

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE
LAHORE

Complaint No.337-L/2009

Major ® Javed Zamir Ahmad,
1-C-B, Building Abid Majeed Road,
Girja Chowk, Lahore Cantt:
Lahore.

... Complainant

V E R S U S

The Secretary, Revenue Division, Islamabad.

...Respondent

(Dealing Officer: Mr. Haji Ahmad, Advisor)

**DECISION/
FINDING**

Present: Mr. S.A Khan AR of the Complainant
Maj® Javed Zamir Ahmad, Complainant himself.
Ms Samia Ejaz, DCIT for the respondent
Mr.Khuram Ali Qadri, Taxation Officer..

The complainant's case for tax year 2008 was selected by the Income Tax Department for audit. Taxation officer made additions on account of gain on sale of property u/s 111 of the Income Tax Ordinance, 2001 and various add-backs in profit and loss account and assessed income of the Complainant at Rs.35,62,640 against declared at Rs.2,44,252.

2. Aggrieved by this assessment, the taxpayer lodged the complaint on the plea that the additions were unjustifiably made without giving statutory notice and providing reasonable opportunity of hearing, which is against the principle of natural justice and statutory provisions on the subject. Complete vouchers were stately provided

to the Assessing Officer twice, firstly along with letter dated 4-4-2009 and secondly on 29-4-2009. But the same were ignored and the Complainant's claims were disallowed allegedly on flimsy grounds with mala fide intentions, which falls under maladministration. The Complainant has prayed that directions be issued for cancellation of bad assessment for the tax year, 2008 and suitable action be taken against the concerned official who acted in a manner which is alleged to be illegal and mala fide.

3. Authorized Representative Mr.. S.A. Khan, and the Complainant, Major ® Javed Zamir Ahmad, appeared for hearing. Departmental Representative Ms Samia Ejaz, Deputy Commissioner Income Tax and Mr. Khuram Ali Qadri, Taxation Officer attended on behalf of the respondents. AR stated that after filing of this complaint, an appeal has also been filed before Commissioner of Income Tax (Appeals) Lahore, which is likely to be disposed of in the near future.

4. Examination of Relevant record shows that additions were made on general remarks like "expenses remained unverifiable and unvouched." etc., ignoring the evidence/vouchers produced by the Complainant. Obviously, no addition could be made without affording reasonable opportunity and a show cause notice. In such like situations, it was held in a case cited as 2007 PTD (Trib) 2319 that " It is legal obligation of the assessing authorities to communicate to the taxpayer as under what clause of subsection (1) of Section 111, he is being required to furnish his explanation. The higher appellate forum have conclusively held that where an assessee is deprived of his right to know about the law being applied to him, the proceedings taken against him will be of no legal consequence.....Additional Commissioner completed proceedings under Section 111 but he did not indicate to the assessee as to what clause of subsection (1) of Section 111 was being applied to him. In this manner the taxpayer was deprived of his legal right. Hence all the actions taken by the assessing authority and the consequential orders passed by them are legally not maintainable"

5. The DRs. were unable to defend the stance taken by the A.R. While for determination of the assessment, an appeal is pending before Commissioner Income Tax (Appeals), Lahore the assessment framed by Taxation Officer even if held to be correct, has been done in a manner that is tantamount to maladministration as defined in subsection (3) (i) (a) and (d) and subsection (3) (ii) of Section 2 of FTO Ordinance, 2000. According to the Complainant, however, he is expecting relief based on the judgment of the Lahore High Court in Writ Petition No.4630 of 2009, dated 24-4-2009 wherein the following direction has been issued.

“All these petitions are accepted and impugned order passed by CIT (Audit) are declared to have been issued without lawful authority and as such the same are of no legal effect. Consequently a direction is issued to Respondent/FBR to lay down a criteria in compliance with the mandate of Section 177 of the Income Tax Ordinance, 2001 whereof de novo proceedings be initiated with regard to Income Tax affairs of such persons who come within the purview of the said criteria while ensuring that persons similarly placed are treated alike in furtherance with article 25 of the Constitution of the Islamic Republic of Pakistan and selection of case for audit on the basis of whimsical pick and choose at random resulting the discriminations are to be avoided”.

Findings:

6. The action of the Taxation Officer that he decided the matter arbitrarily without issuing a show cause notice to the assessee tantamounts to maladministration in terms of subsection (3)(i)(a) and (d) and subsection (3)(ii) of Section 2 of the FTO Ordinance, 2000.

Recommendation:

7. In view of the above finding, the Secretary, Revenue Division, may seek explanation of the Taxation Officer in writing as to why proceedings under section 22 of the FTO Ordinance, 2000 may not be initiated against him for alleged maladministration committed by him, and forward the same to this office within 3 weeks. The Taxation Officer may also indicate whether he wishes to be heard in person.

(Dr.Muhammad Shoaib Suddle)
Federal Tax Ombudsman

Dated 26.11.2009