

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT No.3589/KHI/IT/2023

Dated: 19.06.2023* R.O. Hyderabad

Mr. Mohammad Arfin Khan Lodhi

House No.C-33, Block-A, Unit No.6, Latifabad,
Hyderabad.

... *Complainant*

Versus

The Secretary,
Revenue Division,
Islamabad.

... *Respondent*

Dealing Officer

: Dr. Faiz Illahi Memon, Advisor

Appraising Officer

: Mr. Muhammad Tanvir Akhtar, Advisor

Authorized Representative

: Mr. Muhammad Irtiza Khan, Advocate

Departmental Representative

: Mr. Abdul Shakoor Memon, IRAO/DR,
RTO, Hyderabad

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint was filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against the officer for finalizing the case u/s 122(1) of the Income Tax Ordinance, 2001 (ITO, 2001) against the law and delay in deciding rectification application filed by the Complainant and Commissioner-IR (Appeals), Hyderabad for passing non-speaking order up-holding the illegal assessment.

2. Brief facts of the case are such that the Complainant is a professor by profession at TEXAS University in the USA, having resided there for the past 30 years and is a non-resident Pakistani. The Complainant remitted an amount of \$100,000 through the banking channel (Bank Al Falah Ltd, Unit No.06, Latifabad Hyderabad). Additionally, the Complainant declared taxable income received from lectures delivered at seminars organized by educational institutions in Pakistan. The department (Deptt) issued

* Date of registration in FTO Secretariat

show cause notice u/s 122(9) of the ITO, 2001 based on the wealth statement filed by the Complainant. However, since the Complainant was a non-resident and was not in Pakistan during the relevant period, he did not receive any notice from the Deptt. Later, the Deptt finalized an ex-parte assessment u/s 122(1) of the ITO. When the Complainant returned to Pakistan, he found an assessment order at his house. Subsequently, a rectification application was filed before the assessing officer, along with all the proof of foreign remittances, such as bank statements, uploaded on IRIS. However, the application remained unattended for reasons unknown. As a result, the appellant had no option but to file an appeal before the Commissioner IR (Appeals), Hyderabad. The Commissioner IR (Appeals) however dismissed the appeal vide order dated 16.06.2023 on the grounds that no details were produced, despite the fact that all details were personally presented and uploaded on IRIS portal. According to the Complainant, the Commissioner IR (Appeals) failed to appreciate the facts of the case which constitute violation of FBR's Circular No. 05 of 2022 dated August 30, 2021 and the findings narrated by the Commissioner IR (Appeals) are completely against the facts of the case. Moreover, the Complainant being a non-resident Pakistani was not required to file a return of income and a wealth statement under Section 115 of the ITO, 2001.

D
X

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 whereof, the Commissioner IR, (Appeals) Hyderabad submitted comments dated 03.07.2023 which have been seen and placed on record.


4. During hearing, the AR reiterated his written submissions. The

DR, however, contended that the jurisdiction of FTO is barred in terms of Section 9(2)(a)/(b) of the FTO Ordinance as legal remedy of filing appeal before the appellate forum is available to the Complainant.

5. After careful consideration of averments and perusal of the record, it has been observed that the dismissal of appeal by the Commissioner IR (Appeals) on the ground that no details were produced appears to be un-sound because details were provided to him as well as uploaded on the IRIS portal. It has further been observed that the Commissioner-IR (Appeals) did not appreciate the facts of the case, including the Complainant's non-resident status as well as non-withdrawal of amount of remittances as is evident from the bank statement. Moreover, the objection raised by the Commissioner IR (Appeals) Hyderabad regarding bar of jurisdiction in terms of Section 9(2)(a)(b), appears to be misconceived as the matter at hand warrants deduction of element of maladministration on the part of the Commissioner IR (Appeals) Hyderabad for not considering the corroborating evidence(s) provided by the appellant, and not relating to assessment of income or wealth. Lastly and above all, none in the tax hierarchy appreciated the fact that the Professor has remitted foreign currency to Pakistan, his country, which money is still lying in the bank account, duly declared. Contrary to encouragement extended to Mr. Mohammad Arfin Khan Lodhi, he is being subjected to extensive rigmorale of proceedings and as a direct corollary, making him wary to remit any amount to his country in the future. It might have devastating horizontal adverse connotations. The renowned academic surely deserves better treatment.

RECOMMENDATIONS:

6. In view of foregoing, FBR to-
- i) direct the concerned field formation to tender apology in the instant case; though it is the least, department owes to the complainant;
 - ii) direct all the field formations of IRS and PCS, that cases of overseas Pakistanis need to be treated with due compassion and deep regard. Such a treatment is even otherwise warranted in the face of current position of dwindling foreign remittances;
 - iii) ensure by all means that notices are properly served through all possible means (especially at given email ID) and no adverse action is taken without proper service of notices;
 - iv) direct the Commissioner IR (Appeals), Hyderabad to invoke Section 221(1) of the ITO, 2001 and pass appropriate speaking order as per law, after taking into account cogent evidence(s) provided by the Complainant; and
 - v) report compliance within 35 days.


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

Dated: 12:7:2023

Approved for reporting


Director
FTO Secretariat
Islamabad