THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.2749/FSD/IT/2024

Dated: 05.04.2024* RO, Faisalabad

M/s Orient Coating & Finishing Mills(Pvt) Ltd.,
Orient Plaza-2, Model Town-C Faisalabad. ...Complainant

Versus

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

Dealing Officer	: Dr. Muhammad Akram, Advisor
Appraisal by	: Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	: Mian Zafar Iqbal, Advocate
Departmental Representative	: Ms. Beenish Aruj, DCIR, RTO, Faisalabad.

FINDINGS/RECOMMENDATIONS

The above mentioned complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against failure to take action on the rectification application dated 01.03.2022 resulting in non-issuance of refund of Rs.0.136 million for Tax Year 2013.

2. Brief facts of case are given as below;

i) In the first round, the complainant filed complaint i.e. No.2372/FSD/IT/2019 for delay in issuance of refund for Tax Year 2013. This forum disposed of the complaint on 21.01.2020 with the directions to complete the process of verification and dispose of refund application for Tax Year 2013. Subsequently, the Deptt rejected the refund vide order u/s 170(4) of the Ordinance dated 08.01.2020. Complainant preferred appeal before the CIR Appeals who vide order 23.09.2020 remanded back the case with directions to verify the requisite documents.

ii) In the second round, Complainant again filed complaint 1916/LHR/IT/2021 for failure to give appeal effect of the CIR(Appeals) order dated 23.09.2020 and this forum disposed of on 05.11.2021 in the following manner;

> *In view of the supra, though the complaints have been withdrawn yet the facts shared above need serious review by FBR, especially in order to ensure;*
>
> *(a) That refund processing and verification process must be strictly time bound, as envisaged under relevant laws.*

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* Date of registration in FTO Sectt.

(b) *Internal checks/controls are developed so that all un-explainable delays need to be looked into so as to fix responsibility.*

But Deptt rejected the refund partially by-passing order u/s 124/170(4) of the Ordinance dated 22.12.2021.

Subsequently, Complainant filed rectification application on 01.03.2022 against rejection of refund by passing order u/s 170(4)/124 dated 22.12.2021. Further, Complainant through application dated 20.07.2023 explained that rectification application has been accepted as per operation of law by passing deemed order u/s 221(3) of the Income Tax Ordinance, 2001 dated 30.06.2023, resultantly, refund of Rs.0.136 million become due. Complainant also stated that he did not receive any refund till date as determined by passing order u/s 170(4)/124 dated 22.12.2021. Hence the instant complaint.

3. The complaint was sent for comments to the Secretary, Revenue Division, Islamabad in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of Federal Ombudsmen Institutional Reforms Act 2013. In response thereto, the Chief Commissioner IR, RTO, Faisalabad forwarded parawise comments of Commissioner IR, Corporate Zone, Faisalabad dated 23.04.2024. At the outset preliminary objection regarding bar of jurisdiction was raised in terms of Section 9(2)(b) of the FTO Ordinance as the matter of assessment of tax and interpretation of law. On merits, it was contended that in compliance to the CIR(Appeals) order dated 23.09.2020, Deptt passed appeal effect order u/s 124/170(4) of the Income Tax Ordinance, 2001 on 22.12.2021 and rejected the refund claim partially. Further, Deptt filed appeal before the ATIR against the CIR(Appeals-I) order dated 23.09.2020 which is still pending. Further, determined refund was not issued as the matter was subjudice. Further, Complainant can avail the remedy of appeal by filing appeal against the said order. And this order did not fall within

the ambit of rectification u/s 221 of the Ordinance as there was no mistake.

4. Both the parties heard and record perused.

5. As regards the preliminary objection regarding bar of jurisdiction being misconceived stands overruled. During hearing, AR of the Complainant strongly agitated that as per directions of CIR(Appeals) order dated 23.09.2020, he filed original tax deduction certificates but Deptt ignored it and passed order u/s 124/170(4). Complainant filed rectification application 01.03.2022 along with the evidence of tax credit under u/s 148, 153(2), 154(1) & 236(1)(a) of the Ordinance. On the other, DR could not put forth any justification for non-disposal of rectification application. AR also furnished copy of order of this Forum vide Complaint No.1445/MWI/IT/2024 dated 05.04.2024 wherein it was upheld that no action u/s 221(1) attracted deeming provision enunciated vide sub-Section 3 of the Section 221.

6. It is pertinent to mention that this Forum already passed an Own Motion No.0213/OM/2021 dated 11.11.2021 on the same issue delivered the following findings;

> **"In view of above, it is not practicable to enforce provisions of Section 164 of the Income Tax Ordinance, 2001 in its literal meanings. Thus currently payment of taxes made by millions of customers of Banks, TELECOS and DISCOS remains incompatible with the provisions of Section 164(2), i.e.**
>
> **"A person required to furnish a return of taxable income for a tax year shall attach to the return copies of the challan of payment on the basis of which a certificate is provided to the person under this Section in respect of tax collected or deducted in that year."**
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> **"Departmental insistence in literal compliance of Section 164(2 is also plagued with glaring pitfalls as, while department readily accepts payments in bulk especially from Banks, its insistence on individual challans is self-contradictory."**

Further, the Hon'ble President of Pakistan has rejected the Departmental representation vide President's Secretariat (Public)

Aiwan-e-Sadr, Islamabad **No. 217/FTO/202022 dated 06.09-2023.** In view of above circumstances, there is no reason to reject the credit of Rs.0.136 million. ***This case presents a classic example of departmental apathy, indifference and ineptitude in (mis)handing taxpayers. It is completely unjustified that on one hand FBR's one field formation (LTOs/CTOs) readily accept bulk collection from banks, without asking for individual CPRs and on the other RTOs refuse to accept the deduction certificates, by the Bank Branches sans CPRs. The poor taxpayer has neither any control over Banks nor on IR filed formations. It is height of maladministration that tax deduction relating to tax Year 2017 being dragged & delayed on such flimsy and callous grounds.***

Complainant claimed taxes paid/withheld under various Sections of the Ordinance. Deptt accepted claim partially u/s 153(2), 154(1) but most of claim u/s 236(1)(a) was rejected as proof of original tax payments was not provided by the Complainant. AR of the Complainant produced relevant record in respect of claimed tax before this Forum. It appears that verification exercise was not carried out diligently. Department's obsession with verification of tax withheld u/s 153 and 154 claimed under FTR/minimum tax regime cannot be accepted on face value Complainant's claim of refund arose from tax withheld u/s 231A & 236(1)(a). Needless to mention that the tax is not supported by the individual CPRs. Telecom companies issue certificates. Maximum that Deptt could do to verify this tax was to examine the original paid telephone bill. Withholding taxes claimed u/s 153 & 154 could be verified from ITMS/IRIS with the help of local PRAL officials. As regards non-issuance of determined refund, Deptt was bound to make payment of determined refund as there was not stay/restraining order by the ATIR.

FINDINGS:

7. It is beyond any doubt that maladministration is involved and complainant has been subjected to willful harassment. No action on application for rectification of order dated 22.12.2021, filed on 29.03.2022 again brings out apathy of the department and attract provision of Section 221(3) of the Ordinance.

RECOMMENDATIONS:

8. FBR to;

(i) direct the concerned Commissioner-IR, Faisalabad to ensure that credit of withholding tax is allowed to the taxpayer after appropriate verification and pass fresh orders u/s 221/170(4) of the Ordinance, as per law;

(ii) transfer the determined refund vide order dated 22.12.2021 into the Complainant's bank account immediately; and

(iii) Complainant is advised to provide original paid telephone bills to the Deptt so that matter could be resolved accordingly.

(iv) report compliance within 45 days.

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

Dated: 06.06.2024
Akif

Approved for reporting