

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE MAQBOOL BAQAR

CIVIL APPEAL NO.1074 OF 2009

*(Against the judgment dated 20.3.2009 of
the Lahore High Court, Lahore passed in
W.P.No.11983/2005)*

Federation of Pakistan through Secretary Revenue Division,
Islamabad etc.

...Appellant(s)

VERSUS

M/s Sahib Jee etc.

...Respondent(s)

For the appellant(s): Mr. Khalid Abbas Khan, ASC

For respondent No.1: Nemo

For respondents 2 & 3: Ex-parte

Date of hearing: 19.01.2017

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ORDER

MIAN SAQIB NISAR, CJ.- On a complaint filed by respondent No.1 (*respondent*) against the appellant-department, the Federal Tax Ombudsman passed an order and made a recommendation in favour of the respondent which (*order*) was not assailed by the appellant by way of a representation in terms of Section 32 of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 (*the Ordinance*). Instead the appellant filed a review petition in terms of Section 14(8) of the Ordinance which was dismissed *vide* order dated 26.1.2004. This order was then challenged by the appellant through a representation under Section 32 of the Ordinance which was accepted by the President on 9.6.2005. Aggrieved, the respondent challenged the order through a constitution petition which was allowed by the learned

High Court through the impugned judgment. Leave was granted by this Court in the following terms:-

“Leave is granted to consider whether the petitioners had the remedy of representation before the President of Pakistan against the order passed in review by Federal Tax Ombudsman.”

2. Heard. The Ordinance is a comprehensive legislative instrument and a complete code in itself in consonance with its objects. The powers of the Federal Tax Ombudsman are enunciated by Section 14 of the Ordinance. Section 10 of the Ordinance sets out the procedure to deal with complaints or grievance petitions and the process of collecting and recording of evidence. Section 11(1) of the Ordinance prescribes *“If the Federal Tax Ombudsman is of opinion that the matter considered amounts to mal-administration, he shall communicate his finding with a recommendation to the Revenue Division within a period of sixty days from the date of receipt of the complaint, reference or motion, as the case may be (emphasis supplied)”*. It is further provided by Section 11(2) that *“The Revenue Division shall, within such time as may be specified by the Federal Tax Ombudsman, inform him about the action taken on his recommendations or the reasons for not complying with the same”*. Be that as it may, recourse against any recommendation made pursuant to Section 11, is provided by means of a representation to the President as prescribed by Section 32 of the Ordinance which reads as under:-

32. Representation to President.— *The Revenue Division or any person aggrieved by a recommendation of the Federal Tax Ombudsman may, within thirty days of the recommendation, make a representation to the*

President who may pass such order thereon as he may deem fit.”

In addition, the Federal Tax Ombudsman is also empowered by Section 14(8) to exercise the power of review. The provision reads as under:-

“The Federal Tax Ombudsman shall have the power to review any finding communicated or recommendation made or any order passed by him”.

3. From the above noted provisions of the Ordinance, particularly Section 32 thereof, it is abundantly clear that when the Revenue Division or any person is aggrieved of a **recommendation** made by the Federal Tax Ombudsman in terms of Section 11 of the Ordinance, it/he may file a representation to the President of Pakistan within 30 days of such recommendation. This remedy of representation, though not *stricto sensu* akin to an appeal, is nevertheless a statutory remedy and, therefore, the provision must be strictly construed and applied, meaning thereby that a representation is only available to either the Revenue Division or an aggrieved person as against a **recommendation** of the Federal Tax Ombudsman within 30 days' time. Section 32 of the Ordinance does not envisage a representation against an order passed by the Federal Tax Ombudsman which is not in the nature of a recommendation. However, as mentioned earlier, Section 14(8) of the Ordinance empowers the Federal Tax Ombudsman to review *“any finding communicated or recommendation made or any order passed by him”*. This power of review either invoked on behalf of an aggrieved person or the Revenue Division (*note:- perhaps even under the exercise of suo motu powers, but as this is not a moot point before us therefore no definitive opinion is being expressed*) has a wider scope and three kinds of decisions can be reviewed

by the Federal Tax Ombudsman:- (i) the findings which were communicated in terms of Section 11; (ii) a recommendation made by him; or (iii) any other order passed by him. If, whilst exercising this power of review, the Federal Tax Ombudsman sets aside his earlier decision, irrespective of whether it was a recommendation or not, and passes a **new recommendation** in the order of review, then this (*new recommendation*) shall have been passed pursuant to Section 11(1) *ibid* and a representation would be competent against it. Conversely, where a recommendation earlier made by the Federal Tax Ombudsman is not set aside while exercising the power of review, the order dismissing the review petition would not be tantamount to a fresh recommendation in terms of Sections 11 and 32 of the Ordinance against which a representation could be competently filed. In light whereof, we do not find any merit in this appeal which is hereby dismissed.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
19th January, 2017
Approved For Reporting
Waqas Naseer/*