TAX APPEALS TRIBUNAL
Justice in Taxation

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO. 102 OF 2025

VIRAL OIL LIMITED..APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY...RESPONDENT

BEFORE: HON. CRYSTAL KABAJWARA, HON. STELLA NYAPENDI CHOMBO, HON. BIRYETEGA EDWARD

RULING

I. Introduction

1. The Applicant deals in the supply of fuel and automobile products and, being aggrieved by the decision of the Respondent, challenges their income tax assessment of Shs. 88,769,586.

II. Background facts

2. The Applicant operates retail fuel service stations under a Retail Business Agreement entered into with Vivo Energy Uganda Limited, pursuant to which it is licensed to market and sell Shell-branded motor fuels and lubricants and to operate service bay facilities at the licensed service stations.

3. For the Financial Year 2021/2022, the Applicant made sales of petroleum products amounting to Shs. 37,923,542,633, as reflected in its accounting records and audited financial statements.

4. Following a tax audit covering the period 2018 to 2023, the Respondent reviewed the Applicant's declared gross profit mark-up and concluded that the gross profit mark-up declared for the Financial Year 2021/2022 was lower than what the Respondent considered to be the Applicant's average gross profit mark-up over the reviewed period.

5. Rather than interrogating the Applicant's actual transactions for the year under review, the Respondent reconstructed the Applicant's sales by applying what it considered to be a notional gross profit mark-up of 3%, being an average allegedly derived from the Applicant's mark-ups over other financial years.

6. Consequently, the Respondent increased the Applicant's declared sales from Shs. 37,923,542,633 to Shs. 38,219,441,254, treating the resulting variance of Shs. 295,898,621 as undeclared business income. The Respondent applied the corporate tax rate of 30% on the variance and issued an additional income tax assessment of Shs. 88,769,586.

7. The Applicant objected to the assessment, disputing, among other matters, the Respondent's adjustment based on the notional mark-up, and on 24 July 2024, the Respondent issued its objection decision dropping the other issues raised and maintaining the Shs. 88,769,586.

8. The Applicant, being dissatisfied with the Respondent's objection decision, filed this application.

III. Representation and evidence

9. The Applicant is represented by Mr. Amanya Bruno Edwin, while the Respondent is represented by Mr. Agaba Edmond of the Legal Services and Board Affairs of Uganda Revenue Authority.

10. The Applicant's case is supported by the affidavit sworn by Mr. Ankit Jangala of C/O Grant Thornton East Africa Ltd, who is the Tax Director of Grant Thornton Advisory East Africa Ltd. Documents were also exhibited thereto, marked “A” to “G”.

11. The Respondent's case is supported by the Affidavit in Support sworn by Mr. Atugonza Allan, an officer of the Domestic Taxes Department of the Respondent, filed herewith, together with the documents exhibited thereto, marked "R1" to "R4", all of which the Respondent adopts and relies upon.

IV. Issues for Determination

12. During joint scheduling by both parties, the following issues were framed.

    i. Whether the Applicant is liable to pay the tax as assessed.

    ii. What remedies are available to the parties.

V. Submissions of the Applicant

(i) Whether the Applicant is liable to pay the tax assessed

13. The Applicant submitted that the core of the dispute is whether the Respondent's basis of the assessment (reworking the Applicant's revenue based on an assumed, static mark-up) is valid and lawful.

14. That the Respondent's assessment rests on a single premise: that a reduction in the Applicant's gross profit mark-up in a year entitled the Respondent to disregard the Applicant's actual sales and substitute a hypothetical turnover derived from an assumed average mark-up. The Applicant respectfully submits that this premise is illegal and erroneous.

The Assessment is based on assumed/conjured income

15. Section 4(1) of the Income Tax Act Cap 338 ("ITA") expressly states that income tax is imposed on a taxpayer's chargeable income. Section 15 of the ITA then defines chargeable income as the gross income less the deductions allowable under the Act. It therefore follows that an income tax assessment must be founded upon the taxpayer's actual gross income as established by credible evidence, and not upon income which the Commissioner erroneously and without basis considers the taxpayer ought to have earned.

16. The Applicant submitted that during the audit, the Respondent analysed the Applicant's financial records, including its sales and purchase ledgers, and its audited financial statements for the years under audit. Those records consistently reflected petroleum sales of Shs. 37,923,542,633 for the Financial Year 2021/2022 (see Paragraph 4 of the affidavit in Support).

17. The Respondent relied upon those very records to compute the Applicant's gross profit mark-ups for each of the years under review. Having accepted the Applicant's accounting records as the source from which the gross profit mark-ups were derived, the Respondent cannot, without identifying any defect in those same records, selectively reject the declared sales merely because it considers the resulting gross profit mark-up to be lower than that which the Respondent would have wanted.

18. The Applicant submitted that this Tribunal has consistently recognised the evidential value of audited financial statements and properly maintained accounting records. In ***Uniworks Transporters and Logistics Ltd v Uganda Revenue Authority TAT Application 62 of 2018***, this Honourable Tribunal held that under the Income Tax Act, a revenue authority should be able to rely on audited financial statements to assess and arrive at the correct tax payable.

19. Furthermore, in the case of ***Bett Mustafa Kiprop v Uganda Revenue Authority TAT Application No. 192 of 2025***, this Honourable Tribunal held that where the taxpayer has produced audited financial statements and supporting accounting records, the Respondent must identify concrete deficiencies within those records before rejecting them; that an assessment cannot be sustained where it is not supported by a clear evidential and legal foundation.

20. The Applicant submitted that in the present case, the Respondent did not provide any concrete deficiencies in the accounting records of the Applicant in disregarding the Applicant's declared sales for the year 2021/2022.

Viability of the Respondent's basis of assessment

21. The Applicant submitted that the Respondent's assessment is founded on a

single assumption: that because the Applicant's gross profit mark-up for FY2021/2022 was lower than what the Respondent regarded as the average gross profit mark-up for the review period, the Applicant must have understated its sales.

22. The Applicant added that no omission of sales was identified; no inaccuracy was found in the accounting records; no concealed transactions were discovered. The assessment, therefore, rests solely on the assumption that a reduction in gross profit necessarily meant that the Applicant had understated its turnover, rather than on objective evidence of the Applicant's actual income **(See Paragraph 8 of the Affidavit in Support)**

23. The Applicant submitted that the Respondent's methodology effectively reverses the statutory process for determining chargeable income. Rather than assessing tax on the Applicant's actual income as reflected in its accounting records, the Respondent first assumed the profit mark-up that ought to have been earned and then worked backwards to create an entirely hypothetical turnover figure.

24. The Applicant submitted that this Honourable Tribunal has cautioned the Respondent against assessments based on administrative suspicion. In the case of ***Salento General Enterprises Limited v Uganda Revenue Authority TAT 180 of 2024***, this Honourable Tribunal held that: *"... the Respondent cannot rely on mere administrative suspicion or generalised assertions but must rebut the taxpayer's explanation through specific, verifiable and cogent evidence."*

25. Similarly, in the ***Indian case of ACIT-1(1), Indore v Anant Commodities Pvt. Ltd., Indore, ITA No. 857/Ind/2024***, where the tax Authority also queried the taxpayer's drop in their gross profit ratio and applied an average gross profit mark-up, the Income Tax Appellate Tribunal held that:

> *"... Merely because gross profit mark-up is lower in the year under consideration vis-à-vis preceding assessment years cannot be a ground of additions to the income of the assessee unless the Assessing Officer points out a particular defect or discrepancies in the books of accounts maintained by the assessee."*

26. That reasoning is directly applicable. Like the Assessing Officer in ***Anant Commodities***, the Respondent has not pointed to any defect in the Applicant's books of account. Instead, the Respondent assumes that because the Applicant earned a lower gross profit mark-up than in previous years, additional sales must have existed. That is precisely the reasoning rejected by the Tribunal in Anant Commodities.

27. The Applicant submitted that the Respondent's methodology, therefore, confuses commercial expectation with taxable income. The law taxes chargeable income earned by a taxpayer, not income that the Commissioner believes ought to have been earned. Such an assessment is unsupported by the statutory scheme governing the computation of income tax and cannot be sustained.

The selective application of the Respondent's basis

28. The Applicant also submitted that the Respondent's own reworking was arbitrary. The Respondent selectively applies their average mark-up and increases the Applicant's gross profit mark-up for the Financial Year 2021/2022 because it fell below this perceived average but fails to apply the same methodology to the financial year 2020/2021, where the Applicant's actual mark-up exceeded that average.

29. That had the Respondent genuinely regarded the average gross profit mark-up as the appropriate benchmark, consistency would have required it to apply that benchmark uniformly across all the years under review. Its failure to do so demonstrates that it applied the average only where it increased tax liability.

30. The selective application of the methodology demonstrates that the Respondent did not genuinely regard the average mark-up as the correct measure of taxable income. Rather, the methodology was only employed where it increased the Applicant's tax liability. Such selective application is inherently arbitrary and further illustrates that the assessment was driven by outcome rather than principle.

The Respondent failed to appreciate the Applicant's business model and commercial realities

31. The Applicant submitted that even if the Respondent was entitled to question the reduction in the Applicant's gross profit mark-up, the evidence before it demonstrated that the reduction was commercially explainable and did not justify an inference that the Applicant had understated its sales.

32. Throughout the audit, objection proceedings and the Tribunal-guided mediation, the Applicant consistently explained the nature of its business. The Applicant operates retail fuel service stations under a Retail Business Agreement with Vivo Energy Uganda Limited ("VIVO"), pursuant to which it markets and sells Shell-branded petroleum products ***(See Paragraph 9 of the Affidavit in support).***

33. The Applicant submitted that under Clauses 6.1 and 8.1 of Annexure C1, the Applicant is contractually required to purchase and sell petroleum products at prices prescribed by Vivo Energy Uganda Limited and therefore has no discretion to determine its own retail prices. Consequently, the Applicant had no commercial ability to manipulate its gross profit mark-up to conform to the Respondent's expected average ***(See Paragraph 10-11 of the Affidavit in support).***

34. The Applicant further explained that the Financial Year 2021/2022 coincided with extraordinary commercial conditions, including the lingering economic effects of the COVID-19 pandemic and the volatility experienced within global petroleum markets following the outbreak of the Russia-Ukraine conflict. These factors inevitably affected consumer demand and, most importantly, the motor fuel pricing schedules set by VIVO, which impacted the Applicant's profit mark-ups ***(See Paragraph 12 of the Affidavit in support).***

35. Furthermore, the pricing schedules demonstrate that, unlike the relatively stable pricing experienced during the Financial Year 2020/2021, the Financial Year 2021/2022 was characterised by frequent revisions in both purchase and retail prices. The schedules further show that purchase prices often increased more rapidly than the corresponding retail prices prescribed by Vivo Energy Uganda Limited, thereby compressing the Applicant's gross mark-ups. See Paragraph 13

of the Affidavit in support.

36. By way of illustration, the Shell Sanyu (Kireka) petrol pricing schedule demonstrates that for the months of July 2021 to September 2021, the Purchase price increased from Shs. 3,991 to Shs. 4,241 while the sales price moved from Shs. 3,620 to Shs. 4,300 per litre. The schedule further demonstrates that during July 2021 there were instances where the purchase price exceeded the prescribed retail selling price ***(See Paragraph 14 and Annexure D of the Affidavit in support)***.

37. By way of comparison, in the year 2020/2021, the schedules reveal relatively stable pricing with only gradual revisions, enabling the Applicant to maintain a gross mark-up of approximately 4.03%. For example, for the same months (July to September), the Purchase and retail selling prices remained constant at Shs. 3,891 per litre and Shs. 3,980 per litre, respectively ***(See Paragraph 15 and Annexure E of the Affidavit in support)***.

38. The Applicant submitted that the above evidence did not merely explain the reduction in the Applicant's gross profit mark-up; it more importantly demonstrated that the reduction resulted from identifiable commercial factors affecting the Applicant's business model and pricing structure. It therefore displaced any inference that the reduction in gross profit mark-up was attributable to unrecorded sales or suppressed income.

39. The Applicant also submitted that the Respondent disregarded not only the Applicant's accounting records but also the commercial realities governing the Applicant's business. In doing so, the Respondent substituted objective evidence with speculation and treated an ordinary commercial fluctuation in profitability as proof of undeclared income. Such an inference is unsupported by the evidence and cannot sustain the impugned assessment.

40. The Applicant therefore prays that this Honourable Tribunal holds that the Respondent's assessment is baseless, illegal and unsupported by evidence. It should therefore be set aside.

What remedies are available to the parties?

41. In view of the above, the Applicant prayed that this application be allowed, and costs be awarded to them.

VI. Submissions of the Respondent

<u>Preliminary considerations - Gist of the dispute</u>

42. The Respondent stated that the Applicant's case rests on a single proposition: that because its declared sales are reflected in its own accounting records, and those records are not shown to contain a fabricated entry, the Respondent had no basis to question them. That proposition does not withstand scrutiny once the full evidential picture is considered. The Respondent stated that they did not act on suspicion but on an objective and unexplained anomaly in the Applicant's own historical trading pattern, and it gave the Applicant every opportunity to explain that anomaly with the two specific categories of document that would have settled the matter.

43. This includes correspondence from VIVO evidencing the actual prices it set for the Applicant during the full year in issue, that is 2021/2022, and a detailed daily stock (fuel) movement ledger capable of verifying the closing stock the Applicant itself declared. Neither has, to date, been produced in the terms requested. It is that failure, and not any presumption of guilt, which sustains the assessment.

Burden of proof

44. The Respondent reiterated that the burden of proving that the assessment is excessive or erroneous lies squarely on the Applicant, and at no point shifts to the Respondent. **Section 28 of the Tax Procedures Code Act ("TPCA")** provides that:

"In any proceeding under this Act — (a) for a tax assessment, the burden is on the taxpayer to prove that the assessment is incorrect; or (b) for any other tax decision, the burden is on the person objecting to the decision to prove that the decision should not have been made or should have been made differently."

45. This is reiterated in **Section 19 of the Tax Appeals Tribunal Act**, and reflects the general evidential principle in Section 101 of the Evidence Act, that he who alleges must prove.

46. Accordingly, it is the Applicant, and not the Respondent, who must satisfy this Honourable Tribunal that the assessment of Shs. 88,769,586 is incorrect. For the reasons set out below, the Respondent submits that the Applicant has not discharged, and cannot on the material before the Tribunal discharge, that burden.

(i) Whether the Applicant is liable to pay the tax as assessed

47. The respondent submitted that Applicant makes much **of Section 4(1) of the Income Tax Act Cap 338 ("ITA")**, which imposes tax on chargeable income, and **Section 15,** which defines chargeable income as gross income less allowable deductions, to argue that the Respondent's assessment is founded on income the Applicant never earned. The Respondent agrees entirely with the statutory proposition. It is precisely because chargeable income turns on the accurate ascertainment of gross income that the Respondent was entitled, indeed obliged, to test whether the gross income the Applicant declared for the Financial Year 2021/2022 was a true and complete reflection of its trading result for that year.

48. The Respondent did not invent a hypothetical taxpayer or a hypothetical business. It applied a markup of 3%, being the average of the very same figures the Applicant itself had declared, year on year, for five consecutive financial years, to the Applicant's own undisputed cost of sales for the year under review. Every input into that computation, the historical markups and the cost of sales, is the Applicant's own data, drawn from its own returns and its own audited financial statements.

49. What the Respondent questioned was not the Applicant's records as such, but the credibility of a single year's result that departed, without explanation, from a pattern the Applicant had itself established and never previously deviated from. That is not the reconstruction of a fictional turnover; it is the ordinary and lawful

use of Applicant's own trading history as a cross-check on the year under review, an audit technique of particular utility in cash-intensive retail businesses such as fuel retailing, where margin analysis is a standard and well-recognised verification tool.

The burden lies on the Applicant, and the two decisive evidentiary gaps remain unaddressed

50. The Respondent submitted that the question is not whether the Applicant's accounting records are internally consistent, that much is not in dispute, but whether the Applicant has affirmatively shown that the 2% markup declared for 2021/2022 is the true and complete result of its trading for that year, as opposed to a result partly attributable to under-declared sales. On that question, two specific and unresolved gaps in the Applicant's evidence are fatal to its case.

    a) **The absence of correspondence establishing the actual prices set by VIVO for the period 2021/2022**

51. The Applicant's own Affidavit in Support, at paragraphs 13 to 15, relies on a "Shell Sanyu (Kireka)" petrol pricing schedule, annexed as "Annexure D", to demonstrate that purchase prices rose faster than retail prices. That schedule, on the Applicant's own pleading, covers only the months of July 2021 to September 2021, three months of a twelve-month financial year.

52. That it is, with respect, <u>not correspondence from VIVO of the kind the Respondent specifically requested</u> at the objection stage, and its source, whether it is an official VIVO price communication or a document compiled by or for the Applicant, has never been established or exhibited in a manner that permits independent verification.

53. The Respondent submitted that the purported petrol pricing schedule marked "*Annexure D"* is not correspondence from VIVO Energy showing the specific prices set in accordance with ***clause 8.1 of the Retail Business Agreement***. On its face, it is a fuel ledger prepared by the Applicant.

b) The absence of a detailed daily stock (fuel) movement ledger

54. The Respondent submitted that the closing stock of Shs. 1,255,294,853 declared by the Applicant is central to the cost of sales figure from which its markup is computed. By email dated **10 February 2026**, marked "R4", the Respondent specifically requested a stock movement ledger showing the quantity and price of fuel sold on a daily basis.

55. The Applicant, in response, provided only an aggregated summary of opening stock, purchases, sales, cost of sales, and closing stock. Neither the Applicant's Affidavit nor its submissions offer any explanation for its inability, or unwillingness, to produce the daily detail requested, records of a kind any retailer operating Shell-branded service stations under a formal supply agreement would ordinarily maintain in the usual course of business. This gap leaves the Tribunal, as it left the Respondent, unable to independently verify the cost-of-sales figure that underlies the Applicant's declared markup.

56. The Respondent submitted that these are not generalised assertions or administrative suspicion. They are specific, identified, and communicated deficiencies, put to the Applicant in writing well before this Application was filed, which the Applicant has had every opportunity to cure but has not.

The Applicant's continued receipt of supplier discounts is inconsistent with its price-squeeze narrative

57. The Respondent submitted that upon review of the Applicant's objection, it was established that the Applicant continued to receive sales discounts from VIVO during the year in issue. Discounts of this kind reduce the Applicant's effective cost per litre and would ordinarily be expected to improve, not compress, gross margin.

58. The Applicant has not, anywhere in its Affidavit or its Submissions, explained or quantified how a margin-depressing movement in prices coexisted with a margin-enhancing discount arrangement such that the net effect was nonetheless a marked and unprecedented decline in markup, from a historical band of 3% to 4% down to 2%. This unexplained inconsistency in the Applicant's

own account is, itself, a concrete evidential deficiency going well beyond the mere suspicion that the Applicant's authorities caution against.

Reconciliation of ledgers, financial statements, and bank statements does not, without more, discharge the burden

59. The Respondent submitted that their Affidavit confirms that a review of the Applicant's sales and purchases ledgers and audited financial statements showed declared fuel sales consistent with the figure earlier declared, and that a review of the Applicant's bank statements showed total credits of UGX 13,838,738,233, which did not on their own point to deposits beyond the declared sales. The Respondent does not resile from this.

60. However, that exercise establishes only the internal consistency of the Applicant's own books; it says nothing, one way or the other, about whether the declared markup itself is a true and complete reflection of the year's trading. That question turns squarely on the two unresolved gaps addressed above, neither of which the reconciliation of ledgers, bank statements, or financial statements can supply.

The authorities relied upon by the Applicant do not assist it

61. The Respondent submitted that the Applicant places heavy reliance on ***Uniworks Transporters and Logistics Ltd v Uganda Revenue Authority TAT Application 62 of 2018, Bett Mustafa Kiprop v Uganda Revenue Authority TAT Application No. 192 of 2025, Salento General Enterprises Limited v Uganda Revenue Authority TAT 180 of 2024***, and the Indian decision in ***ACIT-1(1), Indore v Anant Commodities Pvt. Ltd., ITA No. 857/Ind/2024***. Properly read, none of these authorities assist the Applicant, and each, on examination, supports the Respondent.

62. The Respondent submitted that the common thread running through this line of authority is that a revenue authority may not reject a taxpayer's declared results on the strength of bare suspicion; it must identify a concrete deficiency, and rebut the taxpayer's explanation with specific, verifiable, and cogent evidence. The Respondent accepts that formulation without reservation.

63. The difficulty for the Applicant is that the Respondent has, from the objection stage onward, done exactly that. It identified an objective anomaly in the Applicant's own five-year trading pattern. It identified, in writing, two specific and discrete categories of documents, VIVO's actual price correspondence for the period 2021/2022, and a daily stock movement ledger, that were necessary to test the Applicant's explanation for that anomaly. It requested those documents in unambiguous terms. The Applicant did not produce them. Where ***Bett Mustafa Kiprop and Salento*** condemn an assessment resting on nothing more than administrative suspicion, they equally contemplate, by necessary implication, that an assessment resting on a specifically articulated and communicated evidentiary gap, left unanswered by the taxpayer, is a different matter altogether.

64. The Respondent submitted that the case of ***Anant Commodities*** neither assists the Applicant. The Income Tax Appellate Tribunal there held that a mere decline in gross profit ratio cannot found an addition to income "unless the Assessing Officer points out a particular defect or discrepancies in the books of accounts." The Respondent has done precisely that. The defect is not a vague allegation that the Applicant's books are unreliable; it is the specific and unaddressed absence of the two categories of corroborating evidence identified above, without which the Applicant's own explanation for the decline in its markup cannot be tested or accepted.

The Applicant's "selective application" argument is misconceived

65. The Respondent challenged the Applicant's contention that the Respondent's methodology is arbitrary because it was not applied to reduce the Applicant's declared sales for the Financial Year 2020/2021, a year in which the Applicant's actual markup of 4% exceeded the five-year average.

66. The Respondent stated that a year in which a taxpayer's declared performance meets or exceeds its own historical average discloses no such risk and calls for no adjustment; there is nothing to correct. The average markup was applied only where the Applicant's own historical pattern generated an objective indicator of

possible under-declaration. The Respondent stated that their adjustments were as a result of targeted verification and not selective or arbitrary application.

Conclusion on Issue 1

67. The Respondent concluded that assessment of Shs. 88,769,586 is grounded in the Applicant's own historical declarations and its own undisputed cost of sales, not in assumed or conjured income. The burden of proving that the assessment is incorrect rests on the Applicant, and it has not been discharged. Two specific and unaddressed evidentiary gaps, namely, the absence of VIVO correspondence establishing prices for the period 2021/2022, and the absence of a detailed stock movement ledger, remain outstanding notwithstanding every opportunity afforded to the Applicant to cure them.

68. Furthermore, the Applicant's own evidence of continued supplier discounts is, moreover, inconsistent with the price-squeeze narrative it now advances. The authorities relied upon by the Applicant, properly applied, support rather than undermine the Respondent's position. The Tribunal is accordingly invited to find that the Applicant is liable to pay the tax as assessed.

69. That in light of the foregoing, the Respondent prayed that this Honourable Tribunal be pleased to make orders that:

    (i) The Application be dismissed;

    (ii) The additional income tax assessment of UGX 88,769,586 for the period 2021/2022 is lawful, valid, and justified, and be upheld;

    (iii) The Applicant is liable to pay the tax as assessed by the Respondent; and

    (iv) Costs of this Application be awarded to the Respondent.

70. In rejoinder, the Applicant reiterated their main submissions and prayers for the Respondent's assessments to be set aside.

VII. The determination

71. Having considered the parties' pleadings, evidence and submissions, this is the decision of the Tribunal.

72. The dispute, properly characterised, hinges on whether the Respondent was entitled, on the evidence available to it, to treat Shs. 295,898,621 as additional sales of the Applicant for the Financial Year 2021/2022 and, consequently, to assess additional income tax of Shs. 88,769,586. The Applicant declared sales of Shs. 37,923,542,633 for that year. The Respondent reconstructed the Applicant's sales at Shs. 38,219,441,254 by applying a 3% gross profit mark-up to the Applicant's cost of sales. The difference of Shs. 295,898,621 was treated as undeclared income.

73. As rightly submitted by the Respondent, in proceedings before the Tribunal for review of a taxation decision, the Applicant bears the burden of proving that, where the taxation decision is an objection decision in relation to an assessment, the assessment is excessive. Section 28 of the Tax Procedures Code Act likewise places the burden upon the taxpayer in proceedings concerning a tax assessment to prove that the assessment is incorrect. The statutory burden therefore rests upon the Applicant.

74. We emphasise this at the outset because the Applicant does not succeed merely by demonstrating that the Respondent's assessment could have been calculated differently. The Applicant must establish, on the evidence before the Tribunal, that the assessment under challenge is excessive or erroneous. At the same time, the statutory burden upon the Applicant does not relieve the Tribunal of its duty to examine the basis upon which the assessment was made. Nor does it permit an assessment to be sustained merely because the Commissioner made it. The Tribunal must determine whether the Applicant has discharged its statutory burden by considering the evidence as a whole and by asking whether the amount assessed has been established on a legally permissible and sufficiently reliable basis.

75. This distinction is important in the present case. The issue is not whether the

Respondent was entitled to scrutinise the Applicant's declared gross profit margin. It plainly was. Nor is the issue whether the Respondent was, in an appropriate case, entitled to employ an indirect method of determining income. It was. The issue is whether the particular method adopted in this case, namely, applying an historical average mark-up of approximately 3% to the Applicant's cost of sales provided a sufficiently reliable basis for concluding that the Applicant had additional sales of SHS. 295,898,621 in the year under review.

76. We accept that the Respondent is not required in every case to determine taxable income exclusively from the taxpayer's declared figures. Section 56A of the Income Tax Act recognises the use of input-output ratios and other methods of allocating costs and revenue. The Tribunal recognised this in ***PAC SPA Limited v Uganda Revenue Authority, TAT Application No. 27 of 2022***, where the Respondent had resorted to an estimated profit margin after finding deficiencies in the information available to it. The Tribunal did not hold that an estimated margin was impermissible.

77. However, it found that the particular margin adopted by the Respondent lacked a satisfactory factual basis. The Tribunal noted that the evidence concerning the margin was contradictory and that the Respondent had not demonstrated the basis for the percentage used or produced evidence of comparable enterprises to support it. The significance of ***PAC SPA (supra)*** is therefore not that an estimated assessment is unlawful. It is that the methodology used to produce an assessment must itself be supported by evidence.

78. The same consideration arises from ***Gakou Brothers Enterprises Limited v Uganda Revenue Authority, Civil Appeal No. 55 of 2021, [2023] UGCommC 155***. In that case, the High Court upheld the Tribunal's decision sustaining an assessment based upon a mark-up derived from comparable traders. The Court accepted that the Commissioner was entitled to use available information and an estimated mark-up where the taxpayer failed to provide the documentation required to establish its true liability. We therefore reject any suggestion that the use of a mark-up, estimate or reconstruction is, by itself, unlawful.

79. The circumstances in ***Gakou Brothers*** are, however, materially distinguishable from those before us. In that case, the assessment was supported by comparator information and significant deficiencies in the taxpayer's documentation. Here, the Respondent relied principally upon the Applicant's own historical gross profit margins and did not establish independent evidence corresponding to the particular additional turnover of Shs. 295,898,621.

80. The Respondent's reliance upon the Applicant's historical results was not, in itself, unreasonable. A substantial departure from a taxpayer's established trading results may properly cause the Commissioner to question whether the declared results accurately represent the taxpayer's income. The Applicant's declared gross profit mark-up for 2021/2022 was therefore a legitimate audit concern. It was a reason to investigate. It was not, without more, proof of undeclared sales.

81. The Respondent's methodology proceeded from the proposition that the Applicant ought to have achieved a gross profit mark-up of approximately 3% during the Financial Year 2021/2022. The Respondent then applied that percentage to the Applicant's cost of sales and arrived at reconstructed sales of Shs. 38,219,441,254. The resulting difference of Shs. 295,898,621 was treated as additional sales.

82. We have carefully considered that calculation. Mathematically, it demonstrates what the Applicant's sales would have been if the Applicant had achieved the assumed 3% mark-up. It does not, without more, establish that the Applicant actually made those additional sales. That distinction is central to our determination.

83. A historical average is a statistical measure of past results. It is not, without evidence establishing its applicability to the year in question, a statutory rate of return or a compulsory commercial margin. The Respondent did not establish that the Applicant was required by its agreement with VIVO, by the nature of its business, by prevailing market conditions, or by any other objective criterion to earn a 3% gross profit mark-up during FY 2021/2022. Nor did the Respondent establish that 3% was the actual prevailing margin for comparable retail fuel

businesses operating under materially similar commercial arrangements during that year.

84. This is not a finding that the Applicant's declared margin of approximately 2% was necessarily correct. The Tribunal is not required to determine, for the purposes of this application, what the Applicant's ideal or commercially reasonable gross margin ought to have been. The question is narrower: whether the Respondent established that the difference between the Applicant's declared margin and the 3% historical average represented actual additional sales which the Applicant had derived but failed to declare. On the evidence before us, it did not.

85. The Respondent examined the Applicant's financial records, sales and purchase ledgers, audited financial statements and banking information. The Respondent did not identify a particular invoice, receipt, bank deposit, stock movement, customer transaction or other transaction which represented the additional Shs. 295,898,621. We accept that the absence of an identified transaction is not, as a matter of law, fatal to an indirect assessment. There may be circumstances in which the Revenue Authority cannot identify each omitted transaction and must reconstruct income from other reliable evidence.

86. The absence is nevertheless material in this case because the Respondent's assessment was itself generated from the assumed 3% margin. The alleged additional turnover was not independently established; it was the arithmetic consequence of an assumption.

87. We have considered the Respondent's evidence concerning the Applicant's failure to produce a detailed daily stock movement ledger and the complete correspondence from Vivo Energy Uganda Limited showing the prices applicable throughout the relevant period. Those documents were plainly relevant. Their absence permitted the Respondent to question the Applicant's explanation for the reduction in its gross margin. The Tribunal does not disregard that evidential deficiency. The absence of evidence explaining a reduced margin is not the same thing as positive evidence establishing additional sales of a particular amount.

88. The same applies to the evidence relating to supplier discounts. The existence and quantum of supplier discounts may be relevant to the Applicant's cost of purchases and consequently to its gross margin. They do not, without further evidence, establish that the Applicant sold additional quantities of fuel or received additional revenue which was omitted from its accounts. The Respondent did not demonstrate a calculation by which the supplier discounts, independently or cumulatively, produced the additional turnover of Shs. 295,898,621.

89. We have also considered the Applicant's Retail Business Agreement with Vivo Energy Uganda Limited and the pricing information produced in evidence. We do not find that those documents conclusively establish that the Applicant earned a 2% gross margin throughout FY 2021/2022. They do, however, provide a credible commercial explanation for variation in the Applicant's margin, particularly where the Applicant's selling prices and purchase prices were subject to movements under its arrangements with VIVO and in the petroleum market generally. That evidence was sufficient to put the Respondent's assumption of a uniform 3% margin in issue.

90. Once that evidence was considered together with the Applicant's accounting records, the Respondent was required, not because the legal burden had shifted, but because the assessment had to be tested against the evidence before the Tribunal, to demonstrate why the 3% figure remained an appropriate basis for determining the Applicant's actual sales. The Respondent did not do so. It established the historical average. It did not establish the relevance of that average to the Applicant's particular trading conditions in FY 2021/2022.

91. The recent decision of the High Court in ***Uganda Revenue Authority v Kasaba Investments Limited, Civil Appeal No. 86 of 2023, [2026] UGCommC 210***, is instructive on this point. The Court recognised that the ultimate burden under the Tax Appeals Tribunals Act remains upon the taxpayer. It also considered the evidential significance of credible business records and held that the Revenue Authority's additional assessment must have a demonstrable mathematical basis and cannot rest upon an arbitrary figure. We do not read

Kasaba Investments as transferring the legal burden of proof from a taxpayer to the Respondent. Rather, it reinforces the proposition that an assessment must be capable of being explained and supported by the evidence from which it was derived.

92. That principle is particularly important where, as here, a relatively small alteration in a percentage produces a substantial tax liability. The difference between the Applicant's declared margin and the Respondent's assumed 3% margin resulted in additional alleged sales of Shs. 295,898,621 and additional income tax of Shs. 88,769,586. The percentage used therefore materially affected the amount of tax payable. The Respondent was consequently required to establish why 3%, rather than the Applicant's declared margin or another objectively supported percentage, represented the Applicant's actual trading result for the year.

93. We find that the evidence does not establish that proposition. The 3% figure was derived from an arithmetic average of historical results. The evidence does not establish that the historical average was the appropriate margin for the Applicant's particular circumstances in FY 2021/2022. Nor does the evidence establish that the shortfall between the historical average and the Applicant's declared margin represented undeclared sales rather than changes in purchase prices, retail prices, supplier discounts, contractual pricing arrangements, market conditions or other factors affecting gross profitability.

94. The Respondent submitted that the Applicant's failure to produce all the documents requested during the audit justified the assessment. We accept that a taxpayer's failure to produce relevant records may have serious evidential consequences. It does not, however, authorise the Commissioner to select an unsupported percentage and thereby convert the resulting mathematical difference into taxable income. The assessment must still be founded upon a rational method and evidence capable of supporting the amount assessed.

95. We also reject the Applicant's broader proposition that the Respondent could only lawfully assess additional income if it identified a specific omitted sale. That would overstate the law. There are legitimate circumstances in which the

Commissioner may reconstruct a taxpayer's income using indirect evidence, comparable information, input-output ratios or other appropriate methods. The question in every such case is whether the method adopted is sufficiently reliable and whether the resulting assessment is supported by the evidence.

96. The present case therefore turns not upon the existence of the Respondent's power to estimate, but upon the manner in which that power was exercised. The Respondent identified an anomaly. It investigated the anomaly. It considered the Applicant's historical margins. It then assumed that the historical average of approximately 3% represented the Applicant's appropriate gross margin for FY 2021/2022. The evidence stops there. There is no sufficient evidential bridge between the historical average and the conclusion that Shs. 295,898,621 constituted actual undeclared sales.

97. We have also considered the Applicant's submission that the Respondent's methodology was inconsistently applied because the Respondent did not use the same benchmark to reduce the Applicant's income in a year in which the Applicant's declared margin was above the historical average. We do not find that argument decisive.

98. An assessment directed at suspected understatement of income does not necessarily require a corresponding downward adjustment in a year in which the taxpayer's declared result exceeds a benchmark. The absence of such a downward adjustment does not, by itself, make the assessment unlawful.

99. It does, however, reinforce the need to treat the 3% figure for what it was: an audit benchmark derived from historical results, rather than an independently established measure of the Applicant's actual sales for FY 2021/2022. The Tribunal therefore places no weight on the alleged inconsistency beyond that limited purpose.

100. Having considered the evidence as a whole, we find that the Applicant has established that the Respondent's additional turnover of Shs. 295,898,621 was not derived from identified additional transactions but resulted from applying the historical 3% mark-up to the Applicant's cost of sales. The Applicant has further

demonstrated a credible evidential basis for the proposition that its gross margin could have changed during the year as a result of its commercial and pricing circumstances.

101. The Applicant was not required to prove that its explanation was the only possible explanation. It was required to demonstrate that the assessment was excessive or erroneous. On the evidence before us, it has done so.

102. We accordingly find that the Respondent was entitled to investigate the Applicant's reduced gross profit margin and was entitled, in principle, to employ an alternative assessment methodology. However, the particular methodology adopted was not sufficiently supported by evidence to establish that the Applicant had additional sales of Shs. 295,898,621. The resulting additional income tax assessment of Shs. 88,769,586 is therefore excessive and cannot be sustained. The first issue is accordingly resolved in favour of the Applicant.

Remedies

103. Section 20 of the Tax Appeals Tribunals Act empowers the Tribunal, upon reviewing a taxation decision, to affirm or vary the decision under review or to set it aside and either make a decision in substitution for the decision so set aside or remit the matter to the decision maker for reconsideration. The Tribunal is also required to give reasons for its decision, including its findings on material questions of fact and reference to the evidence or other material upon which those findings are based.

104. In the present case, we have found that the particular basis upon which the additional assessment was made has not been established. We do not consider that a remittal would serve any useful purpose. The Respondent has had the opportunity to investigate the Applicant's tax affairs, consider its records, and defend the assessment before this Tribunal. The assessment at issue has not been proved. The appropriate remedy is therefore to set it aside.

105. The Applicant has succeeded in its challenge to the assessment. In the circumstances, and subject to the Tribunal's discretion as to costs, the Applicant

is entitled to costs of the application.

Orders

106. Accordingly, the Tribunal makes the following orders:

(i) The additional income tax assessment of Shs. 88,769,586 issued against the Applicant for the Financial Year 2021/2022 is hereby set aside.

(ii) The Respondent's objection decision is set aside to the extent that it maintains the additional income tax assessment of Shs. 88,769,586.

(iii) Costs of the application are awarded to the Applicant.

It is so ordered.

Dated at Kampala this **28th** day of **August** 2026.

HON. CRYSTAL KABAJWARA
CHAIRPERSON

HON. STELLA NYAPENDI CHOMBO
MEMBER

HON. EDWARD BIRYETEGA
MEMBER