

**CAPITAL FINANCE CORPORATION LTD**

**v**

**UGANDA REVENUE AUTHORITY**

COURT OF APPEAL OF UGANDA AT KAMPALA

COURT OF APPEAL CIVIL APPEAL NO. 43 OF 2000  
(ON APPEAL FROM HIGH COURT CIVIL APPEAL NO.2 OF 2000)

**BEFORE:**

**HON. MR. JUSTICE G.M. OKELLO, JA.**  
**HON. MR. JUSTICE A. TWINOMUJUNI, JA.**  
**HON. LADY JUSTICE C.N.B. KITUMBA, JA.**

December 3, 2001

**JUDGMENT**

**KITUMBA, JA:** This is an appeal against the decision of the High Court (the Judgment of the HON. MR. JUSTICE OKUMU WENGI dated May 18, 2000) in which the ruling of the Tax Appeals Tribunal was set aside. Capital Finance Corporation Limited, the appellant/cross respondent, was ordered to pay shs. 42,000,000 taxes with interest thereon from July 31, 1997 and costs of the appeal.

The following are the facts, which led to this appeal. The appellant/cross respondent, is a licensed credit institution and a holder of a Certificate of incentives granted by the Uganda Investment Authority under Section 25 of the *Investment Code* exempting it from corporation tax, withholding tax and taxes on dividends for a period of six years with effect from September 1995. The appellant/cross respondent provided professional (management) consultancy services to Metropolitan Forex Bureau.

The respondent/cross appellant sought to tax the fees earned by the appellant/cross respondent from the consultancy contract. The appellant resisted the taxation on the ground that such income was not liable to taxation because it had a certificate of incentives. The appellant/cross respondent made an application to the Tax Appeals Tribunal for review. The Tax Appeals Tribunal decided in favour of the appellant/cross respondent. The respondent/cross appellant appealed to the High Court on three grounds. Firstly, that the Tribunal erred in law in holding that the application was properly before it whereas it had been filed out of time without leave from the Tribunal. Secondly, that the tribunal exercised its discretion contrary to the law and heard the application. Thirdly, that the tribunal misinterpreted section 2 of the *Financial Institutions Statute* and came to the wrong conclusion.

The learned appellate Judge ruled on the first two grounds that the application was properly before the Tax Appeals Tribunal and that the Tribunal dealt with it according to the law. On the third ground he held that the appellant/cross respondent was not entitled to exemption from taxation for income obtained from the consultancy because the certificate of incentives was issued to it as a credit institution.

The appellant being dissatisfied with the above decision has appealed to this court on the following grounds:

- "1. The learned judge erred in law in holding that there was insufficient evidence, and in particular that there was need for evidence of whether the appellant was a foreign investor.
2. That the learned judge erred in law and fact in holding that the business of the appellant was an unlawful activity.
3. That the learned judge erred in law and fact in holding that the certificate of incentives granted to the appellant was lost in the violation of section 23 of the Investment Code and that the certificate was granted in respect of credit Institution Business only.
4. That the learned judge erred in law in his interpretation of section 2 of the Financial Institutions statute and the provisions in respect of certificates of incentives granted under the Investment Code.
5. The learned judge erred in law in holding that allowing a certificate of incentives which covers a credit institution amounts to "institutionalised tax avoidance".

The respondent filed a cross appeal on the following grounds.

- "1. That the Tax Appeals Tribunal No.3 before the tribunal was filed out of time and without leave the Tribunal, contrary to the Tax Appeals Tribunal Act and Rules.

The respondent also filed two grounds for affirming the decision of the High Court namely:

"1 That no valid taxation objection was made to assessment No. 31 within the meaning of Section 89 of the *Income Tax Act*.

"2 That there being no objection, the assessment was final and conclusive for the purposes of the Income Tax Decree as provided by section 93(1) *Income Tax Decree*"

When this appeal came up for hearing on March 19, 2001 this court expressed doubt whether it had jurisdiction to hear the appeal. Counsel for both parties were requested to address court on the issue of jurisdiction. Both counsel applied for an adjournment to the convenient session and it was granted. The appeal was duly fixed during this session and both counsel filed written submissions.

On the issue of jurisdiction learned counsel for the respondent/cross appellant submitted that this

court had no jurisdiction to entertain the appeal. He contended that there is no inherent appellate jurisdiction as appellate jurisdiction is solely a creature of statute. He relied on *Attorney General v Shah* [1971] E.A. 50. He submitted that the right of a second appeal to the Court of Appeal is provided under Section 102 of the *Income Tax Act*. According to that section the appeal can only be filed with leave of the Court of Appeal. However, no leave had been obtained in this case.

Counsel for the appellant/cross respondent submitted that this court had jurisdiction. He argued that if the respondent/cross appellant was serious, he should have taken advantage of the provisions of Rule 81 of the rules of this court to strike out the appeal as being incompetent.

It is this court which created doubts in the minds of the parties about the issue of jurisdiction. It is therefore, necessary to clear the matter.

Section 11 of the *Judicature Statute* provides:

"An appeal shall lie to the Court of Appeal from the decisions of the High Court prescribed by the Constitution I this statute or any other law."

Section 101 of the *Income Tax Act* 11/97 provides as follows:

"101 (1) A tax payer dissatisfied with an objection decision may at the election of the tax payer

a) appeal the decision to the High court; or

b) apply for a review of the decision to a tax tribunal established by

Parliament by law for the purpose of settling tax disputes in accordance

with clause (3) of Article 152 of the *Constitution*."

The Tax Appeals Tribunal Act (No.12/97) is established in accordance with Article 152 of the Constitution. Section 28 of the Tax Appeals Tribunal Act provides a right of appeal from the decisions of the Tax Appeals Tribunal to the High Court. The taxpayer has two options to challenge a taxation decision. According to section 101 (1) (a) of the *Income Tax Act* he may challenge the decision in the High Court. It is only when he goes directly to the High Court that the provisions of Section 102 of the *Income Tax Act* apply. The taxpayer must apply for leave of the Court of Appeal to appeal against the High Court decision.

It is clear, therefore, from the above provisions that this court has the jurisdiction to entertain this appeal from the High Court as the appellant/cross respondent first challenged the taxation decision in the Tax Appeals Tribunal.

The issues which are raised in this appeal that require determination are two. The first one is whether the Tax Appeal Tribunal had jurisdiction to review a tax decision, which was allegedly filed out of time. The second issue is whether the appellant/cross respondent was exempted from taxation by virtue of the certificate of incentives.

Regarding the first issue, learned counsel for the respondent/cross appellant repeated his submissions before the Tax Appeals Tribunal and the High Court. Counsel contended that the

Tax Appeals Tribunal did not have the jurisdiction to review the taxation decision which was made on October 28, 1998 and posted to the appellants on December 15, 1998. The date of effective service was December 29, 1998. The application for review had to be made not later than January 29, 1999. The Tax Appeals Tribunal had no jurisdiction to entertain an application for review, which was filed on May 10, 1999 when no application for extension of time had been made.

Counsel for the appellant/cross respondent supported the learned trial judge's finding that the tribunal had jurisdiction.

In his judgment the learned trial Judge held that the inquiry to the tribunal by the appellant/cross respondent was within six months)) was rightly treated by the Tribunal as an application for extension of time. He also held that the appellant/cross respondent letter of March 5, 1999 and that of respondent/cross appellant set off time running a fresh. As the letter of March 25, 1999 was served on the appellant/cross respondent on April 11, 1999. The application for review filed on May 10, 1999 was within the period of 30 days provided by section 17 (1) (c) of the *Tax Appeals Tribunals Act*. I agree with the reasoning and the conclusion of the learned trial judge.

I now turn to the second issue, which is whether the Capital Finance Corporation was exempted from taxation by its Certificate of Incentives. It was common ground that appellant/cross respondent was authorised by the Bank of Uganda to be a Credit Institution in accordance with Section 2 of the *Financial Institutions Statute*. The crux of the matter was whether the Certificate of Incentives issued under Section 25 of the *Investment Code* exempted the appellant/cross respondent from the taxes, which the respondent/cross appellant wished to impose. The arguments of both counsel during hearing in the Tax Appeals Tribunal in the High Court and in this court centred on the wording of the Certificates of incentives Exhibit P.6 which reads as follows:

"Nature of Business: Credit Institution"

Counsel for the appellant/cross respondent argue that the certificate of incentives covered all activities of the Corporation. He relied on Section 2 of the *Financial Institution Statute*, which defines Credit Institution as follows:

"Credit Institution" means any company licensed to carry out credit Institution business as its principal business."

"Credit Institution Business" means the business of accepting deposits of money from the public repaying after a fixed period or after notice and of employing such deposits wholly or partly by lending or any other means for the account and at the risk of the person accepting such deposits.

Learned counsel for respondent/cross appellant supported the learned trial judge's finding that the appellant/cross respondent's certificate of Incentives was limited to its activities performed as a credit institution. The business of financial management services were not covered and money obtained from that was taxable.

In his judgment the learned trial judge criticised the appellant/cross respondent for failing to produce evidence to prove whether it was a foreign investor or not. He found that the appellant/cross respondent in its application for tax review described itself as a financial institution. He held that credit institution was not synonymous with financial institution.

The learned trial Judge stated:

"It is clear from the above and it is this Court's view that the Incentives granted encompassed the perspective of the respondent as a Credit Institution and not a Banking Enterprise. In other words, the essence of the business enterprise and not merely the institution set up is what the incentive should address"

It is appreciated that the learned trial judge was alive to section 14(1) of the *Investment Code*, which allows an investor to engage in any type of business enterprise, subject to restrictions. However, he did not address his mind to the provisions of Section 23(1) of the *Investment Code* which states:

"An investor in a business enterprise who commences operation after the coming into force of this Code shall qualify for incentives under this part if he satisfies three or more of the objectives specified in section 13"; -(underlining mine).

Section 13 of the same Statute provides for appraisal of the investor's application as follows:

"13. The Authority shall in considering an application for an investment license under this Code, carry out an appraisal of the capacity of the proposed business

enterprise to contribute to the following objectives: -

- a) the generation of new earnings or savings of foreign exchange through exports, resource based import substitution or service activities;
- b) the utilisation of local materials, supplies and services;
- c) the creation of employment opportunities in Uganda;
- d) the introduction of advanced technology or upgrading of indigenous technology;
- e) the contribution to locally or regionally balanced socio-economic development; or
- f) any other objectives that the Authority may consider relevant for achieving the objects of this code;"

My understanding of the above Section leads me to agree with the submissions of counsel for the appellant/cross respondent that the certificate of incentives is given to an investor for all its business. The financial consultancy business was, therefore, not subject to taxation. I find that the appeal has merit. The cross appeal and the grounds for affirming the decision have no merit.

I would allow the appeal and dismiss the cross appeal with costs to the appellant/cross respondent here and in the court below.

**TWINOMUJUNI, J.A:** I have read in draft the Judgment of my Lord, JUSTICE C.N.B. KITUMBA, JA. I agree with it and I have nothing useful to add.

**G.M. OKELLO, JA:** I have read the proposed judgment of KITUMBA. JA and I fully agree. I have nothing useful to add. As TWINOMUJUNI, JA also agrees, the appeal is allowed on the terms proposed by KITUMBA, JA.