



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

CONVENIENCE TRANSLATION - ACCURACY NOT GUARANTEED

Republic of the Union of Myanmar
Revenue Appellate Tribunal
Commercial Tax Appeal No. 2/2022

Applicant	Vs.	Respondent
Golden Land Real Estate Development Co., Ltd. Daw Than Thant Wai and U Myo Min Thant (Authorised representatives) Yankin Road, CMA Old Building, 2F Yankin Township, Yangon Region, Myanmar Appearing for the applicant		Internal Revenue Department Office No. 46, Nay Pyi Taw
Appearing for the respondent	-	U Than Oo, Advocate U Tin Htwe, Director (Departmental Representative) Internal Revenue Department
Date of the order	-	31 March 2023

Judgment

In this case, taxpayer Golden Land Real Estate Development Co., Ltd., paying tax at the Large Taxpayer Office, was dissatisfied with the imposition of a commercial tax fine of in total MMK 942,087,583, composed of an amount equivalent to the additional tax for concealment according to section 22 (a) (2) Commercial Tax Law because of the concealment of sales revenue for fully paid units and rental revenue,¹ and of 10% of the tax payable according to section 21 (b) Commercial Tax Law for failure to pay monthly advance taxes on unit prices received in installments, in the Notification of Audit Result (SAS-3), issued by the Large Taxpayer Office dated 31-3-2022 for the 2017-2018 assessment year (2016-2017 fiscal year), and applied to the Director General of the Internal Revenue Department for administrative review according to section 34 (b) Tax Administration Law, and then applied *[to the Revenue Appellate Tribunal]* to cancel the fines as the Director General's decision dated 20-6-2022 confirmed the decision in the Notification of Audit Result (SAS-3) issued by the Large Taxpayer Office.

The Revenue Appellate Tribunal heard the submissions of the applicant and the respondent and examined in detail the physical evidence sent by the respondent together with the respondent's

¹ "and rental revenue" in the original, although the text further down suggests that the fine for the underreported rental revenue was imposed according to and with the percentage specified in section 21 (b) Commercial Tax Law instead of section 22 (a) (2) Commercial Tax Law.



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statement with case document numbers as well as the legal provisions. The applicant submitted an annual return stating that it received in the 2017-2018 assessment year (2016-2017 fiscal year) for which the appeal is filed from its business of selling and letting constructed buildings, offices, renovated offices and shops a sales revenue of MMK 9,258,128,000 for 25 fully paid units. It has been found that according to the discovery made at the time of the audit by the tax audit team of the Large Taxpayer Office of sales revenue of MMK 35,352,912,323 for 108 fully paid units, of installment sales revenue of MMK 20,330,905,318 for 197 units sold on installments, and of rental revenue of MMK 1,134,011,444 for 1 hire-purchase unit, 3% tax payable (MMK 875,424,810)² on the sales revenue for fully paid units and a fine of MMK 875,424,810 equal to the tax payable according to section 22 (a) (2) Commercial Tax Law, 3% tax payable (MMK 609,927,160) on the sales revenue for the units sold on installments and a fine (MMK 609,927,160)³ of 10% of the tax payable according to section 21 (b) Commercial Tax Law, and 5% tax payable (MMK 56,700,572) on the rental revenue from the hire-purchase and a fine (MMK 5,670,057) of 10% of the tax payable according to section 21 (b) Commercial Tax Law, calculated to amount in total to MMK 1,542,052,541 in tax and MMK 942,087,583 in fines were requested to be paid in addition. It has been found that the re-assessment of the Large Taxpayer Office requires additional payment of both taxes and fines, but the applicant did not dispute the additional taxes to be paid and only appealed against the imposition of the fines.

According to section 22 (a) (2) Commercial Tax Law, the fine is equivalent to the amount of the evaded tax or of the amount of the additional tax because of the concealment, and according to section 21 (b) Commercial Tax Law, the fine is 10% of the tax payable according to the assessment. Fines are calculated and payable according to the rate set for the payable tax.

The applicant submitted an annual return stating that there were 25 fully paid units in the fiscal year 2016-2017 for which the dispute arose and paid commercial tax only for these 25 units. As, when the tax audit team audited the accounts for that fiscal year, sales revenue of MMK 35,352,912,323 for 108 fully paid units was discovered, the requested payment of 3% commercial tax assessed on the sales revenue and of a fine equivalent to the amount of the additional tax because of the concealment according to section 21 (a) (2) Commercial Tax Law is considered to have been made in accordance with the provisions of the existing Commercial Tax Law. As the applicant confirmed the sales revenue, there is no dispute about the tax payable, and the provisions of section 22 (a) (2) Commercial Tax Law do not support the applicant's submission, so there is no reason to consider the arguments submitted by the applicant.

² Context of this figure is not clear as the sales revenue for 108 fully paid units is given as MMK 35,352,912,323 further above of which 3% would be MMK 1,060,587,370.

³ Possibly a clerical error as 10% of MMK 609,927,160 would be MMK 60,992,716.



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It has been found that there is no dispute over the commercial tax payable on the sales revenue and the rental revenue for the requested payment of the tax payable on the sales revenue for 107 units sold on installments and a fine of 10% of the tax payable according to section 21 (b) Commercial Tax Law, and of 5% tax payable on the rental revenue for 1 hire-purchase unit and a fine of 10% of the tax payable according to section 21 (b) Commercial Tax Law, and that there is a dispute on two points, namely, that the causes submitted by the applicant have not been accepted as sufficient cause for defaults according to section 21 (a) Commercial Tax Law, and that neither the LTO nor the IRD are given the authority to impose a fine by the expression “the Township Revenue Officer shall cause him to pay a fine”.

Regarding the applicant’s failure to pay commercial tax payable, in terms of causes submitted as justifying the failure, *[the applicant stated]* among others that prices were reduced with discounts, sales were made by reducing the MMK and USD exchange rate below the market rate and the rate set by the Central Bank of Myanmar, and sales could be made only if installment payment was offered and the price was inclusive of commercial tax, all done to ensure customer confidence and satisfaction as *[the applicant]* was the first to construct and sell units with the BOT system; that the applicant had to pay commercial tax for the customers as customers did not accept the commercial tax to be paid to the state; that due to the global pandemic at the time of the sale of the units, there was almost no market which led to financial difficulties and financial constraints; that the failure to pay was due to the misunderstanding that payment only had to be made after units sold on installments had been paid in full; and that there was no consistency with Myanmar accounting standards as due to language barriers when working on transactions different accountants stuck only to accounting formats that they understood. It has been found that in relation to these submissions, the Director General of the Internal Revenue Department stated in his review that “the particulars submitted to justify an exemption from the fines are unrelated to the failure and cannot be regarded as sufficient evidence” and thereby considered the applicant’s arguments for an exemption from the fines.

It is stipulated that the expression Township Revenue Officer as defined in section 2 (q) Commercial Tax Law includes a chief officer and deputy chief officer who are assigned duties according to section 10 Commercial Tax Law. As the Director General of the Internal Revenue Department allocated and assigned duties with Internal Revenue Department Notification No. 281/2014 dated 27-11-2014 according to the powers conferred by section 10 Commercial Tax Law, the chief officers in the tax audit team are, in accordance with the duties and powers of the Township Revenue Officer, evidently competent for assessment, fines, and requesting tax payments.

It has been found that it was part of the review that the causes submitted by the applicant were the financial difficulties and financial crisis experienced by the applicant company and causes related to the sale of units at a lower price than usual. However, as it has been found that the reason for this dispute is that action was taken against non-compliance with the provisions of the Commercial Tax Law consisting in the company not having correctly reported the number of the fully paid rooms in the annual



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commercial tax return and not having paid commercial tax on advance payments in installments, the applicant's arguments may hardly be considered as arguments related to the cause of the case. In addition, it has been found that the 2016-2017 fiscal year for which the dispute arose predates the outbreak of the global pandemic.

The acts of the applicant company, which so far paid 7 commercial tax installments out of 28 agreed with the Internal Revenue Department despite the business difficulties, can be acknowledged as good acts by the taxpayer company, but there are legal provisions to take action as appropriate if defaults occur for taxes due and payable in accordance with the law as the case may be, so it would not be fair to say that acts undertaken by officials, who are supposed to verify a taxpayer's obligation to pay taxes according to the law, are wrong. Considering that, as the applicant is a large company with a large amount of investment that is operating in accordance with the Investment Law, causes such as not being aware of or misunderstanding existing legal provisions are not sufficient causes, there is no reason for the Tribunal to interfere with the decision made by the Director General of the Internal Revenue Department. It is therefore ordered as follows:

Order

Confirming, in relation to Administrative Review No. 6/2022 applied for to the Director General of the Internal Revenue Department, the decision of the Director General dated 20-6-2022 which confirms the decision issued by the Large Taxpayer Office, and the amended decision in the review order dated 22-9-2022 on undisputed tax and disputed tax, this appeal is dismissed.

Kyaw Kyaw
Member

Myint Oo
Chairman

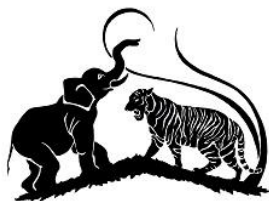
Win Tin
Member

Head of the Bench
Revenue Appellate Tribunal

[Published in the Myanmar Gazette dated 5 February 2024.]

Republic of the Union of Myanmar
Revenue Appellate Tribunal
Commercial Tax Appeal No. 3/2022

Applicant	Vs.	Respondent
Golden Land Real Estate Development Co., Ltd. Daw Than Thant Wai and U Myo Min Thant		Internal Revenue Department Office No. 46, Nay Pyi Taw



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

(Authorised representatives)

Yankin Road, CMA Old Building, 2F Yankin

Township, Yangon Region, Myanmar

Appearing for the applicant

- U Than Oo, Advocate

Appearing for the respondent

- U Tin Htwe, Director

(Departmental Representative)

Internal Revenue Department

Date of the order

- 31 March 2023

Judgment

In this case, taxpayer Golden Land Real Estate Development Co., Ltd., paying tax at the Large Taxpayer Office, was dissatisfied with the imposition of a commercial tax fine of in total MMK 449,671,652, composed of an amount equivalent to the additional tax for concealment according to section 22 (a) (2) Commercial Tax Law because of the concealment of sales revenue for fully paid units and rental revenue,¹ and of 10% of the tax payable according to section 21 (b) Commercial Tax Law for failure to pay monthly advance taxes on unit prices received in installments, in the Notification of Audit Result (SAS-3), issued by the Large Taxpayer Office dated 31-3-2022 for the 2018-2019 assessment year (2017-2018 fiscal year), and applied to the Director General of the Internal Revenue Department for administrative review according to section 34 (b) Tax Administration Law, and then applied *[to the Revenue Appellate Tribunal]* to cancel the fines as the Director General's decision dated 20-6-2022 confirmed the decision in the Notification of Audit Result (SAS-3) issued by the Large Taxpayer Office.

The Revenue Appellate Tribunal heard the submissions of the applicant and the respondent and examined in detail the physical evidence sent by the respondent together with the respondent's statement with case document numbers as well as the legal provisions. The applicant submitted an annual return stating that it received in the 2018-2019 assessment year (2017-2018 fiscal year) for which the appeal is filed from its business of selling and letting constructed buildings, offices, renovated offices and shops, a sales revenue of MMK 10,088,342,133 for 27 fully paid units and a rental revenue of MMK 2,226,329,557. It has been found that according to further discovery made at the time of the audit by the tax audit team of the Large Taxpayer Office of sales revenue of MMK 17,121,513,874 for 67 fully paid units, of installment sales revenue of MMK 22,484,285,569 for 235 units sold on installments, and of rental revenue of MMK 190,347,009, 3% tax payable on the sales revenue for fully paid units and a fine equal to the tax payable according to section 22 (a) (2) Commercial Tax Law, 3% tax payable on the

¹ "and rental revenue" in the original, although the text further down suggests that the fine for the underreported rental revenue was imposed according to and with the percentage specified in section 21 (b) Commercial Tax Law instead of section 22 (a) (2) Commercial Tax Law.



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sales revenue for the units sold on installments and a fine of 10% of the tax payable according to section 21 (b) Commercial Tax Law, and 5% tax payable on the rental revenue from the let units and a fine of 10% of the tax payable according to section 21 (b) Commercial Tax Law, calculated to amount in total to MMK 1,093,578,637 in tax and MMK 449,671,652 in fines were requested to be paid in addition.

According to section 22 (a) (2) Commercial Tax Law, the fine is equivalent to the amount of the evaded tax or of the amount of the additional tax because of the concealment, and according to section 21 (b) Commercial Tax Law, the fine is 10% of the tax payable according to the assessment. Fines are calculated and payable according to the rate set for the payable tax.

The applicant submitted an annual return stating that there were 27 fully paid units in the assessment year 2018-2019 (fiscal year 2017-2018) for which the dispute arose and paid commercial tax only for these 27 units. As, when the tax audit team audited the accounts for that fiscal year, sales revenue for 67 fully paid units was additionally discovered, the requested payment of 3% commercial tax assessed on the sales revenue and of a fine equivalent to the amount of the additional tax because of the concealment according to section 21 (a) (2) Commercial Tax Law is considered to have been made in accordance with the provisions of the existing Commercial Tax Law. As the applicant confirmed the sales revenue, there is no dispute about the tax payable, and the provisions of section 22 (a) (2) Commercial Tax Law do not support the applicant's submission, so there is no reason to consider the arguments submitted by the applicant.

It has been found that there is no dispute over the commercial tax payable on the sales revenue and the rental revenue for the requested payment of the tax payable on the sales revenue for 235 units sold on installments and a fine of 10% of the tax payable according to section 21 (b) Commercial Tax Law, and of 5% tax payable on the rental revenue and a fine of 10% of the tax payable according to section 21 (b) Commercial Tax Law, and that there is a dispute on two points, namely, that the causes submitted by the applicant have not been accepted as sufficient cause for defaults according to section 21 (a) Commercial Tax Law, and that neither the LTO nor the IRD are given the authority to impose a fine by the expression "the Township Revenue Officer shall cause him to pay a fine".

Regarding the applicant's failure to pay commercial tax payable, in terms of causes submitted as justifying the failure, *[the applicant stated]* among others that prices were reduced with discounts, sales were made by reducing the MMK and USD exchange rate below the market rate and the rate set by the Central Bank of Myanmar, and sales could be made only if installment payment was offered and the price was inclusive of commercial tax, all done to ensure customer confidence and satisfaction as *[the applicant]* was the first to construct and sell units with the BOT system; that the applicant had to pay commercial tax for the customers as customers did not accept the commercial tax to be paid to the state; that due to the global pandemic at the time of the sale of the units, there was almost no market which led to financial difficulties and financial constraints; that the failure to pay was due to the



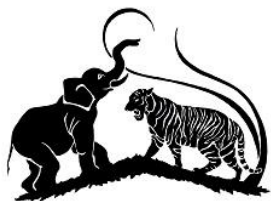
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misunderstanding that payment only had to be made after units sold on installments had been paid in full; and that there was no consistency with Myanmar accounting standards as due to language barriers when working on transactions different accountants stuck only to accounting formats that they understood. It has been found that in relation to these submissions, the Director General of the Internal Revenue Department stated in his review that “the particulars submitted to justify an exemption from the fines are unrelated to the failure and cannot be regarded as sufficient evidence” and thereby considered the applicant’s arguments for an exemption from the fines.

It is stipulated that the expression Township Revenue Officer as defined in section 2 (q) Commercial Tax Law includes a chief officer and deputy chief officer who are assigned duties according to section 10 Commercial Tax Law. As the Director General of the Internal Revenue Department allocated and assigned duties with Internal Revenue Department Notification No. 281/2014 dated 27-11-2014 according to the powers conferred by section 10 Commercial Tax Law, the chief officers in the tax audit team are, in accordance with the duties and powers of the Township Revenue Officer, evidently competent for assessment, fines, and requesting tax payments.

It has been found that it was part of the review that the causes submitted by the applicant were the financial difficulties and financial crisis experienced by the applicant company and causes related to the sale of units at a lower price than usual. However, as it has been found that the reason for this dispute is that action was taken against non-compliance with the provisions of the Commercial Tax Law consisting in the company not having correctly reported the number of the fully paid rooms in the annual commercial tax return and not having paid commercial tax on advance payments in installments, the applicant’s arguments may hardly be considered as arguments related to the cause of the case. In addition, it has been found that the 2018-2019 assessment year (2017-2018 fiscal year) for which the dispute arose predates the outbreak of the global pandemic.

The acts of the applicant company, which so far paid 7 commercial tax installments out of 28 agreed with the Internal Revenue Department despite the business difficulties, can be acknowledged as good acts by the taxpayer company, but there are legal provisions to take action as appropriate if defaults occur for taxes due and payable in accordance with the law as the case may be, so it would not be fair to say that acts undertaken by officials, who are supposed to verify a taxpayer’s obligation to pay taxes according to the law, are wrong. Considering that, as the applicant is a large company with a large amount of investment that is operating in accordance with the Investment Law, causes such as not being aware of or misunderstanding existing legal provisions are not sufficient causes, there is no reason for the Tribunal to interfere with the decision made by the Director General of the Internal Revenue Department. It is therefore ordered as follows:



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Order

Confirming, in relation to Administrative Review No. 7/2022 applied for to the Director General of the Internal Revenue Department, the decision of the Director General dated 20-6-2022 which confirms the decision issued by the Large Taxpayer Office, and the amended decision in the review order dated 22-9-2022 on undisputed tax and disputed tax, this appeal is dismissed.

Kyaw Kyaw
Member

Myint Oo
Chairman
Head of the Bench
Revenue Appellate Tribunal

Win Tin
Member

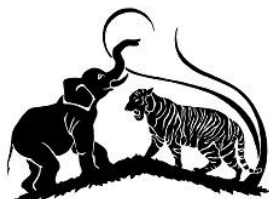
[Published in the Myanmar Gazette dated 5 February 2024.]

Republic of the Union of Myanmar
Revenue Appellate Tribunal
Commercial Tax Appeal No. 4/2022

Applicant	Vs.	Respondent
Golden Land Real Estate Development Co., Ltd. Daw Than Thant Wai and U Myo Min Thant (Authorised representatives) Yankin Road, CMA Old Building, 2F Yankin Township, Yangon Region, Myanmar		Internal Revenue Department Office No. 46, Nay Pyi Taw
Appearing for the applicant	-	U Than Oo, Advocate
Appearing for the respondent	-	U Tin Htwe, Director (Departmental Representative) Internal Revenue Department
Date of the order	-	31 March 2023

Judgment

In this case, taxpayer Golden Land Real Estate Development Co., Ltd., paying tax at the Large Taxpayer Office, was dissatisfied with the imposition of a commercial tax fine of in total MMK 438,765,875, composed of an amount equivalent to the additional tax for concealment according to section 22 (a) (2) Commercial Tax Law because of the concealment of sales revenue for fully paid units and rental revenue, and of 10% of the tax payable according to section 21 (b) Commercial Tax Law for failure to pay monthly



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advance taxes on unit prices received in installments, in the Notification of Audit Result (SAS-3), issued by the Large Taxpayer Office dated 31-3-2022 for the 2019 assessment year (2018-2019 fiscal year), and applied to the Director General of the Internal Revenue Department for administrative review according to section 34 (b) Tax Administration Law, and then applied [to the Revenue Appellate Tribunal] to cancel the fines as the Director General's decision dated 20-6-2022 confirmed the decision in the Notification of Audit Result (SAS-3) issued by the Large Taxpayer Office.

The Revenue Appellate Tribunal heard the submissions of the applicant and the respondent and examined in detail the physical evidence sent by the respondent together with the respondent's statement with case document numbers as well as the legal provisions. The applicant submitted an annual return stating that it received in the 2019 assessment year (2018-2019 fiscal year) for which the appeal is filed from its business of selling and letting constructed buildings, offices, renovated offices and shops sales revenue of MMK 1,341,917,161 for 3 fully paid units and rental revenue of MMK 3,679,277,744. It has been found that according to further discovery made at the time of the audit by the tax audit team of the Large Taxpayer Office of sales revenue of MMK 12,403,928,408 for 71 fully paid units, of installment sales revenue of MMK 18,456,436,722 for 193 units sold/acquired on installments, and of rental revenue of MMK 414,754,395, 3% tax payable on the sales revenue for fully paid units and a fine equal to the tax payable according to section 22 (a) (2) Commercial Tax Law, 3% tax payable on the installment sale/received unit sales revenue and a fine of 10% of the tax payable according to section 21 (b) Commercial Tax Law, and 5% tax payable on the rental revenue from the let units and a fine equal to the tax payable according to section 22 (a) (2) Commercial Tax Law, calculated to amount in total to MMK 947,390,317 in tax and MMK 438,765,875 in fines were requested to be paid in addition. It has been found that the re-assessment of the Large Taxpayer Office requires additional payment of both taxes and fines, but the applicant did not dispute the additional taxes to be paid and only appealed against the imposition of the fines.

According to section 22 (a) (2) Commercial Tax Law, the fine is equivalent to the amount of the evaded tax or of the amount of the additional tax because of the concealment, and according to section 21 (b) Commercial Tax Law, the fine is 10% of the tax payable according to the assessment. Fines are calculated and payable according to the rate set for the payable tax.

The applicant submitted an annual return stating that there were 3 fully paid units in the assessment year 2019 (fiscal year 2018-2019) for which the dispute arose and paid commercial tax only for these 3 units. As, when the tax audit team audited the accounts for that fiscal year, sales revenue for 71 fully paid units and rental revenue were discovered additionally, the requested payment of 3% commercial tax assessed on the sales revenue, 5% commercial tax assessed on the rental revenue and of a fine equivalent to the amount of the additional tax because of the concealment according to section 21 (a) (2) Commercial Tax Law is considered to have been made in accordance with the provisions of the existing Commercial Tax Law. As the applicant confirmed the sales revenue, there is no dispute about



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the tax payable, and the provisions of section 22 (a) (2) Commercial Tax Law do not support the applicant's submission, so there is no reason to consider the arguments submitted by the applicant.

It has been found that there is no dispute over the commercial tax payable on the sales revenue and the rental revenue for the requested payment of the tax payable on the sales revenue for 193 units sold/acquired on installments and a fine of 10% of the tax payable according to section 21 (b) Commercial Tax Law, and of 5% tax payable on the rental revenue and a fine of 10% of the tax payable according to section 21 (b) Commercial Tax Law,¹ and that there is a dispute on two points, namely, that the causes submitted by the applicant have not been accepted as sufficient cause for defaults according to section 21 (a) Commercial Tax Law, and that neither the LTO nor the IRD are given the authority to impose a fine by the expression "the Township Revenue Officer shall cause him to pay a fine".

Regarding the applicant's failure to pay commercial tax payable, in terms of causes submitted as justifying the failure, *[the applicant stated]* among others that prices were reduced with discounts, sales were made by reducing the MMK and USD exchange rate below the market rate and the rate set by the Central Bank of Myanmar, and sales could be made only if installment payment was offered and the price was inclusive of commercial tax, all done to ensure customer confidence and satisfaction as *[the applicant]* was the first to construct and sell units with the BOT system; that the applicant had to pay commercial tax for the customers as customers did not accept the commercial tax to be paid to the state; that due to the global pandemic at the time of the sale of the units, there was almost no market which led to financial difficulties and financial constraints; that the failure to pay was due to the misunderstanding that payment only had to be made after units sold on installments had been paid in full; and that there was no consistency with Myanmar accounting standards as due to language barriers when working on transactions different accountants stuck only to accounting formats that they understood. It has been found that in relation to these submissions, the Director General of the Internal Revenue Department stated in his review that "the particulars submitted to justify an exemption from the fines are unrelated to the failure and cannot be regarded as sufficient evidence" and thereby considered the applicant's arguments for an exemption from the fines.

It is stipulated that the expression Township Revenue Officer as defined in section 2 (q) Commercial Tax Law includes a chief officer and deputy chief officer who are assigned duties according to section 10 Commercial Tax Law. As the Director General of the Internal Revenue Department allocated and assigned duties with Internal Revenue Department Notification No. 281/2014 dated 27-11-2014 according to the powers conferred by section 10 Commercial Tax Law, the chief officers in the tax audit

¹ This is at odds with text further above which suggests that instead of a fine of 10% of the tax payable according to section 21 (b) Commercial Tax Law, a fine equal to the tax payable according to section 22 (a) (2) Commercial Tax Law was imposed for concealing rental revenue.



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team are, in accordance with the duties and powers of the Township Revenue Officer, evidently competent for assessment, fines, and requesting tax payments.

It has been found that it was part of the review that the causes submitted by the applicant were the financial difficulties and financial crisis experienced by the applicant company and causes related to the sale of units at a lower price than usual. However, as it has been found that the reason for this dispute is that action was taken against non-compliance with the provisions of the Commercial Tax Law consisting in the company not having correctly reported the number of the fully paid rooms in the annual commercial tax return and not having paid commercial tax on advance payments in installments, the applicant's arguments may hardly be considered as arguments related to the cause of the case. In addition, it has been found that the 2019 assessment year (2018-2019 fiscal year) for which the dispute arose predates the outbreak of the global pandemic.

The acts of the applicant company, which so far paid 7 commercial tax installments out of 28 agreed with the Internal Revenue Department despite the business difficulties, can be acknowledged as good acts by the taxpayer company, but there are legal provisions to take action as appropriate if defaults occur for taxes due and payable in accordance with the law as the case may be, so it would not be fair to say that acts undertaken by officials, who are supposed to verify a taxpayer's obligation to pay taxes according to the law, are wrong. Considering that, as the applicant is a large company with a large amount of investment that is operating in accordance with the Investment Law, causes such as not being aware of or misunderstanding existing legal provisions are not sufficient causes, there is no reason for the Tribunal to interfere with the decision made by the Director General of the Internal Revenue Department. It is therefore ordered as follows:

Order

Confirming, in relation to Administrative Review No. 8/2022 applied for to the Director General of the Internal Revenue Department, the decision of the Director General dated 20-6-2022 which confirms the decision issued by the Large Taxpayer Office, and the amended decision in the review order dated 22-9-2022 on undisputed tax and disputed tax, this appeal is dismissed.

Kyaw Kyaw
Member

Myint Oo
Chairman

Win Tin
Member

Head of the Bench
Revenue Appellate Tribunal

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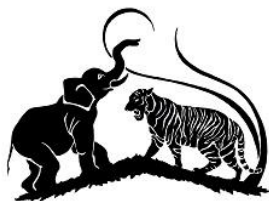
**Republic of the Union of Myanmar
Revenue Appellate Tribunal
Commercial Tax Appeal No. 5/2022**

Applicant	Vs.	Respondent
Golden Land Real Estate Development Co., Ltd. Daw Than Thant Wai and U Myo Min Thant (Authorised representatives) Yankin Road, CMA Old Building, 2F Yankin Township, Yangon Region, Myanmar Appearing for the applicant		Internal Revenue Department Office No. 46, Nay Pyi Taw
Appearing for the respondent	-	U Than Oo, Advocate - U Tin Htwe, Director (Departmental Representative) Internal Revenue Department
Date of the order	-	31 March 2023

Judgment

In this case, taxpayer Golden Land Real Estate Development Co., Ltd., paying tax at the Large Taxpayer Office, was dissatisfied with the imposition of a commercial tax fine of in total MMK 349,034,900, composed of an amount equivalent to the additional tax for concealment according to section 22 (a) (2) Commercial Tax Law because of the concealment of sales revenue for fully paid units and rental revenue, and of 10% of the tax payable according to section 21 (b) Commercial Tax Law for failure to pay monthly advance taxes on unit prices received in installments, in the Notification of Audit Result (SAS-3), issued by the Large Taxpayer Office dated 31-3-2022 for the 2019-2020 assessment year (2019 fiscal year), and applied to the Director General of the Internal Revenue Department for administrative review according to section 34 (b) Tax Administration Law, and then applied *[to the Revenue Appellate Tribunal]* to cancel the fines as the Director General's decision dated 20-6-2022 confirmed the decision in the Notification of Audit Result (SAS-3) issued by the Large Taxpayer Office.

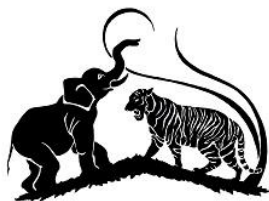
The Revenue Appellate Tribunal heard the submissions of the applicant and the respondent and examined in detail the physical evidence sent by the respondent together with the respondent's statement with case document numbers as well as the legal provisions. It has been found that the applicant is a company operating a business with a permit from the Myanmar Investment Commission, known as the Golden City Project, and consisting in the sale and lease of residential apartments and offices in reconstructed buildings, and the sale and lease of the reconstructed GCBC building with 3 floors as offices and shops, all on 8.369 acres of land situated in Yangon Region, Yankin Township, Land



Survey Ward No. 3, Kanbe (formerly the Accounts Office). In the Myanmar Investment Law 2016, there is no commercial tax relief or exemption for service revenue regarding the construction and sale of buildings and the letting of units, and regarding commercial tax assessment and penalties, the provisions of the existing Commercial Tax Law and the Tax Administration Law which came into force on 1-10-2019 are considered to have to be complied with for the assessment year 2019-2020 (the 2019 fiscal year from 1-4-2019 to 30-9-2019).

The Director General of the Internal Revenue Department issued Public Ruling No. 1/2020 dated 27-1-2020 in exercise of the powers conferred by section 11 (a) Tax Administration Law, and in para. 7 of this Ruling it is stated that on and after 1-10-2019 when the Tax Administration Law comes into force, acts against the law or non-compliance with the law shall be dealt with by applying the Tax Administration Law, and para. 8 provides examples. In example 4, company "C" reported incorrectly in the income tax return submitted in the specified period from 1-10-2019 to 21 [sic]-12-2019 for income earned during the 6 month period from 1-4-2019 to 30-9-2019 and underpaid tax. As the period of earning income was before 1-10-2019, but the incorrect statement in the income tax return occurred after the effective date of the Tax Administration Law, a fine will be imposed according to the Tax Administration Law. It is considered that for the 2019-2020 assessment year (the 2019 fiscal year from 1-4-2019 to 30-9-2019) for which this dispute arose, defaults in the annual commercial tax return submitted after 1-10-2019 during the prescribed period for submitting the annual return may, according to these criteria, not be sanctioned by the Commercial Tax Law, but shall be subject to a fine according to the relevant section depending on the type of default [listed] in chapter 10, sections 64 to 74. The Tribunal asked questions regarding the provisions of the Tax Administration Law that came into force on 1-10-2019, and the Tribunal recorded that the departmental representative of the Internal Revenue Department replied that it is correct that the public had to comply with Public Ruling 1/2022 [sic] during the transition period.

The applicant submitted an annual return stating that for the 2019 fiscal year (1.4.2019 to 30.9.2019) for which the appeal is filed, there was 1 fully paid unit and rental revenue from the business of selling and letting constructed buildings, offices, renovated offices and shops. It has been found that according to the discovery made at the time of the audit by the tax audit team of the Large Taxpayer Office of 51 fully paid units, MMK 260,187,180 additional tax payable on the sales revenue for 51 fully paid units and a fine of MMK 260,187,180 equal to the tax payable according to section 22 (a) (2) Commercial Tax Law, MMK 71,195,583 tax payable on rental revenue and a fine of MMK 71,195,583 according to section 22 (a) (2) Commercial Tax Law, and MMK 176,521,375 tax payable on the sales revenue for 125 units sold on installments and a fine (MMK 17,652,137) of 10% of the tax payable according to section 21 (b) Commercial Tax Law, in total to MMK 507,904,138 in tax and MMK 349,034,900 in fines were requested to be paid in addition. It has been found that the re-assessment of the Large Taxpayer Office requires



additional payment of both taxes and fines, but the applicant did not dispute the additional taxes to be paid and only appealed against the imposition of the fines.

Regarding the imposition of fines according to the Commercial Tax Law for the applicant's default, as specified in the Public Ruling 1/2022 [*sic*] referred to above, defaults in the 2019-2020 assessment year (2019 fiscal year from 1-4-2019 to 30-9-2019) for which the dispute arose may not be sanctioned by the Commercial Tax Law, but shall be subject to a fine according to the relevant section depending on the type of default [*listed*] in chapter 10, sections 64 to 74.

- (a) Section 68 (b) Tax Administration Law provides that if a taxpayer underpays tax due to an incorrect statement or omission in the tax return, and the statement or omission was made intentionally or negligently, 75% of the underpaid tax shall be paid if the amount of underpaid tax exceeds MMK 100,000,000.
- (b) Section 74 (b) Tax Administration Law provides that if any person fails to pay all or part of a tax payable in installments in accordance with any tax law within the due date, an amount equal to 10% of the unpaid tax shall be paid as a fine for the late payment.

In relation to tax assessment and tax collection according to the Tax Administration Law, only the Director General may act, but it has been found that the Internal Revenue Department, by exercising the powers conferred by section 86 (b) Tax Administration Law, delegated with Notification No. 261/2019 dated 1-10-2019 the powers of tax assessment in sections 27, 28, 29, 30 and 32 and matters related to the imposition of fines according to sections 64 to 74 to the Department Head and the Section Heads of the Department of the Large Taxpayer Office.

Regarding the imposition of fines for the applicant's failure to comply with the Tax Administration Law, as there are no provisions with regard to sufficient causes for which an exception may be made, there is no reason to consider the arguments of the applicant. It is therefore ordered as follows:

Order

Instead of the decision of the Director General dated 20-6-2022 (which confirms the decision of the Large Taxpayer Office) in Administrative Review No. 9/2022 applied for to the Director General of the Internal Revenue Department, an amended order is issued requesting the Large Taxpayer Office to re-assess the fines according to the Tax Administration Law for the applicant company's failure to comply with the provisions of the Commercial Tax Law.

Kyaw Kyaw
Member

Myint Oo
Chairman
Head of the Tribunal

Win Tin
Member



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Revenue Appellate Tribunal

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