

UGANDA CONSOLIDATED PROPERTIES

v

UGANDA REVENUE AUTHORITY

HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL COURT)

CIVIL APPEAL NO. 75 OF 1999

BEFORE: THE HONOURABLE MR. JUSTICE R.O. OKUMU WENGI

March 27, 2000

Mr. Charles Odere for appellant  
Mr. Mawanda for respondent

JUDGMENT

This Appeal was brought to contest the ruling of the Tax Appeals Tribunal made on 26th November 1999. In that ruling made on a preliminary point of law the Tribunal dismissed an application for review of a taxation decision on grounds that it was time barred.

The facts of the case are that the Uganda Revenue Authority (the respondent) levied a tax of shs. 504,152,054 on the appellant by a notice of 1/2/1999 on the basis of incomes from sales of houses by the Appellant in the years 1992 to 1997. An objection was made by the tax payer and a decision on this objection was made on 23/3/1999. On 14/6/99 the respondent moved to collect the taxes by directly reaching the respondents Bank accounts. A meeting between the parties resulted in a 30% deposit on the assessed tax and this was reduced into writing by a letter of the respondent to the appellant dated 17/6/1999. By this letter the respondent made a final declaration that the taxes were payable as assessed. The appellant then filed two applications for review before the Tax Appeals Tribunal. The first one was filed on 6<sup>th</sup> July 1999. On 9<sup>th</sup> August 1999 another application was filed. According to the Counsel for the Appellant the first application was not served upon the Respondent within the requisite period of five days. The Tribunal in its rendition of the facts of this appeal did not refer to this first application. The issue before the Tribunal and in this Appeal is the date of the Taxation decision from when the limitation period began to run. If the date of 23/3/1999 was the material date then, and this is what the Tribunal found, the application for review would be time barred. If on the other hand the 15<sup>th</sup> or 17<sup>th</sup> June 1999 when a "final" decision was communicated then as the appellant argues he was within time to prefer his application. There is also the issue of which limit is to be observed under section 17 of the Tax Appeals Tribunal Act; whether it is 30 days or whether six months are the time limits.

Firstly I will deal with the problem of a taxation decision. According to section 3 of the Income Tax Act 1993 "assessment" means ascertainment of income or penal tax and includes "any decision of the Commissioner which under this Act is subject to objection or appeal." And

"taxation decision" is defined in section 2(1) to mean any assessment determination decision or notice.

Now in this case it seems that after the letter of 23/3/1999 the Appellant disputed the tax by a letter of 12<sup>th</sup> May 1999. As of 15/6/1999 no reply by way of an objection decision had been communicated. It can only be stated that the appointment of Uganda Commercial Bank as agent under the provisions of section 107 of the Income Tax Act 1997 became the notification of the objection decision. However it did not by itself mean that the tax payable was not in dispute. Once this collection move was notified to the tax payer an urgent meeting was called and an agreement was reached for the tax payer to pay 30% of the assessed tax. It is the view of this court that the collection agency notification fulfilled the requirement of section 100(b) and section 107(3) simultaneously. It is also the view of this court that the subsequent meeting and notice issued thereafter revived the assessment updating it to 17<sup>th</sup> June 1999. As a result the Appellant could lodge an Application with the Tribunal.

In this regard, in the absence of any information regarding the status of the Appellants application of 6<sup>th</sup> July 1999, namely whether it was dismissed or just abandoned, the appellant did lodge an application within 30 days of the notice to him of an objection decision (This application appears at p.101 of the Record of Appeal). I have not seen any order of the Tribunal discontinuing dismissing or otherwise disposing of this application. Whether or not it was competently made is another matter but it cannot be ignored as it seems to be pending. The respondent in its submissions did not address this matter in any way.

Now turning to the apparent discrepancy between Section 17 (1) (c) and Section 17 (7) of the Tax Appeals Tribunals act 1997, I do not see any difficulty whatsoever. The one provides for a period of 30 days within which a person may apply for review of a taxation decision. The thirty days begin to run from the date when notice of the decision has been given to the Applicant. The date of notification may not be the same as the date of the decision which Section 17 (7) deals with. The six months is the limit from the date of the decision itself. In other words even if the date of the taxation decision were for arguments sake 23/3/1999 then an application to review it may not be made after 23/9/1999. In other words the commissioner has some duty to notify tax payers of his decisions. But he may delay and notify the tax payer, say on 21/8/1999 in which case the tax payer may apply for review within 30 days of notification.

In view of what has been stated above the date of the tax decision and or assessment and or objection decision is mid June 1999 the date having been revived by the respondents own communication. If the commissioner large tax payers had not written notices at all the date would have been frozen to 23/3/1999 subject to election by the tax payer following delay to respond to the tax payers May 1999 letter disputing the tax payable. In the law of Limitation, as I know it, writing letters, even those with negative content, may have the undesired effect of reviving an otherwise stale cause. In this case it did just that and updated the decision to mid June 1999.

In consequence, I have to allow this appeal with costs and remit the application for review to be heard, for and disposed of by the Tax Appeals Tribunal. Leave against this Judgment appellant is

entitled to if required is granted and the appellant is entitled to costs of this appeal.