

THE REPUBLIC OF UGANDA
THE TAX APPEALS TRIBUNAL AT KAMPALA
TAT APPLICATION NO. 41 OF 2024

JK COUNTRY HOMES LIMITED..... APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..... RESPONDENT

**BEFORE: MS. CRYSTAL KABAJWARA, MRS. KABAKUMBA MASIKO,
MR. WILLY NANGOSYAH**

RULING

This ruling arises from an application challenging an Administrative Additional Income Tax Assessment of Shs. 17,286,922, arising from disallowed expenses in the computation of rental income for the period 1 July 2021 to 30 June 2022.

1. Background facts

The Applicant deals in real estate. On 11 September 2023, the Respondent issued the Applicant an administrative additional income tax assessment amounting to Shs. 17,286,922 arising from disallowed expenses in respect to its declared rental income for the period from 1 July 2021 to 30 June 2022.

On 10 December 2023, the Applicant lodged an objection disputing the administrative additional tax assessment. On 9 January 2024, the Respondent disallowed the objection and upheld the assessment hence this application.

2. Issues for determination

The key issue is whether the Applicant is liable to pay the tax assessed.

3. Representation

The Applicant was represented by Mr. Kibyami Charles Lwanga while Mr. Kenan Aruho and Ms. Stella Nayibale appeared for the Respondent.

Mr. Basudde George, the Applicant's Accountant, was the sole witness of the Applicant. He testified that on 11 September 2023, the Respondent issued an additional income tax assessment of Shs, 17,286,922 for the 2021/2022 year on the grounds that the Applicant's expenses exceeded 75% of its gross rental income.

The witness stated that the Applicant attempted to appeal through the Alternative Dispute Resolution Committee but was informed the application was late as it was filed outside the required seven-day window.

He argued that the assessment, which was made under section 24 of the Tax Procedures Code Act wrongly applied the 75% expense cap, which he claimed only applied to individuals and partnerships and not companies. At the time, corporate entities were permitted to deduct 100% of expenses related to rental income.

The witness further stated that, a key expense in dispute was a USD 90,000 shareholder loan used for land acquisition and property development. He further stated that this information was not available during the initial preparation of financial statements.

He concluded that the assessment was based on a misapplication of tax law and an incorrect classification of the company's structure, affirming that his statements were truthful.

The Respondent's sole witness was Ms. Filly Okori Acio, an officer in its Domestic Taxes Department. She testified that the Respondent issued the Applicant an Administrative Additional Income Tax Assessment amounting to Shs. 17,286,922 which was issued on 11 September 2023, covering the income year from 1 July 2021 to 30 June 2022.

The witness stated that the Respondent disallowed certain expenses claimed by the company, which exceeded 75% of the Applicant's gross rental income; further, the Applicant lacked sufficient supporting documentation.

She further testified that on 10 December 2023, the Applicant lodged an objection to the said assessment. Upon receipt of the objection, the Respondent formally requested the Applicant to furnish documentation to substantiate its claim, particularly regarding certain expenses including a purported loan. However, despite repeated reminders, the Applicant failed to provide the requested documentation.

Ms. Acio stated that the Respondent, after considering the objection and the Applicant's failure to submit the required documentation, issued an objection decision on 9 January 2024 which upheld the earlier assessment.

According to her testimony, the Applicant's failure to support its claimed expenses with appropriate documentation rendered the assessment proper and lawful within the meaning of the applicable tax laws. She maintained that, to date, the Applicant had never provided the said information.

The witness emphasized that the Respondent had acted within its statutory mandate and that the tax liability assessed against the Applicant was not only justified but also legally enforceable.

3. Submissions of the Applicant

The Applicant submitted it was not liable for the tax assessed. They further submitted that the Administrative Additional Assessment issued by the Respondent under Section 24 of the Tax Procedures Code Act, 2014, was irregular and based on an erroneous interpretation of the applicable law regarding deductions on rental income for corporate entities. The Applicant submitted that the nature of the Applicant's business is the development and letting of residential and commercial rental property located on Plot 632 Bukasa, Kirinya, Wakiso District, registered in the name of Mr. John Kokas Omiat, who is a shareholder and director of the Applicant.

The Applicant argued that on 10 April 2015, Mr. Omiat obtained a loan of USD 90,000 from Stanbic Bank, which was used for the development of the said property. This loan facility, repayable in 120 equal monthly instalments, is exhibited at Annexure G to the Applicant's Trial Bundle. The same property, according to the Applicant's submissions,

is also mortgaged to Stanbic Bank, confirming the purpose of the loan. The Applicant contended that the Respondent erred in disregarding this loan expenditure as a deductible expense when computing taxable rental income.

The Applicant further submitted that the Respondent wrongly interpreted and applied the section 3 of the Income Tax (Amendment) Act, 2022, which amended Section 5 of the principal Act. The section provides:

"Section 5 of the principal Act is amended in subsection (3): (a) by repealing paragraph (b); (b) by substituting for paragraph (c) the following— "(c) the expenditures and losses incurred by a person, other than an individual or partnership, in the production of rent shall be allowed as a deduction for any year of income only as provided for in section 22(1)(c)."

According to the Applicant, this amendment clarified that only individuals and partnerships are subject to the 75% capping rule, not corporate entities like the Applicant. The implication is that all expenses incurred in the production of rental income by the Applicant, as a non-individual, were deductible without restriction.

The Applicant highlighted that during cross-examination, the Respondent's own witness, Ms. Filly Okori Acio, acknowledged that the Applicant was a non-individual and that the expenses were, by law, allowable. This directly contradicted the notes in the objection decision, which stated that "Claimed Expenses were More than 75% of the Gross Rental Income" and consequently disallowed amounts exceeding that cap. The Applicant submitted that the Respondent erroneously applied a legal regime that was only applicable to individuals, which constituted an illegality.

On the issue of loan documentation, the Applicant submitted that the loan information, though unavailable at the time of filing the returns and objection, was eventually availed. He emphasized that the Tax Procedures Code Act provides timelines for handling objections, which the Respondent failed to adhere to in good faith.

Specifically, the Applicant submitted that the Respondent neither waived the time limit nor gave the Applicant sufficient time to provide the requested documents. Further, the Respondent made its objection decision in only 31 days after receipt of the objection, thereby depriving the Applicant of a fair opportunity to present its case.

The Applicant argued that during the mediation proceedings after the objection had already been decided, the Applicant provided the loan documentation, and the same

was also submitted to the Tribunal on 2 July 2024. Therefore, the Respondent's claim that it was never availed with the loan documentation was misleading.

The Applicant also pointed to the principle of the standard of proof in tax matters and cited the decision in **Red Concepts v. Uganda Revenue Authority, TAT Application No. 36 of 2018**, where the Tribunal stated:

"The standard of proof in tax matters is on a balance of probabilities. Where there is doubt, the taxpayer takes the benefit of it."

The Applicant contended that based on the evidence before the Tribunal, including the existence of the loan, its purpose, and continued repayment obligations, the Tribunal ought to find that the Applicant had sufficiently discharged its burden.

The Applicant, thus prayed for the following reliefs:

- a) A declaration that the Respondent's assessment for the financial year 2021/2022 was irregular, illegal, and in contravention of applicable tax law;
- b) An order setting aside the said assessment and directing the Respondent to vacate the same from the Applicant's income tax rental tax ledger;
- c) Costs of the application.

The Applicant concluded by praying that the Tribunal should decide in its favour on both issues and grant all the reliefs prayed for.

4. Submissions of the Respondent

The Respondent submitted that the Applicant is liable to pay the tax assessed and that the assessment was proper, lawful, and based on sound statutory and evidentiary grounds.

The Respondent submitted that the Applicant failed to discharge their burden of proof burden when the Respondent gave the Applicant several opportunities to provide documentation, particularly in respect of a loan allegedly used to develop the rental property. Despite reminders, the documentation was not submitted in time.

Further, the Respondent referred to **section 5(3)(b)** of the **Income Tax Act**, which provides:

"(b) the expenditures and losses incurred by the individual in the production of the rent shall be allowed as a deduction for any year of income;"

He emphasized that only expenses incurred in the actual production of rental income were allowable. This was reinforced by **section 22(2)** of the same Act, which explicitly excludes deductions for private or domestic expenses:

"(2) The following amounts shall not be allowed as deductions— (a) expenditure of a domestic or private nature; (b) capital expenditure; (c) any loss or expenditure recoverable under insurance contract or indemnity; (d) income tax payable in Uganda; (e) fines or penalties paid to a government or statutory body for breach of any law."

The Respondent explained several of the Applicant's claimed expenses including travel, facilitation, medical expenses, and condolence fees, were personal and unrelated to rental income.

The Respondent also pointed out inconsistencies in the Applicant's documentation, notably vouchers that were internally issued by the Applicant and lacked proper authentication. For instance, the Respondent stated that, Voucher No. 227 dated 1 October 2021 appeared to precede Voucher No. 228 dated 12 September 2021.

In addressing the Applicant's reliance on a loan as part of its claim, the Respondent strongly argued that the loan was advanced to Mr. John Omiat in his personal capacity, not to the Applicant. The Respondent relied on the principle of separate legal personality, as laid down in *Salomon v. Salomon & Co Ltd [1897] AC 22*, which affirms that a company is a separate legal person distinct from its shareholders. Thus, Mr. Omiat's personal liabilities, including the loan, could not be imputed on the Applicant.

The Respondent emphasized that the loan agreement was between Stanbic Bank and Mr. Omiat, and that both the disbursement and repayments were made through Mr. Omiat's personal account. He stressed that the Applicant's own witness admitted during cross-examination that the company had no bank account and that the loan was for Mr. Omiat's future personal development.

Accordingly, the Respondent submitted that the loan did not qualify as a deductible expense under **section 5(3)(b)** of the **Income Tax Act**, since it was not incurred by the company and was not related to the production of rental income.

Furthermore, the Respondent refuted the Applicant's argument that it was denied time to provide the loan documentation. The Respondent maintained that the loan had

existed since 2015 and that, if genuinely related to the Applicant's business, the documentation should have been readily available. Consequently, the Applicant's failure to provide the required supporting documentation in a timely manner was deliberate and intended to frustrate the Respondent's statutory obligations.

The Respondent submitted that the Applicant had failed to prove that the expenses disallowed were indeed incurred in the generation of income, or that the loan had any connection to the company's income-generating activities.

The Applicant did not file submissions in rejoinder.

5. The determination of the issues

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

The Respondent issued the Applicant, a company that is incorporated in Uganda with an administrative income tax assessment arising from disallowed expenses which the Applicant had claimed against their rental income.

The Applicant claims that the Respondent's assessment is unlawful for the following reasons:

- (i) The Respondent capped the Applicant's expenses to 75% of the Applicant's rental income. The Applicant claims that the capping only applies to individuals and partnerships.
- (ii) As the Applicant is a company, all expenses claimed ought to have been allowed as a deduction against its rental income.

At the heart of the dispute is expenses claimed in respect of a loan that was extended to the Applicant's shareholder by Stanbic Bank. The Applicant claims that they obtained the loan from Stanbic bank for purposes of developing the property which generates the rental income that was subject to tax.

On the other hand, the Respondent has argued that as the loan in question was obtained by the Applicant's shareholder in his individual capacity, it cannot, for tax

purposes be treated as a loan of the Applicant. Therefore, any expenses attributed to the loan are not expenses wholly and exclusively incurred by the Applicant in the production of the rental income.

The taxation of rental income is governed by section 5 of the Income Tax Act (ITA) and the applicable tax rates have changed over time. Therefore, it is important to determine the treatment of the rental income in the year of income in which it arose. In this particular case, the year of income was 1 July 2021 to 30 June 2022.

Section 5 (1) of the ITA imposes on every person who has rental income for the year of income. With regard to persons who are companies, section 5 (2) (b), the relevant rates are determined in accordance with section 7 (2) to the rental income derived by the company for the year. Further, section 5 (3) (b) of the ITA is to the effect that *“expenditures and losses incurred by a person, other than an individual or partnership, in the production of rent shall be allowed as a deduction for any year of income only as provided for in section 22 (1) (c).”*

The above provision (section 5 (3) (b)) was introduced by the Income Tax (Amendment) Act, 2022 which came into force on 1 July 2022.

However, in view of the fact that the period in question is 1 July 2021 to 30 June 2022, it would follow that the provision as it stands does not apply to the present facts since the Income Tax (Amendment) Act, 2022 came into force after the period in issue.

Therefore, the correct provision for purposes of determining the allowable expenses is the provision which was repealed by the amendment Act of 2022. Prior to the amendment Act, the ITA provided as follows under section 5 (3) (c):

“Expenditures and losses incurred by a person, other than an individual, in the production of rent shall be allowed as a deduction under this Act for any year of income.”

Therefore, prior to the Income Tax (Amendment) Act, 2022, all expenses incurred by a person in the production of rental income were allowable as a deduction under the ITA.

Therefore, the question that remains is whether the expenses which the Respondent disallowed were incurred by the Applicant in the production of its rental income. Specifically, we must determine whether expenses in respect of the loan that was obtained by the shareholder of the Applicant from Stanbic bank qualify as expenses incurred by the Applicant in the production of its rental income.

To this end, the Applicant has provided the following supporting documentation:

- (i) A loan agreement between the Applicant's shareholder, Mr. Omiat John and Stanbic bank dated 10 April 2015; and
- (ii) Bank statements of Mr. Omiat John.

We have studied the loan agreement and have established that its purpose was to refinance an existing salary loan and to purchase land for future development.

There is nothing in the agreement that suggest that Mr. Omiat John borrowed on behalf of the Applicant. Further, the Applicant, being a company, cannot earn a salary. It is obvious from the loan agreement that it was obtained by Mr. Omiat John in his personal capacity.

It is common for shareholders to borrow on behalf of their companies for purposes of on-lending to the company. In the present case, there is no evidence which shows that the loan was then on-lent to the Applicant. Further, no board resolution, shareholder agreement, or corporate documentation was presented to show that the company assumed liability or reimbursed Mr. Omiat for the loan.

The Bank statement that was adduced belongs to Mr. Omiat. There is no evidence that the funds obtained from Stanbic bank were transferred to the Applicant's bank account. At the hearing, the Applicant admitted that they do not own a bank account.

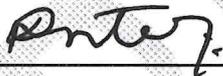
This Tribunal is alive to the principle in *Salomon v Salomon Co. Ltd. [1897] AC 22*, that a company is distinct from its shareholders and directors. Personal liabilities of individuals cannot be imputed to the company unless there is clear legal assumption of such liabilities.

Further, the Applicant's failure to provide the loan documentation at the objection stage, despite repeated requests by the Respondent, indicates the non-existence of information that points to the Applicant's ownership of the property or the liability.

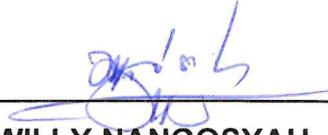
It should also be noted that by their very own admission, the Applicant states that the property comprised in FRV 1421, Folio 23, Kyadondo, Block 242, plot 632, Bukasa, Kirinya, is registered in the names of John Kokas Omiat. This admission, coupled with the evidence of the loan and mortgage in Mr. Omiat's personal capacity, shows that the for all intents and purposes, the property and rental income therefrom belong to an individual and not a company. Therefore, the Respondent rightfully treated the rental income as that of an individual and not of a company by applying the 75% cap to expenses in line with section 22 (1) (c) of the ITA.

In light of the above, the Tribunal finds that the Respondent lawfully disallowed the expenses purportedly incurred by the Applicant in respect of the loan including the corresponding interest expense. This application is therefore dismissed with costs to the Respondent.

Dated at Kampala this 15th day of August 2025


CRYSTAL KABAJWARA
CHAIRPERSON


KABAKUMBA MASIKO
MEMBER


WILLY NANGOSYAH
MEMBER