

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO. 1759/LHR/IT/2022

Dated: 08.05.2022 R.O. Lahore

Mr. Fiaz Ahmad, ... Complainant
Lundi Pitafi Road, Near Second Flood
Sippar, Mauza Nawan Baigrag Rajanpur.

V e r s u s

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

Dealing Officer : Mr. Tausif Ahmad Qureshi, Advisor
Appraisal by : Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representatives : i. Mr. Khalid Hussain Ghori, Advocate
ii. Mr. Raashid Umar, Advocate
Departmental Representatives : i. Mr. Ghulam Sarwar Shah,
CIR, RTO, Multan
ii. Syed Nadeem Akhtar, IRAO
RTO, Multan

FINDINGS/RECOMMENDATIONS

The above complaint has been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against rejection order of income tax refund passed under Section 170(4) of the Income Tax Ordinance, 2001 (hereinafter referred to as the Ordinance) for the tax year 2019.

2. Briefly, the Complainant runs a commission shop at Jampur. He filed income tax return for the tax year 2019 which is deemed to be assessment order under Section 120 of the Ordinance. Refund application alongwith requisite documents was e-filed on 22.07.2020. The Inland Revenue Officer rejected refund claim for the tax year 2019 under Section 170(4) of the Ordinance without examining the record and overlooked the basic provisions of

^{*} Date of registration in FTO Sect.

Section 170 of the Ordinance. The said order was passed on 19.08.2020 after a lapse of 27 days in violation of Section 170(4) and CBR Circular No. 05 of 2003. Moreover, the assessing officer passed order under Section 170(4) of the Ordinance without providing an opportunity of being heard to the Complainant. The Complainant has cited the Hon'ble FTO's order in parallel case of same nature and fact in Complaint No. 2295/MLN/IT/2020 dated 04.11.2020.

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 Chief Commissioner-IR, RTO, Multan forwarded para-wise comments of the Commissioner-IR, Multan Zone vide letter dated 27.05.2022 who stated that the instant complaint pertains to refund rejection order issued under Section 170(4) of the Ordinance which is appealable before the Commissioner-IR, (Appeals) under Section 127 of the Ordinance. At the outset, preliminary objection regarding bar of jurisdiction in terms of section 9(2)(b) of the FTO Ordinance, was raised. Reliance was placed on the Honourable President of Pakistan's orders in a number of cases in 738/KHI/ST/2016 M/s. HSM Packages (Pvt) Ltd, Karachi, 473/KHI/ST(211)/1486/2015 M/s. Siddiq Sons Ltd, Karachi, FTO-PSH/0000520/2016 M/s. Iftikhar Ali Shah, FTO-HQR/0000651/2016 M/s. Zhongzing Telecom Pakistan (Pvt) Ltd, Islamabad and No.60/MLN/IT/28/469/2016. Further stated that the Complainant e-filed his application for refund for the tax year 2019. Screen shots of some certificates were enclosed regarding proof of deduction of income tax by withholding agent. Proofs of tax payment in Govt. treasury in form of CPR were not enclosed. Complete attested

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copies of tax deduction certificates along with prescribed form under Rule 42 were not provided to this office. Due to deficiencies mentioned above, the refund could not be processed. The Complainant was also provided with opportunity of being heard regarding the shortcomings in refund claim vide letter dated 10.08.2020, but he could not provide the evidence by the due date. The Complainant did not provide original certified tax deduction certificates. He neither provided the original documents / certificates to this office nor attached documents with refund application. Many of the documents were not readable and the deductions were also not verifiable form ITMS or IRIS. Therefore, the refund claim of the Complainant was rejected by passing order under Section 170(4) of the Ordinance as per law.

4. During hearing, both AR and DR reiterated the stance taken in their earlier statements. The DR sated that refund was rejected because bank deduction certificates did not bear CPR numbers. The AR emphasized that he had provided deduction certificates along with requisite documents and the order was passed without affording opportunity of hearing.

5. Both the parties heard and record perused.

FINDINGS:

6. The contention of the Department that the Hon'ble FTO has no jurisdiction over the case in terms of Section 9(2)(b) of the FTO Ordinance, 2000 is not tenable because the rejection order is sketchy, flawed and arbitrary because;

- i. Tax deduction claimed by the taxpayer mainly relates to Banks and in the cases of Banks no individual CPRs are generated as bulk tax amounts are transferred to FBR. In such cases only Deduction Certificates issued by the Banks constitute the evidence which has been attached with the refund application on Iris.

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- ii. Department has not made any correspondence with concerned Bank branches for verification of claim. Unilateral rejection of refund claim without verification is arbitrary.
- iii. 4/5 lines Refund Rejection Order is silent even about the issuance of any notice u/s 170(4) prior to passing of order on 19th August, 2020.
- iv. Notice u/s 170(4) dated 10th August 2020, which is claimed to have been issued by the department, affording opportunity of hearing is neither bar-coded nor generated through Iris.

In view of above the refund claim has been rejected arbitrarily and in slipshod manner, that too without confronting the taxpayer and without providing an opportunity of hearing. All this tantamount to maladministration in terms of Section 2(3)(ii) of the FTO Ordinance.

RECOMMENDATIONS:

8. In view of the foregoing, FBR to direct:
 - (i) the Commissioner-IR, Multan Zone, Regional Tax Office, Multan to revisit refund order passed under Section 170(4) of the Ordinance for the Tax Year 2019, after providing opportunity of hearing to the Complainant, as per law; and
 - (ii) report compliance within 45 days.

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

Dated: 13/7/2022

Approved for reporting