

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO.2789/LHR/IT/2021

Dated:29.12.2021*RO Lahore

Mr. Muhammad Rafi,
Abdul Waheed Shakir,
Al-GhaniPaza, Main Bazar, Faisal Colony,
Pattoki.

...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

... Respondent

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|-----------------------------|--|
| Dealing Officer | : Mr. Abdur Rehman Dogar, Advisor |
| Appraisal by | : Mr. Muhammad Tanvir Akhtar, Advisor |
| Authorized Representative | : Mr. Abdul Waheed Shakir, Advocate |
| Departmental Representative | : (i) Mst. Mofiza Iqbal, CIR RTO, Lahore |
| | (ii) Mr. Muhammad Abid, 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 MS. Mofiza Iqbal, CIR Zone-I, RTO Lahore requesting for initiation of defiance and contemptuous proceedings on account of malfunctioning, misuse of powers, duplicate proceedings and duplication of notices for deliberately blocking the lawful refund for Tax Year 2018.

2. Briefly speaking, return of income for Tax Year 2018 was filed under Section 114(1) of the Income Tax Ordinance, 2001 on 22.11.2018 declaring taxable income of Rs.1.200 million and claiming refund amounting to Rs.1.904 million on account of tax deducted u/s 148 and 235 of the Income Tax Ordinance, 2001. As refund was not issued so a complaint was lodged before FTO (C.No.561/LHR/IT/2019 dated 12.03.2019) which was decided vide FTO's Findings/Recommendations dated 23.04.2019 on

assurance of the Deptt to complete the verification process and dispose of refund application for Tax Year 2018 as per law.

3. The Deptt passed order u/s 170(4) (dated 17.06.2019) rejecting the refund claim on the ground that tax deducted u/s 148 of the ITO, 2001 was final discharge of tax liability, which issue was neither raised in the show cause notice nor opportunity of hearing was given. The CIR Zone-I, (Mst. Mofiza Iqbal) attended the proceedings from time to time and made repeated commitments to settle /issue the refund by rectifying the order but same was not done. Meanwhile appeal filed by the Complainant was decided by the CIR (Appeals) vide order dated 31.03.2021 who annulled the order declaring it unlawful. Deptt issued a Show Cause Notice u/s 170(4) (dated 21.06.2021) requisitioning certain details which were beyond the scope of u/s 170(4) and pertained to amendment of assessment. Being dissatisfied another complaint (C.No.1724/LHR/IT/2021 dated 13.09.2021) alleging that the AR was receiving threats that his case might be reopened u/s 177, 122(5A) and especially 122(5A) of the Income Tax Ordinance, 2001. This complaint was disposed of by the Hon'ble FTO vide order dated 25.11.2021 with the directions to the Deptt to settle the refund claim after providing the Complainant an opportunity of hearing and as per law. Proceedings were once again initiated by issuing notice u/s 170(4) dated 29.12.2021 of the ITO, 2001 repeating the earlier notice containing the issues beyond the scope of Section 170(4) of the ITO, 2001. Hence this complaint (C.No.2789/LHR/IT/2021) is filed leveling various allegations against Mst. Mofiza Iqbal, CIR Zone-I, RTO Lahore and requesting for initiation of defiance and contempt proceedings against her.

4. 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, Commissioner-IR, Zone-I, RTO Lahore submitted Para-wise comments vide letter dated 17.01.2022 raising preliminary objection regarding bar of jurisdiction in terms of Section 9(2)(b) of the FTO Ordinance. Reliance was placed on Hon'ble President of Pakistan's decision in C. No. RTO/LHR/0000697/ 2016 dated 16.01.2017 & Order No.46/FTO/2018 dated 27.05.2019.

5. On merits issuance of certain letters/notices and undertaking given by the Deptt. to settle refund are not denied but it is stated that refund claim shall be disposed of according to the legal provisions of the Income Tax Ordinance, 2001 and undertaking of any officer in this context will always remain subject to these provisions. The allegation that CIR is biased and personal is contested as baseless.

6. Both sides heard and available record perused.

7. The preliminary objection regarding bar of jurisdiction raised under Section 9(2)(b) of the FTO Ordinance is misconceived as the matter does not relate to assessment of income or determination of tax liability but failure of the Deptt to dispose of refund application within time stipulated under the law. The case law cited above is also no more relevant as in an identical case the Hon'ble President of Pakistan vide Order No.57/FTO/2020 dated 21.12.2020 dated 21.02.2020 has held that:

"Be that as it may the recommendations of the learned FTO are to the extent to "direct the Commissioner-IR Zone-I RTO-II Lahore to complete verification and dispose of refund applications Tax Years 2016 to 2019, after providing the Complainant opportunity of hearing, as per law, within 45 days"

The preliminary objection raised by the Deptt is thus, overruled.

8. During hearing AR reiterated the stance taken in the complaints. The only issue agitated is that amendment proceedings of assessment are being taken up through notice u/s 170(4) whereas scope of Section 170 is limited only to the verification of tax payments etc. and amendment proceedings cannot be taken up through Section 170 of the ITO, 2001. A number of decisions of higher appellate fora are available on the issue. In one such case the Hon'ble Lahore High Court (**reported as 2016 PTD 377**) has held as under:-

....."Needless to say that refund can be claimed on the basis of an assessment order. If an amount was paid in excess the chargeable tax, as determined in the assessment order, it can be claimed as refund under subsection_(1) of Section 170. Section 170 gives powers; only to see whether claimed refund is supported by evidence or not.

Examination of relevant provisions do not suggest that the Commissioner can look into correctness of Return, which has attained status of an assessment order. The assessment order (under section 120) is an order for all purposes of the Ordinance including issuance or rejection of refund under Section 170, therefore, Commissioner cannot go behind the assessment order, while exercising jurisdiction under Section 170."

The officer issued repeated notice u/s 170(4) calling information related to amendment of assessment. The AR agitated before Commissioner-IR Zone-I time and again but she did not respond.

9. Hon'ble Lahore High Court in PTR 328 of the 2009 has held that Commissioner can however proceed simultaneously under the provisions of Section 170(4) and 122(5A) of the ITO, 2001 and would dispose of the refund matter in accordance with law. The CIR has perhaps interpreted this judgment that issues relating to amendment would simultaneously conveyed through show cause notice u/s 170(4) and notice u/s 122(5A) of the ITO, 2001. Besides confronting the amendment issues through notice u/s 170(4) show

cause notice u/s 122(9) dated 25.09.2020 read with Section 122(5A) has also been issued which is misinterpretation of decision of Hon'ble High Court. Secondly notice u/s 122(9) is not relevant in this case because same has been based on original return filed for Tax Year 2018 on 22.11.2018 whereas same was revised on 15.05.2019 and was accepted u/s 120(3) of the ITO, 2001. The Deptt is insisting for compliance of both the show cause notices i.e. u/s 170 and 122(9) of the ITO, 2001. Both the said notices are unlawful.

10. The case was finally fixed for hearing for 31.03.2022 and Mr. Muhammad Abid, CIR Zone-I (who succeeded Mst. Mofiza Iqbal against whom complaint is filed) attended the proceedings and insisted that his predecessor had rightly processed the case. During hearing hot words were also exchanged between AR and the CIR for which both have filed written statements alleging each other.

FINDINGS:

11. After going through the detailed written as well as oral arguments by both sides following aspects are quite clear;

- i. The department lacks the clarity to dispose of the pending issues as per law and norms. Prolonged proceedings adversely impact the both, department as well as the taxpayer.
- ii. The complainant doesn't come clean either. On one hand he had agitated that the core reason for rejection of refund claim at the time of first rejection of refund claim u/s 170(4) (that tax deducted u/s 148 of the ITO, 2001 was final discharge of tax liability) was neither raised in the show cause notice nor opportunity of hearing was given. But in the instant complaint he is contesting the issuance of notice communicating the same reason and opportunity of being heard.
- iii. Departmental view that it is a case of FTR therefore nothing is overpaid to be refunded is a legal issue, subject to different interpretation of law and FTO office

is not a proper forum to decide such issues rather superior courts constitute the right fora. Facts of each individual case determine the application of law and legal precedents.

- iv. Mere issuance of a notice or a show cause itself doesn't constitute any maladministration unless some illegal order is passed as courts have held in a number of cases that mere issuance of show cause cannot be taken as infringement upon someone rights.
- v. Notices u/s 122(9) read with 122(5A) being related to assessment issues need not be discussed at this forum as any lapse on any account is the prerogative of appellate fora.

12. In view of above discussion the allegations levelled by the AR on the CIR i.e. "Malfunctioning and misuse of powers – double proceedings and duplication of notices – just to gulp down the lawful refund – deliberate withholding and non-payment of refund – defiance and contemptuous proceedings " appears to be premature. Prolonged proceedings u/s 170(4) despite issuance of multiple notices however constitutes maladministration in terms of section 2(3) (i) & (ii) of FTO Ordinance 2000.

13. However, this has been noticed with concern that the conduct of DR, during the course of proceedings, remained far from being exemplary. Being tax collectors, the FBR functionaries are expected to be polite, composed and compassionate while listening to the grievances of tax payers. The conduct of a civil servant ought not to be prejudicial to good order, service discipline or unbecoming of an officer and, a gentleman. The FBR functionaries must be all the time cognisant of the fact that "Courtesy" is one of the core values being pursued by FBR.

RECOMMENDATIONS:

14. FBR is required to:-

- (i) direct the CIR to dispose of the refund claim for TY 2018, in accordance with law and after giving proper

opportunity of being heard to the complainant and compliance to be reported in 30 days.

- (ii) take practical measures to inculcate the true essence of "Courtesy" in its functionaries and this should also be one of the cardinal yardsticks in performance evaluation of the officers/officials.

Approved for reporting

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

Dated: 27-05-2022

Akif /Satti

Certified to be True Copy

27/5/22
Registrar
FTO Secretariat
Islamabad