TAX APPEALS TRIBUNAL
Justice in Taxation

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO. 215 OF 2025

ZULA ENTERPRISES LTD .....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: HON. STELLA NYAPENDI CHOMBO, HON. CHRISTINE KATWE, HON. AGABA GERALD KAKIMA

RULING

I. Introduction

1. This Application arises from an Objection Decision and a resulting Amended Additional Income Tax Assessment issued by the Respondent against the Applicant on 16 June 2025, in the sum of Shs. 73,474,848, following the recharacterization of allegedly unsupported related-party loans for the tax period of 1 July 2021 to 30 June 2022.

II. Background

2. The Applicant is a private limited company incorporated under the laws of Uganda. The Applicant is primarily engaged in the manufacturing and sale of serviettes and toilet paper, as well as the wholesale and retail of consumer goods, with its business premises located at Shriji Shopping Arcade in Kampala.

3. The genesis of this dispute lies in an Administrative Additional Income Tax Assessment (Reference Number CR012500320035) issued by the Respondent, the Uganda Revenue Authority (URA), on 7 March 2025.

This assessment targeted the tax period of 1 July 2021 to 30 June 2022, demanding a total payment of Shs. 148,474,848. The Respondent's primary basis for this assessment was the recharacterization of allegedly unsupported related-party loans amounting to Shs. 494,916,160 into taxable income, citing Section 91 (now Section 117) of the Income Tax Act.

4. On 20 March 2025, the Applicant formally objected to the assessment on several grounds: first, that it was never consulted to provide supporting documentation prior to the assessment; second, that the related-party loans in question had consistently existed in its books of account since the business's inception; and third, that a specific increment of Shs. 100,000,000 was actually a bank loan obtained by a director on the company's behalf.

5. In response to the objection, the Respondent issued a formal request for documents on 25 March 2025, seeking audited books, bank statements, loan agreements, and a loan ledger. The Applicant complied by providing audited books, company resolutions, and bank statements from Equity Bank and DFCU Bank. However, the Respondent contends that the Applicant failed to provide a loan ledger or sufficient evidence of the director's capacity to lend the claimed sums.

6. Following a review of the submitted documents, the Respondent issued an Objection Decision on 16 June 2025. The Respondent partially allowed the objection, verifying only Shs. 250,000,000 as valid loans, which resulted in a revised and currently disputed tax liability of Shs. 73,474,848.

7. Dissatisfied with this decision, the Applicant moved this Tribunal for review, contending that the amended assessment lacks a legal or factual basis and that the Respondent acted irrationally by recharacterizing transactions that had been consistently disclosed in tax returns from 2011 to 2024 without prior query.

III. Issues

8. The following issues were agreed upon for determination;
    a) Whether the Applicant is liable to pay the tax assessed?
    b) What remedies are available to the parties?

IV. Representation

9. The Applicant was represented by Okenge Denish Maxwell and Martin Kyeswa, while the Respondent was represented by Kenan Aruho from their Legal and Board Affairs Department.

10. The Applicant's case was presented through the testimony of Mr. Kaddu Joel, the Director of the Applicant Company, who adopted his Affidavit in Support of Evidence in Chief as his evidence before the Tribunal.

11. Mr. Kaddu testified that the Applicant is a private limited company engaged in the manufacture and sale of serviettes and toilet paper as well as the wholesale and retail trade in consumer goods.

12. He stated that on 7 March 2025, the Respondent issued an income tax assessment under Reference Number CR012500320035 amounting to Shs. 148,474,848 for the tax period 1 July 2021 to 30 June 2022. He testified that the assessment arose from the Respondent's recharacterisation of a related-party loan reflected in the Applicant's books of account. He relied on the assessment notice which was tendered in evidence as Annexure A.

13. Mr. Kaddu further testified that the Applicant objected to the assessment on 20 March 2025. According to him, the Applicant's objection was founded on three principal grounds. First, that the Applicant had not been afforded an opportunity to provide supporting documentation before the assessment was raised. Secondly, that the related-party loan had existed in the Applicant's books of account for many years and was not a new transaction arising in the year under review. Thirdly, that the increase of Shs. 100,000,000 reflected in the related-party loan account during the

period in dispute originated from a bank loan obtained by him as a director and subsequently advanced to the business. He relied on the objection letter tendered as Annexure B.

14. He testified that following the objection, the Respondent requested supporting documentation relating to the disputed loan through a document request dated 25 March 2025, which was admitted in evidence as Annexure C.

15. Mr. Kaddu stated that in response to that request, the Applicant submitted financial statements together with a related-party loan movement schedule. He testified that those records demonstrated that the related-party loan had been consistently disclosed in the Applicant's books of account over the years and had not been introduced during the tax period under review. He relied on the Applicant's financial statements and related-party loan movement schedule admitted as Annexures D and E, respectively.

16. He further testified that the only movement in the loan account during the year of income under review was an increment of Shs. 100,000,000. According to him, that increment arose from a bank loan obtained by him in his capacity as a director and subsequently advanced to the Applicant. In support of that position, he relied on a company resolution, bank statements and a loan statement admitted in evidence as Annexures F, G and H respectively.

17. Mr. Kaddu testified that although he had been authorised to borrow Shs. 200,000,000, only Shs. 100,000,000 was actually disbursed into his account during the relevant period. He stated that the loan statement and bank records produced before the Tribunal confirmed the amount that was ultimately advanced.

18. He further testified that the Applicant had consistently filed income tax returns from the 2011 year of income up to the 2024 year of income and that those returns had been received and processed by the Respondent. According to him, the related-party loan was disclosed in those returns and

associated financial statements, yet the Respondent had never raised any assessment, query or objection regarding the existence of the loan during those years.

19. Mr. Kaddu stated that on 16 June 2025 the Respondent issued an Objection Decision together with an Amended Additional Assessment. He testified that whereas the objection was partially allowed, the Respondent maintained a disputed tax liability of Shs. 73,474,848. He relied on the Objection Decision and Amended Additional Assessment admitted as Annexures I and J respectively.

20. It was his evidence that the Respondent did not disclose the computation or methodology used in arriving at the amended liability of Shs. 73,474,848. He further testified that no reconciliation meeting or engagement was conducted between the parties prior to the issuance of the Objection Decision.

21. Mr. Kaddu told the Tribunal that the Applicant was dissatisfied with the Objection Decision because, in its view, the assessment lacked both a factual and legal basis. He maintained that the related-party loan represented a genuine liability of the Applicant and not taxable income capable of recharacterisation in the manner adopted by the Respondent.

22. He further testified that the Applicant had accumulated withholding tax credits amounting to Shs. 444,797,301.57, which exceeded the statutory amount required for purposes of challenging the assessment. In support of this assertion, he relied on the withholding tax schedule and income tax ledger admitted as Annexures K and L, respectively.

23. In conclusion, Mr. Kaddu maintained that the Applicant was not liable to pay the disputed tax and prayed that the Tribunal set aside the Amended Additional Assessment in its entirety. He further prayed that the withholding tax credit of Shs. 444,797,301.57 be refunded and that costs of the Application be awarded to the Applicant.

24. The Respondent's case was presented through the testimony of Mr. Arafat Jaffer, an Officer, Service Management, in the Domestic Taxes Department of the Uganda Revenue Authority, who adopted his Affidavit in Support of the Respondent's Taxation Decision as his evidence before the Tribunal.

25. Mr. Jaffer testified that the Respondent is the statutory body charged with the administration and enforcement of Uganda's tax laws, including the conduct of tax audits, reviews and the issuance of additional tax assessments where necessary.

26. He stated that the Applicant is engaged in the manufacture of paper and paper products and operates from Shriji Shopping Arcade, Nakivubo, Kampala.

27. Mr. Jaffer testified that on 7 March 2025, the Respondent issued an Administrative Additional Income Tax Assessment under Reference Number CR012500320035 amounting to Shs. 148,474,848 for the period 1 July 2021 to 30 June 2022. He stated that the assessment arose from the Respondent's recharacterisation of unsupported related-party loans pursuant to Section 91 of the Income Tax Act. In support of this testimony, he relied on the assessment notice admitted in evidence as R-EX1.

28. He further testified that the Applicant subsequently objected to the assessment on 20 March 2025 on the grounds that it had not been consulted prior to the issuance of the assessment, that the related-party loan had existed since the inception of the business, and that the increase of Shs. 100,000,000 in the loan account arose from a bank loan obtained by the Applicant's director. He referred to the relevant documentation contained in the Respondent's trial bundle, including R-EX5.

29. According to Mr. Jaffer, upon receipt of the objection, the Respondent requested the Applicant to furnish supporting documentation relating to the disputed transaction. He relied on the document request dated 25 March 2025, admitted in evidence as R-EX3.

30. Mr. Jaffer testified that the Applicant did not provide a loan ledger despite the Respondent's request for supporting documentation. He stated that the Applicant only submitted audited financial statements together with bank statements from Equity Bank and DFCU Bank.

31. It was his evidence that upon reviewing the documents submitted by the Applicant, the Respondent established that the Applicant's bank records reflected loans amounting to only Shs. 250,000,000. He further testified that the financial card for bank borrowings provided by the Applicant reflected total loans of only Shs. 350,000,000. According to him, the information submitted by the Applicant did not support the loan position reflected in the Applicant's accounts and therefore did not adequately explain the related-party loan balances that had been recharacterised by the Respondent.

32. Mr. Jaffer further testified that the Respondent reviewed the Applicant's grounds of objection together with the supporting documentation that had been provided. Following that review, the Respondent partially allowed the objection and issued an Objection Decision on 16 June 2025, reducing the original assessment and leaving a disputed tax liability of Shs. 73,474,848. He relied on the Objection Decision and amended assessment admitted in evidence as R-EX4.

33. He maintained that the amended assessment was lawful, proper and consistent with the applicable provisions of the tax laws. He testified that the disputed tax constituted a debt due and payable to the Government of Uganda and that the Applicant had failed to demonstrate any basis upon which the assessment should be vacated.

34. Mr. Jaffer further stated that the Applicant had not satisfied the statutory requirement of paying 30% of the tax in dispute before instituting the Application. He also testified that the withholding tax credit of Shs. 444,797,301.57 relied upon by the Applicant was unrelated to the assessment that forms the subject matter of the present proceedings.

35. It was his evidence that the Respondent acted fairly, reasonably and within the confines of the law throughout the assessment and objection processes and that the Applicant's allegations of unfairness and unreasonableness were unfounded.

36. In conclusion, Mr. Jaffer maintained that the amended assessment of Shs. 73,474,848 was valid and enforceable. He prayed that the Tribunal dismisses the Application with costs and upholds the Respondent's assessment in its entirety.

37. In rejoinder, Mr. Kaddu Joel, the Director of the Applicant Company, filed and adopted an Affidavit in Rejoinder in response to the affidavit evidence of Mr. Arafat Jaffer. Mr. Kaddu testified that he admitted the contents of paragraphs 1 to 8 of the Respondent's affidavit. He stated, however, that it was necessary to clarify certain matters arising from the Respondent's interpretation of the documents submitted during the objection process.

38. He testified that the Respondent requested the Applicant to provide audited books of account, loan agreements, bank statements, a loan ledger and board resolutions relating to the financial year 2021/2022. According to him, the Applicant complied with that request by furnishing audited books of account, board resolutions, DFCU Bank statements, Equity Bank statements and a loan statement.

39. Mr. Kaddu disputed the Respondent's assertion that the Applicant had failed to provide sufficient documentation regarding the related-party loan. He maintained that the documents submitted demonstrated that the Applicant's total loan position amounted to Shs. 1,334,256,000, of which Shs. 1,234,256,000 represented shareholder loans while Shs. 100,000,000 arose from a bank loan obtained during the 2021/2022 financial year.

40. It was his evidence that the Respondent confined its review to the Applicant's bank statements and consequently concluded that the Applicant had only proved loans amounting to Shs. 250,000,000. He maintained that such an approach failed to take into account the entirety of the documentary

evidence submitted by the Applicant, particularly the records demonstrating the historical existence of shareholder loans reflected in the Applicant's books of account.

41. Mr. Kaddu further testified that the Respondent treated Shs. 244,916,160 as income earned by the Applicant during the financial year 2021/2022 and consequently issued an Amended Additional Assessment of Shs. 73,474,848. According to him, the Respondent did not disclose the basis, methodology or computation through which it arrived at the impugned income figure.

42. He reiterated that no reconciliation meeting or engagement was held between the parties prior to the issuance of the Objection Decision and maintained that the Applicant was not liable to pay the assessed tax.

43. Mr. Kaddu further testified that, in the Applicant's view, the assessment lacked both a legal and factual foundation because the Respondent had recharacterised a related-party loan as taxable income without sufficient basis.

44. With regard to the issue of withholding tax credits, Mr. Kaddu stated that the Applicant had accumulated withholding tax credits amounting to Shs. 444,797,301.57. He testified that the Respondent had applied part of those credits towards settlement of the disputed tax liability of Shs. 73,474,848. According to him, this demonstrated that the withholding tax credits were directly related to the subject matter of the present proceedings. In support of this assertion, he referred to the income tax ledger previously produced in evidence.

45. He further testified that the Applicant considered the Respondent's decision to recharacterise the related-party loan of Shs. 244,916,160 as income to be irrational and unsupported by the available evidence. He maintained that the Amended Additional Assessment of Shs. 73,474,848 was unlawful and ought to be vacated.

46. In conclusion, Mr. Kaddu reiterated the Applicant's position that the impugned assessment should be set aside in its entirety and that the withholding tax credit of Shs. 444,797,301.57 should be refunded to the Applicant. He accordingly prayed that the Application be allowed.

V. Applicant's submissions

47. The Applicant submitted that the impugned assessment is premised on a fundamental mischaracterization of shareholder loans that have been consistently disclosed to the Respondent for more than a decade. The Applicant stated that its capital structure as at the 2021/2022 year of income stood at Shs. 1,334,256,000, comprising shareholder advances made between 2011 and 2020 by Mr. Kaddu Joel and Mr. Ntege Just, who respectively hold 65% and 35% of the shareholding in the company, together with a bank facility of Shs. 100,000,000 obtained through a director in May 2022.

48. The Applicant contended that these liabilities were neither concealed nor omitted from its records but were consistently reflected in its audited financial statements and annual income tax returns filed with the Respondent from 2011 through to 2024. The Applicant further submitted that throughout this period, the Respondent received, processed, and accepted the Applicant's returns without raising any queries regarding the authenticity, characterization, or tax treatment of the shareholder loans.

49. The Applicant relied on Section 16(4) of the Tax Procedures Code Act, which empowers the Commissioner to require a fuller or further return where he is dissatisfied with the information contained in a taxpayer's return. The Applicant argued that the absence of any such request over several years demonstrates that the Respondent was satisfied with the disclosures made and cannot now, without cogent justification, seek to reclassify transactions that have historically been declared and accepted.

50. Accordingly, the Applicant maintained that the Respondent's current position is inconsistent with its previous treatment of the same transactions and undermines the principles of certainty, consistency, and fairness in tax administration.

51. The Applicant submitted that it fully complied with the Respondent's request for supporting documentation during the audit process. The Applicant stated that following the Respondent's request dated 25 March 2025, it furnished audited books of account, company resolutions, loan statements, and bank statements from Equity Bank and DFCU Bank evidencing the loan transactions.

52. The Applicant argued that despite the provision of these documents, the Respondent restricted its review to selected bank statements and acknowledged only Shs. 250,000,000 as verified loans. The balance of Shs. 244,916,160 was allegedly treated as taxable income without any explanation of the methodology employed or the evidentiary basis upon which the Respondent arrived at that conclusion.

53. The Applicant referred the Tribunal to Section 19 of the Tax Appeals Tribunal Act, Cap 341, which places upon an applicant the burden of proving that an assessment is excessive or incorrect, as well as Section 101(1) of the Evidence Act, Cap 8, which embodies the general principle that he who asserts must prove.

54. The Applicant nevertheless argued that the burden imposed by these provisions is not static. Reliance was placed on the decision of this Tribunal in Noorbrook Uganda Ltd v Uganda Revenue Authority (TAT Application No. 18 of 2018), where it was held that once an applicant adduces evidence supporting its position, the evidential burden shifts to the Respondent to rebut or controvert that evidence.

55. The Applicant therefore submitted that having supplied documentary evidence demonstrating the existence and source of the shareholder loans, it discharged its initial burden of proof. The Applicant contended that the Respondent failed to identify any specific deficiencies, inconsistencies, or inaccuracies in the documents provided and consequently lacked a lawful basis upon which to disregard them. The Applicant maintained that the Respondent's conclusion was arbitrary and unsupported by evidence.

56. The Applicant challenged the Respondent's reliance on Section 117 of the Income Tax Act, Cap 338 (formerly Section 91), contending that the statutory conditions necessary to justify recharacterization were never established.

57. The Applicant submitted that Section 117 authorizes the Commissioner to recharacterize a transaction only where it forms part of a tax avoidance arrangement, lacks substantial economic effect, or where the legal form of the transaction does not reflect its true economic substance.

58. The Applicant argued that the Respondent failed to demonstrate the existence of any tax avoidance scheme, failed to establish that the shareholder loans lacked commercial reality, and failed to show any divergence between the legal form and economic substance of the transactions. According to the Applicant, the loans represented genuine advances made by shareholders to finance the operations of the company and were duly reflected in the Applicant's books of account and financial statements.

59. The Applicant relied on ***Explorer (U) Ltd v Uganda Revenue Authority (TAT Application No. 87 of 2023),*** in which this Tribunal emphasized that although the power to recharacterize transactions is statutorily conferred, it must be exercised judiciously, rationally, and upon a proper evidential foundation.

60. The Applicant therefore submitted that the Respondent's decision to recharacterize transactions that had remained disclosed and unchallenged for over ten years, without demonstrating the existence of any of the statutory grounds under Section 117, amounted to an unreasonable and improper exercise of administrative discretion.

61. The Applicant further submitted that the Respondent failed to establish a fundamental prerequisite for taxation, namely that the disputed sums constituted income within the meaning of the Income Tax Act.

62. The Applicant argued that under Sections 15 and 17 of the Income Tax Act, a tax liability can only arise where income has been earned, derived, or accrued to a taxpayer. Consequently, before subjecting any amount to tax, the Respondent bears an evidential obligation to demonstrate the source and nature of the alleged income.

63. The Applicant again relied on the Tribunal's decision in ***Explorer (U) Ltd v Uganda Revenue Authority***, wherein the Tribunal observed that the Respondent must provide at least a scintilla of evidence demonstrating how the alleged income arose before it can lawfully impose tax on a taxpayer.

64. The Applicant submitted that the Respondent produced no evidence identifying the activities from which the alleged income was generated, no records of sales or services giving rise to the income, and no analysis demonstrating how the disputed sums satisfied the statutory definition of taxable income. In the Applicant's view, the assessment is therefore founded on conjecture rather than evidence and cannot be sustained in law.

65. On the basis of the foregoing submissions, the Applicant prayed that the Tribunal exercise its powers under Section 22(6) of the Tax Appeals Tribunal Act to set aside the impugned assessment in its entirety and declare that the Applicant is not liable for the tax assessed thereunder. The Applicant further prayed for an order directing the Respondent to refund withholding tax credits amounting to Shs. 444,797,301.57, being sums

allegedly in excess of thirty per cent of the tax in dispute. The Applicant also sought an award of the costs of the Application and any other relief that this Honourable Tribunal may deem just and appropriate in the circumstances.

VI. Respondent's submissions

66. The Respondent submitted that the burden of proof in tax disputes rests squarely upon the taxpayer who challenges an assessment. The Respondent argued that once an assessment has been raised, it is incumbent upon the taxpayer to demonstrate that the assessment is excessive, incorrect, or that the tax decision ought to have been made differently.

67. In support of this proposition, the Respondent relied on Section 28 of the Tax Procedures Code Act, Cap 343, Section 19 of the Tax Appeals Tribunal Act, Cap 341, and Section 101 of the Evidence Act, Cap 8, all of which place the burden of proof upon the party asserting a fact.

68. The Respondent further relied on the decision in Williamson Diamonds Ltd v Commissioner General, where it was held that the burden of proving that an assessment is excessive lies upon the taxpayer and cannot be shifted to the revenue authority. The Respondent also cited ***Uganda v Gurindwa and 5 Others (2012)*** for the proposition that whereas the revenue authority bears the burden of proving certain factual matters, the taxpayer bears the ultimate responsibility of establishing that the assessed tax is not due.

69. The Respondent therefore submitted that the Applicant was required to provide satisfactory documentary evidence establishing the existence and legitimacy of the alleged shareholder loans and that failure to do so was fatal to its case.

70. The Respondent submitted that the Applicant's financial statements reflected a loan balance of Shs. 1,334,256,000 as at the year 2022, yet the Applicant failed to provide sufficient documentary evidence to substantiate the existence of the alleged indebtedness.

71. According to the Respondent, specific documents were requested from the Applicant, including loan agreements, loan ledgers, bank statements demonstrating the transfer of funds into the company, and evidence of repayment of the purported loans. The Respondent contended that despite these requests, the Applicant failed to furnish loan agreements or a loan ledger capable of establishing the origin, terms, and existence of the alleged debt.

72. The Respondent argued that in the absence of such evidence, the Commissioner was entitled to conclude that the amounts reflected as loans did not represent genuine liabilities and could properly be treated as taxable income earned by the Applicant.

73. The Respondent relied on Section 117 of the Income Tax Act, Cap 338, which empowers the Commissioner to recharacterize transactions where they lack substantial economic effect or where the legal form of a transaction does not correspond with its economic substance. The Respondent submitted that the impugned assessment was made pursuant to this statutory mandate.

74. The Respondent further relied on East Africa Breweries International Limited v Uganda Revenue Authority (2017), wherein it was held that the Commissioner's exercise of the power of recharacterization cannot be faulted unless it is shown to be illegal, irrational, or procedurally improper.

75. The Respondent also referred to the decision in ***Commissioner of Income Tax v Maduri Rajaiahgari Kistaiah (1979)***, as cited in ***Bullion Refinery Limited v Uganda Revenue Authority***, to support the proposition that where unexplained cash credits appear in a taxpayer's records, the burden rests upon the taxpayer to establish their source because such information lies within the taxpayer's special knowledge.

76. The Respondent maintained that the Applicant failed to discharge its evidential burden and that the Commissioner was justified in treating the unsupported balances as taxable income.

77. The Respondent further submitted that the transactions presented as shareholder loans constituted a mere form that did not reflect their true economic substance.

78. The Respondent argued that no evidence was produced to demonstrate the financial capacity of the directors or shareholders to advance the substantial sums allegedly loaned to the company. It was further contended that the Applicant failed to establish any direct movement of funds from the shareholders to the company or any documentary trail linking the alleged lenders to the purported loan amounts.

79. The Respondent also submitted that there was no evidence demonstrating an intention to repay the funds, which is an essential characteristic of a genuine loan transaction. According to the Respondent, the absence of loan agreements, repayment schedules, security arrangements, or records of repayment undermined the Applicant's assertion that the amounts represented bona fide loans.

80. In support of this position, the Respondent relied on ***Dominion Taxi Cab Association v Minister of National Revenue (1954) and Placer Dome Inc v Canada (1992),*** both of which emphasize that tax liability should be determined by reference to the true legal rights and obligations created by a transaction and its commercial reality rather than its form alone.

81. The Respondent further cited ***Danish Mercantile Co. Ltd v Beaumont and Another (1951)*** for the proposition that a company acts through resolutions and corporate decisions. The Respondent therefore argued that the Applicant ought to have produced board resolutions or minutes authorizing the borrowing of the alleged funds.

82. Reliance was also placed on ***Commissioner Investigations and Enforcement v Kidero (2022)***, where the court emphasized the obligation of taxpayers to maintain proper records in the ordinary course of business capable of substantiating their transactions when called upon to do so.

83. The Respondent consequently maintained that the Applicant failed to demonstrate that the alleged loans possessed the characteristics of genuine debt and that the Commissioner was entitled to look beyond their form and determine their true substance for tax purposes.

84. With regard to the reliefs sought, the Respondent prayed that the Tribunal finds that the impugned assessments were lawfully issued and that the Applicant is liable for the assessed tax.

85. The Respondent further opposed the Applicant's claim for a refund of withholding tax credits amounting to Shs. 444,797,301.57, contending that the issue was not pleaded in the Notice of Application and was therefore improperly raised during the proceedings.

86. The Respondent relied on the decision in ***Interfreight Forwarders Limited v East African Development Bank (1992),*** wherein it was held that parties are bound by their pleadings and that a court may only determine matters that arise from the issues disclosed therein.

87. The Respondent therefore submitted that the prayer for refund falls outside the scope of the present proceedings and ought not to be entertained by the Tribunal.

88. On the issue of costs, the Respondent argued that costs should follow the event and be awarded to the successful party. Reliance was placed on Section 27 of the Civil Procedure Act and the decision in ***Godfrey Katunda v Betty Atuhaire Bwesharire and Another,*** which affirm the discretionary power of a court or tribunal to award costs to a successful litigant.

89. Accordingly, the Respondent prayed that the Application be dismissed with costs.

VII. Applicant submissions in rejoinder

90. In rejoinder, the Applicant submitted that it had discharged the burden imposed under Section 19 of the Tax Appeals Tribunal Act and Section 101 of the Evidence Act by producing documentary evidence demonstrating the existence of shareholder loans and the source of the impugned increment in the related-party loan account.

91. The Applicant argued that whereas the legal burden remained on it throughout the proceedings, the evidential burden shifted to the Respondent once it produced prima facie evidence in support of its case. In support of this proposition, the Applicant relied on ***Uganda Revenue Authority v K-Files Ltd (Civil Appeal No. 28 of 2022)*** and ***Kamo Enterprises Ltd v Krystalline Salt Limited***, which were cited for the principle that an evidential burden may shift where a party adduces credible evidence in support of its assertions.

92. The Applicant further submitted that it had produced sufficient documentary evidence to explain the related-party loan balances reflected in its books of account. It contended that it furnished audited financial statements, a related-party loan movement schedule, board resolutions, bank statements and loan statements demonstrating that its total loan position amounted to Shs. 1,334,256,000, comprising shareholder loans of Shs. 1,234,256,000 and a bank loan of Shs. 100,000,000 obtained during the 2021/2022 financial year.

93. The Applicant argued that the Respondent improperly confined its review to selected bank statements and failed to consider the totality of the documentary evidence submitted during the objection process. It was further submitted that despite maintaining that Shs. 244,916,160 constituted taxable income, the Respondent did not disclose the factual basis, computation or methodology used to arrive at that figure.

94. The Applicant further submitted that the Respondent failed to establish how the impugned amount fell within the statutory definition of gross income under Sections 15 and 17 of the Income Tax Act. It argued that the Respondent merely recharacterised a related-party loan as income without demonstrating the existence of business income, property income or any other taxable receipt recognised under the Act.

95. Reliance was placed on ***Noorbrook (U) Ltd v Uganda Revenue Authority (TAT Application No. 18 of 2018)*** for the proposition that once a taxpayer adduces prima facie evidence in support of its position, the Respondent bears an evidential obligation to rebut that evidence. The Applicant also relied on ***Explorer (U) Ltd v Uganda Revenue Authority (TAT Application No. 87 of 2023)*** and submitted that before recharacterising a loan as taxable income, the Respondent must establish, through evidence, the basis upon which the alleged income arose.

96. The Applicant further argued that the Respondent's reliance on the absence of a formal loan agreement was misplaced. It submitted that the shareholder loans had consistently been disclosed in its books of account and tax returns over several years and that the Respondent had never previously challenged those disclosures. Reference was made to Sections 15 and 16(4) of the Tax Procedures Code Act, with the Applicant contending that if the Respondent required further information regarding the loan balances, it possessed statutory powers to request such information.

97. The Applicant also submitted that the Respondent's decision to recharacterise the related-party loan as income was contrary to the doctrine of substance over form and amounted to an arbitrary exercise of the powers conferred under Section 117 of the Income Tax Act. It argued that shareholder funding is a legitimate means through which companies may finance their operations and that the evidence before the Tribunal did not disclose any tax avoidance arrangement capable of justifying recharacterisation.

98. Regarding record retention, the Applicant relied on the decision in ***Explorer (U) Ltd v Uganda Revenue Authority*** and argued that it would be unreasonable to require a taxpayer to maintain transactional documents relating to shareholder loans dating back many years where the existence of those loans had consistently been reflected in audited financial statements and tax returns.

99. On the issue of costs, the Applicant submitted that should the Application succeed, costs ought to follow the event. Reliance was placed on Section 22(5) of the Tax Appeals Tribunal Act, Section 27(2) of the Civil Procedure Act and the decision in ***Uganda Petroleum Co. Ltd v Kampala City Council (Civil Suit No. 250 of 2005).***

100. In conclusion, the Applicant prayed that the Tribunal allow the Application, set aside the impugned assessment, order the refund of the Applicant's withholding tax credit amounting to Shs. 444,797,301.57 and awards costs to the Applicant.

VIII. Determination

101. We have carefully considered the evidence on record, the submissions of the parties, the authorities cited, and the applicable law to come to our determination.

Issue 1: Whether the Applicant is liable to pay the assessed tax?

102. To resolve this issue, the Tribunal must dissect three distinct legal and evidential battlegrounds: the burden of proof, the statutory limits of the Respondent's power of recharacterization, and the concrete weight of the documentary evidence adduced during trial.

103. The dispute concerns the Respondent's decision to recharacterize part of the Applicant's related-party loan balance as taxable income, resulting in an Amended Additional Income Tax Assessment of Shs. 73,474,848.

104. The Respondent's case is that the Applicant failed to provide loan agreements, a complete loan ledger, and sufficient evidence of the directors' capacity to lend the full amount reflected in the Applicant's books. The Applicant's case is that the sums were genuine shareholder and director advances, consistently disclosed in its audited accounts and tax returns, and that the Respondent had no evidential or legal basis for converting a balance-sheet liability into taxable income.

Burden of Proof

105. Section 19 of the Tax Appeals Tribunals Act places the burden on an applicant to prove that an assessment is excessive or that a taxation decision should not have been made or should have been made differently. Section 28 of the Tax Procedures Code Act similarly places the burden on the taxpayer to prove that a tax assessment is incorrect.

106. We accept the Respondent's submission, founded on ***Williamson Diamonds Ltd v Commissioner General, [2008] 4 TLR 197,*** that the legal burden of proving that an assessment is excessive remains on the taxpayer. That legal burden does not shift.

107. However, the legal burden must be distinguished from the evidential burden. Once a taxpayer adduces credible evidence capable of showing that the assessment is incorrect, the Respondent must engage with and rebut that evidence. This principle was applied in ***Noorbrook Uganda Ltd v Uganda Revenue Authority, TAT Application No. 18 of 2018,*** and is consistent with section 101 of the Evidence Act.

108. The standard of proof applicable in tax proceedings is the balance of probabilities. In Red Concepts v Uganda Revenue Authority, the Tribunal held that where there is doubt, the taxpayer is entitled to the benefit of that doubt. The Applicant was therefore not required to prove beyond reasonable doubt that the disputed balances were loans. It was required to

satisfy the Tribunal, on a balance of probabilities, that the assessment was excessive or incorrect.

109. In the present case, the Applicant placed before the Tribunal audited financial statements, income tax returns, a related-party loan movement schedule, company resolutions, Equity Bank and DFCU Bank statements, WHT schedules, and an income tax ledger. The Applicant's director, Mr. Kaddu Joel, also gave affidavit evidence explaining that the loan balances were long-standing shareholder advances and that the Shs. 100,000,000 increment in the 2021/2022 year was a bank loan personally borrowed for the Applicant's business.

110. That evidence was not perfect. The Applicant did not produce a complete loan ledger or formal loan agreements for the entire historical balance. However, the question is not whether the Applicant produced the Respondent's preferred documents. The question is whether, on the whole evidential record, the Applicant proved that the assessment was excessive or incorrect.

111. We find that the Applicant discharged its initial evidential burden. The Respondent was therefore required to demonstrate, by cogent evidence, why the disclosed liabilities should be treated not as loans but as taxable income.

Proof of Loans

112. The Applicant's evidence had several material components. First, the audited accounts and income tax returns from 2011 to 2024 showed that the disputed loan balances were not newly created in response to the audit. They had been carried in the Applicant's books over a long period.

113. This historical disclosure does not create an estoppel against the Respondent, nor does it prevent the Respondent from auditing the Applicant. However, it is relevant to the Tribunal's assessment of whether

the transactions were concealed, artificial, recently manufactured, or part of a tax avoidance scheme.

114. In ***Kasese Cobalt Company Limited v Uganda Revenue Authority***, the Court emphasized the relevance of long-standing disclosure when evaluating the character of transactions consistently reflected in a taxpayer's records. We adopt that approach only to the extent that prior disclosure is not conclusive proof of correctness, but is a relevant evidential factor in determining whether the Respondent had a proper basis for recharacterization.

115. Secondly, the DFCU Bank statement materially corroborated Mr. Kaddu Joel's testimony regarding the Shs. 100,000,000 increment in the 2021/2022 year. The statement showed a "Disbursement Credit" of Shs. 100,000,000 on 11 May 2022 followed by periodic "Loan Recovery" debits. That pattern is consistent with a real borrowing transaction. The Respondent did not produce evidence showing that the entry was false, circular, fictitious, or unrelated to the Applicant's business.

116. Thirdly, the Equity Bank statements and loan movement schedule showed monetary injections and movements consistent with director or shareholder funding. The Respondent criticized the absence of a complete ledger and formal loan agreements, but it did not demonstrate that the bank entries represented sales, service income, suppressed turnover, or any other income item under sections 17 and 18 of the Income Tax Act.

117. Fourthly, the company resolution authorizing the director to borrow funds is material. It supports the Applicant's position that at least part of the financing arrangement was undertaken with corporate authority. The Respondent's reliance on ***Danish Mercantile Co. Ltd v Beaumont, [1951] Ch 680; [1951] 1 All ER 925*** is therefore not fatal to the Applicant. On the contrary, the existence of the resolution weakens the Respondent's argument that the borrowing was unauthorized or commercially unreal.

118. We are also persuaded by the reasoning in ***Katonga Farms Ltd v Uganda Revenue Authority***, where the Tribunal accepted that indebtedness may be established through the cumulative effect of bank statements, financial records and other contemporaneous accounting documents even where a formal loan agreement is absent. That principle is particularly relevant to closely held companies where shareholder advances may not always bear the formal characteristics of arm's-length commercial bank facilities.

119. Similarly, in ***Explorer (U) Ltd v Uganda Revenue Authority, TAT Application No. 87 of 2023*** the Tribunal held that the existence of a loan may be established from the totality of available evidence and that the Respondent cannot disregard credible evidence merely because additional historical documentation is unavailable.

120. The Applicant's evidence must therefore be assessed cumulatively. The audited accounts, tax returns, bank statements, loan schedules, corporate resolutions and affidavit evidence together provide a coherent explanation for the disputed balances. The Respondent did not prove that those documents were fabricated, manipulated, false, or unreliable.

121. We accept that taxpayers are under a duty to maintain records. Section 15 of the Tax Procedures Code Act requires taxpayers to maintain records sufficient to determine their tax liability. The decision in Commissioner Investigations and Enforcement v Kidero also emphasizes that taxpayers must keep records ordinarily expected in the course of business.

122. However, record-keeping obligations must be applied in a legally proportionate manner. Section 15 of the Tax Procedures Code Act requires records to be retained for five years after the end of the tax period to which they relate, unless proceedings commenced within that period require continued retention.

123. In ***Explorer (U) Ltd v Uganda Revenue Authority (Supra)*** the Tribunal found it unrealistic and unduly onerous for the Respondent to demand transactional documents relating to a loan advanced approximately two

decades earlier, where the statutory record-retention period had long expired. The Tribunal reasoned that tax administration must remain consistent with practical commercial realities and statutory record-retention limits.

124. We respectfully adopt that reasoning. The Respondent was entitled to request supporting documents. However, the absence of every historical document requested by the Respondent does not automatically justify converting a disclosed liability into taxable income.

125. A failure to produce a loan ledger may justify further inquiry. It may, in an appropriate case, justify consequences for failure to maintain proper records. It may also weaken a taxpayer's case. But it is not, without more, proof that the amount recorded as a liability is income.

126. The Tribunal must therefore distinguish between two questions: whether the Applicant's records were as complete as they ideally should have been, and whether the Respondent proved that the disputed balance was taxable income. Those are not the same question.

Recharacterization under Section 117

127. The Respondent relied on section 117 of the Income Tax Act as the basis for recharacterization. That provision empowers the Commissioner General, for purposes of determining liability to tax, to recharacterize a transaction entered into as part of a tax avoidance scheme, disregard a transaction lacking substantial economic effect, or recharacterize a transaction whose form does not reflect its substance.

128. We agree that section 117 confers broad statutory powers on the Commissioner. In ***Downtown Forex Bureau Limited and 2 Others v Uganda Revenue Authority, TAT App No. 4 of 2012*** the Tribunal held that the power is not confined only to conventional tax avoidance schemes and may extend to transactions whose economic effect or substance differs from their legal form.

129. However, the breadth of the power does not make it unbounded. In East African Breweries International Limited v Uganda Revenue Authority, the Tribunal held that the Commissioner's powers of recharacterization must be exercised judiciously and rationally, and that the Tribunal may interfere where the decision is illegal, irrational or procedurally improper.

130. The doctrine of substance over form, relied upon by the Respondent through ***Dominion Taxicab Association v Minister of National Revenue and Placer Dome Inc v Canada, (1954)*** is not a licence to tax by suspicion. It requires the decision-maker to identify the true commercial and practical substance of the transaction. The doctrine does not permit the Commissioner to reject the taxpayer's form without proving the alternative substance.

131. In the present case, the Respondent asserted that the loans were unsupported and therefore lacked substance. With respect, that reasoning is incomplete. To invoke section 117, the Respondent had to demonstrate one of the statutory grounds. It had to show a tax avoidance scheme, lack of substantial economic effect, or a divergence between legal form and economic substance.

132. The Respondent did not identify any tax avoidance arrangement, device, artificial step, circular flow of funds, or improper tax benefit procured by the Applicant. The mere existence of related-party financing does not, without more, constitute tax avoidance.

133. The Respondent also did not establish that the transactions lacked substantial economic effect. The evidence before the Tribunal shows that the Applicant was engaged in manufacturing and trading activities requiring working capital. The DFCU statement showed an actual credit and subsequent loan recovery debits. The audited accounts reflected corresponding liabilities. The company resolution supported the borrowing arrangement. The Respondent did not prove that the entries were circular, fictitious, or economically meaningless.

134. The Respondent further failed to prove that the form of the transactions differed from their substance. If the Respondent's case was that the sums were undeclared sales, it had to point to evidence of sales. If its case was that they were service income, it had to point to services. If its case was that they were trading receipts, it had to connect them to trading activity. It did none of these.

135. In ***Explorer (U) Ltd v Uganda Revenue Authority, App No. 87 of 2023,*** the Tribunal held that although section 117 grants broad powers, there must be at least a scintilla of evidence demonstrating how the alleged income arose. The Tribunal questioned whether there were unexplained deposits, undisclosed trading activities, hidden sources of revenue, or other indicators of taxable receipts. In the absence of such evidence, recharacterization was held to be irrational.

136. We encounter the same difficulty in the present case. The Respondent did not identify the source of the alleged income, the customers from whom it was received, the sales or services from which it arose, or the tax period in which it was earned. It did not establish any evidential nexus between the disputed Shs. 244,916,160 and taxable receipts.

137. The Respondent's assessment therefore rests largely on the proposition that because the Applicant did not produce all requested records, the disputed liability should be treated as income. That proposition is legally unsustainable. Section 117 does not convert incomplete documentation into income. It permits recharacterization only where the statutory conditions are established by evidence.

Taxable Income

138. Sections 15, 17 and 18 of the Income Tax Act are central to the dispute. Section 15 defines chargeable income as gross income less allowable deductions. Section 17 defines gross income as business income, employment income and property income derived during the year. Section

18 defines business income as income derived by a person in carrying on a business.

139. It follows that before an amount can be taxed as income, the Respondent must establish a basis for concluding that it was derived by the taxpayer as income. A balance-sheet liability is not taxable income merely because the Commissioner is dissatisfied with the supporting documentation.

140. The financial card for bank borrowers was the Respondent's strongest documentary evidence. It allegedly showed total loans of Shs. 350,000,000. We have considered it carefully. In our view, it does not prove that shareholder or director advances were income.

141. A financial card for bank borrowers may record bank facilities known or captured for a particular banking or credit purpose. It is not necessarily a complete register of all related-party loans, shareholder advances, director borrowings made on behalf of a company, or informal capital injections into a private company. It may raise questions regarding the extent of formal bank borrowing, but it does not disprove related-party financing or establish taxable income.

142. The Respondent also relied on the absence of proof of the directors' financial capacity. That was a legitimate audit concern. However, lack of complete proof of capacity does not answer the statutory question whether the disputed amount was income derived by the Applicant. The Respondent produced no evidence of unrecorded sales, suppressed production, undeclared service income, unexplained customer receipts, or any income-generating transaction corresponding to Shs. 244,916,160.

143. We also consider the accounting treatment relevant. In ***Mukwano Enterprises v Uganda Revenue Authority***, the Tribunal accepted that International Financial Reporting Standards may be used where they are consistent with the Income Tax Act. Loans are ordinarily recognized as liabilities in the financial statements of a borrower. The continued treatment

of the disputed balances as liabilities in the Applicant's audited financial statements is therefore a relevant evidential consideration.

144. The Respondent did not adduce evidence showing that the accounting treatment was false, inconsistent with accepted accounting principles, or inconsistent with the Applicant's tax returns. In the absence of such evidence, the Tribunal cannot disregard the audited financial statements merely because the Respondent preferred additional records.

145. We therefore find that the Respondent failed to establish that the disputed Shs. 244,916,160 constituted income within the meaning of sections 15, 17 and 18 of the Income Tax Act.

146. Considering the evidence as a whole, we find that the Applicant proved, on a balance of probabilities, that the disputed assessment was excessive and incorrect. We also find that the Respondent failed to establish the statutory prerequisites for recharacterization under section 117 of the Income Tax Act.

147. Accordingly, Issue One is answered in the negative. The Applicant is not liable to pay the assessed tax of Shs. 73,474,848.

What remedies are available to the parties?

Vacation of Assessment

148. Having found that the recharacterization was unsupported by evidence and that the resulting assessment was excessive and incorrect, the proper order is to set aside the Amended Additional Income Tax Assessment of Shs. 73,474,848.

149. Under section 20 of the Tax Appeals Tribunals Act, this Tribunal has power to affirm, vary, or set aside a taxation decision and either substitute its own decision or remit the matter to the decision-maker. In the present case, the evidence is sufficient for the Tribunal to finally determine the matter.

150. The Respondent's Objection Decision dated 16 June 2025 is therefore set aside to the extent that it upheld the recharacterization of the disputed related-party loans as taxable income.

WHT Credits

151. The Applicant also prayed for a refund of withholding tax credits amounting to Shs. 444,797,301.57. The Respondent objected on the ground that the refund claim was not pleaded in the Notice of Application.

152. We agree with the Respondent on this point. Parties are bound by their pleadings. In ***Interfreight Forwarders Limited v East African Development Bank, (1992)*** it was held that a court or tribunal should not grant a remedy that was not pleaded and did not arise from the issues framed for determination.

153. The present application concerns the objection decision and amended assessment arising from the recharacterization of related-party loans. The WHT refund claim is a distinct administrative claim which ought to be pursued through the appropriate refund procedure under the tax laws.

154. The prayer for refund of WHT credits is therefore declined in this application, without prejudice to the Applicant's right, if any, to pursue it through the proper administrative process.

Costs

155. Section 27 of the Civil Procedure Act, Cap. 71, which applies to proceedings before the Tribunal provides that the award of costs is a matter within the discretion of the court, although costs ordinarily follow the event. In the circumstances of this case, and having regard to the nature of the dispute and the issues raised, the Tribunal considers it appropriate to depart from the general rule. Accordingly, each party shall bear its own costs of this Application.

IX. Orders

156. The Tribunal makes the following orders:

a) The Application is allowed.

b) The Respondent's Objection Decision dated 16 June 2025 is set aside to the extent that it upheld the recharacterization of the disputed related-party loans as taxable income.

c) The Amended Additional Income Tax Assessment of Shs. 73,474,848 is hereby vacated and set aside.

d) The Applicant's prayer for a refund of WHT credits amounting to Shs. 444,797,301.57 is declined for not having been pleaded and for being outside the scope of the present application.

e) Each party shall bear its own costs.

Dated and delivered at Kampala this **29th** day of **October** 2026.

HON. STELLA NYAPENDI CHOMBO
CHAIRPERSON

HON. CHRISTINE KATWE
MEMBER

HON. AGABA GERALD KAKIMA
MEMBER