

PRESIDENT'S SECRETARIAT (PUBLIC)
AIWAN-E-SADR

Rep.No.81/FTO/2022
Date of Decision: 20.01.2023

Federal Board of Revenue VS Umer Din

Subject: **REPRESENTATION FILED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS / RECOMMENDATIONS DATED 10.03.2022 PASSED BY THE LEARNED FTO IN COMPLAINT NO. 0179/MLN/IT/2022**

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

This representation has been filed by Federal Board of Revenue on 11.04.2022 against the Order of the learned Federal Tax Ombudsman (FTO) dated 10.03.2022, whereby it has been held that:

“The FBR to:

- (i) direct the Member (IT) to enable the RTO, Multan for issuance of exemption certificate for the entire period (01.07.2021 to 30.06.2022) in respect of Public Library & City Reading Room, Multan;***
- (ii) waive of the penalty imposed for late filing of returns withholding statement because this offence has not caused any loss to the national exchequer and manifestly a hardship case; and***
- (iii) report compliance within 30 days.”***

2. The above-mentioned complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (FTO Ordinance) against non-issuance of Tax Exemption Certificate under Section 151/159 of the Income Tax Ordinance, 2001 (the Ordinance) for Tax period 01.07.2021 to 30.06.2022.

3. Mr. Umer Din, Librarian, Public Library and City Reading Room, Multan (the complainant) a Non-Profit Organization (NPO) stated that the Library was a Public Library established in the British era. It provided readership facility to the citizens of the area at a nominal cost of Rs.20 as membership fee having approximately 400 members. Further, it had small number of staff receiving non-taxable salaries and its expenditure was met through donations and profit on fixed deposit of its endowment fund. Being a NPO, the Deptt used to issue Tax Exemption Certificate was used to be issued on yearly basis but that year i.e. 2021-22 Deptt had not issued Tax Exemption Certificate. Consequently, owing to non-availability of Tax Exemption Certificate, Rs.0.198 had been deducted by the Deptt from the deposits of the Library which was a primary source of its income. The complainant therefore took up the matter with the learned Federal Tax Ombudsman by filing complaint under Section 10(1) of the FTO Ordinance 2000.

4. The learned Federal Tax Ombudsman called the comments of the Secretary Revenue Division, Islamabad. In response thereto, the Chief Commissioner-IR, RTO, Multan forwarded para-wise comments of the Commissioner-IR, Multan Zone, dated 01.02.2022. It was averred that the organization did not file Tax Return and Withholding Statements for Tax Year 2021 by due dates.

5. Considering the respective stances, the learned Federal Tax Ombudsman proceeded to pass the above-mentioned order, which is assailed by the FBR.

6. The hearing of the case was fixed for 03.01.2023. Mr. Ehshan Ullah Khan, Secretary-BDT has represented the FBR, whereas the complainant has not appeared despite notice. Needless to mention that Section 15 of the Federal Ombudsman Institutional Reforms Act, 2013 empowers the decision of a representation on the basis of available record without personal hearing of the parties.

7. The learned Federal Tax Ombudsman thrashed the matter vide Paras 5 to 7 of the order as follows:

“5. The complainant is a Non-profit Organization (NPO), a public Library established in the British era. It is providing readership facility to the citizens of the area at nominal cost of Rs.20/- as membership fee per month. It has approximately 400 members at present. A small number of staff is running the library and none of them draws taxable salary. The running cost of the library is met through donations and the profit on fixed deposit of its endowment.

6. The FBR has accorded the library a status of NPO and it avails the exemption certificate facility every year. However, it could not get this exemption for the tax period 01.07.2021 to 30.06.2022. The instant complaint was filed on 19.01.2022. On intervention of this office, the CCIR, RTO, Multan took cognizance of the issue and the exemption certificate for the period 28.01.2022 to 30.06.2022 was issued. It was found that the Complainant did not file its return for the Tax Year 2020-21 and the delay in issuance was attributed to non-filing of the return. The Librarian on the other hand contended that the return was filed. It was revealed that the alleged return filed through IRIS was available as a draft but was not submitted.

7. Consequent to non-availability of E.C, tax amounting to Rs.0.198 million has been deducted on the deposits being maintained with the Bank which is a primary source of its survival. The Complainant is requesting for issuance of exemption certificate through IRIS for the entire year because the return now stands submitted and the waiver of penalty on late filing of return and withholding statement. However, the CCIR, RTO, Multan is of the view that exemption certificate for the entire year having retrospective effect cannot be issued through IRIS and the same has been issued prospectively w.e.f. 28.01.2022 till 30.06.2022. Being a public library, shouldering a noble cause and already notified by FBR as an NPO it merits a considerate and compassionate view by RTO Multan and FBR.”

These are findings arrived at on due consideration of the record and no cavil could be found with such approach to the matter.

8. The recommendations of the learned FTO (i) *direct the Member (IT) to enable the RTO, Multan for issuance of exemption certificate for the entire period (01.07.2021 to 30.06.2022) in respect of Public Library & City Reading Room, Multan;* and (ii) *waive off the penalty imposed for late filing of returns withholding statement because this offence has not caused any loss to the national exchequer and manifestly a hardship case;* are unassailable in the circumstances of the case. Suffice it to observe that the Public Library is a declared Non-Profit Organization (NPO) and it has very limited resources including meagre donations and some fixed deposit to meet its essential expenditures. Consequent upon deduction of tax from fixed deposit due to non-issuance of Exemption Certificate, even its four employees have been deprived of their small salaries i.e. less than Rs.20,000/- of each. Since the FBR has already issued Exemption Certificate from 28.01.2022 to 30.06.2022, thus, the Department is required to issue Exemption Certificate for the remaining period of the financial year 2021-22 i.e. from 01.07.2021 to 27.01.2022 and also in future taking a sympathetic and considerate view of the matter. In such circumstances of the case, the FBR may issue Exemption Certificate to the NPO (Public Library) for the remaining period i.e. 01.07.2021 to 27.01.2022 and refund its deducted amount enabling it to meet its most essential expenses. Thus, the representation is liable to be disposed of accordingly.

9. Accordingly, the Hon'ble President, as per his decision above, has been pleased to dispose of the representation of the FBR.

-Sd-
(Anwar-ul-Haq)
Director General (Legal)

The Chairman,
Federal Board of Revenue,
Islamabad.

Mr. Umer Din, (Librarian),
Public Library & City Reading Room,
Bagh Langay Khan, Multan. 0300.7191556

Copy for information to:

1. The Registrar, Federal Tax Ombudsman, Islamabad.
2. The Chief (Legal-III), FBR, Islamabad.
3. The Chief (BDT-IT) Federal Board of Revenue, Islamabad.
4. Mr. Arshad Nazeer Bhutta Muhammad Safdar Anari, Advocate/Corporate Consultant, 55-Zakariya Block, District Courts, Multan. 0300.6380769, 0300.7197025
5. Master file.

-Sd-
(Anwar-ul-Haq)
Director General (Legal)