



FEDERAL TAX OMBUDSMAN SECRETARIAT

C.No.005/OM/2018 & 0025 to 0030/OMs/2021

Dated: 09-09-2021

To,

The Advisor Media & Awareness,
FTO, Secretariat,
Islamabad.

Copy of Findings/Recommendations in C.No.005/OM/2018 & 0025 to 0030/OMs/2021 is enclosed herewith for Publication.

(Arshad Mahmood Cheema)

Registrar

Federal Tax Ombudsman Secretariat

Islamabad

051-9214348

Encl: As above

Copy to:

- ✓ 1. MIS Manager, FTO, Secretariat, Islamabad.
2. Secretary to FTO.
3. Office copy.

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

0005/OM/2018 & 0025 to 0030/OMs/2021

Dated: 15.02.2018 & 08.04.2021* HQ, Islamabad

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer	:	Ms. Mahbooba Razzaq, Advisor
Appraising Officer	:	Mr. Manzoor Hussain Kureshi, Advisor
Departmental Representative	:	Mr. Afaq Ahmad Qureshi, CCIR, RTO, Abbottabad
	(ii)	Malik Amjed Zubair Tiwana, CCIR, CTO, Islamabad.
	(iii)	Mr. Muhammad Naseer Butt, CCIR, LTO, Islamabad.

FINDINGS/RECOMMENDATIONS

7 This is an Own Motion (OM) investigation initiated through exercise of jurisdiction, conferred under Section 9(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against the systemic maladministration in the shape of gross misuse and abuse of tax credit regime, in terms of Section 65-D of the Income Tax Ordinance, 2001 (the Ordinance) regarding grant of tax credit to the investing industrial undertakings, without fulfilling legal requirements, as enumerated in the above-mentioned provision of law. In all the above-mentioned OMs, common question of law and facts is involved hence shall be disposed of through a single consolidated order.

2. Precisely, a taxpayer being a company incorporated, formed for establishing and operating as a new industrial undertaking, is allowed tax credit for investment in terms of Section 65D of the Ordinance, subject to the fulfillment of conditions, laid down in Section 65D of the

Ordinance. It is only then tax credit is admissible equal to 100% of the income tax payable on income arising from such industrial undertaking, for a period of five years, beginning from the date of setting up or commencement of commercial production, whichever is later. It is however, observed that upon introduction of Universal Self-Assessment Scheme (USAS), the returns of income, filed by taxpayer companies automatically become assessment orders under Section 120(1)(b) of the Ordinance, on the day the same were furnished.

During investigation, it was observed that in the cases where tax credit under Section 65D of the Ordinance, was claimed, the Deptt paid no heed to the verification process required for determining validity of the claim of tax credit. It is after filing of the complaints against delay in issuance of refund, the Deptt took cognizance of pendency of claims. Moreover, in the cases where tax credit on investment had been allowed, requirements of sub-Section (4) of Section 65D of the Ordinance had not been followed/fulfilled.

3. Evidently, no workable Standard Operating Procedure (SOP) had been evolved:-

- (i) for timely examination of the cases of tax credits claims filed by the taxpayer companies under Section 65D of the Ordinance; and
- (ii) to create built-in monitoring mechanism for ensuring strict compliance of the mandates of Section 65D(4) of the Ordinance.

Hence, the tax credit available under Section 65D of the Ordinance, is grossly misused because of the absence of inbuilt checking system to monitor the genuineness of tax credit claims and its timely disposal. Absence of foolproof preventive mechanism, has opened the flood gates of blatant and indiscriminate misuse of this provision of law.

4. In response to notices issued to the Secretary, Revenue

Division, Islamabad in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013, the Deptt submitted RTO/CTO's/LTO's and MTO's wise number of details of cases, where tax credit claimed for the Tax Years 2014 to 2021, under Section 65D of the Ordinance, has been allowed/rejected. Details whereof are tabulated as under:-

1	2	3	Result of investigation				5
Name of the RTOs, CTOs, LTOs.	Number of cases where tax credit u/s 65D has been claimed.	Number of cases where investigation has been completed.	No of cases where claim of tax credit was rejected.	Amount of tax credit claim rejected. (million)	No of cases where claim of tax credit was accepted.	Amount of tax credit claim accepted (million)	Number of Pending cases
LTO, Islamabad	11	07	05	166.043	02	753.261	04
CTO, Islamabad	31	7	Nil	Ni	07	83.345	24
RTO, Abbottabad	10	06	1	28	05	3500.475*	04
RTO, Peshawar	12	04	03	4.722	01	1.324	08
RTO, Gujranwala	17	10	Nil	Nil	10	43.681	07
RTO, Sialkot	1	Nil	Nil	Nil	Nil	Nil	01
LTO, Karachi	22	12	07	213.459	05	90.555	10
MTO, Karachi	18	08	01	10.384	07	152.044	10
CTO, Karachi	134	41	19	113.206	22	214.818	93
RTO-I, Karachi	Nil	Nil	Nil	Nil	Nil	Nil	Nil
RTO-II, Karachi	Nil	Nil	Nil	Nil	Nil	Nil	Nil
RTO, Sukkur	Nil	Nil	Nil	Nil	Nil	Nil	Nil
RTO, Hyderabad	09	01	01	5.566	Nil	Nil	08
RTO, Faisalabad	35	10	05	22.098	05	3.635	25
RTO, Sargodha	Nil	Nil	Nil	Nil	Nil	Nil	Nil
RTO, Multan	11	08	03	3.660	05	22.730	03
RTO, Bahawalpur	07	06	02	7.795	04	46.542	01
RTO, Sahiwal	12	12	Nil	Nil	12	21.449	Nil
LTO, Multan	19	12	05	254.109	07	17.786	07
RTO, Lahore	Nil	Nil	Nil	Nil	Nil	Nil	Nil
CTO, Lahore	69	12	12	3.712	Nil	Nil	57

LTO, Lahore	36	17	07	84.090	10	66.277	19
Grand Total	454	173	71	916.844	102	5017.922	281

*For the Tax Years 2016-2019 separate proceedings u/s 122(5A) read with Section 65D(4) of the Ordinance, amounting to Rs.1427.692 million have been initiated in the case of M/s Fahad Hammad Oil & Ghee Industries.

5. As test cases, following two taxpayer companies cases pertaining to the RTOs Abbottabad and Islamabad, where tax credit claimed under Section 65D of the Ordinance, had been allowed were randomly picked up to see, whether requirements of law were fulfilled.

Sr. No	Name of the taxpayer	NTN	Tax credit claimed in (m)	Tax credit allowed in (m)
i	M/s. Fahad Hammad Oil Ghee Industries (Pvt) Limited	4173317-7	Rs.28.187	Rs.28.187
ii	M/s. Rawat Oil and Ghee Mills (Pvt) Limited	4212817-0	Rs.11.589	Rs.11.589

(i) **M/s Fahad Hammad Oil and Ghee Industries.**

- (a) M/s Fahad Hammad Oil & Ghee Industries is a private limited concern having its registered office at Industrial Estate Hattar Haripur and manufacturing set up is located at Plot no 77-A Bulk Oil Storage area South Western Industrial Zone Port Qasim Karachi. The taxpayer company claimed tax credit during the Tax Year 2015, on investment of Rs.28.187 million, which was allowed under Section 65D of the Ordinance.

After initiation of OM proceedings, the Commissioner-IR (CIR) Zone-I, RTO, Abbottabad started re-examination of the tax credit on investment already allowed under Section 65D of the Ordinance. The re-examination, however, transpired that during the Tax Year 2020, the taxpayer company had already discontinued business. As the business was discontinued in the subsequent five years after the credit on investments was allowed, the CIR Zone-

I, RTO Abbottabad initiated proceedings in terms of Section 65D(4) of the Ordinance. The amended assessment for the Tax Year 2015, was thereafter completed by the Zonal CIR vide order dated 30.06.2021, under Section 122(5A) of the Ordinance, whereby tax credit allowed for Tax Year 2015 was retrieved and demand amounting to Rs.323 million was re-computed. In order to retrieve tax credit allowed for Years 2016 to 2019 amounting to Rs.1427.692 million, the Zonal CIR also initiated separate proceedings under Section 122(5A) read with Section 65D(4) of the Ordinance.

(ii) **M/s Rawat Oil and Ghee Mills (Pvt) Ltd.**

- (b) The above named taxpayer company having NTN 4392702, located at Plot No. 5-C, Street No. N-2, Rawat Industrial Estate (RCCI) Islamabad Capital Territory, filed tax return for Tax Year 2017 claiming refund amounting to Rs.100.000 million. The return for Tax Year 2017, filed by the taxpayer was treated as an assessment order under Section 120(i)(b) of the Ordinance. The taxpayer company claimed tax credit amounting to Rs.11.589 million on investment for Tax Year 2017, which was allowed.

In this case, the taxpayer approached this forum regarding delay in disposal of refund application, for the Tax Year 2019. During the investigation, it is found that after the approval of 65D of the Ordinance for the Tax Year 2019, the refund was determined through a manual refund order. In the meanwhile, the case was transferred from RTO, Islamabad to LTO, Islamabad wherein verification process for the issuance of refund was initiated. During process, the Deptt intimated vide letter dated 21.10.2020 that no

formal investigation was carried out as per provisions of Section 65D of the Ordinances. Subsequently, after investigation, the Deptt submitted report on 26.04.2021, stating that the taxpayer company was not entitled to investment credit, as it had failed to raise equity through issuance of new shares for cash consideration up-to 70% in terms of Section 65D(2)(d) of the Ordinance.

It is thus after initiation of OM proceedings, the CIR Zone-I, RTO, Islamabad started re-examination of already allowed tax credit on investment under Section 65D of the Ordinance and found that the taxpayer company was not entitled to tax credit on investment for Tax Year 2017 and subsequent years as required under Section 65D(2)(c) of the Ordinance.

The Deptt thereafter on 10.12.2020 selected Tax Year 2017, for audit under Section 177(1) of the Ordinance. The amended assessment proceedings were completed under Section 122(1) vide order dated 26.04.2021, creating tax liability amounting to Rs.7.700 million, as against refund amounting to Rs.100.000 million. The entire tax credit amounting to Rs.11.589 million, already allowed on investment was disallowed/retrieved. Besides, the Deptt also initiated similar proceedings for Tax Years 2018-2020 separately. It was also observed that the taxpayer company was issued exemption certificates dated 06.10.2016 under Sections 148 and 159 of the Ordinance for consecutive five years i.e. from Tax Year 2015 to 2019, without conducting any inquiry to determine the genuineness of the claim and in derogation of requirements of Section 65D of the Ordinance.

6. Thus, after taking remedial measures, tax demand was created in case no. (i) amounting to Rs.323.000 million out of which Rs.100.000 million, was also recovered. In the case shown at serial no. (ii) a demand amounting to Rs.7.700 million was created as against refund claimed amounting to Rs.100.000 million.

7. Evidently, in both the above-mentioned cases on random basis, the process of verification was initiated by the Deptt on the intervention of this Office. The apprehension that the credit for investment claimed by the taxpayer companies had been dealt with by the Deptt in a causal manner, having scant regard to the provisions of law, resulting in colossal loss to the national exchequer, has substantially been established.

8. In view of the facts recorded supra, the tax credit already allowed by the Deptt in 103 cases, as shown in Para-4 supra, need to be re-checked/re-examined in the light of provisions of Section 65D of the Ordinance. A Check List (CL) prepared by this Office (Annexures-A) has already been circulated to the FBR's field formations to procure/collect complete data/information/ documents required in each case and re-examine the same in terms of the provision of Section 65D of the Ordinance. Moreover, as per the above list a total number of 281 cases of tax credit claims under Section 65D of the Ordinance are unduly pending with the Deptt. Thus, delay, neglect, inattention, incompetence, ineptitude and negligence in timely disposal of tax credits claims and allowing wrong tax credit under Section 65 of the Ordinance, on part of the Deptt, is established.

FINDINGS:

9. Delay and negligence in completing timely investigation and disposal of pending cases of tax credit on investment and allowing unlawfully tax credit under Section 65D of the Ordinance, is

tantamount to maladministration in terms of Section 2(3)(i)(a)&(ii) of the FTO Ordinance.

RECOMMENDATIONS:

10. FBR to-

- (i) conduct enquiry in the cases discussed supra where tax credit was unlawfully allowed and initiate disciplinary proceedings against the Official(s) who are found responsible for causing loss to exchequer;
- (ii) develop a comprehensive IT based solution;
 - (a) whereby all tax credit claims under Section 65D of the Ordinance should automatically be taken up for verification as soon as the returns are filed and disposed of, on first come first basis, after thorough examination, within first year of filing of the returns;
 - (b) whereby, the claims have been allowed under Section 65D of the Ordinance, the same should be monitored to ensure that provisions of sub-Section(4) of Section 65D of the Ordinance, are fully complied with in letter and spirit;
- (iii) direct the Chief Commissioners-IR, RTOs/CRTO's/ LTUs and MTO's concerned to-
 - (a) complete the verification and dispose of pending cases of tax credit under Section 65D of the Ordinance, strictly as per law and procedure;
 - (b) complete the verification in the cases, where tax credit for investment was already allowed under Section 65D of the Ordinance, in the light of information/details collected as per Check List (Annexure-A), and take appropriate action/measures, where required to retrieve loss of revenue as per law and take strict disciplinary action against those officials who had allowed illegal tax credit with corrupt/ulterior motive; and
- (iv) report compliance within 60 days.

Certified to be True Copy

(Mushtaq Ahmad Sukhera)
Federal Tax Ombudsman

Dated: 31/8/2021

.../HUK

Deputy Registrar
FTO