THE FEDERAL TAX OMBUDSMAN
ISLAMABAD

COMPLAINT NO.5300/ISB/IT/2023
Dated: 06.09.2023* HQ Islamabad

Mr. Adnan Shahzad, ...Complainant
(Registration No. 3810229096799),
Medical Social Officer, Medical Social Services
Unit, SW&BM Department, DHQ Hospital,
Rawalpindi.

Versus

The Secretary, ...Respondent
Revenue Division,
Islamabad.

Dealing Officer	:	Mr. Muhammad Naseer Butt, Advisor
Appraised by	:	Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	:	Mr. Ghulam Qasim Bhatti, AHC
Departmental Representative	:	Ms. Romana Alam, ADCIR, RTO, Rawalpindi

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance 2000 (FTO Ordinance). The complaint was referred for comments to the Secretary, Revenue Division, in terms of Section 10(4) of the FTO Ordinance, read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013 (FOIR Act). Comments were received from RTO, Rawalpindi vide letter dated 15.09.2023, which were examined and placed on file.

2. Hearing notice u/s 9(2) of the FOIR Act, was issued to the parties for compliance on 09.10.2023. In response to which Mr. Ghulam Qasim Bhatti, AHC (Complainant's Authorized Representative) appeared and argued the case. Ms. Romana Alam, ADCIR from RTO Rawalpindi attended as Departmental Representatives (DR) and presented department's stance on the issue. During hearing AR produced documents which were

*Date of registration with FTO Secretariat examined and placed on file. Arguments were heard, record perused and complaint is disposed of as under.

3. Facts of the case are that the complainant is a Health Welfare Society DHQ hospital Rawalpindi and operated a bank account in the Bank of Punjab having account No. 6010057004600014 Liaqat Road Branch Rawalpindi. The complainant further stated that the said account number is being operated jointly with collaboration of three Departments of Government of the Punjab, namely, Social Welfare and Bait-ul-Maal department, Zakat and Usher department and Specialized Health care and Medical Education department under Zakat and Usher Act 2018.

4. The complainant further stated that these three departments of the Government of the Punjab are jointly working for the welfare of the deserving patients have formed Health welfare committees in every Hospital. Provision of Funds from Zakat Fund for the needy and deserving patients is the responsibility of Zakat and Usher department and the both departments Social Welfare and Bait-ul-Maal department, Specialized Health care and Medical Education are responsible for the disbursement of medicines, surgical and other disposable items to the zakat Mustahiqeen.

5. The complainant further stated the tax officer of RTO Rawalpindi recovered an amount of Rs. 7,358,060/- from the said account by attachment u/s 140 of the Ordinance without any cogent reasons as no demand was outstanding against the Health Welfare Committee. He further stated that the tax officer confused the account of the Health Committee with that of DHQ Hospital. Thus, the recovery has been made from a separate entity other than the DHQ hospital under a sheer misunderstanding and wrongly on 06.06.2023 amounting to Rs. 7,358,060/- through attachment of

bank account of the committee which was not defaulter of tax. The complainant prayed to direct the department to refund the amount to the Zakat fund on the given facts at earliest so that the needy and deserving Mustahkeen-e-Zakat patients' services will be restored.

6. The department filed written comments wherein, they stated that M/s District Headquarter Hospital Rawalpindi being a prescribed person as per provision of Section 153(7) of the Ordinance is liable to deduct/collect the due withholding tax and deposit it in the Government Treasury and to e-file the withholding statements u/s 165 read with section 153 & 149 of the Ordinance. The department further stated that proceedings for the Tax Year 2022 were initiated u/s 161/205 of the Ordinance against the hospital. After providing opportunities of being heard, order u/s 161/205 of the Ordinance was passed on 28.04.2023 and thus tax demand of Rs.85,350,509/- (including default surcharge) was created against M/s DHQ Hospital Rawalpindi.

7. The department further stated that on expiry of statutory time period as provided in section 137 of the Ordinance, recovery notice under section 138(1) of the Ordinance was issued on 29.05.2023 for compliance by 05.06.2023 which remained un-complied. Accordingly, in order to affect the recovery, notice u/s 140 of the Ordinance was issued to BOP, Rawalpindi and resultantly, the banking authority remitted tax amount of Rs. 7,358,060/- through Pay Order No.04 128024 dated 06.06.2023 after due process of verification of account status.

8. The department further stated that withholding agent filed appeal before the learned CIR (Appeals) on 09.06.2023 which is still pending for adjudication. Since the complainant has filed appeal before the Commissioner (Appeals) which is still pending for

adjudication, Hence, in the light of section 9(2)(a) of FTO Ordinance 2000, FTO has no jurisdiction to take up the matter.

9. ***As regards legal objection,*** it is observed that the District Hospital Rawalpindi is, allegedly, is the withholding tax defaulter and proceedings u/s 161/205 were initiated by RTO Rawalpindi against the said hospital. The department admitted in their comments hospital itself is the defaulter of withholding tax and order u/s 161/205 was also passed against the DHQ Hospital. However, this complaint has been filed not by the DHQ Hospital Rawalpindi but by the complainant M/s. Health Welfare Committee. It has been brought to the notice of this office that recovery has been effected from a bank account of Health Welfare Committee which maintains a separate bank account with the bank of Punjab in their own name. The Welfare Committee has filed complaint against illegal recovery measures taken against the entity which is not the defaulter.

10. It is further stated that the defaulter hospital has filed appeal against the order passed u/s 161/205. However, the department stated in their comments that the complainant has filed the appeal before CIR(Appeals) against the order passed u/s 161/205 which is contrary to the facts. Apparently, the department has confused DHQ Hospital with Health Welfare Committee.

11. The circumstances show that hardship has been caused to the complainant and action has been taken contrary to law and on the basis of irrelevant facts and recovery has been affected from an entity which was not the defaulter. Such serious lapses squarely fall within the scope of maladministration as defined in the FTO Ordinance, 2000 and this office has rightly taken up this matter for investigation. Therefore, the legal objection is found irrelevant, misplaced which is therefore overruled.

12. ***On merits of the case,*** it is observed that many mistakes have been made by the tax officer while effecting recovery through coercive measures by attachment of bank account of an entity which was not the defaulter taxpayer. Apparently, the record was not properly scrutinized. Some of the factual mistakes have been mentioned below;

(i) Perusal of the copy of the bank statement provided by the complainant shows that the complainant is maintaining a bank account in bank of Punjab in the name of Health Welfare Committee DHQ hospital bearing account No. 6010057004600014. Whereas M/s District Hospital is having a separate bank account with the HBL.

(ii) The record further shows that the said Health Welfare Committee is composed of the following members;

(a)	MS of the hospital	(Chairman)
(b)	A senior doctor of the hospital	(Member)
(c)	Chairman District Zakat Council	(Member)
(d)	Medical Social Officer	(Secretary)

This composition shows that MS is Chairman of the committee whereas two other members belong to district Zakat Council and medical social officer. The composition shows that this is a separate committee form the DHQ Hospital.

(iii) The complainant also filed copy of the disbursement procedure of Zakat Program dated 31.05.2008. The para 9 of disbursement procedure shows that Zakat funds shall be utilized only by committee on medicine, medical treatment and lab test etc.

(iv) The bidding documents also reveal the source of fund. According to the said document, Pakistan Bait ul Mall allocates funds for the purchase of the Bait ul Mall funded medicines to the individual institute under the relevant head of account which is utilized by the Bait ul Mall committee of DHQ hospital.

(v) The complainant produced copy of cheque No. D638583 issued by the District Zakat Office and administrator Zakat and Usher committee dated 08.05.2023 ***in the name of Health Welfare DHQ Rawalpindi***. All these facts show that Health Welfare Committee is a separate entity which maintains a separate bank account with bank of Punjab and which has a separate stream of funds.

(vi) In their comments as given in Para No. 08 the department stated that "***withholding agent filed appeal*** before the learned CIR (Appeals) on 09.06.2023 which is still pending for adjudication." Since the ***complainant has filed appeal*** before the Commissioner (Appeals) which is still pending for adjudication. The department infact failed to appreciate that District Hospital is withholding agent who has filed appeal against order passed u/s

161/205 whereas, the complainant namely, Health Welfare Committee has not filed any appeal as order was not passed against the said committee.

13. As stated above the DHQ hospital is the allegedly defaulter taxpayer against whom proceedings u/s 161/205 were finalized and demand of Rs. 85,350,509/- (including default surcharge) was raised vide order dated 28.04.2023. While giving approval u/s 140, the taxpayer defaulter has been mentioned as M/s District Headquarter Hospital Rawalpindi and approval has been given in respect of the bank account maintained by the hospital at HBL City Branch or from any other account maintained by the defaulter.

14. However, as stated above the recovery has been made from an account which was not owned by the DHQ Hospital. Besides the recovery has been made from an entity through coercive methods of tax recovery in a case where default in payment of tax or duty is not apparent from record. This shows that while effecting recovery facts of the case have not been properly ascertained and recovery has been effected from a bank account which did not relate to the defaulter.

FINDINGS:

15. This gross negligence on the part of the concerned tax authorities involved in the whole process of recovery from the bank account of Health Welfare Committee is contrary to law, perverse, oppressive and shows incompetence and inaptitude in the discharges of duties and responsibilities. Besides the coercive method of recovery has been adopted against an entity which was not in default of payment. All these grave lapses constitute maladministration in terms of section 2(3)(i)(a)(b)(ii) and (iv) of the FTO Ordinance, 2000. In addition to the above departmental action

has caused undue hardship for the poor & needy beneficiaries/patients of Zakat Fund.

RECOMMENDATIONS:

16. FBR to:-

(i) direct the CIR concerned to take immediate corrective measures and refund the amount wrongly recovered in accordance with law within 30 days; and

(ii) report compliance within 45 days.

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

Dated: 24-10-2023
Akif

Approved for reporting