BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

Complaint No.3567/SKT/IT/2022
Dated: 11.08.2022* R.O Sialkot

Mr. Pervaiz Akhtar,
C/o Glaring Sports Pvt. Ltd.,
Daska 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. Waseem Arshad, ITP
Departmental Representatives	:	Mr. Ghufran 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.0.218 million for Tax Year 2021.

2. Precisely, the Complainant filed return of income / statement of taxation claiming refund of Rs.0.218 million for Tax Year 2021. According to the AR, the Complainant also e-filed refund application dated 15.03.2022, followed by reminder. 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,

*Date of registration in FTO Sectt.

RTO Sialkot submitted parawise comments dated 23.08.2022. 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 had filed return of income for Tax Year 2021 on 29.12.2021, wherein refund has been claimed at Rs.0.218 million. However, while examining genuineness of claim and admissibility of refund, various deficiencies/discrepancies have been noticed which need necessary corrective action. Prima-facie, refund cannot be issued until fulfillment of legal requirement in view or following violations or law.

a) The return filed by the Complainant is not complete as the Complainant has not filled columns relating to sales, cost of sales and gross profit etc. The Complainant has not filed the documents required to be flied under Section 114(2) of the Ordinance. The Complainant is required to file the necessary documents.

b) The return filed by the Complainant for the year under consideration is incomplete as the same has been filed without proper filling of portion pertaining to business assets / equity/ liabilities.

c) The tax deduction claimed under Section 148 @ 5.5% is minimum tax under the provisions of section 148(7) read with SRO 715 dated 12.08.2020. Therefore, the assessment deemed to have been made under Section 120 of the Ordinance is erroneous and warrants amendment under Section 122(5A) of the Ordinance. However, there is bar of jurisdiction for initiation or corrective action after assumption of jurisdiction by the Honorable F.T.O. As soon as, the recommendations of the Honorable F.T.O are received, the admissible refund worked out after making necessary amendments shall be issued without any delay. Since Complainant has not discharged its legal obligations

regarding proper filing of return of income, hence no maladministration is involved in the instant case

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:-

> ***"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."***

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. The Complainant filed re-joinder to the para-wise comments, wherein it was stated that:

a) The Tax payer is pure manufacturer cum exporter and tax on export sale realized is being deducted by the bank u/s 154 which is the final discharge of tax liability of the tax payer u/s 154(4).

b) The section 169(3) envisages that where income derived by a person is subject to final taxation under the provision of section 169(1); the assessment shall be treated to have been made u/s 120.

c) After the amendment of withdrawal of statement u/s 115(4) , has not changed the status of exporter in tax law. In fact the format of return was merged after this amendment but status of exporter remained the same.

d) The section 114(2)(b) require the tax payer to fill in relevant columns to state the relevant particulars or information and not the whole columns of tax return; which is otherwise illogical.

e) The department's opinion that all columns of sales purchases cost of sales or expense columns are to be filled is illogical and illegal. Because law is very clear on this issue that tax u/s 154 shall be deducted from export sales realized by the bank which shall be the final discharge of its tax liability; irrespective of the

actual sales/cost of sales/expenses etc. These columns are irrelevant for exporter and need not be filled in.

f) The audited accounts are also not required to be attached with return for exporter. In fact this requirement has been added by Finance Act 2022 u/s 111(4A) (applicable from tax year 2023). That too is applicable where the income shown in tax return exceed the imputable income worked out on the basis of tax deducted. Such provision cannot be applied retrospectively.

g) The circular No.14 of 2002 has also clarified the requirement of Rule 30 of the Income Tax Rules which is not applicable on exporter being covered under final discharge of tax liability.

He further added that:

a) The tax payer is manufacturer cum exporter and imports raw material for manufacture of exportable goods. Since inception of this law the tax paid on import of raw material by industrial undertaking for its own use has been adjustable. It was Finance Act 2020 when a vague amendment was made in section 148. And there was huge hue and cry on this issue and ultimately corrective amendment was made in Finance Act 2022. We suggest your honour to recommend FBR that such corrective amendments should have been made retrospectively. FBR has already confessed this omission in para 19 of the circular 15 of 2022.

b) The import by commercial importer has been intermingled with import by the industrial undertaking for own consumption.

c) It is trite law that any tax paid on import of raw material for own consumption was and is always adjustable and refund on such import cannot be denied by any stretch of law.

d) That no independent income is accrued on import of such raw material; hence its status of minimum tax is against the basic right of the exporter.

e) The SRO 715 was issued on August 2020 and it is not possible for an exporter to wait for months from FBR to apply the applications which ultimately results in huge demurrage and delay in execution of orders in hand.

7. Both the parties heard and record perused.

8. During hearing, both the AR and DR reiterated the stance taken in the complaint and parawise comments. Regarding non-filling of various columns of return filed under Section 114(2) of the Ordinance, it is stated by the AR that the objection of the Deptt. is not well founded because only the format of statement under Section 115(4) of the Ordinance has been merged with the return

of total income to be filed under Section 114(2) of the Ordinance and the law relating to PTR and normal income remains unchanged. Hence, if a taxpayer is having income under PTR, only the relevant columns relating to said income are to be filled into. Other columns relating to normal income tax return are not applicable to the PTR income. Arguments put forth by both the parties are heard. A person having PTR income only has to fill in the relevant columns relating to PTR and similarly as person having normal business income (other than PTR) has to fill in the columns of return relating to business income only. So far as issue of treating deduction of tax claimed under Section 148 of the Ordinance @ 5.5% as minimum tax under the provisions of Section 148(7) of the Ordinance read with SRO 715 dated 12.08.2020 is concerned, the contention of Complainant is correct that said provisions being discriminatory has been withdrawn through Circular No. 15 dated 21.07.2022, hence the FBR needs to look into its applicability retrospectively.

9. Admittedly, the Complainant e-filed refund application dated 15.03.2022, followed by reminder for Tax Year 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 2021, within the stipulated time under Section 170(4) of the Ordinance is evident.

FINDINGS:

10. Inordinate delay in disposal of refund application for Tax Year 2021 is tantamount to maladministration in terms of Section 2(3)(ii) of the FTO Ordinance.

RECOMMENDATIONS:

11. FBR to-

(i) look into the reasonability of application of Circular No.15 dated 21.07.2022 retrospectively;

(ii) direct the Commissioner-IR, Sialkot Zone, RTO Sialkot to dispose of Complainant's refund application for Tax Year 2021 as per law and after giving proper hearing; and

(iii) report compliance within 45 days.

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

Dated: 03.10.2022

Approved for reporting