

**THE FEDERAL TAX OMBUDSMAN  
ISLAMABAD**

**COMPLAINT No.1566/KHI/IT/2023**

Dated: 22.03.2023\* R.O. Karachi

**M/s MK Pakistan (Pvt.) Ltd.**

Bungalow No. D-228, Phase-I,  
Naval Housing Scheme, PS Karsaz,  
Karachi.

... *Complainant*

***V e r s u s***

The Secretary,  
Revenue Division,  
Islamabad.

... *Respondent*

Dealing Officer	: Dr. Faiz Illahi Memon, Advisor
Appraising Officer	: Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	: Complainant in person
Departmental Representative	: Mr. Sajjad Hussain, DCIR, MTO, Karachi

**FINDINGS/RECOMMENDATIONS**

The Complainant has preferred instant complaint in terms of Section 10(1) of the FTO Ordinance, 2000 (FTO Ordinance) against attachment of bank account.

2. Briefly the Complainant is agitated on attachment of bank account maintained at HBL, Athara Hazarri, Jhang Branch by the Deptt where he has Rs.950,000/- available for personal expenses and family needs. The actions of the Deptt leading to attachment of bank account of the Complainant are consequence of order u/s 122(5A) of the Income Tax Ordinance, 2001 (ITO, 2001) finalized on 31.03.2021 for tax year 2015 whereby assessment was amended and resultantly tax demand of Rs.649,823,513/- was created on the ground that the said assessment was erroneous in so far as prejudicial to the interest of revenue. It was contended by the Complainant that the notice issued u/s 140 of the ITO, 2001 is not based on facts as he was not a defaulter.

\* Date of registration in FTO Secretariat

3. The complaint was referred to the Secretary, Revenue Division for comments in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response thereto, the Commissioner IR, Enf-II MTO, Karachi submitted comments stating therein that the recovery proceedings u/s 140 of the ITO, 2001 were initiated to recover the outstanding demand after the condonation application filed by the Complainant was declined by the Commissioner IR (Appeals-I), Karachi vide order dated 10.06.2021.

4. Hearing held, arguments heard and the record perused.

5. The background of the case is that the Complainant is engaged in business of construction services since long and carrying out projects at Hub, Balochistan and Port Qasim, Karachi. The Complainant succeeded in acquiring Gadani Fish Harbor, Mini Port from Balochistan Coastal Development Authority (BCDA) on lease for 30 years in the year 2013 and was allotted 74 Acres to develop, operate and maintain the Gadani Fish Harbor for the purpose of export of seafood stock in the international market. However, later on the Government of Balochistan informed that the land was still the property of Pakistan Tourism Development Corporation (PTDC), Government of Pakistan and was mistakenly allotted to the M/s MK Pakistan (Pvt.) Ltd. (the Complainant) and therefore the Complainant approached PTDC for acquiring the land. Subsequently, the entire land of 172 Acres attached with Gadani Fish Harbor was allotted to M/s MK Pakistan (Pvt.) Ltd. after they won the tender, but the land has not been transferred to them. The Complainant approached relevant authorities of the Government of Pakistan for securing his due right which took him long 6 years and the matter was decided in his favour. However, till date, the land has not been given to him to undertake activity for which it was allotted.

During these long six years, the Complainant put his sweat and money to get his right yet to no avail. During the course of personal hearing, the Complainant pleaded for mercy. His mental and physical health looked compromised.

6. Notwithstanding the above facts, the Deptt created demand of Rs.649,823,513/- against the Complainant which further increased his perpetual miseries apart from massive financial losses. This predicament continued unabated when the Commissioner IR (Appeals-I), Karachi vide his order dated 10.06.2021 without appreciating the facts, rejected condonation application filed by the Complainant.

7. Perusal of order 127(6) of the ITO, 2001 passed on 10.06.2021 by the Commissioner IR (Appeals-I), Karachi reveals that the rejection of condonation application has been made on the basis of relying on decisions of superior courts citing that each and every day's delay must be explained before it can be condoned however, no such specific authority has been quoted by the Commissioner-IR (Appeals) in his afore stated order. It has been observed that the applications filed by the taxpayers for condonation of delay are being rejected by FBR by referring to the judgment of the superior courts which is uncalled for. Each case has to be examined on its merit for condonation of the delay instead of rejecting it by referring to the judgment only. On this legal front, reference is invited to the judgment of the Hon'ble Supreme Court of Pakistan in 1998 in PTCL 354 filed by M/s Pfizer Laboratories Ltd. against Federation of Pakistan and Others wherein it is held that the appellants claim would not be declined on the grounds of limitation of time; as article 24(1) of the Constitution of Islamic Republic of Pakistan states that no person shall be deprived of his property save in accordance with the law and the appeal was allowed. In view of

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foregoing, the recovery proceedings leading to attachment of bank account of the Complainant having been carried out by the Deptt, appear to be on weak footing.

**RECOMMENDATIONS:**

8. In view of supra, FBR to-
- i) direct the Commissioner IR, Enf-II MTO Karachi to de-attach the Complainant's bank account forthwith;
  - ii) direct the Member (Legal) FBR to advise the Commissioner IR (Appeals-I), Karachi to reconsider the request of the Complainant for condonation of delay for filing of appeal in the light of Hon'ble Supreme Court of Pakistan's judgment passed in PTCL 354 of 1998 filed by M/s Pfizer Laboratories Ltd. vs. Federation of Pakistan & Others, and the reasons of delay discussed at para-5 above; and
  - iii) report compliance within 40 days.

  
(Dr. Asif Mahmood Jah)  
(Hilal-i-Imtiaz)(Sitara-i-Imtiaz)  
Federal Tax Ombudsman

Dated: 27:4:2023

*Approved for reporting*