

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**APPLICATION NO. 82 OF 2024**

SHAHIL INVESTMENTS LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. PROSCOVIA REBECCA NAMBI, MS. GRACE SAFI,  
MS. KABAKUMBA MASIKO.

**RULING**

I. Introduction

1. This ruling is in respect of an application challenging additional assessments for VAT and Corporation Tax totaling Shs. 2,786,178,077 raised by the Respondent. The Applicant was assessed on the basis that the Applicant underdeclared sales and allegedly facilitated other companies in evading VAT through “invoice trading” during the period 2021/2022.

II. Background facts

2. The Applicant is a limited liability company engaged in the distribution of hardware materials in Uganda, operating branches in Kampala, Paidha, Bwera, Mpondwe, and Lira.
3. Between 2018 and August 2022, the Respondent conducted three audits of the Applicant’s tax affairs. Further investigations were undertaken by the Tax Investigations Department (TID), including a search-and-seizure exercise at some of the Applicant’s premises (Kampala and Paidha). During this exercise, the Respondent seized business records and conducted physical stock-taking in selected branches. Following these investigations, the Respondent

concluded that the Applicant had significantly under-declared sales and had allegedly facilitated VAT evasion through invoice trading during the period 2021–2022.

4. Between June and October 2023, the Respondent issued multiple administrative additional VAT and Income Tax assessments, with a total disputed liability of Shs. 2,786,178,077. The assessments covered VAT for periods February 2021, and May–August 2022; and Corporation Tax (Income Tax) for the financial year 2021/2022.
5. On 1 November 2023, the Applicant lodged an objection challenging the assessments, principally disputing the additional estimated sales and methodology. On 4 December 2023, the Respondent issued an objection decision upholding the assessments, stating that the Applicant had failed to provide sufficient supporting documents. The Applicant contends that this was unfair because the Respondent seized its documents during the investigations.
6. The Applicant therefore filed this Application for review before the Tribunal, contending that the assessments are unlawful, excessive, duplicative and based on erroneous estimates, and seeking that they be vacated, together with damages and costs.

### III. Issues for determination

7. The parties agreed, and the Tribunal adopts, the following issues for determination:
  - (i) Whether the impugned tax assessments were lawful and valid in fact and in law.
  - (ii) What remedies are available to the parties?

### IV. Representation and Evidence

8. Mr. William Were and Ms. Hajara Namwanga represented the Applicant while Ms. Doreen Amutuhaire and Mr. Tonny Kalungi represented the Respondent.

### The Applicant's evidence

9. The Applicant's case was presented through Ms. Lorna Kamau (AW1), an auditor engaged by the Applicant. She filed three witness statements and tendered exhibits AEX1–AEX12. In summary, AW1 testified that:
  - a. Following the search-and-seizure exercise and stock-taking, the Respondent issued a management letter and VAT and Income Tax assessments totaling Shs. 2,786,178,077, focusing on the period from 1 February 2021 (EFRIS inception) to 26 May 2023.
  - b. The Respondent alleged stock variances between physical counts and system records across four branches, excluding Lira, which was not inspected in the initial stock-taking, yet deposits from that branch were later treated as undeclared sales.
  - c. AW1 identified several alleged defects in the assessments, including:
    - i. Duplication and overlap of assessments for the same periods and sales, notably:
      - a. VAT assessment D0022300001518 for May 2022 allegedly already covered by earlier assessment NE012300441117;
      - b. Additional assessments D012400129704 and ID012400129171 are said to be subsumed within earlier stock-taking computations;
      - c. Income Tax Assessment ID012400129769 said to duplicate sales of Shs. 2,205,935,787.
    - ii. Double counting of sales by adding bank deposits to cashbook sales, even where the deposits were already in the cashbooks, and thereby inflating the so-called "sales increment".
    - iii. Failure to reconcile stock-taking results and prior assessments: The Respondent allegedly concluded that goods worth Shs.

2,421,202,940 had been sold but not declared, leading to a VAT assessment of Shs . 435,816,530, but did not deduct sales already assessed in notices D0022300001515 (Dec 2021), D0022300001519 (Mar 2022), and D0022300001518 (May 2022), collectively covering Shs. 2,106,963,939, leading to double taxation of the same stock.

- iv. Exclusion of branch data from Lira, Mpondwe, and Bwera in the audit, while simultaneously treating deposits traceable from those branches as undeclared sales.
  - v. Use of crude estimates despite the Respondent having seized the Applicant's complete accounting records.
  - vi. Corporation Tax is assessed as if it were a tax on gross sales, without deducting the cost of goods sold and other business expenses.
- d. AW1 also testified that the Respondent seized the Applicant's accounting records during the search-and-seizure operation and yet later grounded the objection decision on an alleged failure by the Applicant to provide documents, which she considered contradictory and unfair.
- e. She testified that the Respondent's stock-movement method ignored the EFRIS-consistent formula of "Goods Sold = Opening Stock + Purchases – Closing Stock" and failed to adjust for stock already taxed in earlier periods.
- f. On re-examination, AW1 stated that she was not aware of any concluded criminal proceedings. She clarified that TID's seizure of records did not, in itself, mean there was a criminal case.

#### **The Respondent's evidence**

10. The Respondent relied on the testimony of Ms. Susan Kihunde (RW1), an Officer in the Respondent's Tax Investigations Department with 10 years' experience. She filed 2 witness statements. RW1 testified that:

- a. URA conducted a compliance review on VAT-registered entities aimed at uncovering invoice trading schemes. The Applicant emerged as one of the entities under investigation.
- b. A joint inquiry by the Domestic Taxes Department (DTD) and the Tax Investigations Department (TID) included an EFRIS stock-check, search-and-seizure operations at the Kampala and Paidha branches of the Applicant, and an analysis of cashbooks and bank statements. These allegedly revealed under-declaration of sales.
- c. RW1 stated that:
  - i. the Applicant's director allegedly instructed staff to deposit daily cash sales into third-party accounts (including Varsani Brothers (U) Ltd, Krisha International Ltd, Kamuli Sugar Ltd, Nato Engineering Co., Techno Three (U) Ltd and others) to disguise actual sales;
  - ii. Comparisons of EFRIS data and daily cashbooks for Kampala branches showed discrepancies where EFRIS sales exceeded cashbook entries or where receipts stamped "PAID" lacked corresponding entries;
  - iii. The director allegedly admitted involvement in invoice trading and acknowledged that some invoiced sales never occurred.
- d. RW1 testified that a reconciliation of cashbooks and bank statements for May–August 2022 revealed undeclared sales of Shs. 5,804,537,661, on which the Respondent computed VAT of Shs. 1,044,816,799 and Corporation Tax of Shs. 1,741,361,298.
- e. She stated that:
  - i. cashbooks for Kampala and Paidha were seized;
  - ii. additional cashbooks were later provided by the Applicant for Lira, Mpondwe and Bwera;
  - iii. The Respondent accepted only the Lira cashbooks as authentic as those from Mpondwe and Bwera could not be verified
  - iv. The Respondent treated unexplained deposits into certain bank accounts as undeclared sales.

- f. RW1 stated that there was a variance between the stock recorded in the Applicant's systems and the physical stock as determined in the previous year. She confirmed that the Respondent physically counted stock at all branches — Kampala, Lira, and Paidha. She further confirmed that the Applicant was issuing EFRIS invoices, which appeared in its VAT returns, and that even where certain transactions were later found not to have occurred, those returns had not been rejected in the EFRIS system.
- g. She explained that the EFRIS review revealed that some beneficiaries claimed to have purchased hardware materials from the Applicant and produced tax invoices, cash-sale receipts, and delivery notes, claiming to have paid cash at the Kampala branches. However, a comparison of EFRIS data with daily cashbook entries indicated that tax invoices for several queried transactions were issued on days when EFRIS sales exceeded the cashbook figures, confirming that some cash sales were either unrecorded or only partially accounted for.
- h. The witness stated that cash paid by clients was received by the Applicant's Director but only a portion of the cash was entered in the cashbooks, while employees were instructed to deposit the remainder in the bank accounts of the companies earlier mentioned.
- i. Upon reviewing both the cashbooks and bank statements, the Respondent added up the sales recorded in the cashbooks and the bank deposits, resulting in what was termed a "Sales Increment." She acknowledged that URA relied on estimates when issuing the assessments, and that as a result, two URA teams — the Tax Investigations Department and the Domestic Taxes Department — issued contradictory assessments for the same period.

- j. Under cross-examination, RW1 confirmed that two URA teams (TID and DTD) issued assessments for partially overlapping periods. She admitted that URA relied on estimates in constructing the assessments. RW1 accepted that in some instances bank deposits traceable in cashbooks were double-counted when URA added deposits on top of recorded sales. She also acknowledged that not all branch cashbooks, especially those from Mpondwe and Bwera, were relied upon. She confirmed that a physical stock-take had been done at Kampala, Lira and Paidha branches and that the Applicant was issuing EFRIS invoices that appeared in VAT returns which had not been rejected in the EFRIS system.
- k. Nevertheless, RW1 maintained that the undeclared sales identified from the reconciliation exercise formed the basis of the administrative assessments and that the Respondent was justified in issuing them under its statutory mandate.

V. Submissions of the Applicant

11. The Applicant submitted that the six impugned assessments, covering both VAT and Income Tax, are unlawful and requested the Tribunal to vacate them. The Applicant cited Section 28 of the Tax Procedure Code Act and Section 19 of the Tax Appeals Tribunal Act, and acknowledged that the burden of proof rests on the Applicant. The Applicant contended that it had discharged this burden of proof by demonstrating that the Respondent's assessments were based on duplication, double-counting and unfounded assumptions.

**Multiple Overlapping Assessments for the Same Period**

12. The Applicant submitted that the Respondent issued multiple overlapping assessments for the same periods without regard to previous assessments that had already been issued. The Applicant provided details of specific assessment overlaps – that Assessment No. NE012300441117 already covered D0022300001518; that Assessments D012400129704 and

ID012400129171 were subsumed within earlier assessments and stock taking exercises; and that the Income Tax Assessment ID012400129769 duplicated sales of Ugx 2,205,935,787. The Applicant further drew the Tribunal's attention to the evidence of the Respondent's witness, who conceded during cross-examination to some overlapping assessments, confirming errors where the evaluation was applied to the same sales period more than once.

#### **Multiple Errors in Tax Computation**

13. The Applicant submitted that they led evidence which showed that the Respondent's computations contained fundamental errors, including the double-counting of deposits traceable in the Applicant's own cash books. They submitted that during the hearing, the Respondent's witness (RW1) admitted that an error had occurred where bank deposits traceable in the cash books had been double-counted.

#### **Assessments Based on Estimates and Unsupported Assumptions**

14. The Applicant argued that the Respondent based the disputed assessments on estimates and unsupported assumptions. The Respondent considered bank deposits from various branches (Kampala, Paidha, Mobile Money/Agent banking) as branch sales, leading to errors in the assessments. The Applicant contended that the Respondent raised the evaluations based on the assumption that its Cash Books for Mpondwe and Bwera were not authentic. However, the Respondent failed to present evidence to support this assumption.
15. The Applicant cited the High Court decision in *Uganda Revenue Authority - vs- Balondemu David, Civil Appeal No. 0002 of 2023*, which stated that a taxpayer only has to comply with the law and account for all tax payable. Justice Ocaya explained that documents can still be relied upon even if they have imperfections (like a lack of signatures or dates), provided they clearly set out the transaction. The Applicant challenged the Tribunal to reject the

Respondent's assumptions, noting the Respondent failed to prove fraud or non-compliance necessary to justify rejecting the cash books.

#### **Mischaracterization of corporation tax**

16. The Applicant submitted that Corporation tax is fundamentally a profit tax, not a sales tax. They contended that the Respondent wrongly calculated corporation tax on estimated sales without considering deductible costs and expenses such as purchases, invoices, receipts and stock movements.

#### **No Evidence of Under-declaration of Sales**

17. The Applicant submitted that the Respondent failed to produce evidence of undeclared or fictitious sales. Evidence showed that the Applicant actually declared and paid VAT on sales the Respondent categorized as fictitious, and the Respondent admitted receiving VAT for those sales. Furthermore, the Respondent failed to provide evidence that the Director received cash from customers or directed employees to engage in malpractice.

#### **Stock-taking contradicts allegations**

18. The Applicant submitted that it provided evidence showing that the Respondent's own stock-taking exercise, covering the period 1/2/2021 to 26/5/2023, resulted in an assessment of UGX 435,816,530/=, which contradicted the Respondent's broader allegations of substantially higher undeclared sales

#### **Remedies**

19. The Applicant prayed that the Tribunal should vacate the assessments for the reasons illustrated above. The Applicant prayed for damages as compensation for the inconvenience suffered. This request is supported by Section 22(6) of the Tax Appeals Tribunal Act, which allows the Tribunal to make an order for damages. The Applicant relied on the Supreme Court case of ***Betty Kizito V David Kizito Kanonya, SCCA No. 18 of 2018***, which noted that general

damages must be quantified and suggested that the Tribunal should propose a reasonable hypothesis for its inquiry into damages.

20. The Applicant also asked for the Costs of the Application, citing Section 22(5) of the Tax Appeals Tribunal Act as amended, which grants the Tribunal power to award costs against any party.

#### VI. Submissions of the Respondent

21. The Respondent submitted that the Applicant was investigated by the Respondent's Tax Investigation Department concerning invoice trading and through investigations, including search and seizure operations at the Kampala and Paidha branches, the Respondent established that the Applicant facilitated the evasion of VAT through invoice trading involving companies like Sai Supplies (Ug) Ltd and Krishna International Ltd. Consequently, the Respondent disallowed the Applicant's input tax credit and raised VAT assessments.
22. The Respondent further submitted that a review of the Applicant's cashbooks and bank statements showed undeclared sales compared to the VAT returns filed between May 2022 and August 2022 and the resulting total administrative additional VAT and corporation tax liability is UGX 2,786,178,077. The Respondent explained that following the Applicant's objection, the Respondent upheld these assessments because the Applicant failed to provide supporting documents.
23. Citing Section 26 of the Tax Procedures Code Act and Section 18 of the Tax Appeals Tribunal Act, the Respondent submitted that it is established law that the burden of proof is on the Applicant to demonstrate that they are not liable to pay the taxes levied. It is the Respondent's submission that the Applicant carries the onus to prove that the taxation decision is erroneous. The Respondent argues that since the Applicant allegedly failed to discharge this

onus, the Applicant is liable to pay the additional assessments as a participant in and/or beneficiary of a VAT fraud scheme involving invoice trading. The Respondent cited to us the authorities of *Williamson Diamonds Ltd v Commissioner General (2008) 4 TTLA 67* and *Radio Pacis Ltd v Commissioner General URA (Civil Suit No. 0008 of 2013)*.

24. The Respondent asserts the assessments are lawful, based on the finding that the Applicant made more sales than what was declared in its VAT returns. The Respondent relied on Section 4(a) and Section 25 of the VAT Act for the authority to impose and calculate the tax.
25. The Respondent explained that Invoice Trading is defined as a tax fraud scheme where businesses register as taxable persons for VAT purposes, sell the invoices to others without actually delivering any goods, enabling beneficiaries to claim input VAT on fictitious purchases. They submitted that RW1's evidence showed the Applicant made more sales than declared. Furthermore, the Applicant's witness (AW1) admitted during cross-examination that she did not know if the Applicant had transacted with alleged suppliers (Sai office supplies and Millennium General hardware), which, according to the Respondent, confirms the invoices were fictitious and the Applicant was not entitled to the input tax credit.
26. They further argued that the Respondent is empowered under Section 47 (1) of the VAT Act to disallow the claimed input VAT credit once an invoice trading scheme is established. To claim input VAT credit, Section 28(1)(a) of the VAT Act requires the taxpayer to provide comprehensive documentation that completes the supply chain, starting from the purchase of supplies to the subsequent sale.
27. The Respondent submitted that it has the power to issue additional assessments under Section 25 (2) (a) TPCA in cases of fraud or willful neglect.

The Respondent argued that the additional assessments were necessitated by new information uncovered in subsequent audits. The Respondent contends that the existence of a subsequent evaluation does not automatically invalidate earlier ones, provided the subsequent assessment corrects or consolidates the liability. The burden was on the Applicant to prove that the assessments overlapped, which they failed to do.

28. The Respondent contends that even if minor clerical mistakes existed, they did not vitiate the legality of the assessments. Such errors, it was argued, can be corrected in the enforcement process, and the Applicant, having failed to produce audited reconciliations, could not rely solely on oral testimony to challenge the computations.
29. The Respondent further submitted that the assessments were issued following a comprehensive review, including stock-taking exercises, analysis of bank deposits, and evaluation of sales declarations. The Respondent maintained that the Applicant's cashbooks and bank statements for the period May 2022 to August 2022 revealed sales far exceeding those declared in VAT returns. Where certain branch records were missing, the Respondent treated unexplained deposits as undeclared sales.
30. It was argued that, in light of the Applicant's failure to produce complete and reliable records, the Commissioner was entitled to employ the "best judgment" method under section 28 of the Tax Procedures Code Act, section 32 of the VAT Act, and section 117 of the Income Tax Act, a principle also affirmed in *URA v Balondemu David (Civil Appeal No. 0002 of 2023)*.
31. The Respondent relied on the principle that the tax authority may resort to estimating when a taxpayer fails to keep full and accurate records. When the Applicant failed to provide complete bank details and records for different bank accounts, the Respondent relied on bank deposits and available sales data,

treating unexplained bank lodgments as undeclared sales, thereby using the best judgment method supported by Section 32 of the VAT Act and Section 117 of the Income Tax Act.

### **Corporation Tax as a Profit Tax**

32. The Respondent counters the argument that corporation tax was improperly treated as a tax on sales, submitting that once undeclared sales were established, the Respondent was entitled to deem those amounts as part of taxable income in accordance with Section 18 of the Income Tax Act. The Applicant's assertion that costs of purchases were ignored was, in the Respondent's view, untenable since the burden lay on the Applicant to produce evidence of deductible expenses, which it failed to do.
33. The Respondent submitted that discrepancies identified in EFRIS declarations, cash book entries, and bank lodgments are sufficient to justify the inference of undeclared sales. The Respondent notes that the Applicant's director conceded to having undeclared sales in a letter dated 23 August 2023.
34. The Respondent invited the Tribunal to find that the Application lacks merit and that the Applicant is liable to pay the administrative additional VAT and corporation tax assessments of Shs. 2,786,178,077. The Respondent prayed that the Application be dismissed with costs.

### VII. *Submissions of the Applicant in rejoinder*

35. In rejoinder, the Applicant maintained that the impugned assessments were erroneous, duplicative, and unsupported by evidence. It argued that the Respondent's reliance on sections 25, 28(1)(a) and 28(5) of the VAT Act was misplaced, as no admissible evidence had been adduced to prove undeclared sales. Although the Respondent's Counsel referred to cashbooks, EFRIS invoices, and bank statements, none were tendered before the Tribunal. During cross-examination, RW1 (Ms. Susan Kihunde) failed to produce the investigation report or identify the cashbooks relied on. The Applicant further

noted that no proof was adduced to show that entities such as Varsani Brothers (U) Ltd, Krisha International Ltd, and Kamuli Sugar Ltd denied transacting with it. VAT for these transactions had been declared and paid, which RW1 admitted. She also conceded that she did not know the value of the alleged undeclared sales, leaving the assessments without factual basis.

36. The Applicant dismissed the allegations of fictitious sales and invoice trading, noting that the Respondent failed to produce EFRIS records or other evidence showing that transactions with Sai Office Supplies Ltd and Millennium General Hardware Ltd were false. It contended that the Respondent misapplied *Tinasha Investments Ltd v URA (TAT App No. 170 of 2023)* and *Red Concepts Ltd v URA (MA No. 36 of 2018)*. Citing *European Grain and Shipping Ltd v Johnston [1962] 3 All ER 989 at 933* and *Dexters Ltd v Hillcrest Oil Co. (Bradford) Ltd [1926] All ER Rep. 273 at 278*, the Applicant invoked the doctrine of approbation and reprobation, arguing that the Respondent, having received and retained VAT from the Applicant, could not now label those same transactions fictitious. Unlike in *Red Concepts*, the Applicant stated that they had fully cooperated and furnished all requested documentation.
37. The Applicant also rejected the Respondent's reliance on *Airtel Uganda Ltd v URA (HCCA No. 0067 of 2022)*, where additional assessments were upheld because the taxpayer failed to produce receipts. In contrast, the Applicant provided all required documentation, and the additional assessments here were marred by duplication and overlap. They argued that section 25 of the TPCA does not authorize the Commissioner to issue multiple tax assessments for the same period without reconciling earlier ones.
38. Regarding computational errors, the Applicant reiterated that its Auditor (AW1) gave unchallenged evidence of inaccuracies, and RW1 admitted that bank deposits traceable in the cashbooks were double-counted and that some

assessments were erroneous. The Respondent's reliance on *URA v Balondemu David (Civil Appeal No. 0002 of 2023)* was said to be misplaced, since, unlike in that case, the Applicant's primary records were complete and had been seized by the Respondent. The use of estimates and assumptions in these circumstances was therefore unreasonable and fell outside lawful "best judgment."

39. The Applicant further noted that the Respondent made unsupported assumptions, including treating deposits from the Lira, Mpondwe, and Bwera branches as undeclared sales despite not reviewing their records. It argued that assessments founded on such conjecture could not stand. On Corporation Tax, the Applicant reiterated that it is chargeable on profits, not on turnover, and that RW1 admitted ignorance of the cost of goods sold, showing that the computation lacked a legitimate profit base and contravened section 18(1) of the Income Tax Act.

40. In conclusion, the Applicant urged the Tribunal to find that the assessments were based on duplication, assumptions, and unsubstantiated allegations, and should therefore be vacated. It prayed that the VAT and Corporation Tax assessments be set aside, the invoice-trading allegation dismissed for lack of proof, and that costs be awarded under section 22(5) of the Tax Appeals Tribunal Act, together with any other relief deemed appropriate.

#### VIII. The determination of the Tribunal

41. Having read the submissions of both parties and considered witness testimonies as well as the evidence on record, this is the ruling of the Tribunal. We will start by addressing the applicable law and principles.

#### **The burden of Proof**

42. Section 28 of the Tax Procedures Code Act ("TPCA"), provides:

*"In any proceedings under the Act,*

- a. for a tax assessment, the burden is on the taxpayer to prove that the assessment is incorrect.*

- b. *for any other taxation decision, the burden is on the person objecting to the decision to prove that the decision should not have been made or should have been made differently.*"
43. Section 19 of the Tax Appeals Tribunals Act (TAT Act) similarly places the burden on an applicant who challenges an objection decision on an assessment to prove that the assessment is excessive, or in any other case, that the taxation decision should not have been made or should have been made differently.
44. In ***Uganda Revenue Authority v Balondemu David, Civil Appeal No. 0002 of 2023***, the High Court held that the legal burden of proof is on the Applicant (the taxpayer) in applications for review of a taxation decision before the Tax Appeals Tribunal to show that the assessment is excessive or erroneous.
45. The same principle appears in ***Radio Pacis Ltd v Commissioner General URA***, where the court emphasized that the onus is on the taxpayer to show, on a balance of probabilities, to what extent an assessment is excessive.
46. However, in the ***Balondemu case (supra)***, the High Court went on to explain that the legal burden must be distinguished from the evidential burden of proof, which shifts once a party makes out an assertion to the requisite standard. Justice Ocaya Thomas O.R. stated:
- "The Appellant is not a static or silent participant in tax proceedings. Once a party makes out an assertion to the requisite standard, the evidential burden of proof shifts to the Appellant to disprove that assertion, even though the legal burden of proof does not shift."*
47. Also see ***Zzimwe Enterprises Ltd v URA (TAT Application No. 40 of 2004)*** where this Tribunal emphasized that the burden is on the taxpayer. Still, once they show specific errors in the assessment, URA must justify the rest. Further,

the Supreme Court decision in *Kampala Bottlers Ltd v Damanico (U) Ltd [2010] UGSC 6* emphasized that allegations of fraud must be specifically pleaded and strictly proved.

48. This Tribunal is therefore guided that, in this Application, the Applicant must demonstrate, on a balance of probabilities, that the impugned assessments are excessive, unlawful or based on material error. We are also guided that where the Respondent alleges fraudulent conduct such as invoice trading, the evidential burden shifts and the Respondent must first establish a prima facie case of fraud.

**The power to make additional and estimated (“Best-Judgment”) assessments**

49. The Tribunal observes at the outset that the term “best-judgment assessment” does not expressly appear in Uganda’s current tax legislation. Historically, the Value Added Tax Act contained provisions permitting the Commissioner to assess tax “based on best judgment” or on the “best information available.” These provisions, however, were repealed with the enactment of the TPCA. The applicable framework is now found principally in Sections 23 and 25 of the TPC A, which empower the Commissioner to raise default assessments and additional assessments, respectively.
50. Under Section 23, a default assessment may be issued where a taxpayer fails to furnish a tax return as required by law. Under Section 25, an additional assessment may be raised where the Commissioner is satisfied that the taxpayer has been under-assessed, has failed to assess tax correctly, or has made an omission or error in a return. These provisions, though not using the phrase “best judgment”, effectively grant the Commissioner authority to estimate a taxpayer’s liability where necessary information is unavailable, incomplete, or unreliable.

51. The East African authority of the ***Commissioner of Income Tax v Williamson Diamonds Ltd*** held that while estimated assessments need not be mathematically precise, they must be honestly made, rational, and based on some material, not arbitrary or capricious. See ***Jacob v Commissioner of Taxes [1971] EA 502 (EACA)***, which establishes that a “best judgment” assessment must not be arbitrary. Estimates must be honest, reasonable, and derived from available information. ***CMC Aviation Ltd v Commissioner of Income Tax [1977] 1 EA 437*** - estimated assessments must be based on “rational inference,” not speculation. ***Commissioner of Taxes v Faraday (Zambia Supreme Court, 1978)*** - the Commissioner may make estimated assessments when records cannot be relied upon, but must show some material supporting the estimate. And from the region, ***MKU v Kenya Revenue Authority (KRA) Tax Appeal 298 of 2018 (Kenya TAT)***, where it was held that the revenue authority can estimate income when records are unreliable, but must demonstrate the basis of estimation.
52. More recently, the Tax Appeals Tribunal in ***Tinasah Investments Ltd v URA, TAT No. 170 of 2023*** emphasized that where URA resorts to estimates, it must demonstrate the basis of its estimates, and cannot reject taxpayer records without objective reasons. Further, in ***URA v Balondemu David (supra)***, the High Court also accepted that URA may estimate when records are unreliable. However, it stressed that such assessments remain subject to judicial scrutiny and must be fair, evidence-based and consistent with the law.
53. We are therefore guided that while the Commissioner enjoys broad discretion in issuing such assessments, the exercise of that discretion must be rational, evidentially supported, and procedurally fair. An estimated assessment must have a reasonable basis and should not be arbitrary, capricious, or devoid of factual underpinning. The Commissioner is required to rely on objectively relevant material, whether derived from the taxpayer’s partial records, industry

benchmarks, third-party data (such as customs or bank information), or other credible sources.

54. In light of the above framework, the Tribunal's task in the present case is to examine whether the impugned assessment was issued in accordance with the TPC Act, whether the Commissioner relied on reasonable and relevant information, whether the taxpayer was allowed to provide records or explanations, and whether the resulting assessment reflects a fair and just estimation of liability in the circumstances.
55. Where the Commissioner's estimation is grounded in credible information and the taxpayer has failed to discharge the statutory burden of proof, the assessment will be upheld. Conversely, where the estimation is unsupported, arbitrary, or contrary to procedural fairness, the Tribunal is empowered to set it aside or to substitute it with an assessment that properly reflects the evidence.

#### **VAT: Output tax, Input tax and Invoice Trading**

56. VAT is imposed under section 4 of the VAT Act on taxable supplies made by a taxable person. A taxable person is entitled to claim input tax credits where there is a genuine acquisition of taxable supplies supported by valid tax invoices and other documentation, in accordance with sections 24–28 of the VAT Act.
57. Where URA establishes that a taxpayer has engaged in invoice-trading or fictitious supplies, the Commissioner may disallow input tax credits, and rely on section 32 VAT Act and Section 25 TPCA to raise further assessments. However, such a serious finding must rest on clear evidence, not mere suspicion.

58. In *Red Concepts Ltd v URA (Application No. 36 of 2018)*, as cited by the Tribunal in later cases, it was emphasized that URA cannot simply characterize transactions as fictitious in the absence of documentation or evidence; it must show why the invoices or supporting documents are not credible. Also, in *Tinasah Investments (supra)*, the Tribunal further underlined that disallowing input tax requires a clear demonstration that either the transaction was not real or the documentation is fundamentally deficient.
59. Therefore, where URA alleges invoice trading (i.e., fictitious invoices generated without real supplies so that others can claim input VAT), it must prove, on the evidence, that the underlying supplies did not take place or that the taxpayer knew or ought reasonably to have known that the transactions were part of a fraud.

We now turn to the issues for determination.

**Issue 1: Whether the assessments issued by the Respondent were lawful?**

60. The Applicant's challenge to the assessments can be grouped under the following heads:
- a. Duplication and overlap of assessments;
  - b. Computational errors and double-counting;
  - c. Use of estimates and rejection of records; and
  - d. Mischaracterization of Corporation Tax and
  - e. Invoice trading and fictitious sales have not been proved.

We have considered each in turn.

**Duplication and overlap of assessments**

61. AW1 gave detailed evidence, which was not effectively rebutted in cross-examination, that:
- a. Certain VAT assessments, D0022300001518 (May 2022) had already been covered by NE012300441117;

- b. Subsequent assessments D012400129704 and ID012400129171 overlapped with periods and sales already covered by prior VAT and stock-taking assessments; and
  - c. Income Tax Assessment ID012400129769 alleged to include sales already taxed under prior income tax assessments amounting to Shs. 2,205,935,787.
62. The Respondent's witness, RW1, acknowledged under cross-examination that there were contradictions and overlaps between assessments issued by the different URA teams (TID and DTD) for the same periods, and that the teams had not fully reconciled their figures. RW1 also confirmed that errors were made in computation and that bank deposits traceable in the cash books had been double-counted.
63. Section 25 TPCA permits additional assessments, particularly where fraud or willful neglect or new information is discovered. However, such additional assessments must target under-assessed income or tax that has not previously been assessed, and cannot lawfully result in the double evaluation of the same taxable base without vacating or adjusting earlier assessments.
64. The High Court in *URA v Balondemu David (supra)* criticized a situation where the Respondent's methodology lacked coherence and the Tribunal failed to interrogate whether the evidence supported the resulting assessment adequately. The court stressed the importance of certainty in taxation and proper evaluation of evidence underpinning assessments.
65. In the present case, the Respondent did not file before the Tribunal a reconciliation showing:
- a. Which earlier assessments were being superseded or vacated; and
  - b. How the alleged undeclared sales of UGX 5.8 billion were distributed across the six impugned assessments without duplication.

- c. How double counting of the same sales or stock was avoided.
66. In the absence of such reconciliation and given the partial admission by RW1 of computational errors, specifically double-counting deposits, and the existence of overlapping assessments, the accuracy of the underlying tax calculations is severely undermined.
67. The Tribunal is therefore satisfied that the Applicant has shown that part of the assessed amounts represent double or overlapping taxation of the same sales. This undermines the integrity of the entire set of assessments, as the Tribunal cannot safely separate valid components from invalid ones without in effect re-doing the Respondent's audit.

**Computational errors and double-counting**

68. The Applicant contended that Corporation Tax is chargeable on profits, not on turnover. AW1 testified that the Respondent added bank deposits to cashbook sales, even where such deposits were already recorded in the cashbooks, and treated the total as "sales increment", thereby double-counting those receipts. RW1 conceded under cross-examination that double-counting of deposits did occur in some instances and described these as errors, admitting that assessment figures were partly based on such flawed computations. Nonetheless, the Respondent submitted that once undeclared sales are established, the Respondent is entitled to deem such amounts as part of taxable income under Section 18 of the Income Tax Act.
69. A taxpayer who alleges an assessment is excessive must point to concrete errors. Here, the Applicant has done so, and the Respondent's witness partly confirmed them. In line with *Radio Pacis* (supra) and *Balondemu* (supra), although an assessment is presumed correct, once a taxpayer points to specific, demonstrable errors, the Tribunal must examine whether the

assessment still satisfies the legal standard of a proper best-judgment assessment.

70. The Respondent argued that any errors were “minor clerical mistakes” that could be corrected administratively. We disagree. The alleged duplication and double-counting involve substantial sums (hundreds of millions of shillings). We find that the computational flaws are material, not trivial, and that the Respondent did not place before the Tribunal revised computations purging those errors. The Applicant has therefore shown that the assessments, as issued and upheld in the objection decision, are excessive.

**Use of estimates and rejection of records**

71. The Respondent relied on estimates, treating all unexplained deposits into specific bank accounts as undeclared sales of the Applicant. The Respondent’s justification for its methodology is that the Applicant’s records were incomplete or unreliable and that URA was therefore entitled to resort to estimates under section 28 TPCA, section 32 VAT Act and section 117 ITA.
72. RW1 confirmed that the audit team reviewed cashbooks for Kampala and Paidha, but lacked records for other branches. The Respondent also disregarded cashbooks from Mpondwe and Bwera as “inauthentic”, but did not produce the investigation report or other forensic basis for such a finding.
73. The evidence reveals that URA seized the Applicant’s accounting records during search-and-seizure; the Applicant subsequently provided additional cashbooks for Lira, Mpondwe and Bwera; the Respondent accepted only Lira’s records, rejected Mpondwe and Bwera records as inauthentic, but did not tender those rejected books or any forensic analysis to show why they were unreliable; the Respondent nonetheless treated all unexplained deposits from these branches as undeclared sales.

74. In *Tinasah Investments Ltd v URA (supra)*, the Tribunal held that URA must give objective reasons for rejecting taxpayer records and cannot rely on bare suspicion to discard them, primarily where they are supported by other documentation.
75. In *URA v Balondemu (supra)*, similarly, the High Court accepted that URA may resort to estimates where a taxpayer fails to keep or produce proper records, but also emphasized that such assessments must be fair, evidence-based, and open to judicial scrutiny.
76. In the present case, on the evidence before us, the Respondent did not tender the allegedly defective cashbooks (Mpondwe, Bwera) to the Tribunal for inspection. No forensic evidence or supplier confirmation was placed before us to show that those books were fabricated or inconsistent with external data. There was no evidence that suppliers or banks had contradicted those records. On the contrary, the Respondent's own witness, RW1, conceded that estimates were used and that TID and DTD produced contradictory assessments for overlapping periods.
77. We accept that the Respondent may disregard objectively unreliable records. However, we are not persuaded that the Respondent has shown a rational basis for discarding entire branch records while still attributing all bank deposits from those branches as undeclared sales. That approach is not a proper exercise of best judgment; it amounts to presuming non-compliance first, and then forcing the numbers to fit that presumption.
78. This is particularly problematic because the Respondent had custody of the original documents and cannot reasonably rely on alleged deficiencies in the taxpayer's "failure to provide records" when those records were seized and not fully returned or tendered.

79. The Applicant has therefore shown that the methodology underlying the assessments is fundamentally flawed and that the resulting figures cannot be said to be reasonable estimates founded on available evidence.

#### **Mischaracterization of Corporation Tax**

80. The Applicant contends that Corporation Tax was computed on estimated sales alone, without considering cost of goods sold or other deductible expenses, contrary to section 18 of the Income Tax Act.
81. RW1 candidly admitted that she did not know the Applicant's cost of goods sold and that the Respondent, having identified undeclared sales from bank lodgments, effectively treated those amounts as taxable income without articulated profit calculation.
82. Income Tax, however, is a tax on profits or gains, not on gross receipts. This is clear both from section 18 ITA. Section 18(1) of the Income Tax Act, Cap. 340 imposes income tax on a person's chargeable income, which, for a business, is the profits or gains derived from that business after deducting allowable expenditures, including cost of goods sold.
83. While the Respondent is not required to calculate profits with mathematical accuracy in a best-judgment assessment, it must at least make a reasonable allowance for cost of sales where it is evident that the taxpayer trades in physical goods and purchase records exist, more so where URA itself has seized those records.
84. In this case, no such allowance was shown. We therefore agree with the Applicant that the Corporation Tax assessment is misconceived in law, as it effectively levies tax on gross turnover, contrary to section 18 ITA.

85. The Applicant has thus discharged its burden of proving that the Corporation Tax component is excessive and invalid.

**Invoice Trading and fictitious sales**

86. The Respondent's case that the Applicant engaged in invoice trading and fictitious sales rests largely on alleged admissions by the director; differences between EFRIS data and cashbook entries; and use of third-party bank accounts, specifically citing transactions with Sai Office Supplies Ltd and Millennium General Hardware Ltd, Krishna International, Varsani Brothers, etc., as vehicles for evasion. The Respondent argued that the Applicant failed to prove the complete supply chain.
87. The Applicant countered that the Respondent failed to produce EFRIS records or other evidence to prove these transactions were fictitious. Furthermore, the Applicant pointed out that VAT on transactions with other named companies (e.g., Varsani Brothers) had been declared and paid, which RW1 admitted.
88. Crucially, we note that the Respondent did not tender into evidence the investigation report. It did not place before this Tribunal the EFRIS reports nor the reconciliations relied upon in the investigation. There are no written statements or confirmations from the alleged third-party companies denying transacting with the Applicant.
89. By contrast, the Applicant adduced evidence that VAT on many of the challenged transactions had actually been declared and paid and that URA had accepted those returns without rejection in EFRIS. RW1 also conceded that she could not state the precise value of undeclared or fictitious sales and those VAT returns still stand in the system.
90. In *Red Concepts* (supra) and *Tinasah* (supra), the Tribunal stressed that URA must demonstrate, with documentation, that a transaction is fictitious before disallowing input tax or characterizing it as part of a fraud scheme.

91. The Applicant in rejoinder invoked the doctrine of approbation and reprobation, arguing that the Respondent, having accepted VAT paid on the same transactions as taxable supplies, with no refund or reversal requested at the time, cannot now casually re-characterize those supplies as entirely fictitious to justify massive additional assessments without robust evidence. We agree that, having accepted VAT returns and payments in respect of certain supplies, the Respondent cannot, absent clear evidence of fraud, simply re-label those same supplies as fictitious to support new assessments.
92. We accept that the use of third-party accounts and discrepancies between EFRIS and cashbooks are serious red flags warranting investigation. But without the supporting documents and reconciliations being tendered, the Tribunal is left with assertions rather than proof. Accordingly, we find that the Respondent has not established on the evidence before this Tribunal that the Applicant engaged in invoice trading on the scale reflected in the impugned assessments, nor that the vast sums assessed as undeclared sales were justified correctly.

#### **Conclusion on Issue 1**

93. Taking all the above together, the Tribunal finds that the Applicant has discharged its burden of proving that the assessments are excessive. The impugned assessments are tainted by:
- a. duplication of assessments for the same periods and sales;
  - b. material computational errors, including double-counting of deposits;
  - c. unlawful use of estimates, in that available branch records were arbitrarily rejected without objective basis;
  - d. misapplication of Corporation Tax as a tax on turnover rather than profits;  
and
  - e. unproven allegations of invoice trading at the scale asserted.

94. These defects render the assessments unreasonable and procedurally unfair. Article 42 of the Constitution of Uganda guarantees to everyone the right to just and fair treatment in administrative decisions, including those of the Respondent.
95. In *Pastoli v Kabale District Local Government Council & Others [2008] 2 EA 300*, the High Court (as widely cited) held that a decision may be set aside for illegality, irrationality, or procedural impropriety, including where it is based on no evidence, ignores relevant considerations, or is so unreasonable that no reasonable authority could have made it.
96. We therefore hold that the six impugned VAT and Income Tax assessments are unlawful, excessive, and invalid, and cannot stand.

#### **Issue 2: Remedies**

97. The Applicant prays that the Tribunal vacate the assessments, award damages for inconvenience suffered, and grant costs of the application. The Respondent prays that the Application be dismissed with costs.

#### **Setting Aside the Objection Decision and Assessments**

98. Under section 20 of the TAT Act, for the purpose of reviewing a taxation decision, the Tribunal may affirm, vary, or set aside that decision and make a decision in substitution or remit the same to the Respondent for reconsideration.
99. Given the depth of methodological flaws, duplication and evidential gaps identified above, the Tribunal cannot simply adjust figures or substitute its own computation for that of the Commissioner. To do so would go beyond review and effectively conduct a fresh audit. The appropriate remedy is therefore to:
- a. Set aside the objection decision of 4 December 2023 insofar as it upholds the six impugned assessments; and

- b. Vacate the six impugned VAT and Income Tax assessments in their entirety.

### Damages

100. The Applicant prayed for damages, citing the inconvenience and hardship allegedly suffered as a result of the Respondent's actions. While section 22(6) of the TAT Act empowers this Tribunal to award damages, such damages must be based on pleaded and proved loss. They must be compensatory rather than punitive, as emphasized by the Supreme Court in *Bank of Uganda v Betty Tinkamanyire (SCCA No. 12 of 2007)* and in *Kizito v Kizito Kanonya & Others (SCCA No. 8 of 2018)*.
101. In this case, the Applicant did not lead evidence of quantifiable economic loss (such as specific loss of contracts, bank foreclosures, or proven loss of profit) directly attributable to the impugned assessments. The inconvenience and uncertainty suffered, while unfortunate, are inherent risks of a contested tax audit and do not, without more, ground an award of general damages against a public authority carrying out its statutory mandate. We also note that although the Respondent's conduct reveals shortcomings in coordination and methodology, there is insufficient evidence of malice or bad faith to justify an exceptional award of damages.
102. Accordingly, the Applicant's prayer for damages is declined.

### Costs

103. The Applicant has substantially succeeded in this Application. There is no special reason to depart from the ordinary rule that costs follow the event. Under section 22(5) of the TAT Act, we accordingly award the costs of this Application to the Applicant, to be agreed or taxed. For the reasons set out above, this Application is allowed with the following orders:

- (i) The Respondent's objection decision dated 4 December 2023 in respect of the disputed VAT and Income Tax assessments is hereby set aside.
- (ii) The six impugned VAT and Income Tax assessments, as particularized in the pleadings and evidence, are vacated in their entirety.
- (iii) The Applicant's prayer for damages is dismissed.
- (iv) The Applicant is awarded costs of this Application.

It is so ordered.

Dated at Kampala this 18<sup>th</sup> day of November 2025.



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**MS. PROSCOVIA REBECCA NAMBI**  
**CHAIRPERSON**



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**MS. GRACE SAFI**  
**MEMBER**



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**MS. KABAKUMBA MASIKO**  
**MEMBER**