

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

REVIEW PETITION

Dated 16.05.2023¹ R.O. Sargodha

in

COMPLAINT NO. 2510/SGD/IT/2022

Dr. Muhammad Naveed Khan,
House No.N 273/3, Mohallah,
Sarwakhel District, Mianwali.

... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer : Dr. Muhammad Akram Khan, Advisor
Appraisal by : Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative : Dr. Muhammad Naveed Khan
Departmental Representative : (i) Mr. Amjad Farooq, CCIR
(ii) Mr. Azmat Hayat Ranjha, CIR
(iii) Mr. Shakeel Ahmad Shakeel, CIR
(iv) Mr. Asad Aziz, Additional CIR, RTO,
Sargodha

ORDER-in-REVIEW

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The Review Petition (RP) has been filed by the Complainant/Petitioner (hereinafter to be referred as Petitioner) under Section 14 (8) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) read with Section 13(1) of the Federal Ombudsmen Institutional Reforms Act, 2013 (FOIR Act) for review of Findings dated 11.08.2022, whereby the complaint was disposed of with the following observations:

- “6. In view of the facts and legal position discussed above,
- i) the complaint stands rejected for want of jurisdiction in terms of Section 9(2)(a) of the FTO Ordinance. File be consigned to record.
 - ii) As the case involves grievance of an overseas Pakistani, Chief Commissioner-IR, RTO, Sargodha and Commissioner concerned are directed to conduct an internal review of the facts of the case and if any wrong has been done, the same may be

¹ Date of registration in FTO Sectt:

mitigated by the department. Such an action would send a positive message to the overseas Pakistanis; saviours of our national economy. Moreover CIR(Appeals) should be contacted for early decision of the appeal filed by the complainant."

2. Briefly, the Complainant is an overseas Pakistani working in Saudi Arabia as a doctor in ministry of health of Saudi Arabia since 2010. According to the complainant, he got registered himself with FBR in 2021 with the vision to support his country by bringing more remittances and investment in his own country. The Complainant alleged that as he registered with FBR, the Deptt issued notices to file returns from the period June 2016 to June 2021. However, he sent emails to FBR alongwith requisite documents i.e. evidence of remittances but Deptt did not give any attention to his stance and passed orders u/s 122(5A) of the Income Tax Ordinance, 2001 on 30.04.2022 for Tax Years 2016 to 2021 resulting in tax demand of Rs.7.5 million. Being aggrieved, Complainant preferred appeal before the CIR (Appeals) Sargodha. CIR (Appeals), who vide orders dated 12.10.2022 remanded back the case to the concerned officer for re-assessment proceedings for Tax Years 2017 to 2021 and annulled the order for Tax Year 2016 on 29.03.2023. Subsequently, Deptt passed appeal effect orders on 20.01.2023 for Tax Years 2017 to 2021 but Deptt filed 2nd appeal before the ATIR, Islamabad against CIR(Appeals)'s order dated 29.03.2023 in respect of Tax Year 2016 which shows that the concerned officer took it personal and filed appeal to harass the Complainant. Being aggrieved, Complainant filed Review Petition on 16.05.2023.

3. The Review Petition was referred to the Secretary, Revenue Division, FBR, Islamabad for comments. In response thereto, the Chief Commissioner IR, RTO, Faisalabad submitted Para-wise comments vide letter dated 25.05.2023. At the outset, Deptt raised objection regarding bar of jurisdiction in terms of Section 9(2)(a) &

9(2)(b) of the FTO Ordinance, 2000. Reference was made to the orders of the Hon'ble FTO in C.No. FTO/LHR/0000697/2016 dated 16.01.2017, C.No.689/ISB/IT/2017 and C.No.314/LHR/IT/2018. On merits, it was submitted that Complainant filed returns of income voluntarily for the Tax Years 2016 to 2018 as resident taxpayer and as non-resident from Tax Years 2019 to 2021. Deptt issued notices u/s 111(1)(4) & 122(9) read with Section 122(5A) of the Income Tax Ordinance, 2001 and Complainant's reply found unsatisfactory. However, Deptt finalized the proceedings u/s 122(5A) of the Ordinance. Complainant preferred filed appeal against the impugned order before the CIR (Appeals) who remanded back case to the concerned officer with the remarks that since, the appellant is residing in Saudi Arabia and receiving salary income which is dully shown in his account statement issued by Al Rajhi Bank for the tax year 2016 to 2021 and the appellant is residing in Saudi Arabia and his stay abroad being non-resident is shown from the passport entries. Therefore, in the prevailing circumstance, the order of the ACIR cannot be maintained and is returned to the officer with direction to pass a speaking order after examining the documents submitted by the AR and to ascertain the status of the appellant from the passport after due verification. Further, reassessment proceedings have been completed by the Deptt in favour of the Complainant and proceedings initiated u/s 124/122(5A) of the Income Tax Ordinance, 2001 for Tax Year 2017 & 2018 are filed. Deptt contended that Commissioner-IR(Appeals) vide order dated 29.03.2023 annulled the assessment order for the Tax Year 2016. Deptt filed second appeal on 11.05.2023 against the order of the CIR (Appeals) under the law and rules and the matter is subjudice before the ATIR and beyond the jurisdiction of this forum in terms of Section 9(2)(a) of FTO Ordinance.

4. Arguments heard and available record perused.

5. The Review Petition was fixed for hearing on 06.06.2023 whereby CIR appeared in the Regional Office, Sargodha and petitioner attended the proceedings through Zoom from Saudi Arabia. Complainant gave a detailed history of events starting from filing of his returns and ending in levy of Rs.7.5 million tax for Tax Years 2016 to 2021. He expressed grave concern and annoyance on the officers, conducting proceedings despite the fact that he furnished full details and documents regarding his status as non-resident Pakistani living in Saudi Arabia since 2010, remitting his earnings through bank to Pakistan for his family and investment. During the proceedings it was felt that Deptt failed to conduct internal review as directed in the original order dated 11.08.2022. It was decided to have an in-depth hearing involving the senior leadership of RTO, Sargodha. Case was heard on 20.06.2023 at FTO (HQ), Islamabad and Mr. Amjad Farooq, CCIR, Mr. Azmat Hayat Ranjha, CIR, Mr. Shakeel Ahmad Shakeel, CIR, Mr. Asad Aziz, Additional CIR, RTO, Sargodha attended the proceedings and petitioner Dr. Muhammad Naveed Khan attended the proceedings through Zoom from Saudi Arabia. He again brought to the notice all the hardships and trauma faced by him during assessment proceedings in spite of fact that he filed returns in good faith and in accordance with law. It was clearly established through evidence produced before the assessing officer that he was non-resident since 2010 being employed with the Government of Saudi Arabia and that he remitted his income earned abroad through banking channels as desired by tax laws. He expressed satisfaction and relief on the orders of Commissioner-IR (Appeals) for all the years and subsequent closing of proceedings by the Additional Commissioner-IR, Mr. Asad Aziz for all the years except for 2016.

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Senior departmental officers, attending the proceedings expressed regret on pain and distress faced by the Complainant during assessment proceedings and offered apology for the same. Complainant also expressed his satisfaction and graciously accepted.

6. As regards tax year 2016, Complainant expressed his concerns regarding filing of second appeal before the ATIR by Commissioner-IR, attributing motives of further harassing him. During hearing it was felt that concerned CIR could still review his decision to file 2nd appeal. However, departmental reply dated 26.06.2023 explained in details all the actions taken by the Deptt on receipt of order date 11.08.2022 of this Forum. Internal review was conducted as directed. Commissioner-IR (Appeals) was requested for an early hearing and on receipt his orders concerned Additional Commissioner-IR processed the remand proceedings for Tax Years 2017 to 2021 and closed the proceedings. The department however thinks that Tax year 2016 being distinct and separate year had its own facts and circumstances and Commissioner-IR (Appeals) who had annulled the assessment order was not justified. Therefore Commissioner-IR found it appropriate to file 2nd appeal. **However, if during 2016 the status of complainant as Non-Resident is established and evidence of foreign remittances through banking channel is established then there is no fun to drag both the taxpayer and the department in useless litigation.**

7. In view of above, this office order dated 11.08.2022 stands partially implemented and review filed dated 16.05.2023 succeeds to the following extent;

- (i) ***Complainant's stance that he has been wronged by the department is proved, however sincere apologies by the management of RTO Sargodha,***

graciously accepted by the Complainant buries the hatchet. The role and sacrifices of Overseas Pakistanis merit matching empathy and compassion by FBR and its field formations.

- (ii) ***Department may review its decision of filing of 2nd Appeal for TY 2016, in the light of underlined part of Para 6 above.***



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

Dated: 24:7:2023

Approved for reporting



Director
FTO Secretariat
Islamabad