

**BEFORE
THE FEDERAL TAX OMBUDSMAN
Islamabad**

Complaint Nos.0422 & 0423/MLN/IT/2022

Dated: 07.02.2022* R.O. Multan

Mr. Aslam Riaz,
Islamabad Colony, Sargodha.

... Complainant

V e r s u s

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer : Dr. Khalil Ahmad, Advisor
Appraisal by : Muhammad Tanvir Akhtar, Advisor
Authorized Representative : Mr. M. Kashif Siddique, ITP
Departmental Representative : Mr. Javed Iqbal Qureshi, IRO,
RTO, Sargodha

FINDINGS/RECOMMENDATIONS

The above-mentioned complaints were filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against failure to allow appeal effect to the Commissioner Inland Revenue (CIR) (Appeals), Sargodha's orders dated 18.11.2019 for Tax Years 2014 & 2017, and as a consequence thereof, delay in issuance of refund. The complaints having identical issues are disposed of, through a single consolidated order.

2. Precisely, the Complainant, an individual, e-filed returns for Tax Years 2014 & 2017 under Section 114(1) of the Income Tax Ordinance, 2001 (the Ordinance). Subsequently, the DCIR, Unit City (Factory Area) Zone-II, RTO Sargodha passed orders dated 29.04.2019 under Section 170(3) of the Ordinance by rejecting the refund applications for Tax Years for Tax Years 2014 & 2017. Being aggrieved, the Complainant went in appeal whereby the CIR

* Date of registration in FTO Sectt.

(Appeals) Sargodha disposed of vide Orders dated 18.11.2019 with directions to expedite the verification process, re-evaluate the evidence already available on record and pass a speaking order strictly in accordance with law and FBR Circular No.05 of 2003. The appellant was also directed to provide all the required documents and details to learned assessing officer on requisition. Thereafter the Complainant approached the Deptt for appeal effect under Section 124 of the Ordinance vide letters dated 25.08.2021 & 04.11.2021. When failed to get any response from the Deptt filed the instant complaints.

3. The Complainant has also prayed for additional payment for delayed refunds in terms of Section 171(1) of the Ordinance.

4. The complaints were sent 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. In response thereto, the Chief Commissioner-IR, RTO, Sargodha forwarded para-wise comments of the Commissioner-IR, Zone-II dated 15.02.2022 vide letter dated 17.02.2022. It has been stated that appeal effect has already been given and verification process is underway and refund applications will be disposed of on completion of the same, as per law. However, in case of any grievance, the remedy to file appeal is available to the Complainant under Section 170(5)(b) of the Ordinance, which has not been opted by the Complainant.

5. During the hearing, the AR contested that appeal effect for Tax years 2014 & 2017 has not been given. The DR committed that needful will be done within 15 days.

6. Both the parties heard and record perused.

7. Evidently, the CIR (Appeals) vide orders dated 18.11.2019 remanded back the orders dated 29.04.2019 for Tax Years 2014 & 2017 with the directions to provide adequate opportunity of being heard to the Complainant. Thus, in terms of Section 124(4) of the Ordinance, the Deptt was required to pass de novo order within two months of the date the Commissioner is served with the Order. In the instant case, the appellate orders dated 18.11.2019 were received by the Zonal CIR on 07.10.2020, thus, delay caused in terms of Section 124(4) of the Ordinance evident. It is pertinent to emphasize here that the **very intent of the legislature for processing of any refund claim is 60 days from the date of application. This intent cannot be bye-passed by delaying appeal effect in the cases wherein any appellate decision restores an earlier refund claim for which application had already been filed. Appeal effect to any such appellate order has to be read with both section 170(4) and 124(4); meaning thereby appeal effect is to be allowed in 60 days from the date of appeal order received in the Zone.** In the instant case appeal effect to the orders dated 18.11.2019 were received by the Zonal CIR on 07.10.2020 was to be allowed in 60 days from the date of receipt of said order in the Zone. This has not happened thus complainant's grievance is genuine.

FINDINGS:

8. Another glaring discrepancy which is floating on the surface, unnoticed by the department that CIR(A)'s order dated **18.11.2019** is claimed to have been received/delivered in the office of Zonal CIR on **07.10.2020**. Thus there was delay of almost 10 months which speaks of negligence/inefficiency on the part of CIR(Appeal)'s office which has resulted into the grievance of the Complainant.

9. In the para-wise comments submitted by the CIR Zone-II, Sargodha, it has been submitted that appeal effect in terms of 124(4) of the Ordinance has been given whereas the AR of the Complainant is adamant that the same has not been done. As per record the ACIR/DCIR (E&C), Range-II, Zone-II, Sargodha issued a show cause notice under Section 170(4) of the Ordinance dated 28.10.2020 for compliance on 05.11.2020 requiring the taxpayer to provide the required documents/details without giving any appeal effect consequent to the order of CIR (Appeals). It is, therefore, a mis-statement on the part of the Deptt as mentioned in the para-wise comments. The delay in allowing effect to the CIR (Appeals) Sargodha's orders dated 18.11.2019 is tantamount to maladministration in terms of Section 2(3)(ii) of the FTO Ordinance.

RECOMMENDATIONS:

10. FBR to-

- (i) direct the Member(Legal) to look into the delay caused in the delivery of appellate order dated 18.11.2019 to the office of Zonal CIR after a lapse of more than 10 months;
- (ii) direct the Commissioner-IR, Sargodha Zone-II, to allow effect to the CIR (Appeals), Sargodha's orders dated 18.11.2019 and dispose of the Complainant's refund for Tax Years 2014 & 2017, within 21 days, in view of the assurance given by the Deptt, after providing opportunity of hearing, as per law; and
- (iii) report compliance within 30 days.

11. The Complainant's request for additional payment for delayed refund for Tax Years 2014 & 2017 is, however, premature at this stage in terms of Explanation to Section 171(2)(c) of the Ordinance.

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

Dated: 10-03-2022

Certified to be True Copy

Registrar
FTO Secretariat
Islamabad