

FEDERAL TAX OMBUDSMAN SECRETARIAT
Islamabad

Complaint No.44/ISD/IT(29)379/2012

Dated: 21-03-2012*

Mr. Iftikhar Hussain
Rawalpindi

... Complainant

Versus

The Secretary
Revenue Division
Islamabad

... Respondent

Dealing Officer : Hafiz Ahsan Ahmad Khokhar, Advisor

Authorized Representatives : Mr. Ghulam Farid, Witness
Syed M.Rehman, Witness
Mr. M. Yasir, Witness

Departmental Representatives : Mr. Attiq ur Rehman, IRO
Mr. M.Kashif, IRO

FINDINGS/RECOMMENDATIONS

The Complainant, a Principal of F.G Boys Model School, G-8/1, Islamabad, who is also performing temporary duty as Director (Schools), is aggrieved at the arbitrarily issued notice under section 221(2) of the Income Tax Ordinance 2001 (the Ordinance).

2. The Complainant contends that as teacher and head of a teaching institution he is entitled to 75% tax rebate under clause (2) of

* Date of registration in FTO Sectt.

Part-III of the Second Schedule of the Ordinance. Refusal to allow him this rebate was arbitrary, discriminatory and illegal.

3. The Complaint was sent for comments to the Secretary, Revenue Division, in terms of section 10(4) of the FTO Ordinance 2000. The Chief Commissioner RTO, Islamabad, responded on behalf of the FBR vide letter No.4(379)TO-1/2012 dated 09-04-2012. The Complainant did not opt to file a rejoinder.

4. Parties have been heard and documents perused.

5. Reiterating his original pleadings, the AR averred that the Complainant's duties included teaching senior classes and supervising teaching work of other teachers. This was in accordance with the instructions contained in letter No. F.1-1/2012(SA)FDE dated 15.03.2012, issued by the Deputy Director (Schools), Islamabad. His administrative duties as Principal and temporary duties as Director (Schools) did not detract from his primary task of teaching. He cited judgment TR No.25/2008 dated 15-04-2010 of the Peshawar High Court, declaring that a professor of medicine and head of Department in Khyber Medical College was a full time teacher. He also cited Recommendations of the Hon'ble FTO in complaint No.38/ISD of 2011 as reported in (2012) 105 Tax 236 (FTO Pak) holding that the librarians of Islamabad, who were also doing teaching work, were entitled to 75% rebate being availed by their counterparts in Punjab and Sindh. The FBR filed a representation before the President against the FTO's recommendations, which was turned down vide No.104/2011-Law (FTO) dated 25.07.2012.

6. The DR contended that the post of the Principal involved administrative, not teaching duties. He argued that 75% tax rebate was linked to full time teaching. He also raised two objections to the assumption of jurisdiction by the Hon'ble FTO: (1) the issue related to determination of tax, and (2) the Complainant was also in appeal before the Commissioner (Appeals).

7. The preliminary objections are misconceived. The issue is not one of assessment *per se*. Rather it relates to discriminatory treatment being meted out different taxpayers falling in the same category. As regards the second objection, at the time of the filing of complaint no appeal, review or revision was pending, and so the bar under section (9)(2)(a) was not attracted. Further, the pending appeal related to tax years 2009 and 2010, not to tax year 2011.

8. It is an admitted position that in the past the Complainant was given the benefit of tax rebate under clause (2), Part-III of the Second Schedule of the Ordinance, which reads:

(2) The tax payable by a full time teacher or a researcher, employed in a non profit education or research institution duly recognized by the Higher Education Commission, a Board of Education or a University recognized by the Higher Education Commission, including Government training and research institution, shall be reduced by an amount equal to 75% of the tax payable on his income from salary.

A Principal is primarily a teacher who additionally supervises the instructional staff, and carries out other duties. Performance of administrative tasks does not detract from his real profession. The

FBR, it appears, has also veered to this point of view in holding, in U.No.3(32)ITP/2001 dated 7th March, 2012, as follows:

“Any full time teacher or researcher also performing administration functions is also entitled to 75% rebate under clause(2) of part-iii of the Second Schedule to the Income Tax Ordinance 2001.”

Findings:

09. Failure to extend the benefit of admissible rebate to the Complainant being arbitrary and discriminatory is tantamount to maladministration as defined under section 2(3) of the FTO Ordinance.

Recommendations:

10 FBR to-

- (i) direct the Chief Commissioner RTO, Islamabad to reopen the Complainant's case for the tax year 2011 with a view to rectifying the same, as per law;
- (ii) issue directions to all tax offices throughout the country to treat this matter as a systemic issue; and
- (iii) report compliance within 30 days.

(Dr. Muhammad Shoaib Suddle)
Federal Tax Ombudsman

Dated: 21-01-2013
A.H