

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 86 OF 2023

MUKWASI GENERAL CONTRACTORS LTD.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

**BEFORE: MS. CRYSTAL KABAJWARA, MS. KABAKUMBA MASIKO,
MS. ROSEMARY NAJJEMBA.**

RULING

This ruling is in respect of an application challenging a tax assessment on the grounds that the Respondent did not properly consider the supporting documentation provided by the Applicant.

1. Background Facts

The Applicant is a company that deals in real estate, specifically, the leasing of commercial office space. Following a tax audit that was carried out for the period 1 January 2017 to 31 December 2020, the Respondent issued additional income tax assessments totalling Shs. 3,528,910,176, citing undeclared income, over-claimed expenses, and overclaimed Industrial Building Deduction (IBD).

The Applicant objected to the assessments on 24 August 2022 and the Respondent made an objection decision on 22 November 2022 wherein the tax liability was revised downwards to Shs. 495,623,807. Dissatisfied, the Applicant sought further review through ADR on 27 November 2022.

On 12 May 2023, the Respondent made an ADR decision and upheld its objection decision of 22 November 2022. The Applicant then filed this application before the Tribunal, challenging the legality and fairness of the assessments. The Respondent

also raised a preliminary objection that the application was not properly before this Tribunal as it was filed out of time.

2. Issues for Determination

The issues for determination by the Tribunal is whether the Applicant is liable to pay the income tax liability of Shs. 495,623,807 for the period 1 January 2017 to 31 December 2020.

3. Representation

The Applicant was represented by Ms. Lydia Namugooma, while the Respondent was represented by Mr. Thomas Davis Lomuria, Ms. Hildah Atusiimire and Ms. Stella Nayebare.

The Applicant's first witness was Mr. Freddie Zagyenda, its tax agent since (AW1). He testified that he handled the Applicant's tax affairs, including filing returns, handling audits, lodging objections, and providing tax advisory services. AW1 stated that the Respondent audited the Applicant for the period 1 January 2017 to 31 December 2020 and issued additional income tax assessments totalling Shs. 3,528,910,176.

AW1 further testified that objections were filed on 24 August 2022 and the assessment was revised downwards to Shs. 495,623,807. The Applicant subsequently filed an ADR application on 27 November 2022, citing unreconciled audit findings, unrealistic 2020 income assessments due to COVID-19, and unsubstantiated increases in 2018 rental income.

AW1 also testified that several disallowed expenses such as bad debts, operational costs, salaries, travel, penalties, exchange losses, related party loan repayments, and Industrial Building Deductions were valid and supported by appropriate documentation.

He argued that the disputed tax liability would not have arisen if this evidence had been properly considered. The witness concluded by asking the Tribunal to vacate the assessment, award Shs. 20,000,000 in general damages, and grant costs of the application.

The Respondent's witness was Ms. Ruth Anne Agwang, a Manager in the Respondent's Objections Unit.

She testified that the assessments were based on undeclared rental income, over-claimed expenses, and a disallowed Industrial Building Deduction (IBD). Following the Applicant's objection, the tax was reduced but several claims were disallowed due to lack of supporting documents.

4. Submissions of the Applicant

The Applicant submitted that the disallowed expenses were legitimate deductions incurred in the production of income in line with Sections 15 and 22(1) of the Income Tax Act. Section 15 provides for the determination of chargeable income as gross income less allowable deductions, while Section 22(1) permits deductions for all expenses wholly and exclusively incurred in generating income. The Respondent's failure to allow these deductions was contrary to the law.

The Applicant contended that bad debts amounting to Shs. 21,579,870 qualified for deduction under Section 24(1), having been previously included in gross income. This was supported by the audited financial statement for 2018 and documentary evidence in AEX. 14 and AEX17(iii).

On salaries and wages totalling Shs. 12,417,698, the Applicant argued that these were supported by ledgers and audited financials (AEX 13, AEX. 17), and that the issue was not part of the initial audit. This was confirmed in the ADR minutes dated 5th April 2023 (AEX. 20), making their subsequent disallowance improper.

The Applicant submitted that for travel and accommodation expenses of Shs. 9,651,928, the Applicant provided travel and accommodation ledgers (AEX. 10) and stated that the expenses were incurred in the normal course of business and should have been deductible under Section 22(1).

Regarding the penalty of Shs. 15,994,140 for non-filing of returns, the Applicant stated that it had already been deducted in the 2019 audited financials (AEX. 17(iv), AEX. 18(iii)), and its re-inclusion in taxable income resulted in double taxation. This was confirmed during cross-examination of RW1.

The Applicant also submitted that a realized exchange loss of Shs. 213,534,813 was allowable under Section 22(1)(a). The claim was supported by schedules and bank statements (AEX. 11, AEX 16).

The Applicant also made reference to the related party loan of Shs. 759,113,354. The Applicant argued it was an interest-free director's loan, transferred in the form of land, evidenced by a certificate of title (AEX 9), explanation letter (AEX. 8), and audited financials (AEX. 17). Counsel submitted that it was wrongly re-characterized as income, and even if disallowed, had no tax implication as the asset offset the liability.

Lastly, regarding the issue of overclaimed IBD, the Applicant argued that the movement in assets was properly documented and supported by a detailed schedule which is sufficient to explain the IBD.

5. The submissions of the Respondent

The Respondent raised a preliminary objection arguing that the application was time-barred, having been filed on 30 May 2023, over six months after the objection decision on 22 November 2022.

Citing Sections 16(1)(c) and 27(1) of the Tax Procedures Code Act and Section 14(1) of the Tax Appeals Tribunal Act, the Respondent maintained that no extension of time was sought, and the application should be dismissed.

On the substantive merits of the case, the Respondent submitted that the Applicant failed to discharge the burden of proof as required by Section 28 of the Tax Procedures Code Act and Section 19 of the Tax Appeals Tribunal Act. The Respondent submitted that by failing to provide the necessary supporting documentation, the Applicant had failed to prove that the assessments were incorrect or excessive.

In response to the issue of bad debts worth Shs. 21,579,870, the Respondent argued that the Applicant had failed to provide a bad debt policy or evidence of recovery efforts. Ledger entries had inconsistencies, and no supporting documentation was submitted. The Respondent cited *Platinum Credit Ltd v Uganda Revenue Authority, Civil Appeal No. 0063 of 20202*, where it was held:

“... the bad debts are deductible if they were included in the person’s income in any year of income and that the person has taken all reasonable steps to pursue that payment.”

On the disallowed salaries and wages, the Respondent submitted that the applicant had failed to submit employment contracts or proof of payments to casual labourers, thus failing to justify the deduction.

Additionally, the Respondent argued that travel and accommodation expenses were disallowed due to insufficient documentation.

The Respondent further contended that the penalty was lawfully imposed and the Applicant did not comply with the Tax Procedures Code Act and failed to justify exclusion of the penalty from taxable income.

With respect to the claimed foreign exchange loss of Shs. 213,534,813, the Respondent contended that the Applicant only submitted a ledger without any invoices, bank statements, or supporting documentation, rendering the claim unsubstantiated.

The Respondent argued and challenged the related party loan of Shs. 759,113,354 on the grounds that the Applicant failed to provide loan agreements, bank statements, or other proof of the loan’s origin and usage. As a result, the Respondent correctly re-characterized the amount as rental income.

The Respondent further submitted that the claim on Industrial Building Deduction (IBD), lacked supporting documentation for land and building movement in 2019–2020. The audit revealed discrepancies, and the disallowance was justified.

The Respondent therefore concluded by stating that the Applicant failed to discharge its burden of proof, and the assessments were lawfully made. The Respondent urged the Tribunal to dismiss the application with costs.

6. The submissions of the Applicant in rejoinder

In rejoinder, the Applicant opposed the Respondent’s preliminary objection, arguing that the application was filed within 18 days of the ADR decision dated 12 May 2023, and thus complied with the 30-day requirement under Section 16(1)(c) of the TAT Act.

The Applicant acknowledged its burden of proof under Section 19 of the TAT Act but maintained that sufficient evidence was provided to show that the ADR decision was erroneous.

The Applicant argued that the disallowed expenses, including foreign exchange losses and unsecured loans, were adequately supported but wrongly added back. Additionally, the Applicant stated that the re-characterization of a Shs. 759,113,354 director's loan as income was termed unjustified.

The Applicant further stated that, expenses relating to premises, equipment, salaries, and travel were disallowed without proper reasoning, despite supporting documents being submitted.

The Applicant further claimed that some items were not originally part of the audit and were later ignored during the ADR process, despite additional evidence being provided. The Applicant prayed for the assessment to be vacated or the matter remitted for reconsideration, a refund of 30% of the disputed tax, general damages of Shs. 20,000,000, interest at 6% per annum as well as costs of the application.

9. Determination of the Issues

Having heard the evidence and submissions of both parties, this is the decision of the Tribunal.

(i) Decision on the preliminary objection

The Respondent raised a preliminary objection that the Application was filed out of time as provided under section 25 of the Tax Procedures Code Act, 2014, and section 14(1) of the Tax Appeals Tribunal Act. The Respondent asserted that the objection decision was made on 22 November 2022 and the application was only filed on 30 May 2023, thus exceeding the statutory thirty-day period allowed for filing an application before the Tribunal.

The Applicant, in response, asserted that the application was filed within eighteen (18) days of the Alternative Dispute Resolution (ADR) decision issued on 12 May 2023.

Section 1 of the TAT Act defines a taxation decision as:

"Any assessment, determination, decision or notice".

Section 14 of the TAT Act requires persons aggrieved by a decision made by the Uganda Revenue Authority to apply to the Tribunal for the review of the decision. Section 16 (2) of the TAT Act provides that the application must be lodged with the tribunal within thirty days after the person making the application has been served with notice of the decision.

The Applicant was served with an objection decision on 22 November 2022. They went ahead and filed an ADR application with the Respondent on 27 November 2022, five days after the objection decision. This was within the timeline prescribed by the Tax Procedure Code Act, Cap 343 which requires taxpayers to file ADR applications within 7 days of the objection decision.

Having received and accepted the Applicant's ADR application, the Respondent made an ADR decision five months later on 12 May 2023. During this time, the Applicant provided information to the Respondent, which the Respondent reviewed. However, following the review, the Respondent maintained the tax liability.

In the case of ***Asiimwe Eunice T/A Assy Lodges v Uganda Revenue Authority, Miscellaneous Cause No. 21 of 2025*** the Tribunal found as follows:

"The Tribunal finds the ADR decision of 11 November 2024, to be the more appropriate "taxation decision" for calculating the appeal timeframe in this case. This is because the ADR process provided a comprehensive and final determination of the tax liability, effectively superseding the preliminary objection decision of 13 June 2024. This ADR process involved meetings and the submission of additional information, including a loan agreement from the Applicant's sister, which the Respondent reviewed. The ADR decision therefore represents the conclusive determination of the tax liability dispute upon which the Applicant's right to appeal rests."

Therefore, the Respondent's ADR decision of 12 May 2023, which conclusively re-affirmed its objection decision is the taxation decision for calculating the appeal timelines in this case.

Consequently, the preliminary objection is dismissed and the Tribunal will determine the matter on its substantive merits.

(ii) Whether the Applicant is liable to pay the tax assessed.

The Tribunal has considered the submissions of both parties in respect of each of the expense items in dispute. We have observed that the gist of dispute concerns whether the information provided by the Applicant to the Respondent is sufficient to prove its claim for the tax-deductible expenses.

We deal with each item below.

1. Bad debts worth Shs. 21,579,870

The Applicant relied on audited financial statements and documentary evidence (AEX. 14 and 17(iii)) to support a deduction for bad debts. According to section 24(1) of the Income Tax Act, a person is allowed a deduction for a bad debt written off in the person's accounts during the year of income.

Further section 24 (3) of the ITA provides as follows:

“bad debt” means—

a debt claim in respect of which the person has taken all reasonable steps to pursue payment and which the person reasonably believes will not be satisfied...”

Whilst the Applicant present audited financial statements as proof of the bad debt, the ITA requires taxpayers to take reasonable steps to pursue payment or recovery of the debt.

In **Platinum Credit Ltd v. URA TAT 28 / 2018**, the Tribunal held that as the Applicant failed to demonstrate the required recovery efforts, the burden of proof under Section 28 of the Tax Procedures Code Act was not discharged.

Therefore, the Applicant has not discharged the burden of proof and as result, the Respondent was justified in disallowing the bad debt expense.

2. Premises and equipment cost worth Shs. 7,608,009

The Applicant claimed these as direct business expenses supported by audited financial statements (exhibited at AEX 17). The Respondent identified discrepancies

with third-party records and noted the lack of invoices and proof of payment. In accordance with **Sections 22 and 28 of the Income Tax Act**, the Tribunal found that the Applicant failed to substantiate the claim.

The audited financial statements are not sufficient to prove that an expense was incurred for tax purposes. While they summarise financial activity, they the underlying events that gave rise to the income or expense.

To prove that the above expenses were incurred, the Applicant ought to have provided the Respondent with supporting documentation such as receipts, invoices, purchase agreement, rental agreements etc.

Therefore, the Respondent was justified in disallowing the expenses in respect of premises and equipment.

3. Salaries and wages worth Shs. 12,417,698

The Applicant submitted ledgers showing salaries paid, the corresponding NSSF and PAYE accounted for. However, the ledgers do not indicate the names of the employees. They indicate block figures for each month.

This is the very information that the Respondent sought to validate. To this end, the Applicant provided a list of their workers, exhibited at pages 159 – 172 of the joint Trial Bundle.

There is nothing on this list that shows that the persons listed are employees of the Applicant. The so-called list only bears names, signatures and phone numbers of individuals claimed by the Applicant to be employees. This list could be anything – it could be an attendance list for a wedding meeting or a “kibiina” meeting. It is definitely not a document that any right-thinking revenue authority can rely on as proof of salaries and wages incurred by a taxpayer.

The Applicant ought to have provided employment contracts, payslips or payment vouchers for payment of casual workers as they allege. None of this was provided. The Applicant has not discharged the burden of proof and the Respondent was justified in disallowing the expenditure incurred in respect of salaries and wages.

4. Travel and accommodation expenses worth Shs. 9,651,928

The Applicant supported this expense by way of a ledger which disclosed the following detail:

"31/12/2019.....travel costs for air tickets to purchase items and meet potential investors ...9,651,928"

No additional information was provided to support the above expense. The Applicant ought to have substantiated the above expense by way of the purchased air ticket, the items purchased or evidence of the meeting with potential investors.

Again, the Applicant has not discharged the burden of proof and the Respondent was justified in disallowing the expense on the ground of insufficient information.

5. Penalty of Shs. 15,994,140

The Applicant argued that the above penalty was incurred as a result of non-filing of tax returns and while it was deducted from its gross income, it was added back and taxed.

To support this position, the Applicant adduced financial statements for the period ended 31 December 2019.

However, financial statements will not indicate whether the penalty has been added back for tax purposes. This is because while a tax penalty is an expense for accounting purposes, for tax purposes. This is as per section 22 (3)(g) of the ITA. Therefore, the correct supporting documentation that shows whether the penalty was added back or not is the Applicant's tax computation or tax return for the relevant period.

Therefore, having not provided evidence of the above, the Applicant has discharged the burden of proof and the Respondent was justified in disallowing the expense.

6. Foreign exchange loss of Shs. 213,534,813

The Applicant allegedly incurred foreign exchanges losses which they sought to claim as an allowable deduction.

Section 46 of the ITA (formerly section 48) deals with foreign exchange gains and losses. Section 46 (1) provides that foreign exchange debt losses are deductible and subsection (3) allows for the deductibility of foreign currency debt losses incurred by a taxpayer during a year of income.

Foreign exchange losses arise when a transaction is settled (i.e., receiving a payment) at a lower exchange rate than when the transaction was originally recorded in the books. For example, if a business invoices a customer in Uganda Shillings but the customer pays in a different currency, and that other currency strengthens against the shilling, the business will experience a loss because they received fewer shillings than anticipated.

Financial statements are not sufficient proof of a forex loss. There must be supporting documentation of the underlying transaction that gave rise to the loss. This for example includes invoices, receipts, purchase orders, bank statements.

The Applicant provided bank statements at pages 173 to 586 of the Joint Trial Bundle. These are over 400 pages of bank statement showing various transactions. However, there was no effort on the part of the Applicant to highlight or identify the transactions that gave rise to the forex losses.

The burden of proving that the assessment issued by the Respondent is excessive lies with the taxpayer and in the circumstances, the Applicant has not discharged the burden. Therefore, the Respondent was justified in disallowing the foreign exchange losses.

7. Unverified movement in Land and Building / Industrial Building Deduction worth Shs. 9,303,715

The Applicant submitted a movement schedule (AEX. 12) as proof of the deduction of Shs. 9,303,715. The Respondent alleged that there was an overstatement of Shs. 186,074,300 in the movement, which gave rise to overclaimed industrial building allowances of Shs. 9,303,715.

However, the Tribunal noted the absence of a formal loan agreement, bank statements, or clear documentation outlining the loan's terms and application. Pursuant to section 117 of the Income Tax Act, which empowers the Commissioner General to re-characterize transactions lacking economic substance, the Tribunal found the Respondent's re-characterization of the amount as rental income to be lawful, reasonable, and justified.

What is a movement and how does it arise?

A "movement" refers to any change in the asset's status, including acquisitions, disposals, depreciation, or revaluations. It essentially tracks how the book value of an asset changes over time. For example, at the close of the financial year ended 31 December 2023, the book value of assets could have been Shs. 1,000,000. On 31 December 2024, the book value could have increased to Shs. 1,500,000. Therein lies a movement of Shs. 500,000. The most likely explanation for this movement is that the taxpayer purchases additional assets ("additions") in the intervening period between 1 January – 31 December 2024.

In such cases, the taxpayer is required to maintain an asset schedule as well as the supporting transactional documentation in support of any acquisitions or even disposals as the case may be.

Therefore, in the present case, since the Respondent found that the assets were overstated by Shs. 186,074,300. It was incumbent on the Applicant to provide documentation that explained and reconciled the above figure. Instead, the Applicant provided a schedule at pages 53 – 56 of the Joint Trial Bundle which shows purchases of various building and construction related material in the period 14/01/2019 to 20/12/2019. No reconciliation has been provided explaining the overstatement of Shs, 186,074,300. Further, no transactional documentation has been availed.

Consequently, the Applicant has not discharged the burden of proof and we find that the Respondent was justified in disallowing the claim for industrial building allowance.

8. Unsecured loan from directors worth Shs. 759,113,354

The Applicant contended that this amount represented an interest-free loan from its directors. The Applicant explained that the loan arose from a transfer of property from the directors of the Applicant to the Applicant company. The Applicant provided a copy of the certificate of title which showed a transfer of ownership from the directors to the Applicant in 2005. The Applicant also adduced audited financial statements for the period ended 31 December 2020 which disclose the related party loans.

However, it is best practice that director or shareholder loans are supported by documentation such as loan agreements and board resolutions authorising the company to borrow. In the present case, such information was not provided.

While the certificate of title shows changes in ownership, on its own, it does not support the existence of the loan. Further, there ought to have been a valuation report determining the value of the land, which same value should have formed the basis for the "loan" amount. In the absence of this information, the existence of the loan has not been proved.

That said, we must now turn to the question as to whether recharacterization of the loan as rental income was appropriate.

While the Commissioner is given power to recharacterize transactions, the powers must be exercised judiciously and rationally. In ***East African Breweries International Ltd v URA, TAT 14 / 2017***), the Tribunal stated:

East African Breweries International Limited URA TAT App No. 14 of 2017 where the Tribunal stated:

"The Commissioner's powers to re-characterize a transaction cannot be faulted unless there are satisfactory explanations. The Tribunal will not interfere with such powers unless it is shown that the decision of the Respondent was illegal, irrational or was made with procedural impropriety."

The Respondent recharacterized the loan repayments as income due to insufficient information. The recharacterisation must be logical and complete. In other words, the

Respondent in recharacterizing cannot only deal with the income side. They must also follow through and deal with the expenditure side for completeness.

When this is done, the recharacterisation of the initial loan as income and the loan repayments as expenses should ideally have no direct impact on the taxpayer's tax position. The net impact should be zero.

In the present case however, there is no proof of the loan which the Respondent seeks to recharacterise as income. Therefore, there is no income. On the other hand, there are loan repayments, which should be recharacterized as expenses for completeness. However, in the absence of income, the loan repayments, recharacterized as expenses for tax purposes, must be added back and taxed accordingly. This is because expenses can only be allowed as deductions for tax purposes if they were incurred in the generation of income included in gross income.

Therefore, while the Respondent was right in recharacterizing the loan repayments, the correct recharacterisation in the circumstances is as expenses and not income. However, the tax impact remains the same, i.e., the taxpayer should account for income tax on the disallowed expenses at rate of 30%. Therefore, the assessment in respect to the directors' loan repayments is upheld.

Obiter

This is a classic case of poor record keeping. Taxpayers need good records to prepare their tax returns. These records must support the income, expenses, and credits that taxpayers report. Further, these are the same records that are used to monitor the business and prepare financial statements.

In the same vein, taxpayers must keep their business records available at all times for inspection by the Uganda Revenue Authority who examine taxpayers' returns and ask taxpayers to explain the items reported. This is in line with section 15 of the Tax Procedure Code Act which requires taxpayers to retain their records for five years after the end of the tax period to which a return relates.

Further, the burden of proving that an assessment is erroneous or excessive rests with the taxpayer. Therefore, record keeping is a critical part of tax compliance and poor


record keeping results in penalties, fines, loss of income and precious time as is the case here. Most tax disputes rise and fall on documentation and where the documentation does not exist, the application will be dismissed.


Therefore, the Application is dismissed and the Tribunal makes the following orders:

- (i) The assessment of Shs. 495,623,807 is hereby upheld.
- (ii) Costs are hereby awarded to the Respondent.
- (iii) The Applicant's prayer for damages of Shs. 20,000,000 is hereby denied.

Dated at Kampala this 17th day of April 2025.


CRYSTAL KABAJWARA
CHAIRPERSON


KABAKUMBA MASIKO
MEMBER


ROSEMARY NAJJEMBA
MEMBER

