



FIJI TAX TRIBUNAL

# Decision

Title of Matter: UMENDRA KUMAR (Applicants)  
X10X PTE LIMITED  
BAKERFIELD COMPANY PTE LIMITED  
V  
FIJI REVENUE AND CUSTOMS SERVICES (Respondent)

Section: Section 88(2) *Tax Administration Act 2009*

Subject: Transfer of Proceedings to Tax Court

Matter Numbers: ITA Actions No 3, 4 and 5 of 2019

Appearances: Mr S Parshotam, Parshotam Lawyers for the Applicant  
Ms R Malani, FRCS Legal Unit for the Respondent

Date of Hearing: 26 June 2019

Before: Mr Andrew J See, Resident Magistrate

Date of Decision: 26 June 2019

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**KEYWORDS: Section 88(2) *Tax Administration Act 2009* Request for Transfer to Tax Court; Important question of law to arise; Jurisdiction of Tax Court to hear all matters; Proceedings When Not Properly Transferred.**

## Background

[1] In an Ex Tempore judgment issued earlier today, this Tribunal agreed to a request of the Taxpayers to have these matters transferred to the Tax Court in accordance with Section 88(2) of the *Tax Administration Act 2009*. By way of background, the Applicant Taxpayers have separately filed applications for review in this Tribunal on 9 April 2019<sup>1</sup> and 12 April 2019<sup>2</sup>. At the first mention of these matters, Counsel for the Applicants had asked that all matters be transferred to

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<sup>1</sup> ITA No 03 and 04 of 2019.

<sup>2</sup> ITA No 05 of 2019.

the Tax Court in accordance with Section 88(2) of the *Tax Administration Decree* 2009, on the basis that an important question of law is likely to arise. At first impression, the Tribunal was not of the view that an important question of law was likely to arise. The applications all appear to concern themselves with the Taxpayers applications for exemption from stamp duty on transfer of property to a Small and Micro Enterprise (SME)<sup>3</sup>. The matters on their face seem nothing more than requiring an interpretation of statute. The argument advanced by Counsel was that the interpretation will have serious consequences on the broader corporate community. The Tribunal finds that argument hardly novel in relation to the interpretation of statute.

[2] Whilst this Tribunal indicated to the parties that it had no issue with transferring matters, in the case where there was no consent to jurisdiction for the purposes of Section 81(2)(b) of the Act<sup>4</sup>, some caution in approach needs to take place in order not to transfer matters to the Tax Court without considering what is meant by the language of Section 88(2)(a).

[3] Section 88(2)(a) provides:

*88. — (1) A party to the proceedings may apply to the Tribunal to have the proceedings transferred to the Tax Court for the hearing and determination of the matter.*

*(2) The Tribunal may order the transfer of the proceedings to the Tax Court if the Tribunal is of the opinion that—*

*(a) an important question of law is likely to arise; or*

*(b) the case is of such a nature and of such urgency that it is in the public interest that it be transferred to the Tax Court.*

*(3) If the Tribunal declines to transfer proceedings to the Tax Court, the party concerned may seek special leave of the Court for an order that the proceedings be transferred to the Court and the Court must apply the criteria that govern the Tax Tribunal's decision under subsection (2).*

*(4) An order for transfer of proceedings to the Tax Court under this section may be made subject to any conditions as the Tax Tribunal or Tax Court may impose.*

*(5) If an order for transfer is made under subsection (2), the Tax Court may, if it considers that the proceedings were not properly transferred, order that the Tax Tribunal adjudicate on the proceedings at the first instance.*

[4] The application made by Counsel for the Taxpayers is that there is an important question of law that is likely to arise, however that a question of statutory construction is one which would arise in a number of cases, does not in itself mean that the issue in dispute concerns itself with an important question of law.

[5] It is a matter of record that the current jurisdictional powers conferred on the Tribunal by virtue of Section 81 of the Act, enable the Tribunal to deal with disputes to the amount of \$500,000.00.

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<sup>3</sup> See Objection Decisions located within the Section 83 Documents filed on 25 June 2019.

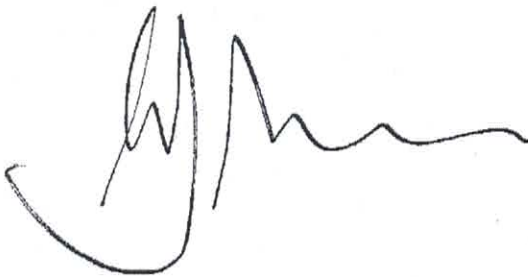
<sup>4</sup> That is the provision dealing with the monetary limits of the Tribunal and the capacity of the parties to submit to the jurisdiction, even where matters in dispute exceed that limit.

The matters in dispute presently before the Tribunal, are for claims of \$17,970.00, \$10,464.00 and \$60,000.00 respectively.

[6] In his submissions, Mr Partashom has suggested that the Taxpayers would have been free to have bypassed the Tribunal in the first instance in any event and brought their application for review directly to the Tax Court. The Tribunal is not convinced that such an approach is consistent with the policy intent and structure of the legislation and the respective roles conferred on the Tax Tribunal and Tax Court.

[7] As there was no objection by the Respondent, the Tribunal has consented to the request of the Taxpayers and will transfer the matter to the Tax Court, to ascertain whether the matters have been properly transferred, having regard to Section 88 (5) of the Act.

[8] Orders to give effect to this decision will be now issued.



Mr Andrew J See  
Resident Magistrate

