

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**TAT APPLICATION NO. 54 OF 2022**

AGRI EXIM LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MS. ROSEMARY NAJJEMBA,  
MS. CHRISTINE KATWE

**RULING**

This ruling is in respect of an application challenging the decision of the Respondent to disallow the Applicant's claim for an initial allowances on an industrial building under Section 27A of the Income Tax Act, Cap 340 (as it then was).

**1. Background Facts**

The Applicant is in the business of procuring, processing, manufacturing, packaging and export of agricultural produce in Uganda. In November 2018, the Applicant purchased eight warehouses and an office building from Lexman Ltd for USD 3,595,000. The Applicant subsequently carried out extensive renovations, including constructing a laboratory, extended the building, and installed machinery to adapt the premises for the manufacture sunflower oil, soy products, and other agricultural goods. The Applicant claimed an initial allowance of Shs.3,275,767,400, which the Respondent disallowed on the grounds that the building was not new and had previously been used by Lexman Ltd.

**2. Issues for determination**

The issue for determination is whether the Applicant is entitled to a claim for initial allowances.

### 3. Representation

The Applicant was represented by Ms. Belinda Nakiganda, Mr. Jonathan Rukikaire and Ms. Linda Mugisha while the Respondent by Mr. Barnabus Nuwaha.

The Applicant presented two witnesses while the Respondent presented one witness.

The Applicant's first witness was Mr. Ankit Jangla, a tax consultant of the Applicant (AW1). He testified that sometime in November 2018, the Applicant purchased eight warehouses and an office building from Lexman Ltd at land situated at Block 206 Plot 77 Kyadondo, Mpererwe for USD 3,595,000 dollars for use in its business. However, the Respondent disallowed the initial allowance claimed amounting to shs.3,275,767,400 on the basis that the initial allowance is only available to person who places a new building in service for the first time.

The Applicant's witness testified that upon purchase of the warehouse, the Applicant refurbished and constructed a laboratory and installed machinery to suit the purpose to manufacture sunflower and soy beans, chia seeds and sunflower seeds. Following this, the Applicant first used the industrial building in 2019 when they started business of manufacturing and agro-processing.

The Applicant's Second witness, Mr. Varun Bhassin, a Director (AW2). He testified that the Applicant purchased the said warehouses and renovated and refurbished them, completed the office building, constructed a laboratory among others and installed different machinery to suit the purpose to manufacture sunflower and soya oil, process agricultural products like sesame, soy beans chia seas, cocoa beans red chilli and sunflower.

The Respondent called one witness, Mr. Ambrose Ongom, who is employed with the Respondent's Large Taxpayers Division (RW1). He testified that in 2020 the Respondent carried out a compliance review of the Applicants tax affairs for the period 2017 to March 2020. The witness stated that he did not carry out due diligence on the state of the building but walked through and around the building. He stated that his due diligence was only restricted to ownership. He further stated that he did not visit the warehouses when Lexman Ltd owned them but visited them when the Applicant purchased them and discovered that the warehouses had machinery that was sorting, cleaning and packing soya beans.

#### 4. The Submissions of the Applicant

The Applicant submitted that the Respondent disallowed the initial allowance on the basis that the building was already put in use by Lexman, and the Respondent witness testified that the property didn't qualify for the definition of an approved industrial building.

The Applicant submitted that following the purchase of the buildings, they carried out extensive renovations and built a laboratory, office block, and extension of the building to convert the same into industrial buildings fit for the business of manufacturing. Only after the building was fit for use and certificates from Kampala City Council Authority (KCCA) and National Environment Management Authority (NEMA), did they put the buildings to first use.

The Applicant further submitted that **Section 22 (1) (a)** of the ITA provides:

*"Subject to this Act, for the purpose of ascertaining the chargeable income of a person for a year of Income, there shall be allowed a deduction all expenditures and losses incurred by the person during the year of income to the extent to which the expenditures or losses were incurred in the production of income included in gross income"*

The Applicant submitted that **Section 27A of the Income Tax Act Cap 340** provided for initial allowance. In particular, **Section 27A (4)** states:

*"A person who places a new industrial building in service for the first time during the year of income is allowed a deduction for that year of an amount equal to 20% of the cost base of the cost base of the industrial building at the time it was placed in service."*

This implies that if a person places a building for service for the first time, the person is allowed a deduction of 20% of the cost base of the building in the year of income.

The Applicant submitted that section 2 of the ITA defines a person to include:

*"an individual, a partnership, a trust, a company, a retirement fund, a government..."*

Therefore, the Applicant is a company and a taxable person under ITA

The Applicant relied on **UMEME Ltd & others Vs. Comm. Gen. URA TAT 40 of 2018** where it was held:

*"A person who incurred the expenditure in acquiring an asset should be the one entitled to claim depreciation allowance in respect of such asset."*

The Applicant further submitted that in the **Umeme (supra)**, it was held:

*"Used for the purpose of the business" means that the assets must be used by the owner for the purposes of carrying on the business and earning profits thereon"*

The Applicant submitted that AW1 and AW2 testified that the building was the manufacturing place for the Applicant's business. Therefore, the buildings were used for the purpose of the business. This is also affirmed in the financial statements, which reflect the capital expenditure for the Applicant regarding business and confirm that the Applicant was in business for the period in issue.

The Applicant further submitted that it is the legal owner of the property, uses the property in the production of its income, and is entitled to initial allowance deductions as the person who incurred the expenditure on the building for the period April 2017 to March 2020.

The Applicant submitted that AW2 testified that when the Applicant bought the property/structure, the floor, and the walls were not constructed properly. He further testified to the fact that on purchasing the property, there were only walls and the out structure of the building. **(See A35 and A36 on pages 260-272 and of the Joint Trial Bundle)**. After purchasing the building, the Applicant refurbished and renovated the warehouses, constructed a laboratory, office block, and toilets, and installed different machinery to suit the purpose of the business of the Applicant of manufacturing and processing agricultural products.

The Applicant submitted that the AW2 further testified that the Applicant had to use civil engineers to finish the walls and redo/repair the floors. He also testified to the fact that there was no electricity, and the Applicant brought in transformers and purchased cables and panels to connect electricity to the warehouses. **(See A11, 12, 13, 14, 15, 16, 19, 20 & 22-37 of the Joint Trial Bundle and A52 of the Applicant's Additional Trial Bundle for documentation to demonstrate the additional expenses incurred)**

The Applicant submitted that therefore, the property in question falls within the ambit of a new industrial building because it was purchased in 2018 and the construction in the form of renovations, refurbishments, purchase of machinery and construction of a laboratory, commenced immediately after purchase of the property.

The Applicant submitted that because of the renovations, refurbishments, and constructions carried out by the Applicant, the Applicant was able to apply to NEMA for certification and approval from KCCA to start production and export of commodities. (**Sec A55 and A56 on pages 13-17 and 18 respectively of the Joint Trial Bundle**) The Applicant only placed the building in service for the first time in 2019 after it was fit for purpose and having obtained clearance from the local authorities.

The Applicant submitted that **Section 27A (7)** of the ITA provides:

*"For the purposes of subsections (4) and (6), a new industrial building or extension of an existing industrial building means a building on which construction was commenced on or after 1<sup>st</sup> July 2000."*

The Applicant submitted that the purchased property in 2018 and thus the construction was commenced after 2000. Therefore, the building, qualifies for an initial allowance deduction on the industrial building.

The Applicant submitted that **Section 27A (8)** ITA further states that "in this section 'industrial building' does not include an approved commercial building."

This implies that the ITA makes an exception to the definition of industrial building in Section 27A by excluding an approved commercial building from the definition of industrial building.

The Applicant further submitted that Section 2 (jj) of the ITA defines an industrial building to mean:

*"any building which is wholly or partly used, or held ready for use, by a person in-*

- (i) Manufacturing operations*
- (ii) Research and development into improved or new methods of manufacture*
- (iii) Mining operations*
- (iv) An approved hotel business*
- (v) An approved hospital; or*
- (vi) Approved commercial building."*

However, the exception to the above is the definition in Section 2(jj) by stating that an industrial building under Section 27A doesn't include an approved commercial building.

The Applicant submitted that it is in the business of manufacturing and had an industrial building that they carry out business from. Therefore, the Applicant qualifies for the definition of industrial building per Section 27A (8) as the building is used for manufacturing operations. The Applicant submitted that it manufactures sunflower oil and processing of agricultural produce like sim-sim, soya beans, etc. (**See A5 on pages 10-30 of the Joint Trial Bundle**). The Applicant submitted that based on the above analysis of the facts and the law applicable, the Applicant is entitled to a deduction for that year of an amount equal to 20% of the cost base of the industrial building at the time it was placed in service.

The Applicant submitted that in the case of ***Commissioner of Domestic Taxes Vs Dodwell and Company (EA) Limited Income Tax Appeal E152 of 2020***, citing ***Amalgamated Society of Engineers Vs Adelaide Steamship (1920) 28 CLR 129 at 161-2***, it was held:

*“The fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of the Parliament that made it; and the intention has to be found by an examination of the language used in the statute as a whole.”*

The Applicant further concluded that it should be allowed to claim for the initial allowance as it has met all the conditions for the grant of the initial allowance.

## **5. Submissions of the Respondent**

The Respondent submitted that the burden of proof is on the Applicant to prove that the assessment is incorrect.

The Respondent also submitted that Section 27A (4) of the ITA provides that a person who places a new industrial building in service for the first time during the year of income is allowed a deduction for that year of an amount equal to 20% of the cost base of the industrial building at the time it was placed in service. Further Section 27(8) of the Income Tax Act provides that for purposes of the section Industrial building doesn't include an approved commercial building.

The Respondent submitted that the Income Tax Approved Industrial Buildings Regulations under Regulation 6 1c provide that an Approved Commercial building is one used as warehouse or commercial storage facility. The above statutory provision establishes the conditions upon which initial allowance is an entitlement.

- (i) That a tax payer owns an industrial building that is not an approved commercial building.
- (ii) That the taxpayer puts the building into use for the first time.

The Respondent submitted that the Applicant sought to rely on Sections 27(6) and 27A (7) and (8) of the ITA however the Applicant does not meet the conditions for the grant of initial allowances.

The Respondent submitted that there is no evidence submitted by the Applicant to qualify their purchase as an industrial building. No evidence was led as to the manufacturing operations of the Applicant, relevant approvals regarding manufacturing on the specific property nor do the returns and or financials of the Applicant bear the acquisition of the said warehouses as factories/manufacturing plant.

The Respondent submitted that a new manufacturing building would require an approved plan for the same, compliance with the relevant construction and manufacturing laws, which the Applicant did not testify about as such the said invoices are merely aesthetic and have nothing to do with construction. It is also noteworthy that at pages 27-28, all relevant approvals were found to have been obtained by the vendor being Lexman.

The Respondent further submitted that it should be noted that the building was already captured in the seller's return and the sale agreement clearly captures the description of the same as warehouses. Further it should be noted that the amount claimed was based on the purchase cost of the warehouses and that the Applicant did not declare or mention in their returns that the building they acquired from Lexman was an industrial building or that the same had been converted.

The Respondent submitted that the cost base or expense claimed in purportedly setting up the 'new' industrial building was never filed with the Respondent or captured in the Applicant's financials. The Respondent stated that the said figure is from thin air and has no basis and the Applicant lacked evidence to demonstrate the basis and or computation of the same.

The Respondent submitted that the Applicant instead attached several documents in support of their assertion as to manufacturing, and additions to the building. However, the said documents were never tendered in at audit nor at objections and as such cannot be relied upon as basis for objection and the said documents are dated after the period in dispute and are merely proof of purchase of equipment and not construction of an industrial building.

The Respondent submitted that it is noteworthy that the role of the Tribunal is to review a decision of the Respondent which review would be unfair to be based on documents that were not made available to the Respondent (*receipts at pages 142 - 258, A55, A56 of the JTB*).

The Respondent submitted that the wording of Section 27 is clear. it is not disputed that the Applicant bought the building as a warehouse. No communication or notice of manufacturing as alleged was ever mentioned at audit or at objections. Accordingly, the Applicant does not fit within Section 27.

The Respondent further submitted that even if they were to have the same listed as a factory, the basis of the sum of Shs. 3,275,767,400 as claimed by the Applicant was not broken down and or defended. The said figure did not appear in the financials and or returns of the Applicant and a guise by the Applicant to recover the purchase price as initial allowance.

The Respondent prayed that the initial allowance which was disallowed by the Respondent be found to have been denied in accordance with the law and upheld.

In the alternative, the Respondent submitted that in the event that the Honourable Members do not resolve in favour of the Respondent, it is their submission that a perusal of the Applicants pleadings, documents and submissions, one cannot find proof of compliance with Section 15 of the Tax Appeals Tribunal Act and accordingly we pray that should be dismissed.

## **6. Submissions of the Applicant in Rejoinder**

The Applicant reiterated its earlier submission. However, regarding the requirement to pay 30% of the tax in dispute, the Applicant stated that the tax assessed wasn't payable as the Applicant was in a loss position. Further, the Applicant submitted that

the payment of 30% was not in dispute by the parties and the Respondent would have raised this objection before the hearing if indeed it was payable.

## **7. The determination by the Tribunal**

Having listened to the evidence and read the submissions of the parties, this is the decision of the Tribunal.

The Applicant company is duly incorporated in Uganda, carrying out the business of procuring processing, manufacturing, packaging and export of agricultural produce in Uganda. In November 2018, the Applicant purchased eight warehouses and an office building from Lexman Ltd for USD 3,595,000. This evidence by a sale agreement dated 15 November 2018 wherein warehouses and an office building was sold by Lexman to the Applicant (**see A5 at page 10 – 30 of the JTB**).

The Applicant subsequently carried out extensive renovations, including constructing a laboratory, extending the building, and installing machinery to adapt the premises for manufacturing sunflower oil, soy products, and other agricultural goods. Evidence of this can be found in the Applicant's financial statements for the period ended 31 March 2019 which show capital works in progress as well as various photos adduced by the Applicant in the JTB.

The Applicant claimed an initial allowance of Shs.3,275,767,400, which the Respondent disallowed on the grounds that the building was not new and had previously been used by Lexman Ltd.

Therefore, the Tribunal must determine whether the Applicant's property / assets qualify for initial allowance within the meaning of the ITA.

### **What is initial allowance?**

Initial allowances are a form of a capital/ tax depreciation allowances that are given to eligible items and industrial buildings that are put in use for the first time by a taxpayer in their business.

In ***Umeme Ltd and another v URA TAT Application 40 of 2018***, the Tribunal stated that the purpose of initial allowances is to encourage investments outside Kampala.

Initial allowances with respect to buildings are provided for under the former section 27 A (4) of the ITA which states:

*“A person who places a new industrial building in service for the first time during the year of income is allowed a deduction for that year of an amount equal to 20% of the cost base of the building at the time it was placed in service.”*

Therefore, bring sections 27 A (1) and (4) together, entitlement for initial allowances requires that two conditions are met, namely:

- (i) There must be an industrial building;
- (ii) The item must be placed in service for the first time.

**Condition 1: Whether the buildings are industrial buildings**

Section 27 A (3) provides that an “industrial building” does not include an approved commercial building.

An “approved commercial building” is defined by the Approved Industrial Building Regulations, 2003 to mean:

*“...an industrial building which is primarily used by the owner or let out for rent –*

- a) for the purpose of carrying on a business, trade or profession;*
- b) as an office;*
- c) as a warehouse or commercial storage facility; or*
- d) as a workshop.”*

Therefore, what distinguishes approved commercial buildings from other industrial buildings is their primary use. This is because a building can be an office today but a factory tomorrow and vice versa, therefore, use and functionality of the building is the test for determining whether it will be treated as an industrial building for tax purposes or an approved commercial building.

Applying the above to the present facts, the Applicant purchased eight warehouses and an office building from Lexman Ltd. What this tells us is that Lexman, the previous owners of the buildings, used them as warehousing and office space. Therefore, the buildings were approved commercial buildings during the subsistence of Lexman’s ownership.

However, Lexman sold the building to the Applicant. What did the Applicant do after they purchased these buildings, that were formerly used as warehouses and offices?

The Applicant carried out extensive renovations, including constructing a laboratory, extending the building, and installing machinery to adapt the premises for manufacturing sunflower oil, soy products, and other agricultural goods.

In effect, the Applicant, being the new owners, changed the primary use of the buildings from warehouse and office use to manufacturing.

The Respondent contends that there is no evidence submitted by the Applicant to qualify building as an industrial building. No evidence was led as to the manufacturing operations of the Applicant, relevant approvals regarding manufacturing on the specific property nor do the returns and or financials of the Applicant bear the acquisition of the said warehouses as factories/manufacturing plant. However, we respectfully disagree with the Respondent.

During the cross examination of the Respondent's witness (RW1), when asked about the presence of machinery at the premises of the Applicant, he stated that when he visited the Applicant's premises, he found that:

*"...one of the warehouses had machinery that was sorting, cleaning and packaging soya bean."*

Further, when the Tribunal asked RW1 the reasons for denying the Applicant initial allowances, RW1 stated:

*"Section 27 has exclusions for initial allowance. These include approved commercial building...which includes buildings that are let out as warehouses."*

However, the same witness had just testified that the buildings had machinery which were being used to sort, clean and package soya bean. To our understanding, the activities involving the use of machinery to sort, clean and package soy bean are manufacturing or processing activities and not warehousing activities.

Further, the Applicant adduced evidence by way of pictures showing how the warehouses were used before they were purchased and their use after the renovations and commissioning as shown at paged **260 -265 of the joint trial bundle**. Specifically, in the pictures after the commissioning of the buildings, one can clearly see plant and machinery used in the processing of agricultural produce.

In addition, there is evidence of importation of various machinery by the Applicant in 2019 including boiler machinery, destoners, aspiration systems, air dehumidifiers, weigh bridge, soybean machinery among others (**pages 169 -179 of JTB**).

In addition, the Applicant's audited financial statements for the period ended 31 March 2019 contain evidence of a significant increase in property, plant and machinery in 2019. For example, PPE increased from Shs. 12 bn in 2018 to Shs. 31 billion. Of this, there were additions to buildings worth Shs, 13 billion, plant and machinery worth Shs. 918 million and capital work in progress worth Shs. 4.7 billion.

Further, all the above plant and machinery was imported and declared by the Applicant via the Respondent's ASYCUDA system. There are also several correspondence between the Applicant and the Respondent regarding the imported machinery (**see pages 289 – 298 of the JTB**).

Therefore, the Respondent's assertion that the Applicant did not provide evidence of the manufacturing operations or that the Respondent had no knowledge of the same (despite the Respondent's own visit to the premises) is disingenuous.

Therefore, we are satisfied that the Applicant's building met the test for industrial building as the Applicant used the buildings in question primarily for manufacturing / processing purposes. Therefore, the Applicant satisfies the first condition.

**Condition two: The item must be placed in service for the first time**

The Respondent has submitted that the said buildings do not qualify for initial allowances because the building was already captured in the seller's return. Therefore, the question to be answered is where previous ownership of a building meets the "service for the first time" test. In other words, in "service for the first time" only available to newly constructed buildings or does it also extend to the purchase of "used" buildings?

The phrase "in service for the first time" is not explicitly defined in the ITA. However, we have the benefit of a Practice Note, by which the Commissioner General has clarified on the meaning of the phrase.

According to the ***Practice Note issued by the Commissioner General on 2<sup>nd</sup> November 2001, the phrase*** “placing an item of eligible property into service for the first time” was clarified as follows:

*“Placing an item of eligible property into service for the first time should be interpreted to mean for the first time in the taxpayer’s business. Therefore, where a taxpayer ‘B’ is entitled to initial allowance in the first year he puts the same equipment to use notwithstanding that ‘A’ got initial allowance in respect to the same equipment.”*

Whilst the above relates to items of eligible property which are dealt with under Section 27 A (1) of the ITA, the clarification can be extended to industrial buildings that are placed into service for the first time. In effect, a building that is used the first time in the taxpayer’s business regardless of the same having been previously owned by another taxpayer or notwithstanding that the previous taxpayer claimed initial allowances in respect of the same building.

Therefore, it is irrelevant that Lexman previously owned the buildings or whether Lexman previously claimed any initial allowances/ what is of relevance is whether the new owner, is using the said building for the first time in their business.

We have already established that the Applicant purchased the buildings, renovated them and converted them to accommodate a manufacturing operation. The Applicant has demonstrated that following the renovations, they obtained a certificate of occupation from Kampala City Council Authority (KCCA) and National Environment Management Authority (NEMA), to allow them put the buildings to use. There is no evidence that the Applicant had previously used the buildings in their business. All evidence points to use for the first time in the Applicant’s business.

Therefore, we are satisfied that the Applicant meets the second condition for the grant of initial allowances.

We are also cognisant of the decision of this Tribunal in ***Umeme Ltd and another v URA TAT Application 40 of 2018*** where the Tribunal held:

*“...if any person...places an item of eligible property outside the radius of Kampala, it is entitled to initial allowance...it is irrelevant if the item was placed by a lessor or a lessee as long as it is any of the abovementioned persons who places the item as prescribed by law.”*

Having established that the Applicant was entitled to the initial allowances, we not turn to the Respondent's prayer for the Tribunal to dismiss this application for non-payment of 30% of the tax in dispute.

Firstly, as submitted by the Applicant, the Applicant has historical carried forward tax losses and even if this application were allowed, the Applicant would not have any tax payable. According to the Applicant's income tax return for 2018, the Applicant had a tax loss of over Shs. 2 billion which would absorb the tax assessed by the Respondent. Therefore, the Respondent's argument regarding the 30% deposit does not hold in the present circumstances.

Taking all the above into consideration, the Tribunal finds that this application has merit. The Applicant is entitled to initial allowances and the assessment is hereby set aside. Therefore, the application is allowed and costs are hereby awarded to the Applicant.

Dated at Kampala this 10<sup>th</sup> day of July 2025.

  
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**CRYSTAL KABAJWARA**  
**CHAIRPERSON**

  
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**ROSEMARY NAJJEMBA**  
**MEMBER**

  
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**CHRISTINE KATWE**  
**MEMBER**