

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO. 0567/KHI/IT/2022

Dated 18.02.2022 * R.O. Karachi

Mr. Muhammad Waseem,
M/s Prime Fisheries,
D-11, Fish harbour, West Wharf,
Karachi.

...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

....Respondent

Dealing Officer	: Mr. Badruddin Ahmad Quraishi Advisor
Appraisal Officer	: Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	: Mr. Muhammad Hussain Shaikh, ITP
Departmental Representative	: Mr. Muhammad Shahid Irfan, IRO RTO-I, Karachi

FINDINGS/RECOMMENDATION

The complaint was filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against order dated 10.02.2022 framed under Section 122(1) read with Section 122(5) of Income Tax Ordinance (the Ordinance) for Tax Year 2020.

2. The Complainant, an individual exporter of fish, filed statement under Section 115(4) of the Ordinance for Tax year 2020 declaring export sales of Rs.75.830 million. The Department (Deptt) issued a Show Cause Notice (SCN) dated 04.02.2022 under Section 122(9) with the intention of addition for concealed income under section 111(1)(b) read with Section 122(5)(i) of the Ordinance against declared cash / cash equivalent amounting to Rs.13.212 million and provided only seven days for compliance on 11.02.2022. The Complainant attended the hearing and submitted

Date of registration in FTO Secretariat

reply stating that Rs.13.212 million was declared as business capital consisting of closing bank balance, stock in trade, cash in hand, moveable & immoveable assets etc and the said business capital was brought forwarded from last year which was declared at Rs.11.000 million in Tax Year 2019. However, the Deptt without considering the reply & without providing adequate opportunity in violation of FBR's instructions issued vide sub-para (ii) of Para (3) of circular letter dated 23.07.2018 and FBR's instructions dated 25.05.2021, passed order on 10.02.2022 creating tax liability of Rs.2.984 million, hence this complaint.

3. The complaint was referred to the Secretary, Revenue Division for comments, in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response thereto, the Chief Commissioner-IR RTO-I Karachi submitted vide letter dated 28.02.2022 comments of the Commissioner-IR, Zone-III, RTO-I Karachi dated 25.02.2022. At the outset, preliminary objection regarding bar of jurisdiction, was raised under Section 9(2) of the FTO Ordinance being matter of assessment of income, determination of tax liability & interpretation of law.

4. On merits, it was contended that the show cause notice was based on definite information which was not just dependent on third party information but there were various possibilities by which the definite information could be obtained. In this case it was definite information that the Complainant had made investment in the shape of cash which escaped the assessment under the Ordinance.

5. Arguments of parties heard and record perused.

6. The preliminary objection regarding bar of jurisdiction, raised under Section 9(2) of the FTO Ordinance, is misconceived as the Complainant is not aggrieved against the assessment as such but against failure of the Deptt to allow adequate opportunity of hearing in terms of FBR circular letter dated 23.07.2018 and completing proceedings in violation of FBR's instructions dated 25.05.2021 binding to all income tax authorities under Section 214 of the Ordinance. The preliminary objection regarding bar of jurisdiction being misconceived, is hereby overruled.

7. It is observed that the Deptt issued only one notice providing seven days to respond against SCN dated 04.02.2022 under Section 122(9) of the Ordinance brazenly violating the FBR's instructions issued vide sub-para (ii) of Para (3) of circular letter dated 23.07.2018, which stipulate:

"Sufficient time (at least fifteen days)/ fair opportunity should be given to the taxpayer, after receipt of the notice, to make necessary compliance."

Perusal of the order impugned order reveals that in violation of the above mentioned instructions, assessment proceeding under Section 122(5) of the Ordinance was initiated on the basis of definite information. The threshold of definite information as stipulated under Section 122(8) of the Ordinance was not met. The relevant provision is reproduced below:

"For the purposes of this section, "definite information" includes information on sales or purchases of any goods made by the taxpayer, receipt of the taxpayer from services rendered or any other receipts that may be chargeable to tax under this ordinance, and on the acquisition, possession or disposal of any money, asset, valuable article or investment made or expenditure incurred by the taxpayer."

Further, the impugned order was passed on 10.02.2022 in total disregard of FBR's instructions dated 25.05.2021 which stipulates:

"Subject: Amendment proceedings u/s 122(5) of Income Tax Ordinance 2001- Instructions Regarding

I am directed to refer to the subject and to say that representations have been received in the Board suggesting that field officers are recklessly issuing notices u/s 122(5) read with 122(9) of Income Tax Ordinance (thereafter "the Ordinance") where purportedly the threshold of "definite information" as defined u/s 122(5) is not met. It goes without saying that amendment proceedings u/s 122(5) of the Ordinance, merely on the basis of audit suspicion picked from within the declarations lodged by the taxpayers themselves, is an enforcement travesty and need to abate. The scheme of law warrants that a taxpayer must be dealt with precisely as per principles of justice and fair play"

In this case, the amendment proceeding under Section 122(5) of the Ordinance was initiated on the basis of data picked from within the declarations filed by the Complainant. Notwithstanding the legality of departmental action even otherwise the alleged illegal addition made as unexplained income/ assets under Section 111 in Tax year 2020 is actually the brought forward business capital amounting to Rs.11.000 million which pertains to Tax year 2019. Thus there is a clear violation of Section 111(2)(i) of the Ordinance.

8. The above scenario speaks a lot about the legal and procedural incompetence of the concerned Officer. He apparently seems to be ignorant of law and procedure. Strangely, the CIR, Zone-III, RTO-1 Karachi overlooked this glaring illegality and impropriety and instead tried to defend the Unit Officer concerned in his comments dated 25.02.2022 against an exporter earning foreign exchange for the country.

9. From the foregoing facts, it is evident that while passing the impugned order dated 10.02.2022 under Section 122(1) read with Section 122(5) the Ordinance for Tax Year 2020, the Deptt not only failed to allow adequate opportunity of hearing in terms of FBR's instructions issued vide sub-para (ii) of Para (3) of circular

letter dated 23.07.2018 but also passed an order violating the instructions of FBR vide letter no. 2(22)Rev.Bud./2020 dated 25.05.2021 read with Section 122(5) & 122(8) of the Ordinance. Thus the impugned order passed was contrary to law & procedure and the principle of natural justice and the trite maxim of *aud ialterm partem*, hence, unlawful *per se*.

FINDINGS:

10. Passing of impugned order dated 10.02.2022 without providing adequate opportunity of hearing in terms of FBR's instructions issued vide sub-para (ii) of Para (3) of circular letter dated 23.07.2018 and violating the instruction of FBR vide letter no. 2(22)Rev.Bud./2020 dated 25.05.2021 read with Section 122(5) & 122(8) of the Ordinance causing administrative excesses is tantamount to maladministration, in terms of Section 2(3)(i)(a),(b),(d)& (ii) of the FTO Ordinance.

RECOMMENDATIONS:

11. FBR to-

- (i) direct the Commissioner –IR, Zone-III, RTO-I Karachi to revisit the impugned order dated 10.02.2022 for Tax Year 2020 in terms of Section 122A of the Ordinance, after affording proper opportunity of hearing to the Complainant, as per law;
- (ii) call for explanation of the Unit Officer concerned and ensure that in future official(s) found responsible for instances of such brazen violations, do not get scot-free; and
- (iii) report compliance within 45 days

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

Dated: 18-03-2022
U.f

Registrar
FTO Secretariat
Islamabad

Approved for reporting
and press release also

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