

THE FEDERAL TAX OMBUDSMAN ISLAMABAD

COMPLAINT NO.16070/LHR/IT/2026

Dated: 04.09.2026 RO Lahore*¹

M/s Excel Engineering (Pvt) Ltd.,

9-KM, Sheikhpura Road, Lahore.

... Complainant

Versus

The Secretary,
Revenue Division,
Islamabad.

... Respondent

Dealing Officer	: Mr. Asem Iftikhar, Advisor
Appraised by	: Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representative	: Mr. Muzammil Badar, Advocate
Departmental Representative	: Rana Sheryar, DCIR, LTO, Lahore
Date of hearing	: 17.09.2026, 23.09.2026, 28.09.2026

FINDINGS/RECOMMENDATIONS

The above-mentioned complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 against delay in disposal of refund applications for Tax Years 2023 to 2025 respectively.

2. Briefly, Complainant (having NTN#0683659-3), a private limited company is engaged in **Foundry & Castings, Manufacturing Services** (equipped with dedicated sections for casting, machining, forging, fabrication, and heat treatment; with **Product Line**: machined castings and components for leading tractor assemblers and heavy-duty automotive brands in Pakistan. The Complainant filed returns of income u/s 114(1) of the Income Tax Ordinance, 2001 for Tax Years 2023 to 2025 claiming refund of Rs.5.605 million, Rs.3.873 million and Rs.32.569 million respectively. The refund arose on account of excess tax deductions under different Sections of the Income Tax Ordinance, 2001 and withholding taxes claimed as adjustable are of Section 148,

¹ Date of Registration in FTO Sectt.



153(1)(a), 231B(1), 235 & 147(6C) of the Ordinance. Furthermore, Complainant declared minimum tax on account of export proceeds u/s 154(1) of the Ordinance. According to the Complainant, refund applications for Tax Years 2023 to 2025 were e-filed on 08.05.2026 followed by reminder dated 17.06.2026 & 13.07.2026. Despite repeated efforts of the Complainant, Deptt failed to pass orders under Section 170(4) within the prescribed statutory period of sixty (60) days, hence the instant complaints.

3. The complaint was sent 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. In response thereto, the Commissioner-IR Refund Zone LTO, Lahore submitted parawise comments vide letter dated 11.09.2026. At the outset, preliminary objection of bar of jurisdiction under Section 170(5)(b) of the Ordinance was raised on the ground that FTO does not hold jurisdiction in such matters where legal remedy is provided. Reference was made to the decision of Hon'ble Lahore High Court, Lahore in W.P. No.599/2017. The Deptt contended that there was no maladministration on the part of the Deptt, since the taxpayer failed to comply with the law and rules applicable in its case and failed to file its refund application on the prescribed format.

4. On merits, Deptt contended that an analysis of the return reveals errors made by the taxpayer which is given as below;

i) **Tax Year 2025**

The taxpayer claimed Director's Fee amounting to Rs. 12,000,000/-. Under Section 149(3) of the Income Tax Ordinance, 2001, tax is required to be deducted from payment of directorship fee at the rate of 20% of the gross amount payable. Accordingly, the withholding tax



applicable on the Director's Fee works out to: Rs. 12,000,000/- x 20% = Rs. 2,400,000/-.

The corresponding withholding tax is not appearing in the withholding tax statement. Therefore, under Section 21(c) read with Section 149(3) of the Income Tax Ordinance, 2001, the Director's Fee amounting to Rs. 12,000,000/- is to be disallowed and added back to the taxable income.

As a result of the above adjustment, the tax chargeable increases from Rs. 69,595,754/- to Rs. 81,595,754/-. Consequently, the refund claimed by the taxpayer is to be reduced from Rs. 32,569,080/- to Rs. 29,469,572/-.

In the light of above observations income tax return filed for tax year 2025 is erroneous and needs to be probed or scrutinized.

ii) **Tax Year 2024**

- a. The taxpayer claimed Director's Fee amounting to Rs. 10,200,000/-. Under Section 149(3) of the Income Tax Ordinance, 2001, tax is required to be deducted from payment of directorship fee at the rate of 20% of the gross amount payable. Accordingly: Rs. 10,200,000 x 20% = Rs. 2,040,000/- The corresponding withholding tax is not appearing in the withholding tax statement. Therefore, under Section 21(c) read with Section 149(3) of the Income Tax Ordinance, 2001, the Director's Fee amounting to Rs. 10,200,000/- is to be disallowed and added back to the taxable income.
- b. The taxpayer claimed tax depreciation of Rs. 10,212,954/- on a motor vehicle. Under Section 22(13) of the Income Tax Ordinance, 2001, in the case of a motor vehicle not plying for hire, the depreciable cost is restricted to Rs. 7,500,000/-. The allowable tax depreciation works out to Rs. 4,191,173/-, whereas depreciation of Rs. 10,212,954/- was claimed. Accordingly, excess depreciation is: Rs. 10,212,954/- - Rs. 4,191,173/- = Rs. 6,021,781/-. Therefore, the excess tax depreciation of Rs. 6,021,781/- is to be disallowed under Section 22(13) of the Income Tax Ordinance, 2001.





As a result of the above adjustments, the tax chargeable increases from Rs. 25,786,478/- to Rs. 33,037,206/-, the declared refund of Rs. 3,873,489/- is to be reduced to zero, and a tax liability of Rs. 3,222,313/- is created.

In the light of above observations income tax return filed for tax year 2024 is erroneous and needs to be probed or scrutinized.

iii) **Tax year 2023:**

- a. The taxpayer had charged an amount of Rs. 5,119,468/- to the Profit & Loss Account under the head "Provision for Gratuity. In this regard, Section 21 (e) of the Income Tax Ordinance, 2001 provides that, in computing income chargeable under the head "Income from Business", no deduction shall be allowed in respect of any contribution made by a person to a fund which is not a recognized provident fund, approved pension fund, approved superannuation fund or approved gratuity fund. Accordingly, the provision for unapproved and unfunded gratuity amounting to Rs. 5,119,468/- is hereby to be disallowed under Section 21(e) of the Income Tax Ordinance, 2001 and added back to the taxable income.
- b. That an amount of Rs. 16,457,500/- was claimed as Director's Fee. Under Section 149(3) of the Income Tax Ordinance, 2001, tax is required to be deducted from a payment made on account of directorship fee, fee for attending a board meeting at the rate of 20% of the gross amount payable. Accordingly, the withholding tax applicable on the Director's Fee is calculated as Rs. 16,457,500 x 20% = Rs. 3,291,500. The corresponding withholding tax of Rs. 3,291,500/- is not appearing in the withholding tax statement in respect of the aforesaid Director's Fee. Therefore, in view of the non-deduction of the applicable withholding tax under Section 149(3), the Director's Fee expenditure amounting to Rs. 16,457,500/- is to be disallowed under Section 21(c) read with Section 149(3) of the Income Tax Ordinance, 2001.

Particulars	Amount(Rs.)
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Taxable income declared	36,345,406/-
Add: Unapproved and unfunded gratuity	5,119,468/-
Add: Director's Fee	16,457,500/-
Revised taxable income	57,922,374/-

The taxpayer had originally determined its tax liability under the minimum tax provisions of Section 113 of the Income Tax Ordinance, 2001, as the minimum tax liability was higher than the tax payable under the normal tax regime based on the income declared in the return.

However, after incorporating the above adjustments, the taxable income increases from Rs. 36,345,406/- to Rs. 57,922,374/-. Resultantly, the tax liability under the normal tax regime becomes applicable in accordance with the revised taxable income. After above adjustments, the taxpayer's refund is to be reduced from Rs. 5,604,729/- to Rs. 5,246,951/-, resulting in a reduction of refund by Rs. 357,778/-.

In the light of above observations income tax return filed for tax year 2023 is erroneous and needs to be probed or scrutinized.

- iv) The returns analysis reveals that no refund remains to be issued for the Tax Year 2024. For Tax Years 2023 & 2025 with revised income tax refunds, applications shall be processed following the FIFO (First-In, First-Out) method, as per Board's notification No.1(8)FTO/IMP/2024/205508-R dated 17.10.2024. The taxpayer's applications are currently in the queue and will be processed in due course after the verification of tax deductions and payments.
- v) The demand u/s 122(5A) amounting to Rs. 75,521,634/- for the tax year 2021 was created. The taxpayer has filed an appeal before CIR (A) dated 13.12.2022 who modified assessment order vide order dated 30.01.2023. Being aggrieved, the department filed 2nd appeal before the learned ATIR.
- vi) No pending proceedings for the tax years 2025, 2024 & 2023. However, Audit for the tax year 2022 u/s 177 of Income Tax Ordinance, 2001 is selected. The notice u/s 177(1) has been issued and the taxpayer's compliance is awaited.





- vii) The taxpayer is a private limited company incorporated under the laws of Pakistan, earning income from the business of manufacturing of auto parts specifically tractor parts Major withholding payment is claimed of Rs.44,543, 195/- collected under Section 153(1)(a) for the tax year 2025 and Rs. 22,799,633/- is collected under section 153(1)(a) for the tax year 2024, 17,383,243/- is collected under section 153(1)(a) for the tax year 2023.
- viii) Desk analysis/computation of taxable income for Tax Years 2023 to 2025 was also shared.

5. In response to the Department's comments, the Authorized Representative (AR) of the Complainant strongly contended that the Department has routinely raised the identical error regarding director's fees across the Tax Years 2023, 2024, and 2025. The AR clarified that this recurring objection is entirely unsubstantiated, as the Complainant has fully complied with its statutory obligations. To conclusively substantiate this position, the AR presented verifiable copies of Computerized Payment Receipts (CPRs), confirming that the due withholding tax deductions on the directors' fees were accurately made and duly deposited into the national exchequer. Consequently, the Department's stance remains factually incorrect and unsustainable in the face of the documentary evidence provided.

6. **Both the parties heard and record perused.**

7. The preliminary objection of bar raised under Section 170(5)(b) of FTO Ordinance is misconceived as the Hon'ble President vide Orders dated 04.02.2016 and 04.03.2016 in that:

"Notwithstanding Section 170(5) of the Ordinance, delay in disposal of the refund application within the mandatory time limit prescribed under Section 170(4) of the Ordinance is tantamount to maladministration."

Moreover, the findings/recommendations in C.No.329/KHI/IT/2017 were assailed by the Department before the Hon'ble President of

Pakistan by placing reliance on the decision of Hon'ble Lahore High Court in Writ Petition 599/2015. While rejecting the representation of the Department vide Order No.165/FTO/2017 dated 29.01.2018, the Hon'ble President has observed that:

"It is as clear as the crystal that FTO has made recommendations which are only to the extent to direct the Commissioner-IR to complete the verification process and settle refund claims for tax years 2014 and 2015, as per law and report compliance within 45 days thereafter. It is just a harmless order and only the Agency has to decide the issue as per law which never denied in its written reply even by the Agency. The Agency has full powers to decide the issue either way, on merits and in accordance with provisions of law. Thus the findings of the learned FTO are quite sustainable and the Agency has unnecessarily filed this representation. In such circumstances, this representation is liable to be rejected having no merits and recommendations of FTO are sustainable and maintainable being unexceptional in nature in the eyes of law".

It is settled by the Hon'ble Superior Courts that money of a Complainant outstanding with the Deptt, is trust money which should be refunded expeditiously, by using good conscience. The preliminary objection regarding bar of jurisdiction having no force is, thus, overruled.

8. Even, the Department's contention regarding non processing of refund claim due to FIFO is misconceived on the grounds that the FBR has issued clear guidelines/instructions of the Chief Commissioners vide letter dated 17.10.2024 regarding FTO's cases, that in order to process the refund claims explicit approval from the authority must be obtained which means that there is no bar for processing of refund claims against which complaints are pending/decided before the FTO. It may be added here that the taxpayer's legal right given by substantive law/legislature cannot be restricted through administrative circular(s). Board's notification dated 17.10.2024 itself excludes Court/FTO cases from the operations of said circular. Statutory timeline u/s 170(4) cannot be overturned/replaced through administrative instructions. This plea





of FBR has already been dismissed by Presidency in a large number of representations filed by FBR on this account. Matter has attained finality.

9. **FINDINGS:**

- i. The Commissioner-IR Refund Zone LTO, Lahore submitted parawise comments vide letter dated 11.09.2026. All objections with reference to merits of the case ***are audit/assessment related***, completely outside the jurisdiction assigned by FBR to CIR (Refund), LTO Lahore. He has trespassed into the domain of the concerned audit Zone. Secondly these desk audit observations which are being made the basis to block refund claims, have been raised only after Complainant's filing of instant Complaint. Departmental inaction for a long time and the raising unwarranted objections at this forum reflects the vindictive attitude of departmental functionaries.
- ii. The Department reports ***no pending audit, revision or rectification proceedings*** which proves that filing of instant Complaint has triggered this tirade, probably to cover prolonged inaction. Identification of possible discrepancies only during the course of FTO investigation cannot retrospectively justify the entire period of prior administrative inaction.
- iii. Under section 170(4) the Department is obligated to dispose of refund claims within 60 days' time from the filing of refund applications. **LTO's comments are silent about breach of law on this account.** The refund applications have neither been duly adjudicated nor has the petitioner been afforded a proper opportunity of hearing as mandated under Section 170 of the Ordinance. Thus, delay in disposing of refund applications for Tax Years 2023 to 2025 is evident and in clear violation of the mandatory statutory provisions governing the adjudication of refund claims.

The non-processing of refund applications in accordance with the provision of Section 170(4) of the Income Tax Ordinance,



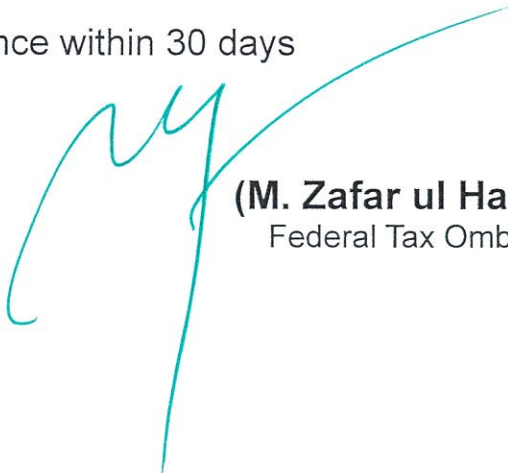
2001 within stipulated time for Tax Years 2023 to 2025 is manifestation of departmental neglect, inattention and ineptitude in discharge of its duties and the same tantamount to maladministration in terms of Section 2(3)(ii) of the FTO Ordinance, 2000.

RECOMMENDATIONS:

10. FBR to-

- (i) direct the Commissioner-IR, Refund Zone, LTO Lahore to dispose of refund applications for Tax Years 2023 to 2025 in accordance with law and after giving proper hearing; and
- (ii) report compliance within 30 days

Dated: **13 OCT 2026**


(M. Zafar ul Haq Hijazi)
Federal Tax Ombudsman