

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO.3284/KHI/IT/2022

Dated 25.07.2022¹R.O.Karachi

Mr. Sadiq Momin,
3113-A, Al-Azhar Garden, Scheme-33,
Gulzr-e-Hijri, Sector 35/B, Karachi.

...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

...Respondent

Dealing Officer	: Mr. Badruddin Ahmad Quraishi Advisor
Appraisal Officer	: Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representatives	: Mr. Tausif Ahmed, ACMA
Departmental Representatives	: Mr. Nadeem Ahmed, IRO, RTO-II, Karachi

FINDINGS/RECOMMENDATION

The complaint was filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against failure of the department (Deptt) to issue income tax refund for Tax year 2013.

2. Briefly, the case of the Complainant was selected for audit through computer balloting under Section 214C of Income Tax Ordinance (the Ordinance) for Tax year 2013. As a result of audit, an order under Section 122(1)/(5) of the Ordinance was passed on 30.04.2015 creating tax demand amounting to Rs. 246,270. On appeal, the Commissioner (Appeals-IV) Karachi confirmed the tax demand. The Complainant filed appeal before Appellate Tribunal Karachi who vide order dated 11.12.2017 decided the appeal with certain directions. The Complainant filed complaint vide no.1422/KHI/IT/2018 for failure to allow appeal effect of Appellate

¹Date of registration in FTO Sectt.

Tribunal's order. During hearing before this forum, the Deptt provided appeal effect to ATIR's order on 15.11.2018 determining refund amounting to Rs.229,635. This forum closed the complaint vide order dated 28.11.2018 when the DR gave commitment that as soon as the Complainant files the refund application, verification would be completed and the refund for Tax year 2013 would be issued expeditiously. The Complainant submitted refund application for Tax year 2013 manually on 04.12.2018 but failed to get any response till date, hence this complaint.

3. 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. The Commissioner, Zone-III, RT0-II Karachi considering the fault of the Deptt immediately issued refund order under section 170(4) of the Ordinance for Tax year 2013 on 19.08.2022 sanctioning refund amounting to Rs. 229,635.

4. During hearing, the AR submitted that he had received the refund order. However, he asked for compensation under Section 171 of the Ordinance due to delay in refund.

5. Arguments of parties heard, and record perused.

6. The Complainant prayed for compensation / additional payment for delayed refund. It is a matter of fact that this refund was required to be made in consequence of an order on an appeal to the Appellate Tribunal attracting provision of section 171(2)(a) which states:

"171. Additional payment for delayed refunds. —(1) Where a refund due to a taxpayer is not paid within three months of the date on which it becomes due, the Commissioner shall pay to the taxpayer a further amount by way of compensation at the rate of KIBOR plus 0.5 per cent per annum of the amount of the refund computed for the period

9

commencing at the end of the three month period and ending on the date on which it was paid

Provided that where there is reason to believe that a person has claimed the refund which is not admissible to him, the provision regarding the payment of such additional amount shall not apply till the investigation of the claim is completed and the claim is either accepted or rejected

(2) For the purposes of this section, a refund shall be treated as having become due —

(a) in the case of a refund required to be made in consequence of an order on an appeal to the Commissioner (Appeals), an appeal to the Appellate Tribunal, a reference to the High Court or an appeal to the Supreme Court, on the date of receipt of such order by the Commissioner; or

(b) in the case of a refund required to be made as a consequence of a revision order under section 122A, on the date the order is made by the Commissioner; or

(c) in any other case, on the date the refund order is made.

Explanation. —For the removal of doubt, it is clarified that where a refund order is made on an application under subsection (1) of section 170, for the purpose of compensation, the refund becomes due from the date refund order is made and not from the date the assessment of income treated to have been made by the Commissioner under section 120."

7. Thus, the complainant is legally entitled to compensation / additional payment for delayed refund in terms of Section 171(2)(a) of the Ordinance.

8. In view of discussion stated above, FBR is to direct Commissioner, Zone-III, RTO-II Karachi to settle the claim of compensation / additional payment for delayed refund on its merit in accordance with the law and report compliance within 45 days.

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

Dated: 20.9.2022

Approved for reporting