THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)

CIVIL APPEAL NO. 11 OF 2020
(ARISING FROM TAX APPEALS TRIBUNAL APPLICATION NO. 48 OF 2018)

UGANDA REVENUE AUTHORITY :: APPELLANT

VERSUS

TAMALE & CO. ADVOCATES :: RESPONDENT

(Before: Hon. Justice Patricia Mutesi)

JUDGMENT

Background

1. This is an appeal from the ruling and orders of the Tax Appeals Tribunal (hereinafter "the Tribunal") in Application No. 48 of 2018. The brief background of the appeal, as can be gathered from the record of the Tribunal, is that the respondent is a partnership carrying on the business of a law firm. The respondent was registered as a law firm on 6th August 2013. On 14th August 2013, the respondent applied for Value Added Tax ("VAT") registration. On 24th October 2013, the appellant issued a VAT certificate to the respondent with an effective date of 1st October 2013.

2. In a subsequent tax audit, the appellant discovered that the respondent had been conducting business in July 2013, August 2013 and September 2013. Consequently, the appellant issued an administrative additional VAT assessment of UGX 9,236,970 in respect of the respondent's taxable supplies in August and September 2013.

3. While objecting to the assessment, the respondent denied making the alleged taxable supplies and maintained that the assessment was illegal since it related to a period prior to its effective VAT registration date. The appellant disallowed the objection and the respondent proceeded to the Tribunal. After hearing evidence from both parties, the Tribunal decided the matter in favour of the respondent.

The Appeal

4. The appellant was aggrieved by the ruling and orders of the Tribunal and appealed to this Court on the following 3 grounds:

> ***"1. That the Chairman and the Honourable members of the Tax Appeals Tribunal erred in law when they held that the respondent was not liable to pay VAT when it made supplies.***
>
> ***2. That the Chairman and the Honourable members of the Tax Appeals Tribunal erred in law when they held that the respondent was estopped from charging the applicant VAT when it made taxable supplies.***
>
> ***3. That the Chairman and the Honourable members of the Tax Appeals Tribunal erred in law when they set aside the VAT assessment of UGX 9,236,970/= against the applicant who made taxable supplies."***

Duty of the High Court in tax matters

5. Section 27(2) of the Tax Appeals Tribunal Act Cap 345 provides that an appeal may be made to the High Court from a decision of the Tribunal on questions of law only. In **High Court Civil Appeal No. 9 of 2006; Uganda Revenue Authority V Tembo Steels Ltd**, this Court explained that the intention of the legislature in enacting that provision was to leave questions of fact, such as the accuracy of tax assessments, to tax professionals at the appellant and at the Tribunal, and to reserve to this Court only points of law for determination.

6. Therefore, in appeals from the Tribunal, this Court entertains and decides questions of law only. Nevertheless, since the failure to exhaustively and objectively appraise evidence constitutes an error of law, this Court may, after finding that the Tribunal is guilty of such an error, reappraise the evidence adduced in the Tribunal and draw its own inferences of fact (See **Court of Appeal Civil Appeal No. 172 of 2019; SWT Tanners Ltd & 14 Ors V Commissioner General URA**).

Representation

7. At the hearing the appellant was represented by Mr. Tony Kalungi from its Legal Services and Board Affairs Department. The respondent was represented by M/S Kampala Tax Advisory Centre Legal Department.

Determination of the appeal

8. I have fully considered the materials on record, the submissions of the parties and the laws and authorities cited. I will resolve the 3 grounds of appeal separately and chronologically.

Ground 1

9. The gist of the appellant's submissions on ground 1 was that the Tribunal erred in law when it failed to consider Section 6(2) of the VAT Act which provides that VAT is chargeable on a person who is not yet registered for VAT but who is required to be registered for VAT. The appellant contended that although the respondent was not registered for VAT between July and September 2013, the respondent made VAT-able supplies during that period and was required to register for VAT. In reply, the respondent still disputed the allegation that it made taxable supplies within the impugned period on grounds that it was only registered on 6th August 2013. The respondent submitted that Section 6(2) of the VAT Act, therefore, did not apply to the matter.

10. I reiterate that the duty of the High Court in tax matters is to decide questions of law only. The respondent's submissions on this ground call for this Court to consider and decide a question of fact which is whether it made taxable supplies between July and September 2013 or not. This question was already determined by the Tribunal which found that the respondent was already carrying on business and making VAT-able supplies at the time it registered for VAT (See paragraph 3 of page 5 of the Tribunal's ruling). The respondent did not file an appeal / cross appeal challenging the Tribunal's evaluation of evidence. Accordingly, this Court finds no reason to disturb any of the Tribunal findings of fact and I will rely on them in the resolution of the appeal.

11. I note that while analysing the relevant law, the Tribunal did not consider Section 6 of the VAT Act in its entirety. Specifically, the Tribunal ignored subsection 2 of Section 6 of the VAT Act which provides that:

"A person <u>who is not registered, but who is required to apply to be registered</u>, is a taxable person from the beginning of the tax period immediately following the period in which the duty to apply for registration arose." (Underlining mine for emphasis.)

12. Section 6(2) of the VAT Act settles the central controversy in this appeal. It confirms that VAT liability can predate VAT registration. By doing so, the provision averts tax evasion by those who should register for VAT but who deliberately refuse to do so. Thus non-registration for VAT cannot be used as an excuse not to pay VAT. Consequently, since the respondent did not appeal the Tribunal's finding that it had carried on business and made VAT-able supplies between July and September 2013 before its effective date of VAT registration, this Court finds that the respondent was liable to pay VAT for all the VAT-able supplies it made before VAT registration. Accordingly Ground 1 of the appeal succeeds.

Ground 2

13. On ground 2 of the appeal, counsel for the appellant contended that the Tribunal was wrong to find that the appellant is estopped from stating that the respondent's VAT liability predates 1st October 2013 which is the respondent's effective date of VAT registration. Counsel argued that the equitable doctrine of estoppel is incapable of fettering the appellant's statutory powers. On the other hand the respondent's counsel supported the Tribunal's decision and submitted that the appellant was estopped by its own conduct of appointing 1st October 2013 to be the effective date of the respondent's VAT registration, from claiming otherwise.

14. It is not in doubt that the appellant has the unfettered discretion under the VAT Act to appoint the date on which VAT registration takes effect. The appointment of an effective date of VAT registration creates a rebuttable presumption that that is the date upon which a taxpayer's VAT liability commences and that no earlier transactions could be considered. This is only a rebuttable presumption because, more often than not, the appellant does not have all the facts relating to a tax payer's affairs and activities before it appoints the effective date. For this reason, the law allows the appellant wide discretionary powers to audit all taxpayers even after the end of a tax period. Following such audits, the appellant is

further empowered to issue any and all necessary additional assessments on each tax payer who is discovered to have made taxable supplies in respect of which no VAT or other tax was declared and paid pursuant to Section 23(2)(a) of the Tax Procedure Code Act, 2004.

15. Counsel for the respondent challenged the applicability of Section 23(2)(a) of the Tax Procedure Code Act, 2004 to the instant case. Counsel contended that there was no earlier assessment in respect of the period between July and September 2013 yet the said provision relates to the issuance of 'additional' assessments. I do not agree with this interpretation of that provision. The respondent lodged VAT returns from October 2013 to June 2014 representing its VAT liability for the financial year 2013/2014. However the appellant discovered that the respondent had not declared and paid VAT for the first 3 months of the said financial year. This was a unique situation, as anticipated under Section 6(2) of the VAT Act. The impugned assessment was additional to the self-assessments and returns already filed by the respondent for the months in that financial year. Therefore, I find that Section 23(2)(a) is relevant and applicable to the instant case.

16. In deciding for the respondent, the Tribunal reasoned that the appellant is estopped from stating that the respondent's VAT liability started before its effective date of VAT registration. I respectfully disagree. The appellant has the discretion to go beyond the effective date of VAT registration in order to discover if there were any VAT-able transactions made prior to that effective date, which had not been brought to its attention at the time of VAT registration.

17. As a general rule equity follows the law, and estoppel, which is a doctrine of equity, cannot stand in the face of clear statutory words. If this court were to hold that estoppel precludes the appellant from auditing a taxpayers' pre-VAT registration affairs, this would render Section 6(2) of the VAT Act and Section 23(2)(a) of the Tax Procedure Code Act, 2004 redundant and of no effect. In tax matters, one has to look only at what is clearly said in the taxing statute. There is no room for any intendment, equity or presumption as to tax. (See **Carpe Brandy Syndicate V The Commissioners of Inland Revenue [1921]1 KB 64 at 71**). As such, the clear

wording of the above mentioned statutes overrides any claim of equity or estoppel that would have arisen on the part of the taxpayer, from an effective date of VAT registration appointed by the appellant. Accordingly, Ground 2 of the appeal also succeeds.

Ground 3

18. Ground 3 of the appeal questions the Tribunal's decision to set aside the impugned VAT assessment of UGX 9,236,970. Having found that the respondent's VAT liability predated its VAT registration and related back to the period between July and September 2013, this ground is answered in the affirmative. The appellants assessments were correctly issued and the Tribunal erred in law when it set them aside.

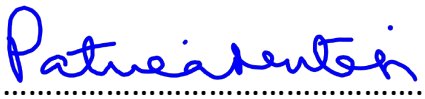
Reliefs

19. Consequently, the appeal succeeds and I make the following orders:

    i. The appeal is allowed.

    ii. The respondent shall honour the impugned assessment and pay the VAT of UGX 9,236,970 as assessed by the respondent.

    iii. Costs of the appeal are awarded to the appellant.



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Patricia Mutesi

JUDGE

(29/12/2023)