



Federal Tax Ombudsman Secretariat

No. 1/503-698-M/16-Impl.

December 14, 2016

Complaint No.FTO/MLN/0000503/2016.

Complaint No.FTO/MLN/0000698/2016.

To

The Secretary
Revenue Division
Islamabad

Subject: **FINDINGS/RECOMMENDATIONS.**

A copy of the Findings/Decision/Order of the Federal Tax Ombudsman dated 14-12-2016 in the complaint cited above is sent herewith for information.

(Arshad Mahmood Cheema)
Registrar

Federal Tax Ombudsman Secretariat
Islamabad

A copy of the Findings/Decision/Order is forwarded for information to:

1. M/s Fatima Medical Centre (Pvt) Ltd, Through Ch. Tanveer Ahmad, Chief Executive, M/s Fatima Medical Centre (Pvt) Ltd, Chowk Rasheedabad, Multan. (Mob: 0300-8626221).
2. Mr. Muhammad Younus Ghazi, FCA, Ghazi & Company, Chartered Accountants, Tawakkal Autos Plaza, Chowk Civil Hospital, Abadli Road, Multan.
3. The Chief Commissioner (IR) Regional Tax Office, Multan.
4. Mr. Abdur Rehman Dogar, Advisor, Federal Tax Ombudsman, Regional Office, Multan (Vetted draft attached).
5. Mr. Haji Ahmad, Advisor, Federal Tax Ombudsman, Regional Office, Faisalabad.
6. Secretary to FTO.
7. Office Copy.

(Arshad Mahmood Cheema)
Registrar

Federal Tax Ombudsman Secretariat
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FEDERAL TAX OMBUDSMAN SECRETARIAT
Regional Office, Multan

Complaint No.FTO-MLN/0000503/16

Dated: 26.05.2016

Complaint No.FTO-MLN/0000698/16

Dated: 28.07.2016

M/s Fatima Medical Centre (Pvt) Ltd,
Chowk Rasheedabad,
Multan.

... Complainant

V e r s u s

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officers : Mr. Haji Ahmad, Advisor
Mr. Abdur Rehman Dogar, Advisor

Authorized Representatives : Khawaja A Mueed, Advocate
Mr. Muhammad Younus Ghazi, FCA
Mr. Imran Ghazi, Advocate

Departmental Representatives : Mr. Arsalan Bukhari, DCIR
Mr. Abid Hussain Ghulshan, DCIR
RTO, Multan
Mr. Irfan Khan Tareen, Dy Director I&I

FINDINGS

Complaint No.503/2016 has been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against issuance of show cause notice (SCN) dated 29.04.2016 under Sections 122(9)/ 122(5)/111 of the Income Tax Ordinance, 2001 (the Ordinance) second complaint (No.698/2016) against the assessment order dated 22.06.2016 for tax year 2010 passed during pendency of the proceedings before this forum, in violation of the provisions of Section 18 of the Federal Ombudsman Institutional Reforms Act, 2013 (FDIR A). The Complainant prayed for withdrawal of impugned notice and the assessment order and also requested to

Date of registration: FTO Secret

initiate proceedings for contempt under Section 16 and defiance under Section 12 of the FTO Ordinance against the officers/officials having corrupt and improper motives for illegal proceedings against the Complainant. Both the complaints, being inter-related, are disposed of through this combined order.

2. Briefly stated, the Complainant namely M/s Fatima Medical Centre (Pvt) Ltd, Multan received SCN dated 29.04.2016 under Section 122(9) of the Ordinance on 04.05.2016 from the DCIR, Unit-01, RTO, Multan stating that as per definite information acquired through investigative audit by the Directorate of Intelligence & Investigation (I&I) IR, Multan, the Complainant medical centre was involved in suppression of business income and expenses. The I&I team impounded manual record, computers, main server and other documents from the business premises. Based on the information collected from the premises, Mr. Abid Hussain Gulshan, DCIR, Audit Unit-01, Special Zone the SCN wherein the complainant was required to submit reply/explanation by 13.05.2016 in respect of suppressed income. In response, application for adjournment was filed which was allowed, but instead of furnishing explanation, complaint No.503/2016 was filed and the DCIR was informed about it vide AR's letter dated 26.05.2016 stating that no court or authority can assume jurisdiction in respect of matters pending with Ombudsman nor any authority or court shall assume jurisdiction in respect of any matter pending with or decided by an Ombudsman. Any violation would be termed as contempt under Section 16 and defiance under Section 12 of the FTO Ordinance. This explanation was found unsatisfactory and the assessment order was passed on 22.6.2016. income assessed at Rs2.198 million and tax demand raised at Rs0.796 million. Being aggrieved, the Complainant filed

another complaint No.698/2016 contesting the action of framing assessment during pendency of the proceedings before this office. According to the Complainant, the Deptt violated the provisions of Section 18 of FOIRA 2013 as such, liable for contempt under Section 16(1)(c) of the FTO Ordinance read with Section 12 of FOIRA 2013 and Contempt of Court Ordinance, 2003 (V of 2003).

3. The complaints were sent to the Secretary Revenue Division in terms of Section 10(4) of the Federal Tax Ombudsman Ordinance, 2000. In response, the Chief Commissioner IR, RTO, Multan vide letter No.CCIR/RTO-MN/16494 dated 20.06.2016 forwarded comments of the Commissioner IR, Special Zone, Multan bearing No.CIR-SZ/RTO-MN/2015-16/5396 dated 17.06.2016 in C.No.503 /2016 and vide letter No.CCIR/RTO-MN/2266 dated 24.06.2016 in C.No.698/2016. The comments received were provided to the Complainant who filed rejoinder. The Deptt defended vide letters No.DIR/I&I-IR/MN/146 dated 09.08.2016 and No.DIR/I&I-IR/MN/2016 /164 dated 16.08.2016.

4. The Deptt raised preliminary objection that the Federal Tax Ombudsman had no jurisdiction to investigate in terms of the provisions of Section 9(2)(b) of the FTO Ordinance, 2000 as the matter relates to the assessment of income and liability of tax in respect of which remedy of filing appeal is available under the relevant legislation. On merits, the Deptt defended show cause notice as well as the order of amendment stating that notice was issued on the basis of information provided by the Directorate of I & I, Multan. When confronted, the Directorate stated that business premises of another taxpayer namely M/s City Hospital (Pvt) Ltd, Multan were visited in pursuance of Section 175 of the Ordinance and during the process it was revealed that some of the record

pertained to the Complainant. This was confirmed through decoding of data by Punjab Forensic Science Agency (PFSA). The data was compared with the assessment record of the Complainant and noticed certain discrepancies in respect of receipts and expenditure which were passed on to the concerned officer for taking consequential action. However, no proceedings were underway against the Complainant till impounding of record. It was only after comparison of the data retrieved from the computers and its comparison with the declared version that the Directorate came to know about the discrepancies.

5. On the issue of framing assessment during the pendency of proceeding before this office, the Deptt was of the view that as no stay order/directions to stop the proceedings were issued by the Ombudsman and as the case was going to be barred by time, the assessment was amended on 22.06.2016 i.e. before the close of financial year ending on 30.06.2016.

6. The AR raised objections on the action taken by the Directorate on the ground that no proceedings in respect of the Complainant were pending before them, therefore, no action could be initiated against the Complainant on the basis of record retrieved from the business premises of another taxpayer namely M/s City Hospital (Pvt) Ltd, Multan. Further stated that the Complainant had been doing business in the capacity of a private limited company having independent business premises and accounting system. The team of I&I neither visited his premises nor looked into the record maintained by the Complainant. The record if any, retrieved from the business premises of another taxpayer, should have been confronted to the Complainant by the Directorate and proper resumption memo should also have been issued. This was not done.

7. According to the AR, information received from Directorate does not constitutes "definite information gathered through conducting audit" as no audit under section 177 of the Ordinance was under process and only action under section 175 of the Ordinance was taken. The issuance of show cause notice without bringing definite information on record was of no legal effect. He referred to the case law as to what constitutes definite information. Further contended that providing record/accounts to PFSA was violation of the provisions of Section 216 of the Ordinance which creates bar to the disclosure of information by a public servant. Further, FBR under SRO 115(1)/2015 dated 09/02/2015 delegated certain powers to the Directorate of I&I, but powers to disclose information/particulars has not been delegated under Section 216(3)(b) of the Ordinance. In support, case law was referred, wherein emphasized that sanctity of the tax record of taxpayer is to be maintained.

8. On the contrary, the DR contended that no violation of Section 216 of the Ordinance was made as no information regarding declared results in the return filed by the Complainant was disclosed to FPSA. Neither any statement made, return, account or record of assessment was disclosed.

9. Both the parties heard and record perused. It is an admitted position that the Directorate of I&I neither visited the business premises of the Complainant nor issued record resumption memo rather issued SCN and passed order on the basis of record retrieved from the premises of another taxpayer namely M/s City Hospital (Pvt) Ltd, Multan. The information collected from Directorate was not confronted to the Complainant by the Deptt. The case was never selected for audit under Section 177 of the Ordinance. Further no

authorization was issued by the competent authority to enter into and search premises of the Complainant. The assessment has been made on the basis of record impounded from business premises of another taxpayer without ascertaining as to whether it pertained to the Complainant or otherwise. However, SCN was not a final order. The Deptt in-fact required the Complainant to explain his position with regard to the receipt & expenditure. It was his obligation to file reply/ explanation to the issues raised in the notice, but he failed to do so and instead filed complaint No.503/2016 which was premature. The issuance of notice does not cause any grievance for filing of complaint as held by this office in various similar complaints.

10. The Deptt, however, did not consider the Complainant's reply with regard to the bar under Section 18 of the FTO Ordinance and opted to amend the assessment during pendency of the complaint which was violation of the provisions of Section 18 of FOIRA 2013. In view of the express provisions of law that no court or authority shall have jurisdiction to entertain the matter which falls within the jurisdiction of Ombudsman nor any court or authority shall assume jurisdiction in respect of any matter pending with or decided by the Ombudsman, there was no requirement of issuing directions by the Ombudsman to stop the proceedings. The unjust and arbitrary act of amendment of assessment during pendency of the proceedings before this office cannot be overlooked. **Chairman FBR is advised to look into the matter and have an enquiry conducted against the defaulting officers/officials. This office may be apprised of the outcome of the action taken within 30 days.**

11. However, this office has no jurisdiction under Section 9(2) (b) of the FTO Ordinance in the matters pertaining to the assessment of income and determination of tax liability in respect of which legal

remedy of appeal, review or revision was available under the Ordinance. The Complaints on this score are not maintainable. The complainant may, however, contest the order of the amendment before the Commissioner IR(Appeals) to get his grievance resolved.

12. Both the complaints stand disposed of in the above terms.

Dated: 14-12-2016.
My/zi/AH


(Abdur Rauf Chaudhry)
Federal Tax Ombudsman

Certified to be true copy


Federal Tax Ombudsman
Islamabad.