

FEDERAL TAX OMBUDSMAN
REGIONAL OFFICE
LAHORE

COMPLAINT'S NO. 275-279/LHR-IT(233-237)492-496/2010

Dated:13.04.2010*

c/o Rana Munir Hussain Adv
7-A Kapoorthala House
Lake Road
Lahore

- 1.Sh. Zafar Abbas
- 2.Sh. Altaf Hussain
- 3.Sh.Waseem Abbas
- 4.Sh.Tanveer Abbas
- 5.Sh.Nadeem Abbas

... Complainants

Versus

The Secretary
Revenue Division
Islamabad

... Respondent

FINDINGS / RECOMMENDATIONS

Dealing Officer	:	Muhammad Munir Qureshi Adviser
Authorized Representative	:	Rana Munir Hussain, Advocate
Departmental Representative	:	Abbas Ahmed Mir, DCIR

These complaints arise out of the Departmental rejection of Declarations filed belatedly by the Complainants under Section 120A of the Income Tax Ordinance 2001 (hereinafter, the Ordinance) relating to the Scheme for payment of Investment Tax in respect of undisclosed income as per FBR Circular No.3 of 2008 dated 01.7.2008 (hereinafter, the Scheme).

2. The Complainants deposited Investment Tax amounting to Rs. 4,00,000 in the aggregate, in time, on 31.12.2008, but Declarations on the prescribed forms were not submitted within the stipulated time frame of 01.7.2008 to 31.12.2008, and were filed late, on 02.02.2009. That being so, it is the Departmental contention that Declarations filed by the Complainants did not qualify under the said Scheme, and were therefore rejected.

3. According to Complainants, Declarations were filed in good faith, after paying due tax within the time frame stipulated in the Scheme. Under the circumstances, rejection of their Declarations without providing an opportunity of being heard was against the principles of natural justice. Furthermore, it is contended that the Taxation Officer did not have the jurisdiction to pass such an order. It is also argued that since the only reason given for rejection of the Declarations was that they had been filed late, the Department could have levied penalty instead of their outright rejection. They have also referred to various judgments of the superior judiciary [(2002-85-TAX-487-HC), (2002-PTD-549) and (2002-PTD-608)] to substantiate their view point. It is also their contention that the assets cited in the Declarations were acquired over a seven-year period (2000 – 2007) but the Department intended to tax the same in one year i.e. Tax Year 2008, which was not fair and was also contrary to law.

4. When confronted, the Department raised a preliminary objection that the Federal Tax Ombudsman did not have the jurisdiction to take up the complaint for investigation due to the bar laid down in Section 9(2)(b) of the FTO Ordinance. On merits, it was contended that those availing the Scheme were required to comply strictly with the terms stipulated in FBR Circular No.3 of 2008 dated 01.7.2008. A six-month period, 01.7.2008 to 31.12.2008, was provided to those intending to avail this opportunity to declare their undisclosed income and incorporate the same in their accounts. As regards the order passed by the Taxation

Officer dated 14.02.2009 rejecting the Declarations, it is argued that under the Scheme there was no specific requirement that such an order be passed and the Taxation Officer issued the order simply to inform the Complainants that the Declarations did not qualify under the Scheme. The question of providing an opportunity of being heard, therefore, did not arise. As regards the competence of the Taxation Officer Audit-01, RTO, Gujranwala to pass such an order, the Department pointed out that the said officer had been duly nominated as "Coordinator" by the Director General, RTO, Gujranwala vide his order No.J-24/TAS-2008)/2008-09/176/J dated 17.7.2008 to process Declarations filed under the Scheme. As such, any challenge to his jurisdiction was misconceived. As regards the Complainants' contention that penalty could have been imposed for the delay in filing the Declaration, the Department submitted that there was no provision in the Scheme to levy penalty when a Declaration was filed late.

5. The Department in its reply went on to say that the Investment Tax Scheme 2008 was a special, one time only, concession and those filing Declarations under the Scheme were bound to comply strictly with all the terms laid down therein. The case law cited by the Complainants was rejected by the Department on the ground that it was not "on all fours" with the situation in which the Complainants were placed. Commenting on the stated intention of the Department to charge tax on the assets cited in the Declarations in Tax Year 2008, the Department contended that this was entirely consistent with the relevant provisions of the Ordinance. Moreover, Section 111(2) of the Ordinance stipulates that addition on account of 'unexplained income' is to be made in the Tax Year immediately preceding the financial year in which it has been 'discovered'. In the case of the Complainants, the "discovery" of unexplained income was made in the financial year 2008-09, hence cognizance of the same was called for in Tax Year 2008. That being so, DCIR Audit-05, RTO, Gujranwala was justified to issue notice to the

Complainants, conveying his intention to make addition under Section 111(1) of the Ordinance in Tax Year 2008 on the fair market value of all assets cited in the Declarations.

6. The DR reiterated what was said in the written reply filed by the Department.

7. The Departmental contention that the FTO cannot hear the complaint is misconceived as the matter has been taken up only in terms of the justification or otherwise of the Departmental rejection of Declarations filed after the expiry of the deadline stipulated in the Scheme.

8. The Departmental officers have admitted that the Complainants have paid the tax under Investment Scheme within prescribed time limit, but declarations were filed 33 days late. The DR could not show that late filing of declarations by the Complainants had any bearing on the revenue. The contention that there was no provision in the Scheme to issue show cause notice to the late filers of the declarations is against the principle of natural justice which emphasizes: **"he who shall decide anything without the other side having been heard, although he may have said what is right, will not have done what is right."** The FBR could have condoned the delay in filing declarations u/s 214A of Income Tax Ordinance 2001, but the Complainants' plea was rejected without providing them opportunity of hearing. In a case involving similar issue, the Honourable President of Pakistan, in Complaint No.1069-K/2007 endorsed the FTO's recommendations with the following observations:

"It is trite law that rules are intended to advance remedy and not to take away the substantive rights. The department concedes that the complainants filed the return within time and the refund is due. The complainants' failure to furnish the supportive documents could not operate to destroy their substantive right. They could and still can be required to furnish the documents. The time limit for complying with the requirements of rules relating to production of

evidence and documents is always considered directory and not mandatory unless the disobedience is contumacious”

Findings:

9. It is evident that the Department by rejecting declarations of the Complainants without providing them the opportunity of hearing has acted in an arbitrary manner which amounts to maladministration as defined under the FTO Ordinance, 2000.

Recommendations:

10. FBR to –

- (i) provide opportunity of hearing to the Complainants, and decide their case keeping in view the Honourable President's decision in Complaint No.1069/2007 on merit within 30 days; and
- (ii) report compliance within 45 days.

(Dr. Muhammad Shoaib Suddle)
Federal Tax Ombudsman

Dated: 28/06/2010
S.A. /rfan

Approved for reporting

ATTESTED

[Signature]
Ch. Muhammad Siddiq Tabassum
Advisor (Implementation & Monitoring)
Federal Tax Ombudsman Secretariat
Islamabad