

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.2141/GWL/IT/2022

Dated:01.06.2022* R.O Gujranwala

Mr. Sohail Akhtar Awan,
M/s. Crystal Distributors,
Attawa More, G.T Road, Gujranwala.

... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad

... Respondent

| | |
|------------------------------|---------------------------------------|
| Dealing Officer | : Mr. Abdur Rehman Dogar, Advisor |
| Appraisal by | : Mr. Muhammad Tanvir Akhtar, Advisor |
| Authorized Representative | : Ms. Yasmeen Dawood, Advocate |
| Departmental Representatives | : (i) Syed Qambar Ali, ACIR |
| | : (ii) Rana Arman Iqbal Khan, ACIR |

FINDINGS / RECOMMENDATIONS

The complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against non-issuance of refund amounting to Rs.23.256 million for Tax Year 2016 alongwith compensation.

2. Precisely, the Complainant, an AOP, filed return of income for Tax Year 2016. Later on, the Deptt. amended the assessment under Section 122(1) of the Income Tax Ordinance, 2001 (the Ordinance) by making additions of Rs.1754.300 million and Rs.164.214 million under Section 111(1)(b), (d) of the Ordinance through Order dated 30.11.2021. Being aggrieved, the Complainant filed appeal before Commissioner (Appeals), Gujranwala who vide Order dated 31.03.2022 modified the order and annulled the addition of Rs.164.214 million made under Section 111(1)(b) of the Ordinance with the directions to the Unit Office for further necessary verifications and confirmed the addition of Rs.1754.300 million made

under Section 111(1)(d) of the Ordinance. The Deptt. recovered an amount of Rs.23.256 million through attachment of bank accounts on the very next day i.e on 01.04.2022 without passing appeal effect order. Statedly, recovery was also made from bank accounts of some un-concerned persons. The Complainant filed appeal before Appellate Tribunal Inland Revenue (ATIR), Lahore who vide Order dated 04.04.2022 granted stay order with certain observations as under: -

"We are of the opinion that the department has committed illegal acts by attaching accounts of AOPs and members before issuance of revised demand notice. Furthermore, the department started recovery proceedings without issuance of appeal effect order and revised demand notice, therefore, we order that the department should desist from encashment of pay orders and re-deposit them in the accounts of the AOPs and members. Since, appeal of the taxpayer is also pending adjudication before the Tribunal, therefore, we grant stay against recovery proceedings for a period of 60 days or till decision of appeal, whichever is earlier. We order accordingly".

The main appeal was decided by ATIR in ITA No.1655/LB/2022 vide order dated 12.04.2022 and concluded as under: -

"10. In view of above stated facts of the case and legal averments, the addition made by the Assessing Office under Section 111(1)(d) of the Ordinance being not sustainable under the law is hereby deleted."

After receipt of orders of learned ATIR, writ petition was filed by the Complainant before Hon'ble Lahore High Court Lahore on 15.04.2022 (W.P No.23136/2022) by one of the partners namely Mr. Mansoor Hyder Javed from whose personal account, recovery of Rs.8.900 million was made. Order of Writ Petition was passed on 01.06.2022 and following directions were given: -

"9. The writ petition accordingly allowed and the respondents are directed to return the amount of Rs.23.213 million to the petitioners within a period of one week from the date of receipt of certified copy of this order."

The certified copy of order was issued / received on 04.06.2022 but refund was not issued, hence this complaint.

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 Chief Commissioner-IR, RTO, Gujranwala submitted parawise comments dated 20.07.2022. At the outset, preliminary objection of bar of jurisdiction under Section 9(2)(a) of the FTO Ordinance was raised on the ground that the Complainant is not entitled to file complaint as the Complainant filed a Writ Petition W.P No.23136/2022 before Hon'ble Lahore High Court, Lahore on 15.04.2022 by challenging the recovery proceedings and the Hon'ble Lahore High Court, Lahore decided the writ petition through Order dated 01.06.2022 and later on Complaint filed contempt petition bearing W.P No.38195/2022 dated 20.06.2022 which is still pending. The Deptt. filed a reference application under Section 133 of the Ordinance before Hon'ble Lahore High Court, Lahore bearing ITR No.41041/2022. The division Bench of Hon'ble Lahore High Court, Lahore has suspended the operation of impugned order of ATIR through its Order dated 30.06.2022 till next date of hearing and the date is fixed for 22.09.2022, so the complaint being not maintainable and is liable to be rejected.

4. On merits, it was stated that the Complainant has filed refund application on 06.06.2022 under Section 170(1) of the Ordinance and the Deptt. will decided the application keeping in view the provision of Section 170(4) of the Ordinance which provides 60 days to the Deptt. to decide the refund application. Further as reference has been filed under Section 133 of the Ordinance against the order of learned ATIR before Hon'ble Lahore High Court, Lahore and the Divisional Bench of Hon'ble Lahore High Court, Lahore vide order

dated 30.06.2022 given in ITR No.41041/2022 suspended the operation of impugned order of ATIR till 22.09.2022.

5. The preliminary objection regarding bar of jurisdiction, raised under Section 9(2)(a) of the FTO Ordinance has been looked into. The Deptt. has taken the plea that writ petition No.23136/2022 was filed on 15.04.2022 and complaint was filed on 30.05.2022 which clearly means that the matter was already subjudice before Hon'ble Lahore High Court, Lahore. It is pertinent to note that writ petition referred is not filed by the Complainant AOP but is filed by one namely Mr. Mansoor Hyder Javed from whose personal account recovery of Rs.8.900 million was made against the alleged demand of AOP. Hence, objection of Deptt. regarding bar under Section 9(2)(a) of the FTO Ordinance is misconceived and is overruled. On merits, it is stated that decision of ATIR (No.1655/LB/2022 dated 12.04.2022) has been challenged by the Deptt. by filing reference under Section 133 of the Ordinance. Notice was issued for 22.09.2022 with directions to suspend the operation of impugned order till next date of hearing.

7 6. DR appeared and reiterated the stance taken in the parawise comments and also stated that the case is adjourned in the reference filed under Section 133 of the Ordinance by Hon'ble Lahore High court till 22.09.2022 by suspending the order of ATIR. On the other hand, AR stated that filing of reference or suspension of order of ATIR neither make the issue subjudice nor authorizes the unlawful acts committed by the Deptt'l. officers in violation of relevant provisions of law and orders of various courts. He also filed re-joinder for elaboration of his contention. Deptt. submitted reply to the re-joinder stating that matter is subjudice and jurisdiction of Hon'ble FTO under Section 9(2)(a) of the FTO Ordinance which has been

discussed and overruled. Regarding non-issuance of refund department is of the view that refund application is under consideration and will be decided in due course of time.

7. FINDINGS:

- I. Recovery of Rs.23.256 million had been made from the Complainant AOP and certain other unconcerned whereas no demand was in the field at the time of making such recovery. This act of department tantamounts to maladministration in terms of section 2(3)(i)(a) of FTO Ordinance, 2000.***
- II. Recovery from the A/Cs of unconcerned person is also an act which tantamounts to maladministration in terms of section 2(3)(i)(a) of FTO Ordinance, 2000.***
- III. While stay granted by Hon'ble ATIR vide order in appeal No.3665/LB/2022 dated 04.04.2022 holds water. As ATIR's directions regarding departmental actions are only prospective in nature therefore any directions in respect of departmental action taken prior to ATIR's order dated 4th February, 2022 have no legal force.***
- IV. Non-compliance of directions given by Hon'ble Lahore High Court vide W.P No.23136/2022 dated 01.06.2022 are currently subject matter of contempt proceedings; thus, a subjudice matter.***
- V. ATIR's order dated 12th April, 2022 admittedly suspended by LHC materially impacts the claim of refund therefore till the decision by learned court FTO office has no mandate to comment upon the facts of the case or merits/demerits of refund claim.***
- VI. The complaint has been filed on 1st June, 2022 whereas refund application was filed subsequently on 6th June, 2022 therefore departmental comments on this account are quite valid.***

RECOMMENDATIONS:

- 8. FBR to;**
 - (i) ensure that an Internal fact finding is conducted to see as who had recovered the amounts from Bank A/Cs without giving appeal effect and without having legally recoverable tax demand on record;**

- (ii) issue clear directions to all field formations;
 - a. forestalling unlawful recovery in the absence of any legally recoverable tax demand; and
 - b. recovery from the A/Cs of unconcerned persons/entities; and
- (iii) report compliance within 45 days.

Dated: 30.9. 2022

Approved for reporting

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

Certified to be True Copy

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Registrar
FTO Secretariat
Islamabad