BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

Complaint No.3015/MLN/IT/2022
Dated: 07.07.2022* R.O. Multan

Mr.Usama Abdul Karim, ... Complainant
House No.30, Block-A, Kheyaban-e-
Sarwar,D. G. Khan.

Versus

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

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

FINDINGS

The complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against order dated 04.07.2022 passed under Section 122(5A) of the Income Tax Ordinance, 2001 (the Ordinance).

2. The facts of the complaint as stated are that the Complainant is an individual and filed return for Tax Year 2016 disclosing income from salary under Section 149 of the Ordinance at Rs.0.180 million, income from property under Section 155 of the Ordinance at Rs.0.207 million & agriculture income of Rs.1.2 million of the Ordinance, along with wealth statement. The return was subsequently revised on 13.8.2019 by reducing the agriculture income at Rs.80,000/-. Wealth statement was also revised downward accordingly. Later on, Additional CIR, Multan issued show cause notice under Section 122(9)/122(5A) of the Ordinance on

* Date of registration in FTO Sectt.

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08.03.2019 for compliance on 22.03.2019 treating the said revision as erroneous in so far as prejudicial to the interest of revenue. After three-year (Approx.) notice was issued u/s 111(1) of the Ordinance by Additional CIR, Multan dated 01.06.2022. The Taxpayer filed reply explaining that original return was filed on 03.10.16 & revised on 13.06.19 reducing agriculture income to Rs.80,000, The Deptt passed order on 04.07.2022 creating demand of Rs.161,940 which is the cause of grievance in the instant 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 thereto, the Chief Commissioner-IR, RTO, Multan forwarded para-wise comments of the Commissioner-IR, Multan Zone dated 21.07.2022 vide letter dated 21.07.2022. At the outset Preliminary Objection has been raised on bar of jurisdiction in terms of Section 9(2)(b) of the FTO Ordinance on the plea that the complaint was filed against order passed under Section 122(5A) of the Ordinance.

4. It has been argued that the Complainant filed wealth statement for Tax Year 2016 on 03.10.2016 in which net assets were declared at Rs.26,872,500, showing an inflow of Rs.1,639,000 out of which Rs.1,200,000 were attributed to agriculture income. The taxpayer revised return and wealth statement on 13.06.2019 reducing assets at Rs.25,752,500/-. The wealth statement was revised after issuance of show cause notice under Section 122(5A) and such revision is not allowable under the law. Moreover, the taxpayer is again availing the benefit of exempt income from agriculture income in the wealth statement of tax year 2017 in which previous net assets declared at Rs.26,872,500/- have been maintained as opening balance as declared in the original wealth

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statement for the tax year 2016. In the show cause notice the section was duly mentioned as 111(1)(d)(ii) of the Ordinance. Moreover, the provision was also mentioned in the show cause notice. Without prejudice to the above, the order was passed on 17.06.2022. However, the order was printed on 04.07.2022 due to system issues but printing the order on a later date does not affect the taxpayer because the limitation starts from the date of receipt of order by the taxpayer. The Deptt has further argued that none of the conditions required for revision of return in terms of Section 114(6)(ba) of the Ordinance were fulfilled by seeking approval for revision of return from Commissioner Inland Revenue.

5. During hearing, the DR strongly contested that issue is beyond the jurisdiction. The AR, however, reiterated the contents of the complaint.

6. The Deptt filed revised para-wise comments on03.08.2022

7. Both the parties heard and record perused.

8. It is evident from record that return was revised on 13.08.2019 i.e. subsequent to issuance of show cause under Section 122(5A) of the Ordinance which was issued on 08.03.2019. Furthermore, the revision is invalid in terms of Section 114(6)(ba) of the Ordinance because

(i) No approval was granted by the CIR.

(ii) Proviso 3's conditionality not met in wealth statement for Tax Year 2017, net assets have been declared as per original wealth statement for Tax Year 2016.

(iii) No evidence of agriculture tax was provided for Tax year 2016.

Since the assessment order under Section 122(5A) of the Ordinance was finalized in IRIS on 17.06.2022 but printed on 04.07.2022, the objection of the AR is not tenable that amended order is time barred.

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9. Evidently, the impugned amended order dated 17.06.2022 has been finalized by the Addl CIR. As the Complainant has legal remedy of appeal available against the order dated 17.06.2022, which he can avail under the relevant legislation under Section 127 of the Ordinance.

10. As a sequel to the above, the complaint stands rejected for want of jurisdiction, in terms of Section 9(2)(a)of the FTO Ordinance. File be consigned to record.

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

Dated: 25-08-2022

Director
FTO Secretariat
Islamabad

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