

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NOS.5623 & 5624/SUK/IT/2022

Dated: 23.12.2022* R.O Karachi

Mr. Dileep Kumar,
Hindu Muhalla, Garhi Khairo,
Distt Jacobabad

...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

...Respondent

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

FINDINGS/RECOMMENDATIONS

The above-mentioned complaints were filed against the Commissioner-IR, Zone-II, RTO, Sukkur in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), relating to alleged illegal orders dated 16.12.2022 & 20.12.2022 for Tax Years 2020 & 2021 respectively issued under Section 221(1) of the income tax Ordinance 2001 rejecting adjustment of tax liability against refunds claimed for earlier Tax Years. As facts of the case are similar, both the complaints are disposed of through a single consolidated order.

2. The Complainant, an individual filed return of income tax for Tax Year 2018 claiming income tax refund of Rs.67651. The Department (Deptt) rejected the claim of refund for Tax Year 2018 without giving any opportunity of being heard vide order dated 15.08.2020 under section 170(4) of the Income Tax Ordinance (the Ordinance) without pointing out any specific deficiency. Meanwhile the complainant filed income tax returns for Tax Years 2020 & 2021

and adjusted admitted tax liability of Rs.13,859& Rs.22,239 against refund claimed in earlier year. The Deptt issued notice for rectification under Section 221 of the Ordinance confronting the adjustments of tax liability against undetermined refunds of earlier years on 24.11.2022 for tax years 2020 & 2021. The complainant filed a detailed reply online through IRIS on 05.12.2022 attaching evidences of tax deductions at source under sections 231A, 235, 236 for Tax Years 2014 to 2020 alongwith working of tax adjustments of each year. But, the Deptt vide orders dated 16.12.2022 & 20.12.2022 rejected the tax adjustments simply stating being the reply as 'unsatisfactory' and creating tax demands of Rs.13,859& Rs.22,239 for Tax Years 2020 & 2021 respectively; hence these complaints.

3. The complaints were 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 submitted reply of Commissioner-IR, Zone-II RTO, Sukkur vide letter dated 04.01.2023. At the outset, preliminary objection regarding bar of jurisdiction, was raised under Section 9(2)(b) of the FTO Ordinance being remedy is available with the Appellate forum.

4. On merit it was contended that the taxpayer had filed income tax return for tax year 2018. The Unit Officer rejected the claim of refund for Tax Year 2018 by passing the order under Section 170(4) of Income Tax Ordinance 2001 dated 15.08.2020. As per law no refundable amount of tax was payable to the taxpayer therefore, the Unit Officer issued SCN for rectification under Section 221 of the Ordinance and passed the rectification order after affording

opportunity of being heard. The unit officer rejected the claim of adjustment of unlawful refund claims against the tax liability payable for the Tax Years 2020 & 2021.

5. The AR of the complainant filed a written rejoinder dated 19.01.2023 stating that the Deptt was required to dispose refund applications within sixty days of refund applications but ignored the mandatory provisions and issued order after many years. Similarly, the Deptt also ignored the recommendations of this forum in 0052/OM/2022 dated 30.05.2022 and order of Appellate Tribunal Inland Revenue, Multan Bench Multan in ITA No. 200/MB/2022 Tax year 2019 dated 13.04.2022.

6. Both parties' argument considered.

7. The preliminary objection regarding bar of jurisdiction, raised under Section 9(2)(b) of the FTO Ordinance, is misconceived as the Complainant is not aggrieved against the assessment as such but against failure of the Deptt to provide even a single opportunity before rejecting refund application and finally not considering the detailed reply against refund adjustments violating the recommendations of this forum as well as Appellate Tribunal.

8. It is observed that the Department (Deptt) rejected the claim of refund for Tax Year 2018 vide orders under Section 170(4) of the Ordinance dated 15.08.2020 without giving even a single opportunity of being heard and without pointing out any specific deficiency violating provisions of Section 170(4) of the Ordinance which states:

"(4) The Commissioner shall, within sixty days of receipt of a refund application under sub-section (1), serve on the person applying for the refund an order in writing of the decision after providing the taxpayer an opportunity of being heard."

9. Later on, the Deptt vide orders dated 16.12.2022 & 20.12.2022 rejected the tax adjustments simply stating being the reply as 'unsatisfactory' and creating tax demands of Rs.13,859 & Rs.22,239 for Tax Years 2020 & 2021 respectively and without following the recommendations of this forum in 0052& 0064/OM/2022 dated 20.09.2022 on this issue which states:

"The preliminary objection regarding bar on jurisdiction is misconceived. The issue in hand is not of assessment or determination of tax. The taxpayer has outstanding refund claim of previous years far in excess of admitted tax liability clearly visible in respective tax years in IRIS. The disposal of determination of refund under Section 170 of the Ordinance for those previous tax years against prescribed period of sixty days; are pending with the department. Now the Deptt intends to penalize the taxpayer for not being able to produce refund order which was in fact to be processed by the Deptt itself. This being a fit case of maladministration; the objection is overruled.

10. The Deptt contends that a tax payer cannot adjust any refund already claimed in previous years until & unless it is determined by the Deptt under section 170(4) of the Ordinance. In support of this argument, the decision of Hon'ble Supreme Court judgment dated 05.03.2020 in civil petitions 283-L to 286-L of 2018 dated 05.03.2020 has been quoted which states;

"5. The impression that deemed assessment under Section 120, when the annual income tax return filed under section 114 shows a refund payable to the taxpayer, passes for a refund order, stands dispelled by the Explanation to Section 171 inserted through Finance Act, 2013 which states as under:

Explanation. —For the removal of doubt, it is clarified that where a refund order is made on an application under subsection (1) of section 170, for the purpose of compensation, the refund becomes due from the date refund order is made and not from the date the assessment of income treated to have been made by the Commissioner under section 120"

11. Perusal of the detailed judgment reveals that the judgment of the Hon'ble Supreme Court is basically with reference to claim of additional payments for delayed refunds (compensation). On the contrary, here the issue in hand is not of additional payment for delayed refund. The claim of the taxpayer is his own excess payments of previous tax years for which he had applied to the Deptt as per law and it was the responsibility of the Deptt to dispose the applications of refund in terms of provision of Section 170(3) & (4) of the Ordinance which states:

"(3) Where the Commissioner is satisfied that tax has been overpaid, the Commissioner shall —

(a) apply the excess in reduction of any other tax due from the taxpayer under this Ordinance;

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(b) apply the balance of the excess, if any, in reduction of any outstanding liability of the taxpayer to pay other taxes; and

(c) refund the remainder, if any, to the taxpayer.

(4) The Commissioner shall, within sixty days of receipt of a refund application under sub-section (1), serve on the person applying for the refund an order in writing of the decision [after providing the taxpayer an opportunity of being heard"

12. Instead of complying with the above provisions, the Deptt kept on sleeping over the refund application of taxpayer for more than prescribed period of sixty days. The taxpayer on the other hand, after having failed to get his refunds issued, resorted to claiming of its adjustment in his return in subsequent years for which a separate TAB was provided in return of income through IRIS. (This TAB has now been removed in income tax return for Tax year 2022 in IRIS) Thus, all the actions of disposal of refund application of previous years, determination of refund and adjustment of the same against taxpayer's admitted liability in terms of provisions of 170(3) & (4) of the Ordinance are pending with the Deptt and the Deptt is asking the taxpayer to produce the evidence for the same. Thus, non-disposal of refund applications of previous years and issuance of show cause notice under Section 221 or 122(9) /122(5A) of the Ordinance without conducting proper desk audit and disposal of previous refund applications tantamount to maladministration in terms of section 2(3)(i)(a)(b) &(ii) of the FTO Ordinance.

13. RECOMMENDATIONS

1. FBR to issue necessary clearcut instructions / clarifications with respect to letter # 6(43)Rev.Bud/2021/116078-R dated 10.05.2022 related to disposal of data of 393,441 refund claims of individuals/AOP who have adjusted refund claims worth Rs. 24 billion against admitted tax liability of Tax years 2016-2021 or any other similar letter

(i) To conduct detailed desk audit of returns

(ii) verify tax payments from ITMS / IRIS/ veri tax/ FBR Maloomat (Asset Inquiry)

(iii) confronting specifically only unverified tax deductions/ payments;

(iv) Dispose of refund applications for previous years on its merit as per law after providing opportunity of hearing;

(v) settle the refund claims in terms of provisions of Section 170(3)(a) of the Ordinance against admitted / determined tax liability

2. Report compliance within 90 days."

Further, the Deptt also ignored the decision of the Appellate Tribunal Inland Revenue, Multan Bench Multan in ITA No. 200/MB/2022 Tax year 2019 dated 13.04.2022 on this same issue whereby it was established that adjustments of prior years' refund being in

accordance with law, rules and established past practice and can not be rectified through order under section 221 of the Ordinance.

FINDINGS:

10. Rejection of refund application for Tax Year 2018 vide order dated 15.08.2020 without giving any opportunity of being heard and without pointing out any specific deficiency violating provisions of Section 170(4) of the Ordinance and further rejecting the refund adjustment of previous years under Section 221 of the Ordinance in utter disregard of direction of this forum in own motion no.0052 & 0064/OM/2022 dated 20.09.2022 causing administrative excesses tantamount to maladministration under section 2(3)(i)(a)(b)(c) & (ii) of FTO Ordinance.

RECOMMENDATIONS:

11. FBR to direct the Commissioner Zone-II, Larkana Zone, RTO Sukkur: -

- (i) to revisit the orders dated 15.08.2020 for Tax Year 2018 issued under Section 170(4) of the Ordinance in terms of Section 122A of the Ordinance in the light of direction of this forum in own motion no.0052 & 0064/OM/2022 dated 20.09.2022, after affording proper opportunity of hearing to the Complainant, in accordance with law;
- (ii) to adjust the determined refund against the tax demand created for Tax Year 2020 & 2021; and
- (iii) report compliance within 45 days

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

Dated: 17-2-2023

Approved for reporting

Certified to be True Copy

MSH
Registrar
FTO Secretariat
Islamabad