BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

Complaint Nos.1880, 1881, 1883 to 1885/MLN/IT/2022

Dated: 18.05.2022* R.O. Multan

Dr. Shazia Irshad,
Qalandari House, Imran Colony,
D.G. Khan Road, Muzaffargarh.

... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer	:	Dr. Khalil Ahmad, Advisor
Appraisal by	:	Muhammad Tanvir Akhtar, Advisor
Authorized Representative	:	Mr. Riaz Ahmad Raja, ITP
Departmental Representative	:	Mr. Irfan Ahmad, 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 2013, 2015, 2017 & 2018 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 and deriving income from Agriculture & Hospital e-filed returns/revised returns of income for Tax Years 2013, 2015, 2017 & 2018 under Section 114(1) / 114(6) of the Income Tax Ordinance, 2001 (the Ordinance), claiming refund amounting to Rs.0.024, Rs.0.017, Rs.0.055 and Rs.0.014 million respectively. The refund arose on account of tax deducted on cash withdrawal from banks under Section 231A, on purchase of vehicle under Section 231B, on vehicle token under Section 234 and on electricity bills under

* Date of registration in FTO Sectt.

Section 235 of the Ordinance. According to the Complainant, total refund amounting to Rs.0.110 million is available with him. The Complainant has adjusted this refund against tax liability for Tax Year 2021 under code 92101 of the return form. He has relied upon FBR Circular No.1 of 2009 dated 20.02.2009 regarding adjustments of payments. The Assessing Officer however, without finalizing the pending refund claims has issued rectification notice under Section 221(2) of the Ordinance dated 10.05.2022. Hence this 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 02.06.2022 vide letter dated 02.06.2022.

4. The Deptt view is that:

"Tax Year 2013

The Complainant filed an application for issuance of refund amounting to Rs.24,033/- but not provided proof of tax deduction/copy of CPRs till to date. The Complainant filed his income tax return manually and she had filed refund application on e-portal of FBR. As submitted above, no evidence or proof in respect of deduction and deposit of tax deduced was submitted by him alongwith the return or otherwise. So, order under Section 170(4) of the Ordinance could not be passed. Further, she was legally obliged to file appeal on failure of the Deptt for passing order under Section 170(4) of the Ordinance, as provided under Section 170(5) of the Ordinance. But no appeal has been filed by him. Furthermore, neither any application for rectification has been received from the Complainant taxpayer nor any such notice was issued to him pertaining to the Tax Year 2013. In the circumstances, the taxpayer is not liable to claim refund from the Deptt at this stage.

Tax Year 2015

The Complainant filed an application for refund amounting to Rs.17,100/-. Notice under Section 170(4)(Notice in respect of refund) was issued vide Bar Code No. 100000073241897 dated 13.04.2020 for provision of proof of tax deductions. Since the Lady taxpayer has failed to comply, she had not provided proof of tax deductions, its payment on form of CPRs, therefore his refund was rejected vide order under Section 170(4) (order to grant/refund of tax paid in excess on application) vide bar code No.1000000778449022 dated 26.09.2020. Now taxpayer had filed a fresh refund application for the instant tax year, 2015 on 17.05.2022 for which she was not allowed to file under the existing law. However, the taxpayer had right to file an appeal under Section 170(5) against the order under Section 170(4) of the Ordinance (order to grant/refund of tax paid in excess on application) but has not filed not appeal rather he has filed he instant complaint for which he has no justification. The taxpayer filed refund application after issuance/receiving of notice under Section 221(2) of the Ordinance. In the circumstances, the taxpayer is not liable to claim refund from the Deptt at this stage.

Tax Year 2017

The Complainant filed an application for refund amounting to Rs.55,100/-. Notice under Section 170(4) (Notice in respect of refund) was issued vide Bar Code No. 100000076539832 dated 24.08.2020 for provision of proof of tax deductions and deposition in form of CPRs. Since the Complainant Lady taxpayer has failed to comply, she had not provided proof of tax deductions, a reminder has been issued for provision of proof of tax deductions for complaint by 31.05.2022. However, the taxpayer had filed another refund application for Tax year 2017 dated 17.05.2022. The taxpayer filed refund application after issuance/receiving of notice under Section 221(2) of the Ordinance. On receipt of evidence / proof of tax deduction, if provided, by the taxpayer on or before the given date, 31.05.2022 the refund order will be issued after verification of the evidence provided by him.

Tax Year 2018

The Complainant filed an application for refund under Section 170 (Application for refund of tax paid in excess) dated 17.05.2022 amounting to Rs.14,049. Notice under Section 170(4) (Notice in respect of refund) has been issued vide Bar Code No. 100000124871124 dated 24.05.2022 for provision of proof of tax deductions. The taxpayer filed refund application after issuance/receiving of notice under Section 221(2) of the Ordinance. On receipt of evidence / proof of tax deduction, if provided, by the taxpayer on or before the given date, 31.05.2022 the refund order will be issued after verification of the evidence provided by him."

5. During hearing, the AR explained that refunds for Tax Years 2013, 2015, 2017 & 2018 have been adjusted by her against payable demand in the return for Tax Year 2021. The Deptt has asked for evidence in support of deductions claimed as refund through show cause under Section 221 of the Ordinance which

4 1880, 1881, 1883 to 1885/MLN/IT/2022

stands responded by the Complainant on 15.05.2022 and evidence has again been provided to the DR.

6. Both the parties heard and record perused.

7. Evidently, the Complainant is seeking permission for adjustment of refund for Tax Years 2013, 2015, 2017 & 2018 against payable demand for Tax Year 2021 which are as under:

Refund		**Demand**
Tax Year	Amount	**adjusted against demand for Tax Year 2021**
2013	24033	
2015	17100	
2017	55000	
2018	14049	
Total	**110,182**	**185,396**

8. The Complainant claimed refund for Tax Years 2013, 2015, 2017 & 2018 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 221 showing its intension to disallow refund claim on the plea that the refund claim have not been formerly disposed of in terms of Section 170(4) of the Ordinance for all the yeas and the credit of refund could not be taken for adjustment in the subsequent year i.e. 2021. The Deptt has also taken the plea that in the absence of an explicit order under Section 170 of the Ordinance, the refund claims are liable to be treated as rejected and hence are appealable.

9. The Dept'l plea is not tenable because the Deptt has failed to issue refund for Tax Years 2013, 2015, 2017 & 2018 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.

FINDINGS:

10. Neglect, inattention, delay and inefficiency in the administration or discharge of duties and responsibilities in this case are obvious which subsequently lead to maladministration, in terms of Section 2(3)(ii) of the FTO Ordinance.

RECOMMENDATIONS:

11. FBR to -

(i) direct the CCIR, RTO, Multan to revisit the whole case i.e. claims of refund for Tax Years 2013, 2015, 2017 & 2018 as well as adjustment against the demand for Tax Year 2021 after due verification and 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: 23-6-2022
Satti

Director
FTO Secretariat
Islamabad