

**BEFORE  
THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**COMPLAINT NO.3508 & 3510/QT/IT/2022**

Dated: 05.08.2022\*RO Quetta

**Mr. Arbab Abdul Razaq,**  
Amjad Ali Siddiqui, Office  
No 07, Second Floor, Civic  
Business Center, Halli Road,  
Quetta.

... Complainant

**Versus**

The Secretary,  
Revenue Division,  
Islamabad.

... Respondent

Dealing Officer	:	Mr. Tausif Ahmad Qureshi, Advisor
Appraisal by	:	Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	:	Mr. Amjad Ali Siddiqui, Advocate
Departmental Representative	:	Munir Ahmed Maher, ACIR RTO Quetta

**FINDINGS/RECOMMENDATIONS**

The above mentioned complaints were filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against alleged unlawful transfer of Complainant's jurisdiction from RTO Quetta to MTO/LTU, Karachi by the FBR.

2. Briefly, the Complainant states that he is a bona-fide resident of Quetta City bearing CNIC No.54400-0509313-7 and registered with the FBR vide NTN 1806939-8 at RTO Quetta since long. The principal activity of the Complainant's business is the construction of the Buildings and Roads on contract basis being awarded by various Government Authorities of the Government of Balochistan. As per Registration Order under Section 181 of the Income Tax Ordinance 2001, the Complainant obtained NTN in the business name of M/s Arbab Brothers. However, FBR vide its notification

\*Date of registration in FTO Sectt.



No.07(407)Jurisdiction/2019/280620-R dated 03.12.2019 transferred the cases falling under the business category of Builders and Developers from RTO Quetta to MTO/LTU Karachi. The case of the Complainant was also transferred on the assumption that his business category is the Builder and Developer. Further contended that Quetta Chamber of Commerce and Industries (QCCI) and Balochistan Tax Bar Association (BTBA) had approached the FBR to transfer the cases back to RTO Quetta. FBR accepted the contention of QCCI and BTBA. Accordingly, some cases have been transferred back to the RTO Quetta from MTO / LTU Karachi. Further added that in the instant case, the Complainant is neither the Builder nor the Developer as defined under Section 100D(9) of the Income Tax Ordinance 2001, but the jurisdiction of the case was transferred to Karachi just on the assumption that the taxpayer's activity seems similar to the Builders and Developers. The Complainant states that he had applied to the concerned authorities to transfer the jurisdiction back to RTO Quetta, but of no avail. Meanwhile, assessing officers at Karachi passed various orders and created huge demands against him. The Complainant prayed to transfer the jurisdiction back to RTO Quetta as well as to annul the orders passed against him by the assessing officers at Karachi.

3. The complaint was forwarded 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. In response thereto, the Chief Commissioner-IR, MTO, Karachi submitted parawise comments vide letter dated 22.08.2022 stating therein that the jurisdiction of the case of the taxpayer was transferred to Large Taxpayers Unit-II Karachi (now Medium Taxpayers' Office, Karachi) vide Board's notifications No.



07(401)Jurisdiction/20119/291555-R dated 03.01.2020 and No. 07(401)Jurisdiction/20119/280620-R dated 03.12.2019 by considering the taxpayer as "Builder and Developer". Further added that the Commissioner TR, Audit-III and Commissioner IR, Enforcement-H have reported that the principal activity of the taxpayer as per ITMS is "construction/ building completion and finishing". As such, the jurisdiction of the case of the taxpayer has been lawfully assigned to this office rightly falling within the definition of "builder" as provided in Section 100D(9)(a) of the Income Tax Ordinance, 2001. As such, no maladministration is involved in the instant matter.

4. The Complainant submitted rejoinder rebutting Department's parawise comments contending that he is doing business under the name of M/s Arbab Brothers since long and the principal business activity of the taxpayer is Government Construction Works. In this regard, the Income Tax Returns of the taxpayer are filed as Contract Receipts under the Final Tax Regime. Further added that the Chief Commissioner Inland Revenue MTO Karachi takes the strength from Section 100D(9)(a) of the Income Tax Ordinance 2001, but it is imperative to mention here that Section 100D of the Income Tax Ordinance, 2001 was inserted vide Finance Act, 2020 dated 30June, 2020 and the jurisdiction of the taxpayer was transferred from RTO Quetta to MTO Karachi vide Board's Notification No.07(401) Jurisdiction/20119/291555-R dated 01Jan, 2020 and No.07(401) Jurisdiction/20119/280620-R dated 03Dec, 2019. As such, the jurisdiction of the taxpayer has been transferred about six months before the insertion of Section 100D of the Income Tax Ordinance, 2001. This makes the case of the transfer of the jurisdiction unlawful and void in the eyes of the law.



5. During hearing, AR and DR reiterated their respective stance taken in the complaint and parawise comments. Both sides heard and available record perused.

### **FINDINGS:**

- I. From analysis of the jurisdiction orders of the Board and the powers of the Board under Section 209 of the Income Tax Ordinance, 2001 to transfer jurisdiction of any person or class of persons, it is established that cases of builders/developers have been transferred to specialized zones as a special class of persons. The act of the Board to transfer cases as class of persons is not illegal and within the ambit of the powers conferred by the Income Tax Ordinance, 2001. **However, it is also evident that the transfer of case from Quetta to Karachi has caused severe hardship to the taxpayer and it is his genuine right to be taxed in the jurisdiction by facilitating him at the doorstep where the business is being done.**
- II. Secondly whether Contractors involved in public sector construction can be clubbed with **private sectors Builders & Developers** is yet another area which needs FBR's deliberations. In any case no discriminatory treatment with any individual or a class of persons is desirable.
- III. The allegation that some of the similar cases have reportedly been transferred back to RTO Quetta also needs probe by concerned authorities at FBR HQs.
- IV. Some of identical cases relating to KPK and Baluchistan are currently pending at superior judicial fora. Uniform treatment of all identical cases is the only solution of this issue.

### **RECOMMENDATIONS:**

8. FBR is required to take a pragmatic view in this matter. IR Policy wing FBR to:

- (i) decide the issue of jurisdiction in line with other identical cases and in the light of orders by the superior judiciary;
- (ii) review individual facts of the instant case so as to reach at a legal and equitable decision/conclusion;



- (iii) issue clarification about the scope of builders & developers so as to clear the existing ambiguities on the subject; and
- (iv) report compliance within 60 days.

9. This also disposes of complaint No.3510/QTA/IT/2022 of exactly similar nature and contents.

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

Dated: 11.10.2022

*Approved for reporting*

Certified to be True Copy

Registrar  
FTO Secretariat  
Islamabad