

**BEFORE  
THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**COMPLAINT NO.1471/LHR/IT/2022**

Dated:17.04.2022\*RO Lahore

**Mst. Tayyaba Akhtar,**  
M/s. SarSabz Khad Bank, ... Complainant  
Ghalla Mandi, Pattoki.

**Versus**

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

Dealing Officer : Mr. Tausif Ahmad Qureshi, Advisor  
Appraisal Officer : Mr. Muhammad Tanvir Akhtar, Advisor  
Authorized Representative : Mr. Abdul Waheed Shakir, Advocate  
Departmental Representative : Ms. Nawal Sheikh, Addl. CIR RTO, Lahore

**FINDINGS/RECOMMENDATIONS**

The above-mentioned complaint was filed against the Commissioner Inland Revenue, Zone-I, RTO, Lahore under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) for alleged delay and inaction in finalization of claim of income tax refund for the Tax Year 2018, and the impending departmental action of reopening of his case for audit under section 122(5) or 122(5A) read with Section 177 of the Income Tax Ordinance, 2001 as an alleged retaliatory measure to prevent him from seeking redress from the Office of FTO.

2. Briefly, the Complainant is under threat from the Department for reopening of his case for audit under Section 122(5) and 122(5A) of the Income Tax Ordinance, 2001, if he does not desist from his complaint against the latter. Further contended that the proceedings u/s 121, 122, 170, and 177 of the Income Tax Ordinance, 2001 were mutually independent by virtue of their own

parameters, procedures, scope and nature. The income tax return for the Tax Year 2018 was filed which had automatically become deemed assessment under section 120 of the Income Tax Ordinance 2001. He submitted refund claim amounting to Rs. 0.132 online on 05.01.2019 along with tax payment details. The reminders also followed. He further added that tax paid under Section 236G of the Ordinance is an adjustable tax and whole record is available on the e-portal of the FBR. Non-issuance of due refund falls under the purview of maladministration under the FTO Ordinance, 2000. Moreover, initiation of fresh audit / recovery proceedings against the taxpayer during the pendency of his complaint is in violation of directions contained in FBR letter No.4(10) Rev Bud/2020-Vol-II/17217-12 dated 04.02.2022. He prayed for sanction of his refund claim in the light of his past profile as well as to stop the Department to take any retaliatory actions.

3. The complaint was 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 Commissioner-IR, Zone-I RTO, Lahore submitted para-wise comments vide letter dated 21.05.2022 raising preliminary objections regarding bar of jurisdiction in terms of Section 9(2)(b) of the FTO Ordinance. It was contended that since the matter involved the determination of tax liability and refundable amount on account of tax, such matter is appealable before the Appellate forums. In this regard, reliance was placed on Hon'ble President of Pakistan's decisions vide orders No. 17/FTO/2018 dated 13.06.2018, No.



RTO/LHR/0000697/ 2016 dated 16.01.2017 & No.46/ FTO/2018 dated 27.05.2019.

4. The Commissioner further added that the respondent has alleged about threat of reopening the case/proceeding u/s 122(5A) on the basis of filing the instant complaint, whereas the fact is that the taxpayer had deliberately declared inaccurate and wrong particulars of income in his tax return with a view to claiming inadmissible tax refund which required rectification for which proceedings u/s 221 of the Income Tax Ordinance 2001 were initiated. Aggrieved thereof, the taxpayer / complainant filed a writ petition before the Honorable Lahore High Court, Lahore. The Honorable Lahore High Court, Lahore vide order dated 07.03.2022 held that the said discrepancy/mistake was to be corrected through action u/s 122 of the Income Tax Ordinance, 2001. Hence, in compliance with the observations of the Honorable Court, proceedings u/s 122(5A) were initiated and resultantly inaccuracies of particulars of income and the admissibility of claim of refund stand exposed through the said proceedings. It has been found that the taxpayer / complainant had claimed other revenue of Rs.0.950 million without declaring the purchases and sales of their trading / dealership business. The claimed credit of tax withheld at Rs.0.139 million u/s 236G of the Income Tax Ordinance, 2001 (at the applicable rate of 0.70% of the amount of purchases) shows that purchases of Rs. 19.961 million were made. Since no closing stock has been declared in the return, hence it is presumed that whole of the purchased goods were sold. Taking into account the declared expenses and declared business income of Rs.0.451 million the minimum sales as per the return come to Rs.20.412 million. Being so, the taxpayer was

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required to pay minimum tax as provided u/s 113 of the Income Tax Ordinance, 2001 on the said turnover. Furthermore, the meager turnover of Rs.0.451 and capital of Rs.1.500 million (as declared in the return) do not sufficiently explain the sources of investment made for the purchases of Rs.19.961 million. As the said proceedings u/s 122(5A) *ibid.* are in line with the directions of the Honorable Lahore High Court, Lahore, therefore, in accordance with the provisions of section 10(8) of the FTO Ordinance 2000 read with the *ratio* settled by the Honorable Lahore High Court, Lahore in PTR 328 of 2009, no occasion of any maladministration arises in the matter.

5. Furthermore, as per section 170 of the Income Tax Ordinance, 2001, refund becomes due only if tax is properly charged and paid. Reference may be made to sub-section (1) & (3) of section 170 of the Income Tax Ordinance, 2001. It is worthwhile to mention here that the Honorable Lahore High Court, Lahore vide PTR No.48/2011 has held that deemed assessment order under section 120 of the Income Tax Ordinance, 2001 is not a refund order. Filing of refund application is mandatory and if after filing the refund application, no order is passed by the Commissioner within the stipulated time, then a negative order is presumed to be passed for which appeal can be filed under section 170(5) of Income Tax Ordinance, 2001. Therefore, the matter agitated in this complaint falls in the ambit of section 9(2)(b) of the FTO Ordinance 2000. The Complainant may kindly be directed to agitate the matter before the appellate forum. Moreover, the indispensable necessity to determine and establish the admissibility of refund claim as per the provisions of sub-sections (1) and (3) of section 170 of the Income Tax Ordinance

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