



REPUBLIC OF KENYA



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**Commissioner of Domestic Taxes v Market View Chemists Limited (Tax Appeal E046 of 2023)
[2024] KEHC 13979 (KLR) (Commercial and Tax) (11 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 13979 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
TAX APPEAL E046 OF 2023
JWW MONG'ARE, J
NOVEMBER 11, 2024**

BETWEEN

COMMISSIONER OF DOMESTIC TAXES APPELLANT

AND

MARKET VIEW CHEMISTS LIMITED RESPONDENT

(An Appeal from the Judgment of the Tax Appeals Tribunal delivered on 17th March 2023)

JUDGMENT

1. A dispute arose as a result of the Appellant disallowing the Respondent's business expenses for the years 2014, 2015 and 2017 and demanding a sum of Ksh.2,365,333.00/= as additional taxes. The Respondent was unable to amend its tax returns for the years 2014, 2015 and 2016 owing to the limitations inherent in the Appellant's iTax system which does not allow taxpayers to amend their returns twice.
2. Subsequently, the Respondent provided the Appellant with an explanation and reasons why their returns for the years 2014, 2015 and 2017 seemed to have only one single expense item stated as "advertising expenses" but which were in reality the total establishment, administration, financial expenses and depreciation costs for the business for each of the years in question.
3. Notwithstanding the foregoing, the Appellant went ahead and issued assessments for 2014 and 2017 with an assessment order sent to the Respondent on 20th March 2019 through the iTax system vide acknowledgement KRA201903165653 and KRA201903175274 with the total tax due being Kshs.2,365,333.00/=.
4. The Respondent, being aggrieved by the Appellant's decision, submitted detailed Notices of objection dated 28th March 2019. The Appellant acknowledged the objection on 1st April, 2020. On 31st May,



- 2019 the Appellant made an objection decision and disallowed the Respondent's objection. The Appellant did not provide the Respondent with a decision in writing nor explain or give any reasons for disallowing the objection.
5. The Respondent appealed to the Tribunal on 22nd July, 2020. The Tribunal delivered its judgment on 17th March 2023, found that the Appellant's Objection Decision was invalid inter alia and allowed the Respondent's Appeal in its entirety.
 6. The Appellant being dissatisfied and aggrieved by the entire decision of the Tax Appeals Tribunal rendered on 17th March, 2022, appealed against that whole decision on the following grounds: -
 - a. The Tribunal erred in law and in fact to find that the Respondent's Objection is valid.
 - b. The Tribunal erred in law and in fact in failing to find that the Respondent did not provide relevant documents in relation to the objection.
 - c. The Tribunal erred in law and in fact in failing to find that the Respondent did not provide evidence that the taxes were indeed declared and taxes paid.
 - d. The Tribunal erred in law and in fact by mischaracterizing the Respondent's decision 31st May 2019 as an Objection decision and not an invalidation.
 - e. The Tribunal erred in law and in fact by failing construe the natural effect and consequence of annulling an invalidation.
 7. Based on the foregoing grounds the Appellant prayed for the following orders:-
 - a. The court do allow the Appeal herein and set aside the decision of the Tax Appeal Tribunal dated 17th March 2023.
 - b. The court do uphold the decision of the Appellant demanding taxes from the Respondent.
 - c. In the Unlikely event that the Court finds that the Objection was valid, to refer the dispute back to the Appellant directing the Appellant to consider the documents/information provided/ to be provided by the Respondent in its objection.
 - d. The court grants the costs of this Appeal to the Appellant.
 8. In opposition to the Appeal, the Respondent filed a Statement of Facts dated 8th May 2023. The Respondent argued that the Appellant confirmed the assessments on 31st May, 2019 without reviewing the documents and bank statements provided by the Respondent. The Appellant did not provide the Respondent with a decision in writing nor explain the reasons for disallowing the objection as required under Section 51(10) of the Tax Procedure Act.
 9. Further, the Respondent contended that the Appellant has subjected the Respondent to illegal tax demands; malicious and unfair administrative action. The Respondent paid the entire principal of taxes due and owing to the Appellant in the years 2008, 2009 and 2010 and applied for waiver of penalties. The Respondent has been waiting for a decision on their application for waiver of penalties only to be slapped with a demand for the same by the Appellant without any notice or a written explanation.
 10. In addition, the Respondent made its application for waiver of interest and penalties on 27th June, 2014 and to date they have not received any answer from the Respondent. The Appellant's action to demand these penalties & interest was therefore illegal, unfair, unreasonable, irrational and malicious.



11. The Respondent maintained that they have always been tax compliant for the periods under review and hence the Respondent's additional assessment and tax demands were unjustified, malicious and unreasonable. It had discharged its obligations and fully complied with the provisions of the *Income Tax Act* as read together with the *Tax Procedures Act* and paid all taxes that were lawfully due and payable.
12. Based on the foregoing, the Respondent prayed to have the court dismiss the Appeal and uphold the Tribunal's judgment.

Analysis and Determination

13. After carefully considering the Appeal, the record of appeal, the pleadings filed in opposition to it and the rival submissions the court frames the following issues for determination:-
 - a. Whether the Tribunal erred in law and in fact to find that the Respondent's Objection is valid.
 - b. Whether the Tribunal erred in law and in fact by mischaracterizing the Respondent's decision 31st May 2019 as an Objection decision and not an invalidation.

Whether the Tribunal erred in law and in fact to find that the Respondent's Objection is valid.

14. The Appellant herein argued that the Objection Application was invalid for failure to meet the requirements of Section 51 (3) of the Tax Procedure Act. That the Appellant in the objection failed to state the grounds of the objection, the amendments required and the reasons for the amendment.
15. In response, the Respondent submitted that the allegation by the Appellant that the Respondent's notice of objection was not valid and cannot stand. The Commissioner did not at any one time inform the Respondent that their objection was invalid as required under Section 51(4) of the *Tax Procedures Act*.
16. From the Record of Appeal, it is clear that the Respondent through letters and meetings with the Appellant provided explanations as to why there were numerous amounts of expenses under its advertisement on its tax returns. The Respondent had explained that the iTax system did not allow for more heads under expenses for its type of business.

Whether the Tribunal erred in law and in fact by mischaracterizing the Respondent's decision 31st May 2019 as an Objection decision and not an invalidation.

17. It is notable that while the Appellant listed this as one of the grounds for Appeal; the Appellant failed to address the same in its submissions yet this was the main ground upon which the Tribunal's judgment was made.
18. Notwithstanding the Appellant's failure to address this ground; it was the Respondent's contention that the objection decision issued by the Appellant was invalid since it failed to substantially comply with the law. The Respondent argued that issuing a decision simply in words "fully reject" without a statement of findings and reasons for the decision denies a taxpayer the opportunity and information the basis upon which they can file an Appeal.
19. Section 51(10) of the Tax Procedure Act provides that:-

"An objection decision shall include a statement of findings on the material facts and the reasons for the decision."



20. This position was reiterated in the case of *Ndirangu T/A Ndirangu Hardware vs. Commissioner of Domestic Taxes (Tax Appeal No. E070 of 2021)* [2023] KEHC 19357, where the court held that:-

“From the above, the Commissioner rejects the objection but does not give any reasons for rejecting the objection. It does not state why it was not prepared to amend the assessment. The Appellant was not informed why his objection was rejected and why the Commissioner was “not prepared to amend in accordance with your objection”. The requirement under section 51(10) above for an objection decision to give reasons is couched in mandatory terms and thus, I agree with the Appellant that the said Objection Decision was inadequate and did not amount to an objection decision as contemplated by the law”

21. Consequently, the court does concur with the Tax Tribunal that an objection decision must have a statement of findings and the reasons behind the findings hence the Appellant’s Confirmation of Assessment Notices dated 31st May 2019 confirming the additional assessment with the phrase “Fully Reject” without any reasons for that decision is perfunctory, contemptuous, irrational and contrary to the law.

22. Further, in *PZ Cussons East Africa Limited v Kenya Revenue Authority ML HC C&HR No. 309 of 2012* [2013] eKLR, the court outlined the effect of failure to give written reasons:-

“I agree with the KRA that the burden would be upon the Company to show that the amounts taxed was excessive. But to that extent only. It was necessary and indeed in regard to reasonable administrative action to detail how it came to its decision contained in the letter of June 29, 2012 so as to enable the company, if it so wished, to mount challenge if it so wished. The duty to give reasons is now embedded in Article 47(2). I therefore find and hold that the failure by KRA to give information as to how it arrived on the amount was unreasonable.”

23. By failing to comply with the provisions of Section 51 (10) of the *Tax Procedures Act*, the effect of the Appellant’s decision is that the same is not proper and cannot stand the test law.

24. In light of the above, the court finds that the appeal is disallowed. The Judgment of the Tribunal be and is hereby upheld. Each party is directed to bear their own costs of the Appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY at NAIROBI this 11TH DAY OF NOVEMBER 2024

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J.W.W. MONG’ARE

JUDGE

In the Presence of:-

1. Ms. Naeku Holding brief for Ms. Chelangat for the Appellant.
2. Mr. Collins Wanderi for the Respondent.
3. Amos - Court Assistant

