

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA**  
**APPLICATION NO. 90 OF 2023**

UGAFODE MICROFINANCE LIMITED.....APPLICANT  
VERSUS  
UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MR. SIRAJ ALI.

**RULING**

This ruling is in respect of an application challenging an income tax assessment of Shs. 577,123,658 arising from accruable interest not being allowed as an expense.

The applicant is a financial institution which provides services such as loans. In 2021, the respondent conducted an audit on it for 1<sup>st</sup> January 2017 to 31<sup>st</sup> December 2019. As a result of the said audit, the respondent raised an income tax assessment of Shs. 577,123,658 on interest which was treated as an allowable expense. The respondent issued a second Withholding Tax (WHT) assessment on the ground that the applicant did not withhold tax. The applicant objected and the respondent disallowed it.

Issues.

1. Whether the applicant is liable to pay the tax assessed?
2. What remedies are available?

The applicant was represented by Mr. Charles Muwanguzi and Ms. Lucy Kemigisha while the respondent by Ms. Diana Kagonyera Mulira.

The parties filed a partial consent settlement order in which the WHT assessments were adjusted. The applicant also agreed to a VAT assessment of Shs. 15,941,367. The parties agreed that the issue of the income tax assessment of Shs. 577,123,658 on interest allowed as an expense be referred to the Tribunal for determination.

The applicant's first witness, Ms. Sarah Joanita Nyakaisiki, its head of finance stated that the applicant generates working capital by obtaining loans from all institutions and deposits from individuals, where interest is paid. The applicant accounts for tax on an accrual basis. In its returns, it deducts accrued interest from its income earned to arrive at the amount on which income tax is charged, whether the interest has been paid or not. She disagreed with the respondent's decision in its income tax because interest accrued on borrowings was incurred in the production of income included in gross income and as such it ought to be deducted as an allowable expense.

The applicant's second witness, Mr. Edgar Mukasa, a senior tax manager at KPMG stated that that the accounts for income tax, if the applicant were on an accrual basis under S. 42 of the Income Tax Act. The applicant derives income when it is payable even if it is not actually paid. The accrual principle is an accounting concept that requires transactions to be recorded in the time period in which they occur regardless of when the actual cash flows for the transaction are received. The idea behind the accrual principle is that financial events are properly recognized by matching revenues against expenses when transactions such as a sale occur rather than when actual payment for the transaction is received. He contended that all interest payable by the applicant is incurred in the production of income included in gross income for the year of income ought to be deducted as an allowable expense when computing its chargeable income. It is a principle of accrual accounting which is acceptable under S. 42 of the Income Tax Act.

The applicant's third witness, Ms. Mary Imong, its company secretary and head of legal, testified that the applicant obtained loans. From 2017 to 2019, it made loan agreements with lenders such as Strome Microfinance, Oikcredit, Grameen Agricole, ABI Finance Limited, Agribusiness Trust, Alterfin, FEFISOL SA SICAV, Regmifa Symbiotics S.A, KIVA and ACCION Africa-Asia Investment Company. The loans attracted interest payable by the applicant. The applicant also incurred interest on deposits from customers' savings. The applicant paid some interest. She stated that any interest not paid by the applicant in a financial year is not due in its books of accounts. It is carried forward to the next year and paid per the agreement. She admitted that the interest claimed in 2017, 2018 and 2019 were not paid in the said years.

The respondent's witness, Mr. Fred Kyomuhendo, a tax officer in its objection's unit testified that the respondent conducted an audit on the applicant and issued an assessment of Shs. 577,123,657. He stated that the applicant is a microfinance deposit taking institution that provides financial services including lending and taking deposit. The audit revealed that the applicant had claimed interest of as deductible expenses from 2017 to 2019. The respondent allowed interest that was paid out as a deductible expense. Interest that was not paid out was disregarded as it did not qualify as a deductible expense incurred. Interest totaling to Shs. 10,379,267,275 was established to have been paid out from 2017 to 2019, which was allowed as a deductible interest. Interest totaling to Shs. 2,738,230,13 was found not to have been paid out. It was disregarded. He stated that the interest that had been disallowed in each year was allowed as deductible interest in the preceding years.

The applicant submitted that its principal business activity is to extend financial services including loans where interest income is earned in return. However, it obtains working capital from by getting loans from institutions and deposits from individuals where interest is paid. For the years ending 31 December 2017, 2018 and 2019, the applicant incurred interest on loans and deposits of Shs 5,792,670.000, Shs. 4,498,652,000 and Shs 4,354,575,000 respectively. The loans were acquired to produce income to enable the applicant to advance finances to its customers.

The applicant submitted that the assessment of Shs. 577,123,668 arose because of disallowed unpaid interest expense for the years ending 31<sup>st</sup> December 2017, 31<sup>st</sup> December 2018 and 31<sup>st</sup> December 2019 on the ground that it is only claimable for income tax purposes when it is paid. The applicant submitted that the respondent during its audit divided these interest expenses into interest that is incurred by the applicant on fixed deposits with financial institutions (which is WHT exempt) and the interest expense incurred by the applicant from its lenders. The table below illustrates this division by the respondent as per respondent's audit workings exhibit E5.



**Table 1; Interest expense breakdown as per respondent's workings.**

Nature of Interest	2017	2018	2019	TOTAL
Interest incurred on fixed Deposits-Financial Institutions (WHT Exempt)	345,806,301	248,457,534	766,865,753	1,361,129,589
Interest expense based on loans from lenders	5,446,863,699	4,250,204,466	3,420,429,247	13,117,497,411
<b>Total interest expense (Audited Financial Statements)</b>	<b>5,792,670,000</b>	<b>4,498,662,000</b>	<b>4,187,295,000</b>	<b>14,478,627,000</b>

The applicant submitted that the respondent broke down the interest expense incurred on loans from lenders into two namely, the portion which has been paid by the applicant to the lenders and whose WHT has been remitted to URA and the portion which was payable by the applicant but not yet paid

**TABLE 2 Breakdown of interest expense base on loans from lenders as per respondent's workings.**

Nature of Interest	2017	2018	2019	TOTAL
Paid portion of the interest subject to WHT claimed as an interest expense	4,518,799,306	3,376,946,395	2,483,521,574	10,379,267,275
Unpaid portion of interest subject to WHT claimed as an interest expense	928,064,393	873,258,070	936,907,672	2,738,230,135
<b>Total interest expense based on loans from lenders</b>	<b>4,446,863,699</b>	<b>4,250,204,466</b>	<b>3,420,429,247</b>	<b>13,117,497,411</b>

The applicant submitted that when the applicant was preparing its income tax returns exhibit E1, it claimed the entire interest expense which included both the paid and unpaid interest expense. The parties disagreed with the applicant's treatment of the entire interest expense as an allowable deduction. The respondent adjusted the applicant's income tax computation by disallowing the unpaid (but payable) portion of interest and allowing it in the following years when it was paid. This adjustment by the respondent led to income tax payable of Shs. 577,123,658.

**Table 3: Respondent's adjustments on the interest expense of applicant's lenders in the income tax computation of the Applicant.**

Nature of interest	Adjustment by the respondent	2017	2018	2019	TOTAL
Paid portion of the interest subject to WHT claimed as an interest expense -A		4,518,799,306	3,376,946,395	2,483,521,574	10,379,267,275
Unpaid portion of interest subject to WHT claimed as an interest expense -B	Disallowed	928,064,393	873,258,070	936,907,674	2,738,230,135
Prior year unpaid portion of interest -Allowed in the year it was paid -C	Allowed -a year later	-	928,064,393	873,258,070	1,801,322,463
<b>Total Interest Allowed by the respondent per audit workings - A+C</b>		<b>4,518,799,306</b>	<b>4,305,010,788</b>	<b>3,356,779,644</b>	<b>12,180,589,738</b>

The applicant submitted that the entire interest expense of the lenders (both the paid and the unpaid) incurred in each of the audited years of income is allowable for income tax purposes as per its income tax returns self-declaration exhibit E1.

**Table 4: Applicant's lenders interest expense that should be allowable**

Nature of Interest	2017	2018	2019	Total
Paid portion of the interest subject to WHT claimed as an interest expense -B	4,518,799,306	3,376,946,395	2,483,521,574	10,379,267,275
Unpaid portion on interest subject to WHT claimed as an interest expense -B	928,064,393	873,258,070	936,907,672	2,738,230,135
<b>Total Interest Allowed by the respondent per audit workings - A+B</b>	<b>5,446,863,699</b>	<b>4,250,204,466</b>	<b>3,420,429,247</b>	<b>13,117,497,411</b>

The applicant submitted that during the period ended 31<sup>st</sup> December 2017, 2018 and 2019 it incurred interest on borrowings and fixed deposits of Shs. 5,792,670,000, Shs. 4,498,662,000 and Shs. 4,354,575,000 respectively. The interest expense was from loans obtained by the applicant from Stromme Microfinance, Oikocredit, Grameen Agricole, Agribusiness Trust, Alterfin, FEFISOL SA SICAV, Regmifa Symbiotics S.A, KIVA, and ACCION Africa- Asia Investment Company. It included interest that was unpaid but was payable under accrual accounting.

The applicant submitted that the respondent in its management letter noted that the former presents financial performance on an accrual basis. The respondent contended that the taxpayer did not consider S. 47(2) of the Income Tax Act in determining the amount of interest expense allowable as a deduction. According to the respondent unpaid interest is a non-deductible expenditure. To the respondent unpaid interest is incurred. WHT is not paid on it and as such is not claimable as allowable expenses. The respondent disallowed the unpaid interest claimed by the applicant.

The applicant cited *National Social Security Fund v Uganda Revenue Authority* Civil Appeal 29 of 2020 where Boniface Wamala J. noted that.

"The relevant provisions concerning a debt obligation for purpose of determining whether interest is allowed as a deductible expense are S. 25(1) and 2(a) of the Income Tax."

The applicant submitted that S. 2(s) of the Income Tax Act states;

"Debt obligation means an obligation to make a repayment of money to another person, including accounts payable and the obligations arising under promissory notes, bills of exchange and bonds."

S. 25(1) of the Income Tax Act states.:

"Subject to this Act, a person is allowed a deduction for interest incurred during the year of income in respect of a debt obligation to the extent that the debt obligation has been incurred by the person in the production of income included in gross income."

The applicant submitted that for an interest expense to be an allowable deduction, it must be incurred during the year of income in respect of a debt obligation incurred in the production of income included in the gross income.

The applicant submitted that accrual accounting is a generally acceptable accounting principle. It is acceptable under International Financial Reporting Standards (IFRS) and International Accounting Standards (IAS). Under IFRS 15 and IAS 16, revenue is recorded when a sale is made-whether or not cash is received at the time. Similarly, expenses are recorded when goods and services purchased are received, not when they are paid for. The accrual principle is an accounting concept that requires transactions to be recorded in the time period in which they occur, regardless of when the actual cash flows for the transaction are received.



The applicant submitted that In *National Social Security Fund v Uganda Revenue Authority* (supra), it was noted that;

"...Although interest is declared at the end of the year, the obligation to pay interest on the part of the appellant accrues at the beginning of the year. The fact that the payment is effected the following year is merely an accounting issue and not a legal issue, I agree that it changes neither the obligation to pay interest nor the accrual of interest for the benefit of the appellant's members. I am therefore satisfied upon the law and facts before me that the interest paid to the appellant's members is incurred during the year of income. Clearly, incurring and effecting payment are different aspects under the law."

The applicant submitted that the interest expense disallowed by the respondent, is an allowable deduction in the year of income it was accrued or incurred as per the applicant's income tax return declarations. It argued that S. 47 of the Income Tax Act provides that;

- " 1) Subject to subsection (2), interest in the form of any discount, premium, or deferred interest shall be taken into account as it accrues.
- 2) Where the interest referred to in subsection (1) is subject to withholding tax, the interest shall be taken to be derived or incurred when paid."

The applicant submitted that S.47 of the Income Tax Act is not applicable to it. For the Section to apply, the nature of the interest in dispute should be in the form of a discount, premium or deferred. The interest that was disallowed for income tax purposes was not in the form of any discount. It was not reduced by the applicant's lenders. The whole amount of interest was still due. The interest that was disallowed by the applicant was not yet due for payment but had been incurred.

In reply, the respondent submitted that interest of Shs. 2,738,230,135 which was not paid in 2017, 2018 and 2019 was denied as an allowable deductible expense because it was actually not paid. It submitted that interest is defined under S. 2(kk) of the Income Tax Act to include-

"Any payment, including a discount or premium, made under a debt obligation which is not a return of capital; any swap or other payments functionally equivalent to interest; (i) any commitment, guarantee, or service fee paid in respect of a debt obligation or swap agreement"

The respondent submitted that S. 25(1) of the Income Tax Act reads.

"Subject To this Act, a person is allowed a deduction for interest incurred during the year of income in respect of a debt obligation has been incurred by the person in the production of income included in gross income."

*Black's Law Dictionary* 11<sup>th</sup> Edition p. 917 defines 'incur' to mean "to bring on oneself (a liability or expense)". It also further defines an 'expense' at p. 723 "as an expenditure of money, time, labor, or resources to accomplish a result; especially a business expenditure chargeable against revenue for a specific period." The respondent submitted that one has to suffer an expenditure prior to it qualifying as incurred or an expense. No individual can claim as deductible an expense that has actually not been paid. The mere fact that the applicant uses accrual basis and records expenses for goods and services purchased when received and not when paid for does not in any way affect the applicability of the statute.

The respondent submitted that the applicant was assessed Shs. 577,123,658 in regards to disallowed interest expense under S. 47 of the Income Tax Act. It conducted an audit which revealed that the applicant claimed interest expenses which included both paid out and incurred interest. It is trite law that where interest is subject to WHT, that interest is incurred when paid. S. 47 of the Income Tax Act states.

"(1) Subject to subsection (2), interest in the form of any discount, premium, or deferred interest shall be taken into account as it accrues.

(2) Where the interest referred to in subsection (1) is subject to withholding tax, the interest shall be taken to be derived or incurred when paid."

The respondent submitted that it only allowed actual interest expense that was paid and disallowed accrued interest expense that was not actually paid. It submitted that unpaid interest refers to interest that has accrued by the bank but has not matured to be paid. This unpaid interest is deferred from one year to the next and only paid at maturity. This unpaid interest cannot be allowed as a deduction.

The respondent submitted that there is no ambiguity in Sections 25 and 47 of the Income Tax Act. It contended that the implication of S. 47 is that when the interest has been paid it is allowed. However, interest that has not been paid cannot be allowed. The respondent submitted that Justice Kiryabwire J. in *Crane Bank v Uganda Revenue Authority* HCCA 18 of 2010 held that; "a provision of the law is ambiguous only if it irreconcilably conflicts with another provision or when it is equally susceptible to more than one meaning". There is no ambiguity in the said Sections. The respondent



submitted that the applicant admitted that interest accrues on a monthly basis. an accrued expense is an expense incurred but not paid. The respondent submitted that the applicant did not pay the interest and could therefore not expense the same. This interest shouldn't have been claimed by the applicant as a deductible expense for income tax purposes given that it was not paid; and it is on that basis that the deductible expense was disallowed. The respondent disallowed and added back the unpaid interest claimed by the applicant. The respondent submitted that it correctly disallowed unpaid interest expense for the years ending 31<sup>st</sup> December 2017, 2018 and 2019 basing on the fact that the expense is only claimable for income tax purposes when it is paid.

The respondent submitted that *Black's Law Dictionary* 8<sup>th</sup> Edition p. 4944 defines "Withholding tax" as 'the practice of deducting a certain amount from a person's salary, wages, dividends, winnings, or other income, for tax purposes.' It cited *Kenya Revenue Authority v Republic (ex parte Fintel Ltd)* Civil Appeal 311 of 2013, where WHT was seen as an obligation which requires a tax payer to deduct tax at source or payments made and to remit the deducted tax to the revenue body. The respondent submitted that interest where corresponding WHT has not been paid is not an allowable deduction for income tax purposes. Had the interest been credited to the recipients, it would have had a corresponding WHT remitted. In this case, there was no WHT remitted since no payment had been made by the applicant. The respondent contended that in *ATC v Uganda Revenue Authority* Civil Appeal 32 of 2020; it was held that; "The import of S. 47 of the Income Tax Act, is that the requirement to withhold tax arises at the time interest is "paid and not when it accrues". In *Afrigri v Uganda Revenue Authority* Civil Appeal 35 of 2020 it was also held that.

"The appellant having paid interest, it was liable to withholding tax.... The appellant could not have deducted for tax- purposes what was not incurred.... therefore, the appellant actually having recognized the interest as expensed, the interest was paid."

The respondent submitted that where the payment of the interest has not been paid but simply accrued and there was no evidence of payment in their financial statements with no corresponding WHT tax being remitted, the applicant could not claim an interest as an expense. The respondent was therefore justified in disallowing the interest expense claimed.

In rejoinder, the applicant submitted that interest that was disallowed by the respondent was payable in 2017, 2018 and 2019. The applicant was legally obligated or accountable for interest expense in the year it accrued. The applicant had a liability towards the lenders as interest accrued. The applicant incurred the disallowed interest during the year of income in line with S. 25 of the Income Tax Act. The applicant submitted that the interest that was disallowed by the respondent had generated income that was reported by the applicant in the years of income in issue in line with S. 25 of the Income Tax Act.

The applicant further submitted that S. 42(1) of the Income Tax Act provides that:

“(1) A taxpayer who is accounting for tax purposes on an accrual basis-

- a) derives income when it is receivable by the taxpayer and
  - b) incurs expenditure
- (2) an amount is treated as payable by the taxpayer when all the events that determine liability have occurred and the amount of the liability can be determined with reasonable accuracy, but not before economic performance with respect to the amount occurs”.

The applicant submitted that the interest expense disallowed for income tax purposes by the respondent was payable as all events that determine liability occurred and it could be determined with reasonable accuracy. The applicant submitted that it is not true that no person can claim as deductible an expense unless it has been actually paid. Such an argument would mean that all taxpayers pay taxes through cash basis accounting.

The applicant submitted that S. 47(2) of the Income Tax is concerned with the point at which WHT would be due when interest is discounted, paid at a premium or deferred. The applicant's interest expense does not fall under these categories. The applicant further submitted that *ATC v Uganda Revenue Authority* (supra) and *Afrigri v Uganda Revenue Authority* (supra) are not applicable to the current case. This is because both cases were concerned with the applicability of WHT on deferred, discounted and premium interest. In the current case the interest of the applicant was not deferred discounted, or offered at a premium in addition the issue in contention is not WHT.

The applicant submitted that disallowing the applicants interest expense without referring to the loan agreements is improper on the part of the respondent. A review of



the loan agreements demonstrates that the nature of the interest in dispute was accrued by the applicant and is allowable under S. 42 of the Income Tax Act.

Having listened to the evidence, perused the exhibits and read the submissions of parties, this is the ruling of the tribunal.

The applicant provides financial services including advancing loans where it earns income. To generate working capital the applicant obtains loans from financial institutions and non-financial institutions and from deposits from individuals, where interest is paid. The dispute between the parties is on the treatment of interest to the institutions where it obtains loans. The applicant treated accrued interest as a deductible allowance. The respondent contended that the applicant did not pay the interest and could not therefore expense the same. The respondent disallowed the unpaid interest claimed by the applicant and added it back leading to an income tax assessment of Shs. 577,123,658.

The tribunal has to determine whether interest not paid by the applicant is allowable expense. S. 25 of the Income Tax Act states that;

“(1) Subject to this Act, a person is allowed a deduction for interest incurred during the year of income in respect of a debt obligation to the extent that the debt obligation has been incurred by the person in the production of income included in gross income.

(2) In this section, “debt obligation” includes an obligation to make a swap payment arising under a swap agreement and shares in a building society.”

S. 2(s) of the Income Tax Act defines a ‘debt obligation’ as.

“Debt obligation to mean an obligation to make a repayment of money to another person, including accounts payable and the obligations arising under promissory notes, bills of exchange and bonds.”

It is not in dispute that interest incurred in the production of income included in the gross income is an allowable deduction. However, the dispute is that the respondent contends that the applicant included interest that it did not pay. Therefore, the dispute becomes whether interest that is not paid can be allowed as deductible allowance.

Interest that has not been paid or has been paid to be considered as an allowable deduction depends on the accounting system a taxpayer uses. There are two

accounting system; cash based or accrual based. S. 41 of the Income Tax Act provides for cash-based accounting. It reads

“A taxpayer who is accounting for tax purposes on a cash basis derives income when it is received or made available and incurs expenditure when it is paid”.

Paid interest can only be an allowable deduction under S. 41 of the Income Tax Act. S.42 provides for accrual accounting system. S. 42 of the Income Tax Act reads

“A taxpayer who is accounting for tax purposes on an accrual basis-

(a) derives income when it is receivable by the taxpayer; and

(b) incurs expenditure when it is payable by the taxpayer.

(2) Subject to this Act, an amount is receivable by a taxpayer when the taxpayer becomes entitled to receive it, even if the time for discharge of the entitlement is postponed or the entitlement is payable by instalments.”

Further S. 42(3) mentions accuracy

“(3) Subject to this Act, an amount is treated as payable by the taxpayer when all the events that determine liability have occurred and the amount of the liability can be determined with reasonable accuracy, but not before economic performance with respect to the amount occurs”.

Accrual interest under the accrual accounting system accumulates over time even though, it has not been physically paid by the borrower or received by the lender. S. 42(1)(b) of the Income Tax Act allows a taxpayer to incur expenditure when it is payable by the taxpayer. Therefore, a taxpayer can incur an interest expense when it is payable under the accrual accounting system. The applicant contends that it used an accrual accounting which allows for accruable interest. The applicant could under the accrual accounting system expense accruable interest.

The respondent's witness, Mr. Fred Kyomuhendo, stated that the audit conducted on the applicant revealed that the applicant had claimed paid interest and unpaid or accruable interest as deductible expenses from years ending 31<sup>st</sup> December 2017 to 2019. The respondent allowed interest that was paid out as a deductible expense. Interest that was not paid was disregarded as it did not qualify as a deductible expense incurred. Interest totaling to Shs. 10,379,267,275 was established to have been paid out from 2017 to 2019, which was allowed as a deductible interest. Interest totaling to Shs. 2,738,230,13 was found not to have been paid out. It was disregarded.



There is a contradiction when a taxpayer treats both paid interest and accrued interest as allowable deductions. Using both the accrual and cash basis accounting methods to treating unpaid and paid interest as allowable deductions leads to less chargeable income. Interest cannot be considered as payable and paid in the same income statement and or financial statements. One cannot use both Sections 41 and 42 of the Income Tax Act which allows for opposing accrual and cash accounting systems. That is because by the time a taxpayer pays interest and treats it as an allowable expense using the cash accounting, it would have already been considered as payable under the accrual method in another financial year. While interest maybe payable in one financial year it may be paid in another financial year. This may distort the chargeable tax as the said interest may be allowed as an expenditure twice. Therefore, the applicant should use one of the accounting methods and not both. Mr. Kyomuhendo testified that the unpaid interest that had been disallowed in each year was allowed as deductible interest in the preceding years when it was paid. This explains the rectification of the distortion created by the applicant treating both unpaid and paid interest as allowable deduction.

S. 25 of the Income Tax Act allows interest that has been incurred in the production of income included in the gross income. Therefore, if a taxpayer treats accruable interest as an expense, it should also include the accruable income in the gross income for the interest to qualify as an allowable expense. While the accrual system allows for accrual income and expenditure, the cash-based accounting system allows for paid income and paid expenses. Therefore, where one uses one kind of expense, it should use the corresponding kind of income. For instance, if one uses accruable expenses, then it should use accruable income arising from the said expenses. Where one uses paid expenses, then it should consider paid income in its gross income. If accrual income is not included in the income statement of the financials when using accruable interest, it means that the said interest was not used in the production of income included in the gross income under S. 25 of the Income Tax Act. In *ABSA Bank Limited v Uganda Revenue Authority* Application 57 of 2021 the Tribunal noted that

“Under accrual accounting system, revenue is recorded when a sale is made whether or not cash is received. Similarly, expenses are recorded when goods and services purchased are received, not when they are paid for. Accrual accounting requires transactions to be recorded in the time period in which they occur, regardless of when

the actual cash flows for the transaction are received. When using the accrual basis accounting, if the applicant treats accrued interest as a deduction, then it would have to treat the accruable income what would give arise to the accrued interest in the gross income. That is income which has not yet been received but is due if the said interest accrues.”

A perusal of the applicant's financial statements does not show that it indicated the accruable income in the gross income arising from the accruable interest.

Both parties referred to Sections 25 and 47 of the Income Tax Act. In *ABSA Bank Limited v Uganda Revenue Authority* (supra) the Tribunal noted that the said Sections entail different concepts. The Tribunal noted that.

“S. 47 of the Income Tax Act deals with WHT on interest that has been paid or is due. S. 25 of the Act deals with allowing interest as a deductible expense. The two Sections are talking of different concepts, one being withholding tax and the other allowable deductions.”

Therefore, the accruable or paid interest for WHT cannot be used as a basis for determining the interest that to be allowable as a deduction should be paid.

The treatment of interest expense under the different accounting system affects whether WHT should be paid. Under the cash-based system where a taxpayer pays interest that is sourced in Uganda, WHT is due. S. 47 of the Income Tax Act states

- “(1) Subject to subsection (2), interest in the form of any discount, premium, or deferred interest shall be taken into account as it accrues.
- (2) where the interest referred to in subsection (1) is subject to withholding tax, the interest shall be taken to be derived or incurred when paid”. This section does not apply here since both parties do not prove any discount, premium or differed interest.”

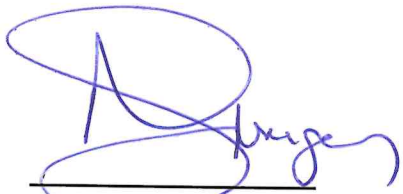
By using both both the accrual and cash accounting systems, the applicant creates confusion as to whether WHT is payable. If the applicant was using the cash-based system it would have been required to withhold tax paid on the interest paid. By treating paid interest and accruable interest as allowable deductions would mean that under the cash accounting system, no WHT was paid on the accruable interest. The respondent would be justified not to allow the accrued interest because no WHT was paid. In *Afrigri v Uganda Revenue Authority* Civil Appeal 35 of 2020 it was noted that.



"The appellant having paid interest, it was liable to withholding tax.... The appellant could not have deducted for tax- purposes what was not incurred  
Therefore, if the applicant was using a cash accounting system it ought to have withheld tax on the interest paid.

Taking the above into consideration, the applicant has failed to discharge the burden that the respondent ought to have made the decision differently. In the circumstances, this application is dismissed with costs to the respondent.

Dated at Kampala 23rd day of November 2023.



**DR. ASA MUGENYI**  
**CHAIRMAN**



**DR. STEPHEN AKABWAY**  
**MEMBER**



**MR. SIRAJ ALI**  
**MEMBER**