Insight

Maldives Inland Revenue Authority v Travel Land Maldives Pvt Ltd (2013)[1]

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Who should read this?

This case is crucial to all taxpayers.

Keywords:

Audit Notice, Jurisdiction, Procedure, Objection, Appeal

What constitutes a "decision made by the MIRA" appealable with the TAT?

Summary

The High Court of Maldives ("High Court"), on 3 October 2013, passed its judgment in favour of the Maldives Inland Revenue Authority ("MIRA") on a case that involved the taxpayer filing an appeal with the Tax Appeal Tribunal ("TAT") challenging the validity of an Audit Notice issued by the MIRA. Although the TAT accepted and proceeded with the appeal, the MIRA took the view that it was not within the TAT's jurisdiction to hear the appeal arguing that there was no "decision made by the MIRA", as stated in Section 44 of the Tax Administration Act ("TAA") under which the taxpayer has filed the appeal. In its unanimous judgement setting out the interpretation of a "decision made by the MIRA", the High Court held that a "decision made by the MIRA" appealable to the TAT pursuant to Section 44 of the TAA originates only from an assessment issued by the MIRA.

[1] Maldives Inland Revenue Authority v Travel Land Maldives Pvt Ltd [2013] 2013/HC-A/203

Facts and Observations

Validity of the audit notice challenged

The MIRA issued an audit notice to Travel Land Maldives Pvt Ltd ("TLM") to assess the Tourism Tax (imposed under the Maldives Tourism Act) liability of TLM for taxable periods prior to the ratification of the TAA and creation of the MIRA. Prior to the completion of MIRA's audit, TLM made notice to the MIRA that the audit notice issued was ultra-vires of MIRA's statutory authority to conduct audits. The MIRA responded to TLM stating that the audit notice was valid. It is against this response of the MIRA that TLM filed an appeal to the TAT considering the said response as a "decision made by the MIRA" as required in Section 44 of the TAA.

Section 44 of the TAA reads:

> "Where a taxpayer is not satisfied with a decision made by the MIRA with regard to an objection made in relation to a decision made by the MIRA, he shall have the right to appeal to the Tax Appeal Tribunal within 30 (thirty) days from the date that the decision was made. Nevertheless, the taxpayer shall be obliged to pay the amount assessed by the MIRA, if any. ..."
>
> [emphasis added][2]

MIRA: An appeal may only be filed if an assessment is made

In the TAT proceedings, the MIRA raised a procedural issue stating that the response to TLM's letter does not constitute a "decision made by the MIRA" appealable under Section 44 as there is no assessment made by the MIRA.

TAT: An assessment is not mandatory

In its decision on the procedural issue, the TAT highlighted that the words "if any" (in relation to payments required to be made prior to the appeal) in Section 44 of the TAA indicates that there may be cases where the MIRA does not make an assessment but are appealable under that Section. As such, with reference to Articles 68 and 69 of the Maldives' Constitution and Section 7 of the Interpretation Act, the TAT took the view that the letter sent by TLM to MIRA concerning the audit notice constituted an Objection under Section 42 of the TAA and thereby holding that the MIRA's response to the said letter constituted a "decision made by the MIRA" as stated in Section 44 of the TAA.

[2] This Section is quoted here from the "Consolidated Version of the Tax Administration Act (29 December 2011) published by the MIRA.

Held

A purposive approach by the High Court

The High Court, by a unanimous finding by the bench in favor of the MIRA, quashed the decision of the TAT to proceed with the substantive issues of the case, holding that a "decision made by the MIRA" appealable to the TAT pursuant to Section 44 of the TAA originates only from an assessment issued by the MIRA. In arriving at its decision, the High Court noted that the phrase "decision made by the MIRA", which is not defined in the TAA, must be understood in light of the Interpretation Act, the TAA and the jurisdictions of the TAT. In this regard, the High Court made some key observations. The first is on the appealability of an audit notice issued by the MIRA. The High Court took a purposive approach observing that while a taxpayer must have the right to appeal decisions and acts of the MIRA, save for certain internal administrative decisions such as those relating to employees, if the taxpayer believes them to be *ultra vires*, challenging an audit notice limits the powers of the MIRA in audits and investigations and therefore defeats the purpose of such audits and investigations.

A collective reading of Chapter 3 is required in order to give clarity to Section 44

Subsequently, in interpreting the words "decision of the MIRA", the High Court observed the importance of the context of Section 44. As such, it was stated that a collective reading - which considers the fact that Section 44 is in Chapter 3 (Power to Audit and Investigate) of the TAA, and reading together other Sections in that Chapter, the Interpretations Act, and considering the purposes of the TAA - it is understood that the right to appeal under Section 44 of the TAA originates from the assessment being made by the MIRA. The High Court further made it clear that if the audit notices are to be challenged, the taxpayer may do so by way of an Objection filed pursuant to Section 42 of the TAA and in accordance with Section 35 of the Tax Administration Regulation ("TAR").

Our Comments

Procedural issues can also be challenged, but only after an assessment is made

The outcome of this case raises the question of whether this decision encumbers the right of appeal of a taxpayer in circumstances where MIRA has made a decision that does not originate from an audit or assessment. Examples of such decisions include where the MIRA:

- ◊ incorrectly determines the registration threshold of a taxpayer and demands registration of the taxpayer;
- ◊ denies refund of an excess amount or set off an excess payment;

- ◊ disallows foreign tax credit;
- ◊ denies amendment of a tax return;
- ◊ decisions made with respect to applications for exemption under Section 16 of the Business Profit Tax Act;
- ◊ denies any other right to a taxpayer under a taxation Act.

Decisions that do not originate from an assessment

Hence, the question is should a taxpayer wait until an assessment is issued in above mentioned circumstances or will there ever be an assessment per se in some of those circumstances that would ultimately allow the taxpayer to appeal the case to the TAT. Should there be no assessment by the MIRA or a decision of the MIRA situation, how will their dispute be redressed? One might argue that such matters can be heard at Civil Court. However, a recent ruling[3] by the High Court has reaffirmed the view that tax related disputes and matters in relation to an assessment must be adjudicated in the TAT, ultimately requiring the taxpayer to fulfill the Objection process before a case can be filed with the TAT (except the issues that are listed as directly appealable to the TAT) .

How we can assist

If you would like to know more about the implications of this case on you or want to inquire about any of our practice areas, you may contact the following member of our team:

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[3] Travel Land Maldives Pvt Ltd v Maldives Inland Revenue Authority [2016] 2014/HC-A/277

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