

President's Secretariat (Public)
Aiwan-e-Sadr
ISLAMABAD

Khawaja Ghulam Hussain, Hafizabad
Versus
Federal Board of Revenue

REPRESENTATION PREFERRED BY KHAWAJA GHULAM HUSSAIN, HAFIZABAD AGAINST FINDINGS / RECOMMENDATIONS DATED 18.03.2019 PASSED BY THE FTO IN REVIEW PETITION COMPLAINT NO. 616/GWL/IT/2018

Kindly refer to your representation dated 15.04.2019 on the above subject addressed to the President in the background mentioned below:-

1. This representation dated 15.04.2019 has been filed by Complainant Khawaja Ghulam Hussain, Hafizabad against the revised findings of the FTO dated 18.03.2019 whereby it has been held that:

"From the facts discussed above, it is evident that neither the impugned findings suffer from any legal infirmity nor any flaw or mistake floating on the face of the record is noted. The RP, therefore being without any merit, stands dismissed. Case file be annexed with the complaint file and be consigned to record."

Original findings dated 29.06.2018 of the learned FTO provides as follows:

"For what has been discussed above, it is manifested that the Complainant was properly served with assessment order and demand notice but he remained inactive and recovery of tax too was effected through attachment of his bank account. He became active only after the recovery. Under the circumstance, no maladministration could be attributed to the Department, therefore, the complaint stands dismissed. Case file be consigned to record."

2. The background of the matter is that the complaint has been filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against the provisional assessment dated 14.04.2014 under Section 122C of the Income Tax Ordinance, 2001 (the Ordinance) for tax year 2011 and unlawful recovery of tax demand through attachment of bank account, without service of statutory & demand notices.

3. Briefly, provisional assessment under Section 122C of the Ordinance was framed against the complainant raising tax demand of Rs. 0.470 million, without proper service of statutory notices and without providing proper opportunity of hearing. Immediately after having come to know that order under Section 122C of the Ordinance had been passed, the complainant filed return of income, wealth statement, reconciliation statement and explanation regarding issuance of purchase of motor vehicle alongwith written explanation on 18.08.2014, but neither tax demand was taken to minus account, as per provisions of Section 122C(2) of the Ordinance, nor his bank account was detached, hence the complaint.

4. The deptt: vide reply dated 02.05.2018 stated that order under Section 122C of the Ordinance was passed on failure of the Complainant to respond to the statutory notices. Statedly, demand notice was served on 12.06.2014, but the Complainant failed to furnish return of income, wealth statement and reconciliation statement within 45 days, therefore, the demand could not be taken to minus account in terms of Section 122C(2) of the Ordinance and an amount of Rs. 0.073 million was recovered through attachment of bank account under Section 140 of the Ordinance in two installments on 06.02.2018 and 12.03.2018. Bank account has not been detached as the remaining amount is yet to be recovered. According to the Deptt, these actions were in accordance with law and no maladministration was involved in the case.

5. The hearing of the case has been held on 10.06.2019. Mr. Nayer Mahmood Add. Commissioner IR has represented the FBR. On the other hand, Mr. Umair Anwar Awan Advocate has appeared on behalf of the Complainant.

6. The instant representation has been made by the complainant. The complainant has prayed that the instant representation/complaint may be allowed in favour of the complainant and the agency may very graciously be directed to decide the complainant's case on merits.

7. On the other hand, the representative of the Agency has urged that the instant representation of the Complainant may be rejected being baseless/meritless and the impugned findings/recommendations of learned FTO may be upheld.

8. A thorough perusal of record and examination of all documents on record has been undertaken. During the course of hearing, the Authorized Representative has stated that the Complainant is a retired primary teacher aged 79, who served the nation for 32 years; and, retired in 1996. The Complainant purchased a Toyota Corolla XLI car (LEC-10-4081, Engine

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No.Y121020, Chasis No. NZE 1402054574) from the amount of his G.P. Fund and Gratuity for his unemployed married son, Naseem Ejaz, in order to enable him to earn his livelihood by providing pick-n-drop. service to the students of the area, which was sold by his son on 30.04.2011. The Complainant's son purchased another Toyota Corolla (Model 2011, Engine No.Y319186) on 12.04.2011; and, upon Complainant's demand, his son transferred the new vehicle to the Complainant through a Gift Deed on 02.05.2011.

9. The AR has argued that the complainant received on 24.07.2014 an ex-parte order dated 14.04.2014 issued under section 122C of the Income Tax Ordinance, 2001 along with a demand notice of Rs.469,750/- by the respondent /FBR which had been delivered at a *Pan Shop* run by the other son of the Complainant, Pervaiz Akhtar, allegedly on 12.06.2014, who used to reside in a separate accommodation and work independently; and, was not at good speaking terms with the Complainant. Upon receiving the order on 24.07.2014, the Complainant collected his relevant documents and information and appeared on 18.08.2014 (within 45 days of receipt) before the learned Assessing Officer along with the relevant documents comprising return of income, wealth statement, reconciliation statement and explanation regarding ownership of the motor vehicle, besides an affidavit as to non-receipt of notices. As a rule, upon filing the aforesaid information and documents the ex-parte order under Section 122C would have ceased to exist. However, the complainant received a notice dated 5.11.2014 for recovery of the tax demand. The Complainant duly responded to the said notice vide letter dated 12.11.2014 requesting to close the matter. Thereafter, no further notice was issued, which meant to the Complainant as an indication of closure of the issue. After more than 3 years of the Complainant's reply, shockingly, on 06.02.2018, the Complainant's Pension Account was attached arbitrarily by the respondents and his pension amounting to Rs.41,241/- was withdrawn. The Complainant approached the respondents with the request to detach his account; but, again, his pension for the next month on 12.03.2018 was withdrawn. Consequently, the Complainant filed Complaint No.616/GWL/IT/2018 before the learned Federal Tax Ombudsman on 17.04.2018.

10. Prima facie, the aforementioned arguments of the AR have logical force and the revenue authorities have taken the ex-parte decision against the complainant without providing proper opportunity of hearing. It would be in the fitness of things, if the Revenue authorities may provide an opportunity of hearing to the complainant and decide the issue afresh. The Agency has the powers to decide the issue on merits and in accordance with the provisions of law. In such circumstances, this representation is accepted and the recommendations/findings of FTO are set aside. The Agency is directed to decide the issue on merits and in accordance with the provisions of law after providing proper opportunity of hearing to the complainant.

11. After perusal of the case the Hon'ble President has been pleased to order that the representation is accepted and the findings of the FTO are set aside. Commissioner IR Gujranwala to decide matter afresh providing opportunity of hearing to complainant.

12. Accordingly, Hon'ble President has been pleased to (a) accept the instant representation of the complainant namely Khawaja Ghulam Hussain (b) to set aside the impugned findings/recommendations of learned FTO and (c) to direct Commissioner IR Gujranwala to decide the matter afresh after providing equitable opportunity of hearing to the complainant as per law.

(Dr. Zulfiqar H. Awan)
Director General (Legal)

Khawaja Ghulam Hussain
S/o Jahan Ali,
R/o Qazian Wala, Jalalpur Bhattian,
Tehsil Pindi Bhattian, District Hafizabad.

No.16/FTO/2019 dated 05.08.2019

Copy for information to:

1. The Chairman, Federal Board of Revenue, Islamabad.
2. The Registrar, Federal Tax Ombudsman's, Islamabad.
3. The Commissioner Inland Revenue, Broadening of Tax Base, RTO, Gujranwala.
4. The Chief (Legal), Federal Board of Revenue, Islamabad.
5. Mr. Umair Anwaar, Advocate High Court, Off. 475-G, Johar Town, Lahore.
6. Master file.

(Dr. Zulfiqar H. Awan)
Director General (Legal)

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