

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO.3168/KHI/IT/2022

Dated: 18.07.2022* R.O, Karachi.

Syed Mutahir Hussain,
A-130 (ST-13/1), Sector-6/B,
North Karachi Industrial Area,
Karachi.

... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer	:	Ms. Seema Shakil, Advisor
Appraised by	:	Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	:	Mr. Moaz Mehmood, Advocate
Departmental Representative	:	Mr. Saleem-u-Rahman. (ADC)

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint has been filed against the Commissioner-IR, Audit-II CTO Karachi in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), for passing harsh arbitrary order under Section 122(5A) & creating illegal demand.

2. The Complainant is an individual, registered as importer / exporter. Return of income for the Tax Year 2016 was filed alongwith wealth statement, declaring receipt of gift worth Rs. 16.3(M) from wife. Department initiated proceedings under Section 122 (5A) for explanation of source of gift. In response, the complainant provided copy of wealth statement of wife, an existing taxpayer. From total gift received, explanation regarding 8.2 (M) was accepted. Whereas the value of receipt of gift of car & prize bonds, totaling 8.1 (M) was added to income as unexplained under Section 39 read with 111 of the Income Tax Ordinance 2001, creating demand of Rs. 2.19(M). As the

department rejected explanation regarding receipt of partial gift from wife, duly declared in her wealth statement, the instant complaint is 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, CTO, Karachi submitted reply of CIR Audit-II, CTO Karachi vide letter dated 28.7.2022. At the outset, issue of bar on jurisdiction has been raised in terms with the provisions of Section 9(2)(b) of the FTO Ordinance 2000, on the ground that issue involved is assessment of income determination of tax liability for which legal remedy of appeal is available. On merit it is contended that the order passed under Section 122(5A) of the Income Tax Ordinance, 2001 is as per law and in accordance to the Income Tax Ordinance, 2001. The taxpayer has complained that additions in the assessment order were made merely on account of non-furnishing of the gift deed and without providing any legal support for the actions/ findings. It is apprised that several opportunities were provided to the taxpayer to furnish evidence in support of his claim of gift including gift deed. However, taxpayer failed to furnish any corroborative evidence. Therefore, adverse inference was drawn and additions were made as per law. That the additions were made as per law and in terms of Section 111(1)(d) read with Section 39 of the Income Tax Ordinance, 2001. That no concrete documentary evidence in respect of title/ownership of assets so transferred was provided by the taxpayer. That the taxpayer was requested to furnish documentary evidence including gift deed to support his claim. However, taxpayer failed and said amount was added to the income of the taxpayer as per law.

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In response, the complainant averred that all requisite details & evidence were provided to the officer. This statement is supported by the fact that partial explanation of transfer of assets from wife's wealth, i.e. receivables of Rs. 8.2(M) were accepted by him. However, regarding the balance amount of Rs. 8.1(M) in the form of a motor vehicle & prize bonds were discarded with the observation that gift deed has not been produced. Complainant also provided copy of wealth statement of his wife for the Tax Year 2016 as well as the preceding year of 2015, whereby the amount of Rs. 16.3(M) was appearing in wealth statement of 2015 & shown as gift to husband in Tax Year 2016. The concerned officer was asked about the reason for rejection of partial claim. He insisted that the complainant was asked to provide the details, i.e. make & model of car which was not provided. However, perusal of record shows that registration number was provided and is also incorporated in the assessment order.

4. Both the parties were heard & record perused.

FINDINGS:

5. (i) The abjection regarding bar on jurisdiction is not valid. The issue in hand is not of assessment of income and determination of tax liability. Maladministration is caused by ignoring the explanations & passing the order with the remarks that no documentary evidence was provided. Whereas, the wealth statements of wife were not only provided but also acknowledged by the officer in his order. The assets incorporated in the wealth were gifted by wife and complainant provided copy of wealth statement as an existing taxpayer in support of her possession and transfer of assets. The officer considered gift deed which is a self-documented piece of paper as sufficient documentary evidence. Whereas discarded the evidence in the form of legal document of donor's tax record which tantamounts to

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maladministration. Therefore, the objection is not valid & accordingly over ruled.

(ii) Addition of Rs. 8.1(M) has been made under Section 39 of the Income Tax Ordinance 2001, being income from other sources after rejecting the claim of gift by complainant with following observations;

"The taxpayer was requested to provide complete documentary evidence of gift received at Rs. 16,304,555/-, however, taxpayer submitted documentary evidence of only receivables at Rs. 8,200,000/- duly reflected in the gift deed furnished by the taxpayer. Contention of the taxpayer regarding balance amount of Rs. 8,104,555/- is liable to be rejected because of fact that the gift deed furnished by the taxpayer is completely silent about prize bonds and vehicles. Mere reconciliation on plain paper does not prove the validity and genuineness of the transaction so claimed. The same is therefore rejected and hence adverse inference is drawn on this count."

The officer has accepted declaration of gift only to the extent of Rs. 8.2(M) which is a receivable amount. Whereas other two assets worth Rs. 8.1(M) have been rejected simply on the basis of fact that there is no gift deed. The description and vehicles No were provided and also incorporated in the order. It is beyond comprehension as to what documentary evidence was requested other than the duly filed wealth statements of donor for the current as well as preceding year, whereby she has declared these in her wealth & also shown as gift in subsequent year. In an earlier judgment of Hon'ble FTO on complaint No.1028/LHR/2002 reported 2003 PTD 1639, it is held,

"Mr. Rana passed the money to his daughter through a gift deed. The proper course, therefore, was to, enquire into the sources of Mr. Rana, who gifted Rs. 800,000 and Rs. 400,000 to his daughter and if that explanation was not found satisfactory, the amounts could be taxed in his hands as income from unexplained sources. The taxability of these amounts as deemed income in the hands of the complainant was in any case uncalled for, unwarranted the without and justification. The reopening of the assessment for the year 1997-98 of the complainant was, therefore, obviously not on valid grounds."

Therefore, the addition of gift as income from other sources in the hands of recipient is not valid as the donor is an existing taxpayer & have duly declared the subject assets in her wealth statement. The discarding of partial claim of gift simply on the basis of non-mentioning in gift deed tantamounts to maladministration in terms of Section 2(3)(i)(a)(b)&(ii) of the FTO Ordinance.

RECOMMENDATIONS:

6. FBR to: -

- (i) direct the Commissioner-IR Audit-II, CTO Karachi to revisit the order under Section 122A and pass fresh order on the basis of evidence produced by the complainant in accordance with law, after providing proper opportunity of hearing; and
- (ii) report compliance report within 45 days

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

Dated: 02-09- 2022