

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPLICATION NO. 47 OF 2022

HUMAN RESOURCE MANAGERS' ASSOCIATION OF UGANDA ===== APPLICANT
VERSUS
UGANDA REVENUE AUTHORITY ===== RESPONDENT

BEFORE: MR. SIRAJ ALI, DR. STEPHEN AKABWAY, MS. CHRISTINE KATWE

RULING

This ruling is in respect of an application challenging income tax assessments on the ground that the applicant is a tax-exempt organization under S. 2(bb) of the Income Tax Act.

The applicant is a company limited by guarantee, is a registered professional Association of Human Resource Management practitioners. The respondent conducted a review of the applicant's income tax returns for the years ended 31st December 2019 to 31st December 2020, and issued additional tax assessments of Shs. 19,575,798/- based on unverified retained earnings and suppressed salaries expenses. The applicant objected to the above assessment on the ground that it is an exempt organization under the Income Tax Act. The respondent partially allowed the objection but maintained the assessments in respect of the applicant's surplus amounting to Shs. 14,647,487.

The following issues were set down for determination.

1. Whether the applicant is liable to pay the taxes assessed?
2. What remedies are available to the parties?

The applicant was represented by Mr. Augustine Kiggundu while the respondent by Ms. Charlotte Katuutu, Mr. George Ssenyomo and Ms. Tayahwe Sheba.

The applicant's first witness was Mr. Brian Musisi, its Business Development Manager. The witness stated that the applicant is a company limited by guarantee and that its assets do not confer private benefit to any person and is strictly not for profit. The witness stated further that the applicant is an open registered professional Association of Human Resource Management practitioners for both public and private entities and is affiliated to the World Federation of People Management, the African Federation of Human Resource Management Association and the Federation of Uganda Employers. The witness stated that the Association was established to promote the development of Human Resources Management in Commerce, Industry, trade, government, para-government and voluntary organizations. The witness stated that the Association is governed by a Constitution and has categories of memberships namely; Honorary, Fellows, Professional, Associates, Retired and corporate members. The witness stated that the members of the Association pay a one-off membership upon joining and an annual subscription fee all of which run the activities and affairs of the Association. The witness stated that the applicant organizes meetings and trainings for members where there professional development is enhanced. The witness testified that the respondent carried out a review of the applicant's income tax returns for the years ended 31st December 2019 and 2020 and raised income tax assessments in respect of which the applicant objected. The respondent partially allowed the objections but maintained tax assessments in respect of the applicant's surplus amounting to Shs. 14,647,487/-. The witness objected to the objection decision maintaining the partial tax assessment on the ground that the applicant is an exempt organization under the Income Tax Act due to the nature of its activities.

The applicant's second witness was Mr. John Barasa, a member of the applicant's Governing Council, currently serving as treasurer. The witness stated that as a member of the Governing Council, he does not receive any income, salary, allowance or any form of monetary benefit from the applicant. The witness stated that his roles include collecting and receiving money on behalf of the applicant, disbursing bill under the direction of the Governing Council, keeping accounts of the applicant and presenting audited financial statements to the General Assembly of members among others.

The applicant's third witness was Mr. Bob Trubish, a member of the applicant. The witness stated that he served on the applicant's Governing Council as treasurer for three terms from the year 2016 to the year 2022. The witness testified that the members of the Governing Council do not receive any income, salary, allowance or any form of monetary benefit from the applicant. The witness stated that it was during his tenure as treasurer that the respondent conducted a review of the applicant's income tax returns and raised income tax assessments. The witness stated that he was surprised when the respondent issued the assessments as it was his belief that the applicant being an open registered professional Association which does not engage in profitable activities and whose activities do not confer private benefit to any member, was an exempt organization. The witness testified that employees of the respondent were part of the membership of the applicant.

The respondent's sole witness, was Mr. Samuel Lwetutte, an officer in the respondent's Domestic Taxes Department. The witness testified that on 6th October 2021, the respondent issued additional income tax assessments against the applicant for the periods 1st January 2019 to 31st December 2019 and 1st January 2020 to 31st December 2020, amounting to Shs. 16,476,198/- and Shs. 3,099,600/- respectively based on unverified retained earnings and suppressed salaries expense re-characterized as other income and added back. The witness testified that on 28th October 2021, the applicant objected to the assessment on the grounds that it was a non-profit Association and that it was exempt from tax under the Income Tax Act. The witness stated that the applicant only provided copies of its audited accounts inspite of the fact that the respondent had asked it to present copies of its audited accounts, salaries and wages ledger and income tax exemption certificate. The witness testified that at the objections review meeting, the respondent discovered that the applicant had characterized its surplus of Shs. 87,923,979/- for the period 1st January 2019 to 31st December 2019 and Shs. 58,536,829/- for the period 1st January 2020 to 31st December 2020, as '*non-taxable surplus*'. The witness stated that the applicant had then proceeded to classify the aforementioned surpluses as allowable deductions which resulted in zero chargeable income for the said period. The witness stated that the applicant justified the above deductions by contending that it was a tax exempt organization but did not submit any

income tax exemption certificate to support its claim nor could any record of the applicant's alleged exemption be traced in the respondent's e-tax system. The witness stated that on 25th January 2022, the respondent made objection decisions partially allowing the applicant's objections and in particular revised the applicant's tax liability from Shs. 16,476,198/- to Shs. 11,731,816 for the period 1st January 2019 to 31st December 2019 and similarly, the tax liability of Shs. 3,099,600 for the period 1st January 2020 to 31st December 2020 was revised to Shs. 2,915,671. The witness stated that the applicant does not possess an income tax exemption certificate for the period under review and consequently, the applicant was and presently is, not an exempt organization under the Income Tax Act for the period under review.

The applicant submitted that the gist of the matter is whether the applicant is an exempt organization within the meaning of S.2 (bb) of the Income Tax Act and if so whether its surplus income is subject to income tax. The applicant submitted that under S. 21(1) (f) the income of an exempt organization, other than the exceptions stated is exempt from tax. Relying on the definition of an exempt organization under S. 2(bb) of the Act the applicant submitted that in order to be categorized as an exempt organization the applicant must show that it is a company; which is an association established for the purpose of promoting farming, mining, tourism, manufacturing or commerce and industry in Uganda which has been issued with a written ruling by the commissioner currently in force stating that it is an exempt organization, and none of the income or assets of which confers or may confer, a private benefit on any person. Additionally, the exempt income of the applicant should not include property income or business income that is not related to the function constituting the basis for the organization's existence. The applicant concluded therefore that it is an exempt organization within the meaning of S. 2(bb) of the Income Tax Act and is not liable to pay the Tax assessed.

The applicant submitted that from the respondent's statement of reasons for taxation decision filed in the Tribunal on 24 March 2022, and from the respondent's sole witness statement filed on 29 November 2022, it is not in dispute that the applicant is; a company, an association established for the purpose of Farming, mining, tourism manufacturing or commerce and industry in Uganda and none of the income or assets of the applicant

confers, or may confer, a private benefit on any person. The applicant also contended that it is also not in dispute that the surplus that the respondent seeks to tax is not property income, or business income that is not related to the function constituting the basis for the organization's existence, therefore what appears to be the respondent's basis to tax the said surplus is the failure by the applicant to avail its income tax exemption certificate for the period that was reviewed.

The applicant submitted that the unchallenged evidence of AW1, Brian Musis, was that the applicant was registered as a company limited by guarantee and that its assets do not confer private benefit to any person and strictly not for profit. The applicant submitted that the evidence before the tribunal showed that the applicant is an open registered association of Human Rights Management Practitioners for both the private and public entities and affiliated to the World Federation of People Management (WFPMA), the African Federation of Human Resource Management Association (AFHRMA) and the Federation of Uganda Employees (FUE). The applicant submitted further that it was set up to promote the development of Human Resources Management in the commerce, industry, trade, government, para government, voluntary organizations among others; to foster and maintain high professional standards among Human Resource practitioners; to organize meetings, tours, lectures, discussions, conferences and seminars for practitioners to enable them exchange views, ideas, experiences, information all in the interest of the profession.

The applicant submitted that the respondent did not contest all the other requirements presented by the applicant for consideration as an exempt organization apart from the income tax exemption certificate. The applicant submitted that the question which the tribunal needs to answer is whether the lack of an exemption certificate automatically disqualifies one from being considered as an exempt organization. The applicant cited the decision of the High Court in *Uganda Ltd v Commissioner General Uganda Revenue Authority* (civil Appeal No.4 of 2016) for the proposition that the authority to tax is vested in an Act of Parliament not the respondent and that the respondent's role in issuing income tax exemption rulings under section 2(bb) of the Income Tax Act is not

discretionary. The applicant submitted therefore that the respondent's ruling ought to be rooted in the specific provisions that provide for the exemption.

The applicant also cited the decision in *International School of Uganda Limited v the Commissioner General Uganda Revenue Authority* (high Court Appeal No.3 of 2018), as a case where the court had confirmed an appellant's tax exemption status in spite of the fact that it did not have an exemption ruling from the respondent. The applicant submitted that the question before the tribunal is whether the applicant would be liable to pay the assessed taxes simply because it did not possess an income tax exemption ruling for the period under review.

The respondent submitted that the applicant is not an exempt organization within the meaning of Section 2 (bb) of the income Tax and thus liable to pay the assessed tax. The applicant submitted further that the first condition for an income Tax exemption Status is for the organization in question to be a company, institution or irrevocable trust established for the purposes set out in Section 2(bb) of the Income Tax Act. Relying on the objects of the applicant the respondent submitted that the objective of the applicant is to promote Human Resource Management practice which is not provided for under S. 2(bb) (i) of the income Tax Act. It was the respondent's submission that the applicant does not fit in any of the categories in section 2 (bb) (i) of the income Tax Act and is thus not an exempt organization under the income Tax Act. The respondent submitted further that the entity seeking a tax exemption status must possess a written ruling by the Commissioner to the effect that it is an exempt organization. The respondent submitted that the word 'AND' is defined in the Collins English dictionary at page 56 as 'along with, in addition to ...plus. The respondent argued that the use of the word 'and' in the aforementioned provision means that in addition to falling within the categories listed in Section 2(bb) (i) of the income Tax Act, an entity claiming exemption must also possess a written ruling from the Commissioner. In other words falling under the categories in Section 2(bb) (i) of the income Tax Act merely makes an entity eligible for income Tax exemption. The respondent submitted further that qualifying under section (bb) (i) of the Income Tax Act does not automatically grant the organization exemption from the income tax. To be recognized as exempt from income taxation, the organization must apply to

the Commissioner for a ruling declaring it as an exempt entity which is given by the issuance of an income tax exemption certificate. The respondent submitted that exemption from income tax is only automatic where such exemption is expressly stipulated in the Income Tax Act for instance under S. 21(1) (a), (e) and (s).

The respondent submitted that in the instant case the applicant has never applied to the Commissioner's for a ruling on their exemption status. This was confirmed by AW1, Brian Musisi in cross examination when he admitted that the applicant has never applied for income tax exemption from the respondent. In addition to the above, AW2 Bob Trubish and AW3 John Barasa both admitted in the cross examination that the applicant did not an exemption certificate for the period for which it was assessed taxes that is 01/01/2019 and 01/01/2020 to 31/12/2020. AW1 also testified that the applicant does not possess an exemption certificate to date. It was the respondent's submission that the aforementioned facts confirm that the applicant did not fulfill the mandatory requirement for recognition as an exemption organization.

The respondent submitted further that for an entity to be an exempt organization within the meaning of the Act, none of its income or assets should confer a private benefit on any person. The respondent submitted that it was noteworthy that the applicant's AEX 2 shows a contrary position, by allowing the applicant to confer private benefits to individuals particularly, under clauses 3(p) and (g) at page 3 and 4 of AEX 2.

The respondent submitted that taking into consideration the above facts the applicant is not an exempt organization within the meaning of S. 2(bb) of the Income Tax Act and is thus liable to pay the assessed taxes which are premised on the applicant's undisputed surplus income which was wrongly characterized as allowable deductions.

In rejoinder, the applicant reiterated its earlier submissions and stated that in interpreting the ordinary meaning of words in a tax statute, it is important not to deviate from the purpose of the statute. The purpose of the provision in the statute can't be outwitted through a narrow interpretation. The applicant reproduced the following excerpt from the decision of Justice Stephen Mubiru in *Uganda Revenue Authority V COWI A/S (Civil Appeal No. 34 of 2020*

"Until relatively recently courts generally used this 'strict and literal' approach to the interpretation of statutes, especially in fiscal matters, to overcome interpretational problems. It did not matter that such approach led to unfairness or even hardship. However, in modern times, any exercise in interpretation and application of statutes cannot be undertaken on the assumption that it is an exercise without any object, that the Acts have no 'spirit or 'aim."

The applicant submitted that the purpose of the application is clear and its intended beneficiaries are known and that the framers of the Income Tax Act intended to exempt from tax the income of associations established for the purpose of promoting farming, mining, Tourism, manufacturing, or commerce and industry in Uganda. The applicant submitted that for the respondent to submit that the applicant is not one of the associations, envisaged by the framers of the Income Tax Act would be akin to burying one's head in the Sand.

In response to the submission by the respondent to the effect that the applicant's objectives allow it to confer private benefits to individuals, the applicant submitted that members of the applicant are different from employees/officers/servants. The applicant submitted that it pays salaries to its employees, which like other operating expenses are incurred in the provision of services and are not a distribution of the residual income or asset of an organization. The applicant submitted that for instance, the applicant's first witness, Brian Musisi, testified that he is an employee of the applicant but not a member of the applicant. The applicant pays him for his services. While the applicant's second witness, John Baras, is a member of the applicant and serves on the Governing Council but does not receive any income, salary or allowance or monetary benefit from the applicant. The applicant submitted that in any event, if the assets of the applicant ever conferred any private benefit the same would have been reflected in the Audited Financial Statement of the applicant.

Having listened to the evidence and read the submissions of the parties, the following is the ruling of the tribunal.

This application turns on the interpretation on S. 2(bb) of the Income Tax Act which provides as follows;

"Exempt organization" means any company, institution or irrevocable trust-

- (i) Which is-
 - A. An amateur sporting association;
 - B. A religious, charitable or educational institution whose object is not for profit; or
 - C. A trade union, employee's association, an association of employers registered under any law of Uganda or an association established for the purpose of promoting farming, mining, tourism, manufacturing, or commerce and industry in Uganda;
 - D. A body established by law for the purpose of regulating the conduct of professionals; and
- (ii) Which has been issued with a written ruling by the Commissioner currently in force stating that it is an exempt organization; and
- (iii) None of the income or assets of which confers, or may confer, a private benefit on any person;
- (iv) Or the National Medical Stores. "

The dispute in interpreting the above provision relates to the use of the word 'and', which appears at the end of S.2 (bb) (i) (D). The argument by the respondent which is based on the definition set out in the *Collins English Dictionary* is that the word 'and' should be construed as meaning 'along with; in addition to; plus'. The position of the respondent therefore is that in addition to being one of the entities under S. 2(bb) (i) (A), (B), (C) and (D), the applicant must fulfill all the requirements set out in S. 2(bb) including being issued with a written ruling by the Commissioner stating that the applicant is an exempt organization. The applicant on the other hand rejects this argument on the ground that the authority to tax is vested in an Act of Parliament and not the respondent and that the respondent's role of issuing tax exemption rulings under S. 2(bb) above, is not discretionary. Without making specific arguments about the use of the word 'and', the

position of the applicant is that an entity falling under any of the four bodies set out under S. 2(bb) (1) (A),(B),(C) and (D) above, is eligible to tax exempt status without the need to prove that it has been issued with a written ruling by the Commissioner.

In Black's Law Dictionary 6th Edition, the word 'And' was defined as follows;

"And. A conjunction connecting words or phrases expressing the idea that the latter is to be added to or taken along with the first. Added to; together with; joined with; as well as; including. Sometimes construed as "or". Land & Lake Ass'n v. Conklin, 182 A.D. 546, 170 N.Y.S. 427, 428.

"It expresses a general relation or connection, a participation or accompaniment in sequence, having no inherent meaning standing alone but deriving force from what comes before and after. In its conjunctive sense the word is used to conjoin words, clauses, or sentences, expressing the relation of addition or connection, and signifying that something is to follow in addition to that which proceeds and its use implies that the connected elements must be grammatically co-ordinate, as where the elements preceding and succeeding the use of the words refer to the same subject matter. While it is said that there is no exact synonym of the word in English, it has been defined to mean 'along with', 'also', 'and also', 'as well as', 'besides', 'together with'. Oliver v. Oliver, 286 Ky. 6, 149 S.W. 2d 540, 542."

In Stroud's Judicial Dictionary of Words and Phrases 5th Edition, the word was defined as follows

'AND. (1) "And" has generally a cumulative sense, requiring the fulfillment of all the conditions that it joins together, and herein it is the antithesis of OR. Sometimes, however, even in such a connection, it is by force of a context, read as "or". Thus, where a lessee underlet, with a proviso, on breach of covenant, enabling him *and* his lessor to re-enter; held, that he *or* his lessor might re-enter on breach (Doe d. Bedford v. White, 4 Bing. 276). So, a power to apply corpus of trust money for the "benefit and advancement" of a tenant for life, "and" may be read "or" (Re Brittle-bank, 30 W.R. 99). On the other hand, Poor Relief Act 1819 (c.12), s.17, makes "churchwardens and overseers" a quasi-corporation for holding and dealing with property belonging to a parish; that means that, in order to create such a corporation officers of both descriptions must be appointed, and until that is done, nothing vests (Woodcock v. Gibson, 4 B. & C. 462)."

It is clear from the above authorities that the word ``And`` is generally used conjunctively to join or connect words or phrases, however in some cases it can be read as ``or`` in which case it is used disjunctively to separate words or phrases.

In *Green v. Premier Glynrhonwy Slate Co.*, (1928) 1 K.B. 561, C.A., *per Scrutton L.J.*, at p.568.

``You do sometimes read `or` as `and` in a statute ... But you do not do it unless you are obliged, because `or` does not generally mean `and` and `and` does not generally mean `or`.

In the instant case if the word `And` is used conjunctively to join proviso (i) with proviso (ii), above, it would mean that the requirements of both proviso (i) and proviso (ii) have to be satisfied for the applicant to avail itself of the benefit of a tax-exempt status. However on the other hand, if the word `And` is used disjunctively, it would mean that the word `or` is substituted for it, with the result that the applicant can avail itself of the benefits of a tax exemption status, if it qualifies as one of the entities under proviso (i).

What must determine whether the word `And` in the provision above should be used conjunctively or disjunctively, must arise from the intention of the legislature. This intention can only be determined from a consideration of the provision itself.

It will be observed that S. 2(bb) has been divided into three parts. The first part under proviso (i), the second part under provisos (ii) and (iii) and the third part under proviso (iv). The clauses under proviso (i) are separated by semi-colons and the word `or`. In *Sunil Srivastava v. Union of India & Another* 1984 145 ITR 356, the court held that when two clauses are separated by a semi-colon, they have to be read disjunctively. As can be seen from the authorities above, the word `or` is generally used as a disjunctive to separate clauses. By using semi-colons and the word `or` the intention of the legislature under proviso (i) was to separate the four entities set out under proviso (i) A – D, by making each of them eligible for tax exemption status in their own right. The second part under proviso (ii) and (iii) sets out the conditions which these eligible entities must satisfy before availing themselves of a tax exemption status. It will be seen that the word `And` has been used at the end of proviso (i) and between provisos (ii) and (iii). This is no accident but a deliberate act by the legislature to join the eligible entities set out under proviso (i) with the conditions that they must satisfy under provisos (ii) and (ii). The word

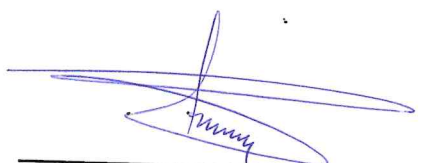
`And` has been used here, in its conjunctive sense to join proviso (i) with provisos (ii) and (iii). The only inference that can be drawn from the above is that while each of the entities are eligible for tax exemption status in their own right, they must satisfy the requirements of both provisos (ii) and (iii) before they can benefit from a tax exemption status. The third part under proviso (iv) grants tax exemption status to the National Medical Stores, without requiring them to comply with the conditions set out under provisos (ii) and (iii) above. This has been achieved by the use of the word `or` between provisos (iii) and (iv). The word `or` has been used here in its disjunctive sense to separate proviso (iii) from proviso (iv). If it was the intention of the legislature to grant tax exemption status to the entities set out under proviso (i) without requiring them to comply with the conditions under provisos (ii) and (iii) above, they would have been granted tax exemption status under the same terms as the National Medical Stores.

It is clear from a consideration of S. 2(bb) above that for any of the entities set out under proviso (i) to benefit from a tax exemption status they must prove that they have been issued with a written ruling by the Commissioner currently in force stating that they are an exempt organization and that none of its income or assets confer, or may confer, a private benefit on any person in these entities. From the evidence before us it is apparent that the applicant was not issued with a written ruling by the Commissioner stating that it is an exempt organization. In the absence of such a ruling, the applicant is not an exempt organization within the meaning of S. 2(bb) of the Income Tax Act. For these reasons this application is dismissed with costs.

Dated at Kampala this 27th day of June 2023.



**MR. SIRAJ ALI,
CHAIRMAN**



**DR. STEPHEN AKABWAY,
MEMBER**



**MS. CHRISTINE KATWE
MEMBER**