THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.15221 & 15227/KHI/IT/2025

Dated: 30/06/2025* R.O. Karachi

Mr. Mehmood Ali Ahmed, CNIC 4230160097751
Prop: Saba Oil,
Plot # B-121, Sector 6-F, Mehran Town,
Korangi Industrial Area, Karachi ...Complainant

Versus

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

Dealing Officer	: Mr. Badruddin Ahmad Quraishi, Advisor
Appraising Officer	: Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	: The complainant in person
Departmental Representative	: Mr. Muhammad Tahir, ACIR, RTO-II Khi Mr. Mansoor Ahmed, Inspector, CIR(A)

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint was filed against the Commissioner-IR (Appeals-III), Karachi, and Assistant/Deputy Commissioner-IR, unit IV, Zone-III, RTO-II Karachi in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for passing arbitrary, ex parte illegal assessment orders for tax years 2014 & 2015 and confirmation thereof by the CIR (Appeals-III) without providing proper opportunity of being heard. Being an identical case, both the complaints are disposed of in a consolidated order.

2. The complainant is a septuagenarian senior citizen 78 years old, declared income from salary, exempt share income from AOP, exempt pension and profit on debt from bank accounts in his return of income. The Department selected the case of the complainant for a total audit for tax years 2014 & 2015 through a computer ballot under Section 214C of the Income Tax Ordinance 2001 (the Ordinance). According

* Date of registration in FTO Secretariat

to the complaint, the Department issued exparte assessment orders for the tax year 2014 on June 29, 2020, creating a tax liability of Rs. 1,915,702, and for the tax year 2015 on June 21, 2021, creating a tax liability of Rs. 8,847,580 without serving any notice /audit report/ assessment order / appellate order. Both assessment orders were confirmed on 12.01.2024 by the CIR (Appeals-III) Karachi. The complainant came to know about the assessment orders and appellate orders when recovery notice u/s 138 of the ordinance were issued on 27.09.2024 in case of assessment orders and on 17.04.2025 in case of Appellate orders. Further, the bank accounts of the complainant as per complaint was also attached. The complainant e-filed Rectification Applications before the Commissioner-IR (Appeals-V), which are still pending; hence, these complaints are for the redressal of the grievances.

3. 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 whereof, the Commissioner-IR, Zone-IV, RTO-II Karachi vide letter dated 08.07.2025 raised the issue of jurisdiction in terms of section 9(2)(b) of the FTO Ordinance, where legal remedy is available to the taxpayer. On merit, it was stated that notice for intimation of selection for audit u/s 214C for the tax year 2014 was issued on 26.10.2015. Thereafter, SCN was issued on 23.06.2020 for compliance on 29.06.2020. On noncompliance, an order was issued on 29.06.2020 creating a tax demand of Rs1,915,702, and an amount of Rs127,537 was recovered through bank attachment. Similarly, notice for intimation of selection for audit u/s 214C for tax year 2015 was issued on 09.02.2017. Thereafter, SCN was issued on 03.06.2021 for compliance on 10.06.2021. On noncompliance, an order was issued on 21.06.2021 creating a tax demand of Rs 8,847,580. On the other hand, the CIR(Appeals-III) Karachi vide letter dated 10.07.2025

did not file any comments on his appellate orders, stating that the complainant did not make him a respondent in this complaint.

4. Heard the parties, perused the relevant case record, and legal issues involved therein given due consideration.

5. At the outset, the question of complaint's maintainability u/s 9(2)(b) of the FTO Ordinance is concerned, it is misconstrued, as the matter at hand warrants the deduction of an element of maladministration on the part of the Deptt. for patently illegal assessment orders without providing a fair opportunity of hearing by the assessing officer and the Commissioner-IR (Appeals) while rejecting the appeal. The honourable Supreme Court of Pakistan, while deciding the civil petition for special leave to Appeal no. 788 of 1984 dated 07.11.1988 states:

> *"One of the conditions for the grant of relief in writ jurisdiction of the High Court is that petitioner before it should not have any alternate adequate remedy. In this case, a remedy by way of appeal, as mentioned in the impugned order , was such remedy. Therefore, it is correct that no relief could be granted to the petitioner under article 199 of the Constitution. But that does not mean that the petitioner has not been allowed any relief by the departmental authorities (despite the observation of the supreme Court) the petitioner would have no immediate remedy at all against the highhandedness of the department.*
>
> *Amongst others he can file a complaint and grievance application before the Federal Ombudsman, who can provide effective redress, in a case like the present one. That forum has several attributes of a Court in many aspects of its powers. It can also move in a matter promptly whenever so needed. At the same time, it does not suffer from some of the handicaps, due to technicalities of procedural nature, which operates as impediment or thwart such like action by the Courts. For example the limitation of non-availability of alternate remedy in this case for the High Court under Article 199 of the Constitution, is not applicable to the said forum. Besides, the same being quasi-judicial it is also headed by a judge of the Supreme Court, with similar powers to punish for contempt. In this context therefore, it can be safely concluded, that it can provide the alternate effective and adequate remedy to the petitioner also.*
>
> *With the foregoing observations and remarks, leave to appeal is refused in the circumstance of this case, due to the technical hurdle faced by the petitioner in High Court . He may file a complaint before the Ombudsman."*

The preliminary objection regarding the bar of jurisdiction being misconceived is overruled.

6. Examination of the impugned assessment order dated 29.06.2020 for the Tax year 2014 reveals that after selection for audit through a computer ballot, the Assessing Officer issued notice for intimation of selection for audit u/s 214C on 26.10.2015. Thereafter, the Assessing Officer slept over the issue for more than four & half years. A few days before, when the case was going to be time-barred, the Assessing Officer woke up from the deep slumber, and an SCN was issued on 23.06.2020 for compliance on 29.06.2020, allowing only six days. Similarly, notice for intimation of selection for audit u/s 214C for tax year 2015 was issued on 09.02.2017. After four & half years, when the issue was going to be time-barred, an SCN was issued on 03.06.2021 for compliance on 10.06.2021, providing only seven days in violation of Board's Circular dated C. No 7(2) DT-14/92 dated 01.02.1994. The rush was to create tax demand through administrative excesses, resulting in the taxpayer's hardship. Moreover, a mandatory statutory audit report containing audit observations and findings before concluding the total audit was not issued. The relevant portion of the provision of section 177(6) of the Ordinance is reproduced below:

> *"177(6) After compilation of the audit, the Commissioner shall, after obtaining the taxpayer's explanation on all the issues raised in the audit, issue an audit report containing audit observations and findings."*

The same assessing officer Mr. Muhammad Ansir Ali Khan failed to issue an audit report before issuing an assessment order for both the tax years.

ANALYSIS OF ASSESSMENT ORDERS

7. TAX YEAR 2014

The complainant declared a salary income of Rs. 4,065,900 derived from "ENAR Petroleum refining facility" on which tax at Rs. 618,122 was deducted at source. The Assessing Officer, out of his fragment of imagination, considered the declared salary income of Rs. 4,065,900 as salary expense and disallowed the complainant's salary income under section 18 & section 174(2) of the Ordinance. Further. an amount of Rs. 1,217,700 was disallowed u/s 174(2) on account of exempt share income from AOP (Energy Enterprise Associates, NTN 3754016-5) claimed at Rs. 8,118,000 and exempt u/s 92(1) of the Ordinance. Even an amount of Rs. 480,000 out of the total exempt pension received from "ENAR Petrotech Services" was added u/s 174(2) of the Ordinance. Further, the first sentence of the impugned assessment order for the tax year 2014 states "ORDER UNDER SECTION 122(9) OF THE INCOME TAX ORDINANCE 2001"

8. TAX YEAR 2015

The Assessing Officer disallowed an amount of Rs 3,696,000 u/s 174(2) of the Ordinance on account of share income from AOP (Energy Enterprise Associates, NTN 3754016-5) claimed at Rs. 9,240,000 and exempt u/s 92(1) of the Ordinance. In addition, the bank balances as on 30.06.2015 of all five bank accounts at Rs21,776,084 were added u/s 111(1)(b) of the Ordinance without issuance of any notice u/s 111 when these bank balances were already reconciled in the wealth reconciliation statement being part of declared assets.

9. A bare reading of both the assessment orders reveals that these are patently illegal assessment orders. It cannot be an inadvertent mistake because it is the same Assessing Officer who abused his powers twice for ulterior motives, firstly on 29.06.2020 for the tax year 2014, creating a tax liability of Rs. 1,915,702, and just after one year on 21.06.2021 for the tax year 2015, creating a tax liability of Rs. 8,847,580. Either the Assessing Officer does not have any knowledge of the Income Tax Ordinance, Income Tax Rules, and orders/instructions of the Board binding u/s 214 of the Ordinance, or he has played havoc with the assessment orders against a septuagenarian senior citizen intentionally by exercising powers for

corrupt or improper motives, such as bribery, jobbery and administrative excesses attracting maladministration in terms of section 2(3)(i)(d) of FTO Ordinance. In case he does not have any knowledge of Ordinance/Rules/Instructions, he should not be assigned any assessment-related job unless trained again in the Directorate of Training, Lahore. However, in case he has purposefully issued the patently illegal assessment orders for corrupt motives, a departmental inquiry may be initiated for appropriate action under the provisions of law.

OPPORTUNITY OF BEING HEARD / SERVICE OF NOTICE

10. The complainant contended that the impugned exparte assessment orders for the tax year 2014 on June 29, 2020, creating a tax liability of Rs. 1,915,702, and for the tax year 2015 on June 21, 2021, creating a tax liability of Rs. 8,847,580 were passed alongwith confirmation through exparte CIR (A) orders both dated 12.01.2024 without serving prior mandatory notices upon the complainant as mentioned u/s 218 of the ITO, 2001 and upheld by the CIR(A) was against the instructions issued by FBR vide sub-para (ii) of Para (3) of circular letter dated 23.07.2018, hence, the assessment order and whole super structure built on it is liable to be set-aside. In this regard, reliance was placed on the order of the FTO dated 18.03.2022 in Complaint No.0567/KHI/IT/2022 and the order dated 04.01.2022 in Complaint No.5424/KHI/IT/2022. It was further contended by the complainant that the impugned assessment order dated 27.06.2023 was passed by the officer without service of notice upon the complainant in the manner described in section 218 of the ITO, 2001. It was argued that it is a settled preposition of law that the mere placement of notices on the IRIS portal is not sufficient to service of notice. Reliance was placed on the order of the FTO dated 16.09.2022 in Complaint No. 3174/KHI/IT/2022.

11. Moreover, service of notice was not ensured, and it was assumed that uploading on IRIS was a valid service. The complainant's duly updated profile is available on record with his mobile number and email address. The complainant denied receipt of any SMS or email through which he could be alerted about the placement of any notice or order. Neither has the department placed anything on record in this respect. Service under Section 218(d) based on mere placement of notice or order on IRIS profile is not a valid service as per Rule 218(1)(d) which is reproduced for reference;

> **"218. Service of notices and other documents.**
>
> *(1) Subject to this Ordinance, any notice, order or requisition required to be served on a resident individual (other than in a representative capacity) for the purposes of this ordinance shall be treated as properly served on the individual if*
>
> *(d) Served on the individual electronically in the prescribed manner."*

The prescribed manner as per Rule 74 is also reproduced for reference;

> **"74. Service of documents electronically.**
>
> (1) *This rule applies for the purposes of the service of documents under the Ordinance or these rules.*
>
> *(2) Where a person has notified the Commissioner in writing of an electronic address for service of documents under the Ordinance or Rules, a document required to be served on the person by the Commissioner or Chief Commissioner shall be considered sufficiently served if sent to that address.*
>
> *(3) For the purposes of sub-rule (2), a document is considered sent to an electronic address if the sender receives.-*
>
> *(a) in the case of a message sent to a facsimile number, confirmation from the sending facsimile machine that the transmission is sent;*
>
> ***(b) in the case of a message sent to an electronic mail address, confirmation from the server of the recipient that the message has been received".***

It is thus clear that mere placement of notice on the IRIS does not constitute valid service within the meaning of Section 218(1)(d) read with Rule 74 of the Income Tax Rules 2002. Even otherwise, the department IT system is expected to ensure that the taxpayers are informed about any event through an SMS or email rather than expecting every taxpayer to keep checking their IRIS profile on a daily basis, which is against the principles of natural justice & fair play.

12. It has further been deduced that the Commissioner-IR (Appeals) did not take into account all the grounds of appeals put forth by the complainant in his appeal filed before the Commissioner-IR (Appeals) and confirmed the treatment meted out by the assessing officer without discussing the issue of service of SCN & Order in terms of section 218 of the Ordinance raised in the grounds of appeal. If notices were not served, then there is no question of submission of any details or evidence. The simple bare reading of the Assessment Orders reveals that the SCNs for both years were issued, allowing time for only one week. Further, no audit reports were issued, which is the mandatory requirement u/s 177(6) of the Ordinance. Illegal additions made in the Assessment orders can be observed from a cursory look. Whereas the Commissioner-IR (Appeals) did not consider that non-receipt of notice is sufficient cause that prevented the appellant from furnishing the evidence. The Commissioner (Appeals) should have either examined the evidence as per law, or if it was evident that the notice was not validly served, the order could have been remanded back to the officer for denovo proceedings after providing the proper opportunity of hearing, which was not done. Ex-parte orders are invariably passed due to the non-availability of records/evidence. If the contention of Commissioner-IR (Appeals) is accepted, then no ex-parte order can be assailed/adjudicated in appeal on the merits of the case as the appellate authority would not accept any evidence which was not produced before the officer, even if the notice was not properly served.

13. In short, as can be observed from the discussions supra, the assessment orders for both tax years 2014 & 2015 were patently illegal. Due to merger theory, these assessment orders have been

merged with the Commissioner Appeals orders dated 12.01.2024. The complainant taxpayer should not be punished for the deliberate & intentional follies in the issuance of patently illegal assessment orders by the Deptt. Therefore, it will be in the interest of natural justice & fair play that both the assessment orders for Tax years 2014 & 2015 be remanded back to the trial court (before DCIR) for decision on merit in accordance with the law after providing opportunity of being heard, especially considering the details at paras 7-10 by the Board u/s 214B of the Ordinance reproduced below:

> *"214B. Power of the Board to call for records.— (1) The Board may, of its own motion, call for and examine the record of any departmental proceedings under this Ordinance or the rules made there-under for the purpose of satisfying itself as to the legality or propriety of any decision or order passed therein and may pass such order as it may think fit: Provided that no order imposing or enhancing any tax or penalty than the originally levied shall be passed unless the person affected by such order has been given an opportunity of showing cause and of being heard.*
>
> *(2) No proceedings under this section shall be initiated in a case where an appeal is pending.*
>
> *(3) No order shall be made under this section after the expiry of three years from the date of original decision or order."*

FINDINGS:

14. Issuance of patently illegal, exparte assessment order for Tax years 2014 & 2015 and later on upheld by the CIR (A) without providing proper opportunity of being heard in violations of the instructions issued by FBR vide sub-para (ii) of Para (3) of circular letter dated 23.07.2018 is contrary to law & procedure, principle of natural justice and the trite maxim of *audialtermpartem*, hence, unlawful *per se* & void ab-initio; and also tantamount to maladministration, in terms of Section 2(3)(i)(a)(b)(d) & (ii) of the FTO Ordinance.

RECOMMENDATIONS:

15. FBR to:

(i) direct the Member Legal to revisit the confirmation of patently illegal assessment orders for Assessment years 2014 & 2015 both dated 12.01.2024 by the Commissioner (Appeals III) Karachi and remand back to the trial court (before DCIR) for decision in the interest of justice & fair play on merit under the law as per discussions held supra;

(ii) The Commissioner Zone-III, RTO-II Karachi to detach bank accounts immediately;

(ii) Member Ops/ Admn to initiate an inquiry on the conduct of the Assessing Officer against a septuagenarian senior citizen taxpayer for appropriate action under the law in the light of discussions held in paras 6-11; and

(iii) report compliance within 45 days

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

Dated: 2:09:2025
Akif
Approved for reporting