

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO.3219/KHI/IT/2022

Dated: 18.07.2022* R.O, Karachi.

Mrs. Robina Mukhtar,
M/s. Prince Weaving Factory,
46-A/II, 4th Sunset Street, Phase-II Ext,
DHA,
Karachi.

...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

...Respondent

Dealing Officer	:	Ms. Seema Shakil, Advisor
Appraised by	:	Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	:	Mrs. Robina Mukhtar, Self
Departmental Representative	:	Mr. Saad Ali Hassain. (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 arbitrary, harsh ex-parte order under Section 122(1) for Tax Year 2016.

2. The Complainant is an individual engaged in textile manufacturing business. The case was selected by the Board for audit under Section 214C, for the Tax Year 2016. Final show cause notice under Section 122(9) was issued on 20.6.2022 for compliance on 27.6.2022. Complainant applied for extension which was rejected & ex-parte order was passed creating demand of Rs. 2.7(M). All the relevant details were filed from time to time during the course of proceedings for audit as well as withholding audit under Section 161 but order was framed without considering the details available on record, hence this complaint.

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 29.7.2022. It is contended that the case of the complainant was selected under Section 214C of the Income Tax Ordinance, 2001. Subsequently, the ACIR issued notice to produce records for the purpose of audit but the taxpayer didn't fulfill its statutory duty. However, in order to provide another opportunity to the taxpayer, audit report under Section 177(6) was issued to the taxpayer before show cause notice dated 18.4.2022 for due date dated 28.4.2022. The taxpayer failed to make any compliance. Having left with no option but to make assessment as provided under the law, the unit officer issue notice under Section 121(I)(d) of the Ordinance dated 20.6.2022. In response, the taxpayer sought adjournment through IRIS on 27.6.2022. The same was regretted on the grounds that the audit proceedings for the Tax Year 2016 would have been barred by time limitation on 30.6.2022. The order was passed under Section 121(1) on the basis of failure to provide explanation on the audit report under Section 177(6) dated 18.4.2022 and show cause notice dated 20.6.2022. The jurisdiction of FTO is also contested on the ground that the complainant has legal remedy of appeal available to her under the law & there is no maladministration involved in this case.

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4. During hearing, complainant averred that she is an old lady and is a compliant taxpayer. She is being excessively burdened with multiple notices for audit of her withholding affairs for different years. Her withholding audit was initiated for 2016 & she was asked to produce all the documents of her purchases & expenses which she promptly provided & paid her short withholding tax as pointed out by the department. Withholding audit proceedings were also initiated for the Tax Years 2017, 2018, 2020 & she has been providing the relevant

details from time to time. It is not right to say that she failed to provide the documents. All documents were provided through letter dated Nov 3rd 2021 as asked for by notice under Section 177(1) and details of all purchases & expenses were not only filed during 161 proceedings but duly examined by the officer as per his own order. It is thus not only unfair to allege that no compliance is made but arbitrary to add the purchases and expenses to income as being unverifiable.

5. Both the parties were heard & record perused.

FINDINGS:

6. Objection regarding bar on jurisdiction is not valid in view of facts of the case. The issue is not assessment of income and determination of tax liability. Complaint is filed against unfair treatment meted out to complainant by passing harsh ex-parte order when the complainant is regularly making compliance to departmental notices issued for multiple years from time to time & in spite of filing all relevant details, the order has been passed without considering the details and documents already filed by the complainant. The objection is therefore overruled.

7. Complainant's case was selected for audit in 2018 and the order has been passed on 28th June 2022, i.e. when the case was getting time barred on 30.6.2022. it is a very unfortunate departmental practice to sleep over the audit cases till the last minute & summarily dispose them off when they are getting time barred. This results not only in prolonged agony for Tax Payers but also does not result in any meaningful audit as these cases are disposed off mostly either ex-parte or without examining any details & documents. In view of hardships faced, many petitions were filed by taxpayers for the Tax Year 2015. Hon'ble Lahore High Court directed to finalize the cases before 30th June of the year of selection which was later on relaxed to 31st December in ICAs 1263/2017. Subsequently the learned Supreme Court of Pakistan on

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CPLA No. 2370-L filed by the department, vide order dated 13.3.2018, Para 22 held,

"we are also convinced that a general timeframe is necessary to be put in place in order to ensure that the tool of audit is not abused or misused to pester, torment or harass the Taxpayer on account of reasons not attributable to him. We, therefore find that the timeframe mentioned in the policy guidelines namely completion of the audit within the same financial year in which a taxpayer is selected for audit is fair and reasonable. It must as far as possible be adhered to. However, if delays are inevitable, beyond the control of the department and do not occur on account of any act or omission on the part of the taxation officers and happen on account of litigation and grant of stay orders, the Audit Officer may seek extension of time from the Federal Board of Revenue for completion of the audit after recording reasons in writing for seeking such extension explaining reasons for his inability to complete the audit within the stipulated time. The Board may on consideration of such reasons grant reasonable extension in order to enable completion of the audit. It is however emphasized that extension so granted should be supported by due application of mind and appropriate reasoning on the part of the Board. It should not be granted casually, repeatedly and as a matter of routine. Adherence to guidelines and time frames would enhance confidence of the taxpayers in the system and at the same time act as check on lethargy and inefficiency on the part of the departmental functionaries."

Based on above judgment, FBR issued guidelines to its field formations, vide letter C. No.1(1)Chief(Legal-I) 2018 dated 13th June 2018. The relevant extract vide Para (e) of the letter is reproduced below;

Time Limitations;

"On the question of putting a bar by the lower forato complete audit within a stipulated time frame and the department's objection against putting such a bar, it has been held by the Court that questions of completion time of audit cannot be left open ended and that the audit must be completed within a reasonable timeframe as spelt out explicitly in the Audit Policy 2015. On the issue of ability of the department to conduct quality audit within short time period the Court has held that taxpayers cannot be burdened with the ordeal of prolonged audit and that issue and problem regarding delays in conducting audit primarily are due to capacity and shortage of trained audit officers. The Board is expected to enhance the qualitative as well as quantitative capacity of the audit teams.

In the final analysis, it has been held that "general timeframe is necessary" so as to avoid abuse, misuse and hardship to the taxpayer. Timeframe of completion of audit of a tax year in the same financial year in which it is selected for audit as provided in the Audit Policy is fair and reasonable. However, in case of any eventuality beyond the control of the department, the timeframe can be extended by the Board through a reasoned order on a written request for extension explaining reasons for inability to complete the audit within the

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stipulated time. The extension so granted by the Board should not be casual, repeated as matter of routine."

It is unfortunate that neither the field formation are following the judgment of Hon'ble Supreme Court nor the guidelines issued by FBR. The instant complaint is a classic example of abuse, misuse and hardship pointed out by the Hon'ble Supreme Court of Pakistan on the basis of following facts.

- (i) *The case was selected for audit in 2018*
- (ii) *As per order, the first notice was issued in Nov' 2021, i.e. three years after selection.*
- (iii) *The complainant produced copy of reply vide letter dated 3.11.2021, whereby the requisite details were filed.*
- (iv) *Details & documents regarding all purchases & expenses were also furnished to the department during proceedings for monitoring of withholding taxes under Section 161. This fact is acknowledged by the department in its own order under Section 161 and it is after complete verification of all, certain instances of default were pointed out on which tax was charged & paid by the complainant. This clearly proves that all purchases & expenses were examined by the department. These proceedings though conducted by enforcement officer but audit officer should also be aware of these facts as the record maintained in e-folder of IRIS.*
- (v) *Audit report was issued vide letter dated 18.4.2022 for compliance on 25.4.2022 which was uploaded on IRIS & not sent through post. Complainant was repeatedly been receiving notices from the department for different years during this period & also making compliance. As notice not served on her through post, she remained unaware. In view of non-compliance a show cause notice was issued on 20.6.2022, i.e almost 2 months after audit report & only 10 days before the expiration of time limit of Tax Year 2016. Understandably, only 7 days were given for compliance which were further reduced to only 2-3days as service of notice also took some time. The complainant applied for extension of 15 days to provide reasonable opportunity as is held by superior courts. However, in view of expiring time limitation, the request was regretted vide letter dated 28.6.2022 & the exparte order passed on the same date.*
- (vi) *Department furnished the plea in para wise comments that if compliance was already made then why the complainant applied for extension of time. Whereas complainant needed time to furnish reply to show cause relevant to a 6-year-old tax record which is only fair & according to norms of natural justice.*
- (vii) *Before issuing show cause & even when finalizing the order, department failed to examine its own record whereby complete details of purchases & expenses were already provided by the complainant, duly acknowledged by another officer in his order. The two additions made are 20% of total purchases & 20% of direct expenses under Section 174(2) due to non-provision of details. Needless to mention*

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that all these details were also provided earlier during audit proceedings under Section 177 vide letter dated 3.11.2021.

8. Hon'ble Supreme Court held in its referred judgment that a time frame is necessary for completion of audit. In pursuance, Board issued guidelines for audit of Tax Year 2015. However, these are broader principles of natural justice & the department has clearly violated the guidelines, which has resulted not only injury to complainant but no meaningful audit is resulted. The passing of harsh, arbitrary ex-parte order without considering the details on record tantamount to maladministration in terms of Section 2(3)(i)(a)(b)&(ii) of the FTO Ordinance.

RECOMMENDATIONS:

9. FBR to: -

- (i) direct the Commissioner-IR Audit-II, CTO Karachi to revisit the order under Section 122A of the Income Tax Ordinance 2001 & pass fresh order after affording proper opportunity of hearing strictly in accordance with law; and
- (ii) report compliance report within 45 days

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

Dated: 16.09.2022

Approved for reporting