

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
TAT APPLICATION NO. 207 OF 2023

AFRICA RENEWAL MINISTRIES LIMITED..... APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

**BEFORE: MS. PROSCOVIA R. NAMBI, MS. KABAKUMBA MASIKO, MS. GRACE
SAFI**

RULING

This ruling is in respect of an application challenging an assessment of Shs. 54, 000,000 being withholding tax on land acquired by the Applicant by gift. Further, the High court of Uganda made a decision invalidating the Respondent's objection decision.

1. Background Facts

The Applicant is a non-profit, non-governmental organization established under Ugandan law, and it carries out evangelism across the country. On 19 September 2019, the Howie Christian Charitable Trust and the Applicant executed a gift deed, in which the Trust donated property located at Leasehold Register Volume 3026 Folio 8 Main Street, Iganga, measuring approximately 0.231 hectares. Subsequently, on 7 July 2020, the Respondent issued a notice of assessment for Shs. 54,000,000, representing a 6% withholding tax on the purchase of said property.

On 10 July 2020, the Applicant objected to the assessment on the grounds that the land in question was a gift, not a purchase. On 7 October 2020, the Respondent issued a decision on the objection, rejecting it and upholding the initial assessment, along with an additional assessment.

2. Representation

The Applicant was represented by Mr. Mugabi Roger and Ms. Patricia Mugisa, while the Respondent was represented by Mr. Donald Bakashaba and Mr. Samuel Oseku.

3. Issues for determination

- 1) Whether the Applicant is liable to pay the tax assessed by the Respondent?
- 2) Whether the Respondent's objection decision is valid?
- 3) What remedies are available to the parties?

Ms. Joanne N. Kabugo, the Finance Manager of the Applicant, testified that on 17 June 2019, the Howie Christian Charitable Trust donated property located at Leasehold Register Volume 3026 Folio 8 Main Street, Iganga, measuring approximately 0.231 hectares to the Applicant without any monetary consideration. This donation was made through a resolution of the Howie Christian Charitable Trust during a meeting held on 29 May 2019. The resolution was extracted and signed on 17 June 2019 and was filed with the Uganda Registration Services Bureau on 20 June 2019.

She further testified that the Applicant executed a deed of gift and assignment with the Howie Christian Charitable Trust to formalise the resolutions agreed upon. To the Applicant's knowledge, the donation and/or transfer of the mentioned property was not subject to Withholding Tax for two reasons:

- i) The donation was made by a resolution that was duly registered and filed on 20 June 2019, prior to the amendment of the Income Tax Act that introduced Withholding Tax on the purchase of business assets.
- ii) The transaction was not a purchase; it was a gift/donation, as can be clearly established from the resolution and the Deed of Gift, in accordance with the amended Income Tax Act Cap. 340, even if the law were applicable at the time.

Ms. Joanne N. Kabugo stated that following the transfer of the property into its name, the Applicant received a notice of assessment from the Respondent on 7 July 2020, demanding 6% withholding tax on the purchase of said property, amounting to Shs. 54,000,000 plus interest of Shs. 6,336,000.

She noted that the Applicant objected to the assessment, and the Respondent issued a decision on the objection that partially allowed and partially disallowed the objection while upholding its assessments and issuing an additional assessment. Ms. Joanne N. Kabugo pointed out that the objection decision was ambiguous, as it did not specify which parts

of the Respondent's assessment were allowed or disallowed. She maintained that the Applicant's property was transferred as a gift with no consideration subject to withholding tax.

Ms. Joanne N. Kabugo testified that the Applicant applied for an extension of time to file the Application for review. Although the Tax Appeal Tribunal denied the application for extension of time, the High Court of Uganda subsequently allowed it upon appeal. In its ruling in Civil Appeal No. 58 of 2022, the Trial Judge remarked that the objection decision issued by the Respondent was not legally tenable due to its ambiguity, as it failed to clarify whether the Applicant's objection was allowed or disallowed. However, the High Court of Uganda did not determine whether the property obtained by the Applicant as a gift could be subjected to withholding tax.

The Respondent did not call any witnesses.

4. Applicant's submissions

The Applicant submitted that the Applicant is not liable to pay the tax assessed on grounds that:

"a) The property in issue was acquired by the Applicant as a gift with no consideration paid and therefore could not attract 6% Withholding Tax.

b) The gift was made on 17 June 2019 before the amendment on withholding tax came into force".

The Applicant contended that the property was acquired as a gift without consideration paid and should not incur the 6% Withholding Tax. The applicant cited Section 118(B)(2) of the Income Tax Act, as amended in 2019 (now Section 130 (2)), which states:

"A resident person who purchases a business or business asset shall withhold tax at a rate specified in Part VIII of the Third Schedule"

The Applicant submitted that it is not in dispute that the Applicant is a resident person within the meaning of Section 2 (yy) of the Income Tax Act which defines a person to include a company and Section 2(hh) which defines a resident person to include a

resident company. However, the matter in dispute before the Tribunal is whether there was a purchase that would attract withholding tax.

The Applicant referenced the Black's Law Dictionary, 10th Edition, Page 1429 which defines a purchase as "the act or instance of buying".

Furthermore, the Applicant affirmed that the facts indicate the property was donated, not purchased. On 17 June 2019, the Howie Christian Charitable Trust donated property at Leasehold Register Volume 3026 Folio 8 Main Street, Iganga, measuring approximately 0.231 hectares to the Applicant without any monetary compensation. This transaction constituted a gift from the Howie Christian Charitable Trust to the Applicant and should not incur withholding tax.

The Applicant also cited Black's Law Dictionary, 10th Edition, page 803, which defines a gift as "the voluntary transfer of property to another without compensation."

Additionally, the Applicant referenced the case of Grace Musiime v Uganda Revenue Authority, Application No. 204 of 2022, where the Tribunal noted:

"..the three essential characteristics of a gift are that it should be voluntary, it should be without consideration and there should be acceptance by the donee."

The Applicant argued that the property gifted by Howie Christian Charitable Trust Ltd exhibited all three essential characteristics of a gift. Regarding the gift's voluntary nature and the absence of consideration, Exhibit 1, the resolution authorising the transfer of the property from Howie Christian Charitable Trust to the Applicant, explicitly states:

"The Company transfers its property comprised in LRV 3026 Folio 8 described as Plot 120 Main Street Iganga to Africa Renewal Ministries for no monetary consideration."

The Applicant maintained that by passing and registering the resolution authorising the land transfer, Howie Christian Charitable Trust Ltd voluntarily gifted the land to the Applicant.

The Applicant further argued that concerning the third characteristic—acceptance by the donee—after registering the resolution, the Applicant began occupying the land, and the

parties later executed a deed of gift, signed by the Applicant's representatives, signifying the Applicant's acceptance of the gift.

Additionally, the Applicant argued that the donation of the property was typical, given the context behind the donation, namely that the Applicant is a non-profit, non-governmental organization that relies on donations and gifts for its evangelism activities throughout the country. Moreover, the land was donated by a charitable trust that does not engage in selling and purchasing land. The gift was motivated by love, affection, and the relationship between the parties.

The Applicant referenced the case of ***Luwaluwa Investments Limited v Uganda Revenue Authority, Application No. 39 of 2021***, where Mr. Siraj Ali, in his dissenting ruling, stated:

"A withholding tax is an income tax. For Section 118 (B) (2) to apply to the proceeds arising from the sale of property by a financial institution such proceeds of sale must constitute income in the hands of the financial institution".

Mr. Siraj Ali further remarked:

"The term "income" has been defined under Black's Law Dictionary 10th Edition, Bryan A Garner, at page 880 as "The money or other form of payment that one receives usually. periodically, from employment, business, investments, royalties, gifts, and the like..."

The Applicant submitted that since no money was exchanged in the transaction leading to gifting of the property to the Applicant, the gifting of the property to the Applicant does not qualify as a purchase within the meaning of Section 118(B)(2) of the Income Tax Act. The Applicant submitted that the amendment to the Income Tax Act which was relied upon by the Respondent to assess the 6% Withholding Tax came into force after the said transaction had taken place.

The Applicant cited **Section 17 of the Interpretation Act, Cap. 3** which provides:

"(1) Subject to this section—

(a) the commencement of a statutory instrument shall be such date as is provided in or under the instrument or, where no date is so provided, the date of its publication as notified in the Gazette;

(b) every statutory instrument shall be deemed to come into force immediately on the expiration of the day next preceding its commencement.

(2) A statutory instrument may be made to operate retrospectively to any date which is not earlier than the commencement of the Act under which the instrument is made".

The Applicant submitted that in the case of ***Uganda Revenue Authority v Whistleblower, Civil Appeal No. 30 of 2021***, Justice Stephen Mubiru observed that;

"The above common law position is also reflected in section 13 (2) (c) of The Interpretation Act, which provides that where any Act repeals any other enactment, then unless the contrary intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. Retrospective operation should not be given to an amending statute so as to effect, alter or destroy existing rights. The law does not operate retrospectively as to affect "rights and obligations which arose pre-enactment."

The Applicant submitted that according to **Section 1 of the Income Tax (Amendment) Act, 2019**, the said amendment came into force on 1 July 2019. The property was donated to the Applicant by a resolution dated 17 June 2019 and filed with URSB 20 June 2019. The Applicant contended that it is their submission that the resolution dated 17th June 2019 amounted to an instrument of gift through which the said property was gifted to the Applicant.

The Applicant referenced the case of ***Grace Musiime v Uganda Revenue Authority, App No. 204 of 2022*** where it was observed that

"...the above decision requires either a deed of gift, or an instrument of gift or actual delivery of the gift for a valid transfer of a gift. A donor can therefore transfer property by gift through any of the above means."

On the issue of ***whether the objection decision was valid***, the Applicant submitted that the objection decision issued by the Respondent was ambiguous and accordingly invalid.

The Applicant cited Section 24 (5) of the Tax Procedure Code Act which provides:

"The Commissioner may make a decision on an objection to a tax assessment, affirming, reducing, increasing, or otherwise varying the assessment to which the objection relates; or to any other tax decision, affirming, varying, or setting aside the decision."

The Applicant further submitted that in this case, upon receiving a notice of assessment, on 10 July 2020, the Applicant objected to the assessment contending inter alia that the same had been wrongfully imposed by the Respondent. The Applicant submitted that on 7 October 2020, the Respondent made its objection decision wherein it allowed the objection in part, disallowed the objection, upheld its assessments and issued an additional assessment.

The Applicant submitted that the said objection decision was ambiguous and made in contravention of Section 24(5) of the Tax Procedure Code Act since it did not specify which parts of the Respondent's assessment were allowed or disallowed.

The Applicant submitted that when the Applicant's application for extension of time to file the application of review of the Respondent's decision was before the High Court of Uganda vide Civil Appeal No. 58 of 2022, the Trial Judge addressed the issue of whether the objection decision in this matter was valid.

The Trial Judge, Hon. Lady Justice Patricia Kahigi Asimwe, observed that;

"The Appellant's objection was to the assessment of the tax of UGX 54,000,000. On review of the decision of the Respondent, the court finds that it raises several questions. Was the decision with respect to Section 24(5) of the Tax Procedure Code Act "affirming, reducing, increasing, or otherwise varying the assessment of UG 54,000,000? Which part of the objection to the assessment of UG 54,000,000 was allowed and which part was disallowed? How much was the Appellant required to pay and how much was the Appellant exempted from paying."

The Trial Judge further observed and held that;

"The decision of the Respondent is ambiguous. The purpose of an objection decision is to communicate the final decision of the Respondent on the tax objection made by a taxpayer. The objection decision should guide the taxpayer on what to do. That is, whether to go ahead and pay the tax assessed or appeal to the Tribunal against the objection decision. The Appellant was at a loss on what to do with such a communication from the Respondent. Court finds that the decision was ambiguous and therefore does not meet the requirements of Section 25(4) ..."

The Applicant submitted that since the objection decision in this matter was allowed in part, disallowed in part, upheld the Respondent's assessments and issued an additional assessment, it was ambiguous and therefore invalid. The Applicant prayed that the Tribunal upholds the decision of the High Court and find that the objection decision issued by the Respondent was invalid and set it aside.

5. Respondent's Submissions

On 21 September 2023, the TAT ruled in favor of the Respondent dismissing the Applicant's application for an extension of time. Dissatisfied, the Applicant filed an appeal in the High Court. The Judgment Arising from Civil Appeal No. 0058 OF 2022, ruling is as follows:

"The 7 October 2020 decision did not meet the requirements of Section 24(5) (now Section 23) of the Tax Appeals Tribunal Act, Cap 341, and therefore, it was not a valid objection decision and that the Tribunal failed to evaluate and interpret the provisions of Section 16(1)(c), (2), and (7) of the Tax Appeals Tribunal Act, nor did it address whether the Applicant's application for an extension of time was time-barred. The Applicant had reasonable grounds to request an extension of time to file for a review of the objection decision."

The appeal was allowed, and the High Court's decision set aside the Tribunal's ruling. Following the High Court's judgment, the Applicant filed an application for review of the objection decision before the TAT (TAT No. 207 of 2023). The grounds for the review are that the property was a gift, not a purchase, and the objection decision of 7 October 2020, which partially upheld and partially dismissed the objection, lacked clarity.

The Respondent submitted that in tax disputes, it is well-established that the burden of proof lies with the Applicant to demonstrate that they are not liable to pay the taxes levied. The Respondent submitted that the crux of the dispute is whether the transfer of the property to the Applicant amounted to transfer of a gift, or the same was a purchase and therefore attracting WHT.

The Respondent submitted that **Section 4 (1) of the Income Tax Act Cap. 338** provides:

"Subject to, and in accordance with this Act, a tax to be known as income tax shall be charged for each year of income and is imposed on every person who has chargeable income for the year of income."

The Respondent submitted that in the case of ***Siraje Hassan Kajura Vs. URA*** the Supreme Court noted:

"In conclusion, the duty to pay taxes is sanctioned by the Constitution. Unless exempted, the obligation to pay income tax is mandatory."

The Respondent also cited ***Uganda Revenue Authority vs Balondemu David HCCA NO. 2 Of 2023***, where High Court held:

"It is trite law that the role of court is not re-write the law or infer fanciful or extraneous interpretations into plain provisions of the law, but rather to interpret and apply the meaning reasonably deductible from the provisions".

The Respondent submitted that the Courts emphasize the necessity to construct statutes without reading anything into the statute and restrict the Court to discern the true intention of the legislature.

The Respondent pondered as to whether the transfer of property from Howie Christian Charitable Trust to the Applicant qualifies as a gift under Section 21(1) (t) of the Income Tax Act, Cap 338 or it amounted to a purchase under Section 130 (2) of the Income Tax Act, Cap 338 that should have attracted tax at a 6% WHT rate.

The Respondent submitted that the Applicant was issued with a WHT tax assessment of Shs. 54,000,000. They referenced the ***Black's Law dictionary, 8th Edition, page 4944*** which defines "Withholding Tax" as *"the practice of deducting a certain amount from a person's salary, income, wages, dividends, winnings or other income for tax purposes."*

The Respondent submitted that withholding tax on sale of a business asset is provided for under **Section 118B (2)** which states:

"(2) A resident person who purchases a business or business asset shall withhold tax at a rate specified in Part VIII of the Third Schedule".

They submitted that Part VIII of the Third Schedule prescribes that;

"1. The withholding tax rate for purposes of section 118B (2) is 6% of the gross payment.

Section 2(h) defines a Business Asset to mean; *"an asset which is used or held ready for use in a business, and includes any asset held for sale in a business and any asset of a partnership or company"*.

The Respondent cited Section 18 (1) (a) of the Income Tax Act, Cap. 338 as amended which provides:

"Business income means any income derived by a person in carrying on a business and includes the following amounts, whether of a revenue or capital nature -

(a) the amount of any gain, as determined under Part VI of this Act which deals with gains and losses on disposal of assets, derived by a person on the disposal of a business asset, or in the satisfaction or cancellation of a business debt, whether or not the asset or debt was on a revenue or capital account."

The Respondent submitted that according to Section 2(g) of the Income Tax Act as amended business includes any trade, profession, vocation or adventure in the nature of trade. The Respondent submitted that the law provides that every resident person who purchases a business asset shall withhold tax at a rate of 6% of the gross payment made.

The Respondent submitted that for an asset to be considered as a business asset it has to fall under any of the categories under section 2(h). The asset does not have to fall within all the categories thereunder before it can be considered as a business asset. This position was affirmed in the recent case of ***Comfort Homes (U) Ltd vs. Uganda Revenue Authority TAT Application No.66 of 2020*** where it was stated:

"In construing the term business asset as under S.2 (h), it must be established, either:

- (a) That the land in question was an asset which was being used in a business, or*
- (b) That the land in question was an asset held ready for use in a business, or*
- (c) That the land in question was an asset held for sale in a business, or*
- (d) That the land in question was an asset of a partnership or a company.*
- (e) That the land in question was an asset which was being used in a business."*

The Respondent again referenced Black's Law Dictionary which defines an asset as "an item that is owned and has value." This definition has been cited with approval in the case of ***Vivo Energy Uganda Limited Vs. URA TAT App. No. 29 of 2017.***

The Respondent contended that the suit property was an asset as it was an item that was owned and had business value and that under Section 2 (h), an asset can be classified as a business asset if the asset is owned by a partnership or company.

The Respondent submitted that where the taxpayer has failed to make their declarations to the Commissioner as in this case, the Commissioner has the powers to use other methods to arrive at the correct tax liability of the taxpayer. The phrase "best judgement" has been elaborately discussed by courts in a plethora of decisions.

The Respondent submitted that in ***Uganda Revenue Authority v Tembo Steels Ltd Civil Appeal No. 09/2006***, the Court citing ***Van Boeckel v Customs and Excise Commissioners [1981] 2 ALL ER 505*** where at page 508 Woolf J held:

"As to this, the very use of the word judgment" makes it clear that the commissioners are required to exercise their powers in such a way that they make a value judgment on the material which is before them. Clearly, they must perform that function honestly and bona fide. It would be a misuse of that power if the commissioners were to decide on a figure which they knew was, or thought was, in excess of the amount which could possibly be payable, and then to leave it to the taxpayer to seek, on appeal, to reduce that assessment."

Secondly, clearly there must be some material before the commissioners on which they can base their judgment. If there is no material at all it would be impossible to form a judgment as to what tax is due.

Thirdly, it should be recognized, particularly bearing in mind the primary obligation to which I have made reference, of the taxpayer to make a return himself, that the commissioners should not be required to do the work of the taxpayer in order to form a conclusion as to the amount of tax which, to the best of their judgment, is due. In the very nature of things frequently the relevant information will be readily available to the taxpayer, but it will be very difficult for the commissioners to obtain that information without carrying out exhaustive investigations.

The use of the words "best of their judgment" does not envisage the burden being placed on the commissioners of carrying out exhaustive investigations. What the words 'best of their judgment

envisage, in my view, is that the commissioners will fairly consider all material placed before them and, on that material, come to a decision which is one which is reasonable and not arbitrary as to the amount of tax which is due. As long as there is some material on which the commissioners can reasonably act then they are not required to carry out investigations which may or may not result in further material being placed before them."

The Respondent submitted that the Applicant does not adduce any transfer agreements, proof of stamp duty payments, financial statements to demonstrate that indeed the property in dispute was transferred to it as a gift. The failure of the Applicant to provide the documents requested only buttresses the Respondent's case that the property in question was a purchase and tax ought to have been paid on the same.

The Respondent submitted that they are fortified by the ruling in ***Red Concepts Ltd V Uganda Revenue Authority Application No. 36 Of 2018***, the tribunal emphasized the crucial necessity of information and documentation when it observed:

"Where a statute requires one to give information or other particulars, the said information should be accurate to enable public authorities act on it. If the information is false or misleading, the tribunal cannot turn a blind eye to it as this would be tantamount to condoning an illegality and perpetrating fraud."

The Respondent relied on the case of ***Karl Evans Brown V Commissioner of Income Tax***, DOWNER JA said at Pg. 289;

"The cardinal features of the income Tax Act are the obligation on the taxpayer to furnish particulars of his income to the tax gatherer and the inquisitorial power of the tax gatherer to require such particulars. There is no room for reversal of roles".

The Respondent submitted it is the duty of the taxpayer to furnish all particulars in respect to incomes earned for that year of income to enable the tax body to act on the same in determining the taxes due.

The Respondent submitted that under paragraph 5 of the statement of reasons, the Respondent pleads that it invited the Applicant's representatives to understand the grounds of the Applicant's objection and requested proof in support of their objection. Despite being requested for documents to support its objection, the Applicant failed to

adduce the document requested. The only implication being the transaction in question was a sham, subterfuge and camouflage all intended to evade the payment of taxes.

The Respondent submitted that the Applicant relied on ***Grace Musiime v Uganda Revenue Authority (TAT Application No. 204/2022)***, where the Tribunal identified three key characteristics of a gift: it must be voluntary, without consideration, and accepted by the donee. The Applicant relies on the above holding for the proposition that the resolution dated 17 June 2019 amounted to an instrument of gift through which the said property was gifted to the Applicant.

The Respondent submitted that the facts and the principle of law espoused in *Grace Musiime* above are distinguishable from the facts at hand. Whereas in *Grace Musiime*, the Tribunal dealt with a car being transferred as a gift, the instant case deals with the transfer of land which is quite peculiar.

Whether the Respondent's objection decision is valid?

The Respondent contended that the Applicant submitted that the Respondent's objection decision was ambiguous and accordingly invalid and should be set aside. The Applicant relied on the decision of the High Court in the *Africa Renewal* case vide Civil Appeal No. 58 of 2022, an appeal filed in the High Court against the ruling of the Tribunal which dismissed the Applicant's application for extension of time. The Court held:

"The decision of the Respondent is ambiguous. The purpose of an objection decision is to communicate the final decision of the Respondent on the tax objection made by a taxpayer. The objection decision should guide the taxpayer on what to do. That is, whether to go ahead and pay the tax assessed or appeal to the tribunal against the objection decision. The Appellant was at a loss on what to do with such a communication from the Respondent. Court finds that the decision was ambiguous and therefore does not meet the requirements of Section 25 (4) of the TPCA."

The Respondent submitted that the decision of the High Court had merely the effect of granting the Application for an extension of time as prayed for by the Appellant (Applicant). The Court did not in any way pronounce itself on the merits of the case as to whether the Applicant is liable to pay the taxes as assessed by the Respondent.

The Respondent contended that taxes are levied and assessed by an Act of Parliament and can only be waived or set aside by the same process. The Respondent submitted that the Applicant further argued that the objection decision was ambitious and invalid for failure to comply with Section 24 (5) of the Tax Procedure Code which states:

"The Commissioner may make a decision on an objection;

a) To a tax assessment, affirming, reducing, increasing, or otherwise varying the assessment to which the objection relates; or

b) To any decision, affirming, varying, or setting aside the decision.

The Respondent contended that it is their submission that the above section does not state the prescribed form of an objection decision. However, Section 68 of the TPCA provides that the validity of a tax decision, a notice of a tax decision, or any other document purporting to be made or executed under a tax law is not affected by reason that the provision of the tax law under which it is made have not been complied with, quashed or deemed to be void or voidable for want of form; or affected by reason of any mistake, defect, omission or commission in it.

The Respondent argued that the jurisdiction of the courts of law does not extend to the format or mode of construction of taxation documents or documents executed under the law. The objection decision was valid and should be upheld by the Tribunal.

6. The Applicant's submissions in rejoinder

The Applicant reiterated its submissions and stated that the argument that the suit property was a business asset did not constitute the Respondent's arguments in the objection decision, nor their statement of reasons and it amounts to departure of pleadings.

The Applicant submitted that the Respondent did not adduce any evidence to prove that the suit property was a business asset. The Applicant argued that this was an afterthought which did not influence the Respondent's decision and amounts to departure of pleadings.

The Applicant submitted that it presented evidence to show that the suit property was a gift, and no gross payment was made hence not subject to withholding tax. The Applicant submitted that it submitted all relevant documents including a duly registered company resolution and a deed gift. These documents alone, the Respondent should have reached a conclusion that the property was not purchased and was before the enactment of the provision of the 6% withholding tax.

The Applicant further submitted that the decision of the High Court on the validity of the objection decision is binding on the Tribunal and should be upheld. The objection decision was allowed in part, disallowed in part, it was unambiguous and therefore invalid. The Applicant prayed that the Tribunal sets aside the Respondent's objection decision and substitute it with an order that the notice of assessment was issued in error since the property did not amount to purchase that attracts withholding tax. The Applicant prayed that this application is allowed with costs.

7. Determination by the Tribunal

Having reviewed the evidence and submissions of both parties, this is the ruling of the Tribunal:

Section 118 (B) (2) of the Income Tax Act as it was then provided:

"A resident person who purchases a business or business asset shall withhold tax at a rate specified in part VIII of the third schedule".

PART VIII of the schedule provides that:

"The withholding tax rate for purposes of section 118B (2) is 6% of the gross payment".

In the case of ***Luwaluwa Investments Ltd V URA, TAT App No. 39 of 2021***, the Tribunal noted:

"A reading of Section 118 B (2) of the Income Tax Act shows that for one to withhold tax under the said section, the following must be met:

- 1. There must be a resident person*

2. *There must be a purchase*
3. *The purchase must be of a business and or a business asset*
4. *The purchaser must withhold tax."*

In the present case, the Applicant argues that the property was received as a gift and that there was no purchase and therefore, there was no need to withhold. On the hand, the Respondent however contends that since the Applicant did not provide sufficient documentation to demonstrate that no compensation was exchanged, it had to categorize the transaction as a purchase.

The Tribunal must determine whether the property in question can be classified as a gift exempt from withholding tax or as a purchase subject to the 6% tax.

As outlined in ***Grace Musiime v Uganda Revenue Authority, TAT Application No. 294 od 2022***, a valid gift transfer requires either a deed of gift or an actual delivery of the property. The Applicant has provided documentation, including a resolution and a deed of gift, which substantiate its claim that the property was indeed a gift. Black's Law Dictionary defines a gift as "*the voluntary transfer of property to another without compensation*". This definition aligns with the characteristics stipulated in *Grace Musiime v Uganda Revenue Authority*, wherein a gift must be voluntary, without consideration, and accepted by the donee. The resolution clearly outlines that the transfer was made without monetary exchange, fulfilling these requirements.

Effect of the Income Tax (Amendment) Act of 2019:

The Tribunal acknowledges that the amendment in question came into force on 1 July 2019. The timing of the property transfer, which occurred on 17 June 2019, means that the transaction, even if it were to be deemed a purchase, should not be subject to taxes introduced by the amendment. As highlighted in *Mayanja Joshua & others v Wantante Samuel & Others*, Civil Suit No. 467 of 2018, the rights of parties to previously established transactions remain intact unless expressly stated otherwise in the legislative amendment. Lady Justice Florence Nakachwa affirmed,

"In my judgment, where a statute is amended while a matter is pending, the rights of a party to the action, in the absence of a contrary intention, must be decided in accordance with the statutory provisions in force at the time of the institution of the action."

The Tribunal therefore agrees with the Applicant that the amendment does not affect the transaction about this property.

Validity of the Objection Decision:

The Applicant argues that the Respondent's objection decision is invalid due to ambiguity and failure to meet the requirements of Section 24(5) (now 26 (5)) of the Tax Procedure Code Act. The objection decision failed to clarify which parts were allowed, disallowed, or what the additional assessments entailed. The lack of specificity violates fundamental principles of fairness and due process in taxation, which dictate that obligations must be clear and understandable.

The High Court has already ruled that the Respondent's objection decision did not meet the legal requirements as set out in Section 24(5) of the Tax Appeals Tribunal Act, ultimately determining that the decision was invalid due to its ambiguity. The purpose of an objection decision, as noted by the High Court, is to clarify the standings of both parties regarding tax liabilities. Given this context, the Tribunal finds that the ambiguity inherent in the Respondent's decision fails to guide the Applicant appropriately, thus rendering it invalid.

Furthermore, once the High Court determined that the Respondent's objection decision was invalid, it practically meant that the Respondent did not make a valid decision within the statutory timelines stipulated in Section 26 (6) of the Tax Procedure Code Act, Cap 343, which requires:

(6) The Commissioner General shall serve notice of an objection decision on the person objecting within ninety days from the date of receipt of the objection.

Burden of Proof:

In tax disputes, the burden of proof lies with the Applicant to prove that a tax assessment or any other tax decision is incorrect, as reiterated by the Respondent. However, it is

critical that the Respondent adheres to the legal standards and frameworks when making assessments and decisions. The reliance on an objection decision that was expunged by the High Court, alongside arguments not presented in that objection decision, constitutes a departure from proper legal procedure.


Conclusion:

The Tribunal therefore finds that the property in question was indeed gifted to the Applicant, not purchased, and therefore does not attract withholding tax. The Tribunal is bound by the decision of the High Court that the Respondent's objection decision dated 7 October 2020 is invalid due to its ambiguity and failure to comply with statutory requirements.


The Tribunal orders as follows:

- i. This Application is accordingly allowed.
- ii. The withholding tax assessment of Shs. 54,000,000 is hereby set aside.
- iii. Costs of this application are awarded to the Applicant.

Dated at Kampala this 11th day of April 2025.



PROSCOVIA R. NAMBI
CHAIRPERSON



KABAKUMBA MASIKO
MEMBER



GRACE SAFI
MEMBER