

**BEFORE  
THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**Complaint No.0495/KHI/ST/2022**

Dated: 14.02.2022<sup>1</sup> R.O. Karachi

**Mr. Abdul Rasool S/o Ghulam Rasool Arain,**  
Proprietor: M/s New Al-Noor Electronics, ... *Complainant*  
Zardari Market Opp: Session Court,  
Thatta.

***Versus***

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

Dealing Officer	: Mr. Manzoor Hussain Memon, Advisor
Appraising Officer	: Mrs. Sarwat Tahira Habib, Sr. Advisor
Authorized Representative	: Mr. Waseem Baloch, Advocate
Departmental Representative	: Mr. Tanweer Siddique, AD, RTO-II on behalf of RTO, Islamabad

**FINDINGS / RECOMMENDATIONS**

The above mentioned complaint was filed against Inland Revenue Officer, South Zone, RTO, Islamabad in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) for passing illegal Order-in-Original No.16/122/2022 dated 31.01.2022.

2. Precisely, M/s New Al-Noor Electronics, Zardari Market Opposite Session Court, Main National Highway Road, Makli, Thatta having NTN 408947-7 got itself registered with Sales Tax w.e.f 05.09.2020 and he was issued STRN 3277876206368 as a Retailer.

<sup>1</sup> Date of registration in FTO Sectt

He files sales tax returns and income tax returns regularly. On 05.01.2022, FBR issued STGO No.7 of 2022 dated 05.01.2022, wherein the name of the taxpayer was inserted at S.No.854 of the list for implementation of "Tier-1 Retailer." According to the Complainant, no intimation letter was received by him from any tax office. On 27.01.2022, a show cause notice dated 27.01.2022 issued by Inland Revenue Officer, Unit-1, South Zone, RTO, Islamabad was received by him on 29.01.2022 on account of not linking with the system of POS of FBR. The show cause notice required from him to submit reply and attend hearing at Islamabad on 31.01.2022. Despite the shortest notice, he sent his reply on 31.01.2022 through courier service, though two days out of four i.e 29 & 30 January were holidays as a weekend. In his reply, he agitated on the jurisdiction of RTO, Islamabad over them; as he was located in Thatta, Sindh, therefore, the jurisdiction over them was of RTO, Hyderabad. Moreover, they submitted that they did not fall in any category of "Tier-1 Retailers" as defined in Section 2(43A) of the Act, hence, not required to be linked with POS of FBR. He also requested the Commissioner-IR, South Zone, RTO, Islamabad with a separate letter on the same date i.e 31.01.2022 to transfer the jurisdiction over his case to RTO, Hyderabad; being falling in its administrative jurisdiction.

3. To his utter surprise, the Adjudicating Officer passed Order-in-Original No.16/122/2022 on the same day i.e 31.01.2022 without waiting for reply even for one day imposing upon him penalty of Rs.5 lac under Section 33 (25A) of the Sales Tax Act, 1990; which is not in



accordance with law. He has prayed that since the order was passed without granting hearing opportunity, applying mind and without jurisdiction, therefore it should be declared as illegal, not tenable in the eyes of law and therefore should be set aside. He has also prayed to direct the FBR authorities to transfer his case from RTO, Islamabad to RTO, Hyderabad on point of administrative jurisdiction.

4. The complaint was referred to the Secretary, Revenue Division for comments 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, letter dated 04.03.2022 was received from the Chief Commissioner-IR, RTO, Islamabad alongwith comments of the Commissioner-IR, South Zone, RTO, Islamabad, wherein it was averred that the Complainant's jurisdiction lies with RTO, Islamabad since the date of the registration with income tax i.e 02.01.2013. The Complainant never challenged and applied for change of jurisdiction and filed his returns regularly. He also did not agitate issuing of notice under Section 114(4) of the Income Tax Ordinance dated 25.10.2017; which was done when he failed to file income tax return for the tax year 2015. Since the Complainant is registered as "Retailer", he is legally required to link himself to the POS of the FBR as his name was already notified by FBR through STGO No.7 of 2022 dated 05.01.2022 at S.No.854. Again, the same was not agitated and never applied for exclusion of his name from Tier-1 Retailer. After notification, he was legally required by law to integrate with POS but he failed to do so therefore show cause notice was issued by the concerned officer and order passed under which

penalty was imposed for violation of sales tax law. It was further averred that the reply of the Complainant was received after issuance of the Order-in-Original and imposition of penalty. It was stated that they had no objection, if the case is transferred from RTO, Islamabad to RTO, Hyderabad on point of jurisdiction.

5. Hearing was held on 07.03.2022. AR averred that his client has retail shop of electronic goods at Makli, District Thatta, Sindh, whereas PRAL has registered him with Sales Tax with RTO, Islamabad on 05.09.2020 despite the fact that he had mentioned address of Thatta in his Sales Tax Form for registration; as evident from Sales Tax Registration Certificate/Order dated 05.09.2020 passed by Assistant/Deputy Commissioner-IR, Unit-IV, South Zone, RTO, Islamabad. He further averred that the show cause notice dated 27.01.2022 issued by Inland Revenue Officer, Unit-I, South Zone, RTO, Islamabad was received by them on 29.01.2022, wherein they were required to submit reply and attend hearing on 31.01.2022. Despite so much short notice of four days which included two days holidays, they dispatched their reply on 31.01.2022 through courier service, wherein they had agitated on jurisdiction of RTO, Islamabad because of the reason that they were located in interior Sindh. Despite agitation, the officer passed order on the same date i.e 31.01.2022 without waiting for reply even for one day and granting them hearing opportunity to defend their case and imposed penalty of Rs.5 lac on them. Further averred that they don't fall in any one of six categories of retailers; as defined in Section 2(43A) of the Sales Tax Act, 1990 even then they are being insisted to link with Point Of Sale



(POS) system; being run by the FBR for "Tier-1 retailer" and their name has been included at S.No.854 of STGO No.7 of 2022 dated 05.01.2022 and imposed penalty on them on this account; which is highhandedness and clear maladministration on the part of the Deptt. DR simply averred that since the Order-in-Original has been passed, therefore they may file appeal against the said order before the concerned Commissioner (Appeal) instead of filing complaint before the FTO.

6. Averments of both sides heard and the record perused.

7. It is a fact that the Complainant is registered with RTO, Islamabad for the purpose of income tax since 2013 and filing returns. The computerized system accordingly generated his STRN putting him in the jurisdiction of RTO, Islamabad despite his address of District Thatta, Sindh; as shown in print out issued under the name of Assistant/Deputy Commissioner-IR, South Zone, RTO, Islamabad. How the NTN and STRN of a person located in interior Sindh and running business there is assigned the jurisdiction of RTO, Islamabad by the PRAL, is not understandable. This is to be looked into by FBR itself to correct the jurisdiction over the taxpayers to thwart tax frauds if any committed under the garb of far flung jurisdictions. It is also admitted fact that the Complainant had never objected over the jurisdiction of the RTO, Islamabad till the issuance of the show cause notice for not linking with POS of FBR. So far as the show cause notice is concerned, it was issued on 27.01.2022 requiring the Complainant to submit reply and attend hearing in Islamabad on 31.01.2022; which included two day holidays. Whereas, the Circular

letter dated 23.07.2018 issued by FBR instructs the field formations to provide at least 15 days time to the taxpayers after receipt of the notice to make necessary compliance; which was not done in this case. Secondly, the order has been passed without granting opportunity of hearing to defend the case. In case the taxpayer could not reach Islamabad on such a short notice, the case should have been adjourned and re-fixed for hearing to provide opportunity to the Complainant to attend hearing and defend the case; which was also not done in this case. It is against the principle of audi alteram partem and is tantamount to maladministration. The Adjudicating Officer's assertions that the Complainant was given reasonable opportunities and repeated requests to install POS software duly integrated with FBR, is blatant lie; as is evident from the date of the issuance of the show cause notice and passing order. Thirdly, sub rule (2) of Rule 150 ZEB of Chapter XIV-AA of the rules notified vide Sales Tax Rules, 2006 require Tier-1 retailers to integrate their retail outlets with FBR's computerized system for real time reporting of sales in the mode and manner as prescribed in the chapter. The Complainant has vehemently denied falling in any category of retailers as defined in Section 2(43A) of the act. Neither it has been physically verified, nor checked from any source by FBR or RTO, Islamabad, they have simply included his name in the list on the basis of his registration as "Retailer" whereas retailers are not required under the prevalent law to link with POS of FBR. The Adjudicating Officer has not bothered to look into anything and just passed the order in haste and in slip shod manner..


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8. It is very unfortunate that despite so many blunders made by the Adjudicating Officer in the order, the senior management of RTO, Islamabad instead of correcting/rectifying them, has defended his actions and stated that the actions taken by the Adjudicating Officer were legal and the Complainant should file appeal against the order. Such attitude on the part of senior management discourages the taxpayers to get themselves registered with sales tax and pay taxes as per law. It also creates bad name for FBR and tarnish its image. It is a clear case of maladministration on the part of the RTO, Islamabad.

**RECOMMENDATIONS:**

9. In view of supra, FBR to direct:

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- i) the Commissioner-IR, South Zone, RTO, Islamabad to reopen the Order-in-Original No. 16/122/2022 dated 31.01.2022 in terms of Section 45A of the Sales Tax Act, 1990 and set aside it; being not legally tenable;
  - ii) the Chief Commissioner-IR, RTO, Islamabad to forward the case to the Secretary (POS), FBR for deleting the name of the Complainant from the STGO;
  - iii) the Secretary (POS), FBR, Islamabad on receipt of the letter from the Chief Commissioner-IR, RTO, Islamabad delete the name accordingly;
  - iv) the Commissioner-IR, South Zone, RTO, Islamabad to forward the request of the Complainant alongwith RTO Islamabad's NOC for transfer of jurisdiction over the Complainant from RTO, Islamabad to RTO, Hyderabad on point of jurisdiction;
  - v) the Secretary-IR (Jurisdiction) FBR Islamabad to issue order for change of the jurisdiction on receipt of the NOC from RTO Islamabad and feed it in the computerized system;

- vi) the Concerned Commissioner-IR, RTO Hyderabad after receipt of transfer of the case to his jurisdiction, may like to get the business premises of the Complainant physically verified and in case he falls in any category of Tier-1 retailers, issue him letter for linking himself with POS of FBR. If he fails to comply with the advice, the show cause notice be issued, the case adjudicated and speaking/appealable order be passed on its merit and as per law; and
- vii) report compliance within 45 days.

*Approved for reporting and  
Press releases. F*

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

Dated: 25/3/2022

*Certified to be True Copy*

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*29/22*  
Registered  
FTO Secretariat  
Islamabad