THE FEDERAL TAX OMBUDSMAN ISLAMABAD

COMPLAINT NO.4964/KHI/IT/2022

Dated: 11.11.2022* R.O. Karachi.

Ms. Kanta Bai.

... Complainant

C/O M/s. Shaikh Flour Mills, Roshanabad.

Mirpur Sakro Road, Gharo, Thatta

Versus

The Secretary,

...Respondent

Revenue Division, Islamabad

Dealing Officer

: Mr. Badruddin Ahmad Quraishi, Advisor

Appraised by

: Mr. Muhammad Tavir Akhtar Advisor

Authorized Representative

: Mr. Jehan Alam Khan,

Departmental Representative : Mr. Farhan Abdul Rahim, ACIR, RTO

Hyd.

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint has been filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance), against duplicate illegal assessment orders for Tax Years 2016, 2017 & 2020.

The Complainant is an individual engaged in the business of 2 running a rice husking mill. The Inland Revenue Officer, Unit-XII, WHT Zone, RTO Hyderabad carried out withholding audit for Tax Years 2016, 2017 & 2020 and issued manual orders as per following details:

S.No.	Tax year	Tax demand u/s 161/205 in Rs.	DCR No.	Date
1	2016	28,391	27/44	25.12.2017
2	2017	35,600	49/66	17.08.2018
3	2020	24,743	54/46	18.08.2020

Thereafter, the department (Deptt) issued show cause notice for withholding audit for the above-mentioned years again. The Complainant replied that the monitoring of withholding audit for these years were already conducted by previous Officer. But without



examining the facts, the Unit Officer issued bar coded assessment orders for Tax Year 2016 on 28.06.2022 and for Tax Years 2017 & 2018 on 29.06.2022 through IRIS creating tax liability of Rs.35,746,758, Rs.19,517,692 and Rs.29,405,862 respectively. As per complaint, the complainant filed rectification application under Section 221 as well as revision application under Section 122A of the Ordinance but failed to get any response; 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 Chief Commissioner, RTO Hyderabad vide letter dated 01.12.2022 forwarded reply of Commissioner Withholding Zone RTO Hyderabad vide letter dated 25.11.2022. Preliminary objection regarding bar of jurisdiction was raised in terms of section 9(2)(b) of the FTO Ordinance. Reliance was placed on the Hon'ble Supreme Court of Pakistan's Judgment in the Case of Mst. Kaneez Fatima reported as 2001 SCMR 1493.
- 4. On merit, it was stated that the barcoded speaking orders were issued in accordance with the Board's instructions dated 30.06.2015. The issue of manual orders was also discussed in these orders. The complainant did not produce documentary evidence of manual order during the course of proceedings. The taxpayer's rectification applications for Tax Years 2016, 2017 & 2020 require necessary disposal at the end of the ACIR which would be decided on merit if mistake apparent from the record is found whereas the statute provides legal remedy in terms of Section 127 of the Income Tax Ordinance 2001.
- 5. During hearing, the DR produced DCRs (Demand & Collection Register) in order to cross check issuance of manual



orders for respective years. No entry related to manual assessment orders for Tax Years 2016, 2017 & 2020 was observed in DCRs on examination.

- 6. Arguments heard and record perused.
- 7. The preliminary objection regarding bar of jurisdiction, raised under Section 9(2)(b) of the FTO Ordinance, is misconceived as the Complainant is aggrieved against illegal issuance of duplicate assessment orders for same tax years by the same authority. The preliminary objection regarding bar of jurisdiction being misconceived, is hereby overruled.
- It is observed that manual assessment orders under Section 8. 161/205 of the Ordinance for Tax Years 2016, 2017 & 2020 were issued on 25.12.2017, 17.08.2018 & 18.08.2020 respectively. These manual orders contain fake DCR numbers, which could not be verified from the relevant Demand and Collection Register of the Unit. Even the paltry tax demand created in this dubious way had not been carried forward in subsequent year for recovery action, resulting in loss of legitimate Govt revenue. The manual orders were issued in violation of FBR Circular dated 30.06.2015 which states that no notice under Income Tax Ordinance 2001 be issued to taxpayers w.e.f. 01.07.2015 without a system generated Bar Code. These unverifiable orders have been signed & issued by Mr. Nazir Ahmed Soomro, IRO, Unit-XII, WHT Zone, RTO Hyderabad. Apparently, these manual needs review and if found erroneous in so far these are prejudicial to the interest of revenue. the Deptt may invoke Section 161(3) of the Ordinance against these manual orders which states:
 - "(3) The Commissioner may, after making, or causing to be made, such enquiries as he deems necessary, amend or further amend an order of recovery under sub-section (1), if he considers that the order is erroneous in so far it is prejudicial to the interest of revenue:



Provided that the order recovery shall not be amended, unless the person referred to in sub-section (1) has been provided an opportunity of being heard."

This instant case reflecting dubious manual orders may be a tip of the iceberg; hence a thorough investigation is required to unearth the loss of legitimate of Govt. revenue through issuance of manual orders having fake DCR numbers since Board's direction dated 30.06.2015

FINDINGS

10. Issuance of impugned duplicate assessment orders for Tax Year 2016 dated 28.06.2022 and for Tax Years 2017& 2020 dated 29.06.2022 is contrary to law, rules or regulations and is departure from established practice or procedure, principle of natural justice; hence, unlawful *per se* attracting 'maladministration' under section 2(3)(i)(a) & (ii) of FTO Ordinance.

RECOMMENDATIONS:

11. FBR to: -

- (i) direct the Commissioner –IR, Withholding Zone, RTO Hyderabad to revisit the impugned duplicate orders for Tax Year 2016 and for Tax Years 2017& 2020, in terms of Section 122A of the Ordinance, after affording proper opportunity of hearing to the Complainant and as per law;
- (ii) direct Member Admin to conduct a fact-finding inquiry into passing unverifiable orders, in violation of Board's direction dated 30.06.2015 and causing loss of revenue in order to initiate disciplinary proceedings under E&D rules; and
- (iii) report compliance within 45 days

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

Dated: 21/12/2022
Approved for reporty