

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.601/LHR/IT/2022

Dated: 22.04.2022* R.O Lahore

Mst. Shabana Asif,
Ferozwala, P.O Imamia Colony,
District Sheikhpura. ... Complainant

Versus

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

Dealing Officer : Mr. Tausif Ahmad Qureshi, Advisor
Appraised by : Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative : Mr. Rana Ikhtlaq, Advocate
Departmental Representatives : Mr. Rizwan Manzoor DCIR

FINDINGS / RECOMMENDATIONS

The above-mentioned complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against non-issuance of refund amounting to Rs.0.250 million for Tax Year 2019.

2. Brief facts of the case are that the Complainant's refund application was at first rejected by the Assistant Commissioner-IR Unit-II, Range-I, Zone-IV, RTO Lahore vide Order dated 28.09.2020 under Section 170(4) of the Income Tax Ordinance, 2001 (the Ordinance) for want of verification of supporting documents. This order was annulled by the Commissioner-IR (Appeals-VII), Lahore with the directions to verify the documents and issue refund accordingly. The Complainant again submitted application to the ACIR on 11.02.2022 with all necessary documents but the officer did not proceed in the matter. The Complainant approached the Commissioner-IR, Zone-IV, RTO

Lahore for necessary directions to the concerned officer for issuance of her refund of Rs.0.250 million but again no action was taken. Finally, the concerned ACIR rejected the refund application vide Order dated 18.04.2022 under Section 170(4) of the Ordinance for the reasons that the **“taxpayer failed to declare the properties against which she has claimed income tax refund. Moreover, the bank withholding certificate of Rs.1987.80 could also not be verified.”** The Complainant has come up with the complaint that not only the property in question had been declared in her wealth statement for Tax Year 2019 but also that opportunity of being heard was not provided. A copy of the wealth statement as on 30.06.2019 was also provided by the Complainant, hence this complaint.

3. In response to the notice issued under Section 10(4) of the FTO Ordinance, read with Section 9(1) of Federal Ombudsmen Institutional Reforms Act, 2013, the Assistant Commissioner-IR, Unnit-02, Zone-IV RTO Lahore submitted parawise comments, wherein it was initially contended that he did not deny the contents of the complaint and stated that the refund would be processed after submission of refund application on IRIS portal. However, in her final parawise comments dated 12.05.2022, the Commissioner, Zone-IV, RTO, Lahore endorsed the contents of the order under Section 170(4) of the Ordinance that the contested property had not been declared in the wealth statement and thus the claim was rejected.

4. The parawise comments were forwarded to the Complainant. She reiterated her earlier stance of having been not provided opportunity of being heard as well as declaration of the property in question in her respective wealth statement.

5. Both the parties heard and record perused.

FINDINGS:

6. Case record examined viz-a-viz complaint and the departmental responses as well as contentions taken at the time of hearing. Para-wise comments filed by the department reflect the following glaring most instances of highhandedness, arbitrary and unjust treatment of complainant/taxpayer. Following Departmental actions are contrary to law, oppressive and discriminatory:

- i. "Ever since Finance Act 2003 opportunity of being heard is mandatory u/s 170(4) of Income Tax Ordinance, 2001. In the instant case twice claim of refund or TY 2019 has been rejected u/s 170(4) without affording the said mandatory opportunity of hearing.(1st rejection dated 28th September, 2020 and 2nd one 18th April. 2022)
- ii. It is common departmental practice that assets received through **inheritance** are declared at zero value/cost. In the instant case asset devolved upon the complainant i.e. share in plot 474, Block-E, Phase XII Lahore EME Housing Society has been duly declared in her wealth statement filed by the complainant. Department still maintains non declaration of the said asset without any proper rebuttal. Even otherwise non declaration of any asset being a matter relatable with assessment of income cannot be made part of refund processing which is confined only to overpaid tax.
- iii. CPR's u/s 236K are available on record, verifiable from FBR's portal as well. Tax deduction under the said section is adjustable but without any legal basis this adjustable amount is being rejected on flimsy grounds (Para-ii above) and without confronting the taxpayer (Para-i above).
- iv. Tax u/s 231, (Rs. 1987) deducted by Faysal Bank is being rejected stating that deduction certificate provided by the bank doesn't incorporate CPR. As Banks transmit withheld taxes in bulk therefore individual CPR is neither generated nor provided to the withholders. Without conducting any verification from the Bank how department can reject the claim arbitrarily and that too without confronting the taxpayer.

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- v. All above is being done in a case which is pending at FTO. In other unrepresented cases the situation can be well imagined.”

Departmental reply filed on 16th June, 2022 is just an eyewash as none of the issues raised vide above Paras(i-v) was responded satisfactorily. The department admitted the adjustability of tax deductions, claim of refund and as reported by the Commissioner concerned alleged refund has been issued.

FINDINGS:

7. The instant case reflects glaring most instances of maladministration in terms of section 2(3) of FTO Ordinance, 2000 yet in view of department's corrective measure no further investigation is warranted.

RECOMMENDATIONS:

8. FBR to-
- (i) direct the Commissioner-IR, Zone-IV, RTO Lahore, CCIR and Secretary Revenue Budget FBR to transmit the refund into bank account of the complainant without further delay; and
 - (ii) ensure that the concerned ACIR is counseled by RTO Management on issues raised by this office at Para-6 above; and
 - (iii) report compliance within 45 days.

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

Dated: 22/6/ 2022

Approved for reporting