THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.2671/MLN/IT/2024

Dated: 02.04.2024* R.O. Multan

Mr. Ammar Hussan Khalid, ... Complainant
Ward No.9, House No.1226D, Mohalla
Gurianwi Wala, Layyah.

Versus

The Secretary,
Revenue Division,
Islamabad. ... Respondent

Dealing Officer	:	Dr. Khalil Ahmad, Advisor
Appraised by	:	Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	:	Mr. Inayat-ur-Rehman, Advocate
Departmental Representative	:	Mr. M. Irfan Khan Tareen, Addl. CIR RTO, Multan

FINDINGS/RECOMMENDATIONS

The complaint has been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against un-due delay in issuance of refund for Tax Year 2016.

2. Facts of the case in brief are that the Complainant is an individual, e-filed revised return of income for Tax Year 2016 which was selected for audit under Section 214D of the Income Tax Ordinance, 2001 (the Ordinance) and the Deptt passed *ex-parte* assessment order under Section 121 of the Ordinance on 16.06.2022. The Complainant preferred appeal before the CIR(Appeals), Multan who annulled the impugned order vide his appellate order No.126211744 dated 23.06.2022. As no appeal was filed by the Deptt before the ATIR against the Order of the CIR(Appeals), the order attained finality. Previously, the Complainant filed complaint No.1154/MLN/IT/2023 on this issue which was disposed of vide order dated 10.04.2023 with the following Recommendations:

"12. FBR to –

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* Date of registration in FTO Sectt.

(i) ....;

(ii) ***direct Commissioner-IR Multan Zone to dispose of refund application for Tax Year 2016, as per law and after providing opportunity of hearing within 30 days;***

(iii) ....; and

(iv) *report compliance within 45 days."*

3. During implementation, the Deptt rejected the refund vide order dated 06.06.2023 passed under Section 170(4) of the Ordinance stating therein that the taxpayer has claimed refund on the basis of payment under Section 231A of the Ordinance. The Taxpayer have not provided copies of original CPRs regarding tax deduction under Section 231A of the Ordinance. The Complainant again filed appeal before the CIR(Appeals) against the order dated 06.06.2023 who vide appeal order dated 14.09.2023 annulled the impugned order with direction to reconsider the claim of the taxpayer and issue refund within a fortnight.

4. Thereafter the Complainant approached the Deptt for appeal effect under Section 124 of the Ordinance. When failed to elicit any response, filed the instant complaint. As no appeal was filed by the Deptt before the ATIR against the Order of the CIR(Appeals), the order attained finality.

5. The Complainant contended that demand of CPRs for Tax Year 2016 by the Deptt in the instant case is contrary to the Judgment of Appellate Tribunal Inland Revenue, Multan in ITA No.163/MB/2021 dated 23.11.2021 and Hon'ble FTO's Findings in Complaint Nos. 2349, 2350, 2352 & 2354/MLN/IT/2023.

6. The Complainant has also prayed for additional payment for delayed refunds in terms of Section 171(1) of the Ordinance.

7. The complaint was referred to the Secretary Revenue Division,

for 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, Multan forwarded Para-wise comments of the Commissioner-IR, Multan Zone dated 16.04.2024 vide letter dated 18.04.2024. It has been contended that the CIR(Appeals) did not grant any direct relief to the taxpayer. Therefore, the period for appeal effect extends to two years under Section 124(1) of the Ordinance. Added that the refund application Tax Year 2016 will be processed as per law after necessary verification.

8. During the hearing, the DR sought adjournment for thorough study of case which was allowed. However, on next date of hearing the AR attended while non-attended on behalf of the Deptt.

9. It is a matter of record that the Complainant e-filed refund application for Tax Year 2016 22.06.2022 which the Deptt rejected in a hasty and passed orders under Section 170(4) of the Ordinance by rejecting the refund. The Deptt could have obtained the copy of bank statement of the taxpayer which is sufficient evidence to cross check the tax deduction but the Deptt passed order without considering the tax deduction certificate under Rule 42 of the Rules as required in terms of Section 164 of the Ordinance which states "or any other equivalent document along with a certificate setting out the amount of tax collected or deducted". **It is unfortunate that Deptt has shown complete disregard to the fact that in cases of Bank withholding no individual CPR were generated by the banks at that point of time i.e. Tax Year 2016. The taxpayers have no control over the banks to ask for individual CPR. While the Deptt accepts bulk collection from Banks without insisting individual CPRs, it is a farce that same Deptt denies collection of tax while credit is claimed by individual taxpayers. Such an approach is arbitrary, whimsical and epitome of double standards. It is worthwhile to**

point out that it is second round of complaint filed by the Taxpayer which is indicative of the fact that the Deptt unnecessarily drags the proceedings which is a cause of hardship for the taxpayer.

10. The Complainant's request for additional payment for delayed refund for Year 2016 is, however, premature at this stage in terms of Explanation to Section 171(2)(c) of the Ordinance.

FINDINGS:

11. The delay in giving appeal effect to CIR(Appeals) order dated 14.09.2023 for Tax Year 2016 and its consequential effect and rejecting refund application for on one pretext and other in a hasty manner without considering Rule 42 certificates and ground realities & practices tantamount to maladministration, in terms of Section 2(3)(ii) of the FTC Ordinance.

RECOMMENDATIONS:

12. FBR to -

(i) **direct the concerned Commissioner to desist from harassment of taxpayers by asking individual CPRs in cases where no such CPR is generated becaue Department itself accepts bulk withholding from the banks;**

(ii) direct the concerned CIR to allow appeal effect in terms of Section 124 of the Ordinance and issue refund as per law consequent to appeal effect order dated 14.09.2023, after providing opportunity of hearing to the Complainant; and

(iii) report compliance within 45 days.

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

Dated: 04/06/ 2024
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Approved for reporting