

**BEFORE  
THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**COMPLAINT NOS.2841 to 2850/KHI/IT/2022**

Dated: 29.06.2022\* R.O Karachi

**M/s. Martin Dow Ltd,**  
6<sup>th</sup> Floor, Nice Trade Orbit Building, Plot  
No. 44-A & B, Block-IV, PECHS,  
Shahrah-e-Faisal, Karachi.

... Complainant

**Versus**

The Secretary,  
Revenue Division,  
Islamabad.

... Respondent

Dealing Officer : Ms. Seema Shakil, Advisor  
Appraisal by : Muhammad Tanvir Akhtar, Advisor  
Authorized Representative : Mr. Ahsan Iqbal,  
Departmental Representative : Mr. Ali Hassan DR

**FINDINGS/RECOMMENDATIONS**

The above-mentioned complaints were filed against the Commissioner-IR, Enforcement-II, LTO, Karachi in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for non-issuance of refund. As facts of the case are similar, all ten complaints are disposed of through a single consolidated order.

2. The complainant is a private limited company engaged in manufacturing of pharmaceutical products. Returns of income have been filed with refund claims, as per year-wise details below;

S.No.	Tax Years	Refund claim in Million
1	2010	3.33/-
2	2012	19.44/-
3	2013	38.12/-
4	2016	197.03
5	2017	209.41
6	2018	215.06
7	2019	179.86
8	2020	159.5
9	2021	85.37

The complainant applied for refund on the basis of deemed assessment order under Section 120 and amended assessment order Under Section 122(5A) in the relevant years. Partial refunds were issued but full tax credit was not given. Department also made certain refund adjustments. Complainant applied for rectification with the request to allow full credit and also rectification of refund adjustment. Having failed to get the departmental response, the instant complaints are filed.

3. The complaint was referred to the Secretary, Revenue Division for comments in terms of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response, the Chief Commissioner-IR, LTO, Karachi submitted reply of CIR Enforcement-II, Karachi vide letter dated 15.07.2022. The department gave year-wise reply which is summarized below;

- 2010: - Refund application is filed late & is under process.
- 2012: - Partial refund has been issued to the extent of Rs.15.98(M) balance refund of Rs.3.4(M) has been rejected.
- 2013: - Partial refund of Rs.23(M), Rs.7.5(M) & 0.5(M) has been adjusted against demand of Tax Year 2015. Balance amount is pending due to short verification,
- 2015: - The order under Section 122(5A) has been passed which resulted in demand of Rs.24.7(M)
- 2016: - There's outstanding tax liability of Rs.8.2(M) after the amended order passed 22(5A).
- 2017: - Refund of Rs.134.86(M) was adjusted against demand of Tax Years 2016, 2019 & 2020. An amount of Rs.49(M) has been issued and balance is outstanding for want of verification.
- 2018: - Order has been amended and an amount of Rs.60(M) has been adjusted against advance tax liability of Tax Year 2023. Rectification is to be processed by audit for adjustment of minimum tax.
- 2019: - Application under Section 170 was processed and adjustments of refunds have been made. An amount of Rs.48.87(M) has been issued and Rs.47.78(M) has been adjusted against demand of Rs.24.3(M) & Rs.23.4(M) for the Tax Years 2015 & 2016 respectively.
- 2020: - An amount of Rs.34(M) has been issued and another 34(M) have been adjusted against advance tax liability of Tax Year 2022. Balance is pending for verification.
- 2021: - The complainant has claimed tax collected under Section 148 @ 5.5% to the tune of Rs.111,255,004/- as adjustable but through



finance Act, 2020 amendment in Section 148(7) ibid has been made and tax collected only at 1% & 2% have been made adjustable and rest minimum even for a manufacturer/industrial undertaking. Hence, if amount of Rs.111,255,004/- is deleted from adjustable taxes, then there will be tax payable rather than tax refundable.

The copy of para-wise comments was provided to the complainant and rejoinder has been filed vide letter dated 26.7.2022. It is pointed out that the applications for refund are still pending for balance amount No rejection order for refund has been received as is claimed by the department for Tax Year 2012. Credit of refund adjustments have not been allowed in the orders for 2015 & 2016 for which rectification applications were filed and are still pending. Rectification application for Tax Year 2018 is pending. Show cause was issued for adjustment of WPPF & WWF for the Tax Year 2019 against Income Tax refund. No adjustment has been made nor there is any response to our reply. Regarding Tax Year 2021, it is submitted that the department has commented in para 5 & 7 that the tax is deducted under Section 148 @ 5.5% and is a minimum tax. It is explained that the tax payer imports raw materials which are subject to deductions under Section 148 @ 1%, 2% & 5.5% depending on PCTs of raw materials. Tax payer is a well reputed industrial undertaking and is included in top 20 pharma companies and is subject to regulations of Drug Regulatory Authority of Pakistan. The application under Section 170 of the Income Tax Ordinance 2001 is still pending which needs disposal in accordance with law. Department has already given an assignment on iris subsequent to filing of complaint which shall be responded soon.

4. Both the parties were heard & record perused.

#### **FINDINGS:**

5. The year-wise reply of the department and rejoinder of complainant has exposed the haphazard manner in which the department is handling its affairs. No proper refund adjustments are passed which is giving rise

to the risk of loss to both the parties. In the absence of proper adjustment orders, any taxpayer can claim adjustment of the same amount in multiple returns or against any other outstanding liability. On the other hand, department can claim adjustment of same tax demand multiple times against refund of different years as is seen in the case of the complainant. As per department's own reply, the tax demands of 2015 & 2016 have been adjusted against refunds of Tax Years 2013, 2017 and then against 2019. On the other hand, income tax refund for Tax Year 2019 has been adjusted against demand of WPPF & WWF which is non-tax levy & cannot be adjusted against income tax refund. LTO Karachi is the flagship arm of FBR & it is very unfortunate that the largest taxpayers of the country who were assigned to its jurisdiction for best, efficient & professional handling are suffering due to such high handedness and maladministration of its officials. The entire ledger of the complainant needs to be properly scrutinized, the pending rectification applications & adjustments to be properly processed as per law & procedure.

#### **RECOMMENDATIONS:**

6. FBR to direct: -

- (i) commissioner-IR Audit-II Range-C LTO Karachi & Commissioner Enforcement-II LTO Karachi to process the pending rectification applications for all the years as per law & after providing opportunity of hearing;
- (ii) commissioner-IR Enforcement-II LTO Karachi to process refund applications & adjustments as per law & after providing opportunity of hearing; and
- (iii) report compliance within 60 days.

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

Dated: 2 : 9 : 2022

*Approved for reporting*