

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 043 OF 2020

AIRTEL UGANDA LIMITED :::::::::::::::::::::::::::::: APPLICANT
VERSUS
UGANDA REVENUE AUTHORITY :::::::::::::::::::::::::::::: RESPONDENT

DR. ASA MUGENYI, MR. GEORGE MUGERWA. MS. CHRISTINE KATWE

RULING

This ruling is in respect of payment of interest imposed on Valued Added Tax (VAT) and income tax where the applicant agreed to pay the principal tax but disputed the interest.

The applicant provides telecommunication and mobile phone services. It also rents out space. The respondent carried out an audit on the applicant. As a result of the said audit, the respondent issued an additional VAT assessment of Shs. 11,284,067,439 for the period January 2013 to February 2019 and an additional income tax assessment of Shs. 39,641,648,554 for the period 2017 to 2018. On 17th February 2020, the applicant objected. On 15th May 2020, the respondent disallowed the objection.

The following issues were set down for determination;

1. Whether the applicant is liable to pay the tax in the additional assessment?
2. What remedies are available to the parties?

The applicant was represented by Ms. Belinda Nakiganda while the respondent by Mr. Tonny Kalungi and Mr. Sam Kwerit.

On 7th June 2021, the parties entered a partial consent settlement. The applicant agreed to settle the principal tax on VAT of Shs. 3,409,081,404 and income tax of Shs. 3,617,312,998. Interest of Shs. 27,630,816 on VAT and Shs. 795,808,869 on income tax totalling to Shs. 823,439,675 for the period July 2020 to April 2021 was not paid.

The applicant disagreed that the said interest is due and payable. The parties agreed to refer the matter of interest to the Tribunal for determination.

The dispute between the parties revolves around interest payable by the applicant when the matter was pending determination.

The applicant submitted that the interest of Shs. 823,439,675 for the period July 2020 to April 2021 is not due and payable because if filed the application on 29th May 2020 and 30% of the tax in dispute was paid. The applicant cited *Airtel Uganda Limited v Commissioner General Civil Appeal 40 of 2013* where the Court of Appeal stated that:

“A person who has objected to a tax assessed, appeals against it, paid 30 percent of the assessed tax, paid interest on arrears cannot in our view be penalized for having sought redress by the Tax Appeals Tribunal.”

The applicant also cited *Fresh Handling Ltd. v Uganda Revenue Authority Application 83 of 2019* where the Tribunal held where interest had accumulated during appeal requesting a party to pay it would be tantamount to penalizing it. The applicant contended it cannot be penalized by imposition of interest on a tax liability which is in a dispute before the Tribunal pending determination. The applicant contended that interest imposed is wrong and unlawful.

In reply, the respondent contended that the applicant is liable to pay interest. It contended that the applicant did not fully pay 30% of the tax in dispute and did not pay interest on arrears. The respondent contended that the interest that is in dispute arose after 30th June 2020. For interest before that date, S. 40C of the Tax Procedure Code Act waived all outstanding interest and penal as at 30th June 2020.

The respondent contended that the applicant did not pay 30% of the tax in dispute. It only paid Shs. 1,723,793,013 as VAT for the period January 2013 to February 2019 instead Shs. 2,918,679,081. The respondent also contended that the applicant did not pay 30% of the income tax in dispute. The respondent submitted that the applicant did not comply with the cases of *Airtel Uganda Limited v Commissioner General Civil (supra)* and *Fresh Handling Ltd. v Uganda Revenue Authority (supra)*. The respondent emphasized that in the former case the Court stated that a person should have paid interest on arrears and also the 30 percent of tax assessed.

In rejoinder, the applicant submitted that its tax was reconciled and the tax in issue is Shs. 4,554,284,854. The applicant submitted also that it paid Shs. 3,295,549,224. The applicant contended that it paid the 30% as evidenced by the partial consent. The applicant submitted that no interest arose after 30th June 2020. It reiterated that interest cannot be imposed when a matter is before the Tax Appeals Tribunal for determination.

Having read the submissions of both parties, this is the ruling of the tribunal;

The parties entered a partial consent settlement and referred the issue of interest to the Tribunal for determination. The applicant agreed to settle the principal tax on VAT of Shs. 3,409,081,404 and income tax of Shs. 3,617,312,998 but left the issue of interest for the period July 2020 to April 2021 of Shs. 27,630,816 on VAT and Shs. 795,808, 869 on income tax totalling to Shs. 823,439,675 pending.

The interest in dispute is for the period July 2020 to April 2021. For interest prior to the said period S. 40C of the Tax Procedure Code Act waived all outstanding interest and penalty as at 30th June 2020. The applicant filed this application on 29th May 2020. Therefore the interest before the filing of the application was waved. The interest in dispute arose after the application was filed.

In *Airtel Uganda Ltd V Commissioner General, URA Civil Appeal No. 40 of 2013*, the Court of Appeal stated that;

“...The requirement to pay the 30% of the objected tax suspends the requirement to pay the whole sum which is objected to which may only be paid after the objection is dismissed.

The court further stated that;

A person who has objected to a tax assessed, appealed against it, paid 30% of the assessed tax, paid interest on arrears cannot in our view be penalized for having sought redress by the tax appeals tribunal. The law in our view protects him or her from penalties during the period of dispute resolution. To hold otherwise would create an absurdity in which a person appealing a tax assessment is treated as a criminal tax defaulter ..., such a person would have been wrongly put in the same position as a smuggler or a tax cheat.”

In *Fresh Handling v Uganda Revenue Authority* Application 83 of 2019 the Tribunal noted that: “Penalizing a party where the wheels of justice are clogged with many

disputes is an affront to a right to a fair hearing and a denial to access to equitable justice.” Since the matter was filed, there are circumstances that have delayed the disposal of the application such as the COVID pandemic and lockdown. One wonders why an aggrieved party should be penalised by paying interest for events that are beyond its control.

The respondent submitted that the applicant did not fully pay 30%. The applicant submitted that its tax was reconciled and tax in issue is Shs. 4,554,284,854. The applicant submitted that it paid Shs. 3,295,549,224 which is over 30%.The issue of payment of 30% is one of facts. Parities cannot submit on it during submission as it requires evidence to be adduced. Counsel for the parties cannot become witnesses.

What is important to note is that the requirement to pay 30% does not attract payment of interest. It is not provided anywhere in the taxing laws. If the respondent was aggrieved by the non-payment of the 30% tax in dispute it ought to have prayed for the applicant’s application to be dismissed. The Court of Appeal *Airtel Uganda Ltd V Commissioner General (supra)* stated that “The law in our view protects him or her from penalties during the period of dispute resolution.” The Court was more interested in penalizing a taxpayer while its dispute was pending determination and not collection of 30% of the tax in dispute. The requirement to pay 30% is not a condition for one to pay interest when an application is pending. It was so, the law would have clearly stated so.

The applicant is therefore not obliged to pay interest when its application is pending determination. Therefore, the Tribunal will not award any interest to the respondent. No order as to costs. The remaining terms of the consent settlement still abide.

Dated at Kampala this 20th day of MAY 2020.

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DR. ASA MUGENYI
CHAIRMAN

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MR. GEORGE MUGERWA
MEMBER

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MS. CHRISTINE KATWE
MEMBER