

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 83 OF 2023

RICHARD OMONGOLE ANGURIA.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. KABAKUMBA MASIKO, MS. CHRISTINE KATWE, MS. GRACE SAFI.

RULING

This ruling is in respect of an application for review of an objection decisions of the income tax assessments issued to the Applicant of Shs. 9,227,914 for the periods of July 2013 to June 2017.

1. Background Facts

The Applicant was incorporated in 2011 as a sole proprietorship trading as Omongole & Co Advocates. He was registered for income tax with Tax Identification Number (TIN) 1000882332 effective from 1 July 2013 with business income as a source of income.

On 9 Aug 2016, 6 February 2016, 4 July 2017 and 23 Feb 2018, the Respondent issued administrative default assessments of Shs. 9,227,914 for the period of July 2013 to June 2017 after realizing that the Applicant had not filed any returns since his registration for income tax in 2013.

The Applicant confirmed that he only discovered the said assessments in February 2023 and he did not understand how they were arrived at. He consequently sought for extension of time to object the said assessments which the Respondent allowed.

On the 10 of February 2023 the Applicant objected to the assessments on grounds that he was not eligible to file income tax returns as he is an individual earning employment income only. He also stated that at the time of registration he did not have any income and that he only wanted a TIN for purposes of registering a car in his names which car was donated to him.

Consequently, on 5 day of April 2023 the Respondent requested the Applicant to provide documents to support his grounds of objection. The Respondent indicated that the Applicant has to date not filed any documents in support of his objections.

On 18 of April,2023 the Applicant wrote back saying that he did not have any supporting documents since the said assessments were over 8 years ago which documents he could not access as they were no longer available. The Applicant argued that Section 129 (3) of the Income Tax Act (ITA) allows taxpayers to retain documents required by Respondent for a maximum of five years which time had already passed.

On 25 April 2023, the Respondent issued the Applicant with objection decision notices allowing his objection partially while upholding the assessments due to failure by the Applicant to provide documentation to support his grounds of objection. The Applicant alleged that on the same day, the Respondent issued administrative additional assessments for the same period, July 2013 to June 2017, that reflected the exact amounts that were contained in the earlier Administrative Default assessments.

On 4th of May, 2023, the Respondent issued numerous third party agency notices against the Applicant's Banks whose execution was halted by a temporary injunction.

2. Issues for determination

The following were the agreed issues during the scheduling;

- i. Whether the Applicant is liable to pay the tax assessed?
- ii. What remedies are available?

3. Representation

At the hearing the Applicant was represented by Mr. Richard Omongole Anguria while the Respondent was represented by Mr. Kenan Aruho.

4. Submissions by the Applicant

The Applicant submitted that it was in February 2023 when he discovered that the Respondent had issued the assessments. He sought and was granted an extension of time to file objections. On 10 February 2023, he lodged objections to the said assessments. The Respondent asked for documentation in support of his grounds of

objections to which the Applicant responded on 18th day of April 2023 stating that he had no documents since the assessments in issue related to periods of more than 8 years ago.

Lack of documents

The Applicant submitted that pursuant to Section 15 (1) (c) of the Tax Procedures Code Act (TPCA), it is incumbent upon every taxpayer to retain records for a period of 5 years following the conclusion of the tax period to which those records pertain.

It stipulates:

"Subject to subsections (2) and (5), every taxpayer shall for the purposes of a tax obligation - c) Retain the record for five years after the end of the tax period to which it relates, or other period as specified in the tax law"

The Applicant submitted that he could not produce any documents because the assessments in question pertained to periods exceeding eight (8) years. The Applicant submitted that during cross-examination Ms. Harriet Mwebaze, a witness for the Respondent, confirmed that the Applicant's objections concerned the tax periods of 2013-2014, 2014-2015, 2015-2016, and 2016-2017. In re-examination, the Applicant reiterated his position above.

The Applicant submitted that his duty to furnish supporting documentation for the objection was waived upon the expiration of the 5 year period. The Respondent erred in rejecting the Applicant's objection in 2023 on the basis of his failure to provide documentation.

The Applicant argued that it is imperative to reorganize that the statutory timeframe established by the aforementioned section serves as a critical threshold beyond which obligations related to documentation are no longer enforceable.

The Applicant cited ***Dr. Arinaitwe Raphael & 37 ors VS. Attorney General HCCS No. 201 of 2012***, where Hon. Mr. Justice Stephen Musota, relying on ***Hilton Vs Sulton Steam Laundry [1946] 1 KB 61.81***, held:

"...the statute of limitation is not concerned with merits, once the axe falls, it falls, and a defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled of course, to insist on his strict rights."

The Applicant submitted that the Respondent's decision to disallow the objection based on documentation deficiencies was unfounded and should be rectified as the Applicant was not liable to pay the tax assessed.

Issuance of Administrative Additional Assessments

The Applicant submitted that on 25 day of April 2023 the Respondent issued the applicant with Administrative Additional Assessments for tax periods ending in 2013-2014, 2014-2015, 2015-2016, and 2016-2017.

He submitted that Section 23 (2) (b) of the TPCA establishes a three-year limitation period for issuing additional assessments.

The section provides that;

*"An additional assessment under subsection (1) may be made-
(b) within three years from the date of service of the notice of the additional assessment..."*

These periods fall outside the 3-year period. Therefore, any assessments related to these periods would be considered invalid.

The Applicant cited the case of ***Kasese Cobalt Company limited V URA HCCA No. 28/2018***, Lady Justice Susan Abinyo stated that;

"From the reading of Section 23 (2) (b). it is my understanding that the commissioner may make an additional assessment amending a tax assessment made from a period, to ensure that the taxpayer is liable for the correct amount of tax payable in respect of the said tax period, within three years from the date of service of the notice of the additional assessment."

Her Lordship further held that:

"The Commissioner for purposes of subsection (2) (b), shall limit the additional assessment to amending the alterations, and additions made in the additional assessment, and where an additional assessment has been made by the commissioner, a notice in writing of the additional assessment specifying the purpose shall be served upon the tax payer in accordance with subsections (5) and (6) of Section 23 on additional assessment".

The Applicant submitted that the Respondent's witness testified that the Administrative Additional Assessments issued to the Applicant where a direct consequence of the Objection Decisions dated the 25 day of April 2023. The

Administrative Additional Assessments failed to reflect any alterations or amendments to the Applicant's tax position, despite the partial allowance of the objections. A detailed comparison between the Administrative Default Assessments (REX. 1) and the Administrative Additional Assessments (AEX.1) in the Joint Trial Bundle reveals that the figures in both sets of assessments remain identical, indicating no adjustments were ever made to warrant being called administrative additional assessments.

The Applicant submitted that given the failure to amend the Assessments as required by law beyond the recognized three (3) year period after the end of the tax period renders them unenforceable.

On the Issuance of third party Agency Notices

The Applicant prayed for an order quashing the Administrative Default Assessments, and all Agency Notices issued and a declaration exonerating Diamond Trust Bank, GT Bank, Old Stanley Hotel Limited, Stanbic Bank, Kumi Municipal Council, and any other parties involved.

The Applicant prayed that the Tribunal sets aside the Respondent's decision to issue Administrative Additional Assessments against the Applicant beyond the statutory period and be relieved from the liability of Shs. 9,227,914. The 30% paid by the Applicant be refunded with interest at a commercial rate of 25% and costs of this application.

5. Respondent's Submissions

In reply, the Respondent submitted that the Applicant is an individual registered for income tax by the Respondent effective 1 July 2013 and persistently failed to file returns for the period July 2013 to June 2017 as a result the Respondent issued administrative default assessments amounting to Shs. 9,227,914 against the Applicant. That the Applicant belatedly objected the assessment on grounds that he was not eligible to file income tax returns as he is an individual earning employment income only.

The Respondent submitted that he requested the Applicant to provide documentation to support his objection but to date he has never. Consequently, the Respondent reviewed the objection on the basis of the available information and partially allowed

the applicant's objection requiring him to pay Shs. 8,227,914 in taxes and relayed this information to the Applicant on 25 April 2023 adding that the assessments had been upheld.

Burden of Proof

The Respondent submitted that the burden of proof is on the Applicant to prove that the assessment raised by the Respondent was incorrect or erroneous and that he is not liable to pay the tax or that the taxation decision should not have been or should have been made differently.

He cited Section 28 of the TPCA, Cap 343 which states that;

"In any proceeding under this Act-

- b) For any other tax decision, the burden is on the person objecting to the decision to prove that the decision should not have been made or should have been made differently.*

That this was reiterated in Section 19 of the Tax Appeals Tribunal Act and further stated in Section 101 of the Evidence Act, that he who alleges must prove.

The above position was adopted in ***Williamson Diamonds Ltd VS. Commissioner General [2008] 4 TTLR 167***, where the Tax Appeals Tribunal of Tanzania held that;

"...the burden of proving that the assessment issued by the Respondent is excessive or erroneous lies on the taxpayer (appellant) and in no way may it be shifted to the Respondent..."

Requirements to file Income Tax Returns

The Respondent submitted that Section 4 of the Income Tax Act imposes as income tax on every person in Uganda who has chargeable income. The Respondent cited Section 118 of the Income Tax Act and Section 16 of the TPCA which require every taxpayer to furnish tax returns for each year of income not later than six months after the end of that year.

The Respondent submitted that the Applicant admitted during cross examination that he is duly registered for income tax with the Respondent effective 1 July 2013, with

Legal Services as his nature of business, trading as Omongole & Co. Advocates, a sole proprietorship since 2011.

The Respondent submitted that the *Black's Law Dictionary* defines sole proprietorship as a business in which one person owns all assets, owes all liabilities and operates in his or her personal capacity. The Applicant is liable for all the tax liabilities of the sole proprietorship and is thus required to file income tax returns for the assessed period.

Failure to file Returns for the assessed period.

The Respondent submitted that Section 23 (1) (c) and (2) (Section 21 as at the time of assessment) of the TPCA provides;

"(1) Where a taxpayer fails to furnish a self-assessment return for a tax period as required under a tax law, the Commissioner General may, at any time, make an assessment as follows-

c) In any other case, the tax payable for the tax period.

(2) The Commissioner General shall serve a taxpayer assessed under subsection (1) with notice, in writing, of the assessment specifying

a) the amount of tax assessed, assessed loss, or in excess input tax credit, as the case may be;

b) the amount of penal tax and interest, if any, payable in respect of the amount assessed;

c) the tax period to which the assessment relates;

d) the due date for payment of the tax, penal tax and interest; and

e) the manner of objecting to the assessment".

The Respondent submitted that the Applicant conceded during cross-examination that he did not file the tax returns for the period in question (1 July 2013 to 30 June 2017) despite having registered for Income Tax effective 1 July 2013. Failure to do this, he became liable for Administrative Default Assessments as provided for under Section 23 of the TPCA.

The Respondent contended that the said assessments were issued to the Applicant on 06/02/2016, 09/08/2016, 04/07/2017 and 23/02/2018, to his tax account/email on

his profile, well within the time required under the law. The default assessments complied with all the provisions of Section 23 (2) and therefore are lawful and valid.

The Respondent submitted that the Applicant has not proved that he is not liable to pay the tax as assessed. The Applicant simply puts up an excuse that he does not have documentation for the period in question which documentation was at all material times within his possession as the assessments were issued to him in time. The Applicant ought to have brought evidence of his returns for the said period indicating that it wasn't doing any profitable business. The Applicant cannot turn around and claim that he did not have documentation, having sat on his rights for years.

The Respondent submitted that the Applicant's duty to object to the assessments arose at the time they were issued, which duty the Applicant failed to discharge in time. Having belatedly objected to the assessments, it was the Applicant's duty to prove his grounds of objection, which he failed to do.

The Respondent submitted that the Applicant's excuse is that he did not have the documentation since these were assessments of over 8 years back are unfounded and should be disregarded as the assessments were issued to him in time. Had the Applicant been a compliant taxpayer, he would have duly filed his returns in time and would have objected in time.

The Respondent submitted that the Applicant should not be allowed to claim that they are not under obligation to keep documents for over 8 years, yet he neglected his duty to challenge the assessments as and when the assessments were made.

The Respondent submitted that having been issued with the notices for default assessments, the Applicant was under duty to object with supporting grounds to the assessments. The Applicant's failure to furnish the documentation as requested by the Respondent was a deliberate move to frustrate the Respondent from effectively dispensing its statutory duty.

Additional assessments

The Respondent submitted evidence to show that the default assessments were issued way back in 2016, 2017 and 2018, following the Applicant's failure to file

returns as required under the law. The said assessments were issued within the time prescribed by the Law and are therefore valid.

The Respondent contended that the additional assessments issued in 2023 are assessments that arose out of the objections process. They state the outcome of the objection review was disallowing the objection due to failure to support grounds of objection. These were a follow up to the original assessments of 2016, 2017 and 2018. The Respondent averred that in any event, even if the additional assessments are illegal, the default assessments issued in 2016, 2017 and 2018 still stand and the Applicant is liable to pay this liability.

Issuance of Agency Notices

The Respondent submitted that the agency notices were the result of the Applicant's consistent failure to clear his tax liability. Despite having been issued with the assessments, the Applicant had deliberately and/or willfully failed to pay the tax assessed for several years.

The Respondent submitted that the agency notices are legal as provided for under Section 31 of the TPCA since the assessments on which they were based are lawful. The Respondent prayed that the Applicant be found liable to pay the tax assessed of Shs. 8,227,914 plus interest. This Respondent prayed that this Application is dismissed with costs to the Respondent.

6. Applicants Submissions in Rejoinder

In rejoinder, the Applicant submitted that Section 16 (4) of the TPCA provides for review of an objection decision limited to the grounds in the objection decision. The grounds for refusal in the objection decisions were the failure to provide documentation in support of the objections. In the statement of reasons for taxation decision, the Respondent did not raise the issue of failure to file income tax returns. This is a departure from pleadings, the Applicant prayed that it is disregarded.

On failure to file returns, the Applicant contended that it became aware of the assessments in February 2023. The default assessments in question relate to periods for which the Applicant could not reasonably be expected to have kept records well beyond the statutory limit, thereby rendering them invalid and unenforceable.

The Applicant submitted that Section 15 (1) (c) imposes a legal obligation to keep records for a period of five years after the end of the year the period relates. The assessment in dispute is from 2013-2014, 2014-2015, 2015-2016 and 2016-2017. The Applicant was only required to keep the records for a period of five years.

On Additional assessments: The Applicant submitted that the Respondent acknowledged that the additional assessments were issued in 2023, yet these assessments pertain to tax periods of 2013-2014, 2014-2015, 2015-2016, and 2016-2017. In Section 23 (2)(b) of the TPCA, the Commissioner General is required to issue additional assessments within three years from the end of the relevant tax period. Additional assessments were issued beyond three years.

On the Validity of the Default assessments: The Applicant submitted that the Respondent argued that the default assessments made in 2016, 2017 and 2018 still stand. The Applicant contended that the assessments were not properly communicated to him and he only became aware of them in February 2023.

The Applicant submitted that the additional assessments were based on the same figures as the original default assessments, despite the partial allowance of the objections. No amendments or alterations were made to reflect the Applicant's objections to making the additional assessments redundant and invalid.

The Applicant further submitted that if the assessments were illegal then the agency notice is illegal. The Applicant prayed that the Tribunal finds the agency notice illegal and should be set aside. The Applicant also prayed that the Tribunal finds in its favour and award costs of this Application.

7. The determination of the Application by the Tribunal

Having listened to and studied the submissions of both parties, this is the decision of the Tribunal.

Whether the Applicant is liable to pay the tax assessed?

In resolving the above issue, three segments were considered;

- i) The time for issuance of assessments
- ii) The time and maintenance of records and
- iii) The issuance of agency notices.

Issuance of Assessments

It is an undisputed fact that the Applicant is registered for income tax since 1 July 2013 as a sole proprietorship trading as Omongole & Co. Advocates with TIN 1000882332 since February 2013.

The Respondent issued administrative default assessments to the Applicant amounting to Shs. 9,227,914 for the periods of July 2013 to June 2017 due to failure by the applicant to file returns.

Ms. Harriet Mwebaze in her witness statement stated that the Applicant did not file his returns for the period 1 July 2013 to 30 June 2017. On 9 Aug 2016, 6 February 2016, 4 July 2017 and 23 Feb 2018, the Respondent issued administrative default assessments Shs. 9,227,914 for the periods 1 July 2013 to 30 June 2017. The Applicant, during cross examination confirmed that he did not ever file income Tax returns for the period 2013 to 2017.

Default Assessments

The power to issue default assessments is provided for under Section 23 (1) (c) of the TPCA which provides:

“(1) Where a taxpayer fails to furnish a self-assessment return for a tax period as required under a tax law, the Commissioner general may at any time make an assessment...in any other case, the tax payable by the taxpayer for the tax period.

Default Assessments are issued by the Revenue authority in cases where the taxpayer does not file returns. By February 2013, the taxpayer in this matter was already registered for the income tax. The Respondent issued default assessments on the basis that there was a registered business going on and no returns were filed for the period.

The Applicant in his defense stated that he only discovered the default Assessments in February 2023, upon which he immediately sought for an extension of time to object, which was granted. On 10 February 2023 he objected stating that he did not know about the assessments, that they were miscommunicated to the Applicant. The Applicant stated that the assessments were time barred and that he no longer could access the records.

The Tribunal wondered how he got to discover the default assessments of 2016 in 2023 after 8 years. The Applicant did not tell us how he finally got to know about the assessments.

When registering for a TIN, a taxpayer issues the revenue authority with an email, that is used for communication between the two. The taxpayer is expected to issue an active email so as to keep up with his tax responsibilities and liabilities.

According to the Applicant's tax profile in the Joint Trial Bundle, the Applicant registered for income tax in 2013. This means that the Applicant had a duty to file returns and make sure his taxes are filed. The Applicant's email address is also listed in the profile.

Did the Applicant give an inactive email address? Section 90 (2) of the TPCA provides that a notice is treated to have been served if-

"... (d) an electronic data message is transmitted to the person's known or registered electronic account".

It is the duty of the taxpayer to check their email address especially if they carry out a business. The Applicant cannot claim that he did not check his email for over 8 years and that he finally decided to check in 2023 after 8 years.

The Tribunal finds the Applicant is using his late discovery of the assessments of 2016 as an excuse not to pay the taxes assessed. The fact that he discovered the assessments of 2016, 2017 and 2018 in 2023 does not negate the fact that the assessment for the period of July 2013 to June 2017 were issued on time.

We therefore find that the administrative default assessments were properly issued on the Applicant.

Additional assessments

The word extension is defined in the *Black's Law Dictionary* at page 703 as;

"The continuation of the same contract for a specified period."

During the cross-examination, Ms. Harriet Mwebaza clarified that the initial default assessment became additional assessments after the Applicant submitted an objection and the Respondent made a decision upholding the default assessments.

Clearly on this case the administrative additional assessments were an extension of the administrative default assessments.

Although the Applicant contended that the additional assessments should have been issued within three years, in this case, the Applicant cannot claim that he did not know about the assessments that were issued in 2016. This means that there was willful neglect on the part of the taxpayer.

On the issue of additional assessments, Section 25 (2) (a) of the TPCA states that the assessment may be raised at any time, if fraud or any gross or willful neglect has been committed by, or on behalf of the taxpayer, or new information has been discovered in relation to the tax payable by the taxpayer for a tax period.

Having found that the additional assessments were an extension to the default assessments, we also find that the additional assessments were issued because the Applicant willfully neglected his duty to file tax returns and failed to pay his income tax contrary to Section 25 (2) (a) of the TPCA.

On maintenance of records

Maintenance of records is important for verification of tax liabilities. A taxpayer who fails to maintain records may not be able to challenge an excessive or incorrect assessment which may lead to tax liabilities and penalties.

Section 15 of the TPCA imposes an obligation on a person carrying on a business to maintain accounts and records. The records including electronic records should be maintained in English and should be kept for five years after the end of the tax period to which it relates. The Applicant submitted that pursuant to Section 15 (1) (c) of the Tax Procedures Code Act (TPCA), it is incumbent upon every taxpayer to retain records for a period of 5 years following the conclusion of the tax period to which those records pertain.

It stipulates:

"Subject to subsections (2) and (5), every taxpayer shall for the purposes of a tax obligation - c) Retain the record for five years after the end of the tax period to which it relates, or other period as specified in the tax law".

In the present case, the Applicant failed to act on the default assessments that were issued to him. He acknowledges them when he seeks an extension of time to object. Indeed Section 15 (2) (c) of the Tax Procedures Code Act (TPCA) states:

"Where at the end of the specified time in subsection (1)(c), a record is necessary for a proceeding commenced before the end of the five year period, the person shall retain the document until all proceedings have been completed ".

It was incumbent upon the Applicant to maintain the documentation that he would use in his defense to prove that he was not liable to pay the assessed tax.

We agree with the Respondent that it was the Applicant's duty to object to the assessments that arose at the time they were issued in 2016-2018, which duty the Applicant failed to discharge in time. The Applicant admitted that he applied for an extension of time to object and it was granted, this meant that the Applicant was cognizant of the fact that he was late. The Applicant was supposed to avail evidence that exonerates him from the tax liability and he failed to do so.

Even when the Applicant failed to provide the requested for information, the Respondent used the available information to review the Assessment and partially allowed the objection hence requiring the Applicant to pay Shs. 8,227,914.

Issuance of Agency Notices

Having found that the default assessments were issued in time and lawfully and that the Applicant did not provide the necessary information or evidence to exonerate himself from the tax liability, we find that the agency notices were legal as provided for under Section 31 of the TPCA. This is because the assessments on which they were based are lawful.

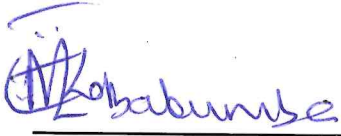
What remedies are available?

In the circumstances, we find that:

- i) The Applicant is liable to pay the tax as assessed,

- ii) The agency notices were issued lawfully, and
- iii) The application is hereby dismissed with costs to the Respondent.

Dated at Kampala this... 25th ... day of ... October ... 2024.



KABAKUMBA MASIKO
CHAIRPERSON



CHRISTINE KATWE
MEMBER



GRACE SAFI
MEMBER

RULING

