

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT No.3653/KHI/IT/2023

Dated 23.06.2023¹R.O. Karachi.

M/s Wali Travel & Tours,

... Complainant

NTN 3221166

Shop No.9, Fasih Market, Block-4,
F.B. Area, Karimabad, Karachi.

Versus

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer

: Syed Shakeel Ahmed, Advisor

Appraisal Officer

: Mr. Muhammad Tanvir Akhtar, Advisor

Authorized Representatives

: Mr. M. Hassan Abbasi, ACCA

Departmental Representatives

: Mr. M. Azam Mughal, ACIR, Zone-III,
RTO-I, Karachi

FINDINGS / RECOMMENDATIONS

The complaint has been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against the allegedly illegal order passed u/s.122(4) of the Income Tax Ordinance, (ITO) 2001 by the Assistant / Deputy Commissioner Inland Revenue, Unit-II, Range-IV, Zone-III, RTO-I, Karachi.

2. Briefly stated the complainant had earlier filed a complaint vide No.5049/IT/2022 whereby the following was recommended;

"(i) revisit the impugned ex-parte order dated 15.11.2022 for Tax Year 2020 in terms of Section 122A of the Ordinance, after affording proper opportunity of hearing to the Complainant, as per law; and

(ii) dispose of application for revision of return for Tax Year 2020 as per law; and..."

3. Implementing the above recommendations, the Department allowed the complainant to revise return for Tax Year 2020 while the

¹ Date of registration in FTO Sectt.,

original order was revisited by the concerned Commissioner and it was remanded to the concerned Officer for fresh proceedings. As a result of those proceedings an order u/s.122(4) of the Ordinance was passed wherein certain additions under various sections of the Income Tax Ordinance 2001 were made by the Officer. Some additions have been made without considering the nature of complainant's business. An addition u/s.111(1)(d) of the ITO, 2001 was made without confronting the nature and form of it in the show cause notice or providing any opportunity of being heard to the complainant on this issue. Strangely, while making an addition under this section, the other revenue which was duly declared in the tax return for the year had been added back as a suppressed and unexplained amount. Moreover, the entire business capital declared by the complainant amounting to Rs.5,267,824/- has been disallowed and added back u/s.21(l) of the ITO, 2001, which is not the scheme of the provisions of that section.

4. The complaint was referred to the Secretary Revenue Division, Government of Pakistan for comments and hearing by the Departmental Representative (D.R.), in terms of Section 10(4) of the FTO Ordinance read with section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013.

FINDINGS:

5. Both the parties were heard and record was examined. Apparently, the order passed by the Assistant / Deputy Commissioner Unit-II, Range-IV, Zone-III, RTO-I, Karachi was passed in slipshod manner without having any understanding of the provisions of law as given in the Income Tax Ordinance. The Officer's action is found to be in an arbitrary and unreasonable way which is totally unjust and oppressive, it also shows incompetence,

inefficiency and in-aptitude on part of the Officer for the following reasons: -


- i) The entire declared capital of the complainant has been added back u/s.21(l) of the I.T.Ord.2001 treating it as a 'business expenditure' which is patently illegal action on the part of the Officer.
- ii) An amount of Rs.549,224/- has been added back u/s.111(1)(d) of the Ordinance without confronting the complainant over this in the notice u/s.122(9) of the Ordinance served upon the complainant. This addition represents the commission receipts duly declared as 'Other Revenue' in the Income Tax Return vide code 3129. This action by the Officer is found to be in stark violation of the scheme of law u/s.111(1)(d) of the I.T. Ordinance, 2001.

6. Keeping the above facts in view as well as the previous recommendations by this office as discussed earlier, this order passed by the Departmental Officer is not only an attempt to hoodwink the previous directions but also speak of his total lack of understanding with the scheme of law in the Income Tax Ordinance, 2001. Passing of such a patently illegal order tantamounts to "maladministration" as it was totally unjustified, arbitrary and speaks of inefficiency in discharge of duties and responsibility, attracting Section 2(3)(i)(b),(c) &(d) as well as Section 2(3)(ii) of the FTO Ordinance, 2000.

RECOMMENDATIONS:

7. FBR to direct;
 - (i) the Commissioner IR, Zone-III, RTO-I, Karachi to revisit the said order u/s.122(A) of the ITO, 2001, passed by the Assistant / Deputy Commissioner, Unit-II, Range-IV, Zone-III, RTO-I, Karachi, u/s.122(4) of the ITO, 2001 vide Bar Code No.100000150879978 dated 19.06.2023, immediately as per law;

- (ii) the Chief Commissioner IR, RTO-I, Karachi to call for the explanation of the concerned Officer who has passed such patently illegal order;
- (iii) supervisory officers to ensure that subordinate officers act judiciously and strictly follow the law in letter and spirit; and
- (iv) report compliance within 30 days.


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

Dated: 1 : 08 : 2023

Approved for reporting


Director
FTO Secretariat
Islamabad