

**THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**COMPLAINT No. 2500/QTA/IT/2023**

Dated: 08.05.2023 \*R/O Quetta

**Mr. Muhammad Hashim,**

C/o Mr. Abdul Samad,

ITP, Office# 02, 1st Floor, Spny Law Firm,

Chamber of Commerce Building,

Zarghoon Road, Quetta.

... Complainant

***Versus***

The Secretary,

Revenue Division,

Islamabad.

... Respondent

Dealing Officer

Appraisal Officer

Authorized Representative

Departmental Representative

: Mr. Tausif Ahmad Qureshi, Advisor

: Mr. Muhammad Tanvir Akhtar, Advisor

: Mr. Abdul Samad

: (i) Mr. Ahsan Bukhari, IRAO, RTO, Quetta

(ii) Mr. Usama Ameen, DCIR, Zone-v, MTO,  
Karachi

**FINDINGS/RECOMMENDATIONS**

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The above complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against Medium Taxpayers' Office, Karachi and the Commissioner-IR, RTO, Quetta seeking transfer of jurisdiction from MTO Karachi to RTO, Quetta as well as cancellation of orders passed under Section 161 and Section 122(5A) of the Income Tax Ordinance, 2001.

2. Briefly, the Complainant states that he has been filing his returns electronically and paying due taxes well in time. He is resident of Mullah Khail Sura Ghuargi Killi Shah Alam Nawa Killi Kotwal, District Quetta and carries out business at the same place. Under Section 209(5) of the Income Tax Ordinance, 2001, his case falls under RTO, Quetta. Further added that he is engaged in business of execution of contracts and is never engaged in business of real estate or doing business of builders/developers. His case has been transferred to the

\*Date of registration in FTO Sectt.

MTO, Karachi without intimating him. The Assistant Commissioner (Audit-III), Inland Revenue, Unit 04-Range A, MTO Karachi has passed order under Section 161 without providing sufficient and proper opportunities of being heard which was his inherent and legitimate right. The Additional Commissioner (Audit-III), Inland Revenue, MTO, Karachi has passed order under Section 122(5A) of the Income Tax Ordinance, 2001 without providing sufficient and proper opportunities of being heard which is his inherent and legitimate right. All expenses claimed have been charged to tax under Section 153(1)(a) read with Section 161 without considering the payments made below taxable threshold as laid down under Section 153. Similarly entire expenses claimed have been charged to tax under Section 153(1)(a) read with Section 161 at the rate of 9% without considering the payments made to the active taxpayers. The minimum tax under Section 113 has been charged at the rate of 1.25% without considering the facts that he is engaged in sale of goods charged to reduced rates. Notice under Section 122(9) was issued on 03.02.2022 for compliance by 14.02.2022 whereby 11 days were provided against the directions issued by the FBR. The Federal Board of Revenue while transferring cases from RTO, Quetta to Karachi ensured that hearing shall take place at Quetta either through e-hearing or physically in the Tax House at Quetta. The FBR as well as Commissioner Inland Revenue, RTO, Quetta failed to provide facility of e-hearing. The Deputy Commissioner Inland Revenue failed to observe the directions issued by the FBR as envisaged under Section 214 of the Income Tax Ordinance, 2001. In view of above, the orders passed by the Additional Commissioner and Assistant Commissioner Inland Revenue under Section 122 and 161 are illegal and against the principle of law and having lawful jurisdiction. In this regard, he placed reliance on reported judgment of Honorable High Court of Karachi reported as Muhammad Azim v. CIT, East Zone Karachi (1991) 63 Tax

143 (H.C.Kar.) It is held that "--It is well settled principle that if the very foundation of an action is illegal or without jurisdiction the whole superstructure built upon it cannot validly and legally stand." The act of Assistant Commissioner as well as Additional Commissioner falls within the definition of "MALADMINISTRATION" being order passed without lawful jurisdiction, departure from established practice and in violation of directive of the FBR. The Complainant has contended that his case has been transferred to MTO, Karachi from RTO, Quetta without lawful authority and providing opportunity of being heard. The Orders under Section 122 and 161 have been passed without providing opportunity of being heard and having lawful jurisdiction. The Complainant prayed that the Department may kindly be directed to cancel the orders passed under Section 122(1) and 161 of the Income Tax Ordinance, 2001. The concerned Department may also be directed to transfer his case from MTO, Karachi to RTO, Quetta as well.


3. The complaint was forwarded 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. In response thereto, the Commissioner-IR, MTO, Karachi submitted reply stating therein that the jurisdiction of the taxpayer has been transferred to Medium Taxpayers' Office, Karachi from Regional Tax Office, Quetta vide jurisdiction Order No. F.No. 57(2)Jurisdiction/2017-45602-R dated 22.03.2023 at Serial No. 3769. The orders were legally passed after following the due course of Law. Therefore, the grievance of the Complainant is not justified. Furthermore, the FTO under Section 9(2)(b) of the FTO Ordinance, 2000 does not have jurisdiction to investigate or inquire into matters which relate to assessment of income or wealth, determination of liability of tax or duty, classification or valuation of goods, interpretation

of law, rules and regulations relating to such assessment, determination, classification or valuation in respect of which legal remedies of appeal, review or revision are available under the Relevant Legislation. Further, the Honorable Peshawar High Court in W.P. No. 110-A/2017 held that ".....once an order has been passed by the revenue hierarchy under the Ordinance of 2001, whether legally correct or otherwise, FTO has no jurisdiction to declare the said order illegal." Therefore, the instant complaint may be filed.

4. DR and AR appeared for personal hearing. AR of the Complainant emphasized that he does not fall under the category of Builders and Developers. In fact, he is government contractor. As such, his jurisdiction should be RTO, Quetta.

#### **FINDINGS:**

5. From perusal of the arguments of DR and AR as well as available record, it has transpired as under:

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- i. So far as Complainant's prayers seeking cancellation of orders passed under Section 161 and Section 122(5A) of the Income Tax Ordinance, 2001 are concerned, Section 9(2)(b) of FTO Ordinance, 2000 envisages bar of jurisdiction of the Federal Tax Ombudsman in cases relating to assessment of income or wealth, determination of liability of tax or duty, classification or valuation of goods, interpretation of law, rules and regulations relating to such assessment, determination, classification or valuation in respect of which legal remedies of appeal, review or revision are available under the Relevant Legislation. Since, the instant complaint patently relates to assessment of income and determination of liability of tax, it is not entertainable at this forum, being barred by jurisdiction. The remedy is available to the Complainant in terms of filing appeal before Commissioner (Appeals). The Commissioner (Appeals) may consider the factual and legal aspects of the case. He may also give due consideration to the arguments of the tax payer that he did not receive hearing notices.
  - ii. The request of the Complainant with regard to jurisdiction from MTO Karachi to RTO, Quetta merits consideration. From study of the jurisdiction orders of the Board and the powers of the Board under Section 209 of the Income Tax Ordinance, 2001 to transfer jurisdiction of any person or class of persons, it is established that cases of builders/developers have been transferred to specialized zones as a special class of persons. The act of the Board to transfer cases as class of persons is not illegal and within the ambit of the

powers conferred by the Income Tax Ordinance, 2001. However, it is also evident that the transfer of cases from Quetta to Karachi has caused severe hardship to the taxpayer and his request to be taxed in the jurisdiction which facilitates him the best i.e., jurisdiction where the business is located and is being done.

- iii. Secondly, whether Contractors involved in public sector construction can be clubbed with private sectors Builders & Developers is yet another area which needs FBR's deliberations. In any case, no discriminatory treatment with any individual or a class of persons is desirable.
- iv. The Board needs to take a uniform and rational view. In this regard, the complaints bearing Nos. 3508/QTA/IT/2022 and 3510/QTA/IT/2022 refer to, whereby the jurisdiction of the taxpayers has been transferred from MTO, Karachi to RTO, Quetta vide Board's letter F.No.6(777)Jurisdiction/2017-267683-R dated 09.01.2023.
- v. Some of the identical cases relating to KPK and Balochistan are currently pending at superior judicial fora. Uniform treatment of all identical cases is the only solution of this issue.

### **RECOMMENDATIONS:**

6. FBR is directed to:

- (i) decide the issue of jurisdiction in line with other cases similar to the outcome of identical complaints bearing Nos. 3508/QTA/IT/2022 and 3510/QTA/IT/2022, and in the light of the orders by the superior judiciary;
- (ii) issue clarification about the scope and extent of builders & developers, so as to clear the existing ambiguities with regard to government contractor; and
- (iii) report compliance within 60 days.

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

Dated: 26:6: 2023

*Approved for reporting*

  
Director  
Secretariat  
FBR