

the complainant prayed to declare the impugned OIO dated 18.10.2022 as well as subsequent CIR(A) order dated 22.02.2023 illegal, void abinitio and without any legal authority.

4. 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 thereto, the Commissioner-IR Appeals-VII Karachi submitted comments vide letter dated 21.07.2023. At the outset, preliminary objection regarding bar of jurisdiction, was raised under Section 9(2)(b) of the FTO Ordinance on the ground that the matter was related to assessment of income, determination of tax liability and interpretation of law against which remedies of appeal was available.

5. On merit it was contended that Section 30 of the Act clearly defines 'Inland Revenue Audit Officer' as an authority; hence the order was issued by a legal authority.

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 Complainant was aggrieved on issuance of SCN, OIO by an Officer without any lawful jurisdiction. The honourable Supreme Court of Pakistan while deciding the civil petition for special leave to Appeal no. 788 of 1984 dated 07.11.1988 states:

*"One of the conditions for grant of relief in writ jurisdiction of the High Court is that petitioner before it should not have any alternate adequate remedy. In this case, a remedy by way of appeal, as mentioned in the impugned order, was such remedy. Therefore, it is correct that no relief could be granted to the petitioner under article 199 of the Constitution. But that does not mean that the petitioner has not been allowed any relief by the departmental authorities (despite the observation of the supreme Court) the petitioner would have no immediate remedy at all against the highhandedness of the department. Amongst others he can file a complaint and grievance application before the Federal Ombudsman, who can provide effective redress, in a case like the present one. That forum has several attributes of a Court in many aspects of its powers. It can also move in a matter promptly whenever so needed. At the same time, it does not suffer from some of the handicaps, due to technicalities of procedural nature, which operates as impediment or*

*thwart such like action by the Courts. For example the limitation of non-availability of alternate remedy in this case for the High Court under Article 199 of the Constitution, is not applicable to the said forum. Besides, the same being quasi-judicial it is also headed by a judge of the Supreme Court, with similar powers to punish for contempt. In this context therefore, it can be safely concluded, that it can provide the alternate effective and adequate remedy to the petitioner also.*

*With the foregoing observations and remarks, leave to appeal is refused in the circumstance of this case, due to the technical hurdle faced by the petitioner in High Court . He may file a complaint before the Ombudsman."*

The preliminary objection regarding bar of jurisdiction being misconceived, is overruled.

8. Without touching the merit of the case, evidently, the showcause notice dated 11.04.2022 and OIO dated 18.10.2022 were issued by an IRAO without lawful authority and beyond his jurisdiction in view of decision of honourable Sindh High Court decision dated 23.11.2022 in CP No.D-1356/2022 wherein the Honourable High Court confirmed the decision of the FBR dated 28.10.2015 that the Officers of Audit Cadre in IRS shall not be posted as Unit-In-Charge in field formation and shall not be assigned assessment related function and duties. The decision of the honourable High Court of Sindh (SHC) has been challenged by the aggrieved party but the Honorable Supreme Court has not suspended the order of SHC yet meaning thereby that the judgment of the SHC is in field. Therefore, it can be concluded without any iota of doubt that the showcause notice dated 11.04.2022 and OIO dated 18.10.2022 issued by IRAO were illegal, Coram non judice and abinitio void.

9. Further, the Commissioner (Appeals-VII) Karachi vide order dated 22.02.2023 upheld the order of the Assessing Officer. When the showcause notice dated 11.04.2022 and the OIO dated 18.10. issued by IRAO were patently illegal, coram non judice and abinitio void, the subsequent order issued by the Commissioner (Appeals-VII) Karachi dated 18.10.2022 upholding the illegal order of IRAO is also abinitio void because such order have as little legal foundation as the void

order on which they were founded in view of decision of the Larger Bench of the honourable Supreme Court of Pakistan in "Yousuf Ali Vs Muhammad Aslam Zia & Others" cited as PLD 1958 Supreme Court 104 which states:

*"if on the basis of a void order subsequent orders have been passed either by the same authority or by other authorities, the whole series of such orders, together with the superstructure of rights and obligations built upon them, must, unless some statute or principle of law recognizing as legal the changed position, of the parties is in operation, fall to the ground because such orders have as little legal foundation as the void order on which they are founded."*

The basic principle laid down by this decision has also been followed in several cases cited as 2007 SCMR 818, 2007 SCMR 729, 2003 SCMR 549, 2003 YLR 1277, PLD 1982 Lahore 1 etc.

10. Further, the matter of jurisdiction has already been settled by the Honourable Supreme Court of Pakistan in the case reported as 2008 SCMR 240 Izhar Alam Farooqi Vs Sheikh Abdul Sattar Lasi and others in C.P.L.As nos. 488-K & 489-K of 2006 decided on 17.11.2006 wherein the Honourable Supreme Court has held,

*"---- Jurisdiction could not be assumed with consent of parties --*

*Mandatory for court to decide at first instance question of its jurisdiction, even though such question not raised by a party ---- Jurisdictional defect would not be removed by mere conclusion of trial or inquiry---- Objection to jurisdiction could be raised at any subsequent stage'*

### **FINDINGS**

11. Upholding the patently illegal, coram non judice and abinitio void order of IRAO dated 18.10.2022 is contrary to law and procedure and is against the principle of natural justice; hence unlawful per se and tantamounts to maladministration in terms of section 2(3)(i)(a)(b)(c) & (ii) of the FTO Ordinance.

**RECOMMENDATIONS:**

12. FBR to direct :

- (i) the Commissioner-IR (Appeals-VII) Karachi to rectify the order dated 22.02.2023 on his own motion or upon application filed by the Complainant as per discussions in para 07-09 after affording proper opportunity of hearing to the Complainant, on its merit and in accordance with law;
- (ii) report compliance within 45 days

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

Dated: 14.11.2023

*Approved for reporting*

  
Director  
FTO Secretariat  
Islamabad

**THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**COMPLAINT NO.5883/KHI/ST/2023**

Dated 06.10.2023 \* R.O. Karachi

**M/s. Reliance Textile Industries, AOP NTN 3068895-7,  
E-8 SITE,  
Karachi**

...Complainant

**Versus**

**The Secretary,  
Revenue Division,  
Islamabad.**

...Respondent

|                              |  |
|------------------------------|--|
| Dealing Officer              | : Mr. Badruddin Ahmad Quraishi Advisor   |
| Appraising Officer           | : Mr. Muhammad Nazim Saleem, Advisor     |
| Authorized Representatives   | : Mr. Munir Haq, Advocate                |
| Departmental Representatives | : Mr. Abdul Hafeez, Sr. Auditor, CTO Khi |

**FINDINGS/RECOMMENDATION**

The complaint was filed in terms of Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against alleged illegal

- i) exparte OIO (Order in original) # 805 of 2022 dated 18.10.2022 imposing sales tax of Rs.3,650,062 & penalty of Rs.182,503
- ii) Commissioner (Appeal-VII) Karachi order 04/2023 dated 22.02.2023 upholding the order of the Assessing Officer.

2. Briefly, the Complainant, an AOP engaged in the business of dyeing & processing of textile products is aggrieved against impugned exparte order vide # 805 of 2022 dated 18.10.2022 passed by Mr. Zulfiqar Ali Khokar, Inland Revenue Audit Officer (IRAO) , Enforcement -II, CTO Karachi imposing sales tax of Rs.3,650,062 & penalty of Rs.182,503 without lawful authority and beyond his jurisdiction. As per complaint, Mr. Zulfiqar Ali Khokar, IRAO, Enforcement -II, CTO Karachi did not have any authority to issue the impugned order in view of

honourable Sindh High Court decision dated 23.11.2022 in CP No.D-1356/2022 wherein the Honourable High Court confirmed the decision of the FBR dated 28.10.2015 that the Officers of Audit Cadre in IRS shall not be posted as Unit-In-Charge in field formation and shall not be assigned assessment related function and duties. In addition, Honourable Lahore High Court in case of Shahbaz Hussain Vs Federation of Pakistan in ICA No.50591 / 2021 also declared that Section 33 in general and entry at S.No.25 in particular does not empower any Officer of Inland revenue to issue showcause notice or adjudication thereof under the said section without recourse to section 11 of the Sales Tax Act (the Act).

3. As per complaint, the IRAO issued showcause notice (SCN) on 11.04.2022 against inadmissible input tax without lawful authority. The Complainant submitted reply on 31.05.2022 but the IRAO without jurisdiction issued exparte OIO(Order in original) # 805 of 2022 dated 18.10.2022 imposing sales tax of Rs.3,650,062 & penalty of Rs.182,503 after expiry of stipulated 120 days in violation of proviso to Section 11(5) of the Sales Tax Act (the Act). Later on, the Commissioner-IR Appeals-VII, Karachi confirmed the OIO vide order 04/2023 dated 22.02.2023. The Complainant quoted case laws of honourable Supreme Court of Pakistan PLD 1958 Supreme Court 104, 2007 SCMR 1835, 2007 SCMR 729 whereby it was held that "*if on the basis of a void order subsequent orders have been passed either by the same authority or by other authorities, the whole series of such orders, together with the superstructure of rights and obligations built upon them, must , unless some statute or principle of law recognizing as legal the changed position , of the parties is in operation, fall to the ground because such orders have as little legal foundation as the void order on which they are founded.*" Accordingly,