THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.0009/OM/2024

Dated: 03.05.2024* HQ, Islamabad

The Secretary,
Revenue Division,
Islamabad. ... Respondent

Dealing Officer	:	Dr. Khalil Ahmad, Advisor
Appraised by	:	Mr. Muhammad Tanvir Akhtar, Advisor

FINDINGS/RECOMMENDATIONS

Own Motion investigation was initiated by FTO Secretariat, Islamabad under Section 9(1) of the FTO Ordinance, 2000 based on the Complaints Nos.1225 to 1229/LHR/IT/2024 in the cases of Complainants / Teachers M/s. Qurrat-ul-Ain Qadeer, Sumera Sajid, Majida Ahmad, Andleeb Fatima and Asma Bukhhari regarding excess tax deductions and subsequent ordeal faced by the taxpayers and hardships faced by salaried taxpayers.

2. BACKGROUND OF OWN MOTION INVESTIGATION:

P

It was observed during investigation of above complaints that all of the Complainants are subjected to excess tax deductions u/s 149 at the stage of deduction at source, despite the fact that they fully qualify the benefit under Clause (2) of Part III of Second Schedule to the Income Tax Ordinance, 2001, which stipulates that:

> **"[(2) The tax payable by a full-time teacher or a researcher, employed in a non-profit education or research institution duly recognized by Higher Education Commission, a Board of Education or a University recognized by the Higher Education Commission, including government research institution. shall be reduced by an amount equal to 25% of tax payable on his income from salary.**
>
> **Provided that this clause shall not apply to teacher of medical profession who derive income from private medical practice or who receive share of consideration received from patients."**

---

* Date of registration with FTO Secretariat

3. The above scenario establishes that;

   i. ***all these complainants are public-sector full-time teachers as such they qualify for 25% tax rebate, as provided under clause (2) of Part-III of the Second Schedule to the Income Tax Ordinance, 2001. The rebate @ 25% is allowable on the basis of total tax payable on total salary income for a particular year.***

   ii. ***the deductions from their monthly salaries are not being made in line with the tax rebate as admissible to the full time teachers in the Government Sector.***

4. In the above as well as other similar cases multiple hardships are being caused as in the first instance;

- *Salaried persons get subjected to excess deductions;*
- *secondly the ordeal of excess deductions continues throughout the financial year;*
- *thirdly they have to wait for more than one year for lodging the claim of refunds; and*
- *Then they have to undergo the agony of filing refund claims, approaching tax offices and facing all refund related hazards.*

All these sufferings are completely unjustified in the face of explicit legal provisions which duly provide the timely relief at the first stage i.e. Deduction at Source. Section 149 of Income Tax Ordinance, 2001 clearly spells out;

> ***149. Salary. — (1) Every person responsible for paying salary to an employee shall, at the time of payment, deduct tax from the amount paid at the employee's average rate of tax computed at the rates specified in Division I of Part I of the First Schedule on the estimated income of the employee chargeable under the head "Salary" for the tax year in which the payment is made after making adjustment of tax withheld from employee under other heads and tax credit admissible under section 61 and 63 during the tax year after obtaining documentary evidence], as may be necessary, for***
>
> ***(i) tax withheld from the employee under this Ordinance during the tax year;***
>
> ***(ii) any excess deduction or deficiency arising out of any previous deduction; or***
>
> ***(iii) failure to make deduction during the year;]***
>
> ***(2) The average rate of tax of an employee for a tax year for the purposes of sub-section (1) shall be computed in accordance with the following formula, namely:–***

A/B

where – A is the tax that would be payable if the amount referred to in component B of the formula were the employee's taxable income for that year; and B is the employee's estimated income under the head "Salary" for that year.

5. The above legal provisions clearly provide that the withholding agent, while deducting tax at source is obligated to adjust the ***tax withheld from employee under other heads and tax credit admissible under section 61 (donations to approved charitable institutions) and 63 (contribution to approved pension funds) during the tax year after obtaining documentary evidence], as may be necessary.*** Meaning thereby that in the cases of salaried persons, prior to deduction of tax at source, the adjustment of admissible full time Teachers rebate, tax credit and taxes withheld from salaried persons under other heads ***(other than salary, such as on vehicles, property transactions, and all other adjustable tax deductions/collections)*** is to be made by the withholding agent. If this legal provision is implemented it can prevent all the subsequent hazards & hardships as mentioned in Para 4 above.

6. Currently nowhere in Pakistan, any of the IR field formations is making any visible effort whereby concerned withholding Agents (AGPR/ Provincial AGs and District Account Offices) are appraised about the above legal provisions nor there is any monitoring mechanism in place to see the implementation of aforesaid facilitating window, made available by the legislature for the salaried persons. This act of FBR functionaries reflects inattention and ineptitude on one hand and causes hardships for the salaried taxpayers on the other due to excess tax deductions. If this provision alone is implemented in letter & spirit thousands of salaried persons will get the relief, already granted (but not guaranteed by FBR) under the law.

7. In view of above given account, Federal Tax Ombudsman ordered Own Motion Investigation vide No.0009/OM/2024 into affairs of tax collecting agents i.e. Dy Accountant General of Pakistan Revenue & District Accounts Offices of Multan & D.G. Khan Divisions.

8. Accordingly, information was called for vide Notice dated 06.05.2024 in terms of 23 of the FTO Ordinance, 2000 from District Accounts Offices, Multan, Khanewal, Muzaffar Garh, D. G. Khan, Layyah & Rajanpur. They were requested to respond to the following queries:

i. Whether any guidelines/instructions with reference to the concept & mechanism of **adjustment of taxes withheld from and tax credit due to the salaried persons,** has been shared by RTO Multan with your office. If so the copy of same may please be shared.

ii. Whether any homegrown/ internal organizational mechanism of adjustment **of taxes withheld from and tax credit due to the salaried persons is in vogue at your office.** If, yes the same may please be shared.

iii. Is there any mechanism in place whereby issues related to adjustment **of taxes withheld from and tax credit due to the salaried persons** are shared & discussed with RTO Multan, which holds jurisdiction over the salaried persons, who are paid their salaries through your office? If so the details may please be shared.

9. <u>**In response to above referred notice, all the Accounts offices submitted that Regional Tax Office has never shared any mechanism of adjustment of taxes.**</u> The DAOs, Multan Khanewal, Muzaffar Garh, D. G. Khan, Layyah & Rajanpur have responded to the aforementioned queries and have taken stance that:

(i) <u>The FBR field formation at Multan has never issued any guidelines / instructions with regard to adjustment of taxes withheld under Section 149 of the Ordinance from the salaried person.</u>

(ii) <u>All the DAOs are unanimous in opinion that presently the tax in terms of Section 149 of the Ordinance is being withheld through automated SAP system which only provides for monthly</u>

deduction on salary at average rate and final adjustment is made during the month of each June. The SAP system has statedly been configured by AGPR, and FBR and adopted by AG Punjab. The DAOs have expressed their inability to make any adjustment in the deductible taxes even if the salaried individuals provide the detail of tax deducted under various other withholding sections of the Ordinance.

10. The Revenue Division was also confronted vide notice 06.05.2024 in terms of 10(4) of the FTO Ordinance, 2000read with Section 9(1) of the FOIR Act, 2013, and was required to respond to the following queries in the backdrop of above given background of this OM.

i. Whether any guidelines/instructions with reference to the concept & mechanism of adjustment of taxes withheld from and tax credit due to the salaried persons, stand issued to the concerned withholding agents, responsible for deduction of tax u/s 149 in the cases of Salaried persons. If so the copy may please be shared.

ii. Is there any mechanism in place to monitor that Withholding Agents falling under your jurisdiction are implementing tax deduction at source u/s 149, as per law. If so the details may please be shared.

11. In response to above referred notice, the Deptt submitted that the withholding agents are being monitored as per prevalent system provided under the law. As per the existing provisions of law each withholding agent is duty bound to e-file quarterly withholding tax statement under Section 165(1) of the Ordinance read with Rule 44(4) of the Income tax Rules, 2002.

12. **FINDINGS:**

(i) Despite the fact that admittedly no mechanism to adjust taxes deducted under other sections and tax credits exists at present, the Deptt has failed to appreciate the spirit of the instant Own Motion initiative taken by the FTO in the true context of express provisions of substantive law as laid down by the legislature in terms of Section 149 of the Ordinance.

(ii) It is obvious that in this regard no instructions, whatsoever have been issued by RTO Multan to the concerned DAOs. Currently at the best RTO Multan is merely monitoring the deductions under Section 149 of the Ordinance by enforcing quarterly statements filed by the withholding agents. No effort has thus far been made by RTO Multan to facilitate the salaried taxpayers by implementing statutory tax adjustment facility during the financial year.

(iii) It is observed that the current withholding procedure of tax deduction in vogue at DAOs level is not in conformity with the intent of the legislature as laid down under Section 149 of the Ordinance

RECOMMENDATIONS:

13. It is recommended that;

(i) **FBR, AGPR and AG, Punjab may consider the requisite changes in the SAP module enabling it to allow adjustment of tax deducted under various provisions of the Ordinance and tax credits, enabling the salaried individuals / pensioners for timely credit and to circumvent long process of refund issuance in terms of Section 170 of the Ordinance;**

(ii) **FBR to evolve a sound monitoring mechanism whereby it is ensured that the facility provided by the legislature is not misused at withholding stage; and**

(iii) **Report compliance in 90 days.**

(Dr. Asif Mahmood Jah)
(Hilal-i-Imtiaz)(Sitara-i-Imtiaz)
Federal Tax Ombudsman

Dated: 3 : 7 : 2024
Akif

Approved for reporting