

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

Complaint No.3058/GWL/IT/2020

Dated: 17.11.2020 R.O. Gujranwala

Mr. Muhammad Aslam
S/o Muhammad Shafi,
House No.48, Aziz Shaheed Colony,
Sialkot.

... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer	: Mr. Ghazanfar Hussain, Advisor
Appraisal Officer	: Mr. Manzoor Hussain Kureshi, Advisor
Authorized Representative	: Mr. Zulfiqar Ahmed Nasir, FCA
Departmental Representatives	: Mr. Ghufuran Syed, DCIR, RTO, Sialkot

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against order dated 25.09.2020, framed under Section 122(5A) of the Income Tax Ordinance, 2001 (the Ordinance) for Tax Year 2015.

2. Precisely, the Complainant, an individual e-filed return of income under Section 114(1) of the Ordinance, along with wealth and reconciliation statements, for Tax Year 2015. According to the AR, the Complainant subsequently, received a notice dated 24.10.2019, under Section 111(1)(b) read with Section 122(9) of the Ordinance, for Tax Year 2015, requiring him to provide documentary evidence regarding foreign remittance declared in the wealth statement amounting to Rs.20.00 million. In response thereto, reply was submitted vide letter dated 07.11.2019, along with supporting documentary evidence regarding foreign remittance with the request

* Date of registration in FTO Sectt.

to drop the proceedings, as per the State Bank of Pakistan's (SBP's) clarification issued vide letter dated 08.04.2019 and the Hon'ble FTO's Order-in-Review (O-in-R) dated 16.07.2019, in complaint No.1239/GWL/IT/2018. The Department, (Deptt) however, did not consider the SBP's clarification and O-in-R referred to above and passed the impugned amended assessment vide order dated 25.09.2020, under Section 122(5A) of the Ordinance, for Tax Year 2015, hence the instant complaint.

3. The complaint was referred to the Secretary, Revenue Division, for Para-wise 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 Commissioner-IR, Sialkot Zone, RTO, Sialkot submitted Para-wise comments vide letter dated 26.11.2020. At the outset, preliminary objection regarding bar of jurisdiction in terms of section 9(2)(b) of the FTO Ordinance, was raised on the ground that the matter pertained to the assessment of income and interpretation of law which is beyond the scope of this forum. Reliance has placed on the orders of Hon'ble President of Pakistan, in complaint No. 0000912/2016, No.75/KHI/IT(23)/258/16 and NO.956/2004.

7 4. On merits, it was contended that Complainant declared in his wealth statement encashment of foreign remittance amounting to Rs.20.00 million, without providing supporting documentary evidence regarding the channel through which it was remitted. In response to notice issued under Section 111(4) read with Section 122(9) of the Ordinance, the Complainant furnished Foreign Demand Drafts (FDDs) issued by the National Exchange Company (NEC), UAE where amount was clearly mentioned in Pak Rupee. The same FDDs

were deposited by the Complainant in his bank account and received the amount in Pak Rupee. He, however, failed to furnish encashment certificate as required under Section 111(4)(a) of the Ordinance. The reply furnished was duly examined and found un-satisfactory as the Complainant neither received the foreign currency through proper banking channel nor its encashment in Pak Rupee through the scheduled bank. Thus, the criteria as laid down under Section 111(4) (a) of the Ordinance, was not fulfilled. As far as, the O-in-R referred to above, the Zonal CIR was directed to consider the foreign remittance in the light of (SBP's) clarification as per law; it means that the Deptt had to examine the clarification in the light of the Income Tax Ordinance, 2001. Accordingly, the Deptt has acted as per law keeping in view the Judgments of the Appellate Tribunal-IR,(ATIR) in its order ITA No. 794/LB of 2012 dated 10.10.2013 and the Hon'ble Lahore High Court, Lahore in case PTR No. 64/2014 (Musadaq Farhan Chagatai vs. CIR & others). The clarification issued by the SBP was only to the extent of different channels used for remittances; however, scope of Section 111(4) of the Ordinance, had been clarified by the ATIR. The Hon'ble Lahore High Court, Lahore in case PTR No. 64/2014 also elaborated the requirement of genuine foreign remittance.

7 5. The AR argued that the Complainant had received foreign remittance through National Exchange Commission Company, UAE which is strictly as per the SBP's clarification issued vide letter dated 08.04.2019. The O-in-R dated 16.07.2019 was passed in complaint No.1239/GWL/2018 in the light of the SBP's circular referred to above which the Deptt has failed to take into its true perspective. He further argued that the Hon'ble Lahore High Court, Lahore's judgment cited supra, is also not relevant under the facts and circumstances of the

instant case. In the cited case, the taxpayer had received encashment of foreign remittance through Standard Chartered Bank which the Deptt had disallowed and the decision of the Deptt was upheld by the ATIR. The Hon'ble Lahore High Court, Lahore, however, held vide judgment cited Supra, the action of the Deptt as well as ATIR, illegal and without lawful authority.

6. Both the parties heard and record perused.

7. The preliminary objection regarding bar of jurisdiction, raised under Section 9(2)(b) of the FTO Ordinance, is misconceived as the issue here does not pertain to the assessment of income or determination of tax liability but failure of the Deptt to consider the foreign remittance of the Complainant as non-taxable income as per SBP's clarification dated 08.04.2019 and O-in-R dated 16.07.2019, issued by this office in C. No. 1239/GWL/IT/2018, duly upheld by the Hon'ble President of Pakistan, vide order dated 16.12.2019. The preliminary objection being without any merit stands overruled.

8. Evidently, the Complainant encashed foreign remittances amounting to Rs.20.00 million, through authorized NEC, UAE wherein FDDs amount was clearly mentioned in Pak Rupees. It is observed that the SBP had already clarified vide letter No. EPD/8302/EPP.16 (37)-Misc-2019 dated 08.04.2019 that the remittances received through MSBs/Exchange Companies and MTOs also constitute to be "foreign exchange remitted from outside Pakistan through normal banking channels" as delineated in Section 111(4) of the Ordinance. Based on this clarification, O-in-R dated 16.07.2019, was passed in C.No.1239/GWL/IT/2018, which was upheld by the Hon'ble President of Pakistan vide order dated 16.12.2019. It was this point of time when the FBR must have issued necessary instructions to the field

formations to follow the above clarification of SBP and ruling of this office, duly upheld by the Hon'ble President of Pakistan. So that non-residents should not be put to un-necessary notices by the Tax officials but the FBR failed to perform its due duty. Thus, failure to issue necessary circular by the FBR and to follow the clarification of the SBP and precedent decision issued in O-in-R dated 16.07.2019 by the concerned officer, while passing the impugned order, is established.

FINDINGS:-

9. Passing of impugned order dated 25.09.2020, against clarification issued by the SBP and O-in-R dated 16.07.2019 issued in C.No.1239/GWL/IT/2018, duly upheld by the Hon'ble President of Pakistan, is tantamount to maladministration, in terms of Section 2(3)(i)(a) of the FTO Ordinance.

RECOMMENDATIONS:-

10. FBR to-

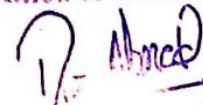
- (i) issue circular to all the field formations to follow the clarification of SBP dated 08.04.2019 and O-in-R of this forum in C.No.1239/GWL/IT/2018, duly upheld by the Hon'ble President of Pakistan in letter and spirit;
- (ii) direct the Commissioner-IR, Sialkot Zone to revisit the impugned order dated 25.09.2020, in the light of clarification dated 08.04.2019, issued by the SBP and O-in-R dated 16.07.2019 and pass fresh order, after affording opportunity of hearing to the Complainant; and
- (iii) report compliance within 45 days.

Dated:
F.S/MI/HUK/MI

12/2/2021

(Mushtaq Ahmad Sukhēra)
Federal Tax Ombudsman

Certified to be True Copy



Deputy Registrar
FTO Secretariat