Federal Tax Ombudsman's

Annual Report 2004

Federal Tax Ombudsman's Annual Report 2004

Office of the
Federal Tax Ombudsman
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Acting President Muhammadmian Soomro administering oath of office to Federal Tax Ombudsman Justice (R) Muneer A. Sheikh at Aiwan-e-Sadr, Islamabad on December 8, 2004

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JUSTICE ® MUNIR A. SHEIKH
FEDERAL TAX OMBUDSMAN

Islamabad, March 15 ,2005

Dear Mr President

السلام علیکم

I took over Office of the Federal Tax Ombudsman on December 8, 2004. It is my proud privilege to submit herewith the Federal Tax Ombudsman's Annual Report for the calendar year 2004 pursuant to Section 28(1) of the Establishment of the Office of the Federal Tax Ombudsman Ordinance, 2000.

2. The report pinpoints the maladministration on the part of the tax collecting departments and their functionaries under the Revenue Division. It also highlights the irritants with a view to seeking solution to the problems and providing relief against injustice done to the taxpayers.

3. The institution of Ombudsman is recognized the world over as the leader in providing timely and free of cost justice to the aggrieved taxpayers. This concept of delivery of speedy and quality justice has acquired a new trend of placing extra premium on the performance of Federal Tax Ombudsman in the protection of the rights of the taxpayers.

4. During the year under review, relief has been afforded to a large number of complainants directly, while many others have indirectly benefited from the precedent established through the reported cases. The recommendations made by the FTO based on his findings, have substantially helped the Revenue Division to bring about a change in their routine practices and reform the system and procedures.

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5. There are, however, three major stumbling blocks in the way of orderly and efficient functioning of the FTO's office, viz:-

i. Non-delegation of financial and administrative powers to the FTO on the analogy of sister institutions like Wafaqi Mohtasib, Federal Shariat Court, Election Commission of Pakistan, etc. in the absence of which time and energy get wasted in pursuing the concerned Ministries in order to dispose of day-to-day government business.

ii. Hardship to the taxpayers exists with regard to President's directive of December 10, 2001. According to the earlier directive of November 8, 2001 of the Honourable President, once a Representation is filed by the CBR, status quo had to be maintained by all concerned. This decision was reversed by the directive referred to above. Now, only the recommendations of the FTO are to be kept in abeyance. The result of this change is that while the Department complained against proceeds with impunity with impugned action, the recommendations made by the FTO remain unimplemented. This causes hindrance in the process of justice.

iii. The office accommodation available for the FTO Headquarters in Islamabad is highly insufficient. The staff members of the FTO's Office have been housed at two different places due to non-availability of required space at one place.

6. I am sure that FTO's Office will, as usual, with your guidance and support, continue to serve the people in a befitting manner and help achieve the goal of good governance.

With profound regards,

Sincerely yours

(Justice (R) Munir A. Sheikh)
Federal Tax Ombudsman

EXECUTIVE SUMMARY

Fifth Annual Report

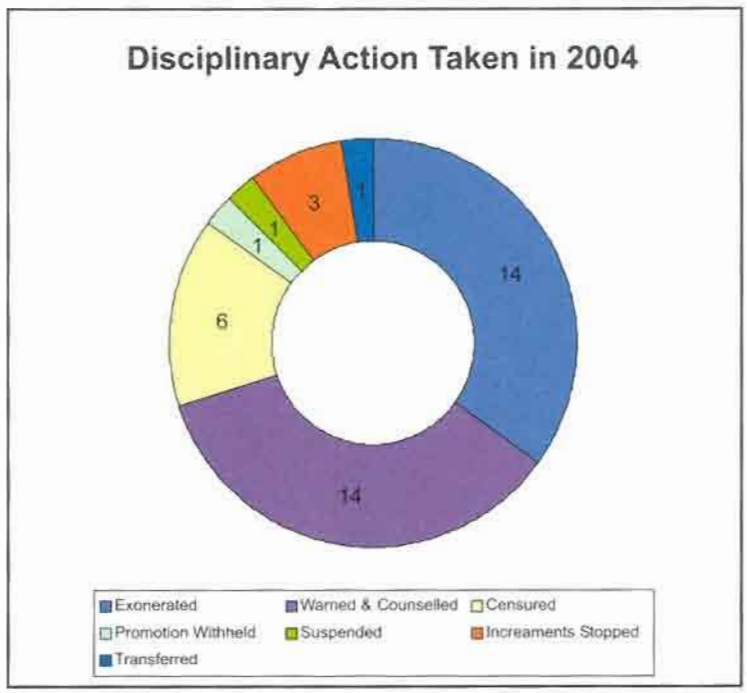
This is the fifth Annual Report of the Federal Tax Ombudsman (hereinafter called FTO). It dilates on FTO's performance for the year 2004. The report pinpoints maladministration committed by the revenue collecting departments and their functionaries. It also highlights the recommendations made by the FTO which not only afforded relief to a large number of taxpayers but also enabled the tax collecting departments under Revenue Division to change their mindset and reform the system and procedures. This is the difference the FTO has been able to make in achieving the goal of good governance. The report covers the details about total number of complaints admitted, investigated and disposed of.

Charter of the FTO

2. The office of the FTO was established on September 19, 2000. The charter of the FTO, according to the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 (hereinafter called "the Ordinance"), is to diagnose, investigate, redress and rectify any injustice done to a person through maladministration by the functionaries administering tax laws. The jurisdiction of the office does not extend to those cases that are sub judice before a Court or Tribunal of competent jurisdiction or those that fall within the executive functions of the Tax Authorities such as assessment of tax, value classification of goods, etc. Additionally, the FTO may take cognisance of any case referred to him by the President, the Senate or the National Assembly or a motion of the Supreme Court or the High Court during the course of any proceedings or of his own motion. The basic consideration is to ensure that rights of the taxpayers, to the extent possible, are respected and principles of good governance followed.

Disciplinary Action Taken Against the Delinquent Officials

3. Every finding in which maladministration is noticed on the part of the tax employees is always followed by recommendations in order to get the wrong corrected. "Compliance and Monitoring Section" was established in FTO's Office with the aim to ensure in time implementation of the recommendations. Disciplinary action was taken against a number of delinquent officials on the recommendation of FTO. This has not only helped to restore confidence of the stakeholders but also paved the way for enlisting their support.



Compliance of FTO's Recommendations

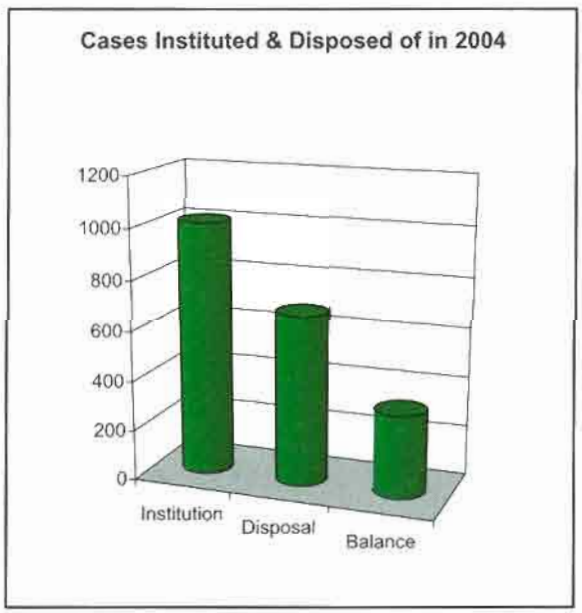
4. Positive attitude was shown, by and large, by the tax collecting departments in the compliance of the recommendations made by FTO. This helped to facilitate expeditious dispensation of justice. Yet, in many cases frivolous and baseless review applications and representations were resorted to

in order to impede the implementation of the recommendations, which trend needs to be arrested.

5. Another factor which has resulted in delay regarding implementation of the Recommendations is the President's directive of December 10, 2001 whereby earlier directive of November 8, 2001 that on filing a Representation to the President against the Findings and Recommendations of the FTO status quo is to be maintained has been changed into keeping the Recommendations in abeyance. The result of this change is that while the Department complained against proceeds with impunity with impugned action, the recommendations made by the FTO remain unimplemented. This causes hindrance in the process of justice.

Complaints Received and Disposed of

6. During the year under review, 1010 complaints were received while 1143 cases were disposed of, which included 467 cases carried forward from the preceding year. 234 Representations were made to the President against the Findings of FTO. Out of these, 75 were rejected.



Representations Made to and Rejected by the President

Year	Previous Balance	Institution	Total	Disposal	Balance
2001	0	29	29	9	20
2002	20	227	247	17	230
2003	230	324	554	269	285
2004	285	234	519	162	357
		814		457	357

Significance of FTO's Recommendations

7. The mandate of the FTO is to eradicate malpractices in tax administration system and, thereby, restore stakeholders' trust and confidence. Remedial measures recommended by him to improve the system of tax administration and provide correct tax assessments are significantly helping the promotion of investment, both foreign and local.

Some Causes of Maladministration

8. FTO identified some causes of maladministration and recommended appropriate steps for their eradication. Major irritants causing discontent among the taxpayers were found in the following areas:-

i) Improper maintenance of record of taxpayers.
ii) Reluctance to issue determined refunds.
iii) General slackness in responding to taxpayers' applications/enquiries.
iv) Subversion and disuse of prescribed office procedures.
v) Lack of expertise in matters relating to Government Servants Conduct, Efficiency & Discipline Rules.
vi) Arbitrary and undesirable proposals/advice for legislation–[Deeming provisions]

vii) Discontinuance of prescribed periodical inspections.

viii) Improper maintenance of record of performance.

ix) Unlawful and extra legal decision making.

x) Deficiency of knowledge and skills.

xi) Discriminatory legislation relating to Amnesty Schemes.

Adverse Effect of the Irritants

9. These irritants invariably cause (a) Corruption (b) Delay in decision making and (c) delay in payment of refund As a result, the confidence of honest taxpayers gets impaired, the investors particularly the foreign ones, get discouraged; thereby causing loss to the national exchequer.

FTO Institution is Complementary to Revenue Collecting Structure

10. FTO provides accountability and transparency and also gives relief to the taxpayers. This, however, is not an adversarial relationship with revenue collecting departments. Because, he diagnoses irritants and recommends systemic reforms. FTO plays an important role to bridge the gulf of "trust deficit" which exists between the taxpayers and the tax collecting departments. A greater trust between the two sections is bound to yield higher tax receipts in the long run.

Appreciation of FTO's Work by the Stakeholders

11. Various stakeholders have appreciated the excellent work being done by the FTO in providing justice to them and in meeting the objectives for which this institution was created. Some letters of appreciation to this effect have been included in this report.

Conversion of Record of Disposed of Cases into Electronic Form

12. Another achievement of the office of the Federal Tax Ombudsman during the year under report is that the entire record of more than 5000 disposed of complaints has been converted into Electronic Form.

Cooperation in International Fora

13. There are 270 Ombudsman Institutions in 114 countries of the world. Two major international organizations represent the Ombudsmen of different countries/regions. They are: (i) the International Ombudsman Institute (IOI) and (ii) the Asian Ombudsman Association (AOA). Pakistan is a member of the Board of Directors of the IOI since 1984, President of the AOA since its inception in 1996 and has regularly been taking active part in meetings organized by the two organisations.

(i) International Ombudsman Institute (IOI)

14. The IOI, based in Canada, has the objectives, inter alia, of promoting concept of Ombudsmanship, encouraging and supporting research, developing and operating educational programmes having links with Ombudsmanship and collecting, storing and disseminating information about the Ombudsmanship institutions. Its Board of Directors consists of 20 members. The Board meets every year. The FTO Institution is one of the 163 voting members. FTO participated in the VIIIth Conference of the Institutional Ombudsman Institute from 7 September 2004 to 10 September 2004 held at Quebec (Canada).

(ii) Asian Ombudsman Association (AOA)

15. Pakistan initiated the idea of creation of the Asian Ombudsman Association (AOA). It was established in 1996 with its Headquarters in Islamabad. Pakistan was elected as President. In the AOA's Session of the General Assembly held in Seoul (South Korea) on April 29, 2004, Pakistan was re-elected as President of the AOA.

16. As a result of the interaction and exchange of views, experience and information among the delegates of the member states, effective strategies were evolved to ensure access to speedy and free of cost justice for alleviating the sufferings of the common lot.

17. FTO participated in the following conferences and meetings held under the auspices of the AOA:-

- Visited Bangladesh from 3rd September 2003 to 6th September 2003 on the invitation of the President, Bangladesh Enterprises Institute, Dhaka, to attend the "Sectoral Workshop on Customs and Taxation".
- Visited Seoul (South Korea) from 26th April, 2004 to 29th April, 2004 to participate in the 8th Asian Ombudsman Association Conference on the theme of, "The Ombudsman and Strengthening of Civil Rights in Asia".
- Visited New Delhi (India) from 1st June, 2004 to 6 June, 2004 on the invitation of MC Mehta Environmental Foundation, to hold one of the sessions of the Moot Court on the World Environment Day, the 5th of June, 2004, and deliver a talk at the training programme for the young lawyers from SAARC countries on the main theme of "Understanding Environmental Law and Policy".
- Visited Kathmandu (Nepal) from 20 June 2004 to 28 June 2004 on the invitation of Environmental and Justice Education Programme of Forum for Justice, to attend the South Asian Judicial Interaction Programme on Environmental Justice and Equity.

Budgetary Allocations for the Financial Year 2004-2005

18. Funds to the tune of Rs.36,396,000/- have been allocated during the current financial year as against an allocation of Rs.34,195,000/- during the financial year 2003-2004.

Research, Development and Study Cell

19. In order to keep up with the rapidly changing international practices and to build a coherent system that reflects the changes that are taking place, it is imperative to keep track of the best practices with a view to ensuring their adoption and adaptation in the functioning of our institutions and system to achieve the goal of good governance. An essential part of the FTO's Office is to reach out the International network wherever possible, practical and useful, to seek advice.

20. A Research, Development and Study Cell (RD &SC) has been established at Regional Office Karachi under the general supervision of FTO's Office, Islamabad with the scope as envisaged under section 9(4) of the Ordinance.

21. The RD&SC is expected to use the expertise gained during the course of investigation of various complaints filed by aggrieved taxpayers against different tax collecting departments and their functionaries. The findings and recommendations made on such complaints pinpoint the extent of maladministration on the part of the tax collecting departments and their functionaries. They also highlight the irritants which cause discontent among the stakeholders. Based on such findings and recommendations, a number of maladies of tax administration have been diagnosed and identified. Yet, the causes whereof still need in depth study so as to prescribe proper solution to the problem.

22. The RD&SC has to achieve the following:-

i. to carry out the objectives of the Ordinance;
ii. to beef up the human and technical resources of the Ombudsman Institution;
iii. to develop ways and means of addressing main causes of corrupt practices in the Federal Tax Administration;
iv. to make suggestions as to the eradication of these practices;

v. to create awareness among taxpayers about issues of tax administration; and

vi. to formulate modification in the laws in vogue in the light of the recommendations made by the FTO with a view to improving the working of tax administration.

23. The RD & SC has inter alia carried out the following studies:-

i) Draft Taxpayers' Bill of Rights (Annexure-I)

ii) Code of Conduct of the Advisory Committee (Annexure-II)

iii) Report on Irritants in Federal Tax Administration, Regulation and Statutes (Annexure-III)

iv) Historical Perspective of office of Ombudsman (Annexure-IV)

Problems Faced by FTO's Office

24. The FTO's office is beset with the following three significant problems, which hamper its orderly functioning:-

i. Non-delegation of financial and administrative powers to the FTO on the analogy of sister institutions like Wafaqi Mohtasib, Federal Shariat Court, Election Commission of Pakistan, etc. in the absence of which time and energy get wasted in pursuing the concerned Ministries in order to dispose of day-to-day business.

ii. Hardship to the taxpayers exists with regard to President's directive of December 10, 2001. According to the earlier directive of November 8, 2001 of the Honourable President, once a representation is filed by the CBR, status quo had to be maintained by all concerned. This decision was reversed by the directive referred to above. Now, only the recommendations of the FTO are to be kept in abeyance. The result of this change is that while the Department complained against proceeds with impunity with impugned action, the recommendations made by the FTO remain unimplemented. This causes hindrance in the process of justice.

iii. Office accommodation available for the FTO Headquarters in Islamabad is highly insufficient. The staff members of the FTO's Office have been housed at two different places due to non-availability of required space at one place.

Future Programme

25. FTO's Office has planned to establish Management Information System(MIS), which will cover:-

i. establishment of online networking between the Headquarters and Regional Offices;
ii. computerization of Budgetary Allocations and Accounts;
iii. building a database of decisions and their retrieval mechanism;
iv. database of Complaints; and
v. database of personnel.

26. The MIS is an important and vital resource of operation and management of an organisation. It facilitates timely action and decision with accuracy and provides information for modelling and forecasting. The MIS will help enable the FTO Headquarters to have direct online linkage with the Regional Offices which will enhance efficiency and performance.

27. In summary, Office of the Federal Tax Ombudsman has established itself as a credible institution providing free of cost justice to the needy. There has to be at the same time a clear understanding that there are certain challenges before it – challenges that require an understanding of the role of the Ombudsman, the nature of work assigned to him and the resources provided to him for carrying out the responsibilities. On his part the FTO is fully committed to meeting those challenges and continue to build upon the work already done.

INTRODUCTION

The Institution of Ombudsman has its roots in the injunctions of the Holy Qur'an. ALLAH ordains in Surah An-Nisa (V 58) "When ye judge between man and man, that ye Judge with Justice" and again in Al-Maeda (V 8), "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". The Holy Prophet (SAWS) himself used to hear and redress the complaints. Khulafa-e-Rashedeen followed the tradition.

2. Based on his experience on the working of the Office of the Dewan-i-Mazalim (Office of the Redressal of Injustice) in Turkey, Charles XII, the King of Sweden, passed a law, in 1809, to establish a similar institution under a Swedish name, "Ombudsman". The word 'Ombudsman' is Swedish in origin and literally translated means 'grievance person" The Office of Ombudsman in its developed form has so far been established in 114 countries of the world to deal with complaints relating to administrative departments of the state.

3. The Office of the Federal Tax Ombudsman was established through promulgation of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 (Ordinance XXXV of 2000) and it started functioning on September 19, 2000. The office is located at State Enterprises Complex, 5-A, F-5/1, Constitution Avenue, Islamabad, with two regional offices in Karachi and Lahore.

4. The Federal Tax Ombudsman's Office is an independent quasi judicial institution having well defined jurisdiction, functions, powers to provide relief to the taxpayers who are victim of maladministration at the hands of any of the department collecting federal taxes, be it Income Tax, Sales Tax, Customs or Central Excise. The aim is to introduce accountability in the tax administration, achieve good governance and healthy tax culture in order to restore trust of the taxpayers and confidence of the investors.

5. Justice (Retd) Saleem Akhtar was the first Federal Tax Ombudsman, (hereinafter called FTO) who held office from September 2000 to September 2004. His successor, Justice (Retd) Munir A. Sheikh, took over as FTO on December 8, 2004.

6. The main function of the FTO as contained in the Ordinance, is to diagnose, investigate, redress and rectify any injustice done to a person through maladministration by functionaries administering any of the federal tax laws.

7. The FTO has been empowered to conduct research and study, constitute inspection teams, establish standing or advisory committees, seek information, analysis, comments, etc. for formulation of policies and procedures and improvement and reformation of rules and regulations. The investigation of multifarious complaints relating to different spheres of operations of the Revenue Division and the tax functionaries in the Federal Tax Departments were conducted during the year under report. To prescribe appropriate remedies for achieving the purpose of the creation of the office of the FTO i.e. instituting efficient methods of dispute resolution; and to allow prompt redressal to taxpayers' grievances arising from different forms of maladministration, more indepth studies are being conducted. As a result, a number of irritants have been identified and systemic reforms, which are essential for a dynamic and transparent tax administration, recommended to the revenue departments.

8. The report contains a brief description of the output, achievements and identification of areas of maladministration on the part of the tax departments and their functionaries during the calendar year 2004. It also highlights the irritants, which caused grievance to the taxpayers. The report covers the recommendations of FTO made to the concerned tax departments to take measures to provide quick relief to the aggrieved taxpayers.

9. During the year, 1010 complaints were received, while 1143 cases were disposed of which included 467 cases of the preceding year. Out of 234

Representations made to the President against the Findings of the FTO, 75 were rejected. Out of 94 Review application, 65 were disposed of.

10. A sum of Rs.36,396,000 has been allocated to FTO's office during the financial year 2004-2005 as against an allocation of Rs.34,195,000 during the year 2003-2004 as detailed below:-

Budget Allocation during the Financial Year 2004-05	**Rs.**	**36,396,000**
Employees Related Expenses	*Rs.*	*14,657,000*
Operating Expenses	*Rs.*	*20,009,000*
Transfers	*Rs.*	*180,000*
Physical Assets	*Rs.*	*1,000,000*
Repairs and Maintenance	*Rs.*	*550,000*
Total	***Rs.***	***36,396,000***
Budget Allocation during the Financial Year 2003-2004	***Rs.***	***34,195,000***
Employees Related Expenses	*Rs.*	*13,481,000*
Operating Expenses	*Rs.*	*19,234,000*
Transfers	*Rs.*	*180,000*
Physical Assets	*Rs.*	*750,000*
Repairs and Maintenance	*Rs.*	*550,000*
Total	***Rs.***	***34,195,000***

11. Any complaint in which maladministration is noticed, on the part of the tax collecting departments or their functionaries, is followed by recommendations with the aim to get the wrong corrected and to provide a redressal of the grievance. "Compliance and Monitoring Section" was established in the FTO's Office for the implementation of the recommendations. Disciplinary action was taken by the departments concerned in the light of the recommendation of the FTO against a number of officials who were found guilty of administrative excesses. This has not only helped to restore confidence of the stakeholders in FTO institution but also paved the way for enlisting their support.

12. There are 270 Ombudsman Institutions in 114 countries of the world. Two main international organizations represent the Ombudsmen of different countries/regions. They are: (i) the International Ombudsman Institute (IOI) and

(ii) the Asian Ombudsman Association (AOA). Pakistan is the member of the Board of Directors of the IOI since 1984, President of the AOA since its inception in 1996. The FTO Institution is one of its 163 voting members. Pakistan had initiated the idea of creation of the Asian Ombudsman Association (AOA). Regional cooperation nowadays is considered complementary to better understanding between the comity of nations; for the world has taken shape of a global village. The AOA was established in 1996 with its Headquarters in Islamabad. Pakistan was re-elected as President on April 29, 2004.

13. FTO Institution is member of the AOA. As a result of the interaction and exchange of views, information and experience among the participants in different conferences and meetings held under the auspices of the IOI and AOA, effective strategies were evolved to ensure access to speedy and free of cost justice for alleviating the sufferings of the people.

14. Research, Development and Study Cell (RD & SC) established in FTO's Regional Office, Karachi on 23 May 2003, has, after indepth study of complaints, identified some major causes of maladministration. Remedial measures taken for eradication of these irritants are helping significantly in the promotion of investment, both foreign and local.

15. A number of stakeholders have appreciated excellent work being done by FTO's Office to bridge the gulf of "trust deficit" that exists between them and the tax collecting departments and providing quick and free of cost justice. Some appreciation letter to this effect are placed at the end of this report.

Salient Characteristics of the FTO's Office

- It is independent of executive.
- It is easily accessible.
- It is free of cost.
- It is welfare-oriented, yet has no adversarial relationship with the revenue collecting departments.
- It is result-oriented.

- It delivers speedy and free of cost justice.
- It bridges the yawning gap that exists between the taxpayers and the revenue authorities, thereby mitigating "trust deficit".
- It has 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.
- "The Ordinance" have effect notwithstanding anything 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).
- It enjoys immunity. No suit, prosecution or other legal proceedings shall be against the Federal Tax Ombudsman, Staff Members, Inspection Team, Members of a Standing or Advisory Committee, nominee of Office, or any person authorized by the FTO for anything which is in good faith done or intended to be done under the Ordinance.
- It has the authority to enter and search any premises.
- It has the powers to grant compensation.
- It has authority to recommend institution of criminal or disciplinary action.
- It has powers to review its own finding communicated or recommendation made or any order passed.
- It has power to punish for contempt.

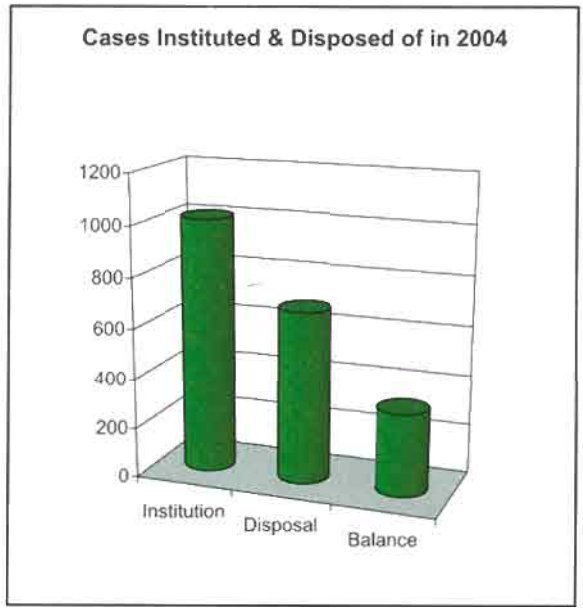
Chapter I

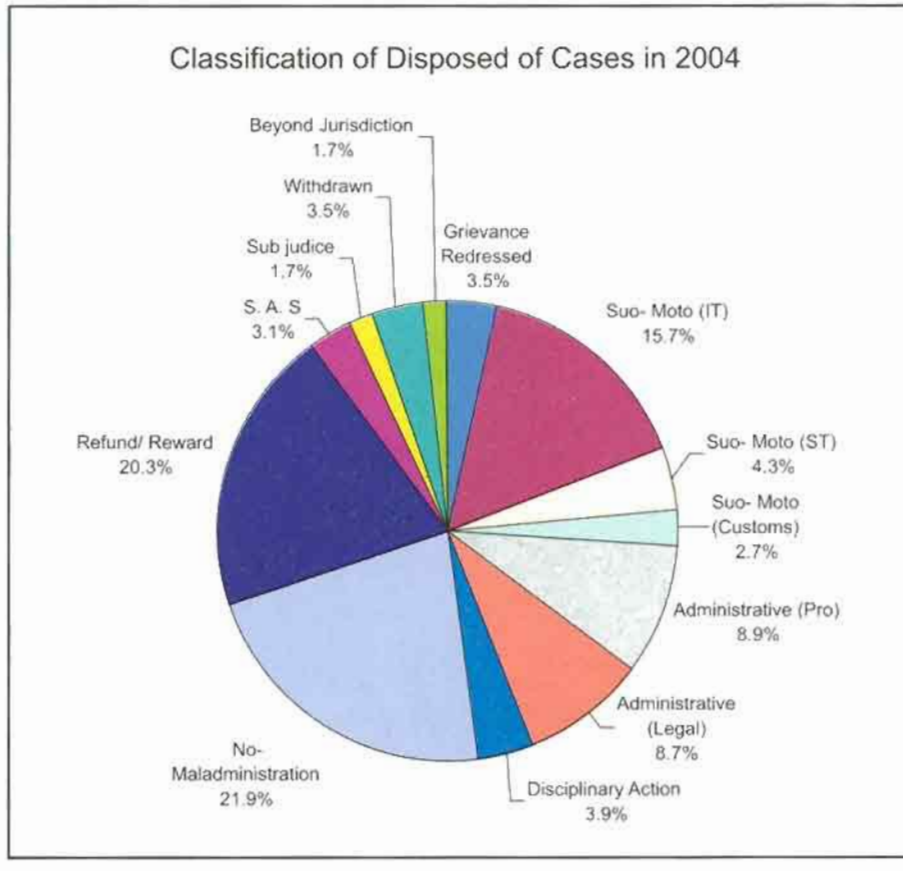
PERFORMANCE DURING THE YEAR 2004

On September 19, 2004, Office of the Federal Tax Ombudsman had completed its four years of existence. It has grown into a respectable and trustworthy institution. It has acquitted itself with a sense of satisfaction and pride. People from all shades of opinion have acclaimed this institution.

2. The function of office of the FTO is to diagnose, investigate, redress and rectify injustice done to a person through maladministration by Revenue Division and their functionaries.

3. During the year 2004, 1010 complaints had been received while 1143 complaints including 467 of the previous year were disposed of. Statements showing month-wise institution, disposal, balance of complaints and overall performance are placed at Annexures-I & II.





4. As a result of prompt relief provided by the FTO, there has been a marked improvement in the redressal of taxpayers grievances. The wide ranging measures taken by the FTO have had an impact in bringing about meaningful reforms in the tax culture and the dispensation of relief to people against injustice and administrative excesses by tax functionaries.

5. The FTO, in addition to addressing grievances of taxpayers, carries out investigations to diagnose the causes of maladministration and recommends appropriate remedial measures to improve the working of tax collecting departments. FTO's Office has also been proactive in recommending action to the Revenue Division under the Government Servants Conduct and Discipline Rules. As a result of the FTO's substantive observation of maladministration, the Revenue Division took appropriate disciplinary action in a number of cases against the delinquent officials.

6. These actions of providing relief to aggrieved taxpayers and eradicating maladministration will go a long way in creating mass awareness about the role and functions of the FTO, enlisting support of the stakeholders and winning confidence of the taxpayers.

7. The mandate of the FTO is to eradicate malpractices in tax administration system and, thereby, restore stakeholders' trust and confidence. Remedial measures recommended by the FTO to improve the system of tax administration and provide correct tax assessments are significantly helping the promotion of both foreign and local investment.

8. FTO identified some major causes of maladministration and recommended appropriate steps for the eradication of such practices. Major irritants causing genuine discontent among the taxpayers were found in the following areas:-

i) Improper maintenance of record of taxpayers.
ii) General slackness in responding to taxpayers applications/enquiries.
iii) Subversion and disuse of prescribed office procedures.
iv) Lack of expertise in matters relating to Government Servants Conduct, Efficiency & Discipline Rules.
v) Arbitrary and undesirable proposals/advice for legislation–[Deeming provisions]
vi) Discontinuance of prescribed periodical inspections.
vii) Improper maintenance of record of performance.
viii) Unlawful and extra legal decision making.
ix) Deficiency of knowledge and skills.
x) Discriminatory legislation relating to Amnesty Schemes.

9. These irritants invariably cause (a) corruption (b) delay in decision making and (c) delay in payment of refund. As a result, the confidence of honest

taxpayers gets damaged, the investors, particularly the foreign ones, get discouraged; and hence loss to the national exchequer is caused.

10. The FTO provides accountability and transparency. He also gives relief to the taxpayers. This is certainly not an adversarial treatment meted out to the revenue collecting departments. Because he diagnoses irritants and recommends systemic reforms, which are essential for a vibrant and transparent administrative system. FTO as such plays an important role to bridge the gulf of "trust deficit" which exists between the taxpayers and the tax collecting departments.

11. Another achievement of FTO's Office is that entire record of more than 5000 disposed of complaints has been converted into Electronic Form.

12. Every complaint in which maladministration is found on the part of the tax employees is always followed by recommendations in order to get the wrong corrected. For this purpose, "Compliance & Monitoring Section" has been established in FTO's Office. Primary object of this section is to keep a track of and to get all the recommendations made by FTO implemented.

13. Generally, positive attitude was shown by the tax collecting departments in the compliance of recommendations. Yet, in many cases frivolous and baseless review applications and representations were resorted to in order to thwart the implementation of the recommendations.

14. Implementation of Recommendations was monitored vigorously so as to ensure that the following goals are achieved:-

i. Rights of taxpayers are safeguarded.

ii. Revenue Division and revenue departments are enabled to achieve high standard of competency, efficiency and transparency among all those falling under their administrative fold.

iii. To reduce the incidence of recurring complaints.

Annexure-I

Consolidated Statement Showing the Previous Balance, Institution and Disposal of Complaints during the Year 2004

Month	Balance of 2004	Institution	Total	Disposal	Balance
Jan 04	467	93	560	121	439
Feb 04	439	83	522	94	428
Mar 04	428	101	529	96	433
Apr 04	433	70	503	162	341
May 04	341	73	414	97	317
Jun 04	317	100	417	99	318
Jul 04	318	97	415	112	303
Aug 04	303	135	438	120	318
Sep 04	318	71	389	88	301
Oct 04	301	68	369	0	369
Nov 04	369	35	404	0	404
Dec 04	404	84	488	154	334
Total		**1010**		**1143**	**334**

Annexure-II

Statement Showing the Year-wise Institution and Disposal of Complaints

Year	Institution	Disposal	Balance
2000	72	72	0
2001	1782	1782	0
2002	1549	1549	0
2003	1681	1674	7
2004	1010	683	327
Total	**6094**	**5760**	**334**

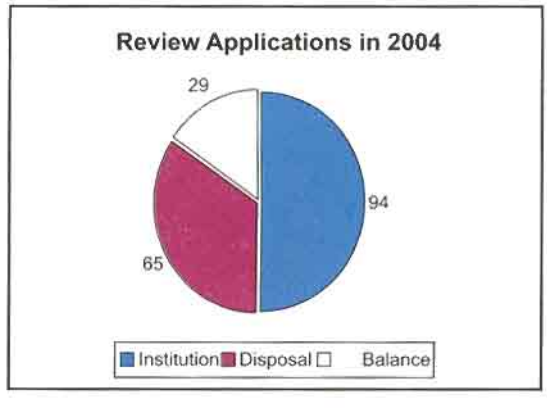
REVIEW CASES

Sub section (8) of Section 14 of the Ordinance provides for review of any findings communicated or recommendation made or any order passed by FTO. Taking advantage of this provision of the Ordinance, 94 review applications were filed of which 65 were disposed of during the year 2004. However, ratio of review applications in favour of the movers was very low for the reasons that the scope of review has been made very limited.

2. The superior courts in various judgments, have limited the scope of review and confined it to the extent that for a review it is necessary that the error which can be made a ground for review must be one which is apparent on the face of the record, that is, it must be so manifest and so clear that no court could permit such error to remain on the record. It may be an error of fact or of law but must be an error, which is evident and floating on the surface.

Statement Showing the Total Progress of Review Applications

Year	Institution	Disposal	Balance
2001	62	60	2
2002	142	133	9
2003	214	205	9
2004	94	65	29
Total	512	463	49



Reviewed Cases

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

Review Application No.44/04
in
Complaint No.891-K/03

M/s. Pakistan Petroleum Ltd,
Karachi ... **Complainant**

Versus

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

ORDER

Present: Mr. Fateh Muhammad, Additional Collector, LTU, Karachi for the Respondent.

The Director General, LTU has filed Review Application for review of recommendations made in Complaint No.891-K/2003, which reads as follows:

a. "The Director General (DG) LTU ensures payment of refund to the Complainant by September, 30, 2003.

b. The Member, Central Excise, CBR directs the concerned Collector to identify the officers/officials responsible for the maladministration found supra and proceed against them under the rules."

2. In the application it has been stated that in compliance of recommendation:

(a) The refund was sanctioned and paid vide Cheque dated 09-3-2003 within the extended time.

(b) In respect of recommendation No.2, it has been pleaded that the complainant's jurisduction to LTU was transferred in July, 2002 and the record was transferred in September, 2002 but there are complaints that the pendency of the refund was never indicated. The LTU was in its infancy, trying to settle down

systems and regulate its work. The transferring authority should have indicated the pendency particularly the refund but it was not pointed out by the Transfer Memo, nor reminded by the claimant, it escaped the notice of the department. The intention behind approaching the claimant was the facilitation of taxpayer and not harassment and that should not be taken as a maladministration. The delay was purely due to change of jurisdiction, incomplete transfer of records and administrative problems. The CBR forwarded parawise comments received from the LTU which only stated that "it is informed that there is no such refund claim of the Central Excise Duty of M/s. Pakistan Petroleum Limited with LTU. However, the claimant is being approached to provide him assistance in resolving of the claim so that the claim could be processed. The Complainant had only the complaint enclosing of unnecessary documents which were sent to and served on CBR and should have been brought to the knowledge of the Reviewing Officer without which, comments or reply could not be filed. In these circumstances, the approach of the LTU in approaching the Complainant instead the relevant department was considered maladministration and it was observed as follows:

Maladministration is also proved on the part of the officers dealing with the recommendation of this office and LTU for failure to approach the Collector concerned seeking the records relating to refund application instead of requiring the complainant to file duplicate copies of the record again. The applicant claimed that the decision of upholding of officers of LTU and recommendation in para (b) be reviewed. So far para (b) is concerned the Collector has submitted a report of compliance therefore, the question of review does not arise. However, about the above observation no cogent reason has been given to review the same. There is no error apparent on the face of the record which may call for review of the recommendation and findings. The inquiry is being conducted by

Collector and no further action is to be taken in this regard by the LTU. The Review Application is rejected.

(JUSTICE (R) SALEEM AKHTAR)
FEDERAL TAX OMBUDSMAN

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

Review Application No.74/04
in
Complaint No.275/04

Commissioner of Income Tax,
Zone-C,
Lahore. ... Applicant

Versus

M/s. Popular Engineering Works,
Opposite Data Darbar,
2/A, Ratigun Road,
Lahore. ... Respondent

Dealing Officer: ... Shamim Ahmad
Adviser

ORDER

Present: Mr. Muzammil Hussain, DCIT, for the Applicant.
None for the Respondent.

The Review Application under consideration is filed by the Respondent to seek rectification of following alleged mistakes apparent from the face of record and consequent minor modifications in the recommendations made through the decision dated 14-06-2004 in Complaint No.275/04:

a) Infact, the Complainant did not pray for payment of refund for the assessment year 1996-97, hence recommendation to pay refund for A.Y. 1996-97 is a mistake apparent from record.
b) Refund amounting to Rs.55,087 for assessment year 2001-2002 and of Rs.17,802 for assessment year 2002-2003 stood adjusted against

the tax liability for the Tax Year 2003 as on 23-06-2003 i.e. before the above-mentioned recommendations were received, hence recommendation to pay refund for A.Y. 2001-2002 is a mistake apparent from record.

2. Following recommendations were made in the decision ibid:

i) The refund due to the Complainant for the assessment years 1996-97 to 1999-2000 and 2001-2002 be issued immediately alongwith copy of adjustment memo/advice for adjustment of refund for the assessment years 2000-2001 to 2002-2003 towards advance tax liability for the Tax Year 2003.

ii) Compliance report be submitted within 40 days of receipt of these recommendations by the Revenue Division.

3. As the Complainant did not appear despite the opportunity provided to him, the application is being decided on the available facts after hearing the D.R. The mistakes identified by the Applicant are found apparent from record and warrant rectification. Accordingly, the assessment year "1996-97" appearing in second line of para 7(i) is substituted with "1997-98" and assessment year and word "2000-2001 to" appearing in 4th and 5th lines of Para 7(i) is substituted with "2001-2002 and" of the decision ibid and shall be deemed to be substituted from the date of original order.

4. The DR also produced the following documents:

a. Copy of refund voucher showing refund for assessment year 1997-98, 1998-99 and 2000-2001 amounting to Rs.210,523 in complete settlement of the refund claimed for the said three years.

b. Copy of refund voucher amounting to Rs.128,250 for assessment year 1999-2000. In this regard, it was stated that the claim of Rs.157,548 relating to deduction from Millat Tractors Limited was not fully proved by the Complainant. Therefore, a minor refund of Rs.29,231 was still pending subject to the production of necessary proof by the Complainant.

c. A copy of letter from M/s. Nazir Law Associates, the AR of the Complainant, giving the consent for the issuance of refund amounting to Rs.128,250.

5. Recommendations are found duly complied with. Balance refund of Rs.29,231 will be paid as soon as proof of payment is produced by the Complainant. File is closed.

(JUSTICE (R) MUNIR A. SHEIKH)
FEDERAL TAX OMBUDSMAN

BEFORE THE FEDERAL TAX OMBUDSMAN ISLAMABAD

Review Application No.37/04
in
Complaint No.1507/03

Mr. Lal Deen,
Gali No.40, Deena Nagar Road,
Near Madina Masjid, Mohallah Wahdat Colony,
Gujranwala. ... **Complainant**

Versus

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

Dealing Officer: ... **Shamim Ahmad**
Adviser

ORDER

Present: Mr. Abu Bakar, DCIT and Mr. Abdul Rauf, for the Respondent.

This Review Application was filed by the Respondent/ Applicant in respect of the decision made in Complaint No.1507/03 dated 11-03-2004. Briefly, in the said complaint allegation of maladministration was made against the Revenue for passing arbitrary assessment orders for assessment years 1998-99, 2000-01, 2001-02 and 2002-03, saddling the Complainant with heavy tax liabilities only because he had refused to pay bribe demanded by the Inspector of the Income Tax by the name of Mr. Muhammad Rauf. During the hearing of the case, the AR of the Complainant requested that the Inspector be summoned alongwith DCIT so that they could be cross-examined to prove the charges of corruption. The AR also promised to produce witnesses to testify that the Inspector had demanded the bribe as alleged. On the appointed date the DCIT and the Inspector attended but neither did the Complainant nor any one on his behalf. Another opportunity was extended to both the parties. On this date too the DCIT and the Inspector appeared but not the Complainant. Therefore, it was concluded that the Complainant failed to prove the allegations. No maladministration was found to be discernible and the complaint was filed for lack of evidence and non-prosecution.

2. The Respondent/Applicant in the application under consideration stated that the filing of the complaint due to the Complainant's inability in proving the allegation of corruption was not enough. The Complainee official may be awarded compensation by imposing penalty on the Complainant for making frivolous and bogus complaint as provided in sub-section (4) of Section 14 of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 (F.T.O. Ordinance).

3. The case was fixed for hearing on 26-05-2004. The DCIT attended and demanded the compensation for the aggrieved Complainee official. To provide opportunity to the Complainant, namely Mr. Lal Deen, notices to both the parties were issued for 04-06-2004. On that date the DCIT and the Complainee official attended but not the Complainant. Two more opportunities were provided to the Complainant for 07-07-2004 and 22-07-2004. On both the occasions the DCIT and the Complainee official attended but not the Complainant.

4. Finally a notice was issued to Mr. Lal Deen on 24-07-2004 which is reproduced as follows:

> "Complaint No.1507/2003
>
> You filed a complaint in this office on 01-09-2003 alleging that that Income Tax Inspector, Mr. Abdul Rauf, demanded bribery of Rs.5000 from you. The case was fixed for hearing in which your AR, Mr. Safdar Hussain Nagra, attended. He wanted to cross-examine the Inspector against whom allegations were made. The case was re-fixed and the Inspector attended for the proposed cross-examination. However, no one attended from your side.
>
> 2. As no evidence or proof was furnished to support the allegations, the complaint bearing No.1507/2003 dated 11-3-2003 was filed and the case was closed.
>
> 3. Later on, on 27-04-2004, the Respondent filed a Review Application stating that mere filing of the complaint was not enough. He prayed that compensation be granted to him within the meaning of Section 14(4) of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000. In this connection, you were required to attend this office on 4-6-2004, then on 07-07-2004 and finally on 22-07-2004. On none of the three occasions you attended.
>
> 4. As you have failed to attend, you are informed through this notice, that a penalty of Rs.3,000 as compensation is being contemplated as a compensation to the Inspector against whom you filed the complaint.
>
> 5. You are required to attend this office on 09-08-2004 to defend your case".

5. On 09-08-2004, the DCIT and the Complainee official attended. The Complainant, Mr. Lal Deen, once again did not. It is observed that the Complainant was provided abundant opportunity to prove his allegations. During the hearing of the complaint when his AR asked for the attendance of the DCIT and the Complainee official, as discussed in the decision on Complaint No.1507/2003, the two were summoned. They attended. But neither did the Complainant nor his AR. Later on, when the application under consideration was under process, the Complainant was provided as many as three opportunities and was finally served with the notice dated 24-07-2004 as reproduced in para 4 supra. All these notices were duly served on him. The Complainant made serious allegations against the official of the Income Tax department which was investigated and was found to be without any substance as held in the decision of the complaint referred to above.

6. Under sub-section (4) of Section 14 of the FTO Ordinance, it has been provided that if the complaint is found to be false, frivolous and vexatious, the FTO may award reasonable compensation to the revenue Division or the tax employee against whom the complaint was made. In this case the allegations could not be proved. Thus the acquisition was found to be false, frivolous and vexatious. The object of this provision is to act as a deterrent against frivolous complaints instituted against the tax employees. Thus it seeks to provide them protection so that they may not be dragged into false and frivolous proceedings. Similar protection has been afforded to the taxpayers as well. Section 22 of the FTO Ordinance provides awarding compensation to aggrieved parties for any loss or damage suffered by them on account of maladministration committed by tax employees or Revenue Division.

7. The charges by the Complainant have not been proved due to his non appearance. Considering the fact that there prevails a tax culture of mistrust and administrative excesses, pressure and revenge and also taking note of the fact a tax payer is afraid of pursuing complaint with allegations of corruption and bribery, the hesitation of the Complainant in making appearance can well be imagined. In these circumstances it will be reasonable just and proper to award compensation of Rs.500/- to the Respondent.

(JUSTICE (R) SALEEM AKHTAR)
FEDERAL TAX OMBUDSMAN

Chapter II

CHRONIC AREAS OF MALADMINISTRATION

The office of the Federal Tax Ombudsman provides remedy in addition to the existing tax appellate institutions. Hence it does not replace the existing channels of redress; rather it complements the structure.

2. As a result of investigations made in different complaints received in the FTO's office, the following chronic areas of maladministration, causing discontent among the taxpayers, came to light:-

Improper maintenance of record of taxpayers	**Complaint No.441/2004** The Complainant applied for registration under the Sales Tax Act, 1990 on 29-04-2004 alongwith the prescribed documents. After inspection by the functionaries of the Sales Tax Department, a Provisional Sales Tax Registration Certificate was issued on the condition that Sales Tax Registration Certificate will be issued as soon as the verification of all documents is made as per the provisions of Sales Tax Ruling/Instructions No.21/2003 dated 16-08-2003. It was also alleged by the Complainant that the Assistant Collector Sales Tax orally ordered his personal appearance. This act was termed as immoral, illegal, and arbitrary. In issuing the said Rulings / Instructions, the C.B.R acted beyond its jurisdiction, it was contended. It was alleged that the oral order was issued with ulterior motives. Oral order to the Complainant for appearing in person were denied by the Respondent.

	Recommendation(s): i. Sales Tax Registration Certificate be issued to the Complainant immediately. ii. CBR's letter bearing No.3(17)/STL&P/2003 dated 05-04-2003 be withdrawn.
Slackness in responding to taxpayers' applications/enquiries.	**<u>Complaint No.111-L/2004</u>** The complainant filed tax return under the Self Assessment Scheme declaring income at Rs.1813200/-. The return was accepted under the Self Assessment Scheme, a refund of Rs.1102720/- was created and IT-30A was issued. Thereafter a notice dated 4.1.2003 was issued under para-9 for total audit. On complainant's reply dated 15.1.2003, the action was dropped and the return was not selected for total audit. On 28.8.2003, the complainant filed an application dated 19.8.2003 for refund amounting to Rs.,1102720/-. As neither any action was taken by the department nor any reply was given to the complainant, the complaint was filed on 15.1.2004 claiming refund alongwith compensation u/s 102 of the Income Tax Ordinance 2001. **Recommendation(s):** i. Refund created under I.T.30 amounting to Rs.1102720/- be paid to the complainant. ii. Compensation/additional payment for delayed refund be paid to the complainant according to law. iii. The Director General (Inquiries) to hold an inquiry personally or through an independent officer in

	respect of alleged issuance of notice u/s 122 and recommend appropriate action in the matter.
Subversion and disuse of prescribed office procedures.	**Complaint No.421/2004** This complaint alleges delay in issuance of refund of Rs.789,671 for the assessment year 2002-2003 which was allowed at Rs.785,712 on IT-30 and communicated vide Demand Notice dated 31.01.04. **Recommendation(s):** i) Rectification as sought for by the Complainant may be carried out and refund issued alongwith additional payment for delay in issuing refund as per Section 171 of the *Ordinance*. ii) All RCITs and CITs instructed to ensure compliance by the withholding agents, of the provisions of Chapter X in *the Ordinance* particularly Sections 160,161, 164(1), 165 and 182(2). iii) The assessing officer who signed the IT-30 be issued a warning (and placed on PER) for not having verified the payment before preparing IT-30 and entering the same in the DCR.
Lack of expertise in matters relating to Government Servants' Conduct, Efficiency & Discipline Rules.	**Complaint No.801/2003** Maladministration is alleged in the instant complaint against Collector Customs (Appraisement) Karachi and his subordinates firstly for conniving with the destruction of record of the case of embezzlement and fraudulent encashment of Pay Orders deposited by importers with the Collectorate as security against provisional release of

	goods pending final assessment of duty through collusion between the guarantee cell of Custom House and National Bank officials. The information was given by the complainant which resulted in red handed arrest of Customs and Bank Officials involved in it. **Recommendation(s):** i. That Member Customs, CBR ensures proper representation of the Department in the case pending in Custom Court. ii. That Member Custom, CBR ensure that all tax employees named in FIRs in case of violations of provisions of law are issued charge sheets promptly and proper enquiries are held against them in right earnest till the logical conclusion of the legal process. iii. Bimonthly progress of compliance of recommendation be submitted till conclusion of cases.
Arbitrary and undesirable proposals/advice for legislation – [Deeming provisions]	**<u>Complaint No.506/2004</u>** The complaint protests against withdrawal of the facility of exemption form Customs duties/taxes allowed in 1990 on import of certain textile weaving machinery. The Complainant was asked to deposit taxes and penalties aggregating Rs.940,021. In the meantime a sum of Rs.335,000 was recovered and the Complainant's textile unit placed under attachment order. Department slept over the matter for long and complainant's Revision Petition of 1994 remained unattended for four years compelling him to file Writ Petition in 1998.

	Recommendation(s): i) CBR to treat and accept the complaint filed by the complainant before the Federal Tax Ombudsman bearing No. 506/2004 as an application u/s 195C of he Customs Act. ii) CBR to take necessary action as provided under the said section 195C and pass such orders as provided by law.
Improper maintenance of records of performance.	**Complaint No.1663-K/2003** Maladministration is alleged in the instant complaint against Assistant Collector of Sales Tax (Registration) East for neglect, inattention and delay in making necessary change of address in Registration Certificate. **Recommendation(s):** The Member Sales Tax, CBR issues general instructions to all Collectorates that the concerned officer, after receiving any such notification of change of address, has to incorporate the change not only in the Department records but the Registration Certificate as well.
Unlawful and extra-legal-decision-making.	**Complaint No.306/2004** Kohistan and Malakand Division enjoy special status as no law or Act of Parliament has been extended to the area under Articles 246 and 247 of the Constitution of Pakistan. The complainant is a resident of village Seo in Kohistan which falls under PATA and he executed some contracts with Frontier Works Organization for road works in the Kohistan Pattan area.

	Since the Income Tax Ordinance, 1979 was not applicable to Kohistan, which exemption to Tribal Areas is also evident from SRO No.586(1)/99 dated 30-4-1999 it is obvious that tax was wrongly deducted u/s 50(4) of the repealed Income Tax Ordinance. 1979 from the payments received by the complainant and was thus refundable. Despite applications to the tax authorities, including the RCIT the refund has not been allowed to the complainant. **Recommendation(s):** (i) Tax deducted from the complainant's receipts be refunded without further delay. (ii) The refund would be considered as due from the date of the rectification u/s 221. (iii) Reasons for failure to attend on the date of hearing be explained by the respondent.
Deficiency of knowledge and skills in the functionaries.	**Complaint No.115/2004** The Complainant, M/s Army Welfare Trust Nizampur Cement Plant alleged maladministration which arose out of an Ex parte Order-in-Original. The Complainant did not deny the fact that a number of adjournments were sought. It was contended by the Complainant that the perusal of the postmarks reveals that both the notice of hearing and the O.I.O. were dispatched simultaneously and after the date of hearing. The plea of the Complainant was that it is a trite law that no body can be condemned unheard. The said acts of omission and commission reflected neglect, inefficiency, inattention and inaptitude

	in the discharge of duties and squarely fall within the definition of maladministration. **Recommendation(s):** The O.I.O. to be vacated in terms of Section 45A of the Sales Tax Act 1990, and the case be finalized on merit after hearing the Complainant by a neutral Collector(Adjudication) other than the one who had passed the impugned order-in-original within 30 days.
Biased conduct towards individuals.	**Complaint No.257004** The complainant has pleaded that Sandak Copper Gold (Project) area is located at Taftan Tehsil of the Chagai Distt, in the Province of Balochistan. At the time the Constitution of Pakistan, 1973 came into force the areas now comprising the Taftan Tehsil, were part of the Dalbandin Tehsil. It is further stated that Article 246 of the Constitution provided that " Tribal Areas" meant the areas in Pakistan which immediately before the commencing day (of the Constitution), were Tribal Areas and included (i) Tribal Areas of Balochistan (ii) Dalbandin Tehsil of Chagai District. The Project continued to fall within the definition of Tribal Areas of Balochistan. It is pleaded that on no point of time the Governor of Balochistan has extended the application of either the Income Tax Ordinance 2001 and Rules framed thereunder or any former enactment on the subject to any part of the Dalbadin Tehsil including the Project site. 2. An agreement was executed between the China Metallurgical Construction (Group) Corporation

	(MCC) which is fully owned by the Government of the People's Republic of China and Sandak Metals Ltd, a company wholly owned by the government of Pakistan. MCC was allowed to re-start and operate the Project on lease, for a period of ten (10) years. All the senior Management staff were to be stationed at the Project site to supervise and monitor its activities, the Registered Office of MRDL was shifted from Quetta to the Project site office on 16th September 2002 and the prescribed Form 21 was filed with the Dy. Registrar of Companies at Quetta on 19th September 2002. 3. In the circumstances neither MRDL nor any other production/ commercial activity carried on in the project area was liable to the provisions of the Income Tax Ordinance 2001. 4. MRDL sought confirmation of the correctness of the above views from the Member(Income Tax), CBR vide its letter of 24th September 2002 followed by several reminders but in vain. **Recommendation(s):** (i) The CBR to decide the issue raised by the complainant in his letter dated 24th September 2002 within 30 days of the receipt of this decision/recommendation. (ii) The decision be placed before the Chairman C.B.R. for information and necessary action.

Discriminatory legislation relating to Amnesty Schemes.	**Complaint No.165703** This complaint agitated against "setting apart" of the return for the assessment year 2001-02 for Total Audit by resort to Para 9 of the Self Assessment Scheme. 2. According to the RCIT, "the case was selected for Total Audit strictly in accordance with the directions of the respective Self Assessment Scheme and Guidelines issued by the CBR" keeping in mind "the observations of the Lahore High Court" which, according to the RCIT, were under challenge before the Supreme Court. The RCIT conveyed that "intimation letter was duly served upon the assessee on 25-06-02" through his own office. Therefore, proper opportunity was extended before selecting Complainant's case for Total Audit. **Recommendation(s):** i) RCIT order dated 25.6.02 Setting-apart Complainant's Return for 2001-2002, and notice dated 03-06-03 issued under section 61 for Total Audit be withdrawn. ii) Notice of Set-apart having not been objectively drafted nor legally served on (or before) 30.6.02, Complainant's Return for 2001-2002 be treated as accepted under the SAS by operation of law as per sub-section (4) of Section 59 of the repealed Ordinance.

3. It also came to light that the prescribed periodical inspections had been discontinued. As a result, the deficiencies kept on accumulating and could not be made up with the passage of time.

4. In order to ameliorate the hardship and sufferings of the stakeholder, the FTO recommended to the tax collecting departments to take firm measures for eradication of the aforementioned maladministration.

Some Recommendations Made to the Tax Colleting Departments

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

Complaint No.768/2004

Naeem Jan,
R/o Tehkal Payan,
Peshawar.

... Complainant

Versus

Collector Customs, Custom House, Peshawar.
Assistant Collector Auction Cell Custom House, Peshawar.
Assistant Anti Smuggling Custom, Peshawar.
Deputy Superintendent Auction Cell Custom House, Peshawar.

... Respondents

(Dealing Officer: S. M. Sibtain, Advisor)

FINDINGS/DECISION

Present. None for the Complainant.
Mr. Imran Chaudhry, D.C. Customs, Peshawar for the Respondents.

Maladministration is alleged in the instant complaint against respondents for not refunding the bid money amounting Rs.125,000 deposited by the

complainant in the auction of vehicle the chassis number whereof was found tampered.

2. Briefly the facts are that the complainant purchased a Suzuki SWIFT Model 1986 having chassis No.400226 in an open Auction held on 16-10-2003 in Customs House Peshawar for a consideration of Rs.125,000 out of which ¼ i.e. Rs.35,000 was deposited on the spot and the remaining amount of Rs.90,000 was deposited later in Bank. Chassis number of the said vehicle looked tampered. An application for Lab examination was submitted on 25-10-2003. The Assistant Collector Auction directed the incharge Forensic Science Laboratory (FSL), Peshawar for examination vide letter No. V-Cus (16) Auction/ 2003/547 dated 03-12-2003. The FSL examined the said vehicle and reported vide report No. S.VI-40506 dated 10-12-2003 that the chassis number was tampered. An application dated 13-12-2003 was submitted before the Assistant Collector Auction for cancellation of the said Auction and for refund of Rs.125,000 but there was no response till filing of instant complaint. An application submitted before Collector Customs Peshawar too has been ignored.

3. The Respondent has averred in his Para-wise comments on the complaint that the Competent Authority i.e. Assistant Collector (Auction) ordered that the aspect of Chassis Number being Replaced & Welded may be incorporated in the NOC. The respondent further averred that the bidder was not willing to have such NOC and did not intimate the concerned Motor Registering Authority with whom the vehicle was to be registered. His application addressed to the Collector for cancellation of auction and refund of bid money was marked to Assistant Collector (Auction) who had already ordered to do the needful as mentioned above. Since the actual facts regarding the Replaced and Welded Chassis were not in the knowledge of the department, therefore, the question of disclosure of the facts to this effect did not arise.

4. The foregoing investigation proves that the vehicle auctioned by Customs was not a smuggled vehicle; instead it was a stolen vehicle with a tampered

chassis number. The decision on complainant's application *ibid* to issue an NOC mentioning that the auctioned vehicle bears a Replaced and Welded Chassis Number suffers from inattention to the fact that the Respondents had ceased and confiscated a vehicle stolen and used by the smugglers and as such the decision to confiscate the vehicle itself warranted a review. The vehicle snatched or stolen from an innocent owner by the persons involved in crime could not be legally confiscated by the Customs. Maladministration on account of inattention and ineptitude on the part of concerned officers in the administration or discharge of duties and responsibilities as defined u/s 2(3)(ii) of the Ordinance XXXV of 2000 is proved.

5. It is recommended:

i) That the Collector considers to invoke his jurisdiction u/s 195 of the Customs Act, 1969 to call for and examine the records of the seizure, confiscation and auction proceedings of the vehicle supra for the purpose of satisfying himself as to the legality or propriety of the orders passed by his subordinates in respect of the vehicle and may pass such order as he may think fit.

ii) In case the Collector concludes after necessary verification from concerned Police Branch that it was a stolen vehicle, he should, besides passing an appropriate order u/s 195, refer the matter to CBR to issue general instruction to verify the title to all vehicles ceased by Customs before passing confiscation orders.

iii) Compliance is reported within 45 days.

(Justice (R) Munir A. Sheikh)
Federal Tax Ombudsman

Group Photo of Staff Member at Headquarters, Islamabad with Federal Tax Ombudsman

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

Complaint No.681/2004

M/s Be Be Jan Protein Farms Limited,
Chak No.R.B-204,
Faisalabad. ... Complainant

Versus

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

Dealing Officer: ... Shamim Ahmad
Adviser

ORDER

Present. Mr. Hamid Masood, FCA, AR of the Complainant.
Mr. Zafar Abbas, DCIT, for the Respondent.

The complaint was filed for the non-issuance of Income Tax as well as Wealth Tax refund. The claim regarding Income Tax refund is taken up first. The year-wise details are given as under:

Assessment Year	Tax Refundable
1997-98	Rs. 118,102
1998-99	Rs. 425,592
1999-00	Rs. 184,368
2000-01	Rs. 609,813
Total	**Rs.1,337,875**

2. The complaint stated that, despite the lapse of so many years and submission of the proof for payment of tax a number of times, the refund had not been issued so far. The case of the Complainant was originally assessed in

Faisalabad, was transferred to Multan and then again to Faisalabad where it presently exists.

3 The facts of the case briefly are that the Company was incorporated in 1995. Being an agro-based industrial undertaking for poultry farming and processing, its income was exempt for 8 years under Clause (126 D) of Part-I of the Second Schedule of the Repealed Ordinance (the R.O.). For the 4 years under consideration, the returns of income were filed and finalized. According to the Complaint, the credit of tax deduction was not given deliberately to avoid creation of refund. The matter was brought to the notice of the taxation authorities through filing of the rectification application u/s 156 of the R.O. Neither any response was given nor any rectification was made. This, according to the complaint, fell within the ambit of maladministration.

4. The applications for rectification u/s 156 of the R.O. were filed for the three years. As per the claim of the Complainant, the two of them stated to have been accepted by the operation of law within the meaning of sub-section (3) of Section 156 of the R.O. Their claim is reproduced in the following schedule:

Assessment Year	Deemed to be Rectified u/s 156(3) on
1998-99	30-06-2002
1999-00	30-06-2004
2000-01	--

5. Another matter raised in the complaint related to the refund of tax paid u/s 14D of the Wealth Tax Act, 1963. The details are given as follows:

Assessment Year	Tax Paid (Rs)
1998-99	180,000
1999-00	216,667
2000-01	260,000
Total	656,667

6. It was claimed by the Complainant that the tax was paid on motor vehicles which do not fall within the definition of "assets" under section 2(5)(ii) of the Wealth Tax Act, 1963. The non-taxability of the motor vehicles owned by a Company were also clarified by the CBR vide their Circular No.9 of 1999 bearing C.No.1(12)WT/97-pt-III dated 28-07-1999.

7. The RCIT, Central Region, Multan in his reply stated as follows:

a) The record received from the office of the Taxation Officer, Circle-01, Multan in the office of the Taxation Officer, Circle-07, Faisalabad, did not contain any proof of Income tax payments for the four years under consideration.

b) Application for rectification u/s 156 of the R.O. for the assessment year 1998-99 was not available on record. The applications under the same section for the remaining two years (1999-2000 and 2000-01) were rejected on 30-06-2004.

c) The Complainant was once again requested on 23-08-2004 to furnish proof of the tax payments.

d) No record pertaining to Wealth Tax was received from Multan Zone.

8. Both the AR and the D.R. attended and reiterated their respective arguments already discussed above. In addition, the AR stated that the non-availability of the record was not the fault of the Complainant. He produced a number of letters which showed the receipt of either the original challans or their photo copies of tax payments for the years under consideration by the Taxation Authorities. He emphasised that the taxation authorities were finding one excuse or the other to avoid payment of refund.

9. The DR, on the other hand, stated that the case was transferred twice, and it was not unlikely that some of the record was misplaced.

10. From the above discussion, it is quite clear that the claim of the assessee regarding the payment of refund has not been given due attention it required. The case was transferred from one place to the other for one reason or the other. This action, however, should not adversely affect the claim of the Complainant. Undoubtedly there was neglect, inattention, delay, incompetence, inefficiency and inaptitude in the administration and discharge of duties and responsibilities which fell within the ambit of Section 2(3)(ii) of the Establishment of the Office of the Federal Tax Ombudsman 2000. The act of withholding the refund also falls within the definition of maladministration u/ 2(3)(b) of the Ordinance quoted above. The only mitigating feature is that the DR accepted the problems which were faced by the Complainant and promised to rectify them without any further delay.

11. During the discussion, the following points emerged:

a) For assessment year 1997-98, 1998-99 and 2000-01, original challans have already been submitted by the Complainant. The DR acknowledged their receipt.
b) For assessment year 1999-2000, original challans were submitted in Multan. Application for rectification was rejected. However, the order rejecting it was never received by the Complainant. It was decided that he would approach the CIT, Companies Zone, Faisalabad for revision of the order rejecting the application.

12. With regard to Wealth Tax refund, following steps are to be taken:

a) Wealth Tax Returns were filed on 20-08-2000 for assessment year 1998-99, 1999-2000. For the remaining assessment year (2000-01), the return was filed on 25-08-2000. The said Returns were filed to claim the refund.
b) No action was taken because the Returns were not received from Multan. The fact of their non-receipt should not adversely affect the case of the Complainant as it was not his fault.

In one of his reports addressed to the CIT, the DCIT acknowledged the fact of Complainant filing the Returns of Wealth Tax. Therefore, the fact of filing of the Returns should be accepted. The processing of refund is to be done according to the law.

13. In view of the above-mentioned discussion, it is recommended that:

i) The claim of refund of Income Tax for assessment years 1997-98, 1998-99, 1999-2000 and 2000-01 be processed in accordance with law and the preceding discussion.

ii) The Wealth Tax refund be also determined in accordance with law and the preceding discussion.

Iii Compliance report of the above-mentioned recommendations should be furnished to this Office within 30 days of the receipt of this order.

(Justice (R) Munir A. Sheikh)
Federal Tax Ombudsman

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

Complaint No. 655/2004

Mr. Shahid Mehamood,
Sales Representative,
State Life Insurance Corporation of Pakistan,
Zeb Plaza, Rehman Shaheed Road,
Gujrat. ... Complainant

Versus

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

Dealing Officer: ... Shamim Ahmad
Adviser

FINDINGS/DECISION

Present: Dr. Shehzad Muhammad, brother and AR of the Complainant.
Mr. Abbas Ahmad Mir, DCIT, for the Respondent.

The complaint relates to non-issuance of refund for the assessment year 2002-03. It was alleged that the Return of Income for the assessment year referred to above was filed on 10-10-2002 alongwith the required documents claiming a refund of Rs.8,892/-. On 18-11-2003, the Complainant filed an application for refund which has not been issued so far. It was prayed that the refund due may be ordered to be issued immediately. Allegation of demand of illegal gratification by the tax officials was also made. It was alleged that the refund was being denied to him because he refused to pay the said illegal gratification.

2. In reply, the RCIT, Northern Region, Islamabad stated that the Complainant filed Return of Income declaring net income of Rs.60,000. Return was not supported with any sort of documents. It was a new case and also Below Taxable Limit. Therefore, notice u/s 61 of the Repealed Ordinance was issued. In compliance, the brother of the Complainant attended and he was asked to file certain documents in connection with assessment proceedings. Since then nobody attended. The assessment proceedings were underway and the refund, if any, would be issued immediately on completion of the proceedings, it was added by the RCIT.

3. Both the AR and the D.R. attended and reiterated their respective positions as narrated above. The DR stated that notice u/s 61 was issued as it was required legally. It was duly responded by the AR of the Complainant. However, afterwards he stopped complying with the legal requirements of the notice. In support of his claim, the DR produced the order sheet which showed the noting of the attendance of the AR of the Complainant and his signatures.

4. The AR, on the other hand, denied having received the notice u/s 61 or even attending hearing. He stated that the signatures were either of some one else who was not authorised to attend or were forged. However, he could not produce any evidence in this regard.

5. It is difficult to accept that someone attended on behalf of the Complainant without his knowledge. On the other hand, the Taxation authorities were legally wrong to allow a person to attend the hearing without his presenting a proper Power of Attorney. Under the circumstances, it was mutually agreed between the AR and the DR that the AR would comply with the the notices issued by the Taxation authorities and the DR would take necessary action.

4. It is, therefore, recommended that:

i. The AR to comply with all the notices issued by the taxation authorities.

ii. The Taxation authorities to finalize the assessment at the earliest.

iii. Refund, if due, be issued alongwith the finalization of the assessment.

iv. Compliance report of the above-mentioned recommendations is to be made within 30 days of its receipt by the Revenue Division.

(Justice (R) Munir A. Sheikh)
Federal Tax Ombudsman

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE
KARACHI

Complaint No.257/2004

MCC Resources Development Company (Pvt) Limited,
C/o Mr. Syed Ahmed,
68/1 Khyaban-e-Badban,
Off 4th Street, Phase-V, DHA
Karachi. Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. Respondent

(Name of Officer S. Asghar Abbas,, consultant)

FINDINGS/
DECISION

Syed Ahmed, Chartered Accountant present.
None present for the respondent.

The complainant has pleaded that Sandak Copper Gold (Project) area is located at Taftan Tehsil of the Chagai Dist, in the Province of Balochistan. At the time the Constitution of Pakistan 1973 came into force the areas now comprising the Taftan Tehsil, were part of the Dalbandin Tehsil. It is further stated that Article 246 of the Constitution provided that " Tribal Areas" meant the areas in Pakistan which immediately before the commencing day (of the Constitution), were Tribal Areas and included (i) Tribal Areas of Balochistan (ii) Dalbandin Tehsil of Chagai District. The Project continued to fall within the definition of Tribal Areas of Balochistan. It is pleaded that on no point of time the Governor of Balochistan has extended the application of either the Income Tax Ordinance 2001 and Rules framed thereunder or any former enactment on the subject to any part of the Dalbadin Tehsil including the Project site.

2. It is further stated that by an agreement executed in Beijing on 30th November 2001 between the China Metallurgical Construction (Group) Corporation (MCC) which is fully owned by the Government of the People's Republic of China and Sandak Metals Ltd, a company wholly owned by the government of Pakistan (GOP) through the administrative Ministry of Petroleum & Resources, MCC was allowed to re-start and operate the Project on lease, for a period of ten (10) years from a date to be mutually agreed between the two parties, either by MCC or through a wholly owned subsidiary. Metallurgical Construction (Group) corporation (MCC) arranged for incorporation of the MCC Resources Development Co. Ltd (MRDL) in Pakistan as its wholly owned subsidiary on 27th March 2002 under the Companies Ordinance 1984 with its Registered Office at Quetta. However, as all the senior Management staff were to be stationed at the Project site to supervise and monitor its activities, the Registered Office of MRDL was shifted from Quetta to the Project site office on 16th September 2002 and the prescribed Form 21 was filed with the Dy. Registrar of Companies at Quetta on 19th September 2002.

3. In the above stated circumstances neither MRDL nor any other production/commercial activity carried on in the project area was liable to the provisions of the Income Tax Ordinance 2001 and the predecessor enactments and Rules framed there under.

4. MRDL sought confirmation of the correctness of the above views from the Member/(Income Tax), CBR vide its letter of 24th September 2002 followed by several reminders. It is alleged that the CBR has not responded so far. It is further stated that the project started commercial production from 01 September 2003 and GOP is deducting 1.25% of the export proceeds as presumptive tax under the Income Tax Ordinance 2001. It is alleged that the deduction was illegal in view of the provisions of Articles 246 and 247 of the Constitution. The complainant has prayed that the CBR be directed not to deduct any taxes from proceeds of export sales of goods produced by MRDL at the Project site and to refund the amount of tax already deducted at source.

5. The respondents have forwarded the reply prepared by the Regional Commissioner of Income Tax, Southern Region, Karachi. It is stated therein that the Commissioner concerned had reported that M/s MCC Resources Development Company (Pvt) Ltd never filed return of income in Sukkur Zone. No record, papers or documents pertaining to the complainant were available anywhere in the Region. It is concluded that in such circumstances it was not possible to submit any report or parawise comments.

6. Mr. Syed Ahmed, Chartered Accountant has filed a letter of authority from Mr. Zou Jianhui CEO & President of MCC Resources Development Company (Pvt) Limited dated 9th May 2004. He has requested to substitute his name as the complainant instead of Syed Ahmed, Chartered Accountant who has been authorized to represent the company before the Federal Tax Ombudsman, Government of Pakistan. The request is misplaced. The complainant MCC Resources Development Company (Pvt) Limited (MRDL) as it is the aggrieved party. Mr. Syed Ahmed is merely its representative. He cannot be a complainant. Correct name of the complainant has been mentioned in the title.

7. Mr. Syed Ahmed has pleaded that the observations of the learned Regional Commissioner of Income Tax, Southern Region, Karachi that no record, papers or documents were ever, filed by the complainant in his Region are not well founded. He stated that this issue had been taken up by the concerned ACIT, Quetta and the Inspecting Additional Commissioner of Income Tax Quetta Range on the directions of the higher authorities of the department. He has produced copies of letter bearing No.784 dated 21.11.2002 from the Inspecting Additional commissioner of Income Tax, Quetta, Range Quetta and No.249 dated 19.12.2002 from Taxation Officer Circle-I, Quetta. The Authorized Representative also stated that on receipt of parawise comments dated 14.4.2004 from Regional Commissioner of Income Tax, southern Region, Karachi, he provided copies of all the relevant documents including lease contract, incorporation certificate and correspondence with the DCIT, Additional Commissioner of Income Tax Quetta and the Regional commissioner of Income

Tax, Southern Region, Karachi vide his letter dated 21.6.2004. The copies of all the said documents were also endorsed to the member (legal CBR Islamabad). The documents were dispatched through Courier Service and photocopy of the receipt issued by the TCS has been furnished in this regard.

9. The copies of documents furnished by the complainant's A.R. show that a letter dated 24th September 2002 was addressed to Mr. Vakil Ahmed Khan, Member Income Tax, C.B.R. Islamabad, seeking clarification and confirmation from him regarding exemption from payment of Income Tax to persons resident in District Chagai located in the Tribal Area of Balochistan and also from filing any Returns under the Income Tax Laws and Rules framed there under. Thereafter the member CBR was reminded vide A.R's letters dated 21st October 2002 and 21st June 2004. It is established from records that the Member Income Tax, C.B.R. did not respond to the aforesaid letters of the complainant's Authorised Representative, which is in violation of the instructions of CBR and the decision of the Federal Tax Ombudsman. The matter was kept pending without any response from September 2002. It was the duty of the Member to have acknowledged, replied and apprised the complainant of the final decision/opinion on the issues raised in the letter dated 24.09.2002 within a reasonable time. In spite of reminders there was complete silence. The complainant is a subsidiary company of China Metallurgical Construction (Group) Corporation (MCC) which is wholly owned by the Government of Peoples Republic of china and Saindak Metals Limited, a company wholly owned by Government of Pakistan. There is involvement and investment from China which is engaged in an important project beneficial for country's economy. In this background the non-response and delay becomes a serious maladministration committed none else but a Member. The negligent and non-serious approach of the Member is exhibited by the fact that the reply was asked to be filed by the Regional Commissioner of Income Tax who did not have any paper and information about the case. In fact all allegations related to the Member who was duty bound to reply but it was avoided. Such negligent and arbitrary attitude and

behaviour shake the confidence of the investors particularly the foreign investors, which brings bad name to our country.

10. As maladministration has been established it is recommended that:

(ii) The CBR to decide the issue raised by the complainant in his letter dated 24th September 2002 within 30 days of the receipt of this decision/recommendation.

(ii) The decision be placed before the Chairman C.B.R. for information and necessary action.

(iii) Compliance be reported within one week of the compliance period.

(Justice (R) Saleem Akhtar)
Federal Tax Ombudsman

Group Photo of Staff Member at Regional Office, Lahore with Federal Tax Ombudsman

BEFORE THE FEDERAL TAX OMBUDSMAN
Regional Office, Karachi.

Complaint No.1663-K/03

Mr. Ovais Moe,
Proprietor,
M/s. Pioneer Plastic,
124, Hoor Market, Jamia Masjid,
Kemari, Karachi. Complainant

Versus

CBR (Sales Tax & Central Excise),
Karachi. Respondent

Dealing officer: ***S.M.Sibtain***
Advisor

DECISION/FINDINGS

Mr.Iqbal Hussain Advocate: for the Complainant.
Dr. Abdul Rehman Rind, DC: for the Respondent.

Maladministration is alleged in the instant complaint against Assistant Collector of Sales Tax (Registration) East for neglect, inattention and delay in making necessary change of address in Registration Certificate when the complainant notified the ACST u/s 20 of the Sales Tax Act, 1990 about the change of his address as stated in the registration application.

2. Briefly the admitted facts are that M/s Pioneer Plastic applied for registration under Sales Tax Act on October 25, 2001 and they were registered on November 11, 2001 vide STR No.11-00-3923-071-64.They shifted their business premises from 308, New Kutiyana Centre, Mulji Street, Kharadar, Karachi" to Plot No.124, Hoor Market, Jamia Masjid Road, Kemari, Karachi. The new business premises fell under the jurisdiction of Collectorate of Sales Tax & Central Excise (East), Karachi. M/s Pioneer Plastic, therefore, applied for transfer of registration from West Collectorate to East Collectorate as per SRO 339(I)/2002 dated 15.06.2002. The application was submitted alongwith prescribed proforma and necessary documents before both the Collectorates to transfer the case file from one Collectorate to another Collectorate. They also filed the Rent Agreement of new business premises, electric and telephone bills

before Collectorate of East, Karachi and made a request to the Member (Sales Tax) Central Board of Revenue, Government of Pakistan, Islamabad as well to solve the matter.

4. Responding to the notice u/s 10(4) of Ordinance XXXV, 2000 the respondent submitted that the application of transfer of record was received on 07.10.2002 in Collectorate of Sales Tax & Central Excise (East), Karachi and while processing the application for a fresh registration few necessary documents were not found enclosed for which a letter C.No.1669 dated 12.11.2002 was issued by the then Superintendent (Registration) Collectorate of Sales Tax & Central Excise (East), Karachi requiring to submit the said documents for processing of application for registration. However, the required documents were never provided, so the matter remained pending.

5. Meanwhile, Collectorate of Sales Tax & Central Excise (East) & (West) became defunct and after the merger of both the Collectorates and formation of Sales Tax House, Karachi "new business processes were formulated", according to respondent, and issues related to new registration as well as amendments were also "being turned to the new scenario" alongwith shifting of record from old buildings to new office.

6. The respondent further averred that instructions/directions were solicited to deal with the transfer of registration, between defunct East & West Collectorate and policy guideline was accorded on 02.01.2004 to deal with these cases. *All the cases including M/s Pioneer Plastic regarding transfer of* registration from East to West or vice versa were being dealt as change of address cases after the policy decision and necessary amendment had already been incorporated in registration particulars and data of M/s. Pioneer Plastic in the original registration No.11-00-3923-071-64 and registered person had already been informed vide letter No.11/62/Reg/E/HQ/2002 dated 09.01.2004.

7. It transpires on further investigation and after personal hearing of the representatives of the two sides that neither there was nor there still is any prescribed procedure for notifying the change of address required under section 20 of the Sales Tax Act. SRO 339(1) 2002 also does not relate to the

requirement of section 20 *ibid*. The complainant faced procedural snags in filing monthly returns, issuing invoices mentioning address of a place where the business was no more located, and suffered delay merely because of neglect, inattention, incompetence and ineptitude of the concerned officers who were notified the change of address. It is true that the complainant used wrong proforma and incorrectly referred to an irrelevant SRO while notifying the change of address. However, the concerned officers were supposed to know the law and procedure that in order to record change of address of a registered person, the only requirement was a satisfactory evidence that a genuine change of business address had taken place. The complainant had already provided the rent agreement of the new business premises alongwith electricity and telephone bills. What has been done on 9th January, 2004 could have been done soon after 7th October, 2002 had the concerned officers been competent enough to know their job or had the aptitude to appreciate that it was their duty to ensure that correct procedure was adopted to record the correct business address in the certificate of the Registered Person without loss of time because it was mandatory that each Registered Person / Tax Collecting Agent mentioned his correct address on the invoice. The only obligation placed by section 20 of Sales Tax Act on the Registered Person was to notify his change of address if and when it occurred. It was for the concerned officer, after receiving any such notification of change of address, to incorporate the change not only in the Departmental records but the Registration Certificate as well.

8. The alleged maladministration is proved. It is recommended:

   a) That Member Sales Tax, CBR issues general instructions to all Collectorates in the light of observations made *supra*.

   b) That the compliance is reported within 45 days.

(JUSTICE (R) SALEEM AKHTAR)
Federal Tax Ombudsman

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

Complaint No.1674/2003

Aurangzeb Khan,
Rawalpindi — Complainant

Versus

Secretary,
Revenue Division,
Islamabad — Respondent

[Dealing Officer — Mirza Muhammad Wasim, Adviser]

FINDINGS/DECISION

Mr. Shaukat Ali, Advocate for the complainant.
Mr. Ahmad Reza Khan, Deputy Collector, Sales Tax, Faisalabad for the respondent.

The main points in the complaint are as follows –

(i) The complainant purchased standing trees in lots offered in open auction by the Divisional Forest Officer, Faisalabad Forest Division, Faisalabad.

(ii) The Forest Officer being an agent of revenue demanded sales tax totalling Rs.295,938 from the complainant in respect of the five lots.

(iii) The sales tax demand is contrary to law for the following reasons –

(a) Standing trees, being "agricultural produce" are exempt from the payment of sales tax vide item 2 of the Sixth Schedule to the Sales Tax Act, 1990 read with CBR's letter CNO.1/105-ST/98 dated 10-9-2003.

(b) The recovery of sales tax on standing trees has been held to be illegal, without jurisdiction and contrary to law in a similar complaint No.120/2003.

(c) The above act of the respondent through the Forest Officer as his agent is contrary to law and falls within four corners of the definition of maladministration.

It has been prayed that the respondent be directed not to recover the amount of sales tax demanded and also to refund the amount already recovered illegally from the complainant.

2. In the respondent's reply it is admitted that trees being agricultural produce, are exempted from sales tax vide S.No. 2 of the Sixth Schedule to the Sales Tax Act, 1990 as also clarified vide CBR's ruling/instructions No.23/2003 dated 10-9-2003. It is, however, stated that the matter is between the Divisional Forest Officer and the complainant and, therefore, the complaint against the Revenue Division may be dismissed.

3. The representatives of the two sides have been heard. The learned Advocate for the complainant pointed out that the Forest Officer was trying to collect sales tax on behalf of the Sales Tax Department and there was thus no merit in the contention of the respondent that it was a matter only between the complainant and the Forest Department. The complainant's contention is quite valid and as the Forest Department acting on behalf of the Sales Tax Department Revenue Division is demanding sales tax on an item (viz standing trees) which is exempt from sales tax it is incumbent on the Revenue Division/Sales Tax Department to inform its sales tax collecting agency, the Forest Department, Faisalabad about the exemption available to the complainant under the law. There is thus no substance in the respondent's plea that it was merely a matter between the complainant and the Forest Department. It is added that in the findings/decision dated 31-2-2003 in complaint No.120/2003 which also involved a similar issue of sales tax recovered on unprocessed logs, the recovery of sales

tax despite the exemption was found to be illegal, without jurisdiction and contrary to law. It was thus recommended that the sales tax recovered from the complainant in that case be refunded.

4. In the light of the above, it is recommended that -

(i) The concerned forest department be informed by the respondent that standing trees are exempt from sales tax and that no sales tax be recovered from the complainant on the purchase of the trees.

(ii) If any sales tax has already been recovered from the complainant, it be refunded on the production of satisfactory evidence.

(iii) Compliance report in respect of (i) above be furnished within 30 days and (ii) above within 60 days.

(Justice (R) Saleem Akhtar)
Federal Tax Ombudsman

Chapter III

LANDMARK RECOMMENDATIONS

Any complaint in which maladministration on the part of the tax collecting departments and their functionaries is noticed during the course of investigation is always followed by recommendations with a view to getting the wrong corrected.

2. Some landmark recommendations are as under:-

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE
LAHORE.

Complaint No.736/2004

Mr. Salim S. Salamat
Messers Salamat Academy
7/8, Zafar Ali Road
Gulberg-V, Lahore.

...Complainant

Versus

The Secretary, Revenue Division, Islamabad.

...Respondent

[Dealing Officer: Mr. A.A. Zuberi, Advisor].

FINDINGS/
DECISION

Mr. S. S. Salamat for the Complainant.
Mr. M. Majid (D-CIT) for the Respondent.

This complaint alleges *malafide* disregard of the directions conveyed by the Appellate Tribunal in its order dated 28.12.02 in respect of assessment years 1991-92 to 1993-94 thus committing an act contrary to law, and a departure from established practice and process resulting in 'maladministration' as per the *FTO Ordinance*.

2. Briefly the facts are that the Complainant-AOP exists at NTN 07-06-0455359-4 and runs an educational institution. No books of accounts are said to have been maintained. The assessments framed for the years 1991-92 to 1993-94 were taken in appeal to the CIT (A) and finally to the Appellate Tribunal in its consolidated order dated 13.8.97 set these aside. On reassessment the matter again went upto the Appellate Tribunal who vide consolidated order dated 28.12.02 ordered: -

i) "No implicit reliance can be pleaded as the Enquiry Report by the Inspector on 11.04.94 because the same related to a period subsequent to the years-under-consider hence.

ii) Controversy be resolved by estimating Receipts by adopting 20% increase in each year; but

iii) Fee Receipts for Class-10th be determine keeping in mind that permission for enrolment of students for this class was granted on 01.04.95.

iv) Though Profit & Loss express as per declared version could not be accepted, considering that Salary and Rent constitute 81% of the total Receipts, appropriate expenses should be allowed to determine Taxable Income, keeping in mind (a) net profit in the preceding assessment year as well as in the succeeding assessment years and comparable cases, so that the issuance is set at naught.

The assessment so *set aside* was reframed on 23.05.03 determining Income as under: -

Assessment Year	Income Declared	Income Assessed
1991-92	Loss: Rs.239,900	Rs.2,974,816
1992-93	Loss: 131,831	4,176,710
1993-94	Loss: 88,193	5,557,695

In addition, Penalty under Section 111 of the Income Tax Ordinance, 1979 was imposed at Rs.1,431,284 in 1991-92 and Rs.1,555,234 in 1992-93 and at Rs.2,086,912 in 1993-94. This, dispensation, according to the Complainant, has disregarded the directions by the Appellate Tribunal hence arbitrary amounting to "maladministration" as defined in Clause (3) of Section 2 of the Establishment of the Office of Federal Tax Ombudsman Ordinance 2000 (hereinafter called *the FTO Ordinance*).

3. Respondents have forwarded para-wise comments by R-CIT, Eastern Region, Lahore which question the competence of the complaint for admission in view of the bar as per Section 9(2)(b) of the *FTO Ordinance*. "Maladministration" is denied contending that assessments were framed after due opportunity but the required details "were never produced by the assessee". The failure of the assessing officer not to apply the net profit as obtaining in the preceding and succeeding years, has been justified by the R-CIT on the ground that onus for this was on the Complainant but "the assessee did not provide documentary evidence and its proved that the assessee filed incorrect particulars of the Income viz-a-viz Fee Receipts etc". Similarly, according to the R-CIT, no documentary evidence was furnished to support the claim of Overhead expenses. The imposition of Penalty under Section 111 has been justified by the R-CIT "because the Fee Receipts computed in the light of Appellate Tribunal directions did not commensurate with the Receipts declared by the assessee".

4. Mr. Salim S. Salmat, Principal-Member of the AOP appeared personally to pursue the complaint. He pointed out that as per directions by the Appellate Tribunal it was the obligation of the assessing officer to estimate the Receipts keeping in mind the upper limit of 20% from the past. This obviously was not done as is evident from the estimate of Receipts. In support of this contention the Complainant furnished the following data: -

CALCULATIONS OF FEE RECEIPTS AFTER APPELLATE ORDERS

Assessment year	Declared on Calendar year basis	Adopted by ITO on Financial year basis	To be adopted after allowing 10% reduction for Kinship as held by CIT(A) Order dated 07.03.2000
1993-94	Rs.6,593,640	Rs.10,171,680	Rs.8,892,660
1992-93	5,315,325	8,137,344	6,351,900
1991-92	2,813,618	6,509,875	3,811,140

Again, according to the Complainant, the Receipts for Class-10th were not to be taken into account prior to the year 1995-96 and the Expenses were to be around Rs.81% of the Receipts. None of these instructions were adhered nor there is any mention of the Appellate Tribunal's directions in the impugned assessment order. This betrays that no respect or regard was shown to the directions by the Appellate Tribunal though it is the highest fact-finding forum under the Income Tax Law so much that as per sub-section (10) of Section 132 of *the Ordinance* its decisions "shall be final".

5. Mr. M. Majid (D-CIT) representing the Department advanced the same arguments as are contained in the para-wise comments. He, however, frankly conceded that the directions as contained in the Appellate Tribunal's consolidated order dated 28.12.02 have not even remotely referred to by the assessing officer in the impugned consolidated assessment order nor the estimate of Receipts and the extent of Expenses is on the same lines as specified by the Appellate Tribunal.

6. The rival arguments of the contending parties have been considered and record examined. It must at once be pointed out that the complaint does not assail the quantum of assessment and determination of tax thereon but alleges *malafide* misconduct reflected by disregard of the directions given by the Appellate Tribunal in its consolidated order of 28.12.02. The objection by the R-CIT as respects competence of the complaint for admission is, therefore, overruled.

7. The examination of record brought out that the Complainant has been filing Returns calendar year-wise corresponding to the relevant assessment year. Assessment up to the year 1989-90 were made on this basis. Surprisingly, the assessing officer, without any rhyme or reason, switched over to 'financial year' when determining Income for the assessment year 1990-91. No reason for switch over has been recorded as was necessary keeping in mind the provisions of sub-section (3) Section 32 read with Explanation (b) to Section 2(26) of the *repealed Ordinance*. The result is that whereas income for the assessment year 1989-90 has been determined for the period 01.01.88 to 31.12.88, Income for the immediately following year of 1990-91 is for the period 01.07.89 to 30.06.90. In consequence (i) either income for the period 01.01.89 to 30.06.89 has been totally omitted from assessment, or (ii) the assessment for the year 1991-92 is for a period of 18 months but the assessment order is silent about it. It is surprising that this vital infirmity in the assessment has not been noticed during inspection by IACs in any of the last ten years (or so) nor by the R-CIT when preparing Para-wise comments. This is a glaring example of "neglect, inattention, incompetence, and inefficiency in the discharge of duties and responsibilities", thus falling in the category of 'maladministration' as defined in clause (3) of section 2 of the FTO Ordinance.

8. Turning to the three impugned assessments, the DR has already admitted that the directions by the Appellate Tribunal in the second round of litigation have not been followed. It is a pity that assessment years 1991-92 to 1993-94 are now over a decade old history yet the matter is still not finally settled despite the present assessment being the third attempt after *set-aside* of two earlier assessment efforts. The scenario is highly unsatisfactory and a genuine cause of grievance besides being a pathetic example of "maladministration". It is, therefore, imperative that the matter be decided once-&-for-all as quickly as possible after suitable reprimand to all concerned 'tax functionaries' who participated in the three rounds of assessments. It is, therefore, RECOMMENDED that: -

i) Commissioner by resort to Section 122(5A) of the Income Tax Ordinance, 2001 revise the assessment at his level so as to bring it in line with the directions of Appellate Tribunal vide order dated 28.12.02.

ii) The assessing officers (the person not the office) who framed the second and third assessments on 26.06.99 and 28.02.03 be suitably warned and a copy thereof, placed on the Performance Evaluation Report to be considered at the time of promotion.

iii) The assessing officer who made a change in Income year in total disregard of provisions of Section 32(3) read with Section 2 (26) of the *repealed Ordinance* in the year 1990-91 be reprimanded wherever he is presently posted.

9. Compliance report be submitted within 30 days of the receipt of this Order.

(Justice (R) Munir. A. Sheikh)
Federal Tax Ombudsman

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE
LAHORE.

Complaint No.787-L/2004

Mr. Abdul Basit
Messers Alba Engg. Co.
Daska, District Sialkot.

...Complainant

Versus

The Secretary, Revenue Division, Islamabad.

...Respondent

[Dealing Officer: Mr. A.A. Zuberi, Advisor].

FINDINGS/
DECISION

Mr. Ahmad Shuja Khan (Advocate, Supreme Court) for the Complainant.
Mr. Anwar-ul-Haq Jillani (D-CIT) for the Respondent.

This complaint alleges "maladministration" represented by (a) illegal withholding of WWF refund for the assessment years 1991-92 to 2001-2002, and (b) in the initiation of amendment proceedings under Section 122 of the Income Tax Ordinance 2001 (hereinafter called *the Ordinance*) for the assessment year 2001-2002.

2. The facts, as these emerged, are that the Complainant-AOP is a manufacturer and vendor of auto-parts which are supplied to various auto and tractor manufacturers. The Complainant exists on NTN 19-02-0680029-7 and was initially assessed in Circle-03, Sialkot, before the transfer of the case to Daska and again to Circle-02, Sialkot. For the purpose of manufacture, imports were made on which tax was deducted at source. Consequently assessments framed on the basis of Statements filed under Section 143B of Income Tax Ordinance 1979 (hereinafter called *the repealed Ordinance*) crystallized in a

refund at Rs.957,372 which was issued on 30.8.2000 but the dispute remained about refund in respect of Workers Welfare Fund (WWF) which was claimed at Rs.424,381. The Complainant now asserts for refund of this amount together with additional payment for delay in its issuance. Another controversy relates to initiation of amendment proceedings for the year 2001-2002 where assessment on the basis of Statement under Section 143B was framed on 25.06.03 (under Section 59A/80C) of the *repealed Ordinance* creating a refund of Rs.1,435,394. Later amendment proceedings were initiated on 05.11.03 through issuance of notice under Section 122 of *the Ordinance* alleging:

> "As you had not exercised option under Section 80C the assessment completed under Section 59A/80C is incorrect and liable to be amended under Section 122 of the Income Tax Ordinance 2001. This is a case of misclassification of income in terms of Section 122(5) of Income Tax Ordinance 2001 was to be assessed under normal which has assessed incorrectly under Section 59A/80C".
>
> (here underlined for emphasis)

The Complainant's reply dated 10.11.03 and the proof regarding filing of an option on 30.9.98 in Circle-03, Sialkot were considered unsatisfactory on the ground "no such letter of irrevocable option had been received.....". Subsequent elucidation concerning circumstantial evidence about the exercise of option vide letter dated 11.05.04 also do not find favour with the assessing officer. On 24.06.04 the assessing officer conveyed the intention to adopt the declared Sales/Supplies as per Statement under Section 143B, to work out Income by applying GP rate at 25% after allowing reasonable expenses for administrative and other expenses. An assessment was later framed on 29.6.04 determining Income at Rs.8,307,440, resulting in a tax liability of Rs.2,873,568. Thus there are two causes of grievances viz:

a) Non-issuance of WWF refund together with Additional Payment of delay, for the years 1991-92 to 2001-2002.

b) Initiation of 'amendment' proceedings under Section 122 of *the Ordinance* for the year 2001-2002.

3. Respondents have forwarded para-wise comments by the R-CIT, Northern Region, Islamabad who, in addition to questioning the competence of complaint for admission in view of Section 9(2) of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 (hereinafter called *the FTO Ordinance*), deny "maladministration". As respects issue of WWF refund pertaining to the assessment years 1991-92 to 2001-2002, the R-CIT has conveyed that although according to the Lahore High Court "industrial establishment covered by the provision of Section 80C of the Income Tax Ordinance 1979 is not liable to charge of the fund contemplated in Section 4 of the WWF Ordinance, 1971", the Department is in appeal before the Supreme Court of Pakistan where the matter is pending for adjudication hence refund cannot be issued as the same is *subjudice*.

4. On the issue of amendment proceedings under Section 122 of the Ordinance, the R-CIT has insisted -

> "the taxpayer failed to exercise this option for assessment under Section 80C within 3 months of the Income year relevant to the assessment year 2001-2002 as required by provisions of Clause (9), Part-IV of the Second Schedule. The assessment made under Section 59A/80C was, therefore, incorrect and liable to be amended.....".

The filing of option in Circle-03 at Sialkot has been denied by the R-CIT. The initiation of Section 122 proceedings have been justified pleading that income was 'misclassified' when assessed under Section 59A/80C on 25.06.03 hence no "maladministration" was committed.

5. On the issue of refund of WWF payment aggregating at Rs.424,381 for the assessment years 1991-92 to 2001-2002, the Complainant's Counsel, Mr. Ahmad Shuja Khan (ASC) submitted that as per sub-section (10) of Section 132 of *the Ordinance*, the order by the Appellate Tribunal is 'final' moreso when it has been upheld by the High Court hence denial to issue the refund relating to WWF was a conduct arbitrary falling in the realm of "maladministration". Furthermore, the learned Counsel brought on record Lahore High Court judgment in ITAT-447/98 where the Court has unequivocally ruled that industrial establishments

covered by the presumptive tax regime are not liable to the charge of WWF. The learned Counsel insisted that a question of law decided by a Superior Court is to be followed by subordinate judicial and qausi-judicial forums. In the face of this legal position, according to the learned Counsel, the R-CIT's plea about the matter being *sub-judice* before the Supreme Court is frivolous and effect has to be given to the order by the Appellate Tribunal until a verdict is given by any superior court reversing this decision. Mr. Khan concluded his arguments with the submissions that no order under Section 102 of the *repealed Ordinance* was ever passed withholding the refund nor any specific instructions issued in this behalf.

6. Taking up the issue of proposed amendment of assessment for the year 2001-2002, the learned Counsel drew attention to sub-section (1) of Section 80C of the *repealed Ordinance* which prescribes that the amounts representing payments made to 'residents' on which tax has been deduced under sub-sections 4, 4A, 5AAA, 7A, 7H of Section 50 were deemed to be the Income of the said person and tax thereon charged at the rate specified in the First Schedule. At the same time Section 143B which requires filing of Statement regarding Income under Section 80C, nowhere makes it obligatory for such importers to file a Return of Income, consequently, those having Income under Section 80C only file Statement under Section 143B, for assessment to be made under Section 80C read with the First Schedule. In the opinion of the learned Counsel no assessment order as such was required under Section 59A particularly when the Section 59A becomes operative when a Return is furnished under Section 55. In the Complainant's case, according to the learned Counsel, admittedly no Return was filed (nor was required to be filed), hence the original assessment framed on 25.06.03 was under Section 80C on which Section 59A was erroneously typed alongwith Section 80C. Since, it is not legally permissible to amend a Section 80C assessment by invoking Section 122 of *the Ordinance*, the learned Counsel insisted, notice dated 05.11.03 represented an arbitrary conduct, contrary to law, rules or regulations thus perverse, arbitrary and unjust. The learned Counsel

carried his arguments further by emphasizing that it was wrong to suggest that the issue related to "misclassification" of Income because "misclassification" is possible when Income falling under one Head is erroneously taken as falling in a different Head a situation totally missing in the present controversy.

7. Another point which the learned Counsel advocated with vehemence was that the option under Clause (9) Part-IV of Second Schedule for assessment under Section 143B was duly expressed by the Complainant and tangible evidence was tendered for record but the Department has failed to disprove the validity of the office copy bearing signature of a 'tax functionary' hence the lame excuse that delivery of the document is not recorded in the Receipt Register of the Circle amounts to an admission that all documents received by the officials are not necessarily entered in the Receipt Register which by itself an example of "maladministration". The learned Counsel further explained that the option filed in 1997 was for one year only because the amendment to file a consolidated option for three years came subsequently, through an amendment in 1998. It was for this reason that the option was filed in Circle-03 on 30.9.98 which was to be operative for three years upto 2001-2002 hence it was too late in the day to deny the exemption facility in the year 2001-2002. The learned Counsel concluded his arguments by summarizing: -

a) The assessment under Section 80C could not be amended under Section 122 as this Section was not specifically mentioned in Section 122(1).

b) Sub-section (5) of 122 was not applicable because no 'definite information' had come in the possession of the assessing officer subsequent to the assessment under Section 80C on 25.06.03 which could justify action for amendment. For this assertion reliance was placed on cases (2000) 81-TAX-139(Trib) = 2000-PTD-1299.

c) The proposed action was a 'change of opinion' which was not permissible by law and the case law.

The learned Counsel categorically affirmed that no appeal against the impugned order has been filed to CIT (A).

8. Mr. Anwar-ul-Haq Jillani (D-CIT) appearing for the Respondents first of all insisted that the matter was beyond the jurisdiction of FTO because it involves assessment of Income and classification of Income thus hit by Section 9(2) of the Establishment of the Office of Federal Tax Ombudsman Ordinance 2000 (hereinafter called *the FTO Ordinance*). He repeated the stand taken by the R-CIT in the para-wise comments to plead that the original assessment having been framed under Section 59A, the jurisdiction to amend it was available by pressing into service sub-section (1) of Section 122. Mr. Jillani made out the point that the Income having been treated as one chargeable under Section 80C implied its classification as 'Income arising from import' and not as Income from Business or Profession hence the 'misclassification' resulted in incorrect assessment and inappropriate tax.

9. The arguments of the rival parties have been considered and record examined. As respects the WWF refund of Rs.424,381 for the years 1991-92 to 2001-2002 is concerned the Department has withheld the refund because the view taken by the Tribunal in the case of the Complainant and the law interpreted by the High Court in its judgment on ITAT-447 of 1998 where it has been ruled that those taxpayers who are subject to presumptive tax regime are not liable to pay WWF, are sub-judice before the Supreme court. There can be no two opinions that merely filing of an appeal before the Supreme Court against the judgment of the High Court or an appeal against the Tribunal's order, cannot operate as a stay or detract from the provisions of Section 132(10) of *the Ordinance* which confers finality on the decision of the Tribunal till such time as it is reversed by the High Court nor any interim prohibitory order had been passed earlier. This view has since been enshrine in *the Ordinance* where Section 124A specifically lays down that the decision enunciating a law shall be followed notwithstanding filing of an appeal against in a higher forum. Non-issuance of refund under Section 170 of *the Ordinance* together with Additional Payment under Section 171 is, therefore, a clear disregard of law and thus "maladministration" as defined in sub-section (3) of Section 2 of the *FTO Ordinance*.

10. As about the initiation of proceedings to amend the assessment for the year 2001-2002 by pressing into service sub-section (5) of Section 122 of *the Ordinance* on the plea that the tax charged on the basis of Statement under Section 143B of the *repealed Ordinance* was incorrect firstly because no option under Clause 9 of the Second Schedule was filed and that there was 'misclassification' of Income, the validity of the arguments advanced by the learned Counsel for the Complainant gets support from the decision of the Supreme Court reported (1997)76-TAX-131 *in re*: Pakistan Herald Limited where at page136 the learned Judges observed that: if after framing the assessment consciously the assessing authority realized having ignored any provision of law or having not applied or misapplied the law; such discovery would not fall within the ambit of term "definite information" as is necessary to initiate amendment proceedings. The view has been followed in the Sindh High Court recently reported decision (2004) 89-TAX-231 *in re*: Muslim Commercial Bank Ltd. The insistence to carry on proceedings ignoring the dictum pronounced by the highest judicial forum of the realm is clear "maladministration" as defined in Clause (3) of Section 2 of the *FTO Ordinance* moreso when the Department is not able to disprove the authenticity of the official receipt issued about filing of the option as required by Clause 9 of the Second Schedule.

11. The "maladministration" having been established on two counts, it is RECOMMENDED that: -

i) WWF refund at Rs.424,381 together with Additional Payment for delayed refund for the years 1991-92 to 2001-2002 be issued forthwith.

ii) The amendment proceedings initiated on 05.11.03 under Section 122 of the Ordinance for the year 2001-2002 be dropped.

12. Compliance report be submitted within 30 days of the receipt of this Order.

(Justice (R) Munir. A. Sheikh)
Federal Tax Ombudsman

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE
LAHORE.

Complaint No.712-L/2004

Mr. Farhat Mahmood
Prop. Farhat Dental Health Care Lab.
Main Bazar, Chishtian
District Bahawalnagar.

...Complainant

Versus

The Secretary, Revenue Division, Islamabad.

...Respondent

[Dealing Officer: Mr. A.A. Zuberi, Advisor].

FINDINGS/
DECISION

Mr. Tariq Javed (Advocate) for the Complainant.
Mr. Mukhtar Ahmad (D-CIT) for the Respondent.

This complaint relates to the assessment year 2002-2003 and alleges arbitrary conduct amounting to "maladministration" in the proceedings initiated for 'amendment' of the assessment by resort to Section 122 of the Income Tax Ordinance, 2001 (hereinafter called *the Ordinance*).

2. Briefly the facts are that the Complainant-Individual runs a Dental Clinic and exists on NTN 24-23-0110429. Return for the assessment year 2002-2003 filed under SAS declaring Income at Rs.138,000 was accepted under SAS on 30.12.02 *(order served on 05.06.03)*. After a lapse of two years the Complainant was served on 09.02.04 a letter inquiring about the source of investment in acquisition of 4.3 Marlas/1-2-S-81/F.E, Chishtian property, the reply to which, filed on 12.02.04, was considered by the assessing officer unsatisfactory and

further details called for on 20.02.04. When the Complainant approached the R-CIT with copies to CBR, the notices were withdrawn on 23.04.04 thus dropping the initiated proceedings. However, on 07.06.04 the Complainant was served statutory notice under Section 122 accompanied by a Show Cause Notice under Section 122(9) of *the Ordinance* alleging that due to incorrect particulars having been filed, the "*assessment was erroneously finalized under Section 59(1) of the Income Tax Ordinance, 1979 and is liable to be amended under Section 122 of the Ordinance*". This notice was replied and copies endorsed to the CIT whereafter yet another notice under Section 122 dated 20.8.04 was served alleging "*you have willfully camouflaged expenditure..... which is not legally permitted" and "you have willfully camouflaged figures*". This notice proposed addition of an amount Rs.450,000 said to be hit by the mischief of Section 12(18) of the *repealed Ordinance* and Rs.50,000 for tax paid for Amnesty 2000 but not disclosed. The Complainant considers that the initiation of impugned proceedings is based on 'change of opinion' and on "material already available on record" thus not covered by the provisions of Section 122. This precisely is the controversy.

3. Respondents have forwarded para-wise comments by R-CIT Central Region, Multan which deny the alleged harassment or maltreatment by the assessing officer and clarify that the show-cause notices on 09.02.04 and 20.02.04 were issued on the basis of information received from Sub-Registrar, Chishtian where sale/purchase of properties are recorded. These two notices were later withdrawn. The para-wise comments explain that in an 'inspection note' of 28.05.04 the IAC Bahawalnagar observed that the assessment framed for the year 2002-2003 under Section 59(1) of the *repealed Ordinance* warranted amendment particularly because the Complainant had not shown expenditure of an amount of Rs.50,000 which was paid as tax under the Tax Amnesty Scheme. Furthermore, Qaraz-e-Hassna claimed at Rs.450,000 was not received through cross cheque hence attracted the provisions of Section 12(18) of the *repealed Ordinance*. The R-CIT has rebutted any personal grudge or bias in the proceedings which are said to be strictly in accordance with law, full opportunity

having been extended to the Complainant to explain his position. The R-CIT has insisted that filing of documents like wealth statement, purchase deed etc. was not a requirement for SAS Returns. It has been affirmed that the assessing officer was duly authorized on 01.7.02 by the Commissioner under Section 210 of *the Ordinance* hence no *malafide* in the initiation of the proceedings. The allegation of 'change of opinion' is rejected by the R-CIT.

4. Mr. Tariq Javed (Advocate) appearing for the Complainant vehemently denied introduction of any paper on record after the completion of original assessment under Section 59(1) and drew support from the fact that the original "Return Acknowledgement Receipt" duly signed/stamped by Circle-23, Chishtian clearly mentions enclosures spread over 27 sheets. An argument was built up that the list of enclosures *inter alia* mentioned the wealth reconciliation, details of which were subsequently incorporated by the assessing officer in his notice dated 07.06.04. Thus there was a full disclosure of immoveable property and other assets hence it was wrong to allege that any fresh discovery was made which could be made a basis for initiation of amendment proceedings under Section 122 for which acquisition of "definite information" is a condition precedent. Reliance for this assertion was placed on 1994-PSC-621, (2004) 88-TAX-83 (FTO) and 1989-PTD-141. Therefore, utilizing material already existing on record as a basis for amendment represents "change of opinion" which is not a valid ground for interfering with the assessment especially by the same authority who completed the original assessment as held in 1992-SC-939(SCC) and 1993-SC-1026(SCC). As respects utilization of existing material, the learned *Counsel relying upon Supreme Court judgment reported as 1988-SCC-692* pleaded that resort could be made to Section 122(5A) of *the Ordinance* for which the competent authority is the IAC and not the assessing officer. Therefore, the initiation of proceedings was not justified on legal grounds as well as the precedent. Attributing *malafide* and arbitrary conduct falling under the definition of "maladministration" as per Section 2(3) of the Establishment of the Office of Federal Tax Ombudsman Ordinance 2000 (hereinafter called *the FTO*

Ordinance), the learned Counsel prayed for recommendation to drop the impugned amendment proceedings.

5. Mr. Mukhtar Ahmad (D-CIT) appearing for the Revenue in his arguments repeated the pleas conveyed by the R-CIT in the para-wise comments. It was insisted that no 'change of opinion' was involved as the matter was examined and action suggested by a superior authority i.e. the IAC in his 'inspection note' whereafter proceedings were initiated. The DR further asserted that before insertion of sub-section (5A) in Section 122 of the Ordinance through Finance Act 2003, the assessing officers were delegated powers under Section 210 to proceed with cases where 'erroneousness' has caused prejudice to the revenue. In addition, in this particular case, according to the DR, "definite information" was available that tax paid to avail Amnesty Scheme was not claimed as expenditure in the reconciliation and that Qarz-e-Hassna was admittedly through bearer cheque thus attracting Section 12(18) of the *repealed Ordinance*.

6. The rival arguments of the contesting parties have been earnestly considered and the record examined. The investigations reveal that impugned proceedings were not initiated on the basis of "inspection note" dated 28.05.04, as claimed by the Department, because the first notice issued on 09.02.04 unequivocally proclaimed that "*information obtained from Tehsildar, Chistian shows that you have invested ..... in the purchase of property..... and got it registered in the office of Sub-Registrar, Chistian.....*" and that "*you are required to furnish documents such as source of investment, copy of registered purchase deed, copy of NIC and NTN, if any*". It is thus beyond doubt that the proceedings were triggered by the communication received from the Tehsildar and NOT by the direction in the subsequent 'Inspection Note'. It also is glaring that no attempt whatsoever was made to ascertain whether the person about whom information was received from the Tehsildar was an existing assessee and whether he had declared the property in question in his Return or Wealth Statement. In response, the Complainant categorically asserted: "*I have submitted Return of total income alongwith all the*

relevant documents as required by law within due date of the preceding year" but furnished the NTN and NIC. The assessing officer considered this explanation 'unsatisfactory' vide letter dated 20.02.04 and required the Complainant to file receipts of dowery, jewellery, wealth reconciliation, bank statement etc. Obviously no detail about (i) the taxes paid at the time of Amnesty, or (ii) obtaining Qarz-e-Hassna, was demanded which leads to the inference that information in respect of these two existed on record by way of annexures to the Return, as claimed by the Complainant. The fact that proceedings were later closed by withdrawing notices as communicated on 23.04.04, is indicative that the explanation by the Complainant was considered convincing. It also is significant that these amendment proceedings were dropped on a date prior to the IAC's inspection note of 28.05.04 to which a reference has been made by the R-CIT. This leaves us only to see whether any 'definite information' subsequent to 23.04.04 was obtained as could authorize resort to Section 122. There appears none on record and the DR failed to submit any. Whatever reference was made by the DR related to the statements already available on record which have been proved by the Complainant to have been submitted alongwith the SAS Return which was accepted under Section 59(1) of the *repealed Ordinance*. A close scrutiny of record revealed that documents like Wealth Statement and Sale/Purchase Deed of immoveable property, have since been detached from the Return and placed in different covers to which these are said to belong. These documents/papers still carry, Serial numbers 1 to 27, in the writing of the complaint as claimed and as mentioned on the Return Acknowledgement Receipt though presently these are placed in different covers. Therefore, the assertion that all these documents were attached with the Return is clearly established and erodes the allegation by the R-CIT that the AR managed to introduce these documents after the completion of the assessment. No evidence to this affect exists on record nor any proof could be tendered at the hearing.

7. Another contradiction on record is that in the notice dated 07.06.04 the assessing officer alleged that Income was 'erroneously assessed' but in the notice dated 20.08.04 the allegation was changed to: "you have willfully furnished

camouflaged figures". It appears that Department was not too sure whether they were to proceed to amend the assessment by resort to Section 122(1) or Section 122(5A). This distinction is all the more important because after insertion of sub-Section (5A) through Finance Act 2003 in Section 122, the CBR issued specific instruction on 18.05.04 that, as required by letter of law, powers under Section 122(5A) should not be delegated to the D-CITs but to IACs and that any authorization if already made to the D-CITs earlier, be cancelled. It is surprising that despite these unequivocal instructions which were dealt out to CITs in Eastern Region on 22.05.04, the assessing officer was still allowed to continue the proceedings and no cognizance of this illegality has been taken even when drafting Para-wise comments. It is now well settled that –

a) if 'existing material' on record has been ignored, the remedy is Section 122(5A), and

b) if any "definite information" comes to the possession of the assessing officer, the remedy is Section 122(1).

This has already been held in Finding/Decision on C.No.182-L/2002 dated 12.10.02 and C.No.823-L/2004 dated 25.10.02.

8. In the present case, the Complainant has successfully demonstrated that all the relevant evidence was available on record and no new 'definite information' was obtained to lend legality to the amendment proceedings. This stand was taken by the Complainant in reply to the show-cause notice on 09.02.04 and he continues to stick to it. On the other hand, the Department has failed to establish any definite evidence unearthed after the framing of the original assessment under Section 59 of the *repealed Ordinance* on 30.12.02. The conclusion is thus inescapable that impugned proceedings are not based on *bonafide* and are being continued arbitrarily ignoring explanation and evidence tendered by the Complainant thus causing "maladministration" as defined in Clause (3)(i) of Section 2 of the *FTO Ordinance*. It is, therefore, RECOMMENDED that the CBR direct: -

i) The proceedings initiated through notice under Section 122 on 07.06.04 and 02.8.04 be dropped forthwith.

ii) The officers should be advised not to insinuate introduction of evidence on record without conclusive proof because it primarily is the responsibility of the 'tax functionaries' to ensure safety of record in their Office.

iii) It should be ensured that in adherence to the provisions of sub-section (5A) of Section 122 of *the Ordinance* powers assigned to amend an "assessment erroneous and prejudicial to the interest of Revenue" be forthwith withdrawn from D-CITs and assigned to IACs, as required by law and directed by the CBR.

iv) It should be investigated with a view to initiate disciplinary action, regarding failure of the concerned officer to carry out the CBR instruction dated 18.05.04 *(ibid)*

9. Compliance report be submitted within 30 days of the receipt of this Order.

(Justice (R) Munir. A. Sheikh)
Federal Tax Ombudsman

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.223/04

M/s Aqsa Security Guards (Pvt) Ltd.,
F-8 Markaz,
Islamabad. ...Complainant

Versus

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

FINDINGS / DECISION

Present: Mr. Faisal Lateef, ACA, for the Complainant.
Mr. Nasir Iqbal, DCIT, for the Respondent.

Maladministration is alleged in the instant complaint on the part of Taxation Officer, Companies Zone, Islamabad for invoking jurisdiction under sub-section (5A) of Section 122 of the Income Tax Ordinance 2001 (the Ordinance) substituted by Finance Act, 2003 to the assessments deemed to have been made u/s 59(4) of Income Tax Ordinance, 1979 (Repealed Ordinance) on 30-06-2001 and 30-06-2003 for assessment years 2000-2001 and 2002-2003 respectively; hence contrary to law as settled in the binding decision of Lahore High Court in the case of Messrs Monno Industries Limited V. The Commissioner of Income Tax, Central Zone, Lahore reported in 2001 PTD 1525. Besides it is alleged that receipts of Complainant for "Services rendered" are specifically excluded from the ambit of Section 80C (2)(a)(i).

2. The facts of the case briefly are that assessments for the two assessment years are said to be finalized on 01-12-2001 and 22-11-2003 u/s 59A of the Repealed Ordinance (R.O) at net incomes of Rs.100,199 and Rs.248,493 respectively.

3. Afterwards, the Taxation Officer, Circle-01, Company Zone, Islamabad considered the finalized assessment as erroneous in so far as they were allegedly prejudicial to the interest of revenue because, in his opinion, the receipts from security services ought to have been taxed u/s 80C of the R.O. Therefore, he issued a combined notice dated 27-01-2004 u/s 122 of the Ordinance for the two years.

4. The Complainant averred that it was a Private Limited Company providing security services to its clients comprising of both individual and corporate bodies. Its receipts from services rendered lay outside the ambit of the presumptive tax regime and they did not attract the provisions of Section 80C of the R.O. The assessments already finalized were in accordance with law. Jurisdiction invoked by the Taxation Officer u/s 122(5A) to bring Complainant's receipts under the provisions of Section 80C was contrary to law, which constituted maladministration.

5. The RCIT, Northern Region, Islamabad, in his reply, raised preliminary objections against the said complaint which are briefly enumerated as follows:

a. The matter related to the assessment of income for which legal remedy of appeal was available. Therefore, the complaint fell outside the jurisdiction of the honourable FTO within the meaning of Section 9(2)(b) of the Establishment of the Office of Federal Tax Ombudsman, 2000 (FTO Ordinance). It was further stated that this view was upheld in a number of representations filed before the honourable President of Pakistan.

b. The matter contained in the complaint involved interpretation of law which once again fell outside the jurisdiction of the honourable FTO within the meaning of Section 9(2)(b). This view too was endorsed by the honourable President of Pakistan in a number of representations as stated by the RCIT.

c. No maladministration was committed because the said notice u/s 122 was issued in accordance with the provisions of law.

6. In respect of merits of the case, it was stated that:

a. The receipts on account of providing labour/security guards services under a contract were to be treated as contractual receipts assessable u/s 80C of the R.O.

b. The services of security guards were not covered by the expression of services rendered. He went on to state that they included only the ones rendered by:

"doctors, lawyers, accountants, auditors, architects, surveyors, actuaries, engineers, advisors and consultants."

To elucidate the above quotation, the RCIT stated that "the reference to professional as above carries a powerful image of having achieved some expertise by employing education, faculties and intelligence of an above average measure. The Security guards cannot, by any stretch of imagination, be considered as professionals."

c. It was pointed out that the issue of taxability of security companies u/s 80C of the R.O. was sub judice before the honourable High Court.

7. Representatives of both sides assisted in further verification of facts from record and citation of decisions of this Forum as well as the Income Tax Appellate Tribunal on the nature of services rendered by Security Agencies and the decision of Lahore High Court ibid with regard to applicability of section 122 ibid to the assessments finalized prior to the date of enforcement of the Ordinance and any assessment finalized even prior to substitution of sub section (5A) earlier added through SRO No. 663(1)/2002 dated 14.09.2002 by the Finance Act 2003 which is invoked in the complainant's case. The following principle settled by the binding decision of Lahore High Court in the case: Messrs

Monnoo Industries Limited Vs The Commissioner of Income Tax, Central Zone, Lahore in which CBR Circular No. 1(48)/11-01-1979 dated 17.02.1981 conveying the next following clarification has been cited with approval:

> *"Section 66-A of the Income Tax Ordinance, 1979 is not procedural in nature, and therefore, it could not have retrospective effect to touch the completed assessments before its introduction on the statute book. The interpretation made by the CBR through the Circular No. 1(48)/1101/1979, dated 17-02-1981 appears to be more in consonance with law".*
>
> *(2001 PTD 1525)*

"Certain queries have been made from the Board raising the following questions:

i) whether the proceedings under section 34A of the repealed Act pending on Ist July, 1979 have lapsed on repeal of the said act;

ii) whether it is possible to revise assessments completed after the promulgation of Income Tax Ordinance, 1979 but before the insertion of section 66A in 1980.

The undersigned is directed to say that the principle applicable in such cases is given in section 6 of the General Clause Act, according to which the repeal does not affect the proceedings already commenced unless the repealing Act otherwise intends. The repeal does not revive anything not in force or existing at the time the repeal takes effect. Hence the proceedings which were pending under the repealed Act may continue under that Act. However, if proceedings under section 34A had not been initiated when the old Act was repealed Act (Sic). Similarly section 66A does not have retrospective application. The assessments finalized before Ist July, 1980 cannot be reopened under section 66A of the Income Tax Ordinance, 1979".

(CBR C.No.1(48) dated 17.02.1981)

8. It is found that according to proviso to sub section (4) of section 59 of the Repealed Ordinance assessment for assessment year 2002-2003 is deemed to have been passed on 30.06.2003; hence any order passed subsequently u/s 59A is nullity in law. Assessment for 2000-01 has been admittedly passed on Ist December 2001. The principle enunciated by the Lahore High Court in the

binding decision ibid is squarely applicable to the proceedings initiated in complainant's case for each of the two assessment years because assessment order for 2000-01 had been made on 01.12.2001, which was almost seven months prior to coming into force of the provisions of section 122 itself. The assessment for assessment year 2002-03 too was deemed to have been made u/s 59(4) ibid on 30.06.2003, which was prior to coming into force of the following provisions of sub section (5A) of section 122 substituted by Finance Act 2003:

> *"(5A) Subject to sub-section (9), the Commissioner may amend, or further amend, an assessment order, if he considers that the assessment order is erroneous in so far it is prejudicial to the interest of revenue."*

9. Proceedings initiated by the Respondent under provisions of sub section (5A) of Section 122 supra as substituted by Finance Ordinance 2003 for the following provisions of sub section (5A) earlier inserted by Notification No. SRO 633(1) dated September 14, 2002 are contrary to settled law:

> *"(5A) where a person does not produce accounts and records, or details of expenditure, assets and liabilities or any other information required for the purposes of audit under section 177, or does not file wealth statement under section 116, the Commissioner may, based on any available information and to the best of Commissioner's judgement, make an amended assessment."*

10. Thus the process initiated by invoking provisions of sub section (5A) of section 122 as substituted by Finance Act 2003 effective from July 01, 2003 for assessments that were finalized before Ist July 2003 in contrary to law settled by the binding decision of the Court as considered supra. The alleged trait of maladministration involved in the impugned process is specifically included in the definition of maladministration vide sub clause (a) of clause (i) of sub section (3) of Section 2 of the FTO Ordinance is proved. It neither relates to require any interpretation of law relating to any assessment. If assessment of income, determination of liability of tax nor solely relates to question of jurisdiction which stands settled by the decision of Lahore High Court in the case: M/s Monnoo Industries Limited V. CIT, Central Zone Lahore reported in 2001 PTD 1525.

11. Investigation into merits of the reasons for considering the assessments u/s 59 of the Repealed Ordinance to be erroneous in so far as these were alleged to be prejudicial to the interest of revenue is uncalled for in view of the fact that the Respondent has no jurisdiction to amend those assessments u/s 122 of the Ordinance. Even otherwise the same question is subjudice before the High Courts in reference made by the Tribunal at the instance of both the Department as well as the assessees.

12. It is recommended:

i) That the Commissioner ensures that the Taxation Officers who are delegated such authority and jurisdiction constantly endeavour to keep themselves abreast of the settled law so that unnecessary litigation is avoided and taxpayers are saved from undue harassment.

ii) That the Commissioner advises the concerned Taxation Officer to drop the proceedings initiated u/s 122 (5A) for assessment years 2000-01 and 2002-03.

iii) Compliance is reported within 30 days.

(Justice (R) Munir A. Sheikh)
Federal Tax Ombudsman

BEFORE THE FEDERAL TAX OMBUDSMAN ISLAMABAD

COMPLAINT NO.620/04

M/s. Din Muhammad Cut Piece Dealer,
Rahim Centre, Factory Area,
Faisalabad. ...Complainant

Versus

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

Dealing Officer: ... Shamim Ahmad
Adviser

FINDINGS / DECISION

Present:

Mr. Muhammad Saleem Malik, Advocate, for the Complainant.
Mr. Muhammad Asif, DCIT, for the Respondent.

The Complainant is an Individual who filed a Nil return for assessment year 2001-2002. According to his own statement, he was doing cloth cut-piece business on retail basis. For the accounting period pertaining to assessment year under consideration no business was done. However, the Respondent did not agree with this contention and served notices u/s 61 of the Repealed Ordinance (R.O) on him. He attended the proceedings. The assessment was made on 11-03-2003 at Net Income of Rs.617,500. This figure included the addition made u/s 13(1)(aa) of the R.O. at Rs.217,500, made on account of the following discrepancy in the wealth statement for the period ended on 30-06-2001. The opening balance was shown at Rs.430,500, although for immediately preceding

year (30-06-2000), net wealth was declared at Rs.212,000. The Complainant revised his wealth statement of the preceding year which was not accepted on the plea that the revision in the wealth statement could not be made after the finalization of assessment within the meaning of sub-section (2) of Section 58 of the R.O.

2. According to the complaint under consideration, against the assessment order, an appeal was filed before CIT (A), which was rejected. Then a second appeal was filed before I.T.A.T. on 18-08-2003.

3. The treatment given by Respondent was challenged by the Complainant on the following grounds:

a) The wealth statement was revised according to the rules and regulations and its rejection was illegal.
b) The notice u/s 13(1)(aa) of the R.O. was issued on irrelevant grounds.
c) The Complainant filed an application for rectification of the order for assessment year 2000-01 which was rejected.
d) The Complainant did not carry on any business during the period under consideration and the business premises were occupied by an employee of M/s. Rehman Processing (Pvt) Limited.
e) Notices u/s 61 were not properly served and thus the opportunity of being heard was not given to the Complainant.

4. The Respondent challenged the claim of the Complainant regarding non-pursuance of business. It was stated that notices were served on him as late as 18-05-2002 on his business premises. It was also stated that the assertion of the Complainant that his business was occupied by Rehman Processing (Pvt) Ltd was also incorrect because the latter were carrying on business on a different address.

5. The AR and the DR attended. Both of them were heard and their arguments were considered. The AR repeated the arguments which have been reproduced in para 2 supra. The DR challenged the assertions made by the Complainant. Additionally, he emphasized the fact that the Complainant filed an appeal before the ITAT prior to the filing of the complaint under consideration.

The former was filed on 18-08-2003 and the latter on 30-07-2004. Thus the jurisdiction of the honourable F.T.O. is ousted within the meaning of Section 9(2)(a) of the F.T.O. Ordinance. He also informed that the decision of the ITAT has now been given. In this connection he produced a copy of the order ITA No.3673/LB/03 dated 30-07-2004 which rejected the appeal of the Complainant and confirmed the original assessment order.

6. In view of the fact that the proceedings have been completed upto the level of the ITAT, the complaint no longer relates to the Revenue Division within the meaning of sub-section (1) of Section 9 of the Establishment of the Office of the FTO Ordinance 2000. It is, therefore, rejected and further proceedings are closed.

(Justice (R) Munir A. Sheikh)
Federal Tax Ombudsman

BEFORE THE FEDERAL TAX OMBUDSMAN

ISLAMABAD

Complaint No.654/2004

Dr. Shahzad Muhammad,
Sales Manager,
State Life Insurance Corporation of Pakistan,
Zeb Plaza, Rehman Shaheed Road,
Gujrat. ... Complainant

Versus

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

Dealing Officer: ... Shamim Ahmad
Adviser

Findings/Decision

Present: Dr. Shehzad Muhammad, the Complainant.
Mr. Abbas Ahmad Mir, for the Respondent.

The complaint was filed to agitate against the non-issuance of refund for the assessment year 2002-03. The brief facts of the case are that the Complainant is working as Sales Manager of State Life Insurance Corporation of Pakistan, Gujrat Zone. For the assessment year under consideration, he filed a return of income declaring net income of Rs.62,000. According to the Complainant, Rs.8,903 were deducted from the commission he received. His liability, being Rs.150, Rs.8753 were refundable to him. He filed refund application and pursued the matter with taxation authorities. However, despite his repeated efforts he could not get the refund. He also accused that illegal gratification was demanded from him for this purpose. Hence the complaint under consideration.

2. In reply, the RCIT, Northern Region, Islamabad stated that the return filed by the Complainant was not supported by any evidence of tax deduction. When he filed application for the refund, he was once again asked to produce the evidence which has not been done so far. The allegation of demand of illegal gratification was vehemently denied by the RCIT.

3. Both the Complainant and the D.R. attended and repeated their respective standpoint. However, the Complainant could not prove that necessary evidence for deduction of tax at source was indeed produced by him. Neither could he pinpoint a person who demanded illegal gratification. Therefore, no maladministration is discernible. However, the D.R. promised that as soon as the evidence for deduction of tax at source is produced by the Complainant, the refund will be issued.

4. It is, therefore, recommended that:

v. The Complainant is to produce the evidence of deduction of tax at source.

vi. The CIT concerned to ensure that the refund to the Complainant is issued soon after the production of the evidence stated in (i) above.

vii. Compliance report of the above-stated recommendations is to be produced within 30 days of the receipt of this order.

(Justice (R) Munir A. Sheikh)
Federal Tax Ombudsman

BEFORE THE FEDERAL TAX OMBUDSMAN

ISLAMABAD

Complaint No. 652/04

Mr. Nasrullah Jan Kabari,
Kabari Bazar, near Fowara Chowk,
Peshawar Cantt. ... Complainant

Versus

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

Dealing Officer: ... Shamim Ahmad
Adviser

ORDER

Present: Mr. Abdul Malik Khan, ITP, Advocate, for the Complainant.
Mr. Tariq Bakhtiar, ACIT, for the Respondent.

The Complainant is an individual deriving income from purchase and sale of old spare parts. Allegedly his business is on a small scale. The complaint under consideration was filed to agitate treatment given for assessment years 1999-2000 and 2000-01. The facts of the case for the two years are discussed separately as follows:

2. For assessment year 1999-2000, the income was assessed at Rs.202,500/-. According to the Complainant, he did not receive the assessment order till the time of filing of the complaint under consideration. He had requested the taxation authorities to provide photo copies of the assessment order vide his application dated 29-07-2004 and paid the required copying fee. It may be noted here that the income for the immediately preceding year (1998-99) was determined at Rs.90,000 which was reduced in Revision by the Commissioner of Income Tax, Peshawar Zone, Peshawar.

3. The assessment for assessment year 2000-01 was made at an income of Rs.220,000 u/s 63 of the Repealed Ordinance (R.O). In his assessment order the Taxation Officer, Circle-02, Peshawar stated that the return of income was filed under Self Assessment Scheme declaring net income of Rs.48,000. He further stated that the return could not qualify under SAS as the requirements of the

scheme were not fulfilled. He, however, did not specify the requirements which led to the disqualification of the return. According to the Complainant the assessment order and the demand notices were served on 04-11-2003. The contention of the Income Tax department, on the other hand, was that they were served on 29-09-2003. The Complainant filed an appeal before the CIT (Appeals), Peshawar on 04-12-2003. He, in his Appellate Order dated 18-05-2004, noted that the appeal ought to have been filed within 30 days of the receipt of the demand notice and assessment order within the meaning of Section 132(1) of the R.O. which, according to him, were served on 29-09-2003. Therefore, the appeal was late by 36 days. He further stated that neither any application for condonation of delay was filed nor any explanation for the said delay was given. He, therefore, dismissed the appeal *in limini*. It was stated by the Complainant that the appeal was heard on 18-05-2004 and was decided on the same day. The CIT (Appeals) failed to issue any show cause notice and allow time to the Complainant/Appellant to plead his case before him and explain the situation regarding the wrong claim of the Income Tax department regarding the date of the service of the order.

4. The Complainant also alleged that Notice Server of the Circle as well as the Income Tax Inspector were harassing him for quite some time with demands of illegal gratification. Since he refused to oblige them, a scuffle ensued at the time of service of notice and the Notice Server, as revenge, put the wrong date on the demand notice. It was further stated that the assessments for two years under consideration were harsh and were made in arbitrary fashion and were made due to malafide intention of the department. It was tantamount to maladministration, as claimed by the Complainant.

5. In his reply, the RCIT, Northern Region, Islamabad, stated that the assessment for the assessment year 1999-2000 was finalized on the basis of the ITI's report wherein sales were proposed at Rs.6000 to Rs.6500 per day. The I.T.I. also obtained Complainant's Statement on oath in which he admitted his sales at Rs.4000 per day. The income for the subsequent year (2000-01) was finalized on the basis of the earlier assessment. He vehemently denied the pre-dating of the service of the assessment order and the demand notice for assessment year 2000-01. In this regard, he pointed out that the issue had been settled by the CIT (Appeals) in his appellate order. Hence the objection is without any merit.

6. Regarding the non-service of the assessment order for assessment year 1999-2000, he stated that the Complainant could have approached the Taxation Officer for obtaining the copies of the said documents. He denied the receipt of the application for the supply of copies and the payment of copying fees.

7. Regarding the demand of illegal gratification, he stated that no proof was available on record or was provided by the Complainant. He went on to state that the complaint filed by the Complainant was without any justification because the income for the two years were finalized in accordance with the provisions of the R.O. Moreover, the Complainant had already availed the benefit of appeal, which was rejected. It was further stated that complaint had no merit.

8. Both the A.R and the D.R were heard. They reiterated thair respective stand points which have been discussed in the foregoing paragraphs. Additionally, the AR stated that the Income Tax Inspector was not authorised to record the statement of an assessee under oath. In this regard he referred to the provisions of Section 148 of the R.O. and relied upon the decision of the learned Tribunal quoted as [(2001) 83 TAX 156(Trib)]. He also stated that the Inspector was not authorised to enter the premises of the Complainant in accordance with the instructions of the CBR issued in 1993.

9. The DR stated that assessment for assessment year 1999-2000 was duly served and no application of the Complainant for supply of copies was received. He argued that the I.T.I. was duly authorized to enter the premises and CBR's instructions in this regard were duly followed.

10. The two parties were asked to produce the following evidence in the next hearing:

For the Complainant:

i. Copy of the decision of the learned Tribunal cited above.

ii. The proof that a letter requesting for supply of copy of the assessment order for assessment year 1999-2000 was filed and copying fee was paid.

For the Respondent:

i. Proof that the assessment order for 1999-2000 was served on the Complainant.

ii. Both the accused ITI, Mr. Ghulam Mustafa, and Notice Server, Mr. Muhammad Safeer, were to be produced for cross-examination by the Complainant in the next hearing.

11. On the next hearing, the AR produced the copy of the decision of the learned Tribunal referred to above. He also produced the proof in the shape of a letter requesting for the supply of a copy of assessment order for assessment year 1999-2000. The proof of payment of copying fee was also produced and found verifiable.

12. The D.R, however, could not produce any evidence regarding the service of assessment order for assessment year 1999-2000. Neither could he disprove the authenticity of the Complainant's letter referred to in para 11 above.

13. The two accused, however, were produced. Both of them vehemently denied making any demand of illegal gratification. Instead, they accused the Complainant of not disclosing true particulars of his income and assets. The AR was also provided the opportunity to cross-examine them to prove his accusations regarding the demand of illegal gratification. This opportunity he did not avail.

14. From the above discussion, the following facts emerge:

a. The ITI was not authorised to obtain the statement of the Complainant on oath within the meaning of Section 148 of the R.O. This statement, therefore, does not exist in the eyes of law.

b. Though the ITI was duly authorised to enter the premises of the Complainant, his report could not be made the basis of the assessment unless the Complainant was duly confronted with it. As it is apparent from the assessment order for assessment year 2000-2001, no such action was taken.

c. The circumstantial evidence regarding the date of service of the assessment order for assessment year 2000-2001 favours the stand point of the Complainant for the following reasons:

i. The assessment order did not bear any date of its passage. This is a serious lapse, especially in view of the fact that it got time barred on 30-06-2003. Even if the date of the service of Demand Notice is

accepted, as claimed by the Respondent, it was effected after 3 months the assessment got time-barred. The delay could not be explained.

ii. Even the demand notice does not bear any date.

iii. What is most serious is that the copy of demand notice produced by the Complainant is different in its contents from the one produced by the Respondent. The former neither contains the signatures of the recipient nor the date of receipt. (purported to be 29-09-2003). There is a noting at the top right hand corner of the said copy which states "received on 04-11-2003". These two copies of the same demand notice clearly establish the claim of the Complainant that the demand notice was not served on the date claimed by the Respondent.

d. The assessment for assessment year 1999-2000 was framed u/s 62 of the R.O. It was noted in the said order that no books of accounts were produced on the plea that they were not maintained. Neither any evidence could be produced to support the declared income of Rs.46,000. After making these general observations, the ACIT, Circle-02, Peshawar, proceeded to assess the income at Rs.202,500. As has been noted above, the income of the Complainant for the immediately preceding year (1998-99) was determined at Rs.85,000 after the Revision. The ACIT did not discuss the circumstances which led him to increase the estimated income by almost 250%. It may be noted that income for the immediately preceding year was determined by his superior, i.e. the Commissioner of Income Tax, Peshawar Zone in Revision and ought to have provided a guideline for him. Unless he could bring some additional facts, he ought to have followed the history of the case.

15. In view of the above discussion, the maladministration on the part of the taxation authorities is proved because the action of putting wrong date on the demand notice was perverse and involved exercise of powers for corrupt or improper motive within the meaning of Section 2(3)(i)(b) and (d) of the Establishment of Federal Tax Ombudsman Ordinance, 2000. The maladministration is also apparent on the part of CIT (Appeals) as he failed to take into account the fact that demand notice for assessment year 2000-2001 was not served on the date stated by the taxation authorities as pointed in para

14(c)(iii) supra. The assessments for both the years are bald and their passage falls within the category of maladministration within the meaning of Section 2(3)(i)(a) of the F.T.O. Ordinance.

16. It is, therefore, recommended that:

i. The CIT (Appeals)'s action, while deciding the appeal for assessment year 2000-01, in not taking into account the fact that demand notice was not served on 29-09-2003 is a mistake apparent from the record. It should be corrected u/s 221 of the Income Tax Ordinance, 2001. The Complainant is to file an application for the rectification of the mistake.

ii. The CIT, Peshawar Zone to take action u/s 122A of the Income Tax Ordinance, 2001 for the revision of assessment for assessment year 1999-2000 after conducting proper enquiry required under the law.

iii. Compliance of the above-mentioned recommendations be made within 40 days of the receipt of this order.

(Justice (R) Munir A. Sheikh)
Federal Tax Ombudsman

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.646/2004

Iqbal Ahmad,
Iqbal Public High School,
Bannu. ... Complainant

Versus

Secretary,
Revenue Division,
Islamabad. ... Respondent

Dealing Officer ... S. M. Sibtain,
Adviser

FINDINGS/DECISION

Present: Mr. Iqbal Ahmad, complainant in person.
Mr. M. Akram, Taxation Officer, Circle 25, Bannu for the respondent.

Maladministration is alleged in the instant complaint on the part of Taxation Officer, Bannu for repeating the same process in making the reassessment of complainant's income for assessment year 1998-99 disregarding the directions given by the Commissioner of Income Tax (CIT) in his order dated 3rd January, 2002 passed u/s 138 of the Income Tax Ordinance 1979 (Repealed Ordinance) and for disallowing exemption of income in contravention

of provisions of clause (86) of Part-I of the Second Schedule to the Repealed Ordinance. The assessment order dated 23-06-2003 has been served on 24.06.2004.

2. It is further alleged that the same process has been employed for passing assessment orders for assessment years 2000-01 and 2001-02. The hearings were conducted on 23rd June and 30th June, 2004. The accounting record of fee receipts, salary and other overhead were produced before the Taxation Officer as evident from his signatures and rubber stamp subscribed and affixed on the original. Certificate from District Education Officer, Bannu, dated 30-05-2002 confirming the amount of fee charged from students was also produced and acknowledged by the Taxation Officer and exemption from tax on income of School was claimed under clause (86) *ibid* in each year. The Taxation Officer, however, rejected the entire evidence on hearsay, whims and surmises without conducting any enquiry and placing any documentary evidence on record, which was contrary the figures declared in the returns of income and supported by registers and records produced before him. Thus it is alleged that the process employed was contrary to settled law, rules and regulations which is tantamount to a major trait specifically included in the definition of *maladministration* u/s 2(3)(i)(a) of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 hereinafter referred to as FTO Ordinance. Claim of exemption has been rejected in both the years.

3. The CIT while setting aside the original assessment made at a total income of Rs.480,000/- had directed the Assessing Officer to make the assessment of income *de-novo* keeping in view the following recommendations of Federal Tax Ombudsman through his decision dated 06.12.2001 in C. No. 1572 of 2001:

i) The Commissioner of Income Tax may invoke his suo moto powers u/s 138 of the Income Tax Ordinance to cancel the assessment for the year 1998-99 with the directions that fresh assessment be made after proper examination of the complainant's records and

other evidence and after allowing him a full opportunity of being heard. The records must not be rejected without adequate reason.

ii) A letter to be issued to the assessing officer who made the assessment for the year 1998-99 pointing out the maladministration involved in the case and warning him to be careful in future.

iii) The Commissioner may also examine the matter of the complainant's arrears and the show cause notice for warrant of arrest based on the said arrears. If there are in fact any arrears for earlier years these may be properly intimated to the complainant and further action taken in accordance with law after allowing the complainant an adequate opportunity of being heard.

iv) No action be taken on the show cause notice for warrant of arrest before action is taken in the light of (iii) above.

4. Following allegations were made against the Assessing Officer in C. No. 1572 of 2001:

i) That the assessing officer has totally ignored the actual facts while framing the assessment and has disregarded the complete record of receipt and expenditure maintained by the complainant and produced before the assessing officer.

ii) That the complainant's income is exempt under clause (86) of the Second Schedule Part I to the Income Tax Ordinance which fact was accepted by the Settlement Commission in its order dated 18.08.1999.

iii) The assessing officer has referred to a report from the District Education Officer, Bannu which did not pertain to the year under consideration.

iv) The tuition fee charged by the complainant's school is Rs.100 per month and it has been wrongly estimated at Rs.190 per month in

the assessment order while the number of students has also been adopted at a higher figure without any basis.

v) An application for rectification dated 21-09-1999 for the assessment year 1998-99 was sent to the assessing officer and the mistake is to be deemed as rectified u/s 156(3) of the Income Tax Ordinance.

vi) The Tax Recovery Officer has issued a show cause notice preceding warrant of arrest dated 22-09-2001 for an amount of Rs.267,051 which is an act of harassment.

5. Briefly the facts recorded by the Taxation Officer in his *de novo* assessment order dated 23.06.2003 are that the assessee (complainant in instant complaint) has filed return showing nil taxable income, claiming exemption under clause (86) of Part I of the Second Schedule to the Repealed Ordinance. The Taxation Officer has rejected the claim of exemption *ibid* relying upon the decision of Income Tax Appellate Tribunal (ITAT) in ITA No. 541 to 544 (PB) of 1998-99 dated 19.5.1999 (A.Y. 1991-92 to 1994-95). The Taxation Officer has mentioned in his order that the assessee again placed reliance on the decision of Income Tax Settlement Commission dated 18.08.1999 in support of his claim for exemption *ibid*.

6. He has further recorded that in response to notice u/s 61 issued on 18.04.2003 for assessment years 1994-95 to 1999-2000 the assessee filed attendance registers of classes III, IV, VI, IX and X, class reports and confirmation from District Education Officer, Bannu. After two adjournment for 30th April and 13th May proceedings remained suspended due to intimation of representation made to President of Pakistan vide letter No. C.NO.4(34)I.O.I/03 Islamabad. Ultimately fresh notice u/s 61 was issued for 17.6.2003 when assessee filed written reply relevant to assessment year 1998-99. Hearing was adjourned to 23.06.2003 when the assessee filed another written explanation alongwith affidavit regarding bank account, personal expenditure statement and wealth statement.

7. However, the Taxation Officer found that in order to avail exemption under clause (86) ibid the assessee does not meet the following requirements of section 47(1)(d):

a) Accounts audited by Chartered Accountant.
b) School expenses required to be met from donations while assessee meets the expenses by charging fee.
c) School is run for profit, not on charity as evident from Advertisement.
d) Profit earning is inferred from the fact that assessee's brothers Zulfiqar Ahmad and Ijaz Ahmad have opened Al Qaiser Public School and Faran Public School respectively.
e) The District Education Officer, Bannu has no authority to certify vide his letter No. 1191 dated 22.02.1999 that the School runs solely to promote education and it has not been established for purposes of business or profit.
f) Revenue stamps are not affixed on salary register against signatures of recipients of salary nor their addresses are recorded.
g) Assessee failed to produce Admission/Discharge/Leaving Register which is mandatory under the "Education Code (Act) 1935".
h) Information collected from locals and their recorded statements confirm that the "assessee's school is private and charges fee from Rs.180 to Rs.250 in various classes.
i) Executive District Officer School, Bannu confirmed/ verified that school did not submit monthly staff/ student/Tuition Fee statements as well as Income – Expenditure Statement for the period July 1997 to June 1998 and that it was registered as a Private/Public School vide No. 14 dated 17.04.1984.

j) Assessee has purchased a palatial house in Mohalla Ghazni Khel. He owns another plot of land in Bannu Township besides two motor cars.

k) A printed fee receipt showing Rs.130 charged from one Ilyas in January, 1990 is placed on record.

8. The Taxation Officer has rejected assessee's book version on the basis of foregoing alleged discrepancies. He has accepted the declared total students on roll during the year at 220 but estimated the average fee per student @ Rs.200. He also rejected the plea that admission fee is charged only once at the time of entry to school; instead he estimated admission fee @ Rs.100 for all 220 students in various classes. Overhead expenses were disallowed to the extent of Rs.16,198. Thus total income was computed at Rs.285,878 which included income of Rs.36,000 declared by the complainant from a tuition centre run in the name of Iqbal Academy in the evening.

9. Mr. Muhammad Akram, Taxation Officer of Circle 25 at Bannu is present. He has denied any maladministraion in the process of assessments, at the outset. However, when asked to produce the evidence on which he and his predecessor relied upon to reject the accounting version of the complainant on his returns of income as well as the claims of exemption were based upon, he could not produce any supporting evidence to the contrary except the lone undated tuition fee receipt referred in Para 4(k) supra for Rs.130 in January 1990. He conceded that the complainant was never confronted even with this document during any of the proceedings.

10. It is further noted that while rate of fee has been estimated for assessment year 2000-01 and 2001-02 @ Rs.150 per month, the tuition fee rate has been estimated for assessment year 1998-99 @ Rs.200 per month. The alleged baselessness of the adoption of rates of monthly tuition fees is evident from the fact that it was adopted @ Rs.200 in 1998-99 while in the subsequent assessment years 2000-01 and 2001-02 it was adopted @ Rs.150. The Taxation

Officer states that he has taken a lenient view. It is a well settled principle that where supporting evidence of receipts and expenditure is produced, it can not be disregarded or rejected without placing any evidence to the contrary on record; mere hearsay, presumptions, whims and surmises cannot be adopted as the basis of rejecting the supporting documentary evidence produced by the assessee. The occasion for estimates to be made by the assessing officer arises, according to principles well settled by binding decisions of competent Courts, only where the accounts maintained by the assessee are rejected on valid grounds recorded in the order and evidence relied upon to do so is placed on records of proceedings or where no accounts are admittedly maintained and the declared version is low in comparison to parallel cases. It is only then that the occasion for a harsh or lenient view can arise. This manner of process has been employed despite directions of the CIT through his order u/s 138 of the Repealed Ordinance to proceed according to recommendations of Federal Tax Ombudsman made in the decision dated 06-12-2001 on an earlier Complaint No.1572 of 2001.

11. The foregoing facts and circumstances prove the allegations that the process employed to assess the incomes in each of the three assessment years under complaint is contrary to settled law, rules and regulations; the consequent actions and decision are perverse, arbitrary, unjust, oppressive and discriminatory, are based on irrelevant grounds and involve exercise of powers for administrative excesses reflecting incompetence and ineptitude of the respondents in discharge of their duties and responsibilities.

12. Reasons recorded by the Assessing Officer in the order for assessment year 1998-99 for refusal to allow exemption claimed from tax on income of the School under clause (86) *ibid* as reproduced in Para 7 supra are equally fallacious and contrary to law. There is no nexus of the exemption of income of educational institution from tax, allowed under clause (86) of Part-I of the Second Schedule ibid specified u/s 14 of the Repealed Ordinance, with the *institution* or

fund which is established in Pakistan for a religious or charitable purpose approved by the CBR for such purposes, allowing tax relief to the assessees on the sums donated to such *institution* or *fund* as envisaged u/s 47(1)(d) of the Repealed Ordinance.

13. There is no requirement under clause (86) *ibid* of the audit of accounts of educational institution by a Chartered Accountant. Likewise there is no requirement of meeting the expenses of such institution out of donations and not through charging tuition fee. Had no surplus income from such institution been visualized there was no need to allow exemption to its income from tax under clause (86) *ibid*. Imputing profit earning by the owner of the School and inferring its passing over to his brothers who have established two other schools is without placing any evidence on record to support such insinuation. It is not the case of the Assessing Officer that brothers of the owner of instant School have failed to explain the investment made by them on their schools from their own sources. In short there is no evidence of diversion of any income of the School to the personal benefit of the proprietor of school or for benefit of his brothers. Further, the Settlement Commission noted in para 5 of their decision *ibid* that a governing body supervises the institution which consists of citizens of the city and the Chairman of the Board of Intermediate and Secondary Education, Bannu as well as the District Education Officer. The District Education Officer, therefore, is certainly in a position to certify that the sole purpose of the school is to promote education and that it has not been set up for business or profit. There is no provision in Income Tax Ordinance to disallow salaries or to disallow exemption for non affixture of revenue stamps under the signature of recipients of salaries. There are other relevant laws to recover and penalize such contravention. Similarly any breach of Education Code is to be dealt with by the Education Department. Simply referring the fact that the proprietor owns a house and other moveable and immovable property, while he has filed his wealth statement as well, without establishing that the investment thereon does not reconcile with the

declared sources of his income would not justify the insinuation of diversion of school income towards acquiring such assets.

14. All the foregoing baseless and wild insinuations reflect the incompetence and inaptitude of the respondent in discharge of his duties and responsibilities. Placing the fate of educational institutions, which the state wants to promote through tax exemptions on income generated by those institution to be utilized in improvement of standards of instructions and expansion, in the hands of such incompetent officers and overlooking their repeated perverse, arbitrary assessments of income and decisions to follow exparte decision of Income Tax Appellate Tribunal, holding the school ineligible to claim exemption on its income in assessment years 1991-92 to 1994-95 warrant review by the Commissioner of his policy of delegation of jurisdiction to such officers. The Tribunal decided the appeals on 19.5.1999 against the school exparte in peculiar circumstance of alleged non compliance of notices for hearing. The order of ITAT was not communicated to the complainant till 17.08.1999 when the erstwhile Settlement Commission heard the case for settlement.

15. The Income Tax Settlement Commission have recounted the facts of the case in their decision dated 18.08.1999, which are reproduced hereunder as part of findings of investigation:

> "2. The facts for the 04 years under consideration are that he did not file any returns of income as he claimed exemption. However the assessments were made ex-parte on the following total incomes :-
>
> | | |
> |---|---|
> | 1991-92 | Rs.3,43,799/- |
> | 1992-93 | Rs.4,01,128/- |
> | 1993-94 | Rs.4,26,878/- |
> | 1994-95 | Rs.4,89,954/- |
>
> The assessee went into Revision against these assessments before the CIT, who herd the case and discussed his claim for exemption. However he set aside the case for reconsideration by the ITO. On reconsideration the ITO framed the assessments on the same total incomes, rejecting the claim for exemption. It was

held in the assessment order that since the institution was managed by the assessee himself, since the profits were diverted to the "personal benefits" of the proprietor, since there was no community or society which was running the institution, and since the institution was also charging fee from the students and since no exemption was claimed in the past assessment years, it was held that this was not a non-profit educational institution.

3. This time the assessee filed an appeal before the AAC, who rejected the assessee's claim on the basis of the ITO's findings. However he reduced the estimate of receipts. The assessee then filed second appeals before the Income Tax Appellate Tribunal while the department also filed second appeals. The cross appeals have not yet come up for hearing before the ITAT and the assessee has now approached this Commission for settlement. The assessee had earlier filed a Revision Petition before the Member (Judicial), CBR which could not be taken up as the department was in second appeal. The assessee had also made a representation before the Chairman, Central Board of Revenue reiterating his case for exemption from income tax being an educational institution. The CBR responded vide letter C.No.7(3)S.Asstt/95 dated 26-2-1996 by addressing a letter to the CIT, Zone-B, Peshawar enclosing a copy of CBR's Circular No.2 of 18-2-1996 which contained guide-lines for testing whether an institution was established solely for educational purposes and not for purposes of profit.

4. The said Circular was considered at the assessment stage and at the appellate stage also. In fact extracts have been reproduced in the appellate order, but the claim has been rejected stating that the institution did not fulfil the requirements. There is no reference to any spot enquiry conducted or any other type of enquiries made regarding the profit motives of the assessee for running a school. There is no concrete finding that the assessee has earned heavy profits, made properties, or derived any material benefits from the school. Just by stating that the profit is diverted to the personal benefit of the proprietor does not establish the fact of earning profits. When the case was initially taken up for hearing for settlement, the Commissioner of Income Tax, Zone-B, Peshawar was requested to conduct spot enquiries and forward his findings regarding the claim of exemption under clause (86). No reply was received.

5. The assessee who had attended in response to call notices, produced his books of accounts which consisted of receipt books, and ledgers. These showed that the fee charged was Rs.60/- per student. Monthly accounts were recorded in the ledgers which consisted of expenditures for rent of building, payment of utility bills, salary of teachers and of the principal which was Rs.1,900/- per month only. Any evidence of personal benefit is not available from these accounts. A governing body supervises the institution which consists of citizens of the city and the Chairman of the Board of Intermediate and Secondary Education, Bannu as well as the District Education Officer. The District Education Officer has certified that the sole purpose of the school is to promote education and that it has not been set up for business of profit. He also certified that the quantum of monthly fee per student during the years under consideration was Rs.60/-.

6. The contentions of the assessee have been considered. The assessee has availed of all the forums of assessment, appeal, revisions provided under the Income tax law to stress his claim for exemption. No material evidence has been found by the department for not accepting his contention. Thus no case for rejection of the assessee's claim has been made out. It is therefore directed that for the years under consideration the income of the school run by this individual be exempt from income tax, as it falls within the purview of clause (86) of Part-I of the Second Schedule to the Income Tax Ordinance, 1979. As a consequence of this decision, the assessee will withdraw his appeals filed before the ITAT. The department is also directed to withdraw the second appeals."

16. It is evident from the foregoing facts and the circumstances in which the ITA Tribunal delivered the exparte decision ibid and the unambiguous provisions of clause (86) ibid that the decision of Tribunal is not binding on subsequent years and that claim of exemption is to be decided from year to year on its own merits. The complainant, basically a teacher, has suffered the humiliation of arrest and had been subjected to coercive proceedings for recovery of a dubious tax liability determined on the basis of assessments made by employing processes that were contrary to law, rules and regulations as well as departure from established practice and procedure of processing of returns of income and

claims of exemption for which the respondents have no bona fide and valid reasons.

17. It is recommended:

i) That the Commissioner of Income Tax, Peshawar Zone undertakes written counselling of the two officers who have passed the assessment orders for assessment years 1998-99, 2000-01 and 2001-02.

ii) That the Commissioner considers, in order to fulfill his statutory obligation u/s 122A, to call for records of assessment proceedings in which orders have been passed by the Taxation Officers and considers in view of the foregoing findings of investigations and after ordering any other enquiries considers that the orders require revision, so as to make such revision to the orders as be deems fit.

iii) Compliance is reported within 45 days.

(Justice (R) Munir A. Sheikh)
Federal Tax Ombudsman

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

Complaint No.581/2004

M/s Golden Weaving,
Faisalabad — Complainant

Versus

Secretary,
Revenue Division,
Islamabad — Respondent

[Dealing Officer — Mirza Muhammad Wasim, Adviser]

FINDINGS/DECISION

Mr. Muhammad Ashfaq Ahmad Naz, ACMA for the complainant.
Mr. Muhammad Asif, DCIT Circle 10, Faisalabad for the respondent.

This is a complaint filed by an association of persons which contains the following main points –

(i) The complainant owns power looms which are run on conversion basis.

(ii) Return of income was filed for the assessment year 2002-03 declaring income of Rs.188,253 which was assessed by the taxation officer at Rs.466,580.

(iii) The complainant filed appeal before the CIT (Appeals) on 30-1-2004 under intimation to the department who, however, issued notice u/s 122 just after 10 days of the date of filing of appeal by the complainant. An order u/s 122 was then passed (assessing income

at Rs.705,707) although there was no definite information and the condition u/s 122(5) was not fulfilled.

(iv) The show cause notice u/s 122 referred to an agreement (with the power looms association) but in fact no such agreement is enforceable unless it is accepted by the party concerned.

(v) The President has already held that assessment made under the repealed Ordinance cannot be re-opened u/s 122 of the Income Tax Ordinance, 2001.

(vi) The complainant is not member of any association.

It has been prayed that the order u/s 122 be declared as illegal.

2. In the respondent's reply the preliminary objection is that it is a matter relating to assessment of income and, therefore, falls within the ambit of section 9(2)(b) of the Ordinance XXXV of 2000. On facts it is further stated as under -

(i) The notice u/s 122 was issued for the reason that the assessment was finalized in utter disregard of the agreement between the power looms association and the department.

(ii) The agreement was executed between the power looms' owners and the department and a number of assessments were finalized on the basis of the said agreement. The communication of this agreement (to each power loom owner) was not necessary as every such owner, being a party to the agreement, was aware of it.

(iii) There was no malafide on the part of the department.

It is prayed that the complaint be dismissed.

3. The representatives of the two sides have been heard and the records examined. The main portion of the show cause notice dated 10-2-2004 issued by the taxation officer to the complainant reads as under -

"Please refer to the above.

By virtue of order No.3271 dated 9-1-2004 of worthy Commissioner of Income Tax, Faisalabad Zone, Faisalabad, the powers to amend assessments as provided by section 122 of the Income Tax Ordinance, 2001 have been delegated to the undersigned. You are, therefore, requested to please explain the following –

1. As per estimated receipts and expenditure accounts weaving charges have been declared at Rs.9,368,102 and on which expenses have been claimed at Rs.9,176,007 against electricity consumption of Rs.2,421,258. You were confronted through a notice under section 62 that conversion receipts are grossly under stated and that these did not commensurate with electricity expenses. A parallel case was also quoted in the very same notice in which the assessee had declared receipts at ratio of 6.14%. You are called upon as to why the receipts may not be adopted as in the above referred case. Please explain.

2. The income has been calculated at lower side when compared with all other parallel cases in the circle in which percentage of conversion receipts has been applied while keeping in view the agreement executed between the power looms owners and the department. By virtue of this agreement your assessed income for the year under consideration is low. Please explain as to why your income may not be adopted keeping in view the agreement as under –

Declared receipts	Rs.9,368,102
Ratio conversion receipts.	
On 1st Rs.5,000,000 @ 8%	Rs. 400,000
On remaining Rs.4,368,,102 @ 7%.	Rs. 305,767
Total receipts :	Rs. 705,707
Less income declared	Rs. 188,253
Balance for addition :	Rs. 517,514

As against above an addition of Rs.278,327 has been made thus causing a loss of Rs.239,187 in your assessed income.

Your reply on the above should reach the undersigned on or before 17-02-2004 failing which or unsatisfactory explanation is received action as proposed above will be accordingly completed without another opportunity of being heard.

Sd/-

Assistant Commissioner
of Income Tax, Circle 30,
Faisalabad"

In reply to the notice u/s 122 it was stated by the complainant that the notice had been issued without any definite information which was required u/s 122(5) of the Income Tax Ordinance, 2001. It was also stated that if there was an agreement the complainant should have been confronted on this point in the notice u/s 62. It was also stated that the date of the so-called agreement was not known and in any case, it could not be enforceable unless accepted by the concerned parties. It was further stated that apparently the notice u/s 122 had been issued in retaliation for the appeal filed against the original assessment. It was thus requested that the notice u/s 122 be withdrawn. The complainant's plea was, however, not accepted and an order u/s 122 dated 19-6-2004 was passed in which reference was made to the department's agreement with power looms owners and two cases were also cited in which income was statedly assessed in accordance with the said agreement. The order originally passed u/s 62 of the repealed Ordinance was thus amended u/s 122 as under –

"Receipts as per original order	--	Rs.9,368,102
Ratio of conversion receipts:		
On the 1st Rs.5,000,000 @ 8%		Rs. 400,000
On the balance of Rs.4,368,102	@ 7%	Rs. 305,707
Net income assessed :		Rs. 705,707"

4. It is apparent from the above that while in the show cause notice the declared receipts were stated to be low the said receipts have been accepted in

the order u/s 122. Against the declared receipts, a net profit rate of 8% has, in effect, been applied to the first Rs.5,000,000 of the receipts while the net rate of 7% has been applied to the balance. The representative of the respondent could not show the basis for the net profit rate applied or to indicate what the so-called agreement with the owners of power looms actually was. In fact, throughout the entire proceedings u/s 122 no reference was made to the actual contents of the so-called agreement which agreement has remained a mystery. It is thus evident that the order u/s 122 did not fulfil the requirements of sub-section (5) of the said section. According to this sub section an assessment can only be amended where "on the basis of definite information acquired from audit or otherwise" the Commissioner is satisfied that income has escaped assessment or has been under assessed. In the instant case there was no such definite information and the basic requirement of section 122(5) was thus not fulfilled. Even otherwise, as indicated above there is no valid basis for the computation of income in the amended assessment. The order u/s 122 is, therefore, contrary to law, is perverse, arbitrary, unreasonable, unjust and oppressive and is also based on irrelevant grounds. The matter thus falls within the definition of "maladministration" contained in section 2(3)(i)(a), (b) and (c) of Ordinance XXXV of 2000 and thus falls in the jurisdiction of this Office.

3. In the light of the above, it is recommended that -

(i) The order u/s 122 dated 19-6-2004 be again amended and income be assessed at the original figure in the order u/s 62, subject to any relief that may be allowed to the complainant by the CIT (Appeals).

(ii) Compliance be reported within 30 days.

(Justice (R) Munir A. Sheikh)
Federal Tax Ombudsman

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE
LAHORE.

Complaint No.149-L/2004

Messers Top End Productions
24-Masson Road,
Lahore.

...Complainant

Versus

The Secretary, Revenue Division, Islamabad.

...Respondent

[Dealing Officer: Mr. A.A. Zuberi, Advisor].

FINDINGS/ DECISION

Kh. Riaz Hussain (Advocate) for the Complainant.
Mr. Muzammil Hussain D-CIT) for the Respondent.

This complaint alleges "maladministration" in the issuance of notice on 17.09.03 under Section 122 of the Income Tax Ordinance, 2001 with a view to amend assessment for the years 1999-2000 to 2001-2002.

2. The facts leading to the complaint are that the Complainant-AOP is engaged in the production and exhibition of TV drama by obtaining 'Air Time' from PTV. Returns for the assessment years 1999-2000 and 2000-2001 were accepted under SAS resulting in refunds at Rs.413,724 and Rs.1,048,257 respectively. When Return for the assessment year 2001-2002 declaring Income at Rs.1,313,080 and claiming refund at Rs.2,325,441 was set apart for Total Audit by resort to para 9(2) of the SAS, the Complainant approached this Forum

alleging *malafide* in the set-apart. Investigations resulted in Finding/Decision dated 03.10.03 recommending that the order of set apart be withdrawn. The Return was then accepted under SAS. Yet another complaint was filed whereupon Findings/Decision dated 01.10.03 on C.No.923-L/2003 recommended issuance of refund after verification, which is said to be under-process. In the meantime the Complainant have been served with a notice under Section 122 dated 17.09.03 contending : On "scrutiny of record it transpires that contract receipts in your Return were chargeable to tax under Section 80C of the Income Tax Ordinance, 1979 as tax deducted under Section 50(4) ..... constituted final discharge of tax liability ..... As such assessment already finalized is erroneous in so far as it is prejudicial to the interest of revenue". With this the Complainant is aggrieved.

3. The Respondents have forwarded para-wise comments by the R-CIT, Eastern Region, Lahore which, in addition to questioning the competence of the complaint for admission in view of the bar as per Section 9(2) of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 (hereinafter called the *FTO Ordinance*), deny "maladministration". It is submitted by the R-CIT that the Complainant derive Income by telecasting dramas on PTV "through purchase of air time under contract" which aspect was overlooked by the assessing officer who failed to consider that *prima facie* the receipts were contractual in nature falling within the presumptive tax regime – hence liability to tax under Section 80C of the *repealed Ordinance* for which purpose assessments in all the three years have to be amended.

4. Khawaja Riaz Hussain (Advocate) appearing for the Complainant dilating on the chequered history of the case pointed out that initially

i) refund for the assessment years 1999-2000 and 2000-2001 were unduly withheld,

ii) till now, despite recommendation by the FTO vide Findings/Decision dated 01.10.03 (ibid), only part of the refunds have been issued,

iii) refund for the year 2001-2002 and unpaid balance of Complainant's refund for the preceding two years have been withheld on superficial grounds for which C.No.139-L/2004 had been filed.

It is to forestall the issuance of these refunds, despite recommendation by the FTO, that the present action under Section 122 has been initiated which clearly smacks of *malafide*, thus falling in the category of "maladministration" as defined in the *FTO Ordinance*.

5. Mr. Muzammil Hussain (D-CIT) appearing for the Revenue repeated the same arguments as were conveyed by the R-CIT in the para-wise comments. He explained that the expression that the assessment already finalized is "erroneous in so far as prejudicial to the interest of revenue" clearly implies that the action is proposed under sub-section (5A) of Section 122 of the Ordinance though not specifically mentioned in notice dated 17.09.03. According to the DR, though action for erroneousness and prejudice to the revenue was, in the *repealed Ordinance*, to be initiated by the IAC, in the Income Tax Ordinance, 2001 (hereinafter called *the Ordinance*) all powers vest in the Commissioner who has delegated some of these to the Taxation Officers and hence notice has been issued by the Taxation Officer dealing with the case. It was canvassed by the DR that instead of submitting a Statement under Section 143B of the *repealed Ordinance* a normal Return of Income was filed by Complainant thus misleading the Department to believe that his Receipts were not contractual but normal trading transactions.

6. The rival arguments have been heard and case record examined. As already discussed, the Return for the assessment year 2001-2002 was set-apart for Total Audit, which action was reversed on the basis of Findings/Decision dated 03.10.03. As per the Scheme of Self Assessment, resort to Set-apart Para 9(b) is made on the recommendation of the Commissioner. Therefore, for the same Commissioner to now contend that filing of the Return under SAS was not proper and Statement under Section 143B should have been filed, is self-

contradictory. In other words it amounts to a 'change of opinion' which could not be made a basis for considering the assessment erroneous. Again, the Return was initially examined by the Commissioner who identified certain points for recommending its set-apart to the R-CIT whose order was subsequently set at naught by the FTO, leaves no room to suspect erroneousness in the proceedings as may have caused prejudice to the revenue. Admittedly 'change of opinion' cannot be a valid basis for resort to Section 122A *inter alia* to amend the assessment on an evidence which had been duly considered and accepted. The *bonafide* of action evidently stands eroded thus revealing "maladministration" as defined in Clause (3) of Section 2 of the *FTO Ordinance*. It is essential for action under sub-section (5A) of Section 122 that the assessment is erroneous and prejudicial to the interest of revenue at the same time. Since there is no erroneousness in the acceptance of Return, which have been done on the recommendation of FTO, prejudice to the revenue alone cannot be the only ground for the proposed amendment.

7. Another lapse of more serious dimension is that though *the Ordinance* vests all the powers of assessment, determination of Income and also of amendment/rectification (etc). in the Commissioner, on his turn the Commissioner has been authorized vide Section 210 of *the Ordinance* to delegate powers to his subordinates who all are designated as Taxation Officers. Adhering to the principles of justice and the practice existing in the Department, it is incumbent on the Commissioner to delegate assessment (and related) powers to a Taxation Officers, and supervisory powers to Taxation Officer of higher rank/status such as the IACs. This does not appear to have been done hence the impugned notice has been issued by the same Taxation Officer (office, not the person) who made the assessment. It is clearly contrary to established practice without any valid reason, against the norm of justice and thus perverse, arbitrary and unjust falling in the realm of "maladministration" as defined in the *FTO Ordinance*.

8. The R-CIT's objection as to the competence of the complaint for admission is overruled for the reason that Section 9(2) of the *FTO Ordinance* protects acts of omission or commission which are *bonafide* and for valid reasons. Where *bonafide* is *prima facie* missing an investigation alone can determine the validity of the complaint. Furthermore the process adopted to reopen a case does not amount to assessment against which proceeding no appeal is provided. The proceeding initiated is independent of assessment. The objection to jurisdiction is overruled.

9. In the final analysis, it is RECOMMENDED that: -

i) The impugned notice issued under Section 122 of the Income Tax Ordinance, 2001 by the Taxation Officer (D-CIT Circle 10, Zone-C, Lahore) in respect of assessment year 1999-2000 to 2001-2002 be withdrawn/cancelled.

ii) The assessment as framed under Section 59(1) accepting the Returns be allowed to stand good.

iii) Refund as determined for the two years be issued under Section 170 alongwith Additional Payment for delayed refund, as per the provisions of Section 171 of *the Ordinance*.

iv) The CBR may issue instructions to the R-CITs/CITs to delegate powers so as to retain the hierarchy of the Income Tax Department on the same lines as in the *repealed Ordinance*.

10. Compliance report be submitted within 30 days of receipt of this Order.

(Justice (R) Saleem Akhtar)
Federal Tax Ombudsman

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE
LAHORE

****

COMPLAINT NO.253-L/2004

M/s Ahmed Sons, Lahore,
8-B Kashmir/Egerton Road,
Lahore (Lung Fung Building).

...Complainant

Versus

The Secretary, Revenue Division, Islamabad.

...Respondent

[Dealing Officer Muhammad Akbar (Advisor)]

DECISION/ FINDINGS

Mr. Nadeem Saeed ITP for the Complainant.
Mr. Abdur Rehman Warraich, DCIT, Lahore for the Respondents.

Facts of the complaint are that the complainant had filed Wealth Tax Return for the assessment year 1995-96 declaring wealth amounting to Rs.36,00,000/- which was assessed by the Wealth Tax Officer at Rs.14,378,091/- vide Assessment Order dated 16.05.1996 which, however, was reduced to Rs.36,00,000/- by the Appellate Tribunal vide its order dated 17.09.02. Following assessment by the taxation officer the complainant deposited wealth tax of Rs.328,986/-. He filed an application for refund of tax on 16.10.02 which was not considered. Subsequently, the complainant filed more applications/reminders for payment of refunds but to no effect.

2. In reply the respondents have submitted that the complainant claimed total payment of wealth tax at Rs.328,986/- for A.Y. 1995-96. Wealth tax liability of the complainant after ITAT's order amounted to Rs.40,000/-. Another amount of Rs.5,000/-, deposited on 21.11.1997 related to super tax and not wealth tax and was, therefore, not refundable. The payment of Rs.30,000/- made on 18.04.1998 could not be verified from the record of Data Processing Center (DPC) available with the MTU. This payment would require further verification from State Bank of Pakistan. If the aforesaid three amounts were excluded the refundable balance would work out, tentatively, to Rs.253,986/-. The reply to the reminders could not be given because the wealth tax record was under transfer from Zone-B to MTU. Income tax and additional tax demands amounting to Rs.313,566/- are outstanding against the complainant for A.Ys.1995-96 to 1997-98, which are more than the refund being claimed. The complaint may be dismissed being devoid of merit.

3. During the hearing, the AR reiterated the arguments advanced in the written complaint and stated that even if an amount of Rs.40,000/- is deducted from the overall amount of refund claimed i.e. from Rs.328,986/- it still would leave a refund of an amount of Rs.288,986/-. The complainant applied for 'appeal-effect' to Tribunal's order dated 17.09.2002 and though the order was received by the department it did not give the appeal-effect. The AR pleaded that the department may be directed to give the requisite appeal-effect.

4. The DR, however, submitted that apart from Rs.40,000/- which was payable, there were two more amounts namely Rs.5,000, which was not refundable as it was deposited as super tax, and an amount of Rs.30,000/- which was paid on 13.04.1998 required verification. Asked as to why the appeal-effect was not given when the ITAT's order was received in September 2002 he admitted that the appeal-effect should have been given but could not be due to work overload and due to transfer of record to the MTU. At this stage the two sides agreed to reconcile the amount of Rs.5,000/- to ascertain whether it was deposited as wealth tax or super tax, reduce an amount of Rs.40,000/- i.e. the

tax payable from the overall claim of refund. The DR also undertook to verify payment of an amount of Rs.30,000/- from the State Bank of Pakistan. He, however, stated that even then an amount of Rs.313,566/- was outstanding against the complainant for A.Ys. 1995-96 to 1997-98, which would be adjustable against possible refund of wealth tax. He further added that the assessments for income tax for A.Ys. 1995-96, 1996-97 and 1998-99 were finalized on 18.05.1999. Refund of wealth tax became due only after issuance of ITAT's order on 17.09.02, therefore, the outstanding amounts of income tax and additional tax were adjustable against refund of wealth tax. Asked to produce copies of formal demands for payment of additional tax the DR admitted that those had not yet been finalized/determined nor have the payment been demanded or a notice served. The AR submitted that if there was any outstanding liability they should have been informed at the appropriate time. The complainant had been making request after request for payment of refund but the department did not react. He further added that in so far as income tax assessment for A.Y.1995-96 is concerned the complainant had written to the department on 08.11.1999 for rectification of the order under section 156 of the repealed Ordinance on account of claim of credit of 1/5th for repair of the property but no reply was received. Similar applications for rectification were made in respect of assessments for the year 1996-97 and 1997-98 which also failed to elicit any response from the department. The income tax demands were, therefore, not final. Now they were time-barred and the department should accept complainant's contention. The DR submitted that applications for rectification of assessments for 1996-97 and 1997-98 were received, which were disposed of vide Income Tax Officer's letter dated 13.08.1999 as not falling within the ambit of section 156 of the repealed Ordinance. He, however, could not produce any reply with regard to the other application dated 08.11.1999 relating to A.Y. 1995-96. The AR, however, submitted that the complainant had filed the returns for A.Ys 1995-96, 1996-97 and 1997-98 for lease income and not property income and, therefore, even respondents' reply dated 13.08.1999 was not relevant to the application dated 22.06.1999. The DR showed his willingness to look into the application for

rectification and decide it on merit so as to determine the correct picture. The complainant, however, submitted that the time for rectifications as applied for had expired. He, however, submitted that his client would be prepared to discharge any tax liability which is legally determined as payable and outstanding against it.

5. The arguments of the parties and the record of the case have been considered and examined. It is observed that despite Appellate Tribunal's clear order dated 17.09.02 the department failed to give the appeal-effect. Department's argument that some payment (Rs.30,000/-) required verification is also not tenable because had the appeal-effect been given and the refund created the task of verification could have been completed much earlier. They cannot, therefore, hold back this amount. The complainant is, however, ready to reconcile the amount of Rs.5,000/- (super tax?) to ascertain whether this amount was deposited as payment of wealth tax or super tax. The DR could not produce copies of formal demands of additional tax said to be recoverable alongwith demands for income tax which means that admittedly the demands for additional tax are still undetermined. As for complainant's applications for rectification of assessment orders for the subject years, it is observed that while the department disposed of complainant's application dated 22.06.1999 for rectification under section 156 of the repealed Ordinance vide their letter dated 13.08.1999 it appears that it did not process complainant's application for rectification for A.Y. 1995-96. The Appellate Tribunal passed its order on 17.09.2002. Had the appeal-effect been given and had the refund been created at the appropriate time the department could have adjusted the refund against the then settled income tax liability and allowed the balance refund, if any. The respondents' failure to (i) give appeal-effect to the Tribunal's order, (ii) create refund, and (iii) pay proper attention to the complainant's refund claim has unduly complicated the matters to the detriment of the complainant which amounts to maladministration within the meaning of Section 2(3) of the Establishment of the Office of the Federal Tax Ombudsman Ordinance, 2000.

6. The maladministration aspects of delay caused in allowing credit for taxes paid by, deducted and collected from assessees due to flawed system of accounting of such collection being persistently followed by the Income Tax Department has been the subject of a number of decisions e.g. C.No.1429-L/2003 dated 10.1.2004 and the Special Report on Accounting of Income Tax Collection latest being the decision/recommendation in C. No.331-L/2004 dated 04-08-2004. Similarly the CBR has yet to take effective measures against officers who neglect and at times deliberately delay in allowing effect to the appellate orders such as the one in the instant case.

7. The issue of jurisdiction, specially the misreading of law with reference to the rider, "unless it is bonafide and for valid reasons" appearing in sub clause (a) of clause (i) of sub-section (3) of section 2 of FTO Ordinance with reference to allegations of maladministration on account of "departure from established practice or procedure" has also been considered in several decisions, the latest being the decisions in C. No.530-L/2003 dated 17.07.2004 and C. No. 1472-L/2003 dated 17-07-2004. It is reiterated here that except the departure from established practice and procedure, no other trait of maladministration specifically laid down under sub section (3) of section 2 ibid or any other aspect of maladministration covered by the dictionary meanings of the word "maladministration" there is any valid reason with the Revenue Division or any tax employee working under the Revenue Division to justify the decision, process, recommendation, act of omission and commission falling under the ambit of maladministraion; there is no onus on the complainant either to allege or prove matice/malafide against the respondent.

8. It is now recommended:

(i) That the Member Income Tax, CBR directly or through the Regional Commissioners issues instructions to all concerned officers that they shall not provide any cause to assessees for alleging maladministration on account of inattention or delay in allowing effect to the orders in appeal; that all backlog shall be cleared by December 31, 2004 and that any officer found responsible for maladministration on the aforesaid account after the aforesaid date

shall render oneself liable to major punishment "Removal from Service (Special Powers) Ordinance, 2000."

(ii) That the Member Income Tax, CBR ensures, by 31st December 2004, implementation of the recommendations of Special Report of the Federal Tax Ombudsman on Accounting of Income Tax Collection or any better devised system to enable allowing full credit, at the time an assessment is made, deemed or through any method provided under the law, rules or regulations, of tax genuinely claimed with return to have been paid by or deducted or collected from the assessee, if full particulars of such payment by or deduction or collection from such assessee are enclosed with the return in the form of a statement or photocopies of challans, certificates or bills in respect thereof. (The CBR may prescribe a proforma statement in this behalf).

(iii) The Member Income Tax, CBR issues instructions to all those concerned to implement/evolve and implement the system recommended at serial number (ii) supra that the backlog is cleared by December 31, 2004 and that any tax employee found responsible for any lapse in this regard shall render oneself liable to major punishment under the Rules ibid.

(iv) Allow appeal-effect to the Appellate Tribunal's order dated 17.09.02 and create refund immediately reducing the amount of refund by Rs.40,000/- said to be tax payable in consequence of Tribunal's order.

(v) Reconcile with the complainant the disputed amount of Rs.5,000/- and verify whether or not it represented payment of wealth tax or super tax and decide its status. If it is demonstrably determined that the amount in question represented wealth tax and not super tax, refund of this amount would be admissible, otherwise not.

(vi) Adjust towards recovery of income tax the tax liability finally settled and outstanding for A.Y 1996-97 and 1997-98 as complainant's applications for rectification for the aforesaid years were decided but without adjusting undetermined additional tax and pay the balance refund, if any.

(vii) Pay refund for A.Y. 1995-96 after adjusting the finally settled/outstanding income tax liability without adjusting any additional tax which admittedly has not been determined/ demanded.

(viii) The Commissioner in-charge undertakes written counseling of the Tax Employees responsible for the maladministration found in the instant case.

(ix) Compliance be reported within 30 days in respect of recommendations (iv) to (viii) and monthly progress reports are submitted beginning from September 15, 2004 upto January 15, 2005 with regard to recommendations (i) to (iii) supra.

JUSTICE (R) SALEEM AKHTAR
Federal Tax Ombudsman

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE
LAHORE

Complaint No.143/2004

M/s Nazar Khan, Contractor,
D.G.Khan.

... Complainant

Versus

The Secretary, Revenue Division, Islamabad.

...Respondent

(Dealing Officer: Muhammad Mushtaq, Advisor)

FINDINGS/
DECISION

Present: Sheikh Ghulam Asghar, Advocate, for the Complainant.
Mr. Qaiser Mehmood, DCIT, for the Revenue.

The Complainant is aggrieved on account of non issuance of refund. The brief facts are that the Complainant is a resident of Basti Jan Mohammad, Fort Munro, Dera Ghazi Khan situated in Tribal Area. The Complainant executed contracts with the Irrigation Department, District Zhob, Baluchistan Province for the assessment year 2002-2003 and received payment of Rs. 54,787,883. Tax was deducted at source at Rs.3,284,255. The Complainant alleged that the contract was executed in Tribal Area hence he was not liable to Income Tax. Income earned by him was alleged to be exempt in view of Article 247 of the Constitution of Pakistan as laws of the country were not applicable in the Tribal territory. The Complainant filed statement u/s 143B of the repealed Ordinance in Circle-18 D.G. Khan and claimed refund of Rs.3,284,255. Income Tax assessment was completed u/s 62 vide order dated 14.03.2003 wherein the Complainant's claim of exemption was accepted. However, so far no refund has been issued and injustice was being continued indicating 'maladministration' on

the part of the Taxation Authorities which has caused grievance to the Complainant.

2. In reply the RCIT, Central Region, Multan has denied any maladministration. It has been submitted by the RCIT that the Complainant was a permanent resident of Tribal Area. The entire contract was executed by him in Tribal Area of Zhob, which fell in the province of Baluchistan. According to the RCIT, the payment was made by the Irrigation Department, Zhob and the tax was accounted for by The Accountant General, Baluchistan. The RCIT submitted that jurisdiction of this case lay with the RCIT, Southern Region, Karachi and Income Tax assessment completed by the Taxation Officer, Circle-18, D.G.Khan was without any jurisdiction. The RCIT has also submitted that the refund in this case could not be issued because not only assessment was completed without any jurisdiction but also because verification of payment of tax deducted at source has not been completed inspite of the fact that District Account Officer, Zhob was requested by the Taxation Officer on 24.12.2003 for verification. The RCIT further submitted that the Complainant had filed only statement u/s 143B of the repealed Ordinance and no Income Tax Return claiming refund was filed by the Complainant. According to the RCIT statement u/s 143B of repealed Ordinance was filed u/s 80C of the repealed Ordinance where the taxpayers did not have any other source and tax deducted was treated as final liability of a taxpayer. If the Complainant wanted a refund then he should have filed a regular Income Tax Return u/s 55 of the repealed Ordinance and claimed refund in the return, which was not done by the Complainant. The RCIT has further submitted that demand notice issued on 15.03.2003 did not indicate any refund implying thereby that the matter of refund has not been finalized as yet. The RCIT informed that the assessment record was transferred to RCIT, Southern Region, Karachi on the point of jurisdiction and the Taxation Officer, Circle-18 has been asked to explain his position for completing the assessment without jurisdiction.

3. Sheikh Ghulam Asghar, Advocate, attended for the Complainant. He forcefully argued that the assertion of the RCIT that Income Tax assessment

completed by the Taxation Officer, Circle-18 was without any jurisdiction was not correct and too late in the day for the following reasons:

(1) The very first sentence of assessment order read. "The assessee an individual falls within the jurisdiction of this Circle and continued to derive income from execution of work contracts". It meant that while making assessment the Taxation Officer examined the issue of jurisdiction and made a conscious decision after consultation with the Inspecting Additional Commissioner. Now at this stage after assessment has been completed to say that assessment was completed without jurisdiction was not correct.

(2) The Complainant is resident of Basti Jan Mohammad, Fort Munro, Dera Ghazi Khan which is a part of D.G. Khan District as is evident from the notification No.2205/Steno-LG dated 16.10.2000 issued by the deputy Commissioner D.G. Khan in connection with the local bodies election. A copy of this notification was placed on the record.

4. The AR has submitted that the Complainant was not only exempt from tax keeping in view the provisions of Article 247 of the Constitution but was also exempt from tax keeping in view S.R.O 586(1)/91 dated 30.06.1991. The AR has argued that the Complainant filed statement u/s 143B of repealed Ordinance to claim the refund of Rs.3,284,255 which was clearly indicated in the statement u/s 143B filed by the Complainant. In this statement the Complainant nowhere indicated that the tax deducted at source was his final tax liability. The AR submitted that the Taxation Officer, keeping in view the provisions of Article 247 of the constitution and the decision of Peshawar High Court in case reported as (2000)-St-Tax-360 (H.C. Peshawar), exempted the Complainant from Income Tax but inspite of this fact refund has not been issued so far which was serious Maladministration. The AR pointed out that the assertion of the RCIT that the tax

deducted at source had not been verified by the District Accounts Officer Zhob was not correct because the said office had already issued a verification certificate which was available on the record. Instead of issuing refund, the assessment record was transferred to the RCIT, Southern Region, Karachi with malafide intentions to delay the refund. The AR further submitted that the Respondent in this complaint was The Secretary, Revenue Division and refund had to be issued on his behalf. The Taxation Officer, Circle-18, D.G.Khan, IAC, CIT, and RCIT, Multan are his representatives. They have to issue the refund requested by the Complainant.

5. The replies of the Complainant and the Respondent were examined and rival arguments considered. This complaint involves a number of legal issues which are as under:

(i) The Complainant admittedly is a resident of Tribal Area and executed contract in Tribal Area. The payments were made to the Complainant by the Irrigation Department, Zhob and tax deducted was accounted for by the District Accounts Officer, Zhob and the Accountant General Baluchistan. Thus the jurisdiction of the Complainant falls with the Taxation Authorities, Baluchistan within the meaning of Section 5(3)(a) of the Repealed Ordinance. The assessment completed by the Taxation Officer, Circle –18, D.G.Khan was without any jurisdiction. The assertion of the AR that the Complainant is a resident of Basti Jan Mohammad, Fort Munro, is not tenable because jurisdiction in cases deriving income from business lies with the Taxation Officer where business is situated as provided by Section 5(3)(a) of the repealed Ordinance.

ii) The Complainant is a resident of the Tribal areas. However, it does not make him a non-resident because:

a. According to Article 247 of the Constitution of Pakistan, no Act of Parliament applies to Federally Administered Tribal Areas (FATA). However, the said areas remain part of Pakistan and their residents are Pakistanis.

b. The Complainant is the holder of National Identity Card.

(iii) The assertion of the AR that Complainant enjoyed exemption from Income Tax in view of S.R.O. 586(1)/91 dated 30.06.1991 is not tenable. The said S.R.O. provides exemption from withholding of Income Tax u/s 50(4), which cannot be equated with the exemption from Income Tax altogether.

(iv) The Complainant has filed only statement u/s 143B of the repealed Ordinance which statement is filed in the cases covered by the presumptive tax regime u/s 80C of the repealed Ordinance indicating that tax deducted is a final tax liability of the person filing such statement. In order to claim the Income Tax Refund a regular Income Tax Return u/s 55 or 57 had to be filed which was not done.

(v) The assertion of the RCIT that as the Complainant had filed statement u/s 143B he was not entitled to refund is not tenable as observed by the I.T.A.T in a case reported as 1993-PTD-(Trib) 249. In the quoted case, it was held "that if an assessee is clearly entitled to a relief the same should be provided to him and no effort should be made to subject to tax an income which was otherwise exempt by encashing on the ignorance or oversight of the assessee". Mere filing of statement u/s 143B by the Complainant does not deprive him of the relief he is entitled to.

(vi) The assessment completed by the Taxation Officer, Circle-19, D.G. Khan is not only without jurisdiction but also suffers from other legal infirmities. The assessment has been completed u/s 62 of repealed Ordinance where no Income Tax Return was filed by the Complainant and no notices u/s 56/65 calling for the return were issued. Only a statement u/s 143B was filed by the Complainant. Completion of assessment u/s 62 on the basis of 143B statement is illegal. In such cases assessments have to be completed u/s 59A, 62 or 63, as the case may be read with Section 80C of the Repealed Ordinance.

(vii) It has been asserted by the RCIT that assessment was completed by the Taxation Officer without jurisdiction but inspite of these observations the said assessment order was not cancelled.

6. The AR pleaded that as the Taxation Officer, Circle-18, D.G. Khan accepted the claim of exemption, the refund should have been issued by the Taxation Officer alongwith assessment order. This was not done even after a year of finalization of assessment, which was, according to the AR, a case of maladministration. The AR also argued that in the complaint the Secretary Revenue Division was made the respondent. Refund was to be issued on his behalf. The Taxation Officer, Circle-18, D.G. Khan being his representative was bound to issue the refund. These pleas of AR are not acceptable for the reason that notwithstanding the fact the the Secretary, Revenue Division is the respondent in this case but refund has to be issued by the Taxation Officer in whose jurisdiction the case of the Complainant falls. It has already been pointed out that the assessment completed by the Taxation Officer D.G. Khan was without any jurisdiction. An order passed without jurisdiction is an illegal and void order. It does not confer any right on the parties concerned as held by Karachi High Court in a case reported as PLD-2001-Karachi-695.

7. Another issue which is required to be examined is the late filing of the instant complaint. The Complainant filed 143B Statement on 31.10.2002. Assessment order was made on 15.03.2003 but complaint was filed on 16.02.2004. Thus the complaint was prima facie time-barred keeping in view the provisions of Section 10(3) of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000. This issue has been examined. Since the issue of refund has not been so far settled and injustice is continuing the complaint is treated to be in time.

8. Completion of assessments in this case without jurisdiction and without following proper procedure and non-settlement of the claim of refund of the Complainant even after a year constitutes maladministration on account of neglect, inattention, inefficiency and inaptitude in performance of duties falling within the meaning of the provisions of Section 2(3)(i)(a) and 2(3)(i)(b) of the

Establishment of the Federal Tax Ombudsman Ordinance 2000. The Taxation Authorities have failed to prove that the non-settlement of the issue of refund of the complaint was bonafide and for valid reasons. The onus to prove that respondent acted bonafide lay with the Taxation Authorities which has not been discharged.

9. In view of the above discussion, it is recommended that:

(i) CBR to direct the concerned Taxation Authorities to make thorough enquires to determine:

(a) The location where the income arose.
(b) If it arose within the Tribal Area refund is to be made to the Complainant.
(c) If it did not arose in Tribal Area, then proper assessment be made and refund due, if any, be issued immediately on the completion of the assessment as required by law.

(ii) The CIT, Multan, to take action against the concerned Taxation Officer for completing the assessment u/s 62 read with Section 80C for assessment year 2002-2003 in the case of the Complainant without jurisdiction and without following proper procedure.

(iii) Compliance report of above-mentioned recommendation be submitted within 60 days of the receipt of this order by the Revenue Division.

(Justice (R) Saleem Akhtar)
Federal Tax Ombudsman

BEFORE THE FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE KARACHI

Complaint No. C-1607/2003

M/s A.G. Works
Plot No.LS-2 Street No.7,
Sector-4, Qasba Colony,
Karachi.

---Complainants

Against

Secretary
Revenue Division
Islamabad

---Respondent

FINDINGS
DECISION

[Dealing Officer: Mr M Mubeen Ahsan, Advisor]

Mr Tariq Ahmed, Consultant (Authorized Representative)
Mr Javed Sarwar, Assistant Collector of Sales Tax
Mr Mamoon Muazzam Khuhawar, Deputy Collector(Adjudication)
Mr Nooruddin Ahmad, Senior Auditor

The complaint has been filed against the recovery of allegedly evaded sales tax amounting to Rs.3,046,248/- during 1999/2000, additional tax Rs.8,739,484/- and penalty of Rs,913,874/- on the (clandestine) supply of crockery valued at Rs.7,551,634/- manufactured during 01-07-1999 to 20-10-2000, vide the order-in-original No.63/2003 dated 30-09-2003 passed by the Collector (Adjudication). The Consultant representing the Complainants stated in the complaint that order-in-original was time-barred under the first proviso of sub-section (3) of section 36 of the Sales Tax Act; it should have been issued within 90 days from the issue of the show cause notice (SCN) whereas the order was received after 203 days from the notice date. He contended that the provision of time-bar under section 36 of the Sales Tax Act was mandatory in nature and not directory.

2- The Authorized Representative (AR) stated that the Complainants have a unit manufacturing melamine products. An unknown person submitted a complaint to the National Accountability Bureau (NAB) on 02-11-2001 and, on 07-12-2001, the Director I&I NAB, Sindh, instructed the Collector of Sales Tax to investigate the matter. A Deputy Collector and his team raided the premises on 27-12-2001. The notice produced by him was dubious as there was no evidence that the CBR or the Collector had authorized the Deputy Collector to carry out the raid as required under section 38 of the Sales Tax Act. The Consultant discussed at considerable length the provisions of sections 38 and 40A of the Act and argued that the entire action was illegal, without jurisdiction, and not maintainable under the sales tax law.

3- The AR submitted that:

(1) The disputes, issues and queries raised by him during the course of hearings were not considered by the adjudication officer.

(2) SCN was allegedly issued after scrutiny of the private and statutory sales tax record, but it was vehemently denied that any private record of the relevant period was found at the premises of the Complainants as admitted by the Collector in the adjudication order.

(3) According to SCN, cost of Diesel purchased during 01-07-1999 to 20-10-2000 was added to the total cost although the generator was purchased on (and used after) 13-12-2000. The adjudication order was silent on this point.

(4) Prosecution had arbitrarily determined the number of employees and the salary without any basis. It ignored the EOBI and SESSI documents which nullified the prosecution case. The adjudication officer deliberately ignored this aspect.

(5) The prosecution was requested to furnish the details of additional tax Rs.8,739,484/- but nothing was provided.

(6) Department had blindly believed the hand-written pieces of paper submitted by an anonymous person but no evidence in the shape of commercial invoices, sales tax invoices, delivery challans, acknowledgement receipt of supplies,

banking transactions, gate passes, purchase orders, receipts of goods form transport company etc were produced in support thereof. These pieces of paper contained figures without mentioning whether these were supplies by the anonymous person or purchases made by him.

(7) The diary, attendance sheet etc relied upon by the Department were disowned.

(8) Despite repeated requests, the relevant records such as miscellaneous file stock, stock and goods registers, ledger, investigation reports from city market, from upcountry and business competitors, were not produced.

(9) The adjudication order comprised the text of the SCN, the reply to the SCN, the comments by the Department, but did not refer to and examine the submissions made by the Consultant.

(10) Since the adjudicating officer did not consider the submissions of the unit, the "act of adjudication tantamount to be illegal, illogical, malafide, deliberate ignorance in order to safeguard the malafide proceedings of the Department"

(11) During the proceedings, the Departmental Representative (DR) repeatedly stated that they had in their custody all evidence and records but the same etc were not produced.

(12) DR or the adjudication officer did not provide him the opportunity to reconcile the data before the issuance of SCN or the adjudication order.

(13) The grim fact was that the Collector did not at all apply his judicial mind before issuing the order which was not a speaking order. Without considering and analyzing even the basic issues, without proving any charge, without considering and paying attention to any of the arguments advanced by the Complainants and the factual and legal position of the case, the adjudication officer whimsically, without applying his judicial mind, upheld the charges framed in the show cause notice.

(14) The impugned adjudication order was not sustainable under law and of no legal value and it should be vacated.

5- The Collector (Adjudication) replied to the complaint that the case was adjudicated on the basis of a contravention report submitted by the Executive

Collectorate. In fact two separate contravention reports were submitted and the first order covered the period 01-07-1999 to 30-10-2000 and the second order covered the period from August 2000 to December 2001. The first contravention report was made on the basis of record resumed in the first instance. Later, some more record was recovered which was included in the second case. He stated that the order covered all the points put forward by the Complainants as well as the Department and the allegation of non-speaking order was baseless. He stated that the Complainants had, instead of preferring appeal to the Appellate Tribunal under section 46 of the Sales Tax Act, submitted a complaint to the Federal Tax Ombudsman which was barred by law. Therefore, they be directed to first exhaust departmental remedies.

6- The Assistant Collector of Sales Tax, Sales Tax House, Karachi, also submitted parawise comments on the complaint and reiterated the argument that the Complainants should have filed an appeal before the Appellate Tribunal instead of filing a complaint in this office. He stated that information against the Complainants was received through National Accountability Bureau which proved correct on investigation. The Deputy Collector who conducted the search with the subordinate staff served notice to the party under section 36 of the Act and conducted search under section 40-A in accordance with law. He stated that the private record was obtained under section 38, the diary and the note sheets were properly shown to the adjudicating authority and the reply to SCN and the comments of the Department were thoroughly probed by him. He stated that the complaint had no legal basis and it had been made only to avoid payment of the amounts adjudged against the Complainants. He stated that they be directed to pay the amounts outstanding against them.

7- AR submitted a brief resume of the contents of the complaint and "vehemently denied" the allegations of unrecorded purchases and sales and contended that all records of actual purchases and sales were available with the Department in the income tax and sales tax records. He "fervently denied" the (validity of) hand-written papers provided by the unknown suppliers. He stated that allegations of

clandestine removal and huge supplies could not be established on the basis assumptions and presumptions, the Department did not possess any private record for the relevant period and the figures relied upon by the Department could not be substantiated. He stated that copies of diary, attendance register of workers, electricity, gas and telephone bills provided to the Complainants did not belong to them.

8- During the hearing of the complaint, AR reiterated that since the search of the premises and seizure of records was ab inito without lawful authority, all subsequent proceedings were also unlawful. He contended that during the hearing by the adjudication officer, the seized records were not produced, the allegations contained in the SCN were not established, he was not given the opportunity to examine the record, compare the same with the specific allegations in SCN and rebut the same. When it was pointed out by the Departmental Representative (DR) that hearings were conducted on nine dates, AR stated that on all occasions only papers were exchanged and only on the last date of hearing, arguments were allowed but without production of records and the opportunity of scrutiny and rebuttal was denied.

9- DR responded that AR did not discuss or rebut the charges mentioned in SCN either in its reply or at the time of hearing; he had only raised objections and pointed out errors and mistakes but did not bring out any concrete evidence contradicting the allegations or substantiating his own stand.

10- The Deputy Superintendent stated in his separate submission that massive evasion of sales tax was computed on the basis of (1) the information received from the Director NAB and (2) the private record resumed during the raid showing labour charges, electricity bills, diesel expenses etc. He stated that the overhead charges revealed from the private accounts of the manufacturer were not consonant with the recorded production. When the information communicated through the NAB was examined, it was found that the overhead charges were commensurate with the new statistics made available. All the

evidential record was produced before the adjudicating officer and was also provided to the Complainants after issuance of SCN.

11- AR responded that it was admitted by the Collector in his order No.1/2003 that private records for 13 months were not found at the premises of the Complainants. He stated that the private record was neither available with the prosecution nor was it made available to him and his requests and applications in respect of the queries made by him in the reply to SCN were ignored by the adjudicating officer.

12- AR stated that the questions raised during the course of hearing were not replied to by the adjudicating officer or the Department. While the period from 01-07-1999 to 20-10-2000 was allegedly the period of default in SCN, the same period had already been covered in another case. The Collector had admitted this contention and allowed to delete the period from August 1999 to October 2000 but the amount of principal sales tax mentioned in the order (related to the period up to 30-09-2003, which) was inclusive of the deleted period. Thus an amount of Rs.1,013,148/- was over-charged through the impugned order. The prosecution had applied a wrong formula for calculation of gross profit but the impugned order was silent about it.

13- From the submissions made by both the sides, it has been brought out that the Department has taken the position that (i) the search carried out by the sales tax staff was legal which led to the recovery of private records supporting allegations of clandestine removal of production and consequent evasion of sales tax, (ii) the hand-written pieces of paper were relied upon as valid evidence of supply of raw material to the Complainants, (iii) the evidence of purchase of diesel and payment of salary/charges to labour also revealed the concealment of production, (iv) all records were produced during the adjudication proceedings and full opportunity was provided to the Complainants/AR to examine the same and submit defence arguments.

14- AR has (i) argued against the legality of the search without due process of law, (ii) denied recovery of any private records, (iii) the period of default had already been covered in another case, (iv) the Collector admitted this contention and allowed deletion of the period which was not done, (v) during the period mentioned in SCN, diesel was not purchased for the generator but the adjudication officer did not take this point into account, (vi) the prosecution ignored EOBI and SESSI documents as valid evidence about the number of employees etc which nullified the prosecution case, (vii) the arguments advanced in reply to SCN were not examined by the Collector (Adjudication), (viii) all the points raised in defence and inquiries made by AR, the calculation of sales tax and the additional tax etc were not examined and discussed in the adjudication order. The learned AR also emphasized that the time limitation for issue of adjudication order as prescribed under sub-section (3) of section 36 of the Sales Tax Act was of mandatory nature and the adjudicating officer was under legal obligation to decide the case not beyond the period of 90 days of the issue of show cause notice.

15- In the 11-page adjudication order, the Collector has reproduced the charges against the Complainants, almost the entire reply to the SCN in five pages, and the Department's (Auditor's) in more than three pages. The Complainants had made certain significant observations about the gaps in SCN, they had raised several queries, asked for some information and clarifications such as the calculation of dues etc, put forward arguments against the rate of profit, pointed out the contradiction about the discrepancy in the period covered by SCN (vii), they did not accept the labour charges and the calculation of miscellaneous expenses and additional tax, and raised their major objection against reliance on the written pieces of paper. They had mentioned that the records had not been provided, and the gas bills, telephone bills and electricity bills relied upon by the Department did not belong to them.

16- It is greatly surprising that none of the arguments advanced by the AR, whether factual or legal, has been fairly and properly examined by the

adjudicating officer. He has not discussed the issues raised by AR, he has not examined the evidence issue-wise, he has not answered the questions involved, he has not taken into consideration the issues and points taken up by AR, nor properly analyzed to his objections, queries and questions. He has not given any attention or consideration to the facts of the case, the charges leveled in SCN, the bases of the charges, the validity of the defence arguments, whether the observations of the Departmental officials was substantive or otherwise etc. Ignoring all the objections and arguments of AR, he has summarily decided the case, in one paragraph, entirely on the basis of the report sent to him by the reporting officer.

17- The charges leveled by AR against the adjudicating officer of not applying his mind and not issuing a speaking order is established. He seems to have ignored all the norms of fairness in a decision which is perverse, arbitrary, unjust and unreasonable; it betrays inattention, incompetence and inefficiency which amount to a serious case of maladministration as defined in sub-section (3) of section 2 of the Ordinance No.XXXV of 2000 and falls within the jurisdiction of this office.

18- This office has taken cognizance of this adjudication order for another significant reason. Such arbitrary and capricious decisions strike at the foundation of qusai judicial structure provided for in the tax laws and administered by officers up to the level of Collector under the Revenue Division. The adjudicating officers should apply their independent minds and, after weighing the facts brought out in the proceedings and the arguments put forward by both the sides, decide the tax liability and issue a speaking order based on the principles of natural justice and tax laws. It is strongly felt that the Revenue Division should monitor the adjudication orders issued by its officers with a view to protecting the revenue and ensuring that these orders should be able to stand be test of judicial scrutiny at the higher forums. In order to maintain the sanctity of quasi judicial proceedings, it is necessary to maintain oversight on the performance of the adjudicating officers whose orders should not be entirely dependent on the opinions and comments of the reporting officers. It is

necessary to monitor the adjudication orders, perhaps by the Director General of Inspection, who should examine and report to the Chairman about the validity of the orders and the suitability of the officers appointed to accurately determine the tax liability based on sustainable grounds and deliver departmental justice to the taxpayers.

19- It is recommended that CBR

(i) set aside the order passed by the Collector (Adjudication) vide order-in-original No.63/2003 dated 30-09-2003;

(ii) entrust this case to another officer of competence to examine the contravention report, issue an appropriate show cause notice, allow the Complainants to present their defence arguments in writing and during personal hearing, decide the tax liability of the Complainants on merits, and issue a reasoned speaking order by applying his judicious mind, within thirty days; and

(iii) issue necessary instructions (to D.G. Inspection) to examine the quasi judicial orders passed by officers under the Revenue Division and furnish periodical reports to the Division about the quality of the orders and competence of officer occupying the adjudication posts, identifying the procedural mistakes and lapses, illegalities and improprieties, flaws etc, if any, with a view to maintaining a fair degree of judicial propriety and justice.

(iv) Compliance be reported within forty-five days.

Justice (R) Saleem Akhtar
Federal Tax Ombudsman

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.772/2003

Muhammad Khurshid &
Amir Ahmad, Islamabad. — Complainant

Versus

Secretary,
Revenue Division,
Islamabad — Respondent

Dealing officer — Muhammad Anwar,
Consultant

FINDINGS/DECISION

Mr. Muhammad Khurshid and Mr. Amir Ahmad, complainant in person.
Mr. Zahid Hussain Bhayo Additional Collector (Sales Tax) for the respondent.

This is a joint complaint made by the alleged informers namely Mr. Muhammad Khurshid and Mr. Amir Ahmad for non-payment of reward to them for providing information regarding evasion of central excise duty allegedly committed by Pakistan Telecommunication Company Ltd (PTCL). It is stated in the complaint that Mr. Muhammad Khurshid (termed as complainant No.1) retired from the post of Statistical officer in the Collectorate of Sales Tax and Land Customs (now/Sales Tax) Rawalpindi on 15-01-1998. In December, 1997 while he was in service his old friend Agha Amir Ahmad (termed as complainant No.2) gave him a typed report containing information that the PTCL was evading CED on lines leased to mobile companies. This information was submitted by complainant No.1 on 15-12-1997 under his signature and stamp to the Collector who passed it on to the Deputy Collector on 22-12-1997 to carry out the audit of PTCL record to ascertain CED evasion on service rendered by PTCL to mobile phone companies. It is further stated that in July 1999 Agha Amir Ahmad informed him (Muhammad Khurshid) that recovery of certain evaded CED had

been made on the basis of information provided in the report. They both met the Collector who gave a sum of Rs.146,667 as reward under the thumb impression and initials MK of Muhammad Khurshid. On pointing out by Agha Amir Ahmad that according to his estimates a much large amount of reward was admissible, the Collector informed that an agreement had been made with the PTCL by the CBR and all CED arrears upto June 1998 had been settled for Rs.850 million. Thereupon Mr. Amir Ahmad requested the Collector that reward be given on the basis of recovery of Rs.850 million but the Collector did not accede to his request stating that the matter settled at CBR level did not specifically include any CED evasion on lines leased to mobile phone companies. Therefore the complainants lodged a complaint with the Wafaqi Mohtasib (Ombudsman) which was allegedly signed by Mr. Muhammad Khurshid and Agha Amir Ahamd had put his LTI on it. *The Excise Department submitted before the Ombudsman that reward could not be granted for the reason that in respect of the period upto June 1998 due to an* agreement between the CBR and PTCL recovery could not be effected and after June 1998 the evasion of CED was detected by the department and was not the result of information provided by the complainants in December, 1997. On establishment of the office of the Federal Tax Ombudsman the Wafaqi Mohtasib advised the complainants to approach him.

2. The complainants allegedly filed a complaint before the FTO in the name of one Mr. Khlid Zubair as Complaint No.98-K/2001 which was not considered maintainable on the ground that Mr. Khalid Zubair was not the aggrieved party. Another complainant was filed in the name of Mr. Amir Ahmad as complaint No.1262/2002 in which it was observed that since Mr. Muhammad Khurshid had submitted the information to the Collector the complaint from Agha Amir Ahmad as informer was not maintainable. Now the instant joint complaint has therefore been filed stating that both the complainants had been making efforts since 1998 for getting reward for supplying information to the Excise Officers involving evasion of over 100 million rupees of CED. It is prayed that the Collector be directed to pay reward to the complainants jointly in the same manner in which reward of Rs.146,667 was made in August 1998.

3. In reply the respondent has stated that firstly Mr. Muhammad Khurshid and Mr. Amir Ahmad tried to get reward in a spurious manner by filing complaint (complaint No.98-K/2001) in the name of Mr. Khalid Zubair which was held non-maintainable. Mr. Amir Ahmed made a second attempt by filing another complaint (complaint No.1262/2002) which was also dismissed. Now through the instant complaint which is signed by both a third attempt has been made. It is stated that the real motivation and beneficiary was Mr. Muhammad Khurshid who was making complaints through his front men and it was he who was earlier given a reward of Rs.146,667 which was allegedly shared by him with Amir Ahmed. It is further stated that Mr. Muhammad Khurshid remained posted in the Collectorate as Statistical Officer till his retirement on 15-01-1998 and during his posting he became privy to certain information about dutiable services of the PTCL and the reward which he had received is recoverable from him. It is further stated that pursuant to the ECC of Cabinet's decision dated 04-04-1998 an agreement was reached between PTCL and CBR whereby PTCL agreed to pay Rs.850 million in settlement of all liabilities upto 30-06-1998. Since there was no mention of any specific services in the agreement no reward became due.

4. It is further stated by the respondent that information regarding period after 30-06-1998 was Collected from the mobile companies by the Assistant Collector concerned on the basis of which contravention reports were prepared against the said companies for recovery of evaded duty. It is further stated that submission of a joint complaint established the connivance between Mr. Khurshid and Agha Amir Ahmad and the complainants have raised the same issue which already stood settled by the honourable FTO. It is prayed that the complaint be dismissed as no reward is admissible to the complaints and appropriate action be taken against them.

5. Representatives of the both sides were heard. The contention of Mr. Muhammad Khurshid that the information which he passed on to the Collector on 15-12-1997 under his signature was actually given to him by Mr. Amir Ahmad is not borne out from the record. The complainants had previously made two

attempts to get the award which were rejected. In the entire exercise centre point was Mr. Mohammad Khurshid who was using Mr. Agha Amir Ahmad as a front man. The conduct and behaviour of both the complainants is doubtful and they seem to be in collusion with each other. The contention of the department that Mr. Mohammad Khurshid obtained this information from the official records in discharge of his duties as Statistical Officer in the Sales Tax Collectorate carries force. The complainants have not come with clean hands. In giving the reward of Rs.146,667 the concerned authorities do not seem to have given proper consideration to the issues involved and doled it out in a negligent manner which casts doubt on their bonafides. The revenue authorities will be justified in investigating the matter lest such malpractices be adopted in the name of practice which is bound to erode the creditability of the department. Considering nature, facts and circumstances of the case the complaint is rejected.

6. It has been noted that the Reward Rules are not comprehensive and do not seem to take note of situation as in the present case. It requires reconsideration.

7. It is recommended that:

(i) CBR to set up a Rule Committee to consider the existing Reward Rules and submit its report for enforcing comprehensive and uniform Reward Rules in respect of Income Tax, Sales Tax, Customs and Excise Duty.

(ii) Compliance be reported within three months.

(Justice (R) Saleem Akhtar)
Federal Tax Ombudsman

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINTS NO. 420 / 2004

M/s. International Cigarette
Industries (Pvt) Limited,
Swabi. ... Complainant

Versus

The secretary,
Revenue Division,
Islamabad. ... Respondent

FINDINGS/DECISION

Ch. Riasat Ali, Advocate, for the Complainant.
Mr. Fazal Yazdani, Additional Director (Intelligence and Investigation) and Mr. Ahmad Rauf, Deputy Collector (Adjudication) Sales Tax, Gujranwala, for the respondent.

The main points in the complaint are as follows:

i) The complainant, a private limited company, is engaged in manufacture of cigarettes. On 25-09-1997 the customs staff of Gujranwala impounded a truck of the complainant enroute to Lahore from Swabi carrying the consignment of 289 packarites of cigarettes.

ii) On the basis of seizure report dated 30-10-1997 the Additional Collector, Customs, Gujranwala issued show cause notice dated 12-11-1997 which was duly responded by the complainant.

iii) The last hearing in the case was held on 24-12-1998 at Gujranwala by Mr. M. Ghauri, the then Additional Collector, Customs.

iv) Since the last hearing dated 24-12-1998 nothing has been heard from the respondent. The complainant has not received the adjudication order which has been delayed for about 7 years.

v) The complainant's counsel tried to find out the actual position verbally and also in writing but in vain. The counsel finally sent registered letter dated 25-02-2004 to the Deputy Collector (Adjudication) Central Excise, Lahore considering to be the relevant authority in the matter but no response was received from him.

vi) The complainant got the goods released alongwith the truck on furnishing bank guarantee of Rs.620,000/- which is still lying with the department un-cleared. The complainant has so far paid mark up to the tune of Rs.150,000/- which is a financial loss to the complainant with no fault on his part.

vii) Such delay in adjudication of the case is against the norms of law and natural justice.

It has been prayed that the respondent be directed to finalize the adjudication forthwith and release the impugned bank guarantee to save the complainant from further loss.

2. In reply the respondent has forwarded the submissions of the Superintendent (Intelligence & Investigation) Customs, Sales Tax & Central Excise Gujranwala the facts have been admitted. It has been further stated that the complainant's case regarding evasion of sales tax amounting to Rs.93,831 was sent to Additional Collector, Sales Tax, Peshawar for adjudication on 24-12-1997 on the point of jurisdiction as directed by the Additional Collector, Sales Tax, Gujranwala and proceedings in this regard were still pending. However, the adjudication proceedings on the Central Excise side continued with the Additional Collector, Central Excise, Gujranwala. As regards delay in passing the adjudication order, the superintendent has stated, the same is to be explained by the Deputy Collector (Adjudication) Gujranwala.

3. The representatives of the two sides attended. The learned counsel of the complainant reiterated the facts and contentions as stated in the complaint.

4. The respondent's representative who is also the dealing officer in the Collectorate submitted that action in the case was delayed due to the reason that at the time when show cause notice was issued (12-11-1997) the jurisdiction over the case vested with the Collectorate of Customs. It was w.e.f. 01-02-2000 that the Central Excise was made part of Collectorate of Sales Tax Gujranwala. Further, w.e.f. 01-07-2000, for the propose of adjudication a new Collectorate was created. These changes in the jurisdiction and subsequent shifting/transfer of record from one Collectorate to the other was stated to have caused considerable delay and during these shiftings the case file went missing.

5. As regards the complainant's contention that he had suffered a loss of Rs.150,000 in the form of mark up paid to the bank on account of bank guarantee which is being renewed by the bank, the respondent's representative submitted that the bank was not authorised to renew the guarantee on its own. The customs/sales tax department had not asked for such a renewal and as such the complainant himself was responsible for renewal and payment of mark up after the expiry of the guarantee. This contention of the department is valid and the complainant cannot claim any damage on this score.

6. From the facts stated above systemic mal-administration is quite obvious. The main defence advanced for the inexcusable delay in adjudication is change of jurisdiction and shifting of record. Such instances have been noted in all tax departments where jurisdictions are frequently changed records are transferred but in practice there is no systemic procedure for shifting the record and its receipt by the transferee office. As is obvious from the statement of the Deputy Collector (Adjudication) that when the Central Excise was separated from Customs department the inventory of transferred cases was prepared but when it was again transferred to the Adjudication Wing no inventory was prepared. The explanation for this lapse is that the dealing clerk in the Sales Tax Wing was also transferred to the Adjudication Wing although the office premises were different and there was physical transfer of the record. It has been noted that on transfer of cases no proper checking is made by the receiving officer. It seems that record is dumped without any checking. In the present case the Deputy Collector (Adjudication) admitted that on taking charge and receipt of the record in his branch no list was prepared nor the status of the pending cases was ascertained. This shows utter negligence because unless the record is checked and pending cases are sorted out it is difficult to proceed with those cases as there seems to be no record of such cases with any department. It was the duty of the transferor department to prepare inventory of disposed of and pending cases separately. If it was not prepared the Deputy Collector (Adjudication) was duty bound to sort out the pending cases for proceedings. No step was taken for years and the matter remained pending. The complainant addressed letters without any result.

The plea of the respondent is that it was addressed to wrong quarters. Unless the party is intimated of the transfer of case it is not possible for a party to know in which forum the hearing will take place. It is the duty of the transferor department to intimate the party that the case has been transferred to a particular jurisdiction. On receipt of record by the transferee department it is its duty to intimate the parties about the transfer of case and the next date of hearing. This procedure does not seem to be adopted by the department. It has been noted in many cases that the records are bundled or stored without preparing any inventory. The respondents were asked to produce any manual, instructions or circular of CBR regarding transfer of record but they were unable to produce and had no knowledge about it at all. This is a very disturbing aspect prevailing in the departments where there is no security for the record which not only puts the public to harassment but may cause loss of revenue. It is a serious mal-administration. In these circumstances the CBR must advert to this aspect of the case which has been pointed earlier without any result and therefore it is recommended as follows:-

i) CBR produce manual, circular or instructions relating to the maintenance, preservation and transfer of record from one office to another.

ii) CBR to direct the departments that if the record is transferred the parties should be informed about the transfer and the new jurisdiction. The transferee department should be directed to intimate the parties about the transfer of case and the new date of hearing.

iii) CBR to suggest systemic reforms and proper methods for maintaining, preserving and transfer the records.

iv) Compliance be made within 30 days.

(Justice (R) Saleem Akhtar)
Federal Tax Ombudsman

Chapter IV

COOPERATION IN INTERNATIONAL FORA

There are 270 Ombudsman Institutions in 114 countries of the world. Two major international organizations represent the Ombudsmen of different countries/regions. They are: (i) the International Ombudsman Institute (IOI) and (ii) the Asian Ombudsman Association (AOA). Pakistan is a member of the Board of Directors of the IOI since 1984, President of the AOA since its inception in 1996 and has regularly been taking active part in meetings organized by the two organisations.

(i) International Ombudsman Institute (IOI)

The IOI, based in Canada, has the objectives, inter alia, of promoting concept of Ombudsmanship, encouraging and supporting research, developing and operating educational programmes having links with Ombudsmanship and collecting, storing and disseminating information about the Ombudsmanship institutions. Its Board of Directors consists of 20 members. The Board meets every year. The FTO Institution is one of the 163 voting members. FTO participated in the VIIIth Conference of the Institutional Ombudsman Institute from 7 September 2004 to 10 September 2004 held at Quebec (Canada).

(ii) Asian Ombudsman Association (AOA)

Pakistan initiated the idea of creation of the Asian Ombudsman Association (AOA). It was established in 1996 with its Headquarters in Islamabad. Pakistan was elected as President. In the AOA's Session of the General Assembly held in Seoul (South Korea) on April 29, 2004, Pakistan was re-elected as President of the AOA.

2. As a result of the interaction and exchange of views, experience and information among the delegates of the member states, effective strategies were

evolved to ensure access to speedy and free of cost justice for alleviating the sufferings of the common lot.

3. FTO participated in the following conferences and meetings held under the auspices of the AOA:-

- Visited Bangladesh from 3rd September 2003 to 6th September 2003 on the invitation of the President, Bangladesh Enterprises Institute, Dhaka, to attend the "Sectoral Workshop on Customs and Taxation".
- Visited Seoul (South Korea) from 26th April, 2004 to 29th April, 2004 to participate in the 8th Asian Ombudsman Association Conference on the theme of, "The Ombudsman and Strengthening of Civil Rights in Asia".
- Visited New Delhi (India) from 1st June, 2004 to 6 June, 2004 on the invitation of MC Mehta Environmental Foundation, to hold one of the sessions of the Moot Court on the World Environment Day, the 5th of June, 2004, and deliver a talk at the training programme for the young lawyers from SAARC countries on the main theme of "Understanding Environmental Law and Policy".
- Visited Kathmandu (Nepal) from 20 June 2004 to 28 June 2004 on the invitation of Environmental and Justice Education Programme of Forum for Justice, to attend the South Asian Judicial Interaction Programme on Environmental Justice and Equity.

Group Photo of Staff Member at Regional Office, Karachi with Federal Tax Ombudsman

Chapter V

SOME IMPORTANT DECISION MADE BY THE PRESIDENT

Under section 32 of the Ordinance 2000, the Revenue Division or any person aggrieved by a recommendation of the Federal Tax Ombudsman may, within thirty days of the recommendation, make a representation to the President who may pass such order thereon as he may deem fit.

2. During the year under report, 1010 complaints were received while 1143 cases including 467 of the previous year were disposed of. Some 234 representations were made to the President against the findings of the FTO as detailed below:-

Statement Showing Year-wise Institution and Disposal of Representations

Year	Previous Balance	Institution	Total	Disposal	Balance
2001	0	29	29	9	20
2002	20	227	247	17	230
2003	230	324	554	269	285
2004	285	234	519	162	357
		814		457	357

3. Some important decisions made by the President are as under:-

No.151/2003-Rep (FTO)Law
Government of Pakistan
Law, Justice and Human Rights Division

.....

Islamabad, the 26th February 2004.

OFFICE MEMORANDUM

Subject:- REPRESENTATION UNDER SECTION 32 OF THE ORDINANCE XXXV OF 2000 AGAISNT FINDINGS OF THE FEDERAL TAX OMBUDSMAN DATED 28-04-2003 IN COMPLAINT NO.146-K/03 (M/S PMDC HYDERABAD VS. CBR/SALES TAX DEPARTMENT)

The undersigned is directed to refer to Central Board of Revenue's representation No.1(68)S(TO-II)/03, dated 20.05.2003, on the above subject and to say the President has been pleased to pass the following order:-

."The tax employee (Collector) has not given effect to the Appellate Tribunal's order for the reason that the order is '"short". The law does not prescribe any length for an order of the Tribunal to be effective. The representation too does not refer to any provision or principle of law which provides, or establishes the rule, that the Tribunal's order can be ignored on the ground that it is laconic. If the tax employee was dissatisfied with the Tribunal's order he could appeal the order in the High Court on available pleas on merits including the plea of shortness and imperfection of the order. The matter raised in the complaint did not relate to determination of tax liability. The manner in which the tax employee has approached the matter depicts his inattention and ineptitude in the administration and discharge of his duties and responsibilities. The findings/recommendations of the Ombudsman are appropriate.

2. Accordingly, the President has been pleased to ***reject*** the representation of the Collector".

/
(RAJA QAMAR SULTAN)
SECTIUON OFFICER

Central Board of Revenue,
(Secretary (TO-II),
ISLAMABAD.

Copy to:-

1. President Secretariat (D.G. (Law), Islamabad, with ref. to their No.03/FTO/2004, dated 21.2.2004.
2. The Registrar, F.T.O., Islamabad.
3. M/s Pakistan Mineral Development Corporation, 128/C, Unit No.2, Latifabad, Hyderabad.

Sd/-
(RAJA QAMAR SULTAN)
SECTIUON OFFICER

No.151/2003-Rep (FTO)Law
Government of Pakistan
Law, Justice and Human Rights Division

.....

Islamabad, the 26th February 2004.

OFFICE MEMORANDUM

Subject:- REPRESENTATION UNDER SECTION 32 OF THE ORDINANCE XXXV OF 2000 AGAISNT FINDINGS OF THE FEDERAL TAX OMBUDSMAN DATED 28-04-2003 IN COMPLAINT NO.146-K/03 (M/S PMDC HYDERABAD VS. CBR/SALES TAX DEPARTMENT)

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."The tax employee (Collector) has not given effect to the Appellate Tribunal's order for the reason that the order is '"short". The law does not prescribe any length for an order of the Tribunal to be effective. The representation too does not refer to any provision or principle of law which provides, or establishes the rule, that the Tribunal's order can be ignored on the ground that it is laconic. If the tax employee was dissatisfied with the Tribunal's order he could appeal the order in the High Court on available pleas on merits including the plea of shortness and imperfection of the order. The matter raised in the complaint did not relate to determination of tax liability. The manner in which the tax employee has approached the matter depicts his inattention and ineptitude in the administration and discharge of his duties and responsibilities. The findings/recommendations of the Ombudsman are appropriate.

2. Accordingly, the President has been pleased to ***reject*** the representation of the Collector".

/
(RAJA QAMAR SULTAN)
SECTIUON OFFICER

Central Board of Revenue,
(Secretary (TO-II),
ISLAMABAD.

Copy to:-

1. President Secretariat (D.G. (Law), Islamabad, with ref. to their No.03/FTO/2004, dated 21.2.2004.
2. The Registrar, F.T.O., Islamabad.
3. M/s Pakistan Mineral Development Corporation, 128/C, Unit No.2, Latifabad, Hyderabad.

Sd/-
(RAJA QAMAR SULTAN)
SECTIUON OFFICER

No.259-263/2003-Rep(FTO)Law.
Government of Pakistan
Law, Justice and Human Rights Division

Islamabad, the 18th May, 2004

OFFICE MEMORANDUM

Subject:- REPRESENTATION UNDER SECTION 32 OF THE ORDINANCE XXXV OF 2000 AGAINST FINDINGS OF THE FEDERAL TAX OMBUDSMAN DATED 17-07-2003 IN COMPLAINT NO. 235-L/2003 [M/S AL-FAISAL JEWELLERS VS. CBR/INCOME TAX DEPARTMENT)

The undersigned is directed to refer to Central Board of Revenue's representation No. 4(235)TO-I/2003, dated 26.08.2003, on the above subject and to say the President has been pleased to pass the following order:-

2. This order disposes of the Revenue Division's representation and of the complainant.

Revenue Division's representation

3. After examining the record the Federal Tax Ombudsman has observed that there is "no room for doubt that the information supplied by the complainant was reproduced verbatim in (i) ACIT's letter seeking permission under section 144 [of the Income Tax Ordinance 1979]; (ii) the CIT's letter granting permission to the ACIT; and (iii) ACIT's summons under section 144 (c) to the Bank. Since the Bank furnished full particulars and copy of account even no account number was mentioned in it..." The above finding is very crucial. But, it is neither contested nor explained. If the assessing officer had unearthed the complainant's bank account why it was not disclosed to the Bank in the requisition for details is not explained. There is no ground to interfere with the Federal Tax Ombudsman's recommendation.

The Complainant's representation.

4. His request is for award of compensation under section 22 of the Establishment of the Officer of Federal Tax Ombudsman Ordinance 2000. It appears that the complainant did not claim such compensation before the FTO. The FTO's power to award compensation under section 22 ibid is discretionary. If he does not award compensation his discretion ought not to be interfered with by the President.

5. Accordingly, the President has been pleased to reject the representation of the Agency as well as of the complainant.

(Raja Qamar Sultan)
Section Officer

Central Board of Revenue,
(Secretary (T-II),
Islamabad.

No. 251/2003-Rep(FTO)Law.
Government of Pakistan
Law, Justice and Human Rights Division

Islamabad, the 20th May, 2004.

OFFICE MEMORANDUM

Subject:- REPRESENTATION UNDER SECTION 32 OF THE ORDINANCE XXXV OF 2000 AGAINST FINDINGS OF THE FEDERAL TAX OMBUDSMAN DATED 12-07-2003 IN COMPLAINT NO. 303/2003 [M/S NEW GIFT CENTRE VS. CBR/INCOME TAX DEPARTMENT)

The undersigned is directed to refer to Central Board of Revenue's representation No. 4(303)TO-I/2003, dated 21.08.2003, on the above subject and to say the President has been pleased to pass the following order:-

2. Paragraph 9 (a) of the Self Assessment Scheme for the year 2002-3003, so far as material, provides that from amongst the returns filed under the Scheme (excluding salary and only property income cases) 20% returns may be selected for total audit (i)... (ii) by Regional Commissioners of Income Tax on the recommendations of the Commissioners concerned in the light of guidelines issued by the CBR in this behalf. Policy guidelines issued by the CBR, so far as material provide that the RCITs shall select only those revenue potential cases, where there is an evidence, information or reason to believe that the true particulars of income have been suppressed. Such selection may be based upon factors including an evident decline in income etc.

3. The RCIT has selected the complainant's return of income for audit for the reasons: "In my considered opinion, detailed scrutiny of your return for the assessment year 2002-2003 is required to ascertain the magnitude of your business and the income arising therefrom, which is otherwise not reflected in your return for the said year. Your case has thus been selected for audit under Para 9 (a)(ii) of C.B.R's Circular No.7 of 2002". The FTO has found that due care was not taken to carry out the CBR's instructions wherein it was emphasized that "it must be ensured that selection is based on material evidence", and also that none of the parameters prescribed by the CBR was indicated in the show cause notice, and has recommended that (i) the RCIT Northern Region, Islamabad order dated 37.01.03 setting apart Complainant's Return for the year 2002-2003 for Total Audit be cancelled/withdrawn; (ii) the complainant's return for the assessment year 2002-2003 filed under Self Assessment Scheme be accepted as such."

4. The RCIT has represented against the FTO's findings/recommendations on the ground that the FTO had no jurisdiction to investigate the complaint under section 9(2)(b) of the Establishment of the Office of Federal Tax Ombudsman Ordinance 2000; and that the declared sales were grossly understated against the sales assessed as per survey form. The comments of the complainant on the representation have been received and perused. The department has not contested the crucial findings of the FTO that the show cause notice served on the complainant did not identify any parameter prescribed by the CBR and the ground that the complainant's sales were less than those assessed in the survey is not one of the grounds prescribed by the CBR on which the return can be selected by RCIT. Where RCIT selects a case on relevant ground referable to evidence his conclusion may be un-contestable before the FTO but, if he selects a case on irrelevant grounds the conclusion may contested.

Contd.....P/2

5. Accordingly, the President has been pleased to reject the representation of the Commissioner Income Tax".

(RAJA QAMAR SULTAN)
SECTION OFFICER

Central Board of Revenue,
(Secretary (TO-I),
ISLAMABAD.

Copy to:-

1. President's Secretariat (Director General (Law), Islamabad, with reference to their No. 63/FTO/2004, dated 19.5.2004
2. The Registrar, Federal Tax Ombudsman Secretariat, Islamabad.
3. M/S New Gift Centre, Khan Plaza, Main G.T. Road, Gujranwala.

(RAJA QAMAR SULTAN)
SECTION OFFICER

No.262/2003-Rep(FTO)Law.
Government of Pakistan
Law, Justice and Human Rights Division

.....

Islamabad, the 29th July, 2004.

From :- Raja Qamar Sultan,
Section Officer.

To :- M/s Satti Overseas Employment Service,
84-C/2, Satellite Town,
Rawalpindi.

Subject:- REPRESENTATION UNDER SECTION 32 OF THE ORDINANCE XXXV OF 2000 AGAINST FINDINGS OF THE FEDERAL TAX OMBUDSMAN DATED 11.07.2003 COMPLAINT NO. 391/2003 [M/S. SATTI OVERSEAS EMPLOYMENT SERVICE VS. CBR/INCOME TAX DEPARTMENT].

Dear Sir,

I am directed to refer to your representation No. nil, dated 15-8-2003, on the above subject and to say the President has been pleased to pass the following orders:-

2. From among the returns filed under the applicable Self-Assessment Scheme 20% returns can be selected for audit through computer ballot/by Regional Commissioners (RC) on the recommendations of the Commissioners concerned in the light of the guidelines issued by the CBR. The guidelines issued by the CBR, in pertinent, are that RC shall select only those revenue potential cases where there is an evidence, information or reason to believe that true particulars of income have been suppressed and such selection be based upon factors including an evident, decline in income and disparity in expenses on utilities. The complainant complained to the FTO that his return has been wrongly selected by the RC. After taking into account the gross receipts, expenses (operating as well as P&L) and un-reconciled wealth statement the FTO has rejected the complaint.

3. The complainant has represented against the FTO's decision. He contends that (a) he was not provided opportunity of being heard before final selection of his return; (b) selection of return was made after the closing date and (c) the facts did not justify the selection.

4. Since grounds (a) & (b) were not raised in the complaint they cannot be considered. Rather, the complaint shows that the complainant was asked to furnish reply to the proposed selection. By calling the written representation the complainant was provided the requisite opportunity. The justification for selection is based on the evaluation of facts and such a conclusion of the FTO ought not to be interfered with by the President.

5. Accordingly, the President has been pleased to reject the representation of complainant.

Yours faithfully

(Raja Qamar Sultan)
Section Officer

P.T.O

No.374/2003-Law(FTO)
Government of Pakistan
Law, Justice and Human Rights Division

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Islamabad, the 11th August 2004.

OFFICE MEMORANDUM

Subject:- REPRESENTATION UNDER SECTION 32 OF THE ORDINANCE XXXV OF 2000 AGAISNT FINDINGS OF THE FEDERAL TAX OMBUDSMAN DATED 15-10-2003 IN COMPLAINT NO.1117/2003 (CH. MUHAMMAD ARIF VS. CBR/INCOME TAX DEPARTMENT)

The undersigned is directed to refer to Central Board of Revenue's representation No.4(1117)TO-I/2003, dated 25-11-2003, on the above subject and to say the President has been pleased to pass the following order:-

2. In 2000 the CBR introduced a scheme known as New Tax Amnesty Scheme 2000 under which a person could, on paying certain amount of tax acquire amnesty in respect of un-explained investments. The complainant paid tax in respect of certain immoveable properties. Since the declared properties were not properly identifiable the tax employee called upon the complainant to give addresses/identification of the properties; total area and covered area of each property; and identification of open plot. The complainant furnished information regarding identification of the properties but did not work out their valuation in accordance with the valuation rules. The assessing officer rejected the declaration with the approval of Commissioner. An intimation in that regard was sent to the complainant on 30-6-2001. Through notice dated 25-6-2003 the assessing officer called upon the complainant to show cause by 28-6-2003 why the declared properties should not be taxed under section 13 of the Income Tax Ordinance, 1979.

3. The FTO has found that the intimation regarding rejection of the declaration allegedly sent to the complainant on 30-6-2001 was never so sent and the notice dated 25-6-2003 to be complied with by 28-6-2003 (within three days) was against natural justice, and recommended that CBR to issue direction to the Commissioner to accept the declaration under the scheme and withdraw the show cause notice under section 13 dated 25-6-2003 and section 61 and proceeding taken in pursuance thereof.

4. The Commissioner has made representation againt the FTO's recommendation.

5. The representation does not contest the crucial findings. No proof has been furnished with the representation to show that the intimation dated 30-6-2001 was delivered to the complainant. The FTO's finding that it was against natural justice (fairness to issue notice on 25-6-2003 to be complied with on 28-6-2003 has not been commented upon. The complainant contends that actually the notice was delivered to him on the day it was required to be complied with. To call the complainant to comply the notice on the day it was delivered to him or even within three days was clearly an act of unfairness to oppression – the most influential elements of maladministration. The recommendation of the FTO must be sustained.

6. Accordingly, the President has been pleased to reject the representation of the Commissioner.

7. The Secretary Revenue Division shall take appropriate action against the tax employee who acted unfairly and oppressively towards the complainant.

/
(RAJA QAMAR SULTAN)
SECTIUON OFFICER

Central Board of Revenue,
(Secretary (TO-I),
ISLAMABAD.

Copy to:-

1. President Secretariat (D.G. (Law), Islamabad, with ref. to their No.137/FTO/2004, dated 9-8-2004.
2. The Registrar, F.T.O., Islamabad.
3. Ch. Muhammad Arif, Ata and Maida Farosh, Civil Bazar Attock.

Sd/-
(RAJA QAMAR SULTAN)
SECTIUON OFFICER

No. 80/2003-Rep(FTO)Law.
Government of Pakistan
Law, Justice and Human Rights Division

....

Iskamabad, the 8th Nov., 2003.

OFFICE MEMORANDUM

Subject:- REPRESENTATION UNDER SECTION 32 OF ORDINANCE XXXV OF 2000 AGAINST FINDINGS OF THE FEDERAL TAX OMBUDSMAN DATED 24.01.2003 IN COMPLAINT NO.781/2002 [MRS. NADEEMA BADAR VS. CBR].

The undersigned is directed to refer to Central Board of Revenue representation No. 4(781)/T.O.I/2002, dated 08.03.2003, on the above subject and to say that the President has been pleased to pass the following order:-

"Section 32 of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 provides that the Revenue Division or any person aggrieved by the recommendation of the Federal Tax Ombudsman may, within thirty days of the recommendation, make a representation to the President who may pass such order thereon as he may deem fit. FTO's findings/recommendations were received by the Commissioner on 6.2.2003. His representation received in the Law & Justice Division on 10.3.2003 is time barred. Neither section 32 ibid provides for extension of time nor any cause for delay has been shown.

5. Accordingly, the President has been pleased to reject the representation as time barred".

(Raja Qamar Sultan)
Section Officer

Central Board of Revenue,
(Second Secretary (TO-I),
Islamabad.

Copy to-

1. President's Secretariat (Director General (Law), Islamabad, with reference to their No.64/FTO/2002, dated 6.11.2003.
2. Registrar, FTO Secretariat, Islamabad.
3. Mrs. Nadeema Badar, Assistant Professor, Govt. College for Women, Satellite Town, Rawalpindi.

(Raja Qamar Sultan)
Section Officer

Chapter VI

RESEARCH, DEVELOPMENT AND STUDY CELL

In order to keep up with the rapidly changing international practices and to build a coherent system that reflects the changes that are taking place, it is imperative to keep track of the best practices with a view to ensuring their adoption and adaptation in the functioning of our institutions and system to achieve the goal of good governance. An essential part of the FTO's Office is to reach out to the International Network wherever possible practical and useful, to seek advice.

2. A Research, Development and Study Cell (RD &SC) has been established at Regional Office Karachi under the general supervision of FTO's Office., Islamabad with the scope as envisaged under section 9(4) of the Ordinance.

3. The RD&SC is expected to use the expertise gained during the course of investigation of various complaints filed by aggrieved taxpayers against different tax collecting departments and their functionaries. The findings and recommendations made on such complaints pinpoint the extent of maladministration on the part of the tax collecting departments and their functionaries. They also highlight the irritants which cause discontent among the stakeholders. Based on such findings and recommendations a number of maladies of tax administration have been diagnosed and identified. Yet, the causes whereof still need in depth study so as to prescribe proper solution to the problem.

4. The RD&SC has to achieve the following objectives:-

i. to carry out the objectives of the Ordinance

ii. to beef up the human and technical resources of the Ombudsman Institution

iii. to develop ways and means of addressing main causes of corrupt practices in the Federal Tax Administration

iv. to make suggestions as to the eradication of these practices

v. to create awareness among taxpayers about issues of tax administration

vi. to formulate modification in the laws in vogue in the light of the recommendations made by the FTO with a view to improving the working of tax administration

5. The RD & SC has inter alia carried out the following studies:-

i) Draft Taxpayers' Bill of Rights (Annexure-I)

ii) Code of Conduct of the Advisory Committee (Annexure-II)

iii) Historical Perspective of Office of Ombudsman (Annexure-III)

Annexure-I

TAXPAYER'S BILL OF RIGHTS

1. The right that there can be no taxation without representation.

2. The right that government can commit no financial liability without the approval of elected legislature.

3. The right to protection from perverse, arbitrary or unreasonable, unjust, biased, oppressive or discriminatory decisions, processes, recommendations and actions.

4. The right to be treated according to established practice or procedure unless the departure is bonafide and for valid reasons.

5. The right to be protected from decisions, processes, recommendations or actions based on irrelevant grounds.

6. The right to be protected from 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.

7. The right to be protected from neglect, inattention, delay, incompetence, inefficiency and ineptitude of the tax employees and Revenue Division in tax administration or discharge of duties and responsibilities.

8. The right to protection from harassment through 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 drawback or

(e) determination of fiscal and tax concessions, or exemptions

9. The right to protection from wilful errors of tax employees in the determination of refunds, rebates or duty drawback;

10. The right to be protected from deliberate withholding or non-payment of refunds, rebates or duty drawbacks by tax employees, which are already determined by the competent authority;

11. The right to protection from coercive methods of tax recovery in cases where default in payment of tax/ duty is not apparent from record;

12. The right to protection from 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.

13. The right to restrict State Expenditure of revenue above and beyond inflation and population growth.

14. The right to seek assistance from the Tax Collector who should act as facilitator and not as Tax grabber. His office should be a walk in clinic especially for the old tax payer, low income tax payer or senior citizens who can not afford services of the consultant.

15. The right to available information and prompt, accurate responses to questions and request for tax assistance.

16. The right to request assistance from an expert of the department, who shall be responsible for facilitating the resolution of taxpayer complaints and problems not resolved through the normal administrative channels within the department, including any taxpayer complaints regarding unsatisfactory treatment by department employees. The expert issue a stay order if a taxpayer has suffered or

is about to suffer irreparable loss as a result of an action by the department.

17. The right to have proper service of notices of any kind and application of all possible modes of service before passing ex parte order/ assessment.

18. The right to have prompt refund of additional duty, return of Bank Guarantee or security in the cases of provisional assessments of duty where final assessment is not completed within the period specify under the law.

19. The right to be represented or advised by counsel or other qualified representative at any time in administrative interactions with the department.

20. The right to procedural safeguards with respect to recording of interviews during tax determination or collection processes conducted by the department.

21. The right to be treated in a professional manner by department personnel

22. The right to have audits, inspections of records, and interviews conducted at a reasonable time and place except in criminal and internal investigations.

23. The right to freedom from penalty attributable to any taxes administered by the Department of Revenue; and to abatement of interest attributable to any taxes administered by the Department of Revenue, when taxpayer reasonable relies upon binding written advice furnished to the taxpayer by the department through authorized representatives in response to the taxpayer's specific written request which provided adequate and accurate information.

24. The right to obtain simple, non–technical statements which explain the reason for audit selection and the procedures, remedies, and rights available during audit, appeals, and collection proceedings, including, but not limited to, the rights pursuant to this Taxpayer's bill of rights and the right to be provided with a narrative description which explains the basis of audit changes, proposed assessments, assessment, and denials of refunds; identifies any amount of tax, interest, or penalty due; and states the consequences of the taxpayer's failure to comply with notice.

25. The right to be informed of impending collection actions which require sale or seizure of property or freezing of assets, except jeopardy assessments, and the right to at least 30 days notice in which to pay the liability or seek further review.

26. The right to have all other collection actions attempted before a jeopardy assessment unless delay will endanger collection and, after a jeopardy assessment, the right to have an immediate review of the jeopardy assessment.

27. The right to seek review, through formal or informal proceedings, of any adverse decisions relating to determinations in the audit or collection processes and the right to seek a reasonable administrative stay of enforcement actions while the taxpayer pursues other administrative remedies available under tax law.

28. The right to have the taxpayer's tax information kept confidential unless otherwise specified by law.

29. The right to procedures for retirement of tax obligations by instalment payment agreements which recognize both the taxpayer's financial condition and the best interests of the state, provided that the taxpayer

gives accurate, current information and meets all other tax obligations on schedule.

30. The right to procedures for requesting cancellation, release, or modification of liens filed by the department and for requesting that any lien which is filed in error be so noted on the lien cancellation filed by the department, in public notice, and in notice to any credit department at the taxpayer's request.

31. The right to procedures which assure that the individual employees of the department are not paid, evaluated, or promoted on the basis of the amount of assessments or collections from taxpayers.

32. The right to an action at law within the limitations to recover damages against the state or the Department of Revenue for injury caused by the wrongful or negligent act or omission of a department officer or employee.

33. The right to settle claims through Alternative Dispute Resolution (ADR).

34. The right to have the department begin and complete its audits in a timely and expeditious manner after notification of intent to audit.

35. The right to have the department actively investigate and, where appropriate, implement automated or electric business methods that enable the department to more efficiently and effectively administer the revenue sources of the state taxpayers.

36. The right to waiver of interest that accrues as a result of errors or delays caused by a department employee.

37. The rights to participate in free educational activities that help the taxpayer successfully comply with the revenue laws of the state.

38. The right to pay a reasonable fine or percentage of tax, whichever is less, to reinstate an exemption from any tax which a taxpayer would have been entitled or received but which was lost because the taxpayer failed to properly register as a tax dealer or obtain the necessary certificates entitling the tax payer to the exemption.

39. The right to fair and consistent application of the tax laws of the state by the Department of Revenue.

40. The right to pay only the amount of tax due under the law and to have the law applied as consistently and equitably as possible.

41. The right to be treated courteously and professionally by Department employees and to be answered as promptly as available resources permit.

42. The right to receive a simple, non–technical explanation rights and the Department's obligations in all proceedings and activities involving taxpayers.

43. The right to have personal and financial information kept confidential and to know why the Department is asking for information, how that information will be used, and what might happen if it is not provided. The Department may share information with certain federal, state, and local government departments under strict legal guidelines.

44. The right to obtain basic information concerning the basis for and amount of any tax, interest, and penalties owed or refunded when sent a tax due, deficiency, or refund notice.

45. The right to obtain information about tax exemptions for which a Taxpayer legally qualify. The Department will make every effort to inform those eligible for such exemptions.

46. The right to have penalties abated for under payment of tax due to erroneous Department advice in written response to a specific written inquiry, provided that the taxpayer gives the Department complete and accurate information.

47. The right to enter into installment agreements in case of hardship at the Department's discretion in order to facilitate collection of payments due. The Department may require financial statements prior to and during the administration of such agreements and may cancel such agreements in the event of default or change in the taxpayer's financial condition.

48. The right to telephone assistance through a tool-free telephone net work, responsible to answer any query by a taxpayer.

49. The right to have honest, competent, efficient, well behaved and trust worthy tax officials.

50. The right to have protection of life and property.

51. The right to have assurance that their taxes would be utilized in a transparent manner.

52. The right to guarantee unfettered right of appeal or review through an independent judicial tax appellate system.

Annexure-II

CODE OF CONDUCT OF THE ADVISORY COMMITTEE

Taxation laws whenever ordained are said to be simple but the whole difficulty arises in their application, due to complex machinery designed for the purpose. That is how the complexities originate and take the shape of abuses, needing a legislative authority to perform functions and exercise power fairly, honestly, diligently and independently of the executive and all executive authorities. This authority was named "Federal Tax Ombudsman" vide The Establishment of the Office of the Federal Tax Ombudsman Ordinance, 2000 (Ordinance XXXV of 2000) and was invested with powers to diagnose, investigate, redress and rectify any injustice done to a person through maladministration by functionaries administering tax laws. This the Federal Tax Ombudsman could not do singly and therefore section 18 of the said ordinance provides for "Standing or Advisory Committees." It became necessary for appointment of an Advisory Committee to assist the Federal Tax Ombudsman for performance of his functions under the Ordinance. Now, as the Hon'ble Federal Tax Ombudsman has established an advisory committed vide Notification dated 11-12-2003, it is imperative to define its role, functions and code of conduct for the purpose of smooth application of the said Federal Tax Ombudsman Ordinance, 2000 (Ordinance XXXV of 2000) which is as follows:-

i. The Advisory Committee should identify issues that increase burden or create problems for the taxpayer and to bring those issues to the attention of the Federal Tax Ombudsman.

ii. The practices and performances of tax collectors which show (i) lack of attention to tax payers needs (ii) harassment to the taxpayers and (iii) tax leakages.

iii. To suggest measures to simplify the tax structures.

iv. To identify measures to widen the tax base.

v. To propose measures for improvement in the tax administration.

vi. To reduce potential for discretion and concomitant harassment.

vii. To suggest appropriate legislative proposals.

viii. To propose problem resolution programs to handle taxpayers problems and complaints, not promptly or properly resolved through normal procedures or those problems which taxpayers believe have not received appropriate attention. In addition also to provide analysis of problem resolved by it to determine their underlying causes so that corrective action can be taken to prevent their recurrence.

ix. To review the government polices in relation to tax laws and procedures for possible adverse effects on taxpayers.

x. To recommend review of the Federal Tax Ombudsman Ordinance, 2000 (Ordinance XXXV of 2000) in particular specially section 9(2)(b) of the said ordinance implication of interpretations of which have been found to defeat the very purpose for which the government had set up the institution of the Federal Tax Ombudsman.

xi. To recommend amendment in section 32 of the Federal Tax Ombudsman Ordinance, 2000 (Ordinance XXXV of 2000) to put a time limit of 90 days for holding the recommendations of the Federal Tax Ombudsman in abeyance as has been held by the Hon'ble Supreme Court of Pakistan re: Federation of Pakistan Versus Mohammad Tariq Pirzada reported as 1999 SCMR 2189 while dealing with section 32 of the Establishment of the Office of the Wafaqi Mohtasib (Ombudsman) Order (1 of 1983).

xii. To watch that the findings /decisions of the Hon'ble Federal Tax Ombudsman are implemented religiously and are not flouted. Any such case coming to the notice of the Advisory Committee

be brought to the notice of the Hon'ble Federal Tax Ombudsman for appropriate action.

xiii. With respect to the study of findings / decisions recorded by the Hon'ble Federal Tax Ombudsman it would be appropriate to suggest lacunae in tax laws which are pregnant with complexities and provide free hand to the tax collectors to harass the taxpayer.

xiv. To solicit views from the tax bars of the country and also to request them to identify problems faced by them as well as by the taxpayers.

xv. To maintain liaison with trade bodies like Federation of Pakistan, Chamber of Commerce & Industries (FPCCI) and Chamber of Commerce & Industries of each province, APTMA, Stock Exchanges of each province and also to obtain their views and to ascertain tax problems coming to their notice with an analysis for mitigating such problems.While defining maladministration in section 2(3) of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 (Ordinance XXXV of 2000) the legislature has used the word "includes" meaning thereby it is inconclusive and therefore it would be appropriate for the advisory committee to constantly and consciously remain alert to the tax collectors designs and actions to which the taxpayers are subjected which in substance are acts of maladministration.

Annexure-III

Historical Perspective

The evolutionary process of dispensation of justice believed to have taken a chequered course through the ages. For a long period of time, even the norms of justice remained unidentified in the absence of any developed social structure worth the name. However, with the passage of time, due to the growing consciousness of people to receive social justice, humane treatment and fair deal the governing elite could not hold it back for long. Subjugation and suppression of the people was gradually giving way to appeasement and conciliatory conduct. The individual ruler followed by oligarchy condescended to concede certain basic rights of possession and property by devising some organism to cope with social obligation, which, hitherto, was grossly undermined.

2. Recorded history bears witness to misrules of many forms and later different phases of regimes under authoritative oligarchy, autocracy, monarchy and theocracy, etc. in annals of human civilizations of the past. Each one of them imposed rule and regulations to suit its ponderous objective of bolstering central authority ignoring rights of the citizens. By many standards the rules and procedures adopted by them were arbitrary and discriminatory. As such the true spirit of justice was sacrificed in order to perpetuate exploitative authority and the element of rationalism was subordinated to irrational tenets of statecraft. Thus the mankind suffered the brunt of unjust treatment without relief and succour for centuries.

3. It is only after the advent of Islam in the early 6th century AD, when the perceptions of justice in real term took a concrete form to establish a social order based on fair play and equitable relationship between the rulers and the ruled under divine injunctions which embody universal principles of justice without discrimination.

4. The pronouncements of judgments under the Islamic legal system stand as a testimony of even-handedness and impartiality to the core in order to create harmony among human beings without distinction. These pronouncements laid down, for the first time in the recorded history, the principle that be it the Caliph, the vicegerent or the ordinary citizen, no one was above the law and all men and women were accountable for their deeds. The functionaries of state, according to principles evolved in such judgements, are strictly ordained to ensure justice with dignity and integrity, which are the supreme traits of God-fearing followers of divine faith.

5. The Holy Quran lays down judicious conduct in all aspect of life with special emphasis on justice and accountability in public administration. And the Prophet Muhammad, (SAWS), acted upon divine edicts himself in letter and spirit and issued instructions to governors and officers in charge of public administration and made them accountable for their acts of omission and commission Thereby the entire system of administration of justice was revolutionised for the good of the mankind.

6. The philosophers and the social scientists of post-Islamic era have credited the Prophet Muhammad (SAWS) with the title of lawgiver to the mankind. Rightly so the Islamic dominion stretched over eastern and western hemisphere demonstrated a high standard of administration of justice free from exploitation and discrimination. The model of judicial edifice established in the Prophets (SAWS) lifetime and followed by four Caliphs served as a model for the successive Muslim states with salutary results.

7. The legal justice and social justice run concurrently in Quranic code. For judiciary, in Islam, the concept of accountability is supreme denominator to ensure an orderly and a grievance-free society. In fact this sublime approach to adjudication has attracted jurists and rulers from the rest of the world for its universal appeal. And many provisions of law invoked in Islamic jurisprudence were emulated by western legal codes.

8. To cite one example, King Charles XII of Sweden, while in self-exile in Turkey during the Ottoman Caliphate was deeply fascinated by the unique concept of the department of Dewan-ul-Mazalam (examiner of grievances) for accountability of bureaucracy and its effective enforcement in Islamic state. Upon his return he introduced the law in early 19th century in Sweden with success in reforming state machinery, which was highly appreciated by the people who were subjected to injustices at the hand of functionaries of the Kingdom. A separate commissionerate was created under decree known as office of Ombudsman (equivalent for Mohtasib in Swedish language) attached to Ministry of Law and it continues to function even today.

9. Following the effective system of eradicating people's grievances through the services of Ombudsman other countries also adopted the model in conformity with their socio-economic condition. By the end of 20th century many countries of Europe and Asia have established the Office of Ombudsman in compatibility with their own system of government.

10. Being convinced of the effective role of "Dewan-ul-Mazalam" and Swedish Ombudsman in eradication of maladministration in bureaucratic cadre others in Europe and Asia have also constituted separate departments in their legal systems. By the end of 20th Century about 87 countries of the world could claim proven record of good performance of this unique institution of accountability with positive results.

11. With the unprecedented upsurge in socio-economic activities the world over which gave rise to complex legislative and statutory structure, the need for establishing the institution of Ombudsman is more acutely felt to remove causes of grievances and sufferings of the people who are productive individuals of society. If the social justice is not done in full measure and equitable treatment is not meted out the society itself, in a manner, would suffer the social cost to the detriment of national progress.

12. One may agree to a certain extent with the burdensome task of scrutiny and investigation to pinpoint waywardness in the implementation and interpretation of bureaucratic rules. But correcting the wrong by taking pains in order to do justice outweighs the burden. And no task is too heavy to redress the grievance of the victim of injustice and maladministration.

13. In this respect the judgement of the apex courts of various countries during the last five decades subscribe to the concept of justice in all its ramifications and are shining precedents.

14. In Pakistan there is abounding volume of knowledge of fundamental codes and procedures in the light of injunctions of the Holy Quran and Sunnah to support the effort in effectively dealing with the cases of maladministration and transgression of authority to meet the ends of justice.

15. There has been a series of attempts to legislate provisions of law in respect of the institutions of Ombudsmen in the country, but the experiments in framing the constitutions of 1956 and 1962 could not bring in their scope. The elaborate legal structures; and the recurring political upheavals in the country led to traumatic circumstances and uncertainties of all sorts. It were only the framers of the constitution of 1973 who ensured the provision of establishment of the institution of Ombudsman as a legal entity by incorporating it in clear terms in federal legislative list and by enabling provincial legislature vide clause (c) of Article 142 of the Constitution to frame laws for appointment of ombudsmen in the provinces as they may deem fit.

16. However, the functional structure of Federal Ombudsman could not materialise in the true sense except in some selective cases till a permanent institution of Federal Ombudsman was established by the Presidential Order of 1983 under the title of Wafaqi Mohtasib (Federal Ombudsman). The Federal Ombudsman was empowered to perform his functions independently of the executive authority to redress grievances of the people against the functionaries of the state and correcting the course of their conduct. To a large extent the

Federal Ombudsman's performance has played a significant role in deciding many cases of irregularities, contraventions of laws, rules and regulations as well as highhandedness of the government functionaries and provided relief to the people concerned.

17. In the course of delivering justice to the aggrieved persons in all spheres of governmental activity the need to deal with the cases of mal-administration found in the federal revenue departments on priority could not be overemphasised. It was felt that the complex and multidimensional financial transaction, intricacies of multinational trade and the innovations in the sources of income generation have enormously increased the regulations and statutory orders that can be found lacking in clarity. Such complexities and intricacies have increased manifold the inadequacies of tax functionaries and imply hardship to the taxpayer. The government, therefore, took another significant step to establish a separate Office of Federal Tax Ombudsman through an Ordinance promulgated in August 2000 to deal with this special area. In fact the creation of the Office of Federal Tax Ombudsman to diagnose, investigate, redress and rectify any injustice done to a person through maladministration by functionaries administering tax laws was a long standing demand of the people.

18. The first Federal Tax Ombudsman was administered oath of his Office on 19th September 2000. Besides carrying out the aforementioned objectives of the Ordinance, provisions have been made for the Federal Tax Ombudsman to arrange studies to be made and research to be conducted in particular for ascertaining the causes of corrupt practices and injustice so that he may recommend appropriate steps for their eradication.

19. This institution is of vital importance in the redressal and mitigation of the grievances arising out of an inclusively defined term "maladministration". It is relevant to mention that most of the advance countries have evolved one or the other mechanism with regard to correcting the anomalies in tax collection system and other irregularities, which bring hardship and injustice to the taxpayers. The

resolution of the issues and problems through this mechanism has a salutary effect in dispensation of justice and redressal of grievances of taxpayers.

20. In Pakistan there was a long felt need of creation of Federal Tax Ombudsman for rectifying the injustices, high-handedness and harassment faced by the taxpayers at the hands of tax departments. The creation and establishment of the office of Federal Tax Ombudsman is fulfilment of a long awaited demand of Tax Bars and taxpayers.

21. In a short span of time of two years the institution of Federal Tax Ombudsman has made its existence felt in all the departments of Revenue Division which in itself is a great achievement by all standards. The office of the Federal Tax Ombudsman has all the potentials to address maladministration in any form and manner. The impact of Federal Tax Ombudsman is visible on the Tax Administration as well as the taxpayers. It is destined to play a historic role in future as well. For having achieved so much within such a short time the credit goes to the relentless and untiring efforts and endeavours of Mr. Justice ® Saleem Akhtar, the Federal Tax Ombudsman, the Secretary, Advisers, Consultants, Directors and each and every member of the staff.

FUTURE PROGRAMME

In view of the expected enlargement of the FTO's office in future it is imperative to have an improved infrastructure capable of meeting day-to-day requirements of the office. With a view to improving upon the existing facilities of database and having online linkage between the Headquarters and the Regional Offices, Management Information System (MIS) has been planned to be installed in future with the following characteristics:-

i. establishment of online networking between the Headquarters and Regional Offices;

ii. computerization of Budgetary Allocations and Accounts;

iii. computerization of Decisions Retrieval;

iv. computerization of Complaints; and

v. computerization of Personnel Information

The MIS is an important and vital resource of operation and management of an organisation. It facilitates timely action and decision with accuracy and provides information for modelling and forecasting. The MIS facility will help enable the Headquarters to have direct online linkage with the Regional Offices. The system will help enhance efficiency and performance of the FTO's office.

Chapter VII

PRESS CLIPPINGS

The hard work put in by the FTO's Office in enabling the aggrieved taxpayers to get speedy and free of cost justice has been appreciated by all and sundry. Some of the press clippings containing such sentiments of different segments of society form part of the report.

The News International, Wednesday, January 28, 2004

Withholding of determined refund on baseless grounds

FTO terms action of Customs mal-administration

By our correspondent

KARACHI: Federal Tax Ombudsman (FTO) - terming the action of the Lahore Dry Port Customs Authority mal-administration - has directed the Central Board of Revenue (CBR) to pay the refund amount of duty without delay.

The FTO, Justice (Retd) Saleem Akhtar, was approached by representatives of Crescent Art Fabrics (Pvt) Ltd alleging mal-administration on the part of the Lahore Dry Port Customs Authority for non-payment of refund of duty amounting to Rs72,218 paid by the complainant on a price higher than the actual price of the imported goods.

The complainant applied for refund on 01.08.2000 for the amount of duty paid in excess after submitting the requisite documents but no refund has been paid. In reply, the respondents have taken preliminary objection to the jurisdiction of the FTO on the ground that a case involving an assessment matter excludes the FTO's jurisdiction in terms of section 9(2)(a) of the establishment of the Office of the Federal Tax Ombudsman Ordinance, 2000.

It is incorrect to allege that no decision has been taken by the department. An amount of Rs34,472, on account of customs duty, has been approved but kept pending in abeyance due to a huge outstanding amount liable against the complainant who has also filed a writ petition No 9297/03 in the Lahore High Court, which is pending decision. The complaint may be filed.

The FTO observed that the arguments of the parties and the record of the case have been considered and examined. As to the respondents' objection to the FTO's jurisdiction, it is well settled now that in order to redress the grievances of the complainants, the FTO can take cognizance of and investigate cases involving mal-administration, otherwise the very purpose of the establishment of the office of the Federal Tax Ombudsman Ordinance, 2000 would get defeated.

It is observed that an amount of Rs34,472 on account of customs duty (the amount has been agreed to by the complainant in his rejoinder on record) was approved but its payment kept in abeyance due to an outstanding liability against the complainant and because the complainant has filed a writ petition No 9297/03, which the respondents contended was pending in the Court.

He observed that the refund amounting to Rs34,472 though sanctioned, is being withheld because the department intended to adjust the refund amount against the so-called pending liability, said to be outstanding against the complainant, in terms of the provisions of section 202 of the Customs Act, 1969 and also because the complainant has filed a writ petition No 9297/03 in the Lahore High Court, which is subjudice.

The so-called liability has admittedly neither been formally determined/decided nor has any notice or demand been so far issued/served on the complainant for its payment.

Withholding refund on account of a so-called expected but undetermined/undecided tax liability, and for which no notice or demand has yet been served on the complainant, is both premature and arbitrary.

Similarly, it is admitted that the writ petition No 9297/03 cited by the respondents is not relevant to the cases under complaint. Respondents' failure to pay the amount of refund already sanctioned constitutes mal-administration within the meaning of section 2(3)(i)(b) and 2(3)(v) of the establishment of the office of the Federal Tax Ombudsman Ordinance, 2000.

The FTO concluded that from the facts of the case and the admitted position it is clear that neither the matter is subjudice nor relates to assessment, valuation of goods or determination of liability. It is a clear case of arbitrary action to withhold the determined refund on flimsy and baseless grounds, which is nothing but harassment.

This act of the department is neither bonafide nor according to law. Nor against such process any appeal is provided.

As mal-administration in dealing with the matter is established, the objection to jurisdiction is misconceived. Therefore, the CBR should direct the concerned dry port authority to pay the amount of refund of duty involved in the case without delay.

Frontier Post
PESHAWAR.
05 MAR 2004

FTO asks CBR to obey orders

F.P. Report

ISLAMABAD: The Federal Tax Ombudsman, Justice (R) Saleem Akhtar direct the Central Board of Revenues (CBR) Collector, Lahore to recall the order dated October 25, 2003 and notice dated October, 30, 2003 and delete complainant's name from the blacklist dated October 25, 2003.

The recommendation came in the complaint filed by M/S Trust Fabrics, News Garden Town, Lahore that the complainant, registered with Sales Tax Department and doing wholesale business in Textile products was blacklisted by the Collectorate of Sales Tax, Lahore allegedly in violation of the provision of sub section (4) of section 21 of the Sales Tax Act, 1990, which empowers the Collector to blacklist or suspend the registration of any unit involved in evasion of sales tax or issuing fake invoices.

Neither any audit was conducted to establish complainant's involvement in tax evasion nor did the department have any other proof of his involvement in issuance of fake invoices. The competent authority (Collector) did not approve blacklisting of complainant's unit nor did the respondents communicate to him any decision in this regard. The act of blacklisting or suspension of registration has adversely affected his business.

After hearing the arguments of the parties and examining the record of the case the Tax Ombudsman observed that M/S Trust Fabrics was blacklisted and its registration was suspended in terms of section 21(4) of the Sales Tax Act, 1990 vide order dated October 25, 2003 (on record). The order blacklisting the complainant and suspending its registration was issued on October 25, 2003 by the Additional Collector, Headquarters and communicated, among others, to the complainant and so called order dated October 25, 2003 blacklisting the complainant and suspending its registration is illegal as it was passed by the Additional Collector and not by the Collector. The said order is without jurisdiction and arbitrary. The FTO further said that the order of blacklisting, suspension of registration issued by the Additional Collector is violative of the provisions of section 21(4) of the Sales Tax Act, 1990 and is contrary to law.

Thus all proceeding in pursuance of such order including issuance of notice date October 30, 2003 are contrary to law and without jurisdiction and fall under the category of 'maladministration' as defined in the Establishment of the Office of the Federal Tax Ombudsman Ordinance, 2000.

BUSINESS RECORDER
May 10, 2004

Tax deducted by Wapda is refundable: FTO

RECORDER REPORT

ISLAMABAD: The Federal Tax Ombudsman has held that a petrol filling station has fulfilled its tax obligation if the tax has been deducted at the source and it has no other source of income. In such a case tax deducted by Wapda is refundable.

The FTO, Saleem Akhtar, found that the complainant, Forest View Filling Station, Changa Manga, Chunian, had applied for the refund as the department had made excess deduction of tax of Rs 20,000 for the assessment years 2000-01 to 2002-03 but the department gave no response to repeated requests for refund. According to it, the petrol pump received commission income from PSO for supply of petrol and tax was deducted at source.

The department, in its reply to FTO's notice, admitted that under section 80 C (4) of the repealed Ordinance, if an assessee has no other income, tax deducted at source is the final discharge of tax liability. However, the complainant's claim of refund on account of tax withheld on electricity bills under section 50 (7E) was not tenable. The claim is not admissible, under section 80 (C) which reads as under:

"Nothing contained in this ordinance shall be so construed as to authorise any allowance or deduction against the income as determined under sub-section (1) or any refund of tax deducted or collected u/s 50 or set off any loss under any provisions of the Ordinance."

During hearing, the authorised representative of the complainant, Mushtaq Ahmed, submitted that PSO deducted the tax under section 50 (7H) for its supplies which was the final discharge of tax liability. The complainant was not claiming any refund thereof but of the tax collected by Wapda on electricity u/s 50 (7E).

He also pointed out that the department in its order dated 6.11.03 passed in the case of Iqbal filling station had allowed refund of tax amount of Rs 6,750 paid under section 50 (7E). The complainant is thus being discriminated against.

Further he argued that sub-section (2) of the section 80C(2) does not declare that the amount of tax collected by Wapda on account of consumption of electricity would be payable in addition to the tax payable by the complainant on its income.

To counter this, the departmental representative argued that the case of Iqbal filling station was prejudicial to revenue and needed rectification because no refund could be allowed in view of the express provision of law.

After hearing both sides and examining the record, the Tax Ombudsman noted that the complainant had filed statements under section 143B of the repealed Ordinance. The tax on income was deducted on its receipts/commission in the subject assessment years by the PSO, which supplied petrol to the complainant. The tax so deducted represented full and final discharge of liability. However, complainant's application for refund of the amount of tax collected by Wapda on account of consumption of electricity is not being processed by the respondents for one reason or the other. The main contention is that refund is not payable because no refund on account of deduction or collection under section 50 of the repealed Ordinance is admissible in a case where receipts are covered under section 80C(3) of the repealed Ordinance. No doubt, Section 80C(3) of the repealed Ordinance does not allow any refund of tax deducted or collected under section 50 or set off any loss under any provision of the ordinance. However, in the case of the complainant tax was deducted by PSO in respect of its income (commission so received) under section 50(7H) of the repealed Ordinance which constituted final discharge of complainant's tax liability. Section 80C(3) of the repealed Ordinance cannot be stretched to cover collection by Wapda on account of consumption of electricity so as to declare it as non-refundable deduction or collection made under section 50. The amount of tax chargeable under sub-section (1) of section 80C was deducted by PSO and the refund of collection made on electricity bills by Wapda cannot be held back because the complainant's tax liability stood finally discharged. The tax deducted by Wapda being in excess of the total liability under section 80C is refundable.

The FTO's order further reads:

It is worthwhile to recall that the CBR has already explained in Circular No.18 of 1993 dated 13.10.1993 as under:

"....the tax liability of a person under Section 80C would be restricted to the extent of tax deductable under sub-section (4) and (5) of Section 50. Any amount deducted or collected in excess of the required amount of tax under Section 80C would constitute the amount of tax paid by or on behalf of the assessment in excess of the amount with which he was properly chargeable.... The provision of Section 96 of the Income Tax Ordinance, 1979 duly entitles such assesses to refund of the excess amount so paid".

Quite obviously, collection by resort to Section 50(7E) falls beyond the scope of deduction/collection on the refund of which restriction has been imposed in Section 80C(3). There is, therefore, no justification for withholding refunds due to the complainant because of collection under Section 50(7E) which is in excess of the requisite amount of tax under Section 80C.

The department's refusal to respond to the refund application and reluctance to allow refund to the complainant of the amount of tax collected by Wapda on electricity bills is arbitrary and unjust amounting to maladministration as defined under the provisions of section 2(3) of the Establishment of the Office of the Federal Tax Ombudsman Ordinance, 2000. Whereas the complainant is being denied the refund, similar refund has already been allowed by the department in the case of Equable Filling Station (case cited by the complainant), which is discriminatory. This is case of obvious maladministration.

Accordingly, it is recommended that the CBR direct the competent authority to:

i. Allow refund of Rs.20,060 collected by Wapda through electricity bills as the complainant has discharged its tax liability by way of deduction of tax at source by PSO.

ii. Compliance be reported within 30 days.

THE NEWS
March 23, 2004

FTO spurns action of tax officials

By our correspondent

KARACHI: The Federal Tax Ombudsman (FTO) Justice Saleem Akhtar has termed an action of tax officials' as maladministration and ordered that the refund claim should be decided within two weeks of the filing of documents by the complainant as provided by law.

The FTO was approached by Amir Rauf, proprietor of AYS Fridge Co Electronics Peshawar saying that an application for refund of Rs383, 941 u/s 66 of the Sales Tax Act was filed with the Deputy Collector, Sales Tax, Peshawar on 27-5-2002 (actually dated 27-5-2003).

The claim was complete in all respects but on various pretexts including misinterpretation of section 66 the refund has not been paid.

A representation dated 26-9-2003 was also filed with the respondent regarding the scope of section 66 but there has been no result.

After approaching the FTO the claimant urged for an early payment of the refund after appropriate directions were issued to the Collector to sanction the complainant's refund claim.

The FTO sought the view of the Deputy Collector Sales Tax who submitted that the complainant has not provided the required documents relating to the refund claim u/s 66 of the Sales Tax Act and no refund could be allowed without the documents.

A letter dated 25-11-2003 addressed to the complainant by the Deputy Collector (Refund); Peshawar was filed with the reply in which certain documents and records had been called for.

It has been prayed that the complainant be directed to submit the necessary documents in support of the claim, which would be decided on merits and under the law.

The FTO observed that the complainant filed application for refund dated 27-5-2003 with copies of invoices along with sales tax return.

A copy of this application was also filed. In reply dated 19-11-2003 the respondent did not deny and stated "No comments".

He argued that it is stated in paragraph 3 that the complainant did not file any supportive document. If it is true then immediately on receipt of refund application the complainant should have been informed of the deficiency but instead there was complete silence on the part of the Department.

In reply the department never pleaded that it had required the complainant in writing to submit the requisite documents necessary for processing and deciding the claim. A photocopy of the letter of the DC (Refund) dated 24-11-2003 has been placed on record which required the production of five documents.

The complainant has denied the receipt of this letter while the department did not give any proof of service, which shows that it is a self-serving letter allegedly issued two days after submitting the reply.

It is therefore established that the respondent did not take any action in the matter and to justify their act have produced a letter which proves their negligence and inefficiency.

From the department's admission it is proved that the complainant had filed application with relevant documents, which was kept, in the file without any action.

"Maladministration is fully established and for expeditious disposal of the refund application it is advisable that the complainant file the relevant supportive documents within three weeks of receipt of this decision" he said.

Therefore, it is recommended that the claim for refund be decided within two weeks of the filing of documents by the complainant as provided by law.

Disputed sales tax refund claims

FTO lays down guidelines for adjudication

M RAFIQ GORAYA

ISLAMABAD: Federal Tax Ombudsman former Justice Munir A Sheikh has laid down detailed guidelines for adjudication of disputed sales tax refund claims by the concerned officials of the Central Board of Revenue (CBR) in a judgement made available to Business Recorder here on Tuesday.

A registered commercial exporter had lodged a complaint with the FTO alleging that the collectorate of sales tax Faisalabad had unlawfully rejected his sales tax refund claims aggregating Rs. 1,973,281 and imposed a penalty amounting to Rs. 591,984, by maladministration, making a decision contrary to the law, perverse, arbitrary, and without valid reasons.

Responding to the allegations, the deputy collector ((refund) Faisalabad described tax invoices as fake claiming that the complainant had not received supplies against such invoices, the bank statement did not show the exact amount transferred against each invoice, the four suppliers never manufactured the goods claimed to be purchased by the complainant, the manufacturing units/vendors who issued the tax invoices were either fake or fraudulent, as those were not found at their registered address, etc.

After hearing the arguments from both sides, the FTO said that as for the contravention alleged supra against the registered suppliers, it is a matter purely between the collector and the alleged registered contravener/supplier and did not have bearing on the complainants' obligations in law, rules and regulations as in force during the relevant tax periods.

Even the list of suspected units circulated by the relevant collectorate much after the relevant tax period has no sanctity in any law, rules or regulations. The only credibility that may be assigned to such a list in practice is to alert the functionaries administering the law to carefully verify the invoices issued by such registered units and withhold claims on the basis of such invoices only for a reasonable period sufficient to verify that such tax invoices were issued by the suppliers whose name and address was printed thereon, that payment against such invoices was made through cross cheque collected by the supplier through bank account opened and operated by him and that the quantity of goods recorded in such invoices were consumed in manufacturing for export/domestic sale or exported in the same state.

The FTO made it clear that the only obligation of the complainant/buyer under the law was to ensure and prove that the supplier was a registered person, that the payment against the tax invoices was made through cross cheques issued in the name of such suppliers collectable in payees account only and that the quantity of goods recorded in such invoices were consumed in manufacturing for export/domestic sale or exported in the same state.

The respondent is totally oblivious of the fact that the buyer/complainant neither had nor can ever be saddled with any obligation under the law to know the source from where the registered vender was supplying the goods.

The FTO also said that neither adjustment/refund of input tax be denied nor any penal action can be taken unless it is conclusively proved through due process of law that such tax invoices were not issued by such registered units and payment was not collected by the vendor in his bank account or no goods had been procured by the buyer/complainant against such tax invoices from the vendor and used as input against taxable or zero-rated output export.

Since the rules in force during the relevant period did not prescribe any specific documents to be kept in respect of delivery of goods, any reasonable documentary evidence of procurement of such goods recorded in stocks and consumption/export thereof should be sufficient. As long as it is not the case of the CBR functionaries that the registered supplier has not collected input sales tax from the registered buyer/complainant for the supplies made in the manner considered in the preceding lines it is the duty of the sales tax collectors under the law to ensure collection of the amount of sales tax from the vendor whom the buyer has paid such amount. The CBR is bound to honour the statutory commitment of the state to the registered buyer/exporter/manufacturer, etc.

The FTO said that contravention like false declaration in registration application, suppression of capital employed in business, suppression of element of profit/value addition in output by manipulating cost of inputs and false claims of input tax, etc., by complainant's suppliers duly registered under the Sales Tax Act have no nexus with complainant's refund claim of sales tax paid by them on their input if there is no conclusive finding that the transaction between the complainant and their alleged suppliers were manipulated and fake.

Unless it is so proved within a reasonable time, no adverse inference can be drawn against the complainant and no penal action can be initiated against them. The test for reasonability of time is in the promptness of sequence of process under the law ever since the alleged prima facie evidence was placed on record.

Long gaps, inattention, inordinate inaction or misdirected action would render the time consumed to be unreasonable warranting a finding of maladministration against the concerned functionary, entitling the complainant to the refund claimed even at the expense of the state.

He said that denying input tax adjustment against taxable/zero-rated supplies/exports instead of pursuing registered vendors involved in the deals through their bankers and identifying the ultimate registered person who has embezzled the amount of tax collected on behalf of the state is maladministration of worst order.

These are acts of omission contrary to law, rules and regulation involving exercise of powers or failure or refusal to do so for administrative excess or reflecting neglect, inattention, incompetence and ineptitude in performance of duties by the government departments.

The FTO directed that the collector of sales tax must ensure that the competent officers conduct verification of relevant facts in accordance with the law and rules in the light of these observations and findings and the matter is adjudicated within a reasonable time not exceeding 70 days.

LETTERS OF THANKS

It is indeed the most pleasant phenomenon to get letters of thanks from the complainants whose complaints have been redressed by the FTO. Majority of such affectees being extremely distressed, disgusted and anguished by maladministration at the hands of the tax collecting departments and their functionaries, express their profound thanks on redress of grievances. The relief so provided impels them to speak up their mind by wishing consistent success of the FTO Institute. Some selected letters form part of the report. A glance through them will enable the reader to feel the gravity of the difficulties through which the complainants may have passed through before getting speedy and cost free justice from the FTO.

In Respect of

The Most Honourable Federal Tax Ombudsman,

5-A Constitution Avenue, Islamabad.

Subject: Complaint No. 1558/2003

Date of Hearing: 2-1-2004

The Honourable Sir,

I beg your pardon for my inevitable failure in making my presence available before your honour on 2-1-2004 as the College was being closed for the winter vacations upto 31-12-2003 and your esteemed order for my attendance on 2-1-2004 was handed over to me a bit latter.

In the mean while I received a voucher of Rs. 3025 from the Income tax Officer, Salary circle Dera Ismail Khan for the session 2002-03 while actually the amount for Rs. 3209 was paid in excess during the session 2001-02. Any how avoiding the un-necessary related details of the matter I request your honour for your kind permission regarding the settlement of the case with the Income tax officer, Salary circle D.I.Khan. I thank you from the depths of my heart for your kind justice.

Yours Obediently,

Abdur Rauf Khan

Asstt: Prof: of Arabic

G.D.C.Tank.

Dated: 22-01-2004

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JAN/14/2004

FEDERAL TAX OMBUDSMAN SECRETARIAT,
STATE ENTERPRISES COMPLEX,
5-A CONSTITUTION AVENUE,
ISLAMABAD.

SUB: COMPLAIN NO. 663/2003 & 743-K/2003

SIR,

WE WISH TO INFORM YOU THAT WE HAVE RECEIVED ALL OUR OUTSTANDING REFUND CLAIMS FROM COLLECTORATE OF SALES TAX KARACHI (WEST) AND NOW MATTER HAS BEEN RESOLVED DUE TO YOUR KIND INTERVENTION AND THE MATTER MAY PLEASE BE TREATED AS CLOSED.

WE WISH TO THANK YOU FOR YOUR COOPERATION AND HELP IN RESOLVING OUR DISPUTE.

WE ARE EXTREMELY GRATEFUL TO YOU FOR YOUR TIMELY ACTION WHICH RESULTED IN SAVING US UNNECESSARY HARDSHIPS.

ONCE AGAIN THANK YOU VERY MUCH FOR THE SAME.

YOURS TRULY,
JETEX INDUSTRIES (PVT) LTD.

MANAGING DIRECTOR.

TRANSOCEAN ASIA (PVT.) LIMITED

5TH FLOOR, KARACHI CHAMBERS,
HASRAT MOHANI ROAD, P. O. BX 4998,
KARACHI-2, PAKISTAN.

PH : 2416818 - 2419866 - 2417298
TELEX : 20627 INDUS PK
FAX : 92-21-2410998 CABLE TRANSASIA
E-mail: toal@super.net.pk

Dated : 21.01.2004

Justice (R) Saleem Akhtar Esq,
Federal Tax Ombudsman,
State Enterprise Complex,
5-A, Constitution Avenue,
F 5/1,
Islamabad.

SUB : **COMPLAINT NO. 1524-K/03.**

Respected Sir,

We refer to your **findings/decision** in respect of our subject complaint against the Secretary, Revenue Division, Islamabad.

We are pleased to confirm that we have today received cheque No. 354371 dated 19.01.2004 for Rs. 62,126.00 from the Office of Collectorate of Sales Tax and Central Excise (Enforcement) against our refund claim of June/2001.

We take this opportunity to express our sincere thanks to the Federal Tax Ombudsmen, Islamabad and Federal Tax Ombudsman Secretariat Karachi Regional Office for their taking keen interest in providing us the justice in the subject case by way of arranging promptly our long outstanding refund claim.

Many thanks and with best regards.

Yours sincerely,
For TRANSOCEAN ASIA (PVT) LTD

Muhammed Akram.

CC : Federal Tax Ombudsman,
Regional Office
NIC Building, 14th Floor,
Abbasi Shaheed Road,
Off Shahra-e-Faisal,
Karachi.

Mr. Javed Ahmed,
Director (C & M)
Office of the Federal
Tax Ombudsman,
5-A, Constitution Avenue,
Islamabad.

Islamabad
5-8-2004

Sub: Complaint No. 1130/2002

Dear Sir,

Kindly refer to your letter dated 24-7-2004 on the above subject.

I would like to inform you that after hectic efforts and with your kind intervention, Manager National Savings Centre, Islamabad issued me a certificate regarding total deduction of Withholding Tax on the profit of Regular Income Certificates. The Manager took the necessary action after a period of more than Two months. On the basis of the Certificate, I have got the refund of Withholding Tax from the Income Tax Office.

Thank you very much for your kind cooperation and help. The case may please be closed now.

With regards,

Yours sincerely,

Mrs. Feroza Begum
Mother of Syed Ashfaq Ali Azad
H.No. 209 St. No. 32
I-8/2, Islamabad

Dy. No 10 14/05
4-03-05

May kindly be seen at DAR Staff
Hon'ble FTO
4.3.05

جناب وفاقی محتسب صاحب جسٹس ریٹائرڈ منیر A شیخ صاحب

عنوان :- کمپلینٹ نمبر 918/04 اسلام آباد مورخہ 23/2/05 تا 21/2/05

السلام علیکم ورحمۃ اللہ وبرکاتہ

میں جناب وفاقی محتسب صاحب جسٹس ریٹائرڈ منیر A شیخ صاحب، اس کے ماتحت عملے اور ادارے کے تمام دیگر افراد کا دل کی اتھاہ گہرائیوں سے مشکور ہوں۔ میرے پاس آپ لوگوں کا شکریہ ادا کرنے کے لیے الفاظ نہیں ہے۔

سیلز ٹیکس والوں نے مجھے ناجائز تنگ کیا، مجھے ذہنی کوفت پہنچائی۔ لیکن اللہ کے فضل وکرم اور اس ادارے کی برکت سے مجھے 6 سالوں کے بعد (De-Registered) کا فارم بھجوایا۔ مجھے جیسے غریب اور قانون سے بے خبر لوگوں کو خواہ مخواہ پریشان کراتے ہیں۔ اگر پاکستان میں وفاقی محتسب جیسے ادارے نہ ہوتے تو غریب لوگ عدالتوں میں وکلاء کی زیادہ فیس دینے پر مجبور ہو جاتے۔

اگر حکومت پاکستان غریب لوگوں کو پریشانیوں سے بچانا چاہتی ہے تو اس ادارے کو مزید وسعت بخشے اور فنڈ ات بھی فراہم کرے۔ تاکہ بے سہارا لوگوں کو وکیلوں کے بغیر سہارا مل سکے۔

اگر ملک میں سارا دفتری نظام اس طرح تیز اور جلد عمل درآمد کرائے تو کسی کو کوئی پریشانی نہیں ہوگی۔ سیلز ٹیکس محکمے کے آفسران بالا کو سخت ہدایت کریں کہ غریب لوگوں کو رشوت اور ناجائز تنگ نہ کرے۔ جائز کام کو بروقت انجام دہی کے ساتھ صحیح طریقے سے کریں تاکہ نہ غریب لوگ وفاقی محتسب جیسے ادارے کے سربراہ کو اور نہ گورنمنٹ کے پیسے کو فضول کاموں میں خرچ کریں۔ کیونکہ سیلز ٹیکس مفت میں طرح طرح کے لیٹر بازی کرتے ہیں۔ اور لوگوں کو ذہنی کوفت پہنچاتے ہیں۔

آخر میں میں وفاقی محتسب صاحب جسٹس ریٹائرڈ منیر اے شیخ صاحب اور اس کے تمام عملے کا تہہ دل سے مشکور ہوں کہ ان کی وجہ سے مجھے ان فرعونیوں سے نجات ملی۔ میں وفاقی محتسب اور اس کے سارے عملے کی اچھی صحت اور لمبی عمر کے لیے رب العزت سے دعا گو رہونگا۔

28-2-05

فنان سردار والسلام
حاجی خان سردار آباخیل لکی مروت

عرضے

Profile of
Federal Tax Ombudsman
and
Officers of FTO's Office

Mr. Justice (R) Munir A. Sheikh
Federal Tax Ombudsman

Educated at Government College and Law College, Lahore. Started law practice as Pleader in 1962. Enrolled as Advocate, Lahore High Court, in 1964 and Supreme Court of Pakistan in 1969. Became Deputy Attorney General of Pakistan in 1981. Elevated as Judge of Lahore High Court on March 10, 1987. Became Judge of the Supreme Court of Pakistan on November 05, 1997. Till retirement as senior most Judge on December 31, 2003, held position of Chief Justice of the Supreme Court of Pakistan on several occasions. Appointed as Federal Tax Ombudsman on December 08, 2004.

Sayed Mohsin Asad
Secretary

Academic Qualification

MA Political Science
LLB (University of the Punjab)

Experience

Joined Government Service as Assistant Collector of Customs and Excise. Served on various departmental positions in all parts of the country and several Secretariat assignments in Islamabad. Also served as Pakistan's Permanent Representative to World Customs Organisation from early to mid 90s. Was promoted as a Federal Secretary in June 2004 and served as Secretary, Ministry of Local Government and Rural Development before joining as Secretary, Federal Tax Ombudsman's Secretariat in December 2004.

Mirza Muhammad Wasim
Advisor

Academic Qualification

M.A (English)
M.Sc. (Defence & Strategic Studies)

Experience

Held important positions on the policy, administrative and appellate sides. Served as Chief (Tax Policy and International Taxes) CBR, Regional Commissioner of Income Tax, Member Income Tax Appellate Tribunal and Director General, Inspection. Studied at the Harvard Law School, USA. Remained a member of the United Nations Ad hoc group of Experts on Tax Matters as Pakistan's representative. Retired as an officer of the Income tax Group in 1996. Joined the Federal Tax Ombudsman's Secretariat as Advisor in June 2001.

Shamim Ahmad
Advisor

Academic Qualification
MA Psychology (Karachi University)
MSc Defence & Strategic Studies
(National Defence College)
One Year's Course in Public Finance
and Economics (Syracuse University, New York)

Experience

Joined Pakistan Taxation Service through CSS Examination in 1964. Worked as Chairman CBR and Chairman, Settlement Commission (BPS-22). Attended a number of courses in Pakistan and abroad. Retired in 1998. Joined as Advisor, Federal Tax Ombudsman Secretariat on February 6, 2004.

Muhammad Siddique
Director General(Admn)

Academic Qualification
M. Sc. Nuclear Physics (Karachi University)

Experience

Specialist in Fire Prevention/Fighting, Camouflage and Concealment, Bomb Disposal, Instructional Technique, Nuclear and Chemical Accidents Prevention, Chemical, Biological & Radiological Warfare, Planning & Organization, Disaster Management and Mitigation, Fire Engineering, Industrial Safety and Accident Prevention, Office Management, Discipline and Financial Control Systems. In addition to literature on protection and safety during various disasters, wrote handbooks on Guidelines for Bomb Disposal Officers and Survival of General Public During Nuclear Disasters. Provided fire prevention consultancy to major Government as well as public sector establishment including Aiwan-e-Sadr, Prime Minister's Secretariat, Parliament House, Supreme Court of Pakistan, State Bank, Airports, Ordnance Factories, Oil Refineries and fields, Pakistan Atomic Energy Commission, etc. To study the fire fighting and civil protection system at international level, visited Tunis, UK, Switzerland, France, Indonesia, Saudi Arabia and UAE. Elected as Vice President of International Civil Defence Organization (ICDO) and received medal. Held the post of Director General, Civil Defence prior to joining Federal Tax Ombudsman's Secretariat as Director General on September 04, 2004.

Muhammad Tariq Lateef
Consultant

Academic Qualification

MA Islamic Studies (Punjab University)
MA History (Punjab University)
MA Political Science (Peshawar University)
MA Urdu (Peshawar University)
Postgraduate Diploma in Journalism
(Peshawar University)

Experience

Retired as Director General, Wafaqi Mohtasib (Ombudsman)'s Secretariat, Islamabad on March 31, 2004. Served for 17 years in several departments of Government of NWFP and for 13 years in different Ministries in the Federal Government. Attended a number of courses at NIPA Karachi, NIPA Lahore, NIPA Quetta, Pakistan Administrative Staff College, Lahore, RIPA London. Officially visited Qatar, Bahrain, UK, China, Singapore, Shri Lanka, South Korea, Malaysia, Indonesia, Thailand, Luxemburg, Germany, France, Australia, Hong Kong and Saudi Arabia. Joined the Federal Tax Ombudsman's Secretariat as Consultant (Research, Development and Study) on December 11, 2004.

Muhammad Naseem
Consultant

Academic Qualification
BA (Punjab University)

Experience

Prior to his joining the Federal Tax Ombudsman's Secretariat as Consultant on August 17 2004, served and retired as Deputy Secretary (Admn) Establishment Divisions, Islamabad.

Liaqat Ali
Director(Admn)

Academic Qualification
BA, B Ed

Experience

Started government service on May 26, 1977. Joined Federal tax Ombudsman's Secretariat as Deputy Director on February 21, 2001. Has been working as Director since May 2004.

Shaukat Ullah Khan
Director(Accounts)

Academic Qualification
BA (Punjab University)

Experience

Joined government service in 1962. Served as Audit and Inspection Officer in the Ministry of Food, Agriculture & Cooperatives, Director (Finance and Accounts) in Wafaqi Mohtasib's Secretariat, Budget and Finance Officer in Pak PWD. Received training at NIPA Lahore, Pak Computer Bureau, Islamabad and Audit and Accounts Training Academy Islamabad. Retired as Director (Accounts) in 2000. Joined as Director (Accounts) in the Federal Tax Ombudsman's Secretariat, Islamabad on 20-07-2001.

Javed Ahmad
Director(Compliance & Monitoring)

Academic Qualification
MA Political Science (Karachi University)
LLB (Karachi University)
LLM (Karachi University)

Experience

Joined Judicial Service of Government of Sindh in 1994 through Competitive Examination. Served as Civil Judge and First Class Magistrate. Worked as Research Officer and Secretary Inspection, High Court of Sindh. Has been working in Federal Tax Ombudsman's Secretariat as Director on deputation basis since October, 2002.

Rukhsana Arshad
Secretary to FTO

Academic Qualification
M.A Political Science
M.A Punjabi

Experience

Started Government service on May 31, 1980. Worked in the Wafaqi Mohtasib Secretariat. Joined the Federal Tax Ombudsman's Secretariat as Private Secretary to FTO on May 31, 2001. Has been holding the post of Secretary (BPS-19) to Federal Tax Ombudsman since April 12, 2004.

Syed Zia Mehboob
Expert (Management and Computer)

Academic Qualification
B. Com. (Punjab University)
Cost & Management Accountant (ICMAP)

Experience

Prior to joining the Federal Tax Ombudsman's Secretariat as Expert, he worked in the Federal Government Employees' Housing Foundation Islamabad. He also worked as Internal Auditor at GIK Institute.

Ahmed Saeed
Director

Academic Qualification
B. Com.

Experience

Joined Government service through CSS Examination in 1983. Elevated to BS-19 in 1998. Served as Income Tax Officer and Deputy Commissioner, Income Tax Karachi, Additional Commissioner, Income Tax Jhang, Faisalabad and Karachi and Secretary, CBR, Islamabad. Has been working as Director, FTO's Regional Office Karachi, on deputation basis, since 28-02-2004.

M. Mubeen Ahsan

Adviser

Academic Qualification

BA

Experience

Joined Customs and Excise Service on November 19, 1963. Retired as Chief, Experts Advisory Cell/Additional Secretary, Ministry of Industries & Production, Islamabad. During 36 years' service, worked mainly in CBR and its revenue collecting and enforcement agencies. Joined the Federal Tax Ombudsman Regional Office Karachi as Advisor on April 24, 2001.

S. A. Nasser

Advisor

Academic Qualification

MA (Economics)
MA (Political Science)
MA (International Relations)
LLB

Experience

Joined service through CSS Examination in December 1954. Attended courses at Harvard Law School in 1966 and University of Southern California in 1983. Was promoted to BPS-21 in April 1990. Retired on November 14, 1990. Joined Federal Tax Ombudsman's Regional Office, Karachi as Advisor on April 24, 2001.

S. M. Sibtain
Advisor

Academic Qualification

M.A. Political Science
M.A. International Relations (Karachi University)

Experience

Joined government service through CSS Examination in 1965. Served for 21 years on judicial side out of 39 years service. Held the post of Income Tax Officer, Additional Commissioner Income Tax, Commissioner Income Tax, Accountant Member Income Tax Appellate Tribunal, Member, Additional Secretary in charge and Secretary Federal Tax Ombudsman's Secretariat. After retirement on March 10, 2003, served FTO's Secretariat as Advisor.

S. Asghar Abbas
Advisor

Academic Qualification

MA English
LLB

Experience

Joined Income Tax Department through CSS Examination on April 16, 1964. Held different positions during 33 years service. Received training at Directorate of Training Karachi, London and Manila. Originally, was appointed as Consultant in Federal Tax Ombudsman's Regional Office Karachi on October 10, 2001. Later, redesignated as Advisor on August 13, 2004.

A. A. Zuberi
Advisor

Academic Qualification

MA Public Administration (IBA, Karachi)

Experience

Joined Income Tax Group through CSS Examination in 1960. Prior to joining the Federal Tax Ombudsman's Secretariat as Advisor in 2001. Served CBR for 37 years in different capacities. Attended courses at NIPA Karachi, University of Southern California, Pakistan Administrative Staff College, Lahore and Directorate of Computer Training Lahore. Represented Pakistan in the USA, UK, China, Japan and Thailand.

Muhammad Akbar
Advisor

Academic Qualification

MA Political Science

Experience

Joined as Assistant Collector, Customs and Excise in 1963. Held different positions in CBR. Worked as Minister, Customs Corporation Council, Brussels (Belgium), Executive Director, ADB, Manila (Philippines), Member Punjab Public Service Commission, etc. Attended courses at Pakistan Administrative Staff College, Lahore and Customs International Executive Management Programme in Australia. Retired as Chairman Indirect Taxes Settlement Commission, Islamabad, prior to joining the Federal Tax Ombudsman's Regional Office, Lahore on June 01, 2002.

Muhammad Mushtaq
Advisor

Academic Qualification

M.Sc.

Experience

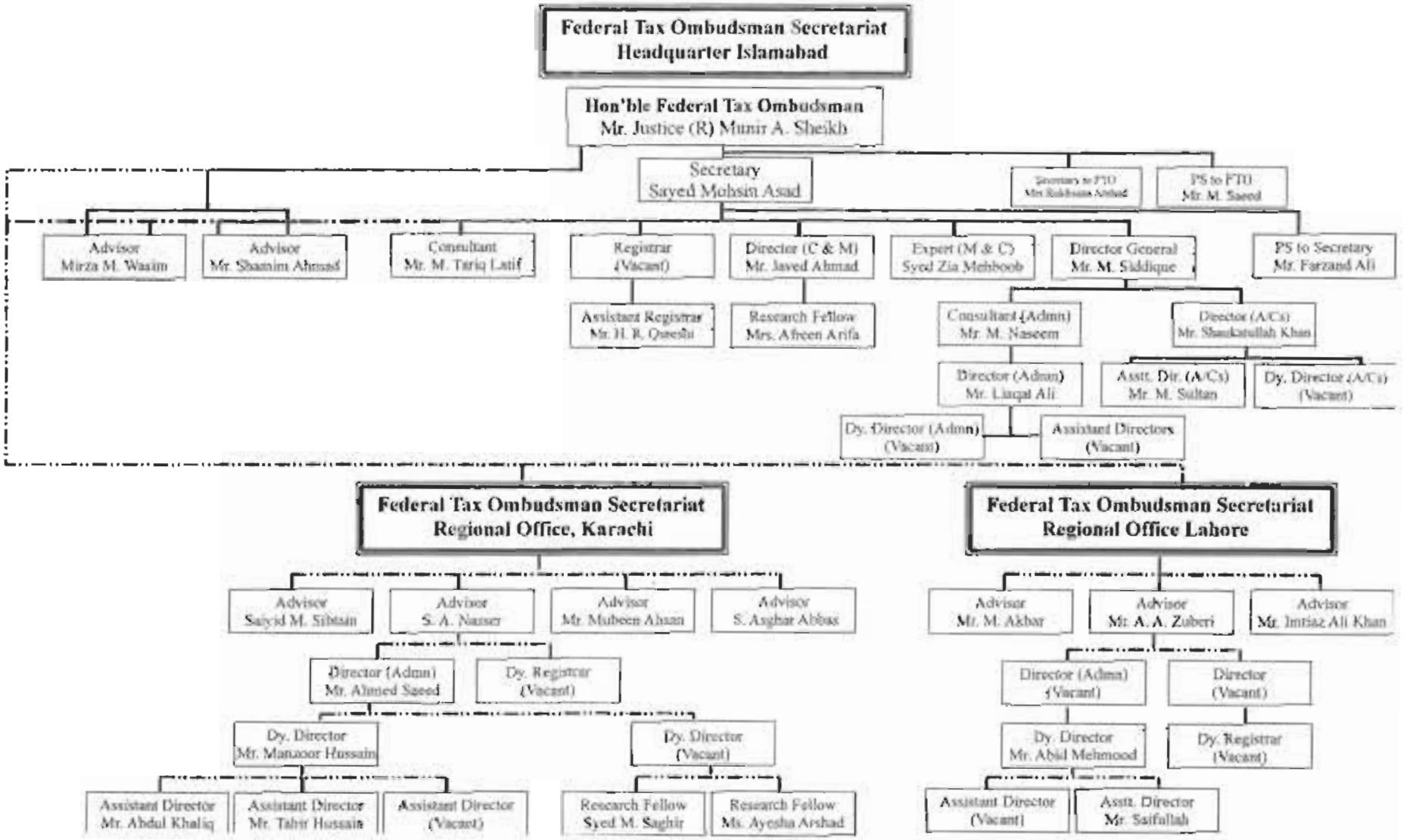
Served as IAC, Commissioner Income Tax, Karachi, Faisalabad and Gujranwala and Member Income Tax Appellate Tribunal, Karachi/Lahore. Attended courses at NIPA, Pakistan Administrative Staff College, Lahore and University of Southern California (USA). Retired as Member Income Tax Settlement Commission, Lahore. Joined as Advisor in FTO's Regional Office, Lahore on 01-03-2003.

Imtiaz Ali Khan
Advisor

Academic Qualification

MA Political Science
LLB (Punjab University)
LLM (Harvard Law School)
Diploma in International Tax Programme

Experience

Inducted into Income tax Service in April 1964 as Income Tax Officer. Attended Advance Course in Admn & Management at NIPA Lahore. Worked as Senior Member, Federal Services Tribunal, Lahore Bench. Retired as Appellate Commissioner of Income tax Lahore. Joined Federal Tax Ombudsman' Regional Office, Lahore as Advisor on December 27, 2004.

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FEDERAL TAX OMBUDSMAN SECRETARIAT