

**BEFORE  
THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**REVIEW PETITION**

Dated: 25.03.2022 HQ Islamabad

in

**COMPLAINT NO.2538/ISB/IT/2021**

Decided on 24.02.2022

The Secretary,  
Revenue Division,  
Islamabad.

... Petitioner

**V e r s u s**

Muhammad Saleem Raza,  
Chak No. 12, Chabi NB Post Office Chak  
No. 14 D, NB, Tehsil Yazman,  
District Bahawalpur.

... Respondent

Dealing Office	:	Mr. Muhammad Majid Qureshi, Advisor
Appraisal Officer	:	Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representatives	:	None
Departmental Representative	:	Mr. Tariq Iqbal, Secretary (Law & Clarification) FBR, Islamabad

**ORDER-IN-REVIEW**

This Review Petition (RP) has been filed by FBR under Section 14(8) of the FTO Ordinance, 2000 (FTO Ordinance) read with Section 13(1) of the Federal Ombudsmen Institutional Reforms Act, 2013(FOIR Act) against the Findings / Recommendations issued on 24.02.2022 in Complaint No. 2538/ISB/IT/2021.

2. Brief facts of the case are that a temporary low paid news caster of the Pakistan Broadcasting Corporation (PBC) had lodged a complaint stating that the salary paid to him was being treated as payment for 'Services rendered' and subjected to withholding tax

under Section 153(1)(b) of the Income Tax Ordinance, 2001 (the Ordinance) instead of Section 149 *ibid*.

3. After obtaining comments of the Secretary Revenue Division/FBR, it was held that the instant case which reflects a clear "Employer-Employee Relationship", based on "Master-Servant Relationship" cannot be denied status of a Salaried Taxpayer. PBC has confirmed the existence of "Master-Servant Relationship" with the complainant therefore tax deducted u/s 153(1)(b) of the Ordinance was held against the law as tax had to be deducted u/s 149 of the Ordinance. The Complaint was disposed of with the following Recommendations;

**RECOMMENDATIONS:**

*FBR is directed to:-*

- (i) *ensure that low paid employees of PBC and other such organizations are not burdened with excessive tax deductions at withholding stage. While Taxpayers facilitation constitutes the core function of FBR its implementation on ground should also be visible;*
- (ii) *direct the concerned RTO to process the instant case on priority basis and under relevant legal provisions, so as to save the complainant from grave hardship he is suffering since 2017;*
- (iii) *issue necessary clarification for all and sundry so as to safeguard the low paid employees against excessive deductions; and*
- (iv) *report compliance within 60 days.*

♀

4. Vide the subject Review Application dated 25.03.2022, the FBR has informed that the Recommendations at serial number (i) and (ii) have been communicated to Inland Revenue (Operations) wing for implementation. However, it was requested that the recommendation at serial number (iii) may be reviewed on the following grounds;

*"The Hon'ble FTO has directed that the FBR may issue necessary clarification for all and sundry to safeguard the low paid employees against excessive deductions. It is submitted that the question as to whether a person is an employee under a master servant relationship, or a service provider is a question of fact that needs to be established in each situation. Hence any such clarification of a general nature is likely to be misused and may cause a loss of state revenue in such cases where the person has been engaged under a contract or otherwise to provide or render service as a daily wager.*

*In the instant Complaint the Hon'ble FTO has specifically held the agreement between PBC and the complainant provided that there will be a master servant relationship. This may not be true in every case and therefore in the absence of a master servant relationship it is likely that the person has been engaged on daily wages for rendering or providing specific services for example as a liftman, as a photocopy operator, as a security guard as an electrician etc.*

*Given these specific situations, a general clarification cannot be issued for all and sundry by the FBR. It is likely to cause a loss of revenue by its misuse. It is therefore, humbly submitted that the Hon'ble Federal Tax Ombudsman may review the above recommendations given by him. Any clarification issued by Board contrary to express and implied meaning of words in statute may result in revenue loss".*

6. Hearing notice was issued under Section 9(2) of the FOIR Act in response to which Mr. Tariq Iqbal Secretary (Law & Clarification), FBR attended as Departmental Representative. He reiterated FBR's point of view already detailed in the R.P.

7. He was informed that FTO's detailed Order duly dilated upon the various shades of employment namely Regular, Adhoc, Contractual, Temporary, Daily Wages etc. Based on this it was held that Income Tax Ordinance, 2001 does not create any distinction among all the above referred forms of employment. Moreover section 12 of the said Ordinance while defining **Salary** includes pay, wages and any other remuneration or perquisites as well. He

was advised to reconsider the fact that in order to determine whether any case falls under salary the only criterion is existence of "Employer – Employee Relationship" or in other words "Master – Servant Relationship". If any payment is made in connection with said relationship it will qualify as a salaried case. It is immaterial whether employment is Regular / Adhoc / Temporary / Daily Wages etc.

7. The DR requested for adjournment for one week for reconsideration of the issue. In the meanwhile the FBR, conceding to FTO's recommendation, contested vide instant Review had issued & circulated the letter C.No. 3(3)/2022-S(CM)/81818-R dated 11.04.2022, issuing instructions to all and sundry in the following manner:

*"In view of above findings and further recommendations made by Hon'ble FTO, it is clarified that if on a case to case basis the relationship between payer and payee is found to be that of an employer and an employee respectively, then income of such low paid employee under any of the forms of employment i.e. Regular, Adhoc, Temporary or Daily Wages would be treated as Salary Income under Section 12 of the Income Tax Ordinance, 2001."*

8. Since all recommendations issued vide order dated 24.02.2022 have been implemented by FBR, no more proceedings on this R.P are warranted. The instant R.P is, therefore, disposed of and the file is consigned to record.

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

Dated: 18-4-2022  
U.f

Approved for Reporting

Certified to be True Copy

  
Deputy Registrar  
FTO Secretariat  
Islamabad