

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.0935/ISB/IT/2022

Dated: 14.03.2022* HQ, Islamabad

M/s. Pakistan Telecommunication Authority,
C/O EY Ford Rhodes 75-West, Fazal-ul-Haq
Road, 3rd Floor, Eagle Plaza Blue Area,
Islamabad.

...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

...Respondent

Dealing Officer	:	Mr. Muhammad Majid Qureshi, Advisor
Appraising Officer	:	Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	:	Mr. Saqib Latif, Director EY Ford Rhodes
1Departmental Representative	:	Mr. Kamran Ullah, ADCIR, LTO, Islamabad

FINDINGS/RECOMMENDATIONS

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The above referred complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance 2000 (FTO Ordinance) alleging that the Additional Commissioner-IR, Audit, LTO Islamabad has passed an order u/s 221 of the Income Tax Ordinance, 2001 (the Ordinance) by creating a demand instead of providing tax credit.

2. 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 Ombudsman Institutional Reforms Act, 2013. The comments were submitted by the Chief Commissioner-IR, LTO Islamabad vide letter dated 04.04.2022.

3. Hearing notice was issued u/s 9(2) of the FOIR Act 2013, in response to which Mr. Saqib Latif and Mr. Kamran Ullah attended. The AR vehemently contended that action of the Additional Commissioner-IR, Audit, LTO Islamabad was malafide and falls within the ambit of maladministration.

4. The DR on his part stated that the instant complaint has been filed against an order passed u/s 221(1) of the Ordinance, which is appealable before Commissioner-IR (Appeals) u/s 127(1) ibid, hence bar of jurisdiction in terms of Sections 9(2)(b) applies in this case.

FINDINGS:

5. After hearing arguments of both parties and perusing the available record, it is clear department has not furnished Para-wise comments with reference to the core allegation **i.e. illegality of order u/s 221, dated 18th February, 2022**, yet the following aspects of the case need to be thrashed so as to reach at right conclusion:

- i. Order u/s 122(5A) was passed 16th May, 2017 for TY 2014 and an amount of Rs.7.006 billion was recovered from the bank A/C of complainant authority on 16th June, 2017.
- ii. The complainant filed an appeal and CIR (Appeals-I) Islamabad who remanded the case on 30th October, 2017.
- iii. On 30th September, 2020 department passed order u/s 122 (Order to close amendment) for TY 2014, concluding that "no adverse inference is drawn and proceedings initiated u/s 122(5A) of the Income Tax Ordinance, 2001 are dropped."
- iv. In October, 2020 the complainant authority applied for rectification asking for the credit of tax already withdrawn from it's a/Cs on 16th June, 2017.
- v. On 18th February, 2022 department passed an order u/s 221(1) for TY 2014 wherein without confronting the taxpayer in terms of section 221(2) of the said Ordinance instead of restoring deemed assessment and allowing credit of tax recovered from the bank accounts, demand equal to the recovery was created afresh. Nowhere in the said order the alleged "mistake apparent from record was mentioned, confronted or discussed.
- vi. No doubt the said order is appealable but passing an outright illegal, perverse and unjust order cannot be justified in the guise of mindless litigation. Eight years old

of a regulatory authority is being handled in an arbitrary manner.

The instant case has all the ingredients of maladministration i.e.

- (3) "maladministration" includes,- (i) a decision, process recommendation, act of omission or commission which-
- (a) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bona fide and for valid reasons;
- (b) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory;

RECOMMENDATIONS:

6. In view of above FBR is directed to ensure that;
- i. *IR-Policy and Legal wings examine the instant case in depth and issue necessary clarification/instructions to all IR field formations with reference to the scope of section 221 of the Ordinance;*
- ii. *in the light of aforesaid clarification, if so required, CIR concerned may like to revisit the order passed u/s 221 of the Ordinance for TY 2014, after granting proper opportunity of being heard and as per law; and*
- iii. *report compliance within 45 days.*

*Approved for reporting
and press release*

Dated: 09/05/ 2022
U.f

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

Certified to be True Copy
9/5/22

Registrar
FTO Secretariat
Islamabad