

**THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**COMPLAINT NO.3944/KHI/ST/2023**

Dated 12.07.2023 \* R.O. Karachi

**Muhammad Riaz, CNIC 4220163725713, Proprietor**  
M/s Riyaz Sahaab,  
S-1, Plot 16-D, 2<sup>nd</sup> Floor, Block 2,  
PECHS, Karachi

...Complainant

**Versus**

The Secretary,  
Revenue Division,  
Islamabad.

...Respondent

Dealing Officer	: Mr. Badruddin Ahmad Quraishi Advisor
Appraising Officer	: Mr. Muhammad Nazim Saleem, Advisor
Authorized Representatives	: Mr. Ammad Mehmood, Advocate
Departmental Representatives	: Mr. Iltaf Hussain Memon, A.D. Audit, CTO 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

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- i) penalty order vide OIO(Order in original) # 413/2021 dated 29.10.2021 imposing penalty of Rs. 1,000,000/
  - ii) subsequent action of sealing business premises vide order dated 27.01.2023 and recovery of penalty of Rs.500,000/
  - iii) Commissioner Appeal's VII Karachi Order 41/23 dated 21.06.2023.

2. Briefly, the Complainant, an individual and falling under Tier-1 Retailer, is aggrieved against impugned OIO No.413 of 2021 dated 29.10.2021 passed by Inland Revenue Audit Officer (IRAO) , Enforcement -II, CTO Karachi allegedly imposing penalty of Rs.1,000,000 on account of non-integration with POS without lawful

authority and beyond his jurisdiction. As per complaint, the said Officer did not have any authority to issue the impugned order of penalty in view of honourable Sindh High Court decision dated 23.11.2022 in CP No.D-1356/2022 wherein the Honourable High Court confirmed the administrative decision of the FBR dated 28.10.2015 that the Officers of Audit Cadre in IRS shall not be posted as Unit-In-Charge in field formations and shall not be assigned assessment related functions and duties. In addition, Honourable Lahore High Court in case of Shahbaz Hussain Vs Federation of Pakistan in ICA No.50591 / 2021 also declared that Section 33 in general and entry at S.No.25 in particular does not empower any Officer Inland Revenue (OIR) to issue show cause notice or adjudication thereof under the said section without recourse to section 11 of the Sales Tax Act (the Act).

3. As per complaint, the IRAO on the basis of alleged illegal order, issued recovery notice on 11.03.2022 for recovery of penalty amounting to Rs.1,000,000 and subsequently, the business premises was sealed. However, it was de-sealed on payment of 50% of penalty amounting to Rs.500,000/. Later on, the Commissioner-IR Appeals-VII, Karachi confirmed the imposition of penalty vide order dated 21.06.2023 without recording arguments of the complainant on the basis of illegal OIO issued by IRAO without any jurisdiction. The Complainant quoted several case laws of honourable Supreme Court of Pakistan reported as PLD 1958 Supreme Court 104, 2007 SCMR 1835, 2007 SCMR 729 whereby it was held that " *if on the basis of a void order subsequent orders have been passed either by the same authority or by other authorities, the whole series of such orders, together with the superstructure of rights and obligations built upon them, must , unless some statute or principle of law recognizing as legal the changed position , of the parties is in operation, fall to the ground because such orders have as little legal foundation as the void*

*order on which they are founded."* Accordingly, the complainant prayed to declare the impugned OIO dated 29.10.2021 as well as subsequent actions and orders by the Departmental Officer (s) including recovery of penalty as well as the CIR(A)'s order dated 21.06.2023 were illegal, void abinitio and without any legal authority.

4. 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 submitted parawise comments vide letter dated 24.07.2023. At the outset, preliminary objection regarding bar of jurisdiction, was raised under Section 9(2)(b) of the FTO Ordinance on the ground that the matter was related to assessment of income, determination of tax liability and interpretation of law against which remedies of appeal was available.

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5. On merit it was contended that the section 11(2) of the Act authorizes "An Officer of Inland Revenue" to issue show cause notice and pass order under section 11(2) of the Act. Section 2(18) read with section 30 of the Act clearly defines "Inland Revenue Audit Officer" as an authority; hence the order was issued by a legal authority.

6. The Commissioner (Appeals-VII) Karachi vide letter dated 07.08.2023 submitted comments stating that that the impugned OIO dated 29.10.2021 as well as subsequent recovery notice were issued by IRAO on point of holding jurisdiction and lawful authority in view of section 30 of the Act. The commissioner (Appeals-VII) also raised preliminary objection regarding bar of jurisdiction, under Section 9(2)(b) of the FTO Ordinance on the ground that the matter was related to assessment of income, determination of tax liability and interpretation of law against which remedies of appeal was available.

7. During hearing, the complainant pointed out the decision dated 21.06.2023 of the Commissioner (Appeals-VII) Karachi as well as his parawise comments confirming the imposition of penalty of Rs. 1,000,000/ while referring to clause 25A of Section 33 of the Act. The said clause was introduced on 15.09.2021 whereas the OIO dated 29.10.2021 reveals that the show cause notice to impose penalty under this clause was dated 26.08.2021 meaning thereby that this particular clause 25A of Section 33 of the Act was not in existence when this show cause notice dated 26.08.2021 was issued. Accordingly, when the basic show cause notice was not issued with any legal force and in the absence of clause 25A of Section 33 of the Act at the time of issuance of the show cause notice, the whole super structure of OIO and subsequent Appellate Order of Commissioner (Appeals VII) would become illegal and abinitio void.

8. Arguments of parties heard and record perused.

9. The preliminary objection regarding bar of jurisdiction, raised under Section 9(2)(b) of the FTO Ordinance, is misconceived as the Complainant was aggrieved on imposition of penalty by an Officer without having the lawful jurisdiction. Further the honourable Supreme Court of Pakistan while deciding the civil petition for special leave to Appeal no. 788 of 1984 dated 07.11.1988 states:

*"One of the conditions for grant of relief in writ jurisdiction of the High Court is that petitioner before it should not have any alternate adequate remedy. In this case, a remedy by way of appeal, as mentioned in the impugned order, was such remedy. Therefore, it is correct that no relief could be granted to the petitioner under article 199 of the Constitution. But that does not mean that the petitioner has not been allowed any relief by the departmental authorities ( despite the observation of the supreme Court) the petitioner would have no immediate remedy at all against the highhandedness of the department.*

*Amongst others he can file a complaint and grievance application before the Federal Ombudsman, who can provide effective redress, in a case like the present one. That forum has several attributes of a Court in many aspects of its powers. It can also move in a matter promptly whenever so needed. At the same time, it does not suffer from some of the handicaps, due to technicalities of procedural nature, which operates as impediment or thwart such like action by the Courts. For example the limitation of non-availability of alternate remedy in this case for the High Court under Article 199 of the Constitution, is not applicable to the said forum. Besides, the same being quasi-judicial it is also headed by a*

*judge of the Supreme Court, with similar powers to punish for contempt. In this context therefore, it can be safely concluded, that it can provide the alternate effective and adequate remedy to the petitioner also.*

*With the foregoing observations and remarks, leave to appeal is refused in the circumstance of this case, due to the technical hurdle faced by the petitioner in High Court. He may file a complaint before the Ombudsman."*

Hence, the preliminary objection regarding bar of jurisdiction being misconceived, is overruled.

10. Evidently, the show cause notice dated 26.08.2021, OIO dated 29.10.2021 & recovery notice were issued by an IRAO without lawful authority and beyond his jurisdiction in view of decision of honourable Sindh High Court decision (SHC) dated 23.11.2022 in CP No.D-1356/2022 as referred supra wherein the Honourable High Court confirmed the decision of the FBR dated 28.10.2015 that the Officers of Audit Cadre in IRS shall not be posted as Unit Incharge in field formations and shall not be assigned assessment related functions and duties. The decision of the honourable SHC has been challenged by the aggrieved party but the Honourable Supreme Court has not suspended the order of SHC yet meaning thereby that the judgment of the SHC is in the field. In addition, FBR till date has not withdrawn its direction dated 28.10.2015. Therefore, it can be concluded without any iota of doubt that the show cause notice dated 26.08.2021, OIO dated 29.10.2021 & recovery notice issued by IRAO were illegal, coram non-judice and abinitio void.

11. In addition, the Commissioner (Appeals-VII) Karachi vide order dated 21.06.2023 confirmed the imposition of penalty of Rs. 1,000,000/ under clause 25A of Section 33 of the Act. The basic foundation i.e; the show cause notice to impose penalty under this clause was issued on 26.08.2021 by the IRAO whereas this clause was introduced into the Act on 15.09.2021. This clause was not in existence when this show cause notice dated 26.08.2021 was issued to impose penalty. Hence,

the show cause notice dated 26.08.2021 was patently illegal on this ground as well.

12. Under the given circumstances and the position of law as well as the facts of the case, the show cause notice dated 26.08.2021, OIO dated 29.10.2021 & recovery notice issued by IRAO were patently illegal, coram non judice and abinitio void. The subsequent order issued by the Commissioner (Appeals-VII) Karachi dated 21.06.2023 upholding the illegal order of IRAO is also abinitio void because as discussed earlier. The Larger Bench of the Honourable Supreme Court of Pakistan in "Yousuf Ali Vs Muhammad Aslam Zia & Others" cited as PLD 1958 Supreme Court 104 has held that:

"if on the basis of a void order subsequent orders have been passed either by the same authority or by other authorities, the whole series of such orders, together with the superstructure of rights and obligations built upon them, must, unless some statute or principle of law recognizing as legal the changed position, of the parties is in operation, fall to the ground because such orders have as little legal foundation as the void order on which they are founded."

13. Further, it will not be out of context to mention here that the matter of jurisdiction is mandatory for court to decide at first instance and this can be raised at any stage as settled by the Honourable Supreme Court of Pakistan in the case reported as 2008 SCMR 240 Izhar Alam Farooqi Vs Sheikh Abdul Sattar Lasi and others in C.P.L.As nos. 488-K & 489-K of 2006 decided on 17.11.2006 wherein the Honourable Supreme Court has held,

"---- Jurisdiction could not be assumed with consent of parties --

Mandatory for court to decide at first instance question of its jurisdiction, even though such question not raised by a party ---- Jurisdictional defect would not be removed by mere conclusion of trial or inquiry---- Objection to jurisdiction could be raised at any subsequent stage'

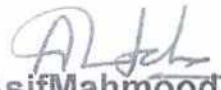
**FINDINGS:**

14. Upholding the patently illegal, coram non judice and abinitio void order of IRAO dated 29.10.2021 is contrary to law and procedure and is against the principle of natural justice; hence, unlawful *per se*; and tantamounts to maladministration, in terms of Section 2(3)(i)(a)(b)(c) & (ii) of the FTO Ordinance.

**RECOMMENDATIONS:**

15. FBR to:-

- (i) direct the Commissioner-IR (Appeal-VII), Karachi to rectify the order dated 21.06.2023 on his own motion or upon application filed by complainant as per discussions in para 09-12 after providing opportunity of hearing on its merit and in accordance with law;
- (ii) the Member IR (Ops) & Member (Admn) to look into violation of Board's circular no.2467-IR-I/2015 dated 28.10.2015 despite confirmation from Honourable SHC; and issue fresh instructions to all Inland Revenue field formations accordingly; and
- (iii) report compliance within 45 days

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

Dated: 4:9:2023

*Approved for reporting*

  
Director  
FTO Secretariat  
Islamabad