

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO.5232/SUK/IT/2022

Dated: 28.11.2022 R.O. Sukkur

Mr. Gahano Khan Warar,
P.O Khan, Wahan Kandiaro,
Naushahro Feroze.

... *Complainant*

V e r s u s

The Secretary,
Revenue Division,
Islamabad.

... *Respondent*

Dealing Officer	: Mr. Badruddin Ahmad Qurashi, Advisor
Appraisal Officer	: Mr. Muhammad Tanvir Akhter, Advisor
Authorized Representative	: Nemo
Departmental Representative	: Nemo

FINDINGS/RECOMMENDATION

The above-mentioned complaint was filed against the department (Deptt) in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for issuance of illegal notice and not cancelling the registration / NTN of the deceased person.

2. Briefly as per complaint, Mr. Gharon Khan Warar, a registered taxpayer with NTN/ CNIC No. 45302-0379002-7 expired on 21.4.2019 but the Deptt kept on issuing notices even after death of the taxpayer. The AR submitted an application for closure of NTN to Income Tax Office at Nausero Feroz but did not get any response, hence this complaint.

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, the Chief Commissioner, RTO Sukkur vide letter dated 13.12.2022 forwarded comments of Commissioner WHT Zone RTO, Sukkur dated 12.12.2022 stating that the no death intimation of

Mr. Gahano Khan Warar was ever submitted by his family members or his authorized representative before office of the ACIR, WHT Unit-V, Naushahro Feroze. A notice under Section 161(1A) of the Income Tax Ordinance, 2001 for Tax Year 2018 was issued on 11.07.2019. However, after issuance of reminders on 14.07.2022, his family member submitted death intimation of Mr. Gahano Khan Warar. It is on record that taxpayer filed return of Income for Tax year 2020 as well as for Tax year 2021 in which he declared business income Rs. 1,505,919/-, agricultural income Rs. 125,000/- and turnover as Rs. 24,899,932/- in spite of the facts that taxpayer had already expired on 21.04.2019.

4. Record perused and arguments heard through telephone link.
5. As per Taxpayer registration profile, Mr. Gahano Khan Warar was registered in income tax on 22.12.2010 and in sales tax on 02.04.2015 as a distributor of fertilizer under the business name of 'M/s Haji Ghanio Fertilizer Agency'. He expired on 21.04.2019. As per provisions of Income Tax Ordinance, the Commissioner may cancel the registration/NTN on the death of individual proprietor in terms of Rule 82(5) of Income Tax Rules 2002 which states:

"82. Modification or cancellation of registration. -

(5) The Commissioner may, based on available information, particulars, data or documents, after making such inquiry as he may deem necessary, after discharge of all outstanding liabilities, without prejudice to any other liability which such person may incur under the Ordinance and after providing reasonable opportunity of being heard to a person, by an order in writing, cancel registration of a taxpayer."

Similarly, the Commissioner may deregister this taxpayer after obtaining application in prescribed form 'STR-3' and following the procedure laid down in Rule 11 of Sales Tax Rules 2006 which states:

"11. De-registration.-- (1) Every registered person who ceases to carry on his business or whose supplies become exempt from tax, or who ceases to remain registered shall apply to the Commissioner Inland Revenue

having jurisdiction for cancellation of his registration in Form STR 3, and the Commissioner, on such application or on its own initiative, may issue order of de- registration or cancellation of the registration of such person from such date as may be specified, but not later than ninety days from the date of such application or the date all the dues outstanding against such person are deposited by him, whichever is later and such person shall caused to be de- registered through computerized system accordingly.”

6. It is observed that even after the death of the taxpayer, the returns are regularly filed on behalf of the deceased. Who so ever is conducting business of the deceased after his death should have obtained fresh NTN & STRN against his own CNIC as in case of individual proprietorship, registration in income tax as well as sales tax are issued against particular CNIC.

FINDINGS

7. However, issuance of notice for monitoring of withholding taxes to the deceased after the receipt of his death intimation tantamount to maladministration under section 2(3)(i)(a) of FTO Ordinance.

RECOMMENDATIONS:

8. FBR to direct: -

- (i) the Commissioner Withholding Tax Zone, RTO Sukkur to withdraw notice of monitoring of withholding tax to the deceased for Tax year 2018; necessary proceedings may be conducted in the case of successor;
- (ii) concerned Commissioner, RTO Sukkur to deregister the deceased person on its merit in accordance with law; and
- (iii) report compliance within 45 days

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

Dated: 4:1: 2023

Approved for reporting