THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO. 003 OF 2023

KK SECURITY UGANDA LIMITED ....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 additional assessments of VAT, PAYE, WHT, and income tax on the grounds that the assessments were based on erroneous computations and raised beyond the statutory limit of three years.

II. Background facts

2. The Applicant provides security services. On 29 September 2022, the Respondent issued additional tax assessments for Value Added Tax (VAT), Corporate Income Tax (CIT), Withholding Tax (WHT) and Pay As You Earn (PAYE) and raised the following tax assessments:

Tax Head	Period	Additional Tax Assessed
VAT	Feb 2016 to Jan 2021	614,224,316

Income Tax	Feb 2016 to Jan 2021	191,778,926
WHT	Feb 2016 to Jan 2021	467,369,824
PAYE	Feb 2016 to Jan 2021	562,359,080
TOTAL		**1,835,732,146**

3. Between 11 and 12 November 2022 and 14 and 21 December 2022, the Applicant lodged objections to the assessments on the grounds that they were based on erroneous computations and were raised beyond the statutory limit of three years, and the Respondent issued the Applicant with objection decisions disallowing the objections.

4. The Applicant, being dissatisfied with the decision of the Respondent, filed this application seeking a review of the Respondent's objection decision. The parties participated in TAT–guided mediation, and after reviewing the information submitted by the Applicant, the Respondent adjusted the Applicant's tax liability from Shs. 1,835,732,146 to Shs. 1,190,983,670.

5. The parties entered a partial consent wherein the Applicant agreed to a tax liability of Shs. 350,566,457. However, the Applicant disputes the following:

   (i) A liability of Shs. 840,417,212 on the ground that the same were issued outside the three-year period contrary to section 25(2) of the Tax Procedure Code Act.

   (ii) The undisputed amount of Shs. 350,566,457 be offset against the 30% deposit paid during the pendency of this application.

   (iii) The reduction of its carried forward tax losses from 2016 of Shs. 8,891,874,369 to Shs. 2,668,374,583

   (iv) Disallowance of its bad debts written off amounting to Shs. 283,275,934 for the years 2019, 2020 and 2021 as being contrary to section 24 (1) (2) and (3) of the Income Tax Act.

6. The parties agreed to forward the above disputed issues for the Tribunal's determination.

III. Issues for determination

7. The following issues were framed for determination.

   (i) Whether the tax liability of Shs. 840,417,212 for the years 2016, 2017, 2018 and 2019 is outside the three-year limitation period?

   (ii) Whether the Applicant is entitled to a deduction of the bad debts amounting to Shs. 283,275,934 for the years 2019, 2020 and 2021?

   (iii) Whether the Respondent was justified in adjusting the Applicant's carry forward tax loss of 2015/2016 from Shs. 8,891,874,369 Shs. 2,666,374,583?

IV. Representation and evidence

8. At the hearing, Mr. Kule Rolant of M/S SM & Co. Advocates appeared for the Applicant, whereas Mr. Sam Kwerit appeared for the Respondent.

The Applicant's affidavit

9. The Applicant filed an affidavit deponed by Ms. Julian Ingabire, the Finance Manager of the Applicant company, 13 March 2026.

10. She stated that she is well acquainted with the facts of the dispute. On the issue of assessments allegedly issued outside the statutory limitation period, Ms. Ingabire stated that the Respondent is only permitted to issue additional assessments within three years after a taxpayer furnishes a self-assessment return, unless there is fraud, gross or wilful neglect, or discovery of new information relating to the tax payable. Despite this legal position, the Respondent raised assessments relating to the tax periods 2016, 2017, and 2018 amounting to Shs. 840,417,212.

11. Ms. Ingabire further stated that no new information relating to the tax assessed had been discovered by or come to the attention of the Respondent after the Applicant furnished its self-assessment returns. She added that all facts, documents, data, and records upon which the additional

assessments were based had already been fully disclosed by the Applicant in its original returns and were within the Respondent's possession or readily accessible at the time the returns were filed and accepted.

12. On the issue of carried forward tax losses, Ms. Ingabire stated that the Respondent wrongfully reduced the Applicant's loss brought forward because the Applicant genuinely incurred the claimed assessed losses while carrying on its business and that the losses were computed in accordance with Generally Accepted Accounting Practices. She added that the losses were properly declared in the Applicant's self-assessment returns and were substantiated by the Applicant's books of account and supporting records.

13. Regarding the bad debts written off, Ms. Ingabire deponed that reasonable steps, including engaging external debt collectors, obtaining approvals from regional offices, and issuing several demand and reminder notices to non-paying customers, were undertaken to recover payment from customers who failed or refused to pay for the Applicant's services, and believes that the debt will not be satisfied.

14. She concluded by stating that the Applicant is not liable to pay the disputed tax assessments and prayed that the Respondent's assessments be vacated.

<u>The Respondent's affidavit</u>

15. The Respondent filed an affidavit in reply, deponed by Mr. Brian Amanya, an Officer in the Objections Unit of the Domestic Taxes Department of the Respondent, and sworn on 25 March 2026.

16. He stated that the parties engaged in a Tribunal-guided mediation process, following which the total tax liability was reduced from Shs. 1,835,732,146 to Shs. 1,190,983,670.

17. Mr. Amanya further stated that the Applicant disputed the residual amount of Shs. 840,417,212 on the grounds that the assessments had been issued outside the statutory three-year period.

18. He further stated that the undisputed amount would be offset against the 30% deposit paid during the pendency of the application. He also stated that the issue of reducing carried forward tax losses from Shs. 8,891,874,369 to Shs. 2,668,374,583 was already pending before the Tribunal in TAT Application No. 254 of 2022.

19. Regarding PAYE, he stated that the Applicant did not declare PAYE on all employment income. This is because the Respondent established a variance of Shs. 828,077,600 between the Applicant's audited financial statements and PAYE returns for the period March 2016 to January 2021. He further stated that staff benefits and other benefits of Shs. 1,046,452,667 had not been included in the PAYE declarations.

20. In relation to VAT, he stated that additional VAT was assessed due to sales variances, overclaimed imports, proceeds from disposals, and undeclared VAT on imported services and management fees. Income tax records and VAT returns revealed under-declaration of VAT sales amounting to Shs. 755,739,913 for the year 2017–2018. Input VAT amounting to Shs. 1,152,991 had been claimed twice on entry number C6B50 during the year 2017–2018 without supporting documentation.

21. With respect to withholding tax, Mr. Amanya stated that the Applicant was assessed for failure to withhold tax on payments to local suppliers, imported services, and interest expenses. The Applicant paid interest amounting to Shs. 1,433,559,712 to its related party lenders between March 2016 and January 2021, without accounting for withholding tax, and also claimed local and professional expenses amounting to Shs. 1,311,665,598 without charging withholding tax.

22. Regarding income tax, the audit treated undeclared sales and unexplained trade payables as taxable income. It also identified discrepancies between VAT and income tax sales, mismatches in related-party loan balances, unsupported borrowing proceeds, and an overstated carried-forward loss. Additionally, the Applicant claimed bad debts, miscellaneous expenses, PAYE, integration expenses, and administrative costs without providing supporting documentation.

23. He also stated that the omissions and discrepancies discovered during the audit amounted to gross and wilful neglect on the part of the Applicant, thereby justifying the issuance of additional assessments outside the statutory three-year period. He further stated that the issue relating to the reduction of carried forward tax losses was already pending before the Tribunal in TAT Application No. 254 of 2022 and that the Applicant had failed to demonstrate that it had taken reasonable steps to recover the bad debts before writing them off.

V. Submissions of the Applicant

24. The Applicant did not file written submissions despite the Tribunal's directives to that effect.

VI. Submissions of the Respondent

Issue 1. Whether the tax liability amounting to Shs.840,417,212 for the years 2016, 2017, 2018 and 2019 is outside the three-year limitation period?

25. The Respondent argued that the three-year limitation period does not apply in instances where there is fraud, gross or wilful neglect or where new information is discovered that leads to the issuance of an additional assessment. **Section 25(2)(a) of the Tax Procedures Code Act** provides:

> *"An additional assessment can be raised at any time where fraud or gross or wilful neglect has been committed by or on behalf of the taxpayer or where new information has been discovered in relation to the tax payable by the taxpayer."*

26. The Respondent submitted that they discovered new information during the audit conducted in 2022. The Respondent also submitted that the Applicant was willfully negligent for failing to fully account for their tax obligations. The newly discovered information concerned the different tax heads, as shown below.

<u>Pay As You Earn of Shs.499,669,980</u>

27. The Respondent submitted that they reviewed the staff costs declared in the Applicant's audited accounts against the costs per the filed PAYE returns and established a variance of Shs. 828,077,600 for the period March 2016 to January 2021. Some of the staff benefits, such as commission, directors' fees, school fees, work permits, holiday payments, and other benefits aggregating to Shs. 1,046,452,667 for the period March 2016 to January 2021 had not been included in the PAYE declarations. Some benefits in kind, such as the motor vehicle benefit, housing for the Managing Director, and school fees, were not taxed. Salaries paid to the MD while at the head office were also not taxed

Value Added Tax of Shs. 366,709,000

28. The Respondent assessed VAT on sales variances, overclaimed imports, proceeds from disposals and undeclared VAT on imported services on management. The Respondent compared the sales in the Applicant's income tax returns with the amounts that were declared in the VAT returns and established a variance of Shs. 755,739,913 for the period 2017-2018. In addition, the Applicant claimed a worth of Shs. 1,152,991 twice on entry number C6B50 during the year 2017-18.

29. Additionally, a review of the Applicant's financial statements, as well as group management fees, viz-a-vis the Applicant's declared VAT returns, disclosed that imported services relating to management fees and reimbursable expenses had been understated for VAT and WHT purposes by Shs. 1,409,905,806 and Shs. 1,157,572,876, respectively, for the period of February 2016 to January 2021. There were also unsupported proceeds from borrowing of Shs. 860,045,948 and Shs. 341,551,240 for the years ending January 2017 and January 2019, respectively, which were characterised as sales and taxed accordingly.

Withholding Tax of Shs.324,604,690

30. In addition to the above, the Applicant did not withhold tax on payments to local suppliers and interest payments. The Applicant paid interest of Shs. 1,433,559,712 to its related parties for the period March 2016 to January, 2021 as per the statement of cash flows, but did not account for WHT. The

Applicant further claimed local and professional expenses of Shs. 1,311,665,598 for the period March 2016 to January 2021, and did not charge WHT.

Income Tax

31. The Applicant had unexplained trade payables of Shs. 39,311,000 for the period 2018/19, which the Respondent recharacterised as income. The audit disclosed that the sales, as per the Applicant's VAT returns, exceeded those declared in the income tax returns by Shs. 15,561,442, Shs.8,663,994, Shs.300,140,540 and Shs. 22,128,525 for the years ending January 2017, 2019, 2020 and 2021. Additionally, there were mismatches between the opening and closing balances of related-party loans and unsupported proceeds from borrowing.

32. In addition, the Applicant's assessed loss for the year 2015-2016 was reduced to Shs. 2,668,374,583 from Shs. 8,891,876,000. For the years 2016 to 2021, the Applicant included bad debts of Shs. 698,351,000, miscellaneous expenses of Shs. 18,812,000, other expenses of Shs. 11,675,451, PAYE and integration of Shs. 76,963,410 and other administrative costs of Shs. 221,957,922 in their allowable expenses without supporting documentation.

33. The Respondent cited ***Uganda Electricity Transmission Limited Vs Uganda Revenue Authority, Civil Suit No.423 of 2010***, where **Hon. Justice Mr. Christopher Madrama,** stated:

> *"An audit exercise can lead to the discovery of new information.......*
> *"The defendant could only have established all the material facts on losses and allocation of assets based on the "written down value of assets" after submission of the document dated August 2006, with ascertainment would be within time by August 2010. Furthermore, the information would be new information simply because the defendant was satisfied with the tax returns of the plaintiff for the years of income 2001. However, the audit conducted by the defendant linked the information that no losses were brought forward from Uganda Electricity Board in 2001 self-assessment. This revealed that the self-assessments were misleading for containing information that losses were carried forward. The Commissioner had not reconciled the information*

available by August 2006 to the self-assessment returns until after the defendant carried out an audit in 2009 – 2010. Consequently, the reconciliation of the information and the result of the reconciliation that the plaintiff was in a taxable position in the year of income 2001 is new information within the meaning of section 97 (2) of the Income Tax Act, and the assessments issued in August 2010 are not time-barred"

34. The Respondent argued that the court's interpretation of what amounts to "new information" is not restricted to what was not at the disposal of the Commissioner. In a nutshell, the discovery of new information following the audit gave the Respondent latitude to issue the additional assessments outside the three-year period. The Applicant's contention thereof is devoid of any merit.

35. The Respondent also submitted that in instances where gross or willful neglect is demonstrated or established, the three-year limitation period does not apply in raising additional assessments. In determining whether there was gross or willful neglect, it is imperative to define what amounts to gross or willful neglect.

36. **Blacks law Dictionary, 11th Edition, on page 1916,** defines willful as

"Voluntary and intentional".

37. **Black's Law Dictionary, 11th Edition, on page 1244, d**efines *Neglect* as

"*The failure to give proper attention to a person or thing, whether inadvertent, negligent or willful"*

38. The Respondent contended that the Applicant had not accounted fully for all the taxes as per the audit, and this action amounted to gross or wilful neglect.

39. The Respondent also cited ***Michael Ndichu v Commissioner of Domestic Taxes (Income Tax Appeal E064 of 2021) [2023] KEHC 2594 (KLR) (Commercial and* Tax)** where the Tribunal found that:

"MNM willfully neglected to file tax returns; therefore, it was lawful for KRA to assess tax for the year 2013 as stipulated under section 29(6) of the Tax Procedure Act".

Issue 2. Whether the Applicant is entitled to a deduction of the bad debts amounting to Shs. 283,275,934 for the years 2019, 2020 and 2021?

40. Counsel for the Respondent submitted that the deductibility of bad debts is governed by Section 24 of the Income Tax Act, which provides as follows:

    1. *Subject to subsection (2), a person is allowed a deduction for the amount of a bad debt written off in the person's accounts during the year of income.*
    2. *A deduction for a bad debt is only allowed:*

    a) *if the amount of the debt claim was included in the person's gross income in any year of income;*

    b) *if the amount of the debt claim was in respect of money lent in the course of a business carried on by a financial institution in the production of income included in gross income; or*

    c) *if the amount of the debt claim was in respect of a loan granted to any person by a financial institution for the purpose of farming, forestry, fish farming, bee keeping, animal and poultry husbandry or similar operations.*

41. The Respondent relied on ***Standard Chartered Bank Uganda Ltd v. URA (HCCS No. 810 of 2015),*** where Justice Christopher Madrama (as he then was) held that;

    "The taxpayer must show that the debt was included in income, take all reasonable recovery steps and prove it reasonably believes the debt will not be recovered".

42. The Respondent submitted that the Applicant is required to demonstrate that there was a valid debt claim and that they undertook all reasonable steps taken to recover the debts.

<u>Reasonable steps to recover the debt</u>

43. The Applicant provided demand notices issued to its debtors in an attempt to recover the alleged debts. Such efforts, limited to the issuance of demand letters, do not amount to all reasonable steps required to justify a bad debt write-off. The Applicant ought to have undertaken more substantive measures beyond mere correspondence. The Annexures labelled "F", for example, the letter dated 6 June 2019, is addressed to Zange Concrete Works Limited, demanding payment of Shs. 12,328,884.70. Notably, the

letter itself acknowledges that the demand should be ignored if payment has already been made, and that such a letter, standing alone, is insufficient to demonstrate genuine and reasonable recovery efforts.

44. The Respondent also submitted that the Applicant did not adduce evidence establishing that the alleged debt was truly owing. No contract for the provision of services has been produced, nor has evidence of default under such a contract been furnished. Mere demand notices without corroborating documentation are inherently weak and cannot be considered cogent proof of indebtedness. In the absence of such evidence, the Applicant failed to demonstrate that it exhausted reasonable avenues of recovery. Therefore, has not made out a proper case for the writing off of bad debts, and its claim should not be sustained.

45. Therefore, the Applicant's attempted efforts underscore a complete lack of diligence and initiative in pursuing recovery. The Tribunal in ***Platinum Credit Ltd v URA, TAT No. 28 of 2018***, held that bad debts are only deductible where:

> *"The taxpayer has taken all reasonable steps to recover the debt; and there is a reasonable belief that the debt will not be recovered".*

46. The Respondent contended that *"all reasonable steps to pursue payment"* requires a creditor to act as a prudent business person would in attempting to recover a debt. This includes issuing written demand letters, making persistent documented follow-up efforts (calls, emails, physical visits) and engaging in formal debt collection, including litigation if appropriate.

47. The Respondent cited ***Standard Chartered Bank Uganda Ltd v URA, HCCS No. 810 of 2015,*** which held that:

> *"Documented, earnest, and legally enforceable efforts must be made to recover debts before a bad debt deduction can be granted."*

48. Counsel for the Respondent maintained that the demand letters issued to the various debtors by the Applicant threatened legal action in the event of default. However, no further legal action was taken when the alleged debtors failed to comply.

Issue 3: Whether the Respondent was justified in adjusting the Applicant's carry-forward tax loss

49. The Respondent submitted that this issue is already in an earlier matter, TAT Application No.254 of 2023, which is pending determination before this Honourable Tribunal. Raising this issue in the present Application amounts to an abuse of the court process and is barred by law as it offends the Lis pendens rule.

50. Counsel for the Respondent relied on ***Section 6*** of the ***Civil Procedure Act,*** which provides for a stay of suit, which embeds the spirit of the *lis pendens* as follows;

> *"No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where that suit or proceeding is pending in the same or any other court having jurisdiction in Uganda to grant the relief claimed."*

51. Counsel for the Respondent maintained that the conditions laid out in Section 6 of the Civil Procedure Act are all present and therefore this section of the dispute should be severed from the instant Application as the same is pending determination in an earlier lodged suit.

VII. The Determination

Procedural History and Preliminary Matters

52. Before addressing the substantive issues for determination, the Tribunal considers it necessary to set out the procedural history of this matter and address the concerns raised by the Applicant regarding the conduct of the proceedings.

53. On 25 July 2024, when this matter came up for hearing, the Tribunal directed the parties to file witness statements and a joint trial bundle by 30 August 2024, while the Respondent was directed to file its witness

statements by 10 September 2024. The matter was thereafter adjourned to 17 September 2024 for hearing.

54. When the matter subsequently came up on 6 November 2024, the Tribunal was informed that the parties were still pursuing a consent settlement and were in the process of compiling the requisite documentation. Fresh directions requiring the parties to file a joint scheduling memorandum by 30 November 2024, witness statements by 30 December 2024, and a joint trial bundle by the same date were issued. The Tribunal further directed that in the absence of a consent settlement, the matter would proceed to a hearing. The matter was accordingly adjourned to 7 January 2025 and on several other occasions.

55. Ultimately, on 10 December 2024, the Tribunal expressly directed as follows:

> *"We are fixing this matter for hearing. If you do not have a partial consent, be ready to hear the whole matter. This matter is hereby adjourned to 19 February 2025 at 9:00 a.m. for scheduling and hearing. If you have a partial consent on that day, file a revised Joint Scheduling Memorandum, joint trial bundle and witness statements by 10 February 2025."*

56. Despite the foregoing directions, the parties did not file witness statements or the requisite pre-trial documents. When the matter came up on 19 February 2025, the Tribunal, in exercise of its powers to regulate its own procedure and to facilitate the expeditious disposal of the matter, directed that the proceedings would continue by way of affidavit evidence and written submissions, to which both parties agreed. The Applicant was directed to file its affidavit evidence and written submissions by 12 March 2025, and the Respondent to file by 2 April 2025. A ruling date was thereafter fixed for 28 May 2025 at 2:30 p.m.

57. The Applicant filed their affidavit evidence on 18 March 2025 and did not file written submissions. The Respondent subsequently filed its affidavit evidence on 27 March 2025 and later filed written submissions on 28 April 2025.

58. The Tribunal further notes that by letter dated 15 April 2025, the Applicant sought leave to cross-examine the Respondent's deponent on the contents of the replying affidavit. Thereafter, on 26 May 2025, two days before the scheduled ruling date, the Applicant wrote to the Tribunal expressing surprise that the Respondent had filed submissions and that the matter had been fixed for ruling, contending that it had awaited communication regarding the intended cross-examination.

59. The record clearly demonstrates that the parties were accorded numerous opportunities to comply with the Tribunal's directions. The matter was adjourned on several occasions, timelines were repeatedly extended and the Tribunal afforded the parties ample latitude to compile documents, file witness statements and even pursue settlement by consent. Despite this indulgence, the parties failed to comply with the issued procedural timelines.

60. The directions issued on 19 February 2025 were clear, unambiguous, and made in the presence of Counsel for both parties. The parties expressly consented to the matter proceeding by way of affidavit evidence and written submissions. The Applicant was specifically directed to file both affidavit evidence and submissions within the prescribed timelines; however, they elected to file only affidavit evidence and failed to file submissions altogether. The Tribunal cannot be faulted for a party's omission to comply with clear procedural directions. The Applicant also cannot credibly assert that the ruling date came as a surprise because Counsel for the Applicant was present when the ruling date of 28 May 2025 was fixed. At the time of drafting this ruling on 26 May, 2026, the Applicant had not yet filed its submissions.

61. The Tribunal notes that **section 23 of the Tax Appeals Tribunal Act, Cap.** 341 empowers the Tribunal to regulate its own procedure and to conduct proceedings with as little technicality as possible, while **section 22(3)** permits the Tribunal to receive evidence by affidavit. The adoption of

affidavit evidence was therefore firmly grounded both in law and in the parties' consent.

62. In the circumstances, the Tribunal is satisfied that the parties were afforded a full and fair opportunity to present their respective cases, and the Applicant failed to adhere to the directions of the Tribunal. In ***Anna Tuhebwa v Mary Tibita, (Civil Appeal 13 of 2023) [2026] UGHC 552***, the High Court held that a failure to comply with court scheduling directions, particularly the filing of written submissions, constitutes a failure to satisfy the procedural requirements necessary to prosecute an appeal, thereby rendering the appeal abandoned.

The resolution of the issues

63. We have carefully considered the pleadings, the evidence placed before us and the submissions. In resolving this dispute, we have also considered the applicable statutory provisions and authorities cited.

Issue 1; Whether the tax liability amounting to Shs. 840,417,212 for the years 2016, 2017, 2018 and 2019 was issued outside the statutory limitation period

64. On 29 September 2022, the Respondent raised assessments for the periods 2016-2019, which are outside the statutory timelines. The **Black's Law Dictionary, 10th Edition,** defines statute of limitations as: *"A law that bars claims after a specified period."*

65. Further, in an article **"The Statute of Limitations in Tax Cases and Mistaken Advice by Officials", The Yale Law Journal, Vol. 61, No.7 (Nov., 1952)** pp. 1214-1220, it is stated as follows:

> *"The statute of limitations on federal tax claims must balance conflicting equities of individual taxpayers and the public. Whenever the statute bars the collection of a valid claim, the taxpayer receives a windfall at the public's expense. On the other hand, if the government asserts tax claims many years after they arise, individuals who, in good faith, believed they owed no tax may suffer unreasonable hardship. Accordingly, Congress has provided a relatively short limitations period if the taxpayer files a proper return."*

66. In other words, statutes of limitations, such as section 25 of the TPCA, are meant to restrict the period within which a tax authority may assert a claim against a taxpayer who, in good faith, believed that they owed no tax.

67. In the present case, where a taxpayer has filed their tax return, the Respondent has until three years to make a claim against the taxpayer. The Respondent is not allowed to issue additional assessments beyond the 3year limitation period except in exceptional circumstances which are set out in section 25 (2) of the TPCA, which provides:

> *"An additional assessment under subsection (1) maybe made:*
>
> *a) At any time, if fraud or any gross or wilful neglect has been committed by, or on behalf off the taxpayer, or new information has been discovered in relation to the tax payable by the taxpayer for a tax period.*
>
> *b) in the case of an additional assessment, within 3 years from the date of service of the notice of the additional assessment".*

68. The question to be decided is whether, subject to the exception therein, the Respondent is barred from making a claim against the Applicant due to the Limitation in Section 25 above. We must first determine whether the Respondent's audit findings constituted the discovery of new information.

69. Before addressing the specific adjustments under the various tax heads, the Tribunal considers it necessary to determine whether the Applicant discharged the burden of proof imposed upon it by law.

Burden of Proof.

70. The Tribunal is guided by **Section 19 of the Tax Appeals Tribunal Act** which places the legal burden upon the Applicant to demonstrate that the assessment raised by the Respondent is excessive, erroneous, or otherwise not in accordance with the law.

71. This statutory position establishes that an assessment issued by the Respondent is presumed correct unless displaced by credible evidence and sound legal argument presented by the taxpayer. This principle was affirmed

in ***Williamson Diamonds Ltd v Commissioner General [2008] 4 TTLR 167,*** where the Court held that:

> *"The burden of proving that the assessment issued by the respondent is excessive or erroneous lies on the taxpayer."*

72. Similarly, **Section 28 of the Tax Procedures Code Act** provides that:

> *"In a proceeding under a tax law, the burden shall be on the taxpayer to prove that a tax decision is incorrect."*

73. **Section 101 of the Evidence Act** further provides that:

> *"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist."*

74. The burden does not shift merely because an assessment is disputed. Rather, the taxpayer must adduce sufficient and credible evidence demonstrating the alleged errors in the assessment and establishing the factual basis of the challenge.

75. The Applicant's principal contention was that the documents, records and data relied upon by the Respondent in raising the additional assessments originated from the Applicant's own returns and records which had previously been submitted to, and were already in the possession of, the Respondent.

76. The Applicant maintained that the information relied upon by the Respondent did not constitute new information capable of justifying the issuance of additional assessments outside the statutory assessment period and that the Respondent's findings were based on erroneous assumptions and variances that did not accurately reflect its tax position.

77. In order for the Tribunal to determine whether the information relied upon by the Respondent was already disclosed and whether the assessments were issued within the period prescribed by law, the Tribunal required the underlying records from which those issues could be independently verified.

78. The Tribunal notes that the Applicant did not tender in evidence the relevant self-assessment returns, VAT returns, PAYE returns, withholding tax returns, income tax returns, sales ledgers, purchase ledgers, financial statements, reconciliations, variance analyses, or any other primary accounting records necessary to verify the assertions made.

79. Instead, the record shows that the parties principally relied upon the management audit report, the assessments, the objection decisions and related correspondence attached on the Applicant's affidavit in support annexures A to F. While these documents disclose the positions adopted by the parties, they do not provide the primary evidential material required for the Tribunal to independently evaluate the accuracy of the Respondent's findings or the validity of the Applicant's objections.

80. The Tribunal further notes that the Respondent identified a number of discrepancies and variances between the Applicant's returns, declarations and financial information. Although the Applicant disputed those findings, it did not avail the underlying records against which the Respondent's conclusions could be tested. Without the source documents, the Tribunal is unable to determine whether the alleged variances were genuine, whether they were satisfactorily explained, or whether the Respondent's computations were erroneous.

81. The Applicant argued that many of the relevant records were already in the possession of the Respondent. While that may well be the case, the Tribunal cannot relieve the Applicant of the burden expressly imposed upon it by statute. The burden of proof requires a taxpayer challenging an assessment to place before the Tribunal the evidence upon which it seeks to rely. The Tribunal cannot infer the contents of documents that were not tendered in evidence, nor can it determine disputed factual issues on the basis of unsupported assertions.

82. The absence of the underlying returns and financial records is particularly significant in relation to the Applicant's argument that the assessments were issued outside the statutory assessment period. The Applicant's case was premised on the assertion that the Respondent relied on information that

had already been disclosed through previously filed returns and records and that such information therefore did not amount to new information.

83. The self-assessment returns and related documents upon which that contention was founded were not produced before the Tribunal. The Tribunal is unable to ascertain what information was originally disclosed to the Respondent, when such information was disclosed, whether the information subsequently relied upon during the audit was already within the Respondent's knowledge, or whether the impugned assessments were founded upon new information discovered during the audit process.

84. Equally, in the absence of the self-assessment returns, the Tribunal is unable to determine the dates on which the relevant returns were filed and cannot ascertain the date from which any applicable limitation period would begin to run. The Applicant's contention that the assessments were issued outside the statutory period therefore remains unsubstantiated by evidence.

85. The Tribunal is guided by ***Warid Telecom Ltd v Uganda Revenue Authority***, where the Court emphasized the necessity of proving tax claims through proper evidence and observed:

> *"As a counsel he should know better. A counsel cannot testify in court. The applicant ought to have adduced evidence to that effect. The audited reports and returns ought to have been tendered in court by competent witnesses who ought to have clarified on the matter to the Tribunal."*

86. Having carefully reviewed the record, the Tribunal finds that the Applicant largely invited the Tribunal to conclude that the assessments were erroneous and time-barred without producing the primary records necessary to establish those allegations. Such evidence was indispensable given that the disputed assessments arose from an audit exercise involving comparisons between tax returns, accounting records, declarations and financial information.

87. The Tribunal is therefore unable to verify the Applicant's assertion that the Respondent relied exclusively on information already disclosed through prior returns. Likewise, the Tribunal is unable to determine whether the

assessments were based on new information, whether the alleged variances were incorrectly computed, or whether the assessments were issued outside the statutory period prescribed by law.

88. It bears repeating that the burden imposed by section 19 of the Tax Appeals Tribunal Act requires more than a mere assertion that an assessment is excessive. The taxpayer must demonstrate, through cogent evidence, the inaccuracies in the Respondent's findings, computations or legal conclusions. In the present case, the Applicant did not adduce evidence demonstrating errors in the Respondent's variance analysis, inaccuracies in the audit findings, or mistakes in the resulting assessments.

89. The consequence of failing to discharge that burden is well settled. Where a taxpayer does not produce the records necessary to substantiate its challenge, the Tribunal is left without an evidential basis upon which it can interfere with the assessment. The assessment therefore stands unless

Issue 2: Whether the Applicant is entitled to a deduction of bad debts amounting to Shs. 283,275,934 for the years 2019, 2020 and 2021

90. **S.15 of the ITA** provides that;

"Subject to section 16, the chargeable income of a person for a year of income is the gross income of the person for the year less total deductions allowed under this Act for the year."

91. The deductions are generally provided for under **Section 22(1)(a) of the ITA** which provides that;

'All expenditures and losses incurred by the person during the year of income to the extent to which the expenses and losses were incurred in the production of income included in gross income are deductible.'

92. A bad debt is deductible under Section 24 of the ITA, which provides that;

(1)A person is allowed a deduction for the amount of a bad debt written off in the person's accounts during the year of income.

(2)A deduction for a bad debt is only allowed

(a)if the amount of the debt claim was included in the person's gross income in any year of income...".

93. Furthermore, the **section 24** of the Income Tax Act defines a debt claim to mean;

> *(a) A debt claim in respect of which the person has taken all reasonable steps to pursue payment and which the person reasonably believes will not be satisfied;*
>
> *"Debt claim" means a right to receive a repayment of money from another person, including deposits with financial institutions, accounts receivable, promissory notes, bills of exchange and bonds.*

94. Additionally, the **Uganda Revenue Authority Practice Notes of 2001, Paragraph 2(a)** provide that;

> *"For persons other than financial institutions, a bad debt is allowed as a deduction only if all reasonable steps for recovery have been taken and there is reasonable ground that the debt will not be recovered"*

95. In the case In ***Standard Chartered Bank Uganda Ltd v. URA (HCCS No. 810 of 2015)***, Justice Christopher Madrama (as he then was) held that;

> *"The tax payer must show that the debt was included in income, take all reasonable recovery steps and prove it reasonably believes the debt will not be recovered".*

96. The Tribunal shall therefore evaluate the Applicant's claim against each of the statutory requirements under section 24.

Existence of a valid debt claim.

97. The Applicant's evidence on this issue is contained in the affidavit of Ms. Julian Ingabire, the Finance Manager of the Applicant. She deponed that the Applicant wrote off bad debts amounting to Shs. 457,028,466 for the years 2019, 2020 and 2021 arising from customers who allegedly refused to pay for services rendered by the Applicant. The Respondent only allowed Shs.173,752,532 and disallowed Shs. 283,275,934.

98. She further stated that prior to the write-off, the Applicant took reasonable steps to recover payment, including engaging external debt collectors, obtaining approvals from regional offices and issuing several demand and

reminder notices to customers. She attached correspondence to customers as annexure "F".

99. The Respondent, however, contended that the Applicant failed to demonstrate existence of a valid debt claim, failed to prove that all reasonable recovery steps had been undertaken and failed to discharge the burden of proof under the Act.

100. Section 24 of the ITA contemplates the existence of a "debt claim", which the Act defines as a right to receive repayment of money from another person, including accounts receivable and similar obligations.

101. The burden lies with the taxpayer to demonstrate the statutory requirement that a valid and enforceable debt claim exists and arises from a legitimate commercial transaction. The taxpayer must therefore adduce evidence demonstrating that services were rendered, payment became due and the debtor defaulted in satisfying the obligation.

102. The Applicant did not adduce any evidence demonstrating that services were rendered through either contracts for provision of services, invoices, statements of account, debtor reconciliations, acknowledgements of indebtedness or evidence demonstrating the terms upon which the alleged debts arose. Only the demand letters annexed as annexure "F" were adduced.

103. Demand notices without corroborative documentation merely assert indebtedness but do not conclusively establish the existence of a legally enforceable debt claim. A demand letter is not itself proof that services were rendered, that payment became due or that the debtor defaulted under enforceable contractual obligations.

104. In ***National Bank of Kenya Limited V Patrick Maina Ikinya &Grace Muthoni***, the court stated:

"The Plaintiff was selective on the kind of evidence they were bringing. This court is a court of evidence. There was no bank statement showing indebtedness, and correspondence cannot be a source of debt."

105. The absence of primary source documents is particularly significant because the Tribunal is unable to ascertain the nature of the transactions giving rise to the alleged debts, or whether the debts were ever recognised as income in the Applicant's accounts.

Whether the debts formed part of the Applicant's gross income

106. In ***F.E Dinshaw v The Commissioner of Income Tax, Bombay (1934) 50 TLR 527***, the court held:

> *"A debt might be bad even though the debtor continues to trade. What is material is that the bad debt should fall in the category of losses incurred by the person during the year of income as provided for under S.22 of the ITA. The purpose of the bad debt deduction is to reverse the amount not received by the taxpayer but which had been included in the gross income".*

107. Accordingly, the taxpayer must prove that the debts claimed as bad had previously been accounted for as income in the taxpayer's returns. The Applicant merely asserted that the debts arose from customers who failed to pay for services rendered. However, no schedules, accounting records, income declarations or reconciliations were produced, demonstrating that the specific debts written off had previously been included in the Applicant's gross income for the relevant years of income.

108. The Tribunal is therefore unable, on the evidence before it, to conclusively verify whether the statutory requirement under section 24(2)(a) was satisfied.

Whether the Applicant took all reasonable steps to pursue payment

109. Section 24 of the ITA requires proof that the person has taken all reasonable steps for recovery and there is reasonable ground that the debt will not be recovered. The phrase "all reasonable steps" imports an objective standard requiring the Tribunal to evaluate whether the recovery efforts undertaken were commercially reasonable in the circumstances of the case.

110. In ***Andes (EAS) Ltd v Akoong Wat Mulik Systems*** **(Civil Suit No. 184 of 2008)**, Justice Hellen Obura ruled that;

> *"What constitutes "reasonable " is not a question of law, but one of fact, and it depends on the specific circumstances of each case. The burden of proof rests on the claimant".*

111. The **Black's Law Dictionary, 8th edition, at page 1293** defines reasonable

> *"As fair, proper or moderate under the circumstances."*

112. In ***International Hospital Kampala v URA*****, TAT No. 193 of 2024**, the Tribunal held that;

> *"Recovery measures need not be exhaustive but only reasonable".*

113. The Applicant undertook recovery efforts, including engaging external debt collectors, obtaining regional approvals, issuing demand and reminder notices. Annexure "F", comprising a correspondence from Pamoja Chambers, indicated that despite repeated recovery efforts, several debtors could not be traced, contacted or compelled to settle the outstanding amounts. For instance, Truth Consults Ltd was no longer operational, and recovery efforts had proved futile; other debtors were untraceable despite repeated attempts. The correspondence further recommended that the Applicant proceed to write off the debts as irrecoverable.

114. The Tribunal accepts that reasonable recovery efforts were undertaken in however, evidence tendered only related to certain specific debtors and did not comprehensively account for the entirety of the disputed bad debts amounting to Shs. 283,275,934.

115. Where a taxpayer seeks a deduction of substantial bad debts, the taxpayer must place before the Tribunal sufficient evidence proving compliance with all the statutory requirements under section 24 in respect of the full disputed amount.

116. The Tribunal therefore finds that a taxpayer seeking a bad debt deduction must establish, among other things, the existence of a valid debt claim, that

the debt was written off in the taxpayer's accounts, that the amount had previously been included in gross income, that reasonable recovery efforts were undertaken, and that there were reasonable grounds for concluding that the debt had become irrecoverable.

117. Accordingly, the evidence before the Tribunal shows that the Applicant did not adduce sufficient evidence demonstrating compliance with all the requirements of Section 24.

Issue Three: Whether the Respondent was justified in adjusting the Applicant's carried forward tax loss for the year 2015/2016 from Shs. 8,891,874,369 to Shs. 2,668,374,583

118. The Tribunal notes that the Respondent raised a preliminary objection contending that this issue is already pending before the Tribunal in TAT Application No. 254 of 2023 and that the present proceedings therefore offend the doctrine of *Lis pendens* under section 6 of the Civil Procedure Act.

119. The Tribunal considers it necessary to first determine the preliminary objection because if upheld, it would bar the Tribunal from proceeding to determine the issue on its merits.

Preliminary objection on Lis Pendens doctrine

120. The doctrine of Lis pendens is grounded in public policy and aims to prevent multiplicity of proceedings, avoid conflicting decisions and preserve the orderly administration of justice. This doctrine is statutorily embodied in section 6 of the Civil Procedure Act, Cap. 71, which provides:

> *"No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where that suit or proceeding is pending in the same or any other court having jurisdiction in Uganda to grant the relief claimed."*

121. The principle was articulated in ***Springs International Hotel Ltd v Hotel Diplomate Ltd & Boney M. Katatumba*, HCCS No. 227 of 2011**, Bashaija J. held that:

> *"No court ought to proceed with the trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding; and the previously instituted suit or proceedings is between the same parties; and the suit or proceeding is pending in the same or any other court having jurisdiction to grant the reliefs claimed."*

122. The Respondent submitted that the issue regarding the reduction of the Applicant's carried forward losses is already pending before this Tribunal in TAT Application No. 254 of 2023 between the same parties, and that the matter is therefore not properly before this Tribunal.

123. The Tribunal has considered the record and notes that TAT Application No. 254 of 2023 involved the same parties and substantially the same issue as in the present case, namely the Applicant's carried-forward losses. The Tribunal heard the matter and delivered a ruling remitting the issue to the Respondent for reconsideration.

124. Upon delivery of that ruling, the Tribunal fully discharged its adjudicative function in respect of that application. The effect of the decision was to finally dispose of the proceedings before the Tribunal, notwithstanding that consequential administrative steps were to be undertaken by the Respondent.

125. The Tribunal finds that the issue of the Applicant's carried-forward losses was directly and substantially in issue in TAT Application No. 254, the parties are the same, and the Tribunal rendered a determination on the matter, which culminated in a remittal order.

126. To the extent that the present proceedings seek to re-open or re-agitate the same issue already determined in TAT Application No. 254, the Tribunal finds that such proceedings are barred by the doctrine of res judicata and offend the principle of finality in litigation.

127. The Tribunal accordingly upholds the preliminary objection and declines to entertain the matter further to the extent that it relates to issues already determined in TAT Application No. 254.

Orders

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

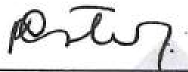
(i) The Applicant is liable to pay the liability amounting to Shs. 840,417,212.

(ii) The Applicant's claim for deduction of bad debts was properly disallowed by the Respondent.

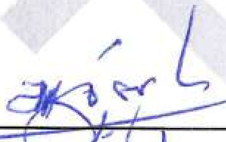
(iii) Costs awarded to the Respondent.

It is so ordered.

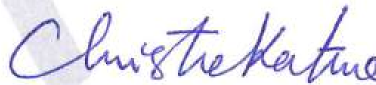
Dated at Kampala this **29th** day of **May** 2026.



HON. CRYSTAL KABAJWARA
CHAIRPERSON



HON. WILLY NANGOSYAH
MEMBER



MS. CHRISTINE KATWE
MEMBER