

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
TAT APPLICATION NO. 028 OF 2025

SLUNKO (U) LIMITED..... APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MR. WILLY NANGOSYAH,
MS. ROSEMARY NAJJEMBA

RULING

This is a ruling in respect of an application challenging an additional assessment of Shs. 15,487,933 arising from the Respondent's denial of certain deductions against the Applicant's rental income.

1. Background Facts

The Applicant is engaged in the business of real estate management. The company owns a property located on Kabaka Njagala Road in Mengo, from which it has been collecting rent since 2010. The property was constructed using borrowed funds, with the total construction cost amounting to Shs. 1,288,735,000.

The property was first put to use during the year of income ending on 30 June 2010 and the Applicant has been claiming Industrial Building Allowance of Shs. 64,436,750 as per Section 29 (now Section 28) of the Income Tax Act (ITA) in addition to deductions claimed under Section 22 of the ITA.

The Applicant computed its chargeable income for the year ended 30 June 2022, and the total deductions allowed for rental income exceeded the gross income for that year by Shs. 139,189,439 thus placing the Applicant in a loss-making position.

In November 2023, the Applicant attempted to file its annual rental tax return for the year ended 30 June 2023. The statement of income and expenditure reflected gross rental income of Shs. 103,252,888.

The Applicant observed that the online return template was programmed to cap expenses at 50% of the rental income for the year of income when determining applicable deductions under the ITA chargeable income for periods after 1 July 2022. This limitation ignored other applicable deductions under the ITA.

On 25 November 2023 and 25 January 2024, the Applicant wrote to the Commissioner of Domestic Taxes seeking clarification on the matter. Having received no response, the Applicant wrote to the Business Policy Department of the Respondent on 15 February 2024 requesting an interpretation of the same.

A response was received on 2 October 2024, to which the Applicant objected contesting the interpretation of the matter. The Respondent issued an objection decision partially allowing the objection from Shs.33,942,780.90 to Shs.15,487,933. The Applicant being dissatisfied with the objection decision filed this application for review.

2. Representation

The Applicant was represented by Ms. Belinda Nakiganda and Ms. Tracy Ainebyoona while the Respondent was represented by Ms. Ritah Nabirye.

3. Issues for determination

The key issue for determination by this honourable Tribunal is whether the Applicant is liable to pay the tax assessed.

4. Submissions of the Applicant

The Applicant submitted that their tax computation for 2023 was as follows:

| | |
|--------------------------------|--------------|
| Gross Rental Income | 103,252,888 |
| Allowable Deduction S.22 (50%) | 51,626,444 |
| Adjusted Profits | 51,626,444 |
| Less CBA S.29 | (64,436,750) |

| | |
|-------------------------|---------------|
| Less Assessed Loss BF | (139,189,659) |
| Assessed loss year 2023 | (151,999,745) |

The Applicant submitted that they are entitled to a deduction for the carry forward losses and industrial building allowance over and above the expenses capped under section 22 of the ITA. The Applicant's arguments are stated below.

(i) Assessed loss carried forward

The Applicant submitted that the assessed loss of Shs. 139,189,439 is fully deductible. This is on the grounds that section 22 (1) (c) only caps expenses incurred in the production of rental income in the current year and not losses carried forward from prior years. On the other hand, section 36 governs the treatment of accumulated losses from prior years. Therefore, the two provisions operate separately.

The Applicant argued that if Parliament intended for the 50% cap to apply to carried forward losses, they would have amended section 36 by subjecting it to section 22 (1) (c). However, section 36 (1) is only subject to sections 36 (6) which restricts carry forward losses to a period not exceeding seven years and to section 74, which deals with change in ownership of companies.

Section 36 provides:

"36. Carry forward losses

(1) Subject to this section and section 74, where, for any year of income, the total amount of income included in the gross income of a taxpayer is exceeded by the total amount of deductions allowed to the taxpayer, the amount of the excess, in this Act referred to as an assessed loss, shall be carried forward and allowed as a deduction in determining the taxpayer's chargeable income in the following year of income."

Therefore, the capping of carry forward losses is not justified.

(ii) Application of the 50% cap on deductible expenses under section 22 (2)

The Applicant also stated that the Respondent's automatic capping mechanism makes no distinction between operational and capital related deductions.

The Applicant cited section 22 (1) (c) which states as follows:

“Subject to this Act, for the purposes of ascertaining the chargeable income of a person for a year of income, there shall be allowed as a deduction in case of rental income, the expenditure and losses incurred by a person other than an individual or Partnership in the production of such an income subject to subsection (2)”.

The Applicant argued that the phrase “subject to this Act” means that section 22 should be interpreted subject to and in consideration of other provisions of the ITA and not in isolation. Further, the above provision allows a person to claim deductions for expenditure and losses incurred in the year of income but subject to the ITA.

The phrase “expenditure and losses incurred by a person” does not include items of a capital nature since section 22 (3) (b) of the ITA specifically excludes expenditure of a capital nature. Accordingly, only revenue expenditures qualify for deduction under section 22 (1) (c).

The Applicant cited the case of ***Vivo Energy Uganda Limited v Uganda Revenue Authority, TAT No. 29 of 2017***, where the Tribunal held:

“Revenue expenditures are incurred in the daily operation of the company or day to day running of the company. These are expenses incurred in the normal course of business. They are expenditures incurred for the purpose of keeping a profit earning asset in a condition to earn profits. They are expenditures incurred in the production of income.”

The Applicant submitted that the deduction permitted under **Section 22(1)(c)** relates to expenditure of a revenue nature. Lady Justice Patricia Mutesi, in ***Uganda Revenue Authority v Mukwano Enterprises Limited (Civil Appeal 55 of 2019)***

“Section 22(1) of the ITA allows a taxpayer, in the course of tabulating his or her chargeable income, to deduct all expenditures and losses incurred by him or her during a year of income to the extent to which those expenditures or losses were incurred in the production of his or her gross income. However, Section 22(2) of the Income Tax Act provides for exceptions to subsection 1 thereof. Specifically, paragraph (b) of Section 22(2) forbids any deduction to be made to the gross income if it is in respect of an expense or loss of capital nature”.

... The Court's opinion is that the categorization of the prepaid operating lease rentals as non-current assets in the respondent's financials irresistibly infers that, from the onset, the respondent understood the leases and the buildings thereon to be fixed assets, and knew that any money it used to acquire those fixed assets constitutes capital expenditure."

The Applicant submitted that if an expenditure results in the acquisition or improvement of a fixed or enduring asset, it is capital in nature and not deductible under **Section 22**. If it is incurred in the regular course of business to sustain operations or income production, it is revenue in nature and may be deductible, subject to **Section 22(2)** which ITA provides:

"Where the expenditure and losses incurred by a person other than an individual or partnership in the production of rental income exceeds fifty percent of the rental income, the allowable deduction shall be fifty percent of the rental income for that year of income."

The Applicant submitted that per paragraph (b), it has been clarified that the expenditure in Section 22 (1) ITA is expenditure of a revenue nature. This thus aligns with Section 22 (2) and the expenditures that are capped are the expenditure of a revenue nature and NOT capital expenses.

(iii) Treatment of Capital expenditure on rental buildings under Section 28 of the Income Tax Act

The Applicant also submitted that the Respondent erroneously treated capital expenditure on the construction of its rental property as an ordinary deduction subject to the cap under section 22 (2) rather than as a distinct capital allowance governed by section 28 of the ITA.

The Applicant submitted that Section 28 of the ITA sets out a self-contained regime for claiming depreciation on industrial buildings used in the production of income. It provides:

"Subject to this section, where a person has incurred capital expenditure in any year of income on the construction of an industrial building and the building is used by the person during the year of income in the production of income included in gross income, the person is allowed a deduction for the depreciation of the building during the year of income as calculated according to the following formula

$A \times B \times C / D$

where-

A is the depreciation rate applicable to the building as determined under Part III of Schedule 7 to this Act;

B is the capital expenditure incurred in the construction of the building;

C is the number of days in the year of income during which the asset was used or was available for use in the production of income included in gross income; and

D is the number of days in the year of income."

The Applicant argued that the formula prescribed under Section 28 recognises the gradual recovery of capital investment through annual deductions, which are separate from the treatment of operational expenses under Section 22. The Act does not subject capital allowances under Section 28 to the 50% cap in Section 22(2), and there is no legal basis for merging the two regimes.

The Applicant submitted that the Respondent's reclassification of industrial building deductions as ordinary rental expenses disregards this statutory distinction and results in the erroneous application of the 50% limitation. Section 5(3)(b) of the Income Tax Act, provides:

"The tax imposed under this section on any person is separate from the tax imposed under section 4 and—

(a) the rent derived by a person shall not be included in the gross income of the person which is subject to tax under this Act for any year of income;

(o) the expenditures and losses incurred by a person, other than an individual or partnership, in the production of rent shall be allowed as a deduction for any year of income only as provided for in section 22(1)(c):"

The Applicant submitted that section 5(3)(b) confines the 50% cap to deductions made under Section 22 and does not extend its application to capital allowances claimed under Section 28. Section 22(1)(c) underscores that the limitation was intended to apply only to operational rental expenses, not to statutory depreciation allowances for industrial buildings.

5. Submissions of the Respondent

In reply, the Respondent submitted that the taxing statutes must be interpreted strictly on clear and unambiguous wording as the courts have no authority to extend or infer obligation or rights that are not expressly provided for in the statutes.

The Respondent stated that **Section 5(1)** of the ITA imposes tax on every person who has rental income for the year of income but only subject to and in accordance with the Act.

The Respondent submitted that "**Rental Income**" is defined under section 2 of the Income Tax Act as:

"In relation to a person for a year of income, means total amount of rent derived by the person for the year of income from the lease of immovable property in Uganda with the deduction of any expenditure and losses incurred in respect of the property"

"**Rent**" is also accorded meaning in section 2 of the Income Tax Act, to mean,

"Any payment, including a premium or like amount, made as consideration for the use or occupation of, or the right to use or occupy, land or building".

"**Chargeable Income**" is defined under section 15 of the Income Tax Act as;

"Subject to section 16 of the Income Tax Act, the chargeable income of a person for the year of income is the gross income of the person for the year, less total deductions allowed under the Act for the year".

The Respondent submitted that expenditures and losses incurred by a person, other than an individual or partnership, in the production of rent shall be allowed as deduction for the year of income only as provided under section 22(1)(c) of the Act.

The Respondent submitted that section 22(1) (a) of the ITA as amended states:

"While determining the chargeable income of a person for the year of income all expenses and losses incurred by the person during the year of income all expenses and losses incurred by a person during that year of income shall be allowed as a deduction".

The Respondent further submitted that in respect of the rental income, it states:

“Where expenditure and losses are incurred by the person for the year who is not an individual or Partnership shall be allowed a deduction subject to section 22(2) of the Act”.

The Respondent submitted that the Applicant falls squarely within this provision for the fact that it is a limited liability company.

The Respondent cited Section 22(1) (c) of the Income Tax Act states:

“Subject to this Act, for the purposes of ascertaining the chargeable income of a person for a year of income, there shall be allowed as a deduction in case of rental income, the expenditure and losses incurred by a person other than an individual or Partnership in the production of such an income subject to subsection (2)”.

Section 22(2) of the Income Tax Act, states:

“Where the expenditure and the losses incurred by a person other than an individual or Partnership in the production of rental income, exceeds fifty percent of the rental income, the allowable deduction shall be fifty percent of the rental income of that year of income”.

The Respondent submitted that Section 28(1) of the Income Tax Act provides that where the expenditure in any year of income on construction of an industrial building is used by the person for a year of income in the production of income included in the gross income, the person is allowed a deduction for the income included in the in gross income, the person is allowed deduction for the depreciation of the building during the year of income.

The Respondent submitted that the Applicant was allowed the above IBD and the same was capped at 50% of rental income for the year of income as provided under section 22(2) of the Income Tax Act.

The Respondent argued that “**Gross Income**” of a person for the year of income as per section 17(1), is the total amount of business income, employment income and property income. Consequently, the Respondent assessed the Applicant`s income for the year at Shs. 133,242,603 which is gross income for the Applicant hence classified as rental income. Chargeable income should be gross income less the total allowable deduction allowed under the Act for that year.

What activities did the Applicant incur expenses and losses?

The Respondent submitted that the expenses and losses incurred by the Applicant relate to the construction of the building property that forms part of the Applicant's business which are not expenses covered under the ITA.

The Respondent relied on the case of *New Vision Printing & Publishing Corporation V Uganda Revenue Authority Civil Appeal No. 78/1999*, which while citing the case of *Kenya Meet Commission V The Commissioner of Income Tax No. 56 of 1967 (report as case No. 127)* held:

"It is clear that evidence of the nature of expenditure is important in the determination of the question whether its deduction was permitted"

The Respondent referred to an online financial website www.investopedia.com which differentiates between capital expenditures and revenue expenditure. Capital expenditures were defined as funds used for one-time large purchases of fixed assets that will be used for revenue generation over a longer period. This could be acquired, upgrade and maintain physical assets such as property, building or equipment. Revenue expenses, which are short-term expenses are used in running the daily business operations.

The Respondent submitted that the word "capital" from the wording of the **Black's Law Dictionary 4th Edition at page 263**, means "the principal of a fund of money"

The Respondent also defined "cost base" to mean original value of an asset for tax purposes usually purchase price. At most basic levels the most basis of an investment is the total amount originally invested, plus any commissions or fees involved in the purchase (Investopedia.com).

The Respondent submitted that in *New Vision Printing & Publishing Corporation V Uganda Revenue Authority(supra)* court noted:

"This would mean that the law sought to restrict even further the categories of allowable deductions".

The Respondent submitted that section 29(1) of the Income Tax Act states:

“A person who has incurred expenditure in starting up a business to produce income included in gross income or income in the initial public offering at the stock market shall be allowed a deduction of an amount of equal to twenty five percent of the amount of the expenditure in the year of income in which the expenditure was incurred and in the following three years of income in which the business is carried on by the person”.

The Respondent submitted that the Applicant incurred Shs.1,288,735.000 in funding and facilitating the construction of the said property as business to be used to produce income and claiming Initial Building Deduction (IBD) of Shs. 64,436,750. The said expenditure shall be allowed as deductions is allowed in the year of income the same expenditure was incurred.

The Respondent submitted that in the case of **Forbes J.A in Commissioner of Income Tax v Buhemba Mines Ltd CA No. 77 of 1995 as cited Justice Okumu Wengi, in New Vision Printing & Publishing Corporation V Uganda Revenue Authority(supra)** had this to say about deduction of expenses.

“For an expense to be deducted it must have been incurred for the direct purpose of producing profits. Therefore, some evidence had to be led on the matter. It is the view of this court that it is not prohibited by statute. At the same time character must be adduced. Thus, to certain extent it is a question of fact and law. The evidence must demonstrate that expenditure was “wholly and exclusively” incurred by the appellant in the production of the income. If the part of such expenditure relates to capital acquisition value for an asset, then the doubt arises as to whether it was wholly or exclusively incurred (the production of income).”.

The Respondent submitted that on the one hand, the expenses and losses are of a capital nature and where the expenses and losses of a revenue nature exceed fifty percent of the rental income, fifty percent shall be allowed off rental income for the period in issue.

The Respondent prayed for the following orders:

- (i) The Application is dismissed
- (ii) The additional income tax assessed amounting to Shs. 15,487,933.20.
- (iii) Costs of this Application be awarded to the Respondent.

6. Submissions of the Applicant in rejoinder

The Applicant reiterated their earlier submissions. However, they added that section 4 of the ITA deals with chargeable income and the Respondent was wrong to quote provisions of chargeable income or gross income which are separate from rental income that is dealt with under Section 5 (3) of the ITA.

Section 5 (3) provides that rental income is separate from the tax imposed under section 4. The Applicant argued that Shs. 103,252,888 capped to Shs. 51,626,444 should not be included in the gross income of the Applicant and should be treated separately. It is trite law that only expenditures of revenue in nature are allowed under section 22 for rental income. Thus, the amount liable for rental tax after revenue expenditure deductions is Shs. 51,626,444.

- (i) A declaration that the 50% cap under Section 22(2) of the ITA applies only to operational expenses incurred in the production of rental income and does not extend to statutory capital allowances under Section 28 or to assessed losses carried forward under Section 36(1).
- (ii) A declaration that the Applicant's assessed loss of Shs. 139,189,439 for the year ended 30 June 2022 is deductible in the 2022/2023 year of income and is not subject to the 50% cap under Section 22(2).
- (iii) A declaration that the deductions claimed by the Applicant in respect of capital expenditure on its rental building under Section 28 were lawful and not subject to limitation under Section 22(2)
- (iv) An order setting aside the Respondent's assessment of Shs. 15,487,933.20 as unlawful.
- (v) An order that the Respondent refunds the 30% amounting to Shs. 4,646,380 with interest from the date it was deposited by the Applicant.
- (vi) An award of costs in favor of the Applicant.

7. The determination of the Tribunal

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

The Applicant challenges the Respondent's application of the 50% cap under Section 22(2) to all the Applicant's expenses including carried forward losses and IBD. The Applicant has argued that carried forward losses, expenditure of a capital nature and IBD should not be subjected to the 50% cap. Rather, only expenditure of a revenue nature should be capped. The Respondent contends that they rightly capped the Applicant's expenses.

We examine below the relevant provisions of the ITA that apply to the taxation of rental income.

Taxation of rental income

Rental income is subject to tax in accordance with section 5 of the ITA which imposes tax on every person who has rental income for the year of income. Subsection 3 of the ITA provides that the tax on rental income is separate from the tax imposed under section 4, which deals with other chargeable income.

Further, subsection (3) (b) provides that expenditures and losses incurred in the production of rent are allowed as a deduction for any year of income ONLY as provided for in section 22 (1) (c) of the ITA. The provision states as follows:

"the expenditure and losses incurred by a person, other than an individual or partnership, in the production of rent SHALL be allowed as a deduction ONLY as provided for in section 22 (1) (c)."

The words "shall" and "only" have been emphasized because they are expressive of the mandatory requirements of that provision. In other words, whereas the ITA allows for the deductibility of several items of expenditure and losses against chargeable income, with regard to rental income, only those items of expenditure which meet the criteria under section 22 are allowable against rental income to the extent provided under section 22 (1) (c).

We now turn to section 22 of the ITA which deals with deduction of expenditures and losses incurred in the production of income. We note that both parties limited themselves to sections 22 (1) (c) and 22 (2) of the ITA. However, it is important that the provision is read as a whole.

Section 22 of the ITA

Section 22 (1) of the ITA provides:

“(1) Subject to this Act, for the purposes of ascertaining the chargeable income of a person for a year of income, there shall be allowed as a deduction –

(a) all expenditures and losses incurred by the person during the year of income to the extent to which the expenditures or losses were incurred in the production of income included in gross income;

(b) the amount of any loss as determined under Part VI of this Act, which deals with gains and losses on the disposal of assets, incurred by the person on the disposal of a business asset during the year of income, whether or not the asset was on revenue or capital account;

(c) in case of rental income, the expenditure and losses incurred by a person other than an individual or partnership in the production of such income subject to subsection (2);

(2) Where the expenditure and losses incurred by a person other than an individual or partnership in the production of rental income, exceeds fifty percent of the rental income, the allowable deduction shall be fifty percent of the rental income for that year of income.”

Section 22 (1) begins with the phrase “*Subject to this Act*”. This means that section 22 must be read together with other provisions of the ITA and not on a stand alone basis. Moreover, since section 22 is a general provision that deals with the deductibility of expenditure and losses, it must be read subject to other provisions of the ITA which may contain exclusions to the general principles of section 22.

This is in accordance with the principle of statutory interpretation that a statute must be read as a whole. This was highlighted in the case of ***Farid Meghani v URA, Civil Appeal No. 0006 OF 2021***, where Justice Mubiru stated:

“One of the cardinal rules of statutory interpretation is that statutes are to be read as a whole, in context, and, if possible, the court is to give effect to every word of the statute. The court is bound to give consistent, harmonious, and sensible effect to all of the parts of a statute, to the extent possible. Thus, in cases involving statutory construction, courts are not permitted to consider only a certain isolated part or parts of an act, but are required to consider and construe together all parts thereof in pari materia. It is the duty of the court, as

far as practicable, to reconcile the different provisions so as to make them consistent, harmonious, and sensible.”

Section 22 (1) (a) allows deductions for all expenditures and losses incurred by a person during the year of income.

Therefore, ALL expenditures and losses would apply to items whether of a capital or revenue nature provided that they are incurred during a year of income.

However, section 22 (3) of the ITA specifically treats items of a capital nature as non-deductible. It therefore follows that only expenditures and losses of a revenue nature that are incurred during a year of income are allowable as deductible under section 22 of the ITA.

The proviso “incurred during a year of income’ means that the item of expenditure or loss must have been incurred in the respective year of income in which the applicable income was generated.

Section 22 (1) (c) contains special considerations for rental income. It caps expenditure or losses incurred in the production of rental income to 50% of the rental income.

When section 22 is read together in its entirety, it means that while expenditures and losses of a revenue nature incurred during a year of income are allowable deductions, in the case of rental income, such expenditures and losses (as incurred) shall be capped to 50% of the rental income as per section 22 (2) of the ITA.

In sum, the implication of section 22 (1) (c) of the ITA is that a person who has rental income for a year of income is allowed to claim 50% of the expenditures or losses that are of a revenue nature against their rental income provided that those expenditures or losses were incurred in the year in which the rental income was generated.

Therefore, the criteria for an item of expenditure or loss to be deductible under section 22 (1) (c) of the ITA is as follows:

- (i) The expenditure or loss must be of a revenue nature; and
- (ii) The expenditure or loss must have been incurred in the current year of income.

The Applicant has argued that section 22 is subject to other provisions of the ITA such as sections 28 and 36 which do not expressly cap the deductibility the expenditures thereunder to 50% of the rental income.

While in principle we agree with the Applicant that section 22 of the ITA is subject to other provisions of the Act, one must bear in mind the express provision of section 5 of the ITA, which is the charging provision for rental income. Section 5 (3) (b) states categorically that ONLY those expenditures and losses as provided for in section 22 (1) (c) are allowable as deductions against rental income. Therefore, items such as IBD or carry forward losses which are provided for under other provisions of the ITA will only be deductible against rental income to the extent that they meet the criteria provided for under section 22 of the ITA.

Below, we apply the above analysis to the Applicant's facts.

Carry forward losses

Carry forward losses are provided for under section 36 and are tax losses that arise from prior years of income. Therefore, for purposes of section 22 (1) (c) of the ITA:

- (i) Are the carried forward losses of a revenue nature? Yes.
- (ii) Were the carried forward losses incurred in the current year of income? No. They relate to losses from previous years of income.

Implications: Disallow as not deductible at all against rental income as they do not qualify under section 22 (1) (c).

Industrial / commercial building allowances (IBD)

IBD is provided for under section 28 and is tax depreciation that is allocated over the lifetime of the building. Each respective year of income is allocated a depreciation amount based on a prescribed formula. Therefore, for purposes of section 22 (1) (c) of the ITA:

- (i) Is IBD an expenditure of a revenue nature? Yes.
- (ii) Was the IBD expenditure incurred in the current year of income? Yes

Implications: Allow as deductible against rental income but subject to the 50% cap under section 22 (1) (c).

In conclusion, we agree with the Applicant's statement that the "capping provision in Section 22(2) ...can only apply to revenue expenditure permitted under section 22 (1) (c)." However, it follows that expenses such as carry forward losses which do not meet the criteria permitted under the above provision are not deductible against rental income.

In view of the above, the application is dismissed and the Tribunal makes the following orders:

- (i) The assessment of Shs. 15,487,933 is hereby maintained.
- (ii) Costs are awarded to the Respondent.

Dated at Kampala this.....24th.....day of.....September.....2025.



MS. CRYSTAL KABAJWARA
CHAIRPERSON



MR. WILLY NANGOSYAH
MEMBER



MS. ROSEMARY NAJJEMBA
MEMBER