

**THE REPUBLIC OF UGANDA**  
**THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA**  
**APPLICATION NO. 32 OF 2022**

**MEGHA INDUSTRIES UGANDA LTD ===== APPLICANT**  
**VERSUS**  
**UGANDA REVENUE AUTHORITY ===== RESPONDENT**

**BEFORE: DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MR. SIRAJ ALI**

**RULING**

This ruling is in respect of an application challenging an additional assessment of Shs. 208,152,614 on the ground that it was issued after the statutory limitation of three years.

The applicant is in the business of manufacturing. On 21<sup>st</sup> September 2021, the respondent issued the applicant with an additional Pay As You Earn (PAYE) assessment of Shs.208,152, 614. The applicant objected to the said assessment. On 20<sup>th</sup> December 2021, the respondent made an objection decision upholding the PAYE assessment.

The following issues were set down for determination.

1. Whether the additional tax assessments in issue are barred at law?
2. Whether the applicant is liable to pay the taxes in issue?
3. What remedies are available to the parties?

The applicant was represented by Mr. Arnold Nogan Kimara while the respondent by Mr. Stuart Aheebwa.

The applicant's first witness, Mr. Mubeen Mohammed, its head of accounts, testified that for several years until 2019, the applicant used the services of casual laborers. He testified that the casual work comprised of loading and offloading of trucks, carrying rubbish etc. The casual laborers would be paid depending on work done by them. The

payments were recorded in petty cash book which were signed by them acknowledging receipt of payment. The records of payments were also entered in an electronic tally sheet. The factory was gutted by a fire. many documents got destroyed, including the petty cash books however the tally sheets in the electronic system survived. He contended that the casual laborers were never employees of the company. The payments made to casual laborers did not constitute salaries and therefore did not attract PAYE. He stated that the applicant's returns always reflected salaries paid to employees and the corresponding PAYE.

The witness stated that following a PAYE ledger reconciliation for the tax period 2009 to 2018, the respondent wrote to the applicant on 29<sup>th</sup> March 2018 stating that it was satisfied with the ledger reconciliation between it and the applicant and issued the applicant with an additional tax assessment of the total tax outstanding. The witness stated that the letter represented to the applicant that for the period 2009 to 2018 its outstanding PAYE liability totaled to Shs. 467,295. The current dispute arose after the applicant applied for an income tax refund of Shs. 412,188,761 for 2016 to 2018 being excess taxes paid. During the audit commissioned by the respondent as a consequence of the application for refund, all relevant documents were availed to it including petty cash books for the payments made to the casual laborers before their destruction in 2021. Following the audit, the respondent issued a tax audit management letter dated 3<sup>rd</sup> December 2019 with an additional assessment of Shs. 36,411,964 for 2016 to 2018. To the applicant's surprise the respondent issued further additional assessments of VAT Shs. 120,140,292, PAYE of Shs. 208,152,614 and WHT of Shs. 8,666,280 as outstanding tax payments for the period 2012-2018. The applicant objected. At a meeting held between the parties on 29<sup>th</sup> December 2021, to reconcile tax records, the respondent demanded for physical copies of the petty cash books. The respondent was aware that the physical petty cash books, had been destroyed in the fire at the applicant's factory on 28<sup>th</sup> January 2021. The applicant provided the respondent with tally sheets in the electronic system where the payments to casual laborers had been recorded using dates from the petty cash books. On 20<sup>th</sup> December 2021, the respondent partially allowed the objection but maintained the assessment of Shs. 208,152,614 in respect of PAYE, on the

grounds that the applicant had failed to furnish physical copies of the petty cash books. The witness stated further that some of the records requested by the respondent dated back more than five years.

The applicant's second witness was Mr. Babu Ramesh; its accountant who gave similar testimony to that of Mr. Mubeen Mohammed which we shall not repeat

The respondent's witness, Mr. Muwonge Musenero Gabriel, an officer in its Large Taxpayers office testified that on 21<sup>st</sup> September 2021, the respondent issued the additional assessments as referred to above. The basis of the said additional assessments was the Auditor General's audit findings. The PAYE assessments of Shs. 208,152,614 arose from salary variances between PAYE schedules and audited financial statements. The applicant objected to the said assessments on the grounds that the Office of the Auditor General (OAG) audit findings had been reconciled with the respondent's audit team for the periods 2016 to 2018. The respondent's audit findings established a salary variance of Shs. 36,411,964 for January 2016 to December 2018. On 10<sup>th</sup> November 2021, the respondent requested the applicant for information to support its objection. It requested the applicant to provide records where the casual workers acknowledged receipt of wages. The applicant responded that the records had been destroyed in the fire. Owing to the applicant's failure to provide the said information the respondent upheld the PAYE assessments of Shs. 208,152,614.

The applicant submitted that the respondent acted in breach of the Employment Act and the Income Tax Act in assessing its PAYE in respect of wages paid to casual laborers. The respondent also acted in breach of S. 15 of the Tax Procedure Code Act (TPCA) in basing its objection decision on the absence of labor expense records for periods beyond the statutory limit of 5 years. The additional PAYE tax assessments of Shs. 208,152,614 issued by the respondent for the years 2012 to 2017 were irregular and illegal. The objection decision was issued without reliance on tax records and the tally sheets showing payment of wages to casual laborers. The applicant submitted that it had filed self-assessments and paid taxes. It submitted that the additional assessments were beyond

the three-year statutory limitation under S.23(2)(b) and (c) of the TPCA. Contrary to S. 23(2)(a) the respondent adduced no evidence of fraud, gross or willful neglect or new information justifying the issuance of additional assessments. The claim by the respondent about the discovery of new information based on an Office of the Auditor General (OAG) sanctioned audit of the steel sector by PKF was not furnished before the tribunal. The applicant submitted that in the premises the additional assessments were statutorily barred. The respondent failed to adduce evidence as basis of the additional assessments.

The applicant submitted that the additional assessments were barred by the doctrine of legitimate expectation. The respondent made representations and assurances to it regarding its tax position, outstanding liabilities and compliance. Its outstanding tax arrears were fully settled. In a letter dated 29<sup>th</sup> March 2018, the respondent confirmed that the applicant's outstanding PAYE liability for the period 2009 to 2018 was Shs. 467,295. The respondent conducted a comprehensive ledger reconciliation and satisfied itself on the outstanding tax liability. Acting on that legitimate expectation the applicant fully repaid the outstanding amount. Following an application for a tax refund the respondent commissioned an audit of the applicant for the period 2016 to 2018 and by letter dated 3<sup>rd</sup> December 2019, issued an additional PAYE assessment of Shs. 36,411,964. The applicant cited *Solar Now Services Ltd v. URA Application 13/2017* where the tribunal cited with approval *Republic v Kenya Revenue Authority Ex parte Universal Corporation Ltd MA 460/2013*, *Kenya Revenue Authority v Universal Corporation Ltd Civil Appeal 150/2018 (2020) eKLR* and *Republic v Commissioner of Customs Ex parte Mulchand Ramji & Sons Limited (2010) eKLR*.

The applicant submitted that casual laborers are exempt from PAYE because they do not fall within the definition of an employee under S. 2(x) of the Income Tax Act. The applicant relied on the definition of a casual laborer in *Kitaka v. Aim Distributors Ltd Labor Dispute Ref. 75/2017*. PW1, Mubeen Mohammed testified that until 2019, the applicant engaged the services of casual labor to offload trucks and dispose of rubbish whose payments were duly recorded in petty cash books and electronic tally sheets. The applicant adduced

its income tax returns for relevant years as proof of salary payments to its employees and the corresponding PAYE and labor expenses to casual laborers. The evidence was unchallenged by the respondent.

The applicant submitted that it objected to further additional assessments issued by the respondent on 21<sup>st</sup> September 2021, namely; VAT of Shs. 120,140,292, WHT of Shs. 8,666,280 and PAYE of Shs. 208,152,614. On 29<sup>th</sup> December 2021, at the respondent's request, the applicant provided the respondent with printed electronic tally sheets as evidence of payments to casual laborers. The tally sheets were in English and contained the precise amounts expended by the applicant as payments to its casual laborers and the dates on which they were made. The tally sheets were also converted into a paper record and presented to the respondent. Under S.15 of the TPCA the tally sheets satisfied the criteria of a maintainable tax record under the law and ought to have sufficed as ample evidence of payments made by the applicant to the casual laborers. The respondent's sole witness conceded that the applicant furnished evidence of the petty cash vouchers showing payments made to casual laborers by the applicant. The applicant could not comply with the respondent's request to adduce petty cash books with signatures of casual laborers as they had been destroyed in a fire that ravaged the applicant's factory in 2021. The fire constituted an act of God and discharged it from the obligation of furnishing the records. The applicant cited *Ryde v Bushell and Anor* (1967) E.A 817 which was cited in *Partizanski and Anor v Sobetra (U) Ltd* HCCS 1740/2000. Despite that the respondent unreasonably disregarded the electronic tally sheets and maintained its additional PAYE assessments. The applicant submitted that it was under no obligation to retain records past the statutory period of five years as set out under S. 15(1)(c) of the TPCA.

The respondent submitted that the additional assessments were issued based on new information from the findings of the OAG special audit on the steel sector in Uganda for the period January to December 2012. The respondent cited *King v Bloomsbury Income Tax Commissioners* (1915) 3 KB at 762, *R v St. Giles and George Commissioners Ex part Hooper* (1915) 3 KB 768, *Parkin v Cattell*, CA 1971, 48 TC 462 and *Newspaper*

*Society v C.I.T* (1979) I.T.R 996. The respondent submitted that information may be found in the assessment record. It submitted that the original assessment can be re-opened on the ground that the Commissioner had rendered a wrong decision upon a wrong understanding of the facts. It submitted therefore that the discovery of new information is not limited to finding facts which are not known to someone or his predecessor but extends to situations when the predecessor got the law wrong and did not assess income where it ought to have been assessed. The respondent submitted that the fact that the report of the OAG was not furnished before the tribunal does not take away the fact that the said report contained new findings which was the basis of the additional assessments. The respondent submitted further that this position was clearly communicated to the applicant at the time of the issuance of the additional assessments. The respondent stated further that the applicant was at all material times aware of the OAG audit report and the findings thereof constituted new information on the basis of which the respondent rightly raised additional assessments against the applicant. The respondent submitted therefore that the additional assessments are not barred in law. The respondent submitted that not all the additional assessments are beyond the three-year limitation period as alleged by the applicant but even in cases where they are beyond the three-year period the respondent was justified in raising them.

The respondent submitted further that the applicant did not adduce evidence to prove that the payments made to the casual laborers were not subject to PAYE. The respondent submitted that under S. 6 of the Income Tax Act and the 1<sup>st</sup> Schedule, aggregate amounts paid to a casual laborer in excess of Shs. 235,000 per month. It placed a duty on the applicant to remit PAYE on such payments. The respondent further submitted that the applicant did not adduce any evidence to show that petty cash books existed. The only evidence of payments to casual laborers adduced by the applicant was electronic tally sheets that were not signed by it. It did not mention the casual laborers to whom payments were made nor indicate the amounts paid to them. The applicant's witness, Mubeen Muhammad admitted that the only evidence of payments to casual laborers was in 'soft copy'. The tally sheets were for two months in 2017 and only mentioned the total sum paid. The applicant therefore did not have any proof to show that the casual laborers

received money. The respondent submitted that the first investigation report adduced by the applicant did not indicate whether the alleged cash books were part of the `machinery and property stock` that were gutted by the fire. The respondent submitted that there was nothing in the report to suggest that the documents in question were part of the machinery and property that were burnt in the fire. The respondent submitted that there was therefore no evidence that the fire which gutted the factory also burnt the documents in issue.

In rejoinder, the applicant reiterated its earlier submissions. It submitted that the alleged new information was never subjected to the tribunal for viewing, assessment or inspection nor was the same availed to it contrary to the natural rules of justice which demands that a party be granted a fair hearing. The applicant submitted further that it adduced evidence of payments to casual laborers and tally sheets capturing the amounts paid to them and the dates of the said payments. The applicant submitted that the omission to expressly name the casual laborers and attach their signatures is not adequate to impeach the probative value of the tally sheets as it is the best evidence in the circumstances.

Having listened to the evidence and read the submissions of the parties, the following is the ruling of the tribunal.

We will begin by resolving the question relating to legitimate expectation. The applicant submitted that the respondent's additional assessments were barred by the doctrine of legitimate expectation. We note that the respondent made no reply to these submissions. The gist of the applicant's argument is that the respondent made various representations and assurances to the applicant regarding its tax position, outstanding liabilities and compliance. Upon the settlement of the outstanding liabilities the applicant relied on legitimate expectation that its tax arrears had been fully settled. The first representation referred to by the applicant was by a letter dated 29<sup>th</sup> March 2018 where the respondent confirmed to the applicant that following a ledger reconciliation the applicant's outstanding PAYE liability for the period 2009 to 2018 was Shs. 467,295. The applicant paid the outstanding liability in belief that it had settled its PAYE liability. The second representation arises from an audit undertaken by the respondent following an application

for a tax refund for the period 2016 to 2018. At the end of the audit the respondent informed the applicant that its PAYE liability was Shs. 36,411,964. This sum was paid by the applicant. The applicant argued that having confirmed its tax liability and paid it respondent is precluded from raising an additional assessment. With respect, this argument fails in the face of S. 23 of the TPCA. S. 23 sets out the circumstances under which the respondent can make additional assessments. The use of the term 'amend' under S. 23(1) shows certain circumstances might require assessments to be amended. The doctrine of legitimate expectations does not override the express provisions of a statute. In *Gakou and Brothers Enterprises Ltd vs. URA*, the tribunal agreed with the Kenyan decision of *Republic v Kenya Revenue Authority Ex parte Shake Distributors* (2012) Eklr where the court found that for a promise to hold, the doctrine must be within the confines of the law. In this case, the respondent cannot be precluded from making additional assessments. We accordingly find that the doctrine of legitimate expectations does not apply in this case.

The applicant has submitted that the additional assessments of Shs. 208,152,614 issued by the respondent on 21<sup>st</sup> September 2021, in respect of PAYE are barred by law for the reason that they were not issued within the three-year limitation period provided for under S. 23 (2) (b) of the TPCA. The respondent on the other hand submitted that the additional assessments were validly issued on the basis of the discovery of new information in under S. 23 (2) (a) of the TPCA. In order to resolve this issue, we must determine whether the issuance of the additional assessments was a result of discovery of new information by the respondent.

S. 23 of the TPCA states.

- "1. The Commissioner may make an additional assessment amending a tax assessment made for a tax period to ensure that-
- a) For an assessed loss under the Income Tax Act, the taxpayer is assessed in respect of the correct amount of the assessed loss for the period.
  - b) For an excess input tax credit under the Value Added Tax Act, the taxpayer is assessed in respect of the correct amount of the excess input tax credit for the period;
- or



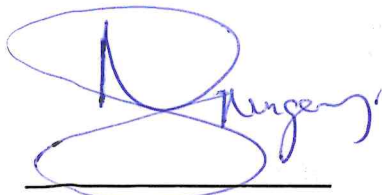
- c) In any other case, the taxpayer is liable for the correct amount of tax payable in respect of the period.”
- 2. An additional assessment under subsection (1) may be made-
  - a) At any time, if fraud or any gross or willful neglect has been committed by or on behalf of the taxpayer, or new information 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 three years from the date of service of the notice of the additional assessment; or
  - c) In any other case, within three years after the date-
    - i. The taxpayer furnished the self-assessment return to which the original assessment relates; or
    - ii. The Commissioner served notice of the original assessment on the taxpayer.”

S. 23(2)(a) of the TPCA requires that the discovery of new information to relate to the tax payable by the taxpayer for the tax period in question. The respondent contended that it obtained new information leading to the additional assessments for the period January 2012 to December 2017 from a tax audit report commissioned by the Office of the Auditor General in respect of the steel sector in Uganda. The notes to the assessments, (pages 11 to 21 of the joint trial bundle) indicate that the assessments have been raised after the OAG special audit on the steel sector in Uganda. Apart from stating that the findings of the OAG audit constituted new information, the respondent does not state what this new information is. Further the respondent did not adduce the audit report as evidence before the tribunal. In order for the tribunal to determine whether the findings of the OAG audit constituted new information for the purposes of S. 23(2) (a) above, the audit report and the findings, ought to have been brought before the tribunal, so that by examining the report and the findings, a determination might be made, as to whether, the findings constituted new information and whether this new information related to the tax payable by the applicant for the tax period in question. In the absence of this vital piece of evidence the tribunal is unable to determine whether the additional assessment was issued in accordance with the provisions of S. 23(2) (a) of the TPCA. We accordingly find that the additional assessment was time barred.

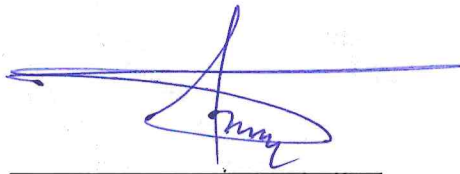
The respondent contended that some of the additional assessments were not time barred. The parties did not indicate when the initial assessments were made for the Tribunal to determine which assessments were time barred. The respondent did not indicate which assessments were not time barred. Without prejudice, for those assessments that were not affected by the time limits, the applicant contends that its records were gutted by fire. The respondent does not dispute that the records were gutted by fire. There is no evidence that the applicant had a hand in the fire outbreak. In the absence of clear evidence of which assessments were not time barred, and due to the fire outbreak, that destroyed the applicant's records it would be difficult for the Tribunal to require the applicant to avail information challenging the said assessments.

In the result, this application is allowed with costs.

Dated at Kampala this 14<sup>th</sup> day of December 2023.



**DR. ASA MUGENYI**  
**CHAIRMAN**



**DR. STEPHEN AKABWAY**  
**MEMBER**



**MR. SIRAJ ALI**  
**MEMBER**