

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No. 5052/KHI/IT/2022

Dated: 15.11.2022*R.O. Karachi

Mr. Muhammad Usman Ali Usmani,
32/1, Khayaban-e-Hilal, DHA,
Phase-VI, Karachi.

...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

...Respondent

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| Dealing Officer | : Mr. Badruddin Ahmad Quraishi, Advisor |
| Appraisal Officer | : Mr. Muhammad Tanvir Akhtar, Advisor |
| Authorized Representatives | : Mr. Muhammad Usman Ali Usmani, |
| Departmental Representatives | : Mr. Waqas Rashid, Add-CIR, AEOI Lahore |

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 illegal transfer of jurisdiction to LTO Lahore despite permanent residential address of Karachi and consequent issuance of assessment orders of Tax Years 2015 & 2016 by AEIO Zone, LTO Lahore without lawful jurisdiction.

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2. Briefly the Complainant is an eighty years old retired pensioner, Ex-President of MCB and has been residing at 32/1, Khayaban-e-Hilal, DHA, Phase VI, Karachi since 1984. He has been receiving pension from American Express Bank, New York in US dollar which is drawn through Bank Al-Habib since 1993. On 15.06.2019, he sent an email to 'Helpline FBR' inquiring about taxability of pension from American Express Bank and asking specific questions whether it is required to be declared in Asset Declaration Scheme 2019 and whether it could be invested in

'Pakistan Banao Certificate'. FBR replied in writing on 26.06.2019 that it was not required to be declared in Asset declaration Scheme and also confirmed that he could invest in Pakistan Banao Certificate. As per complaint, despite confirmations from FBR in writing, DCIR AEOI-3, AEOI Zone, LTO Lahore issued an assessment order on 21.06.2021 for tax year 2015 creating tax liability of Rs. 44 million and another order for Tax year 2016 on 20.06.2022 creating tax liability of Rs. 33 million.

3. The complaint was sent 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 DR (the author of order for Tax year 2016) submitted reply vide letter dated 05.12.2022, raising preliminary objection regarding bar of jurisdiction under Section 9(2)(b) of the FTO Ordinance on the ground of legal remedies being available under the Ordinance.

4. On merit, it was stated that the case of the complainant was transferred by FBR to AEOI Zone Lahore vide Board's jurisdiction order dated 29.11.2018. On receipt of definite information related to possession of immovable property in UAE, legal proceedings were initiated by the department. The complainant case was selected for audit for Tax Year 2015 due to late filling of return under Section 214 D of the Ordinance. Thereafter, the jurisdiction of his case was transferred to AEOI Zone on 29.11.2018. During audit proceedings; after audit report, issues were confronted to the taxpayer in terms of Section 122(9) of the Ordinance on 03.06.2021 and finally assessment order was issued under Section 122(1) by creating tax demand of Rs. 43,687,902/- on 21.06.2021. On similar issues, proceedings under Section 122(5A) of the Ordinance were

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initiated for Tax Year 2016 and amended assessment order was passed on 20.06.2022.

5. The Complainant, on the other hand provided evidence of his retirement from American Express Bank, New York on 19.02.1993 and receipt of monthly pension of USD 1,986.84 till date through banking channel, reconciliation of Rs.94,740,865 declared in wealth statement for Tax Year 2016 on account of pension received as foreign remittance & deposited in HSBC Middle East Bank / Habib Bank AG Zurich, Dubai and evidence of receipt of gift amounting to Rs.1,600,000 from her wife (a return filer).

6. Arguments of parties 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 assessment orders were finalized without determining lawful jurisdiction. This forum has held in number of cases that, even if the taxpayer had legal remedy of appeal available under Section 127 of the Ordinance, passing an order in contravention of law & procedure, is tantamount to maladministration. The preliminary objection regarding bar of jurisdiction being misconceived, is overruled.

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It is a matter of fact that the complainant is an eighty years old retired pensioner, Ex-President of MCB and has been residing at 32/1, Khayaban-e-Hilal, DHA, Phase VI, Karachi since 1984. This address of Karachi is still being reflected in 'Taxpayers profile Inquiry' of FBR website. In terms of Section 209(5) of the Ordinance, the Commissioner shall have jurisdiction in respect of any person carrying on business, if the person's place of business is within such area. The relevant portion of income tax provision is reproduced

below:

“Within the area assigned to him, the Commissioner shall have jurisdiction, -

- (a) In respect of any person carrying on business, if the person's place of business is within such area, or where the business is carried on in more than one place, the person's principal place of business is within such area; or***
- (b) In respect of any other person, if the person resides in such area”***

Thus, in terms of above provision, the jurisdiction of the Complainant lies with Karachi as the Complainant has been residing in Karachi since 1984. But unfortunately, the complainant is being assessed in Lahore. The Complainant agitated the issue of jurisdiction in writing which can be observed in para 5, page 4, of assessment order dated 21.06.2021 for Tax Year 2015. In this connection, Chief International Taxes, FBR vide letter dated 14.06.2022 also wrote a letter to Chief IR formation to transfer this case from AEOI Zone LTO Lahore to AEOI Zone LTO Karachi However, the Assessing officer bulldozed the submission of the complainant as well as even the letter dated 14.06.2022 issued by his own boss Chief International Taxes for transfer of jurisdiction and issued order for Tax Year 2016 on 20.06.2022 creating tax liability of Rs. 33 million without lawful jurisdiction.

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9. It is a matter of basic principle that objections to jurisdiction are to be decided before proceeding in the matter by adjudication authority [(1999) 80 TAX 115(H.C. Lah)]. As a result, show cause notice under section 122(9) for Tax Year 2016 becomes defective and if notice is prima facie defective and error is incurable, the entire proceedings including assessment order dated 20.06.2022 for Tax Year 2016 are null and void. Even otherwise on merit, the Complainant provided sufficient documentary evidences to prove his innocence.

10. This is a classic case of maladministration where a taxpayer has been burdened with huge amount of tax only because of the fact that his case was lying with LTO Lahore. Such type of unlawful acts does not inspire confidence of the taxpayers; rather they create mistrust between the Deptt and a taxpayer.

11. As regards, the assessment order dated 21.06.2021 for Tax Year 2015, this order has been confirmed by CIR (Appeals-1) Lahore vide order dated 31.08.2022 and the complainant has already filed appeal before Income tax Appellate Tribunal, Lahore on 06.12.2022. Since the matter is subjudice before Appellate Tribunal Lahore, the Federal Tax Ombudsman does not have jurisdiction to investigate the matter in view of Section 9(2)(b) of FTO Ordinance.

FINDINGS:

12. Passing impugned order dated 20.06.2022 for Tax year 2016& creating huge tax liability against a retired Octogenarian without determining lawful jurisdictions contrary to law& procedure and principle of natural justice, hence, unlawful *per se* and is tantamount to maladministration, in terms of Section 2(3)(i)(a) &(b) of the FTO Ordinance.

RECOMMENDATIONS:

13. FBR to direct:

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- (i) Second Secretary (AEOI), FBR (HQ), Islamabad, to transfer jurisdiction of the Complainant from AEOI Zone, LTO Lahore to AEOI Zone, LTO Karachi in view of recent correspondences made by Second Secretary (Jurisdiction) vide office memo dated 21.11.2022 to Second Secretary (AEOI), FBR (HQ) Islamabad.
- (ii) Commissioner-IR, AEOI Zone LTO Karachi to revisit the impugned order dated 20.06.2022 for Tax Year 2016 in terms of Section 122A of the Ordinance, after affording

proper opportunity of hearing to the Complainant, and as per law;

- (iii) CCIR, LTO Lahore to call for explanation of the AD CIR, Range-2, AEOI Zone LTO Lahore, who without settling issue of jurisdiction, completed the impugned assessment proceedings vide order on 20.06.2022; and
- (iv) report compliance within 60 days

ALL

(Dr. Asif Mahmood Jah)

(Hilal-i-Imtiaz)(Sitara-i-Imtiaz)

Federal Tax Ombudsman

Dated: *23.12.* 2022

Approved for reporting