

**BEFORE  
THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**COMPLAINT NOS.2097 & 2099/KHI/IT/2022**

Dated: 31.05.2022<sup>1</sup> R.O. Karachi

**Mr. Saad Muhammad Ali CEO**

M/s. Helium (Pvt.) Ltd,  
3<sup>rd</sup> Floor, Plot No. 14-C, Bukhari Commercial  
Area, DHA, Phase-VI,  
Karachi.

... *Complainant*

***Versus***

The Secretary,  
Revenue Division,  
Islamabad.

... *Respondent*

Dealing Officer	: Ms. Seema Shakil, Advisor
Appraisal by	: Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	: Mr. Yasmin Ajani Counsel
Departmental Representative	: Mr. Nisar Ahmed Marri, ACIR, 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), for non-issuance of refund. As facts of the case are similar for both the complaints, the same are disposed of through a single consolidated order.

2. The Complainant is a private limited company earning income from providing marketing & fulfillment house services. Returns of income for both the Tax Years, i.e. 2014 & 2015 were filed with refund claims on account of tax deduction in excess of admitted liability. Subsequently, the orders were amended by different officers. The latest orders under Section 122(5A), which were assailed in appeal & the order was annulled by Commissioner Appeal resulted in the instant refund. The year-wise position is given hereunder;

<sup>1</sup> Date of registration in FTO sect.

	Tax Years		Date of Order/Letters	
	2014	2015	2014	2015
Claim of tax credit	43.71(M)	69.84 (M)		
Refund claim as per return	30.20(M)	55.38 (M)		
Date of order by ACIR			NA	10.8.2017
Tax credit allowed	NA	15.30 (M)		
Date of order under Section 122(5A)			8.7.2015	26.9.2018
Tax credit allowed	13.65 (M)	67.46 (M)		
Date of second order u/s 122(5A)			26.9.2018	NA
Tax credit allowed.	42.62 (M)	NA		
Date of appeal order,			30.1.2020	30.1.2020
date of appeal effect order			29.6.2020	18.6.2021
Tax credit allowed	Nil	Nil		
Date of refund applications under Section 170			12.8.2020	
Date of reminder to DCIR			16.7.2020	24.10.2020
letter to CIR CTO Karachi			13.5.2020	
letter to CCIR CTO Karachi			17.2.2021	
Letter to Member (IR) Operation			30.7.2021	
Representation to Chairman (FBR)			22.11.2021	

Though the ADCIR gave credit of tax in his order under Section 122(5A) after verification from RECAP, no tax credit was given in appellate order to avoid creation of due refund. Complainant kept on applying for rectification & issuance of refund duly determined as a result of appellate order & verification by the Department. However, no response was made by any functionary of the department, hence this complaint.

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 21.06.2022. It is submitted that the refund is to be processed by enforcement division on the

basis of appeal effect order by ADCIR audit in IRIS. The Additional Commissioner Audit has only uploaded the text of appeal effect order & no computation has been made in the order. Without this computation sheet, the enforcement officer cannot process the refund. Upon filing of this complaint, the audit officer has been requested to attach the computation in his appeal effect order. During hearing the DR was required to get the needful done by the concerned officer. However, on the next date of hearing, the D.R attended with copy of letter dated 21.06.2022, addressed to Commissioner Audit to look into the matter to address the complainants' grievances.

4. Both the parties were heard & record perused.

**FINDINGS:**

5. (i) The Instant complaint is a classic case of maladministration caused through inefficiency and red tapism in the department. Additional Commissioner Audit is a senior officer of Grade 19, with more than 10-15 years of service. His lack of knowledge regarding processing of orders in IRIS is extremely shocking. Passing of orders under Section 122(5A) and ensuing rectification & appeal effect orders is his core job responsibility. Anyone who is not conversant with the process of his core job responsibility is not fit enough to hold that position. Alternatively if the order is deliberately left incomplete with the intention of non-creation of due refund on the basis of credit already allowed after due verification in order under Section 122(5A), the maladministration is evident.

(ii) The complainant has been running from pillar to post to get the refund duly created as a result of appeal order dated 30.1.2020 and verified tax withholding, the credit of which has already been allowed in audit vide orders under Section 122(5A) passed in 2018. The deliberate withholding of refund of duly verified tax

tantamounts to maladministration in terms of Section 2(3)(i)(a)(b)&(ii) of the FTO Ordinance.

(iii) The complainant has also claimed compensation due as per law, from the date of appeal effect order. As the department has either willfully or negligently not created refund in the appeal effect order, the credit of which is already allowed through original orders under Section 122(5A). Therefore claim of compensation is also to be allowed as per law.

**RECOMMENDATIONS:**

6. FBR to direct:-

- (i) Commissioner-IR, Audit Zone-III CTO Karachi to incorporate computation of tax in appeal effect order
- (ii) Commissioner-IR Enforcement-II CTO Karachi to dispose of complainant's refund applications as per law and after giving opportunity of hearing.
- (iii) Commissioner-IR Enforcement-II CTO Karachi to grant compensation for delayed refund as per law from the date of appeal order.
- (iv) Chief Commissioner-IR CTO Karachi to look into the conduct of Additional Commissioner Audit, from the perspective of his suitability for field posting; and
- (v) report compliance within 30 days

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

Dated: 07.07.2022

*Approved for reporting*