

TaxHelpline 2013/216

FEDERAL TAX OMBUDSMAN

Complaint No.55/LHR/IT(41)/105 of 2013, decided on 10th July, 2013

Before Dr. Muhammad Shoaib Suddle, Federal Tax Ombudsman

Muhammad Munir Qureshi, Advisor Dealing Officer. Syed Ali Imran Rizvi Authorized-Representative. Murtaza Ali Akbar, ACIR Departmental Representative

MUHAMMAD JAVED

VS

SECRETARY, REVENUE DIVISION, ISLAMABAD

FINDINGS/RECOMMENDATIONS

This complaint is against alleged illegal requisition of wealth statement.

2. The Deptt. received definite information that the complainant and his brother had made an investment of Rs. 7.9 million each in a 3-1/2 Marla shop at Railway Road, Shakargarh, on 3-2-2011 (relevant to Tax Year 2011). They were served notices under sections 176 and 116 of the Income Tax Ordinance, 2001 (the Ordinance), asking them to explain their sources of investment and file a wealth statement as on 30-6-2011 along with a wealth reconciliation statement. The complainant responded to the notices issued by the Assessing Officer by identifying the sources of his investment in the said immovable property as follows:--

Date Investment Source Amount (Rs.) Whether documented

31-12-2007 Foreign Remittance 1,600,000 Yes

9-8-2010 Sale of Shop 1,500,000 Yes

22-9-2010 \$-Rupee Conversion 1,501,452 Yes

27-12-2010 Foreign Remittance 700,000 Yes

27-12-2010 Foreign Remittance 3,500,000 Yes

TOTAL : Rs.8,801,452

3. While the sources of investment were fully identified by the complainant, he did not file a wealth statement as on 30-6-2011, nor a wealth reconciliation statement. According to the complainant, as a deemed assessment had been finalized under section 120(1) of the Ordinance on 28-11-2011, no further assessment could be made without the FBR first selecting the case for audit under section 214C of the Ordinance. As this had not been done, the Deptt. could do nothing more than enquire into the sources of the complainant's investment in the said property/shop and the complainant had discharged his responsibility in this regard by providing details of funds that had been mobilized to finance the acquisition. The complainant contends that the Assessing Officer had found no irregularity in the explanation given to him regarding the sources of investment involved and therefore the explanation should be accepted and further probe into the matter closed. He submits that the Assessing Officer's insistence that a wealth statement be filed was not only an illegal demand but was also in excess of the jurisdiction vested in him under the law and was actually an attempt to conduct an audit without asking the FBR to select the case for audit under section 214C of the Ordinance. As the Assessing Officer did not relent in the matter and continued to insist that a wealth statement be filed along with a wealth reconciliation statement, a complaint was filed before the Hon'ble FTO seeking his intervention to restrain the Assessing Officer from his alleged illegal demand.

4. When confronted, the Deptt filed a reply denying that the Assessing Officer had acted illegally by demanding that a wealth statement be filed along with a wealth reconciliation statement. The Deptt. contended that it had definite information in its possession that the complainant had purchased valuable commercial property that entailed significant investment. Given the meager income declared in the return filed, it was not at all evident that the complainant had the resources to finance such a purchase. Nor was it evident that he was in possession of the property (shop) the sale of which he claims to have contributed part of the funds required for the purchase. It was therefore imperative that the required documents be filed.

5. Both sides have been heard and record examined.

6. In 2001 SCMR 838 the Hon'ble Supreme Court of Pakistan has ruled that:--

"It is well settled proposition of law that a thing required by law to be done in a certain manner must be done in the same manner as prescribed by law or not at all."

Applying the ratio of the above judgment to the complainant's case, it follows that where the Assessing Officer has finalized an assessment under section 120(1) of the Ordinance and receives definite information that the taxpayer has made an investment, the Assessing Officer has the right to ask the taxpayer to identify his sources of investment as done in the case presently before the Hon'ble FTO. If the taxpayer cannot identify any source or can do so only partly, then the already completed assessm

ent is liable to be amended under section 122(1) of the Ordinance after first serving a Show-Cause Notice under section 122(5) of the Ordinance. Either the entire unexplained investment or part thereof, as the case may be, will then be included in the computation of total income as income from unexplained sources under section 111 of the Ordinance.

7. In the case of the complainant, however, he has identified sources to explain the full amount of the investment made by him. These sources are mainly foreign remittances. The Deptt. has raised no objection to the documentation adduced to substantiate the explanation given by the complainant. Thus so far as sources of investment are concerned, the Deptt. has raised no objection regarding these sources. The Deptt. insists that a wealth statement be filed because it would like to use this opportunity to examine the complainant's case in depth and analyze the cash flow, the business and personal expenditures, the bank transactions, the payments made, the tax paid and withheld (if any), etc. In other words, the Deptt seeks to conduct an audit for Tax Year 2011. This it cannot do unless the FBR first selects the complainant's case for audit under section 214C of the Ordinance. As no such selection has been made the Assessing Officer's demands for submission of bank statement, wealth statement and reconciliation statement are in excess of the jurisdiction vested in him under the statute. As per the cited Supreme Court judgment, a tax authority can do only what the law allows and in the manner envisaged under the law or not do anything at all. In the case of the complainant, the Deptt. does not have the authority to demand that a wealth statement be filed as there is no pending assessment for Tax Year 2011. The deemed assessment finalized under section 120(1) of the Ordinance is the only assessment in the field and has not been revised, re-opened or amended. Nor has the case been selected by FBR under section 214C of the Ordinance for conduct of audit. The complainant has fully identified all sources of investment involved to raise the funds required to purchase the property in question (shop). Under the given circumstances, therefore, the Dept'l insistence that additional documentation be filed by the complainant does not have any statutory sanction.

Findings:

8. The complainant's assessment for Tax Year 2011 stands finalized under section 120(1) of the Ordinance and he has rendered explanation about the sources of investment involved to finance the purchase of immoveable commercial property on which no objection was raised by the Deptt. The complainant cannot thereafter be compelled to submit additional documentation such as wealth statement as on 30-6-2011 except if his case is selected by FBR for conduct of audit.

Recommendations:

9. FBR to –

(i) direct the Chief Commissioner to restrain the Assessing Officer from trying to conduct an audit in the garb of a probe into the already accepted sources of investment, or select the complainant's case for audit, as per law; and

(ii) report compliance within 21 days.

Order accordingly



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