THE REPUBLIC OF UGANDA

IN THE HIGFI COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 57 OF 1999

UGANDA REVENUE AUTHORITY :: **APPELLANT**

VERSUS

CHINA JIEFANG (U) LTD :: **RESPONDENT**

BEFORE THE HON. JUSTICE RICHARD 0. OKUMU WENGI.

JUDGMENT: This is a taxation appeal brought by the Uganda Revenue Authority against the respondent a tax payer. It arises from a decision of the Tax Appeals Tribunal made on 9th July 1999 by which the Tribunal allowed an appeal brought by the tax payer to claim interest on over paid tax. The facts of the case are sufficiently described by the Tribunal ruling and award. Briefly they are as follows: In April 1997 the Internal Revenue Commissioner of the Uganda Revenue Authority issued a presumptive tax assessment by which a sum of Shs. 77.6 million was payable by the tax payer for 1994 through 1996. To avert a distress order accompanying the tax burden the taxpayer in June 1997 deposited Shs. 28.8 million pending an audit carried out at the instance of the Revenue Authority. The audit established that the tax payer's liability together with a penalty of Shs. 1.2 million having been imposed on the tax payer was only Shs. 4.6 million. The tax payer demanded a refund for the over payment which was not forthcoming until October 1998 when the appellant paid it to the tax payer. However no interest was paid on this money which had been held by the Revenue Authority for over 27 months. The tax payer insists that it was entitled to interest on this sum and this was the thrust of the appeal to the Tax Appeals Tribunal which found for the tax payer. The Revenue Authority is dissatisfied with the ruling and award of the Tax Appeals Tribunal by which the tax payer would collect Shs. 7.5 million payable as interest. From this ruling the Revenue Authority has appealed to this court.

Five grounds of appeal were set out in the amended memorandum of appeal filed on 14th October 1999 though only three grounds were substantially argued. These are firstly that the Tax Appeals Tribunal had erred in holding that the Income Tax Act 1997 was applicable to this matter. The second ground of appeal was that the Tax Appeals Tribunal erred in holding that the tax payer was entitled to interest payment under section 100 and 111 of the Income

Tax Decree 1974. Finally it was contended on appeal that the Tribunal wrongly held section 111 of the Income Tax Decree 1974 to be ambiguous and inexplicit. In response the tax payer cross appealed on two grounds which mainly related to the effective date for accrual of interest which the Tribunal set at February 1998 while the tax payer sought to claim interest effective from July 1997. When this appeal came up for hearing learned counsel for the Appellant Ms Kagwa Kasule argued that since the over payment of tax related to tax years prior to July 1997 the Income Tax Act 1997 did not apply to this case. She however conceded that the Tribunals view of this matter did not have any bearing on its ruling and award even if some post July 1997 taxes were recovered from the amount refunded to the tax payer.

Learned counsel then proceeded to deal with the second and third grounds of her appeal. She submitted that the Commissioner General of the Uganda Revenue Authority had a statutory duty to refund any excess amount paid by a tax payer together with interest if such interest payment was provided for in the Income Tax Decree. Counsel submitted further that no where in the said decree was a rate of interest on refunds of overpaid tax provided; nor was there a provision specifically stipulating when interest should be payable to a tax payer. She contended that while there was provision for the Revenue Authority to levy interest on unpaid tax or underestimated tax there was no provision for payment of interest on tax refunds. Counsel thus argued that the law was silent on the matter as none of the numerous amendments to the Income Tax Decree addressed the issue. Learned Counsel cited Maxwell on Interpretation of Statutes 1 Edition at page 4 and cases Cape Brandy Syndicate vrs Commissioner Inland Revenue IRC (1921) 1KB 64 at 71; B vrs Commissioner Income Tax Misc. (Tanganyika) Appeal No. 1 of 1954 and Allibhai vrs Commissioner Income Tax (1961) E.A 610 to support the literal and strict rule of interpreting statutes. She contended that a tax payer making a claim for relief under a taxing statute must be able to fit it within the four covers of the statute and contended that the Tax Appeals Tribunal was not justified in referring to the authorities as rather old. Counsel contended that the dichotomous situation where the Revenue recovers interest on unpaid or underpaid taxes while the tax payers do not earn interest on overpaid taxes must only be addressed by the Tax Appeals Tribunal or this court, in the face of a tax statute which was silent on the matter. She further contended that the Commissioner General while implementing a tax statute could not unilaterally pursue an equitable angle by authorising interest where the law did not provide for it. This she argued was not the case under the new Income Tax Act whose provisions specifically and clearly

mandate payments of interest on refunds of overpaid tax.

Learned Counsel for the Appellant then submitted that Section 111(1) of the Income Tax Decree was not in any way ambiguous as found by the Tax Appeals Tribunal. She contended that if there was any ambiguity this perhaps related to the silence in the law on interest claims on refunds of overpaid tax. As such it did not amount to ambiguity as a law may be silent but not necessarily ambiguous. She cited Dupot Steels Ltd case (1980) 1 AER at 529 to support this view and argued that the circumstances in Morgan Properties Ltd vrs City of Winnipeg (1982) 2 DLR 1 493 relied on by the Tribunal were different since there was an ambiguity there unlike in the Tax provision in this case. She then prayed that the appeal be allowed as no incident or rate for interest payments to a tax payer existed in the Income Tax Decree. Alternatively counsel asked this court to find that the law only gave a discretion to the Commissioner General of the appellant to determine when interest may be payable. Such a discretion was thus only questionable when exercised injudiciously. With respect this contention is not only misconceived but untenable and I reject it as it will become clear in the course of this judgment.

In reply, Professor Sempebwa Learned Counsel for the Respondent submitted that from the wording of Section 111 (1) of the Income Tax Decree there was no discretion on the Commissioner General but that the section made it mandatory for him to pay interest and the excess of tax paid. Counsel contended that the argument about discretion went counter to the rules of interpretation in that the words were clear and could not be overstretched to mean that the Commissioner General could determine interest. He further argued that the context of the statute was to give justice to the tax payer by refunding excess and that it was only rational that interest is paid on money that is held by another. Learned Counsel then contended that there was nothing ambiguous in the Decree and any such ambiguity had to be construed in favour of the tax payer. That where silence became ambiguity then it should not be construed against the tax payer. He cited Seaford Hot Estates Ltd vrs Asher (1949) 2 AER to argue that a court faced with such a situation need not lament but should enforce the tax payers right to property (interest) in money held by the Revenue for so long no matter whether the tax payer was a defaulting one. In this case counsel argued that the Tribunal or

the Court could intervene to provide the interest rate payable.

Learned counsel then urged this court to set aside the order of the Tribunal fixing February 1998 as the date when interest became payable as the determination did not flow from evidence. However in reply to this point raised in Cross Appeal Ms Kagwa learned counsel for the Appellant submitted that it was a question of facts only which could not be canvassed on appeal to this court which must be on questions of law only.

Before going into the merits of this case it will be useful to set out the provisions of the law that have become the bone of contention. Section 100 of the Income Tax Decree as amended by statute No. 1 of 1992 reads:-

> "100 (1) where any amount of tax remains unpaid after the due date, an interest of ten percent higher than the rates of interest of the ruling Commercial Bank lending rate applicable to Commerce shall become due and payable on the tax due.
>
> (2) Any interest charged under sub section (1) shall be deemed to be a tax for the purpose of collection."

Section 101 of the Decree then provides for interest collection on underestimated tax. While section 111(1) provides -

> "111(1) If it is proved to the satisfaction of the Commissioner that in respect of any year of income, any tax has been paid by or on behalf of any person, whether directly or by deduction or otherwise, which is in excess of the amount payable by that person as finally determined in respect of that year of income, the Commissioner shall refund the amount of such excess. together with any interest which may be payable thereon under this decree to the person entitled to such refund" (emphasis added).

In the decree “interest” is defined in section 2 as follows: -

“interest” (other than interest charged on tax) means interest payable in any manner in respect of any loan, deposit, debt, claim or other right or obligation, and includes any premium or discount by way of interest and any commitment or service fee paid in respect of any loan or credit.”

This definition of course also encompasses the entire interest question in income tax, an area of tax law where many complications have arisen. Such definition was nowhere in similar English tax legislation.

The decree also provides for refund of balance of overpaid tax and the due dates when taxes are payable, including in cases where an objection to assessment is made and the matter goes on appeal to the High Court. Section 99 (2) then stipulates that if the High Court finally determines the assessment and it is

> “(a) less than the amount paid in accordance with this subsection then the amount overpaid shall be refunded under section 111 of this decree together with interest thereon at such rate as the court may order (emphasis added).
> The issue of refund of overpaid tax is also to be found in section 98 (6)(b) of the decree. It is also to be found in Section 29(2) of the Tax Appeals Tribunals Act No. 12 of 1997 which provides

> “29(1) ……

> (2) where the decision maker is required to refund an amount of tax to a person as a result of a decision of reviewing body, the tax shall be repaid with interest at the rate specified in the relevant law on the amount of the refund for the period commencing from the date the person paid the tax refunded and ending on the last day of the month

in which the refund is made."

And Section 43 of the same act provides that

> "43. This act applies to taxation decisions before the coming into operation of this act."

Now it seems to this court that the appellant considered that payment of interest was a discretionary decision by the Commissioner due perhaps to the phrase "any interest which may be payable." But if it was the intention to give a discretion to the Commissioner the words giving the discretion would have been added to signify such a discretion. As it is the phrase refers to the interest itself which becomes payable on a delayed or underpaid tax or on a refund of an overpaid tax. Such interest is the interest that accrues on a tax and is payable thereon. At best there could only be room for regarding the rate of interest to be paid, but the decree makes reference in other sections to bank rates of interest as a guide.

As it is, the law is not as ambiguous as it would appear. The interest payable under the decree may be payable by the taxpayer to the revenue in cases of delayed or unpaid tax. It may also be interest payable on a refund as adjudged by a court, and the definition of interest must be kept in mind here.

As a result interest is clearly payable on the money held by the Revenue which is due to the taxpayer. The problem arose in my view due to the misunderstanding of the words in the decree which give the impression that "may be payable" was meant to describe a levy or payment that the Commissioner was empowered to decide on. However the correct interpretation is that it is the interest itself that is payable in certain circumstances. I see such interest may be payable by the taxpayer who is also entitled under the decree to recover interest on overpaid tax from the revenue. Another way of looking at the issue seems to be that since interest charged on delayed or underpaid taxes amounts to a tax then denying a taxpayer the right to accrual of interest on tax deposits or money overpaid by him, refund of which is mandatory, would constitute a levy. Such a levy would equally be unsupported by

the taxing legislation in like manner as the argument that the decree was silent on interest. To this extent the taxpayer would be right to question the legal or for that matter the Constitutional basis for the levy or imposition of such a burden on him which amounts to deprivation of property or simply an unlawful tax. The court is in any way entitled to pronounce on interest in exercise of its inherent powers, and by virtue of interpreting the interest provisions in the Income Tax Decree that have been cited herein above. The Court would also invoke section 26 of the Civil Procedure Act. On interest all these considerations are also remedial to the taxpayer in the context of democratising the tax regime. This is a point that is advanced by the Canadian Authority of Morgan Properties vrs City of Winnipeg (1982) (Supra) and The Queen vrs Mclaren (1991) IFC 468 cited by the Tax Appeals Tribunal. But even without going into the jurisprudence enunciated in these cases it is my opinion that the clear words of the decree are that a reference to "any interest" includes interest payable by either the Revenue Authority to the taxpayer or by the taxpayer to the Revenue which forms part of or arises out of an excess or deficit in the tax paid or payable. This is found in sections 2, 99(2)(a) and 111(1) themselves. A reading of those sections given their purposive interpretation rule out any ambiguity or inexplicity that has been argued to exist in them.

The payment of the excess tax was made in June 1997. The tax burden was then finally established after an audit, adjustments and penalty (which is a form of interest) and a refund for overpayment was made iii October 1998. There is no explanation for the delay or indeed the torment of an exorbitant assessment that became reduced from Shs. 77 million to a mere Shs. 4.6 million. Even the deposit of Shs. 28 million was exorbitant in the circumstances, in which the actual liability is established at about 15% of the negotiated collection. Perhaps the Revenue could exercise restraint and professional discretion to avoid the accusations of being extortionist in its collection practices even when dealing with notorious avoiders and defaulters. In this *way* it would be creating credibility in the tax regime. The lesson taught to the Respondent in this case apart, a balance ought to be found between the ingenious and stubborn taxpayers on the one hand and the tax authority on the other. This is the clear dispensation in the Constitution of Uganda and the Tax Laws in place today. Timely action by the taxpayer, the tax authority and the Appeals Tribunals is no longer an issue of open ended discretion but professional and speedy action.

The Cross Appeal sought to extend backwards the due date for interest accruals in order to collect more from the revenue. But I think under the old law the due date would coincide with the date when the final liability was established. Probably this is why the Tribunal set February 1998 for accrual of interest. In this respect I notice that in the Tax Appeals Tribunal ruling and award there was a serious error stating a fact that the taxpayer paid to the Revenue a deposit of Shs. 28 million on 2/6/1999; and that the refund to the taxpayer was effected on 2/10/1998. This could not have been the case. But given the sequence of events, I would disallow the Cross Appeal. For the reasons I have also given above I do also not allow this appeal by the Appellant. The decision of the Tribunal is accordingly upheld without adhering to the perspectives it advanced to arrive at it. Accordingly both the Appeal and Cross Appeal are dismissed, No orders to costs are made for a number of reasons. Firstly each party can bear the costs of this Appeal and Cross Appeal both of which have been dismissed. Secondly this appeal related to a tax decision reached under a repealed law and issues raised only bear a historical interest. Thirdly it cannot be said that the appellant was not innocent in its conviction that the law bent towards its own interpretation of it. The issues are also of Landmark significance in the cross cut between taxpayer rights and collection practices of the Appellant in the context of democratisation of the tax regime in the twilight to the millenium. As such an important question of public interest regarding the interpretation of a statute regarding the taxing powers of the state has arisen. For these reasons this court would order that each party bears its own costs.

RICHARD O. OKUMU WENGI
JUDGE
10/01/2000.

01/02/2000 Mr. S.K. Katende for Respondent
Ms. Margaret Kagwa Kasule for Appellant
Rosemary A. Emeru Court Clerk
Judgment read in open court in the presence of the above persons.

RICHARD O. OKUMU WENGI
JUDGE
01/02/2000