

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO.1994/ISB/IT/2023

Dated: 10.04.2023*HQ Islamabad

Mr. Ansar Mahmood Butt,
House No. 16, Street No. 3,
Fazaia Housing Scheme,
Expressway, Rawalpindi.

...Complainant

V e r s u s

The Secretary,
Revenue Division,
Islamabad.

...Respondent

Dealing Officer	:	Mr. Muhammad Naseer Butt, Advisor
Appraised by	:	Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	:	Mr. Asad Azam, FCA
Departmental Representative	:	Mr. Muhammad Hayat Khan, ADCIR, RTO, Rawalpindi.

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance 2000 (FTO Ordinance). The complaint was referred 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 (FOIR Act). Comments were received from RTO, Rawalpindi vide letter dated 19.04.2023, which were examined and placed on file.

2. Hearing notices u/s 9(2) of the FOIR Act, were issued to the parties for various dates and last hearing was held on 23.05.2023. In response to which Mr. Asad Azam, FCA (Complainant's Authorized Representative) appeared and argued the case. Mr. Muhammad Hayat Khan, ADCIR from RTO Rawalpindi attended as Departmental Representatives (DR) and presented department's stance on the issue. Rejoinder from the complainant's AR was also received. Arguments were heard, record perused and complaint is disposed of as under.

3. The complainant is an Overseas Pakistani who has been living permanently in Germany for past 20-25 years and he was never Pakistan tax resident nor did he have any source of income in Pakistan. The complainant stated that he had purchased the property out of foreign income earned from his business in Germany. The complainant had also filed a declaration under "Tax Amnesty Scheme 2018" on July 26 2018 which is much earlier than the date of impugned assessment dated 22 March, 2021 and though he had declared cash and prize bonds which he utilized against very same property in reconciliation of net wealth filed with revised wealth statement on 26 October 2020 and all these documents are available on his online profile. The complainant further stated that for Tax Year 2018 original assessment order u/s 122(1) of the Income Tax Ordinance, 2001 (the Ordinance) was amended ex-parte on 22 March, 2021 by treating properties purchased worth Rs.60,809,500/- as concealed income and tax of Rs. 20,502,825/- was thus imposed and withdrawn directly from his bank account.

4. Being aggrieved the complainant filed an appeal before worthy Commissioner Inland Revenue (Appeals) which was decided on 5 October, 2022 in favour of the complainant. The complainant prayed that to kindly direct the learned DCIR to refund the unjustified recovered sum of Rs. 20,502,825 from his bank account in the interest of justice and fairness.

5. The department filed written comments wherein, they stated that the taxpayer is a dual German Pakistani national whose residential as well as business address belongs to Lala Musa, Gujrat and thus falls under the jurisdiction of Gujrat Zone, RTO Sialkot, therefore, the case was transferred to RTO Sialkot on point of jurisdiction dated 01.03.2023. Therefore, reassessment proceedings could not be initiated as the case does not fall under the jurisdiction of this RTO.

The department further stated that as the case was transferred to RTO Sialkot on point of jurisdiction dated 01.03.2023, therefore, refund application was could not be processed.

6. Perusal of complaint and record shows that the appeal order was passed on 05 October, 2022 by Commissioner-IR (Appeals-III) RTO Rawalpindi for Tax Year 2018 which was remanded back with the following observations;

"Although the documents provided by the AR lends credence but are not ascertainable at this stage which needs to be presented before the Department for verification. Therefore, it would be appropriate **to remand the case back to the assessing officer with the direction** to provide reasonable opportunity of being heard, obtain documentary evidence of properties in question, subject the same to detail scrutiny, ascertain if amnesty has been availed in cash and consumed against the specific properties, identify the specific discrepancy if any, confront the appellant on the same and thereafter pass a speaking order as per law."

7. The CIR (Appeals) remanded back the case on 05.10.2022 which is still pending with the department for reassessment. During hearing the AR of the complainant stated that set aside proceedings are pending and directions should be issued to the tax authority to complete the set aside proceedings.

8. Perusal of the tax profile of the taxpayer shows that his address belongs to Rawalpindi and as such the jurisdiction of the case falls with the RTO Rawalpindi. During hearing the AR of the complainant has also confirmed that jurisdiction of his case belongs to RTO Rawalpindi and requested that reassessment proceedings should be completed in the same office where return was filed, amendment made, appeal order passed and tax recovery was made from the bank through coercive measure. As per facts stated above the stance of the complainant is correct in regard to jurisdiction of the case. It is strange that while making ex-parte assessment and effecting recovery from Bank RTO Rawalpindi was well satisfied with its jurisdiction but the moment case has been set aside and possibility of refund surfaced the

case is being thrown to some other jurisdiction. So, the tax authority is directed to deal with the case in RTO Rawalpindi and not to transfer the case to any other RTO.

9. It is further observed that remand back proceedings have been pending since passing of order by CIR (Appeals) on 05.10.2022 which have not been completed by the tax authorities. The complainant has already suffered hardship at the hands of tax authorities due to ex-parte amendment order passed by them and recovery of tax through coercive measure by attachment of his bank account. The taxpayer had to go through appeal procedure to get some relief. So, in the instant case, the tax authorities should have completed reassessment proceedings expeditiously to provide some relief to the taxpayer which has not been done.

FINDINGS:

10. Transfer of jurisdiction at this point of time and in the face of facts stated above constitutes maladministration in terms of section 2(3) (i)(b) of the FTO Ordinance, 2000.

RECOMMENDATIONS:

11. FBR to:
- (i) make sure that jurisdiction of the case is not transferred arbitrarily and unilaterally;
 - (ii) direct CIR RTO Rawalpindi to complete the reassessment proceedings expeditiously, as per law and in the light of directions of appeal order; and
 - (iii) report compliance within 60 days.

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

Dated: 19.6 : 2023

Approved for reporting


Director
FTO Secretariat