

**BEFORE  
THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**COMPLAINT NO.1766/KHI/IT/2022**

Dated: 26.05.2022 R.O. Karachi

**Mr. Muhammad Raza Nensey,**  
6<sup>th</sup> Floor, Jason Trade Centre, 39-A/1,  
Block-6, PECHS, Shahrah-e-Faisal,  
Karachi.

... *Complainant*

***V e r s u s***

The Secretary,  
Revenue Division,  
Islamabad.

... *Respondent*

Dealing Officer	: Ms. Seema Shakil, Advisor
Appraisal by	: Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	: Mr. Nensey
Departmental Representative	: Mr. Ajaz Hussain, ADCIR, LTO, Karachi


**FINDINGS/RECOMMENDATIONS**

The above mentioned complaint has been filed against the Commissioner-IR, Zone-AEOI LTO Karachi in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for proceedings under Section 122(5A) involving enquires which are not permissible under law.

2. The Complainant is an individual holding offshore assets. The jurisdiction of the case has been transferred to AEOI Zone, LTO Karachi on the basis of information received from offshore jurisdiction. Proceedings under Section 122(5A) have been initiated for amendment of assessment for the Tax Year 2020. The complainant being aggrieved with proceedings conducted under Section 122(5A) which require enquiry not permissible under law. It is complained that the subject notice has been issued under Section 122(9) Income Tax Ordinance, 2001(the Ordinance) to amend the assessment under Section 122(5A) of the Ordinance.

However, it is pertinent to mention here that the power to make inquiries under Section 122(5A) of the Ordinance in certain matters regarding amendment of assessment without selection of case for audit under Section 177 of the Ordinance has been withdrawn vide finance Act, 2021. The aforesaid amendment includes omission of the words "after making, or causing to be made, such enquiries as he deems necessary" from sub-Section (5A) of Section 122 of the Ordinance.

3. The complaint was referred to the Secretary, Revenue Division for comments in terms of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response, the Chief Commissioner-IR, CTO, Karachi submitted reply of CIR Enforcement-II, Karachi vide letter dated 21.05.2022. At the outset, preliminary objection has been raised regarding bar on jurisdiction of FTO in terms of Section 9(2)(b) of the FTO Ordinance 2000, on a matter which is appealable. On merit, it is contended that the complainant has failed to explain the source of exempt income, have furnished contradictory statements regarding gift from his mother and has erroneously claimed exemption of gain on disposal of his personal car.

 4. Giving rebuttal to departmental reply, the complainant asserted that details of property income earned & taxed in the offshore jurisdiction have been provided. The proof of gift from mother in the form of bank certificate of both the recipient & donor have also been provided & now the department is insisting on providing complete bank statement to conduct further enquiry which is not permissible as per law. It is further contended that department has initiated multiple proceedings in his own case & that of his family members which is causing undue stress &



harassment to his family. Proceedings initiated in his own case for Tax Year 2018 were dropped upon intervention of FTO on an earlier complaint. The issue in hand for 2018 was based on information regarding offshore assets. Whereas the proceedings for 2020 in the instant complaint year are section 122(5A) proceedings, without any information regarding undeclared offshore assets.

5. Both the parties were heard & record perused

**FINDINGS:**

6. (i) The preliminary objection regarding bar on jurisdiction is misconceived. The issue under complaint involve asking for information with the purpose of conducting enquiries which are beyond the scope of Section 122(5A) and comes under the definition of maladministration. Hence the objection is overruled. Notice under Section 122(9) read with Section 122(5A) involves multiple issues. Some are related to determination of income & admissibility of exemption claim. All these issues are within the scope of Section 122(5A) and are beyond the jurisdiction of FTO in terms with the provisions of Section 9(2)(b) of the FTO Ordinance 2000. Whereas calling of bank statement & conducting enquiries is beyond the scope of Section 122(5A). During hearing, the DR agreed to restrict the proceedings to the extent of scope of Section 122(5A).

(ii) The DR was asked as to why he has not sent back the case to its original jurisdiction after completion of proceedings for the year involving information regarding offshore assets. These AEOI Zones were created for the sole purpose of taxation proceedings of offshore assets but initiation of fresh proceedings for other years is against the spirit of the very creation of these

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specialized zones. It is submitted that the Zone has requested FBR for transfer back of all cases once proceedings in the relevant year have been finalized. However, the request is not acceded to by FBR. This is a grave issue which is compromising the efficiency of specialized offshore taxation zones. The original policy was to retransfer the cases to their respective jurisdiction, once the proceedings are finalized so that the zones which are created for specialized purpose remain focused on their core purpose. The current practice of indulging in routine rut may seriously compromise the efficiency of specialized zones.

**RECOMMENDATIONS:**

7. "FBR to direct:-

- i) Additional Commissioner-IR, Audit AEOI Zone LTO Karachi to complete the proceedings under Section 122(5A) strictly in accordance with law.
- ii) Member-IR Operation (FBR) to revisit the prevalent practice of retransfer of cases from AEOI Zones to original jurisdiction upon completion of Proceedings involving offshore assets and;
- iii) report compliance within 45 days."

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

Dated: 20.17. /2022

*Approved for reporting*