FIJI TAX TRIBUNAL

Decision

Title of Matter:	TAXPAYER J	(Applicant)
	V	
	FIJI REVENUE AND CUSTOMS AUTHORITY	(Respondent)
Section:	Section 82 *Tax Administration Act* 2009	
Subject:	Application for Review of Reviewable Decision	
Matter Number(s):	VAT Action No 1 of 2018	
Appearances:	Mr A Bale, Lal, Patel, Bale for the Applicant Mr S Ravono, FRCA Legal Unit for the Respondent	
Date of Hearing:	20 November 2018	
Before:	Mr Andrew J See, Resident Magistrate	
Date of Decision:	10 January 2019	

KEYWORDS: *Value Added Tax Act* 1991; Section 81 *Tax Administration Act* 2009; Jurisdiction of Tax Tribunal; Section 82(5) *Tax Administration Act* 2009; Application for Reviewable Decision.

CASES CITED:

Jione v Chief Executive Officer, Fiji Revenue and Customs Authority [2017] FJHC 190; HBT08.2015 (10 March 2017)

Jione v Fiji Revenue and Customs Authority [2013] FJTT 14; VAT Action 5.2010 (9 October 2013)

Taxpayer J v Fiji Revenue and Customs Authority (Unreported Decision) Action No 5 of 2010. (23 January 2014)

Taxpayers J1 and J2 v Fiji Revenue and Customs Authority [2018] FJTT 1; ITA6.2016 (13 March 2018)

Background

1. This is an Application for Review of an Objection Decision of the Chief Executive Officer of the Fiji Revenue and Customs Authority, dated 28 March 2018. The Application for Review has been made in accordance with Section 82 of the *Tax Administration Decree* 2009.

2. The Application for Review has a long and somewhat convoluted past[1]. The first issue that it flags, has its origins in a *Sales and Purchase Agreement* between the Taxpayer and a property developer in 2004, involving the purchase of a $240,000 FJ villa, at a Denarau Island beach resort and spa. In a matter heard before this Tribunal in 2013, the Taxpayer had argued that she was of the understanding that at the time of entering into the contract with the property developer, a tax-offset arrangement was in place or that the sales and purchase price was inclusive of any value added tax otherwise imposed on the supply of goods and services for the purposes of Section 15 of the then *Value Added Tax Decree* 1991. As it transpired, the Authority had refunded to the Taxpayer the VAT amount that had been claimed by the Taxpayer as an input credit associated with the sale, in the sum of $26,666.67. As part of an audit process, the Respondent Authority ultimately determined that no VAT had been accounted for in the sales price and as a result, reversed its decision of allowing the 'credit' and issuing a revised Assessment Notice demanding the payment of $26,666.67 for VAT owing. In the review case that followed, the Tribunal affirmed the Authority's decision that the Taxpayer did not pay value added tax to the property developer at the time of sale and intimated within its decision, that any subsequent claim that it had, perhaps should be pursued in a different jurisdiction.

3. The first aspect of this current Application for Review, continues the Taxpayer's quest for being able to claim the VAT input credit that she says comes about with the purchase of the Denarau property. To achieve this, the Taxpayer now seeks that the Tribunal compel the Authority to impose a tax on that supply, so that in effect the Taxpayer can thereafter claim the offset. What is further sought by the Applicant, is that the monies withheld by the Respondent Authority for failing to make good the refund credit at the time that the VAT liability occurred, should be paid back with an interest amount of 12.5%. Thereafter the Applicant claims legal fees for having to pursue this case through to finality and further, a request that a settlement document, ostensibly entered into between Company D and the Taxpayer on 1 February 2015, be enforced "by the order of the court.[2]"

The Proceedings

4. On 10 August 2018, Mr Bale of Counsel provided notice to the Tribunal of his appointment as the Taxpayer's legal representative. On 16 August 2018 at a mention of this matter, the parties were asked to confer in relation to the Application with regard to the remedies sought. Specifically, they were asked to consider whether what was being sought from the Taxpayer, is achievable within the confines of the *Tax Administration Act* 2009 and the *Value Added Tax Act* 1991.

5. When the matter was relisted for hearing on 12 November 2018, the Applicant's husband and not his Counsel, told the Tribunal that regard needs to be given to Article 26 of the *Agreement Between Australia and Fiji For the Avoidance of Double Taxation and the Prevention of Fiscal*

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1 *Taxpayer J v Fiji Revenue and Customs Authority* (Unreported Decision) Action No 5 of 2010. (23 January 2014)

2 On 12 December 2018, the Tribunal requested a copy of this Settlement Decision, as it was not located within the earlier submissions of the parties, nor had it been raised in any of the occasions when the Tribunal convened proceedings.

Evasion With Respect to Taxes on Income (1990)[3]("**the DTA**"). Counsel for the Authority, Mr Ravono expressed a different view to this and indicated that the DTA had no bearing on this matter, as it pertained to value added taxation arrangements that came into place after the DTA was made. The other issue that Mr J raised, was whether the Authority was empowered to transfer an amount of $5205.53 from the Applicant's Income Account to her Value Added Tax Account, as a result of a 2016 VAT *Notice of Assessment*.

6. For the purposes of attempting to resolve this dispute, the Tribunal issued Directions to the parties[4], asking that they consider the following matters:-

   (i) Whether the transfer of $5,204.53 from the Taxpayer's Income Tax Account on 12 May 2017 falls within the scope of the Application for Review;

   (ii) What is the capacity of the Tribunal to enforce the Respondent to pursue a taxation liability against the third party property developer; and

   (iii) If there was such a capacity, is it limited by any time window under the *Value Added Tax Act* 1991 or the *Tax Administration Act* 2009.

The Submissions of the Parties

7. The Tribunal has had regard to the following submissions and related documents:-

   - *Respondent's Documents Pursuant to Section 83(1) of the Tax Administration Act* 2009, filed on 19 June 2018.
   - *Applicant's Exhibit Book,* filed on 12 November 2018.
   - *Applicant's Submissions,* filed on 20 November 2018.
   - *Applicant's Submissions,* filed on 30 November 2018.
   - *Respondent's Submissions,* filed on 30 November 2018.

8. The Tribunal has read the submissions of the parties and is of the view that the Applicant has simply not addressed the specific questions put. This matter that is now being raised by the Taxpayer as to whether the transfer of $5,204.53 from the Taxpayer's Income Account to the VAT Account is a permissible act of the Respondent, is one that falls outside of the scope of this review application. A simple review of the Taxpayer's application dated 13 April 2018 and the issues that she wishes to have decided, makes so much clear. It is not acceptable to create a situation where the scope of applications can be constantly evolving. The focal point in these proceedings must be the taxation decision that gave rise to the Application and nothing more. Of course that is not to prevent an observation or recommendation being made along the way. The role of the Tribunal in part is to assist in the resolution of disputes between parties, not to see them unnecessarily continue, however the Respondent is entitled to know the case it is to meet. If the review is a challenge to the *Objection Decision* dated 28 March 2018, then that must be the scope of the analysis.

9. Be that as it may, it is noted that during proceedings, Mr Ravono had flagged with the Tribunal the Authority's reliance upon Section 33 of the *Tax Administration Act* 2009, as authority for justifying any transfer of monies within the Income and VAT accounts of the Taxpayer. If that is the case,

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[3] See LN 113/1990 [FRGS No. 43 18th December 1990]

[4] See Directions Order dated 20 November 2018.

then it may be worthwhile if a simple explanatory note to that effect was provided to the Taxpayer, so that she understood the legislative basis by which such action was undertaken.

10. The second matter that was raised within the Directions issued, deals with the question regarding the capacity of the Tribunal to compel the Authority to pursue a third party taxpayer, in order that it properly account for the value added taxation arising out of a Sales and Purchase Agreement. That issue was earlier canvassed in *Taxpayer J v Fiji Revenue & Customs Authority,*[5] where it was found that the Taxpayer was under a mistaken belief that a Cost Offset Agreement was in place, or that the sales price was inclusive of value added tax. It was for that reason, that the Tribunal had earlier held that as no taxation had been paid at the time of sale, that the Authority was correct in reissuing an amended Notice of Assessment, in order to rectify that situation.

11. Understandably, the Taxpayer was aggrieved with the situation it found itself in and has persisted in her efforts to have the Authority pursue the property developer (Company D) for the purposes of accounting for the VAT that should have been otherwise collected from the seller at that time. The matter is further complicated by the fact that following the original transaction in 2004, the Taxpayer and Company D entered into a 'fixed revenue agreement', whereby the villa the subject of that Sales and Purchase Agreement, became part of a rental pool of accommodation, ostensibly managed by Company D. From the materials submitted by the Taxpayer, it would seem that there are ongoing disputes with Company D, including the withholding of VAT amounts of $32,748.14 and $3,337.33[6] under the terms of a fixed rental agreement[7].

Observations

12. This matter had been listed for review and report back on several occasions. Initially, the case was called on in Lautoka on 25 June 2018, when Mr J, the husband of the Taxpayer appeared on her behalf. When the matter was next called in Suva on 16 August 2018, Mr Bale of Counsel entered his appearance as legal representative for the Taxpayer.

13. On that occasion Mr Bale undertook to liaise with the Taxpayer, recognising that whilst she was free to pursue all available legal remedies that these still needed to be appropriately couched in order that they could be effectively addressed. Unfortunately, despite the Tribunal's best efforts to truncate the processes , the relief that is sought remains unclear and certainly far removed from that which was initially contained within the review application[8]. In relation to the claim that the Tribunal should now compel the Authority to have Company D make account for the taxation on the supply of the Denarau property, the Tribunal is of the view that it is functus officio in this regard. The decision in *Taxpayer J* was never the subject of an appeal to the Tax Court and the issue that is glistened from the materials as to whether or not Company D has withheld monies purportedly claimed to cover taxation obligations arising out of its commercial dealings with the Taxpayer, renders that issue a civil dispute that needs to be resolved in a different jurisdiction.

14. All of the other issues that flow as a result of that claim, that are contained within the review application, including the imposition of an interest charge to be garnisheed from Company D at the rate of 12.5% and the reimbursement of legal expenses, are matters that may be better prosecuted, if they can be, in the civil courts. From what it appears and there is no evidence to the contrary, the Taxpayer has never paid to Company D, value added tax, coinciding with the sale

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5 Application No 5 of 2010 (23 January 2014).

6 See Letter to FRCA dated 7 June 2017 as provided in *Applicant's Submissions* dated 20 November 2018.

7 The Tribunal has never been made aware of the details of this Agreement.

8 That document has been referred to by the Taxpayer, as the 'Notice of Appeal'.

and purchase of the Denarau villa in 2004. In this regard the attention of the parties is drawn to page 3 of the *Applicant's Submissions* filed on 30 November 2018, where it is states:

> *10/11/2010 Correspondence from (Company D) stating that vat on the sale of villa was collected on top of the sale price after settlement of the sale.*

15. The Tribunal has seen no evidence of any such correspondence, nor is this assertion relied upon as a constant theme within the materials that have been submitted.

Summary and Conclusions

16. That is the scope of this review application and the Tribunal is disinclined to allow for any further interrogation of issues beyond that point, except where it has earlier flagged that the Authority should clarify the basis by which it says it is entitled to transfer monies from the Taxpayers Income to VAT Accounts. In conclusion, in accordance with Section 21(1) (b) of the *Tax Administration Act* 2009, the Taxpayer has the burden to prove that the Objection Decision should not have been made, or should have been made differently. Whilst the Tribunal finds that the Objection Decision has been poorly drafted, it nonetheless conveys the position adopted by the Authority. The Taxpayer has not been able to persuade the Tribunal as to why that position should be disturbed. The Taxpayer is strongly advised to seek legal advice in relation to any further steps that she wishes to take either in relation to this decision, or in relation to the broader matters that appear to remain unaddressed.

DECISION

17. For the above reasons, the application of the Taxpayer is dismissed.

Mr Andrew J See
Resident Magistrate