BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.3321/KHI/IT/2022

Dated 26.07.2022 * R.O. Karachi

Mr. Nadeem Nizam,
House # 51/I/II, 14 Lane,
Phase-VII, DHA,
Karachi

...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad

....Respondent

Dealing Officer	: Mr. Badruddin Ahmad Quraishi Advisor
Appraisal Officer	: Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	: Mr. S.M. Faraz Zaidi, ITP
Departmental Representative	: Mr. Hamid Mukhtar, IRO, RTO-I,Karachi.

FINDINGS/RECOMMENDATIONS

The complaint was filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against alleged illegal appeal effect through assessment order dated 30.06.2022 passed under Section 124/129 of the Income Tax Ordinance (the Ordinance) for Tax Year 2016 creating tax demand amounting to Rs. 4.040 million.

2. Briefly, the Complainant, an individual, filed income tax return under Section 114(1) of the Income Tax Ordinance (the Ordinance) for Tax Year 2016. The department (Deptt) selected the case for audit through computer balloting under section 214C of the Ordinance and issued an ex-parte assessment order on 13.12.2018 creating tax liability of Rs. 3.976 million. The Commissioner (Appeal IV) Karachi

* Date of registration in FTO Sectt

vide order dated 13.11.2019 remanded back the impugned order with the direction to pass a fresh order strictly in accordance with law. The Deptt issued show cause notice under section 122(9) of the Ordinance on 12.12.2019 &11.06.2021 for remand back proceedings. The Complainant submitted details on 06.09.2021 but as per complaint, the Deptt issued order on 30.06.2022 creating tax liability of Rs.4.040 million without considering the explanations/details submitted by the complainant, 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. In response, the Commissioner, Zone-II, RTO-1. Karachi vide letter dated 15.08.2022 submitted comments. At the outset, preliminary objection regarding bar of jurisdiction, was raised under Section 9(2)(b) of the FTO Ordinance being matter of assessment of income, determination of tax liability & interpretation of law.

4. On merits, it was contended that the impugned order for Tax year 2016 was passed after providing ample opportunity of being heard. Further, it was stated that the complainant furnished excel based reconciliation of debit & credit entries of bank statement. The reconciliation was found unsatisfactory as it was not substantiated with any documentary evidence.

5. During hearing, the AR submitted that the Complainant mistakenly declared tax deducted at source at Rs. 32,210 instead of actual at Rs. 5,067 against cash withdrawal from bank under section 231A in income tax return for Tax year 2016. He submitted documentary evidence in support of his contention. However, the Deptt

took flawed figure of tax Rs.32,210 and worked back to cash withdrawal of Rs. 10.736,666 and made illegal addition under section 111(1)(c) of the Ordinance presuming it as unexplained expenditure.

6. Both the parties heard and record perused.

7. The preliminary objection regarding bar of jurisdiction, raised under Section 9(2) of the FTO Ordinance, is misconceived as the Complainant is not aggrieved against the assessment as such but against a decision, act of omission or commission which is contrary to law, rules or regulations and is a departure from established practice or procedure by making illegal adhoc addition of 50% against management expenses and illegal addition under Section 111(1)(c) against cash withdrawal. The preliminary objection regarding bar of jurisdiction being misconceived, is hereby overruled.

8. The impugned order dated 30.06.2022 shows that the assessing officer has made adhoc addition of 50% against declared management expenses without identifying the exact nature, type & amount of unverifiable expense contrary to the provision of Section 174(2) of the Ordinance which states:

> *"174*
>
> *(2) The Commissioner may disallow or reduce a taxpayer's claim for a deduction if the taxpayer is unable, without reasonable cause, to provide a receipt, or other record or evidence of the transaction or circumstances giving rise to the claim for the deduction."*

9. Further, the assessing officer took flawed figure of tax Rs.32,210 instead of Rs. 5,067 and worked back to cash withdrawal of Rs. 10,736,666 and presumed it as unexplained expenditure making addition under section 111(1)(c) of the Ordinance in original dated 13.12.2018. On the contrary, the addition of Rs. 9,736,666 was made

in the impugned order dated 30.06.2022 without confronting the new figure of Rs. 9,736,666. **However, the most surprising aspect of this addition is that the assessing officer presumed cash withdrawal as unexplained expenditure under section 111(1)(c) of the Ordinance. Whereas, there is no concept of presumption or assumption in fiscal laws.**

10. From the foregoing discussed facts, it is established beyond any doubt that the impugned order dated 30.06.2022 was passed contrary to law, rules or regulations and is a departure from established practice or procedure and principle of natural justice hence, unlawful *per se*.

FINDINGS:

11. Passing impugned order dated 30.06.2022 contrary to law, rules or regulations is tantamount to maladministration, in terms of Section 2(3)(i)(a) of the FTO Ordinance.

RECOMMENDATIONS:

12. FBR to-

(i) direct the concerned Commissioner-R, Zone-II, RTO-1 Karachi to revisit the impugned order dated 30.06.2022 for Tax Year 2016 in terms of Section 122A of the Ordinance after affording proper opportunity of hearing to the Complainant on its merit in accordance with law; and

(ii) report compliance within 45 days

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

Dated: 22.9.2022

Approved for reporting