

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA**  
**APPLICATION NO. 300 OF 2024**

LAKE VICTORIA HOTEL LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MRS. STELLA NYAPENDI CHOMBO,  
MS. SAFI GRACE

**RULING**

This ruling is in respect of an application challenging an administrative income tax assessment of Shs. 118,460,942 for the years 2021 and 2022, categorizing income earned from leasing of the Applicant's hotel facility as rental income.

**1. Background Facts**

The Applicant is a hotel establishment engaged in the hospitality industry in Uganda. Its primary objectives include operating hotels, restaurants, cafes, conference centers, lodging houses and safari lodges as well as operating as a refreshment contractor, refreshment room proprietor, caterer, travel agent, dry cleaner, theatre operator and manager, tourist agent, and contractor among other activities.

The Applicant entered into a lease agreement dated 21 December 2020 and leased the hotel facility and its establishments to Granada Hotels Uganda Limited, a company under the Granada Hotel Group. The lease facility agreement was executed with an annual amount of USD 850,000.

On 20 March 2024, the Respondent issued an administrative income tax assessment of Shs. 810,470,298 for the years 2021 and 2022, arising out of the undeclared rental income of Shs. 2,701,567,662. On 5 July 2024, the Applicant objected to the assessment because the Hotel business, including goodwill and inventory, had been transferred to Granada Hotel Limited and the income charged constituted business income and not rental income.

The Respondent made an objection decision disallowing the objection and maintaining the assessment of Shs.118,460,942 based on the characterization of the income received from leased properties as rental income.

## **2. Issues for determination**

The parties agreed upon the following issues for determination:

- (i) Whether the income received by the Applicant is Business income or Rental Income?
- (ii) What are the remedies available to the parties?

## **3. Representation**

The Applicant was represented by Tusiime Yvonne and Dorothy Uwimana of PKF Taxation Services Limited, while the Respondent was represented by Ms. Rita Nabirye of the Respondent's Legal Services and Board Affairs Department.

## **4. Submissions by the Applicant**

The Applicant submitted that Section 18 of the Income Tax Act, as amended defines business income to mean any income derived by a person carrying on a business. A business includes any trade, profession, vocation or adventure in the nature of a trade.

The Applicant submitted that rental income is defined under Section 2 as the total amount of rent derived by the person for the year of income from the lease of immovable property in Uganda, with the deduction of any expenditures and losses incurred in respect of the property.

The Applicant submitted that the lease agreement clearly identifies the subject matter which is a hotel/ hotel establishment. This is under the Preamble which states; *"WHEREAS the lessor owns, operates, supervises, directs and controls the operation of the hotel known as "Lake Victoria Hotel at Plot 23/31 Circular Road Entebbe Uganda and desires to lease the same to an able person and to the extent invited parties to express interest in the same WHEREAS the lessee has responded positively and competitively and wishes to lease the Hotel and run, manage it as the owner whereof WHEREAS the lessor and the lessee have negotiated and agreed to the lease of the Hotel in the terms of this agreement."*

The lease agreement defines the hotel establishment to mean Lake Victoria Hotel located at Plot 23/31 Circular Road Entebbe and includes hotel properties (properties include shops,

several offices, bars, fitness centers, laundry and others as stated on clause), motor vehicles, furniture supplies, minor stock (minor stock is grocery, glass ware, kitchen utensils, room beddings, linen, restaurant linen and all other assets as per the inventory).

The Applicant submitted that they transferred the business, which includes immovable vehicles, supplies, and stock, which are movable property and therefore do not fall within the meaning of rental income. It should be noted that the business could only be operated on the premises. The immovable property was only incidental to the transfer of the business as a whole.

The Applicant submitted that in this case, the lease agreement provides for the transfer of the business and not merely the transfer of the property. The business was transferred to Lake Victoria Granada Hotels Ltd, which was to operate the hotel business at the premises during the lease. There are also restrictions on how the business was to be done, hence the conclusion that the income of the Applicant was business income and not rental income.

#### **Terms, conditions, and obligations of the parties to the agreement**

The Applicant submitted that in the case of *Everest Hotels Ltd Vs Commissioner of Income Tax, 1978 114 ITR 779*, the court stated that the business of letting depends on the circumstances of each case. The court, in concluding that this was business income, looked at the terms which included:

*"(1) To be business income within the meaning of Section 10 there must be evidence of exploitation of a commercial asset.*

*(2) Exploitation of a commercial asset does not necessarily mean exploitation by the assessee himself at all material times. The assessee may temporarily cause it to be exploited by another person against payment of consideration and for this purpose may also execute a lease for a fixed period, even with clauses of option to renew.*

*(3) But in order that the income derived from the lease may be taxable under Section 10 it must be shown that the lessor's intention was that during the period of the lease, the asset leased out must remain and be treated as a commercial asset and exploited as such.*

*(4) This intention of the lessor referred to above has to be ascertained from the cumulative effect of all the terms of the lease and other material circumstances".*

The Applicant submitted that the terms show that the assets were to be used for purposes of the true business rather than income from property (rental income). The Applicant submitted that the terms of the agreement in the case of ***Everest Hotels Ltd Vs Commissioner of Income Tax, 1978 114 ITR 779*** included that the lessor shall on the request of the lessee lay out such sum for capital investment for improvement and better carrying on of the hotel business provided an estimate of the cost of such addition to or alteration in the demised premises or purchase of any fittings, installations, plates, wares or other goods has been approved by the lessee.

The clauses contained the respective covenants of the lease and the lessor, and the provision for the determination of the lease and right of re-entry in the event of breach. The court concluded that the lessor intended that during the period of the lease, the building, along with the fittings, furniture, goodwill, equipment, etc., which were leased out, should be used for a hotel business and hence qualified as profits and gains from business, profession or vocation.

The Applicant submitted that, in this case, the obligation to maintain the hotel at current 4-star standard (Clause 11.1), the termination in case of bad services (clause 24.3), maintaining designated employees to monitor the activities and ensure the standards of the hotel are met, (Clause 6.2) and the transfer of the ongoing operational contract to be carried out by the lessee all point to the fact that what was transferred was business rather than rental property and hence business income rather than rental income.

#### **The intention/ objectives of the parties**

The Applicant referred to the case of ***Chenna Properties and Investments vs Commissioner Income Tax Civil Appeal No.4494/2004*** where the Supreme Court of India held that the decision rested solely on the main objective of the company and took note of the fact that letting out property was not the objective of the company at all.

The Applicant submitted that the main object was the running and operating of the hotel business at Plot 23/32 Circular Road, Entebbe as provided in the Memorandum and Articles of Association. The Applicant transferred these objects to another to manage as the owner; as such, the income received is business and not rental income.

Following the above submissions, the Applicant prayed for the following:

- (i) a declaration that the income received by the Applicant is business income and not rental income,
- (ii) income tax assessments raised be vacated, and
- (iii) The costs of this application.

## 5. Submissions of the Respondent

The Respondent submitted that the term "Business" is defined in Section 2 of the Income Tax Act (ITA) as any trade, profession, vocation or adventure in trade, but does not include employment. The Respondent further stated that section 2 of the ITA defines the term "rent" to mean any payment, including a premium or like amount, made as consideration for use or occupation of, or the right to use or occupy, land or buildings.

The Respondent submitted that Section 20(1)(a) of the Income Tax Act Cap provides that property income means any dividends, interest, annuity, natural resource payments, rents, royalties and any other payment derived by a person from the provision, use, or exploitation of property.

The Respondent cited Section 18(1) of the ITA which states:

*"Business income means any income derived by a person in carrying on a business and includes the following amounts, whether of a revenue or capital nature-*

- a) the amount of any amount of any gain, as determined under Part VI of this Act which deals with gains and losses on disposal of assets, derived by a person on the disposal of a business asset, or on the satisfaction or cancellation of a business debt, whether or not the asset or debt was on revenue or capital account,*
- b) any amount derived by a person as consideration for accepting a restriction on the person's capacity to carry on business.*
- c) The gross proceeds derived by a person from the disposal of trading stock;*
- d) Any amount included in the business income of the person under any other section of this Act;*
- e) The value of any gifts derived by a person in the course of, or by virtue of, a past, present or prospective business relationship, and*

f) *The interest derived by a person in respect of trade receivables or by a person engaged in the business of banking or money lending or on the*

The Respondent submitted that it is trite law that where the taxpayer is in the business of letting out property as its principal business, then the income from the property is treated as business income, however, where the taxpayer by its objectives is not majorly in the business of letting out properties and deriving income thereof then, the income is treated as rental income.

The Respondent submitted that rental income from immovable property (land or buildings) is defined and taxed separately from business income under Section 5 of the ITA. The lease of the hotel facility, a fixed property, falls squarely under this provision.

The Respondent submitted that rental income is segregated from other income sources, requiring distinct reporting and taxation. The Applicant's transaction is neither listed nor does it fall within the scope of business income. It qualifies as rental income as defined under Section 2 of the ITA.

The Respondent submitted that in the case of ***India in Chennai Properties & Investments Ltd V Commissioner of Income Tax (2015) 373 ITR 673 (SC)***, the Court noted that the appellant, a company incorporated with the main objective of acquiring properties in the city of Madras and leasing them out, reported the rental income as business income in its filed return. Sikri, J noted that:

*"The Memorandum of Association of the Appellant- Company which is placed on record mentions main objects as well as incidental or ancillary objects in clause III. (A) and (B) respectively. The main object of the Appellant company is to acquire and hold the properties known as "Chennai House" and "Firhavin Estate" both in Chennai and to let out those properties as well as make advances upon the security of lands and buildings or other properties or any interest therein. What we emphasize is that holding the aforesaid properties and earning income by letting out those properties is the main objective of the company".*

The Respondent submitted that the above raises the question whether the Applicant in leasing/letting out the said Hotel establishment did so, as its principal business? And if so, then the tax head is business income. However, if the proposition is found to be to the contrary, then the Respondent's position is in the negative.

The Respondent submitted that the Applicant operates in the business of managing hotels as set out in the Memorandum of Association and other incidental activities. This notion, therefore, does not position the Applicant as doing business of leasing out property to derive income. Notwithstanding the position that the Applicant has transferred the business to the Lessee who also retained employees of the Applicant, the Applicant is not in the business of leasing or letting out property as its major objective and deriving income thereof.

The Respondent submitted that the Applicant's primary activity is hospitality and not property leasing. The income derived from the lease cannot be classified as business income. Rental income is generally taxed as "Income from House Property" unless leasing property is a core part of the taxpayer's business operation. Since the Applicant's main business is hospitality, the lease income should not be considered business income. The Respondent invited the Tribunal to dismiss the application with costs.

#### **6. Submissions of the Applicant in rejoinder**

In rejoinder, the Applicant submitted that it has produced evidence to show that the assessment was wrong. The Applicant further submitted that while the lease agreement included immovable property and qualifies as rental income, the Respondent states that the income received is rental income rather than business income because the Applicant's principal business is not letting out property.

The Applicant contended that the Respondent introduced a new basis for the objection decision by stating that the income does not qualify as business income because the Applicant's principal activity is not the business of letting out properties. This contradicts the Respondent's decision that where a transaction includes immovable property, it is rental rather than business income.

The Applicant submitted that the business of the company is not static and may change depending on the objectives of the company at a time. The principal business of the company and income received was from letting out the business as a whole and receiving returns from another entity (Granada Hotels Ltd) which would take over the running of the business and remunerate the lessor based on the amount agreed upon.

The Applicant submitted that what was transferred was a business as a whole and the income received from the leases of the hotel establishment is business income and not rental income.

## 7. The determination by the Tribunal

The Applicant owns a hotel establishment in the hospitality industry in Uganda. Its primary objectives include operating hotels, restaurants, cafes, conference centers, lodging houses and safari lodges as well as operating as a refreshment's contractor, refreshment room proprietor, caterer, travel agent, dry cleaner, theatre operator and manager, tourist agent, and contractor among other activities.

The Applicant entered into a lease agreement dated 21 December 2020 and leased the hotel facility and its establishments to Granada Hotels Uganda Limited, a company under the Granada Hotel Group during the COVID 19 pandemic period. The lease facility agreement was executed with an annual amount of USD 850,000.

On 20 March 2024, the Respondent issued an administrative income tax assessment of Shs. 810,470,298. When the Applicant objected against the assessment, the Respondent partially allowed the objection up to Shs. 118,460,942 but characterized the income received from leased properties as rental income.

Therefore, the dispute hinges on the characterization of the Applicant's income from the lease of the hotel establishment, that is, whether it is rental or business income.

Section 4 of the ITA imposes income tax on every person who has chargeable income for a year of income.

Chargeable income is defined by section 15 of the ITA to mean the gross income of a person for a year of income less total deductions allowed under the ITA for the year.

Section 17 of the ITA defines the term gross income to be the sum total of business income, employment income and property income derived during the year by a person.

Section 18(1) of the Income Tax Act defines business income as follows:

*"Business income means any income derived by a person in carrying on a business and includes the following amounts, whether of a revenue or capital nature-*

*a) the amount of any amount of any gain, as determined under Part VI of this Act which deals with gains and losses on disposal of assets, derived by a person on the disposal of a business asset, or on the satisfaction or cancellation of a business debt, whether or not the asset or debt was on revenue or capital account,*

b) *any amount derived by a person as consideration for accepting a restriction on the person's capacity to carry on business*".

However, the ITA contains a special regime for the taxation of rental income which the ITA treats differently to other gross income.

Section 5 of the ITA imposes tax on any person who has rental income for the year of income. Further, section 5 (3) of the ITA categorically states that rental tax is separate from the tax imposed under section 4 (see above) and is not to be included in the gross income of the person that is subject to tax for any year of income.

In other words, the ITA ringfences rental income from other kinds of business income that would ordinarily have been taxed under section 4 had it not been for the exclusion under section 5 (3) of the ITA.

Having stated the above legal framework, the pertinent question that one ought to ask is, what is rental income?

Section 2 of the ITA, defines the term rent as:

*"Any payment, including a premium or like amount, made as consideration for use or occupation of, or the right to use or occupy, land or buildings"*.

Therefore, for an item of income to qualify as rent, it must have been made in consideration for the use or occupation of land or buildings.

We must now turn to the transaction between the Applicant and Granada Hotels and determine whether the payments arising therefrom are consideration for the use or occupation of land or buildings.

## **Analysis**

The Tribunal examined the lease agreement dated 21 December 2020, which transferred the hotel facility and its establishments to Granada Hotels Uganda Limited.

Clause 2 of the agreement headed "Grant of Rights" states:

*"2.1 ...the Lessor shall subject to clause 8 and 9 herein lease the Hotel to Lessee for the duration of the term.*

*2.2 The Hotel comprises of*

132 hotel rooms

8 Junior suites

3 ministerial suites

1 presidential suite

4 conference rooms

1 restaurant

3 bars

10 shops, etc”

In addition to the above, clause 3.1 of the agreement states:

*“...the Lessor mandates the lessee to take the Hotel in its current condition, to fully operate it as a hotel under its own name, logo, trademarks and get up for the duration of the term...”*

Further, clause 3.2 states:

*“...the Lessee shall have quiet possession of the Hotel establishment and shall ensure that all outgoing including telephone line, internet, electricity and water on the hotel are properly and punctually paid for.”*

It is unequivocally clear from the above provisions that the main purpose of the transaction involving the lease of the hotel establishment was to grant the Lessee rights to use the buildings comprising the various rooms listed in clause 2.2 of the agreement.

This is further confirmed by the fact that the Lessee was under no obligation to continue operating the business of the Applicant under its trademark. Instead, the Lessee was allowed to operate the hotel under its own name, logo and trademarks. Clause 5 of the agreement permitted the Lessee to change the trading name of the hotel, subject to the Applicant's written approval.

While the lease entitled the Applicant to have a team of not less than 10 designated employees to look after the Applicant's interests (clause 6), this did not amount to and cannot be interpreted as a transfer of an entire business.

We have taken note of the Applicant's submissions that certain obligations were imposed upon the Lessee, such as the obligation to maintain the hotel at the current 4-star standard (Clause 11.1), the termination in case of bad services (Clause 24.3), maintaining designated employees to monitor the activities and ensure the standards of the hotel are met. The

Applicant argued that these conditions all point to the fact that the Applicant transferred a business rather than renting property.

We disagree with the Applicant. The obligations imposed upon the Lessee are no different from conditions precedent to a property lease arrangement, such as restrictions on the use of the property.

In addition, the mode of remuneration for the transaction is telling. Clause 8 of the Agreement provides that the agreed annual lease amount shall be USD 850,000, exclusive of all applicable taxes.

If the Applicant intended to let a business and not a property, the consideration would have reflected such intention, for example, a share of the earnings generated by the Lessor from operating the hotel business.

However, this was not the case. We have also taken note of Clause 7 of the agreement, which mandated the Lessee to collect and remit proceeds from existing receivables to the Applicant. This further confirms the finding that the transaction was not a transfer or lease of a business but the letting of buildings in consideration for rent.

Therefore, having studied the agreement in its entirety, we have concluded that the consideration received by the Applicant was for the right to use and occupy the property, which falls squarely within the statutory definition of rental income. Although the agreement included operational obligations for the lessee, these were incidental to the main purpose of granting possession and use of the property.

In the case of ***Hajji Musa Ntale vs URA, HCT 00 cc cs 303-2008***, Hon. Justice Geoffrey Kiryabwire held:

*"There is no doubt that the parties to the rental agreement intended this agreement to be a rental agreement, and therefore, the proceeds from the letting of the property were rent, which was instead of being collected by the plaintiff as the landlord, credited on his loan account with the bank.*

The court further stated:

*"... It follows from this section that rental income is treated separately from the gross income of an individual. To that extent, Counsel for the defendant was correct in his submissions".*

In the circumstances, the Application is dismissed and the Tribunal orders as follows:

- (i) The assessment of Shs. 118,460,942 is upheld.
- (ii) Costs are awarded to the Respondent.

Dated at Kampala this.....3<sup>rd</sup>.....day of October.....2025



**MS. CRYSTAL KABAJWARA**  
**CHAIRPERSON**



**MRS. STELLA NYAPENDI CHOMBO**  
**MEMBER**



**MS. GRACE SAFI**  
**MEMBER**

**RULING**