

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL REGISTRY AT KAMPALA**  
**APPLICATION NO. 149 OF 2023**

MOIL UGANDA LIMITED..... APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..... RESPONDENT

**RULING**

**BEFORE: MS. CRYSTAL KABAJWARA, MR. SIRAJ ALI, MRS. CHRISTINE KATWE**

This ruling is in respect of an application challenging an assessment of Shs. 789,242,588 issued by the Respondent on grounds that the Applicant over stated their interest expense deduction contrary to section 25 of the Income Tax Act ("ITA"). The Applicant is before the Tribunal seeking:

- i) A declaration that the Applicant is not part of a group of companies,
- ii) A declaration that the assessment of the sum of Shs. 789,242,588 by the Respondent was untenable under the law.

**1. Background facts**

The Applicant, a company incorporated in Uganda, is engaged in the supply of petroleum products.

On 30th March 2023, following an audit, the Respondent issued the Applicant with administrative additional income tax assessments of Shs. 240,831,554, Shs. 367,587,532 and Shs. 180,823,502 for the period 2019, 2020 and 2021 respectively. The assessments were issued on grounds that the Applicant purportedly overstated its interest expense.

The Respondent alleged that the Applicant belonged to a group of companies with common underlying ownership. Therefore, it ought to have restricted its interest expense deduction to 30% of Earnings Before Interest, Tax, Depreciation and Amortisation (EBITDA) in accordance with section 25 (3) of the Income Tax Act, Cap 338 ("the ITA").

The Applicant's objection to the assessments was disallowed by the Respondent hence this application.

The Applicant objected stating that the additional assessments were issued on the assumption that the Applicant formed part of a group of companies whereas not.

## **2. The issues for determination**

The following issues for determination.

- i. Whether the Applicant is liable to pay the tax assessed?
- ii. What remedies are available to the parties?

## **3. Representation**

At the hearing of this application, Mr. Sydney Ojwee appeared for the Applicant while Ms. Doreen Amutuhaire and Mr. Edmond Agaba appeared for the Respondent.

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

The Applicant submitted that they are not liable to pay the taxes assessed as they are not a member of a group.

The Applicant also submitted that although they have the same shareholders as two other companies, namely, Moil Kenya Limited and Mansoor Industries Limited (incorporated in Tanzania), the two companies are not subscribers to the memorandum and articles of association of the Applicant. Therefore, they do not form a group with the Applicant. The Applicant further submitted that the definition of the term "group" in Section 25 (5) of the Income Tax Act is an underhand method aimed at defeating the legal definition of a group of companies as provided for in the Companies Act. To this end, the Applicant relied on Section 47 of the Companies Act which states the ways in which a person can become a member of a company.

The Applicant also submitted that Section 25 (5) of the ITA does not clearly state whether it is binding only on companies within Uganda and those outside Uganda. Since the section is silent on its scope, it would be safer to conclude that being a Ugandan law, it is targeting only Ugandan group companies.

The Applicant relied on Uganda Revenue Authority v COWI AS, Civil Appeals No.0034 of 2020 where Justice Mubiru held that it has for long been a well-established principle in the interpretation of tax legislation that the taxpayer may only be taxed by clear words.

The Applicant also argued the loan that was obtained from Diamond Trust Bank was used solely in the business of the Applicant and that no other entity benefited from it.

Therefore, the Applicant concluded that they are not liable to pay the taxes as assessed by the Respondent because they are a standalone company with no ties to any other company in Uganda or elsewhere.

#### **5. Submissions by the Respondent**

The Respondent submitted that the dispute revolves around whether the Applicant is a member of a group of companies within the meaning of Section 25(5) of the ITA which defines who the term "group" as used in section 25 (3) of the ITA.

The Respondent states that following an audit of the Applicant, the Respondent issued the Applicant with additional income tax assessments totaling Shs. 789,242,589 on the grounds that the Applicant had overstated its interest expense deduction contrary to Section 25 (3) of the ITA. The Applicant objected to the additional assessment on the ground that the Applicant is a standalone company whose shareholders are individuals and no other common ownership.

Upon review of the Applicant's objection, the Respondent established that the Applicant, along with Moil Kenya Limited and Mansoor Industries Limited, have common underlying ownership as they have common shareholders.

Consequently, the interest deduction claimed by the Applicant ought to have been capped to 30% of EBITDA as stipulated in section 25 (3) of the ITA.

The Respondent submitted that the burden of proof is on the Applicant to prove that the assessments that were raised by the Respondent were incorrect or erroneous and that the Applicant was not liable to pay tax or that the taxation decision should not have been made or should have been made differently.

The Respondent cited section 25 (3) of the ITA which restricts the deductible interest claimable by a taxpayer who is a member of a group to 30% of EBITDA. The Respondent also cited section 25 (5) which defines the term “group” to mean;

“...persons other than individuals, with common underlying ownership.”

The Respondent implored the Tribunal to give the above provision its literal meaning as it is a principle of interpretation of tax statutes that one must look at the plain language of the act without reading into it. The Respondent cited Uganda Revenue Authority v Siraje Hassan Kajura SCCA No. 009/2015 where it was held-

“In a taxing act, one has to look merely at what is clearly said. There is no room for intendment. There is no equity about a tax.”

The Respondent submitted that the Applicant has common underlying ownership with Moil Kenya and Mansoor Industries Limited as they have the same shareholders.

The Respondent prayed that the Tribunal finds the Applicant to be a member of a group of companies and sustain the additional assessments.

## **6. Determination by the Tribunal**

This dispute concerns the interpretation of section 25 of the Income Tax Act, Cap 338 in as far as limits the deductibility of interest expense by a person who is a member of a group.

On 30 March 2023, the Respondent raised an additional assessment that totaled to Shs. 789,242,589 based on the finding that the Applicant had overstated their interest expense deduction contrary to section 25 (3) of the ITA. The Respondent contends that the Applicant is part of a group and consequently, was not entitled to claim a full deduction for the interest. The Applicant ought to have restricted their expense claim to 30% of EBITDA as required by section 25 (3) of the ITA.

The Applicant disagreed with the Respondent’s findings on the ground that the Applicant is a standalone company, whose shareholders are individuals with no common ownership. The Applicant stated that they are not part of a group as alleged by the Respondent.

Therefore, the issue for determination by this Tribunal is whether the Applicant is part of a group or not. If found to be part of a group, the assessment will be upheld. However, if it is found that the Applicant is a standalone company and is not part of a group, the Respondent should vacate the assessment.

As the dispute concerns Section 25 of the ITA, it is important to consider the provision in its entirety. Section 25 provides as follows:

“25. Interest

(1) Subject to this Act, a person is allowed a deduction for interest incurred during the year of income in respect of a debt obligation to the extent that the debt obligation has been incurred by the person in the production of income included in the gross income

(2)...

(3) The amount of deductible interest in respect of all debts owed by a taxpayer who is a member of a group, other than a financial institution, microfinance deposit taking institution, tier 4 microfinance institution or person carrying on insurance business, shall not exceed thirty percent of the tax earnings before interest, depreciation and amortization.”

What can be deduced from the above provision is that:

- a) Subject to certain conditions, persons are, for income tax purposes, generally allowed a full deduction for interest in respect of a debt obligation;
- b) However, where such a person is part of a group and they are not a financial institution or carry on the business of insurance, the maximum amount of interest deduction that they can claim is 30% of EBTIDA.

The Applicant is neither a financial institution, a microfinance deposit taking institution, tier 4 microfinance institution nor carries on insurance business. The Applicant engages in the buying and selling of petroleum products.

Therefore, what remains to be determined is whether they are part of a group.

The term “group” is defined in section 25 (3) of the ITA as:

“Persons other than individuals with common underlying ownership”. In effect, to be part of a group for purposes of the above provision, one must:

- a) Not be an individual. It is not in dispute that the Applicant is a non-individual.
- b) Have common underlying ownership with other persons

Having established that the Applicant is not an individual, the next step is to determine whether they have common underlying ownership with other persons.

The term underlying ownership is defined as follows in section 2 of the ITA:

“Underlying ownership”, in relation to a person other than an individual, means an interest held in, or over, the person directly or indirectly through interposed companies, partnerships or trusts by an individual or by a person not ultimately owned by individuals.”

Therefore, underlying ownership arises when:

- a) There is a direct interest held in a person; or
- b) There is an indirect interest held in or over a person through interposed companies, partnerships or trusts by an individual or by a person not ultimately owned by individuals.

Therefore, common underlying ownership will be found to exist if there is a person(s) who holds a direct or indirect interest in the Applicant and that person(s) also holds direct or indirect interests in other persons e.g. other companies.

In the present case, the Applicant has three shareholders - Shanif Mansoor Jamal (3,300 shares), Jamal Mansoorali Altaf Hirani (3,300 shares) and Alkarim Mansoorali Hirani (3,400 shares). This is as per the Applicant's annual returns.

The Respondent established that the Applicant has the same shareholders with two other entities - Moil Kenya Limited and Mansoor Industries Limited, a company that is incorporated in Tanzania, as follows:

- a) A company search on Moil (Kenya) Limited at the Business Registration Service, Nairobi as of 8th November 2023, revealed that the shareholders of Moil Kenya are as follows - Altaf Jamal as holding 34 ordinary shares, Shanif Jamal as holding 33 ordinary shares and Alkarim Jamal with 33 ordinary shares
- b) A further company search on Mansoor Industries Limited (as per R.EX8) with the Registrar of Companies of Mwanza, Tanzania indicated the company's shareholders

are as follows - Alkarim M. Jamal with 33 shares, Altaf M. Jamal with 33 shares and Shanif M. Jamal with 34 shares.

The Applicant, in their submissions, stated:

“Whereas the Respondent alleges that the Applicant is a member of a group of companies, it does not categorically bring out any other companies with ties to the Applicant apart from the fact that they are owned by the same individuals, regardless of the fact that it knows that every company acts on its own rights, distinct and separate from its members.”

The Applicant therefore acknowledges the common shareholding of the three entities.

Having established that the Applicant and two other companies have common shareholding, it therefore follows that all three are part of the same group as per the definition of the term in section 25 (5) of the ITA. This is because the underlying ownership of the three companies consists of direct interests held in each of them by three individual shareholders who are common to all the entities.

The definition in section 25 (5) of the ITA does not state, as the Applicant alleges, that for a company to be part of a group, it must be a subsidiary of another company.

Consequently, it is the finding of this Tribunal that the Applicant belongs to a group.

We have taken note of the Applicant’s submissions regarding the Application of the Companies’ Act to the determination of the issue as to whether the Applicant is part of a group. We have also taken note of the arguments that Section 25 (3) only applies to Ugandan companies.

We agree with the Respondent’s submission that where the provisions of a taxing act are clear and unambiguous, provisions of other statutes cannot be applied to interpret the taxing act. This was reinforced by the decision of the Tribunal in Luwaluwa Investments Limited v Uganda Revenue Authority, TAT Application No. 39 of 2021.

Further, section 25 (3) and (5) are clear and unambiguous on the definition of a group and it is not for the Tribunal to read into it beyond what is clearly stated. It is also not for the Tribunal to enquire into the use and application of the borrowed funds as such test is not provided for in section 25.

The case of Cape Brandy Syndicate v The Commissioner Inland Revenue IRC (1921) KB 64 has long since been instructive on matters of interpretation of tax statutes –

“In a taxing act, clear words are necessary to tax the subject...one has merely to look at what is clearly said. There is no room for intendment. There is no equity about tax. There is no presumption as to tax. Nothing is to be read in it. Nothing is to be implied. One can only look fairly at the language used”.


Having established that the Applicant is member of a group, the amount of deductible interest in respect of all debts owed by it should have been limited to 30% of EBITDA. Therefore, the Applicant is liable to pay the tax assessed.

This application is hereby dismissed with costs to the Respondent.

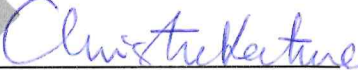
Dated this 4<sup>th</sup> day of October 2024



CRYSTAL KABAJWARA  
CHAIRPERSON



SIRAJ ALI  
MEMBER



CHRISTINE KATWE  
MEMBER