

THE REPUBLIC OF UGANDA
THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPLICATION NO. 157 OF 2024

SANCTUM INVESTMENTS LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

**BEFORE: MRS. STELLA NYAPENDI CHOMBO, MR. SIRAJ ALI, MR. WILLY
NANGOSYAH**

RULING

This ruling arises from a preliminary objection raised by the Respondent, challenging the Applicant's failure to comply with Section 15 of Tax Appeals Tribunal Act (TAT Act), which requires the payment of thirty percent of the tax assessed or the undisputed amount, whichever is greater, prior to filing an application before the Tribunal.

1. Background facts

On 27 March, 2024, the Applicant made an objection to a tax assessment of Shs. 316,337,346 issued by the Respondent. The Respondent was required to serve a notice of the objection decision within ninety (90) days; that is by 25 June 2024. On 27 June, 2024, the Applicant elected to treat the VAT liability of Shs. 316,337,346 as waived. The Applicant contends that prior to the time of election, the Respondent did not issue an objection decision notice but rather issued a demand notice to the Applicant dated 23 May 2024.

Subsequently, the Applicant filed an application before the Tribunal challenging the tax assessment without paying thirty percent of the tax in dispute as required under Section 15 of the TAT Act. The Respondent raised the preliminary objection arguing that the Applicant's failure to meet the statutory precondition rendered the application improper before the Tribunal.

2. Issue for Determination

Whether the Applicant is liable to pay thirty percent of the tax assessed, in light of the election made under Section 26 (7) of the Tax Procedure Code Act (TPCA).

3. Representation

The Applicant was represented by **Mr. Benard Olok** of M/S Kampala Tax Advisory Centre while the Respondent was represented by **Mr. Sam Kwerit** of the Respondent's Legal Services and Board Affairs Department.

4. Submissions of the Respondent

The Respondent raised a preliminary objection that the Applicant had not complied with the mandatory requirement of paying thirty percent of the tax assessed prior to filing this appeal in accordance with Section 15 of the Tax Appeals Tribunals Act.

Section 15 of the Tax Appeals Tribunal Act provides;

"(1) A taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay thirty percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater."

The Respondent prayed that this application is improper before the Tribunal on account of non-conformity with Section 15 of the TATA and should therefore be dismissed.

5. Submissions of the Applicant

The Applicant submitted that the Respondent's preliminary objection premised on the non-payment of thirty percent of the tax in dispute was misconceived. The Applicant argued that Section 26 (7) of the TPCA provides an exception to the requirement under Section 15 of the TAT Act. Section 26 (7) of the TPCA provides:

"Subject to subsection (9), where an objection decision has not been served within the prescribed time specified under subsection (6), the person objecting may, by notice in writing to the Commissioner, elect to treat the Commissioner as having made a decision to allow the objection"

The Applicant averred that it duly filed the objection on 27 March 2024, and did not receive a response from the Commissioner General within 90 days from the date of receipt of the objection. Having not received an objection decision from the Respondent from the expected 90-day deadline of 25 June, 2024, the Applicant made an election on 27 June 2024 to treat the objection as allowed in accordance with Section 26 (7) of the TPCA consequently nullifying the disputed assessment.

The Applicant acknowledged the general rule under Section 15 of the TAT Act, that requires a taxpayer to deposit thirty percent of the tax in dispute before filing an application to the Tribunal. However, the Applicant submitted that this provision presupposes the existence of a valid and enforceable tax liability. The Applicant argued that there was no tax liability since the objection had been allowed by virtue of Section 26 (7) the TPCA.

The Applicant cited the case of ***Kumi Orthopaedic Centre Ltd v Uganda Revenue Authority, TAT Application No. 3 of 2021***, where the Tribunal emphasized that the right to elect under Section 26 (7) of the TPCA arises automatically upon the Commissioner General's failure to respond within the statutory period, overriding any contrary provisions.

The Applicant prayed that this preliminary objection be dismissed with costs, as the election made under Section 26 (7) of the TPCA renders the thirty percent requirement inapplicable.

6. Respondent's submissions in rejoinder

In rejoinder, the Respondent submitted that the Applicant's reliance on Section 26 (7) of the TPCA was misplaced and could not override the mandatory requirements of Section 15 of the TAT Act.

The Respondent averred that the case of ***Fuelex Uganda Limited v Uganda Revenue Authority, TAT Application No. 13 of 2021***, cited by the Applicant, supported its own position when considered within its factual context.

The Respondent submitted that whereas Section 26 (7) of the TPCA allows a taxpayer to elect to treat an objection as allowed where the Commissioner General fails to respond within 90 days, such election does not extinguish the tax liability but creates a procedural opportunity for the taxpayer to escalate the matter for resolution.

The Respondent went ahead to state that the Applicant's interpretation of Section 26 (7) of the TPCA was flawed and did not exempt the Applicant from the mandatory payment requirement. The Respondent submitted, that Section 26 (7) of the TPCA cannot be read to override the specific requirement of Section 15 of the TAT Act, since the cited legal provisions serve distinct legal purposes.

The Respondent therefore prayed that the Tribunal upholds the preliminary objection and dismisses the application for non-compliance with Section 15 of the TAT Act. The Applicant's failure to meet the thirty percent payment requirement renders the application improperly before the Tribunal, and the reliance on Section 26 (7) of the TPCA cannot cure this defect.

7. Determination of the Tribunal

Having listened to the oral arguments and authorities relied upon by both parties, this is the ruling of the Tribunal:

A preliminary objection was raised by the Respondent that this matter is improper before the Tribunal because the Applicant had not deposited thirty percent of the Tax in dispute. This requirement to pay thirty percent is a preliminary point of law which requires determination by the Tribunal.

Order 6 rule 28 of the Civil Procedure Rules Provides:

"Any party shall be entitled to raise by his or her pleadings any point of law, and any point so raised shall be disposed of by the court at or after the hearing; except that by consent of the parties, or by order of court on the application of either party, a point of law may be set down for hearing and disposed of at any time before the hearing"

The Respondent argued that the Applicant's reliance on Section 26 of the TPCA cannot override the mandatory requirement to pay thirty percent of the tax assessed or undisputed tax, whichever is higher.

The Applicant argued that it elected to treat the objection as allowed under Section 26 (7) of the TPCA and, therefore, was not required to meet the precondition under Section 15 of the TAT Act.

The Tribunal shall resolve this matter as a point of law, applying the principle of "pay now, argue later" and examining relevant case law and statutory provisions.

Section 15 of the TAT Act states:

"(1) A taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay thirty percent of the tax in dispute or that part of the tax assessed not in dispute, whichever is greater."

The above provision is a prerequisite for invoking the Tribunal's jurisdiction, intended to ensure that taxpayers meet their immediate obligations even as they contest assessments. We shall go ahead to break down this provision to clarify when such obligation arises.

The key elements of the above legal provision are as follows:

a) Filing a notice of objection

This legal provision applies after a taxpayer has lodged a notice of objection to an assessment with the Commissioner General. This is the first step in the tax dispute process, where the taxpayer formally disputes the assessment.

b) Pending final resolution of the objection

While awaiting the final resolution of the objection by the Commissioner General, the above legal provision imposes a legal obligation onto the taxpayer to make a partial payment.

c) Payment requirement

The taxpayer is required to pay thirty percent of the tax in dispute or that part of the tax assessed not in dispute

d) Timing of payment

The thirty percent deposit of the disputed or undisputed amount must be paid during the objection process and before escalating the dispute to the Tax Appeals Tribunal. This payment can be said to be a mandatory precondition to filing an application before the Tribunal.

The decision in ***Cape Brandy Syndicate v Inland Revenue Commissioners [1921]1 KB 64 (UK)*** is instructive when it comes to interpretation of tax statutes where it states: "In taxing statutes, one has to look at what is clearly stated. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

In ***Bullion Refinery Ltd Vs Uganda Revenue Authority TAT application no.36 of 21***, it was held by this Tribunal that "a taxpayer who objects to an assessment will still be required to pay thirty percent of the tax assessed in the objection"

The constitutionality of the thirty percent payment was also further considered by the Constitutional Court in the matter of ***Fuelex Uganda Limited versus Uganda Revenue Authority, Constitutional Petition No. 3 of 2019***, in a decision rendered in 2020. The Court found that the requirement to pay thirty percent of the tax in dispute was not unconstitutional so far as it applied only to disputes over the tax amounts assessed. However, the Court held that it would be unconstitutional if the requirement for the thirty percent payment was extended to parties whose disputes were purely legal or technical, where the issue before the Tribunal did not relate solely to the amount of tax payable.

One of the issues for determination by the Tribunal in the instant application is whether the Applicant's election is valid and if so, whether the applicant is liable to pay Value Added Tax of Shs. 294,409,525.

The Tribunal is alive to the fact that determining the validity of the election under Section 26 (7) of the TPCA would necessitate delving into the merits of the substantive application, which goes beyond the scope of this preliminary objection. Furthermore, that the VAT amounting to Shs. 294,409,525 is the subject of the election whose validity the Respondent contests in the application. The Applicant is not exempted from the requirement to pay thirty percent of the disputed tax, because the validity of the election made under Section 26 (7) of the TPCA is pending determination by the Tribunal.

The preliminary objection raised by the Respondent is sustained. The Applicant is ordered to pay thirty percent of the tax assessed as this is a statutory requirement that ought to be fulfilled upon lodging an objection pending a tax decision.

The Tribunal will fix the matter for hearing upon confirmation of the Applicant's payment of the thirty percent deposit.

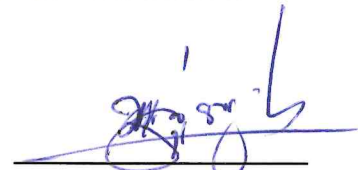
Dated at Kampala this 26th day of November 2024.



MS. STELLA NYAPENDI
CHAIRPERSON



MR. SIRAJ ALI
MEMBER



MR. WILLY NANGOSYAH
MEMBER

