

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO.0579/ISB/IT/2023

Dated: 03.02.2023*HQ Islamabad

Muhammad Azeem,

C/o., Sardar Abdul Wahab Farid Advocate High
Court, House No. D-293, Mohala Bag, Jhelum.

... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer : Mr. Muhammad Naseer Butt, Advisor
Appraised by : Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representatives : Mr. Hafiz Munawar Iqbal, ASC
Mr. Sardar Abdul Wahab, Advocate
Departmental Representative : Mr. Khawar Yaqoob, 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 08.02.2023, 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 10.02.2023. In response to which Mr. Hafiz Munawar Iqbal, ASC and Mr. Sardar Abdul Wahab, Advocate represented the complainant and Mr. Khawar Yaqoob, DCIR from RTO, Rawalpindi attended as Departmental Representative (DR). During Hearing DR produced documents which were examined and placed on file. Arguments were heard and record perused and complaint is disposed of as under.

3. Briefly, the complainant is an individual who alleged that ex-parte order was passed on 27.10.2021 by the officer Unit-I, Jhelum Zone, RTO Rawalpindi pertaining to Tax Year 2019 whereby, illegal demand contrary to facts was created amounting to Rs. 8,174,083/-. Aggrieved with the said order, appeal was filed on 24.01.2023 before Commissioner-IR (Appeals-III) along with application for grant of stay against recovery of income tax demand of Rs. 8,174,083/-. He stated that the learned Commissioner-IR (Appeals-III) Rawalpindi fixed the case for 24.01.2023 and granted stay order against the recovery of disputed tax demand.

4. He further stated that on the same day i.e. 24.01.2023 the stay order was shared with the department and concerned bank manager. However, the department on the same date i.e. 24.01.2023 arrived at bank about 3:45 PM to get pay order from the bank manager amounting to Rs. 8,174,083/-. Furthermore, recovery officer received the pay order No. 4938331 dated 24.01.2023 amounting to Rs. 8,174,083/- despite stay order with commitment/assurance to the banker that the pay order shall not be deposited in the bank for clearance if the copy of stay order is provided before 05.00 PM in the tax officer. Earlier, the same order was delivered to the department, the recovery officer. Despite commitment and valid stay order, the department presented the pay order in the National Bank for clearance. However, the pay order was not cleared by the Faisal Bank and returned the same on 25.01.2023 with the objection that 'stay order is available No.600 dated 23.01.2023 issued by CIR(Appeals-III) RTO Rawalpindi.

5. The complainant prayed that appropriate order may be made for return of pay order NO. 4938331 dated 24.01.2023 amounting to Rs. 8,174,083/- of Faisal Bank, in the interest of justice without any

further delay and direction be issued to competent authority to take appropriate action against responsible officers.

6. The department filed written comments wherein, they stated that the attachment of bank account of the complainant had been made on 23.01.2023 under section 140 of the Ordinance, and at that time, the complainant had neither filed appeal nor any stay was available in filed against the recovery of the outstanding demand, and as such departmental action was lawfully justified. Under the law, the bank manager was lawfully bound to issue the pay order in favour of the department and effect recovery forthwith by clearing the same for diverting the required amount into Government Exchequer. Moreover, the complainant had admittedly filed appeal before the learned CIR(Appeals-III) Islamabad on 24.01.2023 and as such the instant matter is subjudice at the point of time before the competent legal forum, thus, this Hon'ble forum is barred to hear the instant complaint in view of section 9(2)(a) of the FTO Ordinance, 2000.

7. Perusal of record shows that the CIR (Appeals-III) vide order dated 24.01.2023 granted stay till 23.02.2023. While deciding stay application, the learned CIR(Appeals-III) observed;

"3. After taking into consideration arguments of the AR of appellant as well as the case, I am inclined to hold that the recovery of tax, levied through the impugned order, at this stage would cause under hardship to the taxpayer, therefore stay is allowed under section 128(IA) of the Income Tax Ordinance upto 23.02.2023 or till decision of the main appeal whichever is earlier. During stay period, no coercive measure shall be adopted by the department. It is also directed to the department to de-attach the bank accounts of the appellant immediately."

The CIR(Appeals-III) issued clear instructions that ***"during stay period no coercive measure shall be adopted by the department. It was also directed to the department to de-attach the bank account of the appellant immediately"***. Despite stay order and

clear instructions of appellate authority, the demand was hastily recovered from complainant's bank account. It is further noticed but the concerned office is holding pay order till the hearing of the case despite the fact that stay order is available with the department since 24.01.2023. The objection to jurisdiction is not relevant as the issue in hand relates to exercise of arbitrary and unjust departmental action and not to any assessment per se.

FINDINGS:

8. In view of the foregoing discussion making recovery through coercive measure disrespecting legal order of the appellate authority on the part of department is contrary to law and is arbitrary, unjust and unreasonable which constitutes maladministration in term of section 2(3)(i)(a) and (b) of the FTO Ordinance, 2000.

RECOMMENDATIONS:

9. FBR to:-

- (i) direct Commissioner-IR Concerned to comply with stay order issued by the CIR (Appeals-III) forthwith; and
- (ii) report compliance within 15 days.

Dated: 15:2:2023

Approved for reporting

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

Certified to be True Copy

M. J. U.
Registrar
FTO Secretariat
Islamabad