BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

Complaint Nos.2558 to 2560/MLN/IT/2022

Dated: 20.06.2022* R.O. Multan

Mr. Irshad Ahmed Khan,
Qalandrani House, Imran Colony, ... Complainant
Dera Ghazi 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 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 disallowance of refund adjustment for Tax Years 2015 & 2016 against demand of Tax Year 2017. The complaints having identical issues are disposed of, through a single consolidated order.

2. Facts in brief are that the Complainant is an individual deriving income from salary, e-filed return of income for Tax Years 2015 &2016under Section 114(1) of the Income Tax Ordinance, 2001 (the Ordinance), claiming refund amounting to Rs.0.025& Rs.0.088 million respectively. The refund arose on account of tax deducted on salary under Section 149, on cash withdrawal from bank under Section 231A, on motor vehicle sales under Section 231B on passenger transport public vehicle tax under Section 234 and on cell phone bills under Section 236(1)(a) of the Ordinance. According to the Complainant, refund application for Tax Years 2015& 2016 were e-filed on 09.09.2015

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* Date of registration in FTO Sectt.

&14.06.2022 respectively and refund amounting to Rs.114,062 is available with him. The Complainant has adjusted this refund against tax liability amounting to Rs.0.095 million for Tax Year 2017 under code 92101 of the return form. The Assessing Officer however, without finalizing the pending refund claims has issued rectification notice under Section 221(2) of the Ordinance. Hence this complaint.

3. The Complainant also prayed for additional payment for delayed refund under Section 171(1) of the Ordinance on balance refund after adjustment of tax liability for Tax Year 2017.

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 Chief Commissioner-IR, RTO, Multan forwarded para-wise comments of the Commissioner-IR, Multan Zone dated 04.07.2022 vide letter dated 05.07.2022.

5. It is contended that the Complainant/taxpayer e-filed refund application for the tax year 2015 after rejection of refund under Section 170(4) vide bar Code No.100000077847688 dated 26.09.2020 and also after issuance of notice 221(2) hence he is not entitled to refund. As far as Tax Year 2016 & 2017 are concerned the taxpayer has failed to substantiate his refund claim under Section 164 of the Ordinance, as he did not provide documentary evidence in support of refund claim. As soon as the documentary evidence is provided, the refund application will be disposed of under the law.

6. During hearing the AR contended that refund for Tax Year 2015 was rejected for want of documents without giving sufficient opportunity. Refund for Tax Year 2016 is still pending and documents have already been provided. The show cause notice under Section 221 of the

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Ordinance has been issued for adjustment of demand for Tax Year 2017 against refund for Tax Year 2016. The DR could not controvert it.

7. Both the parties heard and record perused.

8. Evidently, the Complainant is seeking permission for adjustment of refund for Tax Years 2015 & 2016 against payable demand for Tax Year 2017 which are as under:

Refund		**Demand**
Tax Year	Amount	adjusted against demand for Tax Year 2017
2015	25,501	
2016	88,561	
Total	**114,062**	**95,792**

9. The Complainant claimed refund for Tax Years 2015 & 2016 while filing respective returns for these years but the Deptt did not process the refund claim within the due timeline. However, the Deptt rejected the refund claim for Tax Year 2015 vide order dated 26.09.2020 for want of documents. As for Tax Year 2016 the Deptt issued notice dated 25.06.2022 for provision of proof of tax deduction. The Complainant filed return for Tax Year 2017 and adjusted the outstanding refund for the aforementioned years against the tax payable in Tax Year 2017 in column 92101 of the return form. The Deptt has now issued notice under Section 170(4) of the Ordinance for Tax Years 2016 and 2017 for provision of CPRs/evidences to verify the claimed refund after filing of instant complaint. The refund application for Tax Year 2015 has already been rejected on 26.09.2020 before filing of this complaint.

10. <u>The Dept'l plea is not tenable because the Deptt has rejected refund for Tax Years 2015 without providing adequate opportunity on one hand and on the other hand is denying the adjustment of refund against tax payable for the Tax Year 2017 because the outstanding refund is adjustable against demand for subsequent year, after due</u>

verification in terms of FBR circular No.1 dated 20.02.2009 and the return form under code 92101.

FINDINGS:

11. Neglect, inattention and delay 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:

12. FBR to -

(i) direct the CCIR, RTO, Multan to revisit order dated 26.09.2020 under Section 170(4) of the Ordinance for Tax Year 2015, after providing adequate opportunity as per law within 21 days;

(ii) dispose of pending claim of adjustment and action under Section 221 of the Ordinance as per law and after giving proper hearing; and

(iii) report compliance within 45 days.

13. The Complainant's request for additional payment for delayed refund is, however, premature at this stage in terms of Explanation to Section 171(2)(c) of the Ordinance.

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

Dated: 28/07/ 2022

Director
FTO Secretariat
Islamabad