

**BEFORE  
THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**Complaint No.3886/KHI/IT/2022**

Dated 31.08.2022<sup>1</sup> R.O. Karachi

**Mr. Shahzad,**

Plot # B-30/A, Near Super Store Chowk (BAH),  
Scheme-33, Phase-1, SITE-II,  
Super Highway Ahsanabad, Karachi.

...Complainant

**Versus**

The Secretary,  
Revenue Division,  
Islamabad

....Respondent

Dealing Officer	: Mr. Badruddin Ahmad Quraishi Advisor
Appraisal Officer	: Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	: Nemo
Departmental Representative	: Mr. Saleem Hussain, DCIR, CTO Karachi.

**FINDINGS/RECOMMENDATION**

The above-mentioned complaint was filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against failure of the department (Deptt) to allow appeal effect order in compliance to Appellate Tribunal decision dated 06.06.2022 for Tax year 2014 and subsequent issuance of refund order & additional payment against delayed refund.

2. The Complainant, a business individual filed income tax return for Tax Year 2014 under Section 114(1) of the Income Tax Ordinance 2001 (the Ordinance). The Deptt selected the case for audit through computer ballot and issued assessment order dated 30.11.2020 creating tax liability of Rs.12.973 million. During pendency of appeal, the Deptt recovered Rs.1.506 million through attachment of bank account. The Commissioner Appeals –III Karachi vide order dated 18.03.2022 confirmed order of the

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

Assessing Officer due to non-compliant attitude of the complainant. However, the Appellate Tribunal Karachi vide order no. 749/KB/2022 dated 06.06.2022 annulled the orders passed by both the lower authorities being void ab-initio and without jurisdiction. The Complainant requested for appeal effect order vide letters dated 21.07.2022 & 12.08.2022 but without any success; hence this complaint. The Complainant prayed for appeal effect order, refund order against recovery of Rs.1,506 million and additional payment against delayed refund.

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 Chief Commissioner-IR, CTO Karachi vide letter dated 16.09.2022 submitted comments of Commissioner –IR Audit-II, CTO Karachi dated 15.09.2022 stating that the appeal effect order under section 124/129 of the Ordinance for Tax year 2014 determining refund of Rs. 1.506 million had already been issued on 15.09.2022 in compliance to ATIR's decision.

4. Arguments of parties heard and record perused.

5. It is a matter of fact that the Deptt selected the case for audit through computer ballot and created tax liability of Rs.12.973 million for Tax year 2014 vide assessment order dated 30.11.2020. During pendency of appeal, the Deptt recovered Rs.1.506 million through attachment of bank account. The Appellate Tribunal Karachi vide order no. 749/KB/2022 dated 06.06.2022 annulled the orders passed by both the lower authorities being void ab-initio and without jurisdiction. As a result of ATIR order, the refund automatically

became due on the date of receipt of the order by the Commissioner in terms of Section 171(2)(a) of the Ordinance which states:

*"171. Additional payment for delayed refunds. — (1) Where a refund due to a taxpayer is not paid within three months of the date on which it becomes due, the Commissioner shall pay to the taxpayer a further amount by way of compensation at the rate of KIBOR plus 0.5 per cent per annum of the amount of the refund computed for the period commencing at the end of the three-month period and ending on the date on which it was paid.*

*Provided that where there is reason to believe that a person has claimed the refund which is not admissible to him, the provision regarding the payment of such additional amount shall not apply till the investigation of the claim is completed and the claim is either accepted or rejected.*

*(2) For the purposes of this section, a refund shall be treated as having become due —*

*(a) in the case of a refund required to be made in consequence of an order on an appeal to the Commissioner (Appeals), an appeal to the Appellate Tribunal, a reference to the High Court or an appeal to the Supreme Court, on the date of receipt of such order by the Commissioner*

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As can be observed from the above-mentioned provision, the Complainant has become entitled to additional payment for delayed refund under Section 171(1) of the Ordinance which is required to be paid from the three months of the date on which the Commissioner had received the order of the Appellate Tribunal dated 06.06.2022 ending on the date on which the refund was paid.

#### **FINDINGS:**

6. Inordinate delay in payment of income tax refund for Tax Year 2014 is tantamount to maladministration, in terms of Section 2(3)(ii) of the FTO Ordinance.

#### **RECOMMENDATIONS:**

7. FBR to direct-

- (i) concerned Commissioner –IR, Enforcement CTO Karachi to issue refund order for Tax year 2014 under

section 170(4) of the Ordinance and settle the additional payment for delayed refund under Section 171(1) of the Ordinance for Tax Year 2014, after providing him the opportunity of hearing, as per law; and

- (ii) report compliance within 45 days.

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

Dated: 14 : 10 : 2022

*Approved for reporting*

Certified to be True Copy

Registrar  
FTO Secretariat  
Islamabad