THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO. 43 OF 2019

1. UGANDA COMMUNICATIONS COMMISSION

2. HARUNA MUSINGUZI ==========APPLICANTS

V

UGANDA REVENUE AUTHORITY ==========RESPONDENT

BEFORE DR. ASA MUGENYI, MR. ALI SIRAJ, MS. CHRISTINE KATWE

RULING

This ruling is in respect of an application challenging the refusal by the respondent to refund motor vehicle benefits paid by the 1st applicant's employees.

The 1st applicant was established by the Uganda Communications Commission Act to regulate the communications sector in Uganda. The 1st applicant provides motor vehicles to some employees to carry out its daily operations. The 1st applicant has been deducting motor vehicle benefits from the employees. The 1st applicant's employees want a refund of taxes paid when the vehicles were used for work purposes only.

The following issues were framed.

1. Whether the 1st applicant's employees are entitled to a refund?
2. What is the effective date for the depreciation of the value of the vehicles?
3. What remedies are available?

The applicant was represented by Mr. Cephas Birungi, Mr. Joshua Mugisha and Ms. Belinda Nakiganda while the respondent by Ms. Barbara Ajambo, Ms. Diana Mulira, Ms. Nakku Mwajjuma and Ms. Diana Prida Praff.

This dispute revolves around taxes withheld and paid by the 1st applicant for its employees as allowances for use of its vehicles.

The applicants' witness, Mr. Haruna Musinguzi, the 1st applicant's Director of Finance and the 2nd applicant testified that the 1st applicant is a statutory corporation that regulates the communication sector in Uganda. He is also a donee of powers of attorney for other employees. He testified that the other employees and him were allocated vehicles for the use of their official duties as per the Human Resource Manual. He was allocated Motor vehicle, land cruiser 2016, Registration No. UBD 386 B Toyota. During a finance health check on the 1st applicant he discovered that its employees were being overtaxed on motor vehicle benefits. The formula provided in the Income Tax Act apportions the use of a vehicle between official and private use. The 1st applicant ought to have apportioned the benefits accordingly, which it did not, resulting into overtaxing the employees. The 1st applicant applied for a refund of Shs. 394,869,273 as the tax overpaid from the respondent which rejected the claim. The witness testified that his vehicle is used for official business. He uses it to go to his workplace, and to attend work related meetings. The employees can use private vehicles and claim mileage. According to his estimation he used the car privately for 100 days in a year. This includes days when the vehicle is used for holidays and excludes days when it is under repair. The witness admitted that it was the 1st applicant who filed the returns and remitted the taxes.

The respondent's witness, Ms. Joan Nabafuma Nyanzi, its tax officer testified that on 16th April 2019 the 1st applicant sought an opinion on treatment of motor vehicle benefit for its employees. The 1st applicant claimed that it provides motor vehicles to its employees to carry out its operations. The 1st applicant contended that the employees used the vehicles for work purposes from Monday to Friday, and on weekend for private use. The 1st applicant claimed that it erroneously taxed motor vehicle benefits for private use without taking into consideration their use for work purposes. The witness testified that the respondent carried out inquiries which established that: The vehicles do stay with the employees. The vehicles transport the employees to office and back home. The vehicles are available for private use during week days. The respondent rejected the 1st applicant's application for refund on the following grounds. Once a vehicle is used or is available for use wholly or partly for private purposes, then no apportionment can be make when the vehicle is used for work purposes.

Depreciation should be computed from 1st July 2018. The witness testified that the 1st applicant has never amended its returns.

In its submissions, the applicants submitted that they are entitled to a refund of overpaid tax arising out of taxation of motor vehicle benefits. The applicants contended under clause 12.5 of the Human Resource Manual of the 1st applicant stated that officers and staff at the level of TMT shall use official vehicles to conduct official business. The said manual provided for the provision of benefits to enable an employee perform his or her duties. The applicants submitted that S. 19(1)(b) of the Income Tax Act provides for the valuation of any benefit granted as part of employment income. Para. 3 of the 5th Schedule provides that where a benefit is provided to an employee consists of the availability for use of a motor vehicle the following formula shall apply (20% x A x B/C) – D. The applicants contended that the 1st applicant was not using the said formula and was instead taxing the motor vehicles as fully for private use. The 2nd applicant contended that he used the vehicle for an estimated period of 100 days. Those are weekends and some public holidays. The applicants contended that the respondent accounted for the depreciation on the value of the motor vehicle in November 2017 as opposed to 1st July 2017 when the law came into force. It therefore follows that when the amendment took effect the vehicles ought to have depreciated at over 35% over the time it was being used by the employee.

In reply, the respondent contended that S. 19(1) of the Income Tax Act defines employment income to mean any income from employment and includes the value of any benefits granted. The respondent submitted that Paragraph 3 of the Fifth Schedule provides how the value of a benefit in respect of a vehicle is calculated. The respondent contended that the term private use is not defined in the Income Tax Act. But can be denoted from the Schedule which gives the formula for calculation of the vehicle benefit. The respondent argued that the use of the vehicle outside the designated official time of 8 am to 5 pm is not considered official duty. The respondent contended that the estimation of the 2nd applicant is misconceived as it has a fleet movement report. The respondent contended that the said report was not adduced in evidence. The respondent also contended that the 1st applicant failed to amend the returns and claim overpaid tax.

The respondent contended that S. 113(2) of the Income Tax Act provides that an application for refund shall made to the Commissioner in writing within 5 years of the date on which the tax was paid. Where the Commissioner is satisfied that the tax has been overpaid he shall refund it. The respondent contended that the applicant's employees' refund claim for the period 2011 to 2013 were time barred.

The respondent submitted that the amendment to depreciate the motor vehicle benefit at reducing balance at the rate of 35% came into effect on 1st July 2017. It therefore became applicable from July 2018, since depreciation of the vehicle is calculated at the end of the year.

In rejoinder, the applicants submitted that the respondent's letter rejecting it's claim for a refund was a taxation decision. There was no assessment. Thus the applicants only recourse was to the Tribunal to resolve the dispute. The applicants contended that though it had a fleet movement report the Income Tax Act does not mention it. It was an afterthought by the respondent and should be ignored. The applicants contended that the respondent did not challenge the computations for the refunds. The applicants also contended that the issue of time limits ought to have been raised earlier by the respondent. The applicants also contended that depreciation to start at 1st July 2018 would create an absurdity. The applicants prayed that the Tribunal finds that the effective day of depreciation is 1st July 2017.

Having heard the evidence and read the submissions of the parties, this is the ruling of the Tribunal.

The Tribunal notes that the 2nd applicant obtained powers of attorney from other employees of the 1st applicant. However the said employees were not made parties to the application. The fact that the 2nd applicant was granted powers of attorney by the said other employees of the 1st applicant did not mean that they automatically became parties to the suit. The 2nd applicant ought to have applied for a representative order to represent the other employees or he ought to have joined them in the said application as parties. He did neither. As it stands,

the other employees were never party to this application. Consequently their claim could not be evaluated by the tribunal nor can any orders be made in relation to them.

S. 19 of the Income Tax Act makes employment income taxable. Employment income means income derived by an employee from employment. It includes the value of any benefit granted. Private use of a motor vehicle is a benefit granted to an employee. The starting point would be to look at employment contracts or letters of appointment to see if it has been granted. Private use of a vehicle does not have to be on non-working days. It can be granted as a benefit also on working days or throughout the year. An employee may use a vehicle on working days to collect children from school, go to the market or other private use. The 1st applicant's employees apart from the 2nd applicant did not attach their employment contracts for the Tribunal to determine whether the use of vehicles were employment benefits. The contract of the 2nd applicant does not show that he was given an official vehicle as a benefit. So if he was using a vehicle for his private purpose it was outside his contract. It would still be taxable.

An employer may grant an employee use of a vehicle specifically for work or official purposes. Such a grant may not be considered as an employment benefit. The employee is required to use the vehicle strictly for official business of the employer. In the event the employee diverts it to private use, that use is subject to taxation. A vehicle being available for use on week days does not mean that it cannot be used for private purposes. It is fallacious to say that on weekdays that the cars were being used exclusively for office work.

An employee may be granted a vehicle partly for both office use and private use. The private use of a vehicle is considered as a benefit granted to an employee. Such private use of a vehicle is subject to income tax. Where a motor vehicle is provided by the employer either wholly or partly for the private use, the value of the benefit is calculated according to the following formula

(20% x A x B/C) – D

A is the market value of the vehicle at the time it was first provided for the private use of the employee.

B is the number of days in the year of income during which the motor vehicle was used for the private purpose by the employee for all or part of the day.

C is the number of days in the year of income

D is any payment made by the employee for the benefit.

For an employer to determine how many days an employee has used a vehicle for private use there is need for it to have a *journey or mileage log to show how the vehicles have been used.* The *journey or mileage log* should show when the vehicle was used for official purposes and when for private use. Using the journey or mileage log, the employer should be able to determine how many days a month a vehicle was used for private use. While the 1st applicant may have also computed the other employees' benefits erroneously, it has to compute the actual benefits using a journey or mileage log or other records. It should not rely on estimates as they may disadvantage the employee. In respect of the 2nd applicant he put the estimate at 100 days. There is no basis for the estimate. In respect of all the other employees the 2nd applicant who was holding power of attorney did not indicate the days when they used the vehicles for private use. It is not clearly shown how the amount refundable was arrived at in the absence of records showing the use of the vehicles. In **Vinyl Design Ltd: Hanmer: Templeman 2014 TC 03345**, a tribunal found that "in the absence of journey or mileage logs the appellants had failed to prove their claim relating to the use of motor vehicles available for their private use." In the instant case the burden of proof was on the applicants to prove on a balance of probabilities that the motor vehicles in question were used for private purposes only over the weekend. This burden could only be discharged through real and credible evidence. In the absence of journey or mileage logs the evidence adduced by the applicants was not sufficient to discharge this burden.

Further, the market value at the time of registration of the motor vehicle in Uganda should have been stated. It would then be easy to compute the benefit. An employee should not use estimates but actual figures. The perusal of the 2nd applicant's contract showed that it was not entitled to use an office car wholly for private use. Therefore any computation as if the 2nd applicant used the office car wholly for private use would be erroneous. The values of the vehicle are not stated. Though the 2nd applicant admits that he was using the vehicle for private use, it is difficult to compute what benefit he is entitled to if the market value of

the vehicle is not stated to enable the taxing collecting agent determine the amount paid in excess. It is important for the applicant to show how the above stated formula was used to arrive at the tax payable.

The amendment to depreciate the motor vehicle benefit at reducing balance at the rate of 35% came into effect on 1st July 2017. Therefore the period in contention from 2011 to 2017 is not affected by the amendment. The amendment cannot operate retrospectively. If the amendment became effective 1st July 2017, it would mean that the annual depreciation would apply to vehicle after 1st July 2018.

Lastly, having discovered the error, the 1st applicant ought to have amended its tax returns. The 1st applicant made self- assessments and remitted the tax due. The omission to amend the returns means that the information stated therein is correct. A taxpayer cannot claim for a refund when the information in the returns indicates that it is not due. The returns ought to be amended within the stipulated time for amendment. Making an objection when the time prescribed to amend will not extend it. S. 113(2) of the Income Tax Act provides that an application for refund shall made to the Commissioner in writing within 5 years of the date on which the tax was paid. Where the Commissioner is satisfied that the tax has been overpaid he shall refund it. Therefore the claims for the period 2011 to 2013 would be time barred. Time-limits have to be complied with. For the period 2013 to 2018 the 1st applicant ought to have amended the returns and presented the correct position.

Taking into consideration the above, this application is dismissed with costs to the respondent.

Dated at Kampala this day of 2020.

DR. ASA MUGENYI	**MR. SIRAJ ALI**	**MS. CHRISTINE KATWE**
CHAIRMAN	**MEMBER**	**MEMBER**