THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO. 0012/OM/2024

Dated: 02.05.2024* HQ, Islamabad

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

Dealing Officer : Dr. Muhammad Akram Khan, Advisor
Appraised by : Mr. Muhammad Tanvir Akthar, Advisor

FINDINGS/RECOMMENDATIONS

Own Motion investigation was initiated by FTO Secretariat, Islamabad under Section 0(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 Bukhari regarding excess tax deductions and subsequent ordeal faced by the taxpayers and hardships faced by salaried taxpayers.

BACKGROUND OF OWN MOTION INVESTIGATION:

2. 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 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 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."**

3. The above scenario establishes that:

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* Date of registration with FTO Secretariat

(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 refund; 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 many be necessary.*** Meaning thereby that in the cases of salaried persons, prior to deduction of tax at source, the adjustment of admissible full time Teacher 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 Office) 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 in 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 scenario, Federal Tax Ombudsman ordered to Own Motion Investigation vide No.0012/OM/2024 into tax affairs

of tax collecting agents i.e. Accountant General of Pakistan & District Account office, Faisalabad.

8. Accordingly, information was called for vide notice dated 06.05.2024 in terms of Section 23 of the FTO Ordinance, 2000 from District Account Office, Faisalabad. It was 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, Faisalabad 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 Faisalabad, which hold jurisdiction over the salaried persons, who are paid their salaries through your office. If so, the details may please be shared.

9. In response to the above notice, District Account Office, Faisalabad submitted comments vide letter dated 31.05.2024. DAO, Faisalabad informed that the tax deduction from the salaries of Govt. employees in terms of Section 149 is being withheld by SAP system automatically as per the tax slabs issued by Govt. of Pakistan in its Finance Act 2023-24. SAP system is under direct control of AGPR, Islamabad and AG Punjab, Lahore in case of Federal Govt. and Provincial Govt. **DAO, Faisalabad has revealed his inability to make any adjustment in the deductible taxes even if the salaried individuals provide the details of tax deducted under various other withholding sections of the Ordinance. Further, the FBR field formation at Faisalabad has never issued any guidelines/instructions with regard to adjustment of taxes withheld under Section 149 of the Ordinance from the salaried persons.**

10. Similarly, this Office also issued notice dated 06.05.2024 in terms of Section 10(4) of the FTO, Ordinance, 2000 read with Section 9(1) of the FOIR Act, 2013 to the Revenue Division and was required to reply 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**, has been shared by RTO, Faisalabad with your office. If so the copy of same may please be shared.

(ii) 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 Faisalabad, which hold jurisdiction over the salaried persons, who are paid their salaries through your office. If so the details may please be shared.

11. In response to above referred notice, the RTO, Faisalabad filed written comments wherein they stated that desired para wise comments are as under;

(i) This office regularly communicates with governments departments for collection and monitoring of withholding taxes. The guidelines are issued to withholding agents regarding any changes in law and policy. Particularly the amendments made through Finance Act are also communicated to withholding agents district account indicate legal or relevant procedural/system changes.

(ii) Regarding monitoring mechanism, Deptt stated that regular meetings are carried out withholding agents for collection of taxes and ensuring payments as per prescribed rates and procedure. Any legal or technical assistance sough is also provided to the government departments on collection of withholding taxes on salary as well as other withholding provisions. In-house data regarding developments and other schemes is collected for analysis and strategizing the monitoring. However, the absence of any online synchronization of IT systems of District Account Office/other departments and FBR and diverse data formats, this office faces difficulty in data collection and analysis and planning.

12. **FINDINGS:**

(i) Despite express provision of law regarding withholding tax u/s 149, allowing mandatory credit to tax withheld under other heads during the current period, Deptt has failed to appreciate concern raised by this Forum to address the issue and evolve mechanism to ensure strict adherence to substantive law.

(ii) DAO Faisalabad is acting as withholding agent within an inflexible system i.e. SAP without taking care of credit of tax withheld during the year under various heads. Deptt has failed to act to facilitate the salaried taxpayers.

(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 within 90 days.

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

Dated: 12.8.2024
Akif

Approved for reporting