

FEDERAL TAX OMBUDSMAN SECRETARIAT
REGIONAL OFFICE
KARACHI

Complaint No.266/KHI/IT(110)797/09
(Dated: 23.12.2009)

Mr. Mehfooz Ali,
R-562, Bloc-8, Azizabad,
F.B. Area, Karachi

... Complainant

Versus

Secretary,
Revenue Division,
Islamabad.

... Respondent

FINDINGS/RECOMMENDATIONS

Dealing Officer	:	Mr. Mumtaz Ahmad, Advisor
Authorized Representative	:	Mr. Mehfooz Ali, Complainant
Departmental Representatives	:	Syed Shahid Hussain, DC (IR) Mr. Shahid Ahmed Khan, Tax Manager- Pakistan Steel Mr. Ahmed Khalid Baloch

Mr. Mehfooz Ali is an employee of Pakistan Steel Mills Limited (Pak Steel). He is aggrieved on the following counts:

- (i) adjustment of tax liability against Provident Fund balance by Pak Steel;
- (ii) discriminatory treatment given in his case vis-à-vis his colleagues in the same grade, in the matter of liability raised;
- (iii) lack of clarity in relation to tax on share income of Pak Steel employees and Provident Fund Trust (hereinafter referred to as Trust) on investment made out of employees' fund.

2. In the matter of tax adjustment related grievance, the Complainant stated that in addition to salary, he also receives 18% of his Provident Fund balance as income from the Trust. 12.5% of investment income was taken as exempt as per clause 3(b) Part-I of Sixth Schedule, and balance made part of salary in terms of sub-clause (iv) clause (e) of sub-section (2) of 12 r/w section 149 and Part-IA of the First Schedule, and is subjected to withholding tax. Due to addition of this PF income, salary income gets increased attracting higher bracket of tax rate. When higher rate of tax was applied on gross amount of salary thus worked out, the amount of tax obviously increases significantly as compared to the tax chargeable on net salary. The difference in tax on gross salary and net salary was adjusted/deducted from Provident Fund balance of the employee, and as a result matching amount of Provident Fund payable by Pak Steel was reduced.

3. Investigation revealed that the Trust invests in securities etc. It earns capital gain on sale of investments in securities, dividend, and interest income etc. The Trust's income is exempt. However, the Trust allocates income on percentage basis fixed on yearly basis. The exemption of 'interest' or 'profit on debt' to the extent of threshold of 12.5% as per clause (3b) of Part-I of Sixth Schedule leaves the remaining 5.5% of investment income as taxable

4. The Complainant pointed out that in his case tax has been adjusted at about 11% which is much higher than average rate of tax at about 4%. His prayer is that tax amount be either deducted from salary so that Provident Fund balance is not reduced or it be deducted from Provident Fund balance at an average rate of tax. Responding to the queries raised, the Manager (Taxation) stated, firstly, that if entire tax is deducted from the pay and allowances, the take home salary gets reduced and may not be acceptable to most of the employees, and secondly, on the principle of attribution tax allocable to the income from P.F is to be adjusted against the income received from that amount. The Manager Taxation was of the view that changes in the principle of allocation can be made only with the permission of the FBR.

5. The Complainant is also aggrieved with the treatment given to employees of same grade by applying different tax brackets. The Complainant was advised to approach the Taxation Manager in this regard to seek clarification. The Taxation Manager also confirmed that clarification would be provided to the Complainant, although, in his opinion, there was, prima facie, no discrepancy.

6. It was also claimed that public corporations like PIAC and PNSC etc were giving different treatment to the income received by the employees from recognized Provident Fund Trusts. There appears to be a confusion among various organizations on the treatment of such income received by their employees. The point raised by the Complainant, therefore, appears to be a **systemic issue** which needs to be addressed by the FBR to allay confusion and discrimination in the matter and also in the interest of justice/equity. Secondly, the higher rate of tax, arbitrarily attributed to profit of Provident Fund amount (notional income), for deduction by Pak Steel from the Provident Fund of its employees appears unjustified, as smaller amount (of PF profit) must not suffer more tax than larger amount of income (salary) due to application of higher rate. For this purpose, the average rate applicable on gross income would seem more equitable. This aspect also requires consideration/clarification by the FBR for a just and uniform treatment.

Recommendations:

7. The FBR to -
- (i) clarify whether Pak Steel is correctly applying rate of higher tax on the taxable profit received by its employees on their Provident Fund balance, or should the taxable profit from Provident Fund be treated as 'income from other sources' in the interest of equity and justice;
 - (ii) clarify whether income allocable to an employee from a recognized Provident Fund on fixed percentage basis can be taken as '**profit on debt/interest**' and can be subjected to threshold under clause 3(b) of Part I of Sixth Schedule; and if so, whether under this clause "**interest**" needs to be so defined

as to include "any fixed return received by an employee on investment of his balance in Provident Fund maintained by a recognized Trust"; and

- (iii) monitor the correct application of law regarding deduction of tax on Provident Fund balance of employees of various organizations for a uniform treatment.

8. Compliance be reported within 60 days.

(Dr. Muhammad Shoaib Suddle)
Federal Tax Ombudsman

Dated: 31-03-2010
Mah/M.I.

Approved for reporting


Mirza Rafi-uz-Zaman
(R) District & Sessions Judge
Advisor (Implementation & Monitoring)
Federal Tax Ombudsman Secretariat
Islamabad