BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

Complaint Nos.2022 to 2024/MLN/IT/2022
Dated: 28.05.2022* R.O. Multan

Mr. Abdul Karim,
House No.30-A, Khayaban-e-Sarwar, ... Complainant
near Dot Pull, Dera Ghazi Khan.

Versus

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

Dealing Officer	:	Dr. Khalil Ahmad, Advisor
Appraised 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 & 2020 against demand of Tax Year 2021. 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, agriculture and rental e-filed return of income for Tax Years 2015 & 2020 under Section 114(1)of the Income Tax Ordinance, 2001 (the Ordinance), claiming refund amounting to Rs.0.376 & Rs.0.357 million respectively. The refund arose on account of tax deducted on salary under Section 149, on rent of property under Section 155, on cash withdrawal from banks under Section 231A, on motor vehicle registration fee under Section 231B(1), on passenger transport public vehicle tax under

* Date of registration in FTO Sectt.

Section 234, on cell phone bills under Section 236(1)(a), on Educational institution fee under Section 236I and electricity bills under Section 235 of the Ordinance. According to the Complainant, refund application for Tax Years 2015 & 2020 were e-filed on 23.09.2015 & 27.05.2020 respectively and refund amounting to Rs.733,913 is available with him. The Complainant has adjusted this refund against tax liability for Tax Year 2021 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 2021.

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 11.06.2022 vide letter dated 11.06.2022.

5. It is contended that:

> "Taxpayer failed to attach/provide documentary evidences of tax deduction along with refund application for Tax Year 2015. Hence, taxpayer is un-justified in adjusting his un-determined/unverified refund for the above mentioned tax year amounting to Rs.376,649 against his admitted tax liability for the tax year 2021. The refund claim of the taxpayer is not bonafide and genuine in absence of proper proofs of tax deduction. Notice in respect of refund claim for provision of CPRs/evidences has been issued to the taxpayer for compliance by 13.06.2022.
>
> Refund adjustment will be allowed and remaining refund will be issued to the taxpayer if he provides necessary proofs/CPRs in support of his refund claim for the tax year 2015.

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Taxpayer failed to attach/provide documentary evidences of tax deduction along with refund application for Tax Year 2020. Taxpayer has declared commission receipts under Section 156A at Rs.21,345,625 in his income tax return and whole of commission receipts claimed as income in wealth statement without excluding any profit & loss expenses which need verification in line with FTR income.

The refund claim of the taxpayer is not bonafide and genuine in absence of proper proofs of tax deduction under Section 235, 236(1)(a), 236I, 155 and 149 of the Ordinance. Therefore, notice under Section 170(4) in respect of refund claim for provision of CPRs/evidences has been issued to the taxpayer for compliance by 13.06.2022.

The refund will be issued to the taxpayer if he provides necessary proofs/CPRs in support of his refund claim for the Tax year 2020 and subject to the fulfilment of other legal formalities as pointed out above."

6. During hearing the AR submitted a rejoinder stating therein that refund applications for Tax Year 2015 & 2020 were e-filed along with documents and adjustment was claimed against demand for Tax year 2021. 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 & 2020 against payable demand for Tax Year 2021 which are as under:

Refund		**Demand**
Tax Year	Amount	adjusted against demand for Tax Year 2021
2015	376,649	
2020	357,264	
Total	**733,913**	**211,996**

9. The Complainant claimed refund for Tax Years 2015 & 2020 while filing respective returns for these years but the Deptt did not process the refund claim within the due timeline. The Complainant filed return for Tax Year 2021 and adjusted the outstanding refund for the aforementioned years against the tax payable in Tax Year 2021 in column 92101 of the return form. The Deptt has now issued notice under Section 170(4) of the Ordinance for both years

for provision of CPRs/evidences to verify the claimed refund after filing of instant complaint.

10. The Dept'l plea is not tenable because the Deptt has failed to issue refund for Tax Years 2015 & 2020 within the given time on one hand and on the other hand is denying the adjustment of these refund against payable for the Tax Year 2021 because the outstanding refund is adjustable against demand for subsequent year, after due verification in terms of FBR circular No.1 dated 20.02.2009 and the return form under code 92101 also provides for the same.

FINDINGS:

11. Neglect, inattention, delay, 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:

12. FBR to -

(i) direct the CCIR, RTO, Multan to allow claim of refunds for Tax Years 2015 & 2020 as admissible/adjustable against the demand for Tax Year 2021

(ii) dispose of the claim of balance refund 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: 04-07 2022

Director
FTO Secretariat
Islamabad