

**BEFORE  
THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**Complaint. No. 2440/PWR/IT/2022**

Dated: 15.06.2022 R.O. Peshawar

**Mr. Mumtaz Khan,**

House No.1056, Street No.29,  
Sector E-5, Phase-7, Hayatabad,  
Peshawar.

... Complainant

**V e r s u s**

The Secretary  
Revenue Division  
Islamabad.

... Respondent

Dealing Officer : Mr. Ziauddin Wazir, Advisor  
Appraisal by : Muhammad Tanvir Akhtar, Advisor  
Authorized Representative : None  
Departmental Representative : Mrs. Amna Sharif, DCIR, RTO, Peshawar.

**FINDINGS/RECOMMENDATION**

The complaint has been filed under Section 10 (1) of the Federal Tax Ombudsman, Ordinance, 2000 (FTO Ordinance) against delay in issuance of refund on account on of income tax wrongly deducted from his salary.

2. The facts of the case are that the Complainant being domiciled of Ex-FATA, and posted as a medical doctor at District Headquarter Hospital, Miranshah, claimed that he is not liable to pay income tax under statutory provisions of ITO, 2001.

3. The Complaint was referred to Secretary Revenue Division for departmental reply/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 Peshawar vide letter No. 3255 dated 15.07.2022 submitted comments, reproduced below:

\*Date of Registration in FTO Sectt.

Complaint of the Taxpayer	Reply
<p>This is with regard to my early correspondence titled as excessive income tax deduction on my salary whereby Chief Commissioner IR was asked for comments/reply dated May,18.2022.</p> <p>Responding to the same complaint I have been asked to claim the over deducted income tax through online application while submitting income return for the year 2022, replying to your notification.</p> <p>I have made the same plea in February this year for return of income tax deducted in 2021 while submitting income tax return as per due process (The acknowledge slip will be shared with you for evidence).</p> <p>It is worth mentioning that the Ex-FATA has been declared exempted from income tax till 30.06.2023 in the 25<sup>th</sup> amendment and keeping in view that I claimed all of income tax being deducted in the year 2021 to be returned being domicile holder of same area and posted too there but ironically the return has not been made till date.</p>	<p>i. the taxpayer was advised to file his return of income and claim refund, if any, as per procedure prescribed by law.</p> <p>ii. Tax from salary of the complainant has been rightly deducted as he is a government employee i.e Government of Khyber Pakhtunkhwa. The salary income of a person, irrespective of his place of posting is taxable under the provisions of Income Tax Ordinance, 2001.</p> <p>iii. Section 101 of the Income Tax Ordinance, 2001 clearly states that salary income shall be considered Pakistan source i.e. deemed to accrue or arise in Pakistan, if it is received from any employment exercised in Pakistan, wherever paid or it is paid by any of the Federal, Provincial or Local Government of Pakistan.</p> <p>Moreover, the Supreme Court of Pakistan vide its judgment in Civil Petition No.259-P of 2002 dated 18.06.2002 has held categorically that salary paid to a government employee would be deemed to accrue or arise in Pakistan and shall be taxed accordingly.</p>

4. The case was fixed for hearing after the receipt of comments. Mr. Mumtaz Khan Wazir the complainant informed in writing as well as telephonically that he is unable to attend personally. Ms. Amna Sharif, DCIR RTO, Peshawar(DR) attended on behalf of the department. She contended that the complainant being salaried person is liable to pay income tax irrespective where he resides as his salary is his Pakistan's source income. During hearing it was examined that Supreme Court of Pakistan judgment in Civil Petition



No.259-P of 2002 dated 18.06.2002, referred by RTO Peshawar relates to the period when Pakistani tax laws were not formally extended to FATA/PATA. After the merger of said areas in KPK/Pakistan tax laws have been fully extended to the areas in question. However as a gesture of goodwill the legislation has granted a grace period whereby all income earned through taxable activity in the said areas by the individuals domiciled in merged FATA/PATA has been exempted through Clause 145A, 109A and 110 of ITO 2001 for a specified period. Salaried individuals who are FATA/PATA domiciled and serving in the said areas are also entitled to this concessionary regime as no specific exclusion has been provided under the law.

#### **FINDINGS:**

5. The DR heard. Record perused. The statutory provisions governing exemption in FATA/PATA are reproduced below:

"Clause (145A) of Part-I of Second Schedule to the Income Tax Ordinance, 2001 was added through Finance Act 2019, which states as under.

*"Any income which was not chargeable to tax prior to the commencement of the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018) of any individual domiciled or company and association of persons resident in the Tribal Area forming part of the Provinces of Khyber Pakhtunkhwa and Balochistan under paragraph (d) of Article 246 of the Constitution with effect from the 1<sup>st</sup> day of June, 2018 to the 30<sup>th</sup> day of June, 2023 (both days inclusive)".*

Clauses (109A) and (110) of ITO 2001 provide that deduction or collection of withholding tax shall not apply to individual domiciled or company and association of persons resident in Tribal area. In the instant case, the complainant's address permanent is 'Tandai, P.O. Shewah, Miami Kabul Khel Tehsil Shewah District, North Waziristan'.

Department however could not produce any provision where Section 101 of ITO 2001 is excluded from ambit of exemption granted by Federal Government under Clause 145A of Part-I of Second Schedule to ITO 2001 or Clause 109A and 110 of Part-I of Second Schedule to Income Tax Ordinance 2001. The intent of legislation promulgated through ITO 2001 to grant relief to residents of tribal areas under clause 145A of Part-I of Second Schedule to ITO, 2001 to grant exemption to residents of Ex-FATA/PATA. Negation of claim of exemption without affording proper opportunity of hearing to complainant tantamount to maladministration as defined under Section 3 (i) (a) (b) (c) of FTO Ordinance 2000.

**RECOMMENDATION:-**

6. FBR to-

- i. direct the Chief Commissioner RTO Peshawar to dispose of application of exemption keeping in view of findings in Para 5 above and decide the case on merits within 15 days under explicit provisions of clause 145A, 109A and 110 of Part-I of Second Schedule to Income Tax Ordinance 2001, after providing proper opportunity of hearing to the complainant;
- ii. report compliance within 30 days.

Dated: 24 : 8 : 2022

*Approved for reporting*

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

Certified to be True Copy

24/8/22  
Registrar  
FTO Secretariat  
Islamabad