THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NOS. 4428 TO 4491, 4493 TO 4517, 4519 TO 4544 AND 4547 TO 4555/LHR/IT/2024

Dated: 31.05.2024*RO, Lahore

Misc. Complaints of Part Time Students, Artists, Artisans, Other Performers of Art and Culture Punjab Council and Arts. (Detail of Complainants as per Annexure-I) ...Complainant
C/o Zafar Associates, 8-G, Gurmani Road,
Gulberg-II, Lahore.

Versus

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

Dealing Officer	:	Dr. Ahmad Shahab, Advisor
Appraised by	:	Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	:	Syed Nasir Ali Shah, Attorney at Law
Departmental Representative	:	Mr. Ali Asjad, DCIR RTO Lahore

FINDINGS/RECOMMENDATIONS

The above-mentioned complaints were filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against deduction of withholding tax under section 156 of the Income Tax Ordinance, 2001 (the Ordinance) on payments received by the complainants from Punjab Council of Arts and Culture, Lahore. All these complaints have identical issues and are therefore being disposed of through a single consolidated order.

2. Brief facts of the case are that the complainants are students of art and music at different academies/institutions. As part timers they participate in the Music and Art events and functions organized by the Punjab Council of Arts and Culture for which they receive payments in the form of participation fees, honoraria etc. They belong to different categories of performing arts like extras, singers, musicians' puppeteers, painters, comedians, compares, poets,

*Date of registration with FTO Secretariat painters etc. for which they are paid amount as low as Rs.2500/- and majority of them do not receive more than Rs.25000/- per annum. However, while making payments, the Punjab Council of Arts and Culture deducts withholding tax u/s 156 of the Income Tax Ordinance, 2001, @ 20% from filers and 40% from non-filers. The complainants admittedly are from the poor and marginalized section of the society as is evident from the payments received by them and are adversely affected in monetary terms due to these exorbitant rates of withholding tax. Hence all these complaints

3. The complaints were referred to the Secretary Revenue Division Islamabad 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 RTO Lahore vide letter dated 18.04.2024, furnished parawise comments contending therein that the students/artists, artisans and other performers participate in the competitions arranged by the Punjab Council of Arts and win **prize money** so withholding tax @ 20% for filers and @ 40% for non-filers is liable to be deducted from their payments under section 156 of the Income Tax Ordinance 2001. The payments made to the complainants is prize money and section 156 of the Income Tax Ordinance, 2001 does not specify any exemption limit below which no deduction is to be made. It was further stated that amendment in law is required for non-deduction of tax u/s 156 of the Ordinance from the poor students/casual artists who have no regular source of income. The department has also averred that issue under consideration is a matter of interpretation of law and therefore falls outside the ambit of Hon'ble FTO under section 9(2)(b) of the FTO Ordinance.

4. During the course of hearing, both AR and DR reiterated their respective stance taken in the complaints and parawise comments. The Representative of the Punjab Council of Arts and Culture argued that the purpose of the payments made to the complainants was to encourage/assist the poor artists so that they may pursue their goals in the field of arts, music and allied fields with single minded devotion. The payments are in the nature of participation fees and honoraria and by doing so the Arts Council is endeavoring to promote art and culture in the society at large.

5. All the parties heard and record perused.

6. The perusal of the record reveals that all these complainants are basically students of traditional Art and Culture, who are undergoing traditional education and training at various academies. They occasionally participate on invitation in the events of Music and Art organized by the Punjab Council of Arts and Culture Lahore. The DR of Punjab Council of Arts, during course of hearing also submitted a written statement about the nature of such payments. According to the above referred statement, it has been clarified that these payments are not prize money. In facts, the payments are participation fees, honoraria and financial assistance to the students & amateur artists. Thus the underlying issue is the nature of payment made to the students of Art and Culture. The Punjab Council of Arts has categorically explained, as referred to above, that payments do not constitute prize money or winnings from competitions but are participation fee/honoraria etc. However, contrary to this the department in their parawise comments and also during hearing stated that it is prize money on which withholding tax is to be deducted u/s 156 of the Income Tax Ordinance, 2001. For

the sake of clarity and ready reference, the above referred provision of law is reproduced below:

> **"156. Prizes and winnings. -**
>
> **(1) Every person paying prize on a prize bond, or winnings from a raffle, lottery. prize on winning a quiz, prize offered by companies for promotion of sale. or cross-word puzzle shall deduct tax from the gross amount paid at the rate specified in Division VI of Part III of the First Schedule.**
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> **(2) Where a prize, referred to in sub- section (1), is not in cash, the person while giving the prize shall collect tax on the fair market value of the prize.**
>
> **(3) The tax deductible under sub-section (1) or collected under (sub-section (2) shall be final tax on the income from prizes or winnings referred to in the said sub- sections."**

7. A plain reading of the above provision of law clearly shows that it is applicable to the following:

(i) A prize on winning prize bond

(ii) Winnings from a raffle, lottery

(iii) Prize on winning a Quiz

(iv) Prize offered by companies on promotion of sale

(v) Prize on crossword puzzle.

The payment in question, made to the complainants can neither be equated with a prize won through a prize bond or through a raffle or lottery nor it falls in the category of prize on winning a quiz or a crossword puzzle, nor can it be considered by any stretch of imagination prize offered by companies on promotion of sales.

8. The law has very explicitly enumerated the specific activities or items which attract the application of section 156 of the Ordinance. The department has erred in presuming without any concrete evidence that the payments made to the complainants are on account of participation in competitions. The department could

not bring any evidence to refute the stance of the complainants that payments were in the nature of participation fees, honoraria or by way of financial assistance. Secondly, not every prize falls in the ambit of section 156 of the Ordinance and therefore is not liable to deduction of withholding tax. Section 156 is applicable to only those prizes specifically mentioned in sub-section (1) of section 156. The generally established principle emanating from judicial pronouncements is that law is to be read and understood through the plain reading of law and it is not to be read between the lines. The department's contention that redressal of grievance of the complainants requires amendment in law is not correct because section 156 as it exists presently does not cover the payments made to the complainants and so is not applicable to them. Rather payments under consideration are on account of services rendered and attract the provisions of section 153(1)(b).

9. The department's contention that the matter involves interpretation of law and therefore falls outside the ambit of the Hon'ble FTO in terms of section 9(2)(b) of the FTO Ordinance is misconceived as the matter pertains to the correct ascertainment or determination of nature of payment. Participation fee or honoraria or financial assistance are distinct from prizes mentioned in section 156(1) of the Ordinance and can also be readily distinguished/differentiated from prizes won in a competition.

10. **FINDINGS:**

(i) The complainants are being unduly subjected to excessive withholding tax @ 20% (for filers) and 40% (for non-filers). Perusal of complaints/information furnished reveals that majority of payments to these complainants are meager and fall in the range of

Rs.2500 to Rs.25,000. Most of the cases fall below 10,000. The plain reading of above referred provision of law i.e. section 156 clearly shows that aforementioned payments cannot be brought within the ambit of prizes won in the categories mentioned in the section 156 of the Ordinance and consequently rates of filers and non-filers are not applicable in the case of complainants.

(ii) As a matter of fact, all the complainants are rendering services like part time workers of movies & theatre and payments made to them are liable to withholding tax under section 153(1)(b) of Income Tax Ordinance, 2001; which is reproduced hereunder:-

"Payments for goods, services and contracts. -

(1) Every prescribed person making a payment in full or part including a payment by way of advance to a resident person:

(b) for the rendering of or providing of services except where payment is less than thirty thousand Rupees in aggregate, during a financial year;"

(iii) The complainants are low paid students/artists and most of them are not even liable to file the returns of income

Thus, excessive and unjustified charging of withholding tax under a wrong section i.e. u/s 156 which has caused undue hardship to the poor and marginalized section of society is a clear instance of maladministration in terms of section 2(3)(1)(a)(b)(c) and (ii) of FTO Ordinance, 2000.

RECOMMENDATIONS:

11. FBR to direct the concerned CIR, WHT Zone RTO Lahore to immediately;

(i) issue instructions to the deducting authority, Punjab Council of Arts for not making deduction u/s 156 of the Ordinance;

(ii) ensure that tax deductions, wherever applicable, are made under the relevant section i.e. 153(1)(b) of the Ordinance;

(iii) ensure that the withholding agent doesn't withhold tax, wherever payments made to one person are less than thirty thousand Rupees in aggregate, during a financial year; and

(iv) report compliance within 60 days.

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

Dated: 6.8.2024
Akif

Approved for reporting

Annexure-I

Sr. No.	Complaint No.	Complainants Name
1	4428/LHR/IT/2024	Mr. Imtiaz Haider
2	4429/LHR/IT/2024	Mr. Imtiaz Haider
3	4430/LHR/IT/2024	Mr. Ejaz Ali
4	4431/LHR/IT/2024	Mr. Khalid Mahmood Siddiquie
5	4432/LHR/IT/2024	Mr. Muhammad Aslam
6	4433/LHR/IT/2024	Rana Muhammad Shuja Ehsan
7	4434/LHR/IT/2024	Mr. Muhammad Ashraf
8	4435/LHR/IT/2024	Mr. Anjum Saleemi
9	4436/LHR/IT/2024	Ms. Samreen Akram
10	4437/LHR/IT/2024	Khawaja Khalid Moin
11	4438/LHR/IT/2024	Mr. Ali Raza
12	4439/LHR/IT/2024	Mr. Aleem Ullah
13	4440/LHR/IT/2024	Mr. Zafar Ali Choundhary
14	4441/LHR/IT/2024	Mr. Niaz Ali Mohsin
15	4442/LHR/IT/2024	Mr. Khurram Altaf
16	4443/LHR/IT/2024	Mr. Shabbir Ahmad Qadri
17	4444/LHR/IT/2024	Mr. Majid Mushtaq
18	4445/LHR/IT/2024	Mr. Ghulam Jilani
19	4446/LHR/IT/2024	Ms. Kousar Ali
20	4447/LHR/IT/2024	Mr. Muhammad Shafique Shahzad
21	4448/LHR/IT/2024	Mr. Madai Hussain
22	4449/LHR/IT/2024	Mr. Muhammad Altaf
23	4450/LHR/IT/2024	Mr. Sajid Ali
24	4451/LHR/IT/2024	Mr. Sajjad Hussain
25	4452/LHR/IT/2024	Mr. Ahmad Ali
26	4453/LHR/IT/2024	Mr. Rashid Ali
27	4454/LHR/IT/2024	Mr. Ali Raza
28	4455/LHR/IT/2024	Ms. Nisbat Bibi
29	4456/LHR/IT/2024	Ms. Sehar Ali
30	4457/LHR/IT/2024	Mr. Shahbaz Tanveer
31	4458/LHR/IT/2024	Mr. Muhammad Hafeez Ullah Khan
32	4459/LHR/IT/2024	Mr. Muhammad Jalil Aali
33	4460/LHR/IT/2024	Mr. Ghulam Jaffar

34	4461/LHR/IT/2024	Mr. Shafqat Hussain
35	4462/LHR/IT/2024	Mr. Arif Hussain Bukhari
36	4463/LHR/IT/2024	Mr. Riaz ul Haq Tahir Riaz Majeed
37	4464/LHR/IT/2024	Mr. Riaz Ahmad
38	4465/LHR/IT/2024	Ms. Bushra Iqbal
39	4466/LHR/IT/2024	Mr. Muhammad Farooq
40	4467/LHR/IT/2024	Ms. Kousar Parveen
41	4468/LHR/IT/2024	Mr. Muhammad Asif
42	4469/LHR/IT/2024	Mr. Muhammad Safdar
43	4470/LHR/IT/2024	Ms. Nisbat Bibi
44	4471/LHR/IT/2024	Ms. Sobia Mazhar
45	4472/LHR/IT/2024	Ms. Farzana Aslam
46	4473/LHR/IT/2024	Ms. Anum Gull
47	4474/LHR/IT/2024	Mr. Rashid Mahmood
48	4475/LHR/IT/2024	Mr. Tariq Mahmood
49	4476/LHR/IT/2024	Mr. Abdul Waheed Nizamy
50	4477/LHR/IT/2024	Mr. Sahibzada Masud Ahmed
51	4478/LHR/IT/2024	Mr. Muhammad Ashraf
52	4479/LHR/IT/2024	Mr. Rashid Mahmood
53	4480/LHR/IT/2024	Mr. Muhammad Ghazanfar Ali
54	4481/LHR/IT/2024	Mr. Saeed Ahmad
55	4482/LHR/IT/2024	Mr. Nisar Ahmad
56	4483/LHR/IT/2024	Mr. Riaz ul Haq Tahir Riaz Majeed
57	4484/LHR/IT/2024	Mr. Riaz Ahmad
58	4485/LHR/IT/2024	Mr. Afzal Khan
59	4486/LHR/IT/2024	Mr. Munir Ahmad
60	4487/LHR/IT/2024	Mr. Muhammad Tahir
61	4488/LHR/IT/2024	Mr. Muhammad Arshad Mahmood
62	4489/LHR/IT/2024	Mr. Naseem Sehrai
63	4490/LHR/IT/2024	Ms. Sadaf Naqvi
64	4491/LHR/IT/2024	Mr. Muhammad Shafique Shahzad
65	4493/LHR/IT/2024	Mr. Muhammad Shabbir Ahmad Qadri
66	4494/LHR/IT/2024	Mr. Zain Manzoor
67	4495/LHR/IT/2024	Ms. Tehmina Afzal
68	4496/LHR/IT/2024	Mr. Niaz Hussain

69	4497/LHR/IT/2024	Ms. Ayesha Riaz
70	4498/LHR/IT/2024	Mr. Ahmad Ali
71	4499/LHR/IT/2024	Syed Ali Shan Shah
72	4500/LHR/IT/2024	Mr. Zulfiqar Ali
73	4501/LHR/IT/2024	Muhammad Aslam Rahi
74	4502/LHR/IT/2024	Mr. Sajjad Hussain
75	4503/LHR/IT/2024	Mr. Umar Hayat
76	4504/LHR/IT/2024	Mr. Zain Manzoor
77	4505/LHR/IT/2024	Mr. Aslam
78	4506/LHR/IT/2024	Mr. Hassan Raza
79	4507/LHR/IT/2024	Mr. Dilbar Hussain
80	4508/LHR/IT/2024	Mr. Muhammad Afzal
81	4509/LHR/IT/2024	Mr. Mushtaq Hussain Shah
82	4510/LHR/IT/2024	Mr. Shoaib Ahmad Asim
83	4511/LHR/IT/2024	Mr. Muhammad Azam
84	4512/LHR/IT/2024	Ms. Fizza Mukhtar
85	4513/LHR/IT/2024	Mr. Khadim Hussani Saqib
86	4514/LHR/IT/2024	Mr. Eid Ahmad
87	4515/LHR/IT/2024	Ms. Shahla Amber
88	4516/LHR/IT/2024	Ms. Maryam Umar
89	4517/LHR/IT/2024	Syed Zeeshan Ali Shah
90	4519/LHR/IT/2024	Mr. Jamal Abdul Nasir
91	4520/LHR/IT/2024	Mr. Zeeshan Akbar
92	4521/LHR/IT/2024	Mr. Jameel-ur-Rehman Parvana
93	4522/LHR/IT/2024	Mr. Abrar Ahmed Abbasi
94	4523/LHR/IT/2024	Mr. Shahid Ali
95	4524/LHR/IT/2024	Ms. Shahzia Naaz
96	4525/LHR/IT/2024	Ms. Hameeda Bibi
97	4526/LHR/IT/2024	Mr. Ditta G
98	4527/LHR/IT/2024	Ms. Rukhsana Sharif
99	4528/LHR/IT/2024	Mr. Mukhtiar Hussain
100	4529/LHR/IT/2024	Mr. Muhammad Ajmal
101	4530/LHR/IT/2024	Ms. Tahira Parveen
102	4531/LHR/IT/2024	Mr. Fayyaz Ahmad
103	4532/LHR/IT/2024	Mr. Jahangir Iqbal

104	4533/LHR/IT/2024	Mr. Ghulam Abbas
105	4534/LHR/IT/2024	Mr. Nadeem Riaz Malik
106	4535/LHR/IT/2024	Mr. Ali Raza
107	4536/LHR/IT/2024	Mr. Bashir Ahmad
108	4537/LHR/IT/2024	Mr. Sohail Ahmad Khan
109	4538/LHR/IT/2024	Mr. Muhammad Afzal
110	4539/LHR/IT/2024	Mr. Jaleel Ahmad
111	4540/LHR/IT/2024	Mr. Muhammad Akmal Shahzad
112	4541/LHR/IT/2024	Ms. Saima Hameed
113	4542/LHR/IT/2024	Ms. Ghazala Anjum
114	4543/LHR/IT/2024	Mr. Jamal Abdul Nasir
115	4544/LHR/IT/2024	Mr. Amjad Mahmood
116	4547/LHR/IT/2024	Mr. Shahid Ali
117	4548/LHR/IT/2024	Mr. Zafar Hussain
118	4549/LHR/IT/2024	Mr. Jamal Abdul Nasir
119	4550/LHR/IT/2024	Ms. Shahla Amber
120	4551/LHR/IT/2024	Mr. Sohail Ahmad Khan
121	4552/LHR/IT/2024	Mr. Shahid Ali
122	4553/LHR/IT/2024	Mr. Bashir Ahmad
123	4554/LHR/IT/2024	Ms. Sadaf Mehdi
124	4555/LHR/IT/2024	Mr. Shahid Ali