

**THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**COMPLAINT Nos.4294 to 4307, 4369 & 4544 to 4549, 4551 to 4563, 4565, 4567, 4569, 4570, 4572 to 4580, 4616 to 4625, 4847, 4848, 4850 to 4856 & 4858 to 4861/FSD/IT/2023**

Dated: 26.07.2023, 31.07.2023, 09.08.2023, 10.08.2023, 21.08.2023\* R.O. Faisalabad.

**Ms. Asifa Ramzan,**  
St No.3, Abbas Nagar, Faisalabad.

...Complainant

***Versus***

The Secretary,  
Revenue Division,  
Islamabad.

... Respondent

Dealing Officer	: Dr. Muhammad Akram Khan, Advisor
Appraisal by	: Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	: ----
Departmental Representative	: i) Mr. Najam ul Hassan Sial, DCIR, RTO, Faisalabad
	: ii) Mr. Muhammad Shakeel, AD, DAE, Faisalabad

**FINDINGS/RECOMMENDATIONS**

The above mentioned seventy (70) complaints have been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against District Education Authority, Faisalabad and RTO, Faisalabad for deducting tax u/s 153(1)(b) of the Income Tax Ordinance, 2001 @10% on payments made to the teachers under ***Insaaf Afternoon School Program***.

2. Brief facts of the cases that Govt. of Punjab initiated "***Insaaf Afternoon School Program***" whereby teachers were hired for nine months on temporary basis and salary was paid at Rs.18000/- per month to the head teachers and Rs.15000/- per month to other teachers. Complainant was hired as teacher. According to the Complainant, District Education Authority paid annual honorarium after deducting of withholding at rate of 10%. The Complainant

\* Date of registration in FTO Sectt.

agitated that the tax deducted on monthly pay is unjustified because her salary is not liable to tax and requested to resolve the matter.

3. Identical complaints have been filed by other teachers of different schools of Faisalabad, alleging the same highhandedness and excessive tax deductions, as tabulated below;

### **NON-REGISTERED COMPLAINANTS**

Sr. No.	Complaint No.	Name of Complainant	CNIC No	Place of Posting
1	4294/FSD/IT/2023	Ms. Asifa Ramzan	3310016202882	St. # 3 Abbas Nagar, Fsd
2	4297/FSD/IT/2023	Mr. M. Asad Saeed	3310511433115	Chak No. 214/JB, Samundari, Fsd
3	4299/FSD/IT/2023	Mr. Ateeque Hussain	3310080916409	GES 221/RB I, Fsd
4	4300/FSD/IT/2023	Mr. M. Sheraz Bashir	3310224867553	GES 221/RB I, Fsd
5	4304/FSD/IT/2023	Mr. Ahsan Ullah	3310032503065	Chak No. 233/RB, Hari Singh Wala, Faisalabad
6	4306/FSD/IT/2023	Mr. Fahid Tanveer	3310220534617	Javaid Block, Satalite Town, Satyana Road, Faisalabad
7	4307/FSD/IT/2023	Mr. Ali Usman	3310591859749	Chak No. 214/JB, Samundari, Fsd
8	4369/FSD/IT/2023	Mrs. Adeeba Arif	3520-4418530-0	GGPS 129/RB I, Chak Jhumra, FSD
9	4544/FSD/IT/2023	Ms. Uzma Shehzadi	3310420880806	GGPS 150/RB, Jarnawala, Fsd
10	4545/FSD/IT/2023	Mr. Arif Hussain	3310004065603	Chak No. 217/RB, Sultan Town, Fsd
11	4547/FSD/IT/2023	Ms. Sumaira	3310384111570	Chak No. 72/JB, Fsd
12	4555/FSD/IT/2023	Mr. Arsalan Haider	3310485380427	GPS 72/RB, Fsd
13	4556/FSD/IT/2023	Mr. Mubashir Hussain	3310452079977	GPS 72/RB, Fsd
14	4560/FSD/IT/2023	Mr. Abdul Rauf	3310433741169	GPS 586/GB, Fsd
15	4561/FSD/IT/2023	Mr. Shahid Bashir	3310421522049	GPS 586/GB, Fsd
16	4563/FSD/IT/2023	Ms. Saba Tariq	3520152138472	GGPS 566/GB, Fsd



17	4565/FSD/IT/2023	Ms. Rukhsana Parveen	3310420903144	GGPS 566/GB, Fsd
18	4567/FSD/IT/2023	Ms. Insha Ishfaq	3310130751612	GGPS 140, Fsd
19	4569/FSD/IT/2023	Ms. Zunaira Amjad	3310107452854	GGPS 140, Fsd
20	4570/FSD/IT/2023	Ms. Arda Amjad	3310121176444	GGPS 140, Fsd
21	4572/FSD/IT/2023	Ms. Sadaf Parveen	3310420543626	GGPS 124/GB, Fsd
22	4573/FSD/IT/2023	Ms. Samia Batool	3310417699962	GGPS 124/GB, Fsd
23	4574/FSD/IT/2023	Ms. Misbah Saleem	3310494915682	GGPS 124/GB, Fsd
24	4576/FSD/IT/2023	Ms. Maria Arshad	3310450377316	GGPS 57/GB, Fsd
25	4577/FSD/IT/2023	Ms. Syeda Iram Zahra	3310430562250	GGPS 57/GB, Fsd
26	4578/FSD/IT/2023	Ms. Muqadas Shafique	3310452991938	GGPS 57/GB, Fsd
27	4579/FSD/IT/2023	Ms. Sidra Imtiaz	3550201616836	GGPS 57/GB, Fsd
28	4580/FSD/IT/2023	Ms. Nida Sher	3310421584978	GGPS 57/GB, Fsd
29	4617/FSD/IT/2023	Ms. Zahida Mubarak	35201-1183070-2	GGPS 236/GB, Fsd
30	4618/FSD/IT/2023	Ms. Sanam Naz	33104-2660407-2	GGCM 561/GB, Fsd
31	4619/FSD/IT/2023	Ms. Sadaf Parveen	33104-2054362-6	GGPS 124/GB, Fsd
32	4622/FSD/IT/2023	Ms. Tanzila Iqbal	36402-0572652-6	GGCMPS 27/GB, Fsd
33	4623/FSD/IT/2023	Mr. Asad Ijaz	45504-1104842-5	GPS 141-II, Fsd
34	4624/FSD/IT/2023	Mr. Sufyan Ashiq	33101-5981151-1	GPS 141-II, Fsd
35	4847/FSD/IT/2023	Ms. Anum Ghafar	33103-0136339-8	GGPS 90/GB, Fsd
36	4848/FSD/IT/2023	Ms. Iqra Zafar	33100-8552544-4	GGPS 90/GB, Fsd
37	4850/FSD/IT/2023	Mr. Mateen Mehmood	33100-1406482-4	GGPS 90/GB, Fsd
38	4851/FSD/IT/2023	Ms. Rukhsana Jabeen	33104-4587795-8	GGPS 73/RB, Fsd
39	4855/FSD/IT/2023	Ms. Sonia Shahzadi	33104-5925383-6	GGPS 150/RB, Fsd
40	4856/FSD/IT/2023	Ms. Shazia Naheed	33104-0945216-6	GPS 137/GB, Fsd

### REGISTERED COMPLAINANTS

Sr. No.	Complaint No.	Name of Complainant	CNIC No	Place of Posting
1	4546/FSD/IT/2023	Syed zaigham Abbas shah	3310004243799	Chak No. 31/JB, Khanpur, Fsd
2	4548/FSD/IT/2023	Ms. Azra Parveen	3310075232380	Chak No. 217/RB Sultan Town, Fsd
3	4449/FSD/IT/2023	Mr. Waheed Ramzan	3310503696393	GPS 202/GB, Fsd



4	4551/FSD/IT/2023	Mr. Muhammad Saddique Iqbal	3310503656201	197/GB, Fsd
5	4552/FSD/IT/2023	Mr. Muhammad Jamil	3310532170091	470/GB, Fsd
6	4553/FSD/IT/2023	Mr. Zulfiqar Ali	3310503395853	209/GB, Fsd
7	4554/FSD/IT/2023	Mr. Muhammad Tayyab Junaid	3310591725711	213/GB, Fsd
8	4575/FSD/IT/2023	Ms. Tasnim Kausar	3310420886970	GGPS 57/GB, Fsd
9	4557/FSD/IT/2023	Mr. Rafqat Ali	3310419448593	GPS 72/RB, Fsd
10	4558/FSD/IT/2023	Mr. Muhammad Asim	3310421914685	GPS 72/RB, Fsd
11	4559/FSD/IT/2023	Mr. Muhammad Khalid	3310422206625	GPS 586/GB, Fsd
12	4301/FSD/IT/2023	Mr. Muhammad Jamal Khan	3310040324781	GPS 740/GB, Fsd
13	4302/FSD/IT/2023	Mr. Muhammad Atif	3310286541375	GPS 223/RB II, Fsd
14	4303/FSD/IT/2023	Mr. Muhammad Afzal Shahid	3310005110981	GPS 240/RB I, Fsd
15	4298/FSD/IT/2023	Mr. Muhammad Nasif	3310212179023	GES 221/RB I, Fsd
16	4296/FSD/IT/2023	Mr. Zeeshan Majeed	3650118816775	St. # 3 Abbas Nagar, Fsd
17	4295/FSD/IT/2023	Ms. Saba Iftikhar	3330111454336	P-1251 St No. 2 Sanat Singh Wala, Fsd
18	4305/FSD/IT/2023	Mr. Muhammad Iqbal	3310018290069	Chak NO. 233 Hari Singh Wala, Fsd
19	4852/FSD/IT/2023	Mr. Muhammad Saleem	3310540326737	GPS 141/GB, Fsd
20	4853/FSD/IT/2023	Mr. Muhammad Adnan	3310506790397	GPS 141/GB, Fsd
21	4854/FSD/IT/2023	Mr. Ahsan Sarwar	3310522662241	GPS 141/GB, Fsd
22	4858/FSD/IT/2023	Mr. Shahid Mehmood	33105443803881	GPS 137/GB, Fsd
23	4859/FSD/IT/2023	Mr. Wasif Ali	3310574603661	GPS 137/GB, Fsd
24	4860/FSD/IT/2023	Mr. Shehzada Gulfam	3410225330689	GPS 137/GB, Fsd
25	4621/FSD/IT/2023	Mrs. Rukhsana Kausar	3310467434606	GGCMPS 27/GB, Fsd
26	4620/FSD/IT/2023	Mr. M Tariq Nazir	3310417120541	GPS 206/RB II, Fsd



27	4562/FSD/IT/2023	Mrs. Sehar Fatima	3310416394312	GGPS 566/GB, Fsd
28	4616/FSD/IT/2023	Ms. Zahida Mubarak	3520111830702	Govt. Girls 236/GB, Fsd
29	4625/FSD/IT/2023	Mr. Muhammad Muzamil Akbar	3310193277511	GPS 141-II, Fsd
30	4861/FSD/IT/2023	Mr. M. Arif	3310402715271	GPS 98RB, Fsd

4. The complaints were sent for comments to the Secretary, Revenue Division, in terms of Section 10(4) of the FTO Ordinance, 2000 read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response thereto, the Chief Commissioner IR, RTO, Faisalabad vide letter dated 16.08.2023 submitted comments of the Commissioner, Chenab Zone, RTO, Faisalabad dated 10.08.2023, 16.08.2023, 23.08.2023, 29.08.2023. It was contended that forty (40) complainants were not registered with FBR and their refund could not be processed being non-registered and non-filers. As regards those registered with FBR, Complainants were required to file returns of income as per income tax law and file refund applications for issuance of refund on account of excessive tax withheld.

5. This Forum also issued letter to CEO, District Education Authority, Faisalabad. In response thereto, CEO submitted his reply dated 28.08.2023 wherein he stated that bill of honorarium for 3 months at Rs.35.044 million was sent to DAO, Faisalabad for payment but DAO returned the same with the objection that bill was to be prepared after deduction of tax @ 10%. Further, the honorarium paid under IASP program was covered as per definition of salary u/s 12 of the Income Tax Ordinance, 2001 which should be added in the regular salary to calculate the tax liability u/s 149 of the Ordinance. CEO, DEO, Faisalabad also informed that tax deduction @10% was made on the directions of

the DAO, Faisalabad. However, tax was not deducted from the private teachers.

### **EXAMINATION OF RECORD AND FINDINGS:**

6. It is evident that CEO, District Education Authority, Faisalabad made payments to the hired teachers/staff during the financial year 2021-22 after withholding tax u/s 153(1)(b) of the Income Tax Ordinance, 2001 at the rate of tax 10% and deposited into the Govt. Treasury. On the other hand, Complainant submitted copy of notification dated 15.07.2021 as issued by the Govt. of the Punjab School Education Department, whereby, "the teachers/other staff for Afternoon Programme will be hired out of the existing staff of the morning school. The staff/teachers of nearby Govt. Schools may also be hired on need basis." Contention of the Deptt and submission by the Complainant have been examined. There can be two criteria to evaluate merits of both legal parameters and material facts in the case;

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i. **Legal Parameters**

Salary taxation is governed through Sections 12 and 149 of the Income Tax Ordinance, 2001. Both are reproduced here under;

- Section 12. **Salary-** (2) Salary means any amount received by an employee from any employment, whether of a revenue or capital nature, including—
  - (a) **any pay, wages or other remuneration provided to an employee**, including leave pay, payment in lieu of leave, overtime payment, bonus, commission, fees, gratuity or work condition supplements (such as for unpleasant or dangerous working conditions).
- Section 149. **Salary.** — (1) Every [person responsible for] paying salary to an employee shall, at the time of payment, deduct tax from the



amount paid at the employee's average rate of tax computed at the rates specified in Division I of Part I of the First Schedule on the estimated income of the employee chargeable under the head "Salary".

Examination of RTO's reply dated 10.08.2023 reflects the following serious flaws:

- i. If Appointment & Regularization of services) Act, 2017 creates any distinction between regular and temporarily hired/adhoc employees how the status of employment can be denied under tax laws. Salary taxation is governed under tax laws.
- ii. Nowhere in the tax laws or in the case law has any distinction been created between a permanent employee, and an adhoc/temporary/contract/hired employee.
- iii. While law treats hired employee's wages at par with PAY, while defining salary, how hired teacher's salary can be excluded from the ambit of salary taxation?

Thus, plain reading of aforesaid legal provisions merely indicates **employer-employee** equation based on "**Master-Servant Relationship**". This **criterion alone** forms the basic parameter for any employment. Regular / Adhoc / Temporary / Hired / Daily Wages, all are the different shades & forms of employment and law doesn't create any distinction among all the above forms.

## II **Material facts in the instant cases**

Complete details obtained from District Education Authority; Faisalabad suggest the following;

- a. The teachers were hired as per Govt. of Punjab initiative i.e. Insaaf Afternoon School Programme as Private Teacher on temporary basis with the monthly salary at Rs.15000.
- b. Punjab Education Deptt have issued detailed guidelines on hiring of teachers.
- c. Hiring procedure has been developed and enforced across the board.
- d. Composition of Selection Committees has also been developed and notified.
- e. Hiring and selection criterion includes;

- Institutional workload
- Limitation of age and Education
- Merit List
- Credentials of the selected candidates
- Office Order of the selected Candidates: the said office order enlists detailed "Terms & Conditions" of hiring as well.

7. This Forum in a complaint **No.2531/SGD/IT/2023** dated **13.07.2023** gave unambiguous findings that payments made to teacher hired under **Insaaf Afternoon School Program** was to be treated salary and taxed accordingly. Treatment of emoluments to employees could not be treated as services as envisaged by Income Tax Ordinance, 2001 by any stretch of imagination. Needless to say, that Deptt concurred with the findings of this Forum and withdrew directions asking for withholding tax u/s 153(1)(b) to District Education Authority Sargodha.

8. Some of the Complainants have filed returns for Tax Year 2022 & 2023 claiming credit of both income and tax deducted thereon. Examination of returns alongwith tax rates prescribed in the Income Tax Ordinance, 2001 reveals that income of the Complainant falls in the first tax slab i.e. below taxable limit of Rs.0.600 million having zero tax. A few falls in the second category where tax is charged @5% on income exceeding Rs.0.600 million. As discussed, earlier honorarium received by teachers is to be treated salary and minimum tax rate u/s 149 comes 5% on the salary exceeding Rs.0.600 million.

#### **FINDINGS:**

9. In view of above discussions;

FBR's treatment of the instant cases u/s 153(1)(b) of the Ordinance is against the dictates of law and excessive tax



deductions from the pay / wages of a hired employee of educational institution tantamounts to maladministration in terms of FTO Ordinance, 2000.

**The above discriminatory and unjust and extra-legal treatment of salary cases tantamounts to maladministration in terms of section 2(3)(i) and (ii) of FTO Ordinance, 2000.**

This office has already issued recommendations in a similar Complaint No. 2538/ISB/IT/2021 filed by an employee of Pakistan Broadcasting Corporations, wherein during Investigation and Review proceedings, the FBR, conceding the wrong being done in such cases, has not only implemented the recommendations rather has widely circulated the same among all concerned departments.

**RECOMMENDATIONS:**

10. FBR is directed to: -

- i) to ensure that in the instant case as well as in other similar cases tax deduction is made u/s 149 as salary and not u/s 153(1)(b) as service provider;
- ii) DAO/DEO, Faisalabad is directed to evaluate the nine months honorarium by including regular salary and ensure to make deduction u/s 149 as salaried person;
- iii) Non-filers and non-registered persons are advised to file income tax returns for all the years in which income from salary has been earned and claim credit of tax deducted by the Distt. Account Office. They can claim refund in case excess tax is withheld;
- iv) ensure that RTO Faisalabad assists the low paid teachers in filing of returns and processing of refunds; and
- v) report compliance within 45 days.

  
Director  
FTO Secretariat  
Islamabad

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

Dated: 18.9.2023

*Approved for reporting*