THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.1926/MLN/IT/2024

Dated: 18.03.2024* R.O. Multan

Mr. Agha Faiz Ullah,
House No.757, Block No.18,
Faridabad Colony, D. G. Khan. ... Complainant

Versus

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

Dealing Officer	:	Dr. Khalil Ahmad, Advisor
Appraisement Officer	:	Mr. Muhammad Tanvir Akhtar, Advisor
Complainant Representative	:	Mr. Mr. Muddasir Yasin Lashari, ITP
Departmental Representative	:	Mr. M. Irfan Khan Tareen, Addl. CIR, RTO, Multan

FINDINGS/RECOMMENDATIONS

This complaint has been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against assessment order dated 27.06.2022 passed under Section 122(5A) of the Income Tax Ordinance, 2001 (the Ordinance) by the Addl. CIR, Range-III, D.G. Khan, RTO, Multan for Tax Year 2016.

2. Facts in brief are that the Complainant is an agriculturist who besides agriculture income also derives income from Presumptive Tax Regime (PTR), other sources etc, e-filed return of income for Tax Year 2016, under Section 114(1) of the Ordinance. The return so filed was taken to be assessment order under Section 120(1)(b) of the Ordinance. Subsequently, the Commissioner-IR, (CIR) Multan Zone amended the deemed assessment under Section 121(1)(d) of the Ordinance, vide order dated 28.12.2017, whereby agriculture income was disallowed on account of non-payment of agri-tax. According to

* Date of registration in FTO Sectt.

the AR, although the Zonal CIR, disallowed agriculture income for Tax Year 2016, the Collector/Assistant Commissioner, City, Sub-Division, D. G. Khan, however, issued a recovery notice dated 02.11.2020, under Section 3-B of the Punjab Agriculture Income Tax Act, 1997 (the Act) for payment of agriculture income tax amounting to Rs.0.268 million. The Commissioner, D. G. Khan Division before whom appeal against the above action was filed also upheld the recovery notices vide order dated 16.03.2021. Previously, the Complainant filed complaint No. 0631/MLN/IT/2021 which was disposed of by the Hon'ble FTO vide order dated 30.06.2021, with the following:

> *"7. In view of the above, it is clear that the complainant has assailed the order dated 09.03.2021 passed by the Commissioner Dera Ghazi Khan Division, which falls within the Provincial jurisdiction, hence, this forum lacks jurisdiction. Resultantly, the complaint stands dismissed for want of jurisdiction. File be consigned to record."*

3. The Complainant has filed instant complaint on the plea that Addl CIR vide order under Section 122(5A) of the Ordinance has again added Rs.2,021,000/- as agricultural income in total income for the Tax Year 2016 and created tax demand thereon. The Complainant has however paid an amount of Rs.268,650/- on account of agriculture income tax to the provincial department under Section 3-B of the Punjab Agriculture Income Tax Act, 1997 (the Act). He provided evidence of tax deposited in support of his contention.

4. 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 thereto, the Chief Commissioner-IR, RTO, Multan forwarded Para-wise comments of the Commissioner-IR, Multan Zone dated 05.04.2024 vide letter dated 15.04.2024. It has been contended that the Complainant derived Share income as a member of AOP of M/s Trend Setter Constriction Company Office at DGK. The taxpayer

had filed tax return on 18.3.2017 for Tax Year 2016 declaring income from AOP share at Rs.16,446,863 on the basis of tax deducted under Section 153(1)(C) from different withholding Agents. The same was taken to be an assessment order under Section 120(1)(b) of the Ordinance. Taxpayer filed late return therefore his case was selected for audit in terms of Section 214D of Ordinance. The assessment was finalized under Section 121 of Ordinance dated 28.12.2017 by the CIR having jurisdiction. Later, on basis of examination of return filed by taxpayer, certain discrepancies were observed. After due process as per law, assessment under Section 122(5A) of the Ordinance was finalized dated 27.6.2022 by Addl. CIR having jurisdiction in the following manner:

Total Agricultural Income (as declared) Rs.2,021,000
Amended Taxable income Rs.16,446,863
Tax Payable Rs.3,793,618

The issue of agriculture income was subsequently addressed in terms of order under Section 122(5A) of the Ordinance which is in field.

The Complainant has been served a notice by Assistant Collector Sub Division (City) D. G. Khan to pay agriculture tax amounting to Rs.268,000/- by considering his agriculture income at Rs.2,021,000/-. The notices served to the taxpayer are through a provincial department so this office has no jurisdiction over that department. The complainant should apply for redressal of his grievances to the relevant provincial authority.

5. The Complainant vide rejoinder has prayed that assessment order passed by the Addl. CIR under Section 122(5A) dated 27.06.2022 be canceled because tax demand on declared agri-income stands paid.

FINDINGS

6. Both the parties have been heard and record perused. The Complainant has come up to this forum for cancelation of assessment order passed by the Addl. CIR under Section 122(5A) of the Ordinance dated 27.06.2022 wherein the agriculture income of Rs.2,021,000 declared by the Complainant has been restored and tax demand has been raised on the said income by clubbing it with the declared share from AOP. The Complainant has paid tax on declared agriculture income to the provincial authorities amounting to Rs.268,650 in pursuance of recovery proceedings initiated by the provincial authorities. It is worthwhile to point out that the Complainant has not agitated / contested the said demand before FBR authorities before coming to this forum. The cause of grievance is, therefore, yet to be established. The Complainant has been advised to approach the Deptt for the relief he is seeking by filing of rectification application in terms of Section 221 of the Ordinance.

RECOMMENDATIONS

7. FBR to direct: -

i) the concerned Commissioner, IR, Multan to dispose of the rectification application once filed by the Complainant in terms of Section 221 of the Income Tax Ordinance, 2001, within 15 days; and

ii) report compliance within 45 days.

8. The Complainant is also advised to approach the department and file the rectification application ibid within 07 days of the receipt of this order.

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

Dated: 20.5.2024
Akif

Approved for reporting

Nisho Anwar
Deputy Director
Federal Tax Ombudsman Secretariat
Islamabad