

IN THE TAX COURT OF THE HIGH COURT OF FIJI
AT SUVA

Tax Appeal HBT 15 of 2019

BETWEEN : MOHAMMED ALI

APPELLANT

AND : CHIEF EXECUTIVE OFFICER, FIJI REVENUE AND
CUSTOMS SERVICES.

RESPONDENT

BEFORE : M. Javed Mansoor, J

COUNSEL : Mr. S. Singh for the Appellant
: Mr. E. Qalo for the Respondent

Date of Hearing : 19 October 2022

Date of Judgment : 24 January 2024

JUDGMENT

INCOME TAX

Appeal – Extension of time to appeal – Sections 16, 17 & 82, Tax Administration Act 2009 – Lodgment of an objection – Substantial delay in filing application for review

1. The appellant has filed a notice of motion dated 12 April 2019 seeking to set aside the decision of the Tax Tribunal dated 25 October 2019, which struck out an application for extension of time to review the objection decision given by the respondent. The application for review challenging the respondent's objection decision of 31 August 2017 was filed in the tribunal on 14 February 2019. The tribunal also struck out the review application. The notice of motion is filed under section 82 of the Tax Administration Act 2009.
2. The respondent objected to the review application on the basis that it was not filed within the statutorily prescribed 30 day period, as its objections review team made the decision on 13 September 2017. The delay in making the application for review was said to be more than a year and five months after the objection decision was made. The tribunal calculated the delay to be 502 days.
3. By its notice of appeal filed on 20 November 2019, the appellant sought the following orders:
 - (1) "To set aside the decision of the Tax Tribunal to not extend time to appeal to the Tax Tribunal and to allow an extension of time, if applicable, to appeal to the Tax Tribunal.
 - (2) To set aside the decision of the Tax Tribunal striking out the Appellants application for review
 - (3) To hear and allow the Appellant's objections to the Income Tax Assessment of the Respondent, and set aside the assessment of Income Tax of \$125,664.51 and penalties of \$74,000 assessed against the Appellant

- (4) That the Respondent refunds to the Appellant all moneys resulting from the withdrawal and or amendment of the assessments as ordered by the Court together with interest at a rate to be determined by the Court.

4. The appellant's grounds of appeal are reproduced below:

- (a) "The Tribunal erred in holding that the Appellant's application for review was out of time given that the Appellant had lodged two objections within the statutory 60 days' time and a decision was given on one on or about 31 August 2007 and another on or about 14 January 2019 and the right of the Appellant to lodge an application for review of the decisions on his objections would have been exercised on receipt of the decision of 14 January 2019 wherein he was advised that his objection had been disallowed in full.
- (b) The Tribunal erred in law and in fact in holding that it was sufficient for the Respondent to provide an objection decision on one of the objections only and not both objections when both were lodged within the statutory 60 days time period.
- (c) If, which is denied, that the Appellant was out of time, then the Tribunal erred in holding that the Appellant inordinately delayed in filing the application for review. The documents presented to the Tribunal showed that the Appellant was represented by a Tax agent and later, by a lawyer. Two sets of objection decisions were received. Both objections were lodged in time and at no point did the Respondent advise that they will not provide a decision on the second objection lodged.
- (d) If, which is denied, that the Appellant was out of time with his application for review, then the Tribunal erred in law in failing to consider that the Appellant had good reasons for the delay in making the application for review and that he had taken action to dispute the objection decision.
- (e) If, which is denied, that the Appellant was out of time with his application for review, then the Tribunal erred in law in failing to consider that the Respondent was not all prejudiced with the delay as it had recovered the full tax and penalties it had wrongly assessed against the Appellant.
- (f) If, which is denied, that the Appellant was out of time with his application for review, then the Tribunal erred in law in failing to consider that the Appellant had merits in his application for review and leave ought to have been granted to him to make the application for review out of time. Monies standing to the credit of the Appellants were not income and wrongly assessed by the Respondent as income of the Appellant.

And further grounds of the original application for review:

- (g) The Respondent, erred in deeming the funds in the Appellant's bank account in Australia as income of the Appellant and assessing income taxes of \$125,664.51 and penalties of \$74,000 against the Appellant.
 - (h) The Respondent, erred in deeming the funds in the Appellant's bank account in Australia as income of the Appellant and assessing income taxes of \$125,004.51 and penalties of \$74,000 against the Appellant when all the returns related to the assessment of Income Tax were delivered to the Respondent indicating the actual tax liability of the Appellant were submitted at the appropriate time, assessed and paid,
 - (i) The Respondent, erred in deeming the funds in the Appellant's bank account in Australia as income of the Appellant and assessing income taxes of \$125,664.51 and penalties of \$74,000 against the Appellant when the funds in the Appellant's Australia Bank Account had either been taxed before being transferred to Australia or were not funds of the Appellant but funds given to him by his son, Irshad Ali in Australia. Travelling funds had been part of the deposits in the Australia account for which the Appellant, being a shareholder of Waimanu Trucking & Hire Ltd, had submitted adequate proof that these funds were taken as dividends from company profits.
 - (j) The Respondent, erred in deeming the funds in the Appellant's bank account in Australia as income of the Appellant and assessing income taxes of \$125,664.51 and penalties of \$74,000 against the Appellant when the funds in the Australian bank account of the Appellant (excepting the funds deposited by Irshad Ali), the rest of the monies in the Australia bank account had been cleared by the Respondent prior to being transmitted overseas.
 - (k) The Respondent, FRCS erred in deeming the funds in the Appellant's bank account in Australia as income of the Appellant and assessing income taxes of \$125,664.51 and penalties totaling \$74,000.00 against the Appellant when there was no proof that the funds in the said Australia Bank account of the Appellant were income.
 - (l) That the penalties imposed by the Respondent should be removed as there was no false statements made by the Appellant in his income tax returns".
5. At the hearing of the appeal, the appellant submitted that he became aware of the respondent's decision on or about 14 January 2019 when his solicitors inquired from the respondent. Thereupon, an email was sent to his former solicitors

advising that the appellant's objection was disallowed. The appellant submitted that it was erroneous to state that the time to appeal commenced from 31 August 2017 or 13 September 2017 as he became aware that his objections were dealt with on 14 January 2019.

6. The amended assessment was raised by the respondent on 27 April 2017. He was assessed over three years from 2013 to 2015 for \$173,105.51 on the basis that the sum has not been declared as income in Fiji. The appellant's contention is that these amounts are not chargeable with income tax for the reasons stated in his grounds of appeal.
7. On being assessed, an objection letter was initially sent by the appellant's agent, Ajesh Prakash, on 5 June 2017. Thereafter, O' Driscoll and Company, the appellant's solicitors lodged a timely objection on his behalf on 26 June 2017. By letter dated 19 June 2017, the appellant informed the respondent of having appointed O' Driscoll and company as his solicitors and that all correspondence was to be delivered to his solicitors. The respondent was provided the contact details of O' Driscoll and Company.
8. By letter dated 31 August 2017, the respondent sent a letter to Mr. Prakash declining the objection lodged by him on the appellant's behalf. The respondent says it informed the appellant's agent that the objection review team (ORT) has disallowed the objection in full. The respondent submitted that it communicated with the tax agent until the date of the objection decision.
9. It was submitted that the second letter received on 26 June 2017, did not instruct the respondent to disregard the initial objection letter of 5 June 2017. The respondent submitted that it issued its objection decision to the appellant's tax agent by post on 31 August 2017, and to his solicitor on 13 September 2017.
10. The respondent submitted that in terms of section 16 of the Tax Administration Act, a person dissatisfied with a tax decision may only lodge one objection to the decision. The respondent submitted that this is clear by the phrase "may lodge an

objection". The objection must be lodged with the respondent's chief executive officer within 60 consecutive days of receiving notice of a decision.

11. The appellant submits that two objections were lodged on his behalf with the respondent within the 60 day period allowed under the Tax Administration Act, and that there was a response to only the first objection lodged by Mr. Prakash. The second objection sent by O' Driscoll & Company was disallowed by the email of 14 January 2019. The appellant submits that the time to appeal would have run from that date, a contention denied by the respondent.
12. Section 16 of the Tax Administration Act deals with objection to a tax decision. The section states:
 - (1) A person dissatisfied with a tax decision may lodge an objection to the decision with the CEO –
 - (a) In the case of a tax decision that is a tax assessment, within 60 consecutive days of service of the notice of the decision; or
 - (b) In any other case, within 30 consecutive days of service of notice of the decision.
 - (2) If the tax decision to which an objection relates is an amended assessment, a taxpayer's right to object to the amended assessment is limited to the alterations and additions made in it.
 - (3) An objection must be lodged in the approved form stating fully and in detail the grounds upon which the person objecting relies to support the objection, and the approved form shall be signed by the tax payer and the tax agent.
 - (4) A person may apply, in writing, to the CEO for an extension of time to lodge an objection and the CEO may, if satisfied there is reasonable cause, grant an application under this section and must serve notice of the decision on the applicant.
 - (5) The CEO may by notice require the taxpayer to provide additional information relevant to the objection.
 - (6) Subject to subsection (7), the CEO must consider the objection and either allow the objection in whole or part, or disallow it, and the CEO's decision is referred to as an objection decision.

- (7) The CEO must serve notice of the objection decision on the person objecting no later than 90 consecutive days after lodgment of the objection or, where additional information has been sought in accordance with subsection (5), 90 consecutive days after receipt of such additional information
 - (8) If no objection to a tax decision is lodged within the time for objecting under subsection (1) or, when such time is extended by the CEO, within the extended time, the tax decision is treated as valid and binding upon the taxpayer subject to any defect, error, or omission that may have been made in the tax decision or in any proceeding relating to the tax decision required by a tax law”.
- 13. An application for review must be filed in terms of sections 17 and 82 of the Tax Administration Act. Section 17 (1) allows a person dissatisfied with an objection decision to make an application to the Tax Tribunal in accordance with section 82 for review of the decision. Section 82 (2) (c) requires a person dissatisfied with a reviewable decision to lodge an application with the Tax Tribunal within 30 consecutive days of being served with notice of the reviewable decision.
- 14. The respondent submitted that the application for review was filed on 14 February 2019 passing the statutory 30 day time line for filing the application for review, and that the tribunal’s finding that the application for review was filed 502 days out of time is correct.
- 15. The tribunal’s observation is that it is bordering on the absurd to suggest that the respondent is required to involve itself in a parallel process dealing with the exact same issue by virtue of the communication that was made by the legal representative.
- 16. The respondent has collected the taxes and penalties under section 21 (3) of the Act which states that tax due under a tax assessment is payable notwithstanding that an objection, application for review by the tax tribunal, or notice of appeal to the tax court has been lodged by the tax payer in respect of the assessment.

Conclusion

17. The respondent submits that the appellant did not provide any source documents or documentary evidence to explain the bank deposits in Australia, and that the tribunal has considered the merits before dismissing the application for extension of time. The respondent states that the appellant's unidentified bank deposits were deemed as income under sections 11 and 14 (1) (c) of the Income Tax Act.
18. Both parties agree that the tax payer filed two objections. They were filed within the prescribed time. Section 16 (3) of the Act refers to the lodgment of an objection. The revenue says there is provision to file only a single objection, and the appellant didn't clarify that the second objection was to be taken as the one to be acted upon. The respondent replied the objection raised on 5 June 2017. There was no reply to the second objection until January 2019.
19. The legislative provision need not be unnecessarily strained. In this instance, the facts are clear. The provision must be looked at in the context of those facts. A second objection dated 26 June 2017 was by the appellant's solicitor, with instructions to send all correspondences to O'Driscoll & Company. If the respondent had any doubt, the matter could have been clarified with the appellant or his solicitor, especially as the consequences to the tax payer of not having an objection dealt with can be prejudicial. The appellant says he came to know that the objection filed on 26 June 2017 was rejected only on 14 February 2019.
20. Without going into the merits, it will suffice to say that the tax payer has paid the disputed tax to the revenue authorities. It is a substantial sum. There will be little prejudice to the respondent, whereas a denial of an extension of time could turn out to be damaging to the appellant. In the overall circumstances, court is of the view the appellant must be allowed to question the basis upon which his overseas bank deposits have been assessed.

ORDER

- A. The decision of tax tribunal is set aside.
- B. The application for review is reinstated.
- C. Parties will bear their costs.

Delivered at **Suva** on this **24th** day of **January, 2024**.



M. Javed Mansoor
Judge