

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NOS.1816 to 1820/KHI/IT/2022

Dated: 14.05.2022¹ R.O. Karachi

Mr. Yousuf Jan Mohammad,
Chief Executive Office,
M/s. Brand Brigade (Pvt) Ltd.
1st Floor, 14-C, Lane-01, Main Bukhari
Commercial Area, DHA, Phase-VI,
Karachi.

... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer	: Ms. Seema Shakil, Advisor
Appraised by	: Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	: Mr. Yasmin Ajani
Departmental Representative	: Mr. Muhammad Irfan Siddiqi, DCIR, Enf-I CTO, Karachi

FINDINGS / RECOMMENDATIONS

The above mentioned complaints were filed against the Commissioner-IR, Enforcement-I, CTO, Karachi in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance). Since issue in complaints is similar, all complaints are disposed of through a single consolidated order.

2. The Complainant is a private limited company carrying on the business of event management, business consultations, marketing & other allied services. Tax has been deducted for all the years under Section 153(I)(b) on service receipts which is in excess of admitted tax liability as per returns. Refund applications were accordingly filed and having failed to elicit the departmental response, the instant complaints are filed. The year wise position of outstanding refund is given hereunder;

¹ Date of registration in FTO sect.

Tax Years	Refund claim	Date of refund application
2010	1,642,048/-	31.05.2013
2011	4,706,387/-	30.05.2013
2012	7,425,808/-	29.05.2013
2013	8,449,427/-	21.07.2020
2014	6,789,265/-	04.04.2020

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-I, Karachi vide letter dated 02.06.2022. For the Tax Years 2010, 2011 & 2012, it is contended that the tax deducted under Section 153(I)(b) is minimum tax in terms with the provisions of third proviso to Section 153(3) of the Income Tax Ordinance 2001. Whereas, for the Tax Years 2013 & 2014 it is submitted that the claims is subject to verification. It is further argued that the matter is appealable and therefore, the complaint may be rejected. During hearing, the complainant's counsel submitted rejoinder to departmental reply. It is argued that not only the complainant applied for refund but also followed up with various letters dated June 6, 2021 and April 27, 2022. Therefore, it is a clear cut case of maladministration as department never responded to make the verification & process our claim. Regarding the issue of minimum tax under Section 153(I)(b), it is contended that exemption from the provisions of third proviso to Section 153(3) was provided to companies for all the three years under reference, vide clause 79 of Part IV of the second schedule to the Income Tax Ordinance 2001. The controversy that surrounded applicability of clause 79 has been settled by High Court as well as Hon'ble President on a representation by the department against judgments of Hon'ble FTO. In the latest judgment reported an ATIR, 2019-PTD-1741 (TR) in case of

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Relacom Pakistan (Pvt) Ltd Karachi V/s Commissioner Inland Revenue, Karachi decided on 30.08.2018. The Appellate Tribunal has discussed in detail the provision of Section 153(I)(b) read with Section 153(6) in regard to services rendered or provided by the Corporate Taxpayer and its amendment; all the relevant circulars issued thereof by FBR from time to time; judgment of Hon'ble High Court and Appellate Tribunal on the issue of tax deduction under Section 153(I)(b) as adjustable in hands of Corporate Taxpayers; and Hon'ble FTO order on the subject against the Corporate taxpayer and his excellency President order on FBR representation, setting aside the impugned recommendations of the learned FTO has given following finding in para 28 of the Tribunal order;

" The issue of tax deduction under Section 153(i)(b) read with clause (iii) second proviso of sub Section (6) of Section 153 of the Ordinance, clause (79) of part IV of second schedule to the ordinance has been settled by the division benches of tribunal and by the Hon'ble High Court Karachi in the decision quoted supra. Therefore, we also held that tax deducted under Section 153(i)(b) read with clause (iii) of second proviso and third proviso of sub Section (6) of the ordinance are adjustable for Tax Years 2009 to 2015 in the hands of corporate taxpayers."

It is further submitted that for all the three years, i.e. 2010, 2011 & 2012 where the department is denying the refund on the plea of minimum tax, its own officers have passed orders under Section 122(5A) and treated the tax as adjustable & have also created refunds in their orders. How can the department deny refund on a plea different from its own orders in the complainant's case for these years which are even otherwise barred by time limitation & have attained finality.

4. Both the parties were heard & record perused.

FINDINGS:

5. (i) The objection regarding the admissibility of complaint as the matter is appealable is not valid in view of Hon'ble President judgment in complaint No.0176/LHR/IT/2020, whereby it is had that;

"the issue does not pertain to assessment of income or determination of tax liability/refund, but it is the failure of the department to dispose off refund application within the statutory period. The recommendations of the learned FTO are only to the extent to "direct the Commissioner-IR, Zone-I RTO Lahore to complete the verification and dispose of refund application for Tax Years 2016 to 2019 after providing the complainant opportunity of hearing as per law, within 45 days. It is merely a reiteration about the duty of the Departmental authority to decide the matter as per law. The Agency has the lawful powers to decide the matter on its merits in accordance with the law. There is thus no valid justification to assail the order of the learned FTO. In such circumstances, the representation is liable to be rejected."

(ii) Therefore, the objection of the department on admissibility of the instant complaint is rejected. The issue of minimum tax is also settled by Hon'ble President of Pakistan, vide his order, in the case of **FBR vs M/s Qurban Security Services (Pvt) Ltd** vide no. 15/FTO/2015 dated 30-05-2016 (paragraph 6 to 9) and **FBR Vs Techno Might Solution (Pvt) Ltd** vide No 01/FTO/2015 dated 30-05-2016 (paragraph 7 & 8), reversed the findings of the Hon'ble Federal Tax Ombudsman, hence, the tax withheld, in the instant case is not minimum tax rather, it is adjustable in nature. The issue is also settled by ATIR, reported judgment quoted by the counsel of the complainant. Additionally, the departmental orders under Section 122(5A) in complainant's case have also attained finality. The department cannot create refund through conscious application of mind by its orders and then take the stand contrary to its own orders. The controversial dual stand of the department and inordinate delay in settling the refund claim tantamount to maladministration in terms of Section 2(3)(i)(a)(b)&(ii) of the FTO Ordinance.

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