

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO.2842/ISB/IT/2023

Dated: 18.05.2023*HQ Islamabad

Mr. Babo Khan,
Shop No. 93-V, Ansari Market,
Gunj Mandi, Rawalpindi, Rawalpindi.

...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

...Respondent

Dealing Officer	:	Mr. Muhammad Naseer Butt, Advisor
Appraised by	:	Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	:	Sahibzada Siyar Ahmed, Advocate
Departmental Representative	:	Mr. Muhammad Hayat Khan, ADCIR, RTO, Rawalpindi

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance 2000 (FTO Ordinance). The complaint 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 Ombudsmen Institutional Reforms Act, 2013 (FOIR Act). Comments were received from RTO, Rawalpindi vide letter dated 05.06.2023, which were examined and placed on file.

2. Hearing notice u/s 9(2) of the FOIR Act, was issued to the parties for compliance on 19.05.2023. In response thereto Sahibzada Siyar Ahmed, Advocate (Complainant's Authorized Representative) appeared and argued the case. Mr. Muhammad Hayat Khan, ADCIR from RTO Rawalpindi attended as Departmental Representatives (DR) and presented department's stance on the issue. During hearing AR produced documents which

were examined and placed on file. Arguments were heard, record perused and complaint is disposed of as under.

3. The complainant is an individual deriving income from the sale of dry fruit and filed his tax return for tax year 2018 which was later on revised and declared income of Rs. 703,100/-. The complainant stated that based on contravention report sent by the Directorate of I&I, Islamabad the assessing officer-initiated amendment proceeding u/s 122(4) without formal selection of the case for audit by the Commissioner-IR. In response to notices u/s 122(9) read with section 111 of the Ordinance he submitted a detailed explanation supported by necessary evidence. The complainant further stated that the assessing officer being dissatisfied with the explanation, amended the deemed order and assessed income at Rs. 150,260,371/- charging income tax at Rs. 51,783,320/-.

4. The complainant felt aggrieved and filed an appeal before the Commissioner-IR (Appeals-III) who vide order dated 03.03.2022 annulled the order of the assessing officer. According to complainant, the assessing officer did not accept the order passed by the Commissioner-IR and instead of contesting the said order before the Appellate Tribunal Inland Revenue, Islamabad reinitiated amended proceedings. However, this time he issued notice u/s 122(1) of the Ordinance. The complainant requested to drop proceedings; however, the assessing officer declined the request and re-amended the order to charge tax of Rs. 39,348,669/- after assessing the income at Rs. 114,385,625/-. The complainant once again went in appeal before the CIR (Appeals-III) who again annulled the amended order of the assessing officer u/s 129 of the ordinance 24.02.2023.

5. The assessing officer once again did not contest the order of the CIR(Appeals-III) before the Appellate Tribunal Inland Revenue and initiated amendment proceedings for the third time issuing a notice u/s 122(9) of the Ordinance dated 29.04.2023 with the intention to impose an amount of tax at Rs. 114,385,625/-.

6. The complainant further stated instead of availing the remedy as available to the assessing officer/commissioner-IR under the law, the assessing officer has chosen the path to harass him through repeated amendments on the same issue without receiving any new information and imposing upon the unnecessary compliance costs through preferring repeated appeals. The complainant prays that to issue an order to stop the assessing officer from these unlawful proceedings which is beyond his jurisdiction or to take any other measure as deemed appropriate.

7. The department filed written comments wherein, they stated that no legal provision bars the department to initiate proceedings more than one time therefore contention of the taxpayer bears no weightage. Moreover, CIR (Appeals) annulled the order of assessing officer merely on legal grounds i.e. passing order u/s 122(1) instead of passing order u/s 122(4) of the ordinance. The department had two courses of actions available against the impugned order:

- a. To file appeal before ATIR against the order passed by CIR (Appeals) or;
- b. To initiate proceedings on the basis of deficiency highlighted by the CIR (Appeals) as the impugned order in its essence remanded back by the CIR (Appeals) that order was required to be passed by assessing officer under section 122(4) instead of section 122(1) of the Ordinance, 2001.

The department has no intention to harass the taxpayer rather it has been given opportunity of being heard through issuing notice u/s

122(9) of the ordinance and deciding case on merits. It is, therefore, submitted that no maladministration has been committed by the department the complainant may please be directed to submit the reply of notice u/s 122(9) of the Ordinance.

8. Perusal of complaint and record shows that the first appeal order was passed on 03.03.2022 by Commissioner-IR (Appeals-III) RTO Rawalpindi for Tax Year 2018 which was annulled with the following observations;


*"5. I have perused the impugned order, the grounds of appeal and considered arguments of the learned AR. It is observed that the proceedings to amend the deemed order were initiated through issuance of a notice on 09.02.2021 wherein it was stated that there is a differential of credit entries in bank account for Rs. 120,347,271/- and closing balance of Rs. 12,740,254, therefore an addition of Rs. 133,087,525/- is to be made. The appellant filed a comprehensive reply which is reproduced in the body of order. But instead of point wise rebutting the reply, another notice was issued on 24.05.2021 wherein the amount for addition was confronted Rs. 100,942,271/- In this notice, the breakup of six bank accounts had been given. The AR has provided bank statement regarding account in Askari Bank and Alfiah Bank. **These two accounts are in the name of Mr. Zafar Khan. This is positive evidence that these accounts are not maintained by the appellant. Therefore, attracting credit entries of these bank account to be appellant is out rightly illegal.** Another inference from this is that the information on the basis of which proceedings were initiated were not correct.*

"6. Without prejudice to the above factual inaccuracy, it is held that the amendment of the deemed order has been made, although the order does not mention it anywhere, by invoking Section 122(5) of the Income Tax Ordinance, 2001. Such action requires availability of an information which directly contradicted the declaration contained in the return and wealth statement. The department got information regarding credit entries in bank account. A prudent course was to get the case selected for audit u/s 177. This was not done. Instead, provisions of Section 122(5) of Income Tax Ordinance, 2001 were invoked, which is not to be maintainable. It is further noted with surprise that after invoking section 122(5) of the Income Tax Ordinance, 2001, the officer did not confirm himself to making addition u/s 111 for the alleged definite information, but went on to make addition u/s 174, which is permissible only when the case is being audited.

7. In view of above, it is abundantly clear that serious illegalities have been committed in passing the impugned order. Hence the impugned order is annulled."

9. It is observed that after the annulment of order the assessing officer reinitiated amended proceedings and order u/s 122(1) passed order on 09.06.2022 for Tax Year 2018 by charging tax of Rs. 39,348,669/- after assessing the income of Rs. 114,385,625/-. The complainant once again went in appeal before the Commissioner-IR (Appeals-III). The appeal order was passed on 24.02.2023 which again annulled the amendment order of the assessing officer with the following observations;

"6. I have perused the impugned order, the grounds of appeal and considered arguments of the AR of the appellant. It is observed that the deemed order u/s 120 has been amended by appellant through filing of revised return u/s 114(6)(c) of the income tax ordinance, 2001, for the tax year 2017. The amended assessment order u/s 122(3) was in field after revision of return but the assessing officer decided the case under section 122(1) read with section 111 of the Income Tax Ordinance, 2001. On this issue it is to be noted that the only provision u/s 122(4) was available with the officer to further amend the deemed order u/s 122(3) of the Income Tax Ordinance, 2001. Since, it is transpired that the officer did not apply mind to decide the case in the relevant provision of law. Hence the entire proceedings which resulted in the form of the impugned order are not found to be maintainable. The order is therefore, annulled on legal grounds, without adjudicating upon the remaining grounds of appeal."

 10. It has further observed that after the annulment order by CIR (Appeals-III) on 24.02.2023, the assessing officer once again initiated amendment proceedings on 29.04.2023 by issuing notice u/s 122(9) of the Ordinance to impose an amount of tax of Rs. 114,385,625/.

11. As stated above, this is the third round of amendment proceedings. Earlier two rounds of proceedings were annulled in the first appeal on legal grounds. The first amendment was made by invoking section 122(5) read with section 122(4). However, the CIR(Appeals) found that invoking section 122(5) in the circumstance was not maintainable. Besides, some factual inaccuracies were also observed in appeal. The second amendment was made u/s 122(1) which was also not approved by

the CIR (Appeals). The same amendment was therefore annulled on legal grounds without adjudicating upon the remaining grounds of appeal. It was also observed in appeal that bank account maintained in Askari bank in the name of Zafar khan was being wrongly added to the income of the complainant.

12. The above factual and legal mistakes made by the department have created undue hardship for the taxpayer who had to go through appeal process due to mistakes of the department. The perusal of the latest show cause notice issued on 29.04.2023 also shows that the bank account maintained in Askari bank has again been confronted which points to the fact that the facts of the case have not been properly examined by the tax department whereas clear observations of CIR (Appeals) are available on record which can provide a guideline for framing a better assessment order. It appears that the concerned officer has not examined facts of the case properly nor has he perused observations contained in the appeal order. It is further observed that his supervisory officers have weak internal controls and are not providing proper guidance to the assessment officer. So, the grave negligence on the part of the supervisory officers and tax officer is found arbitrary, unreasonable, unfair, oppressive which also shows incompetence, inefficiency and inaptitude in discharge of their duties and responsibilities.

FINDINGS:

13. Grave negligence on the part of the supervisor officers and tax officer is found arbitrary, unreasonable, unfair, oppressive which also shows incompetence, inefficiency and inaptitude in discharge of their duties and responsibilities. All these lapses constitute

maladministration in terms of section 2(3)(i)(b) and (ii) of the FTO Ordinance, 2000.

RECOMMENDATIONS:

14. FBR to

- (i) direct the CIR concerned to complete pending assessment proceedings under his own supervision in the light of facts of the case and directions of the CIR (Appeals) within 30 days; and
- (ii) report compliance by 45 days.


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

Dated: 5:7:2023

Approved for reporting


Director
Secretariat
Islamabad