

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

OWN MOTION Nos. 0052 & 0064/OM/2022
Adjustment of Income Tax refunds with Tax Liability

Dated 27.05.2022¹ R.O. Karachi

The Secretary,
Revenue Division,
Islamabad

....Respondent

Dealing Officer
Appraisal Officer

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

FINDINGS/RECOMMENDATIONS

The above-mentioned Own Motion (OM) investigation was initiated through exercise of jurisdiction under Section 9(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against rejection of claim of refund adjustment of previous Tax Years with admitted tax liability in Income Tax return without conducting proper desk audit causing harassment & unnecessary litigation.

2. Back Ground:

A taxpayer files income tax returns every year and may adjust tax liability against refunds of previous years. For this purpose, a separate TAB has been provided in return of income available in IRIS which is as follows:


Refund Adjustments of Other Year(s) against Demand of this year	92101			
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3. FBR vide letter # 6(43)Rev.Bud/2021/116078-R dated 10.05.2022 provided data of 393,441 refund claims of individuals/AOP who have adjusted refund claims worth Rs. 24 billion against admitted

¹ Date of registration in FTO Sectt.

tax liability of Tax years 2016-2021 and asked CCIRs of LTOs/MTO/CTOs/RTOs to conduct desk audit in these cases to ascertain genuineness of refund adjustment. However, no policy guideline was provided to field formations for further action to recover the bogus refund claims.

4. Due to absence of any uniform policy guidelines, the Officers in field formations are not using any uniform legal methods for processing of these claims & their subsequent adjustments against admitted tax liability. Instances have been brought to notice that instead of conducting detailed desk audit of returns & verifying the tax payments from ITMS / IRIS/ veri tax/ FBR Maloomat (Asset Inquiry) and finally confronting specifically only unverified tax deductions/ payments; the Officers are using short cut methods of rejecting claim of refund adjustments, causing harassment and ultimate prolonged litigation. Some of the examples are as follows:

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- a. Issuing show cause notice for rectification under Section 221 of Income Tax Ordinance (the Ordinance) providing only seven days and creating tax demand immediately.
 - b. Claims of refund are being rejected as these were not determined where as it is the responsibility of the Commissioner to determine refund within sixty days of receipt of refund application.
 - c. Disallowing the refund claims under Section 164(2) of the Ordinance whereas this Section pertains to submission of tax paid challan alongwith the return.
 - d. Disallowing the refund claims under Section 174(2) of the Ordinance whereas this Section pertains to claim for deduction of expenses
 - e. Issuing show cause notices under Section 122(5A) of the Ordinance to reject refund claims and creating subsequent tax demand
 - f. In field formations of LTO/MTO/CTO where there are division of functions, show cause notices are being issued by audit as well as by enforcement divisions
 - g. In cases where admitted tax liability was adjusted against refunds of more than one-year, cumulative refunds are rejected without specifying the Tax Years through notice of one year
 - h. Limitation of time of five years for rectification in terms of Section 221(4) of the Ordinance is not being adhered.

- i. Similarly, limitation of maintenance of records of six years is not being adhered.

4. In order to address the above paradox, the issue 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 and the field formations were confronted to confirm:

- a. Whether detailed desk audit of returns is being conducted before issuance of notices?
- b. Whether verification of tax payments from ITMS / IRIS/ veri tax/FBR Maloomat(Asset Inquiry) are being conducted and only unverified tax deductions/ payments are being confronted?
- c. Whether there is any check list being followed for the above exercise?

5. In response thereto, LTO Karachi, MTO Karachi & CTO Karachi submitted comments vide letters dated 24.06.2022 which have been analyzed and common points are discussed in brief. Preliminary objection regarding bar of jurisdiction has been raised as it is contended that the matter pertains to assessment of income & tax liability for which legal remedy is available.

7 6. On merit, it has been stated that a standard operating procedure is being followed for returns wherein refund adjustment of previous years has been claimed. In cases where refunds were already eliminated in respective Tax Years due to amended assessments, tax demand is being raised under Section 221 of the Ordinance. However, tax demand to the extent of self-adjustment of undetermined refund under Section 170(4) of the Ordinance is being raised under Section 221 of the Ordinance in view of Hon'ble Supreme Court judgment dated 05.03.2020 in civil petitions 283-L to 286-L of 2018 dated 05.03.2020 wherein it was held that refund would be considered determined only after order under Section 170(4) of the Ordinance has been passed.

Thus, no taxpayer can adjust his tax liability for the year against refunds for previous year based on deemed assessment order under Section 120 for the previous years.

7. The above-mentioned comments from field formations were confronted to Karachi Tax Bar Associations vide letter dated 14.07.2022 (due to their complaints in various meetings) for their comments/ point of view; however, no reply was received.

8. Arguments heard and record perused

FINDINGS:

9. The preliminary objection regarding bar on jurisdiction is misconceived. The issue in hand is not of assessment or determination of tax. The taxpayer has outstanding refund claim of previous years far in excess of admitted tax liability clearly visible in respective tax years in IRIS. The disposal of determination of refund under Section 170 of the Ordinance for those previous tax years against prescribed period of six months; are pending with the department. Now the Deptt intends to penalize the taxpayer for not being able to produce refund order which was in fact to be processed by the Deptt itself. This being a fit case of maladministration; the objection is overruled.

7 10. The Deptt contends that a tax payer cannot adjust any refund already claimed in previous years until & unless it is determined by the Deptt under section 170(4) of the Ordinance. In support of this argument, the decision of Hon'ble Supreme Court judgment dated 05.03.2020 in civil petitions 283-L to 286-L of 2018 dated 05.03.2020 has been quoted which states;

"5. The impression that deemed assessment under Section 120, when the annual income tax return filed under section 114 shows a refund payable to

the taxpayer, passes for a refund order, stands dispelled by the Explanation to Section 171 inserted through Finance Act, 2013 which states as under:

Explanation. —For the removal of doubt, it is clarified that where a refund order is made on an application under subsection (1) of section 170, for the purpose of compensation, the refund becomes due from the date refund order is made and not from the date the assessment of income treated to have been made by the Commissioner under section 120"

11. Perusal of the detailed judgment reveals that the judgment of the Hon'ble Supreme Court is basically with reference to claim of additional payments for delayed refunds (compensation). On the contrary, here the issue in hand is not of additional payment for delayed refund. The claim of the taxpayer is his own excess payments of previous tax years for which he had applied to the Deptt as per law and it was the responsibility of the Deptt to dispose the applications of refund in terms of provision of Section 170(3) & (4) of the Ordinance which states:

"(3) Where the Commissioner is satisfied that tax has been overpaid, the Commissioner shall —

(a) apply the excess in reduction of any other tax due from the taxpayer under this Ordinance;

(b) apply the balance of the excess, if any, in reduction of any outstanding liability of the taxpayer to pay other taxes; and

(c) refund the remainder, if any, to the taxpayer.

(4) The Commissioner shall, within sixty days of receipt of a refund application under sub-section (1), serve on the person applying for the refund an order in writing of the decision [after providing the taxpayer an opportunity of being heard]"

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12. Instead of complying with the above provisions, the Deptt kept on sleeping over the refund application of taxpayer for more than prescribed period of sixty days. The taxpayer on the other hand, after having failed to get his refunds issued, resorted to claiming of its adjustment in his return in subsequent years for which a separate TAB was provided in return of income through IRIS. (This TAB has now been removed in income tax return for Tax year 2022 in IRIS) Thus, all the actions of disposal of refund application of previous years,

determination of refund and adjustment of the same against taxpayer's admitted liability in terms of provisions of 170(3) & (4) of the Ordinance are pending with the Deptt and whereas the Deptt is asking the taxpayer to produce the evidence for the same. Thus, non-disposal of refund applications of previous years and issuance of show cause notice under Section 221 or 122(9) /122(5A) of the Ordinance without conducting proper desk audit tantamount to maladministration in terms of section 2(3)(i)(a)(b) &(ii) of the FTO Ordinance.

RECOMMENDATIONS

13. FBR to;

- (i) issue clear cut and uniform instructions / clarifications with respect to letter # 6(43)Rev.Bud/2021/116078-R dated 10.05.2022 related to disposal of cases of all individuals/AOP who have adjusted refund claims against admitted tax liability of Tax years 2016-2021;
- (ii) notwithstanding the above no refund adjustment claim may be rejected without;
 - a) *conducting detailed desk audit of returns;*
 - b) *verifying tax payments from ITMS / IRIS/ veri tax/ FBR Maloomat (Asset Inquiry);*
 - c) *confronting specifically unverified tax deductions/ payments;*
 - d) *disposing of refund applications for previous years on its merit as per law after providing opportunity of hearing;*
 - e) *settling the refund claims in terms of provisions of Section 170(3)(a) of the Ordinance against admitted / determined tax liability; and*
- iii) report compliance within 90 days.

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

Dated: 20.9.2022
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Approved for reporting