THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

Complaint No.7274/ISB/ST/2024
Dated: 01.09.2024* HQ Islamabad

Mst. Fozia Ejaz
House No. 1022, St. No.94, I-8/4,
Islamabad ...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad ... Respondent

Dealing Officer	:	Mr. Muhammad Nazim Saleem, Advisor
Appraising Officer	:	Dr. Arslan Subuctageen, Advisor
Authorized Representative	:	Mr. Muhammad Shafqat, ITP
Departmental Representative	:	Mr. Muhammad Hayat Khan, Additional Commissioner-IR, RTO, Rawalpindi

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint has been filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against RTO Rawalpindi for failure to give appeal effect to the order of CIR (Appeals).

2. Briefly, as per the Complainant: -

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"That the complainant is a registered person under the Sales Tax Act, 1990. The Inland Revenue Audit Officer, Zone-II, Regional Tax Office, Rawalpindi, conducted sales tax audit for the Tax Period 2008-09 and 2009-10 and passed ex-parte Order-in-Original No. 09 of 2011, dated 06-10-2011, in the complainant's case. On the basis of the said order, Sales Tax liability of Rs.8,78,764/- and penalty imposed at Rs.50,000/- was adjudged to be recoverable due to alleged difference in the declarations as per the Income Tax Returns and Sales Tax Returns. Besides, Sales Tax liability of Rs.7,45,557/- was also created on account of discrepancies generated by CREST. Total sales tax liability demanded from the complainant stood at Rs. 16,74,321/-.

That the Department attached the bank account of the Complainant and recovered the sales tax demand, amounting to

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* Date of registration in FTO Sectt

Rs. 16, 73,244/-, on 06-06- 2012 without due process of law, as per CPR enclosed.

That, in second round of litigation, the Commissioner Inland Revenue (Appeals-III), Rawalpindi, decided the complainant's appeal vide Sales Tax Order-in-Appeal No.125/492/2015, dated 03-12-2015.

That the Department did not file further appeal against the order of the Commissioner (Appeals) before the Appellate Tribunal Inland Revenue, which has attained finality.

That the Complainant's Authorised Representative visited the office of the concerned Income Tax Authorities several time and made repeated requests for implementation of the order of the appellate authority but of no avail. In this regard, he also made written request through his letters dated 03-01-2024 and 16-01-2024 (but no action was taken thereon by the Department nor any reply thereof was given to the complainant.

That the Counsel of the complainant also made a Representation. Dated 10-06-2024 to the Commissioner Inland Revenue, City Zone RTO Rawalpindi. with the request to direct the concerned officer for implementation of the order of the appellate authority but no response was received.

The outcome of the appeal decided by the appellate authority is not known to the Complainant despite lapse of more than seven years. The order passed by the Appellate Authority has consequently become worthless and inconsequential. It was mandatory on the Adjudicating Authority to carry out the directions given by the appellate authorities. Failure to do so will result in chaos in the administration of justice. In this regard, reference is made to the judgement of the Sind High Court reported as 2017 PTD 1852; Hon'ble Federal Tax Ombudsman's Findings/ Recommendations. dated 15-02-2022 in Complaint No.0204/OM/2021, dated dared 25-10-2021.

That the inordinate delay and inattention in the discharge of duties and responsibilities on the part of the concerned Income Tax authorities for not-giving appeal effect to the order of the CIR (Appeals) tantamount to maladministration in terms of Section 2(3)(ii) of the Federal Tax Ombudsman Ordinance, 2000.

Prayer:

In view of the above submissions, it is respectfully prayed that the grievance of the complainant be redressed and the concerned tax authority to give appeal effect to the order of Appellate Authority, mentioned above, and issue appeal effect order at the earliest, so that the registered person could know the outcome of her appeal decided by the appellate authority."

3. The complaint was referred to 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, Commissioner-IR (City Zone) RTO, Rawalpindi vide report dated 18.09.2024 as received from the Additional Commissioner (HQs), RTO, Rawalpindi vide letter dated 19.09.2024 commented as under:-

> "No time limitation was provided in Sales Tax Act, 1990 to decide the remand back cases. Time limitation has been inserted in Sales Tax Act, 1990 through Finance Act, 2018. It is further stated that Honorable ATIR in his number of cases held that Commissioner Appeals have no power to remand back the cases and this stance of the ATIR has also been endorsed by Superior fora.
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> In this regard it is submitted that in pursuance of Representation dated 10-06-2024 to the Commissioner Inland Revenue, City Zone, RTO, Rawalpindi, the Order-in-Remand dated 28.06.2024 has already been issued u/s 11(2) of the Sales Tax Act,1990."

FINDINGS:

4. The in-depth study of the whole case casts serious aspersions on the working of FBR. Initially, a demand of Rs.2,552,008 (principal amount) was created by IRAO through an O.IN.O No.09/2024 dated 06.10.2011 for the tax period 2009 and 2010 on the grounds of (i) non-production of record (ii) difference in Income Tax and Sales Tax Returns and (iii) discrepancy in E-Folder of FBR Web Portal and STR declaration. On rejection of appeal, by the CIR (Appeal) vide order dated 31.05.2012 the department recovered Rs.1,673,244 on 06.06.2012 pertaining to ground (iii) as aforementioned by attaching bank account of the Complainant. The department vide O-in-O No.02/2015 dated 07.08.2015 again decided the case and reduced the recoverable amount to Rs.1,674,321 with following details;

Sr. No.	Issue Involved	Amount Involved
1	Non-Production of Record	Rs.50,000/-
2	Difference in Income Tax Return and Sales Tax Returns for the tax year 2009 & 2010.	Rs.878,764/-
3	Discrepancy in E-folder of FBR web Portal and STR declarations	Rs.745,557/-

5. Now in compliance of CIR (Appeals-III) Rawalpindi, Sales Tax O-in-Appeal No.125/492/2015 dated 03.12.2015, the Assistant Commissioner-IR A&E, Unit-I (City Zone) RTO Rawalpindi vide Sales Tax Order-in-Remand No.40/2023-24 dated 28.06.2024 has vacated the earlier adjudged liability of Rs.1,624,321/-. During hearing, the AR informed that he has not received the said Order-in-Remand. Accordingly, a copy was provided to him. This is a serious case infested with multiple shades of Maladministration as defined in section 2(3)(i)(a)(b)(c)(d)&(ii) of the FTO Ordinance, 2000. The agony suffered and borne by the taxpayer since 2011 must be immense.

RECOMMENDATIONS

6. FBR to direct:-
   i) Member-IR (Ops) FBR to get conducted a fact-finding enquiry to identify delinquent officers responsible for Maladministration in this case;
   ii) Chief Commissioner, RTO, Rawalpindi to allow refund of already-recovered amount of Rs.1,673,244/-; and
   iii) report compliance within 45 days.

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

Dated: 9.10./2024
Approved for reporting