



**THE REPUBLIC OF UGANDA**

**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**

**TAT APPLICATION NO. 239 OF 2022**

**WATOTO CHILDCARE MINISTRIES.....APPLICANT**

**VERSUS**

**UGANDA REVENUE AUTHORITY.....RESPONDENT**

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

**RULING**

**I. Introduction**

1. This ruling is in respect of an application, challenging Administrative Additional Assessments, of Shs. 594,171,271. The assessments were issued by the Respondent, on the ground that the Applicant failed to pay VAT on certain imported services, for the period January 2017 to December 2021.

**II. Background Facts**

2. The Applicant is a not-for-profit entity engaged in religious and charitable activities including worship, education and child welfare in Uganda. The Applicant's activities and projects are funded by grants, gifts, and donations from well-wishers around the world.

3. During the financial period January 2017 to December 2021, the Applicant withheld and remitted WHT, against payments made to certain foreign persons, for the provision of various services, which were consumed by the Applicant in Uganda.
4. In February, 2022, the Respondent carried out a review of the Applicant's VAT declarations, in relation to the above payments. The review established variances between WHT withheld and remitted by the Applicant against foreign payments and VAT on imported services, in respect of the above stated period.
5. On 22<sup>nd</sup> June 2022, as a result of the above review, the Respondent issued an Administrative Additional Assessment against the Applicant, in the sum of Shs. 594,171,271. The Applicant objected to the assessment on various grounds, one of which was that the assessment was based on an erroneous declaration of 15% WHT by the Applicant. An application to amend the WHT returns, for the purpose of rectifying the said erroneous declaration, was rejected by the Respondent.
6. On 21<sup>st</sup> September 2022, the Respondent rendered an objection decision, disallowing the Applicant's objection. Hence this Application.

### **III. Representation and Evidence**

7. At the hearing, the applicant was represented by Ms. Jennifer Mugisha Ruth while the Respondent was represented by Mr. Kennan Aruho, Mr. Derrick Nahumuza and Mr. Sam Kwerit.

### **IV. Issues**

8. At the scheduling conference, the following issues were set down for hearing.
  - (a) Whether the Applicant is liable to pay the VAT assessed?
  - (b) What remedies are available to the parties?
9. The Applicant's sole witness, was its Chief Finance Officer, Mr. Mathias Medgar Muhimbisa. The witness testified that the Applicant is a non-profit making entity engaged in religious and charitable activities including worship, sports, education, child welfare, medical, pastoral and discipleship in Uganda. The witness testified that these activities and other projects are

funded and supported by grants and donations from partners and well-wishers worldwide.

10. The witness testified that in compliance with the law, the Applicant has been filing returns. Pursuant to these filings, the Respondent reviewed the Applicant's WHT declarations on International payments in relation to its VAT declarations and initiated an audit with the aim of establishing why VAT on imported services was not accounted for during the period January 2017 to December 2021.
11. The witness testified that after receipt and perusal of the Respondent's findings, he had doubts about the tax treatment proposed by the Respondent for the reason that he used to pass journal entries in the Applicant's accounting records to recognize notional income and a corresponding notional expenditure for donations, and no expense was actually incurred by the Applicant on account of the recorded notional payments to non-resident persons.
12. The witness testified that he brought this observation to the attention of the Applicant's management board, who appointed Libra Advocates and Consultants, to advise it on the validity of the Respondent's findings and the proposed tax assessment. The witness testified that after the review of the Respondent's findings, Libra Advocates and Consultants, advised that the amounts against which WHT had been declared and paid were not payments subject to tax in Uganda since the payments were made outside Uganda and from foreign donations. The consultant advised that the amounts reported in the financial statements on account of notional payments to non-resident persons, were not payments of income derived from sources in Uganda and that no economic performance had occurred as required by law to create a payable liability. The consultant accordingly advised the Applicant to amend the WHT returns to correct the erroneous declarations made on account of 15% WHT on International payments.
13. The witness testified that the consultant also advised that no VAT on imported services was due since no consideration was paid by the Applicant for the donated services. The witness testified that the Applicant proceeded to apply to the Respondent to amend its WHT returns to correct the 15% WHT erroneously declared by the Applicant, but the Respondent rejected

the Application. The witness stated that the Applicant did not object to the rejection of the application to amend its returns because it believed that the Respondent would make the correct and proper tax adjustments as part of its audit activity as envisaged in the law.

14. The witness testified that following the audit, the Respondent issued an assessment for undeclared VAT on imported services of Shs. 594,171,271 for the period January 2017 to December 2021.
15. The witness testified that the foreign persons, upon whom it relies to solicit for donations, retain part of the donations for operational costs and periodically remit the balance against budgeted costs for specific projects in Uganda. The witness testified further that the said donations do not constitute income of the Applicant until they are transferred to the Applicant by the said foreign persons. The witness testified that the Applicant is required to account for the donations on a gross basis to satisfy the accountability requirements of the persons soliciting the donations. The witness testified that in order to comply with these requirements, it would pass journal entries to recognize the cash amounts received by the Applicant as actual income and the amounts retained by the foreign persons for operational purposes, as notional income and a corresponding notional expenditure.
16. The witness testified that whereas the Applicant declared and paid WHT to the Respondent, the same was paid in error as the amounts reported in the financial statements as payments made to non-resident persons did not represent payments of income derived from sources in Uganda and no economic performance occurred to create a payable liability and since the Applicant did not make any payments for services received from foreign suppliers, no VAT on imported services was due.
17. The Respondent's sole witness was Ms. Teddy Kyaligonza, a manager in the Respondent's Domestic Taxes Department. The witness testified that the Applicant is a private limited liability company dealing in religious, charitable, and other services.
18. The witness testified that the Respondent carried out a return examination of the Applicant's declarations by comparing international payments declared in its WHT returns to VAT on imported services for the period January 2017

to December 2021. The witness testified that following this return examination, the Respondent established that the Applicant had declared international payments of Shs. 5,471,871,691 on which WHT had been duly paid but without a corresponding, VAT declaration or payment.

19. The witness testified that the Applicant had not accounted for VAT on imported services such as consultancy, website design and maintenance, software subscription, and video production services. The witness stated that these services were received by the Applicant and all payments in respect thereof were made for the benefit of the Applicant and in some cases, the services were actually performed in Uganda.
20. The witness testified that on 22<sup>nd</sup> June 2022, it issued the Applicant with assessments for undeclared VAT amounting to Shs. 536,332,315 on imported services as per the return examination.
21. The witness testified that the Applicant objected to the assessment challenging its own declarations. The witness stated that during the objection review, the Respondent established that;
  - (a) The Applicant had correctly accounted for WHT and ought to have paid a corresponding VAT.
  - (b) The services for which the payments were made were for the Applicant's benefit and were not operational expenses of the foreign entities.
  - (c) Payments were made to foreign entities for services made to the Applicant, which were imported services.
  - (d) The Applicant's contracts indicated that some of the services were to be performed in Uganda with invoices being issued to the Applicant in Uganda.
22. The witness testified that accordingly, on 21<sup>st</sup> September 2022, the Respondent issued an objection decision disallowing the Applicant's objection.

#### **V. The Submissions of the Applicant**

23. The Applicant submitted that it is not liable to pay the VAT assessed on imported services.
24. Relying on **Ss. 2, 4(c), 5(1) (c), 16(1), 21(1)** of the **VAT Act** and **Regulation 13(2)** of the **VAT Regulations**, the Applicant submitted that the tax base for

VAT on imported services is the total consideration paid in money or in kind by all persons for that supply. The Applicant submitted that it did not pay any consideration for the services donated to it by foreign persons.

25. The Applicant submitted that it is a not-for-profit religious and charitable organization whose main source of income is donations, gifts and grants which may be in cash or in kind. The Applicant submitted that the services received from the foreign suppliers were in the form of donations and that no consideration was paid or is payable by the Applicant for the same. The Applicant accordingly submitted that no obligation to account for VAT on imported services arises for services donated to the Applicant and for which the Applicant did not pay any money to the foreign supplier of the services.
26. The Applicant cited S. 21 of the VAT Act, Paragraph 13(2) of the VAT Regulations and the decision of the High Court in **Uganda Revenue Authority v. COWI A/S; HCCA No. 34 of 2020**, and submitted that the transactions in the instant case involve the donation of services for no consideration, by various foreign entities to the Applicant and therefore qualify to be categorized as imported services because they were performed by foreign persons outside Uganda and the services are consumed or used in Uganda by the Applicant. The Applicant reiterated its argument that it has no obligation to account for VAT on imported services since no consideration was paid for the said services by the Applicant, as the services were provided to the Applicant as a gift or donation.
27. In response to the argument by the Respondent that the declaration by the Applicant of 15% WHT on payments to its foreign suppliers meant that VAT on imported services should automatically have been accounted for since such payments represent an import of services, the Applicant submitted that the 15% WHT declarations were made in error and that the Respondent denied the Applicant the opportunity to amend its returns so as to correct the error.
28. The Applicant submitted further that the 15% WHT was declared in error because the foreign persons against whom the declarations were made did not derive any income from sources in Uganda to trigger the obligation to withhold tax. The Applicant submitted that the 15% tax which was withheld and remitted to the Respondent over the period under review, was deducted

against notional payments reported in the financial statements for donation/grant accounting purposes and that therefore they should not form the basis for any income tax obligation as per the requirements of the Income Tax Act.

29. The Applicant submitted that for withholding tax on payments to non-resident service providers to apply, a non-resident person must have derived income from sources in Uganda, and the services must be paid for or be payable by a resident person. In support of this argument the Applicant cited S. 17(2)(b) of the Income Tax Act which provides that the gross income of a non-resident person includes only income derived from sources in Uganda.
30. The Applicant submitted that in the instant case, no service fee or management charge was paid by the Applicant to any of the foreign entities either for services performed in Uganda or from income sourced in Uganda as per the schedule of payments shared by the Respondent's audit team admitted in evidence as AEX6. The Applicant submitted that therefore the obligation to withhold tax did not arise over the period under review.
31. In order to prove that no income was derived by the Applicant from sources in Uganda, the Applicant relied on the Respondent's matrix showing the purported payments on which 15% WHT was declared and on which VAT on imported services was assessed marked AE6 in the summary of the journal entries of notional incomes and notional expenses admitted in evidence as exhibit AEX1.
32. In respect of the purported payments set out under exhibit AEX6, the Applicant submitted that the purported payments are notional payments for services performed outside Uganda and the Applicant merely recognized corresponding notional incomes in its financial statements. However no income was derived from sources in Uganda and therefore 15% WHT is not applicable.
33. The Applicant submitted further that the purported payments are merely accounting entries and that no actual payments were made by the Applicant itself to trigger an obligation to WHT and charge VAT on imported services. The Applicant submitted that the accounting treatment for grant income is different from the accounting treatment for contract income. This is because grants are charitable income, whereas contracts give rise to income received

in the context of a business arrangement. The Applicant submitted that from a financial accounting perspective, the two are recognized differently in the accounts.

34. The Applicant submitted that under accrual accounting provided for under S. 40(1) and (2) of the ITA, income is derived by a taxpayer when the income is receivable by the taxpayer and an amount is receivable as income by a taxpayer when the taxpayer becomes entitled to receive it. The Applicant submitted that from a tax law perspective, recognition of an amount as derived, or recognition of an expense as incurred by an accrual basis taxpayer requires that an amount is treated as receivable by a taxpayer when the taxpayer becomes entitled to receive it and an amount is treated as payable by a taxpayer when all the events that determine liability and economic performance have occurred.
35. The Applicant submitted that under the provision cited above, the timing of amounts derived and costs incurred is typically an issue of entitlement to the underlying payment or an obligation to make the underlying payment. The Applicant submitted that a person cannot become entitled to a donation or gift and therefore recognize it as income, until the gift or donation has been received, or control over the rights or other access to the economic benefit has passed to the person and similarly, a person cannot make a payment using money it is not entitled to or money it has not earned.
36. The Applicant submitted that while the ITA requires under Ss. 38, 40 and 117, that a taxpayer's method of accounting should conform to generally accepted accounting principles, transactions must be accounted for and presented in accordance with their substance and not simply their legal form. The Applicant submitted that the substance of any conditions attaching to donations or grants, and the substance of any contractual terms, must be considered when determining the recipient's entitlement to the income.
37. Relying on Ss. 40(2), 40(5) and 40(6) of the ITA, the Applicant submitted that the notional income and notional expenses recognized, and forming part of the financial statements, do not create an entitlement or performance as envisaged for tax purposes.
38. The Applicant submitted that foreign entities that collect donations outside Uganda, from persons outside Uganda, have a claim over the monies

collected and deal with such monies in accordance with the purpose for which they were collected. The Applicant submitted that it only obtains a claim over the donation monies when it receives them on its account in Uganda.

39. The Applicant submitted that no payment was made by the Applicant for the services donated by the foreign entities and the Applicant had no liability in respect of the services received. The Applicant submitted therefore that no economic performance occurred to warrant a tax liability on notional payments recorded in the financial statement. The Applicant submitted further that no service fee or management charge was paid by the Applicant to any of the foreign entities either for services performed or from income sourced in Uganda as per the schedule of payments shared by the Respondent's audit team. The Applicant stated further that the doctrine of substance over form seeks to tax a transaction on the basis of its economic effect rather than its form and that the law specifically directs the Respondent to disregard a transaction which does not have any substantial economic effect.
40. The Applicant submitted that in accordance with the doctrine of substance over form provided for under S. 117 of the ITA, it is clear that irrespective of how the Applicant passed entries in its financial statements for donor accounting purposes, the Respondent should consider whether or not, in actual fact, any payment was made by the Applicant to the foreign entities to determine the tax liability. The Applicant submitted that if the Applicant had done so, it would have arrived at the conclusion that in fact, the Applicant did not make any payment to the foreign entities to create a tax liability. The Applicant concluded its submissions by stating that the obligation to withhold tax did not arise over the period under review and that the 15% tax, was withheld and remitted over the period in question, was done in error and the same is due for refund or offset against other actual tax liabilities.

#### **VI. Submissions of the Respondent.**

41. The Respondent submitted that the Applicant is liable to pay the assessed VAT as a recipient of imported taxable services which were consumed in Uganda.

42. Relying on the provisions of S.4 (c) of the VAT Act, the Respondent submitted that VAT becomes payable where there is a supply of imported but taxable services. The Respondent submitted that for a person to become liable for VAT on imported services the following must be present;
- (a) Proof of a supply of services.
  - (b) Supplied services must qualify as imports.
  - (c) The services must be taxable services.
43. The Respondent relied on the definition of a supply of services provided for under **S.11 (1) (a)** of the VAT Act and on the decision in **Metropolitan Life Limited vs. Commissioner for the South African Revenue Service 232/2007**, where the court stated that services mean anything done or to be done, including the granting assignment, cession or surrender of any right or the making available of any facility or advantage, but excluding a supply of goods, money or any stamp, from or card contemplated in paragraph (c) of the definition of a 'good'.
44. Relying on **S. 1(j)** of the **VAT Act**, the Respondent submitted that 'import' means to bring or cause to be brought into Uganda from a foreign country. The Respondent cited the decisions in **Apollo Hotel Corporation vs. URA HCCA No. 48 of 2022** and **URA vs. COWI A/S HCCA No. 34 of 2020**, where import services was defined as involving a supply of services made by a supplier who is resident or carries on business outside Uganda to a recipient who is a resident of or carries on business in Uganda to the extent that such services are utilized or consumed in Uganda.
45. The Respondent submitted that the services provided must be taxable supplies. The Respondent relied on the definition of a taxable supply provided under **S. 18(1)** of the **VAT Act**.
46. The Respondent submitted further that the services must be consumed in Uganda. In support of this assertion the Respondent cited **Clause 1.12 of The International VAT/GST Guidelines** and the decision in **URA vs. COWI (supra)** where the Court stated that under the destination principle tax revenue belongs to the jurisdiction where consumption takes place and that tax is ultimately levied only on the final consumption that occurs within the taxing jurisdiction.

47. The Respondent submitted on the authority of **S. 5(1) (c)** of the **VAT Act** and **Regulation 13(1)** of the **VAT Regulations**, that VAT on imported services is payable by the person receiving the imported services.
48. The Respondent submitted that the Applicant made WHT declarations clearly stating that payments had been made to foreign persons and went ahead to withhold tax on the said payments and remitted them to the Respondent. The Respondent submitted that the said payments were made to various persons who provided the Applicant with an assortment of services including solicitation for donations, consultancy, fundraising, music and video production, information technology services and software, music lessons, photography, branding, among others.
49. The Respondent submitted that the said payments were made in some instances by the Applicant and in other instances on the Applicant's behalf through deductions from the Applicant's funds.
50. The Respondent submitted that the Applicant's witness AW1, clearly admitted under cross examination that the Applicant received services from suppliers abroad, for instance, the music trainer, who performed the services in Uganda. The Respondent submitted that the Applicant concludes contracts with foreign-service providers, invoices for the said services are sent to the Applicant and payments due to the foreign-service providers are deducted off from funds meant for the Applicant and the Applicant receives sums less the payments, administrative costs and solicitation fees made to the various suppliers on its behalf, in the form of a percentage.
51. The Respondent submitted that the Applicant also recognizes the deducted sums in its books of accounts, under the respective services in respect of which they were deducted. In support of this submission the Respondent relied on sample invoices contained in the Joint trial bundle at pages 381, 387 and 391. The Respondent submitted that the above undertakings constitute services and accordingly, the transactions in question constitute a supply of services.
52. The Respondent submitted that the service providers are based in the United States of America while the Applicant is a Ugandan registered entity carrying on business in Uganda. The Respondent submitted that the Applicant is therefore a Ugandan resident for tax purposes and carried on business in

Uganda. The Respondent submitted further that in respect of solicitation for donations, the various persons who solicited for the donations retained a fee in respect thereof and the said fees attract VAT. The Respondent relied on the decision in **Goal Relief Development Organization v. Uganda Revenue Authority (Civil Appeal No. 50 of 2023/2024)**.

53. The Respondent submitted that it is not in dispute that the services provided by the various persons are not exempt services. The Respondent submitted that the Applicant has neither made a contrary argument nor adduced evidence to the contrary. The Respondent submitted further that it was evident that the said service providers were paid for the services.
54. The Respondent submitted that the services provided to the Applicant such as consultancy, fundraising, music and video production, information technology services and software, music lessons, photography and branding, were all performed in Uganda, for the Applicant. The Respondent submitted that it followed that the services provided by the various suppliers were consumed in Uganda and the Applicant was the recipient of the said services.
55. The Respondent submitted that the contention by the Applicant that it did not directly pay for the services is untenable. The Respondent submitted that the question as to who paid for the services is immaterial. The Respondent submitted that the Applicant entered into contracts with various service providers based overseas as admitted by AW1. The Respondent submitted further that under these contracts the duty to pay fell squarely on the Applicant, who was the actual beneficiary of the services. The Respondent submitted further that the payments were made upon the Applicant's instruction through deductions from funds due to the Applicant. The Respondent submitted that the sums from which the deductions were made were for all intents and purposes for the Applicant. The Applicant was entitled to the same and actually guided on how the funds were to be spent. No deductions could be made without the Applicant's approval. The Respondent submitted that the fact that the Applicant described the deductions as notional expenditure did not imply that there was no payment made by the Applicant. The Respondent submitted that it was trite that a description of a transaction did not change its character. In support of this argument the

Respondent relied on the decision in **The Elma Philanthropies (EA) Ltd vs. URA TAT Application No. 30 of 2019** and **Goal Relief Development Organization v. Uganda Revenue Authority (supra)**.

56. The Respondent submitted that the Applicant neither objected to the decision disallowing their request to amend their WHT returns nor to the WHT liability.
57. The Respondent submitted on the authority of **S. 79(c)** of the **Income Tax Act (ITA)** that fees paid for services constitute income sourced from Uganda when they are *inter alia* paid in respect of services exercised or rendered in Uganda. The Respondent submitted that WHT is therefore payable where a non-resident person earns a fee as a result of rendering services in Uganda.
58. The Respondent submitted that it was not in dispute that the Applicant entered into contracts with persons in the United States of America for the provision of an assortment of services and not only were invoices issued to the Applicant and payment made for the services by the Applicant through the said suppliers but that the services in question were also consumed in Uganda. The Respondent submitted that the Applicant therefore rightfully and properly withheld taxes on the fees paid to the various non-resident suppliers of the said services.
59. The Respondent concluded this issue by submitting that the Applicant has not dispensed its burden of proving that it is not liable to pay the assessed tax.

#### **VI. The Applicant's Submissions in Rejoinder**

60. In rejoinder, the Applicant reiterated its earlier submissions. The Applicant submitted that while it is trite that the taxpayer bears the burden of proving that it is not liable to pay the tax assessed or that the taxation decision should not have been made or that it should have been made differently, it is also trite that once the taxpayer has discharged this burden, the burden shifts to the Respondent to controvert it. The Applicant rejoined that it discharged the above burden and accordingly the burden shifted to the Respondent. In support of this argument the Applicant relied on the decisions in **Kamo Enterprises Limited vs. Kystalline Salt Limited S.C.C.A No. 8 of 2018** and **John Bwiza v. Patrick Yowasi Kadama C.A.C.A No. 35 of 2011**.

61. The Applicant rejoined that contrary to the assertion by the Respondent under paragraph 1.1 of its written submissions, that the Applicant is liable to pay the assessed VAT, as a recipient of imported taxable services from Verdant Capital, no imported services were ever rendered to the Applicant by an entity known as 'Verdant Capital' and no evidence was adduced by the Respondent in support of this assertion. The Applicant stated that Annexure AEX6 of the joint trial bundle, which illustrates the purported payments on which VAT on imported services were assessed, does not list Verdant Capital as a supplier of any service to the Applicant.
62. The Applicant reiterated its submissions that **Ss. 4(c), 5(1) (c) and 16(2)** of the **VAT Act**, read together with the definition of 'import' under **S. 1**, clearly stipulate that VAT, on imported services, is payable by a recipient of a service, where the supplier of services is outside Uganda, and the services are used or consumed in Uganda. The Applicant stated that the VAT Act, does not provide the tax base, on which the VAT on imported services is to be computed. The Applicant stated that **Regulation 13(2)** of the **VAT Regulations, 1996**, stipulates that the value for calculating the amount of tax payable on imported services is the taxable value of the supply determined under **S. 21** of the **VAT Act**. The Applicant submitted that the prescription of a tax base for VAT on imported services by the Minister through Regulations exceeded the power conferred on the Minister by **S. 51** of the **VAT Act** and that accordingly and pursuant to **S. 18(4)** of the **Interpretation Act**, **Regulation 13(2)** was void for being inconsistent with the provisions of the VAT Act. The Applicant stated that subordinate legislation should not impose tax, as it is merely used to put in place mechanisms for the proper and efficient operation of a principal law.
63. The Applicant submitted that the omission by the legislature to define the taxable value for VAT on imported services cannot be cured by the Minister through Regulations as purported under **paragraph 13(2)** of the **VAT Regulations**.
64. The Applicant submitted that to compound the inconsistency created by VAT Regulation 13, the term 'consideration' under **S. 1(d)** of the **VAT Act**, is defined in relation to a supply of goods or services and not in relation to imported services. The Applicant submitted that clearly the above definition

of a `consideration` exists specifically for supplies of goods or services, of which imported services, is not. A supply of imported services, which is charged to tax under **S. 4(c)** of the **VAT Act**, is separate and distinct from a taxable supply, which is charged under **S. 4(a)** of the **VAT Act**. The Applicant submitted that a holistic reading of the above statutory provisions reveals that a prerequisite for VAT on imported services, is that the recipient must have paid a consideration for these services, as the consideration paid by the recipient of imported services constitutes the tax base for the purpose of calculating the VAT payable as set forth in **S. 21(1)** of the **VAT Act**.

65. The Applicant reiterated that, as a Non-Governmental Organization, it relies on cash or in-kind donations. The Applicant reiterated that the services received from its foreign suppliers were in the form of donations and the Applicant did not pay any consideration for them and as a result no VAT liability arose. The Applicant submitted further that since the VAT Act, does not provide a tax base, for the supply of imported services by any person, no tax is due. The Applicant took this argument further by stating that no tax can be imposed unless it is based on the law and the words of a tax law should not be stretched to impose a tax in circumstances where the language of the law does not clearly impose it. In support of this argument the Applicant cited the decision in **Warid Telecom (U) Ltd v. Uganda Revenue Authority, HCComm. Div. CS No. 24 of 2011**.

66. The Applicant rejoined, that the Respondent erroneously submitted under paragraph 1.16 of its written submissions that the Applicant entered into contracts with multiple service providers whom it did not pay directly for the services rendered, but through payments made on its behalf. The Applicant rejoined that it did not enter into contracts with any of the service providers. The Applicant rejoined that a review of the contracts for the services rendered (AEX5) reveals that the Applicant was not a party to the said contracts. As proof that the Applicant was not a party to the contract for the supply of services the Applicant set out the following contracts and the parties involved.

(a) The contract at page 399 of the Joint trial bundle was between Makefield Group Business Advisory & Technology Solutions and Watoto – Global, a separate entity from the Applicant.

- (b) The payments made to Creative Lab Academy at page 425 of the Joint trial bundle were made by Watoto Childcare Ministry Inc, and not the Applicant.
  - (c) The invoice at page 509 of the Joint trial bundle was for the payment of consultancy services between Heritage Philanthropy partners, LLC and Watoto Childcare Ministry, Inc.;
  - (d) The invoice at page 433 of the Joint trial bundle for the `Gift of Love Video Production` was paid by Watoto Childcare Ministries, Inc, and Scratch Creative.
67. The Applicant rejoined that the reliance by the Respondent on the **Goal Relief Development** case (supra) is misleading, as the facts in the case are distinguishable from the present case. The Applicant submitted that the key distinction is that, whereas GOAL Ireland retained a 10% `program delivery fee` from donations due to GOAL Uganda, no such standard fee was retained on any donations of money received by the Applicant. The Applicant submitted that accordingly the Goal Relief case is inapplicable to the present case given that no payments or deductions were made on behalf of, or against transfers to Watoto Uganda.
68. The Applicant rejoined further that under Ss. 82, 83, 84, 85, 86 and 87 of the ITA read together with Ss. 137 and 140 of the ITA, WHT on International payments to non-resident persons is deducted only against the income derived by the non-resident person from sources in Uganda as provided for under S. 17(2)(b) of the ITA. The Applicant submitted that the above showed that WHT is not deducted on imported services.
69. The Applicant rejoined that S. 84 of the ITA imposes tax by Withholding, on payments made by a resident person, to non-resident contractors or professionals deriving income under a Ugandan-source services contract. The Applicant submitted that a Ugandan-source services contract means a contract, other than an employment contract, under which the principal purpose of the contract is the performance of services which give rise to income sourced in Uganda.
70. The Applicant rejoined that for WHT on International payments to apply, the following conditions must be met;
- (a) There must be a non-resident person.

- (b) The non-resident person must have derived income. The determination of whether income has been derived depends on whether the non-resident person accounts for the income on a cash or accruals basis.
  - (c) The income derived by the non-resident must be a dividend, interest, royalty, rent, natural resource payment or a management charge, as defined in the Act; or it must be a payment to a non-resident contractor or professional under a Ugandan-source services contract.
  - (d) The income must be derived by the non-resident person from sources in Uganda.
71. The Applicant rejoined that it had demonstrated with evidence that it did not contract with the non-resident service providers and it did not make any payments to the non-resident persons for services rendered in Uganda and that above all, there was no payment that was made by the Applicant from income sourced in Uganda.
72. The Applicant rejoined that its failure to object to the decision disallowing its request to amend the WHT returns was due to a legitimate expectation that through the audit, the Respondent would issue an amended assessment reflecting the correct amount of tax payable by the Applicant. the Applicant rejoined that it's erroneous payment of WHT on notional payments cannot be used against it because the Commissioner General has a duty to assess the correct tax, with or without an objection by a taxpayer.

## **VII. Determination of the issues**

73. The issues for determination in this application are the following;
- (a) Whether the Applicant is liable to pay the VAT assessed?
  - (b) What remedies are available to the parties?
74. A summary of the Applicant's case, can be found in Exhibit AEX8, which is a letter by the Applicant's lawyers, Libra Advocates & Consultants, to the Respondent. An excerpt from the said letter, at page 540 of the joint trial bundle states as follows;

*"4. Tax base for VAT on imported Services*

*4.1 Our client acknowledges that the transactions involving the supply of services to WCCM Uganda by various entities contracted by WCCM*

*foreign entities, are supplies of services performed by foreign persons outside Uganda, and consumed or used in Uganda. This gives rise to a supply of imported services which is accounted for using the reverse charge mechanism. However, the law prescribes the value for calculating the amount of tax payable as being the taxable value of the supply determined under section 21 of the VAT Act, i.e. the total consideration paid in money or in kind for the supply. As noted in the preceding paragraphs, WCCM Uganda is a not-for-profit organization whose main source of income is donations, gifts and grants which may be in cash or in kind. The services received from foreign suppliers were in the form of donations in kind and no consideration was paid or is payable by WCCM Uganda for the same. The amounts charged in the financials and for which 15% WHT was declared and paid in error, were notional expenditures for purely donation accounting purposes.”*

75. Four distinct arguments, as to why the Applicant is not liable to pay the VAT assessed, arise from the above excerpt and from the Applicant's written submissions.
76. The first is that the VAT Act does not make provision for a tax base upon which VAT on imported services can be computed.
77. The second argument, which is closely related to the first, is that the tax base provided for under **S. 21** of the **VAT Act**, does not apply to imported services.
78. The third argument, is that the services in question were donations in respect of which no consideration was paid by the Applicant.
79. The fourth argument, is that the sums declared in the Applicant's financial statements, in respect of which 15% WHT was withheld and remitted by the Applicant, constituted notional income and corresponding notional expenditures. These amounts were declared for purely donation accounting purposes and were withheld and remitted to the Respondent in error.
80. We will examine, each of these arguments, in turn.
81. The Applicant contends in respect of the first and second arguments, that in the absence of a tax base for the computation of VAT on imported services, no VAT can be computed.
82. It is the Applicant's contention, that the legislature, omitted to provide a tax base for the computation of VAT on imported services. The Applicant argues that the tax base provided for under **S. 21** of the **VAT Act** applies to taxable

supplies only. The Applicant draws a distinction between taxable supplies and the supply of imported services on the basis that they are charged to tax under distinct provisions of the law. Taxable supplies being charged to tax under **S. 4(a)** of the **VAT Act**, while supplies of imported services are charged to tax under **S. 4(c)** of the **VAT Act**.

83. It is the Applicant's case, that having realized this omission, the Minister, acting under the provisions of **S. 51** of the **VAT Act**, purported to provide a tax base for the computation of VAT on imported services, by promulgating the **VAT Regulations, 1996. Paragraph 13(2)** of which provides a tax base for the computation of VAT on imported services.
84. The Applicant contends, that the above omission by the legislature, cannot be cured by the promulgation of subsidiary legislation, as, **S. 51** of the **VAT Act**, only mandates the Minister to make regulations for the better carrying into effect the provisions and purposes of the Act and not to prescribe a tax base or tax rate for which no substantive provision exists in the principal Act. It is the Applicant's further contention that any provision of a statutory instrument which is inconsistent with any provision of the Act, under which the instrument was made, is void to the extent of the inconsistency. The Applicant argued that **Regulation 13** of the **VAT Regulations, 1996**, was therefore void, to the extent of its inconsistency, with the provisions of **S. 51** of the **VAT Act** and **S. 81(4)** of the **Interpretation Act**.
85. In order to resolve this part of the dispute, the tribunal must determine, firstly, whether the contents of **paragraph 13** of the **VAT Regulations, 1996**, are inconsistent with the VAT Act, and secondly, whether the Minister exceeded the powers granted to him under **S. 51** of the **VAT Act**, by making provision in the **VAT Regulations**, for a tax base, on the supply of imported services, without such a tax base, having been provided for, in the VAT Act.
86. The term 'inconsistent' has been defined in **Black's Law Dictionary, Tenth Edition** as follows;

"1. A part of something that is incompatible with another part of the whole thing.

2. A conflict between two things or different parts of one thing."

87. In determining whether **paragraph 13** of the **VAT Regulations**, is incompatible with the **VAT Act**, we must carefully examine the contents of **paragraph 13** of the **VAT Regulations**, in relation to **S. 51** and **S. 4(1) (c)** of the **VAT Act** and **S. 18(4)** of the **Interpretation Act**.
88. Regulation **13** of the **VAT Regulations, 1996**, provides as follows;

**Imported Services**

- (1) A person who receives imported services other than an exempt service shall account for the tax due on the supply, and the taxpayer shall account for that service when performance of the service is completed, or when payment for the service is made, or when the invoice is received from the foreign supplier, whichever is the earliest.
- (2) The value for calculating the amount of tax payable under paragraph (1) shall be the taxable value of the supply determined under section 21 of the VAT Act and the taxable person receiving the services shall apply the tax rate to the taxable value to calculate the tax due and he shall enter both the value and the tax calculated in his Tax Return.
- (3) If a taxable person carries on a business both in and outside Uganda, and there is an internal provision of services from the part outside Uganda to the part in Uganda, then, in relation to those services, the following applies for the purposes of the Value Added Tax Act and these Regulations –
  - (a) That part of the business carried on outside Uganda is treated as if it were carried on by a person (referred to as the “overseas person”) separate from the taxable person;
  - (b) The overseas person is not a taxable person; and
  - (c) The internal provision of services is treated as a supply of services made outside Uganda by the overseas person to the taxable person for reduced consideration.

89. For our purposes, **paragraph 13** of the **VAT Regulations**, can be broken down into the following;
- (a) The value for calculating the amount of tax payable under **paragraph (1)** of the **VAT Regulations**, is the taxable value of the supply as determined under **S. 21** of the **VAT Act**;
  - (b) The taxable person receiving the services shall apply the tax rate to the taxable value to calculate the tax due and he shall enter both the value and the tax calculated in his Tax Return.

90. **S.4** of the **VAT Act** provides as follows;

**Charge of Tax**

91. A tax, to be known as a value added tax, shall be charged in accordance with this Act on-
- (a) Every taxable supply made by a taxable person;
  - (b) Every import of goods other than an exempt import; and
  - (c) The supply of imported services other than an exempt service by any person.

92. It will be seen from the above, that VAT on the supply of imported services, is imposed under **S. 4 (c)** of the **VAT Act**.

93. While **S. 51** of the **VAT Act**, under which the Minister, promulgated the **VAT Regulations**, provides as follows;

94. "51. Regulations

- (a) The Minister may make regulations for better carrying into effect the provisions and purposes of this Act.
- (b) The Minister may, by statutory order, specify the rates of tax payable under this Act, and the order shall cease to have effect unless it is introduced in Parliament within three months from the date of its publication and Parliament approves a resolution confirming that order."

95. It is apparent from an examination of **Regulation 13** of the **VAT Regulations** that it seeks to implement the collection of the tax imposed under **S. 4(c)** of the **VAT Act**. Far from being inconsistent with the provisions of **S. 4(c)** of the

**VAT Act, Regulation 13** complements, **S. 4 (c)**, by providing the basis upon which the tax due on the supply of imported services is to be computed. In this regard, we fail to see any inconsistency, between **Ss. 4(c)** and **51** of the **VAT Act** and **paragraph 13** of the **VAT Regulations**.

96. In respect of the second argument, the Applicant's assertion is that the Minister could not lawfully make provision for a tax base in the VAT Regulations, without such a tax base, having been provided for in the VAT Act.
97. The Applicant relies for this assertion on the provisions of **S. 18(4)** of the **Interpretation Act**.

98. **S. 18(4)** of the **Interpretation Act** provides as follows;

**General provisions relating to statutory instruments**

- (a) Any reference in a statutory instrument to "the Act" shall be construed as a reference to the Act under which the instrument was made.
- (b) Terms and expressions used in a statutory instrument shall have the same meaning as in the Act under which the instrument was made.
- (c) A statutory instrument may at any time be amended by the authority by which it was made or, if that authority has been lawfully replaced by another authority, by that other authority.
- (d) Any provision of a statutory instrument which is inconsistent with any provisions of the Act under which the instrument was made shall be void to the extent of the inconsistency.
- (e) Any act done under or by virtue of or in pursuance of a statutory instrument shall be deemed to be done under or by virtue of or in pursuance of the Act conferring power to make the instrument.
- (f) Every statutory instrument shall be deemed to be made under all powers enabling it, whether or not it purports to be made in exercise of a particular power or particular powers.
- (g) Section 13(2) shall apply on the revocation of a statutory instrument as it applies on the repeal of any Act.

99. Having carefully examined the provisions of **S. 51** of the **VAT Act** and **S. 18(4)** of the **Interpretation Act**, we take the position, that there is no legal requirement for tax bases to be provided for, in the principal legislation. Tax bases and tax rates are mere mechanisms through which principal

legislations are implemented. They are the nuts and bolts through which the collection of taxes are enforced. They can be and are frequently provided for in subsidiary legislations. The example set by the legislature, with respect to **S. 21** of the **VAT Act**, where the tax base for the computation of taxable supplies, was provided for in the principal legislation, does not imply that all tax bases must be provided for in the principal legislation.

100. No powers of the legislature, were infringed by the Minister, as a result of the promulgation of the VAT Regulations. The powers granted to the Minister under **S. 51** of the **VAT Act**, include the power to provide the means necessary for the implementation of the principal legislation.
101. **S. 18(4)** of the **Interpretation Act**, merely seeks to preserve the primacy of the legislature, as the sole body entitled to enact laws. Regulations constitute subsidiary legislation. They cannot override the primary legislation under which they were made. This principle ensures that the Act remains the superior law and prevents subordinate legislation from overriding principal legislation.
102. We accordingly find that the Minister did not exceed the powers granted to him under **S. 51** of the **VAT Act** by making provision for a tax base on the supply of imported services in the **VAT Regulations**. It is immaterial whether the tax base for the computation of a tax is provided for in the principal legislation or in a subsidiary legislation. What is material is that the tax which the Regulation seeks to implement should have been imposed by the principal legislation, under which the Regulation was promulgated.
103. In respect of the third and fourth arguments, the Applicant submitted that it did not pay any consideration for the services donated to it by foreign persons. The Applicant also submitted that for withholding tax on payments to non-resident service providers to apply, a non-resident person must have derived income from sources in Uganda, and the services must have been paid for or be payable by a resident person. In support of this argument the Applicant cited **S. 17(2) (b)** of the **Income Tax Act** which provides that the gross income of a non-resident person includes only income derived from sources in Uganda.
104. It was the Applicant's submission, that the 15% WHT was declared in error because the foreign persons against whom the declarations were made did

not derive any income from sources in Uganda to trigger the obligation to withhold tax and that the payments in question were deducted against notional payments reported in the financial statements for donation/grant accounting purposes. The Applicant submitted that the monies paid in error are due for refund or offset against other actual tax liabilities.

105. What the Applicant means by notional income and notional expenditure can be discerned from the testimony of Mathias Medgar Muhimbisa, AW1.

106. Mr. Muhimbisa stated as follows under re-examination;

*“The Applicant relies on donations and sponsorship to run their activities with Uganda. Once in a while there is a donor who comes and donates towards a project and pays the service provider directly. But because of the need for accountability when this donation is received in Uganda for accounting purposes we gross up by adding back the payment made to the services provider.*

*We have partner organizations abroad who assist us in the solicitation of donations. From time to time there is a service provider identified by the partner office and contracted by the Applicant. The service provider in question is paid for the service from the donation solicited by the partner office. When the partner office remits the amount less the payment for the service and expenses incurred by the partner office in soliciting this donation into the Applicant’s bank account in Uganda, for accounting purposes the Applicant adds back the amount deducted by the partner office for completeness and accountability purposes. The money added back is reflected in our books as notional expense under the respective expense lines. It is notional because money has not gone out of Uganda”.*

107. The Applicant submitted that **S. 84** of the ITA imposes Withholding tax, on payments made by a resident person, to non-resident contractors or professionals deriving income under a Ugandan-source services contract.

108. The Respondent submitted on the authority of **S. 5(1) (c)** of the **VAT Act** and **Regulation 13(1)** of the **VAT Regulations**, that VAT on imported services is payable by the person receiving the imported services.

109. The Respondent submitted that the Applicant made WHT declarations clearly stating that payments had been made to foreign persons and went ahead to withhold tax on the said payments and remitted them to the

Respondent. The Respondent submitted that the said payments were made to various persons who provided the Applicant with an assortment of services including solicitation for donations, consultancy, fundraising, music and video production, information technology services and software, music lessons, photography, branding, among others.

110. The Respondent submitted that the service providers are based in the United States of America while the Applicant is a Ugandan registered entity carrying on business in Uganda. The Respondent submitted that the Applicant is therefore a Ugandan resident for tax purposes and carried on business in Uganda. The Respondent submitted further that in respect of solicitation for donations, the various persons who solicited for the donations retained a fee in respect thereof and the said fees attract VAT. The Respondent relied on the decision in **Goal Relief Development Organization v. Uganda Revenue Authority (Civil Appeal No. 50 of 2023/2024)**.

111. The Respondent submitted that it is not in dispute that the services provided by the various persons are not exempt services. The Respondent submitted that the Applicant has neither made a contrary argument nor adduced evidence to the contrary. The Respondent submitted further that it was evident that the said service providers were paid for the services. The Respondent submitted that the Applicant therefore rightfully and properly withheld taxes on the fees paid to the various non-resident suppliers of the said services.

112. **S.84** of the Income Tax Act provides as follows;

**Tax on payments to non-resident contractors or professionals**

- (1) Subject to this Act, a tax is imposed on every non-resident person deriving income under a Ugandan source services contract.
- (2) The tax payable by a non-resident person under this section is calculated by applying the rate prescribed in Part V of Schedule 4 to this Act to the gross amount of any payment to a non-resident under a Ugandan source services contract.
- (3) Subsection (1) does not apply to a royalty or management charge charged to tax under S. 82.

- (4) In this section, "Ugandan source services contract" means a contract, other than an employment contract, under which-
- (a) The principal purpose of the contract is the performance of services which gives rise to income sourced in Uganda; and
  - (b) Any goods supplied are only incidental to that purpose.

113. For **S. 84** of the Income Tax Act to apply, the following conditions must have been met;

- (a) Income was derived;
- (b) By a non-resident person;
- (c) From a Ugandan source services contract.

114. **Exhibit AEX5**, is a compilation of invoices, in respect of which payments were made by the Applicant to various non-resident service providers. These invoices together with their accompanying payment detail reports, prove, firstly, that the services in question were provided by non-resident persons and secondly that these non-resident persons were duly paid for these services. An examination of these invoices and the accompanying payment detail reports, clearly show from the addresses of each of the service providers, that these service providers were non-resident persons. The accompanying payment detail reports also show that monies were remitted from the Applicant's bank account to the bank accounts of the said non-resident service providers. This is clear proof that the non-resident services providers were paid for their services by the Applicant. It follows therefore that the non-resident persons in question, derived income in respect of the services that they provided to the Applicant. The argument by the Applicant that no consideration was paid for the services provided by these non-resident persons is not borne out by the evidence before us.

115. The question which remains to be answered is whether the payments received by the said non-resident persons were made in respect of Ugandan source services contracts.

116. A Ugandan source services contract has been defined under **S. 84(4)** of the **Income Tax Act**, as a contract, other than an employment contract, under which the principal purpose of the contract is the performance of services which gives rise to income sourced in Uganda.

117. The term *'income sourced in Uganda'* appearing in the definition of a Ugandan source services contract under **S. 84** of the **Income Tax Act** should not be confused with the term *'income derived from sources in Uganda'* appearing under **S. 78** of the **Income Tax Act**. These two terms are distinct and serve different purposes in the Act. The term *'income derived from sources in Uganda'* is a technical term which has been defined under **S. 78** of the Income Tax Act for the purposes of tax imposed under **S. 82** of the **Income Tax Act**.
118. The distinction between these two terms, is apparent from the fact that, **S. 84(3)** makes it clear that **S. 84(1)** does not apply to a royalty or management charge, charged to tax under **S.82**. Further under **S. 78(d)** employment income is included among income derived from sources in Uganda while under **S. 84(4)** an employment contract is expressly excluded from the definition of a Ugandan source services contract.
119. The term *'income sourced in Uganda'* should therefore be given its plain and ordinary meaning.
120. The term *'source'* has been defined in **Oxford Advanced Learner's Dictionary 10<sup>th</sup> edition** as "a place, person or thing that you get something from".
121. Applying the above definition to the facts of our case, the term *'income sourced in Uganda'* refers to income received from Uganda.
122. It is clear that the contracts between the Applicant and the various non-resident service providers do not constitute employment contracts. The principal purpose of the contracts between the Applicant and the non-resident service providers was the performance of services in exchange for payment by the Applicant, a person resident in Uganda. The payment made to the non-resident service providers were made from the income of the Applicant.
123. **S. 57** of the **Income Tax Act** provides that the income of a person includes
- (a) A payment that directly benefits the person; and
  - (b) A payment dealt with as the person directs, which would have been income of the person, if the payment had been made directly to the person.
124. It will be seen from the testimony of Mr. Muhimbisa, that in some cases, some of the Applicant's donors, paid the service providers directly while in

other cases, service providers were identified by the Applicant's partner offices abroad and contracted by the Applicant. These service providers were paid for the said services from the donations solicited by the partner office. The partner office remitted the amount solicited, less the payment for the services and the expenses incurred by the partner office in soliciting for the donation.

125. The payments to the service providers were made from the Applicant's income even though they were paid directly by the donors or by their partner offices. In all cases these were payments which directly benefited the Applicant or were payments which were dealt with as the Applicant directed. These payments constituted income sourced in Uganda.

126. We accordingly find that the non-resident service providers were non-resident persons who had derived income under a Ugandan source services contract. In accordance with **S. 84** of the **Income Tax Act**, the Applicant had properly withheld WHT in respect of these payments and had properly remitted these payments to the Respondent.

127. This Application is accordingly dismissed with costs.

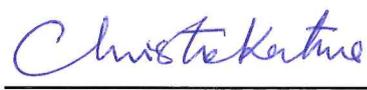
It is so ordered.

Dated at Kampala this **28<sup>th</sup>** day of **November** 2025.



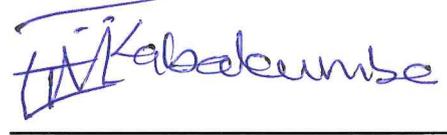
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**MR. SIRAJ ALI**  
**CHAIRPERSON**



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**MS. CHRISTINE KATWE**  
**MEMBER**



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