

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 213 OF 2023

EXP. MOMENTUM (U) LTD APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MR. SIRAJ ALI,MS. CHRISTINE KATWE

RULING

This ruling is in respect of an application challenging assessments arising from variances between sales per income tax returns and sales per VAT returns statements, which the Respondent treated as unexplained income and taxed accordingly.

1. Background Facts

The Applicant is in the business of marketing and advertising. The Respondent conducted a returns examination and issued an additional income tax assessment of Shs. 263,850,113. This was on the grounds that there were sales variances between the VAT and income tax returns.

In February 2022, the Applicant objected to the assessment on the grounds that the variance in its VAT returns and income tax returns arose from timing differences in income recognition for VAT and income tax purposes.

Further, when filing the online objection, the Applicant claims that they erroneously entered the assessed amount in the non-disputed tax column instead of the disputed tax column. The Respondent issued an objection decision on the basis that the Applicant had not disputed the assessed amount.

Furthermore, the Respondent issued an additional income tax assessment of Shs. 33,554,047 allegedly based on an amended objection return to correct a double claim of Shs. 118,813.498 in the Applicant's original income tax return. The Applicant disputes the additional assessment.

The Applicant also disputes penal tax for the period March 2016 that was issued in respect of an outstanding VAT liability.

2. Representation

The Applicant was represented by Mr. Jonathan Rukikaire and Ms. Linda Mugisha, while Mr. Samuel Oseku represented the Respondent.

3. Issues for determination

At the scheduling of this application, the parties agreed upon the following issues for determination by this Tribunal.

- i. Whether the applicant is liable to pay the income tax assessed?
- ii. Whether the Applicant is liable to pay the VAT assessed?
- iii. What remedies are available to the parties?

Ms. Hilda Kidimu Mugambe a Director of the Applicant was the Applicant's first witness (AW1). She stated that in January 2020 to December 2020, the Applicant filed an income tax return showing a total chargeable income loss because that year the company was in a loss-making position of Shs. 81,489,000. On 25 December 2021, the Respondent issued the Applicant an income tax assessment of Shs. 263,850,113 on the basis that there were variances between income tax and VAT sales for the period 1 January 2020 to December 2020. The Applicant objected on grounds that the variance in VAT returns on which tax was assessed arose due to accrual of income brought about by various reasons.

She stated that the Applicant explained and provided the Respondent with detailed explanation and documentation. However, the Respondent made an objection decision on 30 April 2022, allowing the objection and issued an amended additional assessment of Shs. 33,544,049 without showing any basis for the assessment.

AW1 testified that the Respondent's position that the Applicant's sales for the tax period increased from Shs. 879,500,378 to Shs.991,313,876, with a variance of Shs. 11,818,498 in sales had no basis and was purely presumptive. Therefore, the Applicant is not liable to pay the Shs. 33,544,049 and the Shs. 263,850,113 as they both lack basis.

Mr. Gerald Gwoke, a Financial Controller of the Applicant was the Applicant's second witness (AW2). He explained that the variance between the sales per income tax returns of Shs. 2,524,758,659.89 and sales per VAT returns of Shs. 3,485,321,927.87 was due to the following:

Accrued income from 2019 invoiced in 2020

- (i) The Applicant accrued income for jobs executed in 2019 totalling Shs. 800,868,837. Tax invoices in respect of this invoice were then raised in 2020 and disclosed in the VAT returns in 2020.
- (ii) What was treated as undeclared income in 2020 was already disclosed in the financial statements and income tax returns of 2019.

Technical fees included output VAT

- (i) The technical fees amounting to Shs. 84,253,917 were erroneously captured under output VAT in the Applicant's monthly returns of 2020.
- (ii) As the technical fees related to imported services, they were excluded from sales for income tax purposes.

Mr. Obed Bampe Tindyebwa, the Managing Partner of the Applicant, was the Applicant's third witness (AW3). He stated that on 2 December 2021, the Respondent issued the Applicant an administrative additional income tax assessment amounting to Shs. 263,850,113 on the basis that there were variances between the income tax and Value added Tax sales for the period 1st January 2020 to 31st December 2021.

He also stated that the Respondent requested documents supporting the objection, which the Applicant submitted via email. The Applicant also requested a meeting to explain the information in the documents, which was never granted. He further stated that when filling in the objection form, the Applicant indicated that they did not dispute any amount, which was an oversight since the Applicant disputes the tax assessed of Shs. 263,850,113.

On 30 May 2022, the Applicant wrote a letter to the Respondent explaining the oversight in the objection process. However, the Respondent maintained the variance of Shs. 998,396,157 which was objected to and also maintained the assessed tax of Shs. 263,850,113, which had been erroneously declared as not disputed.

The witness also testified that on 30 April 2022, the Respondent issued an amended additional income tax assessment of Shs. 33,544,049, which was not supported by any explanation.

Further, on 30 May 2016, the Respondent issued the Applicant a VAT Assessment for March 2016, which included a penal tax of Shs. 13,327,296. The witness testified that the VAT return of March 2016 had an offset brought forward from February 2016 of Shs. 8,844,892. In addition, the return of February 2016 had a carried forward offset of Shs. 2,787,240 only.

He testified that the January 2016 offset carried forward of Shs. 6,663,647 was not considered, and the assessment of Shs. 13,327,296 was double the offset of Shs. 6,663,657.

He further testified that on 17 August 2021, the Applicant amended the February 2016 VAT return to reflect the correct offset, and it was allowed. After the VAT return was allowed, the Applicant objected to the VAT penalty on the grounds that the VAT liability in the return of March amounting to Shs. 7,106,611 is the correct amount that tallies with the VAT ledger.

The witness also testified that on 6 November 2021, the Respondent disallowed the objection to the VAT penalty on grounds that the Applicant did not avail any evidence, even though the Respondent had, in an email, acknowledged receipt of the documents. Therefore, there was a contradiction in the correspondence from the Respondent.

Mr. Tom Kasaija, an Officer in the Domestic Taxes Department of the Respondent, was the Respondent's first witness (RW1). He stated that the Respondent issued an Administrative Additional Income Tax Assessment of Shs. 263,850,113 due to sales variances between Income Tax and VAT returns for the period 01/01/2020 to 31/12/2020.

RW1 stated that the objection dated 7/02/2022 clearly reflects a non-disputed amount totalling Shs. 263,850,113. Therefore, the Respondent allowed the objection.

RW1 further testified that the Respondent established that the Applicant had double claimed an expense of Shs. 111,813,498 relating to rent in their original return. RW1 further testified that the amendment of the objection return by the Applicant to correct the double claim enhanced the chargeable income and increased the tax payable from the initially assessed undisputed sum of Shs. 263,850,113 to Shs. 297,394,162 as final tax payable, thereby creating an additional tax of Shs. 33,544,049.

4. Submissions of the Applicant

The Applicant submitted that they are not liable to pay the additional income tax of Shs. 263,850,113 because they provided documents to prove that the variances between its income tax returns and VAT returns arose due to timing differences in the revenue recognition during its accounting process.

The Applicant cited Section 38 (1) of the Income Tax Act, which provides that a taxpayer's method of accounting should conform to generally accepted accounting principles. International Accounting Standards (IAS18), the accounting standard applicable at that time, defined revenue as gross inflow of economic benefits (cash, receivables, other assets)

arising from the ordinary operating activities of an entity, such as sales of goods, sales of services, interests, royalties, and dividends.

The Applicant submitted that IAS 18 also provided the following guidance arising from rendering services. It stated:

"For revenue arising from the rendering of services, provided that all the following criteria are met, revenue should be recognized by reference to the stage of completion of the transaction of the balance sheet date (the percentage of completion method)".

The Applicant submitted that in conformity with Section 38 of the Income Tax Act, its revenue recognition criteria align with the guidance of IAS 18. Using the standards, at the end of each month, the Applicant recognized a portion of the contractual income in its financial accounts based on the percentage completed and deferred the rest up to the point the Applicant completed the performance of the service, and the customer accepted the service performed. This is because at the point of income recognition, the Applicant has not fully performed the services and is not entitled to the full contractual amount.

The Applicant further submitted that the timing differences in payment of taxes arising from the different recognition of income methods may shift the tax liability from one fiscal year to another, especially where income recognized in the income tax returns does not amount to a sale under the VAT Act for a specified fiscal year. The tax periods under the ITA are not synchronized with those under the VAT Act due to the difference in recognition criteria between IAS 18 and the VAT Act.

The Respondent considered all sales in the VAT returns as income that ought to have been declared in its ITA. However, the annual income tax payable by a taxpayer is determined by looking at its audited financial statements. It is imperative that the audited financial statements reflect a true and proper reflection of a company's business.

The Applicant testified that there was a variance of Shs. 960,563,276.98 between the Applicant's income tax return and its VAT returns for the assessed period. He stated that the variances arose because the Applicant accrued income (recognized income in audited financial statements without raising VAT invoices) of Shs. 800,868,837 in its financial statements for jobs that it executed in 2019 but not completed by the year-end.

However, the tax invoices in respect of this accrued income were raised in 2020 and declared in its VAT Returns for 2020. This created a situation where VAT returns had higher sales than income tax returns, yet the above accrued income had been subjected to income tax when it was included in audited financial statements. It therefore could not be taxed

again in 2020 and had to be excluded for income tax purposes. To do the contrary would amount to double taxation. (See A14 of the Joint Trial Bundle at pages 80-104).

The Applicant submitted that income was accrued internally before tax invoices were issued, while VAT was accounted for once the performance was completed and tax invoices were generated in line with Sections 29 and 14 of the VAT Act.

Section 29(1) of the VAT Act states that a taxable person making a taxable supply to any person shall provide that other person, at the time of supply, with an original tax invoice for the supply.

The Applicant cited Section 14(1)(c) of the VAT Act which states that a supply of goods or services occurs in any other case, on the earliest of the date on which:

- a) The goods are delivered or made available or the performance of the service is completed;
- b) Payment of the goods or services is made; or
- c) A tax invoice is issued.

The Applicant submitted that the majority of the discrepancy between the income reported in its audited financial statements and the amounts reflected in the VAT returns arose from timing differences in income recognition. This variance does not indicate an under-declaration of income, as substantiated by supporting invoices, bank statements and the Applicant's reconciliation.

The Applicant availed the Respondent with reconciliations of the turnover declared in the audited financial statements and the revenue declared in the VAT returns to prove that the variance was not a result of under declaration but merely related to timing differences and requested for a meeting to explain the information. However, this information was not considered by the Respondent.

The Applicant cited the case of ***Nokia Solutions and Networks Branch Operations OY v Uganda Revenue Authority TAT Application No. 80 of 2020***, the Tribunal noted that variances between income tax and VAT declarations may be explained by timing differences in payment of taxes arising from the different times of recognition of transactions between the two tax heads.

Furthermore, in the case of ***Enviro Serve Limited v Uganda Revenue Authority TAT Application No. 24 of 2017***, the Tribunal held that although the taxpayer in this case had made an error, URA was not allowed to levy a tax on the difference between the income tax

declaration and the VAT. The above decided cases clearly stipulate that the main cause in variances between income tax and VAT is timing differences in payment of taxes as is the case in this very dispute.

The Applicant submitted that the variance between IT returns and VAT returns caused by timing differences in the recognition of income does not constitute under- declaration.

The treatment of technical fees

The Applicant further submitted that the remaining variance was caused by the Applicant's treatment of technical fees received from a foreign provider, amounting to Shs. 84,253,917, which were mistakenly recorded under output VAT in the Applicant's monthly returns for 2020.

The Applicant submitted that technical services received from a foreign provider qualify as imported services, making them subject to VAT under the reverse charge mechanism. However, since they are not a supply made by the recipient, they should be excluded from sales in the recipient's VAT filings. The Applicant erroneously included these sales in its VAT returns, which increased the variance between the income tax and VAT returns.

The Applicant maintained that the income classified by the Respondent as undeclared in 2020 had already been disclosed in its 2019 financial statements and in the respective income tax return. The variance arose from an error in the treatment of imported services and not from an under-declaration, as alleged by the Respondent. The imposition of additional income tax on this basis constitutes double taxation, given that the income had already been declared and accordingly taxed.

The Applicant also submitted that they are not liable to pay the VAT penalty of Shs. 13,460,567 because the same was outstanding as at 30th June 2020 and was therefore waived under Section 46 of the Tax Procedures Code Act, which waives any interest and penalty outstanding as at 30 June 2020.

The Applicant also submitted that the February 2016 return was amended, and a correct offset was reflected, and it was subsequently allowed, implying that the assessment was rendered void.

The Applicant further submitted that they provided all the necessary evidence and documentation to the Respondent, who acknowledged receipt of the same via email on 12 October 2021. This shows a clear contradiction in the objection decision and the email from

the Respondent. The Applicant submitted that it discharged its burden of proof to prove the assessments were unfounded, and the taxation decision should not have been made.

The Applicant therefore prayed that the application be allowed, and the assessments be set aside with costs of this application.

5. Submissions of the Respondent

The Respondent submitted that the Applicant derived income and did not declare the same as required by sections 4 and 15 of the Income Tax Act.

Income tax assessment of Shs. 263,850,113

The Respondent submitted that the Applicant's objection as per the Respondent's system dated 7/02/2022 clearly reflects a non-disputed amount totalling to Shs. 263,850,113. This evidence was not controverted. The Respondent accordingly issued an objection decision allowing the Applicant's objection as the Applicant was not disputing the assessed tax.

Failure to object to the assessed tax

The Respondent submitted that where a taxpayer does not dispute a tax assessment and the Respondent accordingly maintains the same, a party cannot turn around and argue that it intended to dispute the same. This fact was confirmed during cross-examination when the Applicant's witness, Mr. Obed Tindyebwa (AW3) testified that no amount assessed was disputed by the Applicant.

Since the Applicant did not dispute the assessed amount, the amount is payable.

The Respondent submitted that the Applicant's attempt to dispute the assessed tax on 30 May 2022 was an afterthought since the Respondent had issued the objection decision a month earlier on 30 April 2022.

The Respondent cited the case of ***Cable Corporation Ltd v URA, Civil Appeal No. 1 of 2011*** where it was held:

"After the objection decision is made, it shall be communicated to the taxpayer, who may accept it or take further measures to oppose the same. Generally, the Commissioner would, after communicating the objection decision, exhausted its jurisdiction on the matter and further jurisdiction is vested in the High Court or the Tax Appeals Tribunal."

The Respondent cited the case of the ***Republic V Kenya Revenue Authority, Miscellaneous Civil Application No. 65 Of 2015*** where the court had an opportunity to pronounce itself on the nature of an objection to an assessment. It was held:

"The Respondent receiving the objection must be in a position to know what exactly the taxpayer is objecting to and what is not objected to. If it is the figures the taxpayer must indicate what in its view ought to be the correct figure unless the whole figure is objected to. In other words, the objection cannot be in the alternative and without prejudice to the foregoing".

The Respondent submitted that they were therefore justified in allowing the objection and issuance of an objection decision confirming the assessed tax.

Amended additional assessment of Shs. 33,544,049

The Respondent submitted that they established that the Applicant had double claimed an expense of Shs. 111,813,498 relating to rates and rent in their original return. Upon objection, the Applicant corrected the double claimed expense of rates and amended the return to correct the double claim. However, the amendment, which was a reversal of the double claim, enhanced the chargeable income, which in turn increased the tax payable increased from the undisputed sum of Shs. 263,850,113 to Shs. 297,394,162 as final tax payable, hence the top-up tax of Shs. 33,544,049.

The Respondent cited the case of ***Dennis Murray V Commissioner of Taxpayer Appeals Civil Appeal No. 70/2007***, where the Supreme Court of Jamaica held:

"It is incumbent on every taxpayer to deliver a true and correct return of the whole of his income from every source."

The Respondent submitted that it's the duty of the taxpayer (Applicant) 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. Therefore, the amended additional assessment was lawfully raised.

Technical fees

The Respondent submitted that the Applicant referred to technical fees as one of the variances assessed. Further, the Respondent submitted that technical fees were not part of the objection decision, and the tribunal should therefore disregard the same.

6. Submissions of the Applicant in rejoinder

In rejoinder, the Applicant submitted that an error apparent on the objection notice should not bar it from accessing justice.

Regarding the Shs. 33, 544, 049, the Applicant contended that the Respondent issued the additional assessment with no explanation for the assessment, and the Applicant could not object to the same.

The Applicant prayed that the Tribunal allow this application, set aside the assessments and awards the Applicant costs of this application.

7. The determination of the Tribunal

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

The Applicant is in the business of marketing and advertising. The Respondent issued an additional income tax assessment of Shs. 263,850,113 based on variances between VAT and income tax returns. The Applicant objected because the variance in its VAT returns and income tax returns arose from timing differences in income recognition for VAT and income tax purposes.

The Respondent issued an objection decision on the basis that the Applicant had not disputed the assessed amount. Further, the Respondent issued an additional income tax assessment of Shs. 33,554,047 allegedly based on an amended objection return to correct a double claim of Shs. 118,813.498 in the Applicant's original income tax return. The Applicant disputes the additional assessment.

The Applicant also disputed the penal tax for the period March 2016 that was issued in respect of an outstanding VAT liability. The Tribunal resolved as follows:

The validity of the objection made by the Applicant.

The Respondent argues that it issued the objection decision allowing the Applicant's objection on the ground that the Applicant did not dispute the assessed tax. The position taken by the Respondent is that where a taxpayer does not dispute a tax assessment and the Respondent accordingly maintains the same, a party cannot be seen to turn around and argue as an afterthought that it intended to dispute the same.

The Applicant's argument, on the other hand, is that it made an error when it stated in the objection that the tax liability of Shs. 263,850,113 was not in dispute. The Applicant argues that this error "*was a technicality which cannot render the other ingredients of the objection invalid.*"

In order to resolve this question, we must carefully look at the evidence adduced by the parties before the tribunal.

The testimony of Tom Kasaijja, an Objections Officer in the Respondent's Domestic Taxes Department, is very instructive.

Mr. Kasaijja however conceded that when a taxpayer objects, it means that they are not in agreement with the assessment.

Exhibit REX4, is a `Valid Objection Notice` dated 7th February, 2022.

Exhibit A19, which is an `Objection Notice Form for objecting Liability` sets out a description of the grounds for the objections as follows;

`The variance in VAT returns and income tax returns on which tax was assessed arose due to accrual of income. Therefore they arise due to timing differences between the basis of income recognition for VAT and income tax purposes`.

Under Exhibit A18, dated 6th March 2022, the Respondent requested the Applicant to provide documents. An excerpt from Section B of the document states as follows;

`Following your objection notice of reference number indicated above, you are hereby requested to provide the following documents.

- 1. Audited Books of Accounts for the period.*
- 2. Bank Statements for the period.*
- 3. All information necessary to support your grounds of objection.*

As proof that the above documents were provided to the Respondent pursuant to the above Request for documents, the Applicant relied on exhibit A5. Exhibit A5, is an email from Mr. Gerald Gwoke, the Applicant's Finance Controller to Tom Kasaijja, among others. The email states that as requested the following documents are attached;

- Exp Management Accounts for 2020.*
- Summary Writeup of the information relating to the variance.*
- Detailed support information relating to accrued income from 2019 that caused the variance in 2020 when finally invoiced.*
- Detailed support information relating to Technical fees amounts that were in the Output VAT schedules erroneously in 2020.*
- A sales schedule summarising the variance.*

Mr. Kasaijja confirmed under cross-examination that the requested documents had indeed been provided by the Applicant.

The question which arises is whether in the circumstances of this case, the Respondent was justified in rendering an objection decision on the basis that the Applicant had not disputed the assessment?

While both the Valid Objection Notice and the Objection Notice Form for Objecting Liability show that the sum of Shs. 263,850,113, is undisputed, a description of the grounds for objection under Section C of the Objection Notice Form for Objecting Liability (A19) clearly shows that the sum in question is being disputed. The email from Gerald Gwoke (A5) attaching the requested documents also shows that the Applicant was disputing the assessment.

If the Respondent had followed the procedure provided in its Online Objections system, the question as to whether the assessment was disputed or not, would not have arisen.

As can be seen from the Valid Objection Notice, (REX4), when a tax payer files an objection, the Respondent is required to determine whether this objection is valid before proceeding to determine it on its merits. It will be seen that the Valid Objection Notice, is divided into four sections. Section A sets out the details of the objection. Section B and Section C, respectively, set out whether the objection is valid or invalid. Sections B and C show that the system provides a mechanism through which invalid objections are sent back to the taxpayer and only valid objections are sent to the objections team for determination.

An objection, which asserts two contradictory positions, is invalid for being ambiguous, as no proper determination can be made by the Respondent, in respect of two contradictory assertions, by the same taxpayer. At this point, the Respondent ought to have rejected the objection for being invalid under Section C of the Valid Objection Notice. This would have provided the Applicant with the opportunity to file a valid objection.

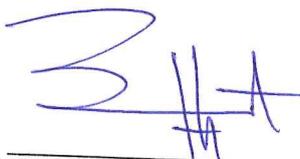
An objection decision, based on an invalid objection, is itself invalid. The Respondent ought not to have proceeded, to render an objection decision, in respect of an invalid objection.

As will be apparent from the testimony of RW1, Tom Kasaija, the objection decision was based solely, on the ground, that the Applicant did not dispute the assessed amount. This means that the Respondent did not address the question as to whether the variance between the Applicant's VAT returns and its Income tax returns arose as a result of the accrual of income. Although the testimony of AW2, Gerald Gwoke, details evidence of the variance and how it arose, the fact that the question relating to the variance was not considered by the Respondent, means that the tribunal is not able to review the objection decision, in as far as it relates to the question of the variance. This is for the reason that we do not have any input on record from the Respondent in respect of this ground. Determining this question without any input from the Respondent would amount to denying the Respondent a fair hearing.

As we agree with the conclusion of the Chairperson in relation to the Additional Assessment of Shs. 35,644,049/- and the VAT penalty of Shs. 13,327,296/-, this Application is allowed in part with the following Orders;

1. The assessment of Shs. 263,850,113/- dated 25th December 2021, is remitted to the Respondent for consideration of the question relating to whether the variance between the Applicant's VAT returns and its Income tax returns, arose as a result of the accrual of income.
2. The Applicant is liable to pay the Additional Assessment of Shs. 35,644,049/-
3. The Applicant is not liable to pay the VAT penalty of Shs. 13,327,296/-
4. Each party will bear their own costs.

Dated this13th..... day of ...October.....2025



SIRAJ ALI
MEMBER



CHRISTINE KATWE
MEMBER

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
TAX APPLICATION NO. 213 OF 2022

EXP. MOMENTUM (U) LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..... RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MR. SIRAJ ALI, MS. CHRISTINE KATWE

RULING

I have had the opportunity of reading in draft the ruling of my colleagues, and wish to dissent as follows.

The application should have been determined on its merits.

Section 20 of the Tax Appeals Tribunal Act permits the Tribunal to set aside the decision under review and make a decision in substitution for the decision so set aside. It provides:

“(1) For the purpose of reviewing a taxation decision, a tribunal may exercise all the powers and discretions that are conferred by the relevant taxing Act on the decision maker and shall make a decision in writing -

- (a) affirming the decision under review;*
- (b) varying the decision under review; or*
- (c) setting aside the decision under review and either –*
 - (i) making a decision in substitution for the decision so set aside; or*
 - (ii) remitting the matter to the decision maker for reconsideration in accordance with any directions or recommendations of the tribunal.”*

In other words, the Tribunal has the powers to exercise all the powers conferred upon the Commissioner General and his or her agents in respect to an application that is properly before it. Further, the Tribunal has the power to set aside the decision under review and make a decision in substitution for the decision set aside.

In the present case, having realized the inconsistencies in the Objections Notice and the supporting information, the Respondent's Objections Officer ought to have requested further clarification from the taxpayer. This was entirely within the Respondent's powers. Section 26 (9) of the Tax Procedures Code Act ("TPCA") waives the time limit for making an objection decision where a review of the records of the taxpayer is necessary for the settlement of the objection and the taxpayer is notified.

Therefore, the Respondent ought to have done everything necessary to settle the objections on its merits, for example, by (a) notifying the Applicant of the inconsistencies and (b) waiving the time limit to address this inconsistency.

Therefore, the Respondent had the power to extend the time within which to make the objection decision to allow it decide on the merits of the objection by considering all the information that the Applicant provided. Having not done this, the Tribunal can step into the shoes of the Respondent and make a decision based on the information that the Applicant provided to the Respondent.

The information that was provided by the Applicant included:

- (i) Management accounts for 2020;
- (ii) A write-up of information relating to the variance;
- (iii) Support information relating to the accrued income from 2019 that caused the variance in 2020;
- (iv) Support information relating to the technical fees amounts; and
- (v) Sales schedule summarizing the variance.

The merits of the assessed tax of Shs. 264 million

The Applicant stated that the variances arose from timing differences for income recognition between VAT and income tax purposes.

This Tribunal has previously pronounced itself on timing differences between the two tax heads. In the case of *Nokia Solutions and Networks Branch Operations OY v Uganda Revenue Authority TAT Application No. 80 of 2020*, the Tribunal noted that variances between income tax and VAT declarations may be explained by timing differences in payment of taxes arising from the different times of recognition of transactions between the two tax heads.

Further in *EnviroServ Limited v Uganda Revenue Authority, TAT Application No. 24 of 2017*, the Tribunal stated as follows:

"The annual income tax payable by a taxpayer is determined by looking at its audited financial statements.... Tax periods under the Income Tax Act are not synchronized with those under the VAT Act. A variance may occur where a transaction is done in June and is declared in the VAT returns in July. Therefore, depending on the circumstances of the case, the audited financial statements may not be appropriate in determining the VAT liability of a taxpayer."

It therefore also follows that the VAT returns of a taxpayer may not be appropriate for determining the income tax liability of a taxpayer.

The Applicant reconciled the variances and the reconciliation provided shows that the variances in respect of 2020 arose from:

- (i) Income that was accrued in 2019 and taxed in the same year for income tax purposes. The Applicant adduced financial statements that show the accrued income.
- (ii) Technical fees, which were imported services but erroneously included in sales. While reverse charge VAT is accounted for on imported services, the technical fees are not the income of the Applicant but of the foreign-based service provider. The Applicant provided copies of the agreement with the foreign supplier as well as invoices showing that the amounts were invoiced by the foreign supplier.
- (iii) Disbursements declared in VAT returns but not as income since disbursements are not the income of the taxpayer.

Therefore, on the balance of probabilities, the Applicant has discharged their burden of proof as they have demonstrated that the variance arose from timing differences and therefore, there is no unexplained income that should be subjected to income tax. Consequently, I would have set aside the assessment of Shs. 263,850,113.

Imported technical fees which the Respondent treated as the Applicant's income for income tax purposes and taxed accordingly

The Respondent's position on this matter is that the Applicant did not object to the technical fees. However, the technical fees formed part of the explanation for the variance between the sales per income tax and the sales per VAT returns. The item was not assessed on a stand-alone basis but formed the explanation for the objection to the Shs. 263,850,113. Further, on 6 March 2022, the Applicant provided detailed supporting information relating to

the technical fees amounts, stating that the technical fees had been erroneously included in the output VAT schedules for 2020.

Having reached the finding that the Respondent ought to have assessed the objection in its merits rather than on its form, and since the technical fees form part of the evaluation of the variances, it follows that they ought to have been considered by the Respondent. The Applicant adduced copies of a licensing of intellectual property and management services agreement dated 6 January 2016, which forms the basis of the technical fees that the Applicant paid to Experiential Marketing (pty) Limited (Ex. A15 at pages 105 of the Joint Trial Bundle ("JTB")). The evidence also shows various invoices from Experiential Marketing (pty) Limited to the Applicant, which corroborates the Applicant's position that the technical fees were not the income of the Applicant.

Therefore, the technical fees ought not to have been taxed as part of the Applicant's income.

The additional assessment of Shs. 33 million

The Applicant alleges that the additional income tax assessment of Shs. 33 million is baseless. On the other hand, the Respondent contends that the assessment arose when the Applicant revised their income tax return to reverse a rental expense that the Applicant had double claimed.

On 30 June 2021, the Applicant filed an amended income tax return for the period 1 January – 31 December 2020. The return showed total tax payable as nil. In the return, the Applicant claimed an expense attributed to rent/rates of Shs. 118,813,498 as part of its total operating expenses. The Applicant in the same return claimed a rental expense of the same amount under "other allowable deductions/expenses" (REX 1 of JTB at pages 115 – 125). Following a review of the Applicant's self-assessment return, the Respondent assessed the Applicant Shs. 263,850,113 (which formed the basis of the objection notice that has been dealt with under section (a) of this analysis). The Respondent supported their assessment with an assessment return. The Applicant then filed an objection return, which corrected the above double claim by deleting the item of expenditure from its operating expenses. This resulted in a tax liability of Shs. 297,394,162.

Since the Respondent had already assessed Shs. 263,850,113, they proceeded to issue an additional assessment for the difference in the assessed tax. This is exhibited as A7 on page 18 of the JTB. The amended additional assessment clearly shows how the difference arose.

It therefore follows that the additional assessment arose from the Applicant's reversal of the double claim.

Naturally, a reversal of the double claim of Shs. 118,813,498 gives rise to tax equivalent to 30% of the reversed amount, as the effect of the reversal of the expenses is to increase the chargeable income by the same amount. 30% of Shs. 118,813,498 is Shs. 35,644,049. Since I have already concluded that the Respondent's assessment of Shs. 263,850,113 is untenable; it follows that the only outstanding liability for purposes of this application is Shs. 35,644,049 arising from the reversal of the double claim. Therefore, I would have found that the Respondent correctly assessed income tax on the reversed double claim.

VAT penalty of Shs. 13,327,296

The Applicant submitted that the VAT penalty of Shs. 13,460,567 was outstanding as at 30 June 2020. Therefore, it ought to have been waived in accordance with Section 46 of the Tax Procedures Code Act. The Tribunal also noted that the Respondent did not make any submissions regarding this issue. Exhibit A8 at page 19 of the JTB contains a VAT assessment dated 30 May 2016. In the assessment, the Respondent imposed penal tax of Shs. 13,327,296 under section 65 (6) of the VAT Act. Therefore, since the penal tax was assessed in 2016 and has remained outstanding since then, the Respondent ought to have waived the same in accordance with section 46 of the TPCA, which provides:

"46. Waiver of interest and penalty

Any interest and penalty outstanding as at 30th June, 2020, is waived."

*In the case of **Kampala Nissan Ug Ltd v URA, Civil Appeal No. 007 of 2009**, Hon. Mr. Justice Christopher Madrama stated:*

"Disobedience to a statute enacted in the public interest and couched in mandatory language in terms of what it commands to be done renders anything done in disobedience of the statute null and void ab initio".

Considering the above, if a statute says a tax is waived, then it is waived, and the Respondent has no right to claim it. Section 46 relieved the Applicant of the penalty burden and in the circumstances, I would have found the Applicant not liable to pay the VAT penalty imposed by the Respondent.

It should also be noted that the assessments at the centre of this dispute were issued in 2021. This matter is being determined four years later in 2025. When parties come to the Tribunal for redress, they expect closure, especially after a protracted dispute. The practical

realities of the business and work environment are that after four years, the individuals who were initially part of the dispute on both parties would have probably left their positions in the organisations or even left the organisations, necessitating new teams to be constituted to reconsider the matter. Therefore, remitting a matter back to the Respondent should only be in exceptional circumstances, for example, in cases that involve complex arithmetic reconciliation of significant and varying amounts that would be an onerous burden on the Tribunal's resources. Otherwise, where the Tribunal is in a position to make a decision based on the information that a taxpayer provided the Respondent at the objections stage, it should do that and resolve the dispute. In view of the above, I would have made orders:

- (i) Setting aside the income tax liability of Shs. 263,850,113;
- (ii) Setting aside the VAT penal tax assessment of Shs. 13,460,567;
- (iii) Varying the amended income tax assessment of Shs. 33,544,049 to Shs. 35,644,049
- (iv) Awarding 90% of the costs of this application to the Applicant.

Dated at Kampala this.....13th.....day of.....October.....2025.



CRYSTAL KABAJWARA
CHAIRPERSON