

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO.3554/QTA/IT/2023

Dated: 15.06.2023* R.O. Quetta

Mr. Muhammad Sultan Jaffar, ... Complainant
Ex. Senior Vice President,
NBP, Regional Office, Quetta.

Versus

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

Dealing Officer : Mr. Tausif Ahmad Qureshi, Advisor
Appraisal Officer : Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative : Complainant in person
Departmental Representative : Ms. Aqsa Gharshin, DCIR, RTO, Quetta

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against the Commissioner-IR, Regional Tax Office, Quetta seeking refund of excess amount of income tax deducted from monthly salary and other payments with effect from July, 2020 to May, 2022.

2. Briefly, the Complainant states that while serving in Bank, one-time payment of Rs.12,00,000/- along with 17% increase in basic pay was made to him by the Bank in July, 2020 as non-MTO compromise agreement, whereupon an amount of Rs.254,408/- was deducted at source as income tax deduction. Further, income tax of Rs.12,68,487/- during financial year July, 2020 to June, 2021 and Rs.941,870/- during financial year July, 2021 to May, 2022 @ 22.5% of total income was also deducted from him. While payment of end service benefits, the Bank Authorities not only recovered the above-mentioned payment of Rs.1,200,000/-, but increase in basic pay and

*Date of registration in FTO Secretariat

consequent allowances was also recovered, whereas an amount of Rs.195,744/- was also recovered as income tax deduction and he was charged twice for deduction of income tax. In this regard, he had moved an application to the RTO, Quetta and the Bank Authorities, but of no avail. He requested that income tax deducted upon monthly salary with effect from July, 2020 to May, 2022 and other payments may please be refunded. Further added that a complaint No. 0129/QTA/IT/2023 was filed before the FTO under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against the Regional Tax Office, Quetta on account of alleged delay with regard to disposal of refund application. As per Findings, it was pointed out that since the Complainant has provided Certificate under Rule-42 of the Income Tax Rules, 2002 issued by the withholding agent, now it is responsibility of the Department to verify the tax deduction certificate from the withholding agent and issue due refund to the Complainant after completing due verification. So, the Commissioner-IR, Zone-I, RTO, Quetta was directed to complete the verification from the withholding agent and dispose of the refund claim of the Complainant, after providing opportunity of hearing in accordance with law. Further added that he furnished certificate in the prescribed format under Rule-42 of the Income Tax Rules, 2002 sought by the Deputy Commissioner. On 17.05.2023, the Deputy Commissioner Inland Revenue, Unit-II, Range-I, Zone-I, RTO Quetta unlawfully rejected refund claim under Section 170(4) of the Income Tax Ordinance, 2001. Further pointed out that no personal hearing was conducted as directed by the FTO and he was condemned unheard. Further pointed out that the statements provided by him clearly show that the tax was deducted, but the Deputy Commissioner failed to consider this aspect of the matter, and that under the law, a person

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cannot be taxed double for the same reason and in present matter, he was charged twice for the same amount. His documents were not gone through properly by the Deputy Commissioner-IR. In this regard, the DCIR may kindly be called and detailed report may be sought, and that he reserves the right to argue any other point of law and fact at the time of hearing. The Complainant prayed that since the order dated 17.05.2023 passed by the Deputy Commissioner-IR is unlawful, the excess amount of income tax deducted upon his monthly salary with effect from July, 2020 to May, 2022 and other payments may please be refunded in the interest of justice.

3. The complaint was referred to the Secretary, Revenue Division, Islamabad 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. Having received no response, the case was fixed for hearing on 14.07.2023. DR and Complainant appeared for personal hearing. DR informed that she rejected the case, as the withholding agent has not furnished the requisite record i.e., CPRs. The Complainant responded that the Department has failed to gather relevant information from the NBP which she admitted.

4. In the aftermath of hearing, the Commissioner-IR (Zone-I), RTO, Quetta submitted reply vide letter dated 21.07.2023 stating therein that in compliance of the direction of the Federal Tax Ombudsman vide complaint No. 0129/QTA/IT/2023 dated 06.01.2023, his office verified the tax deduction, sought documents from the Complainant and after providing proper opportunity of being heard, passed an order under Section 170(4) of ITO, 2001, wherein the refund was rejected, as per law. Further added that the refund order passed is an appealable order under Section 127 of

the Income Tax Ordinance, 2001. It was also contended that it is a well settled principle of law that an appealable order cannot be agitated before the FTO. It will become a vicious cycle of complaining and not taking up the issue with proper fora. The Commissioner requested to reject the complaint and direct the Complainant to approach the Commissioner-IR (Appeals). Commenting upon the contents of the complaint, the Commissioner stated that all the deductions are being made by the employer i.e., the Bank. The issue has already been taken up by the Complainant earlier before the FTO for which directions were issued. Hence, as per theory of merger, these issues cannot be taken up again. As per FTO's directions, opportunity of hearing was provided and verification from the Bank was got, and then order of rejecting refund was passed under Section 170(4) of ITO, 2001. The Complainant has himself accepted at para 6 that he has submitted the required documents, then, how come he says that he was not heard. After hearing the Complainant and perusing all his view points, the order has been passed. The refund claimant failed to make correct declarations, while filing Income Tax Return for the Tax year 2022. After due process of verification & processing, it has been observed that no double tax was deducted from the Complainant and that the Complainant made wrong declarations on account of Total Taxable Income. In this regard, all aspects were considered with due diligence and under the provisions of law. After making herself sure, the concerned officer rejected the refund and passed the order. The Commissioner prayed that the instant complaint being devoid of merit and substance may kindly be rejected.

FINDINGS:

5. From the perusal of the arguments of DR and Complainant, and available record, it has transpired as under:

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- i. The earlier complaint of the taxpayer (complaint No. 0129/QTA/IT/2023) had been disposed of with the directions to process the refund application after due verification of the documents from the concerned quarters. DR during hearing took the plea that refund has been rejected on the basis that the CPRs regarding payment of the tax deducted have not been presented by the Complainant. Moreover, it was argued that the order is an appealable matter. Whereas it has been ignored that the matter of contention in the earlier complaint was that the Complainant was in possession of the certificate issued by the withholding agent regarding deduction of tax and the complaint was disposed of to process the refund application on the basis of verification of the document of tax deduction. The Department has failed to comply with the earlier order and produce any findings regarding genuineness of the Rule-42 certificate produced by the Complainant. The Department has failed to appreciate that it is the duty of the withholding agent to deposit the amount of tax deducted in the government exchequer and for the withholder. Rule-42 certificate issued by the withholding agent is the genuine evidence to claim the tax credit as per Section 168 of the Income Tax Ordinance, 2001, which is reproduced below as ready reference:

"Subject to sub-sections (2A), (2B), (3) and (4), where an amount of tax has been collected from a person under Division II of this Part or Chapter XII or deducted from a payment made to a person under Division III of this Part or Chapter XII, the person shall be allowed a tax credit for that tax in computing the tax due by the person on the taxable income of the person for the tax year in which the tax was collected or deducted."

- ii. The Department has failed to fulfil its responsibilities by not only giving the due credit of tax deduction of the Complainant by the withholding agent but also by not seeking information whether tax deducted has been deposited in the government exchequer and as stated by the Department that no CPRs are found against the tax deducted by the withholding agent. The way the Department is handling the matter reflects unreasonable attitude, inattention, delay, incompetence, inefficiency

and ineptitude. This is tantamount to maladministration in terms of Section 2(3)(i)(ii) of the Federal Tax Ombudsman Ordinance, 2000.

RECOMMENDATIONS:

6. FBR to direct:

- (i) the Chief Commissioner-IR, RTO, Quetta to ascertain whether the withholding agents are depositing the payments of the tax deducted against the CNICs of the withholding agents and also to ensure that the Commissioner-IR verifies the genuineness of the Rule-42 certificate produced by the Complainant;
- (ii) the Commissioner-IR to re-visit the order passed under Section 170(4) of the ITO Ordinance. In case, the certificate is found genuine, re-process the refund application of the taxpayer after giving opportunity of hearing, as per law; and
- (iii) report compliance within 60 days.

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

Dated: 7:8:2023

Approved for reporting

Director
FTO Secretariat
Islamabad