



**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**TAT APPLICATION NO. 103 OF 2022**

JAVA HOUSE COFFEE SHOP UGANDA LIMITED (JHCSUL).....APPLICANT

**VERSUS**

UGANDA REVENUE AUTHORITY.....RESPONDENT

**BEFORE: HON. CRYSTAL KABAJWARA, MS. CHRISTINE KATWE,  
HON. WILLY NANGOSYAH.**

**RULING**

**I. Introduction**

1. This ruling is in respect of an application challenging an assessment arising from the Respondent's reclassification of a shareholder loan of Shs. 3,163,834,930 as income and a denied input VAT claim.

**II. Background Facts**

2. The Applicant is a subsidiary of Java House Mauritius and has been operating Java House Restaurants and Coffee Shops in Uganda since July 2014. The Respondent conducted an audit of the Applicant's tax affairs for the period July 2014 to June 2020 and issued a VAT assessment totalling Shs. 2,643,988,314 arising from input credit disallowed and the undeclared income.
3. The Applicant incurred VAT on the construction and refurbishment of its branches at Grand Imperial, Shell Lugogo, Acacia Kisementi, Shell Jinja, Imperial Mall Entebbe, and Gapco Shop Kamwokya. The Contractor

undertaking the construction was called Sarova International Builders Uganda Limited (SIBUL), which issued invoices marked AE16-AE22 of the Joint Trial Bundle.

4. The Applicant claimed input VAT of Shs. 697,574,407 on the SIBL invoices and imports. The VAT on Serova invoices was Shs. 237,369,865, while imports were Shs. 52,798,822. However, the Applicant stated that it no longer claimed the VAT invoices for imports.
5. Secondly, the Applicant is a successor to the restaurant business of a company called Java Coffee and Tea Limited (JCTL). The two companies are subsidiaries of Java House Mauritius, the parent company, which, through Nairobi Java House, funded the operations of JCTL and the Applicant.
6. According to the Applicant, after taking over Java Coffee and Tea Limited (JCTL) in 2015, it executed a shareholder loan agreement with the parent company in 2016 (AE8 of the Joint Trial Bundle). The total shareholder loan amounted to Shs. 16,506,644,639. During the audit, the Respondent verified Shs. 13,334,807,709 leaving Shs. 3,163,834,930 as unsupported, which the Respondent treated as undeclared sales.
7. According to the Respondent, the Applicant failed to adduce any documentation to illustrate how the purported loans were received, transferred, or utilised. However, after mediation, the tax liability was reduced to Shs. 935,250,774, which is the disputed amount before the Tribunal.

### **III. Issues**

8. The issues for determination are whether the Applicant is liable to pay the tax assessed.

#### IV. Representation and Evidence

9. At the hearing of this application, Mr. Joseph Luswata, Mr. Winston Churchill Ruhayana represented the Applicant, while Mr. Derrick Nahumuza, Mr. Samuel Oseku, Mr. Sam Kwerit and Mr. Aruho Kenan represented the Respondent.
10. The Applicant's first witness was **Mr. Orge Godana (AW1)**, a Finance Director of Nairobi Java House, a sister Company of the Applicant tasked with overseeing the Applicant's operations in Uganda. He stated that Java House Mauritius (JHM) is the parent company of the Applicant, Nairobi Java House (NJH) and Java Coffee and Tea Limited (JCTL).
11. He testified that in 2015, JCTL transferred its business and liabilities to the Applicant and ceased its operations. The Applicant's operations were supported by loans from the parent company, Java House Mauritius (JHM), disbursed through Nairobi Java House (NJH), as shown in AE5 of the joint trial bundle.
12. He stated that in 2021, the Respondent conducted an investigation for the period July 2014-June 2020 and determined a VAT liability of Shs. 2,835,597 and an income tax liability of Shs. 191,608,768. He also stated that loan amounts of Shs. 3,163,834,930 were found unsupported, and the Applicant had claimed input VAT on the wrong invoices (invoices to JCTL). The Witness testified that the Respondent reclassified the unsupported loans as undeclared income.
13. The witness further testified that, according to the shareholder loan agreement between the Applicant and the parent company, Java House Mauritius, the interest rate was 2% per annum and was to accrue monthly, paid in the third year of execution of the agreement. The witness testified that at all times, the Applicant used the exchange rate published by the Respondent to determine the loan value and interest to be accrued thereon

- in Uganda Shillings. The Applicant accrued 2% interest on the loan of Shs. 16,506,644,645 totalling Shs. 338,082,000. On the accrued interest, the Applicant paid withholding tax of Shs. 50,174,159 to the Respondent.
14. The witness testified that the Respondent stated that the Applicant's loans totalling Shs. 3,163,834,930 were unsupported. The witness also testified that its parent company, JHM, through NJH, financed JCTL's operations from 2014 to 2015, until the Applicant's acquisition.
  15. He further testified that the Applicant claimed VAT for various purchases which the Respondent rejected because, according to the Respondent, the invoices were of a different name rather than that of the Applicant, the invoices were duplicated, and VAT was claimed on local purchases presented as imports.
  16. The witness testified that it contracted Sarova International Limited to construct and refurbish its branches. Invoices for 2016-2019 were issued to the Applicant for the work done at a cost in US dollars. The Applicant paid SIBL all the invoices shown in Exhibit AE10 of the Joint Trial Bundle; however, the Respondent rejected the input tax claim.
  17. The Respondent's first witness was **Mr. Fred Kyomuhendo (RW1), an Officer in the Respondent's Domestic Taxes Department**. He stated that the Respondent conducted an audit of the Applicant's affairs and issued VAT assessments amounting to Shs. 1,588,880,938 for the period October 2015 to December 2019. The assessments were based on disallowed input tax on local purchases, disallowed input tax on imports declared as local purchases, undeclared income, and unsupported loans re-characterised as undeclared income.
  18. He testified that the Applicant claimed input tax on purchases that belonged to a sister company, JCTL, with TIN: 1003107529, hence overstating

purchases and input tax. Further, the Applicant also claimed input tax in respect of supplies made by Serova. However, Serova confirmed that the goods in question were supplied to JCTL, the sister company. Therefore, the Respondent disallowed the input claims as the input belonged to a different party, the related company JCTL, on the grounds that the output tax should have been claimed by JCTL.

19. The witness testified that whereas the Applicant had claimed input on purchases from Dembe Traders, the Respondent established that according to VAT return declarations of Dembe Traders, the invoice D/573/05/18 was issued to Shoprite Checkers and not the Applicant. Therefore, the supplies could not be verified, and the input VAT was disallowed.
20. He also testified that whereas the Applicant had claimed input tax against imports, the Respondent discovered that entries C7845 & C9324 had each been claimed twice and thus disallowed the same. For example, the Applicant claimed input tax on the import C7845 as local purchases in both the VAT returns ref D002182046168 for October 2017 and ref DO02182654428 for November 2017. The input tax for October 2017 was fully granted, while the related input tax for November 2017 was disallowed. In addition, the Applicant claimed Input tax on import C9324 as local purchases in both the VAT returns ref CR01174529911 for April 2017 and ref CR01175093835 for May 2017. After review, the April 2017 claim was allowed.
21. He also testified that transport invoices, such as Invoice No. D000026050 were not verified. The Applicant had understated sales based on unsupported loans, which were recharacterised as undeclared income amounting to Shs. 3,163,834,930.
22. In addition, the Applicant claimed expenses purportedly paid by Nairobi Java House (NJH); no documentation in the form of agreements was adduced

where it was agreed that the Applicant's expenses would be paid by NJH. The Applicant did not adduce any evidence to support the claimed expenses.

23. The Respondent's second witness, Mr. Samuel Oboliakol Itiakorit (RW2), a Manager in the Tax Investigations Department of the Respondent. In his witness statement, he stated that the Respondent conducted an audit of the Applicant's affairs and issued VAT Assessments amounting to Shs. 1,588.880,938 for the period October 2015 to December 2019.
24. The assessments were based on unsupported loans that the Respondent recharacterised as undeclared income for both VAT and income tax purposes. This was due to the Applicant's failure to adduce any documentation to illustrate how the purported loans were received, transferred or utilized in accordance with established principles of financial reporting.

#### V. The Submissions of the Applicant

##### **Whether the Applicant is entitled to the Input VAT claim?**

25. The Applicant submitted that Input VAT claimed on the SIBL invoices and on imports by the Applicant. The VAT on the SIBL invoices was Shs. 237,369,865, while the VAT on imports was Shs. 52,798,822. The Applicant no longer claims VAT on imports following the Respondent's explanation that there had been a double claim and that only one had been allowed in each case.
26. The Applicant submitted that it incurred VAT on the construction and refurbishment of its branches at Grand Imperial, Shell Lugogo, Acacia Kisementi, Shell Jinja, Imperial Mall Entebbe, and Gapco Shop Kamwokya. The contractor undertaking the construction was SIBL. The Applicant submitted that SIBL issued invoices in AE16-AE23, on pages 128-135 of the Joint Trial Bundle, and that the amount billed included VAT. The Applicant

paid the invoices from its Dollar account 9030010881721 at Stanbic Bank, and from its Shillings account 6005132035 at Barclays Bank.

27. The Applicant cited the case of *Enviroserv Uganda Limited vs URA (2016-2020) UTLR 97*, where it was held that a taxpayer who is registered for VAT and who has received taxable supplies for use in its business during a tax period is entitled to input tax credit incurred thereby.

28. The Applicant further averred that section 28 of the Value Added Tax Act provides:

*"Where section 25 applies for the purposes of calculating the tax payable by a taxable person for a tax period, a credit is allowed to the taxable person for the tax payable in respect of*

*a) All taxable supplies made to that person during the tax period:*

*b) All imports of goods made by that person during the tax period: if the supply or import is for use in the business of the taxable person".*

29. The Applicant submitted that there is evidence that it received construction and refurbishment services in respect of its restaurants from SIBL, and it paid for the services an amount including VAT. The Applicant has therefore satisfied the conditions for a refund of input VAT of Shs. 237,369,865. The Applicant prayed that the Tribunal make an order that the above amounts are refundable with interest at 2% in accordance with Section 34 of the VAT Act.

#### **Reclassification of the shareholder loan into undeclared sales**

30. The Applicant submitted that it is a successor to the restaurant business of a sister company called Java Coffee and Tea Limited (JCTL). The two companies, along with another Kenyan company, Nairobi Java House, are subsidiaries of Java House Mauritius. The parent company, Java House Mauritius, through Nairobi Java House, funded the operations of JCTL and of the Applicant in Uganda.

31. The Applicant submitted that JCTL began business in Uganda in 2013 and was taken over by the Applicant in 2015. In 2016, the Applicant and the parent company executed a shareholder loan agreement exhibited as AE8 at pages 45-56 of the Trial Bundle. Under that loan agreement, a pre-existing loan of USD 3,800,000 was recognised.
32. The Applicant submitted that the loan was recorded in the financial reports of the Applicant exhibited as AE7 (2018 and 2019) at pages 56, 61 under non-current liabilities, note 4 (financial 4 of 9 liabilities), at page 83 and under note 18 (borrowings), and at page 91 of the Trial Bundle. Under the loan agreement, the shareholder loan carried an interest rate of 2% per annum. The Applicant submitted that although interest was not paid due to cashflow issues, interest was accrued and withholding tax paid to the Respondent.
33. The annual interest on the total loan of Shs. 16.5 billion accrued for 2019 Shs. 338 million and withholding tax at a rate of 15%, being Shs. 50 million was paid. The Applicant further submitted that the total shareholder loan amount was Shs. 16.5 billion. The Respondent stated that it verified Shs. 13.3 billion only and Shs. 3,163,834,930 was unsupported. At the hearing of the Application, the Respondent stated for the first time that the breakdown of the verified loan was as follows:
- (i) Shs. 2,663,628,012 as stock items from Nairobi Java House to the Applicant;
  - (ii) Shs. 6,430,772,434 cash transfers from related parties to the Applicant;
  - (iii) Shs. 939,573,281 bank interest recapitalised according to the ledger provided;
  - (iv) Shs. 1,303,267,939 management fees paid to the lender/shareholder;
  - (v) Shs. 1,157,005,343 forex components on loan/gain/loss; and
  - (vi) Shs. 840,560,700 capital expenditure paid to a construction company.

34. The Applicant submitted that the Respondent verified Shs. 13,334,807,709 and Shs. 3,163,834,930 remained unsupported as alleged by the Respondent. The Applicant submitted that the Respondent, however, understated the cash transfers, which, according to the Applicant's records, amounted to USD 2,407,297. This comprised USD 1,232,704 through the JCTL Barclays Bank account marked AE12 (receiving funds from NJH as per NJH's bank statement marked AE26 at pages 170-178) and USD 1,347,206 received through the Applicant's Stanbic Bank account AE10 at pages 99-110.
35. The Applicant submitted that applying the exchange rate of 3,695.29 as at June 2019, stated in paragraph 15 of AWI's witness statement, the sum of \$ 2,407,297 translates to Shs. 8,895,660,531 and not Shs. 6,430,772,434 as stated by the Respondent to be the cash or bank transfers from sister companies to the Applicant. This implies that the Respondent did not allow Shs. 2,464,888,097 as a proved shareholder loan, despite the availability of evidence supporting its existence.
36. The Applicant submitted that when this sum is considered, the "unsupported loans" would reduce to Shs. 698,946,833. This sum is arrived at by subtracting Shs. 2,464,888,097, which the Respondent disregarded from the Shs. 3,163,834,930, which the Respondent claims to be unsupported. Therefore, the Respondent did not properly account for the actual cash or bank transfers from the Applicant's sister companies.
37. The Applicant submitted that according to the management letter, the reclassification of the "unsupported shareholder loan", whether of the Shs. 3.163 billion or the Shs. 698 million was treated as an undeclared sale under section 91 of the Income Tax Act, although the appropriate section would be 47 of the Value Added Tax Act, since VAT was imposed.
38. The Applicant submitted that Section 47 of the Value Added Tax Act provides:

*"... if the Commissioner General is satisfied that a scheme has been entered into or carried out where- a. a person has obtained a tax benefit in connection with the scheme; and b. having regard to the substance of the scheme, it would be concluded that the person or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person to obtain the tax benefit, the Commission General may determine the liability of the person who has obtained the tax benefit as if the scheme had not been entered into or carried out, or in a manner as in the circumstances the Commissioner General considers appropriate for the prevention or reduction of the tax benefit.*

*2) In this section-*

*"Scheme" includes any agreement, arrangement, promise, or undertaking, whether express or implied and whether or not enforceable or intended to be enforceable, by legal proceeding and any plan, proposal, cause of action or course of conduct.*

*"Tax benefit" includes-*

- a) A reduction in the liability of any person to pay tax*
- b) An increase in the entitlement of a person to a credit or refund; or*
- c) Any other avoidance or postponement of liability for payment of tax."*

39. The Applicant submitted that this section is invoked if there is a scheme for the substance of which shows that the person who entered the scheme did so for the sole or dominant purpose of obtaining a tax advantage. A scheme is any arrangement, agreement, promise, undertaking, plan, proposal, cause of action or course of conduct.

40. In this case, there is no scheme involved in accounting for the Shs. 16.5 billion or any part thereof as shareholder loans, and no tax advantage was derived from accounting for the above sum as a shareholder loan. This was a genuine shareholder loan, as the evidence has demonstrated, extended to support the Applicant's operations.

41. The Applicant submitted that the cases of ***Bullion Refinery, Explorer Limited and Mukwasi Trading*** concerned recharacterisation of shareholder loans into taxable income, and although they were decided under section 91 of the Income Tax Act, we consider the reasoning by the Tribunal in those cases to be applicable to the instant facts to be decided under section 47 of the Value Added Tax Act.

42. The Applicant further submitted that in the case of ***Explorer Limited vs Uganda Revenue Authority, TAT 87 of 2023***, the Tribunal held:

*"Notwithstanding the above, while the Respondent's powers to recharacterize transactions are statutory, they must be exercised judiciously and rationally. This was the position of the Tribunal in East African Breweries International Limited vs Uganda Revenue Authority....It is not enough for the Respondent to recharacterize a transaction; there must be some basis for the recharacterisation from a legal and accounting perspective...it is important that the powers to recharacterize transactions are not wantonly abused."*

43. The Applicant submitted that in this case, the genuineness of the entirety of the loan is demonstrated by the following evidence:

- (i) The existence of a shareholder loan agreement, AE8. There was none in the ***Bullion Refinery case***. There was something akin to an agreement in the ***Explorer case***, a letter extending the loan.
- (ii) The financial statements of the Applicant reporting the shareholder loan are certified by a reputable audit firm in Uganda. The loan's presence on Explorer's financial statements was a determining factor.
- (iii) The payment of withholding tax on the accrued interest; and
- (iv) The verification done by the Respondent was satisfied that there was support to the Applicant from sister companies by way of stock, management and cash injections.

44. The Applicant submitted that it proved up to 96% of the loan; therefore, the possibility that the 4% also came in is high and would, on a balance of probabilities, be a reasonable conclusion. It would be irrational, given the passage of time, to recharacterize the small component of the loan as undeclared sales.
45. The Applicant prayed that the application be allowed on the following terms:
- (i) The Applicant is entitled to VAT input of Shs. 237,369,865.
  - (ii) The reclassification of the shareholder loan of Shs. 3.1 billion into undeclared sales and the VAT assessed consequent to the recharacterisation be set aside.
  - (iii) The 30% deposit of Shs. 744,565,126 be refunded to the Applicant.
  - (iv) The refunds in (i) and (iii) carry interest at 2% per month until fully paid.
  - (v) The Respondent pays the costs of the application in full.
- In the alternative and without prejudice to the foregoing:**
- (i) The unproven shareholder loan is Shs. 698,946,833 and VAT of Shs. 125,810,429 would apply.

## VI. The Submissions of the Respondent

### **Whether the Applicant is entitled to input VAT claimed?**

46. The Respondent submitted that the Applicant is not entitled to the input VAT claimed. The Respondent submitted that the Applicant alleged to have received construction services from SIBL and to have paid for them. The Applicant has not adduced evidence to prove that it paid for the particular services. Section 28 (1) of the Value Added Tax Act provides:

*"A credit is allowed to the taxable person for the tax payable in respect of-*

- a) All taxable supplies made to that person during the tax period;*
- b) All imports of goods made by that person or imports of services made by the contractor or licensee or a person providing business processes outsourcing services during the tax period".*

47. The Respondent submitted that if the supply or import is for use in the business of the taxable person. Read together, Sections 28(1) and (7) of the VAT Act. The Respondent submitted that the Applicant failed to meet these requirements and is therefore not entitled to the claimed input tax credit.
48. The Respondent submitted that a thorough analysis of the invoices marked AE16-AE22 at pages 128-135 of the Joint Trial Bundle indicate that the alleged payments to SIBL do not exactly match the invoices except for invoice 596 amounting to USD 115,000 issued on 15-08-16 and a payment of 115,005 made on 04- 10-17.
49. The Respondent also submitted that the lack of an indication for the purpose of payment makes it impossible for the Respondent to match the alleged payments to the invoices submitted by the Applicant. The Applicant and SIBL may have been sending each other money for various purposes; the alleged payments to SIBL cannot be directly attributed as supplies to the Applicant without sufficient evidence that the Applicant actually received and paid for the supplies from SIBL. Therefore, the Applicant has failed to discharge the burden of proving its entitlement to the claimed input tax.

**Whether the Applicant is liable to pay the assessed tax?**

50. The Respondent submitted that the principle of corporate personality as espoused in the famous case of *Salomon Vs. Salomon & Co. (1897) AC 22* holds that a company is a legal entity separate and distinct from its members, shareholders, and/or directors. The Respondent submitted that when the matter came up for hearing on 24 March 2025, the Applicant's witness, Orge Godana (AW1), testified, in cross-examination, that there was no resolution of transfer of business between Java Coffee & Tea Limited & Java House Coffee Shop (U) Limited. She testified that Java Coffee & Tea Limited did not wind up its business operations in Uganda; JCTL never deactivated its TIN with the Respondent; there was no notice of cessation of business by JCTL;

nor did the Applicant apply to the Respondent to transfer JCTL's business operations to itself.

51. The Respondent submitted that the implication of the above is that JCTL Limited remained a separate entity in Uganda despite the Applicant, its sister company, starting up business operations in Uganda. In further cross-examination, regarding how the money purported to be shareholder loans was disbursed to the Applicant, the witness testified that it was through direct transfers from Nairobi Java House, the payment of expenses on its behalf by Nairobi Java House, and the transfer of previously loaned funds to JCTL.
52. The Respondent submitted that since there were no written agreements to the effect that the liabilities of JCTL were to be incurred or automatically be transferred to the Applicant, and there being no agreements to the effect that the expenses of the Applicant were to be paid as loans, the Applicant cannot be seen to argue that the unexplained deposits in its financial statements were loans.
53. The Respondent submitted that the Applicant has not adduced any evidence in the form of resolutions to confirm that indeed such decisions were undertaken for the company to receive loans from its related companies. A thorough reading of all the clauses of the shareholder loan agreement makes no mention of JCTL as a beneficiary to the existing loans, and none of the clauses mentions JCTL as a beneficiary of the pre-existing loans.
54. The Respondent also submitted that the pre-existing loans that existed between Nairobi Java House & the Applicant were not between JCTL and the Applicant. The liabilities of JCTL could not be mysteriously transferred to the Applicant's attempts to justify the unexplained deposits as purported shareholder loans.

55. The Respondent prayed that the Tribunal holds that it lawfully re-characterised the transactions in issue due to the failure of the Applicant to support the purported shareholder loan.
56. The Respondent submitted that it is clothed with the powers to recharacterize transactions in order to determine the tax liability in question as per 117 of the Income Tax Act and Section 47 of the Value Added Tax Act. Further, whereas the transaction was recharacterised under Section 91 of the Income Tax Act, the principles of law on recharacterisation, as espoused in decided cases, apply with equal force to the ITA & VAT Act.
57. The Respondent submitted that in ***Bullion Refinery Limited Vs. Uganda Revenue Authority Civil Appeal No. 67 of 2023***, Cornelia Kakooza Sabiiti J held:
- "In my considered opinion, the documentation relating to the acquisition and transfer or movement of the loan funds into the accounts of the appellant is a significant aspect of the substance of the loan."*
58. The Respondent's witness (RW2), Mr Samuel Oboliakol Itiakorit, in cross-examination elaborately provided a breakdown of the amounts of the shareholder loan that were verified based on the information the Applicant provided:
- (i) Shs. 2,663,628,012 stock items from Nairobi Java House to the Applicant;
  - (ii) Shs. 6,430,772,434 as cash from related parties to the Applicant;
  - (iii) Shs. 939,573,281 bank interest recapitalised as per the ledger provided;
  - (iv) Shs. 1,303,267,939 as management fees paid to the lender; and
  - (v) Shs.840,560,700 as capital expenditure paid to a construction company.

59. The Respondent submitted that the witness further testified that upon deducting the cumulative sums from the loan in the returns and financial statements of the Applicant, Shs. 3,163,834,930 remained, which was unsupported, and the Applicant failed to provide information in respect to the remaining figure, prompting the Respondent to reclassify the same as undeclared income.
60. The Respondent cited ***Karl Evans Brown V Commissioner of Income Tax***, where **Downer** JA stated 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".*
61. The Respondent submitted that in the present case, the Applicant has failed to discharge the burden of proof that the money deposits the Respondent re-characterised as income were nothing other than disguised revenue.
62. The Respondent submitted that, given there were no written agreements to the effect that the liabilities of Java Coffee & Tea Limited were to be incurred or automatically be transferred to the Applicant. The Applicant cannot contend that the monies deposited on the bank account of Java Coffee & Tea Limited were shareholder loans to the Applicant.
63. The Respondent further contended that a review of the bank statements exhibited as AE12 at pages 119 to 125 reveals that JCTL received funds as early as 2014. The Applicant contended that JCTL transferred its business operations to the Applicant in 2015. One wonders, then, how the Applicant could have anticipated receiving shareholder loans in the future, even before it could have commenced business operations in Uganda. The Respondent contended in its computation that it had duly considered all the deposits that the Applicant received from related companies before arriving at the assessed position.

64. The Respondent submitted that the audit conducted by the Respondent to verify the authenticity of the loans declared by the Applicant in their returns and the request for the Applicant to explain the deposits of the money received was a legal and judiciously exercised mandate as the audit period was from 2014-2020. The Applicant cannot use the passage of time as an excuse for failing to explain the deposits received. Time cannot start running when the tax authority is unaware of the records.
65. The Respondent submitted that the Applicant has failed to discharge its burden of explaining away the unexplained deposits or cash transactions on the Applicant's bank statements, and due to that failure, the Respondent lawfully recharacterized the same as undeclared income and rightly taxed the same.
66. Consequently, the Respondent prayed for the following:
- (i) The Applicant is not entitled to the VAT input claimed;
  - (ii) The Applicant has failed to fully support its purported loan to the tune of Shs. 3,163,834,930, and therefore the Respondent was justified in recharacterizing it as income;
  - (iii) The application be dismissed with costs to the Respondent; and
  - (iv) The tribunal enters judgment on admission as the Applicant concedes to the Shs. 698,946,833.

## **VII. The Applicant's Submissions in Rejoinder**

67. In rejoinder, the Applicant submitted that under the statement of reason for tax decision, the Applicant's claim for input VAT is rejected on the grounds that it was incurred by a sister company and RW1 was completely silent on this issue. But if more evidence of payment of the invoices is required, it is found in REX page 1, read together with RE6 page 58 (see the Respondent's supplementary trial bundle).

68. The Applicant submitted that the Respondent verified the invoices with SIBL, who then sent to the Respondent the invoices it had issued to the Applicant listed in RE6, at page 59 of the Respondent's Trial bundle, and includes all the invoices in issue, namely 573, 579, 591, 596, 609, 628, 633 and 634. During cross-examination, RW1 did not provide an explanation for why there was no refund of the input for these invoices.
69. On the second issue, whether the shareholder loan of Shs. 3.1billion was rightly reclassified as undeclared sales; the Respondent's contention is that transfers to the predecessor company should not be taken into account because there was no evidence of inheritance. The Respondent's submissions differ from its reasons for the tax decision and its evidence. The transfers from the sister company to the Applicant direct are less than the amount certified by RWIL, indicating that he also considered the transfers to JCTL; however, in both cases, he did not consider the full amount. The Respondent is estopped from contending, at this point, that there was no evidence of the Applicant's inheritance of the JCTL loan.
70. According to the Applicant, in the statement of reasons for the tax decision, the Respondent stated that there was no proof of the shareholder loan receipt, transfer or utilisation. The Applicant pleaded that it had inherited its predecessor's loan, and this was not challenged during the assessment. RW2 did not state this as a reason for rejecting the shareholder loan; instead, it reclassified it as undeclared sales. The Applicant reiterated its prayers that the application be allowed.

**VIII. The determination**

71. Having read submissions of both parties, this is the ruling of the Tribunal.
72. Two issues arise from the evidence and submissions that have been presented to us:

- (i) Whether it was appropriate for the Respondent to recharacterise the purported loans as undeclared income; and
- (ii) Whether the Applicant is entitled to input tax credit relating to construction and refurbishment services supplied by SIBL.

### **The shareholder loans**

73. The Applicant submitted that JCTL began business in Uganda in 2013 and in 2015, the business was transferred to the Applicant. In 2016, the Applicant and the parent company executed a shareholder loan agreement exhibited as AE8 at pages 45-56 of the Trial Bundle. The Applicant submitted that the total shareholder loan amount was Shs. 16.5 billion. The Respondent stated that it verified Shs. 13.3 billion only and Shs. 3,163,834,930 was unsupported.
74. The Respondent verified the loan as follows:
- (i) Shs. 2,663,628,012 stock items from Nairobi Java House to the Applicant;
  - (ii) Shs. 6,430,772,434 as cash from related parties to the Applicant;
  - (iii) Shs. 939,573,281 bank interest recapitalised as per the ledger provided;
  - (iv) Shs. 1,303,267,939 as management fees paid to the lender; and
  - (v) Shs. 840,560,700 as capital expenditure paid to a construction company.
75. Regarding Item 2, the Applicant submitted that the Respondent understated the cash transfers, which, according to the Applicant's records, was USD 2,407,297, namely:
- (i) USD 1,232,704 through the JCTL Barclays Bank account, exhibited as AE12 (receiving funds from NJH as per NJH bank statement marked AE26 at pages 170-178);
  - (ii) USD 1,347,206 received through the Applicant's Stanbic Bank account, exhibited as AE10 at pages 99-110.

76. The Applicant submitted that when the exchange rate of 3,695.29 as at June 2019 is applied (as stated in paragraph 15 of AW1's witness statement), the sum of USD 2,407,297 translates to Shs. 8,895,660,531 and not Shs. 430,772,434, as verified by the Respondent, to be cash or bank transfers from sister companies to the Applicant. This implied that the Respondent did not allow Shs. 2,464,888,097 is the proven shareholder loan, despite evidence supporting its existence.
77. The Applicant submitted that when this sum is considered, the "unsupported loans", going by the Respondent's verification approach, would reduce to Shs. 698,946,833. This sum is arrived at by subtracting Shs. 2,464,888,097, which the Respondent disregarded from Shs. 3,163,834,930, which the Respondent claims as the unsupported loan.
78. It is important to bring to the fore the deficiencies in the Applicant's documentation. The deficiencies are even more pronounced, given that the Applicant is a multinational enterprise with sufficient financial and human capital resources to maintain a properly constituted finance department, which we believe it has in place. The Applicant is not a run-of-the-mill SME but a corporation operating in multiple jurisdictions.
79. Therefore, it beggars belief that an entity such as the Applicant engaged in a transaction involving the assumption of the entire business operations of its predecessor, JCTL, and not even a single document has been adduced before this Tribunal regarding the transfer of the business from JCTL to it. There is no business transfer agreement, nor any evidence of the nature of the assets or liabilities that were transferred to it.
80. Further, a diligent and reasonable taxpayer, having such a significant presence in Uganda, would at the very least, have engaged with the

Respondent at before or at the time of the transfer of the business, first, to bring to the Respondent's attention the changes in the business and secondly, to clarify and align on the treatment of such issues involving the assumption of liabilities.

81. The Applicant refers to loans that were previously advanced to its predecessor, JCTL, by the parent company, which, according to the Applicant, were subsequently assumed by it. In the absence of any documentation supporting this, one cannot determine with certainty whether the Applicant assumed the liabilities.
82. Therefore, on the whole, we find that the Applicant cared less and did not exercise the due diligence expected of a large corporate entity, moreover, with a multinational footprint. Taxpayers must understand that they have a primary duty to maintain transactional documents to support their tax positions. A bank statement issued to JCTL does not automatically become the Applicant's statement in the absence of documentation linking it to the Applicant. In view of the above, we find that the Respondent was justified in treating the purported loans amounting to Shs. 3,163 834,930 as unsupported.
83. Regarding the recharacterisation, the Respondent went to great lengths to reconcile and verify various amounts despite a lack of coherent documentation on the Applicant's part. We therefore find that the powers to recharacterize the unsupported loans as undeclared income were exercised judiciously and rationally.
84. Therefore, the assessment that arose from the recharacterisation of the loans as income is maintained.

## The VAT input tax credit

85. During the audit period, the Applicant refurbished various branches of its restaurants located in Grand Imperial, Shell Lugogo, Acacia Kisementi, Shell Jinja, Imperial Mall Entebbe, and the Gapco Shop in Kamwokya. It utilised the services of a third-party contractor, SIBL, who invoiced the Applicant for the services. The Applicant then claimed input VAT, which the Respondent denied, arguing that some invoices could not be matched to the bank statement payments.

86. In determining whether the Applicant is entitled to the input VAT credit, we are guided by the provisions of section 28 of the VAT Act, which provides:

*“(1) Where Section 25 applies for the purposes of calculating the tax payable by the taxable person for the taxable period, a credit is allowed to the taxable person for the tax payable in respect of –*

- a) all taxable supplies made to that person during the tax period*
- b) all imports of goods made by that person or imports of services made by the contractor, licensee, or a person providing business process outsourcing service during the tax period.*

*If the supply or import is for use in the business of the taxable person”.*

87. Further, subsection (7) provides:

*“For the purposes of subsection (1) (2) and (3), 'business use' or 'use in the business' applies only to the related business, generating a taxable supply”.*

88. The Applicant submitted that there is evidence that it received construction and refurbishment services in respect of its branches of operations from SIBL and that it paid for the services an amount including VAT.

89. The Respondent does not dispute that the Applicant refurbished several of its branches. They also do not dispute that the contractor was SIBL and that

they performed the services. The Respondent's rejection of part of the VAT claim was on the grounds of a lack of an exact match of certain invoices to payments. The Respondent also alleged that certain payments lacked descriptions.

90. It is important to note that while the burden of proof in tax matters lies with the Applicant to demonstrate that the assessment was excessive or incorrect, the standard of proof is on the balance of probabilities. This means that the evidence presented should be sufficient to prove the claim is more likely valid than not.
91. In light of the above, we must evaluate the evidence presented by the Applicant to prove, on the balance of probabilities, that they indeed procured services from SIBL. The evidence includes:
- (i) The undisputed fact that SIBL was contracted by the Applicant to refurbish several of its branches.
  - (ii) Invoices from SIBL to the Applicant for the refurbishment works (AE 15-22)
  - (iii) Correspondence from SIBL to the Respondent providing invoices for the work done (RE1)
  - (iv) SIBL's sales ledger, which shows all supplies to the Applicant (RE6)
92. Having evaluated the above evidence, we are satisfied that the Applicant has presented credible evidence that points to the purchase of construction services from SIBL. We have taken note of the Respondent's argument that the payments from the Applicant to SIBL could have been for any other thing due to the absence of a narration. However, based on the evidence before us, the only relationship between the Applicant and SIBL, a third party was a commercial relationship for the provision of construction services. Therefore, in the absence of any other evidence to the contrary, it is highly unlikely that payments from the Applicant to SIBL could have been anything other than the services that SIBL was contracted to provide.

93. We therefore find that the Applicant has discharged the burden of proof concerning the VAT liability as they have provided credible evidence that they received taxable supplies from SIBL, for which they are entitled to input VAT. Therefore, the Applicant is entitled to the VAT refund of Shs. 237,369,865 that the Respondent denied.

94. In the circumstances, the Tribunal orders as follows:

- (i) The income tax and VAT assessments that arose from the treatment of the unsupported loans as income are hereby maintained.
- (ii) The Respondent should refund the Applicant the input VAT of Shs. 237,369,865.
- (iii) Interest on the refundable amount in (ii) above should be computed in accordance with the provisions of section 34 of the VAT Act.
- (iv) 75% of the costs of this Application are hereby awarded to the Respondent.

Dated at Kampala this 16<sup>th</sup> day of April 2026.



**HON. CRYSTAL KABAJWARA**  
**CHAIRPERSON**



**MS. CHRISTINE KATWE**  
**MEMBER**



**HON. WILLY NANGOSYAH**  
**MEMBER**