

**BEFORE
THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

COMPLAINT NO.0876/MLN/IT/2022

Dated: 09.03.2022 R.O. Multan

M/s. Innovative Chemicals,
Through Managing Partner Sheraz Ahmad, ... Complainant
36/A, Industrial Estate, Multan.

V e r s u s

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

Dealing Officer : Dr. Khalil Ahmad, Advisor
Appraisal by : Muhammad Tanvir Akhtar, Advisor
Authorized Representative : Malik Khadim Hussain Maita, Advocate
Departmental Representative : Mr. Abdul Razzaq, Addl. CIR
RTO, Multan

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against recovery proceedings under Section 140 of the Income Tax Ordinance, 2001 (the Ordinance) initiated by the Deptt.

2. Facts in brief are that the Complainant is an AOP. The Deptt attached bank accounts of the Complainant on 01.03.2022 for recovery of tax consequent to appeal order under Section 129 of the Ordinance. The said recovery of Rs.3.292 million was made under Section 140 of the Ordinance read with Rule 69 of the Income Tax Rules, 2002 (the Rules) from the bank account of the Complainant. Being aggrieved, this complaint has been filed.

3. The complaint was sent for comments to the Secretary Revenue Division, 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, Withholding Taxes Zone, dated 18.03.2022 vide letter dated 21.03.2022. It was contended that order under Section 161(1) of the Ordinance for the Tax Year 2015 was passed on 21.06.2021 against the Complainant creating tax demand amounting to Rs.3.292 million. Necessary recovery notices were issued time and again. The Complainant being aggrieved preferred an appeal before the CIR(Appeals), Multan who vide order No.67 dated 08.12.2021 dismissed the appeal and confirmed the impugned order. Recovery notice under Section 138(1) was issued on 12.02.2022 for 17.02.2022. No reply/payment was made by the Complainant. Statutory notice under Section 140 of the Ordinance read with Rule 69 of the Rules was issued on 01.03.2022 to the Manager UBL, Industrial Estate Branch, Multan for recovery of outstanding demand. Copy of notice under Section 140 of the Ordinance was properly served upon the Complainant in terms of Section 218(1)(a) of the Ordinance. All the legal formalities were fulfilled. No violation of Article 10 A of the Constitution of Pakistan was made.

4. During the hearing, the AR argued that recovery under Section 140 of the Ordinance was made without observing legal formalities as laid down in the law. The Deptt attached bank accounts of the Complainant on 01.03.2022 for recovery of disputed amount of tax without service of appeal effect order in terms of Section 124 and fresh demand notice under Section 137

of the Ordinance. The Deptt has not even issued/served notice of demand and assessment order under Section 124 but also not served notice under Section 138 of the Ordinance properly upon the Complainant. However, notice under Section 140 of the Ordinance read with Rule 69 of the Income Tax Rules, 2002 (the Rules) was issued to the bank for recovery of Rs.3.292 million. The Notices whatsoever issued manually are also unjustifiable illegal and void ab initio by virtue of FBR directive vide letter No.2(24) Rev-Bud/2019 dated 10.05.2019 read with Rule 210I(2) of the Rules approval from Chairman FBR was required to be obtained before initiation of recovery proceedings under Section 140 of the Ordinance. The Deptt also failed to serve copy of notice issued under Section 140 of the Ordinance to the Complainant as required under Rule 210C(2) of the Rules. The recovery under Section 140 of the Ordinance can only be initiated after expiry of due date mentioned in notice under Section 137 of the Ordinance. The Article 10A of Constitution of Pakistan, 1973 gives fundamental rights to every citizen for 'fair trail' and 'due process' for determination of his civil rights and obligations. Being aggrieved hence this complaint.

5. Arguments heard and record perused.

FINDINGS:

6. Evidently, the Deptt failed to pass appeal effect order under Section 124/129 of the Ordinance consequent to CIR (Appeals) order and fresh notice under Section 137 of the Ordinance. While enforcing recovery in terms of Section 140 of the Ordinance, being a coercive mode of recovery, certain procedural formalities have

not observed. Evidently, recovery has been made hastily which attracts Section 2(3)(i)(a) of the FTO Ordinance.

7. It has been found that the Complainant has filed an appeal before the Appellate Tribunal Inland Revenue, Multan Bench who suspended the operation of the impugned recovery notice dated 01.03.2022 vide order dated 09.03.2022 which is subsequent to the recovery of tax and the appeal has been heard as stated by the AR.


RECOMMENDATIONS:

8. FBR may be advised to issue instructions to the field formations to observe all the legal and procedural formalities while enforcing recovery in terms of Section 140 of the Ordinance. File be consigned to record.

Dated: 26/4/2022
U.f


(Dr. Asif Mahmood Jah)
(Hilal-i-Imtiaz) (Sitara-i-Imtiaz)
Federal Tax Ombudsman

Certified to be True Copy


Deputy Registrar
FTO Secretariat
Islamabad