



Federal Tax Ombudsman Secretariat

No. 1/448/16-Impl.

April 12, 2016

Complaint No. 46/ISD/ST(13)448/2016.

To

Mr. Asif Jah (Chief Executive),
M/s Elektro Control Industries,
Plot No. 08, Service Road East,,
I-11/4, Islamabad
(Ph: 051-4431451-52).

Subject: COMPLETION OF INVESTIGATION.

It is to inform that the issue raised in the complaint pertains to assessment for which remedy of appeal is available. This fora is barred to invoke jurisdiction in such like matters, in view of Section 9(2)(b) of the establishment of office of Federal Tax Ombudsman Ordinance, 2000. The complaint has therefore, been rejected and investigation closed by the Federal Tax Ombudsman, at limine stage.

THIS ISSUES WITH THE APPROVAL OF THE FEDERAL TAX OMBUDSMAN

Arshad Mahmood Cheema
(Arshad Mahmood Cheema)

Registrar
Federal Tax Ombudsman Secretariat
Islamabad

A Copy for information to:

1. Mr. Abrar Ahmad Khan, Advisor, Federal Tax Ombudsman Secretariat Islamabad
2. Secretary to FTO.
3. Office Copy.
4. Folder copy.

ISLAMABAD

5-A, Constitution Avenue, F-5/1
Ph: 9212316, 9212318, 9212321 & 9212328
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Federal Tax Ombudsman Secretariat

No. 1/448/16-Impl.

June 16, 2016

Review. Petition No. 18/2016.

In

Complaint No.46/ISD/ST(13)448/2016.

To

The Secretary
Revenue Division
Islamabad

Subject: FINDINGS/RECOMMENDATIONS.

A copy of the Findings/Decision/Order of the Federal Tax Ombudsman dated 15-06-2016 in the complaint cited above is sent herewith for information.

Arshad Mahmood Cheema
(Arshad Mahmood Cheema)
Registrar

Federal Tax Ombudsman Secretariat
Islamabad

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

1. Mr. Asif Jah (Chief Executive), Prop: M/s Elektro Control Industries, Plot No. 08, Service Road East, I-11/4, Islamabad.
(Mob: 0233-5156614 & Ph: 051-4431451-2).
2. Mr. Abrar Ahmad Khan, Advisor, Federal Tax Ombudsman Secretariat Islamabad (Vetted draft attached).
4. Secretary to FTO.
5. Office Copy.

Arshad Mahmood Cheema
(Arshad Mahmood Cheema)
Registrar

Federal Tax Ombudsman Secretariat
Islamabad

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**FEDERAL TAX OMBUDSMAN SECRETARIAT
ISLAMABAD**

Review Petition No. 18/2016

*Dated 20.04.2016

in

Complaint No.46/ISD/ST (13)448/2016

*Dated 11.04.2016

Mr. Asif Jah (Chief Executive),
Prop: M/sElektro Control Industries,
Plot No.08, Service Road East,
I-11/4, Islamabad.

...Petitioner

Versus

The Secretary,
Revenue Division,
Islamabad.

...Respondent

Dealing Officer : Mr. Abrar Ahmad Khan, Advisor
Authorized Representative : Petitioner in person
Departmental Representative : None

ORDER-IN-REVIEW

The Review Petition (RP) is filed against rejection of complaint at limine stage vide order dated 12.04.2016.

1. Arguments heard and record perused. Careful examination of impugned Assessment Order (AO) No.13/2015 reflects that it has got some legal infirmities. The impugned order was passed on the basis of show cause notice dated 13.04.2015 which contained time barred demand relating to period June-2009 to 12.04.2010. In view of this apparent illegality in the impugned AO, the matter needs to be investigated. Accordingly, the RP is accepted and the complaint restored for investigation.


(Abdur Rauf Chaudhry)
Federal Tax Ombudsman

Dated: 15-6-2016

NVMZ

*Date of registration in the FTO Secretariat

Certified to be true copy

Registrar
FTO Secretariat
Islamabad

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Federal Tax Ombudsman Secretariat

No. 1/618/16-Impl.

August 19, 2016

Complaint No.FTO-HQR/0000618/2016.
Reference Old C. No. 46/ISD/ST(13)448/2016.

To

The Secretary
Revenue Division
Islamabad

Subject: **FINDINGS/RECOMMENDATIONS.**

A copy of the Findings/Recommendations/Order of the Federal Tax Ombudsman dated 18-08-2016 in the complaint cited above is sent herewith for compliance.

2. Compliance report be submitted to the (I&M) Wing within the prescribed time mentioned in the Findings/Recommendations.

(Arshad Mahmood Cheema)
Registrar

Federal Tax Ombudsman Secretariat
Islamabad

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

1. Mr. Asif Jah (Chief Executive), Prop: M/s Elektro Control Industries, Plot No. 08, Service Road East, I-11/4, Islamabad.
(Mob: 0233-5156614 & Ph: 051-4431451-2).
2. The Chief Commissioner, RTO, Islamabad.
3. Mr. Abrar Ahmad Khan, Advisor, Federal Tax Ombudsman Secretariat Islamabad (Vetted draft attached).
4. Secretary to FTO.
5. Office Copy.

(Arshad Mahmood Cheema)
Registrar

Federal Tax Ombudsman Secretariat
Islamabad

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5-A, Constitution Avenue, F-5/1
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**FEDERAL TAX OMBUDSMAN SECRETARIAT
ISLAMABAD**

FTO-HQR/0000618/2016

Dated: 20-07-2016

Mr. Asif Jah (CEO),
M/s Electro Control Industries
Plot No.08, Service Road East, I-11/4,
Islamabad.

...Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

...Respondent

Dealing Officer	:	Mr. Abrar Ahmad Khan, Advisor
Authorized Representative	:	Complainant in Person
Departmental Representatives	:	Mr. Said Munaf, Addl. Commissioner-IR RTO, Islamabad

FINDINGS/RECOMMENDATIONS

The complaint has been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (the Ordinance) against Assessment Order No.13/2015 dated 28.04.2015 on the plea that all the evidence against the queries of Officers of Inland Revenue was provided by the Complainant but was turned down unjustly. The complaint was earlier dismissed in limini by FTO vide Order dated 12.04.2016 as the issue raised in the complaint pertained to assessment for which remedy of appeal was available.

2. The complaint filed Review Petition (RP) on 20.04.2016 against the FTO's Order dated 12.04.2016. During hearing of RP it

transpired that Assessment Order No.13/2015 had a legal infirmity, having been passed on the basis of a show cause notice (SCN) dated 13.04.2015 which contained time barred demand relating to period June, 2009 to 12.04.2010. The RP was accepted and the complaint was restored for investigation.

3. Accordingly, Secretary, Revenue Division/RTO Islamabad were asked to furnish comments on the complaint in terms of Section 10(4) of the Ordinance. In response, RTO Islamabad submitted comments through FBR's letter dated 04.08.2016 contending that deptt had given adequate hearing opportunity to the Complainant by giving four hearings in which each and every point of observation was discussed in detail. The order was passed discussing all the evidence provided by the Complainant and only those observations were established which could not be proved by him. Further that the Complainant had not availed any remedy of appeal available to him in specified time and when he was asked to deposit the adjudged amount, he made the complaint to the FTO.

4. Hearing dated 12.08.2016 was attended by the Complainant and the DR [Mr. Said Munaf Addl. Commissioner-IR, RTO Islamabad]. During the hearing the fact of the infirmity in impugned Assessment Order being based on partially time barred demand in SCN was discussed. The DR conceded this infirmity in the impugned Assessment Order. It was also discussed that since the Complainant failed to avail remedy of appeal within the time specified in the Act, the infirmity in the impugned Assessment Order could either be removed under Section 36 of the Federal Excises Act, 2005 (the Act) by the Adjudicating Officer or under Section 35 of the Act by Commissioner Inland Revenue (CIR).

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Findings:

5. Time barred demand included in the impugned Assessment Order needs to be deleted either by Adjudicating Officer under Section 36 of the Act or by CIR by using power of review under Section 35 of the Act.

Recommendation:

FBR to advise RTO Islamabad to:-

- (i) consider deletion of time barred demand from the impugned Assessment Order within 30 days either by the Adjudicating Officer under Section 36 of the Act or by CIR under Section 35 of the Act; and
- (ii) report compliance within 7 days thereafter.

(Abdur Rauf Chaudhry)
Federal Tax Ombudsman

Dated: 18-8-2016
NN/MZ

Certified to be true copy

Registrar
FTO Secretariat
Islamabad.

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PRESIDENT'S SECRETARIAT (PUBLIC)
AIWAN-E-SADR, ISLAMABAD

FBR, Versus Mr. Asif Jah, Islamabad / *Electro*

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**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE, ISLAMABAD
AGAINST FINDINGS/ RECOMMENDATIONS DATED 23.12.2016 PASSED BY THE FTO
REVIEW PETITION IN COMPLAINT NO. FTO-HQR/0000618/2016**

I am directed to refer to your representation No. I(448)S(TO-II)/2016 dated 16.01.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 16.01.2017 has been filed by the Agency/FBR against the revised findings of the FTO dated 23.12.2016, whereby it has been held that:

"Fact of the matter is that since demand ordered in impugned AO contained partial time barred demand, it made it nullity in the eyes of the law despite failure of the taxpayer to file appeal against it with the commissioner-IR Appeals. Accordingly, vide impugned Findings, it was recommended to FBR to get time barred portion of demand deleted under Section 36 or 35 of the Sales Tax Act, 1990. In view of supra, the RP is rejected and case file consigned to record."

Original findings of FTO dated 18.8.2016 provides as followings:

"FBR to advise RTO Islamabad to:-

- i. Consider deletion of time barred demand from the impugned Assessment Order within 30 days either by the Adjudicating Officer under Section 36 of the Act or by CIR under Section 35 of the Act; and
- ii. Report compliance within 7 days thereafter."

3. The brief facts of the case are that the complaint has been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (the Ordinance) against Assessment Order No. 13/2015 dated 28.04.2015 on the plea that all the evidence against the queries of Officers of Inland Revenue was provided by the Complainant but was turned down unjustly. The complaint was earlier dismissed in limini by FTO vide Order dated 12.04.2016 as the issue raised in the complaint pertained to assessment for which remedy of appeal was available.

4. The complaint was filed Review Petition (RP) on 20.04.2016 against the FTO's Order dated 12.04.2016. During hearing of RP it transpired that Assessment Order No. 13/2015 had a legal infirmity, having been passed on the basis of a Show Cause Notice (SCN) dated 13.04.2015 which contained time barred demand relating to period June, 2009 to 12.04.2010. The RP was accepted and the complaint was restored for investigation.

5. Accordingly, Secretary, Revenue Division/RTO Islamabad were asked to furnish comments on the complaint in terms of Section 10(4) of the Ordinance. In response, RTO Islamabad submitted comments through FBR's letter dated 04.08.2016 contending that deptt had given adequate hearing opportunity to the complainant by giving four hearings in which each and every point of observation was discussed in detail. The order was passed discussing all the evidence provided by the complainant and only those observations were established which could not be proved by him. Further that the complainant had not availed any remedy of appeal available to him in specified time and when he was asked to deposit the adjudged amount, he made the complaint to the FTO.

6. Hearing dated 12.08.2016 was attended by the complainant and the Departmental Representative (DR) (Mr. Said Munaf Addl. Commissioner-IR, RTO Islamabad). During the hearing the fact of the infirmity in impugned Assessment Order being bases on partially time barred demand in SCN was discussed. The DR conceded this infirmity in the impugned Assessment Order. It was also discussed that since the complainant failed to avail remedy of appeal within the time specified in the Act, the infirmity in the impugned Assessment Order could either be removed under Section 36 of the Federal Excises Act, 2005 (the Act) by the Adjudicating Officer or under Section 35 of the Act by Commissioner Inland Revenue (CIR). Thus FTO has issued aforementioned findings.

7. The instant representation has been filed by FBR. The Agency has taken ground that the registered person was required to retain the sales tax record for the period of six years in terms of Section 24 of the Sales Tax Act, 1990. Whereas the period of show cause notice is required to be issued within Five Years of the date of show cause and is condonable by the Commissioner for the period of one year (differential period of retention of record and show cause period) in terms of Section 74 of the Sales Tax Act, 1990 read with SRO 394(i)/2009 dated: 21.05.2009. The Commissioner Inland Revenue having jurisdiction over the case has already condoned the period of delay vide Note Sheet Para No. 09 dated 10.04.2015.

8. The Agency has pointed out that order-in-original was passed by Deputy Commissioner Inland Revenue on 24.08.2015 which clearly contained the information that an appeal can be filed against the order within 30 days. Jurisdiction of Honourable Federal Tax Ombudsman is barred in appealable cases vide section 9(2) (b) of the

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Federal Tax Ombudsman Ordinance, 2000. Honourable President of Pakistan has also upheld this view point in representation filed in C. No. 615/LIIR/IT(419)/15/2014 titled FBR vs. Innovative (Pvt.) Ltd.

9. The Agency has stated that on factual ground, the Deputy Commissioner Inland revenue, before passing the order obtained condonation of time barred period from Commissioner Inland revenue vide CIR Zone-III approval dated 10.04.2015 vide Para 9 of the order sheet. This fact has been incorporated in Para 5 of Order-in-Original but not considered by the Honorable Federal Tax Ombudsman while giving the recommendations.

10. The Agency has mentioned that the Honorable Federal Tax Ombudsman, Islamabad is barred to entertain complaint under Section 9(2)(b) of the Federal Tax Ombudsman Ordinance, 2000, where the issue involved pertains to assessment or interpretation of law. The appellant begs leave to add, amend or alter the above said grounds.

11. The Agency has prayed that the recommendation of the Honorable FTO may be set aside.

12. On the other hand, the Complainant has filed comments against the instant representation of Agency on 31.01.2017 and supported the impugned recommendations/findings of learned FTO with request that the representation of Agency may be rejected.

13. After perusal of record and examination of all documents, it has been observed that there is no question on the facts that the jurisdiction of the FTO is barred u/s 9(2)(b) to investigate or inquire into the matter which relate to assessment of income or wealth, determination of liability of tax, interpretation of law, rules and regulations relating to such assessment / determination in respect of which legal remedy of appeal or review or revision is available under the relevant legislation. In case the complainant was aggrieved of any action or inaction of the Agency, the complainant has the remedy to file an appeal to the Commissioner Appeals, Income Tax Tribunal, the High Court and the Supreme Court of Pakistan. Hence the matter was not within the jurisdiction of FTO, which is not an appellate forum. In such circumstances, where remedy of appeal was available, FTO could not interfere with and could not pass orders under garb of maladministration.

14. It is an admitted position that the matter involves the determination of tax liability and refundable amount on account of tax. Such matters are appealable before the Commissioner (Appeal), Appellate Tribunal (IR), the High Court and the Supreme Court. Where remedy of appeal is provided under the law the FTO has no jurisdiction to investigate the matter in the name of maladministration. In case the complainant was aggrieved of any action or non action on the part of official(s) of the Agency, it has the remedy to file an appeal at appropriate forum under the relevant law.

15. It has been settled by the Supreme Court of Pakistan in case of Mst. Kaniz Fatima reported in 2001 SCMR 1493, that where a particular statute provides self contained machinery for determination of questions arising under the statute and law provides a remedy by appeal or revision to another forum fully competent to give any relief, any indulgence to the contrary by any other forum is bound to produce a sense of distrust in statutory forums and writ petition will not be maintainable without first availing the alternate statutory legal remedy. The FTO has no jurisdiction to set aside the order where the forum of appeal is available to the complainant. Thus the impugned findings are not sustainable and the representation is liable to be accepted.

16. In such circumstances, where remedy of appeal was available FTO could not interfere with the matter of assessment of tax and interpretation of law. Thus FTO having gone beyond the scope and powers, the impugned findings are not sustainable. Consequently, the Agency's representation is liable to be accepted. However, the complainant can seek remedy available to him from the relevant forums under the law, if so advised.

17. The Accordingly, the President has been pleased to accept the instant representation of FBR-Agency and impugned recommendations of FTO are set aside.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

The Chairman,
Federal Board of Revenue,
Islamabad

No.38/FTO/2017 dated 15.03.2017

Copy for information to:

1. Mr. Asif Jah, Chief Executive, Prop: M/s Elektro Control Industries, Plot No. 08, Service Road East, I-11/4, Islamabad.
2. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
3. The Chief (Legal-I), Federal Board of Revenue, Islamabad.
4. Director to Secretary to the President.
5. Master file

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

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