

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.0042/KHI/IT/2023.

&

Complaints No. 0058 to 0096/INFRML/2023

Dated 03.01.2023 & 15.2.2023* R.O Karachi

- | | | | |
|----|---|----|---|
| 1 | Mr. Imran Ali Magsi,
CNIC. 42201-4169255-7
PTV Center Karachi. | 12 | Mr. Farhan Faheem,
CNIC. 61101-5131103-1,
PTV Center Karachi. |
| 2 | Mr. Shahbaz Khan,
CNIC. 42000-6650778-3
PTV Center Karachi. | 13 | Mr. Muhammad Umer Ali,
CNIC. 42401-1718657-5
PTV Center Karachi. |
| 3 | Mr. Muhammad Yasir Shah,
CNIC. 42301-0851226-1
PTV Center Karachi. | 14 | Syed Abid Ali Hashmi,
CNIC. 42101-4852581-1
PTV Center Karachi. |
| 4 | Mr. Mr. Muhammad Irfan,
CNIC. 42101-4130799-3
PTV Center Karachi. | 15 | Mr. Nawaz Gul,
CNIC. 42201-9727589-9
PTV Center Karachi. |
| 5 | Mr. Adeel Ahmed,
CNIC. 42201-2736104-5
PTV Center Karachi. | 16 | Mr. Muhammad Arif,
CNIC. 42201-2334165-3.
PTV Center Karachi. |
| 6 | Mr. Ali Shayan Haider,
CNIC. 42201-3708887-5
PTV Center Karachi. | 17 | Mr. Imtiaz Ali,
CNIC. 42201-8796146-3
PTV Center Karachi. |
| 7 | Mian Khalid Zaib,
CNIC. 42401-8822615-1,
PTV Center Karachi. | 18 | Mr. Zain Shad,
CNIC. 42101-16741770-7
PTV Center Karachi. |
| 8 | Mr. Muhammad Majid,
CNIC. 42301-7992094-1
PTV Center Karachi. | 19 | Mr. Amjad Khan,
CNIC. 42101-8122877-3
PTV Center Karachi. |
| 9 | Mr. Imran Ahmed,
CNIC. 42101-1593653-1
PTV Center Karachi. | 20 | Mr. Zohaib,
CNIC. 42501-7859999-1
PTV Center Karachi. |
| 10 | Mr. Iftikhar,
CNIC. 42501-0121291-7
PTV Center Karachi. | 21 | Mr. Asadullah Khan,
CNIC. 42201-8391761-3
PTV Center Karachi. |
| 11 | Mr. Sheraz ul Haq,
CNIC. 42000-0535913-5.
PTV Center Karachi. | 22 | Mr. Ashhad Altaf,
CNIC. 42201-7216746-9
PTV Center Karachi. |

* Date of registration in FTO Sectt.,


- | | | | |
|----|--|----|--|
| 23 | Mr. Sanghar Ali,
CNIC. 45302-7340213-3
PTV Center Karachi. | 32 | Ms. Suhini Paras,
Flat No. 514, Radolivna, Block-13,
Gulistan-e-Jauhar, Opp: Rabia
City Karachi. |
| 24 | Mr. Zeeshan Shahid,
CNIC. 42101-1309283-8
PTV Center Karachi. | 33 | Syed Hassan Raza Naqvi,
CNIC. 42101-7319000-5
PTV Center Karachi. |
| 25 | Mr. Shakeel Ahmed,
CNIC. 45301-3551022-5
PTV Center Karachi. | 34 | Mr. Muhammad Saeed,
CNIC. 42401-1892588-7
PTV Center Karachi. |
| 26 | Syed M. Asif Jamil Zaidi,
CNIC. 42101-1707421-7
PTV Center Karachi. | 35 | Mr. Elahi Bux,
CNIC. 44203-7904480-3
PTV Center Karachi. |
| 27 | Mr. Muhammad Salman,
CNIC. 42201-3888470-1
PTV Center Karachi. | 36 | Mr. Harryson,
CNIC. 42201-5504514-1
PTV Center Karachi. |
| 28 | Mr. Owais uddin,
CNIC. 42501-8941029-5
PTV Center Karachi. | 37 | Mr. Yasir Iqbal,
CNIC. 42201-5277654-4
PTV Center Karachi. |
| 29 | Mr. Muhammad Kamran Khan,
CNIC. 42201-0557025-9
PTV Center Karachi. | 38 | Mr. Rizwan Tareen,
CNIC. 42101-7737680-5
PTV Center Karachi. |
| 30 | Mr. Kamran Hussain,
CNIC. 42000-8556872-1
PTV Center Karachi. | 39 | Mr. Shahrukh,
CNIC. 42201-5455341-7
PTV Center Karachi. |
| 31 | Mr. Adil Bhatti,
CNIC. 42501-6740579-7
PTV Center Karachi. | 40 | Mr. Muhammad Wajih,
CNIC. 42201-9418870-5
PTV Center Karachi. |

... Complainants

Versus

The Secretary,
Revenue Division,
Islamabad

... Respondent 1

 Managing Director,
Pakistan Television Corporation Ltd.
Islamabad

... Respondent 2

The General Manager,
Pakistan Television Corporation Ltd.
PTV Karachi.

... Respondent 3

The Executive Manager Finance,
Pakistan Television Corporation Ltd.
PTV Karachi.

... Respondent 4

The Admin & Personnel Manager,
Pakistan Television Corporation Ltd.
PTV Karachi.

... Respondent 5

Dealing Officer	:	Mr. Badruddin Ahmad Quraishi, Advisor
Appraised by	:	Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	:	Sohini Paras, Complainant in Person
Respondent Department	:	Mr. Muhammad Iqbal, Executive Manager Finance, PTV Karachi
		Mr. Abdul Majid, Admin Officer, PTV Karachi
Departmental Representative	:	Mr. Manzoor Memon, ACIR, RTO Hyderabad

FINDINGS/RECOMMENDATIONS

The above-mentioned petitions were filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against excessive and unjust practice of deducting income tax @ 10% being a filer and 20% being a non-filer under Section 153(1)(b) of Income Tax Ordinance (the Ordinance), from the salaries/wages of low paid temporary/contractual employees of PTV, Karachi, treating them as services providers. The complainants demand tax treatment under the head salary warranting tax deduction under section 149 of the Ordinance.

2. The alleged Departmental / PTV authorities (being withholding agent) practice in such cases has been examined in the light of relevant legal provisions i.e., sections 12 and 149 of the Ordinance, 2001: the resulting position is as under:

- Section 12. **"Salary-** (2)Salary means any amount received by an employee from any employment, whether of a revenue or capital nature, including—
 - (a) **any pay, wages or other remuneration provided to an employee**, including leave pay, payment in lieu of leave, overtime payment, bonus,

commission, fees, gratuity or work condition supplements.”

• Section 149. **Salary.** —

- (1) Every person responsible for paying salary to an employee shall, at the time of payment, deduct tax from the amount paid at the employee's average rate of tax computed at the rates specified in Division I of Part I of the First Schedule on the estimated income of the employee chargeable under the head "Salary".


3. Under the above Legal provisions (Section 12 and 149 of the Ordinance), the term “Salary” includes **pay, wages or other remuneration and payment in lieu of leave, overtime payment, bonus, commission, fees etc.** Thus, its scope is much broader than the formal concept of regular employment. As held in an earlier case only the broader **criterion of Master-Servant relationship** truly exemplifies the employment, covering all possible shades of i.e. Regular/Adhoc/Temporary/ Hired / Daily Wages etc. Suffice to say that Section 12 of Income Tax Ordinance, 2001 doesn't create any distinction among all the above forms.

4. In response to the hearing notice under section 9(2) of the FTO Ordinance, Mr. Muhammad Iqbal, Executive Manager Finance and Mr. Abdul Majid, Admin Officer, PTV Karachi attended as Authorized Representatives (AR), Mst Sohini Paras, anchor person / compere. appeared on behalf of the complainants. Mr. Manzoor Memon ACIR, RTO Hyderabad represented FBR. The issues raised in the complaint were discussed in detail.

5. Mst. Sana Bushra, Manager Tax PTV Islamabad filed a written argument vide letter dated 01.02.2023. explaining that the taxation under salary tax slabs would not be applicable in case of anchors / service providers / artists rather to be taxed under section 153(1)(b) of the Ordinance. The limit of Rs.600,000 per annum would be

applicable in case of salaried individuals taxed under section 149 of the Ordinance. The complainants being writers, anchors, hosts, musician & other technician for specific programs are treated as **service providers** to whom remunerations are paid as fee. She further stated that the complainants are not governed by "PTV Employees Service Rules. "Their fees never appeared in payroll of PTV and they are not entitled to any benefits of employees apart from receiving fees based on proforma. They are hired solely for particular program and paid low to high package charges, cost is charged to program budget / expense accordingly; hence taxed under section 153(1)(b) of the Ordinance. They have no personal numbers. They are not subject to rules and regulations of PTVC, however PTVC reserves the right to do so if needed. They have been rendering their services in shift works. In case of anchors and artists employment relationship does not exist neither taxation under salary is applicable.

6. Whereas Mst Sohini Paras submitted that she, along with other complainants are full timers, working in various shifts for a considerable long time. She vehemently pleaded that;

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- the complainants were bound in **Master-Servant Relationship** and their status was similar to the PBC Casual employees.
 - They are paid on monthly basis and their remuneration is deposited directly in their bank accounts.
 - The employer has provided work-stations for them. She further stated that they were subject to approval of leave application, entitled to weekly leave and were subject to similar administrative and disciplinary proceedings as any other employee of PTV.
 - She pleaded that in pursuance to the FTO Recommendations in Complaint No. 2538/ISB/IT/2021 dated 24.02.2022, the PBC has clarified that **all PBC equivalent/counterparts of complainants are governed by "Master-Servant Rule" whether specifically mentioned in engagement letter or not**".

- She pleaded that complainants were only seeking relief from excessive tax deductions with immediate effect and will not seek any other service benefits.

7. In the light of above discussions, the following facts are noteworthy.

- i. The same issue has already been dealt by this office in Complaint **Nos. 0386 to 0424/Infrml/2022**, filed by 38 low paid temporary / contractual employees of PTVC, Headquarter Islamabad. FBR filed representation against FTO's recommendations before the honourable President of Pakistan. While deciding FBR's representations in all above referred cases the **honourable President of Pakistan has upheld FTO's recommendations vide orders dated 25.01.2023** in Rep. Nos.317 to 354/FTO/2022 FBR Vs *Mujeeb Ul Haq & Others*. Thus, FTO's recommendations have already gained finality on this issue.
- ii. Similarly, an identical issue has already been dealt by this office in Complaint No. 2538/ISB/IT/2021, filed by an employee of Pakistan Broadcasting Corporations (PBC), PTVs sister organization. In the said case during Investigation and Review proceedings, the FBR conceding the wrong being done has not only implemented the recommendations rather widely circulated the findings of this office among all concerned vide C.NO.3(3)/2022-S(CM)/81818-R dated 11th April, 2022. FTO's recommendations have already gained finality in the said case.
- iii. In dozens of the cases of low paid employees of KPK education department, this office has granted relief after thrashing the identical issues. In these cases, RTO Peshawar had mainly pleaded that as the payment made to the hired lecturers is being made from college/project funds and not from head "Establishment/Salaries" and that they are not covered under KPK Service rules therefore they cannot be treated as salaried employees. Their plea was rejected because the criterion of **Master-Servant Relationship** has nothing to do with the head of payment or applicability of rules. For instance, Factory & industrial workers, though not covered under normal Federal/Provincial Service Rules yet their wages are not

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treated as payment against services because WAGES is an integral part of SALARY, as defined section 12 of the Ordinance. (Ref: C. Nos.541 & 29 Others, 1248, 1249, 1252, 1258, 1280, 1283, 1286, 1290, 1294, 1299, 1300, 1301, 1302, 1304, 1306, 1308, 1311, 1312, 1313, 1315, 1317, 1370, 1426, 1427, 1428, 1429, 1431, 1432, 1434 & 1440 1488, 1489, 1491, 1493, 1495, 1496, 1502, 1504, 1505, 1506, 1507, 1509, 1510, 1524, 1525, 1526, 1527, 1528, 1529, 1530 & 1531/PWR/IT/2022. While deciding FBR's representations in all above referred cases the honourable President of Pakistan has upheld FTO's recommendations vide orders dated 15th August, 2022.

- iv. The details of engagement/employment of the complainants have been obtained, which are quite revealing:

PTV KARACHI CENTRE

List of Programmers Budget Employees

S.No.	Name	CNIC	Designation	Date of Joining	Per Month Salary	153(i)-B Tax Ded	Net Pay
1.	Mr. Imran Ali Magsi	42201-4169255-7	Transmission Assistant	Jan 2009	22,000	2200	19,800
2.	Mr. Shahbaz Khan	42000-6650778-3	Transmission Assistant	13-12-2017	22,000	2200	19,800
3.	Mr. Muhammad Yasir Shah	42301-0851226-1	Transmission Assistant	2019	22,000	2200	19,800
4.	Mr. Muhammad Irfan	42101-4130799-3	Transmission Assistant	Jan-2019	22,000	2200	19,800
5.	Mr. Adeel Ahmed	42201-2736104-5	Transmission Assistant	Jan-2019	22,000	2200	19,800
6.	Mr. Ali Shayan Haider	42201-3708887-5	Transmission Assistant	10-03-2016	22,000	2200	19,800

7.	Mr. Mian Khalid Zaib	42401-8822615-1	Transmission Assistant	01-11-2022	22,000	2200	19,800
8.	Mr. Muhammad Majid	42301-7992094-1	Naib Qasid	10-03-2016	23,000	2300	20,700
9.	Mr. Imran Ahmed	42101-1593653-1	Makeup Artist	July-2008	22,000	2200	19,800
10.	Mr. Iftikhar	42501-0121291-7	TCJA	05-02-2004	22,000	2200	19,800
11.	Mr. Sheraz ul Haq	42000-0535913-5	Finance Assistant	10-01-2007	24,000	2400	21,600
12.	Mr. Farhan Faheem	61101-5131103-1	Finance Assistant	01-07-2015	15,000	1500	13,500
13.	Mr. Muhammad Umer Ali	42401-1718657-5	TCJA	05-02-2007	28,000	2800	25,200
14.	S. Abid Ali Hashmi	42101-4852581-1	TCJA	01-07-2000	28,000	2800	25,200
15.	Mr. Nawaz Gul	42201-9727589-9	Carpenter	01-07-2012	20,000	2000	18,000
16.	Mr. Muhammad Arif	42201-2334165-3	Carpenter	01-07-2015	15,000	1500	13,500
17.	Mr. Imtiaz Ali	42201-8796146-3	Carpenter	01-07-2011	15,000	1500	13,500
18.	Mr. Zain Shad	42101-16741770-7	Transmission Assistant	Nov-2017	20,000	2000	18,000
19.	Mr. Amjad Khan	42101-8122877-3	Transmission Assistant	Jun-2014	20,000	2000	18,000
20.	Mr. Zohaib	42501-7859999-1	Naib Qasid	July-2005	18,000	1800	16,200

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21.	Mr. Asadullah Khan	42201-8391761-3	TCJA	01-01-2013	20,000	2000	18,000
22.	Mr. Adil Bhatti	42501-6740579-7	TCJA	08-10-2013	15,000	1500	13,500
23.	Mr. Sanghar Ali	45302-7340213-3	Lift Operator	16-02-2018	15,000	1500	13,500
24.	Mr. Zeeshan Shahid	42101-1309283-8	Makeup Artist	2016	20,000	2000	18,000
25.	S. M. Asif Jamil Zaidi	42101-1707421-7	Makeup Artist	14-06-2010	20,000	2000	18,000
26.	Mr. Owais uddin	42501-8941029-5	Recptionist	13-01-2010	15,000	1500	13,500
27.	Mr. Kamran Hussain	42000-8556872-1	Telephone Operator	03-10-2013	15,000	1500	13,500
28.	Mr. Ashhad Altaf	42201-7216746-9	Transmission Assistant	02-05-2011	30,000	3000	27,000
29.	Muhammad Saeed	42401-1892588-7	Telephone Operator	2015	15,000	1500	13,500
30.	Mr. Harryson	42201-5504514-1	Sanitary Worker	01-10-2022	15,000	1500	13,500
31.	Mr. Shakeel Ahmed	45301-3551022-5	TCJA	01-10-2022	15,000	1500	13,500
32.	Mr. Muhammad Salman	42201-3888470-1	Finance Assistant	01-12-2022	30,000	3000	27,000
33.	Mr. Muhammad Kamran Khan	42201-0557025-9	Makeup Aristic	15-03-2022	46,000	4600	41,400
34.	S. Hassan Raza Naqvi	42101-7319000-5	NLE Editor	2020	25,000	2500	22,500

35.	Elahi Bux	44203-7904480-3	Naib Qasid	Aug-2010	27,000	2700	24,300
36.	Yasir Iqbal	42201-5277654-4	NLE Editor	01-09-2007	24,000	2400	21,600
37.	Mr. Rizwana Tareen	42101-7737680-5	News Assistant	06-04-2008	24,000	2400	21,600
38.	Mr. Shahrukh	42201-5455341-7	NLE Editor	03-02-2014	24,000	2400	21,600
39.	Mr. Muhammad Wajih	42201-9418870-5	Secretary	2018	48,000	4800	43,200

- v. It's quite shocking that the above low paid persons employed as full timers since as late as 2000(S.NO. 14) and are subjected to excessive and harsher tax deductions under section 153(1)(b) @ 10/20 % whereas highly paid contract employees of PTV are paying less taxes under section 149 of Income Tax Ordinance, 2001. This tax treatment is arbitrary and discriminatory.
- vi. All the features of engagement of the complainants by PTV Karachi clearly indicate that all ingredients of employment and receipt of SALARY are visible. If nature of job and pre-conditions of engagement indicate the factum of employment then the head of payment, applicability of service rules, biometric attendance, personal numbers etc. are of secondary importance. If the wages, fee received by the complainants is covered under the definition of SALARY u/s 12 then the aforesaid conditions are not material from the point of tax deduction.

FINDINGS:

9. In view of the above-mentioned facts & discussions it has been established that the complainants, who have been hired by PTV as Transmission Assistant, Finance Assistant, News Assistant, Anchorperson, Compere, NLE Editor, Secretary, Makeup Artists, TCJA, Carpenter, Lift Operator, Receptionist, Telephone Operator, Naib Qasids, Sanitary Worker etc. over the last few decades as low

paid employees are entitled to the similar relief which has been allowed to the employees of PTV HQs, PBC and other similar cases. Excessive and harsh deduction of tax from their meager salaries under section 153(1)(b) of the Ordinance is against the dictates of law and nature of treatment being discriminatory, tantamount to maladministration in terms of section 2(3)(i)(b) of the FTO Ordinance, 2000.

RECOMMENDATIONS:

10. FBR is directed to: -

- (i) ensure that the low paid complainants/employees of PTV Karachi are not burdened with excessive tax deductions at withholding stage;
- (ii) implement these recommendations & findings in liaison with PTV's management as this issue has already upheld by the Hon'ble President of Pakistan vide order dated 25.01.2023 in Rep. Nos.317 to 354/FTO/2022 FBR Vs *Mujeeb Ul Haq & Others* in identical case of low paid employees of PTVC Islamabad;
- (iii) ensure that tax already withheld against salary of these complainants but not deposited in Govt. Treasury (if any) are returned to the complainants; and
- (iii) report compliance within 45 days.

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

Dated: 21:2:2023

Approved for reporting

Certified to be True Copy

[Signature]
Registrar
FTO Secretariat
Islamabad