

**BEFORE  
THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**COMPLAINT NO. 2220/ISB/IT/2022**

Dated: 03/06/2022\* HQ, Islamabad

**Muhammad Afzal Majoka,**  
Civil Judge Session Court,  
Rawalpindi.

...Complainant

**Versus**

The Secretary,  
Revenue Division,  
Islamabad.

...Respondent

Dealing Officer	:	Mr. Muhammad Majid Qureshi, Advisor
Appraised by	:	Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	:	Mr. Faizan Khalil, Ahlmad
Departmental Representative	:	None

**FINDINGS**

This complaint has been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance 2000 which was referred 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 Ombudsman Institutional Reforms Act, 2013.

2. Background of this complaint is that in consequence to the judgments of Hon'ble Sindh High Court in CP No. D-1019 of 2019 and of Hon'ble Peshawar High Court in WP No.4747-P of 2015, the FBR vide letters dated 29.03.2021, granted exemption of judicial and special judicial allowances from deduction of tax paid to the judicial officers of District Judiciary. The exemption granted under clause 39 part-I of the 2<sup>nd</sup> Schedule of the Income Tax Ordinance, 2001 was circulated to and implemented by all field formations and AGPR. However, this exemption was withdrawn on 28.05.2021 on

the plea of pendency of appeal before Hon'ble Supreme Court. This action of the FBR was assailed through CMA No. 5668/2021 and the hearing took place on 08.06.2021 resulting in the following orders;

*"By consent of the counsel present, the instant application is disposed of with an observation that the fate of the letters dated 28.05.2021 and 01.06.2021 respectively shall be decided in the light of the outcome of the main appeal and the same shall only be acted upon if thus found to be lawful"*

3. The complainant, an Additional Session Judge, believes that in view of the afore said observation, FBR's letters withdrawing the exemption are no more in field and the letter allowing exemption of judicial and special judicial allowance stands revised, which should be implemented. The Complainant filed an application before Chief Commissioner-IR, RTO, Faisalabad seeking refund of tax from 2016 to 2020; the application was granted and he filed revised returns for 2016 to 2020 and return for 2021 claiming refund of Rs. 900,634/-. Despite repeated requests the amount has not been refunded, hence this complaint.

4. The CIR, Jhang Zone, in response to notice u/s 10(4) of the FTO Ordinance has raised preliminary objection as under;

*"The subject matter relates to non-issuance of refunds for tax years 2016 to 2021. Before detailed comments, it is submitted that in an identical case, the Hon'ble President of Pakistan, while deciding representation preferred by the FBR in complaint No. FTO-FSD/0000578/2016 has held that where remedy of appeal was available, FTO could not interfere with the matter of assessment of tax and interpretation of law.*

*The same decision has been upheld by the Lahore High Court, while deciding Writ Petition No. 5999/17 in the case of M/S. Shahzadi Polypropylene vs FOP. Hence, in terms of section 170(5) (the complaint) is not entertainable by the FTO. The instant complaint as per provision of Section 9(2)(b) of the FTO Ordinance 2000, is out of the ambit of the Hon'ble FTO."*

5. At the outset CIR's preliminary objection regarding bar of jurisdiction is found to be misplaced. This complaint is not filed against any order u/s 170 of the Ordinance, rather the complainant



is agitating against CIR's inaction on his refund applications. The preliminary objection is therefore dismissed.

6. On merits, It has been observed that FBR has withdrawn the exemption in the light of Hon'ble Supreme Court's short order in CPLA No. 6797 of 2017 dated 19.10.2017, by which the order of Hon'ble Peshawar High Court was suspended. Board has also issued instructions to the AGPR and District Accounts Officers to withhold tax from judicial allowance as the Board's letter of exemption has been withdrawn and the matter of exemption was still pending before the Hon'ble Supreme Court. A copy of FBR's letter of comments was sent to the complainant who submitted re-joinder vide his letter dated 10.08.2022. He has stated that FBR/CIR's statement regarding withdrawal of letter was incorrect as the DAO, Rawalpindi was not withholding tax from his judicial allowances.

#### **FINDINGS:**

7. Crux of the issue involved in the subject complaint revolves around contention of the Complainant that after Hon'ble Supreme Court of Pakistan's order dated 08.06.2021 in CMA No. 5668/2021, FBR's letter dated 28.05.2021 and 01.06.2021 are no more in field and the fate of the same will be decided after the outcome of the main appeal. On this very ground the complainant has sought refund of the already paid income tax on judicial and special judicial allowance.

#### **RECOMMENDATIONS:**

7. "In view of the above, the complaint is being forwarded to FBR to:-
- i) treat it as representation on behalf of the Complainant and issue necessary clarification within 30 days, after taking into consideration all legal aspects of the case;

- ii) direct the commissioner concerned to dispose of the Complainant's refund application, in light of the above-referred clarification of FBR, on issuance , after providing the Complainant an adequate opportunity of hearing, as per law; and
- iii) report compliance within 60 days "

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

Dated: 12/09/2022  
Jawad

Approved for reporting