

THE FEDERAL TAX OMBUDSMAN ISLAMABAD

COMPLAINT NO.5608/LHR/IT/2022

Dated: 22.12.2022*RO, Lahore

Mr. Usman Amjad Bhatti,
House No.125/B, PCSIR,
Phase-II, Lahore.

...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

...Respondent

Dealing Officer	:	Mr. Khalid Javed, Advisor
Appraised by	:	Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	:	Mr. M. Asif Rana, Advocate
Departmental Representative	:	Mr. Yasir Butt, DCIR CTO Lahore

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against alleged illegal recovery from Complainant's bank account against tax demand raised vide order dated 27.09.2021 passed u/s 161/205 of the Income Tax Ordinance, 2001 (the Ordinance) for Tax Year 2019 against the Karwan-e-Aqidat Pvt Ltd.

2. Brief facts of the case are that an assessment order under section 161/205 was passed on 27.09.2021 creating tax demand to the tune of Rs.5,193,6961- for the tax year 2019 in the case of Karwan-e-Agidat Pvt Limited NTN-2559918. Recovery notice u/s 138(1) of the Income Tax Ordinance, 2001 was issued to the company on 06.10.2022 for compliance by 14.10.2022, but no compliance was made on the due date. Reminder recovery notice was issued to the company on 24.09.2022 for compliance on 30.09.2022 but again, no compliance was made on the due date. Proceedings u/s 140 of the Income Tax Ordinance 2001 were initiated by the Deptt on 10.10.2022 and all known bank accounts of

the company were attached but the same were found inactive/dormant. Thereafter, recovery notices u/s 139(1) of the Ordinance dated 27.10.2022 were issued to the directors of the company for the Tax Year 2019 in the light of form/order of registration dated 12.03.2018 filed for modification wherein the name of the Complainant was mentioned as Director. Thereafter, the Deptt initiated recovery proceeding u/s 140 of the Ordinance and an amount of Rs.1.664 million was recovered from the Complainant bank account against the outstanding tax demand. The Complainant contended that he has no relation with the Company "Karwan-E-Aqidat (Pvt) Ltd, since 08.03.2012 when he sold out his shares to Mr. Muhammad Yousaf Ali Khan, the present Principal Officer of Company. The Complainant also submitted form of registration filed u/s 181 of the Ordinance dated 19.01.2022 indicating Mr. M. Yousaf Ali Khan and his wife Ms. Shabana Azmat as Directors of the Company. The Complainant contended that Dept'l action of recovery from his bank account is patently illegal, contrary to fact, therefore, it was prayed that recovered amount be refunded to him forthwith, hence this complaint.

3. The complaint was sent for comments to the Secretary, Revenue Division, 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 Deptt submitted parawise comments vide letter dated 02.01.2023 contending that Assessment order under section 161/205 was passed on 27.09.2021 vide order bearing bar code No. 100000105115314 creating demand to the tune of Rs.5,193,696/- for the tax year 2019 in the instant case. Being aggrieved, Karwan-e-Aqidat Pt Ltd has assailed the impugned order before Commissioner Inland Revenue Appeals vide application dated 10.12.2022 which is still pending for adjudication, therefore, provisions of section 9(2)(b) of the FTO

Ordinance are attracted and this forum is barred to investigate in the matter.

4. On merits, it was contended that recovery was made from the Complainant in terms of form/order of registration filed for modification dated 12.03.2018 wherein the Complainant's name was mentioned as Director. However, it was admitted that the perusal of the return filed by the Company from Tax Year 2013 to the date of modification of tax registration on 12.03.2018 indicates that Mr. M. Yousaf Ali Khan is Director with the share of 33 % and Ms. Shabana Azmat, is Director with the share of 66 %.

5. Further, it was contended by the Deptt that after recovery through bank attachment, the Complainant approached the Deptt/FBR and informed that he has no nexus with the Company since 08.03.2012 when he sold out his shares to Mr. Yousaf Ali Khan and provided copy of Form-A submitted in SECP. The Deptt issued notice dated 14.11.2022 u/s 176 of the Ordinance to SECP to obtain Form-A and Form-29 from tax year 2015 to tax year 2020 so as to vouch for contention of the Complainant. The requisite information was received on 17.11.2022 which revealed Mr. Muhammad Yousaf Ali Khan (CNIC-3520285802939) and Mst Shabana Azmat (CNIC-3520226425752) as directors of the company for the tax years 2015 to tax year 2020. Moreso, it was averred that it is evident that anomaly in this respect arose due to Form/Order of modification to registration on application dated 12.03.2018 which revealed ex-directors of Karwan-e-Aqidat Pvt Ltd as directors for the Tax Years 2018, 2019, 2020 and 2021 till another order of modification to registration on application was uploaded on IRIS on 19.01.2022. LRO, CTO, Lahore was requested to explain as to why names of ex-directors were incorporated in Form 181 dated 12.03.2018 whereas income tax return for tax year

2013 filed on 07.02.2014 revealed Muhammad Yousaf Ali: Khan (33.3%) and Mst Shabana Azmat (66.6%) as directors/share holders of Karwan-e-Aqidat Pvt Ltd. The LRO, CTO Lahore vide letter No.LR0/065 dated 09.12.2022 apprised that taxpayer company can modify/change its form of registration for modification u/s 181 (income tax) from its own IRIS user only and therefore no change was made by LRO. Moreover, LRO office did not receive any form for modification us 181 to change details of shareholders. The taxpayer has been informed accordingly vide letter No. 1487 dated 26.12.2022 that outstanding income tax demand for the tax year 2019 has been recovered in accordance with law.

6. During hearing, AR and DR reiterated their respective stance taken in the complaint and parawise comments.

7. Arguments heard and available record perused.

8. Perusal of the record indicates following facts:

- I. The Complainant claiming that he has no relation with the Company "Karwan-E-Aqidat (Pvt) Ltd, since 08.03.2012 when he sold out his shares to Mr. Muhammad Yousaf Ali Khan, the present Principal Officer of Company.
- II. The SECP vide letter dated 17.11.2022 confirmed the FBR that Mr. Muhammad Yousaf Ali Khan (CNIC-3520285802939) and Mst Shabana Azmat (CNIC-3520226425752) are directors of the company for the Tax Years 2015 to Tax Year 2020.
- III. The anomaly arose due to Form/Order of modification to registration on application dated **12.03.2018** which revealed ex-directors of Karwan-e-Agidat Pvt Ltd as directors for the Tax Years 2018, 2019, 2020 and 2021 till another order of modification to registration on application was uploaded on IRIS on **19.01.2022**.
- IV. The LRO, CTO, Lahore explained that taxpayer company can modify/change its form of registration for modification u/s 181 (income tax) from its own IRIS user only and Deptt cannot modify it.

After considering the above, it transpires that Complainant sold out his shares to Mr. Yousaf Ali khan on 08.03.2012. Then the return filed by the Company for Tax Year 2013 reveals **that Mr. M. Yousaf Ali Khan is Director with the share of 33 % and Ms. Shabana**

Azmat, is Director with the share of 66 %. Thereafter, form of registration for modification/order u/s 181 dated 12.03.2018 indicates that names of the ex-directors have been included. Afterwards, another form of registration for modification/order u/s 181 dated 19.01.2022 reveals that name of the Directors as Mr. M. Yousaf Ali Khan with the Share of 66% and Ms. Shabana Azmat with the share of 33% contrary to the previous position. The above trail of facts requires thorough probe as to how Company's ex-directors were included in the form of registration for modification/order u/s 181 of the Ordinance.

RECOMMENDATIONS:

9. FBR to-

- (i) direct the Chief Commissioner-IR, CTO Lahore to look into the matter as how the Company's (Karwan-e-Aqidat Pvt Ltd) ex-Directors were included in the form of 181 of the Ordinance dated 12.03.2018 and then excluded by the form/order u/s 181 of the Ordinance dated 19.01.2022;
- (ii) direct the concerned Commissioner-IR, CTO Lahore to determine the names and accurate share of each director in the Company (Karwan-e-Aqidat Pvt Ltd) in the relevant Tax Year i.e. 2019;
- (iii) Thereafter, dispose of claim of refund to the Complainant, if he was not Director in the relevant Tax Year i.e. 2019, in accordance with law; and
- (iv) report compliance within 60 days.


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

Dated: 31:3:2023

Approved for reporting