

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO.3152/ISB/IT/2023

Dated: 01.06.2023*HQ Islamabad

Rawalpindi Medical University Rawalpindi, ... Complainant
(Registration No. 9020358),
RMU (NTB) Holy family Hospital Satellite Town,
Rawalpindi.

Versus

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

Dealing Officer : Mr. Muhammad Naseer Butt, Advisor
Appraised by : Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative : Mr. Kashif Zaheer, Budget and Account
Officer
Departmental Representative : Ms. Romana Alam, ADCIR, RTO,
Rawalpindi

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance 2000 (FTO Ordinance). The complaint was referred for comments to the Secretary, Revenue Division, in terms of Section 10(4) of the FTO Ordinance, read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013 (FOIR Act). Comments were received from RTO, Rawalpindi vide letter dated 15.06.2023, which were examined and placed on file.

2. Hearing notice u/s 9(2) of the FOIR Act, was issued to the parties for compliance on 10.07.2023. In response to which Mr. Kashif Zaheer, Budget and Account officer (Complainant's Authorized Representative) appeared and argued the case. Ms. Romana Alam, ADCIR from RTO Rawalpindi attended as Departmental Representatives (DR) and presented department's stance on the issue. Rejoinder from the complainant's AR was also

received. Arguments were heard, record perused and complaint is disposed of as under.

3. The complainant Rawalpindi Medical University, (RMU) Rawalpindi filed complaint against unlawful recovery of Rs. 64,452,753/- for Tax Year 2022 through attachment of bank accounts maintained in Bank of Punjab on 22.05.2023. The complainant stated that proceedings were initiated by the department and notice u/s 44(4) of the Income Tax Ordinance, 2001 (the Ordinance) was issued on 26.10.2022 for filing of reconciliation of the amount of Rs. 968,042,206/- pertaining to the debit entries of bank accounts maintained in NBP and BOP on 27.10.2022. The details were provided to the department on extended date vide letters dated 21.11.2022 and 02.02.2023. However, without going through the detailed information provide, the department issued show cause notice u/s 161(1A) on 15.02.2023. This notice was served on 01.03.2023 (after 16 days) in which it was directed to attend the office of the Assistant/Deputy Commissioner office on 21.02.2023 to confirm the amount mentioned in notice.

4. The complainant further stated that the details confronted in the notice by the tax department were different form the details submitted by RMU. The data was related to seven accounts clubbed in such a way that it was not clear whether this information of the payments was vendor-wise or account wise. The dates of transaction/accounts numbers in which transaction were occurred were not given to decipher the information. However, the amount of payments confronted was reduced to Rs. 620,030,139/- with tax of Rs. 117,935,522/-. The department was requested to provide the clubbing details regarding the information confronted in show cause notice to move further in reconciliation process.

5. The complainant further stated that the amount of payment confronted in the final notice was further reduced to Rs. 272,018,841/- with amount of tax to be levied to Rs. 48,333,262/- with an intimation to impose default surcharge u/s 205. Furthermore, the department passed order u/s 161(1) & 137(2) on 29.03.2023, this order was served on 01.04.2023 after 3 days as an attachment of 137(2). The complainant AR further stated that total 15 notices were issued by the department out of which only 05 notices were served properly and remaining 10 notices were not served properly.

6. The complainant prayed that Hon'ble FTO is being approached for redressal against this maladministration and high handedness and the acts contrary to law, arbitrary, unjust and oppressive on the part of office of respondents as alternate fora is not available. According to the complainant, such matters are not appealable before the commissioner (Appeal), ATIR, the High Court and the Supreme Court. The complainant further stated that they are law abiding entity well performing their duty as withholding agent with due diligence and neither any income was concealed nor any tax evasion committed.

7. The department filed written comments wherein, they stated that the order under section 161/205 of the Income Tax Ordinance, 2001 was passed electronically along with the demand notice u/s 137 of Income Tax Ordinance, 2001 dated 29.03.2023. The stance that the notice issued on 15.02.2023 was received on 01.03.2023 hence, attending the office on 23.02.2023 is technically not possible and it is contradictory to the facts as the notice was issued electronically and delivered on the same date.

8. The department further stated that the subject notice was replied electronically dated 23.02.2023. Final opportunity of hearing was provided through notice issued electronically dated 20.03.2023

for compliance by 27 03.2023. Notice u/s 137 is the demand notice issued after finalization of proceedings and that notice u/s 137 was issued on 29.03.2023 after passing order u/s 161/205 on 29.03.2023. Notice u/s 138 of the Income Tax Ordinance, 2001 was issued electronically on 05.05.2023 and served on the same date vide Diary No. 585.

9. The department, therefore, submitted that no maladministration has been committed and that matter is not cognizable under section 9(2)(b) of the Federal Tax Ombudsman Ordinance, 2000 by the Honorable Federal Tax Ombudsman as the assessment proceedings u/s 161/205 of the Income Tax Ordinance, 2001 have already been finalized on 29.03.2023. On the strength of a case of M/s Concrete Solutions (PVT) Ltd, the department asserted that this office has no jurisdiction to take cognizance in the matter in hand. Therefore, they asserted that the complaint may please be rejected being devoid of any merit.

10. The department raised legal objection to jurisdiction of this office in terms of section 9(2)(b) of the FTO Ordinance, 2000. So, it is appropriate **to decide the legal objection first** before moving any further. It is found that the complainant has come up before this forum against department's highhanded, oppressive and perverse attitude while framing an order in the mode of ex-parte where due diligence was not made and facts were not properly examined and proper opportunity of being heard was also denied to the taxpayer. All these acts of omission or commission constitute maladministration which subject falls within the domain of this office. The legal objection raised by the department is misplaced and the same is therefore overruled.

11. **On the merits of the case,** it is observed that many legal and factual mistakes have been made by the tax officer while finalizing the order and making subsequent recovery through coercive

measures by attachment of bank account. The record was not properly scrutinized and assessment was made and order passed in a hurry. Some of the factual mistakes have been mentioned below;

- (i) The amount of **Rs. 10,076,651/-** has been mentioned against M/s. Qamar-e-Bani Hashim in show cause notice whereas, as per details provided by RMU, the total transaction made with the said vendor was of **Rs. 98,337/-**
- (ii) Internal transfer of principal amount of (TDR booked) Rs. 103,000,000/- was illegally taxed at 20% rate. As per FBR Circulars No. 07 and 10 of 2010, tax is not deductible/collectable on interbank and intrabank transfers. The said section is applicable to purchase of instrument on cash only.
- (iii) A wrong intrabank debit entry (Demand Draft) of Rs. 90,800,000/- was taxed and that too at a rate of 20% applicable to non-filer whereas the accountholder (RMU) is admittedly a regular tax filer.
- (iv) Similarly, another payment of Rs. 14,036,000/- made against purchase of vehicle to **INDUS Motors Company Limited Karachi**, having **NTN 0676546-7**, duly mentioned in the invoice, has been tax @ 20% treating it as non-filer. The said company has also claimed exemption from withholding tax. However, tax has been imposed without ascertaining facts of the case and that too at the highest rate applicable to the non-filers.
- (v) It is also noticed that the department assumed that payment on account of purchase of vehicle has been made to some Sachal Engineering, whereas, the said payment, in fact, was made to Indus Motor Company.
- (vi) Application of 20% tax rate has been made on internal transfers, apparently on exempt payments and wrong entries. The tax imposed on only above 4 transactions is Rs. 43,582,530/- as against tax charged in the impugned order of Rs. 50,806,096/- excluding default surcharge which constitutes 86% of the total tax imposed. Ignoring these glaring mistakes, the tax office was bent upon effecting recovery of such inflated demand of tax through coercive measures. It is apparent that facts have neither been properly ascertained by the tax officer nor is applicable law properly appreciated during the assessment proceedings.

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12. Many legal infirmities have also been noticed and some of them are mentioned hereinunder;

- (i) Perusal of the record shows that the order u/s 161(1) was passed in the mode of ex-parte order which denied the taxpayer proper opportunity of being heard and present his case before the tax authority.
- (ii) While framing assessment, the Board's clear and comprehensive instructions as to applicability or otherwise of section 231AA contained in Circular No. 07 and 10 of 2010 were not only ignored but were deliberately violated to boost revenue performance.

- (iii) Notices were not properly and timely served on the taxpayer. Notice u/s 161(1A) issued on 15.02.2023 containing compliance date of 21.02.2023 was served on the taxpayer 28.02.2023.
- (iv) The notice u/s 161(1A) issued on 23.02.2023 for compliance on 27.03.2023 was served on the tax payer on 21.03.2023. The said notice remained with the department unserved almost for one month and the taxpayer was given only six days to file response to the queries raised. Thus, adequate opportunity of hearing was denied to the taxpayer and the taxpayer was deprived of the opportunity to present facts of the case before the tax officer.
- (v) In the reply to the allegations, the department insisted that recovery of tax u/s 140 has no relevance to intimation to taxpayer. The perception of the department is against the law and rule and judicial procedure. As per Rule 210C(2) of the Income Tax Rules, the commissioner is required to forward copy of notice to defaulter at his last known address. The needful was not done. Thus, violation of Rule 210B and 210C were made.
- (vi) The department was specifically asked to produce record relating to obtaining prior approval from the Chief Commissioner-IR, required under Rule 210B. However, original record was not produced. Perusal of the photocopy of note-sheet made on the reverse page of the notice of the commissioner's letter issued to the Assistant Commissioner-IR reveals that the CCIR did not sign the note-sheet meaning thereby that no approval was granted by the CCIR for proceeding u/s 140 whereas, the CIR was required to obtain prior approval of the concerned authority before issuing notice u/s 140.
- (vii) It is further noticed that the file for approval was initiated on 22.05.2023 by the ACIR which reached office of the CCIR after passing through three channels on the same date. The file went back to ACIR on the same date. Besides, attachment notice and recovery were also made on the same date i.e. 22.05.2023. This clearly indicates that due diligence was not made by any of the supervisory officers involved in the process. Thus, clear violation of spirit of law and rule was made by the concerned tax authorities and the notice u/s 140 was issued without seeking prior approval of the CCIR.

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13. Some of the facts narrated above show that the assessment and recovery processes have been made without following law and ascertaining nature of various transactions. This arbitrary, perverse and unlawful action not only created serious hardships for the taxpayer but also exposed incompetence of the tax authorities involved. Such actions clearly constitute maladministration.


FINDINGS:

14. The assessment made together with the recovery process have been completed in undue haste and without following due process of law and laid down procedure. This kind of attitude is contrary to law and rules and laid down procedure and whole process is found perverse, arbitrary, oppressive showing incompetence, inefficiency of all the officers involved in the discharge of their duties and responsibilities. All of these acts of omission or commission squarely fall under maladministration as defined under section 2(3)(i)(a)(b) of the FTO Ordinance, 2000.

RECOMMENDATIONS:

15. FBR to:

- (i) direct the CIR concerned to revisit the assessment order u/s 122A and ensure completion of reassessment under his supervision on merits after providing proper opportunity of hearing within 30 days;
- (ii) the complainant is also advised to join proceedings and provide necessary documents for completion of reassessment proceedings; and
- (iii) report compliance within 45 days.


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

Dated: 19/07/2023

Approved for reporting


Director
FTO Secretariat
Islamabad