

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO.0256/ISB/IT/2023

Dated: 16.01.2023*HQ Islamabad

Mr. Muhammad Ishtiaq, ...Complainant
C/O Mrs. Zahida Ishtiaq (Late),
House No.130, Street No. 01, Pahse-2-S,
Bharia Town, Rawalpindi.

Versus

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

Dealing Officer : Mr. Muhammad Naseer Butt, Advisor
Appraised by : Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative : Mr. Muhammad Suleman, ITP
Departmental Representative : Mr. Ali Raza Khan, DCIR, RTO, Rawalpindi

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance 2000 (FTO Ordinance). 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 Ombudsmen Institutional Reforms Act, 2013 (FOIR Act). Parawise comments were received from RTO Rawalpindi vide letter dated 01.02.2023, which were examined and placed on file.

2. Hearing notice u/s 9(2) of the FOIR Act was issued to the parties on 06.02.2023 for compliance on 13.02.2023. In response to which Mr. Muhammad Suleman, ITP attended as Authorized Representative of the Complainant and Mr. Ali Raza Khan, DCIR from RTO Rawalpindi attended as Departmental Representative (DR). Arguments were heard and record perused and complaint is disposed of as under.

3. Briefly, the complainant alleged that the attachment order of property belonging to Mrs. Zahid Ishtiaq (Late) was made after her death. He stated that the legal heirs of the deceased addressed several letters through their tax lawyer and made personal request to the concerned officer to obtain attested copy of the assessment order and demand notice. He stated that the concerned officers have not provided the certified copy of assessment order or withdrawn the attachment of immovable property.

4. The complainant further stated that Mrs. Zahida Ishtiaq (Late) died on 02.05.2022 due to chronic liver disease. She was not on the tax roll even till the date of her death. The order of attachment of immovable property No. ISD-0732 Plot No. 130 Bahria Town Rawalpindi was made by Mr. Tauqeer Ahmed, DCIR, RTO Rawalpindi without jurisdiction and on 27.05.2015, while the owner died on 02.05.2022. The property was attached without proper service of the demand notice as well as assessment order. The property cannot be attached without proper service of the demand notices as well as assessment order.

5. The complainant prayed that the demand notice as well as assessment order may kindly be given as both were neither served properly nor was in the knowledge of the deceased owner and the attachment of property may kindly be detached.

6. The department filed written comments wherein, they stated that Muhammad Ishtiaq Husband of Mrs. Zahida Ishtiaq (Late) filed a complaint in FTO office regarding de-attachment of property registered in the name of his late wife Mrs. Zahida Ishtiaq (Late). Department further stated that she is not registered in Federal Board of Revenue. Furthermore, the son of Mr. Muhammad Ishtiaq, Mr. Umer was contacted many times to visit this office along with

documentary evidence regarding attachment of property. Furthermore, the office has no record of any property attachment in respect of Mrs. Zahida Ishtiaq (Late).

7. During hearing DR informed that record is not available but he would try again to trace record. AR produced a copy of order passed by DCIR, BTB Unit-III, RTO, Rawalpindi, which was examined and placed on record.

8. Perusal of the record shows that some facts in complaint have not been correctly reported by the complainant. Date of death of the Mrs. Zahida Ishtiaq (Late) has been reported as 02.05.2022 in the complaint whereas, death certificate shows the said date as 02.05.2016. So, it is not factually correct that attachment was made after the death of the taxpayer. As per record the said property was attached on 27.05.2015.

9. Perusal of the copy of attachment notice issued under rule 158 of the Income Tax Rules, 2002 shows that the same was issued by DCIR, BTB Unit-III, RTO Rawalpindi meaning thereby, that the said unit was part of RTO Rawalpindi. The said stage of recovery through attachment of property is not the first step in recovery mechanism provided in the Rules. There are initial steps from serving assessment order and demand notice to recovery notices leading to attachment of property. Denying existence of any record relating to the complainant case does not appeal to reason as the complainant was booked by the officer of RTO, Rawalpindi and tax was charged and recovery notices issued including attachment notice. Therefore, straightway denying existence of record is nothing but neglect, inattention, incompetence, inefficiency in the administration of discharge of duties and responsibility which constitutes maladministration.

7

10. This also shows that no serious effort was made by the RTO to trace the record of the case. The delay in issuing attested copy of assessment order and demand notice despite frequent written requests from the complainant also amounts to neglect, inattention and inefficiency. As regards issue of de-attachment of property the attachment was apparently made due to some outstanding demand so no direction can be issued from this office for de-attachment. The complainant may take up the matter with relevant legal forum after obtaining certified copy of the order/demand notice from the tax office.

FINDINGS:

11. Delay in issuing attested copy of assessment order and demand notice to the complainant constitutes maladministration in terms of section 3(i)(ii) of the FTO Ordinance.

RECOMMENDATIONS:

12. FBR to:

- (i) direct the CIR concerned to trace the record of the proceedings and issue certified copy of assessment order and demand notice as per law within 15 days; and
- (ii) report compliance within 30 days.

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

Dated: 20.3.2023

Approved for reporting


Director
FTO Secretariat
Islamabad