

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO.3666/SKT/IT/2022

Dated: 17.08.2022*RO, Sialkot

Mr. Nauman Ahmad Dodhy,
House No 127/6A, Haider Road,
Sialkot.

... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer	:	Mr. Abdur Rehman Dogar, Advisor
Appraised by	:	Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	:	Mr. Akram Raza, Advocate
Departmental Representative	:	Mr. Ghufraan Syed, DCIR

FINDINGS/RECOMMENDATIONS

The complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against rejection of refund claim by passing order under Section 170(4) of the Income Tax Ordinance, 2001 (the Ordinance) for Tax Year 2017 and initiation of defiance proceedings.

2. Brief facts of the case are that the Complainant filed a complaint bearing C.No.1184/SKT/IT/2022 against non-issuance of refund amounting to Rs.0.565 million for Tax Year 2017 which was decided by the Hon'ble FTO through its Order dated 10.06.2022 with the following recommendations: -

"9. FBR to-

- (i) direct the Commissioner-IR, Sialkot Zone, RTO Sialkot to dispose of the Complainant's refund application for Tax Year 2017, as per law and after giving proper hearing; and
- (ii) report compliance within 45 days".

On the above Hon'ble FTO's recommendations, the Department (Deptt) has passed the Order dated 27.07.2022 under Section 170(4) of the Ordinance which resulted in creation of refund

amounting to Rs.0.012 million and rest of the refund claim was rejected on the following grounds: -

"The claim is rejected because as per sale deed all the payment for purchase of property including payment of 236K has been made by Ms. Shaheen Nauman on behalf of Mr. Fahad Dodhy who was minor at the time of execution of agreement, whereas taxpayer Mr. Nouman Ahmad Dodhy sold the same property on behalf of Brig. Khan Azam Khursheed vide power of attorney dated 25.11.2006."

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 30.08.2022. 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 FTO as per Section 9(2)(b) of the FTO Ordinance.

4. On merits, it was contended that in the light of directions of the Hon'ble FTO contained in Order dated 10.06.2022, the refund application has been disposed of and Order under section 170(4) of the Ordinance dated 27.07.2022 has been passed which resulted in creation of refund amounting to Rs.0.012 million. Hence, the recommendations of the Hon'ble FTO have been implemented by the Deptt. However, Complainant may file appeal before the Commissioner-IR (Appeals) against the said order, if he has any grievance.

5. The preliminary objection regarding bar of jurisdiction, raised under Section 9(2)(b) of the FTO Ordinance is misconceived as the issue under reference is that while passing the order under Section 170(4) of the Ordinance, the Assessing Officer has failed to

implement the recommendations given in the earlier order by the FTO in C.No.1184/GWL/IT/2022, wherein it was clearly mentioned

“Taxation of minor as detailed u/s 91 of Income Tax Ordinance, 2001 is applicable here. The instant modality of transfer i.e. first obtaining Power of attorney and then as attorney subsequent transfer in the name of minor normally involves understatement of actual price of the asset in question but once again it is an audit issue and cannot be taken up during refund proceedings.

Secondly section 91 is so clear that it cannot be misused for any tricks. It reads;

91. “Income of a minor child. -

- (1) Any income of a minor child for a tax year chargeable under the head "Income from Business" shall be chargeable to tax as the income of the parent of the child with the highest taxable income for that year.”

In the instant case the department has neither examined the case in the light of section 91, as was ordained by FTO through an earlier order in Complaint No.1184/SKT/IT/2022, dated 27th July 2022, thus case has been disposed of without observing the relevant legal provisions.

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6. Both the parties heard and record perused.

7. The perusal of order passed under Section 170(4) of the Ordinance in compliance to recommendations of Hon'ble FTO in C.No.1184/GWL/IT/2022 reveals that directions ***“taxation of minor as detailed under Section 91 of the Ordinance is applicable”*** have been ignored and order under Section 170(4) of the Ordinance has been passed in complete disregard to the said provisions.

FINDINGS:

8. Passing of an arbitrary order, based on irrelevant grounds, involving unjust exercise of powers and in complete disregard to the

provisions of Section 91 of the Ordinance and explicit recommendations of Hon'ble FTO is tantamount to maladministration in terms of Section 2(3)(i)(b)(c)(d) and (ii) of the FTO Ordinance.

RECOMMENDATIONS:

9. FBR to direct the Commissioner-IR, Sialkot Zone, RTO Sialkot-
- (i) to re-call the Order dated 27.07.2022 by invoking the provisions of Section 122A of the Ordinance for Tax Year 2017,
 - (ii) to examine the claim of refund strictly in the light of provisions of Section 91 of the Ordinance and dispose of the refund claim 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: 14.11.2022

Approved for reporting