

**FEDERAL TAX OMBUDSMAN**  
ISLAMABAD

**Complaint No.129/Isd/IT(110)/569/2010**  
**Dated: 26-04-2010**

Mr. Muhammad Khalid Randhawa  
Islamabad ..... Complainant

Versus

Secretary  
Revenue Division  
Islamabad ..... Respondent

Dealing Officer : Sardar Irshad Shaheen, Advisor  
Authorized Representative : Mr. Tariq Rashid, FCA  
Departmental Representative : Mr. Anwar Zeb, DCIR  
Malik Muhammad Sarwar, Officer  
Inland Revenue

**FINDINGS/RECOMMENDATIONS**

The Complainant agitates at non-issuance of refund of Rs. 3,848,837 for tax years 2006 to 2008. According to the AR, refund applications were filed with returns on 26-04-2007, 27-09-2007 and 13-09-2008 for the three years respectively, but no response was made by the Deptt. which amounted to maladministration u/s 2(3) of FTO Ordinance 2000. He claimed that the Complainant received income from a rented plaza and tax was deducted on advance rent for three succeeding years (after tax year 2005), in violation of provisions of Income Tax Ordinance 2001. The AR contended that Section 15 of the Ordinance was relevant for tax on rental income but this Section, read with Section 68(2) and Section 74 of the Income Tax Ordinance 2001,

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\* Date of receipt in FTO Secu

expressly provided that tax on property would be chargeable for one year only. He further contended that tax was illegally deducted on advance payment of rent for three years, which meant that advance tax deducted was refundable. The AR contended that neither refund was issued nor any order u/s 170(4) passed by the Deptt. within the prescribed time. He prayed that the Deptt. be directed to issue refund with compensation without further delay.

2. The DRs claimed that under sub-sections (1) and (2) of Section 135 of the Ordinance, tax on any payment of rent including a payment by way of advance' was deductible as 'final discharge of tax liability' which ~~was~~ to be adjusted for the relevant year. They claimed that u/s 169(1), the tax collected from property income was covered under ~~FTT~~. Moreover, the Complainant had not filed wealth statement and returns filed for the relevant period were also incomplete.

3. The DRs also claimed that instead of claiming refund, the Complainant was required to pay arrears demand of Rs. 145,488 for assessment year 1994-95 and Rs. 317,005 for assessment year 2000-2001.

4. The AR rebutted the claim of DRs and contended that in case any return was incomplete, the Deptt should have asked for relevant documents and such a deficiency could not be made an excuse for non-disposal of refund claim. He categorically stated that on appeal against ex parte assessment for assessment year 1994-95, the Income Tax Appellate Tribunal had remanded the case back to CIT(A) vide order dated 22/11-2001, but the CIT(A) failed to pass any order. He contended that under the law the CIT(A) was required to pass order within three months failing which appeal stood accepted in favour of the taxpayer u/s 132(5) of the repealed Ordinance 1979, and, therefore, the tax already paid by the Complainant needed to be refunded. He further

claimed that for assessment year 2000-2001, the demand was rectified and reduced to Rs. 269,161, which was paid.

5. The DRs claimed that some record pertaining to assessment years 1994-95 and 2000-2001 was not traceable. However, both parties agreed to resolve this issue by completing the relevant record. The DRs promised to rectify the assessments and issue refunds if due for the period which came to light only during the hearing.

6. The issue raised by the Complainant has become infructuous with effect from tax year 2011 onwards as tax deducted on property has become adjustable by amendment in law through Finance Act 2010.

7. For the period relevant to tax years 2006 to 2008, both the parties have been heard and record perused. The Complainant's claim of refund for these years is belated as he has already filed returns and tax deduction for the relevant period has been treated as final discharge of tax liability under FTR. The claim of refund for this period, therefore, cannot be entertained at this stage. Nevertheless, the contention of the AR that tax chargeable on property income was required to be paid for one financial year and advance tax deducted for succeeding years created the Complainant's right to compensation appears to carry weight. While Section 155(1) of IT Ordinance 2001, allowing deduction of tax on property income "including a payment by way of advance", did not specify any limit or period of 'advance amount', under the operative/charging Sections of Income Tax Ordinance, tax could only be charged for one (current) year. And as such, depriving a taxpayer of his money, before it is due, which otherwise he can utilize for business purposes, entitles him to compensation. Natural justice demands that Section 171(1) of the Income Tax Ordinance 2001 which permits payment of compensation at

prescribed rate on delayed payment of refund be equally applied on tax deducted in advance.

8. The Department's failure to rectify assessments on the basis of appellate decisions for assessment years 1994-95 and 2000-2001 displays gross negligence in terms of Section 2(3) of FTO Ordinance 2000.

**Findings:**

9. Inordinate delay in rectification and issuance of refund for assessment years 1994-95 and 2000-2001 and non-disposal of refund applications within prescribed time limit for tax years 2006 to 2008 tantamounts to maladministration u/s 2(3)(ii) of FTO Ordinance 2000.

**Recommendations:**

10. FBR to –


- (i) pay, as per law, interest/compensation on advance tax deducted on rental income for tax years 2006 to 2008;
- (ii) direct the Chief Commissioner to rectify the assessments for assessment years 1994-95 and 2000-2001, and issue refund/compensation due, as per law, within 21 days; and
- (iii) report compliance within 30 days.

**(Dr. Muhammad Shoaib Suddle)**  
Federal Tax Ombudsman

Dated: 11/01/2010

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ATTESTED

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

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**CORRIGENDUM**

In order dated 2-3-2010 in captioned complaint case, in paragraph 10 (Recommendations), sub-paragraph (ii), page-4, the following correction is made:

- a. The words: "direct the Chief Commissioner" be read as:  
"direct the Commissioner concerned."

**Dated:**

**(Dr. Muhammad Shoaib Suddle)**  
**Federal Tax Ombudsman**

  
Dr. Muhammad Shoaib Suddle  
Advisor, Investigation & Monitoring  
Federal Tax Ombudsman Secretariat  
Islamabad