

## **KTBA CASE LAW UPDATE (04<sup>th</sup> of 2023 dated May 03, 2023)**

### **Committee Members**

**Mr. Shams Ansari (Convener)**  
0333-2298701  
[shamsansari01@gmail.com](mailto:shamsansari01@gmail.com)

**Mr. Ehtisham Qadir**  
0334-2210909  
[ehtisham@agadirnco.com](mailto:ehtisham@agadirnco.com)

**Mr. Faiq Raza Rizvi**  
0302-2744737  
[federalcorporation@hotmail.com](mailto:federalcorporation@hotmail.com)

**Mr. Hameer Arshad Siraj**  
0333-2251555  
[hameer.siraj@gmail.com](mailto:hameer.siraj@gmail.com)

**Mr. Imran Ahmed Khan**  
0300-9273852  
[iakjci@yahoo.com](mailto:iakjci@yahoo.com)

**Mr. Razi Ahsan**  
0300-0446892  
[razi.lawconsultancy@gmail.com](mailto:razi.lawconsultancy@gmail.com)

**Mr. Shabbar Moraj**  
0321-8920972  
[shabbar.muraj@pk.ey.com](mailto:shabbar.muraj@pk.ey.com)

**Mr. Shiraz Khan**  
0333-2108546  
[shiraz@taxmanco.com](mailto:shiraz@taxmanco.com)

**Dear Members,**

A brief update on a recent judgment on “**FTO can pass disciplinary recommendations to FBR against its Officers**” by Lahore High Court is being shared with you for your knowledge.

This update is in line with the efforts undertaken by our “**CASE LAW UPDATE COMMITTEE**” apprise our Bar members with important court decisions.

You are equally encouraged to share any important case law, which you feel that should be disseminated for the good of all members.

You may contact the Committee Convener Mr. Shams Ansari or at the Bar’s numbers 021-99212222, 99211792 or email at [info@karachitaxbar.com](mailto:info@karachitaxbar.com) & [ktba01@gmail.com](mailto:ktba01@gmail.com)

**(Zafar Ahmed)**  
President  
May 03, 2023

**(M. Mehmood Bikiya)**  
Hon. General Secretary  
May 03, 2023

## KTBA CASE LAW UPDATE (04<sup>th</sup> of 2023 dated May 03, 2023)

### **FTO can pass disciplinary recommendations to FBR against its Officers**

**Constitution Authority:** Islamabad High Court

**Petitioner:** Masud Reza

**Section:** 2(3)(i)(b) & 14(6) of the Federal Tax Ombudsman Ordinance, 2000.

Detailed judgment was issued on March, 03 2023 [W.P. No. 2510 of 2017].

**Background:** The Islamabad High Court (IHC) set-aside the order of the President of Pakistan and restored the recommendations made by the Federal Tax Ombudsman (FTO) to Federal Board of Revenue (FBR) for departmental action against the tax officer who violated a stay order issued by the Commissioner Appeals (CIRA) and made the illegal recovery under Section 140 of the Income Tax Ordinance, 2001 (the Ordinance).

#### **Decision of the Court:**

**First Ruling of the Court:** Judicial review of President Order is IHC Jurisdiction. The IHC brushed aside the very first line of argument of the FBR through which it attempted to dislodge the whole case that the petition was not maintainable before the IHC, on the ground of jurisdiction, in the first place. The argument of the FBR was based on the petitioner's failure to file the petition before the Lahore High Court (LHC), which has jurisdiction over the location where the tax officer's actions took place. The IHC rejected the defence that the petition was filed to seek a judicial review of a decision rendered by the President of Pakistan, which very much falls within the jurisdiction of the IHC.

**Second Ruling of the Court:** The second contention of the department about the tax officer not receiving notice of the stay order was also rejected. The court cited Section 128(1A) of the Ordinance, which requires a notice for hearing of a stay to be issued to the Commissioner who passed the order and for the CIRA to communicate a copy of the stay order to the Chief Commissioner and the appellant. The court found it inconceivable to assume that the tax officer, who was working within the hierarchy of the FBR, would have had no knowledge of the stay order. The plea of the department i.e. no notice of the stay order, was treated as a charge sheet against itself and as an admission of its wrongdoing under the Federal Board of Revenue Act, 2007.

**Third Ruling of the Court:** The court further noted that FBR's stance before the FTO was not about non-communication of the CIRA order. It has been held that FBR's plea that it was never aware of the stay order issued by the CIRA would amount to FBR denying the taxpayer the right and the benefit of the stay order in field.

**Conclusion:** The Court observed that the President's order is not premised on the basis that the stay order was not served on the Commissioner. Instead the President Office was of the view that the FTO exceeded his authority by interfering with the matter of assessment of tax and interpretation of law, which, however, was never the case as the appeal was decided in detail by the Appellate Tribunal. The only question or complain before the FTO was with regard to failure to implement the stay order, which is a maladministration as defined under section 2(3)(i)(b) of the FTO Ordinance. The Court observed that the President office misapplied the facts and law involved in the case resulting in setting-aside the recommendations of the FTO. The FTO recommendations, therefore, to take suitable action against the officials fell very much within the powers vested under section 14(6) of the FTO Ordinance, 2000.

The order passed by the President Office was set-aside and recommendations of the FTO for departmental action against the official were restored, with the directions that the FBR will ensure that the FTO recommendations are given effect.

**NOTE: Members are requested to read the complete order attached herewith.**

This update has been prepared for KTBA members and carries a brief narrative on a detailed Judgment and does not contain an opinion of the Bar, in any manner or sort. It is therefore, suggested that the judgment alone should be relied upon. Any reliance on the summary in any proceedings or project would not be binding on KTBA.