

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.0032/ISB/IT/2022

Dated: 04.01.2021* HQ, Islamabad

Dr. Javid Irfanullah,
House No 219, Zone-1,
Garden City Phase VII Bahria Town,
Islamabad.

... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer
Appraisal by
Authorized Representative(s)
Departmental Representative

: Mr. Muhammad Majid Qureshi, Advisor
: Mr. Muhammad Tanvir Akhtar, Advisor
: Mr. Bedar Bakht and Mr. Khalid Munir
: Ms. Asma Humayun, DCIR, RTO,
Islamabad

FINDINGS/RECOMMENDATIONS

The complaint has been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance 2000 (FTO Ordinance). The Complainant is a medical doctor who has alleged that ex-parte assessment was framed without considering his reply submitted through web portal, his request for transfer of jurisdiction of case on the basis of his residence was not acceded to and his application for revision of assessment under Section 122(A) of the Income Tax Ordinance 1979 (the Ordinance), was summarily rejected without considering the facts of the case and affording opportunity of hearing.

2. The complaint was referred for comments to the Secretary, Revenue Division, in terms of Section 10(4) of the FTO Ordinance, read with Section 9(1) of the Federal Ombudsman Institutional

Reforms Act, 2013. Para-wise comments were obtained from Chief Commissioner-IR, RTO Quetta, vide his letter No. 410 dated 21.01.2022.

3. A hearing notice was issued on 02.02.2022, in response to which Mr. Bedar Bakt and Mr. Khalid Munir attended to represent the Complainant. Ms. Asma Humayun, Deputy Commissioner-IR, RTO, Islamabad attended as DR. Both the parties argued the case as per their written statement/Parawise comments and produced supporting documents.

4. The complainant's main allegations are the following:-

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- (i) The intimation of selection of his case for Tax Year 2015 for audit u/s 214(c) of the Ordinance was sent through IRIS. But no intimation was sent through post.
 - (ii) The ACIR initiated the proceedings without issuing notice u/s 177 of the Ordinance calling for any record.
 - (iii) Request for transfer of jurisdiction of his case from Quetta to Islamabad on the basis of his residence was ignored.
 - (iv) The Notice u/s 121(1) of the Ordinance was without any legal substance. However, a detailed reply was submitted through IRIS on 17.06.2021. The officer did not consider his explanation while passing the order.
 - (v) Review petition u/s 122(A) of the Ordinance was summarily rejected without providing opportunity of hearing and without passing a formal order u/s 122A on merit.

5. Examination of the record reveals that;

- i. The assessing officer proceeded to frame assessment without issuing legal notices as required u/s 177 or complying with the provisions of section 218(1) of the Ordinance.
- ii. The perusal of best judgment assessment order passed u/s 111/122A/121(1)(d) of the Ordinance reveals that the assessing officer added back an amount of

Rs.1,000,000/- out of Profit & Loss Expenses in the total income. Notwithstanding the illegality of addition of a P&L expense under section 111, as a matter of fact no Profit & Loss account was ever filed by the complainant. Moreover such an addition in the income of a person, who derives income from salary and property only, reflects the professional abyss in the instant case.

- iii. The assessing officer also confronted the taxpayer regarding an amount of Rs.18,674,400/- being the amount of gift to his spouse and proceeded to add the amount in taxpayer income being unverified. This action of the assessing officer is also found whimsical as the said amount was not declared in the return of income. The amount of gift out of known sources cannot be treated as income either in the hands of donor or the recipient.
- iv. Departmental apathy can be judged from the fact that a renowned Nuclear Medicine Specialist Dr. Javaid Irfan Ullah, working at NORI Hospital Islamabad since over a decade is being assessed at RTO Quetta and even his request for transfer of jurisdiction to RTO Islamabad is not being given any weightage.
- v. Declared version of Salary and property income is being repeated over the years but Internet browsing reflects that though no income from private practice has been declared, yet he is available for private appointments: (Website <https://oladoc.com/pakistan/islamabad/dr/nuclear-medicine-specialist/javaid-irfan/3610>) confirms that "You can book an appointment with Dr. Javaid Irfan Ullah by using the 'book appointment' button or by calling at this number 0518151800".
- vi. The Commissioner-IR, did not consider the merits of the case when an application for revision u/s 122(A) was filed.

FINDINGS:

- (i) The preliminary objection raised by the Deptt that since a remedy was available to file appeal before CIR (Appeals) u/s 127 of the Ordinance therefore, the complaint before FTO is misconceived. According to the AR the actions of the Deptt suffered from legal and factual infirmities. The Deputy Commissioner-IR, and Commissioner-IR have passed ex-parte orders without

providing opportunity of hearing and ignoring facts of the case which tantamount to Maladministration.

- (ii) The actions of the assessing officer to initiate the proceedings without issuing legal notices and passing the order without considering taxpayer's explanation tantamount to maladministration.
- (iii) The Commissioner's refusal to review the case u/s 122 (A) on the ground that right of appeal was available to the taxpayer rather than looking into facts and merits of the case, tantamount to maladministration **in terms of section 2(3)(i)(ii) of the FTO Ordinance, 2000.**

RECOMMENDATIONS:

6. FBR is directed to:-

- (i) instruct Commissioner-IR, Zone-I, Quetta to review the assessment order under the provision of Section 122(A) of the Ordinance;
- (ii) after revision of the order as directed above, the jurisdiction over the case be transferred as requested by the Complainant, and any further action, if required may be initiated as per law and after affording a proper opportunity of being heard; and
- (iii) report compliance within 45 days.

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

Dated: 21-02-2022
U.f

Certified to be True Copy

Registrar
FTO Secretariat
Islamabad