

**BEFORE  
THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**COMPLAINT NO. 0327/ISB/IT/2022**

Dated: 31.01.2022\* HQ, Islamabad

Mr. Muhammad Irfan Abbasi,  
Shop No. 4 Block No. 43 I&T Centre,  
Sector G-9/4 Islamabad.

...Complainant

**Versus**

The Secretary,  
Revenue Division,  
Islamabad.

...Respondent

Dealing Officer	:	Mr. Muhammad Majid Qureshi, Advisor
Appraisal Officer	:	Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	:	Complainant in person
Departmental Representative	:	Ms. Asma Humayun, DCIR, RTO Islamabad

**FINDINGS/RECOMMENDATIONS**

This complaint has been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance 2000 (FTO Ordinance) alleging that audit in his case was made without issuing legal notices.

2. Notice u/s 10(4) of the FTO Ordinance was issued to the Secretary, Revenue Division, and Chief Commissioner-IR, RTO, Islamabad. Para-wise comments were submitted by the Chief Commissioner-IR, RTO, Islamabad vide her letter dated 02.03.2022. Hearing notice u/s 9(2) of the FTO Ordinance was issued to the parties on 08.03.2022, in response to which Mr. Muhammad Irfan Abbasi, the complainant and Ms. Asma Humayun DR, attended.

3. Brief facts of the case are that complainant had filed income tax return for tax year 2015, which was selected for audit through

computer ballot u/s 214 C of the Ordinance. Intimation to this effect was given to the taxpayer on 24.01.2017 in terms of Section 218 of the Ordinance. Subsequently a notice u/s 177(1) was issued on 21.11.2017, asking the taxpayer to provide the relevant record on the same day i.e. 21.11.2017, which he failed to produce. A show cause notice u/s 121 (1) was issued on 21.11.2017 for compliance on 29.11.2017. This notice also remained un-complied with. Order u/s 121(1)(d) of the Ordinance (Best Judgment Assessment) was passed on 27.12.2017, creating a demand of Rs. 279,448/- The order was served upon the taxpayer through IRIS. Later on recovery proceeding was initiated through issuance of notice u/s 138(1) of the Ordinance on 16.05.2018, bank account of the taxpayer was attached u/s 140 of the Ordinance and an amount of Rs. 30,195/- was recovered on 15.10.2018. Throughout the above mentioned process the taxpayer did not participate in the proceedings.

4. During the course of hearing the taxpayer vehemently pleaded that he was unaware of the various notices issued by the Deptt. Being a senior citizen of 76 years of age and not well versed with the computer technology, he does not know how to access IRIS account. The DR on the other hand stated that the notices have been properly served strictly according to law. She pointed out that the complainant was a regular taxpayer. He has been filing returns for subsequent tax years through IRIS, therefore his contention of being unaware about the notices issued for the years under consideration was not valid. It is also unbelievable that he remained ignorant about attachment of his account for three and a half years. In case he was filing his regular tax returns through a consultant it was responsibility of the consultant to advise him about various notices issued in his case.

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5. The DR contended that the issue involved in the instant complaint relates to assessment of income and creation of tax liability. Legal remedy of appeal was available to the taxpayer hence the instant complaint was hit by bar of jurisdiction in terms of Section 9(2)(b) of the FTO Ordinance, 2000.

6. After hearing arguments of both the parties and perusal of record it has been observed that the audit proceedings as well as recovery proceedings were conducted in violation of the law and rules. DR's contention that service of notices through IRIS was valid service is not based on solid legal basis. Section 218 of the Ordinance deals with service of notices which is reproduced as under;

*"218. Service of notices and other documents;(1) Subject to this Ordinance, any notice order or requisition required to be served on a resident individual (other than in a representative capacity) for the purposes of this Ordinance shall be treated as properly served on the individual if-*

- a) *personally served on the individual or, in the case of an individual under a legal disability or a non-resident individual, the representative of the individual;*
- b) *sent by registered post or courier service to the place specified in clause (b) [of sub-section (2)] or to the individual's usual or last known address in Pakistan; or*
- c) *served on the individual in the manner prescribed for service of a summons under the Code of Civil Procedure, 1908 (v of 1908) [;or]*

*[(d) served on the individual electronically in the prescribed manner]*

Clause (d) inserted by the Finance Act, 2018".

7. All the proceeding in this case was completed before the insertion of clause (d). Notices should have been served personally, through registered post or courier service. Deptt's contention that the notices were properly served does not hold

ground. Erratic pattern of proceedings can be judged from the fact that on one hand the tax payer was intimated about the selection of his case (for audit) on 24<sup>th</sup> January, 2017 and on the other the notice u/s 177(1) calling for record/documents/books of accounts was issued on **21.11.2017**, i.e. after 10 months. But oddly no time was given to the taxpayer for compliance as **21.11.2017** was fixed for compliance. Moreover the Deptt could not produce the evidence in support of proper service of notices which renders the entire proceedings as arbitrary, hence invalid.

### **FINDINGS:**

8. The assessment proceedings in this case have been found contrary to law and rules which are arbitrary and unreasonable. Neglect, incompetence and ineptitude of the assessing officer has been established in terms of Section 2(3)(i)(ii) of the FTO Ordinance.

### **RECOMMENDATIONS:**

9. FBR to:

- i) direct the concerned Commissioner-IR to revisit the assessment order in question which has been passed in undue haste and without complying with section 218 of the Income Tax Ordinance;
- ii) reassessment proceedings may be initiated as per law and after affording proper opportunity of being heard to the tax payer; and
- iii) report compliance within 45 days.

*Approved for Reporting*

Dated: 4/4/2022  
U.f

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

Certified True Copy  
5/2/22  
Registrar  
FTO Secretariat  
Islamabad