# THE FEDERAL TAX OMBUDSMAN
# ISLAMABAD

## COMPLAINT NO.2794/FSD/IT/2024
Dated: 08.04.2024* RO, Faisalabad

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

**Versus**

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

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|---|---|
| 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 non-issuance of refund of Rs.0.043 million for Tax Year 2010.

2. Earlier for failure of the Deptt, the Complainant filed complaint No.4390/FSD/IT/2023, dated 01.08.2023before this forum for non-issuance of refund of 1.525 million for Tax Year 2010 which had been disposed of with the recommendations as given below;

"FBR to direct the CCIR, RTO, Faisalabad to;

(i) give effect to the appeal order by CIR (Appeals) dated 23.09.2020;

(ii) dispose of refund application, as per law and without asking for CPRs which are not generated at all by the Banks in individual case; and

(iii) report compliance within 45 days."

In implementation of the above recommendations, Deptt sanctioned refund of Rs.1.410 million for Tax Year 2010 and remaining amount of Rs.0.043 million was rejected being no verified. Subsequently, Complainant filed instant complaint against the rejection of Rs.0.043

* Date of registration in FTO Sectt.

million. According to the Complainant, deduction was made u/s 231A by the HSCB Bank & Meezan Bank Ltd. and he had the deduction certificate of the relevant banks. Complainant filed rectification application on 30.11.2023 before the Deptt but Deptt failed to do needful as per law. 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 vide letter dated 12.09.2023 forwarded parawise comments of Commissioner IR, Corporate Zone, Faisalabad dated 11.09.2023. At the outset preliminary objection regarding bar of jurisdiction was raised in terms of Section 9(2)(a) of the FTO Ordinance as Deptt has filed appeal before the Appellate Tribunal IR, Lahore which is pending for adjudication. On merits, it was contended that Deptt issued refund of Rs.1.410 million by passing order u/s 170(4) of the Income Tax Ordinance, 2001 on 16.11.2023 after completing due verification of documents and certificates. Deptt also stated that notice dated 03.04.2023 & 05.01.2023 had been issued to Meezan Bank and HSBC Bank Regional Islamabad but no reply was received from the banks till date. Further, Complainant can avail the remedy of appeal before the CIR(Appeals) 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 produced copies of tax deduction certificates

of the relevant banks. On the other, DR reiterated the same stance as taken in the comments.

6. In view of above position, both the sides stuck to their stated position. 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."**
>
> **"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.***

The above discussion explained that Deptt only misled itself into believing that verification of withholding tax supported by certificate and collateral evidence in bank account statement left anything to prove by the Complainant. **Examination of record provided that concerned bank duly verified and attested the certificate issue by it. Again, asking the taxpayer to go to appeal on such frivolous matter sounds callous.**

## FINDINGS:

7. In view of above, it is beyond any doubt that maladministration is involved and complainant has been subjected to willful harassment.

## RECOMMENDATIONS:

8. FBR to;

   i) direct Member IR Operations to issue necessary instructions to IR field formations to the effect that in cases (Banks/DISCOs/TELECOM COs) where bulk withholding payments are received by the department, individual CPRs are neither generated nor should be demanded from the withholdees.

   ii) direct the concerned Commissioner-IR, Faisalabad to ensure that in line with similar cases credit of withholding tax is allowed to the taxpayer by rectifying the order u/s 122(5A) of the Ordinance for Tax Year 2010, as per law; and

   iii) report compliance within 45 days.

AL Jah

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

Dated: 27.5. 2024
Approved for reporting