

RWANDA / JUDGMENT

RWANDA REVENUE AUTHORITY v. AGESPRO SECURITY

RLR V.2 - 2015

COURT

Commercial High Court

DECIDED

20 September 2013

CASE / FILE NUMBER

RWANDA REVENUE AUTHORITY V. AGESPRO
SECURITY

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RWANDA REVENUE AUTHORITY v. AGESPRO SECURITY [Rwanda COMMERCIAL HIGH COURT – RCOMA 0296/13/HCC (Niwemugeni, P.J.) September 20, 2013] Tax Law – Registered mail – When a tax payer refuses to receive a registered mail, the post office makes an official statement demonstrating that the concerned rejected the correspondence and the copy is made to the tax administration – Law n° 25/2005 of 04/12/2005 on tax procedures, article 5 paragraph 3. Tax Law – Interruption of the prescription of tax audit – The prescription of tax audit is interrupted by the rectification note informing the taxpayer when it is going to be audited – Law n°25/2005 of 4/12 2005 relating to Tax procedures as amended and complemented to date, article 27 paragraph 3. Commercial procedure – Burden of proof – Every plaintiff must prove a claim. Failure to obtain proof the defendant wins the case – Law n°21/2012 of 14th June 2012 relating to the civil, commercial, labour and administrative procedure, article 9. Facts: Rwanda Revenue Authority audited AGESPRO Security Ltd for the years of 2006, 2007, 2008 and 2009 decided that it should pay a tax amounting to 95,277,440Frw. AGESPRO appealed to the Commissioner General but also

without satisfaction with the decision. Finally, it filed a claim to the Commercial Court of Nyarugenge which ruled that it should pay a withholding tax of 9,123,604Frw. Rwanda Revenue Authority appealed to the Commercial High Court stating that the judge had disregarded that the mail was sent back because AGESPRO had refused to come and pick it. This is evidenced by different correspondences addressed to AGESPRO. Another ground of appeal is the fact that the judge confirmed that there was prescription for the years 2006 and 2007 while it was interrupted by the rectification note of 23/12/2009. It added again that the judge confirmed the withholding tax be paid on the years 2008 and 2009. On the first ground of RRA's appeal, AGESPRO explained that the letter in question is a copy and its original is not produced, which should have been sufficient to decide it invalid. Concerning the prescription, AGESPRO alleges that the fact that the judge confirmed the prescription and disregarded the letter of 23 December 2009 related to audit, is a proof that the audit performed was not based on that letter as it was performed two years later and by others auditors. Concerning the court decision relating to the payment of withholding tax of the years 2008 and 2009, AGESPRO filed a cross appeal arguing that the judgement was based on a wrong provision of law, because he referred to article 53 of the law on direct taxes on income while the tax imposed to AGESPRO is not an employment income. On this point, RRA states that, apart from the withholding tax included in the tax confirmed by the court, there is also income tax and the value added tax, and only the withholding tax has been confirmed by the judge. Held: 1. When Rwanda Revenue Authority sends a letter by the Post office to a taxpayer and the latter rejects it, there must be an official statement proving that the concerned person rejected mail whereby the copy is sent to Rwanda Revenue Authority.

2. The fact that, the letter of 23 December 2009 stated that on 11 January 2010 an audit would be carried out by the middle and small tax payers department which did not take place

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while another audit was carried out by other auditors different from those indicated in the letter of 23 December 2009, which implies that the audit that was performed is not based on the letter of 23 December 2009 in relation to audit because there is prescription more than three years ago.

3. As long as Rwanda Revenue Authority does neither indicate the tax that the judge could have confirmed to be imposed to AGESPRO, which type of tax, nor its ground and evidence, its appeal cannot have merit. As for AGESPRO, the fact that it does not indicate the tax decided by the judge among the three types of taxes that were imposed makes its appeal unfounded. Appeal without merit. Court fees to the appellant. Statutes and statutory instruments referred to: Law no21/ 2012 of 14 June 2012 relating to the civil, commercial, labour and administrative procedure, article 9. Law n° 25/2005 of 04/12/2005 on tax procedures, as amended to date, article 5, paragraph 3 and article27 paragraph 3. No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] Rwanda Revenue Authority, (RRA) alleges that it has assessed AGESPRO Security Ltd on Tax for the fiscal year of 2006, 2007, 2008 and 2009, and in the notice of assessment, it was notified that, it should pay tax with penalties. AGESPRO Security Ltd was not satisfied and appealed to the Commissioner General. Unsatisfied, it decided to file a claim to the Commercial Court of Nyarugenge. The Court ordered it to pay 9,123,604, 00Frw as withholding tax instead of paying the tax that it was charged, amounting to 95,277,440.00Frw. [2] Rwanda Revenue Authority, (RRA) was not satisfied by the court decision and appealed to this Court on the grounds that appear in the analysis of this case. AGESPRO Security Ltd also filed a cross appealed alleging that it had not even accepted the tax that it was charged. In this case, the Court is about to analyze if the grounds of appeal presented by parties have basis. II. ANALYSIS OF LEGAL ISSUES Whether the ground of appeal upon the Court's motivation that the letter no 1862/ORR/DRI/PMC/DA/09 of 23 December 2009 notifying AGESPRO Security that it would be assessed has no merit since it was neither delivered to AGESPRO Security Ltd nor made an official statement refusing its reception.

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[3] Rwanda Revenue Authority (RRA) states that the decision of the judge is in contradiction with the provisions of article paragraph 2 of the Law n° 25/2005 of 04/12/2005 on tax procedures as modified and completed up to date. The fact that the judge referred to paragraph 3 of this article providing that: "The post office or the Court bailiff shall make an official statement refusing the correspondence by the concerned and send a copy to the Tax Administration". The judge disregarded that the post returned the mail because AGESPRO Security had refused to receive it and this have been demonstrated by post throughout different notes that appear on the envelopes of the notification that were addressed to AGESPRO but it did not come to collect them. [4] AGESPRO alleges that, the fact the mail in issue is a copy without its original from Rwanda Revenue Authority which states that it, it is now for the judge to rule it invalid. Moreover, the fact that the judge based on paragraph 3 of above mentioned article, AGESPRO states that RRA does not indicate any provision that the judge misinterpreted, since the post office was supposed to make an official statement as provided in that article. [5] Paragraph 3 of article 5 of the law stated above, clearly indicating how the post office returned the letter rejected by the recipient to Rwanda Revenue Authority, that there must be an official statement proving that the recipient refused to receive the mail. Therefore, stating that the post office proved on the letter, the dates on which AGESPRO was notified without coming to correct its letter, the Court finds that it cannot be considered since it is contrary to paragraph 3 of article 5 above mentioned. On the grounds of appeal that the judge decided that there was prescription for the years 2006 and 2007. [6] Rwanda Revenue Authority states that the court ruled that there was prescription because the notice of assessment to the taxpayer of 06 March 2012 and rectification note of 14 November 2012 were issued three years later after the prescription. It claims that the court based its decision on the letter of 06 March 2012 and confirmed that it was a notice of

assessment while the really notice of assessment which was the basis of the assessment was that of 23 December 2009, that interrupted the prescription of 3 years, basing on article 27 paragraph 3 of the Law no 25/2005 on tax procedures as modified and completed to date. [7] For AGESPRO Security Ltd, it states that the assessment which was carried out was not based on the notice of assessment of 23 December 2009 because:

- a) The letter of 23 December 2009 which stated that the assessment will be performed on 11 January 2010, but without performance because the one carried out was performed two year later.
- b) The Assessment which is the subject matter in the letter of 23 December 2009, was supposed to be performed by the named Mukamurenzi Nonciata and Kanyemera Vincent, but the assessment which is the subject matter was not performed by both of them.
- c) The assessment stated in the letter of 23 December 2009 was supposed to be performed by office in charge of small and medium taxpayer while the assessment which is the subject matter was performed by the large taxpayers' office. [8] According to article 27 paragraph 3 explained above and which provides that: The prescription mentioned in this paragraph is interrupted by the notification informing the taxpayer the period to be audited. This Court finds Rwanda Revenue Authority's

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explanations, that the document which was used is the one of 23 December 2009 instead of that of 06 March 2012, have no merit for the three motives (a; b; c) as provided by AGESPRO security. On the grounds of appeal that the court decided to remove the extra taxes of (80,590,256Frw) from the years 2008 and 2009, and reduced the amount of tax to be paid to (9,123,604Frw) [9] Rwanda Revenue Authority pleads that apart from withholding tax which is included in that decided by the court; there is a tax on profit and the value added tax while the decided by the court is only the withholding tax. It is for this reason that AGESPRO had filed a cross appeal contending that the court had referred to a wrong article since article 53 on direct taxes on income, while that tax that AGESPRO is required to pay is not the tax on employment income. [10] Basing on article 9 of the law relating to the civil, commercial, labour and administrative procedure, this court finds that Rwanda Revenue Authority does not determine the exact type of tax and exact amount to be paid by AGESPRO which was supposed to be confirmed by the court. Despite oral claims, Rwanda Revenue Authority does not even determine the basis of evidences related to the tax that it agrees with. Therefore, this has no merit. As for AGESPRO, it does not determine the tax that was considered by the judge in accordance to article 53 of the Law no 16/2005 on direct taxes on income, and it stated that it is not a tax on employment income, but without determining the type of the tax among the three types of taxes it was charged. Therefore, its cross appeal has no merit. III. THE DECISION OF THE COURT The Commercial High Court: [11] Receives the appeal filed by Rwanda Revenue Authority. [12] Decides that it is without merit. [13] Rules that AGESPRO Security Ltd wins and Rwanda Revenue Authority loses. [14] Orders Rwanda Revenue Authority to pay Court fees amounting to 12,900Frw otherwise it shall be

deducted from its assets by the government coercion within 30 days. [15] Orders the execution of the judgment RCOM0219/13/TC/Nyge for the rest.

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