

**FEDERAL TAX OMBUDSMAN SECRETARIAT**  
Regional Office, Lahore

**Complaint No.147/LHR/IT(114)/417/2015**

Dated: 02.04.2015 \*

**M/s Niazi CNG Company,**  
House No.43/1, St. No.02,  
Cavalry Ground, Lahore.

... Complainant

**Versus**

The Secretary,  
Revenue Division,  
Islamabad.

... Respondent

Dealing Officer : Mr. Muhammad Munir Qureshi, Advisor  
Authorized Representative : Sayyid Ali Imran Rizvi, Advocate  
Departmental Representative : Mr. Manan Younas, DCIR

**FINDINGS/RECOMMENDATIONS**

This is a complaint filed under section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), against non-issuance of income tax refund for Tax Years 2010 to 2014.

2. The Complainant, an AOP, claims aggregate refund of Rs.1,321,993/- for Tax Years 2010 to 2014 as per applications filed on 04.02.2015 (T.Y 2010), on 02.02.2015 (T.Y 2011 to 2013), and on 06.02.2015 (T.Y 2014). The refund claim arises on account of excess deduction of income tax at source under section 235 of the Income Tax Ordinance, 2001 (the Ordinance), in electricity bills. It is the Complainant's contention that despite fulfilling all requirements of law and procedure the refund claim has not been disposed of and no reason for the same has been given nor has any fresh information been requisitioned from him and so he had no alternative but to seek the intervention of the Federal Tax Ombudsman.

\*Date of registration in FTO Sectt.

3. When confronted in terms of the provisions of section 10(4) of the FTO Ordinance, the Deptt filed a reply in which a preliminary objection was raised that where the refund claim was not disposed of within the time allowed under the statute, the Complainant may file an appeal before the first appellate forum and there was no cause for him to file a complaint before the FTO. On merits, the Deptt contended that the required evidence to substantiate the tax deductions claim was not submitted by the Complainant viz original electricity and sui gas bills for the full years (T.Y 2010 to 2014). It was also contended that the Members of the AOP did not e-file income tax returns and wealth statements along with reconciliation statements. The delay in disposal of pending refund claim was, therefore, claimed to be the responsibility of the Complainant.

4. Both sides heard and available record examined.

5. The Deptt's contention that the Complainant was bound to file appeal before CIR (Appeals) when refund claim was not disposed of within the statutory time frame ignores the fact the taxpayer also had option to file a complaint before the FTO if Dept'l maladministration was evident. The Hon'ble **Supreme Court of Pakistan** in judgment reported as **2012PTD1003 (2012 106 Tax SC Pak) dated 31.03.2012** has held that tax deducted under section 235 of the Ordinance is adjustable or refundable as Advance Tax in view of the provisions contained in sections 147(4) and 147(4B) of the Ordinance, as these sections deal with payment of advance tax. In other words, deduction of tax under section 235 of the Ordinance does not fall under FTR (and cannot be treated as such in any situation), but is adjustable like advance tax deducted or paid under section 147 of the Ordinance, (as

against tax deducted under section 234-A of the Ordinance which deals with CNG Stations).

6. In a recent decision in an identical case in **complaint No.152/FTO/2013, dated 22.10.2014 (M/s Almas CNG Station Rawalpindi)**, the Hon'ble President has upheld Federal Tax Ombudsman's Recommendations for issuance of refund on account of tax deducted on electricity bills under section 235 of the Ordinance.

7. It is not understandable as to why FBR has failed to direct the field formations to adopt a uniform policy in the cases of CNG Stations as directed by this office from time to time. All the RTOs are issuing refunds in such cases but only in some cases refunds are arbitrarily blocked by filing Representations, surprisingly with the approval of FBR. **While filing Representations, true facts were not placed before the Hon'ble President.** The AR cited many cases of other RTOs wherein refunds had been issued in such cases without filing representations. The FTO's Recommendations already issued in identical cases not only required immediate implementation after such a long period of expiry of stay available to the Deptt after filing Representation, as also in view of Supreme Court's judgment which has attained finality. Such an act amounts to defiance of FTO's directions and gross maladministration on the part of the officers concerned.

**Findings:**

8. The Deptt's inconsistent policy in the case of CNG stations with regard to adjustment of tax deductions u/ss 234-A/235 of the Ordinance in electricity bills, as discussed supra, is tantamount to maladministration in terms of Section 2(3) of the FTO Ordinance 2000.

**Recommendations:**

9. FBR to direct the Chief Commissioner to-
- (i) adopt a uniform policy in cases of CNG stations that is consistent with Judgments of the Superior Judiciary and decisions of the President of Pakistan in ~~the~~ disposal of Dept'l Representations;
  - (ii) process and dispose of the Complainant's pending refund claim in the light of the above cited, *uniform policy*; and
  - (iii) report compliance within 30 days.

~~(Abdur Rauf Chaudhry)~~  
Federal Tax Ombudsman

Dated: 11-9-2015  
mmq/my

Approved for reporting

11/9/15