

**BEFORE  
THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**COMPLAINT NO.3726/KHI/IT/2022**

Dated 22.06.2022<sup>1</sup> R.O.Karachi

**Mrs. Ghazala Zafar,**

House No. 33/1, Khayaban-e-Rahat, Phase-6, 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 Representatives	: Mr. Aslam Shelot, ITP
Departmental Representatives	: Mr. Hamid Mukhtar, IRO, RTO-1, Karachi

**FINDINGS/RECOMMENDATION**

The complaint was filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against alleged illegal assessment order dated 27.06.2022 issued under section 122(1) of Income Tax Ordinance 2001 (the Ordinance) creating tax liability of Rs.212,300 for Tax year 2016.

2. Briefly, the department (Deptt) acquired definite information related to purchase of Toyota Corolla by the complainant and issued show cause notice under Section 122(9) read with section 122(5) & section 111 of Income Tax Ordinance (the Ordinance) on 09.05.2018 as the same was not declared in income tax return / wealth statement for Tax year 2016. The complainant submitted his reply on 14.05.2018 stating that the said vehicle was booked with Indus Motors for Rs. 1,839,000 and was sold before June 2016 without taking delivery or registration in the complainant's name.

<sup>1</sup> Date of registration in FTO Secretariat



Since there was no car in her name as on 30.06.2016 consequently not declared in the wealth statement for Tax year 2016. However, the Deptt without considering the reply, issued assessment order under section 122(1) of Income Tax Ordinance 2001 (the Ordinance) after four years on 27.06.2022 creating tax liability of Rs.212,300 for Tax year 2016; 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 thereto, the Commissioner-IR, Zone-II, RTO-1 Karachi vide letter dated 13.09.2022 submitted comments raising preliminary objection regarding bar of jurisdiction under Section 9(2)(b) of the FTO Ordinance on the ground of legal remedies being available under the Ordinance.

4. On merit, it was contended that the complainant failed to declare the purchase of the vehicle in her wealth statement and was not able to explain her source of investment. It was further stated that the written reply of the complainant with TFD acknowledgment could not be traced in the record. Hence the assessment order was lawfully amended after providing proper opportunity to the complainant.

5. Arguments of parties heard, and record perused.

6. The objection regarding bar of jurisdiction, raised under Section 9(2)(b) of the FTO Ordinance, is misconceived as the Complainant is not aggrieved against the assessment as such but against an illegal assessment order which was issued without considering the reply of the complainant. Hence, the objections are being overruled.



7. Perusal of the impugned order dated 27.06.2022 alongwith assessment record reveals that only one show cause notice was issued on 09.05.2018 by Mrs. Komal Altaf, DCIR, Unit-II, Zone-IV, RTO-1 Karachi. The complainant submitted his reply on 14.05.2018 stating that the said vehicle was booked with Indus Motors for Rs. 1,839,000 and was sold before June 2016 without taking delivery or registration in the complainant's name. Since there was no car in her name as on 30.06.2016 consequently not declared in the wealth statement for Tax year 2016. The complainant has submitted evidence of acknowledgement of receipt of his reply at TFD counter. The Deptt slept over the proceedings for four years and when it was going to be time barred, an assessment order was passed on 27.06.2022 by a new officer Mr. Aamir Hussain, DCIR without issuing a fresh notice.

8. Thus, the author of the order did not issue even a single notice. He passed an assessment order without providing any opportunity of hearing and without considering the reply of the complainant. This decision of author of the order is contrary to law, rules or regulations and is a departure from established practice or procedure. It also shows neglect, inattention, delay, incompetence, inefficiency, and ineptitude, in the administration or discharge of duties and responsibilities. Further, this is also very unfortunate that the supervisory Officer / Commissioner in his parawise comments dated 13.09.2022 instead of taking Suo moto corrective action; tried to defend the assessment order by simply saying that the reply of the complainant was not found on record and the assessment order was lawfully amended after providing proper opportunity to the complainant.

9. Thus, the impugned order dated 27.06.2022 passed after 04 years of the issuance of show cause dated 9<sup>th</sup> May, 2018, and without considering the reply of the complainant or providing any opportunity is not only contrary to law, rules or regulations, a departure from established practice or procedure, but also is perverse, arbitrary, unreasonable, unjust, biased and oppressive causing administrative excesses, contrary to the principle of natural justice hence, unlawful per se.

**FINDINGS:**

10 Passing of impugned order dated 27.06.2022 without considering the reply of the complainant and without providing any opportunity causing administrative excesses is tantamount to maladministration, in terms of Section 2(3)(i)(a),(b)& (ii) of the FTO Ordinance.

**RECOMMENDATIONS:**

11. FBR to-

- (i) direct the Commissioner –IR, Zone-II, RTO-I, Karachi to revisit the impugned order dated 27.06.2022 for Tax Year 2016 in terms of Section 122A of the Ordinance, after affording proper opportunity of hearing and as per law; and
- (ii) report compliance within 45 days

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

Dated: 29 : 9 : 2022

*Approved for reporting*

*Certified to be True Copy*

Registrar  
FTO Secretariat  
Islamabad