

**IN THE TAX TRIBUNAL**  
**AT SUVA**  
**CIVIL JURISDICTION**

**HBT No. 12 of 2019A**

**BETWEEN** : **KRISHNA SAMI NAIDU** residing at Lot 5 Malau Road, Labasa, Fiji.

**APPLICANT**

**AND** : **CHIEF EXECUTIVE OFFICER** Fiji Revenue & Customs Service of  
Fiji Revenue & Customs Complex, Queen Elizabeth Drive, Nasese, Suva.

**RESPONDENT**

**Counsel** : **Applicant:** Mr Solanki B

: **Respondent:** Mr Qalo E

**Date of Hearing** : 17.02.2020

**Date of Judgment** : 24.02.2020

**JUDGMENT**

**INTRODUCTION**

1. This is an application for review filed by Applicant, in the Tax Tribunal, for a review of a decision of Respondent dated 18.7.2019. The Application was transferred by Resident Magistrate who is adjudicating matters of Tax Tribunal and the typed minutes reads as "*Application is transferred to the Tax Court in accordance with Section 81(2) (a) and (b) of the Tax Administration Act 2009*". Disputed Sum in terms of Tax Administration Act 2009 (The Act) is FJD 15,901, 762.32. This is in excess of monetary restriction of the Tax Tribunal's jurisdiction to adjudicate a tax disputes, without consent of the parties. Tax Tribunal (TT) can only transfer matters in terms of Section 88 of the Act and there is no power to transfer a matter to High Court in terms of Section 81(2) (a) and (b) of the Act. If Disputed Sum of Application is less than \$500,000, TT obtains jurisdiction to adjudicate the matter in terms of Section 81(2)(a) the Act. If Disputed Sum is above \$500,000 TT obtains jurisdiction to adjudicate only by consent of both parties in terms of Section 81(2) (b) of the Act. If Disputed Sum is more than \$500,000 and parties do not consent to the jurisdiction of TT there is a lacuna in the Act. There is no provision in Section 81(2) of the Act that allows TT to transfer disputes above \$500,000 on the basis

of value alone, but TT can transfer any matter to Tax Court in terms of Section 88 of the Act, irrespective of value of dispute. Such transfers are allowed only in the opinion of TT there are important questions of law, public interest and urgency.

2. TT's power to transfer and jurisdiction of Tax Court to deal with such matter was heard as a preliminary issue in terms of Order 33 rule 3 of High Court Rules 1988. In the absence of specific rules for Tax Court, High Court Rules 1988 is used.
3. Both parties submitted written submissions. Applicant contends that irrespective of manner in which matter was transferred, Tax Court is conferred with jurisdiction of the application.

#### ANALYSIS

4. This matter was transferred by TT purportedly in terms of Section 81(2) of the Act.
5. Since there is no jurisdiction granted to TT to transfer matters in terms of Section 81(2) I invited both parties to make submissions on this issue and a hearing was conducted. Both parties filed written submissions and they also made oral submissions in line with written submissions.
6. A person dissatisfied with tax decision may seek a review of the **tax decision** by CEO of Fiji Revenue and Customs Service Act 1998(CEO), in terms of Section 16(1) of the Act.
7. In terms of Section 2 of the Act .Tax decision is interpreted exclusively in the following manner:

*“ "tax decision" means –*

*(a) a tax assessment; or*

*(b) in relation to a tax law, a decision on any matter left to the discretion, judgment, direction, opinion, approval, consent, satisfaction, or determination of the CEO, other than such decision made in relation to the making of a tax assessment.”*

8. A person dissatisfied with 'tax decision' can object to that within specified time in terms of section 16 of the Act. Section 16 (1) of the Act states:

*“16. (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.*

.....  
*(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 lodgement of the objection or, where additional information has been sought in accordance with subsection (5), 90 consecutive days after receipt of such additional information”(emphasis added)*

9. A person dissatisfied with “**objection decision**” of CEO can make an application to TT in terms of Section 17 of the Act to review the said decision of CEO.
10. In terms with Interpretation contained in Section 2 **objection decision** is defined as decision in terms of Section 16(2) of the Act. This is an exclusive interpretation as the word ‘means’ used.
11. CEO’s decision regarding objection to the ‘tax decision’ is ‘objection decision’ and it can be subject to further review by TT. So TT is a creation of statute and jurisdiction is conferred to it in the Act.
12. Section 17 of the Act states as follows:

*“Review of Objection Decision by the Tax Tribunal*

*17. — (1) A person dissatisfied with an **objection decision** may make an **application to the Tax Tribunal** in accordance with section 82 for review of the decision.*

*(2) The Tax Tribunal may, in reviewing an objection decision, exercise all the powers and discretions of the CEO under the tax law under which the tax decision to which the objection decision was made.*

*(3) If an application for review relates to a tax assessment, the Tax Tribunal may make an order to –*

*(a) affirm, reduce, increase, or otherwise vary the assessment to which the objection decision relates;*

*(b) remit the assessment to the CEO for reconsideration in accordance with the directions of the Tribunal; or*

*(c) refer a question of law to the Tax Court for its opinion in accordance with section 87; or*

*(d) transfer proceedings to the Tax Court as specified in section 88.*

*(4) If an application for review relates to a tax decision other than a tax assessment, the Tax Tribunal may make an order to —*

*(a) affirm, vary, or set aside the decision;*

*(b) refer a question of law to the Tax Court for its opinion in accordance with section 87; or*

*(c) transfer proceedings to the Tax Court as specified in section 88.(emphasis added)*

13. The Act had created TT and jurisdiction of it is conferred in terms of the said Act. So there is no inherent jurisdiction for TT to deal with Tax matters.
14. In terms of Section 17 power to review CEO's 'objection decision' TT may review a 'reviewable decision' in terms of Section 82 of the Act.<sup>1</sup>
15. What constitutes a 'reviewable decision' is also defined in interpretation section<sup>2</sup>.
16. The Act conferred jurisdiction to TT in terms of Section 81 and it states as follow;

*"Jurisdiction of Tribunal*

*81. — (1) The Tribunal has jurisdiction —*

*(a) to review a reviewable decision under this Act; and*

*(b) exercise any other function or jurisdiction conferred to the Tribunal under this Act or any other written law.*

*(2) The Tribunal has power —*

*(a) to adjudicate on matters within its jurisdiction relating to disputes up to \$500,000; and*

*(b) to determine claims where the amount in dispute exceeds \$500,000 if both parties consent to the Tribunal's Jurisdiction.*

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<sup>1</sup> Section 82(1) of the Act "82 (1) A person dissatisfied with a reviewable decision may apply to the Tax Tribunal for review of the decision.

<sup>2</sup> Section 2 of the Act "reviewable decision" means

(a) an objection decision; or

(b) a decision relating to the registration or cancellation of the registration of a tax agent;

*(c) to determine any decision relating to the registration or cancellation of registration of a Tax Agent.”(emphasis added)*

17. When the value of dispute up to \$500,000 can be adjudicated by TT, but when it exceeds 500,000 the jurisdiction to determination of such claims are only with the consent of both parties. If any of the parties object to the jurisdiction of TT it cannot hear such matter, but unfortunately there is no provision to transfer such matter to Tax Court in terms of Section 81(2)(a) and (b) of the Act, as stated by Resident Magistrate in his decision to transfer the matter.
18. TT can transfer a matter before it in terms of Section 17(3)(d) read with Section 88 of the Act.
19. Section 17(3) (c) of the Act read with Section 87 of the Act allows TT to **refer a matter** Tax Court to obtain an opinion about a question of law. This is not transfer of the entire matter but to obtain some opinion on a question of law.
20. So, TT can only transfer an application for review of CEO’s decision in terms of Section 88 of the Act. Section 88(2) allows a transfer of matter on an application by one party. TT can transfer a matter to Tax Court, without a formal application by a party for any of the grounds stated in Section 88(2) of the Act which reads,

*“(2) The Tribunal may order the transfer of the proceedings to the Tax Court if the Tribunal is of the opinion that*

*(a) an **important question of law is likely to arise**; or*

*(b) the case is of such a nature and of such **urgency** that it is in the **public interest** that it be transferred to the Tax Court.”(emphasis added)*

21. In my judgment TT cannot transfer a matter to Tax Court outside the specific provision in the Act. Statutes relating to taxation and administration are to be given strict legal construction. (see *Europa Oil(NZ)Ltd v. Inland Revenue Commissioner* (1976) All ER 503 at 508 (PC); *IRC v Duke of Westminster* (1936) AC 1 at p21). So jurisdiction which is specific cannot be inferred ‘spirit of the law’. The power to transfer a matter from TT is granted only under Section 88 and not under Section 82 of the Act.
22. Applicant argues that Tax Court’s jurisdiction is wide in terms of Section 91(1) (b) of the Act, hence matter can be dealt in this court irrespective of any *lacuna* in law and or irregularity in transfer by TT.

23. Section 91(1) (b) of the Act defines the jurisdiction of Tax Court, and accordingly it conferred Tax Court to hear and determine all actions. Section 91 of the Act reads as follow

*"91 (1) The Tax Court has jurisdiction-*

- (a) to hear and determine appeals conferred upon it under this Act or any other written law;*
- (b) to hear and determine all actions;*
- (c) to hear and determine questions of law referred to it by the Tax Tribunal;*
- (d) to hear and determine matters transferred to it under section 88 (2);*
- (e) to hear and determine applications for leave to have matters before the Tribunal transferred to it under section 88 (3);*
- (f) to order compliance with this Act;*
- (g) to exercise other functions and powers as are conferred on it by this or any other written law;*

*(2) In all matter before it, the Tax Court has full and exclusive jurisdiction to determine them in a manner and to make decisions or orders not inconsistent with this Act or any other written law.*

*(3) No decision or order of the Court, and no proceedings before the Court, may be held to be invalid for want to form, or be void or in any way vitiated by reason of an informality or error in form."*

24. The subject matter jurisdiction is with Tax Court, hence there is no patent lack of jurisdiction to adjudicate application for review. If a matter is transferred by TT in terms of Section 88 of the Act, Tax Court can hear that matter irrespective of value of *objection decision*.
25. TT can transfer a matter if in the opinion of TT if that matter raises an important question of law or in the public interest it is an urgent determination. So, irrespective of reason for the transfer, Tax Court can determine an application for review of CEO's decision.
26. Section 91(2) of the Act allows Tax Court exclusive jurisdiction of all the matters before it. It also allows Tax Court to make any determination in terms of the Act or any other written law.
27. There is a lacuna in the Act as to the matters where the value is over 500,000 and when the parties do not consent. In this instance Applicant stated that it will not consent to the jurisdiction of TT. In such an instance it will be futile to send the matter to TT only to record non consent or their objection to jurisdiction of TT.

28. The value of the proceeding is over 15 million and when one party object to the jurisdiction of TT it cannot adjudicate such applications for review.
29. There is no provision in the Act that allows a party to come to Tax Court, by filing an application directly in Tax Court, when the value of the disputed decision is over 500,000. All applications irrespective of the value needs to be filed in TT. This is to allow parties to consent to jurisdiction of TT, at initial stage. Though this had not happened it is clear that Applicant is objecting to the jurisdiction of TT, hence no determination can be made.
30. If either of party do not consent there should be provision to transfer such matter to Tax Court. There is no such provision in the Act.
31. There is subject matter jurisdiction vested with Tax Court, in terms of section 91(1) of the Act. Section 91(2) gives Tax Court exclusive jurisdiction to deal with the matter in terms of the Act or any other law. There is no inconsistency in Tax Court determining an application to review CEO's decision. Though there is irregularity as to the manner in which it case was transferred by TT, in my mind that will not affect the exclusivity of the jurisdiction granted to Tax Court to deal with the matter.

## CONCLUSION

32. TT cannot transfer a matter in terms of Section 81(2) (a) and (b) to Tax Court. TT can refer a matter or transfer a matter to Tax Court. Transfer is when there is important question of law or urgency or public importance. Irrespective of that irregularity in the manner in which this matter is transferred, there is exclusive jurisdiction vested with Tax Court to deal with a matter before it, in terms of Section 91(2) of the Act. Tax Court can deal with such a matter as long as it is not inconsistent with the Act or any other law. There is irregularity as to the form in with this matter was transferred, but that again was due to lacuna in the Act. There is no provision that grants jurisdiction to TT to adjudicate when the value exceeded 500,000 and both parties do not consent to the jurisdiction of TT. It can transfer a matter in terms of Section 88 of the Act, but that is only on two specific instances stated in said provision. Since the Act had created this situation and it cannot be held against the tax payer I proceed to deal with the matter irrespective of the irregularity as to the form of transfer. Section 91(1) (b) and 91(2) and (3) of the Act grants jurisdiction to Tax Court to deal with a matter irrespective of the irregularity in the transfer and lacuna in the Act. Applicant is estopped from raising this issue later as he had argued that matter should remain in Tax Court. I can refer this matter to TT, but considering lacuna in law, the time factor and amount this will only delay the

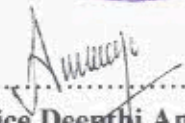
adjudication which is not desirable in this instance. Having considered the submissions of the parties I decided to proceed with this matter, instead of sending back to TT.

**FINAL ORDER**

- a. Matter to proceed in Tax Court.
- b. There is no order as to the costs.

**Dated at Suva this 24<sup>th</sup> day of February, 2020.**



  
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**Justice Deepthi Amaratunga**  
**High Court, Suva**