

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO. 2537/KHI/IT/2022

Dated: 20.06.2022 R.O. Karachi

Mst. Farhat Nasreen,

House No. F/45-534, Mohallah Station Road,
Hyderabad.

... *Complainant*

Versus

The Secretary,
Revenue Division,
Islamabad.

... *Respondent*

Dealing Officer	: Ms. Seema Shakil, Advisor
Appraisal Officer	: Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	: Mr. Jehan Alam Khan,
Departmental Representative	: Mr. Sardar Ali, DCIR, MTO, Karachi

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint has been filed against the Commissioner-IR, Enforcement-II, MTO Karachi in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for attachment of bank account & recovery of outstanding demand of AOP from the member/partner.

2. The Complainant is the widow / legal heir of deceased who was a member of AOP engaged in construction business. An amount of Rs.8.1(M) was withdrawn from deceased's bank accounts as recovery of outstanding demand against AOP for the Tax Years 2014 of Rs4.6(M) & 2017 of Rs.3.8(M). The recovery has been made from deceased account in spite of the fact that he had resigned from AOP in 2015.

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, MTO, Karachi submitted reply of CIR

Enforcement-II, MTO Karachi vide letter dated 30.06.2022. It is contended that a demand of Rs.8.544(M) was outstanding against M/s. S.B Builders & Developers (AOP). Therefore, recovery was made after attaching the bank accounts under Section 139(5)/140 of the Income Tax Ordinance, 2001 on 20.01.2021 of Mr. Shafique Ahmed Qureshi being one of the members of the said AOP. The Commissioner-IR has further reported that, when he was alive, Mr. Shafique Ahmed Qureshi had never approached the department regarding his retirement from M/s. S.B Builders and Developers and/or dissolution of partnership deed thereof. It is only after the passage of seventeen months that Mst. Farhat Nasreen (complainant) has filed complaint against the recovery of outstanding demand producing a private document that her deceased husband Mr. Shafique Ahmed Qureshi had retired from the partnership/AOP.

4. During hearing, complainant's counsel produced original deed of partnership dated.4.1.2012 and amended partnership, change in constitution of partnership dated 31.3.2015 on stamp paper attested by Notary Public whereby 4 partners, including the deceased retired from the partnership w.e.f. 28.2.2015. It is further contended that the legal heirs were not in the knowledge of all these facts. However, after obtaining court decree regarding heirship, the documents were collected & it was then learnt that withdrawal has been made from deceased's bank account. Therefore, letter dated 8.6.2022 was written to CCIR MTO Karachi for redressal of the grievance, which remained un-responded hence this complaint is filed. D.R confirmed from record that form 181 of registration was updated on 26th Jan 2021. Whereas Bank account was attached on 21.1.2021 & withdrawal was made on 20.1.2021.

5. Both the parties were heard & record perused.

FINDINGS:

6. Perusal of record confirmed that there was a change in constitution of firm w.e.f. 28.2.2015 and deceased was not a member of registered AOP from that date. However, the necessary amended in registrations form of the tax record of AOP was made on 26.1.2021. Apparently, the deceased was informed about the attachment of his account by the banker & he persuaded the succeeding partner to make the requisite updation in Income Tax record. Unfortunately, the withdrawal was made on the same date when updation was made in record. Since the deceased relinquished AOP w.e.f. 28.2.2015, the recovery of dues pertaining to Tax Year 2014 are in accordance with the provisions of law. However, the reimbursement of due share from other partners is a civil matter & the complainant is at liberty to pursue the matter in civil court. Whereas the amount of Rs.3.8(M) recovered by the department against demand of Tax Year 2017 is not in accordance with law as the deceased was not member of AOP during the relevant tax period, therefore, unauthorized amount is liable to be refunded to legal heirs of the deceased, being invalid recovery as per law.

RECOMMENDATIONS:

7. FBR to direct: -
- i) commissioner-IR, Enforcement-II, MTO, Karachi to refund the amount recovered through attachment against the demand of Tax Year 2017, as per law; and
 - ii) report compliance within 45 days.”

(Dr. Asir Mahmood Jan)
(Hilal-i-Imtiaz) (Sitara-i-Imtiaz)
Federal Tax Ombudsman

Dated: 15.8.2022

Approved for reporting