THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT No. 0085/OM/2023

Dated: 20.11.2023[1] HQ, Islamabad

The Secretary,
Revenue Division,
Islamabad.

The Chief Commissioner-IR,
Regional Tax Office,
Hyderabad. ... Respondents

Dealing Officer	:	Mr. Muhammad Naseer Butt, Advisor
Appraised by	:	Mr. Muhammad Tanvir Akhtar, Advisor
Departmental Representative	:	Mr. Sajid Hussain, ADCIR, RTO, Hyderabad

FINDINGS/RECOMMENDATIONS

Based on the multiple news items and reports published in print and social media, FTO Secretariat initiated Own Motion Investigation into tax affairs of **Al-Nafees Medical College**, Islamabad which is being run by Isra University Hyderabad vide OM No.0085/OM/2023. The comments of the Secretary and Chief Commissioner-IR, RTO Hyderabad 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. During hearing Departmental Representative (DR) produced copy of parawise comments which were examined and placed on file.

2. Hearing notice u/s 9(2) of the FOIR Act, was issued to the parties for compliance on 27.12.2023. In response to the hearing call, Mr. Sajid Hussain, ADCIR from RTO Hyderabad attended hearing as DR and issues were discussed with him in detail. During hearing DR produced documents which were examined and placed on file. After having examined all the available documents and

[1] Date of registration in FTO Sectt.,

discussions held with the DR, the Own Motion is disposed of as under.

BACKGROUND OF OWN MOTION INVESTIGATION:

3. Currently, in addition to Public Sector Medical & Dental Colleges there are around 75 PMDC approved Medical and 43 Dental Colleges in Pakistan. Though PMDC maintains a structured regulatory mechanism yet tax matters of these private colleges have not been appropriately attended by FBR. During the past few years there has been regular reporting in the national press (details attached) as well in various medical related websites about the irregularities and violation of tax laws committed by Private Medical Colleges in Pakistan. Most recently, a report has been published in the **'Business Recorder'** dated 25.07.2023.

4. The above referred report contains a detailed account of the maladministration with reference to irregularities committed by Trusts controlling the medical colleges, especially improper compliance of withholding taxes, non-conformity with stipulations attached to NPO status, irregularities committed while issuing approvals under section 2(36) of the Income Tax Ordinance 2001 and lack of well-structured audit of withholding taxes. The main issues involved in the above referred report are briefly summarized as below;

i. The trusts controlling medical colleges get approval u/s 2(36) of the Income Tax Ordinance, 2001, however, thereafter misuse the same i.e. are running commercially for profit.

ii. The Trusts/Private Medical Colleges do not get the approval u/s 2(36) of the Ordinance 2001, renewed periodically, thus keep on flouting law.

iii. Private Medical Colleges are not discharging their tax withholding obligations properly.

iv. There is no proper withholding tax audit conducted by FBR field offices.

v. Fees charged from overseas students are not reflected in accounts for taxation

vi. Allegedly, the Private Medical Colleges siphon off receipts from overseas students, to unknown accounts, thus depriving the Tax Department from due withholding on the same.

vii. The controlling Tursts & Medical Colleges also do not conform to the rules and regulations of PMDC as regards to charitable functions; the very basis for claiming exemption.

viii. The Private Medical Colleges suppress their receipts as declared before the Tax Department.

ix. The Private Medical Colleges get heavy donations from affluent parents in the range of 14 Lacs to 40 Lacs but do not declare in accounts subject to audit.

x. Mostly controlling Trusts are being run as family enterprises on commercial basis.

5. The contents of the above referred press report exhibit glaring instances of FBR's inattention & ineptitude, posing serious threats to efficient taxation system and withholding tax regime. Prima facie, the above given malpractices and violations occur because of lack of stringent and well-defined periodic audit of tax withholding and approval regime u/s 2(36) of the Income Tax Ordinance, 2001.

6. According to the data available, the said college is being assessed in RTO Hyderabad. The above-mentioned account necessitates that an Own Motion Investigation may be carried out into the tax affairs of Private Medical Colleges and Trusts.

7. In view of above given account, Own Motion Investigation into tax affairs vide No.0085/OM/2023 was initiated in the case of Al-Nafees Medical College which is being run by Isra University Hyderabad.

8. FBR was asked to furnish parawise comments, especially explaining the following queries;

i. **Al-Nafees Medical College** avails exemption u/s 2(36) or it is taxable entity?

ii. Statutory Withholding Statements for the last 05 years have been timely filed by the **Al-Nafees Medical College or enforced by RTO Hyderabad.**

iii. When was conducted the last Withholding Audit in respect of **Al-Nafees Medical College.**

iv. When was conducted review of exemption u/s 2(36) in respect of **Al-Nafees Medical College.**

v. Number of faculty of qualified professionals hired by the College with the break of regular teaching faculty and professionals covering clinic side. Withholding statement u/s 149 matches with this declaration or not.

vi. Any communication by RTO to concerned IR field formations sharing the details of hired professionals for the purposes of Broadening of Tax Base.

vii. Agreement between Al-Nafees Medical College and Social Security department/company has ever been examined by CTO or not?

The information on the following prescribed format was also called.

Sl. No	Name of Case	Status NPO or PO (Tick relevant)	Date of Approval granted u/s 2(36)	Date of Renewal of Approval	Audit conducted (Mention Tax Years)	Withholding Audit conducted (Mention Years)	Remarks

9. The RTO Hyderabad filed written comments wherein they stated that desired para wise comments are as under;

Sl. No	Description	Remarks
1	Al-Nafees Medical College avails exemption u/s 2(36) or it is taxable entity?	Currently Isra University is not availing/allowed exemption u/s 2(36) and it is a taxable entity. Tax has been charged at Rs. 24,981,585/- for tax year 2019 vide order dated u/s 221 dated 28.04.2023 and also at Rs. 38,791,000/- for tax year 2020 vide order u/s 221 dated 03.05.2023. Proceedings for charge of tax for tax years 2021 and 2022 are also underway.
2	Statutory Withholding Statements for the last 05 years have been timely filed by the Al-Nafees Medical College or enforced by RTO Hyderabad.	The statutory withholding statements are regularly filed by Isra University Islamabad.

Sl. No	Description	Remarks
3	When was conducted the last Withholding Audit in respect of Al-Nafees Medical College.	Withholding Audits are conducted regular in said case. Withholding monitoring proceedings were conducted for tax year 2019 and demand amounting to Rs. 169,803,495/- was created. However, the demand was deleted by CIR(Appeals), Hyderabad on the appeal of the taxpayer. Therefore 2nd has been filed before the Hon'ble ATIR, Karachi. Withholding monitoring of taxes for the tax year 2020 and 2021 and 2022 are under way. The RTO Hyderabad/withholding zone is vigilant in conducting monitoring of withholding taxes in this case.
4	When was conducted review of exemption u/s 2(36) in respect of Al-Nafees Medical College.	Isra University is a taxable entity under the provisions of Income Tax Ordinance, 2001. The CIR, Zone-II rejected he taxpayer's application filed for exemption u/s 2(36) vide order dated 23.06.2023.
5	Number of faculty of qualified professionals hired by the College with the break of regular teaching faculty and professionals covering clinic side. Withholding statement u/s 149 matches with this declaration or not.	Al-Nafees Medical College is integral Part of Isra University under NTN: 5300106 and withholding statement under section 149 of the Ordinance is not separate from Isra University. However, this aspect shall be examined during course of proceedings for the years 2020, 2021 and 2022.
6	Any communication by CTO to concerned IR field formations	No such communications were made.

Sl. No	Description	Remarks
	sharing the details of hired professionals for the purposes of Broadening of Tax Base.	
7	Agreement Al-Nafees Medical College and Social Security department/company has ever been examined by CTO or not?	No such examination was carried out.

FINDINGS:

10. The parawise comments and other related documents provided by the Deptt have been examined. It is observed that even a cursory look at the details & documents filed by RTO Hyderabad reveals some glaring instances of departmental ineptitude and inattention. Following facts substantiate this assertion:

i. Para 5 of Notice u/s 177(1) for TY 2022, issued by RTO Hyderabad on 23rd December 2023 (after initiation of instant proceedings) categorically confirms that ***"No Audited Accounts for last four years have been filed,".*** Filing of properly audited accounts is mandatory in such cases. This fact alone is sufficient to prove the state of preparedness, monitoring and vigilance of RTO Hyderabad.

ii. RTO HYD's assertion that withholding tax statements u/s 165 of the Ordinance, 2001 are being regularly filed by the Isra University Hyderabad is self-contradictory in the face of admitted non filing of audited accounts because withholding statements and audited accounts are mutually inseparable.

iii. As per Parawise comments, the department claims to have conduced withholding audit for tax year 2019, creating tax demand amounting to Rs. 169,803,495/-. (However, the demand was deleted by CIR(Appeals), Hyderabad on the appeal of the taxpayer. Therefore 2nd appeal has been filed before the Hon'ble ATIR, Karachi.) **Once again it is admitted position that ever since 2019 no withholding audit has been conducted.**

iv. Private Medical Colleges are part of a well-organized and streamlined sector wherein the regulator PMDC/PMC exercises strong controls over ***authorized number of seats, annual enrolment, fee structures and admission criterion***. Verifiable fee structures, available on college website, can be cross checked from banks as well because all fee receipts compulsorily route through Banking channels. Thus, in **Five Year Medical programme**, for each Tax Year the department can easily & accurately quantify the annual fee received from students enrolled from 1st year to 5th year. If the annual fee charged from each student, as displayed at college website is multiplied with the number of students from 1st year to 5th year, during each TY the resulting turnover can be worked out without any hassle.

v. In addition to three campuses of **Isra University** at Hyderabad, Karachi and Islamabad offering multiple degrees and courses the controlling entity i.e. Isra University is also running;

a. **Al-Nafees Medical College & Hospital Islamabad**

b. **M/S Al-Tibri Medical College Karachi**

c. **Al-Ibrahim Eye Hospital, Karachi**

d. **Isra School of Optometry Karachi,**

e. **Isra Postgraduate Institute of Ophthalmology Karachi**.

f. **Isra School of Rehabilitation Sciences, Islamabad**

g. **Isra Institute of Pharmaceutical Sciences Islamabad, and**

h. **Isra School of Engineering & Applied Sciences Islamabad.**

In the absence of audited accounts revenue receipts from all the above sources remain unverifiable and resultantly yearly expenses and implied tax withholding also remains un-declared/unchecked.

11. Data regarding number of employees and faculty members of both Medical Colleges and other institutions has not been shared nor has the same requisitioned by the department for proper deduction of tax.

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(i) No break up of receipts into local students, overseas and foreign students has been obtained nor the same has been disclosed in the accounts by the college. No audit of the income are tax affairs of the entity has been conducted by the RTO.

(ii) The RTO Hyderabad has not shared the details of employees/professionals with the concerned IR formation for the purpose of broadening of tax base.

(iii) No independent information was obtained regarding teaching faculty and Doctors providing professional services.

The above acts of omission & commission constitute maladministration in terms of section 2(3)(ii) of FTO Ordinance, 2000.

RECOMMENDATIONS:

12. In view of above, FBR to direct:

(i) The CCIR Hyderabad, to enforce the filing of obligatory Audited Accounts and comprehensive Withholding statements for the last five years so as to check the compliance of relevant provisions of law;

(ii) the concerned Commissioner-IR to requisition and analyze segregated lists of employees of Isra University and it's all integrated institutions, including medical colleges so as;

a. to obtain information about local fees, overseas and foreign fees and check proper declarations thereof in the tax return and take appropriate action under the relevant provisions in case of any discrepancy;

b. to proceed on the same lines as suggested at (a) above in respect of donations if received;

c. to see whether all the faculty members, reflecting at college website are being regularly subjected to withholding taxes at source;

d. to see how all employees receiving taxable salaries are borne on Tax Roll and in cases of default details be shared with the concerned tax offices for BTB purposes.

e. how the share from practice at college teaching Hospital is being paid to specialists and what is the mechanism for tax deduction at source.

(iii) report compliance within 90 days.

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

Dated: 1 : 02 : 2024
Akif

Approved for reporting