

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**TAT APPLICATION NO. 30 OF 2023**

SHOPRITE CHECKERS (U) LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MR. SIRAJ ALI, MS. CHRISTINE KATWE, MS. KABAKUMBA MASIKO

**RULING**

This ruling, is in respect of an application, challenging additional assessments of Shs. 1,354,624,690 for VAT, Shs. 58,956,901 for PAYE and Shs. 31,277,074, in respect of Rental Tax Penalty.

**1. Background Facts**

On 9<sup>th</sup> November, 2022, following a tax audit, the Respondent issued an audit management letter. The audit management letter stated that the Applicant had under-declared employment costs in respect of its long-term bonus share scheme namely; sundry benefits and casual staff salaries for the period 2018 to 2020; a variance between the Applicant's VAT sales and the sales used by the Applicant in computing its franchise fees for the years 2016 and 2017; An over claim of input VAT by the Applicant and an underestimation by the Applicant of its rental income for the period ended 30<sup>th</sup> June, 2021. The Respondent accordingly issued additional assessments for VAT of Shs. 1,434,237,699, PAYE of Shs. 186,931,721 and Rental tax penalty of Shs. 31,277,074. The Applicant objected to the assessments on 18<sup>th</sup> November 2022 and on 17<sup>th</sup> January 2023, the Respondent issued objection decisions partially allowing the objections for PAYE and VAT. The objection in respect of Rental income was disallowed. The Respondent accordingly issued revised assessments for VAT of Shs. 1,354,624,690, PAYE of Shs. 58,956,901 and Rental tax penalty of Shs. 31,277,074.

The dispute in relation to the Rental tax penalty was resolved by the parties in mediation and no longer forms part of the dispute before the tribunal.

## **2. Issues for determination**

At the scheduling, the following issues were set down for hearing.

1. Whether the Applicant is liable to pay the taxes assessed?
2. What remedies are available to the parties?

## **3. Representation**

At the hearing, the applicant was represented by Mr. Bruce Musinguzi, Mr. Thomas Katto, Mr. Ferdinand Tumuhaise, Ms. Charlotte Ahabwe and Mr. Julius Caesar Rugahya. The Respondent was represented by Ms. Gloria Twinomugisha, Ms. Charlotte Katutu and Mr. Simon Peter Orishaba.

The Applicant's first witness was its financial manager, Mr. Louis Jacobus Els. The witness' testimony was limited to the additional PAYE assessment. The witness testified that it was the Respondent's case that it compared the employment cost expensed in the Applicant's income tax returns with the declarations made in its PAYE returns and found an under-declaration of Shs. 623,105,783 which gave rise to an assessment of Shs. 186,931,721. The witness testified that the Applicant duly accounted for and paid all the PAYE for all taxable staff benefits and the rest of the staff costs were either not taxable or were related to the payment of casual labourers, who were considered as non-employees.

The witness stated that the Applicant explained the variance of Shs. 557,837,720 by providing the Respondent with a breakdown of the staff costs and reconciling them as indicated in the Applicant's PAYE returns vis-avis the Applicant's expensed staff costs in the income tax returns. The witness stated that the Applicant was not able to explain the variance of Shs. 65,268,009 and conceded to a PAYE liability of Shs. 19,580,403.

The witness stated that on 17<sup>th</sup> and 18<sup>th</sup> January, 2023, the Respondent issued objection decisions which revised the PAYE assessments to Shs. 78,537,304. The witness stated that following the payment by the Applicant of the conceded amount of Shs. 19,580,403 the disputed PAYE amount was Shs. 58,956,901.

The witness testified that according to the Respondent, the disputed PAYE of Shs. 58,956,901 arises from sundry staff costs which were reviewed and found to be

taxable for instance rent, electricity, water and school fees for staff children for the period July 2019 to June 2020. The witness testified that the Applicant gives the above benefits to its expatriate employees and concedes that they are taxable and that the Applicant had accounted for them in its PAYE returns.

The witness stated that in order to prove that all PAYE in respect of PAYE on expatriates' sundry staff costs had been paid, the Applicant used the Trial Balance which had been used to set up its Annual Financial Statement (AFS) and worked backwards to extract a breakdown of sundry staff costs incurred on its expatriate employees. The Applicant then compared the sundry staff costs for July 2019 to June 2020 with the amounts declared in the PAYE returns for the same period. The witness stated that the comparison revealed that all sundry staff benefits had indeed been accounted for in the PAYE returns.

The witness stated that the Applicant's policy like many international companies, is to incur and pay the expatriates' PAYE on their behalf, rather than deduct it from the expatriate's gross income. The witness testified that the Applicant also accounts for this payment as a taxable benefit and when filing PAYE returns, it includes the PAYE incurred by it on behalf of its employees as a taxable benefit for the relevant employee. The witness stated that for this reason, the staff cost which the Applicant expenses in its income tax returns is more than the chargeable income declared in the PAYE returns.

To explain the above further, the witness reproduced the taxable benefits of Johannes Slabbert, for December 2019 and stated that according to the taxable benefits of Johannes Slabbert, he earned and received total benefits of Shs. 29,331,032 comprising of salary and sundry benefits with tax payable on the above benefits being Shs. 10,634,412. The witness stated that since the Applicant incurs PAYE on behalf of the employee, the PAYE incurred is also considered as a benefit to the employee and is added to the return as a benefit, thereby increasing the chargeable income to Shs. 39,965,444 with a PAYE of Shs. 14,888,177 taking the Applicant's total expense on the staff costs of Johannes Slabbert to Shs. 44,219,209, being the sum of the taxable benefits and the total PAYE incurred on the employee's behalf.

The witness stated that if the Applicant had not incurred PAYE on behalf of the employee, the Applicant's staff costs as expensed in its income tax returns would have

tallied with the employer's total earnings of Shs. 29,331,032 for the reason that the total earnings would have been the employer's chargeable income and PAYE would have been deductible from the chargeable income. In that case the Applicant would not have incurred any cost over and above the chargeable income of Shs. 29,331,032. The witness stated that since the Applicant incurred the PAYE on behalf of the employee, the employee's chargeable income increased to Shs. 39,965,444 and the Applicant's expense on staff costs accordingly increased to Shs. 44,219,209 (total benefits + PAYE). This the witness stated explains away any variance between the employment cost expensed in the Applicant's income tax returns and the declarations made in its PAYE returns for July 2019 to June 2020.

The witness explained further by selecting the PAYE return for Johannes Slabbert for the month of December 2019, which under column 'O' shows a benefit under 'Others' amounting to Shs. 1,751,286. The witness explained that these benefits comprised of internet of Shs. 297,808, discount on co. purchases of Shs. 533,260 and water and electricity of Shs. 920,126. The witness stated that the above confirms that the Applicant indeed considered these benefits as taxable and had duly accounted for them in its PAYE return. The witness testified that the same explanation applies to other expatriates such as Imasiku Munukayumbwa and Louis Els. The witness stated that the assessment of PAYE of Shs. 58,956,901 arose due to the failure by the Respondent to comprehend the facts at hand. The witness reiterated that all PAYE on taxable staff costs were duly accounted for in the PAYE returns and paid.

The Applicant's second witness was Johannes Murray Van Schalkwyk, a tax account Specialist with the Applicant's Group Company in South Africa. The witness stated that in accordance with the terms of an administration agreement between the Applicant and Shoprite Checkers (PTY) Ltd, he supported the Applicant with the periodic calculation of provisional and final corporate tax calculations including rental income and calculations. The purpose of the witness' testimony was to explain that the dispute relating to the Rental penalty was no longer part of the dispute between the parties.

The Applicant's third witness was Mr. Izak Steyn, a divisional finance manager, with Shoprite Checkers (PTY) Ltd, who in accordance with the Administration agreement referred to above supported the Applicant in general finance and related matters. The

witness restricted his testimony to the question relating to VAT calculated by the Respondent on the franchise fees.

In respect of VAT on inter-divisional sales of unprocessed agricultural products, the witness testified that the Applicant operates a supermarket in Uganda under a franchise agreement which requires the Applicant to pay to the Franchisor a fee equal to 1% of the Applicant's gross sales. The witness stated that for the period in question, the Respondent used the WHT which had been paid on franchise fees and worked backwards to compute the value of sales on which the franchise fees had been paid. The witness stated that in their computation the Respondent came up with a variance of Shs. 3,770,977,000 and Shs. 3,829,388,000 for financial years 2016 and 2017, being sales which were reflected in the computation of franchise fees but not in the computation of VAT resulting in additional tax assessments of Shs. 1,368,065,700.

The witness testified that the variance in the value of sales used for computation of franchise fees and therefore payment of withholding tax vis-a-vis the value of sales used for computation of VAT for 2016 and 2017 was based on an incorrect calculation of franchise fees. The witness explained that the Applicant is one company organized into different functional divisions for instance Freshmark, Meat Market, Properties and Supermarket Divisions. The witness explained that each division is structured in such a way that it has its own operational and finance personnel and its own profit and loss statement and that each division's performance can be measured according to KPI's (Key Performance Indicators) that are unique to that division.

The witness explained that the variance arose out of the fact that the Respondent looked at the internal sales from the Fresh mark Division to the Supermarket division. The witness explained that the Fresh mark Division supplies the Supermarket Division with vegetables and fresh fruits, all of which are exempt from VAT. The witness stated that the said movement is evidenced by an invoice and the Supermarket Division then sells the vegetables to customers and the sales in question are ultimately recorded in the financial statements. The witness testified that the purpose of invoicing between divisions is to measure performance, as opposed to indicating that there is a taxable sale. The witness explained that Fresh mark issues an invoice to the Supermarket division. The invoice bears a stamp from the Fresh mark Division indicating when the stock was issued. Upon receipt of the stock, the Supermarket Division, also stamps

the invoice to acknowledge receipt and the `sale` is then reflected in the internal sales account of Fresh mark Division. The Supermarket Division then treats the Fresh mark Division as a supplier via the normal store receiving process and the invoices are captured in the creditors system. The witness explained that the reason for the above is to update the stock ledger with the correct stock received. The witness explained that in addition to the fact that there is no actual taxable supply between the Divisions, no consideration is actually paid and no VAT can be charged as `sales` are more like stock transfers within the same company and that in any event the supplies would have been VAT exempt given their nature as agricultural products.

The witness stated that in the calculation of the franchise fees for the years 2016 and 2017 there was an error due to the use of a figure which included the inter-divisional sales. The witness explained that the calculation ought to have been restricted to sales made to external customers.

The witness explained that whereas each of the Applicant's divisions keep separate books of accounts, at the end of the year, their Trial Balances are consolidated into one which is used to prepare the Annual Financial Statements (AFS). The witness explained that given that no actual consideration is paid for the inter-divisional sales, a journal entry is posted in the joint Trial Balance to remove the inter-divisional sales (to remove the recordal of a sale by Freshmark Division and the corresponding cost to the Supermarket division) which are not included in the AFS.

The witness testified that for the year 2016, the franchise fees calculation was done in July 2016 and the sales figure used contained the inter-divisional sales between the Fresh mark Division and the Supermarkets Division of Shs. 3,770,976,848. The witness explained that the total sales on which the franchise fees was calculated should have excluded inter-divisional sales as it should only be based on sales to third parties. The franchise fees was calculated and invoiced as Shs. 585,242,861, being 1% of the total sales amount of Shs. 58,524,286,057, which as stated above incorrectly included the interdivisional sales of Shs. 3,770,976,848. The WHT was paid on this franchise fees amount. The witness explained that when the consolidation of the Division's Trial Balances was done, the Annual Financial Statement was corrected to exclude the inter-divisional sales and indicate the total value of sales as Shs. 54,753,309,209 leading to an overstatement of the franchise fees of Shs. 37,709,768.

The witness testified that however on 18<sup>th</sup> August 2016, the Applicant declared and paid output VAT of Shs. 105,343,715 on the higher value of the franchise fee invoice, being 18% of Shs. 585,242,861. The witness explained that given that the franchise fee was based on an incorrect higher value which included the inter-divisional sales between two departments of the same legal entity, there was no under-declaration of sales for the financial year ended 2016. The witness stated that the inter-divisional sales did not amount to a taxable supply from a taxable person.

The witness testified that in respect of the year 2017, the franchise fees, was calculated in July 2017 and the sales figure used in calculating the franchise fees also contained the inter-divisional sales between the Freshmark Division and the Supermarkets Division of Shs. 3,829,387,311. The witness stated that the total sales which formed the basis for calculating the franchise fees should have excluded the inter-divisional sales. Similar to what transpired in the previous year, when the consolidation of the Division's Trial Balances took place, the Annual Financial Statement was corrected to exclude the inter-divisional sales and indicate the total value of sales as Shs. 57,316,826,429, however as in the previous year output VAT was paid on the higher figure of Shs. 611,462,137. The witness explained that given that the franchise fees was based on an incorrect higher value which included the inter-divisional sales between two departments of the same legal entity there was no under-declaration of VAT sales for the financial year ended 2017 and the inter-divisional sales did not amount to a taxable supply from a taxable person.

The witness testified that the inter-divisional sales in question were not chargeable with VAT at the rate of 18% as computed by the Respondent and did not result into an over claim of input tax credit by the Applicant. The witness stated therefore that the assessments of Shs. 1,368,065,700 had not basis in fact and law.

The witness explained that the additional VAT Assessments based on purchase variances amounting to Shs. 54,362,260 were fully settled by the Applicant, when the Respondent reduced the said amount to Shs. 51,606,973.

The Respondent's sole witness was Kakyomya Gonzaga, an officer in the Respondent's Domestic Taxes Department.

Mr. Gonzaga testified that the Respondent issued the VAT assessment of Shs. 1,368,065,700 on the grounds that the Applicant had undeclared sales. He stated that the Respondent was able to derive the undeclared sales from the Applicant's WHT declarations which showed that the WHT paid by the Applicant and the franchise fees expense in the Applicant's income tax returns. The witness explained that the sales on which the franchise fees were paid by the Applicant were more than the sales which the Applicant had declared in its income tax returns and VAT returns. The witness explained further that the Respondent proceeded to test the franchise fees through franchise expenses claimed and allowed in the Applicant's income tax returns for the periods 2016 and 2017 and compared this information with the WHT paid on the franchise fees thereby confirming that the franchise fees paid was indeed correct.

The witness testified that upon establishing the variances in the sales, the Respondent recomputed the sales basing on the franchise fees as declared by the Applicant. The witness stated further that after the Respondent had established the variance the Applicant explained the variance by stating that there was an error in capturing the sales in the Trial Balance whereby the cost of fresh foods were captured as sales yet these were stock transfers from the Fresh market division to the Supermarket division. The witness stated that the Respondent scrutinized the returns and the supporting documents submitted by the Applicant like the Trial Balances and found that there was no uniformity in the purported stock transfers and came to the conclusion that this was not a consistent practice of the Applicant.

The witness testified that an examination of the years 2016 to 2021 showed that whereas there were stock transfers in the years 2016 and 2017 from Fresh mark division to the Supermarket division, there were no full transfers from Fresh mark division for the years 2016 and 2017. The witness testified that the Respondent also found that for the years 2016 to 2021, there were no stock transfers from the Meat Market division and the Properties division to the Supermarket division. The witness stated that the Applicant's explanation that the variance had arisen as a result of the inter-divisional stock transfers related to only the variance that had been established by the Respondent.

In respect of the argument by the Applicant that the stock transfers related to fresh produce and were in any event exempt from VAT, the witness stated that the

Applicant's gross sales include both standard rated and exempt sales and rental income. The witness stated that an examination of the Applicant's rental declarations under VAT showed very few declarations of tenants with their Tax Identification Numbers. The witness stated that this implied that the Applicant's argument in respect of exempt sales could not be believed since they could not effectively defend all their standard rated rental income. The witness testified further that the stock transfer internal invoices AE7 were not submitted to the Respondent either at audit or at objection. The witness testified that the existence of the sales were confirmed through the payment by the Applicant of the franchise fees and the WHT.

The witness testified that the payment of WHT by the Applicant on the franchise fees confirmed the existence of the sales. The witness testified further that whereas the VAT assessment also affected the Applicant's income tax, the Applicant did not object to the income tax assessment. The witness testified that the WHT declared by the Applicant is a credit and the effect is that it reduces the income tax payable by the Applicant. The witness testified that the following cast doubt on the Applicant's claim;

- i. There was no evidence that the Applicant ever claimed a refund of the overpaid franchise fees from the franchisor.
- ii. The Applicant did not amend its WHT returns to reverse the error that it purportedly made in its WHT returns.
- iii. The Applicant did not amend its income tax returns to correct the franchise fees expense.

The Respondent's second witness Mr. Arbert Muhwezi an Officer in the Domestic Taxes Department stated that the Respondent conducted a tax audit on the Applicant for the period July 2016 to June 2019 and issued additional principal tax assessments of Shs. 1,596,231,914 being VAT, Income Tax and PAYE.

The witness testified that the audit team compared the Applicant's staff costs as per Income Tax returns and the Salaries and wages as per the Applicant's PAYE returns and established a variance. The Respondent issued PAYE Assessments of Shs. 186,931,721. The Applicant objected and agreed to PAYE of Shs. 19,580,403.

Mr. Arbert Muhwezi testified that at Objection, the Respondent allowed PAYE computed from long term bonus shares and casual staff payments with PAYE of Shs.

108,394,417. The PAYE that remained outstanding related to other staff benefits which were taxable such as rent, electricity, security, school fees for staff's children.

He further testified that the Applicant submitted their PAYE reconciliations and staff cost ledgers which he reviewed and established that some staff costs which are taxable had been classified as non-taxable.

Mr. Arbert Muhwezi stated that if the staff costs were taxed originally, then there would be no variance or the variance would only relate to non-taxable benefits. Since there were taxable benefits under non-taxable in the Applicant's reconciliation, this implied that some taxable benefits were not taxed by the Applicant and hence liable to pay the tax assessed.

#### **4. Submissions of the Applicant**

The Applicant submitted that it accounted for the PAYE on the sundry staff costs. The Applicant submitted that the issue in question is predominantly a matter of reconciliation, accordingly the Applicant relied on and reiterated the testimony of Louis Jacobus Els, set out above.

In respect of the dispute relating to VAT on purported undeclared sales the Applicant submitted that the variance established by the Respondent arose from an error in computation of the franchise fees for the years 2016 and 2017. In support of this argument the Applicant reiterated the testimony of Mr. Isak Steyn and submitted that the purported undeclared sales for the years 2016 and 2017 were inter-divisional sales between divisions which could not form part of the gross sales on which franchise fees were paid for the reason that no actual consideration was paid for the interdivisional sales and they did not constitute sales for the purposes of the franchise agreement. In support of this argument the Applicant cited clause 7.5 of the Franchise Agreement which provides that in the event of any discrepancy in the gross sales and the audited financial statement of the Franchisee, the gross sales as per the audited financial statements of the Franchisee shall prevail, in which event any overpayments of franchise fees shall be refunded or paid.

The Applicant submitted that the supplies between Fresh mark and the Supermarket divisions were groceries. The Applicant cited S. 19 of the VAT Act which exempts the supply of unprocessed agricultural products from VAT. The Applicant submitted

therefore that the supplies made from Fresh mark to the Supermarket division would in any event be exempt from VAT.

The Applicant relied on S. 14(1) (c) and S. 29(1) of the VAT Act for the argument that for a supply to be considered as having been made, the taxable person making the supply should have issued a tax invoice or a payment for the goods should have been received.

The Applicant submitted that having established that no payment was received by the Applicant for the goods and having shown that no supply of goods or sale of merchandise was made by the Applicant to warrant an uplift of its sales, it was clear that the Applicant did not under declare sales in the years in question and the only plausible explanation for the variance was the error in including the interdivisional sales to compute the franchise fees. The Applicant submitted that had it correctly computed the franchise fees by not including the interdivisional sales in its computation of gross sales as it did and as acknowledged by the Respondent in the years 2018-2020, this dispute would not have arisen. The Applicant accordingly prayed that the PAYE assessment of Shs. 58,956,901 and the VAT assessment of Shs. 1,354,624,690 be vacated.

#### **5. Submissions of the Respondent.**

The Respondent rejected the argument by the Applicant that it erroneously included the interdivisional sales while computing franchise fees. The Respondent submitted that it had established that what the Applicant termed as interdivisional sales were in actual fact stock transfers which did not affect the variance determined and could therefore not be considered as a justification for the variance in sales vis-à-vis the declared franchise fees expensed by the Applicant. The Respondent submitted that the Applicant did not present any evidence to show that it made any attempt to correct the purported error by getting a refund from the franchisor despite confirmations by AW3 Isak Steyn, to the effect that the Applicant had paid franchise fees to the franchisor for the years 2016 and 2017. The Respondent also relied on the testimony of AW3 for the submission that the Applicant did not amend its WHT declarations for the period in issue to correct the purported error. The Respondent also relied on the testimony of RW1, Gonzaga Kakyomya that the franchise invoice has never been rectified. The Respondent submitted that the above confirmed that the reason the

Applicant did not seek to correct either the invoice or the WHT declarations was because they were correct.

The Respondent submitted that the Applicant's business is divided into four standalone divisions namely; Fresh mark, Meat, Properties and Supermarket Divisions. The Respondent submitted that according to the Applicant's own submissions each division is structured in such a way that it has its own operational and finance personnel, and its own profit and loss statement. The Respondent submitted that the above is an indication that each division is independent of each other and self-accounting and therefore the stock transfer argument could not justify the variance. The Respondent submitted that its examination of the returns and the supported documents availed such as the Trial Balances it was established that there was no uniformity in the purported stock transfers.

The Respondent submitted that according to the testimony of RW1, the accounting system used by the Applicant did not allow for the transfer of goods from one division to another but only permits the movement of goods from the store to a particular division and not from division to division as alleged by the Applicant.

The Respondent submitted further that the above argument by the Applicant offends International Accounting Standards 1 and 18 which, in terms of presentation of financial statements, does not permit the mixing of costs and revenue in trial balances, as the Applicant did.

The Respondent submitted that it also observed that whereas there were stock transfers in the years 2016 and 2017 from the Fresh mark division to the Supermarket division, there were no full transfers from Fresh mark division for the two years of 2016 and 2017. The Respondent submitted that this contradiction could not be substantiated by the Applicant, as the Applicant's contention about the purported stock transfers related only to the established variance. The Respondent submitted that the stock transfers in question can only be interpreted to be undeclared sales which are taxable supplies liable to VAT as per S. 18(1) of the VAT Act.

The Respondent submitted that according to the agreement between the Applicant and the Franchisor, the Applicant was required to pay to the franchisor a fee equal to 1% of its gross sales as franchise fees in consideration for the use of rights granted to

it. The Respondent submitted that in the year 2016, the franchise fees paid to Shoprite International Ltd was Shs. 585,243,000 which amounted to 1% of the gross sales of Shs. 58,524,300,000 for that year and in the year 2017, the Applicant paid Shs. 611,462,000 as franchise fees which was also 1% of the gross sales of Shs. 61,146,200,000. The Respondent stated that it established that the sales on which the franchise fees had been paid by the Applicant were more than the sales declared in its income tax returns and VAT returns. In the year 2016, the Applicant declared gross sales of Shs. 54,753,309,000 while in the year 2017, it declared gross sales of Shs. 57,316,826,000. The Respondent submitted that the above indicated a variance between the franchise fees expensed and the sales declared of Shs. 3,770,991,000 in 2016 and Shs. 3,829,374,000 for the year 2017. The Respondent submitted that the Applicant failed to explain the above variance. The Respondent submitted that these were undeclared sales in respect of which VAT of Shs. 1,368,065,700 is payable by the Applicant.

The Respondent submitted further that the Applicant claimed the franchise fees as an expense in its income tax returns but has taken no step to reverse this claim nor to correct the purported error. the Respondent submitted that the evidence showed that the franchise fees paid by the Applicant were confirmed to have been correct when the franchise expenses claimed and allowed in the Applicant's income tax returns for the years 2016 and 2017 were compared with the WHT paid on the franchise fees. This evidence the Respondent submitted was uncontroverted. Relying on the decision of the High Court in **M-Kopa Uganda Limited vs. Uganda Revenue Authority, HCCA No. 007 of 2021**, the Respondent submitted that the Applicant remained a beneficiary of the expense claimed in its income tax returns for the years 2016 and 2017 and eight (8) years after having taken benefit of the expense claim, the Applicant cannot be seen to claim that VAT as assessed by the Respondent and confirmed from the Applicant's own income tax and WHT returns, were incorrect.

The Respondent submitted further that the contention by the Applicant that the sales in question were exempt from VAT is incorrect. The Respondent submitted that the Applicant's gross sales included Standard rated, exempt sales and rental income. The Respondent submitted that in the year 2016, the Applicant declared standard rated purchases of Shs. 23,451,616,629 and Shs. 27,014,827,077 in 2017. The Respondent submitted further that the Applicant declared its gross sales in the income tax returns

to include interest, commissions, other income, as well as gross rental income amounting to Shs. 61,837,093,000 in 2016 and Shs. 76,580,833,000 in 2017. The Respondent submitted that an examination of the rental declarations under VAT revealed only a few tenants properly declared with their TIN numbers and the Applicant could not satisfactorily defend all its standard rated rental income. The Respondent submitted further that the Applicant also failed to submit its stock transfer internal invoices at both audit and objections which made it impossible for the Respondent to confirm whether any exempt sales had been made. The Respondent submitted that the above showed that the Applicant had failed to prove that any exempt sales were made as no evidence in the form of invoices for the purported stock transfer were availed to the Respondent, which confirms that taxable supplies were made by the Applicant for which VAT is due and payable.

The Respondent submitted that the Applicant had failed to discharge the burden of proof placed upon it under the law. Relying on the provisions of S. 19 of the Tax Appeals Tribunal Act, the Respondent submitted that the Applicant had failed to adduce any evidence to show that the assessments issued by the Respondent were excessive or erroneous. In support of this argument the Respondent relied on the decision in **Advocates Coalition for Development and Environment & 4 others vs. Attorney General & Another; Constitutional Petition No. 14 of 2011**.

The Respondent submitted that the outstanding PAYE liability of Shs. 58,956,901 is in relation to the sundry staff costs which include rent, electricity, water, and school fees for staff children which costs are taxable, but which were classified by the Applicant as non-taxable. In support of this argument the Respondent relied on **S. 19 of the Income Tax Act and Regulation 3(1) of the Income Tax (Withholding Tax) Regulations, 2000**.

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

In rejoinder, the Applicant reiterated its earlier submissions. The Applicant stated that there was no other explanation for the variance in sales depicted in its VAT returns for the years 2016 and 2017 other than the error. The Applicant stated that it had illustrated that the actual gross sales made in those years after removing the inter-divisional stock transfers, a fact which was not disputed by the Respondent.

The Applicant stated that the Respondent confirmed earlier in its submissions that what was established as inter-divisional sales were actually stock transfers which did not affect the variance and could not be considered as a justification for the variance in sales. However later in its submissions the Respondent contradicts itself by stating that the Applicant made taxable supplies. The Applicant stated that the Respondent cannot approbate and reprobate at the same time. In support of this argument the Applicant cited the decision in **Energo (U) Ltd vs. Geoffrey Rubaramira & Attorney General C.A No. 0183 of 2013.**

The Applicant submitted that the statement in its submissions that invoices are issued between divisions to track movement of the products as a means of accounting for the transfers cannot be evidence of a taxable entity. The Applicant stated that in any event the Respondent did not provide the tribunal with evidence to suggest that the Fresh mark Division was a taxable person for VAT purposes. The Applicant reiterated that the divisions are consolidated and one VAT return is submitted under one TIN number for the various divisions and that a taxable supply cannot be incurred on an internal movement.

The Applicant stated that the submission by the Respondent that there was no uniformity in purported stock transfers was baseless as it was not substantiated with any evidence.

The Applicant rejoined further that neither the argument by the Respondent that the accounting system used by the Applicant did not permit transfer of goods from one division to another nor that the Applicant mixed costs and revenue in the Trial Balance, nor that there were no full transfers from Fresh mark division for the years 2016 and 2017, were not raised in the Objection decision and it would be a procedural error for the tribunal to allow them.

In rejoinder to the submission by the Respondent that the Applicant took benefit of the WHT paid on the franchise fees and claimed an expense which was not reversed the Applicant stated that it could not reverse the WHT without a credit note being issued by the Franchisor and that VAT was paid on the higher franchise fee amount for 2016 and 2017 and no correction was made on the higher VAT amount paid over to the Respondent.

In rejoinder to the submissions by the Respondent that the Applicant's gross sales included standard rated, exempt sales and rental income and that the Applicant failed to submit stock transfer invoices at both audit and objections which made it impossible for the Respondent to verify the exempt sales, the Applicant stated that it attached evidence of the unprocessed agricultural products to its objection letter and indicated to the Respondent that the invoices for the exempt products were available for inspection by the Respondent. The Applicant stated further that the sample invoices are attached to the trial bundle.

## **7. The determination of the issues**

1. Whether the Applicant is liable to pay the taxes assessed?

### **VAT ON PURPORTED UNDECLARED SALES**

**S. 28** of the **Tax Procedures Code Act** provides that, in cases where a tax assessment has been issued, the burden is on the taxpayer, to prove that the assessment is incorrect.

In the instant case, for the Applicant to succeed, it must prove on a balance of probability, that the assessments in question are incorrect. The assessments in question amount to Shs. 1,354,624,690 in respect of VAT and Shs. 58,956,901 in respect of PAYE.

**S. 2(3)** of the **Evidence Act** provides that a fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, in the circumstances of the particular case, to act upon the supposition that it exists.

**S. 2(4)** of the **Evidence Act**, on the other hand, provides that a fact is said to be disproved when, after considering the matters before it, the court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, in the circumstances of the particular case, to act upon the supposition that it does not exist.

**S. 2(5)** of the **Evidence Act** provides that a fact is said not to be proved when it is neither proved nor disproved.

The task of the tribunal, is to determine, whether the Applicant has proved on a balance of probability, that the assessments in question are incorrect.

In order to prove that the VAT assessment of Shs. 1,354,624,690 was incorrect, the Applicant relied on the testimony of its third witness, Mr. Izak Steyn. The gist of Mr. Steyn`s testimony, was that the variance, in the value of sales used in the computation of the franchise fees and therefore the payment of withholding tax vis-a-vis the value of sales used for computation of VAT for the years 2016 and 2017, arose due to the incorrect computation of franchise fees.

Mr. Steyn explained that the Applicant was organized into different functional divisions namely; Freshmark Division, Meat Market Division, Properties Division and Supermarket Division. Each division had its own operational and finance personnel, its own profit and loss statement and its own KPI`s (Key Performance Indicators).

In a letter to the Respondent, dated 6<sup>th</sup> June 2023, and admitted in evidence, as exhibit AE10, the Applicant`s then Financial Manager, Louis Els, explained the role of each of the divisions as follows;

“The Freshmark Division is responsible for procuring fresh fruit and vegetables, locally or by importing, should it not be available in Uganda due to seasonality or type of product. Stone fruit and grapes for example do not naturally grow in Uganda. The stock is then moved to the various stores by the Freshmark Division ensuring that the cold storage chain is not broken and that the articles are delivered in optimal condition to be sold to the customers.....As it is important to measure the performance of each division, the interdivisional stock movements between the various divisions, are treated as “internal sales”. The cost of the fruit and vegetables purchased are recorded in the Freshmark Division`s book of account as well as the stock movement/sales to the Supermarket Division. The Supermarket Division will capture the cost of the fruit and vegetables stock received from the Freshmark Division. The sales made to the end customer in store will be recorded in the Supermarket Division`s book of account.

The Meat Market Division operates on the same basis as the Freshmarket Division. The Meat Market Division is responsible for sourcing different types of meat and poultry articles, either locally or by importing. Meat Markets will operate the butcheries inside the Supermarket stores and the stock is sold through the Supermarket`s POS

system to the customers, transferred internally to Meat Markets daily and the sales are captured in the Meat Markets' ERP system where the cost relating to Meat Markets operations will also be recorded.

The Properties Division developed the Lugogo Mall and Clock Tower Mall in Kampala and managed the lease of the line shops to tenants as well as the maintenance and general management of the malls.

The Freshmark Division operates on a different ERP system and the Trial Balance of the various divisions are consolidated at year end in order to extract a combined Trial Balance that is used to compile Shoprite Uganda's Annual Financial Statements. As part of the consolidation, a journal entry is posted against the combined Trial Balance to remove the interdivisional sales from the Freshmark Division and the corresponding cost from the Supermarket Division, as these amounts should not be reflected in the Annual Financial Statements."

Mr. Kakyomya Gonzaga, RW1, testified that when the Respondent scrutinized the returns and the supporting documents submitted by the Applicant, like the Trial Balances. It found that there was no uniformity in the stock transfers. Mr. Gonzaga testified that an examination of the years 2016 to 2021, showed that while there were stock transfers in the year 2016 and 2017, from the Freshmark Division to the Supermarket Division, there were no stock transfers from the Meat Division and the Properties Division to the Supermarket Division. On the basis of this observation, he came to the conclusion, that this was not a consistent practice of the Applicant.

When asked under cross-examination, whether the Applicant had any evidence, for any period, apart from the period for which the Applicant was assessed, which would prove that it was its practice, to transfer stock between its divisions, Mr. Steyn, could only point to the financial statements and the Trial Balance for the period under assessment.

The failure by the witness, to provide evidence of transfers of stock, between its divisions, for periods other than the period under assessment, lends credence, to the conclusion by the Respondent, that the stock transfers alluded to by the Applicant were not a uniform and consistent practice of the Applicant.

If it was the Applicant's practice, to freely transfer stock between its divisions, this fact would not be limited to the period under assessment, but would extend to all the periods of the Applicant's operation. Evidence of such transfers would be freely available to the Applicant.

At page 13 paragraph 1.39 of its submissions, the Applicant stated that, had it correctly computed the franchise fees, by not including the inter-divisional sales, in its computation of gross sales, this dispute would not have arisen.

How this erroneous computation of the franchise fees came to pass, was explained as follows by Mr. Steyn, at paragraph 9, of his witness statement;

"However, it should be noted that in calculation of the franchise fees for 2016 and 2017, there was an error. The error was due to using a figure that was inclusive of the interdivisional sales rather than being restricted to sales to external customers. This was as a result of the finance manager leaving the organization".

Incredible, as this might sound, the above statement, seems to suggest that the finance manager, was the only person in the Applicant company's finance department, who could correctly compute the annual franchise fees and that with his or her departure, this most basic of accounting tasks, could not be correctly performed, by any other person, in the Applicant's finance department.

It is well-known, that finance managers, do not act in isolation. They usually head finance departments, composed of teams of accountants, with whom they freely share information that is necessary, for the proper execution of their duties. A fact, as commonplace and as essential, as the proper computation of franchise fees, would be well within the knowledge, of all the accountants, in the Applicant's finance department. This would be the case, especially because, of the significant role, that the franchise agreement, played in the Applicant's operations. It is hard to believe, that following the departure of the finance manager, no other person, in the Applicant's finance department, was aware that in computing the annual franchise fees, it was essential to exclude the interdivisional sales from the total sales.

Our incredulity, is stretched further, by the fact, that not only did the Applicant's finance department, fail to correctly compute the franchise fees for the year 2016 but that this failure was replicated in the year 2017.

All this, took place, in spite of the express provisions of Clause 7.5 of the Franchise Agreement, which provides that in the event of any discrepancy in the annual gross sales and the audited financial statements of the franchisee, the gross sales as per the audited financial statements of the franchisee shall prevail, in which event any over-or underpayments of franchise fees, shall be refunded or paid, as the case may be.

Before the computation of the franchise fees, for the years 2016 and 2017, the Applicant's accountants, would have had in their possession, both the annual gross sales and the gross sales as per the audited financial statements. The discrepancy, between these two statements, would have been apparent to them. This would naturally, have led to the computation, of the franchise fees, on the basis of the gross sales, as per the audited financial statements, provided for under Clause 7.5 of the Franchise Agreement. In these circumstances, the need to compute the franchise fees, based on the annual gross sales, inclusive of the interdivisional sales, did not arise. We find it hard to believe, that the Applicant's accountants, well aware, of the discrepancy between the two statements, would have ignored the express provisions of Clause 7.5 of the Franchise Agreement and proceeded to compute the franchise fees on the basis of the annual gross sales, inclusive of the interdivisional sales.

When the Applicant eventually found out the above error, It might have been expected, that it would urgently, to reverse its effects, namely; by amending its income tax returns to correct the franchise fees expense, claiming a refund of the overpaid franchise fees from the franchisor, as provided for under Clause 7.5 above, amending its WHT returns to reverse the error in its WHT returns and objecting to the Income tax assessment.

None of the above remedial measures, were priorities for the Applicant. This can be seen, from the following explanation, given by Mr. Steyn, under cross-examination, when asked why the Applicant did not amend its WHT returns, after it had discovered the error in question.

"The franchise fee invoice was received from abroad and subsequently paid including WHT and VAT. Shoprite Checkers Uganda did not pick up the error on the franchise fees invoice and subsequently no credit note was issued from the franchisor and because of that there was no reduction in the amount of franchise fees paid".

Once again, it is hard to believe, that an entity, such as the Applicant, whose business, is the generation of profits, would behave in such a cavalier fashion, in the management of its financial affairs.

The Applicant has argued, in the alternative that in any event, the stock transfers were made up entirely of unprocessed agricultural products and were as such, exempt from VAT.

Mr. Gonzaga, disagreed with the argument by the Applicant that the stock transfers were made up entirely of unprocessed agricultural products. He testified, that the Applicant's gross sales, were made up of standard rated and exempt sales and rental income.

In order to determine, whether the stock transfers, were made up entirely of unprocessed agricultural products, we have perused the evidence before us on this point, namely; the testimony of Mr. Steyn and the annexures to the Applicant's objection letter dated 18<sup>th</sup> November 2022. We have also examined the interdivisional sales for the year 2017 and the Applicant's returns for the years 2015 to 2021.

The annexures to the Applicant's objection letter, comprising of Appendix C1 for the year 2016 and Appendix C2 for the year 2017, were collectively admitted in evidence as exhibit AE2. They show an extensive list of items transferred from the Freshmark Division to the Supermarket Division. A perusal of exhibit AE2 at page 161 of the Applicant's supplementary trial bundle, filed at the tribunal on 23<sup>rd</sup> October 2024, shows standard rated processed items like Nuts cashew peri peri, Padkos Snack Corn Chutney, Padkos Snack deluxe (Health) Mix, Snack Yoghurt cashew. These standard rated processed items occur again at pages 172, 183, 193, 200, 218, 234, 254, 281,292,303, 319, 334 and 357of the supplementary trial bundle.

The interdivisional sales for the year 2017, was admitted in evidence as exhibit REX7. Once again standard rated processed items like Prepared Garlic and Chilli, Snack breakfast Mix, Snack Sunflower Seed Candy, Dried Fruit Flakes Mix, appear at pages 3, 4 and 5 of this document.

A careful examination of these documents show, that contrary to the assertion by the Applicant, the items transferred from the Freshmark Division to the Supermarket Division, were not entirely composed of unprocessed agricultural products. As stated

above some of the items were standard rated processed products which were not exempt from VAT. The Applicant has not provided any evidence about standard rated transfers between the property division and the supermarket division.

Having carefully considered the evidence before us, namely; the testimony of Mr. Steyn on the organization of the Applicant and the testimony of Mr. Gonzaga, we have come to the conclusion that the Applicant has failed to prove on a balance of probability that the additional assessment of Shs. 1, 354, 624, 690 was incorrect.

## **PAYE**

The evidence before us on this point, namely; the testimony of Mr. Louis Jacobus Els, the Applicant's financial manager, is to the effect that the Respondent established a variance of Shs. 623,105,738 between the Applicant's staff costs as per the Applicant's Income Tax Returns and the salaries and wages, as per the Applicant's PAYE returns. As a result of this variance the Respondent issued a PAYE assessment of Shs. 186,931,721.

Following reconciliation between the parties the Applicant was able to explain the variance of Shs. 557,837,720 to the satisfaction of the Respondent, leaving as unexplained, a variance in the sum of Shs. 65,268,009, in respect of which, it conceded to a PAYE liability of Shs. 19,580,403. Following the above reconciliation the Respondent issued objection decisions revising the PAYE assessments to Shs. 78,537,304. This amount was reduced to Shs. 58,956,901 after the payment by the Applicant of the disputed amount of Shs. 19,580,403.

The dispute in respect of PAYE therefore amounts to Shs. 58,956, 901/-. Both parties agree that the disputed amount arises from sundry costs like rent, electricity, water and school fees for the children of the Applicant's expatriate staff. Contrary to the submissions of the Respondent, the Applicant not only agrees that these sundry costs are taxable but asserts that it has actually accounted for PAYE on these costs. Given the fact that both parties agree, that the sundry costs are taxable, no question of law arises for our determination.

The dispute, as to whether PAYE has been accounted for by the Applicant, in respect of the sundry costs, can be disposed of through reconciliation.

It is accordingly ordered as follows;

1. The Applicant's claim in respect of the VAT assessment of Shs. 1,354,624,690 is dismissed with costs. The Applicant is liable to pay the sum of Shs. 1,354,624,690.
2. The dispute, in respect of PAYE, in the sum of Shs. 58,956, 901/- is remitted to the Respondent for reconciliation between the parties. The Parties are ordered to reconcile and file a Reconciliation report with the tribunal, by close of business, on 15<sup>th</sup> July, 2025.
3. The Respondent is awarded  $\frac{3}{4}$  of the costs of the Application.

**IT IS SO ORDERED.**

Dated at Kampala this 25<sup>th</sup> day of June 2025.



**SIRAJ ALI  
CHAIRMAN**



**CHRISTINE KATWE  
MEMBER**



**KABAKUMBA MASIKO  
MEMBER**