

IN THE TAX TRIBUNAL COURT
AT SUVA

ITA No. 14 of 2019

In the matter of an Application for Review
made pursuant to Section 17 and 82 of the
Tax Administration Act 2009.

BETWEEN : Ms. M Tax Payer.

APPLICANT

AND : CHIEF EXECUTIVE OFFICER,
FIJI REVENUE AND CUSTOMS SERVICE.

RESPONDENT

Appearances

For the Applicant : Mr. F. Solomone (Tax Agent)

For the Respondent : Mr. E.Qalo

Date of Decision : 31st March 2021 at Suva.

(Pursuant to Section 89 (6) of the *Tax Administration Act 2009* the identity and affairs of the tax payer are anonymised)

DECISION ON REVIEW

Background

1. This is an application by the Applicant seeking to review the Objection Decision¹ of the Respondent communicated to the Applicant via correspondence dated 30th August 2019.
2. The Respondent had on 11th April 2019 furnished the Applicant a Notice of Assessment² in terms of Income Tax. The notice required that the Applicant pay total Net tax in the sum of \$1,408.20 realised from an income of \$7,041.00.
3. This prompted the Applicant via a tax agent to lodge via correspondence dated 11th June 2019 an objection³ seeking a re-consideration.

¹ Tab 9 of the Respondent's Bundle of Documents.

² Tab 7 of the Respondent's Bundle of Documents.

³ Tab 8 of the Respondent's Bundle of Documents.

4. This resulted in the objection decision (as highlighted at paragraph 1) which maintained that the Notice of Assessment would not be disturbed.
5. Upon receipt of the above stated decision, the Applicant via document entitled Notice of Appeal (dated 11th September 2019) setting out the grounds for this Tribunal's consideration as follows:

“The appellant, her formal representative and her nominated Fiji Tax Agent states the following;

1. That the FRCS is wrong in law and fact in disallowing the legal expenses as per section 22 (1) (d) of ITA 2015.
2. That section 21 of the ITA states **ALL** allowable expenses as a deduction.
3. That Ms. M Tax Payer is registered for vat and income tax with FRCS and files income tax and vat returns in Fiji for assets held in her revenue account for the properties derived/deriving income and vat subject to Fiji Income Tax and Vat in which the expenses incurred in the year relate to income accounted in her revenue account”
6. The Respondent upon service of the Notice of Appeal had filed⁴ documentation pursuant to Section 83 (1) of the ***Tax Administration Act 2009*** and later filed⁵ its Bundle of Documents.
7. In response the Applicant filed⁶ her Bundle of Documents as well as legal submissions⁷ in support of her application.
8. The Respondent has not complied with the deadline of the filing of submissions as such leave was not granted to them to file their submissions.

APPEAL vs REVIEW

9. The wordings of Section 17 of the ***Tax Administration Act 2009*** highlights that an aggrieved party by the decision (Objection decision) shall seek a ***Review*** from the Tax Tribunal.
10. As such the Notice of Appeal in this matter is construed as the Notice of Review.
11. Section 17 also makes it certain that the Tribunal exercises all powers and discretions of the Chief Executive Officer of the Respondent, whilst in conduct of the review.

⁴ Issued by the Tribunal Registry on 5th February 2020.

⁵ Issued by the Tribunal Registry on 21st December 2020

⁶ Issued by the Tribunal Registry on 14th January 2021

⁷ Issued by the Tribunal Registry on 26th June 2020

IMPUGNED DECISION

12. The objection decision as highlighted at paragraph 1 above-herein states as follows:

“... ”

Reference is made to letter dated 10th June 2019 in respect of the Income Tax Assessment for year ended 31st December 2018.

After careful consideration and review of the objection issues pursuant to Section 16(6) of the Tax Administration Act (TAA) 2009, you are hereby advised that your objection is wholly disallowed.

The legal expenses and court application fees of \$10,109.00 claimed has been disallowed as per Section 22 (1)(d) of ITA which states that no deduction is allowed for an expenditure or loss of a capital nature.

Moreover, expenses claimed does not qualify under allowable deduction under Section 21 (1)(a) of ITA 2015.
.....”

13. In a correspondence⁸ dated 6th April 2020, the Respondent gave reasons for its decision and the same is regurgitated herein as follows:

“... ”

I refer to our objection decision letter dated 20th August 2019 in reference to your objection notice dated 10th June 2019 on the Income Tax Notice of Assessment for year ended 31st December 2018.

Per the court request, we further explain the reason for disallowing legal expense and court application fees of \$10,109.00 as deductible expense.

1. Section 21 (1) (a) of ITA 2015 – Allowable deductions under this section are only for those expense that are attributable for the generation of income. The legal fee expenditure in this case in relation to seeking court redress. It is not incurred by taxpayer to derive income for the business and hence for tax purpose is disallowed as an expense.
2. Section 22 (1)(d) of ITA 2015- Such type costs can be taken as capital in nature and be part of the balance sheet.

...”

APPLICANT’S SUBMISSION

14. The Applicant as per her submissions has outlined that whilst she resides overseas, she is a registered taxpayer as she has business interests in Fiji.

15. In fact, her business interest is in real estate and she draws income from the same.

16. As a consequence of her business interests she has had to engage legal counsel to contend with certain Tax Decisions of the Respondent.

⁸ Tab 10 of the Respondent’s Bundle of Documents

17. One such instance was in 2018 when a local law firm was engaged to review a decision of the Respondent. In furtherance of that cause, a total sum of \$10,109.00 was paid out by the Applicant.
18. This as per the submission of the Applicant was a necessary cost as it was relative to the pursuance of their business interests.
19. It is the Applicant's submission that the sum paid out as explained in paragraph 17 above- herein should be considered as a deductible expense as akin to the use of Tax Agent pursuant to Section 21(a) of the *Income Tax Act 2015*.

ONUS OF PROOF

20. The evidentiary burden lies with the Applicant.

Section 21 of the Income Tax Act

21. The Applicant seeks a positive interpretation of Section 21 (1)(a) of the *Income Tax Act 2015* in her favour. She asks that her legal fees and expenses be accounted under her revenue account.
22. The said section is regurgitated as follows:
- “21(1) Subject to this Act, a person is allowed a deduction for a tax year for
- (a) An expenditure or loss on revenue account to the extent incurred by the person during the tax year in deriving income included in gross income;”
23. Has the Applicant been able to find the nexus between her legal expenses as part of her revenue account?
24. ***In Ronpibon Tin No. Liability v. Federal Commissioner of Taxation*⁹ [1949] HCA 15; (1949) 78 CLR 47**, Latham CJ, Rich, Dixon, McTiernan and Webb JJ. said at 56-7:
- “For expenditure to form an allowable deduction as an outgoing incurred in gaining or producing the assessable income it must be incidental and relevant to that end. The words ‘incurred in gaining or producing the assessable income’ mean in the course of gaining or producing such income.”
25. Apart from submitting receipts of payment, how can the Applicant prove that the expenses are incidental to the real estate business. Is it determinative of what her expectations are or is it determined by the Respondent.

⁹ Cited in Commissioner of Inland Revenue v Jamnadas [2002] FJCA 83; ABU0051U.1999S (1 March 2002)

26. This Tribunal draws resolve from the decision in *Mallalieu -v- Drummond (Inspector of Taxes)* [1983] 3 WLR 409¹⁰ where the House of Lords rejected a claim by a female barrister for the cost of articles of clothing, which were ordinary articles of apparel which could be worn in everyday life. Their Lordships rejected the view that the case was to be determined by the taxpayer's evidence that her motive in purchasing the clothing was solely a business motive. The determination was to be made by the Commissioners.
27. Considering the above decision, it is clear that the intent of allowing an expense to be considered as part of business expenditure is determined by the Respondent.
28. In this case they have determined that legal fees and expenses do not constitute a deductible expense. The Applicant has not been able to prove otherwise.
29. As a consequence, this Tribunal shall not disturb the decision of the Respondent in the matter

Orders

- I. The application for review is dismissed
- II. The decision of the Respondent communicated to the Applicant on 30th August 2019 is hereby affirmed.
- III. 28 days to Appeal to the Tax Court.




JEREMAIA N.L SAVOU
TAX TRIBUNAL

¹⁰ Ibid