

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.3086/SKT/IT/2022

Dated: 14.07.2022* R.O Sialkot

Mr. Tahir Arif,
Khadim Ali Road, Sialkot.

... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad

... Respondent

Dealing Officer	: Mr. Abdur Rehman Dogar, Advisor
Appraisal by	: Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	: Mr. Jawad Sarwar Butt, Advocate
Departmental Representatives	: Mr. Ghufraan Syed, DCIR

FINDINGS / RECOMMENDATIONS

The complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against delay in issuance of refund amounting to Rs.0.363 million for Tax Year 2020.

2. Precisely, the Complainant, an individual, filed return of income / statement of taxation claiming refund of Rs.0.363 million for Tax Year 2020. According to the AR, the Complainant also e-filed refund application on 23.02.2021, followed by reminder dated 25.08.2021. However, despite repeated efforts of the Complainant, the Deptt failed to pass order under Section 170(4) of the Income Tax Ordinance, 2001 (the Ordinance) within the stipulated time, 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 Commissioner-IR, Sialkot Zone, RTO Sialkot submitted parawise comments dated 28.07.2022. At the outset, preliminary objection of bar of jurisdiction under Section

9(2)(b) of the FTO Ordinance was raised on the ground that if an order under Section 170(4) of the Ordinance is not passed within sixty days of receipt of refund application, the matter becomes appealable and does not come within the purview of Hon'ble FTO. Reliance was placed on W.P No.599/2017, titled M/s. Shahzadi Polypropylene Industries Vs. Federation of Pakistan.

4. On merits, it was contended that the Complainant has claimed refund on account of tax deducted / collected under Section 236K of the Ordinance but has not provided registered transfer deeds of properties purchased. In this regard, a notice under Section 170(4) of the Ordinance requiring the Complainant to provide registered transfer deeds of properties purchased has been issued. As soon as requisite documents are received, the refund application will be disposed of accordingly.

5. The preliminary objection regarding bar of jurisdiction, raised under Section 9(2)(b) of the FTO Ordinance, is misconceived as the matter in the instant complaint does not pertain to the assessment of income or determination of tax liability but failure of the Deptt; to dispose of refund application, within stipulated time of sixty days. The President of Pakistan vide orders dated 04.02.2016 and 04.03.2016 in C.Nos.107/LHR/IT(67)/223/2014 and 88/LHR/IT(56)1877/2014, has held that notwithstanding Section 170(5) of the Ordinance, delay in disposal of refund application within the mandatory time limit prescribed under Section 170(4) of the Ordinance, is tantamount to maladministration. In the latest decisions, the Hon'ble President of Pakistan, vide order No. 133/FTO/2020 dated 28.06.2021 in C. No. 1357/LHR/IT/2020, while rejecting representation of the Deptt held that:-

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- “9. *Be that as it may, the recommendations of the learned Federal Tax Ombudsman are merely to the extent directing "the Commissioner-IR, Zone-I, RTO-II, Lahore to complete the verification and dispose of Complainant's refund applications for Tax Year 2019, after providing opportunity of hearing, as per law; within 45 days". The Agency has the lawful authority to decide the matter on its merits in accordance with the law on consideration of all aspects taking a holistic view regarding pending proceedings except the matter pending before any court of law. Suffice it to state that a statutory body in duty-bound under the law to perform its functions/duties in accordance with law and unless restrained to proceed in a matter by a competent forum go ahead as per mandate of law. There is, thus, no valid justification to interfere with the order of the learned Federal Tax Ombudsman. In such circumstance, this representation is liable to be rejected with these observations."*

Moreover, the Deptt before the President of Pakistan, assailed findings in C. No.329/KHI/ IT/2017 by placing reliance on the decision of Lahore High Court, Lahore in W.P 599/2017. While rejecting the representation of the Deptt vide Order No. 165/FTO/2017 dated 29.01.2018, the Hon'ble President observed as under:

"It is as clear as the crystal that FTO has made recommendations which are only to the extent to direct the Commissioner-IR to complete the verification process and settle refund claims for tax years 2014 and 2015, as per law and report compliance within 45 days thereafter. It is just a harmless order and only the Agency has to decide the issue as per law which was never denied in its written reply even by the Agency. The Agency has full powers to decide the issue either way, on merits and in accordance with provisions of law. Thus, the findings of the learned FTO are quite sustainable and the Agency has unnecessarily filed this representation. In such circumstances, this representation is liable to be rejected having no merits and recommendations of FTO are sustainable and maintainable being unexceptional in nature in the eyes of law."

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It is settled by the Hon'ble Superior Courts that money of a taxpayer outstanding with the Deptt, is trust money which should be refunded expeditiously, by using good conscience. The preliminary objection regarding bar of jurisdiction having no force is, thus, overruled.

6. Both the parties heard and record perused.

7. Admittedly, the Complainant e-filed refund application for Tax Year 2020 on 23.02.2021. The Deptt: was required to have disposed of the refund application within 60 days of its filing, in terms of Section 170(4) of the Ordinance. However, till filing of the instant complaint, the Deptt failed to even respond to the Complainant's correspondence. Thus, delay in disposal of refund application for Tax Year 2020, within the stipulated time under Section 170(4) of the Ordinance is evident.

FINDINGS:

8. Inordinate delay in disposal of refund application for Tax Year 2020 is tantamount to maladministration in terms of Section 2(3)(ii) of the FTO Ordinance.

RECOMMENDATIONS:

9. FBR to direct-
- (i) the Commissioner-IR, Sialkot Zone, RTO Sialkot to dispose of Complainant's refund application expeditiously for Tax Year 2020, as per law and after giving proper hearing; and
 - (ii) report compliance within 45 days.
10. The Complainant is directed to cooperate in the process with the authorities.

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

Dated: 25.8.2022

Approved for reporting