



# **FEDERAL TAX OMBUDSMAN'S ANNUAL REPORT 2001**

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STATE ENTERPRISES COMPLEX  
5-A CONSTITUTION AVENUE  
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H. STICE & SALEEM AKHTAR  
FEDERAL TAX OMBUDSMAN

DO No.1(3)/2001-A-II

My dear President

السلام عليكم

It is with a sense of complacency and a pleasure to present the Second Annual Report for the calendar year 2001, as required under section 28 of the Establishment of the Office of the Federal Tax Ombudsman Ordinance, 2000. I bow my head in all humility before Almighty Allah for having enabled me to complete first full year of my office during the year 2001. I had taken oath of my office on 19<sup>th</sup> September, 2000 and the last quarter of that year was taken by the initial teething troubles that beset any new Organization.

An important item on your agenda for introducing structural reforms and improving the quality of life of the people of Pakistan is to establish good governance. And towards that end, the establishment of the Office of the Federal Tax Ombudsman has served as a significant step. The taxpayers who invariably complained of highhandedness and harsh treatment at the hands of the tax officials have taken a sigh of relief and have acclaimed it as an appreciable gesture on the part of your government to have provided an Institution not only for ventilation of their

grievances but redressal thereof expeditiously and at no cost.

All that an aggrieved person has to do is to send his complaint on a plain piece of paper containing relevant facts on solemn affirmation or oath. No fees of any kind are chargeable and the decisions normally come within weeks rather than years. Various Trade Bodies and Tax Bars throughout the country have applauded the decisions handed down and National Press keeps reporting such decisions.

We had started functioning from a temporary office in one of the suites in Baluchistan House when we shifted to one of the bungalows in Supreme Court's Judges Enclave where even today, part of the office is located. As a result of your kind intervention we were provided office accommodation in the left wing of the State Enterprises Complex and have now been given possession of three rooms in the right wing on the ground floor of the same building. Although we are still short of space, we have a mission to accomplish and we shall not get distracted or deterred by bottlenecks that come our way for we know that whenever the need be, your gracious support would be un-stinted and immediate.

You would be pleased to know that we have opened our Regional Offices at Karachi and Lahore which are functional and providing speedy justice to the taxpayers in the two metropolises. *Complaints from Quetta and Peshawar*



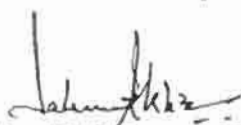
are being attended to from Karachi and Islamabad respectively.

We decided 1339 complaints filed by the tax paying community, out of 1782 received during the calendar year 2001. Out of these 955 related to Income Tax Department, 14 to Wealth Tax, 168 to Customs, 112 to Sales Tax and 90 related to miscellaneous matters. Relief was provided in 936 cases while 403 were rejected. But more than that mere mention of this office by an aggrieved person obliges an errant tax official to desist from the course of uncalled for collision. The impact of the existence of this Institution is therefore, salutary to say the least. During the course of investigations in various complaints, suitable suggestions were sent to the CBR to facilitate their functioning and to reduce the irritants that are a major cause for generating the complaints

I must place on record my appreciation of the cooperation extended by your Secretariat and the Finance Division in the smooth discharge of my duties.

With profound regards,

Yours sincerely,



(Justice (R) Saleem Akhtar)

General Pervez Musharraf, NI (M), TBt.,  
The President,  
Islamic Republic of Pakistan,  
Islamabad.

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## CHAPTER-I

### HISTORICAL BACKGROUND

The cardinal principle of Islam is accountability. Not only in this world one has to justify one's deeds but also even after death, he has to account for his actions. On the Day of Judgement, Allah Almighty Himself will take an account, for not only, there will be record by angels to the deeds of the man but also testimony of his limbs, deposition by the person who had suffered and his own explanation. It would therefore, be seen that in Islam, accountability is a principle covering not only the worldly life, but also life here after.

The Holy Quran says, "When ye judge between man and man, that ye Judge with Justice". An-Nisa (v 58) and, "O ye, who believe; stand out firmly for Allah as witness for fair dealings and let not hatred of others to you make you swerve to wrong and depart from Justice. Be Just; that is next to piety", Al-Maeda (V 8). The Holy Prophet (PBUH) himself heard the complaints. Anybody could go out to him and explain his or her grievance. After hearing the grievance, he would do what would be right and most fair to the parties concerned. The period of the Holy Prophet (PBUH) was followed by the era of Khulfa-i-Rashadeen where instances of rigorous accountability abound. In the course of time, hearing of complaints of aggrieved persons against the government functionaries was institutionalized in Turkey where an Institution known as Dewan-I-Mazalim (Office of the Redressal of Injustices) was established. Any person could lodge a complaint against any government official whereupon, after enquiring, the grievance would be redressed.

Modern concept of Ombudsman dates back to the period of Charles XII. King of Sweden when he observed in Turkey the working of the Office of the Dewan-I-Mazalim. On return to his country, he passed a law on the pattern of that office and gave it a Swedish name, now known as Ombudsman, which has been improved upon since 1809. It is established in some 87 countries of the world by now. In most of the developed countries, an ombudsman system has been established to deal with complaints relating to administrative bodies.

There are two broad models for ombudsman systems. One model has the ombudsman appointed by the legislature and

completely independent of the executive, such as the Parliamentary Commissioner in England or the Commonwealth Ombudsman in Australia. The other model has the ombudsman appointed by the executive, although independent of other administrative bodies. Examples of this type are the Revenue Adjudicator within the U.K. Inland Revenue, or the Taxpayer Ombudsman within the U.S. Internal Revenue Service. Ombudsmen are further classified into general ombudsmen, who deal with complaints relating to all aspects of administration, and special ombudsmen, who deal with complaints only in a specialist area such as privacy or tax. An example of the former is the Parliamentary Commissioner in England. Examples of the latter are the Privacy Commissioners in Canada and Australia, the Revenue Adjudicator in England and the U.S. Taxpayer Ombudsman.

The essence of the Ombudsman is to help citizens against the high handedness of functionaries of the State, as an ordinary man is not in a position to get his right if an officer/official of the State is not inclined to listen or relent. It is only the Mohtasib (Ombudsman), who can listen sympathetically and redress grievances of an aggrieved person in the shortest possible time without any financial burden.

The Ombudsman is not a substitute for the existing institutional devices for accountability. He does not supplant them but only supplements their efforts. The operational purview of an Ombudsman covers a much larger canvas than the implementation of the laws of the land and functions of the courts. The Ombudsman can look into matters, which are outside the jurisdiction of the courts. The Ombudsman is no doubt a guardian of legality and fairness but he never regards it as the end of the process. No doubt the Ombudsman is concerned with justice, but at the same time he works in a terrain much beyond the realm of technicalities. An important aspect of his role is that he concerns himself with equity of decision-making and its reasonableness. He has to check the erratic and ineffective execution of public policy, inattention, delay, inefficiency and abuse of authority. Unlike the Courts of law, the Ombudsman can intervene in cases of even subtle misuse of authority.

The Supreme Court of Canada in one of its judgments [B.C.

Dev Corp vs. Friend Mann, (1985) 1W. W.R. 193] stated as follows: -

“... The traditional controls over the implementation and administration of governmental policies and programmes namely, the, legislature, the executive and the courts are neither completely suited to nor entirely capable of providing the supervision a burgeoning bureaucracy demands. The inadequacy of legislative response to complaints arising from the day-to-day operation of government is not seriously disputed. The demands on members of legislative bodies are such that they are naturally unable to give careful attention to the workings of the entire bureaucracy. More over, they often lack the investigative resources necessary to follow up properly any matter they do elect to pursue...”

“The Ombudsman represents society’s response to these problems of potential abuse and of supervision. His unique characteristics render him capable of addressing many of the concerns left untouched by the traditional bureaucratic control devices. He is impartial. His services are free, and available to all. Because he often operates informally, his investigations do not impede the normal process of government. Most importantly, his powers of investigation can bring to light cases of bureaucratic mal-administration that would otherwise pass unnoticed. The Ombudsman can bring the lamp of scrutiny to an otherwise dark place, even over the resistance of those who would draw the blinds...”

The Supreme Court of Pakistan in one of its judgements [1999 SCMR.2189 Federation vs. Mohammad Tariq Pirzada] stated as follows:

“...the office of Wafaqi Mohtasib (Ombudsman) has been created in order to diagnose, investigate, redress and rectify any injustice done to a person, through misadministration. The view taken by this Court in the judgment under review that the Ombudsman performs quasi-judicial functions, also finds support from the earlier judgment of this court in Hafiz Muhammad Arif Dar v.

Income tax Officer (PLD 1989 SC 109), wherein while examining the scope, powers and functions of the Ombudsman, it was observed: "Amongst others he can file a complaint and grievance application before the Federal Ombudsman who can provide effective redress in a case like the present one. That forum has several attributes of a court in many aspects of powers. It can also move in a matter promptly whenever so needed. At the same time it does not suffer from some of the handicaps due to the technicalities of procedural nature, which operate as impediments or thwart such like action by the Courts. For example the limitation of non-availability of an alternate remedy in this for the High Court under Article 199 of the Constitution is not applicable to the said forum. Besides, the same being quasi-judicial it is also headed by a Judge of the Supreme Court; with similar powers to punish for contempt. In this context, therefore it can be safely concluded that it can provide the alternate effective and adequate remedy to the petitioner also"

### **Institution of general Ombudsman in Pakistan**

The idea of establishing Institution of Ombudsman found its first expression in the Interim Constitution, 1972, providing for appointment of an Ombudsman both at the Federal and Provincial Levels. But in the Constitution of 1973, the plural term "Federal Ombudsmen" appears as item 13 in the Federal Legislative List. The Provincial Legislatures can legislate to appoint Ombudsmen in the Provinces in exercise of residual power under clause (C) of Article 142 of the Constitution.

The Institution of the Federal Ombudsman was established in Pakistan under the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (President Order No. 1 of 1983). The first Ombudsman (Wafaqi Mohtasib) took oath of his Office in August 1983. He holds his office under the statute for four years and reports to the Head of the State. The statute provides that he shall perform his functions and exercise his powers independently of the executive and all executive authorities throughout Pakistan shall act in aid of the Wafaqi Mohtasib (Ombudsmen).





Officers and Staff of Federal Tax Ombudsman Secretariat Islamabad with  
Hon'ble F.T.O Justice (R) Saleem Akhtar.

## CHAPTER II

### FEDERAL TAX OMBUDSMAN

The institution of Ombudsman by now bears the time tested mark of beneficence. The overwhelming confidence reposed by the public, in all the countries where the institution exists has created a demand for specialized Ombudsmen as well.

In developed countries, a major revolution has been under way to establish the concept of taxpayers' rights. To this end, existing administrative procedure laws and specific tax procedure laws have been supplemented with new provisions to control the powers of the tax authorities and attempts have been made in several countries to raise the consciousness of the taxpayer by creation of measures such as a Declaration of Taxpayer's Rights, a Taxpayer's Charter, a Taxpayers' Bill of Rights, *etc.* The respective governments and tax authorities are thus making plain their commitment to fairness and transparency in tax procedures.

In early 1990s with the diversification and increasing complexity of developing societies, various rights that were not provided for in their Constitution progressively got recognition, such as taxpayers rights, the right to privacy, the right to knowledge and information, the right to access to sunlight, the right to scenery and environmental rights.

It is clear, then, that taxpayers' rights are a relatively new concept in developing countries. Most tax bars are of the opinion that the most significant element of taxpayers' rights is the right to procedural fairness, and they have lobbied with the governments and the legislatures to create legislative guarantees in this area. On the other hand, many academics and taxpayer associations favour the view that the main focus should be on democracy for taxpayers, in particular constitutionally-based rights to control the way the government collects and spends tax revenue.

The Katz Commission for Tax Reform in South Africa very aptly observed in their report, "when taxes are considered inherently unfair, the remedy lies, politically, in the ballot box ..... However, "no elections will be called if taxpayers are unfairly treated in the administrative process. Other remedies are therefore required".



In order to exercise the public power of taxation fairly, the tax authorities, therefore, needed to obtain the voluntary cooperation and confidence of the taxpayer, and to this end tax procedures needed to be fair and transparent. Tax procedures needed to be enacted in legislative form in as much detail as possible. Furthermore, information on tax procedures needed to be widely made available to the public. By these means, it was being suggested, that taxpayers would be able to participate in tax procedures on an equal footing with the tax authorities. The government and the tax and revenue authorities, therefore, were urged to promote these practices.

In Pakistan, much like in Japan it was felt that tax administration had developed with the tax authorities in a clearly superior position. Further, tax procedures were by and large tedious so that many decisions were made arbitrarily by the tax authorities. Legislative provisions were loosely worded, leaving room for a wide exercise of discretion by the tax authorities.

“The tax authorities issued tax circulars based on such broad discretions. Often they unilaterally forced procedures upon the taxpayer, and many details of tax procedure were enforced through administrative guidance. There were particular problems with tax audit procedures, such as its general opaqueness, abuse of discretionary powers by the tax authorities and coercive administrative guidance”.

Legislative drafting for tax laws was proposed by CBR in close consultation with the officials of the Ministries of Finance, and Law *i.e.* the bureaucracy. Members of the National Assembly, the elected representatives of taxpayers, were by and large neither well versed nor skilled in tax matters and were not in a position to adequately fulfill their function of preparing legislation in that area. A Comparative study reveals that similar conditions prevailed in Japan. In 1990 the OECD published a report entitled Tax Payer Rights and Obligations:

A survey of the legal position in OECD countries (OECD Report) stated:

“Given that the bureaucracy had this grip on the practical power to legislate in the tax area, their opinions had a

profound effect on procedural tax legislation. However, the bureaucracy's opinions did not include improving procedural fairness by consolidating procedures relating to tax assessment, or increasing public awareness of the kinds of information obtained by the tax authorities through those procedures. On the contrary, there was a strong view in the bureaucracy that it was sufficient if taxpayers who were dissatisfied with the tax authorities' procedures could protect their rights through litigation after the problem had occurred. But the tax authorities on the front line who actually administered tax procedures held the opinion that a high proportion of suits only served the purpose of hindering efficient administration: even where a problem arose, they tended to use administrative guidance to avoid litigation.

From 1993, the Labor Government in Australia opened up the tax system to give a better deal to ordinary taxpayers in their dealings with the Tax Office and proudly claimed, "We created a Tax Ombudsman to deal with disputes between tax payers and the Australian Taxation Office (ATO)".

New Zealand small businessman Dave Henderson has a very dim view of the goods and services tax system after almost losing his business and being bankrupted during a dispute with the Inland Revenue Department. He has written a book about his experience, **Be Afraid -One Man's Stand Against The IRD.**

The news nine msn published a story entitled "New Zea Land GST Tax Victim" produced by Aun Buchner describing the conduct of Tax authorities which can be quoted here to illustrate the malaise that is confronting the tax culture in our country as well with difference in degree of severity.

"Dave Henderson's tax nightmare began innocently enough. In late 1993, his company filed a routine two-monthly GST return, claiming a \$60,000 refund. The only thing unusual about it was that *it was filed in Christchurch rather than Wellington as usual.* But when a member of his staff returned from a meeting with the

Inland Revenue Department alleging harassment by some tax officers, Dave reacted”.

“He concluded the interview by asking her to hold out her hands, which she did. And he then observed that she had small wrists, therefore they would only need small handcuffs. And she came back extremely upset and I did what probably most people in this room would have done: I rang him and I ripped his head off, and that started what, in retrospect, can only be described as the audit from hell.”

Dave’s \$60,000 refund claim was quickly met by a counterclaim by a Zealous IRD that he owed them a million dollars. A four-year battle for justice ensued, costing Henderson almost a quarter of a million dollars in legal fees -and worse.

“I was driven to bankruptcy. I had a million-dollar assessment that I couldn’t defend, I had lines of credit withdrawn, I had my business effectively washed up as a consequence,” said Henderson.

“After I went bankrupt, the department, with no prospect of recovering any money, started another audit against him personally. They started other audits against our company, not just GST audits; they started income tax audits, further GST audits, they started payroll audits. The matter went on and on. And I have to say, it was only with the intervention and tremendous energy and courage of a backbench Member of Parliament that eventually the Commissioner, through the Minister, called an internal investigation into my case.”

Rodney Hide MP spearheaded a full IRD review into its own conduct eventually cleared Dave Henderson and saw him finally receive his \$65,000 GST refund, after a four-year battle for justice.

Hide has this message for Australian small businesses:

“You should always be afraid of the tax department. Every businessperson has to be because of their powers.

There is no doubt about it that in New Zealand the introduction of the GST saw a marked change of the culture within our tax department, and indeed a culture that was named by the parliament as a culture of "intimidation and fear" that must end now."

Parliament ultimately resolved that New Zealanders deserved a good tax system. Keeping in view that Government collected over \$30 billion in taxes and, therefore, the MPs recognized that they all had an interest in protecting their nation's tax base. They resolved that "New Zealand first will continue to reform the taxation systems by: simplifying processes; clarifying legislation; ensuring that the taxation laws of New Zealand are upheld; and that all - large corporate or private individual - pay their taxes".

The Parliament, therefore planned to:

- a) act against incompetence and corruption within the Inland Revenue Department (IRD);
- b) ensure that the IRD's application of the compliance and penalties regimes is fair and equitable;
- c) reduce tax compliance costs by monitoring, evaluating (and amending as necessary) the measures introduced during our time in Government. Priorities remain: streamlining of taxation analysis and preparation of returns processes; and making the tax system as neutral and equitable as possible;
- d) remain opposed to any increase in general taxation;
- e) require that disclosure of tax schemes that affect the instance of tax payable by more than \$50,000, be mandatory;
- f) ensure that any failure to disclose (or the falsification of material facts) by a person experienced in taxation matters is treated as a serious criminal offence. If a sum of greater than \$5m revenue is involved, it will carry a maximum penalty of 10 years imprisonment;

- g) establish a tax ombudsman to investigate tax payer complaints;
- h) enact legislation to give effect to select committee and minority reports recommendations from the enquiry into the IRD;
- i) amend requirements and implement practices to enable the IRD to more appropriately remit tax liabilities or enter into arrangements for deferred payments;
- j) introduce an accelerated depreciation regime for specified industries and selected approved investments so as to assist business development.
- k) provide tax incentives for research and development; and
- l) apply tax incentives to business activities which add value, create employment, provide export growth and/or new technology development.

However, establishment of a Tax Ombudsman did not allay all apprehensions overnight. Unlike New Zealand, Australia where a Tax Ombudsman was there to deal with tax payer complaints against the A TO a former Tax Ombudsman Peter Haggstrom voiced these concerns with reference to Dave's book:

"As I read through the book, I kept seeing parallels with what I had seen with the tax office, so this is real. It's not something that Rodney Hide and Dave Henderson confected. I feel there should be considerable scrutiny on how the tax office responds to cases of over-zealous action. We have an ombudsman in this country but I think people should look very closely as to whether that organization is going to properly scrutinize the behavior of the tax office going through this process.

To the good luck of small business in Australia Tax Commissioner Michael Carmody was quick to allay Australian fears by providing funds to the Commonwealth Ombudsman to handle GST complaints.



He was convinced that "it needed a taxpayers' advocate - someone who was on the taxpayer's side, rooting for the taxpayer - to be able to get to the bottom of issues within the department and help the taxpayer who was wrestling with literally a mountain of tax legislation that not even the wisest tax practitioners in his country could understand fully".

He thought that "tax collectors had far more powers than the police, and the "biggest power that they have is the power to assess" and taxpayers are "held as being guilty and due to pay that money until they proved their innocence. It is the power that the Inland Revenue Department has and it is the power to destroy lives and destroy businesses".

Around the same period, the idea of establishing a Federal Tax Ombudsman was mooted in Pakistan during the interim government of Prime Minister Mr. Moin Qureshi in 1993. Justice ® Gul Muhammad was designated for the post. However, their proposal could not be implemented.

The next feeble response to public outcry against the tax collectors and demand of business community for redressal of their grievances was section 18A in the draft Pakistan Revenue Authority Bill that was supposed to be tabled in the National Assembly as a Schedule to Finance Bill, 1999.

The draft subsection (1) of section 18A provided for a Federal Tax Ombudsman appointed by the Executive to perform such functions and exercise such powers as may be specified in the order of the Federal Government Subsection (2) provided that without prejudice to the generality of foregoing the Federal Tax Ombudsman shall have the powers to diagnose, investigate, redress and rectify any injustice done to a person through maladministration as defined in subsection (3). However, it did not see the light of the day.

The demand, however, became more vociferous and the Government, keen as it was in giving a genuine boost to economy, to plug all the loopholes and establish equity and fairness in the tax system and inject honesty and efficiency in tax administration proposed that President promulgates an Ordinance to establish the Office of the Federal Tax Ombudsman. The Finance Minister in Budget Speech for the year 2000-2001 announced:

"To further the objective of instituting efficient methods of dispute resolution, it has been decided to establish a new adjudication forum, namely the office of Tax Ombudsman. This will allow prompt redressal of taxpayers grievances. A separate law is being promulgated for this purpose, and Mr. Justice (R) Saleem Akhtar, former judge of the Supreme Court, is being appointed as the first Tax Ombudsman. With the establishment of Tax Ombudsman's office, the need for a Settlement Commission will no longer be there and hence is being abolished."

Accordingly, the Establishment of the Office of Federal Tax Ombudsman Ordinance (Ordinance XXXV/2000) was promulgated on 11<sup>th</sup> August 2000.

Primary purpose for establishing the Office of the Federal Tax Ombudsman as indicated in the Ordinance is to diagnose, investigate, redress and rectify any injustice done to a person through maladministration by functionaries administering tax laws.



*Officers and Staff of Regional Office, FTO Secretariat, Karachi*



### CHAPTER-III

#### SALIENT FEATURES OF THE ORDINANCE

The salient features of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 hereinafter referred to as "Ordinance" are being highlighted hereunder for the benefit of stakeholders.

#### **Constitutional Attributes**

##### **I- Item 13 of the Federal Legislative List**

Parliament has the power of enactment for establishment of as many Federal Ombudsmen as the legislature deems necessary as item 13 of the Federal Legislative List provides for Federal Ombudsmen.

##### **II- Expenditure Charged upon Federal Consolidated Fund**

Article 81 of the Constitution provides that the following expenditure would be the expenditure charged upon Federal Consolidated Fund: -

- (a) The remuneration payable to the President and other expenditure relating to his office, and the remuneration payable to:-
  - (i) the Judges of the Supreme Court;
  - (ii) the Chief Election Commissioner;
  - (iii) the Chairman and the Deputy Chairman of the Senate;
  - (iv) the Speaker and the Deputy Speaker of the National Assembly;
  - (v) the Auditor General;
- (b) the administrative expenses, including the remuneration payable to officers and servants of the Supreme Court, the department of the Auditor General and the Office of the Chief Election Commissioner and of the Election Commission and the Secretariats of the Senate and the National Assembly;

- (c) all the debt charges for which the Federal Government is liable, including interest, sinking fund charges, the payment or the amortisation of capital, and other expenditure in connection with the raising of loans, and the service and redemption of debt on the security of the Federal Consolidated Fund;
- (d) any sums required to satisfy any judgement, decree or award against Pakistan by any Court or Tribunal; and
- (e) any other sums declared by the Constitution or by Act of [Majlis-e-Shoora(Parliament)] to be so charged.

Section 35 of the Establishment of the Office of Federal Tax Ombudsman Ordinance provides that the remuneration payable to the Federal Tax Ombudsman and the administrative expenses of the office, including the remuneration payable to eligible staff members, nominees and grantees, shall be an expenditure charged upon the Federal Consolidated Fund.

*This feature of the Office of Federal Tax Ombudsman warrants special delegation of administrative and financial powers as are delegated by the Chief Executive of Pakistan to the Offices and Institutions enumerated in Article 81 of the Constitution in relaxation of the Finance Division O.M. No F.3(4) Exp.III/2000 dated 30.06.2000 for the purposes of his functions under section 24 of the Ordinance*

### III- A fixed tenure

The President of Pakistan shall appoint the Federal Tax Ombudsman for a tenure of four years.

### IV- Independent of Executive

The incumbent shall perform his functions and exercise his powers independent of the executive and all executive authorities throughout Pakistan shall act in aid of the Federal Tax Ombudsman.  
(Subsection (3) of Section 3)

## V- Public servant

The Federal Tax Ombudsman and staff members, according to section 27 of the Ordinance No.XXXV of 2000, shall be public servants within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).

### Basic Objective

The objective of appointment of Federal Tax Ombudsman according to preamble of the Ordinance is to *diagnose, investigate, redress and rectify* any **injustice done to a person through maladministration** of the *government functionaries administering tax laws*. The **Division** whose diagnosis and investigation is aimed at has been defined under *subsection (7) of section 2* of the Ordinance as under: -

“The **Revenue Division** means the administrative unit responsible for the conduct of business of the Federal Government in matters relating directly or indirectly with the collection of revenue from the federal taxes, duties, cess or fees and declared as such by the Federal Government, *and includes all its subordinate departments, offices and agencies.*”

**Maladministration** has been defined to include: -

- “(i) a decision, process, recommendation, act of omission or commission which-
  - a) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bona fide and for valid reasons.
  - b) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory;
  - c) is based on irrelevant grounds; or
  - d) involves the exercise of powers, or the failure or refusal to do so, for corrupt or improper motives, such as bribery, jobbery, favouritism, nepotism and administrative excesses;

- (ii) neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities;
- (iii) repeated notices, unnecessary attendance or prolonged hearings while deciding cases involving-
  - (a) assessment of income or wealth
  - (b) determination of liability of tax or duty;
  - (c) classification or valuation of goods;
  - (d) settlement of claims of refund, rebate or duty drawbacks; or
  - (e) determination of fiscal and tax concessions or exemptions.
- (iv) willful errors in the determination of refunds, rebates or duty drawbacks;
- (v) deliberate withholding or non-payment of refunds, rebates or duty drawbacks already determined by the competent authority;
- (vi) coercive methods of tax recovery in cases where default in payment of tax or duty is not apparent from record; and
- (vii) avoidance of disciplinary action against an officer or official whose order of assessment or valuation is held by a competent appellate authority to be vindictive, capricious, biased or patently illegal.

### Scope of Action

The jurisdiction, functions and powers of the Federal Tax Ombudsman covers following areas within its scope: -

**Investigation** involving any allegation of maladministration on the part of Revenue Division or any tax employee

- (i) on a complaint by an aggrieved person



At the opening ceremony of Regional Office, Lahore on 27 July, 2001.

from Left to Right

Mr. Yaqub Ahmad Khan, Member CBR, Justice (R) A. S. Salam former Waqar Mottasib,  
Justice (R) Saleem Akhtar, Federal Tax Ombudsman, Dr. Tariq Hassan, Adviser to Finance Minister and  
Mr. A.A. Zuberi, Adviser, Regional Office, Lahore.

- (ii) on a reference by the President.
- (iii) on a reference by the Senate
- (iv) on a reference by the National Assembly
- (v) on a motion of the Supreme Court during the course of any proceedings before it
- (vi) on a motion of the High Court during the course of any proceedings before it and
- (vii) of his own motion.

However, *subsection (2) of Section 9* of the Ordinance excludes from jurisdiction of Federal Tax Ombudsman matters which:

are **subjudice** on the date of receipt of a complaint, reference or motion or Matters where *legal remedies of appeal, review or revision are available which relate to*

assessment of income or wealth,

determination of liability of tax or duty,

classification or valuation of goods,

interpretation of law, rules and regulations relating to such assessment, determination, classification or valuation

under the Relevant Legislation.

The foregoing provisions of clauses (a) and (b) of *subsection (2) of section 9* restricting the jurisdiction of Federal Tax Ombudsman have caused serious resentment among trade bodies, Chambers of Commerce and Industry and Pakistan Tax Bar Association and they feel that the jurisdiction should be unfettered.

Meanwhile the Federal Tax Ombudsman, after hearing the parties, has held, in several cases, that notwithstanding the foregoing restrictive provisions, if any allegation of maladministration is made which is not directly under consideration of any authority, court, tribunal or board the Federal Tax Ombudsman shall have jurisdiction to investigate and decide such issues of maladministration.

Further, service matters of tax employees of the Revenue Division are also excluded from the jurisdiction of Federal Tax Ombudsman.

## Filing Procedure

The procedure for filing complaints with the Federal Tax Ombudsman is provided under *section 10* of the Ordinance. The requirements of *subsection (1)* of *section 10* are:

- i) A written complaint addressed to the Federal Tax Ombudsman on solemn affirmation in writing that contents of the complaint are true and correct.
- ii) In case complaint is not verified on solemn affirmation, an affidavit reiterating the contents of complaint should be filed.
- iii) Complaint, solemn affirmation / affidavit to be signed by the aggrieved person or in case of death of the aggrieved person by his legal representative.
- iv) Complaint can be delivered in the offices of the Federal Tax Ombudsman by hand or by any other means of communication.

While *subsection (2)* provides that anonymous or pseudonymous complaints shall not be entertained *subsection (3)* places a **time bar of six months** from the day on which the person aggrieved first had the notice of the matter alleged in the complaint till the date of filing of complaint. However, the Federal Tax Ombudsman may entertain the complaint, which is not within time if he considers that there are special circumstances to deem it proper in the interest of justice to conduct any investigation pursuant to a complaint.

Where the Federal Tax Ombudsman proposes to conduct investigation he shall, in accordance with *subsection (4)*, provide an opportunity to the Secretary of the Revenue Division or to the functionary who is alleged in the complaint to have taken the action or authorized the action complained of, to reply to the allegations contained in the complaint through a notice, when he proposes to conduct an investigation. Further in such eventuality *subsection (6)* provides for an opportunity to the parties to be heard in person or through an authorized representative by the Federal Tax Ombudsman.





*Participants at the Opening Ceremony of Regional office, Lahore of the F.T.O. Secretariat.*



However, when he decides in any case not to conduct an investigation, *subsection (10)* provides that he shall send to the complainant a statement of his reasons for not conducting the investigation.

*Subsection (5)* provides that normally every investigation shall be conducted in private. However, the Federal Tax Ombudsman may adopt such procedures, as he considers appropriate for such investigation. He may also obtain information from such persons and in such manner and make such inquiries as he thinks fit.

Any person who attends or furnishes information for the purpose of any investigation shall receive, in accordance with *subsection (7)*, expenses and allowances from the Federal Tax Ombudsman in accordance with the rules made under the Ordinance.

The Federal Tax Ombudsman, in exercise of his powers under *subsection (9)*, may require any tax employee to furnish any information or to produce any document which in his opinion is relevant and helpful in the conduct of the investigation and there shall be no obligation to maintain secrecy in respect of disclosure of any information or document for the purpose of such investigation.

*Subsection (8)* permits the Revenue Division to take any action or to exercise any power or duty of the Revenue Division to take further action in respect of any matter which is subject to investigation. It is however clarified that such action should be, just, proper and according to law and should not be motivated, biased prejudiced or with the intention to forestall and frustrate the investigation.

### **Force of Recommendations**

Federal Tax Ombudsman has the authority to make recommendations under *Section 11* within a period of sixty days from the date of receipt of the complaint, reference or motion, as the case may be, if he is of the opinion that the matter considered amounts to maladministration.

The Federal Tax Ombudsman shall have the power to review any finding communicated or recommendations made or any order passed by him under section 14(8) of the Ordinance.

If, after conducting an investigation, it appears to the Federal Tax Ombudsman that an injustice has been caused to the person aggrieved in consequence of maladministration and that the injustice has not been or will not be remedied, he may, if he thinks fit, lay a special report on the case before the President.

Where the Federal Tax Ombudsman communicates his finding with recommendation, the Revenue Division shall within the time specified inform him about the action taken on his recommendation or the reasons for not complying with the same.

If the Revenue Division does not comply with the recommendation of the Federal Tax Ombudsman or does not give reasons to the satisfaction of the Federal Tax Ombudsman for non-compliance, it shall be treated as "Defiance of Recommendations."

The Federal Tax Ombudsman, shall forward a copy of the compliance report or communication received by him from the Revenue Division to the complainant or the President, the Senate, the National Assembly, the Supreme Court or the High Court as the case may be.

### **Defiance of Recommendation**

It is the duty of the Revenue Division and the Tax Employee to implement the finding, made under *sections 11 and 12*, within thirty days of communication of such decision to the concerned Tax Employee.

In each instance of defiance of recommendations, a report by the Federal Tax Ombudsman shall become a part of the personal file or character roll of the tax employee primarily responsible for the defiance. Such tax employee shall also be liable for contempt as provided in *section 16*:

The Federal Tax Ombudsman has, *mutatis mutandis*, the same powers under *section 16*, to punish for contempt, as the Supreme Court has to punish a person for its contempt.

In case there is defiance of recommendations by a tax employee with regard to its implementation the Federal Tax Ombudsman may refer the matter to the President who, in his discretion, may direct the Revenue Division to implement the recommendation and inform the Federal Tax Ombudsman accordingly.

The Ordinance provides under *section 13* that the Federal Tax Ombudsman may refer the cases to the Revenue Division for corrective or disciplinary action or both where he is satisfied that any employee is guilty of any allegations. The Revenue Division is required to report compliance within 30 days of receipt of reference failing which the Federal Tax Ombudsman may bring the matter to the notice of the President for such action as he may deem fit. Besides, he may take action for contempt under *section 16* as well.

### **Powers of the Federal Tax Ombudsmen**

#### **i) Code of Civil Procedure at F T O's Call**

The Federal Tax Ombudsman shall exercise powers for the purposes of the Ordinance as are vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of:

summoning and enforcing the attendance of any person and

examining him on oath.

compelling the production of documents,

receiving evidence on affidavits, and

issuing commission for the examination of witness.

#### **ii) Any person can be required to furnish information on points that may be relevant to the subject matter of any investigation.**

The Federal Tax Ombudsman or any other person authorized in writing by the Federal Tax Ombudsman in this behalf may also exercise such powers in the course of conducting an investigation under the provisions of the Ordinance.

iii) Protection to Revenue Functionaries against False Allegations

Where the complaints are found to be false, frivolous or vexatious, the Federal Tax Ombudsman may award reasonable compensation to the Revenue Division or tax employee against whom the complaint was made. The amount of such compensation shall be recoverable from the complainant as an arrear of land revenue. However, award of compensation shall not debar the aggrieved person from seeking civil and criminal remedy.

iv) Criminal or Disciplinary Action Against Errant Revenue Functionaries

The Federal Tax Ombudsman may, in addition to taking other actions under this Ordinance, refer the matter to the appropriate authority for taking disciplinary action against the Revenue Division or the tax employee who disregards the orders of the Federal Tax Ombudsman. In case he has reasons to believe that the Tax Employee has acted in a manner warranting criminal or disciplinary proceedings against him, he may refer the matter to the appropriate authority for necessary action to be taken within the time specified by him.

v) Commissioning Staff To Administer Oath/ Attestations/ Affirmations

The Staff Members and nominees of the Office may be commissioned by the Federal Tax Ombudsman to administer oaths for the purposes of this Ordinance and to attest various affidavits, affirmations or declarations which shall be admitted in evidence in all proceedings under this Ordinance without proof of the signature or seal or official character of such person.

vi) Power of Review already referred to earlier

vii) Power to enter and search (Sec 15)

The Federal Tax Ombudsman or any authorized staff member in this behalf may for purpose of making investigation enter any premises if he has reason to



believe that any article, books of account or any other document relating to the subject matter of investigation may be found and may

- a) Search such premises and inspect any article books of accounts and documents
- b) Take extracts or copies of such books of account and documents
- c) Impound or seal such articles, books of account or documents
- d) Make an inventory

All searches shall be carried out in accordance with the provisions of Code of Criminal Procedure 1898 (Act V of 1898)

viii) Power to punish for contempt already referred to above.

### **Inspection Teams**

The Federal Tax Ombudsman may constitute an Inspection Team for performance of any of the functions of the Federal Tax Ombudsman.

### **Standing or Advisory Committees**

The Federal Tax Ombudsman may, whenever he thinks fit establish Standing or Advisory Committees at specified places with specified jurisdictions.

### **Awarding Cost/ Compensation**

The Federal Tax Ombudsman can award cost or compensation in accordance with *section 22* to an aggrieved party for loss or damage suffered by him on account of maladministration by Tax Employee or the Revenue Division after considering explanation and hearing such Tax Employee or Revenue Division. In cases involving payment of illegal gratification to any Tax Employee or any person on his behalf, or misappropriation, criminal breach of trust or cheating, the Federal Tax Ombudsman may order the

payment thereof for credit to the government or pass such other order as he may deem fit.

### **Representation to the President**

Representation to the President can be made under *section 32* either by Revenue Division or by any person aggrieved by the recommendations of the Federal Tax Ombudsman, within 30 days of the recommendations and the President may pass such orders thereon, as he may deem fit.

### **Informal Resolution of Disputes**

A very significant feature of the Ordinance is *Section 33* for informal resolution of disputes. The authority of Federal Tax Ombudsman to informally conciliate, amicably resolve, stipulate, settle or ameliorate any grievance overrides other provisions of the Ordinance. The Federal Tax Ombudsman can proceed under this provision without requiring any written memorandum and without the necessity of docketing any complaint or issuing any official notes.

The Federal Tax Ombudsman has framed "*Investigation and Disposal of Complaints Regulations*" to regulate the procedure for conduct of business or the exercise of powers under the Ordinance as provided under subsection (11) of section 10 of the Ordinance.

The Federal Tax Ombudsman can also make Rules under *section 36* with the approval of the President for carrying out the purposes of the Ordinance.

Under Section 29 no court or authority shall have jurisdiction to

- i) question the validity of any action taken, or intended to be taken, or order made, or anything done or purporting to have been taken made or done under the Ordinance.
- ii) grant any injunction or stay or to make any interim order in relation to any proceeding before or anything done or intended to have been done or purporting to have been

done by, or under the Orders or at the instance of the Federal Tax Ombudsman.

According to *Section 37* the provisions of this Ordinance shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force including the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (President's Order No.1 of 1983.)





Participants in the Seminar on the Establishment of office of the Federal Tax Ombudsman Organized by APTBA at Haderabad  
from Left to Right

Akhtar Jameel R.C.I.T., Southern Region, Karachi, Justice (R) Saleem Akhtar Honorable Federal Tax Ombudsman,  
Rehmat Ali Sheikh S.V.P, APTBA, Muhammad Asif Hashmi, President APTBA.

## **CHAPTER-IV**

### **REACHING OUT THE STAKEHOLDERS**

Soon after taking his oath of office on 19.09.2000 the first Federal Tax Ombudsman Justice ® Saleem Akhtar realizing the need for embarking upon a public awareness campaign granted interviews to the newspapers as well as on electronic media. He participated in live panel discussion with journalists, advocates and Officials of Chambers of Commerce and Industries which were also published by the newspapers.

Decisions of the Federal Tax Ombudsman on the complaints of the aggrieved taxpayers regarding income tax, sales tax and customs etc. were released to the press. These were given wide coverage in view of tremendous interest shown by their readers. Newspapers also carried articles on the working/performance of this institution and its impact on tax administration as well as the taxpayers. It was widely acclaimed as a positive measure to promote voluntary compliance by the taxpayers and quick response by the tax machinery.

The Federal Tax Ombudsman addressed associations of trade commerce and industry all over the country to introduce them to the objectives of the establishment of his office. On January 10, he addressed the Karachi Chamber of Commerce and Industries. Newspapers carried his speech in which he assured business community to make all out efforts to provide relief to the aggrieved taxpayers. He encouraged them to come forward with their complaints not only with the objective of seeking relief in their personal tax concerns but also to enable the tax administration as well to identify and appreciate their internal weaknesses and shortcomings.

On January 19 Honourable Federal Tax Ombudsman appeared in program of Radio Pakistan Islamabad and gave the introduction of the Federal Tax Ombudsman Ordinance and institution. On January 20 he presided over Seminar in Lahore on the establishment of the office of Federal Tax Ombudsman organized by the All Pakistan Tax Bar Association.

On January 20, the national newspapers carried the news stories of live interview broadcast by Radio Pakistan (PBC) in national hook up programme in which he apprised the listeners of the potential of his Office to redress their grievances against tax administration. On January twenty second he called on the Chief Justice Lahore High Court and briefed him about the establishment of the office of Federal Tax Ombudsman. On February 2, daily Jang Rawalpindi published a detailed story based on PTV's live telecast in the "News-Morning Current Affairs" programme.

The APP scribe interviewed the Federal Tax Ombudsman on January 31. He assured that his office was committed to provide relief, protection and safeguard to the taxpayers against any harassment, coercion and malpractice of tax authorities. The newspapers published detailed accounts of his interview.

The Federal Tax Ombudsman addressed members of Gujrat Chamber of Commerce and Industry on Feb.4, where he dispelled their apprehensions about the effectiveness of his office in protecting the complainants from retaliatory victimization by tax officials.

The Chairman CBR called on the Federal Tax Ombudsman on February 10 along with other members of the Board and expressed his gratitude over the guidance being provided to the tax officials by his useful findings and far reaching recommendations. Newspapers reported the meeting extensively.

On February 16, all the major newspapers carried interview of the FTO conducted by a news agency (NNI).

The visits of Federal Tax Ombudsman to Rawalpindi Chamber of Commerce & Industries Rawalpindi on February 17 and to the Office of the SITE Association of Industries Karachi on February 26 were useful occasions to meet the office bearers and members of associations of trade and industries.

On 27 February he addressed the Overseas Investor Chamber of Commerce Karachi.

On 27 February he also appeared for interview on PTV Karachi. On 28 February he delivered lecture on "the Nature and Functions of Federal Tax Ombudsman in Pakistan", at the Department of Economics University of Karachi.

On March 20 he held Press Conference at Federal Tax Ombudsman Secretariat Islamabad.

On March 21, all the newspapers across the country published reports of press conference, where the FTO explained the details of working of the institution, its impact on the economy and taxpayers. He informed the journalists that his institution had brought awareness among taxpayers of their rights. He apprised them that his office was primarily empowered to diagnose, investigate and rectify the injustice done to taxpayers by mal-administration of the Revenue Division. He said that 398 petitions were filed since inception and in 140 petitions he had accorded relief despite poor logistic support.

The FTO participated in a live programme of PTV Current Affairs on 29.3.2001 and gave replies to the questions of the panel members. The same morning he presented Annual Report of his office for the year 2000 to the President. On March 30 he held meeting with the taxpayers at Lahore organized by Monthly Tax Forum. On March 31 he presided over Seminar on The Establishment of the Office of Federal Tax Ombudsman Ordinance organized by the Pakistan Tax Bar Association. On April 3, Jang, Rawalpindi in his editorial note commended the role of FTO.

On April 6 he presented the Annual Report of 2000 to the Chief Justice of Supreme Court of Pakistan.

Achievements of the FTO were highlighted in print/electronic media, when the government completed its one and a half year on 12.4.2001. Articles on the establishment of the FTO office, its functions and procedure were published in Urdu and English newspapers besides live discussions and panel interviews on electronic media.

On April 26 he addressed the officers of Income Tax Department at Income Tax House Karachi. On June 8 he held meeting with Pak Pulp Papers and Boards Mills Association.

On 7<sup>th</sup> July he addressed the Income Tax Officers at Income Tax House Lahore. On 12<sup>th</sup> July he presided over the second Session of the Seminar on the draft Income Tax Ordinance, 2001 at Banking Institute Islamabad. On July 19 he also delivered a



lecture on Role of the 'Federal Tax Ombudsman' in the four days workshop for Members of Income Tax Appellate Tribunal at Federal Judicial Academy Islamabad. On July 27 he addressed at the inaugural Ceremony of Regional Office Federal Tax Ombudsman at Lahore.

On August 3, he presided over a seminar at Hyderabad on the role of Federal Tax Ombudsman organized by Hyderabad Tax Bar Association. On August 20 he held a meeting with the Member of IMF fiscal affair department mission in the FTO Secretariat Islamabad. On 27<sup>th</sup> of August he attended a question answer programme in the News Morning of PTV Islamabad. He also gave interview to Telebiz Television at Islamabad Office.

On 31<sup>st</sup> of August he addressed the Arabian Sea Club Members Association at Karachi. On September 4 he called on Wafaqi Mohtasib at Supreme Court of Pakistan Islamabad. On 15<sup>th</sup> September he was the Chief Guest in certificate awarding ceremony of taxation law and practice course of Hamdard School of Law Karachi. He was also the Chief Guest of the passing out ceremony of Assistant Commissioners of Income Tax at Training Institute Lahore. On October 10 he attended a Programme on FTO Ordinance on Radio Forum Karachi. On 10 November he visited the Income Tax Department at Sialkot. On the same day he also addressed the Sialkot Chamber of Commerce & Industries. Moreover he presided over a seminar on importance of FTO in the present taxation system in Pakistan. On 29<sup>th</sup> November he was interviewed for Radio Business in Islamabad.

On November 30<sup>th</sup> Revenue Division gave presentation on "Accounting of Income Tax Collection" at FTO Secretariat Islamabad. On 6<sup>th</sup> December he was interviewed by Radio Pakistan for Radio Business Islamabad. On 27<sup>th</sup> December he presided over a seminar on "Meeting with the Tax payers" organized by Tax Forum in Karachi. On 29<sup>th</sup> December he attended PTV News Morning Programme on FTO Ordinance at PTV station Karachi.

All these efforts have created a positive perception that has encouraged the public to repose their confidence in the institution.

The institution has emerged as a beacon of hope in an environment of despair and a symbol of Government's promise to



Participants in the Seminar on the Establishment of office of the Federal Tax Ombudsman Organized by APTBA at Faisalabad.  
from Left to Right

Mian Faheem Muhammad Shahid, President, Sahiwal Tax Bar, S. M. Siddain, Secretary F.T.O. Secretariat Islamabad,  
Z. H Jaffery, Co-President, APTBA, Hon'ble Federal Tax Ombudsman Justice (R) Saleem Akhtar, Muhammad Saleem Saran,  
Executive Member FCCI, Rehmat Ali Sheikh, S.V.P., APTBA, Muhammad Ashraf Hashmi, President APTBA.

hold accountability at all levels and in every field. It has established its credibility and complainants are coming forward to seek quick redressal of their grievances in a large number.

## **2. PUBLICITY / PROJECTION OF ACTIVITIES / JUDGEMENTS OF THE FEDERAL TAX OMBUDSMAN SECRETARIAT DURING THE YEAR 2001**

The Federal Tax Ombudsman Secretariat was given due publicity and projection in the print and electronic media during the year 2001. Newspapers published news, articles/editorials and speeches delivered by the Honourable Federal Tax Ombudsman (FTO) at different forums like Federation of Chambers of Commerce & Industry and other Chambers. Seminars organized by different Income Tax Bar Associations on the Federal Tax Ombudsman's powers, jurisdiction and decisions appeared prominently in the Press.

On January 25, 2001, Daily Business Recorder, Karachi published an article on the editorial page underlining the importance of the institution saying that FTO, Justice (R) Saleem Akhtar wants to bridge the gap between tax payers and tax collectors.

On February 11 daily Asas, Rawalpindi published an article written by Asad Hussain Shirazi introducing the establishment of Federal Tax Ombudsman Secretariat commending the government's timely and tax payer friendly decision. The same article was also published in daily Jang Rawalpindi and Pakistan Islamabad on February 13 and 20 respectively.

On February 14 and 15, Daily Business Recorder Karachi published a comprehensive article, by Muhammad Aslam Shaikh, Advocate, the then Finance Secretary, All Pakistan Tax Bar Association, on "FTO Ordinance, 2000", commenting on different sections of the Ordinance, which helped to give an insight into the Institution. On February 18, Business Recorder, Karachi wrote an editorial under the title "Tax Ombudsman at work".

On March 4, daily Jang Karachi published a special report on Jurisdiction of the Federal Tax Ombudsman, based on "Majlis-e-Muzakra" arranged by it.



On March 17, daily "Financial Post" of Karachi published a detailed news story in which the FTO urged upon the CBR to take effective measures to disseminate knowledge about tax laws. The Honourable FTO has given this important directive in his decision/ findings in a petition regarding waiver of short levied tax and additional tax filed by an agency holder of Mansehra, Hazara.

On March 20, the FTO made his first ever largely attended press conference (in his capacity as the first FTO), which was reported on March 21 in all major newspapers throughout the country. This press conference proved a very useful and productive inter face of FTO with journalists. In this press conference, the Federal Tax Ombudsman informed the media about details of working and his performance during the difficult initial period of his institution.

On March 27, the Financial Post, Karachi published a news story prominently regarding the FTO's directive to CBR for providing the list of refund cases to his office. FTO issued this directive while deciding a complaint regarding refund filed by M/s Ihsan Cotton Products, Karachi.

On March 29, Daily "Business Recorder" Karachi published prominently FTO's directive regarding publication of updated "Procedure Manual" issued while giving the findings/decision in a complaint where refund was sought.

On April 8, Daily Business Recorder, Karachi carried an article which discussed and appreciated the role of Federal Tax Ombudsman office in depth and its impact on the working of CBR.

The FTO decided cases of great importance regarding random balloting in audit cases of income tax, specially with reference to the meaning of "ballot" which got proper publicity in main newspaper including The News, Rawalpindi dated April 24, May 09, June 09 and Jang Rawalpindi, dated June 09.

The FTO gave an interview to the reporters of daily "Nawa-I-Waqt" Islamabad and narrated the performance and working of the institution which was carried by daily "Nawa-I-Waqt" Islamabad in its issue of May 24.

Dailies The "Pakistan Observer" and "The Nation", Islamabad on June 13 and 18 respectively, published an article on "FTO-Vital Step Towards Tax Culture" by Asaf Hussain Shirazi, supporting the government in this respect and signifying the establishment of the office.

The FTO decided a number of cases pertaining to Income Tax Returns under the Self Assessment Scheme, which got sufficient coverage in the print media Business Today and Business Recorder in the month of June). FTO's directive to CBR regarding payments of refunds within one month in July got prominent publicity and was projected in dailies Jang, Pakistan, Frontier Post of July 19.

Prominent newspapers namely "Business Recorder" Karachi, "Dawn" Islamabad, "The Nation" Islamabad and "Jang" Rawalpindi dated July 28 published very prominently the news story about FTO's decision on wrong examination and delay in the delivery of a consignment of an importer and directing the CBR (Customs Authorities) to refund penalty imposed.

On July 30, "Business Recorder", Karachi published a detailed story under the caption "FTO's crusade against CBR's excesses" supporting the establishment of FTO and its positive impact on taxpayers and CBR officials.

In many cases, the Federal Tax Ombudsman recommended to the Central Board of Revenue to take disciplinary action against defaulting officials which was published in main newspapers i.e. "Business Recorder" Karachi, "Business Today", Karachi etc. on different occasions during September. On September 14, "Business Recorder", Karachi wrote an editorial on move for better rapport between tax officials and private sector, which signified the role of Federal Tax Ombudsman Office.

On October 10, "Daily Khabrain" published interview of the Honourable Federal Tax Ombudsman in which he informed that so far during the year 2001 more than Rs.60 million have been refunded to the claimants.

FTO decided an important case of impounded vehicles against Customs officials and directed them to furnish details of impounded

vehicles. The news story of this case was published in "Dawn", Islamabad, "The News", Rawalpindi, "The Pakistan Observer" Islamabad, "The Frontier Post", Peshawar, "Nawa-i-Waqat", Rawalpindi, and "Pakistan" Islamabad on November 23.

On November 27, "Business Recorder", Karachi reported a landmark decision of Federal Tax Ombudsman on import valuation dispute of the importers who faced great hardship by the provisional valuation of imported goods by the Customs, ignoring the declared value of the importer.

On November 28, all major newspapers i.e. "The News", Rawalpindi, "The Dawn", Islamabad and the "Pakistan Observer", Islamabad etc. carried report of Federal Tax Ombudsman's directive to CBR for making assessment to Income Tax on cogent evidence.

Electronic media particularly PTV has also helped very much and given proper projection of the working and achievements of the Honourable Federal Tax Ombudsman. The Federal Tax Ombudsman was invited a number of times and he participated in PTV Current Affairs Programme, News Morning, three to four times during the year. Radio Pakistan also arranged panel discussions, where the Federal Tax Ombudsman participated.

Dailies "Dawn", "News", "Nation", "Frontier Post", "Pakistan", "Business Recorder", "Pakistan Observer", "Jang", "Nawa-i-Waqat", "Khabrain", "Ausaf", "Pakistan" and other papers published the news stories regarding statements, speeches and decisions of Federal Tax Ombudsman regarding refund claims and inordinate delay in disposal of cases and other complaints of maladministration. Press has played a very positive role in creating awareness in the minds of the taxpayers regarding the usefulness of the Institution of the Federal Tax Ombudsman.



*Participants asking Questions in the Question Answer Session in the Seminar on the Establishment of the Office of Federal Tax Ombudsman at Faisalabad.*

## CHAPTER-V

### PERFORMANCE DURING THE YEAR

Soon after the inception of the office of Federal Tax Ombudsman the task of creating awareness in the public mind about the role and functions of the FTO, enlisting support of the stakeholders, winning confidence of business community to come forward and express their grievances and seeking cooperation of the functionaries of revenue departments was undertaken in right earnest.

The task was accomplished within a couple of months and by the advent of New Year complaints started pouring in the Secretariat. It is evident from the fact that whereas only seventy two complaints were received by December 2000 the number of complaints were registered at 405, 547, 446 and 384 in the first, second, third and fourth quarters respectively of 2001.

Despite heavy odds and acute logistic constraints, the office started addressing the complaints by providing relief to 105, 331, 606 and 297 complainants in the first, second, third and fourth quarters respectively. Thus by December, 2001 out of 1782 complaints received from all over Pakistan 1339 complainants had been provided relief and 443 complaints were under investigation (Annex I). Out of 1339 cases decided, 955 related to Income Tax, 168 to customs, 112 to sales tax, 114 to wealth tax and 90 miscellaneous matters. (Annex II)

While addressing these complaints and allowing relief to individual complainants, attention was focused on ascertaining the causes of corrupt practices and injustice, identifying the same in the findings recorded by the Federal Tax Ombudsman and in the process of recommending appropriate steps for the eradication of such practices and injustices. That it has received positive response all over is evident from the healthy reaction of the taxpayers to the creation of a separate office of Federal Tax Ombudsman by the government to deal with the mal-administration by the functionaries responsible for administering federal revenues and tax laws.

The major irritants (Annex III) that are clearly discernable from the complaints so far, causing genuine discontent among the taxpayers, are in the following areas:

- i) Departure from and misuse of prescribed office procedures.
- ii) Discontinuance of prescribed periodical inspections.
- iii) Absence of any consistent policy of career planning of officers and staff.
- iv) Working environment and workload
- v) Arbitrary and undesirable proposals/ advice for legislation. [Deeming provisions]
- vi) Unlawful and extra-legal decision-making.
- vii) General slackness in responding to taxpayer's applications/ enquiries
- viii) Improper maintenance of records of taxpayers.
- ix) Delay in Decisions and their communication.
- x) Delay in issuance of refund.
- xi) Improvement in accounting system.

#### **It invariably causes:**

- a. Corruption
- b. Delay in decisions
- c. Delay in issuance of refund

Findings of the Federal Tax Ombudsman on the causes of corrupt practices and injustices identified along with his recommendations for eradication thereof are being presented, briefly, hereunder:

#### **Disruption and distortion of tested and tried office procedures**

The Federal Revenue Departments had evolved a foolproof office procedure over a period of time in the sub continent. Their functions were well defined and operational steps were clearly identified in the operational manuals regularly updated and published. These were based upon standing instructions and prescribed proformas.

Record of registered taxpayers (**General Index Register**), records of returns/claims/ bills of entry etcetera reflecting up-to-date position of filers and non filers, position of assessments/ adjudications/ clearances to be done, position of disposal and the balance stock for disposal with each assessing/ adjudicating and clearing officer was maintained on day to day basis in the **Stock Register**.

Complete record of orders under appeal at each forum was maintained by each assessing/ adjudicating/ clearing office in suitably devised **appeal registers** with columns for entry of date of receipt of order from each appellate forum, column for required consequential action and a column for the date of such action.

Similar registers were maintained at each level of authority to keep record of applications requiring statutory action e.g. miscellaneous applications for rectification or for certificates of exemption from withholding of tax etcetera.

Entries of assessments/ adjudications/ clearance were made on daily basis in a prescribed **Demand and Collection Register** by the concerned officer in his own handwriting recording therein the serial number, name & address, assessment year, income / value etcetera declared and assessed, tax/ duty payable, tax already paid and balance tax payable or deductible. There were further columns to enter the date of service of demand/ refund notice and date of collection of balance demand or refund of the credit balance.

Entries of all non-collected or non-refunded amounts were transferred at the year-end to an **Arrear Demand & Collection Register** by the Inspector in his handwriting certifying the total arrear brought forward. It was verified by the concerned officer and authenticated by subscribing his signature.

Likewise, there was a perfect system of accounting of each rupee collected from each taxpayer through any source and under any section of relevant law properly posted in prescribed registers. Each entry in the **Daily Collection Register** (cash-book) was duly checked and verified through subscribing handwritten initials on daily basis by the officer in-charge. The document of collection was then placed on the personal assessment record of the taxpayer after recording an entry on the entry-sheet of the file. In case the



collection was on account of demand in consequence of assessment. a credit entry was also made against the debit entry of demand appearing in the Demand and Collection Register.

Staff right from the process-server up to Inspector and office supervisor as well as officers at various levels were required to maintain several other registers and forward diaries relating to their well defined assignments on day to day basis.

The system was sustained through regular periodical inspections. The inspecting officers were required to write comprehensive reports on maintenance of all the required registers and records. The reported officers were duly rewarded or reprimanded on the basis of inspection reports.

The system was so well structured that no person who chose not to opt for self-compliance could buy an escape. The stake of setting him free was too high for the functionary.

However in the wake of introduction of self-assessment schemes designed to promote an anti documentation culture followed on its heels by computerization on ad hoc basis at the hand of officers who had not worked in field offices at the circle level, the manual system was subverted. It was substituted with an extremely inadequate computerized system. The programmers hired to develop the software could not be briefed properly; hence the endless process of trial and error.

The entire system has gone haywire and strangers to the system in the name of experts are unable to diagnose the malaise. Consequently when the remedies prescribed by them are administered the system further deteriorates.

It is basically due to improper enforcement of the system that corrupt practices have emerged rendering supervision and monitoring well nigh impossible.

While arrangements for conducting detailed studies are being contemplated a few examples of the findings and recommendations are reported hereunder:



*Hon'ble FTO is replying the Questions in Question Answer Session in a Seminar on the Establishment of the Office of Federal Tax Ombudsman organized by APTBA, at Faisalabad.*

In a complaint filed against the Customs, recommendations were made to ensure proper enforcement of rules and regulations in respect of consignments meant for Karachi Export Processing Zone and to enforce the rules, regulations, orders and instructions issued from time to time with particular reference to the maintenance of secrecy of records.

Following recommendations were made to regulate the procedure for audit of records and accounts and deregistration of the firms under the Sales Tax Act, 1990.

#### **A. Audit of records**

- i) The audit should be completed within the specific time as provided by Sales Tax General Order No.1 of 1999. If the time frame is to be changed for any reasons, it should be reasonable time.
- ii) Where on the basis of audit report show cause notice is issued, proper opportunity shall be provided to the person/unit to challenge the audit report. The procedure provided in section 11 of the Sales Tax Act shall be followed for any action taken after the audit is carried out.
- iii) No order should be passed or action taken on the basis of oral request of any person unless the same has been duly recorded on the relevant file.

#### **B. Deregistration under section 21 of the Sales Tax Act.**

- a) The Collector or the Officer authorized to deal with such cases shall acknowledge receipt of application in writing within one week of the date it is received.
- b) The officer concerned shall pass final order disposing of the application within the time fixed by section 21 and copy of the order be immediately supplied to the applicant.

It is observed that lack of effective supervision is causing persistent irregularities. Recommendations for ensuring periodical inspections, therefore, have been made and CBR is advised to direct all the Commissioners to ensure proper maintenance of records and registers by carrying out regular periodical inspections and submit reports of inspection. A summary of such reports was also called for in this office for further study.

It was further recommended in a complaint that written explanation of the IAC should be called for his failure to detect that assessing officer under him had proceeded contrary to law and to be advised to improve the monitoring and supervision of his subordinate offices.

### **Absence of career planning policy**

There is no consistent policy planning for careers of officers and staff resulting either in frequent transfers of some or undue prolonged posting of some others at one station /circle /zone etc.

It has been recommended on several occasions and more specifically in complaint **No. C-61 / 2000** that in order to ensure free and fair administration no tax employee should remain posted at one small station or in one Circle in multi-circle stations for a long period because such practice breeds corruption.

### **Working environments & workload**

CBR has been advised to ensure even sharing of workload by the field officers and the staff working under them. Ensuring the quality, adequacy and efficacy of work tools e.g. stationery and prescribed forms provided to them and the working conditions obtaining in their offices will have direct impact on resolution of public grievances and enhancing revenues.

### **Advice for harsh legislation**

All fiscal legislation is basically geared to meet the monetary requirements of the state and to fulfill its obligations of social justice. Introduction of deeming provisions to bring certain receipts to charge of tax, has become common in fiscal legislation. However no "modern government" may like to use this legislative tool to bring capital receipts of individuals under the ambit of chargeable income.

A classic example of such legislative measure is the introduction of sub clause (i) of clause (c) of sub section (2) of section 16 in the Income Tax Ordinance, 1979 for deeming the compensation received by an employee for loss of employment as chargeable income.

Suggestions were submitted to the Chief Executive on June 09, 2000 regarding a common grievance affecting several thousand employees of public sector banks, financial institutions, corporations, as well as semi government organizations who had been paid compensation for loss of their services or termination of employment.

In pursuance of studies conducted by this office under sub-section (4) of section 9 of the Establishment of Office of Federal Tax Ombudsman Ordinance, 2000, in the above matter suggestions were made to the Chief Executive (Annex-IV).

The complainants, therefore, had a valid case but for the following provision of the Income Tax Ordinance, 1979:

**“Section 16(2)** For purposes of sub-section (1),

(a) “salary” includes-

- (i) .....
- (ii) .....
- (iii) Any fees, commissions, allowances, perquisites or profits in lieu of, or in addition to, salary or wages;

(c) “profits in lieu of salary” include-

- (i) The amount of any compensation due to, or received by an assessee from his employer at, or in connection with, the termination of, or the modification of any terms or conditions relating to, his employment;”

The fiction of law supra is a classic example of bad legislation and has become a major irritant to a large number of oppressed individuals causing serious misgivings about a positive public policy.

## **Unlawful and extra-legal decision-making**

A large number of complaints were registered against the orders passed by the assessing officers either without lawful authority or without proper application of law. Some of them were due to lack of knowledge and few were due to wrong interpretation of law. Enquiries have been recommended against such officers.

In another decision where no specific documents were asked for in writing and the claims had been lying unattended it was held that it amounted to maladministration. Further passing of belated orders ex-parte in haste, without recording facts relevant to the claims or without recording any convincing reasons for the rejection of the claims were found to be arbitrary acts falling under the ambit of maladministration.

## **Delay in responding to Taxpayer's applications/enquires**

Complaints were received that the tax employees, invariably, do not respond and acknowledge the letters and queries of taxpayers. It was recommended that all officers be directed to ensure that letters received from public were responded promptly but not later than a fortnight.

## **Improper maintenance of records of taxpayers**

On complaints that assessing officers prolong petty matters to cause harassment, enquiry revealed that, invariably, records of assessee were not traceable in the offices or were incomplete.

**Belated decisions and delayed communication**  
The common response of the tax officers to allegations of delay in deciding the adjustment of input tax claims has been that the allegation has no substance because no time bar has been provided under the law to decide the claims.

The response has been deprecated and it has been strongly recommended that officers should be reminded that time bars are provided in the law to restrain the assessing authorities from creating





*Participants asking Questions in the Question Answer Session in the Seminar on the Establishment of the Office of Federal Tax Ombudsman at Faisalabad.*



any charge after the prescribed period and to prompt the taxpayers to lodge their claims, if any, within the prescribed time. It is incumbent upon the officers to take up the claims at their earliest convenience if it is not possible to take it up on the date it is lodged. They are expected to account for the pendency on day-to-day basis. The requirements to be fulfilled by the claimants should be intimated soon after the preliminary processing of the claim and a reasonable time should be allowed to complete the specified requirements.

### **Delay in issuance of refund**

A large number of complaints were received against delay in deciding the refund cases by the tax authorities. Such cases were investigated and recommendations were issued pointing out the requirement of law, rules and notification which were either ignored or not applied for various reasons. One of the reasons mostly stated orally during hearing was that oral instructions were issued by higher authorities not to issue refund. It was ordered that oral order has no legal sanction. *Subordinate officers, therefore, were advised that no person could be compelled to do what the law does not require him to do, nor can any person be prohibited from doing what is not prohibited by law. A superior officer cannot order his subordinate to do anything which law does not require doing. Yet, considering the possibility that a subordinate may be pressurized to do so it was advised that in such a situation the subordinate must record these facts failing which such plea in defense will not be entertained and he will be held responsible for such act and face consequences.*

### **Improvement in accounting system**

This office had received number of complaints from taxpayers regarding odd accounting system maintained in Income Tax Department. It was recommended that the accounting system of the tax collection be so streamlined by 30<sup>th</sup> June, 2001 that any tax paid by or on behalf of an assessee anywhere in Pakistan is credited to assessee's own account in the Circle where he is assessed, Complaints keep on coming regarding the delay in issuance of refund throughout the year and Honorable Federal Tax Ombudsman ordered to arrange for studies into the system of accounting of Income Tax collection under Section 9(4) of the Federal Tax

Ombudsman Ordinance. On 30<sup>th</sup> November 2001, he was given a presentation by Revenue Division on Accounting Of Income Tax Collection on which Federal Tax Ombudsman prepared a report and laid before the President under Section 28(2) of the Federal Tax Ombudsman Ordinance (**Annex-V**).

### **Tax Information and Guidance Service**

There are frequent changes in tax policies and amendments in laws. Central Board of Revenue has developed its own website.

However it is not regularly updated. Besides, adequate arrangements for those who are unable to have access to the website have not been made.

Recommendations have been made to introduce regular scheme of publishing information folders for wide circulation for self-compliance awareness and familiarization campaigns.

### **Action under Efficiency & Discipline Rules 1973**

Action under Government Servants Efficiency and Discipline Rules 1973 has been recommended to the Revenue Division in a number of cases against officers and staff members. (**Annex-V-A**) A number of them have been charge sheeted, censured, suspended, transferred and even demoted for indulging in maladministration and other corrupt practices.

### **Rewards to Informers**

It has been recommended on complaints for delay in settling the reward claims of informers of evasion of taxes and duties that officers be directed to finalize the cases and submit lists of decided cases within two months along with the amount of admissible reward in each case. Further it should be ensured that useful information provided by the informers is utilized at the earliest in all relevant cases and informers are duly rewarded under the Reward Rules 1980. Recommendations have been usually complied with but in certain cases where huge evasions are assessed and appeals against such orders are pending even high officials in Central Board of Revenue are reluctant to pay 25% of the reward due on ad hoc basis.

### ***Suggestions.-***

The Federal Tax Ombudsman can play an important and effective role in good governance of the country, booster of national economy, create trust and confidence and thus bring about an atmosphere conducive to investment. By quickly redressing the grievances of the tax payers and recovering the irritants that create disharmony, protests, strikes, discontentment and non-cooperation, the Federal Tax Ombudsman not only serves as a buffer between aggrieved persons and the functionaries administering tax laws but pacifies the charged atmosphere by bringing sanity, stability and serenity. This institution has to be strengthened to play a vital role in future. The effectiveness and success of an institution like Ombudsman can be judged by the jurisdiction and power vested in him to ensure the implementation of his decisions and recommendations. By this time implementation has met with successful results but at times frequent references and review petitions filed with intention to delay the process has caused concern and criticism. The Supreme Court in *Federation of Pakistan Vs. Mohammad Tariq Pirzada* (1999 SCMR 2189) while dealing with the provisions of Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order 1983 in respect of implementation of the recommendations which are almost identical to the provisions of the Establishment of the Office of Federal Tax Ombudsman Ordinance 2000 referred to the Directives of the President and Prime Minister of Pakistan and observed as follows:-

It would thus appear that it has been the departmental interpretation of the Federal Government itself that recommendations of the Mohtasib ought to be implemented promptly. *It is unfortunate that the agencies/public functionaries unnecessarily resort to representations under Article 32 of the Order instead of expeditious implementation of the recommendations of the Ombudsman and thereby thwart the ends of justice, aggravating the suffering of the complainants.*

The path shown must be followed.

From the experience gained, the opinion and views expressed by the stakeholders and the problems faced during the year under review following steps may be taken to reform the existing law, which would strengthen the institution.

- 1) The provisions relating to jurisdiction require fresh approach and thinking.
- 2) The jurisdiction of the Federal Tax Ombudsman may be extended to all functionaries responsible for administration and enforcement of federal tax laws. Experience has shown that maladministration by functionaries administering and enforcing tax laws which are not under the control of Revenue Division go unchecked.
- 3) The Federal Tax Ombudsman has not been empowered to issue interim orders even in cases of complaints against patently illegal orders or proceedings causing harassment. To meet the ends of justice power to issue interim orders may be vested in the Federal Tax Ombudsman for limited period as is exercised by the Courts in financial matters.
- 4) Financial independence as conferred on the Supreme Court and Election Commission may be provided.
- 5) The provision that it shall not be necessary to consult Federal Public Service Commission for making appointment of the members of the staff or on matters relating to qualification for such appointment and methods of recruitment may be provided.

Such provision finds place in statutes relating to Wafaqi Mohtasib and Provincial Ombudsmen.

# FEDERAL TAX OMBUDSMAN MEETS THE TAX PAYERS TAX FORUM



Honorable FTO with other representatives in a seminar on "FTO meets Tax Payers" organized by  
Tax Forum, Karachi.

## **CHAPTER-VI**

### **ORGANIZATIONAL SETUP**

By the grace of ALLAH the Office of the Federal Tax Ombudsman is now reaching out from three major cities to address the concerns of the stakeholders all over the country. Two Regional Offices at Lahore and Karachi were also established by June 2001 that are largely operational now.

Starting from an improvised office set up towards the end of the year 2000 the Federal Tax Ombudsman was able to establish a proper Head-Office at Constitution Avenue in Islamabad during the year mainly on account of the directive, very graciously, issued by the Chief Executive of Pakistan on 2<sup>nd</sup> February 2001.

However, possession of only 5000 Sq Ft floor space has been handed over by the Ministry of Industries. The floor area required for the Head Office is 8000 Sq. Ft. Unambiguous directives were issued from the Chief Executive Secretariat to provide the required area in the EAC Building to the Federal Tax Ombudsman Secretariat on priority over requirement of any other office.

Efforts continued throughout the year to seek implementation of the directive. While this report was going to press further space of 1000 Sq Ft in the Right Wing of EAC Building has been handed over to meet the present requirements of Head Office. FTO would like to record his gratitude to the Chief Executive Sectt for extending their support

### **REGIONAL OFFICES**

The Regional Office at Karachi has been set up in the NIC Building, Abbasi Shaheed Road, Off Shahrah-e-Faisal, Karachi where it is functioning since April 2001. Similarly Regional Office at Lahore has been established at House No. 186-A, Scotch Corner, Upper Mall, Lahore. Cooperation and support of Finance Division as well as Works Division are acknowledged.

### **Further Program Of Opening Regional Offices**

Opening the regional offices at Peshawar and Quetta are under



consideration and will be established when the need arises and circumstances warrant.

## PERSONNEL

Initially a total number of 59 temporary posts of officers and 184 temporary posts of support staff in BS-1 to BS-22 were sanctioned for the three proposed offices of the Federal Tax Ombudsman with budget estimates under the head "Establishment Charges amounting to Rs: 18.881 Million. While sanctioning all the posts in various basic scales of pay under section 8 and the provision of budget estimates under the heads of pay and allowances, the provision of Section 20 seems to have escaped the notice which provides for the appointments of advisers, commissioners, consultants, experts, fellows, interns, liaison officers, bailiffs, and other staff that the Federal Tax Ombudsman may appoint to assist him in the discharge of his duties under the Ordinance on remuneration or honorarium to be fixed at his discretion. Accordingly reappropriation of sanction of posts as well as the budget provision for the purpose was proposed.

Meanwhile the Restructuring and Rightsizing Committee constituted by the Cabinet submitted its report in respect of 30 Ministries and Divisions in a meeting held on 28-5-2001 under the chairmanship of the Chief Executive. The Secretary, Federal Tax Ombudsman Secretariat was also invited to attend the meeting and was asked to forward proposals regarding restructuring and rightsizing of this Secretariat for consideration of the Committee.

The salient features of the proposals sent to the Restructuring and Rightsizing Committee on 18-6-2001 are as follows:

- i) This office agreed not to let the ratio of sanctioned officers to support staff exceed beyond the desired 2:5 proportion. The present working strength, however, is even less than this ratio.
- ii) The number of posts with designations of both officers and employees appointed or to be appointed under section 8 of the Ordinance to assist the Federal Tax Ombudsman in the conduct of business of his office, as



envisaged under section 24 of the Ordinance was identified.

- iii) It was proposed that the grant issued for pay and allowances of the Federal Tax Ombudsman along with the pay and allowances of officers and employees identified supra may be retained under the head 'establishment charges'.
- iv) It was further proposed that the grant already issued in excess of the grant proposed to be retained under this head may be issued as lump grant. It may be placed at the discretion of the Federal Tax Ombudsman vested in him under section 20(2) of the Ordinance to fix an honorarium or remuneration of Advisers and other staff that may be appointed / engaged by him from time to time to assist him in the discharge of his duties under the Ordinance.
- v) It was further proposed that the number of appointees u/s 20 might be left to the discretion of the Federal Tax Ombudsman to decide depending upon his requirements. The expenditure on this account would not exceed the lump grant issued for this purpose.

Finance Division have agreed to the proposed reappropriation reducing the temporary posts of officers to 28 and support staff to 105 in BS-1 to Bs-22 to be appointed under section 8 of the Ordinance and to reappropriate a sum of Rs:4 million, for rest of the half year, out of Estimates of Establishment Expenditure to lump grant under the head payment to others for services rendered to meet the expenditure on remuneration / honorarium of appointees under section 20 of the Ordinance.

The Federal Tax Ombudsman is assisted by a Secretary, an officer (of Income Tax Group) in BS-22, in over all performance of the functions of his office. Besides there is a Secretary to the Federal Tax Ombudsman in BS-19, a Personal Secretary in BS-17 and an Assistant in BS-11 on his personal staff. He has so far employed only four officers and a support staff of 22 officials in BS-1 to BS-15 in the Administration, Accounts and General

branches of the Head Office against a sanctioned strength of 8 officers and 47 officials in support staff.

The Federal Tax Ombudsman, similarly, has employed only two Advisors, at the Head-Office with a Registrar, a Consultant two Directors, two Assistant Directors and a support staff of only 8 persons in BS-17 to BS-1 on the Judicial and Investigation side at the Head-Office.

The Regional Offices too are functioning efficiently with minimum possible strength. At Regional Office Karachi an officer of BS-19 working as Director heads the Administration and Accounts branches besides assisting on judicial and investigation side as well. Two Assistant Directors and a support staff of only 8 persons in BS-1 to BS-15 support her. There are two senior retired officers (one each of Income Tax and Customs Groups) working as Advisors and a (retired Commissioner of Income Tax working as) Consultant. A Deputy Director/ Deputy Registrar and a support staff of another 8 persons in BS-1 to BS-15 sustain the Judicial and Investigation side.

In the Regional Office Lahore an officer of OMG in BS-19 working as Director is heading the administration and accounts branches assisted by a Deputy Director, an Assistant Director and a support staff of 12 persons in BS-1 to BS-11. A senior retired officer of Income Tax Group is employed as Advisor assisted by a Director, a Deputy Registrar and a support staff of 7 persons in BS-1 to BS-17 to assist the Federal Tax Ombudsman in his judicial work at Lahore.

## **BUDGET**

An amount of Rs.53.242 million representing supplementary grant for the establishment and running the office of Federal Tax Ombudsman under Charged Expenditure Federal Tax Ombudsman Secretariat was allocated by the Finance Division vide Diary No. 352/D-S (Expenditure) dated 30<sup>th</sup> January, 2002. Details of grants for Head Office and Regional Offices are annexed as **Annex VI**

The process of procurement of durable goods was initiated in right earnest. The required officers and staff were reluctant to join this office due to the absence of necessary logistics and any special



*Audience in Seminar on "FTO meets Tax Payers" at Karachi.*

pay or allowances. However despite acute shortage of time and constraints of men and material, necessary furniture, office equipment and vehicles have been procured for the Head Office as well as the two Regional Offices.

It is pertinent to report here that the codal requirements for procurement of durable goods have not proved beneficial not only to the choice of quality goods but to the economic use of funds as well as to the quick and timely procurement of required goods.

It is, therefore, strongly suggested that Financial Autonomy may be granted to this office on the pattern of High Courts, Supreme Court and Election Commission in order to ensure efficiency and economy in procurement of goods and also in the matter of appointment of the personnel who are equal to the task, as and when required. Besides it may be appreciated that the independence of the institution of Ombudsman from any kind of bureaucratic control is imperative.

## **TRANSPORT**

The Chief Executive has been gracious to accord permission to purchase two 1300cc cars, two 1000cc cars, and three 800cc cars. These vehicles have been purchased along with one Motorcycle each for Head Office and Regional Offices at Karachi and Lahore. One 1300cc car for use of Federal Tax Ombudsman is required at Karachi who is required to spend almost one third of a month there for regular hearing of complaints and for attending meetings. In fact it is necessary to create confidence in taxpayers who wish the Federal Tax Ombudsman to grant them personal hearings.

Though the Sindh government obliges by placing a car at his disposal every time, now they have also shown their inability to provide car on certain occasions. It does not behove the office of the Federal Tax Ombudsman to be a constant burden on the provincial exchequer and to count on the courtesies of their protocol on regular basis. Besides the cars that they are generally able to spare do not conform to his status.

## **RULES AND REGULATIONS**

The Regulations as envisaged under section 10(11) of the Ordinance to regulate the procedure for the conduct of business or the exercise of powers under the Ordinance have already been framed. Rules to be prescribed for carrying out the purposes of the Ordinance as well as the Service Rules for the staff to be appointed under section 8 of the Ordinance are in the process of being framed.

## **ADMINISTRATIVE AND FINANCIAL DIFFICULTIES**

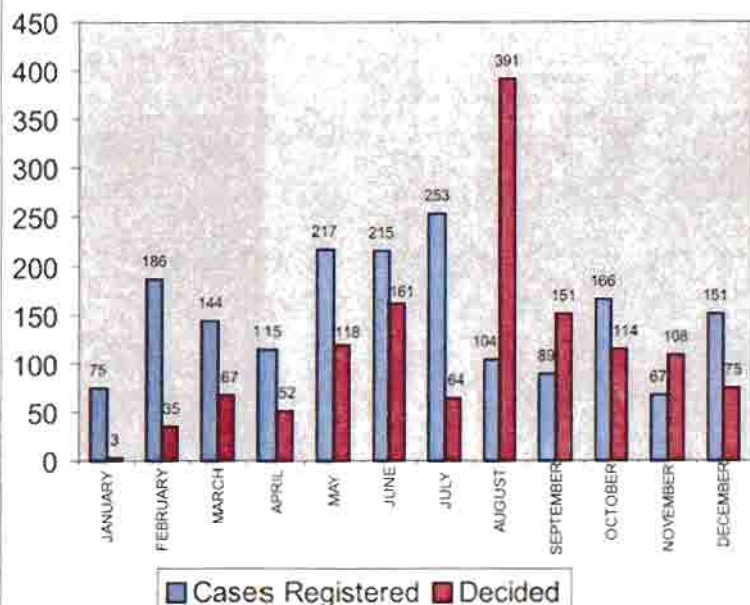
Shortage of accommodation at the HQ office, Islamabad is the main difficulty being faced by this Secretariat. Efforts were being made for implementation to obtain further accommodation in the light of the directive 3(3)DS(D-3)/2000 dated 14.12.2000.

## **SUMMING UP**

The institution of Federal Tax Ombudsman during a short period of its creation has made visible and significant impact on the tax administration and the tax payers equally. It is now acknowledged by persons dealing with this institution and independent observers that injustice and grievances are redressed promptly. The Tax employees are now taking the recommendations seriously and the old tax culture seems to be on the wane. It takes time to correct and clean institutionalized maladministration as it exists. It is therefore necessary that an institution like the Federal Tax Ombudsman charged with the duty to redress grievances and injustices done through maladministration of the Revenue Division, a Tax Employee or functionaries administering tax laws should have full support in all respects. For a permanent impact it is essential that this office should grow as an institution with its own independent building. It is proposed that land in a suitable area be allocated for construction of self contained secretariat of the Federal Tax Ombudsman and sanction of necessary funds may be accorded.

**Monthly Institution of Cases**

Month	Cases Registered	Decided
JANUARY	75	3
FEBRUARY	186	35
MARCH	144	67
APRIL	115	52
MAY	217	118
JUNE	215	161
JULY	253	64
AUGUST	104	391
SEPTEMBER	89	151
OCTOBER	166	114
NOVEMBER	67	108
DECEMBER	151	75
<b>Total</b>	<b>1782</b>	<b>1339</b>

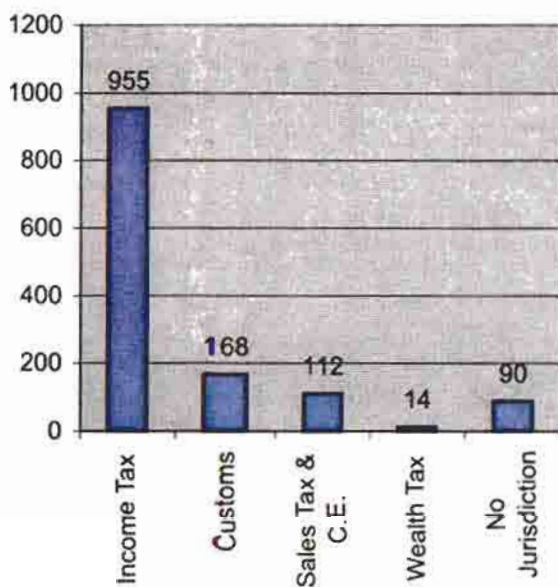
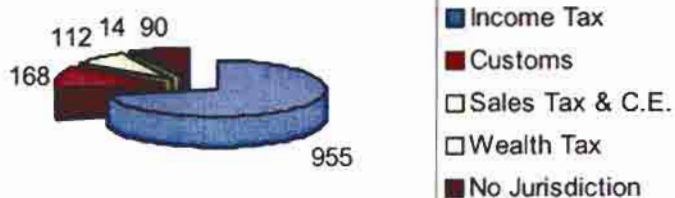
**CASES REGISTERED & DECIDED DURING THE YEAR**



## Cases Decided In 2001

Sr. No.	Description	No. Of Cases Decided
1.	Income Tax	955
2.	Customs	168
3.	Sales Tax & C.E.	112
4.	Wealth Tax	14
5.	No Jurisdiction	90
	Total	1339

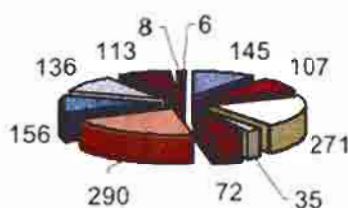
## Cases Decided Statute Wise



DECIDED CASES OF 2001

Refund	145
Recommendation for Administrative & Functional Improvements	107
Total Audit	271
Survey for Documentation of Economy	35
Random Ballot	72
No Maladministration	290
Golden Handshake	156
Recommended modification of Arbitrary Decisions	136
Subjudice	113
Rewards/Remuneration/Compensation	8
Informal Resolution of Disputes	6
Total	1339

Decided cases of 2001



■ Refund

■ Recommendation for  
Administrative &  
Functional  
Improvements

□ Total Audit

□ Survey for  
Documentation of  
Economy

■ Random Ballot

■ No Maladministration

■ Golden Handshake

■ Recommended  
modification of Arbitrary  
Decisions

■ Subjudice

■ Rewards/Remuneration/  
Compensation■ Informal Resolution of  
Disputes



*FTO addressing the Seminar jointly organized by Sialkot Tax Bar Association and Sialkot Chamber of Commerce and Industry.*

**SUGGESTIONS**

Subject: **INCOME TAX ON THE COMPENSATION PAID UNDER GOLDEN HANDSHAKE SCHEME.**

Restructuring, rightsizing and downsizing of public sector banks, financial institutions as well as the Ministries and Divisions of Government, is underway in pursuance of state policy. Every organization has formulated a scheme commonly known as Golden Handshake Scheme commonly known as golden Handshake Scheme under which compensation is allowed to the employees who are retired/relieved from service prematurely. Under the scheme, a compensation is awarded on the basis of certain formula. The number of such organizations are increasing every day.

2. These employees are receiving certain sums paid in terms of their service agreement and certain sums as compensation for loss of employment due to premature termination of service under such schemes.

3. It is a well settled principle that In come Tax Law does not tax the value of the source of income or the amount of capital gain. It therefore, on principle, ought to apply equally to all and every form of such transaction.

4. Accordingly, while the sums paid in terms of service agreement on termination of employment are assessable to tax, payments received for the surrender of rights acquired under a service agreement and found to be in the nature of capital, would be excluded from taxation as income.

**ISLAMABAD:-**

State Enterprises Complex, 5-A Constitution Avenue  
F-5/1, Islamabad.  
Ph: 9212316, 9212318, 9212321, 9212326, 9212330  
Fax: 9206553

**LAHORE:-**

Bungalow No. 186-A,  
Scotch Corner,  
Upper Mall,  
Lahore

**KARACHI:-**

(NIC Building) 14th Floor,  
Abbas Shaheed Road  
off Shahrah-e-Faisal  
Karachi.  
Tel: 5679013

5. However, under the Income Tax Ordinance, 1979, the later sums too have been brought into the ambit of taxation through a fiction of law vide sub-clause (i) clause (c) of sub-section (2) of section 16 of the Ordinance read with sub clause (a) of sub section (2) of section 16.

6. Certain aspects of charging tax on such amounts of compensation are subjudice before the Supreme Court of Pakistan.

7. It has been noted with interest that the Central Board of Revenue appreciating the heavy incidence of tax on the affectees had attempted to provide some relief in tax rate to be applied on the amounts of compensation by issuing Circular No. 15 of 1997 dated 06-11-1997. The Circular, however, has been declared ultra vires of the Income Tax Ordinance, 1979 by the High Courts following the principles laid down by the Supreme Court of Pakistan in *Central Insurance Company and others vs Central Board of Revenue and Others: 1993 SCMR 1232*.

8. The result is that heavy tax is being imposed. One example is that in a case of compensation of Rs.38,00,000/-, an amount of Rs.14,00,000/-has been levied as Income Tax.

9. The intention of the scheme is to enable the relieved/retired employees to re-establish themselves in practical life so as to support their families without and financial problems. This issue is not only relevant from tax point of view but even socially and morally.

10. Thus without prejudice to the chargeability of the amount of compensation under the fiction of law supra and the proceeding pending before the Supreme Court, the issue warrants a compassionate view of the government in the Context of exigencies of the state policy of down sizing/rightsizing, the transitory slump in economy and the consequent large scale unemployment.

11. The situation under the circumstances warrants, if not outright repeal of sub clause (i) of clause (c) of sub section (2) of section 16. at least a notification allowing the relief in tax rate intended to be allowed through Circular 15 of 1997. Further, and exemption from tax may be allowed on such compensation on the

first Rs.50,000/-, or the limit as fixed in the next budget, multiplied by the number of years of service lost.

SD/-

**(Justice (R) Saleem Akhtar)**  
Federal Tax Ombudsman

June 9, 2001.





*FTO in a meeting with Sialkot Chamber of Commerce and Industry.*

**REPORT**  
**ON**  
**ACCOUNTING OF INCOME TAX COLLECTION**

**PERSPECTIVE**

One of the major problems highlighted by the taxpayers, in hundreds of complaints registered at the Federal Tax Ombudsman Secretariat, has been that *the tax paid, deducted or collected from them is not credited to their account required to be maintained in the circle where they were assessed*. Whenever they claim credit for tax paid in excess of their assessed or assessable tax liability, they are invariably asked to file their own copies of paid challans or certificates of deduction or collection required to be issued u/s 51 to them by the withholding agents of CBR on proformas prescribed under Rules 63, 64A, 64B, 64C, and 64D, of the Income Tax Rules, 1982. The Federal Tax Ombudsman has found that the procedure required to be followed under the law is not in vogue; collections are not being properly and regularly recorded in the circles in **Daily Collection Registers** commonly called *cashbooks*.

2. He, therefore, *recommended* that the CBR must develop a software that ensures posting of each rupee paid by and/or deducted, and/or collected from an assessee at any stage to his individual account. When asked to explain the tax collection-accounting procedure the CBR reported that the review of the procedure was already under process in the Board and the whole procedural system of the Income Tax Department was being computerized. CBR further reported that **Pakistan Revenue Automation Limited (PRAL)** had been directed to develop comprehensive software by June 30, 2001.

3. Time was allowed till the promised date but by July the CBR changed their stance and reported that they already had laid down a comprehensive procedure under Circular No. 12 of 1996 dated 28.8.1996. It was claimed that it caters to the recommendations of the Federal Tax Ombudsman and that the same had been circulated among the Regions for strict adherence.

4. Circular 12 of 1996 was perused carefully and it was found that the Circular was too loosely worded to qualify for an accounting procedure; hence ineffective. Any amount of stress on its strict adherence would not yield the desired results. It was observed that it was more concerned with generating figures of overall collection rather than the correct accounting of tax collected from individual assesseees in various modes and posting it to their respective accounts.

5. The Federal Tax Ombudsman, therefore, recommended that priority may be given to devise an accounting procedure ensuring that it fulfilled the foregoing legal obligation. It implied that the assessment record/collection account of each assessee should be manually/automatically/electronically credited with each rupee paid by or collected from him. It further implied that each assessee shall receive due credit for the entire amount of tax paid by or collected from him in his assessment order without bothering him or her to produce supporting evidence unless a specific discrepancy was noted.

6. The system required to be devised was to ensure that the reason for any missing credit would be quickly detectable and the person/agency responsible for the lapse shall be identifiable.

7. Further recommendations, therefore, were issued to ensure that, till such time that a comprehensive alternate structure was set up, the Revenue Division would ensure that IACs did conduct inspection of Circles at regular intervals and reported specifically on the proper maintenance of Daily Collection Registers in all respects. Reconciliation of reported figures of monthly collection with the figures in daily collection register was to be verified.

8. The CBR later reported that the plan was abandoned in the wake of proposed **restructuring of tax administration** that will replace the present set up of *Circle-based organization* with the new *function-based organization structure* as recommended by the Task Force on Tax Administration. However the Member (Direct Taxes) CBR proposed to make a presentation of whatever system was developed by PRAL if so desired by the Federal Tax Ombudsman.

9. Since the time frame for implementation of the restructuring programme was yet to be defined and the malady diagnosed was likely to erode whatever credibility of the tax administration was left among the vast majority of taxpayers, the Federal Tax Ombudsman decided to take the presentation. Accordingly Mr. Arshad Pervaiz, Director Research & Statistics, CBR gave the presentation on 14<sup>th</sup> November 2001.

## **PRESENTATION BY DIRECTOR, R&S, CBR**

### **SUBJECT**

10. **Giving credit for tax deducted/collected under the Income Tax Ordinance 1979** was the title of presentation given by Mr. Arshad Pervaiz. The focus of presentation, therefore, was mainly on the procedure for deduction/collection of tax at source (with-holding tax) under various provisions of section 50 the Income Tax Ordinance 1979 and giving credit thereof to respective taxpayers. The Director highlighted the following points and procedural steps in his presentation: -

- i) That the **withholding taxes** were ad-hoc deductions made at the point of accrual of income with subsequent adjustment at the time of determining the final tax liability of the concerned taxpayer.
- ii) That this effective, convenient and economical method of tax collection was introduced in Pakistan for the first time in the late sixties. Since then there has been ever growing reliance on this regime as a major source on Income Tax collection and expansion of tax base. While tax was being withheld on seven sources of assessee's receipts in 1979 it is now being withheld on following 20 sources of receipts and payments:

### **WITHHOLDING TAXES**

Sr.No	SECTIONS	TYPE OF PAYMENTS/TRANSACTIONS
1.	50(1)	Salary and perquisites
2.	50(2)	Interest on Securities
3.	50(2A)	Interest/Profit by banks and financial institutions

Sr.No	SECTIONS	TYPE OF PAYMENTS/TRANSACTIONS
4.	50(2B)	Banking transactions/cash deposit receipts, travelers' cheques.
5.	50(3)	General payment to non-residents
6.	50(3A)	Payment to non-residents for technical services
7.	50(4)	Payments for contracts/supply of goods/services rendered.
8.	50(4A)	Brokerage & commission.
9.	50(5)	Import of goods
10.	50(5A)	Exports Proceeds. Indenting Commission.
11.	50(5-AA)	Supply of goods to an exporter on back to back inland L/C
12.	50(5AAB)	Exports by industrial undertakings in Export Processing Zones.
13.	50(6)	Public motor vehicles
14.	50(6A)	Dividends
15.	50(7B)	Rent for house property
16.	50(7C)	Prizes or winnings
17.	50(7D)	Profit or interest on bonds, certificates and other instruments.
18.	50(7E)	Electricity bills of commercial and industrial consumers
19.	50(7F)	Telephone bills and prepaid cards.
20.	50(7H)	Commission/discount of petrol pump operators.

- iii) That CBR, since 1982, had issued eleven Circulars laying down the procedure for regulating the withholding taxes. The number of Circulars was an indication of the on-going efforts to improve the procedure. Circular 12 of 1996 was the latest in the series.
- iv) That the process started with deduction of tax and its deposit in the Government Treasury by the withholding agencies and culminated in giving its credit to respective taxpayers in the *IT-30-Assessment Form* by the assessing officer. The process of recording collection and giving credit of tax withheld consisted of two stages. The first stage was the process at the Data Processing Centre (DPC) of the Income Tax Department and the second stage was the process at the field formations. These processes were displayed through a flow chart showing the trail followed by a tax challan. (Annexure 'A').
- v) That the whole collection process started with the assessee or the withholding agent depositing the tax through *treasury challans* in *State Bank* or *National Bank of Pakistan*. The banks prepared *scrolls of challans* and sent to the respective Data Processing Centres (DPC) in Income Tax Offices.



Hon'able FTO with other representatives in a seminar on "FTO meets Tax Payers" organized by Tax Forum, Lahore.



- vi) That the first step in challan processing was the receipt of *batches of challans* (in duplicate) and *Bank Scrolls* in the Totaling Section of the **Treasury Branch** of the DPC / DPU from the State Bank and National Bank. Each challan in a batch was counted and the amount was totaled and verified with the amount mentioned in the scroll.
- vii) That the *verified challans* were then sent to the **Coding Section** where *zone codes* and *payments classification codes* were checked. Each challan was stamped with a unique serialized *Treasury Voucher Number* for future reference / verification. Batches of one hundred treasury challans each were prepared and passed on to the **Entry Section** where all the information given in the challan was fed into the **main computer**. The computer thereafter generated *Edit Lists* of each batch that was signed by **Entry Supervisor** and sent to the Editing Section.
- viii) That the **Editing Section** checked the lists and verifies the entries with each challan in detail in order to detect and correct the errors if any found in the lists that were then sent to **Sorting/ Dispatch Section** where challans were identified and sorted /arranged on Zonal basis and forwarded to respective **Zones**.
- ix) That the unidentified challans were separated and kept in a *suspense account* in the DPC for establishing their proper identity. In case such challans remained unidentified they were sent to the Zone designated by the Regional Commissioner.
- x) That such unidentified challans were of two types:
  - a. **Deficient treasury challan of combined deposits of multiple assesseees:** A single treasury challan on which the aggregate sum of tax withheld by the withholding agent from payments made to various persons was deposited.

However, except the names of such persons on the back of the challan, neither their addresses nor their *National Tax Numbers* (NTN) were recorded. Such persons might be belonging to several zones spread all over Pakistan.

**b. Deficient treasury challan of single assessee:**

This was a challan on which tax was deposited by or on behalf of single assessee with deficient information.

- xi) That the identified challans received in the Zonal CIT office were again totaled in the Treasury Branch and Range wise/ Circle wise sorting of such challans was done for delivery to respective circles having jurisdiction over the taxpayer. The Circle entered the challans in its Daily Collection Register in the columns meant for sections under which the payments were made. Credit of the amount of tax posted in the Daily Collection Register was given to the taxpayer on I.T.30-Assessment Form on finalization of assessment.

11. The Director R&S, CBR further stated that in order to improve the process and to overcome its deficiencies following remedial measures were under consideration:

- a. Development of software to simplify the verification process of multiple assessee challans.
- b. Restructuring of CBR and its field offices.
- c. Seeking coordination of computerized Public sector organizations to provide diskettes containing withholding tax data to the Income Tax Department.
- d. PRAL was collaborating in a project with National Bank of Pakistan, State Bank of Pakistan, AGPR and CBR in devising a fully computerized system for instant identification of taxpayers in order to give timely credit for taxes paid.

## **OBSERVATIONS**

12. The presentation reveals that the system does not suffer from any basic flaw. The fault, mainly, lies in the performance of stakeholders i.e. the assessee, the withholding agent and the tax collector on following counts:

- a. The failure of the assessee:
  - i. in filling up all the relevant entries of the treasury challan while depositing one's own tax ;
  - ii. in furnishing ones NTN and business address to the withholding agency.
- b. The failure of the withholding agency in fulfilling their statutory obligation:
  - i. to obtain NTN and business address of the payees on whose account the tax is withheld and deposited;
  - ii. to file the statements of tax withholding regularly as well as properly as prescribed under relevant rules framed in pursuance of relevant provisions of law ( not being mentioned here for the sake of brevity) and
- v      iii. to issue certificates of deduction of tax to the payees regularly and promptly as required under Rules 63, 64A, 64B, 64C and 64D of Income Tax Rules, 1982 framed in pursuance of the provisions of section 51 of the Income Tax Ordinance, 1979.
- c. The failure of the tax collector:
  - i. in making it obligatory upon their bankers not to accept payments on improperly filled treasury challan;
  - ii. in enforcing the relevant law and the rules upon their withholding agency by invoking available monitoring and punitive provisions of law;

- iii. in carrying out their procedural obligations diligently at various levels of processing, posting and placing of treasury challans on assessee's record.

## **RECOMMENDATIONS**

13. While the Federal Tax Ombudsman recommends strict observance of relevant provisions of the rules of law as well as procedure, identified supra, on the part of all the stakeholders, his observations on certain other aspects of the presentation are recorded hereunder:

### **A. IMPROVEMENT IN SOFTWARE**

#### **a. Task at Entry Section**

The **main computer** may be so programmed that when all the information given in a *multiple assessee challan* is fed it should generate as many *separate challans* as the number of multiple assessees appearing in the combined challan.

It, not only, will enable the system to transmit the collection from such assessees to the respective Zones (anywhere in Pakistan) and Circles where they are assessed but to make separate entries of such collection in the *Daily Collection Register* as well as to place the copies on the record of such assessees. The serialized Treasury Voucher Number of the Combined (*mother*) challan may be entered on the separate (assessee-wise) challans generated there from. Subsequent steps may be adapted accordingly.

#### **b. Task at Sorting / Dispatch Section**

The **Sorting Section**, instead of sending the *unidentifiable multiple assessee combined challans* to the *Suspense Account*, should refer such challans to the *circles holding jurisdiction over the case of withholding agency* for its cross



*Audience in Seminar on "FTO meets Tax Payers" at Lahore.*

verification from the prescribed periodical statement of tax withheld filed by such agency. In case the agency has not filed the statement or the statement filed by it is also deficient in required information, penal provisions of law may be invoked to obtain the required information.

There would be some cases where it may not be possible for the withholding agency to trace the payees whose address and NTN is missing and who have not collected their own certificates of tax withheld as prescribed under the rules. Since such collections cannot be communicated to the respective circles these may be sent to *suspense account*. Assessee claiming credit for such collections shall be obliged to get them verified from the suspense account of the concerned DPC / DPU.

After identification of assessee mentioned therein such combined challans may be referred back to **Entry Section** for generating proper separate (assessee wise) challans as recommended supra. Subsequent steps may be taken in accordance with the planned procedure.

The *deficient single assessee challans* only shall be sent to *suspense account* in DPC / DPU and the assessing officer will be justified in requiring the assessee claiming credit of tax paid on such challan to get it verified from the *suspense account* of the concerned DPC / DPU.

The credit of collection of balance in suspense account as on June 30 should not be allowed to a Zone; instead, the Region or Zone where the respective DPC or DPU falls shall take the credit.



## **B. Ancillary measures**

### **a. Review of IT 31 (Rev) [B]**

The proforma of treasury challan for depositing tax deducted from multiple assessees called *Tax Payment Receipt IT 31 (Rev) [B]* needs addition of a column for *National Identity Card number*. It is imperative in view of the fact that the centralized system of issuance of NTN is still cumbersome for a large number of persons conducting business transactions without obtaining NTN.

### **b. Issuance of National Tax Number**

It is time that instead of considering the NTN to be a privilege bestowed upon an applicant; it should be issued as a tax promotion device. It will go a long way in reductions of unidentifiable collections.

### **c. Wrong perception about Certificates prescribed under Rules 63, 64A, 64B, 64C, and 64D of the Income Tax Rules**

The perception of Mr. Arshad Parwaiz, Director DR&S, CBR that the certificates under the rules *supra* are required to be filed by the assessees along with their returns of income / statements u/s 143B etc. to verify the claims for allowing credit on account of tax deducted / collected and deposited on their behalf is contrary to law. There is no provision in the Income Tax Ordinance and in the rules framed thereunder requiring an assessee to file such certificates along with the return of income or statement u/s 143B.

The process of recording and allowing credit of collections as presented before the Federal Tax Ombudsman totally negates the perception. These certificates are for assessee's own record.

Assessing officer requiring assessee to produce such certificates must prove that his record is correct and that the treasury challan in respect of the deposit of tax for which credit has been claimed by an assessee has not been received in the circle.

He may then ask such assessee to produce evidence in support of the claim. When evidence in the shape of certificate issued in respect of tax withheld and deposited by the withholding agent is produced by the assessee it should be properly recorded on the order-sheet and verification/search proceedings should be undertaken by the DCIT forthwith to be concluded within a reasonable time. Neither assessee's copies of certificates should be retained nor photocopies at his cost should be asked for. The assessee should not be asked to go about tracing the deposit.

Verification/ search proceedings to be initiated by the DCIT should culminate either in tracing the missing deposit or tracking down the withholding agency that may have defaulted in depositing the tax and issued false certificate. Such tax along with additional tax due u/s 86 should be recovered from the defaulter and prosecution proceedings must be initiated against such withholding agent.

Credit for the claim should be allowed to assessee in either case forthwith.

The only other possibility can be a false or forged claim by the assessee for which such assessee must be prosecuted.

However in case the deposit is found misdirected or misplaced the official responsible for it should be identified and action should be taken against him under Efficiency and Disciplinary Rules.

#### **d. Publicity programme**

**Withholding Agents Education Programmes** may be launched through print and electronic media to ensure withholding of tax at prescribed rates, depositing it through properly filled up IT 31 (Rev) [B] Form, filing prescribed monthly/annual statements regularly and properly and issuing certificates prescribed under the rules to all payees mentioning complete particulars.

**Taxpayers** may also be addressed to ensure that withholding agents record their complete name, address, and NTN number in the treasury challans as well as in prescribed monthly statements and give them prescribed certificates in respect of amount of tax deducted.

### **CONCLUSIONS**

The shortcomings in the procedural system, a few obstacles in fulfillment of its requirements and the poor human resource impeding its smooth operation call for immediate remedial measures to be taken by the Revenue Division.

The deficiencies in software identified in Para 13.A.a. can be tackled by PRAL in few hours.

The procedural remedies recommended in Para 13.A.b. B.b.c and d call for appropriate procedural instructions to be followed down the line in letter and spirit.

Recommendation in Para 13.B.a can be implemented while indenting further IT 31 (Rev) [B] Forms.



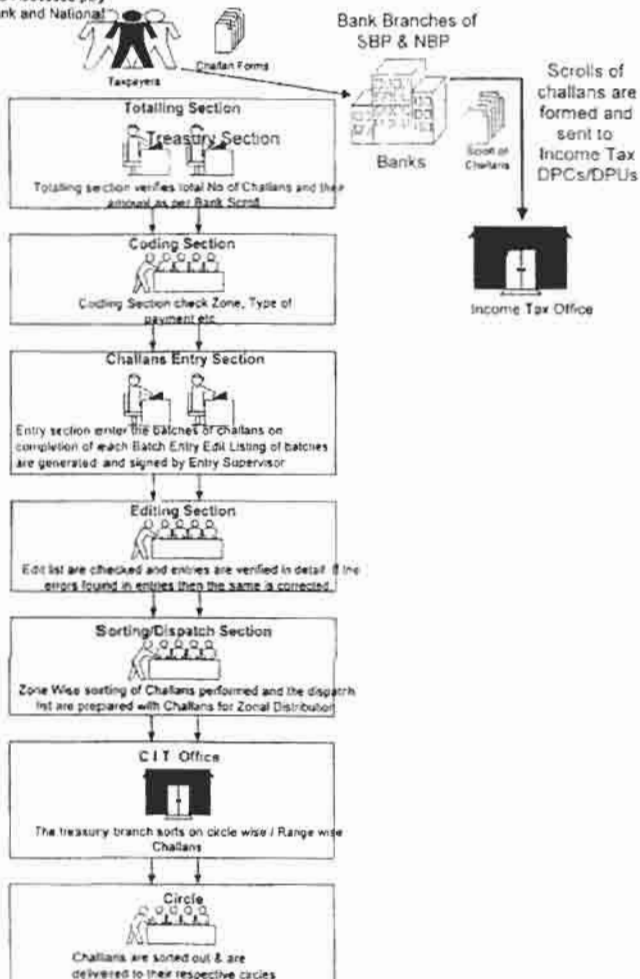
# CHALLANS PROCESSING SYSTEM

## INCOME TAX DEPARTMENT

### GOVERNMENT OF PAKISTAN



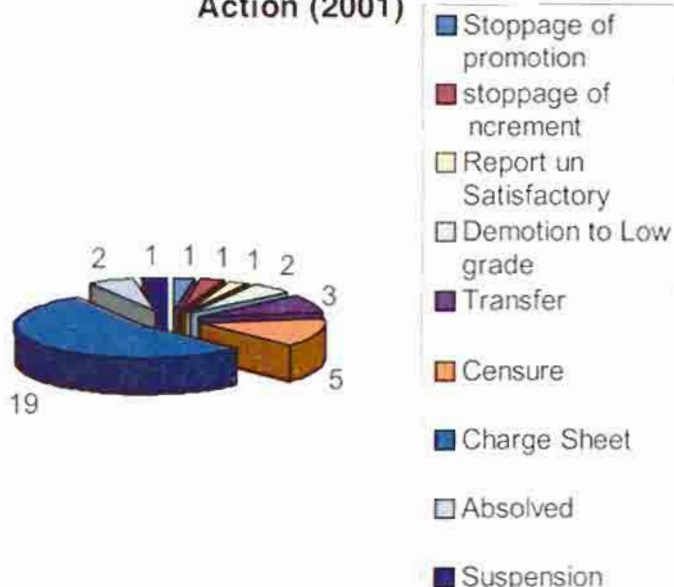
Withholding Agents & Assessee pay  
Challans in State Bank and National  
Bank of Pakistan



## Position Regarding Disciplinary Action (2001) Summary

Sr.No	Topics	Total Cases
1	Stoppage of promotion	1
2	stoppage of increment	1
3	Report un Satisfactory	1
4	Demotion to Low grade	2
5	Transfer	3
6	Censure	5
7	Charge Sheet	19
8	Absolved	2
9	Suspension	1
	Total	35

### Position Regarding Disciplinary Action (2001)



**Statement of Budget Estimate Sanctioned for the year 2001-2002**  
**Main office, Islamabad, Regional Offices at Karachi and Lahore**

<b>Object Classification</b>	<b>Islamabad</b>	<b>Karachi</b>	<b>Lahore</b>	<b>Total</b>
<b>00000</b>				
<i>Establishment Charges</i>	14,041,000	28,42,000	19,980,00	8,881,000
<b>10000</b>				
<i>Purchase of Durable Goods</i>	120,0000	110,0000	110,0000	340,0000
<b>40000</b>				
<i>Repair and Maintenance of Durable Goods and works</i>	140,000	50,000	55,000	250,000
<b>50000</b>				
<i>Commodities and Services</i>	19,855,000	50,38,000	40,38,000	9,73,1000
<b>60000</b>				
<i>Transfer Payment</i>	100,000	40,000	40,000	180,000
<b>90000</b>				
<i>Miscellaneous Expenditure</i>	500,000	250,000	50,000	800,000
<b>Total:</b>	<b>35,836,000</b>	<b>93,25,000</b>	<b>80,81,000</b>	<b>3,24,2000</b>



**SUMMARIES  
OF THE  
IMPORTANT FINDINGS**

**BEFORE FEDERAL TAX OMBUDSMAN**

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**COMPLAINT NO. 454 OF 2001**

Association of Builders &  
Developers (ABAD)  
ST-1/D, Block 16,  
Gulistan-e-Jauher, Karachi.

**COMPLAINT NO. 450 OF 2001**

Dr. Muhammad Tariq Aziz

**COMPLAINT NO. 452 OF 2001**

Dr. Liqat Ali Kusar

**COMPLAINT NO. 495 OF 2001**

Dr. Muhammad Akhtar Ali

**COMPLAINT NO. 502 OF 2001**

Dr. Fateh Muhammad

**COMPLAINTS NO. 537 TO 581 AND  
603 TO 610 OF 2001**

Amjad Ali and others

**COMPLAINTS NO. 651 TO 662 OF 2001**

Miraz Din and others

**COMPLAINT NO. 690-L OF 2001**

Muhammad Ali

**COMPLAINT NO. 691-L OF 2001**

Yousaf Ali

**...Complainants**

**Against**

Central Board of Revenue

Regional Commissioner of  
Income Tax (Southern Region),  
Karachi.

Regional Commissioner of  
Income Tax (Corporate Region),  
Karachi.

**...Respondents**

## DECISION/FINDINGS

M/s. Mohammad Athar Saeed, Ashraf Hashmi, Ehsanul Haq and Masood Ishaq, advocate for the complainants.

Mr. Sardar Aminullah, Special Assistant to Chairman CBR for the respondents.

This complaint and similar other complaints on the same facts challenging the legality of selection of their case for detailed audit will be disposed of by this decision/ recommendation.

2. The Complainants in Complaint No. 454/2001 are a company limited by guarantee holding licence granted under the Trade Ordinance 1961 by the Ministry of Commerce, Government of Pakistan. All its members are income tax payers enrolled on the National Tax Register and are regularly filing their returns of income and paying tax thereon. For the Assessment Year 2000-2001 the members of the complainants submitted return under the Self Assessment Scheme 2000. Under the Scheme 20% of the returns filed could be selected through random computer ballot of total audit. Some of the members of the complainants were selected for total audit. It has been alleged that the selection of cases for total audit has been made on parametric basis. Out of 850 builders who are either the members of Complainants or their sister concern almost 350 have been selected for total audit. It has been pleaded that the income tax payers who did not file requisite documents with the return though ineligible to avail Self Assessment Scheme and ought to have been excluded were included in the ballot. The ballot was not random and, therefore, illegal. They have prayed for cancellation of the balloting for selection of cases for total audit held on 28-02-2001 and direction to be issued to hold fresh ballot strictly in accordance with the Self Assessment Scheme 2000.

3. The Regional Commissioner Income Tax, Karachi filed reply pleading that the selection of cases was within the prescribed limits as envisaged under the scheme. It has been submitted that CBR Circular No. 21 of 2000 which declared the Self Assessment Scheme was amended by Circular No. 26 of 2000 substituting new para 6 whereby from amongst the return filed under the Self

Assessment Scheme other than those where only salary income or only property income is declared 20% can be selected for total audit through computer random ballot. Moreover, the Regional Commissioner Income Tax could also select any number of cases over and above the figure of 20%. The Board selected 33874 cases which makes only 18% of the total number of 206443 Self Assessment Scheme cases fed into the computer. There is no deviation from the provisions of the Circular. It has been denied that the returns which did not qualify due to failure to file/provide requisite documents were included in the ballot to enhance the number of cases. There were cases where either details were not yet requisitioned or where details were requisitioned but time limit for compliance had not yet expired. In these cases subsequently details were filed by the due date. It has been pleaded that selection for ballot was made on the basis of overall number of Self Assessment Scheme cases. The programme was designed by PRAL. In all other cases selection for total audit has been challenged on the same grounds.

4. M/s Mohammad Athar Saeed, Ashraf Hashmi, Ehsanul Haq and Masood Ishaq have been heard for the complainants. Mr. Mohammad Athar Saeed, the learned Counsel for the complainants in Complaint No.454/2001 contended that selection of cases for total audit was not on random basis but it was through parametric balloting. Mr. Sardar Aminullah, the learned representative of the department submitted that CBR selected cases for total audit on basis of a formula. This formula was fed to the computer as in the past. According to him the formula is secret and cannot be disclosed to the complainants. However, he offered to disclose the secret formula only to the Federal Tax Ombudsman in Chambers and in complete secrecy. In view of this statement it was not necessary to ask him to disclose the formula. However, if necessity arises for disclosure the department will be asked to disclose in Chambers. In the light of the statement of the learned representative of the department it is to be considered whether a computer balloting conducted on the basis of a formula fed to it can be termed as random balloting.

5. Mr. Sardar Aminullah the learned representative of the department contended that the selection of computer is random

and all returns which qualified for Self Assessment Scheme were fed excluding those returns which did not qualify. He, however, admitted that there was a formula namely parametric formula which was fed for selection of assessee for total audit. The learned representative for the department justified the procedure followed and termed it as random balloting because the computer selection was random from amongst the returns which were fed under a certain formula. The object of the Self Assessment Scheme was to attract taxpayers to file returns voluntarily in a simple manner which offered facility and freedom from technicalities and complications attached to the submission of the return. It also facilitated the task of the tax employees in carrying out assessment exercise. As observed in *Chappal Builders Vs ITO and another* (1990 PTD 62) the Self Assessment Scheme is calculated to benefit assesses and to simplify procedure thereby reducing avoidable burden from the assessing authorities. However, it was felt necessary to check the returns to detect cases of false declarations and also to maintain control and surveillance on the declarations made by the assessees. For this purpose a system was devised to make such scrutiny transparent and confidence inspiring. This system should be such which does not involve human discretion and interference and does not provide a ground to allege malafide on the part of the Government officials. For these reasons in the Self Assessment Scheme the selection of cases for total audit was left to computer balloting. In the past schemes for computer balloting, computer was fed with a certain formula fixing predetermined criterias. They may be income-wise, profit wise or business-wise. It also included cases where the relationship between gross receipts and profits was on a minimum side. The department had devised a method by which probability of selection of high income assessee and netting of potential tax evaders had been ensured. practice remained in vogue for almost 2 decades when for the first time the Self Assessment Scheme 2000-2001 provided that the cases for total audit may be selected by "computer random ballot". This is for the first time random ballot was introduced and it was held out to the public that 15% which was amended to 20% of the returns filed may be selected for total audit by computer random ballot. Such balloting was provided to give more transparency and freedom so that assessees may take 20% chance of being selected for total audit. For many assessees this may have been a deciding factor to opt for Self Assessment Scheme. Such a system

of balloting was introduced to give impartiality to the functioning of the Scheme and create confidence and trust in the Revenue Department.

6. It is an admitted position that in selecting the cases for total audit the department as adopted a formula which was fed to the computer and all the cases for total audit were selected on the basis of that formula. The learned representative of the department has vehemently contended that such practice was adopted in the past but no one had objected to it. It is pertinent to note that para 6 of the Self Assessment Scheme 2000 providing for selection of assessees for total audit is different from the earlier schemes because it does not provide for computer balloting as in the past schemes but provides for computer random balloting for which no formula has been prescribed in the scheme 2000. A comparative study of Self Assessment Scheme reveals that para 3 of Self Assessment Scheme 1987 for Assessment Year 1987-88 provided that from amongst the qualifying returns some cases percentage of which may vary within a trade or income group from circle to circle shall be selected for total audit on the basis of random sample through the computer under the supervision of CBR. For this random balloting the scheme had laid down a formula according to which selection was to be made. However, the subsequent schemes provided for selection of cases for total audit through computer ballot from amongst the returns qualifying for Self Assessment Scheme. The scheme 2000-2001 is distinguishable from scheme of 1987 as unlike the later scheme, the former did not provide any formula or criteria for computer random selection. Therefore, the past practice and the silence of the assessee during previous year cannot be precedent or justification for adopting the same or similar method of balloting. It has been argued that selection for total audit of the returns is intended to protect the interest of the revenue and in selection of cases no departmental officer has discretion to select any case and thus impartiality is completely ensured. Surely these are the criteria for selecting cases through computer ballot. One cannot dispute the wisdom demonstrated in the past. In the present case the Scheme itself so far balloting for total audit is concerned is distinguishable from the past schemes. It is, therefore, to be considered whether the formulated system fed to the computer as in the past can pass the test of random balloting. The introduction of the word "Random"

in para 6(a) of the Self Assessment Scheme 2000 is not without any purpose otherwise such departure from the past schemes would not have been made. Full effect is to be given to each word and the same cannot be discarded or left as redundant. It is a cardinal principle of interpretation of fiscal statute that meaning and effect should be given to each and every word and if there is any doubt or ambiguity then out of the possible interpretations one which is favour to the subject should be adopted. Before considering the meaning and effect of the word Random it is pointed out that the complainants have relied upon the press reports of Business Recorder dated 1<sup>st</sup> March, 2001 in which inter alia it was reported that a tax official stated that unlike the Random Ballots carried out in previous years which were just like a draw, the random balloting this year was gross profit (G.P.) as mentioned by the assesseees in their tax returns. The names of those with drastic cuts in G.P. rates as compared to the last year were included in the ballot. Dawn dated 11<sup>th</sup> March 2001 reported the protest made by tax experts and consultants that the random balloting held by the Department for detailed audit was not transparent. It was further reported that "though the department has been claiming that those cases were put for computer balloting who had declared very low or lesser gross profit than the last year. But the tax experts say that the balloting was targeted and was trade-wise selective". The complainants have also referred to "policy guide-lines for assessment in total audit cases" issued by the CBR to the Regional Commissioner of Income Tax dated 14-03-2001 in which it has inter alia been stated as follows:-

"The abolition of immunity/whitener schemes in conjunction with para-metric selection aiming at identification of cases of suppressed income has shown good result cases involving substantial potential for revenue stand selected."

7. From theses reference it is crystal clear that there has been protest and general resentment amongst the assessee against the admittedly formulated and doctinated computer balloting.

8. The entire controversy revolves round the term "random." This term has not been defined in the Scheme, or the Income Tax Ordinance. In the absence of any definition provided



by the Statute, the literal meaning is applied. The meaning of the word "Random" is as follows:-

*World Book Dictionary*

By chance, with no plan, method or purpose casual, haphazard, made, done, happening or coming by chance or accident, absence of any direction or purpose or plan.

*Words and Phrases*

Permanent Edition

In its popular sense means done at haphazard or without any settled aim, purpose or direction, left to chance or casual or haphazard.

*Ballentine's Law Dictionary*

Without any settled aim, purpose or direction, left to chance, casual or haphazard.

*Legal Thesaurus*

Regular Ed.

Accidental aimless, blind, casual, chance, done without reason, immethodical, purposeless unpremeditated.

*BBC English Dictionary*

Something done in a random way is done without a definite plan or pattern. Anything intended, planned, designed purposeful is not random.

*Chamber's*

20<sup>th</sup> Century Dictionary

Uncontrolled or unguarded state, haphazard accidental, aimless, blind, casual, unpremeditated

*International Thesaurus*

Orderless, haphazard, unarranged, unguarded, systemless, formless, indeterminate, undestined, purposeless, aimless, undirected.

9. From the above meanings of the word Random it is universally accepted that this word conveys and connotes a state of chance and uncertainty. An act will be random if it is done without any planning, method or purpose. It is haphazard, not doctinated or premeditated and without any settled aims, purpose or direction. In *US Vs Montgomery* 561 Fed 875 for Fourth Amendment purposes police stops of moving vehicles are not random simply because they are left to officers discretion. Leaving such stops to police discretion gives rise to possibility that assertedly random stops will be used to harass where reasonable grounds for suspicion do not exist. Random selection means that selection be made in such a manner which was not known or could not be predicted with certainty by any person. It is done without a definite plan and pattern. To further illustrate the word Random comparatively one can look to its opposite meaning which means intentional, planned, designed and purposeful. Any random act is illustrated in terms of coin flipping process which is attributed to independence and non determination. The process of flipping the coin is not influenced by prior flip and no one can say with certainty whether a head or tail will occur on a flip. In such an event there is a probability of 50% chances of winning or loosing. Random selection protects against selective bias, eliminates human discretion, avoids preplanning and is confidence inspiring. In his book *Basic Statistics for the Health Science* Jan. W. Kuma writes that the best way to limit bias is to use random sampling technique that is simple to apply. We use a means of randomisation such as a random number table to ensure that each individual in the population has an equal chance of being selected." Applying the above principles to the formulated computer selection carried out by the department the same cannot be termed as random selection.

10. To justify the balloting the learned representative stated that selection should be on the basis of formula aiming at generating revenue. The selection of small income assesseees tarnishes the

image of the Government. The view expressed is practically true but such action should have the backing of law. The self Assessment Scheme seems to be alive of this situation. Para 4 of Scheme 2000 enumerates 10 categories of returns which are not eligible for the Self Assessment Scheme. It inter alia includes all cases where loss has been declared and where there is evidence of concealment of income. Besides this paragraph 2 prescribes six conditions for the application of the scheme. This shows that the Scheme has taken care of the grey areas and provided protective measures to check tax evaders from taking advantage of the scheme. It also provides measures for detecting potential tax evaders. After completing the sifting process paragraph 6 provides for total audit on random basis which should be free from trappings, formulas, predetermination and human discretion as discussed above. In conducting computer random ballot the department is allowed to act to the extent provided by the scheme and in the manner required by it. Any deviation from the specified manner and method will nullify the entire act. Para 6 (b) provides another safety valve by authorising the Commissioners of Income Tax with the approval of Regional Commissioner of Income Tax concerned to select returns filed under the scheme for total audit. In this process the Commissioner has the authority to apply any formula or condition for selecting the returns for total audit. In view of these provisions available to check evasion, concealment and misdeclaration the department's contention that there will be great loss to revenue is not tenable. The department has devised a formula which had the concurrence of all the concerned authorities, the Commissioner acted accordingly and supplied list of assesseees to PRAL which carried out the computer balloting according to the formula fed to it. In the circumstances it will be open for the department to deal with the returns selected for total audit under paragraph 6 (b) of the Scheme. While considering the case in depth I have taken note of para 6(b) that the "CBR may issue guide lines and directions in this regard" i.e. cases selected by the Regional Commissioner for total audit. Such power to issue guidelines and direction are limited to cases selected by the Commissioner. It has no relevance and connection with para 6(a) which provides for computer random selection. Guidelines and directions are issued to facilitate the smooth working of the scheme. They cannot override negate or nullify the scheme itself.

11. After the arguments were heard the senior officers of the department discussed the case with the Federal Tax Ombudsman till the end of last month. As no new facts or law point were stated I did not feel necessary to issue notice to the complainants for further hearing. After I had completed my decision/findings, a fax letter no. C-No-4 164 Insp/2001 dated 31/5/2001 was received from Mr. Vakil Ahmed, Member Tax Policy, CBR which reads as follows:-

"The Registrar,  
Federal Tax Ombudsman Secretariat,  
State Enterprises Building,  
5-A, Constitution Avenue,  
Islamabad.

Subject: COMPLAINT NO. 495 & 502 OF 2001-  
ADDITIONAL SUBMISSIONS.

In continuation of the comments submitted by the CBR and oral submissions at the time of hearing the following is brought to the kind notice of the Honourable Federal Tax Ombudsman:

"The provisions of Article 9(2) are stipulated as under:

(2) The Federal Tax Ombudsman shall not have the jurisdiction to investigate or inquire into matters, which;

(a) are subjudice before a Court of competent jurisdiction or tribunal or board or authority on the date of the receipt of a complaint, reference or motion by him.

2. A bare reading of the above provision implicitly esstops the Honourable Federal Tax Ombudsman from investigation/enquiring into matters which are pending for adjudication before a court of competent jurisdiction. The CBR is in receipt of numerous notices from Lahore High Court, Lahore Bench as well as Bahawalpur Bench on the issue of selection of cases for total audit. It is submitted that the grievances as well as prayer in all such writ petitions is the same as before this honourable Secretariat i.e. non-adherence to policy and seeking cancellation of the selection. Article 9 is ousting the

jurisdiction to investigate and enquire into the matters, which are pending before a court of competent jurisdiction. It is respectfully submitted that this Article would be applicable in all such matters till issuance of Findings by Honourable Federal Tax Ombudsman.

3. In view of the above submission it is respectfully prayed that the subject complaints may please be filed in view of the bar of jurisdiction as explained above and the complainants advised to either join the pending writs or wait for their outcome.

4. The undersigned may kindly be afforded opportunity of hearing as well.

Sd/-

(Vakil Ahmad Khan)  
Member (Tax Policy)"

12. It is pertinent to note that the complaint No. 454/2001 which is the leading case was filed on 14/4/2001 and department's reply dated 28/4/2001 was forwarded by CBR by letter dated 30/4/2001. Complaint No. 495-2001 and 502/2001 were filed on 17/4/2001 and 25/4/2001 respectively. Reply in both these cases filed by Secretary Inspection CBR are dated 12/5/2001. In none of these replies the department has pointed out that any proceeding is pending and the matter is subjudice before any court, tribunal or authority. Even in arguments and discussion which prolonged upto 30th May 2001 this was not pointed out. This is for the first time that it has been pointed out that numerous notices from Lahore High Court have been received by the CBR on the issue of selection of cases for total audit. In this regard reference has been made to section 9 [not Article 9(2)] of the Establishment of the Office of the Federal Tax Ombudsman Ordinance, 2000 (hereinafter referred to as the Ordinance). The jurisdiction is barred in respect of matters which are subjudice before the court, tribunal, Board or authority on the date of receipt of a complaint, reference or motion by the Federal Tax Ombudsman. It is therefore necessary to first show that the petitions have been filed by the complainants and were pending on the of receipt of the complaint by the Federal Tax Ombudsman. The department has not furnished particulars of any case and date of filing petition in respect of the matters which are alleged to be

subjudice before the High Court. Prime facie, as till the date arguments were heard such plea was not raised, leads to the presumption that the petition referred may have been filed after the date of receipt of complaint by the Federal Tax Ombudsman. It would have been proper for the department to have given specific details of the cases including the date of presentation of the petition and also whether any of the complainants have filed petition in the High Court. In the absence of these particulars necessary to attract the provisions of section 9 (2) of the Ordinance, the objections are rejected. The matter has been heard so much and the belated objection raised is so clear that I do not feel it necessary to allow another chance to the department's representative to reargue the case.

13. The learned counsel for the complainant have contended that incomplete returns which were not eligible were included in the computer balloting and as such the entire process was illegal. The department has explained that the list referred by the complainants was preliminary compliance had been made before the balloting. They however submitted that it is possible that due to clerical mistake some incomplete returns may have been fed to the computer. There are some such returns which have been selected for total audit. I do not consider this small mistake goes to the root of the matter or is likely to upset the result of the balloting.

14. In the light of the above discussion recommended as follows:

- i. The balloting for selection of returns filed under the self Assessment Scheme 2000-2001 for total audit was not through a computer random ballot and therefore not according to para 6 (a) of the Self Assessment Scheme.
- ii. In all matters selected by computer ballot in which assessment has been completed assessed tax has been paid without any objection by the assessee in respect of manner of balloting shall not be affected by the recommendations and findings. However, the assessee will have the right to challenge assessment in proper forum as provided by law.

- iii. It is left to the option of the department to proceed with total audit under para 6 (b) of the Scheme in respect of return selected through random balloting if they deem fit to do so.
- iv. As the selection of cases for total audit is not mandatory the department may or may not enter into a fresh exercise for selection through computer random ballot under para 6 (a) of the Scheme.

**(Justice (R) Saleem Akhtar)**  
Federal Tax Ombudsman

**Karachi**

2<sup>nd</sup> June, 2001



**BEFORE MR. JUSTICE ® SALEEM AKHTAR  
FEDERAL TAX OMBUDSMAN**

**COMPLAINT NO.895/2001**

M/s. Waqas Jewellers,  
Souri Gali,  
Sahiwal.

Complainant

Against

Deputy Commissioner of  
Income Tax/Wealth Tax,  
Circle 02, Canal Colony, Sahiwal.

Inspecting Additional Commissioner of  
Income Tax/Wealth Tax, Sahiwal Range,  
Canal Colony, Sahiwal.

Commissioner of Income Tax/Wealth Tax,  
Sahiwal Zone, Canal Colony, Sahiwal.

Regional Commissioner of Income Tax/Wealth Tax,  
Sher Shah Road, Multan.

Chairman, Central Board of Revenue,  
Constitution Avenue, Islamabad.

Respondents

**DECISION/  
FINDINGS**

M/s. Muhammad Ashraf Hashmi, Masood Ishaq, Kh. Riaz Hussain, Sh. Nisar Ahmad, Siddiq Ahmad Ch., Muhammad Shahid Abbas & Ch. Hafeezullah, Advocates.

Mr. Anwar-ul-Haq, Complainant.

M/s. Vakil Ahmad Khan, Member, Muhammad Jehangir Khan, Chief (I&A) and Saeed Iqbal, Secretary (T.O.) CBR.

—————

This decision/recommendation will dispose of all the complaints listed in Annexure-A, as common questions of law and facts are

involved therein. In all the cases the complainants have challenged the selection of their cases for total audit under Para 6(b) of Board's Circular No.21 of 2000, as substituted by paragraph 4 of Board's Circular No.26 of 2000. The complainants had filed their return under Self Assessment Scheme for the assessment year 2000-2001. The department selected their cases for total audit under Para 6(a) through ballot, which was challenged by the assessee. The main grievance was that the ballot was not a random ballot but parametric one. The complaints were decided on 2-6-2001 in the following manner:-

- i) The balloting for selection of returns filed under the Self Assessment Scheme 2000-2001 for total audit was not through a computer random ballot and therefore not according to Para 6(a) of the Self Assessment Scheme.
- ii) In all matters selected by computer ballot in which assessment has been completed and assessed tax has been paid without any objection by the assessee in respect of the manner of balloting shall not be affected by the recommendations and findings. However, the assessee will have the right to challenge assessment in proper forum as provided by law.
- iii) It is left to the option of the department to proceed with total audit under Para 6(b) of the Scheme in respect of return selected through random balloting if they deem fit to do so.
- iv) As the selection of cases for total audit is not mandatory the department may or may not enter into a fresh exercise for selection through computer random ballot under Para 6(a) of the Scheme.

2. After this the CBR issued instructions No.7(7)S.Asst/2001 dated 9-6-2001 to all the Regional Commissioner of Income Tax, Northern/ Eastern/ Central/ Southern and Corporate Regions, Islamabad/ Lahore/ Multan and Karachi which reads as follows:-

"GOVERNMENT OF PAKISTAN  
REVENUE DIVISION  
CENTRAL BOARD OF REVENUE

C.No.7(7)S.Asst/2001.                      Islamabad, the 9 June, 2001

To

All Regional Commissioner of Income Tax,  
Northern/Eastern/Central/Southern and corporate  
Regions,  
Islamabad/Lahore/Multan/ and Karachi.

SUBJECT:SELF ASSESSMENT SCHEME FOR  
THE ASSESSMENT YEAR 2000-  
2001 SELECTION OF CASES FOR  
TOTAL AUDIT BY RCIT-POLICY/  
DIRECTION.

I am directed to refer to paragraph 4 of Board's Circular No.26 of 2000 and issue following guidelines for selection of cases for total audit in the light of principles and parameters up held by superior courts (1986-PTD-357):

- (a) declines in income.
- (b) declines in gross or net profits.
- (c) declines in gross or net profits rates.
- (d) declines in turn over.
- (e) turn over Liquidity ratio.
- (f) Stock turn over ratio.
- (g) Addition in assets.
- (h)
- (i) Property income declared for the first time.  
and
- (j) Information available on survey.

Suitable number of revenue yielding cases may please be selected and decided expeditiously and ensure collection at the earliest.

Sd/-

(Waqar Ahmed)  
Secretary (Assessment)"

3. Acting upon these instructions the assessing authorities selected large number of cases including the cases, which had been previously selected under Para 6 (a) for total audit. The complainants objected to this exercise and challenged its legality by filing these complaints. It has been pleaded by the complainants that through circular letter dated 9-6-2001 only 10 categories of cases could be chosen by the CBR and therefore Regional Commissioners were obliged to pick up the cases from among the said categories. In case No.895 of 2001 it was also pleaded that complainant's case was not picked up through random ballot and the department was not authorised to select the case under Para 6(b) as it was in contravention of recommendation No.3 of the Federal Tax Ombudsman reproduced above. It has also been pleaded that the case was picked up for total audit contrary to circular letter dated 9-6-2001 as no category was indicated and despite request the category was not revealed by the department. In another case (1018 of 2001) it has also been alleged that the cases were indiscriminately and arbitrarily selected for total audit without going into merit of the cases. In this case it was further pleaded that in view of the provisions of Finance Ordinance 2001 the procedure and proceedings are illegal. It is a common ground in all the complaints that the cases were selected without first issuing a show cause notice to the assessee.

4. Notice was issued to the Secretary CBR for submitting reply and the hearing was fixed on 20-7-2001. CBR by its letter No.4(421)Insp/2001 dated 14-7-2001 requested for time upto 30-7-2001 to prepare the reply. The request was granted and the cases were fixed for hearing on 9-8-2001. Before the hearing CBR by its letter No.4(457)/Insp/2001 dated 19-7-2001 informed that the "Board has decided to withdraw its letter No.7(17)S.Asst./2001 dated 9-6-2001. Consequently the selection of cases under Para 6(b) of Self Assessment Scheme 2000-01 stands withdrawn as a result of which the subject complaints stand vitiated and no grievance regarding selection of cases under the said Para remains". It was prayed that all complaints may be filed as infructuous. This letter was followed by CBR's letter dated 24-7-2001 inquiring "whether the hearing notice still remains to be attended or not". It was ordered that parties should appear on the date of hearing (9-8-2001) when order will be passed after hearing them.

5. The CBR also furnished a copy of the Circular No.C.7(7)S.Asst/2000 dated 17-7-2001 which reads as follows:-

\*GOVERNMENT OF PAKISTAN  
REVENUE DIVISION  
CENTRAL BOARD OF REVENUE

C.No.7(7)S.Asst/2000                      Islamabad, the 17th  
July,2001

To

All Regional Commissioner of Income Tax,  
Northern/Eastern/Central/Southern and Corporate  
Regions,  
Islamabad/Lahore/Multan and Karachi.

SUB: SELF- ASSESSMENT SCHEME FOR  
THE ASSESSMENT YEAR 2000-2001  
= SELECTION OF CASES FOR  
TOTAL AUDIT BY RCIT – POLICY  
DIRECTIONS.

I am directed to refer to Board's letter of even number dated 9-6-2001 on the above subject and to state that a number of representations have been received in the Board alleging that while selecting cases for total audit, under Para 6(b) of Board's Circular No.21 of 2000 as substituted by paragraph 4 of Board's Circular No.26 of 2000, field formations have not kept in view the policy directions on the subject and have arbitrarily selected cases. Some assesseees have approached various forums on which no adjudication has so far taken place.

2. The Board has given the matter an anxious consideration. It has been decided that lists of all cases selected for total audit under Para 6(b) of Board's Circular No.21 of 2000, shall be withdrawn. Further, in order to ensure a fair and

just treatment to all assessees, it has been decided that the RCIT shall select cases for total audit only where there is evidence, information or reason to believe that true particulars of income have been suppressed. Such selection may be based upon factors including an evident decline in income, gross profit and net profit rates and any additions to the assets of an assessee. Further, RCIT may also confront the assessees and provide them due opportunity of being heard before final selection.

3. I am further directed to state that policy directions issued earlier vide Board's letter of even number dated 9-6-2001 stands withdrawn. It is emphasised that selection of cases for total audit must be carried out in a judicious and transparent manner.

Sd/-

(Waqar Ahmad)

Secretary (Assessment)"

6. The Advocates for the complainants and the complainants present on the date of hearing and Mr. Vakil Ahmad Khan, Member CBR with officers of the CBR present on hearings held on 9th and 10<sup>th</sup> August, 2001 were heard at length. Mr. Ashraf Hashmi and Mr. Masood Ishaq, Advocates contended that after withdrawing list prepared under Para 6(b) a fresh list was prepared without following the guide lines dated 9-6-2001. They also contended that as the CBR by its letter dated 2-4-2001 had declared and assured the assessees that no case shall be selected by Regional Commissioner Income Tax for total audit the department is estopped from selecting the cases for total audit. Mr. Kh.Riaz Hussain, Advocate reiterated the same contentions. Mr. Sh. Nisar Ahmed and Mr. Siddiq Ahmad Ch., Ch Hafeezullah, Mr. Muhammad Shahid Abbas, Advocates and Dr Anwar-ul-Haq all argued their cases. Mr. Vakil Ahmad Khan the learned Member CBR addressed arguments on behalf of the department. At the out set he stated that in view of the instructions dated 17-7-2001 the entire list of

assessee selected under Para 6(b) for total audit has been scrapped. It was further contended that since the list has been cancelled and no action is being taken in cases selected for total audit under circular letter dated 9-6-2001 very little is left for consideration and proceedings be terminated. Mr. Vakil Ahmad Khan has contended that question of estoppel does not arise as the letter dated 2-4-2001 referred and relied upon by the complainants was in reply to query made in respect of Northern Areas.

7. The plea of promissory estoppel is not sustainable. The complainants cannot press letter dated 2-4-2001 in service as it was neither addressed to them nor the assurance contained therein was made to public by a declaration through any statutory or legal document. It was issued on 2-4-2001, after the returns under Self-Assessment Scheme had been filed by the complainants. If such an assurance would have been given by any proper authority in a legal manner and acting upon such assurance the returns would have been filed, the complainants may have been justified in pressing this objection. This contention has no merit and is rejected. Mr. Riaz Ahmed contended that the Finance Ordinance 2001 was promulgated on 18-6-2001 by which Section 59(4) of the Income Tax Ordinance was added and therefore there was no justification in hurrying up the completion of assessment. This contention suffers from inherent infirmity as the Finance Ordinance was promulgated by a Notification issued by the Government w.e.f. 1-7-2001 and not from 18-6-2001. Faced with this situation the learned counsel did not press this objection. The learned counsel also contended that decline in income, gross profit and net profit rates cannot be made a ground for selecting a case for total audit. At the moment the list has been scrapped and if any selection for total audit is made in future on this basis the assessee would be given an opportunity to explain and defend himself before selection when he can press this objection.

8. The main question which has disturbed me throughout and I had made direct queries from both the parties that what is the effect of cancellation of the list under which cases for total audit were selected particularly in cases in which assessment has been completed. Mr. Ashraf Hashmi the learned counsel for the complainant contended that the entire proceeding will be void. Mr. Vakil Ahmad Khan the learned Member CBR also seems to be of



the same view with reservation as to the agreed assessments. The question for consideration is that many assesseees who have undergone the rigours of total auditing may be satisfied and may not like to re-agitate the issue again. Cases may also arise where parties dissatisfied with the total audit assessment may have filed appeal, revision or challenged it before any other forum. Mr. Vakil Ahmed Khan made statement that no assessment will be finalised in cases selected under Para 6(b) in pursuance of instructions dated 9-6-2001. any Commissioner who has taken up the case will not finalise it. He also assured that all Zonal Commissioners will be advised to vacate order of assessment and consider under new procedure. In case of ex-parte assessment in total audit cases the findings will be reversed and set- aside uo-moto.

9. There may be cases in which parties may be satisfied with the assessment made under total audit or for purchasing peace may not like to agitate the question again. In such cases if the assesseees inform the Regional Commissioner Income Tax that they do not wish to challenge the same, then such assessment may not be disturbed by the cancellation of the list.

10. After the hearing was completed circular letter C.No.7(7)S.Asst./2000 dated 10-8-2001 was received in this Secretariat which reads as follows:-

"GOVERNMENT OF PAKISTAN  
REVENUE DIVISION  
CENTRAL BOARD OF REVENUE

C.No.7(7)S.Asst/2000      Islamabad, the 10 August 2001

To: Regional Commissioner of Income Tax,  
Northern/Eastern/Central/Southern and  
Corporate Regions Islamabad/Lahore/  
Multan and Karachi.

SUB: SELECTION OF CASES FOR TOTAL  
AUDIT UNDER PARA 6(b) OF CBR  
CIRCULAR NO.21 OF 2000 -  
INSTRUCTIONS REGARDING

In continuation of Board's letter of even number dated 17-7-2001 on the above subject.

I am directed to state that Board has received a number of representations where queries have been raised as to what would happen to the cases where assessments have already been completed in pursuance of selection, under Para 6 (b) of CBR's circular No.21 of 2000, for total audit on the basis of policy directions issued, vide Board's letter No.7(7)S.Asst./2001 dated 9-6-2001 and withdrawn later.

2. The matter has been examined in the Board. Such taxpayers can avail their legal remedy either by filing appeals before the Appellate Additional Commissioners/Commissioners of Income Tax (Appeals) or revisions before the Zonal Commissioners. It has been decided that in cases where taxpayers opt to avail the benefit of revision before the Zonal Commissioners, the assessments in those cases may please be set-aside. Such cases may, however, be re-considered for selection of total audit in the light of Board's fresh instructions on the subject, issued vide letter of even number dated 17-7-2001.

3. I am further directed to request that utmost care must be exercised in taking such decisions and the above facility would not be extended to the cases where assessments have been finalised on agreed basis.

Sd/-

(Waqar Ahmad)

Secretary (Assessment)"

11. Before parting with this decision I wish to place on record my appreciation for the realistic policy decision made by the CBR and its acceptance by the learned counsel for the assesseees and tax payers with trust and confidence. This proceeding is historic and a landmark. It is a milestone and a turning point in the attitude and understanding of the CBR. Never before any government

department may have responded so swiftly and positively to accede to the just demands of the taxpayers. This amply demonstrates healthy change in thinking and approach of CBR to taxpayers problems. A visible difference from the past. This is the beginning of change in the tax culture of our country for which I have been striving hard to bring about. It is a matter of great satisfaction that immediately on filing of complaints in large number and issuance of notice from this office, the CBR realising the gravity of situation reassessed their position in a realistic and objective manner and offered a solution by withdrawing their instructions regarding total audit under Para 6(b) of the Self Assessment Scheme 2000 thereby creating an atmosphere of trust and confidence which positively has been responded by the assessees.

12. It is recommended that:-

- i) Commissioners who have taken up the case for assessment in respect of an assessee who was selected for total audit under Para 6(b) shall not finalise and the proceedings be terminated.
- ii) Assessment will not be finalised in cases selected under Para 6(b) in compliance with instructions dated 9-6-2001 and the proceedings be terminated.
- iii) As assured by the learned Member, the CBR to advise all Zonal Commissioners to vacate order of assessment except in cases in which the assessee agree to accept the assessment already made which will not be disturbed.
- iv) In case of ex-parte assessment in the total audit cases the assessment shall be set aside suo- moto.
- v) In agreed assessment the assessee if he thinks proper may file appeal and Commissioner Income Tax (Appeal) to follow the above directions.
- vi) In case the department wishes to select any case for total audit under Para 6(b) the same shall be selected by the Regional Commissioner of Income Tax and no other officer keeping in view the parameters fixed by the CBR

in circular/ letter dated 17-7-2001 which includes a show cause notice to the assessee before selection.

(Justice ® Saleem Akhtar)  
Federal Tax Ombudsman

Islamabad  
17-8-2001.

**BEFORE HONOURABLE FEDERAL TAX  
OMBUDSMAN**

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1. Complqint No.582 OF 2001  
Mr. Zaheer-ud-Din son Muhammad Hussain  
Faisalabad.
2. Complaint No.583 of 2001  
Mr. Muhammad Saleem,  
C/O Muhammad Saleem Cloth Dealer,  
Chobara Katra Boota Khan,  
Karkhana Bazar,  
Faisalabad.
3. Complaint No.584 of 2001  
Mr. Waseem Shahzad  
C/O Waseem Cloth House,  
Chobora Katra Boota Khan,  
Karkhana Bazar,  
Faisalabad.
4. Complaint No.585 of 2001  
Mr. Kashif Shahzad,  
C/O Kashif Shahzad Cloth Dealer,  
Chobara Katra Boota Khan,  
Karkhana Bazar,  
Faisalabad.
5. Complaint No. 586 of 2001  
Mr. Muhammad Aamer,  
C/O Nisar Cloth House,  
Rail Bazar, Faisalabad.
6. Complaint No.587 of 2001  
C/O Shahzad Shakeel Cloth Merchant,  
P-166 Old Grain Market,  
Faisalabad.

7. Complaint No.588 of 2001  
 Mr. Ghulam Rasool,  
 C/O Ghulam Rasool Cloth Merchant,  
 Gurdawala Gali No.4,  
 Faisalabad.

Complainants

Versus

Secretary,  
 Revenue Division,  
 Islamabad.

Respondent

### DECISION/FINDINGS

M/S Muhammad Ashraf Hashmi,	]	
Masood Ishaq	]	For the complainants
Mujahid Arshad	]	
Sheikh Muhammad Aslam	]	
Advocate		

M/S Mukaram Jan, Mohammad Azhar & Aamer Amin for the  
 Department

All these complaints will be disposed of by this decision as common questions of law and facts are involved. These complaints are against spot survey conducted by the survey teams during the third survey. It has been stated that the complainants had declared their sales on the form which was duly signed and verified by them as required by Survey for Documentation of Economy Ordinance, 2000 hereinafter referred to as the Ordinance. Thereafter, another survey team consisting of personnel from Army, Income Tax Department, Sales Tax Department and Police Department visited the business premises. They did not provide any notification issued by the CBR constituting such teams and illegally and without jurisdiction, estimated sales of the complainants much higher than the declared sales. The figures in all the complainants are different and it is not necessary to mention them here. The common ground is that the complainants were forced to sign the form in which higher estimates of sales had been recorded by the survey team.

They have challenged the survey proceedings and estimates of sales on the following grounds:

- (i) The Ordinance does not empower the survey team to assess/determine the annual turnover.
- (ii) that no rules have been framed under the Ordinance and therefore, the survey operation was illegal and constitution of survey team was also without any legal sanction.
- (iii) The Ordinance does not provide for estimating/arriving at agreement for sales during the year.
- (iv) It has been alleged that meetings of the representatives of the trade community were held with the government authorities who had verbally agreed that during the survey, the survey teams will estimate sales on the basis of stock. In case of retail sales, it will be adopted equal to three times of the stock and in wholesale business, equal to six times of the stock. However, no circular or notification was made available.

It was prayed that estimates/agreement of sales arrived at by the survey team be declared illegal and without jurisdiction and directions be issued in this regard. There were allegations in Complaint No.670/2001 and many other cases that survey team forced the complainants to affix signatures on the survey form assessing higher sales. They were threatened to severe consequences if the form was not signed. They further alleged that the survey team did not enter the shop nor they looked at the stocks lying there.

2. In reply it was pleaded that survey teams were constituted under the Ordinance to carry out assessments of business premises and determine their turnovers. Army Officer as Leader of the team watches CBR officials and ensures that no harassment is caused to the assessees. It was stated that the survey carried out was transparent and in accordance with the instructions of the CBR. The survey teams on visit to a business premises makes visual estimation of stocks. The assessee is at liberty to disagree. The



traders signed the team's assessment on the survey form which is a clear proof of their acceptance, transparency and genuineness of the assessment. It was denied that the assessment was arbitrary and assesseees were forced to sign the form. It was repeatedly emphasized that as the survey was carried out under the leadership of Army, there was no possibility of harassment. It was pleaded that estimates were made on agreement basis which were duly signed by the assesseees and further that the determination made by the back-up teams can also be subjected to adjudication at the option of the assessee.

3. The department relied on the letter dated 8<sup>th</sup> December, 2000, issued by Mr. Iftikhar Qutb, the Chief (Sales Tax) addressed to RCITs, Collectors of Sales Tax, Central Excise, Commissioners of Income Tax, Sialkot, Sargodha and Sukkur, in which certain guidelines for carrying out survey were mentioned. The complainants showed complete ignorance in respect of the instructions and guidelines disclosed at the time of hearing. On query, the respondent stated that this is a confidential document and therefore, it was not disclosed to any one. However, after examination of the document, I found that there was nothing confidential in it and it ought to have been made public so that the assesseees should know the procedure and criteria to be adopted and also know where they stand. The complainants requested for a copy of the instructions disclosed during the hearing, which was supplied to them. The advocates for the complainants requested for time to study it. The CBR also furnished a copy of letter dated 8.12.2000 and Instructions regarding third visit dated 28.4.2001 which are reproduced as follows:

“Government of Pakistan  
Central Board of Revenue  
Sales Tax Wing

C.No.1/69/STS/2000 Islamabad, the 8<sup>th</sup> December, 2000.

From: Iftikhar Qutab,  
Chief (Sales Tax-II).

To: All Regional commissioners of Income Tax  
All Collectors of Sales Tax & Central Excise  
Commissioner of Income Tax, Sialkot/  
Sargodha/  
Sukkur (All by name)

**“SUBJECT: THIRD VISIT IN CASE OF BUSINESS SURVEY FORMS INSTRUCTIONS REGARDING**

I am directed to refer to the subject noted above and to state that during Collector's Conference held on 1-2.11.2000, Collectors were directed to make preparations to launch third visit programme for the evaluation of stocks and determination of turnover in case of surveyees who had filled in and deposited business survey forms. In this regard, another meeting was held on 22.11.2000 in which the Collectors of Sales Tax & Central Excise (East/West), Islamabad, Karachi, Lahore, Rawalpindi, Faisalabad, Commissioner of Income Tax, Islamabad, Lahore (Zone-B) and Additional Collector of Sales Tax & Central Excise, Multan participated. The meeting was chaired by Member (Tax policy), Member (Sales Tax), Member (Direct Taxes) and Chief (Sales Tax-II) were also present. In order to initiate the work relating to 3<sup>rd</sup> visit in case of business survey forms, the following course of action was decided:

- (i) Commencement date of 3<sup>rd</sup> visit is 12.12.2000. However, adjustment on account of local government elections and electoral roll verification excise, if needed, may be made jointly by the Collector, Commissioners and Army authorities. Timing for third visit will be adjusted locally but no work will be done after Iftar. 3<sup>rd</sup> visit shall be initiated concurrently for trading and manufacturing sectors.
- (ii) Third visit shall be aimed only at evaluation of stocks and determination of minimum annual turnover. No assessment of income shall be made on the spot.
- (iii) Survey teams already constituted for the First Phase will not be broken. However, lesser number of survey teams should initially be deputed for the purpose of 3<sup>rd</sup> visit. Representatives of Income Tax shall continue to be member of survey teams for the purpose of 3<sup>rd</sup> visit.

- (iv) The 3<sup>rd</sup> visit will be carried out in phased manner. Markets and shops shall be selected jointly by the Collectors, Commissioners and Army Authorities. Initially, markets less prone to reaction shall be selected. The basic criteria to select markets and shops to start with the 3<sup>rd</sup> visit will be the revenue potential.
- (v) The 3<sup>rd</sup> visit will be carried out for evaluation of stock and fixation of turnover. The guidelines already issued by the Board in this regard shall be followed. Stock evaluation will, however, be a sort of visual estimated assessment of stocks. While determining the minimum, and annual turnover, a reasonable tolerance on account of Eid season shall be given to the available quantity of stocks.
- (vi) In cases where the findings of the survey teams are not agreed by the surveyees, detailed stock taking and turnover determination shall be undertaken by the back-up teams.
- (vii) The Army personnel shall continue to work in the survey teams for the purpose of 3<sup>rd</sup> visit and the Army Officer ordinarily not below the rank of Major shall lead the team. Technical work will be done by the tax officials. The Army officials will however, in case of dispute, be acting as mediator.
- (viii) Board shall provide lists of representatives of the associations, who will accompany the survey teams primarily as an observer. These representatives will not participate in the stock evaluation and turnover fixation process; they may, however, give their opinion to the survey teams but the final responsibility for stock evaluation and turnover fixation shall lie with the survey teams.
- (ix) In case of retailers, three times of stocks shall be taken as minimum turnover while in case of wholesalers, six times of the stock shall be taken as their minimum annual turnover. Turnover tax

and enlistment tax schemes shall be offered only to the retailers. The manufacturers, wholesalers, importers, dealers, distributors, suppliers, stockists etc. shall be liable to sales tax registration under standard Sales Tax system.

- (x) The survey team shall carry blank application forms for registration/ enrollment/ enlistment/ national tax number.
- (xi) The officers of Sales Tax and Income Tax shall sign the findings of the survey team and the Army officer shall countersign.
- (xii) The survey teams shall carry the Income Tax/ Wealth Tax/Sales Tax profiles of the surveyees intended to be covered for 3<sup>rd</sup> visit besides variation statements prepared with the help of PRAL.
- (xiii) Help of civil administration shall be arranged by the local Army formations as before (MO Directorate to issue instructions).
- (xiv) Survey section of CBR shall devise a proforma for the preparation of daily progress report about the 3<sup>rd</sup> visit. The proforma will indicate the overview of results of stocks evaluation and turnover fixation on daily and progressive basis.
- (xv) No 3<sup>rd</sup> visit shall be paid in case of residential survey form and residential survey teams shall not be involved in third visit programme."

Sd/-  
(Iftikhar Qutab)  
Chief(Sales Tax-II)

Copy to:

- 1) Military Operations Directorate, GHQ, Rawalpindi.
- 2) Headquarters Army Aviation Command, Islamabad.
- 3) Mr. Javed Ali Agha, Chief Executive Officer, PRAL, Islamabad.

GOVERNMENT OF PAKISTAN  
REVENUE DIVISION  
CENTRAL BOARD OF REVENUE

C.No.1(69)STP/2000 Islamabad, the 28<sup>th</sup> April, 2001.

From: S.A. Alam,  
Chief (ST S&R)

To: The Regional Commissioners of Income Tax,  
Southern Region, Karachi/Central Region, Multan/  
Eastern Region, Lahore/Northern Region, Islamabad.  
The Commissioners of Income Tax  
Sargodha/Sialkot/Sukkur/Faisalabad/Islamabad/  
Hyderabad  
The Collectors,  
Collectorate of Sales Tax & Central Excise,  
Multan/Lahore/Gujranwala/Rawalpindi/Peshawar/  
Quetta/East Karachi.

“INSTRUCTIONS OF THE CBR TO RCITS/CITS/  
COLLECTORS

SUBJECT: THIRD VISIT IN CASE OF BUSINESS  
SURVEY FORMS – INSTRUCTIONS  
REGARDING

In continuation of CBR's instructions of even number dated 8.12.2000 on the above subject, it is intimated that the recommended methodology was modified to some degree by the survey teams at Lahore. As per this approach, the declarations of stocks have been got corrected/modified with participation and support of the relevant trade bodies on the understanding that such declarations are subsequently subjected to physical verification by the survey teams. The choice of businesses to be subjected to verification is made on the basis of random selection combined with selection based on information/suspicion.

It has been noted that the modified approach adopted at Lahore has yielded great benefit as over 27 traders/ whole-

sales/ retailers etc. got registered/enrolled/enlisted within the span of 3-4 weeks upto 31<sup>st</sup> March, 2001. In a combined meeting of all parties involved in the survey exercise at Lahore on 31.3.2001 (army, income tax & sales tax) it was noted that there is an expectation that the number of new registration/enrollment/enlistment because of adoption of modified exercise is likely to exceed 25,000 within the next few weeks and may even cross 50,000.

In view of the fact that compliance of GST regime by surveyed businesses through registration/ enrollment/ enlistment is of utmost importance. It has been decided to replicate the aforesaid modified package in all cities along the following outlines:

- i) Relevant trade association/body to be informally offered this modified package.
- ii) Photocopies of business survey forms may be provided to relevant associations/market committees for playing their role in revision of value of stocks and turnover so as to be as close to the actual as possible.
- iii) Such revised forms would be scrutinized by the survey authorities and ordinarily upto 15% cases would be identified for visit/verification on basis of random selection combined with information/suspicion. Where required, the extent of verification may be enhanced.
- iv) Stocks would be determined during such 3<sup>rd</sup> visit by joint CBR-army teams.
- v) The traders/businesses who are eligible to register/enroll/enlist on basis of declarations will be persuaded by the survey teams to start compliance as soon as possible and file their monthly tax return.
- vi) Those among such new taxpayers, who fail to discharge their obligation of filing tax return in the



prescribed manner, their lists would be provided to the survey teams for pressuring such taxpayers to comply.

- vii) Where this modified package is accepted as per (1) above, sub-para (v), (vi) and (viii) of CBR instructions dated 8.12.2000 will stand amended accordingly.
- viii) The modified package will not be offered/applicable to cases selected for total audit through random ballot by income tax department.

4. On the next date of hearing, the most striking statement that came from the complainants was that if they would have been aware of instruction number 9 fixing criteria for determining the stock and its value, they would have voluntarily opted for it. It seems that instruction number 9 contains the verbal assurance given by the Finance Minister, the Finance Secretary and the CBR as alleged by the complainant.

5. In order to correctly appreciate and resolve the controversy between the parties, it is necessary to examine the provisions of the Ordinance. The object of the Ordinance is to get the economy documented and according to preamble as "there is large scale non reporting and under-reporting of assets held, income earned, taxable activity carried out, excisable services provided and manufacturing carried out, it was expedient to provide for documentation of the economy and for matters concerning therewith and or incidental thereto." According to section 2, the CBR was authorized to constitute survey teams in such manner and in such number as it may deem fit to carry out survey of non-reporting or under-reporting of manufacturing, sales and economic activities, income wealth and assets. It also provides that the officials who may constitute the survey teams will be subject to the instructions and directions issued by the CBR. The information collected through questionnaire shall be deemed to be information collected for the purposes of assessment and determination of turnover and the value of tax liability determined by the CBR. The survey forms are given in the First, Second and Third schedule. These forms thus become part of the Ordinance. Survey form in the First Schedule relates to



business containing several questions. Second Schedule form relates to properties owned by the owners and the form in Third Schedule is in respect of survey of properties to be filed by the tenants. At the moment we are only concerned with the questionnaire form in the First Schedule regarding survey of business. There are some striking features in this form. At the end of the questions which are to be replied by the assessee, it has to be verified by him on solemn declaration testifying that the particulars given are correct and nothing has been concealed and further, incorrect information may lead to punitive action. After the assessee has filled in the form, it is delivered to the survey team. The second phase is restricted to office exercise. Thereafter, a third survey is carried out and the survey team is required to fill in items A, B and C at page 6 of the form which are as under:-

Description of business and machinery

- A. Annual gross sales/receipts (Rupees).
- B. Annual gross taxable sales (Rupees).
- C. Business income for assessment year.

Against each item, evaluation is to be made by the survey team which records the amounts in the blocks. After items A, B and C, are filled in by the survey team, assessee has to sign against them. In the end, there is a note which reads as follows:

“In case of disagreement of the business person, the case shall be recommended for stock-taking and investigation.”

6. A close scrutiny of this part of the form reveals that the figures against each item are to be filled in by the survey team according to the evaluation on the spot and the assessee has to put his signature against each item. Therefore, the requirement of law is that the assessee has to sign against each figure as filled in by the survey team. The signature thus made by the assessee can hardly be called to constitute an agreement. The law requires the assessee to sign against each item which the assessee is duty-bound to do so whether he agrees with it or not. The assessee could not legally refuse to fill in or sign the form during third survey as it would attract penal provision as provided by section 4 of the Ordinance. Therefore, mere signature on this portion of survey form does not

lead to the conclusion that the assessee has agreed to the figures filled in by the survey team and there is a binding agreement with the assessee. The note as reproduced above, supports this conclusion. According to this note if business person i.e., the assessee does not agree with the figures mentioned in the aforesaid items A, B and C signed by the assessee, he has the option to disagree and consequently, the case shall be recommended for stock-taking and investigation. He has no option to refuse to sign in case of disagreement. If the assessee does not protest or file any objection within a reasonable time, it shall be presumed that the assessee has accepted the figures filled in by the survey team.

7. It was contended on behalf of the department that the gross total sales/ receipts, annual gross taxable sales and business income for the assessment year were not evaluated and entered without any basis as the department had carried out exercise to ascertain sales and value of goods and had with it tax profile of the assessee. Thus evaluation was not made at random but on reasonable grounds. This may be correct which the assessee was not in a position to admit or deny because such an exercise was carried out secretly. However, it is not possible to carry out such exercise individually for each and every assessee. It may have been carried out in respect of big business houses and trading centers but so far as small traders are concerned, such an exercise may not have been possible. However, there is a general allegation of all the complainants and a lot of hue and cry has been made that the assessee were forced, overawed and oppressed to put their signature on the survey form at the time of third survey. As observed earlier, the signature by itself does not create any binding agreement as contended by the department. However, if any objection is filed or a protest is made, the evaluation will have to be subjected to stock-taking and investigation. Although it is not unreasonable to adopt this procedure, however, it must have created an element of awe and fear in the mind of traders who may have on a second thought, signed the form without being put to any coercive method. The end result is that if any party or assessee objects to the valuation as made during third survey, he may file objections challenging the veracity of such figures entered by the survey team and naturally the authorities will be entitled to recommend for stock-taking and investigation. Such stock-taking should be transparent and free from

fear and coercion. The document shown by the department in respect of complainants does not show basis on which sales, gross taxable sales and business income were valued at the time of third survey. Therefore, if at all, any investigation or stock-taking is to be carried out, it should be transparent, free from fear and coercion.

8. It is therefore, recommended that;

- (i) Signatures against all the three items containing figures filled in by the survey team can not be treated as an agreement with the assessee.
- (ii) Where any party objects to the veracity/correctness of the entries made during third survey, he must file such objection to the relevant assessing authority within a reasonable time who may take necessary action as provided by law.
- (iii) Where any assessee does not object to the evaluation made by the survey team within a reasonable time from the date of decision, such evaluation shall be deemed to have been accepted by the assessee.
- (iv) If the relevant authority recommends for stock-taking and investigation, it shall be conducted by the survey team selected for this purpose and also representative of trade be associated with this exercise. The team shall prepare a comprehensive inspection report with full particulars and details copy of which be supplied to the assessee on the spot.

Sd/-

(Justice (R) Saleem Akhtar)  
Federal Tax Ombudsman

**FINDINGS/RECOMMENDATIONS**  
ON COMPLAINTS AGAINST  
*INCOME TAX DEPARTMENT*

COMPLAINT N. NO. 72 OF 2001

M/s. S.F.S. Corporation and others, .....Complainant

Against

The Secretary, Revenue Division, Islamabad. .... Respondent

Summary of Findings

Law:	Income Tax Ordinance, 1979
Subject:	Refund
Recommendations:	Issue refund voucher constitute inspection teams to inspect appellant and original orders to pin point patently illegal orders.

Three claimants had filed the complaint for refund. The respondents in the reply contended that out of total claim of the complainants only claim of Fazal Autos was sanctioned on 29-01-2001 which would be paid in due course of time.

It was observed during investigation that in spite of appellate order refund was sanctioned only after repeated reminders and secondly the order impugned before the Appellate Tribunal was patently illegal and against the settled law, the provisions of the Customs Act and Judgments of the Superior Courts. This can happen only where the adjudicating officer is inefficient, ignorant of law and incompetent or that he had willfully passed the order merely to harass the Complainants. Such patently illegal orders cause harassment to the parties, create litigation and burden them and the government with financial loss.

It was recommended that CBR to issue instructions or constitute inspection teams to regularly check and inspect the Appellate order and orders in original to pin point patently illegal orders passed by the adjudicating/Valuation/Assessing officers and submit quarterly report to the Secretariat.

COMPLAINT N. NO. 57-K OF 2001

Ihsan Cotton Products (Pvt.) Limited,

Complainant

Against

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

Law:	Income Tax Ordinance, 1979
Subject:	Refund/Maintenance of Record
Recommendations:	Issue refund voucher ensure proper maintenance of the records and register and carry out regular inspection. To delay the decision till the expiry of statutory period without reasonable cause – Maladministration.

The complainant had installed a unit for manufacturing yarn cordage and textile made up in the rural area under Government Scheme. It claimed 5 years tax holiday but exemption was not granted and it was subjected to tax under section 80-D of the Income Tax Ordinance. The claimants applied to the Deputy Commissioner Income Tax for issuance of revised IT-30 for creating refunds in the years 1994-95, 1997-98, 1998-99. Revised ITs-30 admitting refunds were issued. However no payment was made and demand was created by order dated 25-9-2000 against which the refunds were adjusted including the tax paid for the year 1999-2000. This assessment was set aside on 11-11-2000 and on reassessment by order dated 15-12-2000 Rs.3,583,221 was found refundable. The claimant while pursuing its claim filed an application dated 27-1-2001 for refund. On 29-1-2001 a notice u/s 66A of the Income Tax Ordinance for assessment year 1998-99 was issued by Inspecting Additional Commissioner of Income Tax Range-III Special Zone Karachi to which a reply was sent and thereafter no further action was taken. The Department pleaded that it has filed second appeal before the Income Tax Appellate Tribunal which has been admitted and the matter is subjudice. It was pleaded that as the statutory

period for deciding refund claim had not expired the case is under process. It was held that in cases where law provides for an act to be performed or order to be passed within a particular time, the department to cover up the delay take the plea that it shall be done or has been done just before the expiry of the time limit. Such provisions which require the performance of an act or duty within a particular period do not give a free licence to unreasonably delay the matter till the last date. Such attitude may not be illegal but it unreasonably causes delay, demonstrating neglect, inattention, incompetence, inefficiency and ineptitude in the discharge of duties and responsibilities. This mode of performing duties clearly amounts to maladministration as defined in section 3(2)(ii) of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000. It has been noticed that whenever any claim for refund is made, the tax officials require the claimant to furnish proof of payment of tax. They do not bother to ascertain payment of tax from their record.

2. It was recommended that Central Board of Revenue to issue instruction/directive to all the Commissioners and Deputy Commissioners to ensure proper maintenance of the records and registers, carry out regular inspection and submit to CBR report of inspection every two months. A summary of such reports be submitted by CBR to this Secretariat quarterly.

3. It was further recommended that Central Board of Revenue to submit a list of cases relating to the refund pending before the assessing officer of all zones and circles in which appeal effect has not been given.



COMPLAINT NO. 41 OF 2001

Shafqat Nadeem, Bahawalnagar

Complainant

Against

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

- Law: Income Tax Ordinance, 1979  
 Subject: Oral Order not Legal/Delay in supplying copy of orders/ Directions.  
 Recommendations: Direction to supply copy of the final order within two weeks.

The Commissioner Income Tax, Bahawalpur had heard appeal against the order of assessment at Bahawalnagar Camp. According to the complainant appeal was allowed by an oral order and the signature of the advocate was obtained on blank order sheet. But in written order the appeal was rejected. From perusal of original and appellate records it transpired that the order sheet dated 2-2-1997 bore the signature of the advocate for the complainant but no order accepting the appeal was recorded. It was held that any oral order passed by any authority has no validity unless it is in writing and duly signed by the officer concerned. There did not seem to be any illegality in this procedure. The complainant in his affidavit had stated that Mr. Ehsanul Haq, Commissioner Appeal is on the top of the list of honest officers of Pakistan. In these circumstances there does not seem to be any reason to change the order sheet or change the order duly passed by him. No allegation of *mala fide*, dishonesty or bias has been alleged against the learned officer. In these circumstances no case of misadministration was made out.

Direction was issued that all appellate assessing authorities to supply copy of the final order passed by them to the assessee within tow weeks of the passing of the order.

COMPLAINT NO. 1-K OF 2001

M/s Diigital Radio Paging Limited,

Complainant

Against

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

Law:	Income Tax Ordinance, 1979
Subject:	Chap 13-A – Complete Procedure – 138E Scope – default by assessee – procedure provided.
Recommendations:	The complainant shall be entitled to the adjustment of the amount of tax already paid.

The complainant is engaged in the business of Radio paging. For the assessment year 1999-2000 assessment was framed under section 62 of the Income Tax Ordinance and tax demand of Rs.3776846/- was created. The complainant filed appeal and approached the Income Tax Settlement Commission, Karachi where the matter was settled by order dated 21-8-2000. The DCIT CREATED A DEMAND OF Rs. 954869, the department claiming that the claimant failed to pay within 60 days in terms of agreement called up it to show challan of payment of Rs. 3776846/-. The Department pleaded that order of the Settlement Commission was conditional and the as assessee failed to make the payment within the agreed time. The basic condition for payment of revised tax was not fulfilled. It was observed that sub section 5 of section 138E requires the Settlement Commission to state in the order terms of settlement including the amount of tax, penalty or interest and the manner in which they shall be paid. Perusal of the order of the Commission shows that it did not quantify the tax or the demand, which was to be paid under the order. However, the Department calculated it after receipt of the order.

2. The present case does not fall within the ambit of sub section 5 as the complainant did not object to the amount of revised

tax and not only acted upon it by paying partly but sought installment for the rest amount. In these circumstances it is to be seen whether the complainant failed to pay the revised tax demanded and was the Department justified to recover the original amount of tax. The conditions under which a case can be reopened are provided under section 138(I) which also inter alia requires that reopening of the proceeding can be with the concurrence of the applicant. The order of settlement passed by the Commission attains finality and cannot be subjected to challenge or revision except as provided in the order or u/s 138(I).

3. The next question was that if a party defaults in compliance with the order of Settlement what procedure is to be adopted. Section 138-F provides complete answer for such a situation. According to it any sum specified in an order of settlement passed under sub section 4 of section 138-E be recovered subject to the condition mentioned therein. In cases of default penalty for default in making payment may be imposed and recovered in accordance with the provisions of the Ordinance by the Deputy Commissioner having jurisdiction in the case.

4. Chapter 13-A is a complete code which provides independent procedure for settlement of cases under this Chapter and has not only given finality to such order but protection has been given to the assessee and to the order passed by the Settlement Commission. In the face of such exclusive and independent procedure it is difficult to agree that on default the assessee/party can be charged with the tax assessed originally. In these circumstances, the demand of the Deputy Commissioner/Assessing Officer to recover the amount of tax as assessed in the original order was illegal and without jurisdiction. Direction was given to DCIT to consider the case and default has been committed. Proceeding as provided by section 138E be taken.

COMPLAINT NO. 320-K OF 2001

M/s Zulfikar F. Haji.

Complainant

Against

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

Law:	Income Tax Ordinance, 1979
Subject:	Extension of time (u/s 55) for furnishing return of Income/ Apply to SAS.
Recommendations:	CBR to withdraw the impugned circular dated 8-2-2001 and the returns filed during the extended period to be accepted under SAS.

The return of total income is furnished under section 55 of the Income Tax Ordinance and assessed under the Self-Assessment Scheme (SAS) framed under Section 59. The last date for furnishing return was 31-12-2000. The claimant sought extension of time for filing return, which was granted upto 15-1-2001 by Deputy Commissioner Income Tax (DCIT). The return was filed within the extended period and qualified for assessment under the Self-Assessment Scheme. CBR issued circular dated 8-2-2001 whereby return of income filed during the extended date was excluded from SAS to be processed under the normal Law. The complainant approached the Federal Tax Ombudsman. In reply the department challenged the jurisdiction of the Federal tax Ombudsman and justified its action. After exhaustively discussing the provisions of the Ordinance it was observed that the SAS is subject to the provisions of the Ordinance applicable for furnishing return. As section 55 which empowers the DCIT to extend the date for filing return, the due date will be upto the extended date. The CBR circular dated 08-06-2001 is in conflict with the provision of the Ordinance illegally curtailing the exercise of judicial and quasi judicial discretion of the Assessing Officer.

Federal Tax Ombudsman recommended that CBR to withdraw the impugned circular dated 8-02-2001, all actions taken in pursuance

of the circular be withdrawn, necessary rectification order be passed and all returns filed during the extended period under the SAS be considered and assessed under the Scheme.

The Department had objected to the jurisdiction as the matter related to assessment in respect of which appeal is provided. It was held that Federal Tax Ombudsman has jurisdiction to investigate in the allegations of mal-administration which is not under consideration by any Court or authority independent of the assessment proceedings.

COMPLAINT NO. 105 OF 2001

Hamid Hussain,

Bismillah Elect Repair, Islamabad.

Complainant

Against

The Secretary, Revenue Division,

CBR, Islamabad.

Respondent

Summary of Findings

- Law: Income Tax Ordinance, 1979.
- Subject: Illegally exclusion of return from the Scheme (SAS).
- Recommendations: Income declared in the return be accepted under SAS and assessment order for A.Y. 1998-99 be canceled.

The complainant in his complaint alleged that he had filed income tax returns for the assessment years 1997-98 and 1998-99 in time which were illegally excluded from the Self-assessment Scheme. The department in its para wise comment stated that the office record shows that no return for the assessment year 1997-98 was filed and notice under section 56 was issued which remained uncomplied. Thereafter notice was served and assessment was framed. The complainant produced copy of the return for assessment year 1997-98 which bears an endorsement of the Department dated 27-09-1997 with a seal of the office of Assistant Commissioner Income Tax and Wealth Tax Circle 15, Islamabad. It is therefore, clear that the return was duly filed under the self-assessment scheme. It transpired that there was some reorganization in Circle No. 15 and now complainant's assessment is being made in Circle 06. As regards assessment year 1998-99 the return was duly filed and it was sent to the Data Processing Centre. However, before any assessment order was made available the assessing officer framed assessment for this year. In the circumstances it was recommended that income declared in the return for the year 1997-98 be accepted under SAS and the assessment framed by the income tax officer for assessment year 1998-99 be cancelled.

COMPLAINT NO. 227 OF 2001

Bashir Ahmed, Advocate,

Complainant

Against

The Secretary, Revenue Division, CBR,  
Islamabad.

Respondent

Summary of Findings

- Law: Income Tax Ordinance, 1979 and Income Tax Rules, 1982.
- Subject: Advocate applied for registration as an Income Tax Practitioner (ITP).
- Recommendations: Rule 205 of Income Tax Rules, 1982 will apply. No maladministration.

Mr. Bashir Ahmed, advocate had made complain that on 21-06-2000 he applied for registration as an Income Tax Practitioner (ITP) on the prescribed form to the RCIT, Northern Region, Islamabad. An objection was raised requiring the complainant to comply with rule 205(2A) of the Income Tax Rules, 1982. The complainant objected that the procedure prescribed in rule 205(2A) is applicable to accountants and not to advocates. It was observed that the complainant as an advocate, without registration as an Income Tax Practitioner, has the right to appear for any assessee, but if he applies for registration as Income Tax Practitioner he has to comply with Rule 205 which prescribes certain preconditions for registration. The complaint was closed.



COMPLAINT NO. 14 OF 2001

M/s Adnan Enterprises, Faisalabad.

Complainant

Against

The Secretary, Revenue Division, CBR,  
Islamabad.

Respondent

Summary of Findings

Law:	Income Tax Ordinance, 1979.
Subject:	Compensation on delayed payment of refund.
Recommendations:	Compensation for delayed payment of refund be paid @ 15%.

The department served a notice u/s 85 of the Income Tax Ordinance upon the complainant and communicated the entitlement to the refund but it was not accompanied with refund voucher. On an application, refund was made on 27-06-2000 but no additional payment for delayed payment was allowed. The complainant moved application under section 156 of the Ordinance claiming therein the additional payment admissible under section 102 of the Ordinance.

The respondent took the plea that application u/s 156 is pending before the assessing officer and no decision has been taken therefore, the complainants cannot invoke the jurisdiction of the Federal Tax Ombudsman. It was observed that delay in payment of refund causes loss to the Government revenue and proper steps should be taken to check this practice. The delay in payment of refund amounts to maladministration. It was recommended that the complainants are entitled for compensation @ 15% of the refund amount.

**R. A. No. 29-K/2001 in**  
**C. No. 849-K/2001**

M/s Rao & Company, Karachi

Complainant

Versus

The Secretary, Revenue Division, Islamabad.

Respondent

**Summary of Findings**

Law:	Income Tax Ordinance.
Subject:	Reopening of IT Assessment not permissible on change of opinion.
Recommendations:	Recommendation of information already available with the assessing officer at the time of framing original assessment would amount to mere change of opinion. Decision to reopen an assessment would be illegal.

Review application moved on the ground that the complainant could not appear on the date of hearing fixed on 22-8-2001 as notice was received on 8-9-2001. Since it was established that the notice was served after date of hearing another opportunity was provided. The second issue was whether on the basis of Collectrate's rate of assessment of property value, the DCIT could reopen the assessment already framed. Since Collector's valuation rate was available with the Income Tax Officer but was not adopted, subsequent consideration of same information was mere change of opinion. Decision to reopen the assessment under section 65 was treated as illegal.

COMPLAINT NO. 1189-L/2001

Dr. Zahid Ahmad Khan, Radiologist,  
Services Hospital, Lahore

Complainant

Versus

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

- |                  |  |
|------------------|--|
| Law:             | Income Tax Ordinance.  |
| Subject:         | Appeal proceeding before the CIT (Appeals), Complaint not entertained being subjudice.                                 |
| Recommendations: | Complaint not entertained in view of bar on jurisdiction of the FTO by section 9(2)(a) of the E.O. FTO Ordinance 2000. |

The complainant filed his returns for the assessment year 1998-99 under the Self Assessment Scheme at an income of Rs.3,42,296. A notice under section 61 of the Ordinance served on the complainant for the assessment year 1998-99 and 1999-2000. Reasons for excluding the return from the SAS not given inspite of several reminders. Same assessment was appealed against before the CIT(Appeals) which was pending at the time of filing of complaint.

COMPLAINT NO.1249/2001

M/s Cyclopes International, Sialkot

Complainant

Versus

The Secretary, Revenue Division, Islamabad.

Respondent

*Summary of Findings*

Law:	Income Tax Ordinance.
Subject:	Delayed Issuance of Refund.
Recommendations:	Recommended that alongwith a refund that became due on 15-9-1988, compensation at 15 percent be paid from 15-12-1988 up to the date of actual payment to the complainant.

Refund created at Rs.65,931 for the assessment year 1984-85 but not paid. Repeated applications from 1988 to 2001 remained un-responded. The reason assigned being misplacement of record.

COMPLAINT NO.1522/2001

M/s Business Security Technology (Pvt) Ltd.  
Islamabad

Complainant

Versus

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

Law:	Income Tax Ordinance.
Subject:	Whether service provided by Security Agencies falls within the definition of presumptive tax regime.
Recommendations:	Recommended that Chairman CBR to hear the representation after afford opportunity to the complainant and pass an appropriate order.

The complainant is a private limited company, which rendered security services. It was assessed for the charge years 1993-94 to 1996-97. However, proceedings under section 66A were initiated and an order passed on 30-9-1998 holding that the nature of the business of the company could not fall under the head "Services Rendered" and therefore assessment should be made under section 80C of the Income Tax Ordinance. The complainant agitated the issue before the Tribunal, which was pending. The complainant addressed a letter dated 29-05-2001 followed by there reminder but no reply was sent. The main object of the complainant was that the status of Security Company may be re-examined and placed at par with professionals such as accountants, lawyers, advisers and consultants. Non response amounted to maladministration.

COMPLAINT NO. 1250/2001

Sh. Shan-e-Elahi.

Complainant

Versus

The Secretary, Revenue Division,  
Islamabad.

Respondent

Summary of Findings

Law:	Income Tax Ordinance
Subject:	Harsh assessments
Recommendations:	The Commissioner should pass orders u/s 138 to meet the ends of justice. Enquiry be also made regarding the loss of records.

The complainant alleged that for the years 1999-2000 and 2000-2001 assessments have been made at Rs.75000/- and Rs.85000/- respectively in his case and these assessments are based on the assessments for the years 1997-98 and 1998-99, although the assessment orders for those earlier years were never served on him.

On an examination of the records the contention of the complainant regarding absence of service of the orders for earlier years was found to be valid. It was also found that the assessment orders and demand notices for the years 1995-96 to 1997-98 were missing. It was further observed that the declared sales for the years 1999-2000 and 2000-2001 were about twelve times of the declared capital and there appeared to be no justification for the further 100% increase in sales made by the assessing officer.

In the findings/decision the question of jurisdiction of the F.T.O. in the context of the provisions of section 9 of the F.T.O. Ordinance was also discussed at length and it was observed that the F.T.O. had jurisdiction in all cases where maladministration was involved. It was recommended that the Commissioner should invoke his powers under section 138 and pass orders to meet the ends of justice. It was also recommended that enquiry be made regarding the loss of records.

COMPLAINT NO. 744/2001

M/s Rehmat Ali Sheikh, Hyderabad

Complainant

Versus

The Secretary, Revenue Division, Islamabad

Respondent

Summary of Findings

Law:	Income Tax Ordinance, 1979
Subject:	Finalization of assessment much before the expiry of limitation.
Recommendations:	No mal-administration

In the complaint it was stated that the department was trying to finalize assessments by 31<sup>st</sup> May 2000 while the period of limitation specified in section 64 of the Income Tax Ordinance was to expire on 30-6-2000. It was contended that the haste in finalization of the assessment had caused inconvenience to the Advocates as well as to the assessing officers. It was, however, observed that no principle of justice was violated in the case as long as a proper opportunity of hearing was afforded to the assessee. It was further observed that in fact it should be the endeavour of every officer and likewise of the assessee and their Advocates that the assessments be finalized as early as possible. No case of mal administration was thus found and the matter was closed.



COMPLAINT NO. 758-K/2001

Moti-ur Rehman, Malir Halt, Karachi

Complainant

Versus

The Secretary, Revenue Division, Islamabad

Respondent

Summary of Findings

Law: Income Tax Ordinance, 1979.

Subject: Refund.

Recommendations: Outstanding refund be paid.

In this complaint by a salaried person, since retired, it was stated that for the assessment year 1996-97 a refund of Rs.1,789/- had been claimed by him on the basis of employer's salary certificate. It was stated that out of this amount only Rs.1000/- has been refunded on 16-5-1997 and the balance amount of Rs.789/- remained unpaid. During the proceedings it was stated by the respondent that the complainant's tax records were no longer traceable and it was, therefore, not possible to issue the refund claimed. It was observed in the findings that the loss of the records was a matter of serious concern and it does not, in any case, justify the non issuance of refund. It was observed that it was obvious from the salary certificate and copy of tax return that a total amount of Rs.1,789/- was refundable to the complainant and the respondent could not show as to why only Rs.1000/- was refunded. It was, therefore, recommended that the balance Rs.789/- be paid forthwith and compensation be also paid w.e.f. 16-5-1997 viz the date of part payment of refund. It was further recommended that the RCIT should appoint a senior officer to inspect the records of relevant Circles and to furnish a report within the date specified.

COMPLAINT NO. 1348-L/2001

M/s Awaiz Law Associates, Lahore

Complainant

Versus

The Secretary, Revenue Division, Islamabad

Respondent

Summary of Findings

Law:	Income Tax Rules, 1982.
Subject:	Failure to pay remuneration to receiver.
Recommendations:	Remuneration of Rs.25,000/- be paid and fresh rules be framed.

The complainant, an Advocate, claimed that he had been appointed as a receiver in the case of a limited company under the Income Tax Recovery Rules but that no remuneration had been paid to him for the services rendered. The respondent's main plea was that no role was played by the complainant in the recovery of tax from the defaulting company. It was also pointed out by the respondent that the issue had already been disposed of by the High Court and the Supreme Court and subsequently a committee was formed by CBR which examined the complainant's claim. The committee is stated to have found that the complainant was unable to make any significant contribution towards the realization of Government dues. The matter was also statedly examined by the RCIT, Lahore on the directions of the Lahore High Court and he too rejected the complainant's claim although a letter of commendation was directed to be issued to him.

After consideration of all aspects of the case it was found that although the services rendered by the complainant were not of a nature as would justify his claim of 5% of the amount recovered, he had definitely played a role in the recovery of Rs.30 million from the defaulters. It was also observed that if no service had been rendered by the complainant there was no basis for the issuance of a certificate of commendation to him. It was thus recommended that remuneration of Rs.25,000/- be paid to the complainant and fresh rules be framed by the CBR to provide a scale of remuneration/fee for receivers.

COMPLAINT NO. 975/2001

Mr. Iqbal Haider,  
Cost & Management Accountants,  
15-C, East Trust Colony,  
Bahawalpur.

Complainant

Versus

The Secretary,  
Revenue Division,  
Islamabad.

Respondent

Summary of Findings

- Law : Income Tax Ordinance, 1979
- Subject: Request for payment of fee and commission was not acceded to on the plea that the claim was under process due to non-availability of necessary funds.
- Specific directions: It was recommended to CBR to clear the bill of the claimant within one month.

The complainant, a Cost & Management Accountant, was nominated by the CBR for assessment work on 13.2.1998 and 28 cases were entrusted to him. The claimant after completing the work, submitted his bill. He was not paid. The defence plea was that the claim remained under process due to non availability of necessary funds for which proposal for allotment has duly been made. It was observed that delay and completely ignoring the letters and not replying altogether in spite of reminders and personal visits, amounts to maladministration on the part of Department. It was recommended to CBR to clear the bill of the claimant within one month.

COMPLAINT NO. 1349 /2001

Ms Ciro's Enterprises  
42 Haider Road  
Rwp

Complainant

Secretary Revenue Division  
Islamabad

Respondent

Summary:

Law: Income Tax Ordinance, 1979 and Sales Tax Act 1990

Subject: Deduction of withholding tax u/s 50(4) of the income tax ordinance 1979, on payments made inclusive of sales tax amount claimed as fully reimbursable by the complainant.

The complainant is a supplier of goods to the CMA (DP) Army, and had an arrangement with the latter wherein the complainant deposited the sales tax due on the supplies on behalf of the CMA (DP) and claimed reimbursement of the same from the CMA who used to reimburse the sales tax amount in full before but later on started deducting the withholding tax u/s 50 (4) on payments inclusive of the sales tax amount. The CMA (DP)) relied on a CBR letter dated 19.04.2001 wherein it was stated that withholding tax is attracted on account of gross payments inclusive of sales tax.

The issue here is whether WHT is chargeable on "payment of goods only," or "on the payment of goods + sales tax." In order to clarify the issue reference to the section 50(4) and Para 'E' of part I of the First Schedule of the Ordinance was made wherein it was observed that the term, 'payment' is used which does not exclude any component of payment.

According to the section 3 (3) (a) of the Sales tax Act 1990, the liability to pay the tax is on the person making the supply and

the new sub section (3 A) is inapplicable in the instant case as the complainant was unable to produce any notification as provided by the new sub section .It was observed that no one can contract out of a statute, and such an agreement is void and not enforceable. No maladministration on part of Revenue Division has been established and the complaint is thus rejected.

COMPLAINT NO: 1226/2001

Bashir Akbar,

Haidery Kiryana Store, P.D Khan,

Complainant

Against

The Secretary,

Revenue Division,

Islamabad.

Respondent

Summary

Law:

Income Tax Ordinance, 1979

Subject:

Exclusion from Self Assessment Scheme (2000-2001)

The complainant had objected to the exclusion of his return filed under the SAS (2000- 01) and finalization of the assessment order U/S 62 of the Income tax ordinance 1979. According to the provision no (v) of the Circular no.21 of 2000 (Income tax) the eligibility for availing the said scheme requires that the tax payable on the declared income must be 20 % higher or more as compared to the tax payable on income last declared / assessed. Thus the income declared has to be such as would result in 20 % higher tax payable. In the instant case tax on declared income of Rs: 62,200 / - comes to Rs: 1,521 /- as against 1,850/- paid on the last declared income. The complainant's return does not qualify under the SAS (2000-2001) and is therefore rejected.

COMPLAINT NO. 1379-1/2001

Mr. Javed Akhtar Gohar of  
Haram Recruiting Agency, 30 Abbot Road, Lahore  
Vs.  
CBR, Islamabad (Income tax)

It was alleged that the original assessment was set aside by CIT(A) with the direction that case "may be decided as per history of the case". However, the assessing officer reassessed the income at the same figure on which he had made the original assessment disregarding the instructions by the appellate authority. He thus acted in an "oppressive and unjust manner" amounting to 'maladministration'.

On investigation, the facts on record were found to be in favour of the Complainant because previously the assessed income had ranged between Rs.31,000 to Rs.42,000/- in the three preceding years. Income in the year-in-dispute was estimated at a net figure of Rs.120,000/- as against the declared income of Rs.27,600/-. The assessment order neither contained any working of the income nor CIT(A) had been ignored. The assessment was consequently held to be "arbitrary, unjust, oppressive, unlawful" entailing transgression of authority falling under "maladministration".

Moreover, on examination, the records were found to be outrageously ill-arranged inasmuch as (1) assessment orders for several years were missing though IT-30s were obtaining on the file; (2) several assessments were made on one single day; (3) assessments were made at 'net income' without any computation or basis; (4) though copy of assessment order for 1997-98 was supplied to the taxpayer, the same was not available on office record; (5) at least in two assessment years no cognizance was taken of non filing of return nor any proceedings initiated; (6) return, mistakenly filed by an existing assessee of another Zone clearly mentioning his NTN, was not transferred to the appropriate Circle. Taking note of this lack of supervision by superior officers, the importance of "effective supervision and strict monitoring of field officers" was emphasized.



COMPLAINT NO.248/2001

Mr. Abdul Latif,  
Choudhry Tikka Shop, Abbottabad.

Complainant

Verses

Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

- |                  |   |
|------------------|---|
| Law;             | Income Tax Ordinance.   |
| Subject:         | Harsh assessment framed for non payment of illegal gratification.   |
| Recommendations: | Charge of harsh assessment not established. Another officer responsible for not framing the reassessments for the years 1994-95 and 1995-96 within the limitation period, recommended to be proceeded against under E&D Rules 1973. |

The complainant running a Barbecue shop alleged demand of illegal gratification, which if not paid would result in harsh assessment. On investigation it was found that the case was selected for total audit before the incumbent officer was posted in that circle and assessment was framed with the approval of the IAC. Hence charge not established. However, during the investigation it was discovered that reassessment for the charge years 1994-95 and 1995-96 had gone time barred for which disciplinary action was recommended against the responsible officer.

COMPLAINT NO.484/2001

M/s City Heart Plaza.Faisalabad

Complainant

Versus

The Secretary,  
Revenue Division, Islamabad.

Respondent

Summary of Findings

- |                  |  |
|------------------|--|
| Law:             | Income Tax Ordinance.  |
| Subject:         | Non implementation of the order of the<br>Income Tax Appellate Tribunal.   |
| Recommendations: | Zonal CIT asked to cancel the<br>assessment framed by the assessing<br>officer ignoring the order of the<br>Appellate Tribunal, and direct him to<br>pass a fresh order. The officer ignoring<br>order of the Tribunal recommended to<br>be proceeded against under the E&D<br>Rules 1973. |

The complainant alleged that the assessing officer had framed the assessment on an AOP and made additions under section 13(i)(aa) of the Income Tax Ordinance. On appeal the addition of Rs.13,80,000 was deleted and the assessing officer directed to re assess the case, after considering relevant facts. The department applied against this decision before the Tribunal but without success. The assessing officer reassessed the case under section 62 without considering the order of the Tribunal. On examination it was noticed that the order of the Tribunal had been received in the Judicial Branch of the Zonal Commissioner of Income Tax Faisalabad, yet the assessing officer ignored the Tribunal's order. It was recommended to the Chairman CBR to institute an inquiry under the E&D Rules 1973 against the assessing officer who passed the order on 30-6-2000. Zonal Commissioner was advised to exercise his revisional powers under section 138 of the Ordinance, and cancel the order passed by the assessing officer and direct him to complete the assessment in the light of the verdict given by the Income Tax Appellate Tribunal.

COMPLAINT NO.508-L/2001

Mian Tahir Rashid,

M/s latif Brothers Instruments, Lahore

Complainant

Versus

The Secretary,

Revenue Division, Islamabad.

Respondent

Summary of Findings

Law: Income Tax Act.

Subject: Wrong notion about the assessment having been made for 18 months.

Recommendations: Due to change introduced in the definition of "Income year" by Finance Act 1995, assessment for 18 months had to be made on prorata basis.

The complainant alleged that his assessment to income tax for the assessment year 1995-96 was based on income for 18 months, which was legally not justified. On investigation, the Revenue Division explained that in view of the amendment made by the Finance Act 1995 the definition of "income year" was changed and income assessed for 18 months was to be prorated in the light of CBR Circular No.4 of 1995 dated 9-7-1995. There could not be two separate assessments as requested by the complainant. The matter was rectified and grievance resolved.

COMPLAINT NO.522/2001

Haji Khushi Muhammad.  
Abbottabad.

Complainant

Versus

The Secretary,  
Revenue Division, Islamabad.

Respondent

Summary of Findings

Law:	Customs Act.
Subject:	Allegation of application of wrong rate of Customs Duty on the imported goods.
Recommendations:	Rate of duty as applicable on the date of filing of bill of entry is relevant. Correct legal position explained to the complainant.

The complainant alleged that he had booked 3 items of machinery from Dubai for development in his native place. These items were not liable to customs duty, but when the consignment arrived at Rawalpindi Dry Port on 8-4-2000 customs duty was imposed. Matter examined and legal procedure explained to the complainant that the material date for liability to customs duty is the date of filing the bill of entry in the Collectorate. Since the bill of entry was filed on 17-4-2000 it was assessed in terms of 30 of the Customs Act. Complaint rejected.

COMPLAINT NO.820/2001

Rana Muhammad Arshad Kahn,  
Faisalabad

Complainant

Versus

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

Law:	Income Tax Ordinance
Subject:	Investment in super structure of poultry farm over valued under the Tax Amnesty Scheme.
Recommendations:	CIT asked to ascertain whether super structure of poultry farm falls in the specified category under the Tax Amnesty Scheme.

In this case the declaration made under the Tax Amnesty Scheme 2000 was rejected and was contested by the complainant. The assessing officer accepted the declared value of all the assets except House No.220 H, Gulshan-e-Ravi, Lahore and poultry farm.

2. After examination, it was recommended that amnesty scheme provided for due exercise of discretion by the Commissioner Income Tax where it was warranted. The Commissioner Income Tax concerned was therefore asked to ascertain the nature and quality of construction of poultry farm and to decide on the basis of enquiry whether the property actually falls in the specified category under the Tax Amnesty Scheme.

COMPLAINT NO.1365/2001

M/s Paktel Ltd.  
Islamabad

Complainant

Versus

The Secretary, Revenue Division, Islamabad.      Respondent

Summary of Findings

Law:	Income Tax Ordinance.
Subject:	Claim of reassessment having got time barred under section 66(I)(c) dispelled.
Recommendations:	Limitation period under section 66(I)(c) of the Ordinance not applicable in partly set aside cases.

Complaint filed by a public limited company for refusal of the department to give Appeal effect to the order passed by the Income Tax Appellate Tribunal, in consequence whereof assessments framed for the charge years 1995-96 to 1997-98 were partly set aside. Plea taken by the complainant that the set aside assessments should have been framed within limitation period prescribed under section 66(i)(C) of the Income Tax Ordinance not accepted. Held that limitation period would not be applicable on the facts of the case, as partial assessment could not be made for any year.

COMPLAINT NO.1391/2001

Mr. Muhammad Mushtaq Chuhan,  
Gujranwala

Complainant

Versus

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

- Law: Income Tax Ordinance.
- Subject: Apprehension that harsh assessment would be made subsequent to the year of total audit misplaced.
- Recommendations: Department advised to proceed on cogent evidence instead of proceeding on presumptions.

The complainant an Advocate objected to selection of his return for the year 1998-99 for total audit. After investigation it was noted that the complaint was based on an apprehension that subsequent assessments for the years 1999-2000 to 2001-02 would be completed on the basis of income estimated after total audit. Held that a realistic view be taken based on cogent evidence and reliable information, and not to proceed on mere presumption or stereotype phrases customarily used in assessment orders.



COMPLAINT NO.1506/2001

Haji Muhammad Iqbal,  
Attock

Complainant

Versus

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

Law:	Income Tax Ordinance.
Subject:	Non receipt of refund.
Recommendations:	Complainant advised to institute criminal proceedings against the assessing officer who had issued a cash refund voucher for the amount not received by the complainant. CBR asked to inquire in respect of refund issued for cash payment in disregard of its instructions dated 16-1-1982.

In this case income of the complainant for the assessment year 1994-95 was estimated at Rs.253,383 and after adjusting the tax liability a refund was determined at Rs.1,86,877. The complainant claims that he was not handed over refund voucher where as the department asserts that it was issued vide Voucher No.37 Book No.7129 and was received by the complainant himself. On investigation it was noticed that as against the departmental instructions, the refund voucher was issued to be paid in cash, as it was not issued as account payee voucher. The stenographer and the assessing officer who were involved in this fraud had already left government service. As the complainant had admitted that he had personally signed on the counter foil of the refund voucher in token of receipt of the amount, which was fraudulently not paid to him, was advised to approach a criminal court of law against the persons named in the complaint, if advised. It was recommended to the CBR to order an enquiry in respect of refunds issued for cash payment in disregard of its instructions dated 16-1-1982.

COMPLAINT NO.766-K OF 2001

Mrs. Humaira Mubashir

Complainant

Against

The Secretary, Revenue Division, CBR,  
Islamabad.

Respondent

Summary of Findings

Law:	Income Tax Ordinance, 1979.
Subject:	Refund
Recommendations:	Complainant to produce documentary evidence of payment at source before the assessing officer and on production of proof of payment refund be paid with compensation u/s 102.

Complainant alleged that assessment proceeding for the assessment year 1995-96 was finalized vide DCR No.121 dated 04.06.1996 and the refund was determined at Rs 89,902 /- but the refund voucher was not issued. In its reply the Department admitted the creation of refund on the basis of declaration but pleaded that when the assessee was directed to provide challans to verify the payment she instead filed the complaint. The plea of the Department suffers from inherent infirmities. The assessment and creation of refund without proof of payment shows carelessness in discharge of duties. It is evident from the record of these proceedings that the complainant did not produce any document to prove payment at source even at the time of hearing. It is recommended that the complainant produce documentary evidence of payment at source before the assessing officer. On production of proof of payment of Rs 89,902 /- , the same be paid to the complainant alongwith compensation at the rate of 15 % per annum from 05.09.1996 till payment.

COMPLAINT N. NO. 343-K OF 2001

Mr. Mohammad Iqbal Karachi,

Complainant

Vs.

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

Law: Income Tax Act, 1990

Subject: Return filed-not placed in file-Arbitrary  
Decisions-Modified.Recommendation: Penalty imposed on the complainant be  
cancelled and deleted.

The complainant had filed Return of Sales Tax as nil Return on 9-10-1999 with National Bank of Pakistan. It, however, appeared that this Return was not placed on the relevant records. The complainant filed another return on 20-10-1999 for the same period. The complainant was issued a letter as to why penalty of Rs.5,000/- should not be imposed as provided under law for failure to file return within prescribed date.

The Collector himself under his letter No.3(47)/A&P/Federal Tax Ombudsman/SECTT/E/2001 dated 20-04-2001 has confirmed that the return of Sales Tax was filed on 9-10-1999. The case was fixed for hearing on 07-05-2001 but none appeared from the department. The case was again fixed for hearing on 15-05-2001 and on this date also, none appeared from the Department concerned. Considering the irresponsible and negligent attitude of the department, notice was issued to the Collector of Sales Tax to personally appear 31-05-2001 and explain in writing reasons for non-appearance on the dates of hearing in spite of the notices served on them. The record proved that notices were issued and served on the department. Since the representatives of the department have expressed sincere regret for their absence on the due date and have promised to make necessary investigation in the matter with a view to avoid this kind of eventuality in future, taking a lenient view the apology was accepted. Penalty imposed was cancelled.

COMPLAINT No.634 OF 2001

M/s. J.A. Textile Mills Ltd. Faisalabad.

Complainant

Versus

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

Law:	Sec.80CC & 80D.
Subject:	Challenged – Supreme Court Judgement – not applicable to claims not refunded.
Recommendation:	Refund ordered with additional compensation.

The complainant claimed that under clause 118-D, Part I of the Second Schedule of Income Tax Ordinance 1979, its profits were exempted from tax for 5 years from 24-1-92 to 23-1-97. In the year 1991 turnover tax was imposed by Sec.80D and in 1992 withholding tax on export proceeds was imposed by Section 80CC. The complainant challenged the validity the levy in the Lahore High Court. During the pendency of the petition the department recovered an amount of Rs.1,815,427. The petitions filed by several parties were dismissed by the High Court but the Supreme Court by its consolidated judgement dated 4-6-1997 (Elahi Cotton Mills (PLD 1997 S.C.582) allowed the appeal holding that levy and recovery under Sec.80D and 80CC would not apply to assesseees having protection under the Economic Reforms Act. The claimant by letter dated 23-9-97 applied for refund of Rs.1,815,427/-. The Central Board of Revenue by its Circular dated 11-12-97 addressed to all tax authorities advised that in view of the opinion of the Law & Justice Division the refund cannot be made. This Circular was challenged by the petitioner in the Lahore High Court which was set aside. Thereafter the complainant addressed three letters during 14-4-98 to 27-10-98 but no reply was given. Again the complainant filed Writ Petition in the High Court, which by its judgement dated 25-2-99 ordered to create refund within three months. The department was informed about the judgement by complainant on

2-3-1999. On 19-5-1999 the Deputy Commissioner refused to grant the refund. In appeal the Commissioner directed DCIT to reconsider the matter. Till the filing of the complainant no response was received from the department. It transpired that payment of Rs.1,815,427/- had been adjusted against demand under Sec.80D. It was pleaded that as the company while filing returns for assessment years 1993-94,95 and 96 did not ask for refund, it was estopped from claiming the same and that no proof of payment of tax was provided. From the facts it was clearly established that the entire amount 1,815,427/- had been adjusted towards tax under Sec.80D. After framing assessment and adjusting the demand under Sec.80D to ask for proof of deduction under Sec.50 was held nothing but a crude attempt to delay and defeat the claim for refund. The complainant had challenged the validity and vires of Sec.80D and Sec.80CC and had obtained favourable order from the Supreme Court. The department's plea that the judgement will operate prospectively is misconceived and distortion of fact and law. Recommendation was made to refund the amount with additional compensation.

COMPLAINT No.711 OF 2001

Sufi Sajjad,  
Islamabad.

Complainant

Versus

The Secretary, Revenue Division, Islamabad.

Mr. Mir Ahmed Ali, Advocate.  
Mr. Habibullah, Inspecting Additional  
Commissioner.

Respondent

Summary of Findings

Law:

Subject: Notice u/s 85 not served on assessee –  
Notice u/s 65 of Income Tax and issued  
without the prior approval of IAC.

Recommendation: Notice cancelled.

The complainant alleged that on 7-2-2001 a demand was received for the assessment year 1996-97 amounting to Rs.84,230/- . The complainant objected that neither he was intimated properly nor any assessment order was supplied to him as required under law. On 24-4-2001 notice under Section 93(2) of the Income Tax Ordinance was served requiring to deposit the said amount by 1-5-2001. A reply to the letter of the complainant was also delivered stating that on 20-7-99 the notice was served on Mr. Kabir. The complainant's advocate replied there was no proper service as required by Section 85 (1) of the Ordinance. On 5-5-2001 DCIT issued a show cause notice under Section 65 dated 16-5-2001 for re-opening the assessment for the year 1996-97. The department replied that the service of notice was proper as all the notices issued earlier were received by Mr. Kabir, which was duly complied, and no objection was made. The advocate for the complainant contended that requirement of Section 85 had not been complied and therefore the notice should be struck down particularly as notice was not served on the complainant being an assessee. The proceedings in pursuance of the notice under Section 85 of the Income Tax

Ordinance were recommended to be invalid and of no effect. The disciplinary action was recommended against the Special Officer as he had issued notice under Section 65 without obtaining the prior approval of the Inspecting Additional Commissioner of Income Tax.

COMPLAINT NO.1399-K/2001/C-11/2001

M/s. Karachi Shipyard & Engineering Works Ltd.,  
 Dockyard Road, West Wharf, Karachi.

Complainant.

Against

Secretary,  
 Revenue Division,  
 Central Board of Revenue,  
 Islamabad.

Respondent.

Summary of Findings

1. This is a complaint against the abuse of power, mal-administration and retention of money and also non-implementation of the order of learned Secretary of Law, Justice and Human Rights Division dated 1-6-1999.

2. M/s. Karachi Shipyard & Engineering Works Ltd. is fully owned by Ministry of Defence engaged in the manufacture of heavy plants and machineries since 1952. The income-tax assessments of the complainant were being completed and finalized under normal law under section 80-D of the I.T. Ordinance, 1979 treating them as manufacturer-cum-assembler but not as a contractor till the assessment year 1991-92. However, from the assessment year 1992-93 to 1995-96 department changed its stance treating the complainant as that of a supplier finalizing the assessment u/s 80D of the Income Tax Ordinance, 1979 resulting in huge demand of Rs.775,00,007/-.

3. Reacting to it the complainant filed appeals/revision but the case undecided till 1999. In the meantime CBR made a reference to the Cabinet with regard to the disputes between the government organization and CBR. A directive from Cabinet was received that all the court cases against CBR maybe withdrawn and any dispute with CBR should be resolved through Inter Ministerial consultation or should be referred to the Ministry of Law. The complainant, therefore, withdrew his Revision Petition and proceeded before Secretary, Ministry of Law who ruled that the business of the complainant did not fall under the categories of supplier or contractor



but a manufacturer. The complainant contended that despite of the clear finding of the Secretary, Ministry of Law, the department did not issue refund. It was pleaded that before going to Ministry of Law, Revision Petition has been withdrawn but the dismissal order of the Revision Petition was finalized on 28-6-1999 and the order of the Secretary of Ministry of Law was passed on 1-6-1999, does not mean that it effects the merits of case. The CBR accepted this decision and he is bound to implement, but even after a lapse of two years the grievance of the complainant was not redressed due to the failure of the relevant authorities to act in the matter at the right time, thus violating the decision of the Secretary Law dragging the complainant in unnecessary litigation.

4. It was recommended that the CBR must implement the order of the Secretary Law, Justice and Human Rights Division dated 1-6-1999 on or before 16-11-2001. Any amount due to the complainant after implementation be paid on or before 15-12-2001.

COMPLAINT NO.808-K/2001.

M/s Bit Brain Technology,  
Karachi.

Complainant

Secretary,  
Revenue Division,  
Central Board of Revenue,  
Islamabad.

Respondent

Appeal u/s 156-no action-maladministration

Summary of Findings

1. The claimant had filed claim for refund . The complainant pleaded that he himself went to Islamabad to verify the paid challans from Data Processing Centre and submitted the copies of verified challan to the concerned DCIT,IAC and CIT(D), his request of rectification of refund was not acceded to .

2. In reply the Respondent admitted these facts .from the admitted facts and record, it is evident that rectification application u/s 156 was received by by the DCIT on 11-01-2001, but the DCIT issued letter for verification after a lapse of seven months there after no action taken despite of repeated reminders . This can happen only where the Adjudicating Officer is inefficient / ignorant of law and incompetent . He even did not care to follow the CBR circulars and instructions providing limitation period for disposal of rectification application.

3. It was recommended to issue show cause notice to the Assessing Officer and verifying the amount refund be issued within 15 days of the rectification .

**FINDINGS/RECOMMENDATIONS**  
ON COMPLAINTS AGAINST  
*CUSTOMS DEPARTMENT*

COMPLAINT NO. 73-K OF 2001

M/s K.K. Traders and others.

Complainant

Against

Assistant Collector of Customs,  
(Refund & Rebates) Customs Dryport,  
Mughalpura, Lahore and others

Respondent

Summary of Findings

- Law: Customs Act, 1969.  
Subject: Valuation of goods and maintainability of complaint.  
Recommendations: Complaint rejected as the issue had been decided by the Tribunal and Wafaqi Mohtasib.

It had been alleged in the complaint that the respondents have passed order by ignoring the judgment of superior courts and order of the CBR, while increasing the declared value of goods without sufficient reasons and evidence. The complaint presented before this Secretariat has been considered by the highest tribunal of the Custom Department as well as by the Wafaqi Mohtasib. All of them have not found any illegality in the orders passed by the Customs Authorities. On the other hand the findings are that the goods imported were under invoiced and value was mis-declared. It was held that there are no grounds to re-open the case, which has already been considered and decided. The complaint was rejected.

COMPLAINT NO. 330-K OF 2001

M/s Shafiq Textile Mills Limited,  
Federal 'B' Industrial Area, Karachi,

Complainant

Against

The Collector of Customs (Exports),  
Customs House, Karachi and others.

Respondent

Summary of Findings

Law:	Customs Act, 1969.
Subject:	Compensation for delayed payment of refund.
Recommendations:	Delay due to litigation No maladministration - damage suffered not proved. Claim for compensation disallowed.

The complainant had claimed compensation for delayed payment of refund of customs duty which was wrongly charged. It applied for refund on or about 28<sup>th</sup> May 1998 but it was not paid immediately and the matter remained pending in High Court, Supreme Court, Wafaqi Mohtasib and Law & Justice Division, Islamabad. The Collector of Customs (Exports) sanctioned refund claims on 6-01-2000 and transferred the amount of refund to the Regional Commissioner of Income Tax Corporate Region for settlement of the demand of arrears against the party on the request of the party and Income Tax Authorities. The claimant admitted that the amount was paid for adjustment to the Commissioner of Income Tax. In view of the existing liability of the complainant the amount claimed would not have been paid to it. It was observed that much of the time was spent in litigation and taking advice from the Law & Justice Division. In such circumstances mal-administration committed by a Tax Employee has not been proved. As mal-administration was not proved relief of awarding compensation cannot be awarded. Compensation under section 22 of the Establishment of the Office of Federal Tax Ombudsman Ordinance 2000 can be granted where the claimant establishes maladministration and the damage suffered by him.

COMPLAINT NO.1390-K/2001

M/s Orient Traders, Karachi.

Complainant

Versus

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

Law: Customs Act.

Subject: Incidence of service charges if passed on to consumer or claimed as an expense not allowable. Burden on the claimant to prove the fact.

Recommendations: Recommended that if any party has passed on the incidence of the charges to the consumers or has claimed the same as expenses and allowed as such could not be permitted to claim refund for the same.

The Complainant claimed refund of 2% fees paid as service charges, which became refundable having been declared illegal by the Supreme Court of Pakistan on 24-2-1999. Held that if any party has claimed the same as expenses and allowed as such could not be permitted to claim refund for the same as the benefit could not be allowed twice and it is for the claimant to establish the factual position.

COMPLAINT NO. 1064-K/2001

M/s Pakistan Pulp Papers & Boards Mills  
Association, Karachi

Complainant

And

COMPLAINT NO. 1251-K/2001

Mr. Noor Muhammad,  
M/s Impex Agencies, Karachi

Complainant

Versus

The Secretary, Revenue Division, Islamabad

Respondent

Summary of Findings

- Law: Customs Act, 1969.  
 Subject: Valuation of imported goods.  
 Recommendations: In future valuation of imported goods be fixed u/s 25 of the Customs Act giving full opportunity to all parties.

These were two related complaints, one filed by the manufacturers of coated duplex board and the other by importers of the same commodity. It was contended on behalf of the manufacturers that import of coated duplex board was being allowed by the Customs authorities at too low a value which affected the business of the manufacturers and also resulted in loss of revenue. On the other hand it was contended on the behalf of the importers that customs authorities had already enhanced the declared value but in case the manufacturers still considered the value to be low they had already been offered the goods for purchase at the same value, which offer had, however, not been availed of. It was recommended in the findings that in future, valuation of imported goods should be fixed after giving full opportunity to the importers as well the manufacturers or to any other interested person. It was also observed that it seemed that the importers had declared the value of the goods between \$ 340 and \$ 360 per metric ton which

was assessed between \$ 450 and \$ 477 per metric ton. It was observed that it needed to be ascertained whether any action has been taken against the importers for under-valuation of goods. The respondent was directed to submit a list of all consignments of coated duplex board imported from 1-1-2001 till date, also stating whether action had been taken in any case for under-declaration of value.



Complaint No.460/2001

Malik Masood ul Hassan,

H 159-A, St. 36, F-10/1, Islamabad

Complainant

Versus

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

Law: Customs Act.

Subject: Illegal confiscation of vehicle.

Recommendations: Sales proceeds of the auctioned confiscated vehicle to be paid to the complainant.

M/s Contractors International Pvt Ltd Islamabad purchased a Toyota Corolla car model 1988-89 on 16-12-1996 from Mr. Fayyaz S/o Muhammad Hussain resident of village Basia district Attock. After verification of the relevant documents available in the original file Motor Registration Authority registered the vehicle and allotted number IDH 709 on 28-12-1996. However the Customs Airfreight Unit Islamabad informed the Excise & Taxation Department that the vehicle was non-duty paid. It was therefore confiscated by the Deputy Superintendent Customs Preventive Rawalpindi on 30-1-1997. Appeal filed before the Collector Customs (Appeals) Rawalpindi was rejected by him on 15-7-1997. But the Customs Appellate Tribunal Lahore allowed the appeal to the extent that the fine imposed was reduced from 100 percent to 30 percent, in addition to payment of duty and taxes leviable on the vehicle. The sale proceeds of the vehicle disposed of in open auction ordered to be paid to the complainant.

COMPLAINT NO.504-L/2001

Shaikh Salim Ali,

M/s Shaikh Salim ali (Pvt) Ltd, Lahore

Complainant

Versus

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

Law: Customs Act.

Subject: Claim of refund of Customs Duty.

Recommendations: Claim rejected on the ground that declared value of imported goods higher than the ITP value to be accepted.

The complainant, an importer of Arms and Ammunition imported a consignment of different calibres, which was assessed at the declared value. Subsequently the complainant moved an application for refund, as some parts of the consignment containing ammunition imported, were assessed at a value higher than that shown in the ITP. This was claimed to be in contravention of SRO 156(KE)/92 dated 27-7-1992 issued in terms of section 25B of the Customs Act 1969.

2. The point at issue was whether a higher value declared by the importer himself could be ignored if the value fixed by the Controller of Valuation was lower. After investigation it was held that a notification issued under section 25B could be impugned if it could be shown that the power had been exercised arbitrarily or capriciously. There was, nothing capricious or arbitrary about the declared value. The complaint was therefore untenable and was rejected.

COMPLAINT NO. 1246-K OF 2001

M/s Al-Ghazi Tractors Ltd . Karachi

Complainant

Against

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

Law: Customs Act, 1969

Subject: Refund – willful delay-  
MaladministrationRecommendations: Collector of Customs to calculate the  
refundable amount and pass order for  
refund of the amount found due.

Complainant is a local manufacturer of agricultural FIAT tractors and conducts its assembling activity in accordance with the Deletion programme duly approved by the Ministry of Industries and Central Board of Revenue.

The complainant imported components of FIAT tractors which were cleared from Customs after payment of Duty and sales tax on the understanding that these would be subsequently refunded as the matter of granting of exemption was already in process .The claim was lying unattended for want of necessary action on the part of the concerned authorities.

The respondent submitted that the delay was caused due to frequent transfer of officers. Such explanations have no merit and deserve to be rejected. The willful delay of six years in disposing of the claim is clearly maladministration .It was seen that exemption had been allowed and the Collector should have implemented it instead of investigating claimant's entitlement to refund. It was recommended that the Collector of Customs calculate the refundable amount and pass order for refund found due.

COMPLAINT NO.1568-K/2001

C.No.10-K/2001

M/s Cyanamid Pakistan Limited

Complainant

Versus

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

- Law: Customs Act.
- Subject: Replacement consignment for defective imported goods exempt from Customs Duty if paid at initial import.
- Recommendations: Recommended that, since exemption from duty was not availed by the complainant on import of replacement consignments, the duty charged and Bank Guarantee given was asked to be refunded and released.

In this complaint refusal to refund the duty and taxes paid on the consignments that were re-exported with the permission of CBR and the Ministry of Commerce was contested. Despite reminders and personal visits Customs Authorities neither refunded the duty and taxes nor returned the Bank Guarantees, leave alone send any response to the complainant. The department claimed that there was no law to exempt duty on goods, which were found defective and exported or, re-exported. However, replacement consignment imported in lieu of defective consignments enjoys exemption with certain conditions vide SRO 540(1)/98.

COMPLAINT NO.623-K/2001  
SUMMARY

M/s. AJK International,

Complainant.

Versus

Secretary,  
Revenue Division,  
Central Board of Revenue,  
Islamabad.

Respondent.

Law:	Customs Act.
Subject:	Mis declaration of value.
Recommendation:	Recommended that this Collector should examine the issue and decide the case on remits after proceeding adequate opportunity of hearing heard.

Summary of Findings

1. The complainant had filed claiming refund of Rs.490,899/- deposited as security for provisional assessment of the consignment. The consignment was provisionally assessed at US \$ 2,500 PMT on 30-7-1998. The Respondent was supposed to finalise the assessment within 180 days from the date of assessment which was not done. After the stipulated period issued show cause notice. Since the notice was unjustified and barred by time, Asstt. Collector vacated his notice on the plea that valuation department had failed to finalise the assessment within the given time frame.

2. After a lapse of three years the Collector of Customs re-opened the case on the ground that the order of Asstt. Collector was not in accordance to the provisions of law. He admitted that the order under section 81 of the Customs Act becomes final at the expiry of 180 days. But the most significant aspect of the case is the extent of difference in the declared value, ascertained value and the provisional value. As a matter of fact, neither the complainant mentioned the declared value nor the valuation department. Valuation department assessed the value at US \$ 2690 MT but in the show cause notice it was stated \$ 1624 MT by the Collector and Asstt. Collector. The difference is of 66%.

3. This is a case of clear misdeclaration of value involving substantial amount of taxes. It is recommended that the Collector should examine the legal position and decide the case on merits after providing adequate opportunity of being heard to present his arguments.

COMPLAINT NO.C-507-K/2001

M/s. Al-Razzak Traders,  
R.No.14, 1<sup>st</sup> floor, Iqbal Manzil,  
Nanakwara, Karachi.

Complainant.

Against

Secretary,  
Revenue Division,  
Central Board of Revenue,  
Islamabad.

Respondent.

Law:	Customs Act.
Subject:	Wrong examination reports by Customs Officials.
Recommendation:	Recommended that CBR in exercise of process rested in it under section 195 of the Customs Act order release of goods, to remit and refund the rent for the storage of goods on account of wrong examination reports by customs officials.

Summary of Findings

1. The complainant M/s. Al-Razzak Traders, Karachi lodged a complaint that the firm had imported a consignment of secondary quality steel sheets. The importer could not convince the Customs that the material was tinplate exclusively meant for making container for edibles. The bill of entry was submitted on May 19, 2000 but after a month the Additional Collector Customs issued a show cause notice for contravention of Customs Act which was denied by the importer who asked for shifting the goods to save rising demurrage charges. After 56 days permission granted after he has paid Rs.41,642/- as rent of Custom ware house.

2. On October 07, 2000 an order was passed releasing plates of 18 inch and above while below 18 inch were confiscated and penalty equal to three times of value of offending goods was imposed. The goods were not examined to determine the ratio of goods 18 inches above and below.

3. On October 27, the complainant requested for completing bill of entry. A Custom Officer checked the sheets and detected that 785 Kg out of 49,575 tones as under-sized. The consignment was released after much ado in December, 2000. The complainant alleged that unnecessary delay in disposal caused Rs. 168,910/- to port authorities and Customs choice of a costly godown caused another Rs.39,642/-. He further stated that Collector Customs passed wrong orders as under law he could confiscate upto 100% and not 300%. The confiscated goods being less than 10% could have been released. The delay resulted in loss of Rs.85,939/- due to rupee fluctuation.

4. It was observed that had the goods been examined properly in the first instance, the difficulties and hardship faced by the importer would not have been occurred. He, therefore, condemned the inattention and neglect of customs. The neglect and inattention is defined as mal-administration in clause ii of sub section (3) of Section 2 of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000.

5. It was recommended that CBR under section 195 of the Customs Act set aside the confiscation of 785 Kgs goods and order release of goods.

6. Issue delay and detention certificate to the importer for a period from the date of filing of bill of entry to the removal of goods to the warehouse and remission of demurrage to the port authorities in accordance with relevant rules.

7. Lastly to remit and refund the rent for storage of goods on account of wrong examination reports by customs officials.



COMPLAINT NO. C-368/K/2001

Qamar Garments,

Complainant

Against

Secretary,  
Revenue Division.

Respondent

Customs Act Section 24, condonation of delay

1. The complainant had lost the shipping bill and tried to get an attested copy from the Assistant Collector. The document was supplied to him on 28-7-1994. According to the complainant he applied for duty drawback immediately and he pleaded that the delay in filing the claim was beyond his control.

2. The complainant's claim was rejected by the Collector of Customs being time barred by 96 days i.e. after expiry of 210 days from the date of shipment and 110 days after expiry of realisation of foreign exchange. The complainant termed this order as illegal and arbitrary and filed application for condonation of delay in filing the claim but no specific ground was pleaded rather mis-declared the actual facts. The authority have discretion under section 224 of the Customs Act to condone the delay, if the aggrieved party satisfy that it occurred due to the reasons beyond his control and that if delay is condoned there is possibility of loss being mitigated or prevented. In the present case no grounds have been disclosed before him to justify the delay mere statement that delay may be condoned is not sufficient.

3. The complaint was rejected.

COMPLAINT NO. 949-K/ 2001

Mohammad Sohail,  
Gulshan -e- Zainab,  
Garden East Karachi.

Complainant

Against

Secretary,  
Revenue Division,  
Central Board of Revenue. Islamabad

Respondent

Summary of Findings

Law:	Customs Act 1969 Section 195.
Subject:	Gold ornaments- on arrival declared-Re export.
Recommendation:	CBR may direct the Collector (Preventive) to recall the order of remand and to issue a show cause under aforesaid section 195 of the Act and pass order after taking into consideration the merits of the case.

1. The complaint filed against the continuous detention of gold ornaments. The gold ornaments were detained by Respondent at Jinnah Terminal when the complainant arrived from Dubai although declared the gold in his possession to the IPS (Inspector Preventive Services) .

2. The Adjudicating Officer testified in the present of IPS that the jewellery was duly declared and the goods may be released after (payment) of duty and taxes but even after the announcement of the order on 21-02-2001, the goods were not released by Respondent

3. The Respondent admitted that the facts in the Complaint that "re-export of the signed goods pending departure by the passenger" were correct but since the matter was referred to him by the Monitoring Cell before the order in original, the order

becomes doubtful. The case was remanded to the Additional Collector for adjudication on merits.

4. It was observed that under section 195 of the Customs Act, the Additional Collector of Customs has no power to review the case to ascertain the legality of the order passed by the Deputy Collector. Secondly the quashment of the order was passed without providing opportunity heard, it is not sustainable under law.

COMPLAINT NO 436-K/2001

M/s. Anwar Garments (Pvt) Ltd.,  
Care Mr. Mohammad Aleem Khan,  
Karachi.

Complainant

Vs.

Secretary Revenue Division  
Central Board of Revenue Islamabad.

Respondent

Summary of Findings

Law:	Customs Act
Subject:	Allegation of duty Drawback claim being time barred not accepted.
Recommendation:	That AC Customs to scrutinize the claim after examining record and affording opportunity to the complainant of being heard.

The Complainant had filed complaint against the claim of duty drawback No 7534 being time barred. It was alleged that the claims were lost and on the directives of the Export Collectorate, the files were reconstructed. The matter was also reported to CBR Chairman, but the orders of CBR were not complied with.

Respondent, denied the allegation that the rebate claims were lost. He stated that case; files were still lying with the Appraiser as in few cases the claims usually shown as rejected but no formal orders were issued. Later on, the record was checked and presented at the time of hearing but since the duty drawback claims could not be rejected merely by issuing letters [especially when not received by the Complainant] the rejection letter have no validity.

It was recommended that the direction be issued to the Collector of Customs to depute the Assistant Collector dealing with record to carryout and complete the scrutiny of rebate claim after giving full opportunity and to issue appropriate order.

COMPLAINT NO. 1246-K/2001

M/s Al-Ghazi Tractors Ltd,  
Karachi

Complainant

Against

The Secretary,  
Revenue Division,  
Islamabad.

Respondent

Summary of Findings

Law:	Customs Act , 1969
Subject:	Refund -wilful delay- Maladministration
Recommendations:	Collector of Customs to calculate the refundable amount and pass order for refund of the amount found due.

Complainant is a local manufacturer of agricultural FIAT tractors and conducts its assembling activity in accordance with the Deletion programme duly approved by the Ministry of Industries and Central Board of Revenue.

The complainant imported components of FIAT tractors which were cleared from Customs after payment of Duty and sales tax on the understanding that these would be subsequently refunded as the matter of granting of exemption was already in process. The claim was lying unattended for want of necessary action on the part of the concerned authorities.

The respondent submitted that the delay was caused due to frequent transfer of officers. Such explanations have no merit and deserve to be rejected.

The wilful delay of six years in disposing of the claim is clearly maladministration .It was seen that exemption had been allowed and the Collector should have implemented it instead of investigating claimant's entitlement to refund. It was recommended that the Collector of Customs calculate the refundable amount and pass order for refund found due.

COMPLAINT NO.676-K/2001.

M/s. Queens Polyester Industries.  
Mrs. Naheed Shahid (Proprietor),  
113.Al-Hamrah Tipu Sultan Road.  
Karachi.

Complainant

Against

Secretary,  
Revenue Division,  
Central Board of Revenue,  
Islamabad.

Respondent.

Rebate claim rejected in 1996-order in original issued in 1999-no plausible explanation-maladministration case remanded.

Summary of Findings

1. The complaint was lodged against the rejection of rebate claim in respect of five consignments of 100% polyester dyed fabrics vide shipping bill Nos.44795/93,745402/93, 44999/93, 44996/93 and 44997/93. The claims were rejected in 1996 but the order in original were issued by the Collector on 31-12-1999 after a lapse of 3 years creating huge financial loss to the complainant. Respondent stated that the claim was rejected as the complainant attempted to defraud the Customs department. However, no plausible explanation was furnished for the decision taken on 23-10-1996 and issuing the orders in 1999. In the end it was stated that delay in passing the order is due to non-availability of files. This attitude shows the inefficiency and lack of administrative control and organization. The department for no valid reason withheld the orders passed on 23-10-1996 and issued after a lapse of 3 years merely on the basis of unbelievable reasons that the files were missing. It amounted to maladministration.

2. The case was, remanded back to the Collector of Customs for denovo consideration on merits after hearing the complainant,affording proper opportunity to the complainant of being heard.

COMPLAINT NO.186-K/2001

Dr. Javed Adamjee,  
S.M. Yousuf Building,  
Street Alladin, Hoti Market,  
Karachi

Complainant

Against

Secretary,  
Revenue Division,  
Central Board of Revenue,  
Islamabad.

Respondent

Summary of Findings

1. The complainant, an American National arrived at Karachi Airport with his family on 29<sup>th</sup> October, 2000 at 4 p.m. by Gulf flight. He was carrying with him 14 cordless and 6 mobile phones for gifts. The goods were seized by the customs staff on the pretext that it was not bonafide commercial baggage. He was asked to get NOC from PTCL though he offered to pay duty, he was compelled to sign a paper. He then applied for release of goods on payment of duty but his request was turned down.

2. The customs valuation of the confiscated goods amounted to 772 dollars.

3. The goods were detained for production of NOC from PTCL but no authority was quoted in support of this requirement. According to Custom the goods were in commercial quality and not bonafide baggage. Baggage includes personal, professional or household effects of a passenger. The fact that the passenger was allowed to certain allowances (duty free gift allowance as being dollar 450 and dutiable allowances without limit) was not taken into consideration.

4. The arbitrary, unreasonable and unjust order of confiscation of baggage articles constitute mal-administration as defined in clause (1)(b) of sub section (3) of Section 2 of Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000.

5. It was recommended to set aside the order of the Superintendent. Release 2 mobile and 4 cordless phones under gift allowance. Balance items be released on payment of duty and taxes in foreign exchange.



COMPLAINT NO.C-44-K/2001

M/s. Imperial Glass Tiles Co.,  
2-C, 26<sup>th</sup> Street, D.H.A.,  
Karachi.

Complainant

Against

Secretary,  
Revenue Division,  
Central Board of Revenue,  
Islamabad.

Respondent

Summary of Findings

1. The complainant agitated against the valuation department who did not finalize the assessment in the given time frame .

2. In response to the complaint the Collector Customs admitted that the reliance was placed on the valuation data base in provisional assessment under section 81 of Customs Act but the Customs did not finalize the assessment in accordance with the provisions of law. The bank guarantee furnished by the importers as security were arbitrarily encashed without observing the mandatory provisions of section 81. The higher value was adopted. It was observed that the origin of goods is one of the significant factor, was not taken into account. Unnecessary and arbitrary blocking the processing of importers bills of entry in the pipe-line caused hardships. The complainant also approached the CBR authorities but efforts failed and the amount charged in excess was not refunded. A request was also made to Custom House to value the goods as per GATT Code of Valuation as there is no evidence for higher value of goods of Turkish origin but the request was turned down.

3. It was recommended to re-examine the valuation of ceramic Tiles of Turkish origin in consultation with the Controller of Customs Valuation after providing proper opportunity of being heard.

**FINDINGS/RECOMMENDATIONS**  
ON COMPLAINTS AGAINST  
*SALES TAX DEPARTMENT*

COMPLAINT NO. 438-K OF 2001

Informer through Mr. Saleemul Haq,  
Assistant Collector(Retired).

Complainant

Against

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

Law: Sales Tax Act, 1990.

Subject: Claim for reward through a man other than informer.

Recommendations: The informer himself had not approached nor his identity was known. Complaint was rejected.

A retired Assistant Collector of Customs, Central Excise and Sales Tax had filed a complaint on behalf of an informer and claimed that on the basis of information evasion of sales tax was detected to the tune of Rs. 24,00,317/- but no reward was given to the informer.

It was observed that in cases of reward the first point for consideration is whether the person claiming reward had given information leading to detection of evasion of Central Excise duties/ Sales Tax.

The informer himself had not approached nor his identity was known. It was held that in these circumstances the reward if any cannot be given either to such a incognito informer or to the claimant in the capacity of informer. His claim was not found within the ambit of Para 1(A) of the Order for Grant of Reward. The complaint was rejected.

COMPLAINT NO. 162 OF 2001

Ajmal Traders, Court Road,  
Gujrat.

Complainant

Against

The Secretary, Revenue Division, CBR,  
Islamabad.

Respondent

Summary of Findings

Law:	Sales Tax Act, 1990.
Subject:	Computer section's <u>error in tax calculation</u> . Arbitrary decision Modified.
Recommendations:	The Collector (Adj.) was directed to proceed u/s 45-A of the Sales Tax Act and pass fresh order correcting mistake.

The complainant received a show cause notice on 16-09-2000 issued by the Dy. Collector (Adj.) Gujranwala demanding Rs. 53,803/- as sales tax for the month of July 2000. Thereafter on 11-01-2001 he received adjudication order dated 06-01-2001 based on the report of the computer section of the Collector holding that Rs.51474/- has not been paid. All efforts of the complainant to convince the department that the report was wrong failed. The department pleaded that the matter was examined afresh and basically due to typographical error of the computers section short payment of Rs.53,803/- was charged whereas actual short payment amounted to Rs. 975/- only. During hearing it was stated that the Collector of Customs has been requested to reopen the case under section 45-A and fresh order shall be passed soon and the show cause notice issued to the complainant will be quashed.

It was observed that it would have been proper if after detecting the computer mistake the officers should have adopted an objective and realistic attitude by providing relief themselves as suggested now. Action u/s 45-A of the Sales Tax Act was recommended to correct the mistake.

COMPLAINT NO. 379-K OF 2001

M/s Amir Industries,  
Sind Industrial Trading Estate, Karachi.

Complainant

Against

The Secretary, Revenue Division, CBR,  
Islamabad.

Respondent

Summary of Findings

Law:	Sales Tax Act, 1990 & Customs Act, 1969.
Subject:	Refund.
Recommendations:	Complaint was rejected as the complainant did not fulfill the crucial requirement of L.C. for import by the effective date. No LC opened — not eligible for duty concession under SRO 980(1)/95.

Under a Contract date 16-05-95 the complainant imported secondhand machinery without opening letter of credit on long-term credit of 6 years financed by a German Company.

The complainant claimed refund of excess customs duty and sales tax amounting to Rs.302,986/- paid against bill of entry No. 2488 dated 13-09-1995. Reliance was placed on SRO980(1)/95 dated 04-10-1995 which stipulated that only that machinery was entitled to the concession for which L.C. was established by or on 30-06-1995. The complainant did not fulfill the requirement as no L.C was opened for import the consignment in question and was not eligible for duty concession under SRO 980(1)/95. The complaint was rejected.

COMPLAINT NO. 1352/2001

M/s Haider Javaid, Crockery Store, Faisalabad. Complainant

Versus

The Secretary, Revenue Division, Islamabad. Respondent

Summary of Findings

- |                  |  |
|------------------|--|
| Law:             | Sales Tax Act.   |
| Subject:         | Estimate of sales by Survey Team cancelled and asked to make a fair estimate.  |
| Recommendations: | As signature on survey form did not constitute agreement the proceedings in pursuance of valuation recorded in the survey form were cancelled Sales Tax Authorities were advised to decide the case. |

The Complainant a retailer was required to get itself registered under the Sales Tax Act on the basis of the sales assessed by the Survey Team at Rs. 11,000,00 which was treated to be an agreement. This estimate was made in sharp contrast to the annual sales assessed by the Income Tax Department during the last three years at Rs.5,000,00. As signature on survey form did not constitute agreement the proceedings in pursuance of valuation recorded in the survey form were cancelled, the complaint be treated as objection and Sales Tax Authorities were advised to decide the case.

COMPLAINT NO.1353/2001

M/s Iqbal &amp; Co. Faisalabad.

Complainant

Versus

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

Law:	Sales Tax Act.
Subject:	Signature on Survey Form does not amount to any agreement. Objection must be filed with in reasonable time. No objection would mean acceptance of estimate.
Recommendations:	Signature of assess on Survey Form could not be treated as agreement. Where any party objects to the correction of the entries made must file objection before the relevant assessing authority within a reasonable period of time. If timely action is not taken by the affected party, it would be presumed that such valuation has been accepted.

The complainant in this case complained against notice to get registered on the basis of unrealistic estimate of stock by the survey team at more than Rs.10,000.00, when its entire sales were never assessed by the Income Tax Authorities in excess of this amount. Held that in view of the decision in Complaint No.582/2001, the signature of an assessee on survey form could not be treated as agreement by the assessee, and where any party objects to the veracity/correction of the entries made during 3<sup>rd</sup> survey must file objection to the relevant assessing authority within a reasonable time, who should take necessary action under the law. If timely action is not taken by the affected party, it may be presumed that such valuation has been accepted.

COMPLAINT NO. 1293-L/2001

M/s Daewoo Pakistan Express Bus Service Ltd. Complainant

Versus

The Secretary, Revenue Division, Islamabad. Respondent

Summary of Findings

Law:	Sales Tax Act, 1990
Subject:	Charge of Additional Sales Tax
Recommendations:	CBR to consider appropriate relief u/s 34A of the Sales Tax Act.

It was stated in the complaint that the complainant imported buses under the "Prime Minister's Urban Transport Strategy" which envisaged sales tax exemption for such imports. As an abundant precaution, however the complainant requested the CBR to clarify whether Sales Tax was leviable on the imports. No such clarification was received till the arrival of the buses. Therefore at the suggestion of the Assistant Collector and to clear the consignment an "undertaking" was given to the effect that if at a later stage the decision of the CBR goes against the complainant, Sales Tax would be deposited. Accordingly the buses were cleared. Later on the Department demanded that a "bank guarantee" be substituted for the undertaking and subsequently on the department's demand the entire sales tax was paid. The department, however, levied additional tax u/s 34 of the Sales Tax Act for late payment which was statedly unjustified.

The Department pleaded that section 34 is attracted whenever a cognizable default occurs. The complainant on the other hand argued that default would occur when the demand is raised and is not paid but where under an arrangement and with the consent of the department, a bank guarantee is taken while the exemption was under consideration, it would be harsh to bring the case within the purview of section 34(1). The contention was found to be valid and it was recommended that the CBR may consider the complainant's case and in exercise of its powers u/s 34A of the Sales Tax Act, grant relief to the complainant as deemed appropriate.



COMPLAINT NO. 497/2001

Mr. Muhammad Yusuf,

M/s Siza International (Pvt) Ltd, Lahore

Complainant

Versus

The Secretary, Revenue Division, Islamabad

Respondent

Summary of Findings

Law:	Sales Tax Act, 1990
Subject:	Refund of sales tax wrongly levied.
Recommendations:	Refund of the amount specified in the findings be paid within three weeks.

In the complaint, it was contended that three consignments of Polyethylene used as packing material for pharmaceuticals was wrongly subjected to sales tax amounting to Rs.701,471/- although the goods were exempt under SRO 437(I)/97 dated 13.6.1997. It was further contended that there had been no response to the refund application made by the complainant. The respondent contended that two consignments were cleared before the date of notification while for the third consignment no specific benefit was claimed within the stipulated period of six months envisaged in section 33 of the Customs Act. It was found that though the SRO dated 13-6-1997 did not apply in the case of first two consignments the sales tax was payable @ 10% instead of 12.5% levied. Regarding the respondent's contention that the claim relating to the third consignment had become time barred, it was observed that the refund was payable u/s 66 of the Sales Tax Act for which a claim could be filed within one year and not under the Customs Act where the limitation was six months. It was, therefore, recommended that the refund relating to the third consignment be paid. Total refund of Rs.337,261/- was thus recommended.

REVIEW APPLICATION NO. 24  
IN  
COMPLAINT NO. 712-K/2001

M/S International Furniture,  
Malir Halt,  
Karachi.

Complainant

Versus

The Secretary,  
Revenue Division,  
Islamabad.

Respondent

Summary of Findings

- Law: Sales Tax Act 1990
- Subject: Status of the complainant changed with the amendment in section 2(47) of the Sales Tax Act
- Specific directions: Following decision of Supreme Court of Pakistan (PLD 1997 SC 865), wherein it was held that where a conscious and deliberate decision has been made with regard to the nature of order which it is empowered to pass under a provision of law only because another view with regard thereto is canvassed, cannot and does not constitute a ground for review -Review Application rejected.

The department filed Review Application which was rejected as contentions raised were duly considered and consciously decided in the complaint. Reference was made to Rafiq Sehgal vs BCCI SC 1997 SC 865 and it was observed that where a conscious and deliberate decision has been made with regard to the nature or order which it was empowered to pass under the provisions of law only because another view is canvassed, cannot and does not constitute the ground for review.

COMPLAINT NO.498/2001

M/s Yasin Associates,  
CAPGAS. Khushab

Complainant

Versus

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

Law:	Sales Tax Act.
Subject:	Vexatious complaint.
Recommendations:	A compensation of Rs.1000 ordered to be recovered from the complainant.

Mr. Ghulam Yasin a distributor of LPG running his business at Khushab alleged maladministration on the grounds that show cause notice for alleged non filing of Sales Tax Return for December 2000 was unwarranted and that complainant was required to appear before the Deputy Collector(Adjudication) on 27-03-2001 through a notice issued on 28-03-2001. Both allegations were found false as a result of investigation. It transpired that in the Sales Tax Return pertaining to December 2000 the Registered Unit mentioned tax period as 1-2001 instead of 12-2000; hence the notice generated by computer. The error in date of compliance was corrected before issuing the notice on 28-03-2001. The date was changed from 27-03 to 02-04. However, the Complainant who failed to comply tampered with his copy of the notice. Since the complaint was false and frivolous, a compensation of Rs.1,000 was awarded (to be recovered from the complainant) to the Revenue Division under section 14(4) of the Office of the Establishment of Federal Tax Ombudsman Ordinance 2000.

COMPLAINT NO.1093-1/2001

Mr. Khalid Pervaiz Mian,  
Lahore

Complainant

Versus

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

Law:	Sales Tax Act.
Subject:	Framing of Taxpayers (Authorized Representative) Rules 2001.
Recommendations:	CBR advised to notify the Taxpayers (Authorized Representative) Rules 2001, in order to exclude unauthorized and unqualified persons, from representing Taxpayers.

The complainant an Advocate by profession alleged that unauthorized and unqualified persons including dismissed, removed, and suspended officers were allowed to appear on behalf of registered persons in the Sales Tax proceedings, in violation of section 52 of the Sales Tax Act. Amendments suggested in the draft rules which were notified by the CBR as Tax Payers (Authorized Representative) Rules 2001 issued under SRO 768(1)/2001 dated 6-11-2001.

COMPLAINT NO.1564/2001

M/s Technocrat Trading,  
Peshawar

Complainant

Versus

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

Law:	Sales Tax Act.
Subject:	Imposition of penalty for delayed filing of monthly sales tax return.
Recommendations:	CBR advised to avoid frequent amendments in laws and launch a Tax Education Programme for the taxpayers.

The complaint filed by the proprietor of a business concern relates to imposition of penalty of Rs.5000 on a registered person for delayed filing of monthly return for December 1999. Matter examined and discovered that the sales tax officer had no authority to condone the delay, even if the delay happened to be for one day like this case. Imposition of penalty confirmed but CBR advised to launched a well Orchestrated Tax Education Programme and bring out a monthly publication both in English and Urdu incorporating all the relevant information for the taxpaying community including various SROs, Rules, Regulations, CGOs etc.

COMPLAINT NO.696 OF 2001

M/s. Abid &amp; Co/.

Distt. Haripur.

Complainant

Versus

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

Law:	Rule 174,176 Central Excise Rules 1994.
Subject:	Duty/Licence fee demanded after 8 year.
Recommendation:	Time barred.

The department of Central Board of Revenue raised a demand of arrears of Duty amounting to Rs.100,000/- livable in terms of rules 174 & 176 of the Central Excise Rules 1944 for the period 1990-91 to 1999-2000 based on the Order-in-Original passed by Assistant Collector dated 15/19-6-2000. It was stated that the demand was illegal made after 8 years and no survey was carried out nor awareness was created and most of the contractors are not aware of the levy. The licence fee was abolished from 1996-97 and the demand has been raised in 1999-2000. The complainant admitted that it has not obtained licence and was registered upto 1996-97 in Category C which was exempt from levy of Duty. The action was initiated by the department by issuing notice dated 21-8-1999. Period of limitation of one and three years is provided in various situation but 10 years is provided for recovery in respect of short levy or erroneous refund by reason of any false document, counterfeit seal or impression, fraud or any other heinous offence. The show cause notice was not produce but no cases of fraud or mis-representation counterfeit seal or impression or any other heinous offence was stated in the order. The department pleaded that the demand was not in respect of Excise Duty but on account of licence fee and it was in time. This plea was misconceived as licence fee payable under the Rules is covered by Excise Duty as defined in Sec.2(17) of the Excise Act.1944. Therefore recovery could be made provided the ingredients of Rule 10 were complied. The demand was held to be illegal and all actions and proceedings were recommended to be cancelled and dropped.

COMPLAINT NO C-375-K/2001

Mrs. Shahida Maqsood ,  
A-347,Block 1 North Nazimabad ,  
Karachi.

Complainant

Against

Secretary,  
Revenue Division  
Central Board of Revenue,  
Islamabad.

Respondent

Summary of Findings

1. The complainant had filed complaint stating that the Pakistan Railway have not been collecting duty on services on concessional rates to its employees or other personnel. Such as Army in contravention to the excise law .As a result Govt has suffered loss of revenue. The short realisation of Rs 20,03,746/- was taken up by the Directorate of Revenue Receipt Audit (DRRA) vide report dated 25-07-1998. A case adjudicated vide order in original No 379/99 dated 30-12-1998 directing PR to deposit Central Excise duty of Rs. 20,03,746/- along with additional duty and penalty of Rs. 5,000/-. According to the record only an amount of Rs 10,50,323/- had been paid by cheque dated 18-9-1999.

2. It was observed that for the recovery of remaining amount the department has not made any efforts nor the action was taken to implement the adjudicating order.

3. The department conceded that he did not carry out audit of PR on their own which was mainly due to non-cooperative attitude of PR. According to him the information provided by the complainant was nothing new as it had been pointed in the DRRA's report of 1998. The fact is that department is lacking in respect of its implementation. The special procedure for collection of Central Excise duty was introduced through in section of Rule 9622B in Central Excise Rules 1944. PR was required to pay the duty due from them for the month by the end of the following month and liable to furnish the proof of payment .In case of failure 10% of the duty as penalty is levied.

4. The department in its comments failed to highlight these points and had tried to take cover behind audit carried out by DRRA as part of statutory audit of the PR accounts.

5. The violation on the part of the Collectorate constitutes mal-administration, it is recommended to furnish a report of:

- i) Records and returns prescribed
- ii) Collection and payments of Central Excise duty on tickets under Central Excise /Sales- tax law.
- iii) Audit and inspection of the prescribed records and timely submission of prescribed returns,
- iv) Violation of the provisions of Rule 9622B of CER noted by the department and
- v) The amount s of duty, additional duty and penalty outstanding.

6. If the Collector of Excise and Pakistan Railways both defaulted to collect and pay the duty, the complainant should be entitled to suitable rewards in accordance with the Central Excise Reward Rules on the basis of the account of duty unearthed as a result of this audit.



# INFORMAL RESOLUTION OF DISPUTES

COMPLAINT NO.1441-L/2001

Rana Azhar Abbas,  
Lahore

Complainant

Versus

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

Law: Section 33 FTO Ordinance 2000  
 Subject: Dispute re harsh assessment of reopening of assessment resolve under section 33,  
 Recommendations:

The complaint was filed against illegal and harsh assessments for the assessment years 1995-96 to 1999-2000 by reopening assessment already completed under section 59(1) of the Income Tax Ordinance, 1979.

2. After going through the complaint it was thought prudent to invoke the provisions of section 33 of the FTO Ordinance to ameliorate Complainant's grievance and to restore his confidence in the system. The provisions of section 33 relating to informal resolution of disputes read as under:-

"33(1) Notwithstanding anything contained in this Ordinance the Federal Tax ombudsman and authorised Staff members shall have the authority to informally conciliate, amicably resolve, stipulate, settle or ameliorate any grievance without written memorandum and without the necessity of docketing in complaint or issuing any office notice".

The contending parties were told that if they expressed willingness for resolution of the conflict, the matter could be resolved by resort to Sec: 33 of the ombudsman Ordinance, 2000.

Considering the surrounding facts and circumstances it was proposed that the Department may:

1. withdraw all recovery steps, and
2. keep demand in abeyance till decision on the appeals by the CIT(A) and finally by the ITAT.

At the same time the complainant will:

- a) prosecute the appeals in real earnest,
- b) not seek undue (or long) adjournment nor otherwise delay/drag the appeal process.

Both parties requested for a day's adjournment to ponder over the proposal and to seek instructions.

On the due date the Respondent conceded to stay the recovery of entire demand of Rs.5,925,428 till the decision of appeals by the two appellate forums i.e. the AAC and the learned ITAT and further that special request would be made to the above mentioned authorities for early hearing of the appeals. The complainant undertook not to seek adjournment when the appeal is taken up by the AAC and the learned ITAT nor to delay (or prolong) the process unduly. By way of confirmation, the Complainant as also the Respondent's Representative signed the Order Sheet on which terms of this agreement were recorded.

**CONCLUSION:** As a result of conciliation, as provided in Sec: 33 of the Federal Tax Ombudsman Ordinance 2000, the grievances stands ameliorated, without in any way interfering with process of legal remedy provided in the Income Tax Ordinance.

COMPLAINT NO.108/2001

Syed Hassan Mehdi Rizvi,  
Mandi Bahauddin

Complainant

Versus

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

Law: Section 33 FTO Ordinance 2000  
Subject: Complaint by Bar Association -  
Misbehaviour of a Tax Employee -  
Settled amicably.

Recommendations:

Syed Hassan Mehdi Rizvi, Advocate, President, Income Tax Bar association, Mandi Bahauddin forwarded a copy of resolution dated 24-1-2001 passed by Income Tax Bar Association, Mandi Bahauddin against Mr. Zafar Iqbal, Stenographer, Circle 22, Mandi Bahauddin alleging inappropriate attitude and highhandedness shown towards Mian Muhammad Masood, Advocate on 20-1-2001 in the office of Income Tax Circle 22, Mandi Bahauddin. On that date of hearing the dispute was informally resolved between the contesting parties under section 33 of the Establishment of the Office of Federal Tax Ombudsman ordinance when Mr. Zafar Iqbal expressed his deep regrets over the incident on 20-1-2001 that took place in the Income Tax office, Mandi Bahauddin.

COMPLAINT NO. 332-K/2001

Bata Pakistan Ltd.,  
Karachi.

Complainant

Versus

The Secretary,  
Revenue Division,  
Islamabad.

Respondent

Summary of Findings

Law:	Sales Tax
Subject:	Deducted Twice Refunded

The complainants have stated that while dispatching 600 pairs of shoes to Pakistan Navy they issued Sales Tax Invoice No.6168 dated 26-5-2000 for refund of Rs.409,500/- and sent documents to the C.O.P.N. Clothing Stores Depot Karachi. Pakistan Navy accepted 5,895 pairs rejected 105 pairs and sent the relevant bills and other documents to the office of C.N.A. for necessary processing. It seems that the sales tax invoice for Rs.409,500/- was not forwarded. As a result Rs.462,687/- were deducted from the complainant's bill as GST and certificate about deduction was issued. As sales tax was paid at source by the complainants and again Rs.462,687/- were deducted as GST at Karachi for the same consignment the complainants requested for refund but the same has not so far been paid. None of the agencies were prepared to refund.

Considering this anomalous situation where the complainants are entitled to refund but the Collectorate or the Naval Accounts are not prepared to refund the same. The case was discussed with Mr. Abdul Razzaq, Secretary (Sales Tax), C. B. R. at Islamabad and he agreed that the complainants should be paid the refund amount due to it. In the circumstances, it is recommended that the CBR should arrange recovery of the refund and payment to the complainants on or before 30-6-2001.

COMPLAINT NO. 332-K/2001

Bata Pakistan Ltd.,  
Karachi.

Complainant

Versus

The Secretary,  
Revenue Division,  
Islamabad.

Respondent

Summary of Findings

Law:	Sales Tax
Subject:	Deducted Twice Refunded

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Considering this anomalous situation where the complainants are entitled to refund but the Collectorate or the Naval Accounts are not prepared to refund the same. The case was discussed with Mr. Abdul Razzaq, Secretary (Sales Tax), C. B. R. at Islamabad and he agreed that the complainants should be paid the refund amount due to it. In the circumstances, it is recommended that the CBR should arrange recovery of the refund and payment to the complainants on or before 30-6-2001.

COMPLAINT NO. 366 OF 2001

Siddique Ahmad Chaudhry, Advocate.

Complainant

Against

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

Law:	The Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000.
Subject:	Informal resolution of dispute under section 33
Recommendation:	Procedure explained.

The President Gujranwala Tax Bar Association filed petition under section 33 of Federal Tax Ombudsman Ordinance, 2000 against the Secretary, Revenue Division and requested for issuance of direction to Secretary, Revenue Division to extend the period for production of documents from 15 days to 30 days as referred in Para 5(b) of Circular No.21 of 2000 dated 11<sup>th</sup> September 2000 in Self Assessment Scheme for the Assessment year 2000-2001. The Complainant relied on self-assessment policies 1993-1994 and 1995-1996 wherein 30 days time was allowed for filing required documents and making up other deficiencies in the return. Proceedings under section 33 are of conciliatory in nature with a view to amicably resolve the controversy and bring about settlement between the parties. The Federal Tax Ombudsman or any authorized officer can play the role of mediator or conciliator and provide a forum for exchange of views with an object to resolve the controversy amicably. If in this process the parties agree to a settlement the controversy is resolved. However in case of disagreement and failure to resolve the controversy amicably the proceedings are terminated. Due to failure to reach any settlement the proceedings were terminated.

COMPLAINT NO.4 OF 2001

Nazim Poly Sack Limited  
Sheikhupura.

Complainant

Against

Secretary, Revenue Division,  
Islamabad.

Respondent

Summary of Findings

Law:

Subject: Sec 33-Explained. No Power to appoint arbitrator can initiate.

It has been alleged by the complainant that the hearing was fixed on 13-11-2001 but notice was received by it on 1-12-2000 as reflected by the postal stamp on the envelope but the same has not been filed or produced. In view of the record of despatch of notice complainants allegation not accepted.

The complainant had requested for appointing an Arbitration Committee to resolve the issue. The request is not tenable in law. The Federal Tax Ombudsman cannot appoint arbitrator in a dispute between two parties. Such appointment can be made only with the consent of both the parties. In the present case the Department is not willing to submit to arbitration. However, the Federal Tax Ombudsman can make efforts for mediation and conciliation between the parties to resolve the controversy and misunderstanding.



COMPLAINT NO.826-1/2001

Mr. Shafqat Mehmood Chohan,  
Lahore.

Complainant

Versus

Secretary, Revenue Division,  
Islamabad.

Respondent

Summary of Findings

Law:

Subject: Sec 33 FTO ordinances Representation  
pending before CBR-Jurisdiction  
challenges-Rejected object and effect  
of Sec 33 explained.

Recommendations:

A final meeting between the parties was held today in which both of them openly discussed the issues mainly the dispute regarding fixation of fee. The main dispute seems to be in respect of interpretation of provisions of Clause 2(2) of Circular No.1 (5)DC(Customs)93 dated 10-8-94. Mr. Dar states that a reference has been forwarded to CBR for seeking interpretation of Clause 2(2). He further states that CBR will take decision in respect of its interpretation within a period of one month. At this stage Mr. Chohan states that he has no objection provided CBR takes decision within one month and his bills are paid according to the decision within 15 days. Thereafter he reserve his right to challenge the decision of CBR. He further clarified that payment in terms of decision and its acceptance by him will not amount to waiver of right to challenge. He further states that decision of CBR should be prospective and not retrospective. He further requested that Secretary (Budget) to arrange payment in respect of bills at page 84 of the paper book. Mr. Saeed-ur-Rehman states that bills are paid on recommendation of the Commissioner. The decision of the CBR will be communicated to the complainant within one week of the date of decision. This concludes the controversy between the parties at this forum.

2. The representative of the CBR has submitted a reply signed by the Commissioner of Income Tax/Wealth Tax Company Zone-II, Lahore. In fact for the present proceeding it was not necessary to refer to this document but as jurisdiction of the Federal Tax Ombudsman has been challenged I wish to make the legal position clear. The objection raised is that as a representation made by the applicant is pending before CBR, the Federal Tax Ombudsman has no jurisdiction to investigate or enquire into the matter in terms of Section 9 (2) (a) of the Establishment of the Office of Federal Tax Ombudsman Ordinance 2000. It may be pointed out that the instant proceedings have been initiated under Section 33 of the said ordinance which reads as follows:-

“33. Informal resolution of disputes.-(1) Notwithstanding anything contained in this Ordinance, the Federal Tax Ombudsman and authorised Staff Members shall have the authority to informally conciliate, amicably resolve, stipulate, settle or ameliorate any grievance without written memorandum and without the necessity of docketing any complaint or issuing any official notice.

- (2) The Federal Tax Ombudsman may appoint for purposes of liaison counsellors, whether honorary or otherwise, at local levels on such terms and conditions, as the Federal Tax Ombudsman may deem proper”.

3. It may be noted that the Section starts with the words “Notwithstanding anything contained in the ordinance”. It is a non obstante clause and Section 33 shall prevail despite anything contrary contained in the Ordinance. In *EFU General Insurance Co. Ltd. and others vs. Federation of Pakistan and others* 1997 S.C.C 1174 the Supreme Court while considering Section 10 of the Income Tax Act 1922 and Section 26 of the Income Tax Ordinance 79 observed as follows:-

“A non-obstante clause is usually used in a provision to indicate that the provision should prevail despite anything to the contrary in the provision mentioned in such non-obstante clause. In case there is any inconsistency between the non-obstante clause and another provision,

one of the objects of such a clause is to indicate that it is the non-obstante clause which would prevail over the other clause. (Bindra on Interpretation of Statutes-7<sup>th</sup> Edition).

Mr. Fakhruddin G. Ebrahim, S.A.S.C., is correct that the effect of the non-obstante clause is that the specified sections in the Act or the rest of the Ordinance to the extent that these are inconsistent with section 10(7) and First Schedule of the Act or section 26 and the Fourth Schedule of the Ordinance, shall not be given effect to".

4. The provision of Section 33 of the Ordinance authorises and empowers the Federal Tax Ombudsman and authorised Staff Members to informally conciliate, amicably resolve, or settle or ameliorate any grievance. Anything contrary contained in the ordinance will not apply and will not debar the Federal Tax Ombudsman from exercising this power. Section 33 ousts the applicability of such provisions of the Ordinance which are in conflict or contrary to it.

COMPLAINT NO. 1327-L/2001

M/s. Noon Sugar Mills Ltd.  
Lahore.

Complainant

Versus

Secretary, Revenue Division,  
Islamabad.

Respondent

Summary of Findings

Law:

Subject:                      Sec 33-disputor refund of Refunds  
                                     -Amicably resolved.

Recommendations:

M/s. Noon Sugar Mills applied under section 33 of the Establishment of the Office of Federal Tax Ombudsman Ordinance 2000 for amicable settlement and resolution of dispute between them and the Central Excise Department in respect of refund claimed by them. The applicants have filed Writ Petition No.3857/89 in the Lahore High Court challenging the action of the department which is still pending. In this regard according to the applicants similar questions and issues were considered by the Supreme Court of Pakistan, which has rendered authoritative judgement in Civil Petition No.440.K of 1999. According to the applicants the controversy is entirely covered by the judgement of the Supreme Court. The department has its own point of view. According to them the controversy is subjudice before the High Court and further that the facts of the case have to be examined under the provisions of the Central Excise Act particularly section 3-D of the Act.

2. Both the parties appeared for conciliation proceedings. Mr. Wasif Memon, Secretary, CBR, appeared with Mr. Khaliq Mehmood, Additional Collector, Central Excise while Mr. Ehsan R. Sheikh represented the applicants. Both the parties discussed the issues in depth and viewpoint of each other was considered and amicably understood. Both the parties agreed to the following, which will serve as a memorandum of understanding between them.

- i) The Additional Collector, Central Excise will re-examine the issues of refund in the light of section 3 D of Central Excise Act and judgement of the Supreme Court of Pakistan.
- ii) The Central Excise record in possession of the applicants shall be produced before Additional Collector, Faisalabad Collectorate on 10-10-2001. The Additional Collector Faisalabad shall examine the record and after hearing Noon Sugar Mills Ltd. decide the case within 60 days by a speaking order.
- iii) After the decision of the Additional Collector the applicants will withdraw Writ Petition No.3857/89 pending in the Lahore High Court within one week of the date of decision. In case of failure to do so it shall stand withdrawn. If the Writ Petition is fixed for hearing in the Lahore High Court before the case is decided by the Additional Collector, the applicants will seek adjournment.
- iv) Within one week of the date of decision a copy thereof shall be forwarded to this Secretariat.

3. As the parties have amicably resolved the issues conciliation proceeding drawn under section 33 of the Ordinance stands determined successfully.

# MISCELLANEOUS

**Review Application No. 14/2001**  
**(COMPLAINT NO. 107 OF 2001)**

Rameez-ul-Haq,  
 Islamabad.

Complainant

Against

The Secretary, Revenue Division, Islamabad.

Respondent

*Summary of Findings*

Law:	The Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000.
Subject:	Procedure for compliance u/s 11.
Recommendations:	Instead of reporting compliance review application was filed-misconceived-treated as report u/s 11(5)—Register and Record not maintained properly as required by CBR instruction No. C 919-IT-Inf/89 dt.28.10.91—Default and neglect by officers – Directive issued.

The letter of Commissioner of Income Tax/Wealth Tax, Islamabad Zone, Islamabad dated August 20, 2001 has been examined. At the outset it may be pointed out that it is not a case for review of the Findings and the provisions of Ordinance XXXV of 2000 have been misunderstood. After the Findings were made the relevant authorities were required to implement the same as provided by sub section (2) of section 11 of the Ordinance. It is in compliance with these provisions that the Revenue Division has to inform the Federal Tax Ombudsman within the time fixed by him about the action taken on his recommendation or the reasons for non-compliance with the same. Sub section 5 of section 11 of the Ordinance requires that if the Revenue authorities do not comply with the recommendations of the Federal Tax Ombudsman or do not give reasons to the satisfaction of the Federal Tax Ombudsman for non-compliance it shall be treated as "Defiance of Recommendations" and shall be dealt with as provided under the

Law. It is under these provisions of law that the compliance report submitted by the department has to be examined. If compliance has been made to the satisfaction of the Federal Tax Ombudsman he may pass such order as necessary. But where compliance made by the Revenue authorities is not to the satisfaction of the Federal Tax Ombudsman further action for Defiance of Recommendation can be taken against the officer responsible for non-compliance of the decision/recommendation. It is therefore clear that it is the satisfaction of the Federal Tax Ombudsman, which has to be recorded, and the recommendation has not to be reviewed. The request of the Commissioner under the direction of Second Secretary (TO-1) for review of the decision is misconceived. Even otherwise no ground for review has been made out. It is a compliance report to be dealt with under section 11 of the Ordinance.

2. The explanation or the compliance report reflects the working of the department. Although the Special Officer has explained that he has not been negligent in performance of duties yet many questions of institutional nature remain unanswered. The object of the proceedings under the Ordinance is not only to take punitive action in proper cases but to examine in depth lapses, mistakes and defaults emerging from the case, which are irritants in the proper performance of duties, and take proper steps for their eradication.

3. Coming to the present case particularly the compliance report which has the approval of the Commissioner and even the Second Secretary (TO-1) it seems that no one has cared to look into the real malaise which pervades in the system and remains unattended. It seems that the Special Officer, the Income Tax officer and the Inspecting Assistant Commissioner of Income Tax have not cared to maintain proper records and registers from which correct position could be ascertained. In this regard reference can be made to CBR's instruction No.C.919-IT-Inf/89 dated 28-10-1991 in which clear instructions have been given for inspection by Range Inspecting Assistant Commissioners which should be casual and report is to be sent by 5<sup>th</sup> of the succeeding month to the Zonal C.I.T. and the I.T.O. concerned. The Commissioner of Income Tax has to convey the Income Tax Officer his remarks and his evaluation of performance. A copy of these remarks is to be endorsed to the



Director of Inspection. A schedule of inspections is also to be prepared on half yearly basis and circulate it to all the ITOs and copy endorsed to C.I.T. The direction further states that Inspection Reports may not be sent to the Board as a matter of routine. The Board should be involved only in cases of grave mal-administration or if some glaring discrepancy, which requires action at Board's level, comes to light. It seems that the directives of the CBR are not being followed and the CBR does not seem to have taken any step to enforce them. Recently in Case No.214 of 2001 order was passed for inspection of the record and Mr. Ramzan Munawwar Inspecting Assistant Commissioner of Income Tax was appointed to conduct the inspection. He has submitted two reports with commendable clarity, which is an eye opener. This report was sufficient for CBR to have taken the clue to gear up their machinery for effectively enforcing maintenance and inspection of records and registers. In the present case it is clear that none of the instructions were followed and the record does not seem to have been properly maintained. Otherwise any officer taking charge of a post should immediately, in the ordinary course of performance of duty, first examine all records and registers to apprise himself with the present status of the office. This seems not to have been done nor any care was taken by the Inspecting Additional Commissioner of Income Tax to have even inspected or examined the record. In such circumstances to blame the clerk and the lower staff is nothing but to make them a scape goat. The higher authorities and officers should be bold enough to discharge their responsibilities and accept mistakes and lapses committed by them. The compliance report to say the least is most un-satisfactory and reflects irresponsible attitude adopted by the higher officers.

4. In the present case I do not propose to take any action against Mr. Muhammad Riaz, Special Officer or any other tax employee but would direct CBR to appoint an officer to carry out inspection of the Islamabad Range and submit a report specifying how many inspection reports were prepared and forwarded to the C.I.Ts and to the Board, during the last one and half years commencing from 1<sup>st</sup> January 2000 to 30<sup>th</sup> June, 2001. Such report should be submitted within a period of 4 weeks.

**FINDINGS/RECOMMENDATIONS**  
**ON COMPLAINTS AGAINST**  
***WEALTH TAX DEPARTMENT***

COMPLAINT NO. 107 OF 2001

Rameez-ul-Haq,  
Islamabad.

Complainant

Against

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

Law:	Wealth Tax Act, 1963.
Subject:	Delay in framing assessment order - to keep pending without sufficient cause upto the period of limitation - Disapproved - Maladministration.
Recommendations:	To initiate disciplinary action against the A.O. responsible for delay - direction for maintaining record and necessary training to the officers.

The complainant had filed income tax and wealth tax returns for the assessment years 1994-95 to 1999-2000 but the assessing officer neither framed assessment nor gave effect to the appellate order. The reply was found evasive and indefinite. By pleading and reiterating that the law permits assessment to be framed within the prescribed period which has not yet expired, delay is being justified on a flimsy ground. This exhibits an irresponsible attitude as period of limitation does not give a license to the assessing officer to keep the case pending till the last date prescribed for framing assessment. It is the duty of the assessing officer to frame assessment as soon as possible. But in any case it is not proper to prolong the assessment for years without any reasonable ground. Such approach and working not only creates delay and harassment to the assessee but also amounts to inefficiency in performance of duty and in many cases provides fertile ground for corruption.

It was recommended that the assessing officer should finalize the assessment within 30 days and CBR should initiate disciplinary action against the assessing officer for delay in framing the

assessment. Direction to CBR to devise scheme under which newly recruited and under-training officers are given practical training before posting. The Direction has been implemented and the under training batch of officers in 2001 was given practical training.

COMPLAINT NO.1388/2001

Mr. Jahanzaib,  
Fateh Jang.

Complainant

Versus

The Secretary, Revenue Division, Islamabad.

Respondent

Summary of Findings

Law:	Wealth Tax Act.
Subject:	Assessment to be made after service of proper notice u/s 16(2) of the Wealth Tax Act.
Recommendations:	Recommended that reassessment should be made after service of proper notice u/s 16(2) of the Wealth Tax Act.

In this case wealth tax assessments for the years 1993-94 to 1998-99 framed by the DCWT were declared void as no mandatory notice under section 16(2) of the Wealth Tax Act was served on the complainant. The DCWT made a reassessment under section 16(5)/23 of the Wealth Tax Act. The complainant challenged that as the order was declared void no reassessment could be made. The department took the plea that the Appellate Authority had wrongly applied the judgement of the Supreme Court and non-issuance of notices u/s 16 does affect the jurisdiction of the assessing officer. According to the complainant reassessment was made without serving any notice. In view of this fact that the complainant had documentary evidence to substantiate his case by agreement assessment set aside & fresh assessment be made within 30 days after service of proper notice under section 16(2) of the Wealth Tax Act on the complainant.

**IMPORTANT PRESS  
CLIPPINGS**

THE NATION ISLAMABAD 30 March 2001

## President for relief to taxpayers

ISLAMABAD (NNI) – The President Mohammed Rafiq Tarar has directed the Federal Tax Ombudsman (FTO), Justice (Retd) Saleem Akhtar to provide maximum relief to the tax payers.

The FTO Thursday called on the President at the Aiwan-e-Sadr and briefed him about the performance of his office.

The President appreciated the role of his institution and directed him to protect the rights of the taxpayers and address their concerned grievances.

The president said that taxpayers have felt a sigh of relief as the number of filed references with this office had decreased considerably.

وفا کی تمکیدیست سے سالانہ پور میس کر دی کارکردگی چیف جسٹس کا اظہارِ امتنان بدلتی نظر آئے کنڈاک کے

کتاب الفرائض

جسٹس (ر) سلیم اختر کو نمایاں خدمات پر خراج تحسین، توقع ہے کہ یکم محرم اپنا کام کامیابی سے مکمل کر لیں گے، چیف جسٹس

[illegible][illegible]

اقدامات کی روک تھام کرنا ہے۔ چیف جسٹس نے قریب ظاہر کی

[illegible]



THE NATION ISLAMABAD 29 May 2001

# FTO'S intervention helps resolve old dispute

By Afzal Bajwa

ISLAMABAD - Going beyond mere redressal of taxpayers' grievances, Justice Retired Saleem Akhtar, the ~~Federal Tax Ombudsman~~ for the first time played a non-traditional role when he used his special legal powers to informally resolve a long persistent dispute between the tax collectors and tax lawyers.

"Federal Tax Ombudsman Justice (R) Saleem Akhtar has, for the first time since the establishment of his office, opted for a different role when he resolved a dispute amicably between Income Tax Bar Association and Income Tax Department Circle 22, Mandi Bahauddin through negotiations," officials said on Monday.

The dispute was informally resolved between the contesting parties under section 33 of the Establishment of the Office of Federal Tax Ombudsman Ordinance, they added. While elaborating on the particular section, the officials said, the Section 33 of the Ordinance empowers the FTO

to conciliate—informally if required—amicably resolve, stipulate, settle or ameliorate any grievance without written memorandum and without necessity of docketing any complaint or issuing any official notice, they said.

In fact, the officials said, the principle of the Organization Theory called the Grapevine has been exercised for the first time in bureaucracy with FTO resolving conflict of perception between the lawyers and the tax collectors.

They were of the view that this technique of resolving dispute or redressing the grievances through informal channels might have been in vogue in the past but off the record. Thus, the FTO for the time used this method on the record of government procedures.

According to the details of the case President Income Tax Bar Association Mandi Bahauddin sent a copy of a resolution dated January 24, 2001, passed by the said Association against an official of Income Tax Department, Circle 22, Mandi Bahauddin al-

leging in-appropriate attitude and highhandedness shown towards one of their members Mian Muhammad Masood on January 20, 2001 in the office of Income Tax Department.

According to the officials Syed Hasan Mehdi Rizvi, Advocate, President of the Association attended the office of FTO on April 17, 2001 while Shahid Mehmood Sheikh Deputy Commissioner, Income Tax Sargodha represented the tax machinery at the informal hearing.

The FTO required the particular officer of the IT department in the next hearing who upon his appearance regretted his behavior. Though it was not directed by the FTO, the department took a disciplinary action against the officer who was subsequently transferred from the Circle 22 to Sargodha. Commissioner Sargodha also gave an undertaking to the FTO that the particular person would not be posted at Mandi Bahauddin at within next three years.

## FTO's 'crusade' against CBR's excesses

IKRAMUL HAQ

ISLAMABAD: The Central Board of Revenue (CBR) has urged the ministry of finance to wind up the Federal Tax Ombudsman's office because the Board has had to make heavy reimbursements of taxes, hitting its revenue target.

In over a score of cases of customs, sales tax and income tax the ombudsman has ordered repayments of millions of rupees to the aggrieved tax payers, because the FTO found CBR acted in violation of rules, harassed or extorted money. In several cases of delay of refunds, the FTO ordered payment of compensation at the rate of 15 percent to the taxpayers.

Ministry of finance sources told Business Recorder that the proposal was so unbecoming that the concerned officials turned it down at the initial stages.

It may be mentioned that the institution of Federal Tax Ombudsman had been discussed for a number of years and it was the previous government which had announced it in its budget to install a federal tax ombudsman, but failed to put it into shape.

The demand for transparency and accountability in the affairs of the government forced the government to opt for such an institution that was also demanded by the international financial institutions. These called for not only such an institution but also had been suggesting drastic reforms in the taxation system and machinery as a condition of their lending programmes.

Sources stated that the demand for abolition of FTO is wholly irrelevant and out of tune with the times which warrant more openness and transparency on the part of the government. Sources stated that while the government was planning to induct a banking multi-agency how could it do away with the tax ombudsman who is trying to bring some order, one is tempted to say some sanity, in the working of the tax machinery.

A cursory look at the scores of

orders passed by the FTO shows it is trying to curtail the misuse of discretionary powers, high handedness, compulsive harassment and virtually sadistic victimisation of taxpayers.

In a number of orders, the Ombudsman pointed out that some entrepreneurs had been brutalised so persistently by the tax collectors that they had to abandon their business or enterprise. This is not to suggest that all tax collectors were ruthless or the businessmen were upright in tax matters. Rather, the latter have also been cunning enough to evade tax with the collusion of the tax administration.

It may be pertinent to recall that in the last years of the Nawaz Sharif regime, the President of Pakistan Federation of Chambers of Commerce and Industry (PFCCI) had announced that the Federation would launch a "crusade" that the business community would pay their taxes "honestly". This could never happen and perhaps will not. Had there been slight change of heart, the military government's drive for documentation of the economy, and tax survey would not have been a limited success.

Leaving this apart, the Ombudsman has done great service by identifying several weaknesses of the department and demanded departmental action. Not only that, in a good number of cases, the ombudsman has recommended adverse remarks in the annual confidential reports of at least a dozen officials, and ordered inquiries into cases of misconduct.

A recount of the injustices perpetrated by the tax collectors as pointed out by the FTO's orders is quite significant. One such instance was confiscation of 14 mobile phones of a passenger on the patently false plea that these could not be called non-commercial baggage. The passenger who brought these as gifts has been struggling for nearly 30 months to get a release order. The

Ombudsman has ordered the release on payment of duty, but it would be a miracle if he would get the original ones.

In another case, FTO noted that customs harassment and corruption were main factors for the poor working of Karachi export processing zone. He called for a detailed study on the issue.

FTO's rejection of the computer selection of cases for audit on pre-arranged parameters goes to help the hapless taxpayers. The strictures on CBR for not maintaining their record properly and putting the onus of payment of dues on the tax payers instead of keeping its books up-to-date are the irritants which are now removed. The interpretations of some clauses of the tax laws have also benefited the taxpayer community. And punitive action against some officials must have given some consolation to the victims of the highhandedness of the officials.

It is interesting to mention that extensive bribery is largely outside the ambit of the Ombudsman, because its taxpayer dare make such allegation for fear of future punitive assessment. Moreover, money changes hand with the consent of the parties concerned in which both benefit and only the state is the loser.

So far, only one case of corruption and that too of very low level came to the Ombudsman. One employee complained that an IT inspector with the connivance of a firm's employee used to collect Rs 300 or so per employee to save them from any tax inquiries whatsoever. Fortunately, he won the case and the Ombudsman recommended that the taxmen must not pay private visits to the taxpayers.

Talking to this correspondent, the Tax Ombudsman said that if the taxpayer took courage to valiantly corruption cases, he could be saved against any future punitive assessment by bringing such a case to the ombudsman. But how many can take the risk, is difficult to answer.

# Jurisdiction of FTO needs to be extended

ISLAMABAD—Jurisdiction of Federal Tax Ombudsman (FTO) directly needs to be extended to grant interim stay to tax payers (complainants) against actions or emergency cases to provide relief to them in an effective manner.

In an interview with APP here Tuesday, Justice (Retd) Saleem Akhtar, Federal Tax Ombudsman emphasised upon empowering this institution to give interim order for stay of actions by the tax collecting authorities against the tax payers.

Incorporation of amendments in law regarding extension of jurisdiction to FTO, he said will help improve its effectiveness as well as performance in the supreme interest of the tax payers.

To a question, Justice Saleem replied that this forum was in fact an institutional arrangement, provided by the present government to address the genuine grievances of the tax payers.

Unless the institution is vested *carte blanche* to remedy the hardships of the tax payers and check the curse of corruption, dispensation of quick and speedy relief to the complainants was not possible, he observed.

"We are encouraged by the number of complaints pouring in and the people are gradually becoming conscious about the utility and usefulness of this forum regarding resolution of their tax predicaments," he added.

Justice Saleem Akhtar further maintained the *raison d'être* of this institution is welfare of the tax payers and redress of the genuine grievances at fast pace.

He pinpointed that the people were gradually evincing courage and valour by filing complaints against the tax officials which was earlier quite non-existent.

Finance Minister, Shaukat Aziz, he said also acknowledged in his budget speech the upbeat

performance of this institution adding, letters of appreciation from people of cross sections were also received regarding the performance of the institution.

Federal Tax Ombudsman further said it was providing relief to both private and semi-government departments as well as individuals regarding refunds and redressal of other difficulties.

The regional office of FTO is fully operative in Karachi while another regional office will start functioning within two weeks in Lahore.

The Institution, he stated was also undertaking inspection of records of tax officials regarding payments of taxes which was either not available or was not being maintained properly.

FTO, he stated was also focusing on institutional improvement and giving necessary direction to the Central Board of Revenue in tax sector —APP

# Govt plans federal banking ombudsman

By Parvaiz Ishfaq Rana

KARACHI, May 28: The government intends to appoint a federal banking ombudsman (FBO) and introduce some amendments in the Income Tax Ordinance 1979, aimed at reducing discretionary powers of the tax collecting bureaucracy.

These and other measures are being taken to revive investors confidence and are expected to be unfolded by Finance Minister Shaukat Aziz in the forthcoming federal budget being announced on June 16, 2001.

This was stated by the finance minister during a meeting with the chairman, Pakistan Bedwear Exporters Association (PBEA), Shabir Ahmed. The minister had called the meeting recently to get first hand information about the arrest notices issued to the chairman and his wife by the income tax department for the wealth tax liability that had been paid two years ago.

The finance minister said that after successful working of Federal Tax Ombudsman (FTO), the appointment of a Federal Banking Ombudsman (FBO) has been necessitated. Shabir Ahmed suggested to the minister to appoint Insurance Ombudsman, as such an office in UK had been working successfully.

The finance minister, who was assisted by Member Income Tax (CBR) Mohammad Shafi Malik, also assured to relax some of the stringent and coercive sections of the Income Tax Ordinance, 1979.

On the pointation of the PBEA chief that Section 92 is being widely misused by tax authorities, Shaukat Aziz assured to introduce amendment in Section 92, which gives discretionary powers to tax officers for freezing

of bank accounts of a taxpayer.

It was also strongly felt that the present law allowing 10 per cent reward to the informer of tax concealments was being widely abused for blackmailing taxpayers. The minister committed to introducing amendment in the budget for punishing those who provide wrong and false information.

When Shaukat Aziz's attention was drawn towards probes being done in foreign currency account, he said that any tax official from now on found doing so, will be punished as such acts are shaking investors' confidence.

The minister agreed with PBEA chief's contention that the Securities and Exchange Commission of Pakistan (SECP) existing laws are too harsh to be implemented in totality and they should be enforced in phases.

On a suggestion the finance minister agreed to introduce round the clock clearance of export consignments from next budget as it was in vogue all over the world. Presently exports from PQA are only allowed in day time which causes corruption in case of delay in consignments.

Shaukat Aziz also welcomed a suggestion for effecting a total change in sales tax system and instead of asking supplier/seller to deduct ST and then submit it with government treasury, the same should be submitted with a bank.

It was also agreed that it was not possible to bring about an improvement in the tax collection system and remove corruption without taking stern action against tax officials who are found guilty.

# New tax law is simplified, tax friendly: Tax Ombudsman

KARACHI—Federal Tax Ombudsman, Saturday said the new Income Tax ordinance, 2001 is definitely more understandable and more simplified than its predecessor enactments and effort has been made to make it more tax friendly.

Speaking at a seminar on the new tax legislation, organized by the Karachi Chamber of Commerce and Industry (KCCI) here, he said tax friendly should mean such system of taxation which should provide facility to get it assessed without botheration and loss of time, to have a clean culture of tax free from every form of indiscriminate exercise of discretion.

He said wherever conflicting interests arise, there is bound to be dissatisfaction and discontentment but such feelings of disenchantment can be avoided if a healthy tax culture is developed in the country.

He hoped new law will help

change the attitude of the stake holders and develop a clean sustainable culture aiming at generating revenue through taxation in legal, honest and transparent manner.

About the fiscal justice, he said the policies and laws should not be made on permanent basis, looking to the problems, needs and requirements of the entire society, he said. The burden of tax should be bearable by the taxpayers, he added.

"In an attempt to generate revenue if very high rate of tax is imposed it is bound to create dissent, resentment and protest, resulting in evasion of tax. By unrealistic, harsh and unjust tax policies you kill the goose that lays the golden egg" he remarked.

The new law has introduced the concept of universal self-assessment, he said. The assessment procedure has been streamlined and interaction between the taxpayer

and the tax offices has been sufficiently curtailed, he added.

He said the filing of return would be the order of assessment and thus while filing return the tax is assessed and determined by the taxpayer himself. This will be subject to audit in which proper care should be taken, he suggested.

He said the Presumptive tax and withholding tax have been maintained which form 70 per cent of the Revenue. It is necessary to strengthen the withholding tax regime and proper system should be devised to have full control on the collecting and deducting agents, he added.

Some amount of discretion is always required for proper administration of law due to which there is no harm in giving discretion but not absolute discretion, he said. However Government and CBR should ensure that this discretion is not used in an arbitrary manner, he added.—APP

# Tax Ombudsman's office working handicapped

## RECORDER REPORT

**ISLAMABAD:** The recently established Federal Tax Ombudsman's office is handicapped for lack of accommodation since its establishment in October last year. It is without proper accommodation despite the Chief Executive's directive in this regard.

It is now housed in half portion of the ground floor of the Experts Advisory Cell building on the Constitution Avenue, opposite Secretariat Block but awaiting vacation of the remaining portion, it is learnt.

After the induction of the FTO last September, the former Judge of the Supreme Court set up his

office in a suite of the Hala-e-istan House.

Later, thanks to the courtesy of Chief Justice of Pakistan, FTO's office was temporarily shifted in October to a bungalow in Judges Colony, Islamabad. A somewhat far away location in Margalla Hills, it was neither easily accessible to the complainants nor familiar to the aggrieved taxpayers.

As such, it did not attract as many complainants as it is doing now, since FTO's office was shifted to the Experts Advisers Cell building on the Constitution Avenue in November last.

It is learnt that the new premises were allowed by none else than the Chief Executive in December.

FTO's office shifted there, but portion of the ground floor.

Though the other half portion was vacant, the Ministry of Industries did not hand it over to the Federal Tax Ombudsman's office. Instead of doing so, the premises brought forth a new occupant. A new building now appeared at its entrance, that of the Ministry of Commerce.

So, over three months, the premises earmarked for the FTO's office is vacant and locked. The accounts section of the FTO's office is still located in the Judges Colony.

Thus the directive of the Chief Executive awaits to be implemented.

DAWN ISLAMABAD 19 JULY 2001

# ~~F~~ederal tax ombudsman secretariat

I COMPLIMENT the government on the establishment of the federal tax ombudsman secretariat. Not only has this step managed to reduce the workload of the federal ombudsman secretariat (Wafaqi Mohtasib Secretariat) but is also helping to handle complaints against the tax departments in a more effective manner.

It is reliably known that Mubeen Ahsan (ex-member CBR) has been appointed as consultant to the federal tax ombudsman at his Karachi Office. The honourable federal tax ombudsman may wish to reconsider this decision because appointment of an officer from the administrative side instead of the judicial side will not only affect the working of the federal tax ombudsman secretariat but it is also apprehended that in the long run it might even frustrate the very purpose for which this office was created.

MUBARAK SHAH

Advocate  
Karachi



## Reforming the taxation departments

The reported decision of the higher authorities of the Central Board of Revenue to take action against income tax officers throughout the country for showing carelessness in respect of depositing the cheques from taxpayers in banks on time, is a move that was long overdue. This practice in addition to other irregularities in the working of the taxation departments has been found to be rampant so much and so long that it has come to be taken as a normal and unavoidable part of the working style of these departments. After the establishment of the institution of Federal Tax Ombudsman last year, a large number of complaints filed by taxpayers were instrumental in bringing into focus common grievances like long delays in tax refunds, failure to acknowledge letters of complaints by the relevant tax departments, absence of recorded entries of tax payments by the assesseses, reminders from the tax departments to taxpayers for demands already paid, etc. The surfacing of these complaints along with the judgements and remarks of Federal Tax Ombudsman in newspaper reports appears to have underlined the urgent need of carrying out structural reforms in the working of the various taxation departments. At the same time, the IMF Mission's in-depth study of the working of the subordinate departments of the Central Board of Revenue also discovered deep-rooted inefficiency in these departments particularly in methods of tax assessment and maintenance of essential records and data.

The report revealing delays in depositing tax payments, it is interesting to note, was based on complaints from the various federal ministries which may be described as sister departments of the CBR in the federal government. The cheques in lieu of cash payment along with the returns were issued by the

individual taxpayers or officials in case of government departments but since the cheques were not deposited by the relevant IT officials on time they became time barred and therefore fresh demands for tax payments were issued to the assesseses. Since this sort of irregularity baffled the high officials of the federal ministries, it was detected and publicized rather promptly. On the contrary, such instances are fairly common in so far as the taxpayers associated with business activities are concerned whose complaints are rarely admitted and addressed by the taxation departments unless the matter is taken to the Federal Tax Ombudsman. It may be pointed out here that although taxation reforms committees were formed one after the other by the previous governments over the last two decades, little progress was recorded either in the modes of tax assessments and the taxation system itself or in the working efficiency of the various taxation departments. In fact, all the previous plans for taxation reforms virtually ignored the need for injecting efficiency in the working of the taxation departments. That the root cause of the whole malady of the taxation system was the rampant inefficiency and corruption in the overall set-up, was consistently overlooked. As a result since the personnel dominating the taxation system themselves indulged in irregularities, no tax reforms could ever be carried through successfully by the past governments. It is the latest thrust from the IMF for the implementation of taxation reforms along with drastic restructuring of the taxation machinery that seems to have brought into focus the urgency of the task of improving efficiency. The reforms are rightly seen as a means to the goals of broadening the scope of the tax net and thereby achieving a better rate of growth in the tax receipts.



## FTO jurisdiction should be extended: Justice Saleem

ISLAMABAD: The jurisdiction of the Federal Tax Ombudsman (FTO) needs to be extended to grant interim stay to taxpayers (complainants) against actions in emergency cases to provide relief to them in an effective manner.

In an interview here on Tuesday, Justice (Retd) Saleem Akhtar, federal tax ombudsman, emphasised the need for empowering the institution to give interim stay order on actions by the tax collecting authorities against the taxpayers. Incorporation of amendments in law regarding extension of FTO jurisdiction would help improve its effectiveness as well as performance in the supreme interest of the taxpayers, he added.

Justice Saleem said this forum was in fact an institutional arrangement, provided by the present government to address the genuine grievances of the taxpayers. "Unless the institution is vested carte blanche to remedy the hardships of the taxpayers and check the curse of corruption, dispensation of quick and speedy relief to the complainants is not possible," he observed.

"We are encouraged by the number of complaints pouring in and the people are gradually becoming conscious about the utility and usefulness of this forum regarding resolution of their tax predicaments," he added. — APP

# Govt can't run without taxes: ombudsman

## F.P. Report

KARACHI: Justice (Retired) Saleem Akhtar, Federal Tax Ombudsman has emphasized that "the need for taxation in the present world was not only for executing welfare programme but also for purposes of Good Governance. A Government cannot be run without levy and recovery of taxes. The entire machinery of the Government in the present time requires the public to pay the taxes, which are levied and likewise the Government collecting tax and revenue is required to expend for the good governance and welfare of the country and citizens. This concept has introduced an element of Accountability". He was speaking as Chief Guest at the Seminar on "New Income Tax Ordinance 2001", organized by Karachi Chamber of Commerce & Industry in Karachi on Saturday.

Federal Tax Ombudsman further said that concept of No Taxation without Representation created revolution but these days the concept has further developed that if public is taxed, the taxing authorities are accountable firstly for proper and legal realization of tax and secondly Government is required to spend this public money for Good Governance in a transparent manner. Even donors and investors require these conditions to be fulfilled, he added.

Talking on New Income

Tax Law, Retired Justice Saleem Akhtar observed that main grievance of the most taxpayers was the complexity of the tax laws, which created confusion and provided fertile ground to the tax administrator to exercise unbridled discretion and to the taxpayer to devise methods for evasion of Tax, however, all efforts seem to have been made to simplify the Income Tax Ordinance, he said.

He opined that the new Ordinance was definitely more understandable and more simplified than its predecessor enactment. It is spread in 240 Sections and 13 Chapters, which have been divided in Parts and parts have been subdivided in Divisions. So this system introduces clarity and simplicity as all efforts have been made to discard provisos and sub proviso making the law simple and easy to understand. This Ordinance also meet the popular demand of taxpayers that Income Tax Statute should be Tax Friendly, he observed.

Federal Tax Ombudsman further observed that Fiscal Justice is required in the field of Tax Administration. Every citizen is entitled to Justice according to Law. He further explained that "by Fiscal Justice, I mean that the policies of the Government, the proceedings and procedures initiated and followed by the tax administrators and the responsibility of the taxpayers to maintain accounts

should be Transparent", adding, "Fiscal Justice can be developed only when proper policies are framed.

They are not made on Adhoc basis but on permanent basis looking to the problems, needs, and requirements of the entire society. In this regard, it may not be out of place to mention that burden of tax should be bearable by the taxpayers."

He admitted that the Ordinance has been under criticism since the draft Ordinance was published, but said that in the light of opinions and suggestions, due amendments have been made to make it more acceptable.

He further said that the Ordinance has introduced the concept of universal self-assessment. The assessment procedure has been streamlined and interaction between the taxpayers and the tax officers has been sufficiently curtailed. Filing of Return would be the order of assessment and thus while filing return the tax is assessed and determined by the assess himself.

This will be subject to Audit in which proper care should be taken, he assured. He also disclosed that Presumptive Tax and Withholding Tax have been maintained which form 70 per cent of the Revenue. It is necessary to strengthen the Withholding Tax regime and proper system should be devised to have full control on the collecting and deducting agents.

# FTO brings about taxpayer, officials conciliation

## RECORDER REPORT

**ISLAMIABAD:** The Federal Tax Ombudsman has brought about conciliation between a taxpayer and tax officials of Lahore who were allegedly involved in using coercive methods to exact the tax demand determined in an arbitrary manner.

The tax officials had found that the complainant Rana Azhar Abbas of Rahim Medical and Provision Store had concealed his true income by not declaring agricultural land in his tax returns. In response, the complainant said that the land was barren and no income accrued therefrom.

The conciliation power was conferred on the FTO under section 53 of the FTO Ordinance.

The complainant had alleged that Mohammed Nabeel Rana, Additional Commissioner of Income Tax Zone 3, Lahore, had made illegal and harsh assessments for the years 1995 to 2000, levying tax of Rs 5,925,428 against the completed assessments for these years for which he had paid Rs 90,000.

Since the property held by the complainant was not shown in the returns, the tax officials made reassessment of tax liability and issued notice for the payment of arrears of nearly Rs 0.6 million within 17 days.

The complainant not only challenged the reopening of the cases which had been completed, and also against the harsh and arbitrary treatment meted out to him.

The documents before the FTO showed that the demand notice for a consolidated amount of Rs 5,925,428 for five years was issued to the complainant on June 28, 2001, requiring him to make the entire payment by July 15, within a period of 17 days. This FTO regarded this was an ambition beyond reasonability. It also violated the clear instructions to allow, at least, 30 days under a CBR circular No 17 TTP/1991.

The FTO in his order added that still more surprising is the fact that without bothering to send even a reminder for payment of tax, the overenthusiastic tax officials geared up recovery machinery by resort to the provision of Section 44 (2) through a notice dated Aug 28, requiring payment by Sept 4, 2001, thus allowing eight days.

The order further reads that this notice by itself carried threat of "attachment and sale" of movable or immovable property of the taxpayer or the appointment of Receiver to realise the outstanding demand. Almost simultaneously, a show-cause notice for imposition of penalty under sec-

tion 90 was issued on September 13, for compliance forthwith.<sup>17</sup> This sudden resort to coercive measures undoubtedly amounted to harassment of the taxpayer who rushed to the FTO secretary.

After going through the complaint, the FTO thought it prudent to invoke the provisions of Section 53 to ameliorate the complainant's grievance and to restore his confidence in the system. The section 53 provides for informal resolution of dispute. The contending parties were told that the conflict could be resolved under section 53 and both sides after pondering over it for a day agreed to do so.

Thus, it was agreed that the Department would withdraw all recovery steps and keep the demand in abeyance till decision of the appeals by the Commissioner of Income Tax and finally by the Income Tax Appellate Tribunal. In the meantime, the complainant agreed to prosecute the appeals in good earnest and not seek either undue adjournment or delay of drug the appeal process.

Both sides signed the agreement. As a result of conciliation, the grievance stands ameliorated without in any way interfering with the process of legal remedy provided in the IT Ordinance.

## سنٹرل بورڈ قادیان تعلیمہ "ٹیکس نیوز"، جلدی کرے، وفاقی ٹیکس محتسب

اسلام آباد (نمائندہ خصوصی) وفاقی ٹیکس محتسب جسٹس ریٹائرڈ سلیم اختر نے قرار دیا ہے کہ ٹیکس کی تعلیم کے پروگرام کے بغیر ٹیکس کے قوانین میں اندھا دھند ترمیم سے ٹیکس کے جمع کرنے اور ٹیکس دہندگان دونوں کے لئے مسائل پیدا ہوئے ہیں ایک درخواست کی سماعت کرتے

ٹیکس نیوز

ہوئے انہوں نے کہا کہ ٹیکس کی تعلیم کا پروگرام انتہائی ضروری ہے انہوں نے کم شرح تعلیم اور ٹیکس کے قوانین میں تسلسل سے ترمیم کے باعث سی بی آر کو مشورہ دیا کہ "ماہانہ ٹیکس نیوز" کے نام سے انگریزی اور اردو میں معلومات شائع کی جائیں۔ اس ماہانہ میں تمام ایس آر بورڈ قوانین و ضوابط شامل ہونا چاہئے وفاقی ٹیکس محتسب نے یہ ہدایت کی کہ ان سفارشات پر سختی سے غور کیا جائے۔

# FTO to ensure computerised documentation of tax payers' profile

ISLAMABAD: Computerised documentation of tax payers' profile, prompt issuance of assessment orders and implementation of the decisions on petitions are major areas of focus of Federal Tax Ombudsman (FTO) to help reform the tax regime at fast pace.

Central Board of Revenue (CBR) has already issued orders on the directives of Tax Ombudsman for quick disposal of assessment orders to the salaried people, Justice Saleem Akhtar (R), Federal Tax Ombudsman, (FTO) told APP here on Thursday.

To a question, Justice Saleem replied that FTO was poised to entertain any petition by the local manufacturers against the menace of smuggling to provide protection to indigenous goods.

Role of the institution towards improving the tax system, FTO said, was being beefed up and strengthened which would further enhance the usefulness of the institution in realising the objectives.

Spelling out the performance of the institutions, he said, 1230 petitions have been disposed of against the total 1561 petitions filed since January, 2001 to date.

In 25 cases, he continued, disciplinary action was asked, adding of 39 review petitions, 20 were disposed of and in 18 cases reference was filed by CBR or Assessors to the President.

Being public service-oriented institution, Justice Saleem said, the institution could also handle the complaints regarding anomalies in income tax, customs duty, sales tax, etc.

About implementation of the decisions, the FTO said, in 1084 cases decisions have been implemented.

Justice Saleem said, certain studies are also being conducted to make the role of the institution more effective for redressal of tax payers' grievances.

He said, the CBR was asked to ensure complete maintenance of tax payers' record and expedite the progress of computerisation of documents.

In various cases, he maintained, required record was either missing or incomplete, adding the effective role of the FTO would help improve the functioning of tax apparatus.

Most of the complaints, he said, related to the issue of refund, excessive assessments and alleged corruption of the tax officials.

Regarding assessment of salary sector, he said, directive has been issued that unless necessary, no tax official will visit the office or residence of the tax payer.

Barring few exceptions of the cases where difficulties cropped up in the hearing, he observed, most of the cases are disposed of within sixty days.

The FTO said, focus would be accorded in near future towards simplifying the income tax return forms in view of the new income tax ordinances.

To a query, Justice Saleem said that major hallmark of the institution is an effective implementation of the decisions sans any delay in redressing the genuine grievances of the tax payers — APP.

# **The Frontier Post**

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## **CBR directed to encourage honest tax officials**

ISLAMABAD (SANA): The Federal Tax Ombudsman (FTO) Justice (Retd) Saleem Akhtar has asked the Central Board of Revenue (CBR) to encourage the officers who are cooperating in detection of tax evasion and keep them informed about the outcome of their efforts so that doubts do not arise in their minds about bonafide of the proceedings at the departmental level.

The FTO further directed the department to maintain transparency to avoid creation of any misperception about revenue administration and to reward persons for providing information of tax evasion and that the complainant may be considered eligible for grant of reward.

He made those recommendations on the complaint of a former marine engineer, Juned Talat to the FTO that billions of rupees were lost by the shipping sector with the connivance/collusion of income tax officials.

In this complaint, Juned Talat had alleged that the

Regional Commissioner of Income Tax (RCIT) of Karachi, Southern region was indulging in mal-administration by avoiding response to his letters asking information on the progress of the proceedings in the cases of alleged concealment of income by seafarers.

He further alleged that whatever response he received verbally or in writing was evasive which is totally in contradiction with the practice established by the preceding RCIT of keeping him properly apprised of the progress of the proceedings.

Following the hearing of the issue where the departmental representative and the complainant presented their cases, the FTO directed the department to consider and decide the eligibility of complainant for grant of reward under the law as well as apprise him of the progress of detection of cases of concealment of income, and assessments thereof since assessment year 1997-98 and the pursuit of recovery of created tax demand.



# CBR directed to implement order of law secretary

ISLAMABAD Nov 6: Federal Tax Ombudsman Justice (rtd) Saleem Akhtar has directed the Central Board of Revenue (CBR) to implement the order of the Secretary, Law, Justice and Human Rights Division issued on 1.6.1999 by November 16, 2001.

The FTO also directed to refund due and payable/refundable should be paid to the complainant before December 15, 2001 Federal Tax Ombudsman (FTO) has also sought compliance report by 30-12-2001.

These directives were given by the FTO while deciding a complaint lodged by M/s. Karachi Shipyard & Engineering Works Ltd., against CBR regarding the abuse of powers, mal-administration and retention of money of the complainant and also non-implementation of the order of the Secretary of Law, Justice and Human Rights Division dated 01-6-1999.

The complainant is fully owned by Ministry of Defence and is engaged in the manufacture of heavy plants and machinery since 1952. The complainant also undertakes ship repairs, reconstruction-engineering services etc. said a press release here Tuesday.

The income tax assessments of the complainant were being completed and finalised under normal tax law under section 80 (D) of In-

come Tax Ordinance 1979 and it was always treated as a manufacturer-cum-assembler but not as a contractor till the assessment year 1991-92. However for the assessment years 1992-93 to 1995-96, the Income Tax Department took totally different view of the business activities of the complainant. Instead of treating the complainant as manufacturer, builder etc. of ships, vessels and heavy engineering plants and machinery, the Department treated the business activities of the complainant as that of a supplier, and finalised the assessment under section 80 (C) for the assessment years 1992-93 to 1995-96.

As a consequence, a huge demand of Rs77.5 million was created for this period. The complainant filed appeals/revision appeals but the case remained undecided till 1999. In the meantime, CBR made a reference to the Cabinet with regard to the disputes between the government organisation and CBR.

The Cabinet in his decision directed that all organisations under Ministries/Divisions should withdraw all court cases against CBR and any disputes should be resolved and settled either through Inter Ministerial Consultation or un-resolved matters should be referred to the Ministry of law, Jus-

tice and Human Rights for a decision.

In pursuance of this decision the complainant proceeded before the Law Secretary, who ruled that the business of the complainant did not fall under the category of supplier or contractor but a manufacturer. The FTO noted that the assessments for the year 1992-93 to 1995-96 were not sustainable in law and that the Department did not issue refund for these years despite this clear finding of the law Secretary.

The FTO in his decision observed: "It is very unfortunate to recall that the order of the Secretary Law, Justice and Human Rights Division has not been implemented despite a lapse of more than two years and the complainant has lost all avenues for redressal of its grievances not because of its lethargy but because of the failure of the relevant authorities to act in the matter at the right time and in the right manner.

It is a matter of concern that decision of the Cabinet and the Law Secretary are being violated by not implementing the same and dragging the complainant in unnecessary litigation which in fact the Cabinet wanted to avoid. This clearly proves maladministration on the part of Revenue division"—NNI



## Ombudsman's judgment

ON June 2, the Federal Tax Ombudsman pronounced a judgment holding the computer random balloting for selection of cases for total audit as not in conformity with the Self-Assessment Scheme 2000-2001, as selection was not random but parametric and predestined.

In fact, the CBR selected 33,874 cases filed under the SAS. The income tax department applied certain parameters for selection which reduced the whole exercise to no more than a stratagem to hoodwink the assessees who had filed returns under the SAS.

They said, there is already mistrust between tax collector and taxpayers. The selection of cases through a farce of so-called computer random balloting has further widened the gulf. Moreover, instead of learning from the judgment or adopting due legal recourse, the department has embarked upon the venture of selecting cases under Para 6(b) of Circular 21.

It seems the department has decided to go to the last extent of victimizing taxpayers. Once this action is taken it will deprive assessees of the relief awarded by the Tax Ombudsman.

The authorities are requested to redress the taxpayer's grievances, instead of CBR adopting illegal actions to nullify the relief.

**MUHAMMAD YAQUB MALIK**  
Attock City

JANG RAWALPINDI 23 MAY 2001

## وفاقی محتسب کا کسٹم انٹیلی جنس آفسر سے 40 ہزار روپے وصول کر نیکا حکم

کسٹم انٹیلی جنس آفسر نے وفاقی محتسب کو 40 ہزار روپے وصول کر نیکا حکم

ہے کہ نذر احمد سہاسی کسٹم انٹیلی جنس آفسر جو اس وقت گوجرانوالہ میں تعینات ہیں کے خلاف سرکاری ملازمین کی استعداد کار و ضوابط کار کے رولز بحریہ 1973ء کے تحت جتنی ایکشن لے کر اس کی رپورٹ 60 پارا کے اندر وفاقی ٹیکس محتسب سیکرٹریٹ کو پیش کی جائے۔ وفاقی ٹیکس محتسب مسز جسٹس (ر) سلیم اختر کے فیصلے میں کیا گیا ہے کہ حکایت کنندہ نے مکان بچ کر نو ہوتا ہائی ایس ڈین خریدی جسے نذر احمد سہاسی نے یہ کہہ کر قبضے میں لے لیا کہ اس کی کسٹم ڈیوٹی ادا نہیں کی گئی مگر انٹرنیٹ سٹیل کی مدد سے کسٹم ہاؤس کو سٹیل کے گاڑی کی ڈیوٹی ادا ہونے کی تصدیق کر دی جس پر مذکورہ آفسر سے سکھر میں گاڑی چھوڑنے کیلئے رابطہ کیا گیا مگر نذر احمد سہاسی نے ڈیڑھ لاکھ روپے رشوت طلب کی۔

اسلام آباد (وفاقی ٹیکس خصوصی) وفاقی ٹیکس محتسب نے پاکستان میں موٹر گاڑیوں کی اسمگلنگ کے متعلق سی پی آر سے رپورٹ طلب کر لی ہے۔ وفاقی محتسب نے راجنندو دین کے سیکرٹری و چیئرمین سی پی آر کو ہدایت کی ہے کہ وہ ساتھ ہی کے اندر کسٹم ڈیوٹی ادا کئے بغیر پاکستان آنے والی گاڑیوں کے کسٹم کو انٹرفیش کریں۔ وفاقی محتسب نے کسٹم انٹیلی جنس آفسر نذر احمد سہاسی سے 40 ہزار روپے وصول کرنے کا بھی حکم دیا ہے جو اس نے محمد اسلم ولد فضل دین سے بطور رشوت وصول کئے اس کے علاوہ وفاقی ٹیکس محتسب نے مذکورہ عنوان آفیسر سے 50 ہزار روپے کی رقم لے کر حکایت کنندہ محمد اسلم ولد فضل دین کو ادا کرنے کا بھی حکم دیا ہے۔ سیکرٹری راجنندو دین سے کہا گیا

# FTO rejects Paktel charges against CBR

By Our Reporter

ISLAMABAD, Dec 2: The Federal Tax Ombudsman (FTO), Justice (Rtd) Saleem Akhtar, rejected the complaint of Paktel Ltd, finding charges of maladministration against the Central Board of Revenue (CBR) as incorrect and due to separate litigation on the same grounds in the High Court.

The FTO observed that the dispute has two aspects; first phase pertains to whether receipts from the sale of air-time charges and other ancillary receipts falls within the ambit of section 80 C, or to be treated under the normal law, said an statement issued on Sunday.

The second issue, Justice said, related to whether a partly set aside assessment can be completed within the limitation period prescribed under section 66(1)(C) irrespective of the fact, whether an appeal has been filed covering the same issues.

The Justice held that the first issue was under reference before the High Court on the date the complaint was filed and further, as there was no other allegation of maladministration independent of the issue before the court, the complainant can not be enter-

tained. Regarding the second issue, FTO said it was clear that where an appeal was filed in respect of a particular year or years and an assessment has been partly set aside, the provisions of section 66(1)(C) were not invoked.

An assessment was to be made for the whole income year and not in piecemeal. Fresh assessment would be made after the verdict was announced by the High Court.

"For reasons recorded above, there is no substance in the complaint and the same is rejected," he maintained.

A dispute arose between Paktel Ltd, a public limited company and the CBR, in which the former complained to the FTO that the income tax department had refused to give effect to an order in appeal passed by Income Tax Appellate Tribunal.

The Appellate Tribunal had given an order in which the assessment framed for the charge years 1995-96 to 1997-98 were partly set aside and could not be completed within the period of limitation prescribed under section 66(1)(C) of the Income Tax Ordinance.

The complainant alleged that irrespective of the fact whether appeals have been filed in

respect of three years, since these did not cover the set aside issues, assessment thereof should have been completed within the limitation period prescribed under section 66(1)(C) of the ordinance.

The assessment had gone into appeal before the income tax tribunal. After considering the arguments of both the contesting parties, the tribunal concluded that section 80 C, clearly excludes receipts on account of services rendered, as was the current case and directed the assessing officer to re-compute the income from receipts on account of airtime revenue and ancillary charges on account of services rendered and as such outside the presumptive tax regime under section 80 C.

The CBR aggrieved of the judgment of the learned tribunal, filed a reference to the High Court under section 136 of the ordinance and submitted to the FTO that since appeal was pending before the Lahore High Court, decision on set aside issues could not be made.

Further, limitation prescribed under section 66(1)(C) would not be applicable, as partial assessment cannot be made.



# FTO slams tax official smuggling of vehicles

By Afzal Bajwa

ISLAMABAD — The office of the Federal Tax Ombudsman has reprimanded the tax machinery of the government over the rampant illegal business of smuggled vehicles throughout the country having prima facie involvement of officials.

Officers of Customs Department and Provincial Taxation getting voluminous and request bribes for fake registration of smuggled vehicles were depriving the national exchequer of billions of rupees customs duty revenue, remarked Justice Retired Saleem Akhtar, the FTO.

According to officials, the FTO has given 60 days to the Secretary Revenue Division to come up with a thoroughly investigated report on smuggling of vehicles without payment of customs in the country and their subsequent illegal registration.

The FTO, while ordering recovery of bribed amount from a customs officer in this regard, has observed that there was large scale smuggling of vehicles, mainly of Pajeros Mitsubishi, Land Cruisers of Toyota into Pakistan without payment of customs duty and other taxes and are available for sale at nominal prices.

He remarked in his decision of the particular case that the officers of motor registration authorities nearest to the entry routes manage to register these vehicles on fictitious papers.

"Similarly," he observed, "vehicles purchased from Customs Auctions also provide papers on the basis of which duplicate papers are prepared and smuggled vehicles get registered in different districts. Car Sections in Customs

Houses and Provincial Excise and Taxation Officers are hand in glove with each other causing loss of revenue worth billions to the national exchequer. The complainant further informed that the Authorities dispose of vehicles below the reserve price to benefit friends and relatives."

"In order to know the actual facts the FTO has directed the Secretary Revenue Division to cause investigation in respect of the given information and to send a report to the FTO Secretariat within sixty days," the officials added.

According to the details of the particular case, Muhammad Aslam son of Fazal Din of Nawab Shah filed a complaint to the FTO against an official of Customs Department, namely Nazir Ahmed Sahi.

FTO also directed the immediate recovery of Rs 40 thousand from Sahi who was then posted at Sukkar as Customs Intelligence Officers who also misappropriated an amount of Rs 70 thousand spent on the repair of vehicle seized by him and an additional amount of Rs 1,90,000 in the head of miscellaneous items.

Meanwhile, unofficial sources told *The Nation*, that confiscation of vehicle evading two to three lac rupees of customs duty can easily make bright opportunity of getting Rs 100,000 as bribe. In that case the Custom Intelligence would not report a particular confiscation to the Department rather all facilitation would be provided to the owner of illegal in legalizing fictitiously again on payment of unofficial fee, the sources added.

PAKISTAN OBSERVER, ISLAMABAD 26 JUNE 2001

# FTO hears complaints against survey procedure

ISLAMABAD—Federal Tax Ombudsman (FTO), Justice (Retd) Saleem Akhtar on Monday made hearing of 28 complaints against the procedure of survey being adopted by Survey Teams of CBR under the "Survey for Documentation of National Economy Ordinance, 2000."

The FTO observed that it was not desirable and appropriate to keep the instructions regarding taxes of public interest confidential by Central Board of Revenues and decide the cases arbitrarily.

He also questioned the complainants as to why traders did not ask survey team officials for physical checking of stocks to ensure the correct assessment of their income.

The FTO Secretariat had re-

ceived more than two dozen complaints from the traders alleging that survey teams treat them with high-handedness and get the survey forms signed by them under coercion while estimating the stocks at the business premises.

The complainants alleged that the survey teams were not empowered to make estimates of sales or turn over.

The CBR officials were of the view that the Survey Teams were acting according to the relevant laws to carry out the surveys and determine the annual turn over as empowered under the "Survey for Documentation of National Economy Ordinance 2000."

The hearing was adjourned and next date for hearing was fixed at July 9, 2001.

# FTO takes action against tax officials

## RECORDER REPORT

**ISLAMABAD:** The Federal Tax Ombudsman (FTO) Justice Saleem Akhtar has taken action against tax official for demanding illegal gratification from a tax payer and harassing him. This is the first case of corruption - though at low level and involving a small amount - which has come to the notice of the FTO, who has asked for severe action against the tax official as well as his boss i.e. income tax officer for lack of proper supervision on his subordinates.

Cases of bribery and illegal gratification are very common but rarely do these come to light for the taxpayers are always fearful of punitive assessment in the future.

The facts of the case are that complainant Sultanul Arefin, an employee of Filters Pakistan, alleged that income tax employee Salam together with Riaz Ahmed Khan supervisor of Sultanul Arefin used to collect Rs 100 to Rs 300

every year for issuance of income tax certificate /assessment orders every year. But this year the complainant refused and on refusal the complainant was served with a notice u/s 61 of income tax ordinance to produce accounts books, ledgers etc.

When the ombudsman's office took note of the complaint and sought explanation from the Commissioner Income tax Sukkur, Salam denied the allegations but admitted he had gone to serve the notice. The commissioner income tax submitted to the FTO and admitted that the notice under section 61 was not required to be issued in the case of salaried people for the assessment year 2000-01 and was inadvertently issued by Salam who is UDC in the circle office.

Later the notice under section 61 has been withdrawn.

The FTO held the hearing of the parties on May 15, where five

employees of Filter Company confirmed the highhandedness and vindictive attitude of Salam. The FTO, in his order observed, that Sultanul Arefin being a salaried person was not supposed to produce cash book, ledger, stock register etc and found that this process was contrary to laws causing harassment and undue inconvenience and this action was malafide.

The FTO was told that departmental action was being taken against Salam, but the FTO found this "unsatisfactory". According to him the conduct of the official demanded severe punishment rather than mere letter of warning. It is for the department to consider further action so that such behaviour is not resorted to by any officer.

The FTO further expressed concern at the standard of supervision of the circle by the special officer Shabbir Ahmed Sheikh to remain oblivious of the illegal and introp-

sible manner of his subordinate. The head is responsible for the conduct of officials working under him.

The FTO has appreciated the conduct of Sultanul Arefin who he said has set an example for other tax payers to resist illegal action and harassment of tax employees. This is one instance of maladministration, which is practised in other offices of the income tax department.

The FTO has recommended that CBR should initiate proper legal and disciplinary action against Salam and also Shabbir Ahmed Sheikh, special officer incharge, for committing acts of maladministration within 30 days.

The ombudsman has further asked the CBR to direct the assessing officers of the salary circle or frame assessment within three months of submission of the return and supply a copy of the assessment order to the assessee through registered post A.D. immediately.

# FTO emphasises jurisdiction in tax assessment mal-administration cases

## RECORDER REPORT

**ISLAMABAD:** In a comprehensive order, Federal Tax Ombudsman Justice Saleem Akhtar has emphasised that the FTO has jurisdiction to investigate cases relating mal-administration in respect of assessment of income or wealth, determination of tax or duty or classification or valuation of goods, interpretation of law, rules, regulation regarding assessment, determination, classification or valuation.

While there may be bar on FTO to investigate assessment of income or wealth, determination of tax liability etc, there is no bar against investigation in respect of mal-administration which are completely independent of specified proceedings.

The issue arose during the hearing of a case in which a shoe store owner of Kasir pointed out that his assessment for 2001 was based on the assessments for preceding years, 1997-98, whose assessment orders had not been served on the complainant. The department took the stand that since the assessments in question are appealable under Section 129 of the Income Tax Ordinance and the complainant is entitled to file a revision petition under section 258 and is thus outside the jurisdiction of the FTO.

On examination of the record, the FTO found that neither the assessment for the year 97-98 nor the demand notice and IT-90 are available on record. Other documents, claimed by the department, were not available. The assessments were found to be unreasonable, unjust and perverse and oppressive. The FTO thought it was clear case of mal-administration. Dealing at length with the question of jurisdiction, the FTO referred to Section 9 of the Establishment of the Office of Federal Tax Ombudsman Ordinance. The provision relating to jurisdiction, functions and powers of FTO reads that subject to sub-section two, the FTO can investigate any allegation of mal-administration on the part of the revenue division or any tax employee. Sub-section two says The Federal Tax Ombudsman shall not have jurisdiction to investigate or inquire into matters which:

(a) are sub judice before a court of competent jurisdiction or tribunal or board or authority on the date of the receipt of a complaint, reference or motion by him; or

(b) relate to assessment of income or wealth, determination of liability of tax or duty, classification or valuation of goods, interpretation of law, rules and regulations relating to such assessment, determination, classification or valuation in respect of which legal remedies of appeal, review or revision are available under the Relevant Legislation.

Before embarking upon the analysis, meaning and applicability of Section 9(a) will be appropriate to take into consideration the principles governing this exercise. The cardinal principle of construction

and interpretation of a statute is that it is expounded according to the intention of the legislature of authority which made it.

The object of FTO Ordinance is to eradicate mal-administration and grant relief to the aggrieved parties. It is in the nature of a welfare legislation introducing accountability in tax administration for achieving good governance, healthy tax culture and providing clear and honest atmosphere which may restore trust of taxpayers and confidence of investors, thereby increasing the revenue.

The FTO has to diagnose, investigate redress and rectify any injustice done to a person through mal-administration by functionaries administering tax laws. While examining the question of jurisdiction, the definition of mal-administration as provided by sub-section (3) of Section 2 of FTO Ordinance must be kept in view as it is the centre point for doctrine of jurisdiction.

The jurisdiction of the Federal Tax Ombudsman extends to all acts of mal-administration as defined in sub-section (3) of section 2 of the Establishment of the Office of Federal Tax Ombudsman Ordinance 2000. The definition is wide and inclusive in nature. It includes decision, process, recommendation, act of omission or commission which is contrary to law, rules or regulations or is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory or is based on irrelevant grounds or involves exercise of powers or refusal to do so, tax corruption or improper motives such as bribery, favoritism, nepotism and administrative excesses. It also includes neglect, inattention, delay, incompetence, inefficiency and negligence in the administration or discharge of duties and responsibilities. Further, willful error or determination of refund, rebate or duty draw back, deliberate withholding or non payment or determined refund rebate or duty drawbacks, coercive method of tax recovery where details not apparent on record and avoidance of disciplinary action in certain circumstances have been termed as mal-administration. Therefore, whenever a complaint of violation or on reference after investigation it is found that mal-administration has been committed, the Federal Tax Ombudsman has the jurisdiction to intervene.

3. According to sub-section (2-a) of Section 9 matters, which are sub judice before a court of competent jurisdiction or tribunal or board or authority on the date of the receipt of a complaint or motion, the FTO will have no jurisdiction to investigate or inquire into the matter. It is clear that the bar will apply where any complaint is received during the pendency of any matter. But if the complaint motion or reference has been reviewed in the FTO Secretariat before the same matter becoming subject matter of any proceeding in a competent forum, the bar will not apply. It

may further be clarified that even in matters which are sub judice prior to filing of complaint, if any allegation of mal-administration has been made independent of the issues raised in the pending matter, then the FTO will have jurisdiction to investigate or inquire into such allegations.

4. Sub-section (2)(b) of Section 9 provides: (b) Federal Tax Ombudsman shall not have jurisdiction to investigate or inquire into matters which relate to assessment of income or wealth, determination of liability of tax or duty, classification or valuation of goods, interpretation of law, rules and regulations relating to such assessment, determination, classification or valuation in respect of which legal remedies of appeal, review or revision are available under the relevant legislation. The law is limited to the relevant legislation as defined in sub-section (3) of section 2 of the Ordinance. The object of the Ordinance is that on the present case the remedy of appeal has been provided and the matter arises in the assessment the complaint can not be entertained and is outside the jurisdiction. It should be borne in mind that the Ordinance has been promulgated for the removal of the injustice, public and to redress evils created by acts of mal-administration. The Ordinance is in the nature of welfare legislation intended to provide relief and redress according to law. There would hardly be any other proceedings affecting assessee's interest under the Income Tax Ordinance, Customs Act or Sales Tax Act for which remedies of appeal or revision have not been provided. If the contention of the Department is accepted then jurisdiction cannot be exercised by the Federal Tax Ombudsman in any matter. Such interpretation will frustrate the object and intention of the law makers. Such meaning leads to absurdity and makes the appointment of Federal Tax Ombudsman completely nugatory. As it is the intention of the legislature to clothe an officer with a particular object and do not vest any power or jurisdiction to perform the duties prescribed by the Ordinance or restrict it to make it non-existent. In the face of such complex situation the real meaning in consonance with the intention of the lawmakers has to be found out.

5. Considering the object of the Office of Establishment of Federal Tax Ombudsman Ordinance, 2000 and its historical background, the provisions of Section 9(a) can not be given wide and literal meaning as it will not only frustrate the very object of the Ordinance but will result in contradiction. It could never have been the intention of the legislature to create an institution with the object to eradicate mal-administration and get to deny the jurisdiction for investigation and granting relief under the Ordinance. It is a settled rule of interpretation that the plain, literal and grammatical construction

is applied subject to the qualification that the language is to be subordinated or is given a restricted meaning when it is opposed to the object or scheme of the statute or may lead to illogical absurd or unconstitutional result. Where the legislature taking notice of a particular situation enacts a law to provide relief, then the legislative intent must be given effect to and can not be ignored. For determining the intention of the legislature one has to look to the preamble and if necessary to the history of the legislation.

11. According to Maxwell: "There are certain objects which the legislature is presumed not to intend, and a construction which would lead to any of them is therefore to be avoided. It is not infrequently necessary, therefore, to find the effect of the words contained in an enactment (especially general words and some lines to depart not only from their primary and literal meaning but also from the rules of grammatical construction in cases where it seems highly improbable that the primary or grammatical meaning actually express the real intention of the Legislature. It is regarded as more reasonable to hold that Legislature expressed its intention in a slovenly manner than that a meaning should be given to them which could not have been intended."

12. Now, reverting to the language of sub-section 2 (b) of section 9 it seems apparent that a literal construction offends the intention and object of the Legislation. It involves impulsive oppression, is absurdity or leads to unreasonable result plainly in variance with the policy of a statute as a whole. In this situation a harmonious construction should be adopted keeping in view the intention of the legislature, the language of the statute with its context and to avoid conflict, ambiguity and injustice. In view of this analysis in cases where allegations of mal-administration have been made the Federal Tax Ombudsman will have jurisdiction to investigate. The bar is in respect of investigation in assessment of income or wealth, determination of liability of tax or duty, classification or valuation of goods, interpretation of law, rules, regulation relating to such assessment, determination, classification or valuation in respect of which remedies specified are available but there is no bar against investigation in respect of allegations of mal-administration which are completely independent of the specified proceedings.

It is recommended that:

(a) That the CIT Zone B, Lahore invoke into into provisions of Section 138 of the Income Tax Ordinance, 1979 for the years 1997-98 to 2000-01 and pass order to meet the ends of justice.

(b) Inquiry be initiated and responsibility be fixed for the loss of assessment orders, CIT-90, and the Demand Notice for the years 1998-99 to 1997-98 from the file.

(c) Compliance report be submitted on or before 31.01.2002.



# FTO Directs CBR to Pay Reward to Excise Officials

By Haq Nawaz Khan

ISLAMABAD — Federal Tax Ombudsman (FTO) Justice Saleem Akhtar (R) has held that the reward for quantifiable detection of tax evasion cannot be held back even if the informer is a suspended government official. The FTO directed the Central Board of Revenue (CBR) to make payment of reward to a suspended superintendent of central excise and sales tax, who had lodged a complaint with the FTO Office, alleging that the department had been declining his due reward of Rs 41,000 since 1994.

After hearing the case the FTO ordered that the complainant, Bashir Ahmed Ansari should be paid the admissible reward and the compliance should be reported within 30 days. Regarding the plea of the department that the complaint should have been sent through proper channel, the FTO said in his decision that his office was not a part of the normal government channel and the complaint could not be disregarded by the office merely for the reason that it has not been sent through proper channel. About the SRO of April 19, 1999 regarding criteria for grant of Performance Bonus, the FTO maintained that SRO was not relevant to this case, adding that the Performance Bonus was essentially meant for exceeding the revenue to fixed revenue targets or any meritorious service. During the proceedings, the representative of CBR could not show any relevant reward order or rules, which carry any disqualification in respect of payment of reward for suspended officers.

In his order, the FTO stated that under the government order of November 25, 1984, a specific formula has been given in terms of grant of the rewards as percentage of the evasion detected and the amount of avoided tax recovered. Since rewards under this order are with reference to the actual benefit to the treasury, there is provision for disqualification of a person who is responsible for providing quantifiable benefit

# FTO's directive: claimant receives refund of Rs 77m

**Tahir Rathore**

ISLAMABAD: The Federal Tax Ombudsman Justice (R) Saleem Akhtar's order to refund a huge amount of Rs. 77 million has been implemented and compliance report in this regard has been sent to his office by the Central Board of Revenue.

The complaint made to FTO office was directed against the abuse of powers, mal administration and retention of money of the complainant. Karachi Shipyard and Engineering to Works Limited and also against non-implementation of the order of the Secretary of Law, Justice and Human Rights Division.

The refund claim of the complainant amounting to Rs. 77.112 million pertained to assessment years 1992-93 to 1997-98 has been issued and cheque thereby deliv-

ered to the assessee/complainant on December 14, 2001.

It may be recalled that the Federal Tax Ombudsman had directed the Revenue division while giving his findings /decision that the refund found due and payable/refundable should be paid to the complainant before December 15, 2001. Thus the judgement of the FTO stands implemented.

The FTO has noted that in the light of the ruling of the Secretary of Law, Justice and Human Rights Division in this case the assessments for the years 1992-93 to 1995-96 were not sustainable in law and that despite

clear findings of the said Secretary the department did not issue refund for these years.

Describing this unfortunate state of affairs, the FTO in his findings/decision observed: "It is very unfortunate to recall that the order of the Secretary Law, Justice and human rights Division, has not been implemented despite a lapse of more than two years and the complainant has lost all avenues for redresses of its grievances not because of its lethargy but because of the failure of the relevant authorities to act in the matter at the right time and in the right manner".

# FTO deplores CBR's tactics of delaying SC order

## RECORDER REPORT

**ISLAMABAD:** The Federal Tax Ombudsman Justice Saleem Akhtar has deplored the CBR's tactics to delay implementation of Supreme Court's order on one pretext or the other.

The Ombudsman directed the department to refund over Rs 1.8 million to a textile mill of Faisalabad and also pay additional compensation at the rate of 15 per cent per annum amounting to over Rs one million for the delay in making the refund.

The order came on the complaint of M/S JA Textile Mills Ltd which submitted that the profits were exempted from tax for five years from Jan 24, 1992 to Jan 23,

1997 under Sec 80 D of the Income Tax Ordinance, but the department introduced Sec 80 CC imposing withholding tax on export proceeds.

The levy was challenged in the Lahore High Court, which dismissed the complaint, following which the CBR recovered Rs 1,815,427. The complainant went in an appeal to the Supreme Court which in its judgement on June 4, 1997 held that the levy and recovery under Sec 80 D and 80 CC would not apply to the assesses to whom exemption and protection had been offered under the Economic Reforms Act. The apex court ordered the refund.

In the meantime, the CBR directed the Regional Commissioners of Income Tax that that according to the opinion of the Law and Justice Ministry, the refund could not be made. The complainant challenged the circular through a writ in July 1998. The circular was declared unlawful and the complainant renewed efforts to obtain the refund.

The complainant wrote three letters to the CBR without effect. Then he filed another writ in the Lahore High Court and the latter ordered payment of the refund within three months. But the Deputy Commissioner Income Tax refused to grant the refund. The complainant then appealed to the Commissioner of Income tax

who asked the DCT to reconsider the matter. In spite of several letters, there was no response.

When the Federal Tax Ombudsman secretariat put the department on notice, its representative came out with some excuses about the commencement of the period of exemption. The complainant challenged the validity of the order and the Supreme Court upheld the point of view that the tax levied under Sec 80 D and 80 CC will not apply to companies that are enjoying exemption.

The FTO order states that in fact the department has recovered Rs 1,815,427 under Sec 80D. The department had taken the plea that Rs 7,53,580 have been paid against demand under Sec 80D whereas the remaining amount of Rs 10,61,847 was collected under different sub-sections of section 50. It has also been admitted that this amount has been adjusted under Sec 80D. Therefore the entire amount of Rs 1,815,427/- has been recovered under Sec 80D. The plea that the assessee has failed to provide proof of the payment made under Sec 80 does not seem to be valid as while making adjustment and framing assessment order the Assessing Officer would have verified and must have ascertained that such payment has been made. After framing assessment and adjusting the demand under section 80D to ask for proof of deduction under section 50 is nothing but a crude attempt to delay and defeat the claim for refund.

The FTO order adds that the plea for refusing to grant of refund in the order dated 19-5-99 suffers from lack of understanding of law and its interpretation. The complainant had challenged the validity and vires of Sec 80D and Sec 80CC and has obtained favourable order from the Supreme Court as stated above. The only course left was to implement the judgement.

In these circumstances, the department's plea that the judgement will operate prospectively is misconceived and complete distortion of fact and law. The question

of operation of the judgement prospectively does not arise because the complainant had challenged the validity and once a provision of law has been declared not to apply to the assessee the same will operate from the day when such levy was imposed. Again the fact that the company had been paying the tax under Sec 80D voluntarily does not mean that it is estopped from challenging or recovering the tax already paid when it is not liable to pay the said tax. In such circumstances the question of estoppel does not arise. The complainant is therefore, entitled to a refund of Rs 1,815,427.

## SC ORDER IGNORED

The order states: "It is regrettable that the order of Supreme Court which is the highest judicial authority and whose pronouncement in respect of interpretation of any law is binding on every person or authority has been ignored and misconstrued on completely illegal grounds. The department on one pretext or the other had delayed to give effect to the Supreme Court judgement which is a most disturbing aspect and such trends in public functionaries should be checked and stopped."

The claimant has also claimed additional compensation under 102 of the Income Tax Ordinance. The Supreme Court had passed judgement on 4-6-97. The claimant by its letter 23-9-97 informed the department and in spite of more than a dozen letters and personal visits by its Advocate no reply was given and finally it was denied on misconceived ground. The complainant is entitled to additional compensation from 23-12-97 till payment at the rate of Rs 15 per cent per annum.

The following is recommended that:

(i) The complainant be paid refund of Rs 1,815,427.

The complainant be paid additional compensation from 23-12-97 till payment at the rate of 15 per cent per annum amounting to Rs 1,121,878.

(ii) Complainant to be reported within 30 days of the date of this order.

FRONTIER POST PESHAWAR 14 JULY 2001

## IT Dept asked to supply assessment order to salaried persons

**ISLAMABAD (SANA):** Federal Tax Ombudsman, Justice (Retd) Saleem Akhtar has directed the Central Board of Revenue to issue instructions to the Assessing Officers of the Salary Circle or Assessing the salary income to frame the assessment within three months of submission of the return and ensure to supply a copy of the assessment order to the assessee immediately.

He added that in case of assessment of salaried persons if their presence is required notice be sent to them through registered post or courier service and efforts should be made to hear the case expeditiously in time.

He gave these directives while deciding a complaint lodged in the office of FTO on 3.4.2001 by Sultan-ul-Arfeen son of Muhammad Bin, an employee of M/s Filters Pakistan Private Limited Hub, Balochistan regarding corruption and harassment by Income Tax Officials Salamuddin, UDC and Shabbir Ahmad Sheikh Special Officer of Income Tax Circle Hub

Balochistan. The complainant had alleged in his complaint that IT officials used to collect Rs. 100 to Rs. 300 every year for issuance of Income Tax Certificate/assessment order. This year the complainant objected against this corrupt practice and refused to pay bribe. Resultantly he was made victim of revenge and was served with a notice under section 61 of Income Tax Ordinance besides using other tactics of harassment and intimidation.

In the aftermath of investigation, the FTO held that the purpose of issuance of notice to the complainant was based on ill-intention and was mollified. The special officer, Income Tax Circle Hub, Shabbir Ahmad Sheikh, admitted in his explanation to the Commissioner Income Tax Sukkar that notice under section 61 IT Ordinance was issued by a UDC Salamuddin inadvertently otherwise it was not required under the relevant law in the salary cases for the assessment year 2000-2001.

The FTO, in his findings,

expressing his concern at the standard of supervision of the Income Tax Circle Hub, which was held by Special Officer Shabbir Ahmad Sheikh observed, it is not proper for an incumbent of an office to behave in such illegal and irresponsible manner and yet the Head of the Office remains oblivious of the conduct of such official. He added that it led to the conclusion that Head of the Office namely Shabbir Ahmad Sheikh had not acted with sense of propriety and sense of responsibility.

After all the Head of the Office remains responsible for conduct of all officials working under him otherwise the supervisory role would become meaningless, he maintained.

He recommended to the CBR to initiate proper legal and disciplinary action against a Salamuddin son of Amiruddin UDC and Shabbir Ahmad Sheikh, Special Officer for committing acts of mal-administration within 30 days. He has also asked for compliance report in this case within 30 days.

FTO solves 11 puzzle relating to over Rs0.3m income

## OVERLAPPING HEAD

**AHEAD** If your annual income is \$300,000, it does not mean that millions of perks will not be assessed if tax. This is the landmark finding of a recent landmark study by the IRS. The study found that there had been a source of hundreds of thousands of dollars in the hands of taxpayers.

[illegible]

on those where an anniversary, income, including salary and pension, exceeded Rs 300,000; was deprivation of the house rent, or He filed a complaint with the Tax Commissioner, whose final order came only last week.

[illegible]

Bank, Multan, because to the PTO that his total income for 1990 was \$200,000 and his net income was \$100,000. He is including his net income in his 1991 tax return. The earnings and profits for 1990 are \$100,000 and his net income is \$100,000. He is not including his net income in his 1991 tax return. He is including his net income in his 1991 tax return.

and 10 percent annual interest under Regs. 1.163-13 and 1.163-14, as amended, and 10 percent of the unpaid principal amount of the debt, as provided under Rule 13 and 14 of the second schedule of the award, the exemptions, the

officer, advised the commission that the voice has not been identified. He said that the voice is not being listed at the moment, but has been on a list of names since Nov. 1 of 1969.

that order rule (OAR), where  
465, 000,000 in store and this  
is received in only the upside

amount is taxable. It was, however, pointed out that in order to determine whether the income of an employee is Rs. 800,000 or more as envisaged in sub-rule 1A of rule 7, the initial valuation of prerequisites and allowances should be made in accordance with rules 4 to 18 of

The ITCA, 1997, stated that the con-

planetary commentators were found to have mislabeled, except for an erroneous reference to rule 17, instead of rule 13(4), in the context of convenience allowance, which had no bearing on the main issue. The FTC asked for further examination of the Revere-Durham through a letter

I am directed to refer to your letter No. 41258(Huap/2001) dated 17.07.2001 containing reply to the above complaint and to say that during the hearing of the

complaint it was observed that the CRR (Circular No.7 of 1998) dated 17th July 1998 referred to in the report contains only two examples in both of which the salary of the salaried person is Rs. 50,000 as against the perquisites amounting to Rs. 1,50,000. The circular does not then contain any clarification as to how such

—TIA. Valuation of perquisites—all-monies benefits where salary is

The plant of *arisaema* all the Regional

perquisites are taxable in cash if the perquisite is convertible in cash in the next financial year. If the perquisite is not convertible in the next financial year, it is not taxable. For example, if a company provides a car to its employees, the perquisite is taxable if the car is convertible in cash in the next financial year. If the car is not convertible in cash, it is not taxable. This view does not however

appear to be in accordance with subrule 1.1.1 and 1.1.3 of rule 3 of the Income Tax Act, which reads as under:

(10) Valuation of perquisites, allowances, benefits: (i) For the purposes of computing the income chargeable under the head "salary", the value of perquisites, allowances and benefits to be included in the salary shall be determined in accordance with the provisions of rule 13.

11 A Where the income chargeable under the head "salary" of an employee computed under sub-rule (1) is three times that thousand rupees or more for any income year the value of perquisites, allowances and benefits shall be deemed to be nil.

It seems to be evident from the above that according to the rules the value of  $\text{periphrasis}_{\text{res}}$  has first to be determined in accordance with rules 1 to 18 and only then in accordance with the final "rules" in total income under the head "values".

three hundred thousand types of notes according to such computation, will be processors of rule PVA be attracted? In the case of cash human rent allowance of employees it is, for instance, provided while it that only such part of the allowance will be included in income as exceeds a

Thus in order for the threshold of \$5,300,000 (investment in sales,  $M(A)$ ) and  $M(A)$  to be reached, only a small part of the bonus will be awarded. For instance, with a bonus rate allowance for instance, will automatically be 14.2% (see below).

During the last six months of the completed study, under reference the respondent who is an employee of Wal-Mart Stores (retailer) has furnished examples of calculation of salary income including percentages.

which has usually been sustained by the Bank for its employees. It seems that the consequences given by the Bank are in accordance with the income tax rules referred to above but it is in accordance with the department's reply forwarded by Revenue Division. The contents of the Revenue Division are enclosed in the body of the letter.

above which may be made as suitable with  
in 60 days

Part I of the First Schedule to the Income Tax Ordinance 1979, the perquisites and allowances, are taxable as salary.

and Black in respect of an employee whose salary (inclusive of allowance and perquisites) exceeds Rs. 50,000. The quantity of valuation of perquisites, allowances and benefits for the purposes of computing income under the head 'salary' under sub-rule (1) of rule 3 of

<sup>3</sup>As is evident from the provision, it is only the "first" of the "several" years (1991 and subsequent years) that is extended.

The First Schedule providing the same is primary legislation and would prevail.

The FTD's order continues, "It also seems that the response of the Revenue

to be again forced to address the basic question in the complaint that when salary was more than \$1,000,000, all employees must abide in such weight be made but in order to see whether salary was in fact \$1,000,000 or more, the employees would be valued in accordance with rule 1 of rule 1 of the 1950s.

Tax Rules v/z the exemption etc of allow-  
able in accordance with rule 4 in 18 of the  
Income Tax Rules would be given before  
the perquisites and allowances are consid-  
ered in the context of the threshold  
of Rs. 500,000 declared in sub-rule 1A of  
rule 3 and in rule 6A of the Income Tax

It was also seen that the respondent's reference to sub-para (c) and (b) of para graph A of Part of the First Schedule to the Income Tax Ordinance was quite misapplied as the sub-para finally only represented conventional rates of tax on transactions where a sale occurred.

approximately where thirty years ago, the population in the sub-purges is about 100,000. In the last 30 years, however, the populations were not as abundant in order to reach the threshold 80,000-90,000. As regards the observation that the First Sub-purge was a primary population which prevailed over the other, the point is again

but void because in fact there were no willows between the Income Tax and the Income Tax Rules of

Further, framing of rules by the central Board of Revenue to provide for the determination of value of any allowance, benefit or perquisite has been specifically mentioned in section 165 of the Income Tax Ordinance, which deals

7. In the light of observation above, the Revenue Division was asked to depurge its personnel and to request the Chief Tax Officer to request the Chief of Direct Tax to depurge the staff of the Chief of Direct Tax. The Revenue Division was also asked to request the Chief of Direct Tax to depurge the staff of the Chief of Direct Tax.

they would have the same examined again in the CBR. Subsequently a letter No.F-4/7344nsq001 dated 9/10/2001 has been received which reads as under:

The provision of rule 5(1) of Income Tax Rules 1962 are being applied by the assessing officers in

The example attached by the applicant along with the petition is, therefore, not

<sup>1</sup> I am directed to refer to your friend).

dated October 6, 2000 to the subject and advised that it fully concurred in the conclusions and recommendations of the committee and also stated that it fully concurred in the findings of the committee and the recommendations of the committee. The committee also stated that it fully concurred in the findings of the committee and the recommendations of the committee.

**THE FIVE-ORDER CONCLUSIONS**

Since the complainant's contention has been accepted by the Reserve Bank of India, it is recommended that the Commissioner of Income Tax may make the powers as laid in the Income Tax Ordinance as to modify the assets

percent in the year 2000-2003 in the birth of the above-mentioned companies will be reported within 30 days."

# Customs official demoted

## RECORDER REPORT

ISLAMABAD: A customs official has been demoted from Grade 16 to 14 for inefficiency and misconduct under the Removal of Service Rules.

An inquiry against the official, Mohammed Ayaz Khwaja, Superintendent, Collectorate of Customs, Sales Tax and Central Excise, Multan, was ordered against him by the Federal Tax Ombudsman for harassing a restaurant owner of Rahimyar Khan and excessive assessment of latter's income. The hotelier had complained to the FTO that due to personal vendetta, the officer put him to great harassment and inordinate tax demand.

After hearing the case, the FTO found the restaurant owner to be right and asked for an inquiry by the department. In

compliance of the FTO directive, the inquiry was conducted which found that the charges against the official were fully established.

After due formalities of show-cause notice and the response of the official, Secretary, Revenue Division, ordered demotion of the officer from Superintendent (BS-16) to Deputy Superintendent (BS-14) for three years.

It may be mentioned that the official estimated the annual turnover of the restaurant at around Rs 22.3 million and the excise duty payable was Rs 2.7 million.

The FTO found that the case against the hotelier, who employed two waiters and five cooks, was totally based on presumption and fabrication and without any substance.

# LETTERS OF APPRECIATION

A large number of complaints have acknowledged the relief provided to them on the recommendations of Federal Tax Ombudsman. Some of them have wished to record their gratitude as well. While the Federal Tax Ombudsman wishes to place on record that he has only discharged his statutory obligation, he has approved inclusion of following acknowledgements for conveying them to the Government who created this statutory office.

Mr. Liaquat Ali, a school teacher of a village of Jhelum, has written letter with the subject:

بہت بہت شکر گزار اور احسان مند

میں پورے تہہ دل بلکہ دل کی اتھاہ گہراہیوں کے ساتھ آپ کا بہت زیادہ مشکور و ممنون ہوں کہ آپ نے میرے بغیر کسی پیسے کے خرچ کے مجھے اپنا حق دیدیا ہے اور ایک اسلامی حکومت کی روایت کو تازہ کیا ہے۔

میں جناب کا بار بار شکر گزار اور احسان مند ہوں اللہ تعالیٰ آپ کا درجہ بلند کرے اور تاقیامت زندگی دے اور صحت و تندرستی دے۔ (آمین)  
آپ کا بہت بہت شکریہ۔

An other complainant M/s Mussarat Textile Mills Lt., from Faisalabad, writes "Federal Tax Ombudsman's efforts are very much appreciated in the business circle. Our dues were pending for the last many years but nobody was listening/daring to release our refund. This is all due to your good offices that we received our money."

Mr. Zahid Ahmed of M/s Ikram (Pvt.) Ltd., of Jhang Road Gojra, states that "I appreciate your justified favorable consideration and highly thanks for this job. But the attitude of most officers is now highly undesirable in the income Tax department."

Mr. Hanif Adamjee an American national states that "I am very thankful to your Lordship in providing me justice. My grievance has been over. It is respectfully pointed out that due to the finding



Mr. Mohammad Zahid Khan of Islamabad, on redress of his complaint says, "The case of Rs: 6,700/- only pending with the tax office for the last five (5) years was resolved in no time. I am grateful to the Federal Tax Ombudsman for initiating an early action in the matter."

Syed Muthair Shah praise in following words " I would to thank the worthy Tax Ombudsman and his staff for the prompt disposal of the case and just decision."

Mr. S.H. Mahmood of Karachi, on disposal of his complaint says, "I am gratefully to the Hon'ble Tax Ombudsman and the Secretariat for their intervention and directives which made Custom House Act so promptly. The efforts of the ombudsman Secretariat in this matter are really laudable and I am extremely thankful for the valued help of this pious office. I am also confident that the Ombudsman office will remain a blessing for the suffering people."

Mr. Abdul Qadir of Faisalabad says,

میں عبدالقادر مالک 18-cell-2000 اقبال سٹیڈیم فیصل آباد دل کی گہرائیوں کے ساتھ آپ کا شکر گزار ہوں کہ آپ کی مہربانیوں اور بروقت کارروائی سے مجھے محکمہ انکم ٹیکس سرکل نمبر 40 فیصل آباد سے ریفرنڈ مبلغ -/140,772 روپے کا واپس وصول ہو گیا ہے۔ میں امید کرتا ہوں کہ آئندہ بھی آپ جیسے نیک فرشتہ صفت انسان اسی طرح سے محبت وطن شہریوں کا حق دلواتے رہیں گے اور ہم انشاء اللہ نیک نیتی کے ساتھ اپنے ذمہ واجب الادا ٹیکس عین وقت پر ادا کرتے رہیں گے۔

Dr. Muhammad Abid Director of Textto Print Faisalabad, Mr. M. Salim Metla Gp. Capt. (R) of Lahore, Mr. Saeed Shah Bokhari Advocate of Kohat, Mian Wahid Shah Chief executive of Allied Flour Mills (Pvt) Ltd., Peshawar, Mr. Akhlaq Ali Khan of Lahore,

Ch. Iqbal of Ch. Iqbal & Co. Gujranwala, Mr. Kanwar Sharafat Ali, ITP of Faisalabad, Manager, M/s Zia & Co. of Sialkot and Khwaja Bakhtiar Ahmad, Director Finance of Wyeth Pakistan Ltd., Karachi have given their complements on resolution of their complaints & grievance.

## **ESTABLISHMENT OF THE OFFICE OF FEDERAL TAX OMBUDSMAN.**

Mr. Muhammad Ashraf Hashmi, President All Pakistan Tax Bar Association, while Commenting on the Establishment of the Office of Federal Tax Ombudsman state as follow:

"Establishment of Federal Tax Ombudsman Tax Ombudsman Secretariat is in fact the fulfillment of age-old aspirations of the Members of All Pakistan Tax Bar Association as well as the Tax Payers community of our beloved country. We wish to extend our sincerest felicitation to the present Regime, especially, General Pervez Musharraf, President of Islamic Republic of Pakistan, and Mr. Shaukat Aziz, Federal Minister for Finance, Govt, of Pakistan upon the installation of this prestigious Secretariat which was the need of present era and also for perpetual support and patronage of the organization.

Whereas one of the major cause of the remarkable success and accomplishment of the institution of the Federal Tax Ombudsman is the fact that a Senior Jurist of the caliber of Mr. Justice (R) Saleem Akhtar, Federal Tax Ombudsman is at the helm of the affairs, another important causative factor too cannot be lost sight of.

We appreciate the efforts of the Federal Tax Ombudsman who has in a very short period brought confidence among the tax practitioners, tax payers as well as tax administration".