THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

ComplaintNo.3937/SGD/IT/2022
Dated 05.09.2022* R.O. Sargodha

Mr. Mushtaq Ahmad Khan,
Mardwal Post Office Khas
Tehsil & District Khushab. ...Complainant

Versus

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

Dealing Officer	: Dr. Muhammad Akram Khan, Advisor
Appraisal by	: Muhammad Tanvir Akhtar, Advisor
Authorized Representative	: Complainant in person
Departmental Representative	: Ms. Anum Ilyas, ACIR, RTO, Sargodha.

FINDINGS/RECOMMENDATIONS

This complaint has been filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000(FTO Ordinance) against non-issuance of refund of Rs.0.280 million for Tax Years 2019 to 2021, an excessive tax deducted from salary.

2. Precisely, the complainant is a husband of late Mst. Raheela Nusarat who was PET (EST) teacher in Govt. Girls high school Kheora District Khushab. During service, she died on 25.08.2018 due to the heart attack. Among other benefits, her family received salary till the date of superannuation i.e. 20.09.2021. According to the Complainant, the District Account Office deducted excessive tax which was unlawful and biased. Neither District Account Office helped them nor local tax office refunded the tax deducted unlawfully as no tax was leviable on the income of the deceased. Being aggrieved, the Complainant filed the instant complaint.

3. The complaint was sent for comments to the Secretary, Revenue Division, in terms of Section 10(4) of the FTO Ordinance,

* Date of registration in FTO Sectt:

2000read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response thereto, the Chief Commissioner IR, RTO, Sargodha vide letter dated 21-09-2022 submitted parawise comments of the Commissioner-IR, Zone-II, RTO, Sargodha dated 19.09.2022. On merits, it was contented that as per online verification, the deceased Ms. Raheela Nusarat was an existing taxpayer and got registered herself with FBR on 27.11.2013. As salaried person, she did not file any tax return till her death. As per record, statutory notices u/s 114(4) of the Income Tax Ordinance,2001 for the Tax Years 2015 to 2021 were issued but remained un-responded so far. Further contended both of them did not file any return or any relevant documents in this regard. However, Section 87 of the Income Tax Ordinance, 2001 deals in deceases individual, which is reproduced for ready reference as under: -

> "***Deceased individuals (1) The legal representative of a deceased individual shall be liable for____***
>
> ***a) Any tax that the individual would have become liable for if the individual had not died; and***
>
> ***b) Any tax payable in respect of the income of the deceased's estate.***
>
> ***2) The liability of the legal representative under this section shall be limited to the extent to which the deceased's estate is capable of meeting the liability.***
>
> ***(2A) The liability under this ordinance shall be the first charge on the deceased's estate.]***
>
> ***3) For the purpose of this Ordinance,***
>
> ***(a) Any proceeding taken under this ordinance against the deceased before his or her death shall be treated as taken against the legal representative and may be continued against the legal representative from stage at which the proceeding stood on the date of the deceased's death; and***
>
> ***(b) Any proceeding which could have been taken under this Ordinance against the deceased if the deceased had survived may be taken against the legal representative of the deceased.***
>
> ***(4) In this section, "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the***

deceased and where a party sues or issued in representative character the person on whom the estate devolves on the death of the party so suing or sued."

Therefore, Deptt was un-able to proceed further due to the absence of returns/refund applications of tax deductions for the alleged period of 25.08.2018 to 20.09.2021. However, if he files returns with all necessary documents in the light of provisions of Section 87 of the Income Tax Ordinance 2001 department can proceed further in this matter, as per law.

4. During hearing, Complainant contended that his wife died in 2018 during service and he received her salary for the remaining periods upto superannuation i.e. 20.09.2021 in accordance with relevant package and tax was deducted which is refundable being tax charged on the deceased. He has claimed total tax withheld as refund in his own return for the Tax Year 2021. Deptt stated that being legal representative, he is required to file return of income for all the years with proof of tax deductions on behalf of his deceased wife as envisaged under Section 87 of the Income Tax Ordinance, 2001 so that refund for Tax Years 2019 to 2021 will be processed as per law.

5. It is admitted that due to death in service, the legal representative received the salary for remaining period till the superannuation. There is no express provision in Income Tax Ordinance, 2001 that exempts from tax, salary received by the legal heirs of the deceased. Hence provisions of Section 87 are quite clear and unambiguous. However, Section 12(7) of the Income Tax Ordinance, 2001 guides us on tax treatment of salary received in arrears. Relevant provisions are reproduced as below:

"***(7) Where –***

(a) any amount chargeable under the head "salary is paid to an employee in arrears; and

(b) as a result, the employee is chargeable at higher rates of tax than would have been applicable if the amount had been paid to the employee in the tax year in which the services were rendered,

The employee may, by notice in writing to the Commissioner, elect for the amount to be taxed at the rates of tax that would have been applicable if the salary had been paid to the employee in the tax year in which the services were rendered.

(8) An election under sub-section (6) or (7) shall be made by the due date for furnishing the employee's return of income or employer certificate, as the case may be, for the tax year in which the amount was received or by such later date as the Commissioner may allow."

Prima facie, deduction of tax on the salary is at very high rate in this case, whereas, the rates of tax in Tax Years 2019 to 2021 given here under are quite low;

For Tax Year 2019

Sr. No.	Taxable Income	Rate of Tax
1	Where the taxable income does not exceed Rs. 400,000/-	0%
2	Where the taxable income exceeds Rs.400,000/- but does not exceeds Rs.800,000/-	Rs. 1000/-
3	Where the taxable income exceeds Rs.800,000/- but does not exceeds Rs.1200,000/-	Rs. 2000/-

For Tax Year 2020 & 2021

Sr. No.	Taxable Income	Rate of Tax
1	Where the taxable income does not exceed Rs. 600,000/-	0%
2	Where the taxable income exceeds Rs.600,000/- but does not exceeds Rs.1200,000/-	5%

FINDINGS:

6. In view of supra circumstances, it is crystal clear that deductions were made by the Distt. Account Office on the salary at higher rate against the rates as mentioned in the ordinance. On the other hand, the Complainant was also required to file the returns of income for Tax Years 2019 to 2022 as legal representative of his

deceased wife in the light of provisions of Section 87 of the Income Tax Ordinance 2001.

RECOMMENDATIONS:

7. The Deptt is bound to facilitate the complainant, honoring the spirit of the Government policy whereby families of the deceased government servants are helped by giving salary and other benefits. The process of facilitation must not be stuck in legal literalism. **Therefore, the concerned Commissioner-IR is directed to assist, guide and accommodate the Complainant in filing of returns of the relevant Tax Years as per Section 12 (7)(8) read with Section 87 of the Income Ordinance, 2001 and process refund, as per law. The Complainant is also advised to submit all requisite documents to the department for early completion of the proceedings. Subsequent to the filing of documents by the Complainant, compliance report is required to be submitted by the department within 45 days.**

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

Dated: 4 : 11 : 2022

Approved for reporting