THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO. 0060/OM/2022

Dated: 01/06/2022* R.O. Karachi

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

Dealing Officer : Dr. Faiz Illahi Memon, Advisor
Appraising Officer : Mr. Muhammad Tanvir Akhtar, Advisor

FINDINGS/RECOMMENDATIONS

This is an own motion investigation initiated while exercising powers conferred u/s 9(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) to investigate lack of symmetry committed by the FBR filed formations in management of credit of withholding taxes u/s 231B of the Income Tax Ordinance, 2001 (ITO, 2001) in respect of leased vehicles.

2. Record of withholding statements filed by car manufacturers, tax credit u/s 231-B claimed by various banks and the details regarding treatment meted out to them was called for from the Deptt. In response thereto, the Chief Commissioner IR, LTO, Karachi vide letter dated 21.07.2022 submitted the requisite information which is placed on record.

BACKGROUND OF OWN MOTION INVESTIGATION:

3. Adjustable advance tax u/s 231-B on private motor vehicles is collected by the provincial registration authority of Excise & Taxation department u/s 231-B(1) on manufacture of motor vehicles under Section 231-B(3) on registration and sale respectively. The subject tax is adjustable in terms of sub section (5) and the owner can claim credit of this tax against his yearly tax liability. A sizeable number of vehicles are purchased by individuals as well as businesses owned by firms and companies on lease, either from different commercial banks or

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* Date of registration in FTO Secretariat

leasing companies. Sale invoice is issued by car manufactures in the name of lessor, i.e. bank or leasing company. Therefore, tax u/s 231-B (3) is withheld and deposited in their name by the car manufacturer. Although it is called withheld tax but the manufacturer is not extending credit to the ultimate buyer but it is being recovered in the name of the lessor (banks or leasing companies) and then deposited in the government treasury. Factually the lessor is making payment to the manufacturer at the time of purchase & the entire cost is recovered from lessee, alongwith interest. Whereas the advance tax u/s 231-B is in fact recovered from lessee, even before execution of lease agreement in some instances. Therefore, the tax u/s 231-B is paid by the lessee and only he is entitled to take credit of this tax against his tax liability. As the tax is deposited by manufacturer in the name of lessor, the credit is wrongfully allowed to him as it neither belonged to him nor has he borne the burden of this tax. On the other hand the actual buyer is not only deprived of his due credit but double jeopardy is caused to him at the termination of lease when he goes to registration authority for registration of his vehicle. Section 231B (4) provides for exclusion from withholding of tax by registration authority u/s 231-B(I) if the person produces evidence that tax u/s 231-B(3) was charged by manufacturer from the same person. As the tax is deposited in the name of lessor (Bank or leasing Co), the registration authority again charges the tax on the same vehicle on which he has already paid tax to lessor. Therefore, the malpractice of erroneous allowance of tax credit to lessors / denying of due credit to actual buyers and unlawful dual charge of tax to actual buyers is in practice due to negligence, inefficiency, incompetence of officers of FBR in the performance of their duties. This practice is also causing a big dent to FBR's BTB drive due to faulty data of buyers of motor vehicles.

<u>FINDINGS</u>:

4. The information/related documents provided by the Deptt. have

been examined. It has been observed that the tax is deposited in the name of the lessor (banks or leasing companies), but the financial burden is borne by the lessee (individuals or businesses). As a result, the lessor receives the tax credit, although they do not bear the actual cost of the tax. When the lessee goes for vehicle registration, they are charged the advance tax again because the registration authority does not recognize the initial payment made in the name of the lessor; hence double jeopardy. The information/corroborating documents submitted by the Deptt. have been carefully scanned. From the perusal of same, following deductions are palpably obvious:

(i) The withholding statements filed by the manufacturing companies would reveal, at places, mention of names of individual buyers, whereas entries regarding banks are also explicitly mentioned wherefrom the idea of initiating Own Motion gets fortified.

(ii) The information provided by the LTO, Karachi vide its Chief Commissioner IR letter No.Jud-5(II)/21-22/FTO/OM/-0060/3754 dated 21.07.2022 dated 21.07.2022 enclosing report of Additional Commissioner IR, Audit-I, LTO, Karachi bearing No.Audit-I/Range-D/001 dated 19.07.2022 would suggest that no wrong is being done so far as the levy of Section 231B is concerned, yet Annexure-B provided by the same organization would suggest various kinds of statements in respect of banks.

a) tax u/s 231B has not been claimed for last 5 years by few banks.

b) tax u/s 231B for last 5 years was claimed and it was also allowed to few banks.

c) tax u/s 231B was claimed but not allowed via recourse to Section 122(5A) to banks.

d) tax u/s 231B has been claimed but no action has been taken so far at all in few cases.

(iii) The information provided by the LTO Chief Commissioner IR reveals beyond any iota of doubt that no uniform treatment is given to tax withheld u/s 231B and where any bank is by chance caught, cognizance is taken, whereas at the same time few banks have gotten away with the claim filed by them which tantamounts to ineptitude on the part of the Deptt. to say the least. How can the most premier organization of the FBR met out different treatment to different banks under the same set of statute.

(iv) Above highlighted areas manifest that consistent and persistent statutory directions are being violated with impunity and not only the law is being compromised but that too, at the cost of lessee who has to bear the brunt of tax withheld u/s 231B alongwith interest and left at the mercy of registration authorities to do so again on failure to present challan u/s 231B at the time of registration in his own name.

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5. The above omissions & commissions constitute maladministration in terms of section 2(3)(ii) of FTO Ordinance, 2000. As regards the objection u/s 9(2)(b) of the FTO Ordinance, same is overruled being misconceived as the matter at hand warrants deduction of element of maladministration which is discernible from the above.

RECOMMENDATIONS:

6. FBR to:-

i) direct the Member IR (Operations) to devise a mechanism to

a. ensure that the advance tax u/s 231-B(3) is credited to the lessee's account, who is the actual payer of the tax. This can be achieved by requiring manufacturers to document and report the lessee's details along with the tax payment.

b. manufacturers should be mandated to issue a certificate or document to the lessee indicating the advance tax paid u/s 231-B(3) in the lessee's name. The registration authority should accept this certificate as proof of tax payment to avoid double taxation at the time of registration;

ii) direct the Member IR (Operations) to implement a digital system that integrates data from manufacturers, lessors, and registration authorities which should verify the advance tax payment and ensure it is correctly credited to the lessee; and

iii) submit compliance report within 90 days.

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

Dated: 13.6. 2024
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Approved for reporting