

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT No. 5007/PWR/IT/2023

Dated: 25.08.2023* R.O. Peshawar

Mst: Nighat Shaheen,
Daily Aaj Building, Waris Abad,
G.T.Road, Peshawar.

...Complainant

V e r s u s

The Secretary
Revenue Division
Islamabad.

...Respondent

Dealing Officer	: Mr. Ziauddin Wazir, Advisor
Appraisal by	: Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	: Mr. Muhammad Haroon, Advocate
Departmental Representative	: Mr. Yasir Nabi, DCIR, RTO, Peshawar.

FINDINGS / RECOMMENDATIONS

Complaint No. 5007/PWR/IT/2023 has been filed under Section 10 (1) of the Federal Tax Ombudsman, Ordinance, 2000 (FTO Ordinance) against RTO, Peshawar regarding alleged defective order of u/s 122(I) of ITO 2001 and issuance of refund to disputed account of M/s AAA Publication (Pvt) Ltd, instead of Complainant's personal account.

2. Brief facts of the case are that the complainant is Widow of Chief Executive of M/s AAA Publications (Pvt) Ltd (the company). RTO recovered Rs: 3,519,000/- from Complainant's account, being Director of the Company, and Rs: 20,000/- from Company's account, against liability of Rs: 29.557 million. Commissioner IR (Appeal) remanded the case back to Department to pass speaking order. RTO issued order u/s 24/122 of ITO 2001, creating refund of Rs:3,539,000/- in favour of the Company. The said Company applied for refund u/s 170 on 02.03.2023 which was allowed on 04.05.2023.

* Date of Registration in FTO Sectt.

The complainant prayed to issue directions to RTO, Peshawar to issue refund order if Rs: 3,519,000/- in favour the Complainant (Widow) and the amount be transferred to her personal account from where the recovery is made.

3. Complaint is referred to Secretary Revenue Division for departmental reply/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, RTO, Peshawar vide letter No.554 dated 11.09.2023, reported that the request of complainant to transfer refund to her personal account is not acceded to on the ground that recovery is made from Company and therefore refund is also issued in favour of Company.

4. Mr. Muhammad Haroon, Advocate (AR) and Mr. Usman Asif, DCIR, RTO, Peshawar (DR) attended hearing on 20.09.2023. According to AR, the Company's is in litigation due to family disputes after death of Chief Executive. He submitted a copy of letter dated 16.06.2017 issued by Recovery Officers of RTO, Islamabad in another case where it was directed to deposit back amount deducted from account of AR of the Company. According to AR, refund cheque should be in favour of complainant instead of Company. DR did not agree and contended that the Company claimed refund u/s 170 of ITO 2001 and therefore, the same issued in favour of Company. As regard letter dated 16.06.2017 issued in another case, RTO does not agree and contended that the amount once transferred could only be refunded u/s 170 of ITO 2001. According to DR, the complainant failed to substantiate her plea under statutory provision o ITO 2001 to issue refund to credit to her personal account.

FINDINGS:

5. AR, DR heard and record perused. The record shows that the assessing officer gave appeal effect, setting aside assessment and issued order u/s 124/129 of ITO 2001, creating refund which was claimed u/s 170 by the Company and allowed in favour of the Company. This position suffers from the following inconsistency:

Notwithstanding the facts stated above it is also on record that tax liability of the company was not recovered from other Directors/litigants rather Rs. Rs: 3,519,000/- was recovered from the from the Complainant's account, being Director of the Company. Justice requires that when the said amount is adjudicated as refundable, with the same fairness the amount must be credited to the A/C which was attached for recovery. As the amount in question was not recovered from Company's A/C or from other Directors therefore their claim on refund is not justified. FBR representing the state is not supposed to discriminate a widow merely on the basis of technical glitches.

Though currently Company's liquidation case is pending at High Court, yet as the amount in question has not been recovered from Company's A/C therefore its refund cannot be treated as a subjudice issue.

RTO Peshawar's position and reluctance being unreasonable, unjust and discriminatory tantamounts to maladministration in terms of section 2(3)(i)(b) of FTO Ordinance, 2000.


RECOMMENDATIONS:

6. FBR is directed to ensure that;
- (i) *tax recovered from the A/C of Widow is refunded to her, crediting the same A/C which was attached earlier for the recovery;*
 - (ii) *the Company in liquidation must be kept in the loop; and*
 - (iii) *report compliance within 45 days.*


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

Dated: 10/10/2023
 Akif

Approved for reporting


 Director
 FTO Secretariat
 Islamabad