

FEDERAL TAX OMBUDSMAN SECRETARIAT

Regional Office Karachi

Complaint No.11/KHI/IT(03)/21/2016

Dated: 06-01-2016

Mr. Muhammad Saleem,
Proprietor of M/s Haji Abdullah and Sons, ...Complainant
Shop No. 33, New Fruit Market,
Hali Road, Hyderabad.

Versus

The Secretary,
Revenue Division, ...Respondent
Islamabad.

Dealing Officer : Mr. Manzoor Hussain Kureshi, Advisor
Authorized Representatives : (i) Mr. Kamran Rizvi, Advocate
(ii) Mr. Muhammad Saleem, Proprietor
Departmental Representative : Mr. Rizwan Memon, DCIR

FINDINGS/RECOMMENDATIONS

The complaint is filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance 2000 (FTO Ordinance) against the rejection of request for revision of order for the tax year 2010 passed under Section 122(1)(5) in terms of Section 122A of the Income Tax Ordinance, 2001 (the Ordinance).

2. Brief facts of the case are that the Complainant, a proprietary concern, filed return of income for tax year 2010 under Clause 87/88 of Part-IV of 2nd Schedule of the Ordinance, which was deemed assessment order in terms of Section 120(1)(b). This order was, however, amended under Section 122(1)(5) of the Ordinance vide order dated 30.6.2015. According to the AR, the above order suffered from legal as well as factual infirmities as it was passed exparte without providing opportunity of hearing and considering facts of the case. The Complainant approached the Commissioner-IR (CIR) vide letter dated 20.08.2015 to revisit the order by invoking Section 122A

* Date of registration in: FTO Secretariat

of the Ordinance. Without considering merits of the case and passing formal order, request of the Complainant was regretted vide letter dated 29.12.2015 on the ground that Section 122A of the Ordinance vested only suo moto powers to the CIR and action could not be taken on the application of the Complainant.

3. In response to the notice of complaint issued to the Secretary, Revenue Division, FBR vide letter C.No.4(21)TO-I/2016 dated 27.01.2016 submitted comments of the CIR, Zone-I, RTO , Hyderabad dated 22.01.2016. It was contended that the Complainant filed return of income for tax year 2010 under Clause 87/88 of Part-IV 2nd Schedule to the Ordinance. It was further contended that the return for tax year 2010 was not filed voluntarily but the same was furnished subsequent to cognizance on a complaint of tax evasion taken by the Department (Deptt) and in response to notice issued under Section 114 of the Ordinance. It was averred that the word 'suo-moto' is a Latin legal term defined as 'on its own motion', as distinct from action taken or powers exercised on pointation. Reliance was placed on reported judgments captioned as Haji RehmDil VS The Province of Baluchistan and others (1999 SCMR 1060) and Mst. Mubarak Salman and others VS The State (PLD 2006 Karachi 678) . It was concluded that the CIR could not assume jurisdiction under Section 122A on application of the Complainant due to restricted scope of said Section. So the question of passing order discussing merits of the proceedings did not arise.

4. During the hearing, the AR reiterated that as the amended order for tax year 2010 dated 30.6.2015 suffered serious legal infirmities as well as factual lapses, the Complainant moved an application requesting indulgence of the CIR in terms of Section

122A of the Ordinance. The CIR without hearing the Complainant regretted his request vide letter dated 29.12.2015. He further contended that in terms of Section 122A of the Ordinance the CIR was required to pass formal order after hearing the Complainant as held in the complaint No.147/KHI/IT(38)/512/2015 decided on 30.06.2015 and that CIR rejected the application without appreciation of legal provisions.

5. The arguments of both the parties have been given due consideration and record perused. The record shows that earlier the Complainant had lodged complaint No. 368/KHI/IT(123)/1202/2015, which was closed as withdrawn vide order dated 18.11.2015 as the Complainant had already invoked jurisdiction of the CIR in terms of Section 122A of the Ordinance.

The CIR, however, without considering merits of the case rejected the Complainant's request on the following ground:

".....the CIR has only suo moto powers in matters requiring intervention u/s 122A of the Ordinance. Action cannot be taken on application by the taxpayer".

6. It is a well established legal principle that *suo moto* action requires some information for initiation of action to examine the record, without which how the CIR can come to know about any irregularity or illegality in an assessment order. Interestingly, both the reported judgments relied upon by the Deptt., in the parawise comments support contention of the complainant rather than that of the Deptt.. The said judgments elaborate powers of superior courts regarding exercise of inherent *Suo Moto* Jurisdiction, on the basis of some information. This means that for exercise of *Suo Moto* jurisdiction, some information in any form is essential. There is no second view that the CIR received the information highlighting irregularities and serious legal flaws in the impugned

order through an application filed by the complainant but failed to exercise this Jurisdiction on an irrelevant ground referred to in Para-5 supra. The application moved by the Complainant was, therefore, enough to set in motion the proceedings of Section 122A of the Ordinance. The CIR has posited negative meanings to *suo moto* action under Section 122A, as otherwise he can never ever invoke provisions of this Section in practical terms. Rejection of application of the Complainant arbitrarily is against the spirit of law which required the Commissioner to correct the illegality committed by his subordinates to avoid prolonged litigation. Similar view was taken by this office in C.No.147/KHI/IT(38)/512/2015. During the hearing, the department relied upon another reported judgment captioned as Muhammad Mubeen-us-Salam and others VS Federation of Pakistan through Secretary Ministry of Defence and others (PLD 2006 Supreme Court 602) which has no relevance with the issue in hand. In this judgment the Apex Court has decided the questions whether the employees/teachers of PAF educational institutions were Civil Servants under Section (1) (b) of the Civil Servant, Act, 1973 or for the purpose of S.2-A of the Service Tribunals, Act 1973 and whether the employees/teachers of above institutions could invoke the jurisdiction of the Service Tribunal as well as of the Apex Court.

Findings:

7. Failure to revisit the order dated 09.05.2014 in terms of Section 122A of the Ordinance is tantamount to maladministration in terms of Section 2(3)(b)(c)(d) of the FTO Ordinance.

Recommendations:

8. FBR to-

- (i) direct the Commissioner to revisit the order dated 30.6.2015 in terms of Section 122A of the Ordinance, and decide the case afresh after affording proper opportunity of hearing to the Complainant in transparent manner, as per law;
- (ii) sensitize the Commissioner for lack of understanding of legal provisions; and
- (iii) report compliance within 30 days.

(Abdur Rauf Chaudhry)
Federal Tax Ombudsman

Dated: 21-3-2016
MHK:AH

Approved for reporting.

21/3/16