

**FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE
LAHORE**

COMPLAINT NOS. 544-545/LHR/I.Tax(461-462)966-967/2010
Dated: 22.7.2010

1. M. Anwar Khan
Khyber Bricks Company
New Chak No.95/10-R
Tehsil & Distt. Khanewal

 2. Ameer Khan
New Shaheen Bricks Co
Chak No.166/10-R
Adda Mehar Shah
Tehsil & Distt. Khanewal
- ... Complainants

Versus

The Secretary
Revenue Division
Islamabad

... Respondent

FINDINGS / RECOMMENDATIONS

Dealing Officer : Muhammad Munir Qureshi
Advisor

Authorized Representative : Ch. Fayyaz Mehmood, Advocate

Departmental Representative : Dr. Athar Ishaq, DCIR

These complaints are against non-issuance of refund.

2. The facts in this case are that the Complainants manufactured and supplied bricks for lining of water courses. Total amount of tax

* Date of registration in FTO Sectt.

deducted at source in Tax Years 2008 and 2009 against payments made to the Complainants was Rs.1,600/- and Rs.43,204/- respectively in the case of Complainant cited at S.No.1 above, and Rs.41,852/- and Rs.11,108/- in the case of Complainant cited at S.No.2 above. According to the Complainants, these amounts were required to be refunded, after adjusting tax demand, if any. The Complainants have referred to judgment cited as 2008-98-TAX-162(LHC) in which it has been held that in the case of a manufacturer, tax deducted at source on supplies made was liable to be adjusted against demand and not to be treated as final discharge of liability.

3. When confronted, the Department filed reply raising a preliminary objection that the FTO did not have jurisdiction in matters involving interpretation of law, rules and regulations relating to assessment of income for which legal remedy of appeal was available. Reference was made to a decision by the Hon'ble President of Pakistan while disposing of Representation in Complaint No.1096-L/2005.

4. Apart from the preliminary objection referred to supra, the Department stated that tax deduction certificates submitted by the Complainants had not been issued by the competent authority. It was claimed that the deduction certificates were required to have been issued by the Chairman, Water Users Association, and not by the District Officer, Farm Water Management, Khanewal, or the Engineer, Agriculture Water Management, Jahanian. Moreover, certificates earlier issued by them were cancelled and hence credit for tax

deduction cited in those certificates could not be given to the Complainants.

5. The Department has also objected that AR of the Complainants were not competent to file the complaints as the same were filed on 12.7.2010 whereas the power of attorney was issued on 27.7.2010.

6. The Complainants, on the other hand, have rebutted the Departmental contention with regard to improper authorization given to the AR and have clarified that Form-A of the complaint had been duly signed by them and the details annexed therewith were submitted in the FTO's Office under their direction and with their knowledge.

7. Before addressing other issues, let it be clarified that the preliminary objection as to the jurisdiction of the FTO Office is misconceived as the issue here is not concerning interpretation of law, but the arbitrary way in which the Department has handled the complaint.

8. It is also pointed out that refund in similar circumstances had earlier been issued by the Department to the Complainants and also to other similar manufacturers of bricks and no objection was raised regarding issuance of deduction certificates and that this objection had been raised for the first time in Tax Years 2008 and 2009 simply to deny refund to the Complainants when it was properly due to them.

9. In the matter of cancellation of deduction certificates issued by the District Officer, Water Management, Khanewal, and the Engineer, Agriculture Water Management, Jahanian, during

discussion with the DR and the Complainants and their AR, it transpired that the deduction certificates were issued with regard to tax withholding at source on payments made for supplies of different items, including bricks, sand, bajri, cement etc., whereas so far as the Complainants were concerned, they had supplied bricks only and the other items cited pertained to suppliers other than the Complainants. As the deducting authority had lumped all the various items in one certificate this appears to have created problems for the Department with regard to giving credit to the Complainants for tax withholding in their individual cases and as a consequence the certificates had got to be cancelled. However, notwithstanding their cancellation, once tax was deducted at source and deposited in Treasury, the person to whom the deduction pertained must get credit for the same.

10. Under the law, when payment is made to a supplier of goods, the deducting authority is required to deduct and deposit tax in the Treasury within the period stipulated in the statute and it is for the Department to monitor and enforce compliance with withholding tax law. If the withholding agent fails to discharge his statutory responsibility properly, the Department must take cognizance of the lapse and take necessary consequential action as provided in law. In the instant case, it appears that the withholding agents had deducted and deposited tax involving multiple suppliers and had issued consolidated deduction certificates to the suppliers. These consolidated deduction certificates were subsequently got cancelled for the reason that bifurcating payments and giving credit to individual suppliers became too problematic. The proper course of action then would have been to issue revised deduction certificate to each

supplier separately. This was not done. As regards the Departmental contention that the deduction certificate should have been issued by a different authority altogether viz the Chairman, Water Courses, if that indeed was correct, then the appropriate course of action should

supplier separately. This was not done. As regards the Departmental contention that the deduction certificate should have been issued by a different authority altogether viz the Chairman, Water Courses, if that indeed was correct, then the appropriate course of action should have been for the Department to approach the Chairman, Water Courses and ask him to issue the deduction certificate if disbursement of payments to the suppliers had been made by him. The Department took no such action either.

11. During hearing of the complaints on 01.9.2010, the dealing Inland Revenue Officer (IRO), Mr. Abdul Hameed Malik, appeared and submitted that he would finalize the refund claims after getting the tax deductions verified from the District Accounts Officer and this would be completed within 7 days and refund due to the Complainants would then be quantified and issued, but no tangible progress was subsequently reported.

12. It is all too evident that the Departmental officers charged with monitoring of withholding tax provisions did not appear to have a clear idea as to how they were to proceed further in such a case, and so, groping in the dark, they were just assigning blame to the Complainants who had nothing to do with tax deduction and deposit of the deducted tax in the Treasury. The conduct of Mr. Abdul Hameed Malik, Inland Revenue Officer, RTO, Multan, apparently did not make any serious attempt to seek a solution to the problem of verification of payments despite of the fact that he was fully aware of the factual position obtaining in this case and was also aware that refund in similar circumstances had been issued to the Complainants and to other suppliers in the past by the Department.

13. It may also be noted that in the case of excess deduction of income tax in Tax Year 2008, the same was refundable to the Complainants in view of the provisions of Section 153(6A) of the Ordinance. However, in Tax Year 2009, the Complainants' cases would fall in the fixed tax regime, as per Section 153(6) of the Ordinance, and hence no refund would arise in that year.

Findings:

14. Delay and arbitrariness in disposal of Complainants' refund applications is evident and the same is tantamount to maladministration under Section 2(3)(ii) of the FTO Ordinance.

Recommendations:

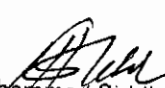
15. FBR to direct the Chief Commissioner to –
- (i) issue refund due to the Complainants along with admissible compensation, as per law, within 21 days;
 - (ii) enquire into the failure of the Departmental officials concerned to properly monitor Withholding Agents' compliance with relevant statutory provisions and to take appropriate remedial action; and
 - (iii) submit compliance report within 30 days thereafter.

(Dr. Muhammad Shoaib Suddle)
Federal Tax Ombudsman

Dated: 22-09-2010
S.A./my

Approved for posting

ATTESTED


Ch. Muhammad Siddiq Tabassum
Advisor (Implementation & Monitoring)
Federal Tax Ombudsman Secretariat
Islamabad