

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

REVIEW PETITION

Dated: 03.02.2021 HQ Islamabad

in

COMPLAINT NO. 2577/GWL/IT/2020

Decided on 11.12.2020

Dr. Faiqa Sattar,
House No. 02, IJ Colony,
Kharian Cantt,
Kharian.

... Petitioner

V e r s u s

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Office	:	Mr. Muhammad Majid Qureshi, Advisor
Appraisal by	:	Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	:	Mr. M. Kowkab Iqbal, Advocate
Departmental Representatives	:	(i) Dr. Razi-ur-Rehman Khan, CIR, Gujrat Zone, RTO, Sialkot
		(ii) Mr. Jahangir Aslam Sindhu, IRO

ORDER-IN-REVIEW

P The Review Petition (RP) was filed under Section 14(8) of the FTO Ordinance, 2000 (FTO Ordinance) read with Section 13(1) of the Federal Ombudsmen Institutional Reforms Act, 2013 against the Findings dated 11.12.2020.

2. A R.P was earlier filed on 03.02.2021 which was rejected being time barred vide letter dated 25.02.2021. The complainant preferred representation before the Hon'ble President of Pakistan which was decided in her favour vide order dated 25.11.2021.

3. The Hearing notice was issued vide letter dated 06.01.2022 in response to which Dr. Razi-ur-Rehman, CIR, Gujrat Zone, RTO,

Sialkot & Mr. Jahangir Aslam Sindhu, IRO attended as DRs and Mr. Kowkab Iqbal, AR of the Complainant. The arguments of both the parties were heard. The complaint is being disposed of in the following paragraph:

4. The facts of the case are that the complainant is running a Private Hospital at GT Road Kharian in partnership with her husband Mr. Abdul Sattar. Proceedings in this case were initiated on the basis of information that taxpayer had purchased immoveable property as listed in the order of assessment dated 28.04.2015. While explaining the sources of the fund certain bank account statement / certificates were produced to reconcile the wealth statement for the relevant year. Analysis of the bank statement in respect of account No. 7201-0015210-0300 indicated that closing balance as on 30.06.2009 amounting to Rs. 6,116,614/- was not declared. The Assessing Officer (AO) confronted the taxpayer vide legal notices, afforded opportunity of hearing, obtained information / confirmation from the relevant bank and rejected the taxpayer's version. The amount of Rs. 6,116,614/- was added to the declared income and taxed accordingly, creating a demand of Rs. 1,646,033/-. The taxpayer had paid Rs. 1.3 million whereas, the balance is still payable.

5. Later on the taxpayer filed appeal before the Commissioner (Appeal) Sialkot on the ground that addition made under section 111(1)(b) of the Income Tax Ordinance, 2001 was unjustified, as the sources have already been explained about the said bank account. The CIR (Appeals) remanded the cases to the AO for verification. The appellant was directed to produce before the AO the documentary evidence within 15 days of receipt of the appellant order. He further directed that if contention of the appellant gets verified, the impugned order shall stand annulled,

otherwise, it will stand upheld.

6. Perusal of the record produced by the complainant reveals that the encashment certificate was produced on 07.07.2015 however, this was the same document which was produced at the time of original assessment proceedings, and was rejected by the AO.

7. The Deptt however, proceeded to pass order under Section 122(I)/129 of the Ordinance, affording opportunity of hearing through a legal notice. On the due date 29.06.2018 nobody attended the office nor any written reply was submitted, therefore, the proceedings were finalized on 29.06.2018.

8. The taxpayer had the right to file appeal against the said order within 30 days which doesn't seem to have been done. Instead a complaint before the Hon'ble FTO was filed vide Complaint No. 2577/GWL/IT/2020. The said complaint was duly processed, and was rejected with the observation that ***"evidently, the matter is related to assessment of income and determination of tax liability against which the complainant has legal remedy of appeal available under the relevant legislation, therefore, bar of jurisdiction, in terms of Section 9(2)(b) of the FTO Ordinance, 2000 is applicable"***.

9. The taxpayer filed R.P on 03.02.2021, which was rejected being time barred by 07 days. The taxpayer preferred representation before the Hon'ble President of Pakistan, who was pleased to issued direction to the learned FTO to process and decide the R.P on merits in accordance with law after affording an opportunity of hearing to the parties.

10. On receipt of the above order, Para-wise comments were

obtained afresh and opportunity of hearing was accorded to the parties. The arguments of the parties were heard on 18.01.2022. The Complainant repeated his arguments which were presented in earlier hearing whereas, the respondent stuck to their stance namely that the matter was related to framing of assessment and determination tax liability against which legal remedy of appeal was available to taxpayer.

11. The crux of the matter is that the taxpayer, is her wealth statement as on 30.06.2009, has declared net wealth at Rs. 26,000,000/-. She had not declared any bank account, nor any cash in bank or in hand. On further probe, it was found that she was maintaining a joint account with her husband at NIB, Kharian. Statedly foreign currency proceeds were received in the said bank account amounting to Rs. 13,283,780 on 22.06.2009. Instead of claiming 50% credit, the lady claimed credit of the full amount, which was allowed accordingly.

12. The assessing officer noticed that an amount of Rs. 6,116,614/- was available in the above mentioned bank account as on 30.06.2009, which was not declared in assessee's wealth statement. Legal notice was issued, and opportunity of hearing was given, the explanation was found in un-convincing, hence the amount was added to the declared income. The taxpayer filed appeal before the CIR (Appeals), who remanded the case to the assessing officer for verification. The Deptt however, proceeded to pass order under Section 122(I)/129 of the Ordinance, affording opportunity of hearing through a legal notice. On the due date 29.06.2018 nobody attended the office nor any written reply was submitted, therefore, the proceedings were finalized on 29.06.2018.

FINDINGS:

13. As Honourable President of Pakistan has referred back the case for decision on merits/facts of the case therefore detailed analysis of the case record reveals the following:

- i. Admittedly Foreign Remittance of Rs. 13,283,780 was received on 22.06.2009 in a joint account (No. 7201-0015210-0300) of complainant with her husband at NIB, Kharian.
- ii. Though the said A/C was not declared but nowhere in the proceedings the department has rejected the incidence of foreign remittance. Thus the claim of Foreign Remittance is verified & admitted.
- iii. Once the source i.e. Foreign remittance is verified & admitted, it stands **explained** thus automatically falls outside the ambit of section 111 of Income tax Ordinance, 2001, which deals only with the phenomenon of "**Unexplained assets, investments, expenditure etc.**".
- iv. Mere non declaration cannot render an otherwise "explained" source of investment as "Unexplained", unless the department proves that non declaration was aimed to avoid/evade taxes, which were attracted in the case of declaration. As non-declaration of any exempt income doesn't make it taxable similarly non declaration of an otherwise explained source cannot render it unexplained.
- v. While department doesn't question the source i.e. incidence of foreign remittance, its decision to treat 50% of the remittance as "unexplained" in the hands of complainant is a paradox in itself. Thus departmental treatment of the case without appreciating integral facts of the case has resulted in an unwanted and otherwise avoidable litigation burdening both the department and the taxpayer. Therefore in terms of Section 2(3) of FTO Ordinance, 2000 it is a case of maladministration:

((3) "maladministration" includes,- (i) a decision, process recommendation, act of omission or commission which-

(a) is contrary to law, rules or regulations or is a departure

from established practice or procedure, unless it is bona fide and for valid reasons;

(c) is based on irrelevant grounds;)

RECOMMENDATIONS:

14. In view of the foregoing FBR is directed to ensure that;
- i. CIR concerned revisits the Order passed u/s 122(I)/129, dated 29th June, 2018, for TY 2009, after affording the opportunity of hearing to the taxpayer and as per law; and
 - ii. report compliance in 45 days.

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

Dated: 15/02/ 2022
U.f

Certified to be True Copy



Deputy Registrar
FTO Secretariat
Islamabad