BEFORE
THE FEDERAL TAX OMBUDSMAN
Islamabad

Complaint No. 2401/MLN/IT/2020
Dated: 04.09.2020* R.O. Multan

M/s Shah Sons Pakistan (Pvt) Ltd,
8-C/1-A, Industrial Estate,
Multan. ... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad. ... Respondent

Dealing Officer	:	Mr. Saleem Raza Asif, Advisor
Appraisal Officer		Mr. Manzoor Hussain Kureshi, adviosr
Authorized Representative	:	Mr. Riaz Ahmad Raja, ITP
Departmental Representatives	:	Mr. Abdul Wahab, IRAO, RTO, Multan

FINDINGS/RECOMMENDATIONS

The complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) for failure to allow appeal effect to the order of Appellate Tribunal Inland Revenue, (ATIR) dated 22.06.2020 and as a consequence thereof, delay in issuance of refund for Tax Year 2013.

2. Precisely, the Complainant, a Private Limited Company, engaged in manufacturing of tractor parts, filed return of income for Tax Year 2013, under Section 114(1) which was taken to be the assessment order under Section 120(1) of the Income Tax Ordinance, 2001 (the Ordinance). Subsequently, proceedings under Section 161 read with Section 205 of the Ordinance, were finalized on 09.09.2014, creating tax demand amounting to Rs.0.089 million.

3. Being aggrieved, the Complainant filed appeal before the Commissioner-IR, (CIR) (Appeals) Multan who vide order dated

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* **Date of registration in FTO Sectt.**

06.03.2015, annulled the proceedings with the direction that:-

> ***"The officer may call for record to determine exact amount of default under the law and decide after providing adequate opportunity of hearing."***

4. The Deptt filed second appeal before the ATIR Lahore, who dismissed the same vide order dated 22.06.2020. Thereafter, the Complainant approached the Deptt to allow appeal effect to CIR, (Appeals) order dated 06.03.2015. However, despite his repeated efforts, the Deptt failed to allow appeal effect under Section 124 of the Ordinance and issue refund due, as per law. The Complainant also prayed for additional payment for delayed refund in terms of section 171(1) of the Ordinance.

5. The complaint was referred for comments to the Secretary Revenue Division, 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 Chief Commissioner-IR, RTO, Multan forwarded Para-wise comments of the Commissioner-IR, Multan Zone dated 17.09.2020 vide letter dated 18.09.2020. At the outset, preliminary objection regarding bar of jurisdiction, in terms of Section 9(2)(b) of the FTO Ordinance, was raised, on the ground that the Complainant had a legal remedy available to file appeal under the Ordinance. Reliance was placed on the Hon'ble President of Pakistan's orders Nos.190/FTO/2016 dated 27.03.2017, 01/FTO/2017 dated 16.03.2017, 75/FTO /2016 dated 31.08.2016,79/FTO/2016 dated 31.08.2016, 05/FTO/2016 dated 16.08.2016 & 01/FTO/2017 dated 02.05.2017 and judgment of the Hon'ble Lahore High Court in WP No.5999/2017 in the case *titled Messrs Shehzadi Polypropylene Industries through Proprietor Vs Federation of Pakistan and 4 others* *(2017 PTD 2019).*

6. On merits, it was contended that appeal effect under Section 124 of the Ordinance, had already been allowed vide order dated 10.09.2020. However, after dismissal of Dept'l appeal by the ATIR, the order of the CIR, (Appeals) is in the field which would be finalized as per his directions. Under these circumstances, refund claimed by the Complainant in the complaint was premature till finalization of proceedings. Concluded that refund, if any, determined after finalization of proceedings would be issued expeditiously.

7. During hearing, the AR contended that after allowing appeal effect vide order dated 10.09.2020, refund for Tax Year 2013 stood determined which the Deptt could not withhold under any pretext. The DR stated that consequent upon appeal effect, the Complainant had yet not e-filed refund application on ITMS. However, he assured that once the Complainant e-filed refund application on ITMS, the refund already determined for Tax Year 2013, would be issued within 30 days, as per law.

8. In view of the assurance given by the DR, to issue refund already determined for Tax Year 2013, within 30 days after filing of the refund application on ITMS, as per law, there is no need to go into other legal & factual merits of the complaint. The Complainant is also entitled to additional payment of delayed refund in terms of Section (a) of sub-section (2) of Section 171 of the Ordinance. The Deptt is, accordingly, directed to issue already determined refund for Tax Year 2013 alongwith additional payment for delayed refund and report compliance within 45 days thereafter.

(Mushtaq Ahmad Sukhera)
Federal Tax Ombudsman

Certified to be True Cop

Dated: 30/11/2020
IM/HUK

Deputy Registrar
FTO Secretariat
Islamabad