

FEDERAL TAX OMBUDSMAN

REGIONAL OFFICE

LAHORE

**Complaint No.208/lrd/I.Tax(141)/799/2009**

(Dated: 24-12-2009)

**M/s Zohaib Motors  
97-A Shamsheer Road  
Sarghoda**

... Complainant

**Versus**

**The Secretary  
Revenue Division, Islamabad**

... Respondent

**FINDINGS / RECOMMENDATIONS**

Dealing Officer : Muhammad Munir Qureshi  
Advisor  
Authorized Representative : Sh Shiraz ul Haq, Advocate  
Departmental Representative: Mr Zaigham Abbas, DCIR

The facts in this case are that the Complainant derives income as a carriage contractor. In Tax Year 2006, he has received payment from Pakistan Telecom Corp Ltd (hereinafter, PTCL) on which income tax was deducted at source in the amount of Rs. 1,35,078/-. As the Complainant's income tax liability, as per Return of Income filed by him for the year, came to Rs. 5625/- only, he claimed the balance amount of income tax (Rs. 1,29,453/-) as refund though application duly filed before the concerned Departmental authority on 3-10-2006. The Deptt had 45 days to process the refund but no action was taken till 24.12.2009, when the present Complaint was filed before the FTO.

2. When confronted on the matter, the Deptt claimed that its Data Processing Center (DPC), where all tax collections are recorded electronically, did not verify the income tax deductions in question due to the reason that original challans for deposit of tax payment were not available. The Deptt then approached the deducting authority (PTCL) for confirmation. The deducting authority advised that individual challans for tax deposited in government account were not available with it as a single cheque in respect of a number of taxpayers was issued. However, a list of taxpayers concerned was provided to the Deptt. The deducting authority also confirmed that all cheques for consolidated amount of tax deductions issued in favour of the Deptt were cleared except two cheques for Rs. 42,766/- & Rs. 83,770/- bearing Nos. 6796754 & 731648 respectively and the amount attributable to m/s Zohaib Motors, 97-A, Shamsheer Road, Sarghoda, was not ascertainable as the challans pertaining to this taxpayer were not available.

3. According to the Deptt, the Complainant's share in the cheques that had statedly not been cleared by the bank could not be ascertained in the absence of individual challans of deposit of payment. It was therefore not possible to ascertain the exact amount of income tax deduction attributable to the Complainant and thus the refundable amount remained indeterminate and no refund could be issued.

4. The AR rebutted the Deptt's contention, saying that all necessary evidence to substantiate the refund claim was duly provided. According to him, refund pertaining to Tax Year 2005 for Rs. 1,16,459/- was issued, though without any order u/s 170(4). He claimed that income tax deductions for Tax year 2006 were made by the same deducting authority (PTCL) as in Tax Year 2005, and the

Deptt was bound to process a refund claim within 45 days from the date an application for refund was filed.

5. The arguments of both sides have been considered. What appears to have happened here is that the deducting authority issued cheques to the Deptt for consolidated amount of income tax deducted at source in respect of various parties to which it had made payment in Tax Year 2005 along with a list of the individual parties concerned and the Deptt then deposited the payment, party wise, in treasury, as per individual challans for each taxpayer listed by PTCL. Now if two cheques for consolidated amount issued by PTCL have not been cleared as intimated by the deducting authority, it means that the Deptt did not deposit these cheques in the treasury. If this be the case, then the entire responsibility (for non deposit of cited cheques in treasury) is that of the Deptt and the Complainant should not have been made to suffer for such a patent Departmental lapse. As the cheques in question have not been cleared, the Deptt can always ask the deducting authority to issue fresh cheques for the amounts in question for depositing the same in treasury, albeit belatedly (in the 'current tax year'). However, as there appears to be no doubt that the deducting authority had indeed deducted income tax against payments made to the Complainant, refund has got to be allowed to the Complainant for the same. As for the non availability of challans, this too is a Departmental lapse as the Deptt is required to maintain them properly and to ensure their safekeeping. The Data Processing Center (DPC) makes data input on the basis of these challans and their importance in the accounting system of the Deptt is obvious. Any misplacement or loss of challans should therefore lead to a formal investigation. It is surprising that no such investigation has been made in the present case and it is being casually stated that the challans are not available.

**Findings:**

6. The non availability of record for deposit of tax in treasury is the responsibility of the Deptt and the Complainant cannot be denied credit for income tax deducted at source by the deducting authority. The protracted, unnecessary delay in settlement of Complainant's refund claim and defective, inefficient maintenance of tax payment challans amounts to 'maladministration as defined in section 2(3)(ii) of the Establishment of the Office of the Federal Tax Ombudsman Ordinance 2000.

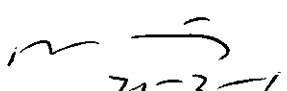
**Recommendations:**

7. FBR to direct the concerned departmental authority to:
- (i) pass order u/s 170(4) and issue due refund to the Complainant alongwith compensation, as per law, for delay in processing the refund claim;
  - (ii) investigate the non deposit of cheques sent by the deducting authority into the treasury, fix responsibility for the lapse and take appropriate action against those found guilty under intimation to FTO Office.
8. Compliance report to be sent to this office within 30 days of receipt of these Recommendations.

(DR. MUHAMMAD SHOAB SUDDLE)  
FEDERAL TAX OMBUDSMAN

Dated: 18-03-2015

MQ/my

  
Mirza Rafi-uz-Zaman  
District & Sessions Judge  
Implementation & Monitoring  
Federal Tax Ombudsman Secretariat  
Islamabad