THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL DIVISION

HCT - 00 - CC - CA - 3 – 2001

(ARISING FROM THR RULING OF THE TAX APPEALS TRIBUNAL IN TAT APPLICATION NO. 8 OF 1999)

UGANDA REVENUE AUTHORITY …….....….....….....……APPELLANT

VERSUS

RWABURINDORE BISHANGA T/A BETAR ENTERPRISES ..... RESPONDENT

BEFORE: THE HON JUSTICE GEOFFREY KIRYABWIRE

J U D G M E N T

This appeal arises from the ruling of the Tax Appeals Tribunal (TAT) in TAT application No. 8 of 1999, for orders that; the ruling of the TAT be set aside, the respondent pays the tax assessed and costs. In the alternative, the court order a retrial before a tribunal constituted of other members.

The grounds for this appeal as set out in the appellant's memorandum of appeal are as follows;

1. The tribunal erred in law in finding that a tax payer's diaries are not one of the books or records or accounts that a tax payer is obliged to keep under the provisions of the Value Added Tax Act (VAT Act) and regulations.

2. The tribunal erred in refusing to allow the appellant adduce evidence on the respondent's bank statements. Furthermore, that the tribunal erred in refusing to allow the appellant's application to lodge the respondent's bank statements out of time.

3. The tribunal having decided that section 33 (a) and 10 of the VAT statute allowed the Commissioner General to amend assessments erred in deciding that such new assessments can only be amended on account of error and fraud.

The brief background to this appeal is that on 29th July 1999, the appellant Authority assessed the respondent's (appellant in the application for review before TAT) VAT liability for the period 1st July 1996 to 30th April 1998 at a sum of Ushs 589,670,542/=. The respondent then applied to the TAT for review of the appellant's assessment. The TAT on review ordered that, the appellant's assessment of VAT be set aside and substituted with one by which the mark up of 20% is to be added to the cost of goods of Ushs 1,224,280,441/= before applying the appropriate VAT rate in order to arrive at the VAT liability of the respondent. Furthermore that a refund if any be granted to the respondent which is in excess of the VAT paid having taken into account the sales tax credit note which was dishonoured by the respondent and costs. The appellant Authority being dissatisfied with the ruling of the TAT then filed this appeal.

At the hearing of this appeal, the appellant was represented by Mr. Tumusingize while Mr. Kibaijona represented the respondent.

Jurisdiction to hear the appeal from TAT by another Judge.

This appeal was part heard by Hon. Justice Ogoola in March 2003 and when the matter came up for further hearing on 13th January 2011 after a notice to show cause why the Appeal should not be dismissed the court decided to visit the question of whether it has the jurisdiction to conclude an appeal from a decision of the TAT.

The Tax Appeals Tribunals (Procedure) Rules (SI 345-1 hereinafter referred to as the TAT Rules) provide in Rule 30 that where the TAT Rules do not provide for a matter then the rules of practice and procedure of the High Court shall apply subject to such modifications as the tribunal may provide. The procedure in this regard is not expressly provided for so I shall apply the practice and procedure of the High Court as provided for under the Civil Procedure Rules (S. I71-1.
CPR).

Order 18 r 11 of the Civil Procedure Rules provides that

> *"…Power to deal with evidence taken before another judge.*
>
> *(1) Where a judge is prevented by death, transfer or other cause from concluding the trial of a suit, his or her successor may deal with any evidence taken down under rules 1 to 10 of this Order as if the evidence had been taken down by him or her or under his or her direction under those rules, and may proceed with the suit from the stage at which his or her predecessor left it.*
>
> *(2) The provisions of sub rule (1) of this rule shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 18 of the Act."*

The provision above uses the term 'suit'. The term 'suit' is defined under S. 2(x) of the Civil Procedure Act as, *"all civil proceedings commenced in any manner prescribed."*
It therefore follows that an appeal from a decision of the TAT to the High Court is a suit within the meaning of the term under the Civil Procedure Act and therefore, this court would have jurisdiction to conclude this matter under O. 18 r 11 of the CPR.

I will therefore proceed to determine the grounds of appeal as set out in the memorandum of appeal. However before I do so I will restate the my jurisdiction in matters of appeals such as this one.

Section 27 of the TAT Act provides

> ***"27. Appeals to the High Court from decisions of a tribunal.***
>
> *…An appeal to the High Court may be made on questions of law only, and the notice of appeal shall state the question or questions of law that will be raised on the appeal.*
>
> *The High Court shall hear and determine the appeal and shall make such order as it thinks appropriate by reason of its decision, including an order affirming or setting aside the decision of the tribunal or an order remitting the case to the tribunal for reconsideration..."*

Briefly put an appeal of this nature should be only on a point of law which question of law should be clearly stated

Ground one: The tribunal erred in law in finding that a tax payer's diaries are not one of the books or records or accounts that a tax payer is obliged to keep under the provisions of the Value Added Tax Act (VAT Act) and Regulations.

At the hearing both counsels did not make specific submissions in relation to this ground.

That notwithstanding a perusal of the record during the hearing in TAT shows that the tribunal applied its mind to section 51 of the Value Added Tax Statute 1996 (herein referred to as VAT Statute) and regulation 9 of the VAT Regulations 1996 (being the applicable law at the time) and found that

> *"…Judging from the above statutory provisions, it is clear that the diaries which the respondent insists on are not one of the books or records or accounts a taxpayer is obliged to keep and there is no evidence to suggest that the Commissioner General under S. 51 (d) of the statute has prescribed such diaries as part of the accounts or records to kept by the tax payer. Nevertheless from the evidence adduced the tribunal is satisfied that the appellant maintained records in accordance with the law and the respondent is or was not right or justified to refuse to accept them."*

Having considered the provisions of the law (without reproducing them here), I find that the tribunal found in accordance with the VAT Statute 1996 that dairies are not one of the books or records or accounts required to be kept by the tax payer. This in my view is the correct position of the law and there is no plausible argument to the contrary.

Ground two: The tribunal erred in refusing to allow the appellant to adduce evidence on bank statements of the respondent's banking and erred in declining to allow the appellant's application to lodge the same with the tribunal out of time.

In respect of this ground, learned counsel for the appellant contended that TAT refused to accept in evidence the bank statements which the appellant authority relied on to assesses the respondent's tax liability and in the appellant's application for extension of time to admit the said documents.

Counsel for the appellant submitted that that Section 25 of the TAT Statute provides that parties may be given reasonable opportunity to present their case but that TAT chose to shut out this vital evidence hence occasioning a miscarriage of justice to the appellant.

Counsel for the appellant submitted that there would be no injustice occasioned to the respondent if the bank statements had been allowed in evidence by the TAT because the respondent in his objection had give reasons why the bank statements could not be used in assessing the tax liability. Counsel for the appellant submitted that the TAT was too technical and formal, contrary to the TAT Statute and therefore its findings were not in accordance with the law. Counsel for the appellant referred to Art 126(2) (e) of the Constitution which requires justice to be done without regard to undue technicalities and prayed that the decision of the TAT should be set aside.

In reply, counsel for the respondent submitted that there were several references to bank statements in the proceedings in the tribunal but these references did not justify admission of the bank statements out of time.

Counsel for the respondent submitted that S. 23 (2) of the TAT Statute provides that proceedings before the TAT shall be conducted with as little formality and technicality as possible, and the Tribunal shall not be bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate.

Counsel for the respondent referred to S. 18 (1) (c) of the TAT Statute which provides that,

> "*Subject to this section, not later than thirty days after being served with a copy of an application to a Tribunal to review a taxation decision the decision maker shall lodge with the tribunal two copies of*
> *(c) every other document in the decision maker's possession or under his or her control, which is necessary to the Tribunal's review of the decision."*

With regard to this section, Counsel for the respondent submitted that the opening words i.e. *'subject to this section'* are clear and plain and can only mean that the section is self contained and therefore other provisions outside its ambit should not be relied on to interpret it further.

Counsel for the respondent further submitted that the tribunal could only have the power or discretion to extend the time for lodging the bank statements if such power was provided for under Section 18 (1) of the TAT Statute. However in this case TAT's powers and discretion to extend time were curtailed.

Counsel for the respondent submitted that the TAT Statute stipulates the documents to be lodged and the time frame within which they should be lodged and therefore, the Tribunal can proceed to review a matter and settle a tax dispute using only the materials available before it filed within the prescribed time which is what happened in this case.

I have carefully considered the submissions of both counsels and the authorities cited in respect of this ground.

I must say to my mind that this appeal ground is not grounded in a point of law but rather is all about procedure and is therefore outside the scope of jurisdiction granted to this Court under

section 27 of the TAT Act. This unfortunate considering that both Counsel submitted at length on this ground.

In the premises, therefore this ground of appeal fails.

Ground three: The tribunal having decided that section 33 (a) and 10 of the VAT statute allowed the Commissioner General to amend assessments, erred in deciding that such new assessments can only be amended only in account of error and fraud.

Both counsels did not specially submit on this ground, however, the tribunal found that,

> *"S. 33 (9) and (10) of the VAT statute allow the Commissioner General to amend assessments in certain circumstances and any such amended assessment is treated as a new assessment. On this issue therefore, the tribunal finds that the Commissioner General is not bound by the assessment of July 1st 1996 to June 30th 1997 even if both parties had agreed on the assessment. He could come up with a new assessment. But there must be a justified reason for so doing, inter alia on account of error or fraud. None of these, to our minds, have been pleaded or proved by the respondent."*

In the absence of any submissions by the appellant in relation to this ground, it is difficult to determine what the appellant's challenge to this finding is. However, the law which forms the basis of this ground is clear. According to Section 33 (9) and (10) of the VAT statute it is provided that,

> *"…(9) The time limit for amending an assessment is—*
>
> *(a) where fraud, or gross or wilful neglect has been committed by, or on behalf of, the person assessed in respect of the period of assessment, any time; and*
>
> *(b) in any other case, within three years after service of the notice of assessment.*
>
> *(10) An amended assessment is treated in all respects as an assessment under this Act..."*

Section 33 (9) provides for the time limit where fraud, or gross or wilful neglect has been committed by, or on behalf of, the person assessed in respect of the period of assessment. The tribunal thus correctly found that the Commissioner can come up with a new assessment but there must be justifiable reason for doing so, inter alia on account of error or fraud. This is the law, and therefore ground three of this appeal fails.

In the premises, the appeal is unsuccessful and it is dismissed with costs.

……
Geoffrey Kiryabwire
JUDGE

Date: 20/08/12

3:45

Judgment read and signed in Court in the presence of;

- Kakuba for Respondent
- Mafabi h/b for Tumusingize for Appellant

In Court

- Mr. Ali Ssekatawa Asst. Comm. Legal for URA
- Ms. N. Nanfuma – Legal Officer URA
- Rose Emeru – Court Clerk

……

Geoffrey Kiryabwire

JUDGE

Date: 20/08/2012