

COMMISSIONER OF DOMESTIC TAXES VS. ACER PETROLEUM LIMITED

FACTS OF THE CASE

The core issue in this case was the determination of the correct commencement date for the 60-day period within which the Commissioner is required to make an objection decision.

The Respondent, Acer Petroleum Limited lodged its **initial notice of objection on 5th July 2023. On 7th July 2023, the Commissioner notified Acer that the objection was invalid for lack of supporting documentation** and requested the missing documents. **Acer Limited submitted the documents on 19th July 2023, and the Commissioner issued the objection decision on 14th September 2023.**

KRA'S POSITION:

The KRA argued that the 60-day period commenced on 19th July 2023, when a valid objection was received. Since the decision was issued 57 days thereafter, on 14th September 2023, it was within time.

ACER PETROLEUM LIMITED'S SUBMISSIONS

Acer Petroleum Limited contended that the 60-day period commenced on 5th July 2023, the date it lodged the initial objection. It maintained that any delay in submitting additional documents did not change the effective date of receipt. Under this interpretation, the Commissioner's decision dated 14th September 2023 was rendered 71 days beyond the 60-day window, which lapsed on 3rd September 2023.

TRIBUNAL'S ANALYSIS AND JUDGEMENT

The Tribunal, in its decision dated 21st November 2024, held in favour of Acer Petroleum Limited. It found that the objection decision was made outside the 60-day statutory period and was therefore deemed allowed by operation of law under Section 51(11) TPA.
The KRA, aggrieved by the decision, appealed to the High Court.

HIGH COURT'S DECISION

Section 51(4A) and (11) of the TPA command the Commissioner makes the objection decision within sixty days from the date of receipt of a valid notice of objection and adds that failure to so act, the objection shall be deemed to have been allowed.

The TPA defines what constitutes a validly lodged notice of objection under Section 51(3). A notice of objection is treated as validly lodged if; it states precisely the grounds of objection, the amendments required, and the reasons for the amendments; in relation to an objection to an assessment, the taxpayer has paid the entire amount of tax due under the assessment that is not in dispute, or has applied for an extension of time to pay the tax not in dispute under section 33(1); and avails all the relevant documents relating to the objection have been submitted.

The High Court emphasized the significance of the 2022 amendment to Section 51(11) of the TPA, which introduced the word "valid" in reference to the notice of objection. The Court held that the inclusion of the word "valid" means that the 60-day timeline does not begin until a valid notice of objection as defined in Section 51(3) is received.

On the facts, the Court concluded that the objection became valid only on 19th July 2023, when the requested documents were submitted. Accordingly, the Commissioner's objection decision on 14th September 2023 was within the statutory time limit. The Court therefore reversed the Tribunal's decision, holding that the Tribunal erred in law by determining the objection was time-barred.

HOW WE CAN ASSIST

Our team of experienced tax consultants and legal experts can help you with tax advisory to ensure compliance, we review and advise on tax filings and audits to ensure compliance with tax laws. and we also assist with dispute resolution and representation if you find yourself facing issues with the KRA or other tax authorities. Don't risk facing penalties or tax assessments. Let us help you stay on top of your tax obligations and keep your business running smoothly. For any queries contact the contributors through taxteam@cmadvocates.com.

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