

FEDERAL TAX OMBUDSMAN SECRETARIAT
Regional Office, Multan

Complaint No. FTO-MLN/0000850/16
Complaint No. FTO-MLN/0000851/16

Dated: 16.12.2016

Mr. Zubair Azhar,
10 Nasheman Colony Road,
Multan.

... Complainants

M/s Croplands (Pvt) Ltd,
10, Nasheman Colony, Multan.

V e r s u s

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer : Mr. Haji Ahmad, Advisor
Authorized Representatives : Mr. Rashid Bashir, ITP
Mr. Khadim Hussain Maitla, Advocate
Mian Abdul Basit, Advocate
Departmental Representatives : Mr. Arsalan Bukahri, DCIR
Mr. Nadeem Ahmad, DCIR
RTO, Multan

FINDINGS/RECOMMENDATIONS

These complaints have been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 against illegal recovery of company's tax by resorting to coercive measure of attachment of bank accounts of its Directors and misuse of authority by tax officials. As facts and circumstances of these complaints are same, these are disposed of with this order.

2. Brief facts of the case are that tax demand was raised at Rs. 1.296 million against the company under Sections 161/205 of the Income Tax Ordinance, 2001 (the Ordinance). DCIR Unit-01, Corporate Zone, Multan, vide notice No. DCIR/U-01/RTO/ MN/447 dated 25.11.2016 initiated recovery proceedings under Section 140 read with Section 139 of the Ordinance. Bank accounts of the Directors namely Mr. Bashir Ahmad Khan and Mr. Zubair Azhar were attached without issuing any notice under Section 138(1) of the Ordinance. Statedly, the Complainant's case falls within the jurisdiction of Officer Inland Revenue, Unit-04, as per Commissioner IR, Corporate Zone's jurisdiction order No. CIR(Corporate Zone)/RTO-MN/272 dated 29.07.2016. The DCIR, Unit-01 who initiated the recovery proceedings had, therefore, no jurisdiction in these cases and this fact was communicated to him by the AR vide letter dated 02.12.2016. The AR informed the DCIR that the matter pertained to disputed liability and an appeal was pending before the Commissioner IR(Appeals) and so taking harsh measures before the decision in appeal would be unlawful as held in the case cited as **2016 PTD 1799**. Thereafter, the Commissioner IR(Appeals) vide order dated 08.12.2016 annulled the assessment and cancelled the tax demand. The Complainant vide letter dated 08.12.2016 informed the DCIR, Unit-01 that in consequence of the order in appeal, there was no demand pending against the Complainant. Despite that, order of attachment of bank accounts was not withdrawn. The Complainant then met the concerned Commissioner IR, but needful was not done. The AR vide letter dated 13.12.2016 once again requested the DCIR to withdraw the recovery notice, but no action was taken, hence these complaints.

3. The Complainants prayed to issue directions to the Deptt to withdraw the notice of attachment, refund the tax illegally recovered and take action against officer(s)/official(s) responsible for misuse of authority and harassing the Complainants. Further requested that the DCIR, Unit-01, Multan should pay damages and compensate financial loss occurred to the Complainant.

4. The complaint was sent for comments to Secretary Revenue Division, in terms of Section 10(4) of the FTO Ordinance. In response, the Chief Commissioner IR vide letter C. No.CCIR/RTO-MN/9182 dated 02.01.2017 and CCIR/RTO-MN/10017 dated 18.01.2017 forwarded comments of the Commissioner IR, Corporate Zone, Multan bearing No.2627 dated 29.12.2016 and No.2825 dated 16.01.2017. In its reply, the Deptt stated that notice under Section 138(2) of the Ordinance was issued prior to the issuance of notice under Section 140 of the Ordinance. Further stated that the Commissioner IR had delegated powers for recovery and issuance of recovery notices under Section 140 of the Ordinance to the DCIR, Unit-01. According to the Deptt, appellate order/intimation regarding annulment of assessment was received on 15.12.2016 and notice under Section 140 of the Ordinance was withdrawn the same day. Under the circumstances, it is stated that no mal-administration was involved in the case.

5. On the contrary, the AR provided jurisdiction order No.CIR(Corp Zone)/RTO-MN/272 dated 29.07.2016 in support of his contention that the Complainant's case fell within the jurisdiction of IRO, Unit-04 and only he could initiate recovery proceedings. The action of the DCIR/IRO, Unit-01 was thus without jurisdiction.

6. The DR attended the proceedings without proper record in support of Deptt's contention. He, however, produced some loose papers, but denied to have maintained any file having note sheet and record of proceedings conducted on the basis of letters/applications filed by the AR. On the issue of jurisdiction, no plausible explanation was offered. Though, copy of notice under Section 138 of the Ordinance was produced, but the same was ^{found} lying in the file unserved.

7. The parties heard and available record perused. Bank accounts of Directors of the Company namely Cropland (Pvt) Ltd were attached by issuing notice under Section 140 of the Ordinance. As provided in Section 139 of the Ordinance, if any tax payable by a private company in respect of any tax year cannot be recovered from the company, every person who was, at any time in that tax year, the director of the company, other than an employed director shall be jointly and severally liable for payment of the tax due by the company. However, for recovery of tax, notice under Section 138(2) and warrant of attachment of moveable property in terms of Rule 136(2) of the Income Tax Rules, 2002 was required to be served and if after service of copy of warrant, the amount is not paid forthwith, the officer can then proceed to attach moveable property of the defaulter. The Deptt has failed to establish that efforts were made for recovery of tax from company, but the same could not be recovered. Even, service of statutory notices & warrants could not be established. Moreover, tax demand of the company was deleted by the Commissioner IR(Appeals) vide order dated 08.12.2016. In spite of that, the DCIR insisted to recover tax and even issued show cause notice No.968 dated 08.12.2016 to the Manager Operation, UBL, Bosan Road Branch, Multan for initiation of prosecution proceedings

under Section 191(1)(d) of the Ordinance for non-compliance of statutory obligation and obstructing the income tax authorities. The Manager was summoned to office on 13.12.2016 when there was no tax demand in the field. In compliance to the notice, Mr. Khalid Mehmood, Branch Manager, Ms. Nosheen Hanif, Manager Operations and Mr. Munir Hamayum, Relationship Manager attended the office on 13.12.2016 and requested adjournment on the ground that show cause notice has been sent to the Legal Division of the Bank for guidance and advice in the matter was still awaited. The Assessing Officer made following noting on the said letter -

"Ms. Nosheen Hanif, Manager Operation and Mr. Munir Hamayun, Relationship Manager present and have admitted that they should submit an unconditional apology in writing on 19.12.2016".

8. This has been done despite the fact that on the date of hearing on 13.12.2016, there was no demand against the Company, but the Manager Operations was compelled to submit unconditional apology which she did vide letter dated 21.12.2016. The DCIR vide letter No.684 dated 23.12.2016 addressed to Ms. Nousheen Hanif confirmed that she along-with Mr. Khalid Mehmood, Branch Manager and Mr. Munir Hamayun, Relationship Manager of UBL, Bosan Road Branch, Multan appeared before the DCIR and submitted an unconditional apology for not responding to his letters. In view thereof, proceedings initiated against her and other officers of the bank were filed. Prior to that, notice under Section 140 had been withdrawn vide DCIR letter No.532 dated 16.12.2016 after recovering an amount of Rs0.783 million from bank account of the Director Mr. Zubair Azhar. There is evident contradiction in withdrawal of notice u/s 140 after issuing banker's

cheque for an amount of Rs0.783 million on 15.12.2016 in favour of Deptt, as perusal of bank statement of the aforementioned Director indicated that an amount of Rs0.783 million was illegally withdrawn by the Deptt on 15.12.2016 vide document CC ISSUED (Ref # 201645959023). However, after filing of this complaint on 16.12.2013 and show cause notice dated 03.01.2017 issued by the Complainant to the bank authorities, the amount, illegally recovered, was re-deposited by the Deptt on 23.01.2017 vide documents CC PAYMENT (CC No.12451951).

9. On the issue of jurisdiction, the DR stated that although as per jurisdiction order, this case vest with IRO, Unit-04, but DCIR, Unit-01 was assigned special jurisdiction by the Commissioner IR to effect recovery. He, however, could not produce copy of order of authorization. Moreover, it was beyond the powers of the CIR to override provisions of Section 139 which laid down the conditions for recovery of the Company's tax from the Directors. Further, delay in disposal of Complainant's application for withdrawal of attachment notice from bank after annulment of order by the CIR(Appeals) could not be justified. The contention that no official order from CIR(Appeals) was received till 15.12.2016 is of no significance as appellate order was submitted to the Deptt by the AR on 08.12.2016 as intimated by the AR. It was obligation of the CIR to confirm its authenticity from CIR(Appeals), even if the order was not directly received by him from the office of appellate authority.

10. The DCIR Unit-01 did not have lawful jurisdiction over the case. Even if he had the jurisdiction, outstanding demand of the company could not have been recovered from the Directors as the procedure

prescribed in Section 139 read with Rule 136(2) of the Income Tax Rules, 2002 was not followed. The Deptt misreported that CIR had delegated powers of recovery and issuance of recovery notice under Section 140 of the Ordinance to DCIR, Unit-01, as authorization in this regard was not produced during the complaint proceedings. The proceedings under Section 140 for attachment of bank account and subsequent withdrawal of Rs.0.783 million from the account of Director, when there was no demand against the company were illegal. The banker's cheque for the said account was obtained by the Deptt on 15.12.2016 and re-deposited in the bank on 23.01.2017, more than a month after complaint was filed on 16.12.2016. Retaining cheque for such a long period without crediting it into the Government Treasury was also **an act of highhandedness and illegality**. Moreover, the DCIR pursued the matter with the bank authorities even after annulment of the demand of the company and compelled the officers of bank to submit unconditional apology **which reflects administrative excesses of the Deptt**. This was brought on record by issuing a letter dated 23.12.2016 to the bank manager. The action against bank authorities after annulment of assessment was tantamount to harassment and personal vendetta. As regards, the claim of compensation for damaging Complainant's reputation and prestige, proceedings under Section 22 of the FTO Ordinance would be initiated separately against the concerned officers.

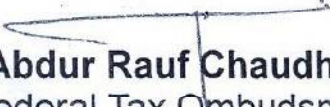
Recommendations:

11. FBR to-


- (i) conduct inquiry and identify the officer(s)/official(s) responsible for acts of omission and commission in the

- instant case including pursuing recovery of tax after appellate decision and harassing the bank authorities;
- (ii) take appropriate disciplinary action against the officials found guilty of administrative excesses in the inquiry; and
 - (iii) report compliance of action taken within 60 days.

Dated: 07-4-2017.
My/zi/AH


(Abdur Rauf Chaudhry)
Federal Tax Ombudsman

Certified to be true copy


Registrar
FTO Secretariat
Islamabad.