BEFORE THE FEDERAL TAX OMBUDSMAN ISLAMABAD

COMPLAINT NO.3629/KHI/IT/2022

Dated: 15.08.20221 R.O. Karachi

Mr. Kamal Danish,
M/s Omni Aviation (Pvt) Ltd,
C-L 5/4, State Life Building No.10,
Abdullah Haroon Road, Karachi.

...Complainant

Versus

The Secretary, Revenue Division, Islamabad

....Respondent

Dealing Officer
Appraisal Officer
Authorized Representative

: Mr. Badruddin Ahmad Quraishi Advisor : Mr. Muhammad Tanvir Akhtar, Advisor

: Mr. Ramzan Awan

Departmental Representative

: Mr. Mansoor Wisal, DCIR, CTO Karachi

FINDINGS/RECOMMENDATIONS

The complaint was filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against issuance of illegal orders on same issue by two different Assessing Officers creating tax demand instead of issuance of refund order under Section 170(4) of Income Tax Ordinance (the Ordinance) for Tax year 2016.

2. Briefly, the Complainant filed income tax return under Section 114(1) of the Income Tax Ordinance (the Ordinance) for Tax Year 2016 and adjusted tax payable against tax refund claimed for Tax year 2014. The DCIR Unit-9, Range-C, Audit-III, CTO Karachi issued rectification order under section 221 of the Ordinance rejecting adjustment of undetermined refund and created tax liability of Rs. 1.316 million on 23.05.2022. Thereafter ADCIR, Range C,





Audit-III has also issued order under section 122(5A) of the Ordinance on same issue on 27.06.2022 for same Tax year 2016, creating the same tax liability. Thus, there were two orders on the same issue for same tax year in field, each creating tax demand and rejecting adjustment of undetermined refund of Tax year 2014. Further, no refund order under section 170(4) of the ordinance for Tax year 2014 was issued despite refund application pending since 28.07.2015; hence this complaint.

3. The complaint was referred to the Secretary, Revenue Division for comments, in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response, the CCIR, CTO Karachi vide letter dated 30.08.2022 submitted comments of CIR, Audit-III, CTO Karachi whereby the CIR on his own, realizing the mistake of duplicate proceedings on same issue, vacated the order of DCIR dated 23.05.2022 vide revision order dated 29.08.2022 issued under Section 122A of the Ordinance. On the issue of refund application pending since 28.07.2015 for Tax year 2014; the CIR Enforcement-II, CTO Karachi vide letter dated 05.09.2022 submitted that the refund order for Tax year 2014 had been issued under Section 170(4) of the Ordinance on 05.09.2022 rejecting the claim of refund.



- Both the parties heard and record perused.
- 5. It is commendable that when the Commissioner Audit-III, CTO Karachi, came to know the mistake of duplicate proceedings on same issue for same tax year 2016; he on his own, vacated the order of DCIR dated 23.05.2022 vide revision order dated 29.08.2022 issued under Section 122A of the Ordinance. Hence an illegal infirmity of duplicate assessment proceedings was corrected.

6. However, perusal of refund order dated 05.09.2022 for Tax year 2014 issued under section 170(4) of the Ordinance by DCIR, unit 9, Enforcement -II, CTO Karachi reveals that the claim of refund was rejected summarily without issuing even a single notice and without providing any opportunity to the complainant. The complainant e-filed refund application for Tax year 2014 on 28.07.2015. In terms of Section 170(4) of the Ordinance, the Deptt was required to have disposed refund application, either way within sixty days of filing, after providing opportunity of hearing. It is however, observed that the Deptt slept over the matter for seven years. The complainant on the other hand, after having failed to get his refunds issued, resorted to claiming of its adjustment in his return in subsequent Tax year 2016. But, the Deptt penalized the complainant for not being able to produce refund order which was in fact to be processed by the Deptt itself. Thus, in this case, the Deptt not only rejected the refund adjustment through rectification order for Tax year 2016 but also summarily rejected the claim of refund vide order dated 05.09.2022 without providing any opportunity.



FINDINGS:

7. Neglect, incompetence, unprofessional attitude, inefficiency and ineptitude in passing of an adverse order dated 05.09.2022 after seven years rejecting the claim of refund without providing adequate and fair opportunity is contrary to law & procedure, principle of natural justice and the trite maxim of *audialtermpartem*, hence, unlawful *per se* and is tantamount to maladministration in terms of Section 2(3)(i)(a) & (ii) of the FTO Ordinance.

RECOMMENDATIONS:

- FBR to direct-
 - (i) the Commissioner-R, Enforcement-II, CTO Karachi to revisit the order dated 05.09.2022 for Tax Year 2016 in terms of Section 122A of the Ordinance and dispose of claim of refund on its merit as per law, after affording proper opportunity of hearing to the Complainant;
 - (ii) Call for explanation of DCIR, unit 9, Enforcement -II, CTO Karachi for unprofessional attitude and inefficiency in passing of an adverse order dated 05.09.2022 after seven years rejecting the claim of refund without providing even a single opportunity for hearing;
 - (iii) Ensure that FBR's instructions issued vide letter No. 4(1 0)Rev.Bud/2020-vol-II/17297-12dated 04.02.2022 regarding expeditious disposal of refund cases, are adhered to in letter and spirit; and
 - (iv) Report compliance within 45 days

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

Dated: 14: 10: 2022

Approved for reporting

Certified to be True Copy

Registration FTO Secretariat