

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO.1930/LHR/IT/2022

Dated:21.05.2022*RO Lahore

Mr. Muhammad Afzal,
House No.110, Block-C,
LDA Tajpura Scheme,
Lahore.

... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer	: Dr. Tariq Mahmood Khan, Advisor
Appraisal by	: Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	: Mr. Raashid Umer, Advocate
Departmental Representative	: Ms. Nawal Sh, Addl CIR RTO Lahore

FINDINGS / RECOMMENDATIONS

The above-mentioned complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against alleged illegal rejection of Complainant's request for correction of Computerized Payment Receipt (CPR) for Tax Year 2013.

2. Brief facts of the case are that Complainant acquired Toll Plaza on lease for Tax Year 2013 and paid advance tax u/s 236A of the Income Tax Ordinance, 2001 (the Ordinance), but the withholding agent deposited tax under wrong section i.e., 153(1)(c) of the Ordinance. The Complainant filed application dated 02.01.2020 for correction of CPR, but Deptt raised some objections. On 24.09.2020 withholding agent removed the objections raised by the Deptt, but the Deptt rejected the application for correction of CPR on 15.10.2020, hence this complaint.

3. The complaint was sent for comments to the Secretary, Revenue Division, 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 Deptt submitted parawise comments vide letter dated 19.07.2022 contending that the Complainant is agitating the matter of Tax Year 2013 in 2022. In accordance with the provisions of entry 181 of the Schedule to the Limitation Act 1908, the matter is hit by limitation (as this entry provided for limitation of three years). Hence the application is invalid and infructuous. Further contended that Deptt cannot scrutinize the Complainant's tax affairs of Tax Year 2013 in the year 2022. The matter of payments made u/s 153(1)(c) of the Ordinance through the CPRs under consideration is a past and closed transaction cannot be reopened or changed now due to the bar of time limitation imposed by the express provisions of law. Further contended that provisions of section 10(3) of the FTO Ordinance are also attracted in the instant case, hence jurisdiction is ousted from the ambit of this Hon'ble forum.

4. During hearing, AR and DR reiterated their respective stance taken in the complaints and parawise comments.

5. Both sides heard and available record perused.

6. There is no denying the fact that the Complainant's request for correction of CPR pertained to Tax Year 2013 and the Complainant applied for correction of CPR vide application dated 02.01.2020 which was rejected on 15.10.2020 due to the reason that Tax Year 2013 has been time barred. However;

- I. It remains a fact that the Article 24 of the Constitution provides for protection of property rights in the following very clear terms: -

“No person shall be compulsorily deprived of his property save in accordance with law.”
- II. Furthermore, superior courts in their judgments have categorically held that right of refund cannot be denied mere on technical grounds like time limitations. Under tax laws for recovery of outstanding/payable taxes there are no time limits. On the same analogy, taxpayer's right/refund warrants the same treatment.
- III. Section 236A involves collection of tax from the bidder along with collection of lease money, whereas section 153(i)(c) involves deduction by the paying department from the contract amount paid to the contractor. Even a lay man can judge that acquiring Toll Plaza on lease the complainant was the payer from whom tax was collected therefore how it could be treated as contract u/s 153(i)(c).

RECOMMENDATIONS:

7. In view of the foregoing, FBR to direct:
 - (i) commissioner-IR, RTO Zone-I to process the complainant's request for correction in CPR/refund on merits after retrieving record of lease auction and dispose of the resultant refund claim as per law; and
 - (ii) report compliance within 60 days.

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

Dated: 23.8.2022

Approved for reporting