



THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO.34 OF 2025

MAHOMA UGANDA LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

**BEFORE: HON. EDWARD BIRYETEGA, HON. KENNETH A. BAGAMUHUNDA,
HON. CHRISTINE KATWE**

RULING

I. Introduction

1. This ruling arises from an application filed by the Applicant before this Honourable Tribunal, challenging the Respondent's objection decision dated 8 August 2024. By the said decision, the Respondent confirmed additional Pay As You Earn (PAYE) tax assessments levied against the Applicant, amounting to Shs. 60,765,000 (Uganda Shillings Sixty Million, Seven Hundred Sixty-Five Thousand).

II. Background facts

2. The Applicant was established as a Special Purpose Vehicle (SPV) to execute a Joint Venture Agreement between itself, Renewgen (Pvt) Limited, and Engineering Consultants (Pvt) Limited, for the development of a 2.7MW Small Hydro Power Plant. The Applicant's core business comprises the generation of hydroelectric power for sale to the National Grid.

3. It is the Applicant's case that its dam operations were outsourced to Engineering Consultants Uganda Limited, thereby leaving the Applicant's directors with minimal operational responsibilities. The Applicant contends that the said directors received only annual sitting allowances which were duly declared in their individual tax returns while the holding company paid their substantive remuneration.
4. Between July 2019 and March 2024, the Respondent conducted a tax compliance review of the Applicant's tax affairs. Arising from the review, the Respondent alleged undeclared gains on the disposal of shares, under-declared PAYE, over-claimed expenses, and unaccounted-for Withholding Tax (WHT).
5. Consequently, on 7 May 2024, the Respondent issued additional tax assessments against the Applicant totaling Shs. 69,607,322, comprising a PAYE assessment of Shs. 60,765,000 and a WHT assessment of Shs. 8,842,322.
6. The Respondent maintained that the Applicant under-declared PAYE on emoluments payable to its directors and failed to account for WHT on qualifying payments. The Respondent further asserted that the directors' earnings constituted employment income that ought to have been declared monthly.
7. Conversely, the Applicant objected to the assessments, maintaining that the directors were non-residents who only received annual sitting allowances from the Applicant, which were fully accounted for in their respective income tax returns. The Applicant further contended that the Respondent's determination of the directors' monthly earnings was speculative and based on unsupported assumptions.
8. Being dissatisfied with the Respondent's objection decision confirming the PAYE assessment, the Applicant moved this Tribunal for redress.

III. Issues for Determination

9. At the joint scheduling stage, the parties framed and agreed upon the following issues for determination by this Tribunal:
- (i) Whether the Applicant is liable to pay the additional tax as assessed by the Respondent.
 - (ii) What remedies are available to the parties.

IV. Representation

10. At the hearing, Ms. Charity Nesigire of M/s Matsiko Wanda & Arinda Advocates appeared for the Applicant, while Ms. Christine Mpumwire appeared for the Respondent.

V. Evidence on Record

The Applicant's evidence

11. The Applicant's case is supported by an affidavit deposed by Mr. Igumba Samson, the Applicant's Head of Finance, sworn on 24 April 2026, the contents of which are summarised as follows:
- (i) Around 2019, the Applicant initiated procedures to outsource its core dam operations to Engineering Consultants Uganda Limited, thereby leaving its Directors, Mr. Runatunga Arachchige Bhatiya and Mr. Pinto Moragoda Liyanage Upul Chandana, with no routine operational tasks.
 - (ii) In 2020, the plant operations were officially and fully transferred to Engineering Consultants Uganda Limited upon the execution of an Operations and Services Agreement (Exhibit AEXH1).
 - (iii) While keeping the company active for future projects, the Applicant resolved to pay the directors nominal sitting allowances exclusively during annual meetings to ensure continuous corporate compliance (Exhibit AEXH4).
 - (iv) Following the outsourcing of operations, the Directors were paid only annual nominal sitting allowances, which they duly declared in their

respective individual tax returns (Exhibit AEXH2) and which are reflected in transaction ledgers (Exhibit AEXH3).

- (v) On 7 May 2024, the Respondent, without conducting a proper investigation into the corporate structure and affairs of the Applicant, arbitrarily raised additional tax assessments totalling Shs. 69,607,322 (comprising PAYE of Shs. 60,765,000 and WHT of Shs. 8,842,322).
- (vi) The Respondent's PAYE assessment was based on sheer speculation that the Directors ought to have earned a monthly stipend of Shs. 7,000,000, without providing any objective evidence or comparative industry data to justify such a figure for an entity with outsourced operations.
- (vii) Between 28 and 30 May 2024, the Applicant formally filed an objection to the said assessments on the system, but the Respondent erroneously disallowed the objections without rendering any legal or factual justifications.

The Respondent's Evidence

12. In reply, the Respondent relied on an affidavit deposed by Mr. Ongom Ambrose, an Officer attached to the Large Taxpayer's Office in the Domestic Taxes Department of the Respondent, sworn on 18 May 2026, stating as follows:
 - (i) The Applicant is engaged in the generation and sale of hydroelectric power to the national grid under a Power Purchase Agreement with UETCL. This activity is capital-intensive, highly specialised, and strictly regulated under the Electricity Act, under the oversight of the Electricity Regulatory Authority (ERA), and requires professional, skilled governance.
 - (ii) Pursuant to its statutory mandate, the Respondent conducted a tax compliance review of the Applicant's affairs. The review unearthed under-declared PAYE, undeclared gains on share disposals, over-claimed expenses, and unaccounted-for WHT, and the Respondent communicated these findings on 7 May 2024.

- (iii) Consequently, the Respondent issued additional Income Tax assessments of Shs. 69,607,322 comprising an additional administrative PAYE assessment of Shs. 60,765,000 (for the period January 2023 to March 2024) and an additional WHT assessment of Shs. 8,842,322 (for the period July 2019 to January 2023).
- (iv) The Applicant objected to the PAYE component only, on the sole ground that its directors are non-residents who only declare "sitting allowances" in their personal tax returns. However, despite a written request dated 28 May 2024 and subsequent follow-ups, the Applicant failed to furnish any documentation to substantiate its objection.
- (v) The Respondent's internal records reveal that only operations and maintenance were outsourced to ECL Energy Uganda Limited. Vital departments such as Finance & Accounts, Administration/HR, and Safety, Health, Environment & Quality (SHEQ) remained the responsibility of the directors.
- (vi) The Applicant declared a mere Shs. 8,000,000 per director per annum (approx. Shs. 667,000 monthly) as a sitting allowance, which is manifestly inconsistent with the market value of professional services required to manage multi-million-dollar infrastructure assets and regulatory compliance.
- (vii) An internal finance memorandum produced by the Applicant stated that directors were paid Shs. 1,000,000 per meeting "*for tax purposes*", revealing an artificial construct designed to minimize tax liability which the Respondent correctly disregarded. "*for tax purposes*", revealing an artificial construct designed to minimize tax liability which the Respondent correctly disregarded.

VI. Submissions of the Applicant

13. In support of its case, the Applicant submitted that Section 25 of the Tax Procedures Code Act empowers the Respondent to issue additional assessments to ensure a taxpayer pays the correct amount of tax. However, the Applicant contended that under Section 25(1)(a), the Respondent can only exercise this power where fraud, gross or wilful

neglect has been committed, or where new information has been discovered.

14. The Applicant argued that it is a settled principle of tax law that where a statute prescribes specific preconditions for the exercise of regulatory power, those conditions must be strictly satisfied. In the absence of evidence establishing fraud, willful neglect, or the discovery of new information, the Respondent acts ultra vires, rendering any resulting additional assessment void ab initio for want of statutory compliance.
15. The Applicant pointed out that, as evidenced by the Audit Management Letter (Exhibit AEXH5), the Respondent relied entirely on a speculative assumption that the Applicant paid its directors a monthly salary of Shs. 7,000,000 to arrive at the additional PAYE assessment of Shs. 60,765,000.
16. The Applicant argued that this assumption was erroneously derived from a comparative analysis of emoluments paid to directors in similar lines of business. The Applicant maintained that this method is illegal and unjustifiable, as PAYE must be computed from actual employment income paid to employees, rather than hypothetical figures. The Applicant emphasised that the Respondent neither discovered new information nor made any findings of fraud or neglect.
17. To fortify this position, the Applicant relied on ***Zee Investments Limited v. Uganda Revenue Authority, TAT Application No. 242 of 2022***, which established that tax liabilities must arise from actual income earned or expenses incurred, and not from deemed income or expenses, unless expressly provided for by statute.
18. The Applicant further cited Section 19(1) of the Income Tax Act, Cap. 340, which defines employment income based on amounts received, and Section 126, which mandates employers to withhold tax from income *paid*. Counsel buttressed this with the case of ***Guaranty Trust Bank Limited v.***

Uganda Revenue Authority, TAT Application No. 20 of 2024, where this Tribunal held that:

"The question as to whether a person earned income is a question of fact. Either the person received the income or not. While deemed income provisions exist in certain jurisdictions, there is nothing in the Income Tax Act that allows the Respondent to deem the income... The Respondent does not have the right to tax income that was not earned or received."

19. Furthermore, the Applicant contended that the Respondent erred in law by issuing an objection decision that disallowed the objection without setting forth detailed, clear, and specific reasons, rendering the decision fatally ambiguous. To illustrate the illegality of vague administrative responses, the Applicant relied on ***Africa Renewal Ministries Limited v. Uganda Revenue Authority (High Court Civil Appeal No. 0058 of 2022)***, where Her Lordship Justice Patricia Kahigi Asimwe observed at page 12:

"Court finds such a submission rather unfortunate for a body that is responsible for collecting taxes in Uganda. It should be obvious that a decision on an objection should be clear... Issuing ambiguous decisions is not only unjust to taxpayers but results in further delays and protracted court battles..."

20. The Applicant similarly cited ***Africa Renewal Ministries Limited v. Uganda Revenue Authority, TAT Miscellaneous Application No. 93 of 2022***, where this Honourable Tribunal noted that the Respondent has historically gained notoriety for rendering unclear objection decisions despite their significant legal consequences. The Applicant therefore prayed that on account of this ambiguity, and the speculative nature of the assessment, the entire objection decision and the underlying tax assessment be set aside.

VII. Submissions of the Respondent

Preliminary Point of Law

21. Prior to addressing the substantive merits of the Application, the Respondent raised a statutory preliminary objection regarding the

competence of this Application. The Respondent relied on Order 15 Rule 2 of the Civil Procedure Rules, SI 71-1 and ***Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd [1969] EA 696***, arguing that a preliminary objection consists of a point of law which, if argued, may dispose of the suit.

22. The Respondent contended that this application is improperly and incompetently before this Honourable Tribunal because the Applicant failed to comply with the mandatory tax payment requirement under Section 15(1) of the Tax Appeals Tribunal Act, which strictly requires a taxpayer who has lodged an objection to an assessment to pay 30 per cent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater, pending the final resolution of the matter.

Submissions on the merits

23. In response, Counsel for the Respondent submitted that the Respondent acted squarely within its statutory mandate when it conducted the tax compliance review. The review validly identified under-declared PAYE, and the Respondent formally communicated the findings to the Applicant on 7th May 2024.
24. Under Section 2 of the Income Tax Act, "employment" explicitly includes a directorship of a company. Section 19(1) further defines employment income to encompass any fees, allowances, and benefits derived by an employee. Therefore, the directors qualify as employees for tax purposes when executing directorial and managerial duties for the Ugandan entity.
25. The Respondent further submitted that in light of the Applicant's failure to produce complete, reliable, and contemporaneous records during the audit, the Commissioner General was fully justified in deploying estimation methods and arm's-length principles. The Respondent anchored this authority on Sections 23 and 25 of the Tax Procedures Code Act (governing default and additional assessments), Section 32 of the Value Added Tax Act, and Section 117 of the Income Tax Act.

26. To fortify this principle, the Respondent relied on the case of ***Uganda Revenue Authority v. Balondemu David (High Court Civil Appeal No. 0002 of 2023)***, which affirmed that:

"The Tax Authority may resort to estimating when a taxpayer fails to keep full and accurate records."

27. The Respondent vehemently contested the authenticity and weight of the Operation and Services Agreement (Exhibit AEXH1), pointing out that while the Applicant pleaded that it had completely outsourced its dam operations and laid off its top management staff in 2016, the face of the agreement itself explicitly shows it was executed on 15 October 2020. The Respondent argued that the agreement was clearly produced as a convenient afterthought to retroactively validate an unverified corporate narrative.

VIII. Resolution of the preliminary objection

28. Prior to embarking on an evaluation of the substantive merits of this dispute, this Tribunal must determine the threshold question of its own competence. The Respondent raised a rigorous Preliminary Objection under Section 15(1) of the Tax Appeals Tribunal Act, Cap. 345, contending that this Application is fundamentally incompetent because the Applicant failed to pay the mandatory thirty percent (30%) of the tax under dispute pending review. The Respondent relies heavily on the binding precedent of the Supreme Court of Uganda in *Uganda Projects Implementation and Management Centre (UPIMAC) v. Uganda Revenue Authority*, Supreme Court Civil Appeal No. 04 of 2019, which definitively established the mandatory "pay now, argue later" principle as a strict condition precedent to the assumption of jurisdiction by this Tribunal.
29. This Tribunal has carefully considered the Respondent's objection but notes a profound, judicially recognized boundary to the "pay now, argue later" doctrine. To be clear, as a quasi-judicial body, this Tribunal is fully aware that it lacks the mandate to overrule a binding precedent of the Supreme Court. Instead, we must look to the highly persuasive and recent guidance

of the High Court of Uganda in *Fortuna (U) Limited v. Uganda Revenue Authority*, which meticulously analyzed and applied the strict exceptions to the *UPIMAC* principle. The High Court in *Fortuna* deconstructed the jurisprudence arising out of the *Fuelex* litigation line, affirming that the mandatory thirty percent (30%) deposit rule explicitly presupposes the existence of a validly computed 'taxation decision' or 'assessment' within the contemplation of the law. Where the Revenue Authority completely abandons all objective source materials to manufacture a purely hypothetical tax liability out of conjecture, the decision ceases to be a lawful assessment under Section 28 of the Tax Procedures Code Act, Cap. 343. The *Fortuna* precedent clarifies that the 30% rule cannot be deployed as a procedural shield to insulate an administrative fiction that is void ab initio, as a taxpayer cannot be locked out of access to justice for failing to remit thirty percent of a legal nonentity.

30. In the instant dispute, the Applicant has raised a threshold question of pure law, demonstrating that the Respondent manufactured a hypothetical monthly salary baseline of Shs. 7,000,000/= without adducing a single contract of employment, payroll sheet, or primary financial record to establish that these directors operated under a contract of service. To force an enterprise to pay a multi-million shilling deposit as a prerequisite to challenging an assessment born out of pure administrative speculation would turn the *UPIMAC* doctrine into an instrument of arbitrary enforcement. Because the very existence of the assessment is fundamentally impugned as a hypothetical fiction violating the strict requirements of Section 28 of the Tax Procedures Code Act, Cap. 343, this case falls squarely within the exceptions recognized in the *Fortuna* decision. The Respondent's Preliminary Objection under Section 15(1) of the Act is consequently overruled, and this Tribunal stands fully clothed with jurisdiction to evaluate the substantive merits of the file. We now proceed to deliver the substantive determination.

IX. The Determination

31. The Applicant is engaged in the business of hydroelectric power generation in Uganda. It operates as part of a group of subsidiary companies held by Engineering Consultants (Pvt) Limited, a limited liability company duly incorporated under the laws of Sri Lanka, with local operations and offices situated at Kampala, Rusona Estate in Bunyangabu, Kasenda, Burahya, and Kabarole.
32. It is the Applicant's contention that starting from the year 2019, and formally upon the execution of an agreement in October 2020, the day-to-day operations and maintenance of its hydroelectric power plant were fully outsourced to M/s ECL Energy Uganda Limited. The Applicant maintains that, because of this structural arrangement, its directors assumed entirely passive roles, executing no routine operational tasks and attending only occasional board meetings, for which they received standard sitting allowances.
33. To substantiate this assertion, the Applicant relies on several pieces of documentary evidence on record, specifically: the Operations and Maintenance Service Agreement (Exhibit AEX1), the directors' individual income tax returns (Exhibit AEX2), transaction ledgers tracking historical payments (Exhibit AEX3), and the internal company policy governing director remuneration (Exhibit AEX4). The Applicant contends these source documents conclusively prove that the only disbursements made to its directors were the declared sitting allowances.
34. On the other hand, the Respondent's case is anchored on three central propositions, namely: that under the relevant tax statutes, a company directorship automatically constitutes an employment relationship; that notwithstanding the physical outsourcing of plant operations, the Applicant's directors actively retained non-delegatable executive functions, specifically overseeing Finance & Accounts, Administration/HR, and Safety, Health, Environment & Quality (SHEQ); and that the declared annual sitting allowance of Shs. 8,000,000 per director (aggregating to approximately Shs. 667,000 monthly) is commercially untenable for an enterprise of this nature, thereby justifying the Respondent's recourse to "arm's-length

principles" to estimate and reconstruct an executive monthly salary of Shs. 7,000,000 per director.

35. In evaluating the evidence, this Tribunal observes that the Respondent did not adduce any primary transactional evidence such as bank statements, payment vouchers, formal contracts of employment, board minutes authorising salaries, or electronic wire transfers to prove that undisclosed monthly salaries were actually paid to the directors. Instead, the Respondent relied on secondary inferences, comparative compliance guidelines regarding under-declared director remuneration, and market indicators from other entities operating within similar industries.
36. This Tribunal has carefully examined the Operations and Maintenance Service Agreement dated 15 October 2020, executed between Mahoma Uganda Limited and ECL Energy Uganda Limited. Under Clauses 3.1.1 through 3.1.22 of the said agreement, substantial operational, technical, and maintenance protocols were explicitly delegated to ECL, including: direct plant operation, management of technical personnel, outage control, procurement, performance monitoring, statutory reporting, engineering supervision, and preventive maintenance, in consideration of a monthly service fee of USD 9,093.
37. This agreement stands as prima facie evidence that vital operational infrastructure and responsibilities were transferred to a third-party contractor. This Tribunal therefore accepts the factual position that the day-to-day running and technical management of the power generation plant were no longer the direct, routine responsibility of the Applicant's directors.
38. While the act of outsourcing technical operations does not legally extinguish the overarching fiduciary and statutory responsibilities of a company's directors, it is highly material in assessing the nature, volume, and scope of services actually rendered by those directors. Consequently, it serves as a vital benchmark in determining whether the remuneration declared by the Applicant is consistent with the corporate functions they actually retained.

39. However, the Tribunal notes a material discrepancy in the timeline presented by the Applicant. The affidavit supporting the application references an outsourcing arrangement starting "around 2019," whereas other interactions with the Respondent suggest 2016. The only executed written agreement produced before us is dated October 2020. No authorising board resolutions or contemporaneous records spanning 2016 to 2019 emerged. While this evidentiary gap weakens the precision of the Applicant's narrative, it does not entirely invalidate it, given that the 2020 agreement remains a valid, subsisting document on the record.

40. In arriving at a just determination, the Tribunal must first consider the legal allocation of the burden of proof under Section 18 of the Tax Appeals Tribunal Act, which provides:

"In a proceeding before a tribunal for review of a taxation decision, the applicant has the burden of proving that— (a) where the taxation decision is an objection decision in relation to an assessment, the assessment is excessive; or (b) in any other case, the taxation decision should not have been made or should have been made differently."

41. Under this statutory architecture, the Applicant bears the primary legal burden of demonstrating that the impugned tax assessment is excessive or erroneous. In the instant case, the Applicant prima facie discharged that initial burden by producing formal income tax returns, transaction ledgers, explicit corporate policy documents, and a signed Operations and Maintenance Service Agreement. Once such credible source documentation was placed on the record, the evidential burden shifted to the Respondent to establish that the information contained therein was false, incomplete, or artificially distorted.

Retention of Core Governance Functions

42. The Respondent argued that despite the outsourcing of technical operations, the directors retained active responsibility for the non-delegable corporate pillars of Finance & Accounts, Administration/HR, and Safety, Health, Environment & Quality (SHEQ). This Tribunal finds this argument

persuasive in part. A hydroelectric power company operating under the Electricity Act, under the stringent oversight of the Electricity Regulatory Authority (ERA), cannot realistically function in a complete vacuum without board-level oversight of financial reporting, statutory compliance, licensing parameters, community relations, and overall strategic direction.

43. Consequently, the Applicant's submission that its directors had "no operational tasks to handle" is an overstatement. In evaluating this, this Tribunal must draw a fundamental legal distinction between an Executive Director and a Non-Executive Director (NED). Under Ugandan company law, an Executive Director is an active employee of the entity, structurally tasked with routine management functions under a formal contract of service. Conversely, a Non-Executive Director is appointed strictly to provide high-level board oversight, governance, and strategic direction, without routine operational engagement.
44. This Tribunal agrees with the Respondent that a directorship constitutes an employment relationship under Section 2 of the Income Tax Act, Cap. 340, which defines "employment" to include a directorship of a company. Therefore, while we affirm that directorship constitutes employment under the Act and that the directors remained responsible for high-level governance and strategic oversight, the mere existence of an employment status does not automatically establish or prove the specific quantum of remuneration earned or received.
45. The Respondent completely failed to produce a single contract of employment, payroll registry, or operational instruction to establish that the subject directors functioned as Executive Directors. The directors functioned as Non-Executive Directors, and the mere allegation that they retained high-level fiduciary governance duties cannot serve as prima facie proof of a hidden executive monthly payroll. The legal question before us is not merely whether the directors performed services which they clearly did but whether the Respondent proved that they received additional undisclosed remuneration beyond the declared sitting allowances.

The Respondent's Reliance on Estimation and "Arm's-Length Principles"

46. To justify its reconstruction of the income, the Respondent invoked Section 116 of the Income Tax Act, Cap. 340, which empowers the Commissioner to adjust consideration in transactions between associates to reflect arm's-length conditions. The Respondent further relied on Section 28 of the Tax Procedures Code Act, Cap. 343 as statutory justification for deploying an estimated assessment methodology.
47. This Tribunal observes that any valid tax assessment must be firmly rooted in verifiable facts and objective evidence demonstrating the actual existence or accrual of taxable income. While the Commissioner General is undoubtedly clothed with broad statutory powers under the Tax Procedures Code Act to issue default, estimated, or additional assessments, such discretion is not unfettered. It must be exercised rationally and on the basis of concrete, objective material reasonably capable of sustaining the assessment.
48. In the present case, the Respondent failed to place before this Tribunal any primary financial records such as bank statements, payroll registers, employment contracts, board resolutions, payment vouchers, or wire transfer documentation to show that the directors ever received monthly salaries of Shs. 7,000,000 or any other remuneration in excess of the sitting allowances explicitly disclosed by the Applicant.
49. It is the finding of this Tribunal that the Respondent fundamentally misapplied the concept of the arm's-length principle in this context. Section 116 of the Income Tax Act is primarily designed as a transfer pricing mechanism to address transactions between associated enterprises where consideration has been manipulated in a corporate group structure to artificially shift profits or distort taxable income.
50. The dispute before us concerns alleged undeclared employment income of individual directors. Furthermore, under Section 3 of the Act, the statutory

definition of an associate contains an absolute exclusion clause providing that "a person is not an associate of another person solely by reason of being an employee of that person." Consequently, because the Respondent's entire case is built on the premise that these directors maintain an employer-employee relationship for PAYE purposes, the Respondent is statutorily debarred from treating them as "associates" under Section 116.

51. While directors are statutorily recognized as "associates" of a company under general corporate parameters, Section 116 is not a substitute for fact-finding, nor can it be invoked as a legal fiction to magically create employment income where no evidence exists that such income was ever paid, credited, accrued, or otherwise made available to the taxpayer.

Application of Precedent and Statutory Interpretation

52. In ***Guaranty Trust Bank Ltd v. Uganda Revenue Authority*** (TAT Application No. 20 of 2024), this Tribunal held that:

"The question as to whether a person earned income is a question of fact. Either the person received the income or not. There is nothing in the Income Tax Act that allows the Respondent to deem the income of the taxpayer."

53. The significance of this principle is that liability to employment tax arises strictly from actual income earned or received, and not from regulatory assumptions regarding what a taxpayer ought reasonably to have earned. Consequently, the Respondent was required to demonstrate through positive evidence that the directors actually received additional remuneration beyond what was disclosed.
54. Similarly, in ***Zee Investments Limited v. Uganda Revenue Authority***, TAT Application No. 242 of 2022, this Tribunal stated that tax liabilities must arise from actual income earned, rather than from deemed income, unless explicitly provided for by statute. This Tribunal therefore rejects the proposition that a taxpayer may be assessed simply because the Commissioner General considers the declared remuneration to be

commercially low. While a commercial improbability may justify further investigation, it cannot, without more, constitute proof of undisclosed income.

55. This position is supported by long-standing canons of tax interpretation. In *Partington v. Attorney General* (1869) LR 4 HL 100, it was held that a taxpayer can be taxed only on facts clearly brought within the law, and that no liability can be imposed by implication. Furthermore, in *Cape Brandy Syndicate v. IRC* 1 KB 64, Rowlatt J. famously stated that in a taxing statute, one must look merely at what is clearly said, as there is no room for intendment or presumption.
56. The Respondent's methodology of assuming a monthly salary of Shs. 7,000,000 based on what directors "ought" to earn in comparable companies is speculative. It is completely unsupported by evidence demonstrating that such sums were actually paid, credited, or accrued to the directors. While the Tribunal notes that the Applicant failed to provide documentation during the objection stage, that procedural failure does not automatically entitle the Respondent to invent an assessment figure without an evidentiary foundation.
57. The Tribunal further observes that no remuneration survey, industry benchmark, expert valuation report, or comparative analysis was produced before us to demonstrate how the figure of Shs. 7,000,000 per month was arrived at. While the Respondent repeatedly asserted that directors of comparable companies earned substantially more than the amounts declared by the Applicant, it produced no documentary evidence identifying those companies, the remuneration they paid, or the methodology used to arrive at the assessed figure. In the absence of such evidence, the Tribunal is compelled to view the disputed tax liability as an arbitrary and speculative assessment that bears no relationship to objective reality.
58. To uncover the truth, the Respondent had ample power to summon third parties including commercial banks or the directors themselves—under Section 49(1)(a) of the Tax Procedures Code Act, Cap. 343 to obtain

payment records. This Tribunal notes that Section 49 grants the Commissioner General broad investigative powers. If the Respondent genuinely believed that undisclosed remuneration had been paid, it could have obtained bank records, payment instructions, accounting records, or other evidence capable of establishing such payments. No evidence was presented to demonstrate that such basic investigative protocols were undertaken.

59. In *Shell Uganda Limited v. Uganda Revenue Authority (TAT Application No. 43 of 2018)*, this Tribunal emphasised that estimated assessments must be based on rational and objective material available to the Commissioner. Here, the objective material was limited to the declared allowances and the general nature of the business. That is legally insufficient to justify an assessment of Shs. 60,765,000.
60. Accordingly, while the Tribunal accepts that the directors continued to perform high-level governance functions for the Applicant company, the Respondent has failed to establish on a balance of probabilities that they received additional undisclosed remuneration beyond the sitting allowances disclosed in the Applicant's records and individual tax returns.
61. The Tribunal appreciates the Respondent's concern that an annual sitting allowance of Shs. 8,000,000 appears unusually low for directors of a hydropower company. Nevertheless, tax liability cannot be founded upon suspicion, conjecture, or commercial improbability. A circumstance may appear highly suspicious and yet remain unproved. The law requires evidence establishing the actual existence and quantum of taxable income. The Respondent's case ultimately rests on the proposition that the directors must have earned more than they declared; however, a belief that income ought to exist is not equivalent to proof that income did exist.
62. The Respondent seized upon a phrase in the Applicant's internal finance memorandum stating that directors were paid Shs. 1,000,000 per meeting "for tax purposes", arguing that this reveals an artificial construct designed

to minimise tax. The Tribunal finds that while this memorandum is admissible and raises suspicion, suspicion is not proof. No document from the directors' banks, no confession, no witness testimony, and no financial analysis showing cash leakage was presented. The memorandum standing alone cannot sustain an assessment of over Shs. 60 million.

63. While the wording "for tax purposes" raises legitimate questions regarding the Applicant's remuneration structure, the memorandum does not identify any undisclosed payment, does not disclose any hidden source of income, and does not quantify any additional remuneration allegedly received by the directors. At its highest, the memorandum creates a cloud of suspicion; it does not constitute proof.

Summary of Findings on the Assessment

64. Having carefully considered the evidence on record, the submissions of the parties, and the applicable law, this Tribunal finds that whereas the Applicant's directors remained employees of the Applicant company by virtue of their positions as directors under Section 2 of the Income Tax Act, Cap. 340, the Respondent failed to adduce sufficient evidence to establish that the said directors received remuneration beyond the sitting allowances declared in the Applicant's records and individual tax returns.
65. The Tribunal further finds that the Respondent's assessment was founded largely on assumptions regarding what the directors ought reasonably to have earned, rather than on evidence demonstrating actual payment, accrual, crediting, or availability of additional remuneration to the directors. No payroll records, bank statements, payment vouchers, employment contracts, board resolutions, remuneration surveys, or other documentary evidence were produced to substantiate the additional income attributed to the directors. To illustrate the legal danger of the Respondent's methodology by way of analogy: it would be equivalent to the URA entering a landlord's private property and arbitrarily asserting without an iota of objective or baseline evidentiary data that the tenants pay a monthly rent of

five million shillings each, simply because the property appears structurally valuable.

66. While the Tribunal accepts that the Operations and Maintenance Service Agreement executed in 2020 does not conclusively prove that all operational responsibilities had been outsourced as early as 2016, the Respondent nevertheless bore the evidential burden of proving the existence and amount of any additional employment income assessed once the taxpayer produced its primary returns. That burden was not discharged.
67. Accordingly, the Tribunal is not satisfied that the Respondent proved, on a balance of probabilities, that the Applicant's directors received additional undisclosed remuneration beyond the sitting allowances disclosed by the Applicant. The Tribunal therefore finds that the additional PAYE assessment of Shs. 60,765,000 was not supported by sufficient evidence, was arbitrary and speculative, and was consequently excessive and erroneous. Given the significant legal questions raised and the divergent viewpoints concerning the intersection of procedural defaults and substantive burdens of proof, this matter is hereby referred to the full Coram of members for definitive guidance at the upcoming technical meeting to ensure a unified jurisprudential delivery. Issue One is therefore resolved in the negative, in favour of the Applicant.

Resolution of issue two – remedies

68. Having resolved Issue One in favour of the Applicant, it follows that the Applicant is entitled to the reliefs sought before this Tribunal. The additional tax assessment raised by the Respondent lacks factual and evidentiary support and cannot be sustained in law.

Summary of Findings on the Assessment

69. Having carefully considered the evidence on record, the submissions of the parties, and the applicable law, this Tribunal finds that whereas the Applicant's directors remained employees of the Applicant company by virtue of their positions as directors, the Respondent failed to adduce

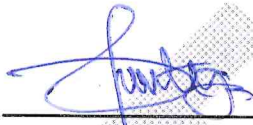
sufficient evidence to establish that the said directors received remuneration beyond the sitting allowances declared in the Applicant's records and individual tax returns.

X. Final Orders

70. The Tribunal hereby makes the following orders:

- (i) The Application is hereby allowed.
- (ii) The Respondent's objection decision dated 8 August 2024, which confirmed an additional administrative PAYE assessment of Shs. 60,765,000 against the Applicant, is hereby set aside and vacated in its entirety.
- (iii) The Respondent shall pay the costs of this application to the Applicant.

Dated at Kampala this 7th day of October 2026.



HON. EDWARD BIRYETEGA
CHAIRMAN



HON. KENNETH A. BAGAMUHUNDA
MEMBER



HON. CHRISTINE KATWE
MEMBER