BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

Complaint No.2563/MLN/IT/2022
Dated: 20.06.2022* R.O. Multan

Mr. Muhammad Tariq Shehzad,
Outside Chutaqa Gate, Mohalla Bari Wala, ... Complainant
Shujabad, Multan.

Versus

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

Dealing Officer	:	Dr. Khalil Ahmad, Advisor
Appraisal Officer	:	Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	:	Mr. Riaz Ahmad Raja, ITP
Departmental Representative	:	Syed Nadeem Akhtar, IRAO, RTO, Multan

FINDINGS/RECOMMENDATIONS

The above-mentioned complaints were filed under section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against ex-parte assessment for Tax Year 2016 under Section 121 & demand notice under Section 137 of the Income Tax Ordinance, 2001 (the Ordinance).

2. The facts of the complaint are that the Complainant is an individual, deriving below taxable salary income of Rs.264,000 Per Annum & employed on contract basis with Land Record Management Information Centre, Multan since 04.07.2014. The Complainant himself got registered under Section 181 of the Ordinance with FBR w.e.f. 09.08.2019, as is evident from taxpayer's online registration certificate. Returns were filed from Tax Year 2020 onward. Deptt issued notice under Section 114(4) of the Ordinance for Tax Year 2016 and ex-parte assessment under Section 121 & demand notice under Section 137 of the Ordinance amounting to Rs.37,654/-.

* Date of registration in FTO Sectt.

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 thereto, the Chief Commissioner-IR, RTO, Multan forwarded para-wise comments of the Commissioner-IR, Multan Zone dated 15.07.2022 vide letter dated 18.07.2022.

4. It is contended that assessment for Tax Year 2016 was finalized under Section 121 of the Ordinance on 18.06.2022 on the basis of definite information. The Complainant instead of filing of appeal before CIR(Appeals) under Section 127 of the Ordinance lodged complaint before Hon'ble FTO. The complaint filed pertains to assessment and matter is appealable.

5. During hearing, the DR contested that issue is beyond the jurisdiction. The AR argued that order under Section 121 of the Ordinance is patently flawed. No show cause was ever issued. The definite information, on the basis of which the income has been estimated, was not confronted to the taxpayer.

6. Both the parties heard and record perused.

7. The preliminary objection raised by the Deptt that since a remedy was available to file appeal before CIR(Appeals) under Section 127 of the Ordinance therefore, the complaint before FTO is misconceived. Patent illegality of the impugned order constituting maladministration is the core allegation in the instant complaint therefore the preliminary objection raised by the Deptt is overruled.

8. According to the AR the actions of the Deptt suffered from legal and factual infirmities. The Assessing Officer has passed ex-parte order under Section 121 of the Ordinance without issuing show cause notice under Section 122(9) of the Ordinance and without providing

opportunity of hearing. The alleged 'definite information' was never confronted with the Complainant.

FINDINGS:

9. Neglect, inattention and inefficiency in the administration or discharge of duties and responsibilities are tantamount to maladministration, in terms of Section 2(3)(ii) of the FTO Ordinance.

RECOMMENDATIONS:

10. FBR to -

(i) direct the CCIR, RTO, Multan to revisit the order dated 18.06.2022 passed under Section 121 of the Ordinance, after providing proper opportunity of hearing, as per law within 21 days; and

(ii) report compliance within 30 days.

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

Dated: 16/08/ 2022

Director
FTO Secretariat
Islamabad