

BEFORE THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

Complaint No.241-L/2009

M/s Amin & Sons Tailor,
Mianwali

Complainant

Versus

Secretary,
Revenue Division,
Islamabad

Respondent

[Dealing Officer

Muhammad Daud Khan, Adviser]

FINDINGS/DECISION

Mr. Raashid Umar, Advocate for the complainant (AR).
Mr. Umar Farooq, ACIT Enforcement 14, RTO Faisalabad for the
respondent (DR).

This complaint pertains to non-payment of income tax refund of Rs.72,052 for the tax years 2003 to 2006. The complainant derives income from rendering of services as tailoring contractor. Refund is claimed on account of tax withholdings under sections 153, and 235 of the Income Tax Ordinance 2001. The complainant had earlier filed statement of tax withholdings u/s 115(4) of the Ordinance showing the receipts and deduction of tax withheld therefrom to be covered by the presumptive tax regime (PTR). Later however, returns were allegedly revised, tax withholdings were claimed adjustable and refund was claimed. The learned AR argued that the complainant was fully entitled under the law to revise his return under the provisions of section 114(6) of the Ordinance and he had exercised his right. It was further

claimed that all the tax payments are verifiable and department should not have any hesitation to pay the refund. Detailed written arguments were also given. The complainant also relied upon a decision of the Honourable Lahore High Court reported as [(2008) 98 Tax 114 (HC Lah)]. A photo copy of the decision is on record).

2. DR contested his arguments. According to him, section 115 of the Ordinance did not authorise any taxpayer to revise the statement. The privilege to revise a return under sub-section (6) of section 114 pertained to returns filed u/s 114 of the Ordinance only. He claimed that revised return had not been filed. The matter had been thoroughly looked into. The receipt and seal affixed on copy produced by the taxpayer show that returns were filed in RTO office, Lahore on 26-3-2008. TO/ACIT Tax Facilitation Division has vide his office letter No.770 dated 08-6-2009 confirmed that the complainant did not file returns for the years 2003 to 2006 either in Mianwali or in Faisalabad on 04-11-2008. DR filed photo copies of that office receipt register for 04-11-2008 (Entries Nos.9630 to 9726). Entry for return allegedly filed appears nowhere. The DR argued that the complainant was not entitled to any refund and no maladministration on part of the department is involved.

3. DR's arguments mainly emphasised the claim that TO/ACIT Taxpayer Facilitation Division, RTO Faisalabad has confirmed that returns and the allegedly attached refund applications have not been filed in his office. He has supported his finding with

furnishing photo copies of the Receipt Register of the office for the day which is on record. Earlier DG, RTO Faisalabad vide his office letter No.7054 dated 10-6-2009 intimated same position. The DG also informed that the complainant had been requested vide letter dated 01-6-2009 to furnish evidence in support of filing returns for the tax years 2003-2006 but he failed to furnish the same.

4. In written arguments the learned AR has mainly dilated upon legal requirement for the department to pass order u/s 170(4) of the Ordinance within 45 days which expired on 20-12-2008 and argued that no adverse order could be passed thereafter. The AR claimed that application for refund was filed for all the three years which was received in the office of RTO, Faisalabad on 04-11-2008. He further claimed that the statements of final taxation u/s 115(4) of the Ordinance were also filed on 26-3-2008 by the taxpayer and copies of returns were also filed on that date. He argued that receipts of the taxpayer comprise of contract of tailoring services and tax deducted from these receipts is adjustable u/s 153(1)(b) and excess amount is refundable.

5. Both the parties have been heard. The receipts of the taxpayer from contract of tailoring services are adjustable u/s 153(1)(b) as held by various appellate decisions quoted in Honourable FTO's reported decision in Complaint Nos. 94, 95, and 96-L/2006 which are on record. The taxpayer claimed that returns of income and applications for refunds have been filed, whereas

the departmental officers claimed that they have no proof of receipt of these documents in their registers. If the department agrees that the tax deducted on the receipts of the taxpayer is adjustable u/s 153(1)(b), the government owes the amount of excess deduction of tax to the taxpayer with the same token of logic and spirit of law as the arrears of the previous years against a taxpayer are recoverable to the credit of the government. The belated claim of refund is not barred by time as held in ITAT's decisions No. 2008 PTD (Trib) 370 and 1999 PTD 2012 since time limit for issuance of refund is directory and not mandatory.

6. The DR claimed that the returns of income were not filed by the taxpayer which ousted his right to claim refund is likewise invalid since the officer concerned can ask the taxpayer to file returns for the purpose of issuance of refunds. If filing of return of a non-taxable person is not mandatory, the law does not bar him to file return of income for obtaining either NTN or refund, or for any other purpose. The definition of taxpayer in sub-section (66)(c) of section 2 of Income Tax Ordinance 2001 includes "any person required to furnish a return of income OR paid tax under this Ordinance". Since the taxpayer has paid tax through deduction and also filed statements u/s 115(4), therefore, he has to be paid the excess amount of deducted tax as per provisions of law, as held in 1999 PTD 2012 that denial of refund would be violation of Article 24(1) of the Constitution which lays down that "no person shall be deprived of his property save in accordance with law".

7. In the light of above discussions for tax years 2004 to 2006 the Taxation Officer should have guided the taxpayer to submit returns and applications of refund in the prescribed manner to issue the amounts of refund due, in view of the clear decisions of the appellate authorities referred to above. However, tax year 2003 is hit by limitation of Section 114(6) read with section 122(4)(a) of the Income Tax Ordinance 2001, since return claimed to have been filed by the taxpayer on 26-3-2008 in RTO Lahore is out of jurisdiction and cannot be treated as having been filed within five years to absolve the complainant from limitation of legal provisions.

8. It is, therefore, recommended that :-

- (i) the Secretary, Revenue Division to ensure the issuance of refund to the complainant for tax years 2004 to 2006 in accordance with the provisions of law;
- (ii) the officer concerned to pass speaking order u/s 170(4) that the return filed by the complainant for tax year 2003 is hit by limitation of statutory provisions, so that he may avail the opportunity of the appellate forum; and
- (iii) compliance be reported within 30 days

(Dr. Muhammad Shoaib Suddle)
Federal Tax Ombudsman

Dated: 29-9-2009
M.I.