TAX APPEALS TRIBUNAL

Justice in Taxation

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO. 71 OF 2024

ZHONGHAO OVERSEES CONSTRUCTION ENG. CO. LTD............ APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..RESPONDENT

BEFORE: HON. CRYSTAL KABAJWARA, HON. STELLA NYAPENDI CHOMBO, HON. NASSIMBWA REBECCA NSUMBA

RULING

I. Introduction

1. This ruling is in respect of an application challenging additional tax assessments issued by the Respondent against the Applicant following a review of the Applicant's tax affairs for the period July 2016 to June 2021. The core dispute revolves around the Respondent's disallowance of several expenses and input tax claims, the assessment of undeclared Pay As You Earn for foreign staff, and discrepancies in withholding tax declarations, resulting in the impugned assessments.

2. The Applicant contests the Respondent's findings and the legality of the assessments as upheld in the objection decision and subsequently adjusted under a partial consent settlement.

II. Background facts

3. The Applicant is engaged in organising site processes, project planning and execution of construction projects. The Respondent is charged with the collection and administration of taxes.

4. For the period July 2016 to June 2021, the Applicant filed its tax returns, which were subsequently subjected to a review by the Respondent. The Respondent's review identified various discrepancies, including alleged undeclared staff, unsupported or unauthenticated purchases, unaccounted-for income from a joint venture, expenses claimed from unregistered suppliers, and inconsistencies in withholding tax declarations.

5. On 29 September 2023, the Respondent issued a management letter together with additional tax assessments amounting to Shs.4,749,709,283 encompassing Corporate Income Tax, Value Added Tax, Pay As You Earn, and Withholding Tax. The Applicant objected to these assessments on 7 December 2023 on the ground that the Respondent had failed to properly evaluate the evidence it had provided. On 28 February 2024, the Respondent issued an objection decision disallowing the objection in its entirety.

6. Following the objection decision, the Applicant lodged an application before the Tax Appeals Tribunal seeking a review of the Respondent's decision and paid 30% of the assessed tax, amounting to Shs.1,424,912,784 Thereafter, the parties entered into a partial consent settlement which reduced the assessed liability to Shs.3,183,908,351, leaving outstanding issues in respect of PAYE relating to foreign staff, disallowed expenses under Corporate Income Tax, disallowed input claims under Value Added Tax, and discrepancies in Withholding Tax declarations for determination by the Tribunal.

III. Representation and Evidence

7. Mr. Masaba Raphael Gideon of RG Masaba Advocates appeared for the Applicant while Ms. Twinomugisha Gloria Akatuhurira and Mr. Desire Mulindwa Muwonge, both from the Respondent's Legal Services and Board Affairs Department, appeared for the Respondent.

8. Following the Tribunal's direction, the parties presented their evidence by way of affidavits as below.

The Applicant's affidavit evidence

9. The Applicant's case is supported by the affidavit of **Mr. Wang Nan**, its **Finance Manager**, who stated that the Respondent conducted a tax audit for the period FY 2016 to FY 2021 and raised assessments comprising Corporate Income Tax, Value Added Tax, Pay As You Earn (PAYE), and Withholding Tax.

10. He averred that the Applicant objected to the assessments on the basis that the Respondent failed to properly evaluate the evidence provided during the audit and objection processes. Following a partial consent settlement which reduced part of the assessed liability, the Applicant remained dissatisfied with the residual assessments and lodged the present application.

11. The deponent contended that the residual PAYE assessment was based on incorrect assumptions regarding the tenure and employment status of certain individuals. He further stated that the residual Corporate Income Tax and Value Added Tax assessments arose from the Respondent's disallowance of business expenses and input tax credits, which, according to the Applicant, were supported by contracts, invoices, receipts, ledgers, audited accounts, and other supporting documentation. He also disputed the residual Withholding Tax assessment on the ground that some of the impugned transactions fell below the statutory withholding tax threshold.

12. The Applicant consequently prayed that the Tribunal sets aside or varies the objection decisions and the resulting assessments, awards any applicable refunds together with interest, and grants costs of the application.

The Respondent's affidavit evidence in reply

13. The Respondent's case is supported by the affidavit of Mr. David Kijewa, an officer in the Tax Investigations Department of the Respondent. The deponent maintained that the additional assessments were raised following a review of the Applicant's tax records and available information, and that the Applicant failed to provide sufficient and verifiable evidence to support the disputed deductions, input tax credits and PAYE positions. The

Respondent therefore contends that the assessments and objection decisions were lawfully issued.

14. The Respondent further averred that the residual PAYE liability arose from the Applicant's failure to adequately account for employment income attributed to identified individuals during the audit period. It maintains that the residual Corporate Income Tax assessment resulted from the disallowance of expenses that were either unsupported, unverifiable, non-deductible, or did not meet the statutory requirements for deduction.

15. Similarly, the witness stated that the residual Value Added Tax assessment was sustained because the Applicant did not provide sufficient evidence to support the disputed input tax credits while the residual Withholding Tax assessment arose from transactions that were found to attract withholding tax under the law.

16. The Respondent therefore prayed that the Tribunal uphold the objection decisions and the resulting assessments and dismiss the application with costs.

The Applicant's affidavit in rejoinder

17. In rejoinder, the Applicant reiterated their evidence and contended that the assessments lacked any legal basis and should be vacated. The Applicant therefore maintained that the Respondent's assessments and decisions on objections ought to be set aside.

IV. Submissions of the Applicant

Withholding tax

18. The Applicant submits that the residual assessments are unlawful and ought to be vacated. As a preliminary point, it contends that the Respondent improperly increased the Withholding Tax assessment during mediation without issuing a corresponding assessment in accordance with the law. The Applicant therefore argues that the increase in the Withholding Tax liability lacked a legal basis and should be set aside.

PAYE

19. The Applicant submits that the Respondent assessed tax in respect of individuals who were either not employees of the Applicant during the relevant periods or had ceased employment before the periods assessed. It argues that PAYE can only arise where there is an employment relationship and actual payment of employment income. Consequently, the Applicant maintains that PAYE assessed in respect of Mr. Cai Zuze, Mr. Cai Zuqing and Mr. Zhou Qiyuan was wrongly imposed.

Corporate income tax

20. The Applicant submits that the Respondent wrongly disallowed various business expenses including directors' expenses, travel expenses, embassy fees, NSSF contributions, rental expenses, equipment hire costs, interest expenses and payments to suppliers. It contends that these expenditures were incurred in the production of income and were supported by ledgers, receipts, contracts, loan agreements, audited accounts and other documentary evidence. The Applicant therefore argues that the disallowed expenses qualify as deductible expenses under Section 22 of the Income Tax Act.

21. The Applicant further submits that part of the disputed assessments improperly related to transactions and expenses belonging to a Joint Venture, which it describes as a separate taxable entity. It argues that it cannot be assessed on income or expenses attributable to another legal person and maintains that the Joint Venture independently accounted for the relevant transactions.

22. The Applicant consequently prays that the Tribunal finds that it is not liable for the residual assessments, awards costs in its favour, and grants general damages for the inconvenience allegedly suffered as a result of the Respondent's actions.

V. Submissions of the Respondent

23. The Respondent submitted that the Applicant remained liable for the revised tax assessments arising from the audit covering the period July 2016 to June 2021. It argued that the parties voluntarily entered into a partial consent settlement during mediation, which revised the Applicant's total tax liability from Shs.4,749,709,283 to Shs.3,183,908,351. The Respondent therefore contended that the Applicant was estopped from challenging the legality of the revised assessments after having participated in and executed the settlement.

PAYE

24. The Respondent submitted that the Applicant had failed to discharge its burden of proving that the PAYE assessments were wrongly raised. It argued that its review of the Applicant's records revealed no satisfactory evidence demonstrating the termination of employment of the individuals in issue and that the available work permit and employment records justified the assessment. Relying on the provisions of the Income Tax Act and the decision in ***Infectious Diseases Institute v URA, Civil Appeal No. 006 of 2022,*** the Respondent maintained that the individuals concerned qualified as employees for tax purposes and that the resulting PAYE liability of Shs.275,048,450 was lawfully assessed.

Corporate Income Tax

25. The Respondent submitted that the Applicant failed to substantiate the disputed deductions. It argued that several expenses claimed by the Applicant, including directors' expenses, travel expenses, embassy fees, police fines, NSSF expenses, rental expenses, supplier expenses and interest deductions, were either unsupported, previously disallowed, unverifiable, or did not qualify as allowable deductions under the Income Tax Act. The Respondent further maintained that the review process had already resulted in substantial adjustments in the Applicant's favour, reducing the Corporate Income Tax liability from Shs.2,633,871,289 to Shs.1,715,401,644.

26. The Respondent further submitted that expenses attributed to the Joint Venture were properly considered during the review process. It argued that under the Joint Venture Agreement, liabilities arising from the Joint Venture were borne jointly and severally by the participating entities and that the relevant expenses and adjustments were accordingly reviewed and reconciled. It therefore maintained that the resultant Corporate Income Tax assessment remained lawful.

Value added tax

27. The Respondent submitted that the Applicant failed to establish entitlement to the claimed input tax credits. It argued that several transactions could not be verified because the supporting invoices were either faded, inconsistent with third-party declarations, or lacking adequate verification records. The Respondent maintained that, following review and adjustments, the Applicant's VAT liability was correctly revised from Shs.1,172,885,079 to Shs.791,005,069.

Withholding tax

28. With respect to Withholding Tax, the Respondent submitted that the revised liability of Shs.402,453,188 arose from further analysis of the Applicant's contractor costs and withholding tax obligations. It maintained that the Applicant had not advanced sufficient evidence to challenge the assessment and therefore remained liable for the tax assessed.

29. The Respondent consequently submitted that the Applicant had failed to prove that the taxation decision should not have been made or should have been made differently. It therefore prayed that the Application be dismissed, the revised assessments be upheld, and costs be awarded in its favour.

30. In rejoinder, the Applicant reiterated their main submissions.

VI. The Determination

31. Having read the evidence and the submissions of the parties, this is the ruling of the Tribunal;

32. The dispute before the Tribunal concerns the residual tax liability of Shs.3,183,908,351 that remained outstanding after the parties partially settled the Application through mediation. The Applicant contended that the Respondent improperly maintained portions of the PAYE, Corporate Income Tax, Value Added Tax and Withholding Tax assessments despite the Applicant having furnished supporting documentation during the audit, objection and mediation processes. The Respondent, however, maintained that the residual assessments were properly upheld because the Applicant failed to provide sufficient evidence to support its objections and justify further reductions to the revised liabilities.

The Applicable Law

33. Section 19(a) of the TAT Act provides that 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.

34. Similarly, section 28(a) of the TPCA places the burden on a taxpayer to prove that a tax assessment is excessive or incorrect. The law therefore does not require the Respondent to prove the correctness of the assessments in the first instance. Rather, once an assessment has been issued, the burden shifts to the taxpayer to adduce sufficient evidence demonstrating that the assessment is excessive, erroneous or ought to have been made differently.

Withholding tax analysis

35. The Tribunal has considered the parties' evidence and submissions regarding the residual Withholding Tax assessment of Shs. 402,453,188. The Applicant challenged the assessment on the ground that the Respondent improperly subjected certain transactions to withholding tax and unlawfully increased the withholding tax liability during mediation without issuing a corresponding assessment. The Respondent, on the other hand, maintained that the revised liability arose from a further review of the Applicant's contractor costs and withholding tax obligations and that the

Applicant had failed to provide sufficient evidence to challenge the assessment.

36. The Tribunal has further considered the Partial Consent Settlement Order entered by the parties during mediation. Whereas the Consent Settlement revised the Applicant's Withholding Tax liability from Shs. 324,160,465 to Shs. 402,453,188 and referred the resultant revised outstanding liability to the Tribunal for determination, the same Consent Settlement expressly provided that:

> *"This Consent Settlement Order is specific to the period in issue before the Tax Appeals Tribunal, and the subject matter herein, and shall not apply to any other period or any other assessment not in issue in TAT Application No. 71 of 2024; and shall not constitute a binding precedent for future matters."*

37. The Tribunal further notes that the parties expressly agreed that the Consent Settlement was entered into *without any admission of liability by either party*. The Tribunal therefore cannot treat the revised Withholding Tax liability reflected in the Consent Settlement as a concession by the Applicant that the additional liability was lawfully due and payable. Rather, the effect of the Consent Settlement was merely to identify the residual matters remaining for determination by the Tribunal.

38. In the Tribunal's view, the effect of the foregoing provisions was to confine the Consent Settlement to the assessments already in issue before the Tribunal. By expressly stipulating that the settlement would not apply to any other assessment not in issue in this Application, the parties limited the scope of the settlement to the matters properly before the Tribunal. It follows that any additional tax liability not forming part of the assessments in issue could not properly be introduced or sustained solely through the mediation process.

39. The Tribunal is also mindful of the principles of fairness, certainty and procedural propriety in tax administration. A taxpayer is entitled to know with certainty the tax liabilities under challenge and to have any assessment subjected to the statutory framework governing assessments, objections

and appeals. Procedural fairness demands that where a taxpayer's liability is increased, such increase must arise from an assessment validly issued in accordance with the law and capable of being challenged through the prescribed statutory mechanisms.

40. In the present case, the Respondent did not demonstrate that the increase in the Applicant's Withholding Tax liability from Shs. 324,160,465 to Shs. 402,453,188 arose from a separate assessment issued in accordance with the law and subjected to the objection process. Neither did the Respondent establish that the additional amount formed part of an assessment already in issue before the Tribunal. Considering the express limitations contained in the Partial Consent Settlement Order and the need to uphold fairness and certainty in tax administration, the Tribunal finds that the additional withholding tax demand cannot be sustained.

41. Accordingly, the Tribunal finds that the increase in the Applicant's Withholding Tax liability from Shs. 324,160,465 to Shs. 402,453,188 was not lawfully maintained. The additional Withholding Tax demand of Shs. 78,292,723 is hereby vacated and the Respondent's Withholding Tax assessment reverts to Shs. 324,160,465.

42. Having found that the increase in the Applicant's Withholding Tax liability from **Shs.324,160,465** to **Shs.402,453,188** was not lawfully maintained, the Tribunal now considers whether the Applicant established any basis for the residual Withholding Tax assessment of **Shs.324,160,465**.

43. The Applicant challenged the assessment and relied on Annexure 63 of its trial bundle comprising withholding tax returns filed with the Respondent. The Applicant maintained that the returns demonstrated that withholding tax had been declared and accounted for during the period under review.

44. Upon examination of the said Annexure 63, we acknowledge the filed withholding tax returns identifying suppliers, payments made and withholding tax declared. Important to note is that; the Respondent did not dispute the existence or authenticity of those returns. However, the Applicant ought to have addressed the discrepancies in its returns that were not accounted for, thus creating discrepancies in its returns.

45. The Respondent's evidence showed that the withholding tax computation was derived from costs declared in the Applicant's income tax returns and adjusted to take account of exempt suppliers, imported purchases and the Applicant's declared withholding tax position. The Respondent further stated that the cost of disallowed purchases had been excluded from the computation and that the Applicant failed to furnish proof of payment for certain transactions.

46. The Tribunal notes that the Respondent's assessment was not maintained because the Applicant failed to file withholding tax returns. Rather, the assessment was maintained because the Respondent identified discrepancies between the Applicant's declared purchases and costs and the transactions upon which withholding tax had been accounted for. In particular, the Respondent's case was that the Applicant failed to withhold the applicable 6% withholding tax on certain local supplies giving rise to the residual assessment.

47. The Tribunal finds that the Applicant did not reconcile those discrepancies. While Annexure 63 demonstrates that withholding tax was declared on identified transactions, the Applicant did not provide a reconciliation showing that the purchases and costs relied upon by the Respondent had already been subjected to withholding tax, were exempt from withholding tax or were otherwise incorrectly included in the Respondent's computation. The Applicant therefore failed to address the specific basis upon which the residual assessment was maintained.

48. Accordingly, the Tribunal finds that the Applicant failed to demonstrate that the residual Withholding Tax assessment of **Shs.324,160,465** was excessive or incorrectly raised. The Respondent was therefore justified in maintaining the assessment, and the same is hereby upheld.

<u>Corporate Income Tax</u>

<u>Rental expenses</u>

49. The Applicant submitted that the rental expenses were incurred while carrying on its construction business and were therefore deductible expenses. The Applicant further contended that the Respondent disallowed

the expenses on the ground that the landlords did not possess Tax Identification Numbers (TINs) namely; Fred Nkuutu (TIN 1017172253), Dr. James N. Kamara (TIN 1006509968) and Dr. Kagwa Lawrence (TIN 1024296223). The Applicant relied on Annexures 33, 35 and 42 of its Trial Bundle in support of that contention. The Applicant further contended that the Respondent could verify that information through its own taxpayer registration records. According to the Applicant, however, the requisite TINs were subsequently availed during the objection process, and the Respondent failed to verify or take this information into account before maintaining the assessment. The Applicant maintained that once the TINs were supplied there was no lawful basis for the continued disallowance of the expenses.

50. The Respondent, on the other hand, submitted that the rental expenses were properly disallowed because the landlords' TINs had not been availed and because the expenses had been disallowed in a previous audit and were not part of the subsequent investigation. The Respondent further argued that the expenses were not deductible since they did not constitute expenses incurred in obtaining rental income under section 22(1)(c) of the Income Tax Act.

51. The applicable law is found in section 22 of the Income Tax Act. Section 22(1)(a) provides that:

> *"Subject to this Act, for the purpose of ascertaining the chargeable income of a person for a year of income, there shall be allowed as a deduction all expenditures and losses incurred by the person during the year of income to the extent to which the expenditures or losses were incurred in the production of income included in gross income."*

52. The Act further provides under section 22(3)(l) that:

> *"Except as otherwise provided in this Act, no deduction is allowed for any expenditure above five million shillings in one transaction on goods and services from a supplier who does not have a taxpayer identification number."*

53. The Tribunal notes that the Applicant is not claiming deductions against rental income. Rather, the impugned expenditure relates to rent allegedly

incurred while carrying on the Applicant's construction business. Consequently, the deductibility of the expenditure falls to be determined under section 22(1)(a) of the Income Tax Act, while section 22(3)(l) governs the circumstances under which such expenditure may be disallowed where the supplier lacks a Tax Identification Number.

54. Having found section 22(1)(a) and section 22(3)(l) to be the relevant provisions, the Tribunal turns to the basis upon which the Respondent maintained the disallowance. The Applicant specifically asserted that the landlords' TINs were subsequently provided during the objection process and identified several landlords together with their corresponding TINs. The Applicant further contended that the Respondent could verify that information through its own taxpayer registration records.

55. The Tribunal is satisfied that the Applicant discharged that burden by furnishing the landlords' Tax Identification Numbers and specifically challenging the basis upon which the rental expenses had been disallowed. The evidential burden therefore shifted to the Respondent to demonstrate why the information furnished was insufficient to warrant revision of the assessment.

56. Therefore, we find that where a taxpayer furnishes information intended to cure a defect that formed the basis of an assessment, the Respondent is under a duty to fairly and objectively evaluate that information before maintaining the assessment. The objection process is not intended to be a mere affirmation of prior audit findings. Rather, it is an avenue by which a taxpayer may submit additional evidence to the Commissioner for review and reconsideration of the assessment.

57. Again, the Respondent repeatedly justified the maintenance of the disallowance on the basis that the expenses had previously been disallowed in an earlier audit and were not part of the subsequent investigation. The Tribunal is unable to accept that explanation as sufficient justification for maintaining the assessment. The existence of a prior audit finding does not absolve the Respondent from its obligation to evaluate evidence subsequently presented by a taxpayer during the objection process.

58. Furthermore, section 22(3)(l) does not permanently disallow expenditure merely because a TIN was not initially furnished during an earlier audit. The provision concerns expenditure incurred on goods or services supplied by a person who does not have a Tax Identification Number. Therefore, where a taxpayer subsequently demonstrates that the supplier possessed a valid TIN and provides the requisite particulars, the Respondent must evaluate that evidence and determine whether the statutory basis for the disallowance continues to exist.

59. The Tribunal is not persuaded by the Respondent's contention that the expenses were sustainably disallowed because they were "not part of the investigation." Tax liability must be determined based on the law and the evidence available. Where a taxpayer provides evidence capable of affecting the correctness of an assessment, such evidence ought to be considered on its merits and cannot simply be disregarded because a different audit team dealt with the matter previously. To hold otherwise would undermine the purpose of the objection process and offend the principles of fairness, procedural propriety and sound tax administration.

60. Accordingly, the Tribunal finds that the Respondent relied on an inapplicable statutory provision, failed to properly address the evidence concerning the landlords' TINs, and improperly maintained the disallowance by relying on findings from a previous audit without demonstrating that the information subsequently supplied by the Applicant had been adequately evaluated. Therefore, the rental expenses were wrongly disallowed and the corresponding adjustment to the Applicant's chargeable income cannot be sustained.

61. Accordingly, the Respondent was not justified in disallowing the rental expenses. The adjustment relating to rental expenses amounting to **Shs.185,793,914** is hereby set aside and the corresponding addition to the Applicant's chargeable income is vacated.

<u>Payments to suppliers without TINs</u>

62. The Applicant submitted that the Respondent wrongly disallowed expenses incurred against certain suppliers on the basis that the suppliers lacked Tax

Identification Numbers (TINs). The Applicant contended that the suppliers were identifiable entities whose particulars had been furnished during the objection process and specifically relied on Annexures 33 and 35. The Applicant referred to suppliers including Fair Point Technologies Ltd, EcoSan Club (ESC) Consulting (U) Ltd, Yuan Yuan Ltd, Mugoya Engineering & Construction Ltd, Icon Computers Ltd and Xing Xing Furniture Ltd and argued that, once sufficient information identifying those suppliers had been availed, there was no lawful basis for maintaining the adjustment.

63. According to the Respondent, this expenses amounting to Shs.162,416,000 had been incurred against suppliers without TINs and that the Applicant failed to provide the requisite supplier information during the audit and objection process and thus carried forward from a previous audit and remained unchanged because the suppliers' TINs had not been availed for verification.

64. We have examined Annexures 33 and 35 relied upon by the Applicant, which annexures comprise of schedules identifying suppliers, transaction dates, invoice references, descriptions of goods and services supplied and the corresponding transaction values. The schedules specifically identify several of the suppliers referred to in the Applicant's submissions and link them to transactions and expenditure amounts, which outcome aligns to the fact that the annexures establish that the disputed expenditure was related to identifiable suppliers and so supported by documentary records capable of verification.

65. Annexures 33 and 35 demonstrate more than the mere existence of bookkeeping entries. The schedules disclose supplier names, invoice references, transaction values and descriptions of the underlying supplies. To that extent, the evidence supports the Applicant's contention that the transactions were genuine, traceable and linked to ascertainable suppliers.

66. We further note that the Respondent's reason for maintaining the adjustment was not that the transactions did not occur, but that the suppliers' TINs had not been provided for verification. However, having regard to the

information disclosed in Annexures 33 and 35, the Tribunal finds that the Applicant furnished detailed supplier information and transaction records sufficient to identify the suppliers concerned and the expenditure attributed to them.

67. In rebuttal of the above circumstances, the Tribunal would have expected the Respondent to demonstrate why the information furnished remained insufficient for verification or to establish that the named suppliers were in fact unregistered suppliers. No such evidence was presented before the Tribunal.

68. Accordingly, the Tribunal finds that the Applicant sufficiently substantiated the expenditure incurred in respect of payments made to suppliers without taxpayer identification numbers and demonstrated that the expenditure was incurred in the ordinary course of its business operations. The adjustment relating to these expenses amounting to **Shs.181,053,509** is hereby set aside and the corresponding addition to the Applicant's chargeable income is vacated.

<u>Directors' expenses</u>

69. The Applicant disputed and maintained the adjustments. In paragraph 17 of his Affidavit in Rejoinder, Mr. Wang Nan stated that:

"The Directors' expenses of Shs.264,464,223/= was disallowed as per audit are proper business expenses incurred by the Applicant Company effectively supported by the ledgers demonstrating business expenses incurred by the Applicants management team for the period FY 2017 to FY 2021, and copies receipts for the period FY 2017 to FY 2021 others". (Reference is made to Annexure 29, 30 and 40 of the Applicant Company's Trial Bundle).

70. The Applicant therefore maintained that the impugned expenditure related to accommodation, meals, training and other business expenses incurred by its management team in the execution of construction projects and that the expenditure was supported by the documentation contained in Annexures 29, 30 and 40 of its Trial Bundle.

71. The Tribunal notes that the Respondent's primary justification for disallowing of directors' expenses was that the expenditure had previously been disallowed during an earlier audit and had not formed part of the subsequent investigations.

72. In the Tribunal's view, all these expenses under Corporate Income Tax that were picked from an earlier audit cannot stand without proper verification.

73. The Tribunal is satisfied that the Applicant discharged its evidential burden by specifically identifying the nature of the expenditure and relying on Annexures 29, 30 and 40 of its Trial Bundle as evidence of expenses incurred by its management team during the relevant period. Once such evidence was placed before the Respondent, it was incumbent upon the Respondent to demonstrate why the expenditure remained non-deductible notwithstanding documentation furnished.

74. The Tribunal further observes that the Respondent did not identify any specific entry within the Applicant's documentation demonstrating that the expenditure supported by Annexures 29, 30 and 40 was fictitious, personal in nature or unrelated to the Applicant's construction business. Rather, the adjustment was substantially maintained because it had previously been disallowed during an earlier audit. The Tribunal is unable to accept that reasoning as sufficient justification for maintaining the disallowance.

75. Regarding the separate amount of Shs.60,326,979, the Respondent maintained that the expenditure represents benefits provided to directors and was therefore disallowed. According to our analysis of the evidence on the record, if the Respondent's position is that the expenditure constituted a taxable benefit provided to directors, such treatment would ordinarily imply that the amount is regarded as employment income or a taxable benefit in the hands of the recipient.

76. We are, however, unable to discern from the Respondent's evidence the statutory basis upon which the same expenditure would simultaneously cease to qualify as a deductible expense in the hands of the employer. The mere characterisation of expenditure as a director's benefit does not

automatically render it non-deductible unless there exists an express provision of the law prohibiting its deduction.

77. The Income Tax Act generally seeks symmetry in taxation. Where an amount is treated as taxable employment income or a benefit in the hands of the recipient, the corresponding expense incurred by the employer in the production of business income ordinarily remains deductible unless expressly prohibited by law. We find that the Respondent did not identify any provision of the Income Tax Act barring deduction of the expenditure in question.

78. Accordingly, the Respondent failed to establish a lawful basis for maintaining the disallowance of the directors' expenses. The Tribunal further finds that the Respondent improperly relied on findings from an earlier audit without demonstrating that the evidence contained in Annexures 29, 30 and 40 of the Applicant's Trial Bundle had been fully and objectively evaluated.

79. In the absence of evidence demonstrating that the expenditure was personal, fictitious, non-business in nature or otherwise prohibited by law, the Tribunal finds that the directors' expenses constituted deductible expenditure incurred in the production of the Applicant's income within the meaning of section 22(1)(a) of the Income Tax Act.

Therefore, the Applicant has sufficiently substantiated the directors' expenses and demonstrated that the expenditure was incurred in the ordinary course of its business operations and for purposes connected with the production of income. The Respondent was therefore not justified in maintaining the disallowance of the directors' expenses and the assessment is hereby set aside. <u>Loan interest deductions</u>

80. The Applicant disputed the disallowance of the loan interest deductions and at paragraph 13(p) of Mr. Wang Nan's affidavit in rejoinder he stated as follows;

"The interest deductions of Shs.736,814,086 were disallowed as per the Respondents audit are supported by copies of loan agreements from United Bank

of Africa. This is supported by a copy of Audited Financial Statements for the periods FY 2020 and FY 2021 others. (Reference is made to Annexures 39, 40 and 65 of the Applicant Company's Trial Bundle)."

81. The Applicant therefore maintained that the interest expense arose from genuine borrowing facilities obtained to finance its construction operations and that the expenditure was supported by the documentation contained in Annexures 39, 40 and 65 of its Trial Bundle.

82. Upon examination of the loan documentation relied upon by the Applicant, that is, Annexures 39, 40 and 65, we found that the same reveal that the Applicant obtained several borrowing facilities from United Bank of Africa, including facilities of USD 23,000,000, USD 13,000,000 and USD 13,500,000, carrying interest rates ranging between 9% and 11% per annum. The facility documentation further indicates that the borrowings were intended to support performance guarantees, advance payment guarantees, contract execution and operational cash flow requirements connected to the Applicant's construction business. This document, accordingly, establishes a sufficient nexus between the loans and the Applicant's construction operations.

83. The Tribunal further notes that the Respondent did not dispute the existence of the loan facilities, nor did it identify any specific deficiency in the loan agreements or audited financial statements relied upon by the Applicant. Instead, the adjustment was substantially maintained because it had previously been disallowed during an earlier audit.

84. Having reviewed the evidence before it, the Tribunal finds that the Applicant furnished sufficient documentary evidence demonstrating both the existence of the borrowing arrangements and their connection to its income-generating activities.

85. Accordingly, the Tribunal finds that the Respondent improperly maintained the disallowance of interest deductions amounting to **Shs.738,814,086.** The adjustment is therefore set aside and the corresponding addition to the Applicant's chargeable income is vacated.

Licence costs for tax-exempt truck number plates

86. The Applicant contended that the Respondent wrongly disallowed licence costs amounting to Shs.426,795,133 relating to tax-exempt truck number plates. The Applicant maintained that the expenditure was incurred during its construction business and was supported by payment schedules, receipts and supporting documentation. In support of that contention, the Applicant relied on Annexures 31, 32, 39 and 40 of the Applicant's trial bundle.

87. The Tribunal has examined Annexures 31 and 32 of the Applicant's trial bundle. The documents contain schedules relating to the licensing and bonding of exempt vehicles together with supporting receipts issued to the Applicant. The schedules identify expenditure incurred in relation to processing new number plates for bonded-off units, agency fees, insurance costs, bond renewals and licence fees. The documents further contain receipts issued by GACH Services Limited and payment receipts issued by the Uganda Revenue Authority in the name of Zhonghao Overseas Construction Engineering Company Limited.

88. The Tribunal is satisfied that the documents do not merely consist of accounting entries. Rather, they disclose the nature of the expenditure, the service provider, the amounts paid and the purpose for which the expenditure was incurred. The receipts and payment records corroborate the expenditure reflected in the schedules and demonstrate that the costs relate to the licensing, bonding, and operation of vehicles used in the Applicant's business activities.

89. The Tribunal is of the view that, since these expenses related to motor vehicles which in effect are capital assets, the right treatment should have been to capitalize these expenditures for which wear and tear is computable. This means that, the Respondent was right in disallowing these expenses however, the same ought to have been capitalized and granted wear and tear accordingly.

Equipment and motor vehicle hire costs

90. The parties were not in agreement regarding either the amount of equipment and motor vehicle hire expenses incurred by the Applicant or the extent to which the expenditure had been substantiated. The Applicant maintained that it incurred equipment and motor vehicle hire expenses amounting to **Shs.275,839,469** and relied on invoices, receipts and other supporting documentation contained in Annexures 40 and 48 of its Trial Bundle. The Applicant contended that the expenditure was incurred in the execution of its construction projects and qualified as a deductible expense.

91. The Respondent's position evolved during the review process. In his affidavit, Mr. David Kijwera acknowledged that upon reviewing the documents presented by the Applicant, the Respondent identified equipment and motor vehicle hire expenses amounting to **Shs.70,410,000** for the year 2019/2020 He further stated that expenditure amounting to **Shs.42,170,000** was accepted and allowed, leaving a balance of **Shs.28,240,000** which remained disallowed.

92. The Respondent reiterated the same position in its written submissions, maintaining that after considering the expenditure it considered adequately supported, the residual amount in dispute under item was **Shs.28,240,000**. The Tribunal therefore understands the Respondent's final position to be that the dispute no longer concerned the entirety of the Applicant's claim, but only the residual amount that remained disallowed after the Respondent's review of the supporting documentation.

93. We have examined the Applicant's evidence, including the invoices, receipts and supporting records relied upon in support of the expenditure and noted that the Applicant's evidence demonstrates that the hire expenses related to equipment and motor vehicles utilised in the execution of its construction projects.

94. Having considered the evidence as a whole, the Tribunal is satisfied that the Applicant sufficiently substantiated the impugned equipment and motor vehicle hire expenses and demonstrated that the expenditure was incurred in the ordinary course of its business operations and for purposes

connected with the production of income. The Tribunal is therefore unable to find a sufficient basis for maintaining the residual disallowance preserved by the Respondent.

95. Accordingly, it is our finding that the Respondent was not justified in maintaining the disallowance of the equipment and motor vehicle hire expenses. The adjustment relating to the residual disallowed amount of **Shs.233,669,469** is hereby set aside and the corresponding addition to the Applicant's chargeable income is vacated.

NSSF contributions

96. The Tribunal notes that section 22(3)(h) specifically provides that no deduction is allowed for a contribution or similar payment made to a retirement fund by an employee either for the benefit of the employee or any other person. The wording of the provision is significant. Parliament expressly restricted the prohibition to contributions made by an employee and did not extend it to contributions made by an employer.

97. This interpretation is reinforced by section 19(2)(g) of the Income Tax Act, which excludes from an employee's employment income any contribution made by an employer to a retirement fund for the benefit of the employee or the employee's dependants. The legislative scheme therefore recognises a distinction between employee contributions and employer contributions. Employee contributions are treated as personal savings and are specifically addressed under section 22(3)(h), whereas employer contributions constitute employment-related expenditure and are expressly excluded from the employee's taxable income.

98. The evidence before the Tribunal demonstrates that the amount claimed under this head comprised both employer NSSF contributions and an amount relating to an NSSF audit penalty. The Tribunal finds that these two components attract different tax treatment.

99. Having examined Annexures 40, 50 and 51, the Tribunal is satisfied that the Applicant substantiated the existence of its NSSF obligations and the corresponding contributions made in respect of its employees. The Tribunal therefore finds that the employer contribution component was incurred pursuant to the Applicant's statutory obligations as an employer and forms

part of the ordinary costs of maintaining its workforce and carrying on its business.

100. However, the Tribunal further notes that the total amount claimed under this head included **Shs.8,229,600** relating to a penalty imposed following an NSSF audit. Unlike employer contributions, the penalty did not arise from the Applicant's obligation to contribute to the NSSF scheme but from non-compliance identified during the audit process. The Tribunal finds that this component of the claim is specifically prohibited from deduction under section 22(3)(g) of the Income Tax Act and was therefore properly disallowed by the Respondent.

101. Accordingly, the Tribunal finds that the employer NSSF contributions amounting to **Shs.14,529,286** qualify for deduction. The Respondent's disallowance is therefore vacated to that extent and the corresponding addition to the Applicant's chargeable income is set aside. However, the disallowance relating to the **NSSF audit penalty of Shs.8,229,600** is upheld and shall remain part of the Applicant's chargeable income.

<u>Embassy fees</u>

102. The Applicant objected to the embassy fees upon which we examined Annexure 25 of the Applicant's trial bundle, comprising a schedule of embassy fees together with supporting receipts issued by the Chinese Embassy in Uganda. The documents show that the payments related to visa processing services and identify both the recipient of the payments and the corresponding receipt references. The expenditure was therefore supported by documentary evidence demonstrating that the payments were in fact incurred by the Applicant.

103. The Tribunal further notes that the Applicant was engaged in large-scale construction projects that required the deployment of foreign personnel. Visa-processing expenses are ordinarily incurred to facilitate the lawful entry, presence and deployment of such personnel in the execution of the taxpayer's business activities. The Respondent did not adduce evidence demonstrating that the impugned expenditure was personal in nature, unrelated to the Applicant's business operations or otherwise caught by any

of the statutory prohibitions contained in section 22(3) of the Income Tax Act.

104. In the circumstances, we are satisfied that the embassy fees were sufficiently substantiated and that they bore a direct nexus to the Applicant's business operations. The expenditure therefore qualifies as expenditure incurred in the production of income within the meaning of section 22(1)(a) of the Income Tax Act.

105. The adjustment relating to embassy fees amounting to **Shs.22,736,886** is hereby set aside and the corresponding addition to the Applicant's chargeable income is vacated.

Travelling expenses

106. The evidence contained in Annexures 27 and 28 of the Applicant's trial bundle showed various documentation consisting of travel schedules and supporting records describing various expenditures including air tickets for engineers and employees, facilitation for monitoring construction projects, facilitation for assessment of household connections, project meeting expenses, employee transport costs, accommodation expenses, and vehicle hire charges. The descriptions contained in the schedules consistently associate the expenditure with the Applicant's ongoing construction projects and operational activities.

107. We equally take note of the fact that the Respondent characterised the entire expenditure as non-business travel. However, beyond that characterisation, the Respondent did not identify any specific transactions demonstrating that the travel was private, domestic or unrelated to the Applicant's operations. Nor did the Respondent meaningfully engage with the documentary evidence produced by the Applicant showing that the travel was undertaken in connection with project monitoring, employee deployment, project meetings and other construction-related activities.

108. The record demonstrates that the expenditure was incurred in facilitating the movement of personnel, monitoring construction works, assessing project implementation, attending project meetings and enabling the

execution of the Applicant's contractual obligations. Such activities are integral to the Applicant's construction business and cannot reasonably be regarded as expenditure of a private or domestic nature within the meaning of section 22(3)(a) of the Income Tax Act.

109. Therefore, the Tribunal finds that the Respondent was not justified in maintaining the disallowance of the travel expenses. The adjustment under this head is hereby set aside and the corresponding addition to the Applicant's chargeable income is vacated.

Unverified expenses

110. The record shows that the Respondent disallowed certain expenditure on the ground that it was unverified and raised an assessment to that effect. However, the Applicant disputed the adjustment and relied on Annexures 23 and 24 of its Trial Bundle. Annexure 23 comprises detailed schedules of the impugned expenditure, while Annexure 24 contains the supporting invoices, receipts and payment records relating to the transactions such as; suppliers' schedules, invoice and receipt numbers, descriptions of goods and services supplied, and the corresponding amounts incurred.

111. Further, the evidence above was found to relate to a wide range of operational items including construction materials purchased from hardware suppliers, electrical fittings and accessories, transport and logistics services, accommodation, fuel, water and electricity charges, equipment repairs, freight services, motor vehicle expenses, and supplies used in the execution of the Applicant's projects, transactions involving hardware dealers, electrical suppliers, logistics companies, accommodation providers, freight handlers, the National Water and Sewerage Corporation (NWSC), UMEME-related suppliers, fuel stations, transporters and other vendors supplying materials and services necessary for project implementation.

112. The supporting documents contained in Annexure 24 correspond to those schedule entries and provide the underlying documentary basis for the expenditure.

113. The Tribunal finds that once the Applicant produced schedules identifying the expenditure together with the corresponding receipts, invoices and payment records, the expenditure could no longer properly be characterised as unverified.

114. Accordingly, we find that the Respondent lacked proper justification for disallowing the above expenses since the Applicant had sufficiently substantiated the impugned expenditure and established their connection to its business operations. Consequently, the adjustment relating to the unverified expenses amounting to **Shs.557,332,331** is hereby set aside and the corresponding addition to the Applicant's chargeable income is vacated.

Compensation expenses

115. The Respondent maintained the adjustment relating to compensation expenses as part of the residual Corporation Income Tax assessment.

116. The Applicant disputed the adjustment and relied on Annexures 37 and 38 of its Trial Bundle. Through those annexures, the Applicant sought to demonstrate that compensation payments were made to project-affected persons, institutions and landowners whose crops, land, access routes and proprietary interests were affected by the implementation of the construction projects. The Applicant's position was that the expenditure arose from project implementation requirements and was therefore deductible for income tax purposes.

117. The Tribunal has examined the evidence relied upon by the Applicant and observed that the annexures being relied upon contain compensation assessments, compensation schedules, correspondence from supervising engineers and project consultants, acknowledgements of receipt, agreements relating to land access and easements, and records demonstrating payments made to project-affected persons. The evidence establishes that the payments were in fact made and that they arose during implementation of the projects.

118. The issue for determination, however, is not merely whether the expenditure was incurred, but whether its nature and character render it deductible for

income tax purposes. In determining deductibility, the Tribunal must look beyond the fact of payment and examine the purpose for which the expenditure was incurred.

119. The evidence before the Tribunal demonstrates that the compensation payments related to crop destruction, acquisition of access routes, easements, rights of way, land interests and other proprietary rights affected by the implementation of the projects. Such payments were made to secure access to land, protect project corridors and facilitate development of the infrastructure works. The expenditure was therefore directed towards securing rights and interests connected with the underlying project asset rather than meeting the ordinary recurrent operational costs of the Applicant's business.

120. The Tribunal further notes that compensation of project-affected persons ordinarily forms part of the costs associated with acquisition of project land, easements and proprietary rights and is therefore more properly attributable to the project owner than to the contractor engaged to execute the works. While the Applicant may have incurred and paid the compensation during project implementation, the evidence does not demonstrate that the expenditure constituted ordinary revenue expenditure incurred in the day-to-day conduct of its construction business. This is capital expenditure that is attributable to the project owner and not to the contractor and for that matter is not tax deductible.

121. In our view, the compensation payments possess the character of capital expenditure. They were incurred to secure land-related rights and interests necessary for implementation of the projects and conferred benefits extending beyond the mere execution of routine operational activities. Such expenditure is capital in nature and does not qualify as deductible revenue expenditure.

122. Accordingly, we find that the Respondent was justified in disallowing the compensation expenses of Shs.37,730,000.

Police and security related expenses

123. S.22(3)(g) of the Income Tax Act, provides that no deduction is allowed for any fine or similar penalty paid to any government or political subdivision of a government for breach of any law or subsidiary legislation. The effect of this provision is that expenditure falling within that category is expressly excluded from deductibility irrespective of whether it was incurred during the taxpayer's business operations.

124. The Tribunal has considered the documents contained in Annexure 36 of the Applicant's Trial Bundle together with the parties' respective positions. Even assuming that the expenditure was incurred during the Applicant's business activities, the evidence demonstrates that the payments were penalties imposed by a public authority. Such payments derive from non-compliance with legal requirements and not from activities undertaken to produce income. They therefore fall squarely within the statutory prohibition under section 22(3)(g) of the Income Tax Act.

125. Accordingly, the Respondent was justified in disallowing the police fines. The adjustment relating to police fines amounting to **Shs.8,117,685** is therefore upheld and shall remain part of the Applicant's chargeable income. Consequently, the corresponding addition to the Applicant's chargeable income under this head is maintained.

PAYE

126. The Applicant challenged its assessment on PAYE of Shs.275,048,450 and contended that the assessment was imposed on expatriates who had either ceased employment, had never worked for the Applicant, or had been assessed for periods when they were no longer associated with the company.

127. The Applicant specifically challenged the assessment in respect of **Cai Zuze**, **Cai Zuqing**, and **Zhou Qiyuan**. The Respondent, on the other hand, maintained that its assessment was based on work permits, immigration records, NSSF records and other information obtained during the audit,

which demonstrated that the individuals remained linked to the Applicant during the relevant periods.

128. In respect of **Cai Zuze**, the Applicant submitted that he never worked for the Applicant company and that the Respondent merely relied on the fact that he was a brother to the former Managing Director, Cai Zuqing, to impose PAYE amounting to Shs.26,250,000. The Applicant further contended that it had provided payroll records, PAYE schedules and NSSF records showing that Cai Zuze was not an employee and earned no employment income from the Applicant.

129. In support of its position, the Applicant relied on Annexures 6 and 8. However, upon examination, the Tribunal noted that Annexure 6 is merely a computation schedule showing the PAYE liability attributed to Cai Zuze and does not address his employment status, remuneration or relationship with the Applicant. Likewise, Annexure 8, being a Company Form 20 filed on 6 February 2010, identifies company directors but does not mention Cai Zuze or provide any evidence concerning his employment. The Respondent, however, maintained that Cai Zuze obtained a work permit with the Applicant's knowledge and assistance, and that no evidence was furnished to demonstrate the absence of an employment relationship.

130. In the Tribunal's view, the annexures relied upon by the Applicant do not establish that Cai Zuze was never employed by the Applicant or that the assessment was factually erroneous. They therefore do not sufficiently rebut the Respondent's findings or discharge the burden imposed under sections 19(a) of the Tax Appeals Tribunals Act and 28(a) of the Tax Procedures Code Act.

131. The Applicant further challenged the PAYE assessment relating to **Cai Zuqing**, contending that he only served the company up to November 2017 and therefore could not properly be assessed for the entire period adopted by the Respondent. To support that contention, the Applicant relied principally on Annexures 7 and 10. Annexure 7, a notification of change of directors filed on 21 October 2015, confirms the appointment of Cai Zuqing and Ma Yongqian as directors of the company. Annexure 10 consists of

company registration documents demonstrating subsequent changes in the company's directorship and management structure.

132. The Applicant argued that those documents demonstrated that Cai Zuqing ceased to be associated with the company during the period in dispute. The Respondent, however, maintained that the work permits remained uncancelled and that no satisfactory evidence of termination of employment had been provided. The Tribunal finds that while Annexures 7 and 10 of the Applicant's Trial Bundle establish that Cai Zuqing held a directorship and that changes subsequently occurred in the company's management structure, they do not expressly state the date on which he ceased to be a director, ceased to receive remuneration, or terminated his employment relationship with the Applicant. Nor do they provide evidence of cancellation of work permits, departure from Uganda, or any other independent documentation capable of conclusively establishing cessation of employment. Consequently, the evidence supports the existence of management changes but does not prove that Cai Zuqing was wrongly included in the PAYE assessment.

133. The Applicant challenged the PAYE assessment relating to **Zhou Qiyuan**, maintaining that he only served the Applicant between December 2017 and August 2018 and therefore ought not to have been assessed outside that period. In support of this position, the Applicant relied on Annexures 8 and 9 of its Trial Bundle. Annexure 8, appearing at page 20, identifies **Zhou Qiyuan** as a director of the company. Annexure 9, appearing at pages 21 and 22 and comprising a list of directors and secretaries of a foreign company filed on 7 September 2018 together with a board resolution of the same date, identifies **Ma Yongqian** and **Wang Feifei** as directors. The Applicant relied on these documents to demonstrate the changes in the company's directorship and to support its contention regarding the period during which Zhou Qiyuan served as a director.

134. The Applicant argued that these documents demonstrated that Zhou Qiyuan was no longer part of the company's registered management after September 2018. The Respondent nonetheless maintained that no

satisfactory evidence of termination of employment had been provided and that the available immigration and work permit records continued to link Zhou Qiyuan to the Applicant.

135. The Tribunal accepts that Annexure 9 supports the Applicant's contention that the directorship structure changed by September 2018. However, the document does not expressly indicate the date upon which Zhou Qiyuan ceased to be a director, ceased receiving remuneration, or terminated any employment relationship with the Applicant. As with the evidence relating to Cai Zuqing, the documents relied upon establish corporate changes but do not conclusively establish cessation of employment for PAYE purposes.

136. The objection decisions produced before the Tribunal reveal that the Respondent consistently disallowed the Applicant's objections on the basis that the Applicant failed to provide comprehensive travel histories proving that the expatriates had left Uganda and never returned, failed to provide travel documents supporting its assertions regarding cessation of employment, and failed to demonstrate the actual employment benefits earned by the affected individuals. The Respondent consequently maintained the PAYE assessments.

137. Therefore, we find that these reasons directly addressed the basis upon which the Applicant challenged the assessment. Although the Applicant produced company records showing changes in directorship and management structure, those records principally establish appointment, and corporate governance matters rather than the critical issues of employment status, remuneration, work permit validity, or cessation of employment.

138. The evidence on record does not demonstrate that comprehensive immigration records, travel histories, termination records, cancellation of work permits, or equivalent independent documentation were availed to rebut the Respondent's reliance on immigration and work permit data. Similarly, the Applicant did not adduce sufficient evidence demonstrating the actual employment benefits earned by the affected individuals in a manner capable of displacing the Respondent's findings.

139. Having reviewed the totality of the evidence before it, the Tribunal is not satisfied that the Applicant produced sufficient evidence to displace the Respondent's findings regarding the employment status and remuneration of Cai Zuze, Cai Zuqing and Zhou Qiyuan. Accordingly, the Applicant failed to discharge the burden imposed under sections 19(a) of the Tax Appeals Tribunals Act and 28(a) of the Tax Procedures Code Act of proving that the assessment was excessive or incorrectly maintained.

140. The Tribunal therefore finds no basis for interfering with the Respondent's determination in respect of PAYE and consequently upholds the residual PAYE assessment of Shs.275,048,450.

Value Added Tax

141. VAT was one of the residual tax assessments raised and later revised to Shs.791,005,069 and maintained that the disputed input tax credits were supported by invoices, receipts, delivery notes, ledgers and other accounting records and that the Respondent failed to properly evaluate the material availed to it.

142. The Respondent, on the other hand, maintained that the disputed transactions could not be satisfactorily verified. We take note of the fact that the Applicant relied on section 15 of the Tax Procedures Code Act and contended that the Respondent could not continue to insist upon historical documentation beyond the statutory record-retention framework. Section 15(1)(c) provides that every taxpayer shall: *"retain the record for five years after the end of the tax period to which it relates or other period as specified in the tax law."*

143. The assessments under review related to the tax periods 2016/17, 2017/18, 2018/19, 2019/20 and 2020/21. The Tribunal has considered those periods against the statutory retention period prescribed under section 15(1)(c) of the Tax Procedures Code Act.

144. By the time the Respondent issued the management letter and assessments on 29 September 2023, the tax period 2016/17, which ended on 30 June 2017, had already fallen outside the five-year retention period

prescribed by law. The Tribunal therefore accepts that the Applicant could not reasonably be faulted for failing to produce records relating to that period where Parliament had expressly limited the obligation to retain such records to five years.

145. The position is different in respect of the tax periods 2017/18, 2018/19, 2019/20 and 2020/21. Those periods remained within the statutory record-retention framework for all or a substantial part of the period under review. The Tribunal therefore finds that the Applicant remained under an obligation to maintain and produce records capable of substantiating the disputed input tax claims relating to those periods.

146. The Tribunal further notes that the Respondent's verification findings were not based solely on the passage of time. According to the Respondent, suppliers failed to authenticate certain transactions, proof of payment was unavailable, some invoices were faded and some supplier declarations were inconsistent with the Applicant's claims. The Applicant did not place before the Tribunal sufficient evidence addressing those verification concerns in relation to the tax periods 2017/18, 2018/19, 2019/20 and 2020/21.

147. In the circumstances, the Tribunal finds that the Applicant's reliance on section 15 of the Tax Procedures Code Act only avails it in respect of the tax period 2016/17, which had fallen outside the statutory record-retention period by the time the assessments were raised. The Respondent was therefore not justified in maintaining the VAT assessment attributable to that period.

148. Accordingly, the Tribunal varies the residual Value Added Tax assessment and directs the Respondent to isolate and quantify the VAT liability attributable to the tax period 2016/17 and vacate the same. The balance of the residual VAT assessment attributable to the periods 2017/18, 2018/19, 2019/20 and 2020/21 is upheld and shall remain payable.

Remedies

149. Having found that the Applicant succeeded in part, the Tribunal must determine the appropriate relief to grant in the circumstances of this case.

150. Under section 20 of the Tax Appeals Tribunals Act, the Tribunal is empowered to affirm, amend, vary or set aside a taxation decision under review. Further, section 22(6) of the Tax Appeals Tribunals Act empowers the Tribunal to make orders as to damages, interest or any other appropriate remedy against any party where the circumstances justify such relief.

Orders

1. The Application succeeds in part.
2. The Respondent's objection decisions are varied to the extent set out in this ruling.
3. The Respondent shall recompute the Applicant's final tax liability in accordance with the findings and determinations contained in this ruling.
4. Each party is directed to bear it's own costs.

DATED at Kampala this...10th.....day of.....August.....2026.

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HON. CRYSTAL KABAJWARA
CHAIRPERSON

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HON. STELLA NYAPENDI CHOMBO
MEMBER

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HON. REBECCA NASSIMBWA NSUMBA
MEMBER