

THE FEDERAL TAX OMBUDSMAN ISLAMABAD

COMPLAINT No. 0050/OM/2023

Dated: 26.07.2023*RO, Lahore

Subject: INVESTIGATION INTO TAX AFFAIRS OF RAHBAR
MEDICAL & DENTAL COLLEGE, LAHORE /
CONTROLLING ENTITY


Dealing Officer : Mr. Khalid Javed, Advisor
Appraised by : Mr. Muhammad Tanvir Akhtar, Advisor
Departmental Representative : Mr. Ali Khalid, DCIR, CTO Lahore

FINDINGS/RECOMMENDATIONS

Based on the multiple news items and reports published in print and social media this forum vide No.0050/OM/2023 initiated Own Motion Investigation into tax affairs of Rahbar Medical & Dental College, Lahore/Controlling Entity.

BACKGROUND OF OWN MOTION INVESTIGATION:

2. The background of above referred OM is detailed as below:


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- (i) Currently, in addition to Public Sector Medical & Dental Colleges there are around 75 PMDC approved Medical and 43 Dental Colleges in Pakistan. Though PMDC maintains a structured regulatory mechanism yet tax matters of these private colleges have not been appropriately attended by FBR. During the past few years there has been regular reporting in the national press (details attached) as well in various medical related websites about the irregularities and violation of tax laws committed by Private Medical Colleges in Pakistan. Most recently, a report has been published in the '**Business Recorder**' dated 25.07.2023.
 - (ii) The above referred report contains a detailed account of the misappropriations and irregularities by the medical colleges, improper compliance of withholding taxes, and lack of well-structured audit of withholding taxes. The main issues involved in the above referred report are briefly summarized as below;
 - a) Private Medical Colleges are not discharging their tax withholding obligations property.
 - b) There is no proper withholding tax audit conducted by FBR field offices.
 - c) Fees charged from overseas students are not reflected in accounts for taxation

- d) Allegedly, the Private Medical Colleges Siphon off receipts from overseas students, to unknown accounts, thus depriving the Tax Deptt from due withholding on the same.
- e) The Private Medical Colleges suppress their receipts as declared before the Tax Deptt.
- f) The Private Medical Colleges get heavy donations from affluent parents in the range of 14 Lacs to 40 Lacs but do not declare in accounts subject to audit.

The contents of the above referred press report exhibit serious threats to proper taxation and withholding taxes. Prima facie, the above given malpractices and violations occur because of lack of stringent and well-defined periodic audit of tax withholding and approval regime u/s 2(36) of the Income Tax Ordinance, 2001.

3. In view of above given account, Own Motion Investigation was ordered vide No.0050/OM/2023 into tax affairs in the case of **M/s Rahbar Medical & Dental College, Lahore/Controlling Entity**.

4. Accordingly, the Revenue Division was confronted vide notice dated 04.01.2024 in terms of section 9(1) of the FTO Ordinance, 2000, and was required to respond to the following queries in the backdrop of above given background of this OM.

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- (i) **RAHBAR MEDICAL & DENTAL COLLEGE LAHORE/CONTROLLING ENTITY**; avails exemption u/s 2(36) or it is taxable entity;
 - (ii) Statutory Withholding Statements for the last 05 years have been timely filed by the **RAHBAR MEDICAL & DENTAL COLLEGE LAHORE/CONTROLLING ENTITY** or enforced by CTO Lahore.
 - (iii) The status of conducting withholding tax audit in respect of **RAHBAR MEDICAL & DENTAL COLLEGE LAHORE/CONTROLLING ENTITY**; during the last 5 years.
 - (iv) When was conducted last review of exemption u/s 2(36) (if applicable) in respect of **RAHBAR MEDICAL & DENTAL COLLEGE LAHORE/CONTROLLING ENTITY**;
 - (v) Whether independent information regarding, Faculty Members, Doctors/Professionals has been obtained and compared the same with filed WHT statements.
 - (vi) Any communication by CTO to concerned IR field formations sharing the details of hired professionals for the purposes of Broadening of Tax Base.

- (vii) Agreement between Rahbar Medical & Dental College Lahore/Controlling Entity; and Punjab Social Security Health Management Company has ever been examined by CTO or not?

5. In response, the Deptt submitted parawise comments vide No.1176 dated 22.01.2024. Mainly stated that withholding tax statements for the tax years 2018, 2019, 2020 and 2021 have been filed but with effect from 2022 to 2023 the WHT statements have not been filed. Further submitted that orders made u/s 161/205 for the tax years 2019 to 2021 are challenged in 2nd appeal. However, WHT audit for tax years 2018 and 2022 are in process/pending. The Deptt further stated that taxpayer has not availed approval u/s 2(36) of the Ordinance and is a **taxable entity**.

6. Subsequent to filing of parawise comments, hearings in this case were conducted on 24.01.2024 and 25.01.2024.


7. During hearing, the DR stated that it is a private limited company i.e. Rahbar Medical and Dental College Private Limited. The DR filed WHT statements for the tax year 2021. However, he stated that taxpayer has not filed WHT statements for the tax year 2022 & 2023, for which penalty proceedings u/s 182 have been initiated. The DR further added that the case of the taxpayer for the year 2021 has been selected for audit u/s 177, which is pending.

FINDINGS:

8. The parawise comments and other related documents provided by the Deptt have been thoroughly examined. The following instances of inattention, ineptitude and delay are visible in the instant case:

- i. The Controlling Entity; Rahbar Medical & Dental College Private Limited is a taxable entity.
- ii. The taxpayer is not regularly filing quarterly withholding tax statements u/s 165 of the Ordinance, WHT statements only upto tax year 2021 are available. No withholding tax statements for tax years 2022 and 2023 filed by the taxpayer. No timely action

initiated for enforcement of withholding tax statements for the above said years.

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- iii. Further orders made by the Deptt u/s 161/205 for the tax years 2019 to 2021 are in 2nd appeal. No action u/s 161/205 taken for the tax year 2022 and 2023 at the appropriate time, though process initiated, now.
 - iv. No independent information obtained in the past regarding Faculty Members, Doctors/Professionals and used for comparison purposes in WHT audit. However, now Deptt has initiated the same.
 - v. The Deptt selected the case for complete audit u/s 177 for tax year 2021 and issued show cause notice u/s 122(9) dated 16.02.2023 which is still pending. However, the following glaring discrepancies have been identified.
 - a. Various reconciliation issues inclusive of short-term deposit encashment at Rs.213,936,615/- needs to be substantiated duly supported by documents.
 - b. Prima facie, an amount of Rs.3,586,090/- claimed u/s 236I not reflecting in the withholding tax statements u/s 165 for the relevant period.
 - c. Fees received in advance at Rs.215, 671, 441 has not been offered as income in consonance with the accrual-based accounting system.
 - d. Part of salary u/s 149 remain unsubstantiated for not having been through proper banking channel etc.
 - vi. The CTO intimated that no information has been shared with the concerned tax authorities for broadening of tax base with reference to Doctors/Professionals.
 - vii. CTO also intimated that no agreement has been executed between the taxpayer and Punjab Social Security Health Management Company.

MALADMINISTRATION:

9. The above omissions & commissions on account of inaction and delay constitute maladministration in terms of section 2(3)(ii) of FTO Ordinance, 2000.

RECOMMENDATIONS:

10. In view of above, FBR to direct:

- (i) the concerned Commissioner-IR to ensure that pending WHT audit and audit-initiated u/s 177 for the tax year 2021 are completed in time;

- (ii) to requisition and analyze segregated lists of employees of M/s Rahbar Medical and Dental College Private Limited so as to verify;
- Whether all the faculty members, reflecting at college website are being regularly subjected to withholding taxes at source or not
 - All employees receiving taxable salaries are borne on Tax Roll and in cases of default details be shared with the concerned RTO for BTB purposes.
 - How the share from practice at College Teaching Hospital is being paid to specialists and what is the mechanism for tax deduction at source.
- (iii) report compliance within 60 days.

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

Dated: 16/2/2024
Akif

Approved for Reporting