

FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE
LAHORE

COMPLAINT NO.538/LHR/I.Tax(455)960/2010

Dated: 22.7.2010*

Hassan Ehsan Cotton Ginner
Muhammadpura Dewan
Tehsil Jampur
Distt. Rajanpur
Complainant

...

Versus

The Secretary
Revenue Division
Islamabad

... **Respondent**

FINDINGS / RECOMMENDATIONS

Dealing Officer : Muhammad Munir Qureshi
Advisor
Authorized Representative : Sh. Ghulam Asghar, Advocate
Departmental Representative : Dr. Athar Ishaq, DCIR

This complaint is against income tax demand illegally raised against the Complainant on account of alleged non-payment of withholding tax on supplies.

2. The facts in this case are that the Complainant, a cotton ginner, supplied cotton lint to various textile mills in assessment years 2000-01 to 2002-03 and although income tax was, statedly, withheld at source against payments made to the Complainant, deduction certificates for tax

*Date of registration in FTO Sectt.

so deducted at source and challans for deposit of the deducted tax in Treasury were not issued to the Complainant. However, the Complainant filed Statements under Section 143-B of the repealed Income Tax Ordinance 1979 in the Department regularly, citing full particulars of each transaction and details of tax deducted at source.

3. Notwithstanding the 143-B Statements filed in the department, the Complainant was treated as a defaulter with regard to payment of withholding tax at source on supplies made in the assessment years under reference, with tax demand amounting to Rs.2,362,294/- in the aggregate for all the assessment years cited above. The Complainant assails the treatment so accorded as illegal and contrary to law as the tax being demanded by the Department had, statedly, already been deducted by the textile mills.

4. When confronted, the Department filed reply, raising a preliminary objection that the Federal Tax Ombudsman had no jurisdiction to take up and investigate the complaint filed in this case as it pertained to determination of tax liability for which alternate legal remedy was available to the Complainant. The Department has referred to a decision by the President of Pakistan disposing of a Representation in Complaint No.1096-L/2005 in which it was held that the FTO was not empowered to investigate complaints involving interpretation of law. It is further contended that where deduction certificates are not on the prescribed form, the Department was entitled to make its own enquiry before issuing any refund. Also, according to the Department, any hardship or inconvenience experienced by a taxpayer was not a ground to justify intervention by the FTO.

5. The preliminary objection raised by the Department with regard to FTO's jurisdiction in the matter has been looked into and is found to be

misconceived as a resolution of the Complainant's grievance does not involve interpretation of law but proper compliance with statutory provisions by the Department. When the Department acts in a manner that is "contrary to law", such action is tantamount to maladministration and hence is well within the jurisdiction of the FTO.

6. Besides the preliminary objection referred to supra, the Department contends that the Complainant had submitted no proof to establish that income tax had been withheld at source and deposited in Treasury as required by law. The 143-B Statements claimed to have been filed by the Complainant have not been commented on by the Department. On the contrary, the Department contends to have rightly treated the Complainant as a defaulter with regard to payment of withholding tax and so the recovery proceedings initiated against him have been claimed to be 'in accordance with law'.

7. According to the AR, the Department had taken action belatedly on 07.4.2010 whereas the matter involving withholding tax at source on supplies pertained to assessment years 2000-01 to 2002-03. Furthermore, he pointed out that a speaking order had not been passed by the Department and instead a stereotyped proforma assessment had been made. Finally, the AR contends that in CBR letter No.1(43)WHT/2000 dated 06.6.2000 it was expressly stated that where tax was withheld at source at the time of making payment to cotton ginners on account of supplies made to textile mills, the Department could not demand that payment of tax be made again.

8. The DR pointed out that CBR's letter referred to by the Complainant's AR applied only in cases where documentary evidence was available to show that tax had been withheld at source on supplies made. He argued that in Complainant's case such documentary

evidence was lacking and hence reference to the circular was misconceived.

9. Under the law, withholding agents (in this case, textile mills that have received supplies of cotton from the Complainant) have primary responsibility to withhold tax at source at the time of making payment to the suppliers and to deposit the tax so withheld in Treasury within the time laid down in the statute. A tax deduction certificate and copy of challan is then issued to the supplier. It is thus evident that the primary evidence with regard to tax withheld at source and its subsequent deposit in Treasury lies with the withholding agent and it is his responsibility to make available this evidence to the Department to enable it to record the tax deducted in the relevant collection statements. The Department on the other hand is required to monitor proper compliance of withholding tax law by the withholding agent.

10. The Department has produced no evidence whatsoever to establish that any attempt was made to query textile mills receiving the supplies of cotton lint from the Complainant with regard to tax withheld at source and its subsequent deposit in the Treasury. This is a glaring lapse on the part of the Department as it should have been aware that primary responsibility to withhold tax and deposit the same in Treasury was that of the withholding agent. Instead, the Department jumped to the conclusion that the Complainant/Supplier had somehow managed to avoid tax withholding at source on supplies and was therefore personally responsible to pay the amount in question to the Department. This approach was misguided, arbitrary and contrary to law as laid down in the statute.

11. The CBR letter dated 06.6.2000 referred to supra clarifies that tax required to be withheld at source when payment is made to the cotton

ginnners cannot be demanded a second time by the Department. Now if, for arguments sake, the textile mills receiving the cotton supplied by the Complainant did not deduct tax at source, these mills then fall in the category of “assessee in default” and become personally liable to pay the said amount to the Department.

12. The creation of tax demand belatedly after the lapse of many years without passing a speaking order is highly arbitrary and has been so held by various appellate fora.

Findings:

13. The Department has raised tax demand against the Complainant in a manner that is “contrary to law”, as explained supra, and the same amounts to maladministration as defined in Section 2(3)(ii) of the FTO Ordinance.

Recommendations:

14. FBR to direct the Chief Commissioner concerned to -

- (i) invoke his revisionary jurisdiction under Section 122B of the Ordinance and take remedial action, as per law, to vacate the illegal demand raised against the Complainant, within 21 days; and
- (ii) submit compliance report within 07 days thereafter.

(Dr. Muhammad Shoaib Suddle)
Federal Tax Ombudsman

Dated: 21-9-2010
S.A.

CORRIGENDUM

In order dated 21.9.2010 in captioned complaint case, in paragraph-14 (Recommendations), page-5, the following corrections are made:

- a. The words: "FBR to direct the Chief Commissioner to-" be read as : "FBR to direct the Commissioner concerned to-".
- b. In sub-para (i) of paragraph-14, the words "Section 122B" be read as "Section 122A".

(Dr. Muhammad Shoaib Suddle)
Federal Tax Ombudsman

Dated: 30-9-2010