

KTBA CASE LAW UPDATE (06th of 2023 dated May 21, 2023)

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Dear Members,

A brief update on recent five (05) orders by Federal Tax Ombudsman (FTO) is being shared with you for your knowledge.

- I. Recommendation to Re-Consider Condonation Applications**
- II. Recommendations to DGI&I-C to Conduct Inquiry & to Compensate for Damage to the Confiscated Property**
- III. Recommendation to Treat Teaching Staff of FG School and PG School at Par in Terms of Section 149 of the ITO 2001**
- IV. Recommendation to Evolve & Enforce a Mechanism for Audit of Income Tax Collection on Sale & Purchase of Property**
- V. Recommendation to Revisit Scheme of Deregistration of Deceased Person and Formulation of SOPS therefor**

This update is in line with the efforts undertaken by our "CASE LAW UPDATE COMMITTEE" with a goal to apprise our Bar members with important decisions.

You are equally encouraged to share any important case law, which you feel that should be disseminated for the good of all. You may contact the Committee Convener Mr. Shams Ansari or at the Bar's numbers 021-99212222, 99211792 or email at info@karachitaxbar.com & ktba01@gmail.com

(Zafar Ahmed)

President

May 21, 2023

(M. Mehmood Bikiya)

Hon. General Secretary

May 21, 2023

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UPDATES ON FEDERAL TAX OMBUDSMAN (FTO): Five (05) RECENT ORDERS

1: 1566/KHI/IT/2023
FTO Order dated April 27, 2023

RECOMMENDATION TO RE-CONSIDER CONDONATION APPLICATIONS.

The FTO has observed that the taxpayer's request to condone the delay in filing of appeal was rejected by Commissioner Appeals with references to judgements of superior courts, which is uncalled for. Article 24 of the Constitution provides that no person can be deprived of his property save in accordance with the law. FTO, accordingly, recommended the Federal Board of Revenue (FBR) to reconsider condonation applications in the light of case law reported as PTCL 354 of 1998 wherein Supreme Court has held that such requests cannot be declined merely upon ground of limitation of time.

2: 1105/QTA/CUST/2023
FTO Order dated April 27, 2023

RECOMMENDATIONS TO DGI&I-C TO CONDUCT INQUIRY & TO COMPENSATE FOR DAMAGE TO THE CONFISCATED PROPERTY

The complaint was filed for compensation with respect to damage to an impounded vehicle parked at State Warehouse. The FTO observed that the vehicle was taken into custody in perfect running condition but later on found to be dysfunctional. FTO consequently recommended DG Intelligence & Investigation-Customs to:

- a) Conduct inquiry against relevant officer on account of non-adherence to warehousing procedures
- b) Compensate the Complainant for his loss
- c) Ensure proper security arrangements around the warehouses

3: 607 and others/IPWRJIT/2023
FTO Order dated May 02, 2023

RECOMMENDATION TO TREAT TEACHING STAFF OF FG SCHOOL AND PG SCHOOL AT PAR IN TERMS OF SECTION 149 OF THE ITO 2001

FTO observed difference in the rates of deduction of income tax from salaries of Principals of Federal Government's (FG) Schools as compared to the deductions of income tax from salaries of Principals of Provincial High School. The Principals of FG Schools enjoyed the teaching rebate while the complainants were denied this concession. FTO recommended the FBR to treat Principals, Vice Principals etc. of FG Institutions and of KP at par in terms of section 149 of the ITO 2001.

4: 5234/QTA/IT/2022

FTO Order dated February 06, 2023

RECOMMENDATION TO EVOLVE & ENFORCE A MECHANISM FOR AUDIT OF INCOME TAX COLLECTION ON SALE & PURCHASE OF PROPERTY

FTO was of the view that RTO Quetta unauthorizedly intervened in the process of payment of withholding tax on properties by imposing an additional requirement of prior verification of the CPR (Computerized Payment Receipts) as this was all ordered without FBR approval. At the same time the FTO Office realized that there is a huge underassessment of tax on sale and purchase of properties due to connivance between taxpayers and registration authorities by way of misclassification of properties. It, accordingly, directed to:

- a) To evolve & enforce mechanism for Post-audit of CPRs pertaining to WHT
- b) Minimize human discretion in application of valuation rates and calculation of taxes through installation of software at withholding agent's premises

5: 1345/1SB/1T/2023

FTO Order dated April 27, 2023

RECOMMENDATION TO REVISIT SCHEME OF DEREGISTRATION OF DECEASED PERSON AND FORMULATION OF SOPS THEREFOR

FTO observed that although the case of the complainant was resolved after its intervention; however, comments received from IT (Wing) suggested that the access of tax officers are restricted in the system after passing the order of de-registration u/s 82(5) of the Ordinance. FTO has recommended FBR to re-visit the entire scheme of deregistration of deceased persons and formulate SOPs to remove any system-based glitches that hamper the deletion of NTN despite legal orders by the concerned officers.

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

DISCLAIMER:

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

KTBA *Karachi Tax Bar Association*

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Best regards

(Zafar Ahmed)
President

(Muhammad Mehmood Bikiya)
Hon. General Secretary

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Convener: Case Law Update Committee