

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPLICATION NO. 4 OF 2022

ELECTRIC POWER SERVICES LIMITED ===== APPLICANT
VERSUS
UGANDA REVENUE AUTHORITY ===== RESPONDENT

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

RULING

This ruling is in respect of an objection on a preliminary point of law that this application is not properly before the tribunal for non-payment of 30% of the tax assessed.

On 23rd August and 1st September 2021, the respondent issued on the applicant an income tax assessment and Value Added Tax (VAT) assessments of Shs. 69,246,943 and Shs. 60,300,906 respectively. The applicant objected to the said assessments. The respondent disallowed the objections whereupon the applicant filed this application.

On 26th June 2023, when the application came up for scheduling the respondent raised an objection that the application is not properly before the tribunal because the applicant has not paid 30% of the tax assessed as required under S. 15 of the *Tax Appeals Tribunal Act*. The respondent cited *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority SC Constitutional Appeal 2 of 1999*, *Commissioner General Uganda Revenue Authority v Meera Investments Limited, SCCA .22 of 2000*, *Elgon Electronic v Uganda Revenue Authority HCCA 11 of 2007* and *Samuel Mayanja v Uganda Revenue Authority HCT-00-CC-MC-0017-2005*.

The respondent submitted that the tax in dispute is Shs. 129,547,849, 30% of which is Shs. 38,864,354. The respondent submitted that the applicant is bound to comply with the law.

In response the applicant submitted that 30% of the tax in dispute has already been paid. The applicant stated that at August 2021, it had accumulated Withholding Tax (WHT) credits of Shs. 38,893,440. The applicant stated that following the issuance of the assessments the respondent utilized its WHT credits of Shs. 38,893,440.11 to reduce the outstanding tax assessment. As a result, the amount outstanding in respect of the income tax assessment was reduced to Shs. 30,353,502.89. As proof the applicant attached a copy of its ledger showing its WHT tax credits had been used to reduce its indebtedness.

The applicant submitted that it had fulfilled its obligation of paying 30% of the tax in dispute as required under S. 15 of the Tax Appeals Tribunal Act. It cited S. 2 of the Income Tax Act which defines `payment` to include any amount paid or payable in cash or kind and any other means of conferring value or benefit on a person. It submitted that the requirement under S. 15 of the Tax Appeals Tribunal Act was fulfilled when the respondent utilized its WHT credits under S. 73 of the Tax Procedure Code Act. The applicant cited *Red Chilli v Uganda Revenue Authority* Application 38 of 2018 where the tribunal held that the applicant was entitled to use its WHT credit to offset its tax liability.

In rejoinder, the respondent reiterated its earlier submissions. The respondent submitted that S. 18 of the Tax Appeals Tribunal Act places the burden of proof on the applicant. It further submitted that there is no evidence of payment of the 30% as S. 15 of the Tax Appeals Tribunal envisages deposit of portion of the tax pending determination of the objection. It stated that the applicant has not adduced sufficient evidence to prove that it paid the statutory amount. It cited *Samuel Mayanja v Uganda Revenue Authority* HCT—00-CC-MC-0017-2005 where it was held that once a taxpayer has lodged an application for review under S. 15 of the Tax Appeals Tribunal Act, he is obliged to deposit at least 30% of the tax assessed.

Having read the submissions of the parties the following is the ruling of the tribunal.

The question for determination before the tribunal is whether the applicant has paid 30% of the tax in dispute as required by S. 15 of the Tax Appeals Tribunal Act. The respondent contends that the applicant has not met this requirement. The applicant contends that its

WHT credits of Shs. 38,893,440.11 were utilized by the respondent to reduce its tax liability. The applicant relied on its tax ledger for the period June 2016 to June 2023.

The requirement to pay 30% of the tax in dispute or the amount which is greater is provided in S. 15 of the Tax Appeals Tribunal Act which states that

"A taxpayer who has lodged a notice of objection to an assessment shall pending final resolution of the objection to an assessment, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute whichever is greater."

The issue of payment of 30% was dealt with by the Supreme Court in *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority Constitutional Appeal 2 of 199* where the Supreme Court held that the statutory requirement in the VAT Act which is similar to S. 15 of the Tax Appeals Tribunal Act, requiring a taxpayer who has lodged a notice of objection to an assessment to, pending final resolution of the objection, pay 30% of the tax assessed or that part of tax assessed not in dispute, whichever is greater is constitutional and did not infringe on the right to a fair hearing. In *Elgon Electronics v Uganda Revenue Authority HCCA 11 of 2007* Justice Geoffrey Kiryabwire stated that the provisions of S. 15(1) of the Tax Appeals Tribunal Act are mandatory. In *Samuel Mayanja v Uganda Revenue Authority HCY 00-CC-MC-0017-2005* Justice Egonda Ntende held that once a taxpayer has lodged an application for review, he is obliged to pay at least 30% of the tax in dispute. In *A Better Place Limited v Uganda Revenue Authority HCCA 37 of 2019* the application was dismissed for failure to pay the 30% of the tax in dispute. Therefore, it is not in doubt that a taxpayer is required to pay at least 30% of the tax in dispute.

The applicant filed this matter on 3rd January 2022 challenging income tax and (VAT assessments of 69,246,943 and 60,300,906 respectively totaling to Shs. 129,547,849. 30% of the both assessments is Shs 38,864,354.7. Therefore, the applicant ought to adduce evidence that it paid the said amount.

The applicant tendered in a ledger. It asserted that it had a WHT tax credit of Shs. 38,893,440.11 which was utilized by the respondent to reduce its income tax assessment from Shs. 69,246,943 to Shs. 30,353,502.89.

The income tax and VAT assessments was issued on 23rd August 2021. The ledger shows that the applicant had an opening balance or credit of Shs. 38,893,440.11 on 19th August 2021. This balance or credit was before the assessments were issued. Row 19 of this ledger shows a credit of Shs. 38,893,440.11 has been applied to reduce an assessment of Shs. 69,246,943 to Shs. 30,353,502.89. The credit had the effect of reducing the income tax assessment from Shs. 69,246.943 to Shs. 30,353,502. Since then, the applicant has paid taxes of Shs. 3,261,321 and Shs. 2,372,928 leaving a balance of Shs. 31,944,636 as income tax. The income tax liability also accumulated interest. If we are to add the VAT assessment of Shs. 60,300,906 to the remaining income tax liability, the outstanding tax in dispute would be Shs. 92,245,542. 30% of the said outstanding tax of 92,245,542 would be Shs. 27,673,662. The applicant would be required to furnish evidence that it has paid Shs. 27,673,662. That evidence has not been furnished. Therefore, if the Tribunal is to go by the ledger, the Tribunal cannot say that the applicant has paid 30% of the tax in dispute.

Coming to the applicant's argument that it is entitled to use its tax credit. It cited S. 4(2) of the Income Tax Act which states that.

"Subject to subsection (4) and (5), the income tax payable by a taxpayer for a year of income is calculated by applying the relevant rates of tax determined under this Act to the chargeable income of the taxpayer for the year of income and from the resulting amount are subtracted any tax credits allowed to the taxpayer for the year of income".

The applicant also cited S. 113(3) of the Income Tax Act which states that

"Where the Commissioner is satisfied that tax has been overpaid, the Commissioner shall-

- (a) Apply the excess in reduction of any other tax due from the taxpayer;
- (b) Apply the balance of the excess, if any, in reduction of any outstanding liability of the taxpayer to pay other taxes not in dispute or to make provisional tax payments during the year of income in which the refund is to be made; and
- (c) Refund the remainder, if any to the taxpayer.

The applicant also cited *Red Chilli v URA* where the tribunal held that the import of S.113 (3) of the Income Tax Act is that the Commissioner has a lien on overpayments and tax

credits so as to pay off any outstanding tax liabilities. The Tribunal notes that the said case was determined after listening to evidence.

In this case, a ledger has been tendered in by the applicant. The respondent has not admitted that it is a true and an accurate record of the applicant's tax affairs. There is no evidence that the Commissioner was satisfied that the applicant has overpaid tax. Furthermore, the accuracy of the ledger is still in doubt. The tax credit the applicant is trying to rely on was before the assessment was issued and not after. It raises issues of reconciliation which can only be determined after evidence has been heard. The major contention with using the outstanding amount in the ledger is its effect on the amount in dispute. For instance, in this case the ledger reduced the alleged tax in dispute from Shs. 129,547,849 to 92,245,542 would this mean that the taxpayer is not disputing Shs. 38,893,440.11? S. 15 of the Tax Appeals Tribunal Act should be given its ordinary meaning. A taxpayer should pay 30% of the tax in dispute. There should be evidence that the taxpayer paid 30% of the tax in dispute after the assessment was issued. If the applicant is to rely on credits, the Commissioner must be satisfied that they are due. Using credits before the assessment was issued, that may still be in contention, will complicate their application and the implication of S. 15 of the Tax Appeals Tribunal Act.

Taking the above into consideration, there is no evidence that the applicant has paid 30% of the tax in dispute as required under S. 15 of the Tax Appeals Tribunal Act. The preliminary objection is accordingly sustained. The main application is dismissed with costs to the respondent.

Dated at Kampala this 5th day of August 2023.



DR. ASA MUGENYI
CHAIRMAN



DR. STEPHEN AKABWAY
MEMBER



MR. SIRAJ ALI
MEMBER