

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NOS.0070 to 0074/SKT/IT/2023

Dated: 04.01.2023*RO, Sialkot

M/s Al-Auf CNG,

Bypass Road, Opp. Zikria Floor Mill,
Gujrat.

... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

...Respondent

Dealing Officer	:	Mr. Abdur Rehman Dogar, Advisor
Appraised by	:	Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	:	Mr. M. Javed Iqbal, Complaint-in-person
Departmental Representative	:	(i) Mr. Umar Ahmed Mehtab, ACIR (ii) Mr. Ali Imam, ACIR


FINDINGS/RECOMMENDATIONS

The above-mentioned complaints were filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against delay in issuance of aggregate refund amounting to Rs.1.906 million for Tax Years 2015 to 2019 respectively. As all the complaints relate to common issue i.e. non-issuance of refunds, so same are being decided through single consolidated order.

2. Precisely, the Complainant engaged in the business of CNG Station, filed returns of income / statements of taxation claiming aggregate refund of Rs.1.906 million for Tax Years 2015 to 2019 respectively. According to the AR, the Complainant also e-filed refund applications dated 20.04.2020. However, despite repeated efforts of the Complainant, the Deptt failed to pass orders under Section 170(4) of the Income Tax Ordinance, 2001 (the Ordinance) within stipulated time, hence these complaints.

3. In response to the notice issued under Section 10(4) of the FTO Ordinance, read with Section 9(1) of Federal Ombudsmen Institutional

Reforms Act, 2013, the Commissioner-IR, Sialkot Zone, RTO Sialkot submitted parawise comments dated 13.01.2023, wherein it was contended that the perusal of record reveals that the Complainant has e-filed refund applications for Tax Years 2015 to 2019. The Complainant has claimed refunds on the basis of tax deductions under Section 234A and 235 of the Ordinance but no supporting documents had been attached with the refund applications. Therefore, the department sought supporting documents through a notice dated 05.01.2023 under Section 170(4) of the Ordinance. In response, the Complainant, through his AR, has filed incomplete documents i.e. only one original electricity bill each for Tax Years 2015, 2016, 2017 and 2018. Not a single gas bill for the said tax years was provided. The refund applications have been examined which reveals that the refund in the case of the Complainant is inadmissible due to the following reasons:

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- i) The Complainant derived income from running a CNG Station and has claimed refund on the basis of tax deductions under Section 234A and 235 of the Ordinance. However, sub-section 3 of section 234A clearly stipulates that any tax deductions under Section 234A and also 235 of the Ordinance shall be a final tax on the income of a CNG station; therefore, it is neither adjustable nor refund can be sanctioned on it. "The section was first amended with "final" tax substituted by "minimum" tax through Finance Act, 2019 and later the entire section was omitted by the Finance Act, 2021".

Accordingly, the Federal Board of Revenue through letter No. 4(19)IT-Budget/2017 dated 23.02.2017 issued a clarification regarding refund claims by CNG Stations. The Board has clarified that in case of CNG Stations, advance tax collected or deducted in terms of Section 234A constituted final tax and "a CNG Station is not entitled to claim adjustment of withholding tax collected or deducted under any other head/provision of this Ordinance even in instances where tax collected/deducted under any other head is in excess of the final tax liability discharged by the taxpayer under section 234A of the Ordinance".

- ii) The Complainant has not provided all the original electricity and gas bills that could establish and verify the tax deductions claimed under Section 235 and 234A of the Ordinance. The Complainant filed only one original electricity bill each for Tax Years 2015, 2016, 2017 and 2018. Not a single gas bill for the said tax years was provided. The tax deductions claimed under Section 235 of the Ordinance require all original electricity bills for verification of income tax deducted on them and for computation of minimum tax liability under section 235 of the Ordinance prescribed under the law.
- iii) The refund applications filed by the Complainant for tax years 2015 and 2016 have become barred by time on the basis of Section 170(2) of the Ordinance which requires that the refund application has to be filed within the 03 years.

It is submitted that the refund application has been taken up for processing and shall be disposed of under the law within due course of time.

6. Both the parties heard and record perused.

7. During course of proceedings, the Complaint reiterated the stance taken in the complaint and insisted for issuance of refund in respect of tax deduction under Section 235 of the Ordinance. On the other hand, the DR stated that FBR vide Circular No.2017 dated 06.09.2017 has clarified that tax deduction under all the head including tax deducted under Section 235 of the Ordinance constitutes full and final tax liability in case of CNG Stations. The issue has been examined and it is observed that application of provision / instructions issued vide Circular No.2017 dated 06.09.2017 has already been examined by this forum while concluding the complaint bearing no.2689/ABD/IT/2022 and wherein it is held that ***“the terms of Circular No.2017 dated 06.09.2017 cannot be exercised retrospectively”***. It is further observed by the FTO's Order reported as 2015 PTD 2348, wherein it was observed as under:

"It is not understandable as to why FBR has failed to direct the field formations to adopt a uniform policy in the case of CNG Stations as directed by this office from time to time. All the RTOs are issuing refund in such cases but only in some refunds are arbitrarily blocked by filing representations, surprisingly with the approval of FBR. While filing

representations, true facts were not placed before the Hon'ble President. The AR cited many cases of other RTOs wherein refunds had been issued in such cases without filing representation."

The refund in this case pertains to Tax Years 2015 to 2019 and provision of Circular No. 2017 dated 06.09.2017 cannot be applied to the refund pertaining to Tax Years 2015 to 2017. Hence, refund application needs to be disposed of accordingly. The circular No.2017 dated 06.09.2017 can, however, be applied for Tax Years 2018 and 2019.

FINDINGS:

8. Circular No.2017 dated 06.09.2017 cannot be applied retrospectively, hence the said provisions of Circular are not applicable for Tax Years 2015 to 2017. Inordinate delay in disposal of refund applications for Tax Year 2015 to 2017 in the garb of Circular No.2017 dated 06.09.2017 and rest of the refund applications i.e. for Tax Years 2018 and 2019 as per provisions of Section 234A and 235 of the Ordinance and not following the uniform policy for CNG Stations as mentioned supra is tantamount to maladministration in terms of Section 2(3)(ii) of the FTO Ordinance.

RECOMMENDATIONS:

9. FBR to direct-
- (i) the Commissioner-IR, Gujrat Zone, RTO Sialkot to dispose of Complainant's refund applications for Tax Years 2015 to 2019 respectively, as per law; and
 - (ii) report compliance within 45 days.


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

Dated: 13/03/2023

Approved for reporting