

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO.5727/KHI/IT/2022

Dated 30.12.2022 * R.O.Karachi

Mr. Muhammad Azam Khan, CEO

M/s Sunrise Capital (Pvt) Ltd,
119, 3rd floor, KSE Building, Karachi.

...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

...Respondent

Dealing Officer	:	Mr. Badruddin Ahmad Quraishi Advisor
Appraisal Officer	:	Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representatives	:	The complainant in person, Mr. Tipu Saeed Khan, ITP
Departmental Representative	:	Mr. Riaz Ali Shah, CIR (Ops), Mr. Naseer Ahmed, ADCIR Mr. Umair Khalil, DCIR

FINDINGS/RECOMMENDATION

The complaint was filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against alleged illegal assessment order issued under section 124/129/122(5A) of Income Tax Ordinance 2001(the Ordinance) for tax year 2016 on 13.12.2022 creating tax liability of Rs.1,042,486.

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2. Briefly, the complainant is a stock brokerage private limited company and engaged in sale/ purchase of client's share as well its own shares. The complainant filed return of income for tax year 2016 on 19.11.2018 declaring business loss of Rs.3,361,446. The department amended the deemed order under section 122(5A) of the Ordinance on 09.06.2022 creating tax liability of Rs.1,042,486. On appeal, the Commissioner (Appeals-III) Karachi vide order dated 26.08.2022 annulled the order for re-examination, reconsideration, re-verification & re-adjudication with the specific directions to confront the third-party information received from NCCPL and pass a judicious

*Date of registration in FTO Secretariat

speaking order after providing opportunity of being heard. The Deptt issued remand back order repeating the same original order by estimating commission of Rs. 0.10 per share on trading of 109,964,094 shares on 13.12.2022 without physically sharing the information of NCCPL and without considering the reply of the complainant; 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 CIR Audit-1, CTO Karachi vide letter dated 12.01.2023 stated that the brokerage commission was not estimated but computed on the basis of third-party information as mentioned in the order.

4. During hearing, the author of the order was asked to explain the source of definite information from third party related to number of shares traded and imposition of commission @ Rs.0.100 per share. The author of the order submitted comments on 20.01.2023 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. On merit, it was contended that the brokerage commission was computed on the basis of third party information gathered from NCCPL and commission was estimated @10 paisa per share on trading of 109,964,094 shares under section 18(1) of the Ordinance.

5. On the contrary, the complainant argued that the definite information from NCCPL on the basis of which the tax was imposed, was not shared violating the direction of CIR Appeals. Further, there is no provision for taxation on estimation. As admitted by the Deptt, there was third party definite information from NCCPL, therefore, the

legal course of action should have been proceedings under section 122(5) and not under section 122(5A) of the Ordinance.

6. Arguments of parties heard and record perused.

7. The objection regarding bar of jurisdiction, raised under Section 9(2)(b) of the FTO Ordinance, is misconceived as the Complainant is not aggrieved against the assessment as such but against failure of the Deptt to follow the direction of CIR (Appeals) and estimating commission income for which there is no provision in the Ordinance. The objection is therefore overruled.

8. Admittedly, the Deptt obtained third party definite information from NCCPL vide letter dated 21.05.2021 related to trading of shares by the complainant. The examination of this definite information reveals that the complainant conducted trading of 109,964,094 shares on behalf of his clients. But the Deptt did not share a copy of this information before issuing an adverse order violating the clear-cut direction of the CIR (Appeals) dated 26.08.2022. On the contrary, the complainant himself declared trading of 375,478,931 shares more than triple the number of shares confronted in show cause notice as acknowledged by the Deptt on page 4 of impugned order. Further, the Deptt estimated commission @ Rs. 0.10 per share on its own and made addition of Rs.10,996,409 whereas no information was available on commission income in NCCPL letter dated 21.05.2021. Therefore, the Deptt made assumption / presumption on commission income for which there is no provision in Income Tax Ordinance to estimate business income. Further, in case of definite third-party information from NCCPL as admitted by the Deptt; the legal course of amendment should have been proceedings under section 122(5) of the Ordinance which states:

"122(5) An assessment order in respect of tax year, or an assessment year, shall only be amended under sub-section (1) and an amended

assessment for that year shall only be further amended under sub-section (4) where, on the basis of audit or on the basis of definite information the Commissioner is satisfied that —

- (i) any income chargeable to tax has escaped assessment; or*
- (ii) total income has been under-assessed, or assessed at too low a rate, or has been the subject of excessive relief or refund; or*
- (iii) any amount under a head of income has been mis-classified.”*

Therefore, the impugned order dated 13.12.2022 without considering the argument of the complainant, violating the directions of CIR (Appeals) is not only contrary to law, rules or regulations but also is perverse, arbitrary, unreasonable, unjust, biased and oppressive causing administrative excesses, contrary to the principle of natural justice hence, unlawful *per se*.

FINDINGS:

9. Passing of impugned order dated 13.12.2022 violating the directions of CIR (Appeals) and without considering the argument of the complainant causing administrative excesses is tantamount to maladministration, in terms of Section 2(3)(i)(a),(b)& (ii) of the FTO Ordinance.

RECOMMENDATIONS:

10. FBR to-

- (i) direct the Commissioner –IR, Audit-1, CTO Karachi to revisit the impugned order dated 13.12.2022 in terms of Section 122A of the Ordinance in the light of discussions at para 8 after affording proper opportunity of hearing to the Complainant and in accordance with law; and
- (ii) report compliance within ~~45~~ ³⁰ days


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

Dated: 3 : 2 : 2023

Approved for reporting