



THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO. 68 OF 2024

AMOS DAIRIES LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: HON. CRYSTAL KABAJWARA, MS. CHRISTINE KATWE

RULING

I. Introduction

1. This application was brought under section 25(3) of the Income Tax Act seeking orders that:
 - (i) Section 25(3) cannot be applied retrospectively to losses accrued prior to 2018, and the Respondent's inclusion of the losses incurred before 2018 is erroneous and unjustified.
 - (ii) Carried-forward losses are not deductions for the purposes of computing tax EBITDA, and their inclusion in EBITDA calculations under Section 25(3) is incorrect.
 - (iii) The additional assessment of Shs. 1,080,511,066 be set aside.
 - (iv) The Respondent recomputes the Applicant's maximum allowable interest deduction for 2019-2022, excluding the losses that were incurred prior to 2018, in accordance with the law.

II. Background Facts

2. The Applicant is engaged in the production of milk and milk products. The Respondent conducted a review of the tax returns submitted by the Applicant for the period 2021-2022 and thereafter issued Administrative Additional Income Tax assessments amounting to Shs. 1,080,511,067 arising from over-claimed interest under the provisions of Section 25 of the Income Tax Act.
3. On 19 December 2023, the Applicant objected to the Assessment of Shs. 1,080,511,066.40 on the grounds that carried forward losses should not be considered in calculating tax EBITDA, and stated that:
 - (i) Carry-forward losses are merely a result of expenses and deductions allowed for the year exceeding the income for the year for a taxpayer. According to the taxpayer, the deductions that should be considered under section 25(5) are offset against chargeable income rather than deducted.
 - (ii) The income tax return template designed by URA considers carry-forward losses after the computation of chargeable income, hence an offset.
4. On 28 February 2024, the Respondent issued an objection decision notice disallowing the Applicant's objection on the grounds that carried forward losses are allowed deductions in determining chargeable income as per section 38 of the Income Tax Act and should form part of the computation in determining EBITDA.
5. The Applicant, being dissatisfied with the objection decision, sought review in this Honourable Tribunal on 27 March 2024

III. Issues for determination

6. The following are the issues for determination:
 - (i) Whether the Applicant is liable to pay the tax assessed?
 - (ii) What remedies are available to the Parties?

IV. Representation and evidence

7. Mr Andrew Kyambadde and Mr Trevor Mark Ntege represented the Applicant, while Mr Amanya Mishambi represented the Respondent.

V. Submissions of the Applicant

8. The Applicant submitted that the Respondent's review of the Applicant's tax returns for the periods 2019-2022 and the subsequent additional assessment of Shs. 1,080,511,066 is erroneous.
9. The Applicant further submitted that the gist of this dispute primarily arises from the Respondent's treatment of carried-forward losses incurred prior to July 2018 in applying Section 25(3) of the Income Tax Act, Cap 340 and that a portion of these losses accrued prior to the enactment of Section 25(3) in 2018. Applying a law enacted in 2018 to losses incurred before that year constitutes an impermissible retrospective application of tax legislation.
10. The Applicant submitted that Section 25(3) cannot be applied retrospectively as it is a fundamental principle of statutory interpretation that tax legislation is presumed to operate prospectively unless the legislature explicitly provides otherwise.
11. The Applicant cited Commissioner *of Income Tax V Vatika Township Pvt Ltd (Civil Appeal 8750 of 2015)*, where the Supreme Court of India held:

"Legislation affecting substantive rights should be applied prospectively, unless a clear and unambiguous intention to operate retrospectively is evident".
12. The Applicant submitted that the court further emphasised that retrospective application of disadvantageous tax provisions violates the rule of law, depriving taxpayers of certainty in arranging their affairs.
13. The Applicant further submitted that Section 25(3), which was enacted in 2018, introduced a cap on deductible interest based on tax EBITDA and contains no express provision allowing retrospective application. Importantly, a significant portion of the Applicant's carried-forward losses pre-dates 2018 and therefore, subjecting these losses to the limitation

imposed by Section 25(3) retroactively would effectively impose a new liability that did not exist at the time the losses arose

14. The Applicant also cited **Commissioner General URA V Edulink Holdings Ltd, HCA 0178 of 2021**, where the High Court stated:

"Retrospective operation cannot be given to a statute so as to take away or impair an existing right or create a new obligation".

15. The Applicant submitted that the Respondent's treatment of the losses incurred before 2018 as part of the Section 25(3) interest limitation improperly disregards the above taxation principle, and is therefore legally untenable.

16. The Applicant submitted that section 25 (3) of the ITA defines EBITDA to represent:

"Earnings before interest, tax, depreciation and amortisation. The Respondent's computation, which reduces EBITDA by including carried forward losses prior to June 2018, is a misapplication of the statutory formula."

VI. Submission of the Respondent

17. The Respondent submitted that the determination of this issue is twofold:

- (i) The determination of whether assessed losses should be included in the computation of EBITDA, and
- (ii) whether the Respondent erroneously applied provisions of Section 25(3) of the ITA retrospectively in computing the Applicant's EBITDA for the period.

Application of assessed losses to compute EBITDA

18. The Respondent submitted that it is paramount to mention the cardinal rule of interpretation of Tax Statutes as stated in **Uganda Revenue Authority V Henry Kajura SCCA 9 of 2015**, where the court held:

"I am persuaded by the decision of AG V Bugisu Coffee Marketing Association Limited (1963) EA 39 in which Justice Shade not only held that, for a taxing

Act, one must look at the language used to ascertain the nature of the obligation created."

19. The Respondent submitted that the tax statutes must be interpreted strictly. Courts are required to adhere to the plain, natural and ordinary meaning of the words in the statute without reading anything into them.
20. The Respondent submitted that Section 25(3) of the Income Tax Act states:
"The amount of deductible interest in respect of all debts owed by a taxpayer who is a member of a group, other than a financial institution, micro finance deposit taking institution, tier 4 micro finance institution or person carrying on insurance business, shall not exceed thirty per cent of the tax earnings before interest, tax, depreciation and amortisation".
21. The Respondent submitted that the purpose of Section 25(3) is to cap the interest expense for enterprises in a group, as set out in ***Aponye Uganda Limited V URA TAT Application 80 of 2021.***
22. In addition, the Respondent submitted that Section 25(5) of the Income Tax Act defines what EBITDA as:
"Tax earnings before interest, tax, depreciation and amortisation "means the sum of (a) gross income less allowable deductions, except a deduction under subsection (1) ;(b) depreciation; and (c) amortisation."
23. The Respondent submitted that Section 36(1) of the Income Tax Act on the other hand, states that;
"Subject to this section and section 74, where, for any year of income, the total amount of income included in the gross income of a taxpayer is exceeded by the total amount of deductions allowed to the taxpayer, the amount of the excess, in this Act referred to as an assessed loss, shall be carried forward and allowed as a deduction in determining the taxpayer's chargeable income in the following year of income."
24. The Respondent further submitted that the plain reading and interpretation of Section 36(1) is that an assessed loss constitutes an allowable deduction

which is carried forward as an allowable deduction in a subsequent year of income, for computation of the chargeable income for that year.

25. The Respondent submitted that the tribunal is therefore enjoined to uphold the literal interpretation of the provisions of Section 25(3), (5) and Section 36 of the Income Tax Act and find that assessed losses should be considered in the computation of EBITDA.
26. The Respondent submitted that although the Applicant stated in its submissions that the Respondent erroneously applied assessed losses in the computation of EBITDA, the Respondent contends that the Applicant misconstrued the provisions of Section 25(3), (5) and Section 36 of the Income Tax Act.
27. The Respondent also cited ***Rwenzori Bottling Company Limited V URA TAT Application 21 of 2021***, which laid out the rationale of EBITDA provisions as follows:

"Section 25(3) of the Income Tax Act states that the amount of deductible interest in respect of all debts accrued shall not exceed thirty per cent of the tax earnings before interest, tax, depreciation and amortisation. Therefore, the 30% is calculated using the tax before interest, earnings, tax, depreciation and amortisation... the intention of Section 25(3), (4) and (5) was set to the limit which interest should not exceed".

Whether the Respondent erroneously apply provisions of EBITDA retrospectively?

28. The Respondent submitted that the provisions of EBITDA under Section 25(3), (4) and (5) of the Income Tax Act were legally applied in the computation of the Applicant's EBITDA for the period under review. The submission is buttressed by the intention and purpose of the amended provision under Section 25(3), (4) and (5) of the Income Tax Act, which was to merely enhance the existing legal provisions of thin capitalisation, and not create and or alter existing rights and obligations.
29. The Respondent further submitted that Section 25(3), (4) and (5) of the Income Tax Act was not an amendment to the legal tax rights and

obligations of taxpayers and the Respondent respectively, but rather an amendment to clarify and enhance the efficiency of the thin capitalisation provisions.

30. The Respondent submitted that Section 89(1) and (2) of the Income Tax Act (As amended) states that;

(1). "Subject to subsection (2), where a foreign-controlled resident company, other than a financial institution, has a debt to-equity ratio in excess of 1.5 to 1 at any time during a year of income, a deduction is disallowed for the interest paid by the company during that year on that part of the debt that exceeds the 1.5 to 1 ratio for the period the ratio was exceeded".

(2). "If the debt-to-equity ratio of a foreign-controlled resident company exceeds 1.5 to 1 for a year of income, subsection (1) does not apply if, at all times during the year, the amount of the debt of the company does not exceed the arm's length debt amount".

31. The Respondent submitted that from the reading of Section 89 above, the thin capitalisation provisions in the amended Income Tax Act had the sole intention of preventing profit shifting from Uganda through overstated/fictitious interest payments.
32. The Respondent submitted that the thin capitalisation provisions were amended and integrated into the interest capping provisions of Section 25(3), (4) and (5) of the Income Tax Act, to enhance the efficiency of the thin capitalisation provisions.
33. The Respondent submitted that it is important to analyse the rationale of the amendment and the resulting amended provisions. The amendment was pursuant to the OECD Base Erosion & Profit Shifting Action Plan 4 recommendation. The recommendation aims to limit base erosion by restricting groups from using intra-group loans to generate interest deductions in excess of the group's actual third-party interest expense.
34. The Respondent further submitted that the amendment neither created new tax liabilities nor rights and obligations; Section 25 (3), (4) and (5) merely provided context to the pre-existing thin capitalisation rules. This is

buttressed by the case of *AON Uganda Limited V URA HCCS No. 4 of 2008*, where it was held:

"The Government has actually put out a bill, namely, the VAT (Amendment) Bill 2009, which will now clearly add brokerage services to the definition of insurance. Does that cure something or change a previous position? I think not, I find that it simply makes good what has always been the de facto position on the ground"

35. The Respondent submitted that the Tribunal should uphold the Respondent's decision to apply the provisions of Section 25(3) of the Income Tax Act. The Respondent also invited the Tribunal to make a declaration that they did not apply the provisions of Section 25(3) of the Income Tax Act retrospectively.

VII. The Determination

36. Having read the submissions of both parties, the Tribunal makes the following decision.
37. The dispute arises from the Respondent's application of section 25(3) of the Income Tax Act, Cap 340, in computing the Applicant's allowable interest deductions for the years of income 2019 to 2022, which resulted in an additional income tax assessment of Shs. 1,080,511,066.
38. The core controversy is whether assessed losses, including those incurred prior to the enactment of section 25(3) in 2018, constitute allowable deductions for purposes of computing tax EBITDA and whether the Respondent's approach amounts to an impermissible retrospective application of the law.
39. We shall determine the following issues:
 - (i) Whether assessed losses carried forward form part of allowable deductions in computing tax EBITDA under section 25(3) and (5) of the Income Tax Act?

- (ii) Whether the Respondent applied section 25(3) retrospectively in violation of established principles of statutory interpretation?

Whether assessed losses form part of allowable deductions in computing tax EBITDA

40. The Applicant argued that carried-forward losses are merely offsets against chargeable income and should not be treated as deductions for purposes of computing tax EBITDA. The Respondent contended that section 36(1) of the Income Tax Act expressly categorises assessed losses as allowable deductions and that such losses must therefore be taken into account when determining tax EBITDA under section 25(5).

41. Section 25(5) defines tax EBITDA as:

“gross income less allowable deductions, excluding interest.”

Section 36(1) is explicit that an assessed loss is “allowed as a deduction” in determining chargeable income in a subsequent year. The language of the statute is clear and unambiguous.

42. In construing taxing statutes, courts and Tribunals are enjoined to give effect to the plain and ordinary meaning of the words used by Parliament where such words are clear, without importing extraneous considerations. This approach was affirmed in ***Mount Kenya Bottlers Ltd v Commissioner of Domestic Taxes [2019] eKLR***, where the Court held:

“Nothing is to be read into a taxing statute where the language is plain.”

43. The exceptions to the above principle include cases where a plain reading of the statute leads to an absurd result or mischief that was never intended by the legislature. In such cases, the intended purpose of the provision is considered. In the present case, the Applicant has not highlighted any mischief or absurdity that arises from the application of the plain meaning of the statute.

44. Further, section 36 (1) of the ITA recognises that once a loss is carried forward and utilised in a subsequent year of income pursuant to statute, it assumes the character of a current-year deduction rather than a historical event. The section provides as follows:

"...where, for any year of income, the total amount of income included in the gross income of a taxpayer is exceeded by the total amount of deductions allowed to the taxpayer, the amount of the excess, in this Act referred to as an "assessed loss", shall be carried forward and allowed as a deduction in determining the taxpayer's chargeable income in the following year of income."

45. The wording of section 36 (1) of the ITA indicates that historical assessed losses are allowable deductions in the current year of income and therefore fall within section 25(5). Consequently, such losses must be considered in the computation of tax EBITDA for purposes of applying the interest limitation under section 25(3) of the ITA.

Whether section 25(3) was applied retrospectively

46. The Applicant further contended that including losses incurred prior to 2018 in the EBITDA computation amounted to retrospective application of section 25(3), contrary to the principle that tax legislation should operate prospectively unless expressly stated otherwise.
47. The Income Tax (Amendment) Act, 2018, commenced on 1 July 2018, and the Act did not provide for retrospective application. Therefore, all the amendments to the Income Tax Act introduced by the Income Tax (Amendment) Act, 2018 take effect after 1 July, 2018.
48. The Tribunal agrees that, as a general principle, legislation affecting substantive rights is presumed to apply prospectively. However, a distinction must be drawn between retrospective imposition of liability and the application of an existing computational rule to a current year of income.
49. Section 13 (2) (c) of the Interpretation Act, Cap. 2 provides:

"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 in respect of any offence committed against any enactment so repealed."

50. In simple terms, the above provision means that if a new law cancels an old law, the cancellation doesn't affect things that happened when the old law was still in force. Any rights, benefits, responsibilities, or debts that existed under the old law remain valid unless the new law says otherwise.
51. In the present case, Section 25 was enacted in 2018. The assessed period in question, 2019 – 2022, came after the enactment of section 25. Therefore, section 25 cannot be said to be retrospective in this regard.
52. The Applicant's arguments that tax losses that arose prior to 2018 fall outside the scope of the provision on the basis that applying the amendment to historical losses amounts to a retrospective application of the law do not hold. This is because section 36(1) of the ITA allows assessed losses to be utilised in subsequent/prospective years of income. Section 25 did not affect taxpayers' rights to their assessed losses or change the legal effect of the losses. It merely introduced restrictions concerning interest deductions for income tax purposes.
53. In ***Yew Bon Tew v Kenderaan Bas Mara [1983] 1 AC 553***, the Privy Council authoritatively held that

"A statute is not retrospective merely because it takes into account antecedent facts; it is retrospective only where it alters the legal consequences of past events."
54. In light of the above, Section 25(3) applies to the computation of deductible interest in the relevant years of income, namely 2019 to 2022. The Respondent did not seek to reopen or re-assess tax losses in the years prior to 2018. Rather, those losses were utilised by the Applicant itself as allowable deductions carried forward into later years in accordance with section 36 of the Act.
55. The Tribunal therefore finds that once such losses are claimed in a post-2018 year of income, they form part of the statutory computation applicable in that year. Their inclusion in the EBITDA calculation does not

amount to retrospective application of the law, but rather the application of the law as it stands to the facts of the current year of income.

56. The Tribunal is persuaded by the Respondent's submission that section 25(3) did not create a new tax on past events but refined the mechanism for limiting interest deductions in ongoing and future tax periods, in line with international best practice on thin capitalisation and base erosion.
57. In light of the above, the Tribunal finds as follows:
- (i) Assessed losses carried forward, including those incurred prior to 2018, are allowable deductions for purposes of computing tax EBITDA under sections 25(3) and 25(5) of the Income Tax Act.
 - (ii) The application of section 25(3) in the computation of the Applicant's deductible interest for the years of income 2019 to 2022 did not amount to retrospective application of the law.
 - (iii) The additional income tax assessment of Shs. 1,080,511,066 issued by the Respondent was lawful and is hereby upheld.
58. Accordingly, the application is dismissed, and costs are hereby awarded to the Respondent.

Dated at Kampala this 17 day of June 2026.



HON. CRYSTAL KABAJWARA
CHAIRPERSON



MS. CHRISTINE KATWE
MEMBER

Note: Following the departure of one of the panel members, the parties agreed that the proceedings would be completed by the tribunal composed of the two remaining members.