THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO. 0024/OM/2024
Dated: 11.07.2024[1] HQ, Islamabad

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

Dealing Officer	:	Mr. Muhammad Naseer Butt, Advisor
Appraised by	:	Mr. Muhammad Tanvir Akhtar, Advisor
Departmental Representative	:	None

FINDINGS/RECOMMENDATIONS

While investigating various complaints, it was observed that recently, the SIMs of 506,671 taxpayers have been blocked by FBR under section 114B of the Income Tax Ordinance, 2001 (the Ordinance), vide Income Tax General Order (ITGO) No. 1/2024 dated 29th April, 2024 on account of Inactive Taxpayers. However, the referred ITGO does not prescribe any SOP regarding reactivation of SIMs. It only mentions that the SIMs of these will remain blocked until ordered by Commissioner or FBR.

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2. Similarly, while investigating Complaint No. 5785/ISB/IT/2024, the SIM of a taxpayer was blocked despite being on the Active Taxpayers' List. Moreover, instances have been reported wherein the SIMs have not been reactivated even after the taxpayers have fulfilled requirements for being on ATL and filed tax return along with surcharge for ATL. Whereas, no written SOPs are available as to how the SIMs of a taxpayer will be reactivated once he becomes an active taxpayer on FBR portal. In view of above an own motion investigation was initiated on account of SIMs having been blocked by FBR for being **'Inactive Taxpayer'** creating hardships for taxpayers, while exercising powers conferred u/s 9(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance).

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[1] Date of registration in FTO Sectt.,

3. The comments of the Secretary, Revenue Division and Member-IR (Operations) were requisitioned in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. Comments were received from the IR (Operations) wing FBR vide letter dated 30.07.2024 which were examined and placed on file.

4. Hearing notices u/s 9(2) of the FOIR Act, were issued for various dates. The first hearing notice was issued on 09.08.2024 for compliance by 28.08.2024. However, none attended on behalf on Member-IR (Operations). Last notice was issued on 29.08.2024 for compliance by 18.09.2024. In response to the hearing call, The DR from IR (Operations) Wing FBR did not join proceedings. After having examined all the available documents, the Own Motion is disposed of as under.

5. The department filed written comments wherein they stated that the Federal Tax Ombudsman (FTO) has taken suo moto action regarding the blockage of SIMs under Section 114B of the Income Tax Ordinance, 2001. However, section 9(1) of the FTO Ordinance prescribed the jurisdiction of the honorable FTO to investigate an allegation of maladministration as defined under Section 2(3) ibid only. The objective of establishment of office of the honorable FTO is to diagnose, investigate, redress and rectify any injustice done to a person through maladministration by functionaries of tax laws as is evident from the preamble of FTO Ordinance. The aforementioned provisions of FTO Ordinance are reproduced below for facility of reference:

> "WHEREAS it is expedient to provide for the appointment of the Federal Tax Ombudsman to diagnose, investigate, redress and rectify any injustice done to a person through maladministration by functionaries administering tax laws;"

6. The department further stated that initiation of investigation through own motion cannot enlarge the scope of jurisdiction of the honorable FTO as stipulated under Section 9 of the FTO Ordinance. Any perverse interpretation of Section 9(1) & 2 and Section 2(3) of the FTO Ordinance aimed at enlarging the definition of maladministration would render the entire FTO Ordinance a legislative absurdity. It is evident from the preamble of FTO Ordinance that the objective of the Ordinance is to redress the injustice done to a person through maladministration administering tax laws.

7. The department further stated that the due process of law has not been followed. The Income Tax General Order (ITGO) dated April 29, 2024, which included a list of non-filers for the blockage of SIMs, was issued after obtaining certificates from the concerned Chief Commissioners. The concerned Chief Commissioners had confirmed that the taxpayers included in the lists were non-filers. Notices under Section 114(4) of the Income Tax Ordinance, 2001, were issued to these individuals, and they failed to file their tax returns even after the due date specified in the notice.

8. The department further stated that the reactivation of SIMs falls under the jurisdiction of the Ministry of IT. Prior to starting the process of blocking the SIMs, detailed discussions with the Ministry of IT, PTA And Telecom Operators were carried out and thorough deliberations, a mechanism for reactivation of SIMs was established. The details of agreed Standard Operating Procedure (SOP), is as under:

> "FBR automatically communicates the list of taxpayers who have filed their tax returns to the telecommunications companies on daily basis. The concerned telecom companies then reactivate the SIMs within 24 to 48 hours. Generally, no delays occur in this process. However, delays might happen in peculiar cases."

9. The department further stated that generally, no delays occur in this process. However, delays might happen in peculiar cases. The department further stated that regarding Complaint No. 5785/ISB/IT/2024, the case has been examined in detail and reply in this respect was furnished vide Board's letter bearing No. F.No.6(30)S(IR-Operations)/2024 dated June 25, 2024. Taxpayer had registered himself with FBR, but had not filed his income tax return for tax year 2023 due to which his name was included in the Income Tax General Order No. 01 of 2024. Upon receipt of the complaint the status of taxpayer's income tax return was cross checked on AJK taxpayers' portal and after thorough scrutiny it was unveiled that taxpayer has filed its income tax return with department of Inland Revenue AJK Government. Subsequently, CNIC No.37405-0352658-1 of Mr. Azhar Iqbal Khan, Jhelum was communicated for unblocking of sims to the telcos and the SIM of the taxpayer's has been unblocked and the matter has been now resolved.

10. The department further stated that the ITGO No. 1 was issued to notify the non-filers of 2023 for blockage of SIMs u/s 114B of Income Tax Ordinance, 2001 and the same was not meant for explaining the SOP for reactivation. However, it is pertinent to mention that once a taxpayer files his return, there is nothing to be done at his end in order to reactivate his SIM. Rather FBR has developed an automatic procedure for it in consultation with the telcos, whereby FBR communicates the list of filers & SIMs are unblocked in 24 to 48 hours.

11. **On issue of Jurisdiction:** The department raised legal objections against jurisdiction of this office to initiate own motion proceedings. The objection of the department is based on wrong appreciation of section 9(1) & 2 and section 2(3) of the FTO

Ordinance. It is further observed that in Para 11 of the judgement of Hon'ble IHC in Writ Petition No. 2322 of 2021, it is settled as under;

> *"11. Section 9(1) authorizes the **learned FTO to investigate an allegation of maladministration on his own motion as well**----- the leaned FTO may come across other maladministration which the Ombudsman is then authorized to take cognizance of on his own motion------But suffice it to say that there must exist a concrete allegation of maladministration **whether or not there is a complaint.**"*

12. The judgement of Hon'ble High Court of Sindh in CP No. 4079/2021 also endorses powers of FTO for own motion proceedings without any complaint. Para 10 of the said judgment states;

> *"10. -------the Federal Tax Ombudsman would still retain such powers and an example of the FTO acting without a complaint but on the basis on allegation would be, on basis on newspaper report which contains certain allegations against officers of FBR as happened in the flying invoices case. Another example of journalist report, investigative reports, observation, reference or reports made by any other department or authority. **Therefore, while it is clear that a presence of complaint is not mandatory, there must be something in the form of allegation."***

13. Para 11 of the said judgement further elaborates scope of the own motion proceedings in the following words;

> *"11. Besides section 9(1) where it relates to his own motion is also dependent on the allegations of maladministration. When it is read with section 10 of ibid Ordinance, 2000 it leaves no room that with the disclosure of allegations or accusations, such actions contemplated under section 9 and 10 could be mandated."*

14. Para 12 of the said judgement further elaborates that;

> *"12. This investigation however is premised on the fact that the maladministration as defined in the Ordinance, 2000 spells out"*

15. As quoted above from the two judgements of Hon'ble High Courts, it is evident that this office can initiate own motion proceedings. Rather ***existence of allegations of maladministration*** based on any earlier inquiry or any report of the department or any relevant source spelling out maladministration as

defined in the FTO Ordinance, 2000 would form a sufficient basis to initiate own motion proceedings.

16. In an earlier judgement of the Hon'ble Peshawar High Court in WP No. 2645/2021 it is held in para 6 as under;

> *"6. ----this court is of the view that the term 'maladministration' as defined in the FTO Ordinance, 2000 is very exhaustive as such, the office of the FTO* ***<u>does not require the presence of a complaint in every case</u>*** *to order for investigation rather it may on its own motion investigate any allegation of maladministration on the part of the revenue division---."*

17. The section 10(5) of the FTO Ordinance authorizes the Hon'ble FTO to obtain information for investigation. The said section is as under;

> *"(5) ----the Federal Tax Ombudsman may adopt such procedure as he considers appropriate for such investigations and* ***<u>he may obtain information from such persons and in such manner and make such inquires as he thinks fit.</u>****"*

18. In the same way the subsection (9) also empowers to obtain any documents which is relevant; the sub section is given as under;

> *"(9) For the purposes of an investigations under this Ordinance, the Federal Tax Ombudsman may require any tax employee* ***<u>to furnish any information or to produce any documents which in the opinion of Federal Tax Ombudsman is relevant and helpful in the conduct of the investigation</u>----"***

19. The above sections state **<u>that nature and manner of the information and its relevance to investigation would be determined by this office and not by the respondent department.</u>** The crux of the above discussion is that while initiating Own Motion proceedings in the instant case, due course of law has been followed under section 9 and 10 of the FTO Ordinance, 2000. The Own Motion is based on inconsistencies, infirmities and deficiencies which constitute maladministration as defined in the FTO Ordinance, 2000 and it is concluded that this office is fully competent to make investigation on allegations confronted to the

department. Therefore, the legal objections raised by the department are found misplaced which are overruled.

20. Perusal of record shows that the SIMs of 56,671 tax payers have been blocked by FBR u/s 114B of the Ordinance, vide ITGO dated 29.04.2024 on account of inactive tax payers. Section 114B of the Ordinance is reproduced as under;

> **"114B. Powers to enforce filing of returns. -** (1) Notwithstanding anything contained in any other law for the time being in force, the Board shall have the powers to issue income tax general order in respect of persons who are not appearing on active taxpayer list but are liable to file return under the provisions who are not appearing on active taxpayers list but are liable to file return under the provisions of the Ordinance.
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> (2) The income tax general order issued under sub-section (1) may entail any or all of the following consequences for the persons mentioned therein, namely: -
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> (a) **disable of mobile phones or mobile phone SIMS**;
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> (b) discontinuance of electricity connection;
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> (c) discontinuance of gas connection; [or]
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> (d) restriction on foreign travel from the country for a citizen of Pakistan excluding persons holding National Identity Card for Overseas Pakistanis (NICOP), minors, students, persons proceeding abroad for Hajj or Umrah such other clauses of persons as notified by the Board.
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> (3) **The Board or the Commissioner having jurisdiction over the person mentioned in the income tax general order may order restoration of mobile phones, mobile phone SIM and connections of electricity and gas, in cases where he satisfied that**-
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> (a) the return has been filed; or
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> (b) person was not liable to file return under the provisions of the Ordinance.
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> (4) No person shall be included in the general order under sub-section (1) unless following conditions have been met with, namely; -
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> (a) notice under sub-section (4) of section 114 has been issued;
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> (b) date of compliance of the notice under sub-section (4) of section 114 has elapsed; and
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> (c) the person has not filed the return
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> (5) The action under this section shall not preclude any other action provided under the provision of the Ordinance."

21. It is evident from the above section it does not prescribe any SOP regarding reactivation of SIMs nor does the ITGO dated 29.04.2024 lay down any procedure for the aggrieved person to applying for reactivation of his blocked SIM. It only mentions that the SIMs of these will remain blocked until ordered by Commissioner-IR or FBR. Therefore, it is observed that no SOP has been laid down by the Board for guidance of the aggrieved taxpayers. Therefore, these inconsistencies, infirmities and deficiencies stated above constitute maladministration in terms of section 2(3)(ii) of the FTO Ordinance, 2000.

22. It is further observed that the IR (Operations Wing) was issued hearing notices twice but no one attended hearing on fixed dates. This serious neglect on the part of the IR wing (Operations) shows inefficiency in discharge of duties which constitutes maladministration in terms of section 2(3)(ii) of the FTO Ordinance.

RECOMMENDATIONS:

23. FBR to:

(i) direct Chairman FBR to call for the explanation of the officer concerned for not attending the hearings on due dates as stated in para 22;

(ii) direct Member-IR (Operations) to issue SOP for guidance of the aggrieved taxpayers for reactivation of blocked Sims; and

(iii) report compliance within 60 days.

A Jah

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

Dated: 28.10.2024
Akif

Approved for reporting