THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[COMMERCIAL DIVISION]

CIVIL APPEAL NO 1 OF 2011

CABLE CORPORATION (U) LTD} .....APPELLANT

VERSUS

UGANDA REVENUE AUTHORITY} .....RESPONDENT

BEFORE HON MR. JUSTICE CHRISTOPHER MADRAMA

JUDGMENT

The appellants appeal arises from the decision of the Tax Appeals Tribunal in TAT No 6 of 2010 delivered at Kampala on the 20th of December, 2010 dismissing the appellants application for review for being time barred under the Tax Appeals Tribunals Act because it was filed more than 30 days after the 23rd of September 2008. The appellant's memorandum of appeal sets forth the following grounds of appeal:

1. The tribunal erred in law when it held that the Assistant Commissioner – Large Taxpayers office and not the Commissioner General was vested with powers to make an objection decision.

2. The tribunal erred in law when it failed to evaluate the evidence thereby coming to a wrong conclusion that the letter of 12th of August, 2008 satisfied the requirements under the Income Tax Act.

3. The tribunal erred in law when it failed to recognise the guidelines and procedures for management of objections and appeals for income taxes of 2008 and came to a wrong conclusion that they are for internal arrangement and have no force in law.

4. The tribunal erred in law when it made a wrong conclusion that the letter dated 23 September, 2008 was the last communication upon which the appellant must have lodged the appeal.

The appellant prays that the tribunal's decision is set aside and the appellant is awarded costs of appeal and in the tribunal below.

At the hearing the Appellant was represented by Counsel Cephas Birungye while the Respondent was represented by Counsel Mary Kutesa.

Submissions of the Appellant's Counsel

The appellant's counsel commenced his address on the appeal by giving it a comprehensive background. That Uganda Revenue Authority audited the appellant for income tax and made an assessment. In the assessment the matter in dispute was whether the interest expense claimed by the appellant was an allowable deduction in the computation of tax. This depended on section 47 of the Income Tax Act. The Appellants Counsel submitted that the section provides that where interest is liable to withholding tax, the year in which that expense is allowed in the tax computation is the year when the withholding tax is charged. If you got a loan and it allowed you to defer payment of the interest, if you are subject to withholding tax the year when you deduct the withholding tax is the year when you expense that interest. According to counsel the question was whether the applicant was exempt. The Minister wrote a letter indicating that there an exemption granted to the appellant to the withholding tax and after the objection decision and the Respondent agreed with this position.

Counsel further noted that there was correspondence on this matter. When application was made in the tribunal, the Respondent maintained that they had made an objection decision on the 12th August 2008. The subsequent letters were merely confirming that decision.

The tribunal ruled that the letter of 23rd of September 2008 is the objection decision from which time within which to make to make an objection decision should start running. Counsel referred court to pages 109 – 110 of the record which contained the decision of the Tribunal on when time should be reckoned for purposes of determining whether the appellants appeal in the tribunal was lodged within time. They ruled that the application was time barred 30 days after the 23rd of September 2008.

The subsidiary issue to the question of time bar to the application for review before the tribunal was the question of who signed the letter notifying the objection decision. The tribunal decided that on the basis of the case of **Tunakopesha (U) Ltd v Uganda Revenue Authority, TAT No. 34 of 2007** that the person to whom a task is given signs on behalf of the Commissioner General. Counsel informed court that the after a comprehensive audit, it was found out that the appellant had deducted expenses worth **Uganda shillings 1,207,774,041/=**. The Respondent objected to that expense on grounds of a memorandum of understanding under the Tax Decree of 1974 only allowed the appellant to apply for exemption on a case by case basis. The applicant had never made any application for exemption. Several communications ensued until the Minister clarified that they had waived tax up to March 2008. As a result of the letter, the respondent URA changed its position from the letter of 27th of August 2008 communicating its objection decision to that of the letter of the 23rd September 2008 which varied the previous letter to take into account the Minister's directive.

At this point I pointed out that the matter before court could be argued on the basis of the decision of the tribunal which was whether the appellant's application before the Tribunal was

time barred, the other grounds would be arguments in support of the contentions on either side. The crux of the appeal was whether the tribunal erred in law to hold that the applicant's application before them was time barred. Consequently and by consent of both counsels the grounds of appeal were amended by order of court and consolidated into one ground to read as follows:

> **"The tribunal erred in law to hold that the applicants application for review was time barred based on the letter of 23rd September 2008 by the Assistant Commissioner Large Tax Payers department**"

Counsel for the appellant submitted that the appellant's appeal arises from an assessment by the respondent of the appellant in respect of corporation tax for the period 1999 – 2006 whereby the respondent rejected an interest expense amounting to **Uganda shillings 1,207,774,051/=**. The rejection of this interest expense was premised on the treatment of interest under section 47 of the Income Tax Act in as far as the interest expense is allowed in the year in which it accrues when it is not subject to withholding tax. It is allowed in the year in which withholding tax is paid where it is subject to withholding tax. Following various communication about whether the withholding tax should be applied in the appellants matter or not, the Minister of Finance in a letter dated 9th May 2008 decided that no withholding tax will be payable prior to 13th March 2008 by the applicant and this letter is on page 11 of the record of appeal.

The respondent in its letter of 12th August 2008 maintained that withholding tax was payable and the appellants wrote on 22nd August 2008 challenging that position. Subsequently in the letter of the 23rd September 2008, the respondent conceded that no withholding tax was payable. The appellant's wrote to the respondents on 16th October 2009 page 63M of the record stating that the issue of treatment of interest had not been addressed.

Further correspondences are also letters on 14th October 2009 page 16 and dated 8th February 2010 at page 15 of the record. There is also a letter by the respondent dated 26th February 2010 on page 13 and it is this letter on page 13 on which the appellant's based their appeal to the Tax Appeals Tribunal. The letter of the respondent dated 26th February 2010 writes that the objection decision was made on 12th August 2010. That letter of 23rd September 2008 merely affirmed the decision of 12th August 2008.

The tribunal decided that the objection decision was made on the 23rd September 2008 and that therefore the time limit for appealing to the Tribunal ended 30 days later, that is around the 24th of October 2008. The applicant's application for review was made on the 25th March 2010 hence the preliminary objection by the respondent that the appeal before the tribunal was filed out of time.

The issue for determination was whether the interest deduction incurred by the appellant was an allowable deduction or not and this can been seen on page 9 of the record of appeal. The issue on page 9 before the tribunal was: "whether the interest expense incurred by the applicant is an

allowable deduction or not." And secondly "remedies available." The application does not talk about an objection decision.

The first issue about the time limit is that in the Income Tax Act time limits are provided for in section 100. It provides that the tax payer may appeal to the High Court within 45 days. The requirement under the Tax Appeals Tribunal Act is in section 16 which provides that an application for review of a taxation decision shall be lodged within 30 days after the person making the application has been served with notice of the decision (see section 16 (1) (c) of the Tax Appeals Tribunal Act cap 345.)

The decision appealed from was the decision made on the 26th February 2010 and the application was made within 30 days of that letter and was received on the 1st of March 2010. The essence of the preliminary objection is that for one to appeal or go to the tribunal it must be on an objection decision. Secondly, that the objection decision was made in 12th August 2008. The respondent's position is that the other letters merely affirm the decision of the 12th of August 2008. The Tax Appeals Tribunal decided that the objection decision was made on the 23rd of September 2008.

The Appellants position on the above is that the letter of the respondent dated 12th August 2008 was essentially referring to whether withholding tax is payable on the interest or not. That is all it is addressing although they were not many other issues. It said nothing about how to treat the interest and whether the expense would be allowed as a deduction. The letter of 12th August 2008 did not refer to it. The further letter of the respondent dated 23rd of September 2008 reversed the letter of 12th August 2008 in paragraph 3 thereof. They held that no withholding tax was payable. The letter talked about other things not mentioned on the previous letter. It concluded by giving a new tax computation.

In summary counsel for the appellant submitted that the letter of 23rd September 2008 is not a confirmation because it substantially varies and brings new issues to that of 12th August 2008. That when an assessment is made as contained in the letter of the 23rd of September 2008, the respondent therein merely informed the tax payer about an obligation. An assessment is the first stage of an audit. When an assessment is made the tax payer can engage in further communication. This may be orally or in writing and when the Uganda Revenue Authority says it has finished and it has communicated the last decision, is when the tax payer may object. He contended that an assessment cannot be an objection decision. He further submitted that an assessment is a *taxation decision* but it is not an *objection decision*. The time limits in the Tax Appeals Tribunal apply to taxation decisions. A number of taxation decisions were made by the appellant and a number of responses were made by the Respondent. Counsel contended that none of them amounted to an objection decision.

He submitted that the only indication that URA had stopped formal communication came in a letter dated 26th February 2010 at page 13 of the record. He submitted that time limits do not apply when communications are ongoing until that tax payer is made aware that there would be

no further communication. Under the VAT Act the letter has to show that it is an objection decision. None of the above referred communications indicate that it is an objection decision. Counsel contended that the respondent is retrospectively saying that the appellant ought to have known that this was an objection decision. The same respondent continued making decisions after the 12th August 2008. In the case of **Uganda Revenue Authority versus Uganda Consolidated Properties Civil Appeal No. 31 of 2000** filed at page 94A of the record and being the judgment of Twinomujuni to effect that even if you made an objection decision, once you continue communicating you have opened up the matter. Counsel submitted that Uganda Revenue Authority continued communicating and raising new issues and in any event the application was made to review a taxation decision and not an objection decision and therefore the tribunal erred to rule that the application was out of time since the Respondent's final communication came in their letter of the 26th of February 2010. The question here is whether the letter is an objection decision and counsel concluded that it was a taxation decision and prayed that the court allows the appeal and sets aside the decision of the tax appeals tribunal.

Reply by Respondent's Counsel

Counsel Mary Kutesa in reply submitted that the issue before court is whether the tribunal erred in law to hold that the applicants application was time barred based on the letter of 23rd of September 2008. She broke the issue into 4 questions namely:

1. Did the applicant make an objection?
2. Did the respondent make an objection decision?
3. If the objection decision was made, the question would be when it was made.
4. When did the applicant make his application to the tax appeals tribunal?

Counsel submitted that the brief facts were that that the Appellant received a loan from the Mehta Group Management Ltd between 1991 and 2006. The loan accrued interest of **UGS: 1,207,774,051/=**. The appellant then claimed unpaid interest on the loan as a deduction for corporation tax purposes. The Respondent disallowed this claim based on section 47 (2) of the Income Tax Act. This position was communicated to the Respondent on the 12th of August 2008 and accordingly varied on the 23rd of September 2008. From that date up to 2010 the applicant was silent except for 2 letters in between which the Respondent did not respond to.

On question 1 which is "whether the applicant did object to the taxation decision to the tax assessment made by URA?" the respondents counsel submitted that at page 51 of the record, "H" the applicant through his tax advisor wrote to the assistant commissioner and not the Commissioner General. The applicant objected to three categories of tax namely on page 52 which were deferred interest, business promotion expenses and personal expenses.

On Page 64 of the record of appeal there is a copy of the scheduling by the applicant before the Tax Appeals Tribunal. In paragraph 3 thereof the applicant confirmed that the letter of 16th May 2008 was his objection and this confirms that appellant did make an objection. Counsel further

submitted that the Tax Appeals Tribunal in **Tunakopesha Ltd vs. URA page 92** J of the record discussed a similar happening where the applicant had not lodged the objection to the Commissioner General but to a Manager. She submitted that delegation is implied by virtue of section 156 of the Income Tax Act. The commissioner may delegate any duty or function conferred on the Commissioner General under the Act. She submitted that the Assistant Commissioner is a delegated officer of the Commissioner General.

On question 2 "did the Respondent make an objection decision?" Counsel for the respondent submitted that the objection decision is on page 74 A1. It is responded to by the Assistant Commissioner to whom the objection had been made and is dated 12th August 2008 and titled "objection decision" and of the assessments listed thereafter. In the objection decision, three issues are answered namely:

a. The deferred interest,
b. Business promotion expense,
c. Personal expenses.

Counsel submits that this indicated that the appellant is not exempt from withholding tax. They indicate that business promotion expenses were not incurred. They correct the mistake made under personal expenses and attached the amended tax computation. Counsel contended whether this fulfils the requirements of law?

The answer is yes it does because section 99 (5) of the Income Tax Act provides that the Commissioner may allow in whole, part or amend the assessment. The commissioner's decision is referred to as an objection decision. It is the standard of an objection decision and has to be served on the tax payer. She noted that this particular decision was served on the same day. The objection decision dated 12th August 2008 totally fulfilled the law.

Counsel contended that if the appellant was of the view that it was not an objection decision, the applicant should have elected that the commissioner had not made an objection decision but this did not happen.

The other question is: If the Respondent made an objection decision, when was this made? It was made on the 12th of August 2008. It was subsequently varied on the 23rd of September 2008, on page 20 of the record. In the variation, deferred interest was maintained. The item on business promotion expenses was adjusted, and withholding tax was vacated because the Minister had specifically waived it. After letter of 23rd September, counsel agreed with decision of Tax Appeals tribunal that the time line was adjusted and started to run on 23rd September 2008 see page 109. This is because the assessments had been reviewed and gave a fresh running date to the applicant.

The respondent further submitted that on the 22nd of October 2008, the Applicant wrote to the Commissioner asking for a review of the tax objection decision given on the 23rd of September

2008. They refer to the adjusted position and ask for a further review. This is at page 18. URA did not reply to this letter. One year later on the 16th of October 2009, page 17 the respondent asks for another review of the decision taken. The Respondent kept quiet and did not reply. Another whole year down the line on the 16th of February 2010 page 14 of the record the appellant again writes and they note is a second reminder as per paragraph 2 thereof. On the 16th of February 2010 the Respondent answers and informs the appellant that it is unable to review. Counsel referred to this letter at page 13 of the record of appeal. She submitted that the letter neither discussed the tax obligations nor raised any of the topics the applicant wanted reviewed. The applicant had neither decided to elect or appeal to the Tax Appeals Tribunal or High Court. Counsel further referred to the judgment of Tax Appeals Tribunal at page 109 where they agreed that time begins to run where there was a review at paragraphs 2 and 3 thereof of the said page. The tribunal further referred to the case of **Uganda Revenue Authority vs. Consolidated Properties** at page 110. She distinguished the appeal case and submitted that the situation herein is different. Not all correspondences lead to a fresh accrual of a cause of action. She prayed that the court finds that the last letter of the Respondent did not lead to an accrual of a fresh cause of action.

Finally on the last question namely: on when the application to the Tax Appeals Tribunal made? The appeal or review was received by the tribunal on the 22nd of April 2010. Evidence of received stamp is on page 7 of the record of appeal. She concluded that the taxation decision of the respondent was made on 12th August 2008 and varied on 23rd September 2008. Time started running in September 2008 with nothing happening between 2008 September – 2009 until April 2010. No injustice has been occasioned to the appellant in this case. She prayed that on the basis of the decision the court finds the strength of the decision of Tax Appeals Tribunal that the application of the appellant before the tribunal was time barred. She prayed that I dismiss the appeal with costs.

Rejoinder of the Appellant

In rejoinder the appellants counsel reiterated his earlier submissions that the application to the Tax Appeals Tribunal was in response to the letter of 26th February 2010 which is the only letter by the respondent that directs that the applicant should appeal. Counsel again referred to the letter of the respondent on page 13. It is after this letter which stipulates that there would be no further decision that appellant went to the Tribunal. The appellant agrees that it got an objection decision on 12th August 2008 and subsequently it got another letter on 23rd of September 2008. The letter is not headed as an objection decision unlike the previous one. If the words “objection decision” is important, they were not used again by the Respondent. This letter not only says it is not an objection decision but it is also issuing new assessments. After this letter, the next letters are addressed directly to the Commissioner i.e. the letter of the 22nd October 2008 on page 18 and also the letter of 16th October 2009 are addressed to the Commissioner. The relevance of this is that in the **Tunakopesha case** the tribunal argued that if taxpayer applied to a manager why compliant that decision should have come from the CG? In this case the letters and objections

on page 14 are addressed to the Commissioner. Were it not for the statement in the letter of 26th February 2010, they would have been no indication that this point had been exhausted. The Commissioner never responded. In this case they appealed to the Commissioner who never responded.

There is a letter on page 76 A2 dated 12th August 2008. There are two letters written on the same date by the same officer. The letter of 23rd September 2008 amended the one of 12th of August 2008 page 85. An objection decision was overtaken by a subsequent letter and there was no objection decision. Election in law is a sword of the tax payer (See section 99 (7)). It does not mean that if you do not elect your rights cease. Counsel referred court to guidelines and procedures for management of objections and appeals for income tax revised edition July 2008 at page 78 of the record. He contended that it explains what happens in objection decisions particularly at page 79 paragraphs (c) thereof.

He further contended that it is only on page 13 that this appeals process is opened to the Commissioner. Counsel further referred to the scheduling notes on page 64 and the subsequent letters and their effect. He prayed that I allow the appeal with costs.

Counsel further prayed that the court should look at the lacunae of what constitutes an objection under the Income Tax Act, the Tax Appeals Tribunal Act and the VAT Act. He submitted that under the VAT Act, it is provided that the Commissioner should include a writing that the tax payer may appeal. Under the income Tax Act, there is a format at page 82 of the record of appeal.

With permission of Court Counsel Kutesa replied to a new matter on the format of an objection by the appellant's counsel. She contended that the guidelines referred to by her learned colleague were not law but meant for internal consumption and should not be relied upon by court. The law does not require that the Commissioner General to appeal. It is not the duty of the Commissioner General. Guidelines are internal documents and cannot be relied on in this court. The guidelines provides without prejudice that the decision would be made open to the tax payer and does not indicate whether this should be in writing as such.

Judgment of Court

I have carefully considered the record of appeal, the submissions of counsel and the provisions of law referred to in their submissions. An appeal from the decision of the Tax Appeals Tribunal is made under section 27 (1) of the Tax Appeals Tribunals Act cap 345 which provides that:

> "a party to a proceeding before a tribunal, may within 30 days after being notified of the decision or within such further time as the high court may allow, lodge a notice of appeal

with the registrar of the high court, and the party so appealing shall serve a copy of the notice of appeal on the other party to the proceedings before the tribunal."

Secondly, section 27 (2) provides that an appeal to the High Court may be made on questions of law only which question or questions of law shall be stated in the notice of appeal. The question or questions of law must arise from a decision of the tribunal. The decision of the tribunal must have been based on the matter in controversy before the tribunal. Therefore to fit within the provision of law it is necessary to examine the question of law arising from the decision of the tribunal. As noted above, by consent of both parties the grounds of appeal were reduced into one issue or ground of appeal namely:

> **"The tribunal erred in law to hold that the applicants application for review was time barred based on the letter of 23rd September 2008 by the Assistant Commissioner Large Tax Payers department**"

The tribunal decided that the appeal was time barred on a preliminary point of law. The other issues assisted it to arrive at this conclusion on the preliminary point of law. The question of law that arises therefore is whether the tribunal erred in law to hold that the applicant's application before the Tribunal was time barred on the basis of a letter of the respondent dated 23rd of September, 2008 and written by the Assistant Commissioner Large Tax Payers Department of the respondent. Implicit in this issue is a determination of the question as to when the respondent made an objection or taxation decision. In the submission of the parties, the nature of the decision was also called into question as to whether it was an "*objection decision*" or "*a taxation decision*". This was meant to resolve the controversy as to when time begun to run. This was further premised on the issue of whether an application for review arose only from an objection decision or taxation decision. Both at the tribunal and in this court, the parties required a decision on whether a decision by the Assistant Commissioner Large Tax Payers Department is a decision of the Commissioner General as envisaged under the Income Tax Act for it to amount to an objection decision.

The crux of the appellant's submission is that it appealed from a *taxation decision* of the respondent and not from an *objection decision*. That this decision is dated the 26th of February, 2010 and is found at page 13 of the record of appeal. It is addressed by the respondent to Messrs Deloitte and Touché, the tax advisors/consultants of the appellant. The letter reads in part:

> "We refer to your letter dated 16 February, 2010 requesting Uganda Revenue Authority to review the decision taken in regard to the treatment of deferred interest. We respond as follow:
>
> (a) Uganda Revenue Authority made an objection decision vide letter dated 12th of August, 2008 which reiterated our position that the interest that was expensed in 1999 to 2006 was not exempt from withholding tax.

(b) On 23 September, 2009 Uganda Revenue Authority reaffirmed its position as stated above following an appeal in your letter dated 22 August, 2008.
(c) You may wish to note that in the event that you were dissatisfied with our objection decision you should have followed the appeal procedures as laid down in section 100 of the income tax act cap 340.

In this circumstance, we are unable to review the decision taken and therefore maintain our earlier position."

The letter is written by the assistant commissioner large taxpayer's office. In the above letter, the respondent refers to a letter of the appellant dated 16th of February, 2010. This letter is found at page 14 of the record of appeal and for the completeness of the facts for this judgment it is quoted in full. It is addressed to the Commissioner Domestic Taxes Department and is written by the tax advisers of the appellant. It reads:

"We refer to our letters dated 22 October, 2008 and 16 October, 2009 (copies are attached) regarding our disagreement to the treatment of interest payable by Cable Corporation Ltd of **Uganda shillings 1,207,774,051/=** to Mehta Group Management ltd. This accrued interest was rejected as an allowable deduction for corporation tax purposes by Uganda Revenue Authority.

This is a second reminder requesting for your response to our request to review of the decision taken by Uganda Revenue Authority. Our client is in the process of preparing their accounts and the tax computation for the year 2009, but it is not able to finalise this process because of this outstanding issue.

We will appreciate your usual corporation in expeditiously resolving this matter."

The genesis is that the appellant had lodged an application for review with the Tax Appeals tribunal under section 17 of the Tax Appeals Tribunal Act on the 26th of March, 2010. In the summary of facts and reasons in support of the application at page 8 of the record the appellant states:

"The respondent carried out a comprehensive audit of the applicant for the period 1999 – 2006 and rejected an interest expense amounting to **Uganda shillings 1,207,774,051/=**. Various communications ensured between the two until 26 February, 2010 when the last one was made by the respondent and the applicant decided to appeal.

The issues before the tribunal are found at page the 9 of the record of appeal and the issue No. 1 thereof is: "*Whether the interest expense incurred by the applicant is an allowable deduction or not*." And secondly "*remedies available*."

It is not in contention that the genesis of this matter started when there was a comprehensive audit of the appellant by the respondent. It is also an agreed fact that the appellant was assessed

for the period 1999 – 2006 in which the appellant objected to an interest expense amounting to **shillings 1,207,774,051/=.** It is an agreed fact that the respondent rejected the objection based on section 47 of the Income Tax Act. The specific assessment of the appellant cannot be traced on the record. However, at page 51 of the record is the objection of the appellant through its tax consultants. The objection letter is dated 16th of May, 2008. The objection is inter alia couched in the following words:

> "The objection
>
> Pursuant to section 91 (1) of the income tax act, cap 340, on behalf of our client, we object to the assessments mentioned above for the years 1999 to 2006. This objection is based on the grounds that the assessments are overstated by the fact that the URA officers did not take into account all the information and explanation made available. This is contrary to section 95 (1) of the act, which requires the commissioner to raise an assessment based on the taxpayers return and "on any other information available".
>
> As stated in several meetings and correspondence, our objection revolves around the following areas:
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> 1. Deferred interest;
> 2. Business promotion expenses
> 3. Personal expenses…"

The bone of contention in this appeal arose primarily from the question of withholding tax on the deferred interest and the appellant's advisers put it in the following words at page 52 of the record:

> "We contend that the provisions in section 47 (2) do not apply to interest accrued by our client as it is not interest subject to withholding tax. Our client's interest payments are exempted from withholding tax under clause 8 P of the agreement between the Government of Uganda and the family of the late Nanji Kalidas Mehta. As required by section 166 (26) of the income tax act, the exemptions in this agreement were confirmed by the minister's letter of 31 December, 1997. Since there is no communication from the Minister of Finance to the contrary, the exemptions remain valid. We have attached copies of both the agreement and the letter for your ease of reference.
>
> Therefore our client should be allowed a deduction for the accrued interest in each year of income. ..."

The response of the Uganda Revenue Authority is found at page 74 of the record of appeal and is dated 12th of August, 2008. It is addressed to the Managing Director Cable Corporation Ltd. It captioned "OBJECTION DECISION FOR ASSESSMENTS SA/LTO/2431, SA/LTO/2432, SA/LTO/2433, SA/LTU/0045, SA/KCL/9535, SA/LTO/342, SA/LTO/630, SA/LTO/2431.

"Please refer to the letter dated 16th May 2008 from your tax consultants M/S Deloitte (Uganda) ltd. We respond as follows:

1. Deferred interest
   As communicated to you separately from this letter, the interest you expensed in the years 1999 to 2006 was not exempted from withholding tax. We thus maintain our position on deferred interest as communicated to you.
2. Business promotion expense
   The ledgers obtained from you clearly indicated that the company incurred both business promotion and public relations expenses in 2004 of 158,759,046/= and 168,292,900/= respectively as indicated by the ledger balances on these ledgers. The nature of these expenses was the same (non- business) and their treatment in the tax computation as money deductible items was at no point ever disputed by you.
   We have a note that the ledger balance for public relations expenses was suspiciously credited with an amount of 158,762,500/= at 31st of December 2004 and the debit made in the raw material consumed ledger thereby overstating the raw material consumed in the year. Either way the principle remains the same – that the amount was not deductible for tax purposes.
   We thus maintain our earlier position that the expense was not incurred exclusively in production of income as stipulated under section 22 (1) (a) of the income tax act (chapter 340).
3. Personal expenses
   We regret the error made in categorising "personnel expenses" as "personal expenses" in the tax computation. The appropriate change has been reflected therein.

Please find attached the amended tax computation. The revised assessments would follow in due course. Hope you find the above in order."

The letter of the respondent is replied to by the Tax Consultants of the appellant in their letter dated 22 August, 2008. In this letter they specifically referred to the respondents letters dated 11th of August and 12th of August, 2008 and they also referred to their objection letter dated 16th of May, 2008 following the audit of the appellant. This letter is found at page 32 of the record of appeal. It is pertinent to refer to paragraph three of the letter: *"pursuant to the provisions of section 99 (1) of the Income Tax Act, cap 340, and on behalf of our client, we still object to your decision on the ground that it did not consider all the available information and we do not agree to your conclusion on the interpretation of clause 8 (P) of the agreement between the GOU and the family of the late Nanji Kalidas Mehta. Areas of contention are; deferred interest; business promotion expense; withholding tax; interest."*

Section 99 (1) of the Income Tax Act deals with objection to assessment to be lodged with the commissioner within 45 days of service of notice of assessment. Pursuant to the above quoted letter from the appellant's tax consultants the respondent wrote the letter of the 23rd of

September, 2008 which is found at page 20 of the record of appeal. The letter is written by the assistant commissioner large taxpayers' office and is addressed to the appellant's tax consultants. It responds to the letter of the tax consultants dated 22nd of August 2008 and paragraph 1 of the letter is of interest. It states: "Please refer to your letter dated 22nd of August, 2008 in response to our objection decision in respect of assessments to your client. We respond as follows: ..." In the letter the respondent revises the previous assessment. The respondent deals with the subjects of deferred interest; Business promotion expense; Withholding tax; and interest of Director's tax.

When the matter came before the Tax Appeals Tribunal the respondent's counsel raised a preliminary objection to the effect that the applicant's application before the tribunal was time-barred. The tribunal noted that the application was filed on the record on 26 March 2010 out of the 30 days within which to file an application for review provided for under section 16 (1) 1 of the Tax Appeals Tribunal Act. The facts before the tribunal were that the objection decision was dated 12th of August 2008 and received on the same day by the applicant. The respondent reiterated its position in the objection decision in a letter dated 23 September 2008. That the respondent's letter of 26th of February 2010 is to maintain its position in its letter dated 12th of August 2008. When the matter was before the tribunal the appellant's counsel submitted that the two letters of 12th of August 2008 and 23 September 2008 did not indicate any finality of the matter and did not advise the taxpayer to appeal if dissatisfied. He further contended that the word "Commissioner" under the Income Tax Act means the Commissioner General appointed under the Uganda Revenue Authority Act. Moreover there was no indication that the person, who signed the objection decision, did so, on behalf of the Commissioner General. The tribunal found that the respondents letter dated 12th of August 2008 satisfied the requirements of section 99 (5) of the Income Tax Act. They found that the Act did not require the Commissioner to indicate any finality of the matter nor does it require him to give advice to the taxpayer to appeal. At page 109 of the record of appeal they hold as follows:

> "We agree with the applicant that time continues to run if there is further communication that opens the subject to review the assessments. Indeed as we have already stated above the respondent's letter dated 23rd September, 2008 extended the time from which the 30 days ran, within which the taxpayer may appeal to the tribunal from 12 August 2008 to the date when the letter of 23 September 2008 was received.
>
> The respondent's letter of 26 February 2010 merely restated the respondent's position as given in the objection decision of 12th of August, 2008 and as varied by the letter of 23 September 2008. The respondent reasonably argues that the letter does not mention a single decision or reason. If it were to be considered as an objection decision what would be the applicant's reason for appeal? The letter of 26th February 2010 cannot be considered as extending the objection decision.

Section 1 (g) of the Tax Appeals Tribunals Act defines an "objection decision" to mean "*the taxation decision made in respect of a taxation objection*. It is very explicitly provided that there

has to be a taxation objection before an objection decision is made. Secondly, section 1 subsection (k) of the Tax Appeals Tribunals Act provides that "taxation decision" means *any assessment, determination, decision or notice*. A taxation decision does not arise out of an objection but an objection decision arises from an objection to a taxation decision other than a decision arising from an objection decision. From the facts reviewed above the appellant objected to an assessment pursuant to a comprehensive audit of the appellant. The objection to assessment of the appellant is at page 51 of the record of appeal. It is dated 16th of May 2008 and is addressed to the assistant commissioner large taxpayer's office Uganda Revenue Authority. The objection dealt with deferred interest, business promotion expenses and personnel expenses. The respondent's letter is dated 12th of August 2008 and is filed at page 74 of the record of appeal and is the objection decision I have already quoted above. Pursuant to the objection decision the appellant's still wrote a letter dated 22nd of August 2008 as filed at page 32 of the record of appeal stating its dissatisfaction with the objection decision of the respondent. The subjects in contention are deferred interest, business promotion expenses, withholding tax, and interest.

The heading of "interest" occurred for the first time in the above letter. In the response of the respondents dated 23 September 2008 and found at page 20 of the record of appeal the following subjects were dealt with: Deferred interest; Business promotion expenses; withholding tax and interest on director's tax. As I have noted above the letter of the respondent at paragraph 1 thereof specifically refers to the objection decision and letter of the appellant dated 22nd August 2008 objecting to it. The respondent's letter in response states: "*Please refer to your letter dated 22nd of August 2008 in response to our objection decision in respect of assessments to your client. We respond as follows:"* as far as "deferred interest" is concerned the respondent indicated that the waiver of the tax will not apply after 31st of March 2008. As far as business promotion expenses are concerned the respondent adjusted the amount disallowed the tax computed for the year of income from 24,690,438/= to 22,668,447/=. As far as withholding tax is concerned they state as follows: *"After receiving the Ministers letter of 9 May 2008, we acknowledge the fact that the withholding tax of Uganda shillings 928,134,376/= on interest and management fees was waived and the assessment is henceforth vacated."* As far as interest on directors tax is concerned the decided as follows: "*the mission of the directive from the list of exempted expatriates is not a sufficient reason for us to recommend the waiver of interest.…"* The letter further attaches the revised Corporation tax computation for the years 1999 – 2006.

On 22 October 2008 the appellant again wrote to the Commissioner Domestic Taxes Department referring to the comprehensive audit period for 1999 – 2006. This letter is on page 18 of the record of appeal. The first the letter of the respondent dated 23 September 2008 of the Large Taxpayers Office. On the first paragraph of the state: "We do not agree how the interest payable by Cable Corporation to Mehta group Management Ltd has been fitted for Corporation tax purposes and as such would like your office to have this issue independently reviewed." As far as the facts of the case were concerned they note that Cable Corporation Ltd got a loan from Mehta Group Ltd and interest thereon accrue to Uganda shillings 1,207,774,051/= which interest was

still unpaid and was claimed as a deduction for Corporation tax purposes. They further complain that the exemption was confirmed by the Minister of Finance on 9th of May 2008. The letter shows that the decision of the respondent was that interest was not exempted from withholding tax and the Minister's letter just waived the withholding tax on interest. Referring to the memorandum of understanding between the government of Uganda and the Mehta group of companies the tax advisers of the appellant argued that the government of Uganda undertook to exempt interest payments to the appellant which was included in the Mehta Group of Companies. They argue that the interest was not subject to withholding tax under section 47 (2) of the Income Tax Act.

As a question of fact of the letter of the respondent dated 23rd of September 2008) deals with withholding tax as follows: "after receiving the minister's letter of 9th of May 2008, we acknowledge the fact that the withholding tax of Uganda shillings 928,134,376/= on interest and management fees was waived and assessment is henceforth vacated." As far as deferred interest is concerned paragraph 1 of the letter provides that "*the ministers letter of 9th of May 2008 further reaffirms the above position in that it simply waived the withholding tax due on interest and management fees prior to 13th of March 2008 thus acknowledging the fact that the tax was properly assessed in accordance with the law*."

For emphasis it is necessary to refer back to the letter of 22 August 2008 by the tax advisers of the appellant making a further objection to the objection decision of the respondent and the last paragraph on page 32 thereof that states: "deferred interest. *You still disallowed accrued interest as per the provision of section 47 which states that… We contend that our clients accrued interest is exempt and is therefore not subject to withholding tax. In addition to the agreement and the minister's letter, please find attached another letter from the Minister of finance dated 9th of May 2008 verifying that there is no withholding tax on interest payable for this period.*" The respondent specifically clarified this matter in its letter of 23 September 2008 at page 20 of the record. As far as the objection of the appellant is concerned, the objection is at page 51 of the record and is the dated 16th of May 2008. The issue of deferred interest is raised at page 52 of the record of appeal in the following words: "*We contend that the provision in section 47 (2) do not apply to interest accrued by our client as it is not interest subject to withholding tax. Our client's interest payments are exempt from withholding tax under clause 8P of the agreement between the government of Uganda and …*"

As far as questions of fact are concerned, the appellant objected to withholding tax on interest accrued in its objection dated 16th of May 2008 page 2 thereof under the heading "deferred interest" and this is found at page 52 of the record of appeal. The objection decision of the respondent dated 12th of August 2008 and paragraph about 1 thereof at page 74 decides on this question that: "*As communicated to you separately from this letter, the interest you expensed in the years 1999 to 2006 was not exempted from withholding tax. We thus maintain our position on deferred interest as earlier communicated to you.*" The appellant in its letter dated 22nd of August 2008 at page 32 bottom to page 33 of the record of appeal pointed out that it was still dissatisfied

with this decision and again objected to it under section 99 (1) of the Income Tax Act. The respondent's letter of 23 September 2008 addresses the question of deferred interest as item number 1.

> "Deferred interest
>
> We maintain our position as communicated to you in the objection decision and letter (both of 12th of August 2008) that the interest you expensed in the years 1999 to 2006 was not exempted from withholding tax. The ministers letter of 9th of May 2008 further reaffirms the above position in that it simply waived the withholding tax due on interest and management fees payable prior to 13th of March 2008 thus acknowledging the fact that the tax was properly assessed in accordance with the law.
>
> You may wish to note of that, had the exemption been provided for by statutory instrument (as is the case with exemptions under the Income Tax Act 1997); there would have been no need for the minister's letter. The letter further stipulates that with effect "from 13th of March 2008 withholding tax will be payable by SCOUL, UGMA and cable Corporation" and hence the waiver will not apply after 13th of March 2008."

It is the question of deferred interest that the appellant complaints about to the Commissioner Domestic Taxes department in its letter of 16th of October 2009 at page 17 of the record of appeal and 22nd of October 2008 which letter is at page 18 of the record of appeal. The letter of 16th of October 2009 reads:

> "We refer to our letter dated 22nd of October 2008 (copy attached) regarding our disagreement to the treatment of interest payable by cable Corporation Limited of Uganda shillings 1,207,774,051/= to Mehta group Management Ltd. This accrued interest was rejected as an allowable deduction for Corporation tax purposes by Uganda Revenue Authority.
>
> This is a reminder requesting for your response to our request *to review the decision taken by Uganda Revenue Authority*. Our client is in the process of preparing the accounts and the tax competition for the year 2009, but it is not able to finalise this process because of this outstanding issue." (Emphasis added)

From the facts reviewed, it is clear that the Respondent made an objection decision pursuant to the objection of the Appellants in their letter dated 16th May 2008 and the assessments it decided on are assessments No's SA/LTO/2431, SA/LTO/2432, SA/LTO/2433, SA/LTU/0045, SA/KCL/9535, SA/LTO/342, SA/LTO/630, and SA/LTO/2431. These assessments are not on the court record. However the Respondent in its letter of 12th August 2008 dealt with it and referred to the question of deferred interest. Thereafter in its letter of 22nd August 2008 addressed to the respondent, the appellant expressed dissatisfaction with the way the respondent dealt with the question of deferred interest. Thereafter the respondent wrote the letter of 23rd September 2008

and maintained its position on stated earlier in its letter of 12th August 2008. The letter of the Respondent of the 23rd of September is accompanied by amended assessments namely assessment No. SA/LTO923 issued on 23rd September 2008 at page 24 of the record; assessment No. SA/LTO/630 issued on 23rd September 2008 at page 25 of the record of appeal; assessment LT/LTU/342 DATED 23RD/Sept/2008 at page 26 of the record of appeal; assessment No. SA/KCL/9535 dated 23rd September 2008 at page 27 of the record; assessment No. SA/LT0/2433 dated 23rd Sep 2008 at page 29 of the record; assessment No. SA/LTO/2432 dated 23rd Sept/2008 at page 30 of the record of appeal and assessment No. SAL/LTO/2431 dated 23rd September 2008 at page 31 of the record of appeal.

After the respondent's letter of the 23rd of September 2008 accompanied by the above listed revised assessments, the appellant sought further review of the decision of the respondent. This was by letter addressed to the Commissioner Large Tax Payers Department. The subsequent correspondence by the appellant sought a decision on the appellants request for review on the question of deferred interest and withholding tax. This request for decision of the respondent communicated to the appellants in the respondent's letters dated 12th August 2008 and 23rd September 2008 are contained in the letters of the appellant dated 22nd October 2008 at page 18 of the record of appeal; the letter of the appellant dated 16th of October 2009 at page 17 of the record of appeal, and the letter of the appellant dated 16th February 2010 at page 14 of the record of appeal. All these letters are addressed to the Commissioner Large Tax Payers Department.

The appellants letters quoted above and which requested the respondent for review of its decision was replied to by the respondent on the 26th of February 2010 and is found at page 13 of the record. The question for determination before the tribunal and this court is whether the letter of the 26th of February 2010 led to accrual of a fresh cause of action for purposes of the limitation periods for appeals or applications for review to the Tax Appeals Tribunal under the Tax Appeals Tribunals Act. The respondent's letter states as follows:

> "We refer to your letter dated 16th February 2010 requesting URA to review the decision taken in regard to the treatment of deferred interest. We respond as follows:
>
> a) URA made an objection decision vide letter dated 12th August 2008 which reiterated our position that the interest that was expensed in 1999 to 2006 was exempt from WHT.
> b) On 23rd September 2009 (2008) URA reaffirmed its position stated above following an appeal in your letter dated 22nd Augusts 2008.
> c) You may wish to note that in the event that you were dissatisfied with our objection decision you should have followed the appeal procedures as laid down in section 100 of the Income Tax Act cap 340.
> d) You may wish to note that in the event that you were dissatisfied with our objection decision you should have followed the appeal procedure as laid down in section 100 of the Income Tax Act cap 340.

In the circumstance, we are unable to review the decision taken and therefore maintain out earlier position."

At the hearing of the appeal the appellant's counsel's main contention was that the appellant was appealing from a taxation decision dated 26th February 2010 and not an objection decision. A review of the meaning of a taxation decision under section 1 (k) of the Tax Appeals Tribunal Act shows that it means "any assessment, determination, decision or notice." The appellant's submission is founded on the premise that it was not appealing from the objection decision of the respondent dated 12th August 2008 and 23rd September 2008. In fact the appellant's Counsel conceded that there was an objection decision as laid out above namely on the 12th of August 2008 and as reaffirmed on the 23rd of September 2008. Implied in this issue is the question of whether the appellant sought a review of the decision of an assistant Commissioner of the Large Tax Payers Department with the Commissioner. The Appellant had maintained that a Commissioner was the Commissioner General Appointed under the Uganda Revenue Authority Act.

The word "Commissioner" is defined by the Income Tax Act cap 340 section 2 (m) to mean the Commissioner General appointed under the Uganda Revenue Authority Act. He contended that the assistant commissioner who made the objection decision communicated on the 12th August 2008 and the 23rd of September 2008 is not the Commissioner envisaged under section 95 of the Income Tax Act. For her part counsel for the respondent argued that the appellant lodged an objection with the Assistant Commissioner and following the case of **Tunakopesha Ltd vs. URA** was bound to accept the decision made by the Assistant Commissioner. Secondly delegation by the Commissioner General is implied under section 156 of the Income Tax Act.

The Commissioner General is appointed under section 9 of the Uganda Revenue Authority Act cap 196 laws of Uganda. The Commissioner General is responsible for the day to day operations of the authority, the management of funds, property and business of the authority and for the administration, organisation and control of other officers and staff of the authority. Section 156 of the Income Tax Act provides that the Commissioner may delegate to any officer of the Uganda Revenue Authority any duty, power, or function conferred or imposed under the Act.

The appellant's submission before the tribunal that the Assistant Commissioner is not the commissioner envisaged is curious, if not strange but raises novel questions that must be carefully considered. Firstly it is a matter of public importance and could have immediate impact on the way the Respondent conducts the administration of tax law in this country. I have found it curious because if this court finds that a commissioner referred to under section 95 of the Income Tax Act is only the Commissioner General under the Uganda Revenue Act which Commissioner General is an individual, several sub questions need to be answered. The first question was raised by the Respondent. If indeed this is the position, it is a question of fact that the appellant in its letter of 16th May 2008 objected to assessment under section 99 (1) of the Income Tax Act. This provision provides that a tax payer dissatisfied with an assessment may lodge an objection to the

assessment with the Commissioner. By implication the appellant would be saying that it ought to have lodged its objection with the Commissioner General. However it is a fact that the Appellant addressed its objection contained in its letter of the 16th of May 2008 found at page 51 of the record of appeal to the Assistant Commissioner Large Tax Payers office. An objection under section 99 (1) of the income Tax Act has to be lodged with the Commissioner within 45 days. Is the appellant challenging the propriety of its own objection? If indeed the word Commissioner is restricted to the Commissioner General appointed under the Uganda Revenue Authority Act, it is apparent that several absurd consequences would ensure. The court will have to consider whether the doctrine of estoppels can be applied against the appellant who lodged the application for objection with the Assistant Commissioner in the first place, and see whether it is barred from raising this issue. This however would not be the end of the matter. An assessment is made by the Commissioner under section 95 of the Income Tax Act. Should an objection be from a junior office to that of the Commissioner General? This issue cannot be raised because the person who makes the assessment is the commissioner and therefore by the definition of the appellant founded on section 2 (m) of the Income Tax Act, it must have been made by the Commissioner General as well.

The tribunal considered the above question in the case of **Tunakopesha (U) Ltd vs. Uganda Revenue Authority TAT No. 34/2007** where a similar question arose and an objection had been lodged with the Commissioner Large Taxes Department. The question was whether the objection decision in that matter was an objection decision because it had been lodged as stated above not with the Commissioner General nor decided by the Commissioner General. The tribunal decided that delegation to the other officials of Uganda Revenue Authority of powers conferred upon the Commissioner General in the Act was implied. The tribunal lamented the fact that the parties had not produced the Human Resources Manual of the respondent to answer the question of the designation of the Commissioner Domestic Taxes Department and therefore the question of delegation of powers of the Commissioner General under the Income Tax Act. It is my opinion that this important point of law should not be left hanging and should be put to rest.

A similar question was decided by the Supreme Court in the case of the **Commissioner General Uganda Revenue Authority as appellant and Messrs Meera Investments Ltd, respondent Supreme Court Civil Appeal No 22 of 2007.** An objection was raised as to whether the Commissioner General could sue or be sued since Uganda Revenue Authority was a corporation sole capable of owning property with the power to sue or be sued. In considering this issue the Supreme Court analysed the role of the Commissioner General (CG) and powers of the CG under the Income Tax Act and various tax laws. The decision of the Supreme Court is contained in the lead judgment of Professor Kanyeihamba JSC. The court said at page 13 of the lead judgment:

> I notice that in her letter to the respondents, Jacqueline Kobusingye signed herself as Commissioner (for) Domestic Taxes Department. In my view, this fact does not alter the legal position that it is the Commissioner General who is responsible and liable in an

> official capacity for the acts of revenue officers under her in accordance with the provisions of Section 10 (2) of the Uganda Revenue Authority Act (*supra)* which empowers her/him to be responsible for the day to-day operations of the authority, the management of funds, property and business of the authority and for the administration, organization and control of **other officers and staff of the authority (***emphasis supplied!***)**
>
> There can be no doubt in my opinion, that it is only the Commissioner General who has the responsibility, powers and knowledge about tax matters to assist court and that is fully recognized by section 104 (3) of the Income Tax Act, Section 104(3) that empowers her to sue for taxes due but unpaid."

The court emphasized in the above quote the powers and right of the Commissioner General to control other officers and staff of Uganda Revenue Authority. In other words the other officers and staff of Uganda Revenue Authority act under his or her control as the person with the powers conferred by the Act. He or she can be sued for the acts of the other officers who exercise powers of the Commissioner General conferred by the Act. In other words the Supreme Court has already decided that the Commissioner General is liable for the acts of the other commissioners responsible for making decisions on behalf of the CG under the Income Tax Act. The rationale for the wide ranging powers of the Commissioner General of the respondent is further considered by the Supreme Court in **URA vs. Meera Investment** (supra) at pages 14, 15 and 16 as follows:

> In my opinion, the purpose of empowering the Commissioner General to assess, demand, collect and sue for any tax not paid is to ensure that Uganda revenues are settled, collected and paid expeditiously. Indeed, the letter written by Jacqueline Kobusingye reads as follows: ...
>
> In my opinion, it appears not to be rational and fair that the Commissioner General can proceed with haste to assess, demand and sue for taxes from an individual or a corporation, but when the latter deny liability and wish to resist the imposed tax by speedily going to court, the Commissioner General not only ignores their defence but also attempts to hide behind the shield of statutory notice to gain ample time which the tax payer does not have to shelter behind.
>
> In this particular case, there are two statutory bodies, namely the Commissioner General and the Investment Authority each purporting to have exercised their functions. In my view, it would be unjust for either or both to impose their will without the victim seeking a judicial remedy within reasonable time. Secondly, the requirement of a statutory notice would unreasonably delay the receipt of Uganda revenues from reaching into the Consolidated Fund expeditiously. In my opinion, this would not be in the nation's interests. In any event, the reading of the statutes applicable show that the law permits the Commissioner General or his or her agent to sue expeditiously for taxes owed.

> Therefore, it my views that the respondent should also have the corresponding right to sue without hindrances
>
> In my opinion, it would be just and proper that where liability for tax is in issue, the dispute should be disposed of quickly so that the uncertainty is eliminated at once and the country is accorded its rights at the earliest opportunity. ...”

The Supreme Court considered the office of the Commissioner General as institutionalised with the power to sue and be sued. The Commissioner General carries out various functions under the relevant Acts i.e. the Value Added Tax Act and the Income Tax Act. These functions cannot be humanly carried out by one individual (The Commissioner General) but has to be delegated. It is therefore a public interest matter that the Commissioner General should be able to function realistically and to handle all tax issues expeditiously throughout Uganda as noted by the Supreme Court.

It is clear that the Assistant Commissioners and Commissioners under various departments are institutionally delegated functions of the Commissioner General under the various provisions of the law. It is an accepted practice that the various departments such as the Large Tax Payers Department, the Domestic Taxes Department, and any designated department managed by Commissioners or Assistant Commissioners are institutionally and in the administration of the respondent authority delegated powers to manage certain schedules of duties conferred on the Commissioner by the Act.

I must note that acting without powers can be the subject of judicial review and evidence of the lack of power must be provided. In any case the Commissioner General is directly responsible for the control of other officers and staff of the Uganda Revenue Authority and may be sued for those acts. In my opinion, delegation can be individual or departmental with designated officers and staff of the Respondent authority carrying out functions conferred on the Commissioner under the Income Tax Act or any other tax law.

The appellants case could have been that in the particular case such a task or duty had not been delegated to the designated departmental commissioner. The proper person to answer that question would have been the Commissioner General.

Secondly, I agree with the decision of the Tax Appeals Tribunal in the **Tunakopesha** case (supra) that this delegation can be implied. It is a presumption of law that the Commissioners and assistant Commissioners appointed to manage departmental schedules under the Uganda Revenue Authority are deemed to act under the control of the Commissioner General and to assist him or her. This is based on interpretation of section 9 (2) of the Uganda Revenue Authority Act cap 196 which makes the Commissioner General the chief executive responsible for the day to day operations of the authority and control of other officers and staff of the respondent. Some of this delegation is inbuilt in the schedule and designation of the officers. Section 9 (2) of the Uganda Revenue Authority Act should be read in conjunction with section

156 of the Income Tax Act to conclude that the assistant Commissioner Large Tax Payers departed is deemed to have acted under the control of the Commissioner General. The onus is upon the appellant to show that the Assistant Commissioner did not act under such control or delegated power of the Commissioner General under the Income Tax Act.

I agree with the respondent that under the Income Tax Act, the only power that may not be delegated by the Commissioner General is that of compounding offences under section 148 of the Income Tax Act and as reserved by the power of delegation under section 156 of the Income Tax Act. In other cases officers appearing in court on behalf of the Commissioner General have to be authorised in writing by the Commissioner General and may be asked for that written authority.

The powers of assessment and of hearing objections under section 95 and 99 (1) are therefore deemed to have been delegated to officers whose schedule is to handle the same in the absence of evidence to the contrary. Good enough the appellant as noted did direct the objection it made to the assistant Commissioner and without raising this as an estoppels which is not applicable against statutory provisions the objection of the appellant just shows the practice in the respondent authority for Commissioners to handle some of the mandate of the Commissioner General under the Income Tax Act.

I have examined the conclusion of the Tax Appeals Tribunal on the case of when the limitation period should begin to be reckoned to determine whether the appellant's application before the tribunal was made within time. The Tax Appeals Tribunal decided that the respondent made an objection decision on the 12th of August 2008 and thereafter revisited some issues thereon on the 23rd of September 2008 and therefore the time of reckoning the limitation period ran from the 23rd of September 2008. The power of the Respondent to review its own decision pursuant to an objection decision must be scrutinised. It is noteworthy as a question of fact that the appellant when it further complained about the objection decision of the 12th of August 2008 in its letter of the 22nd of August 2008 indicated that it was writing the objection under section 99 (1) of the Income Tax Act. This provision deals with objections to assessment.

I have already decided that in the absence of materials that the Assistant Commissioner of the Respondent did not act under the control and delegation of the Commissioner General, and without deciding raised issues as to what amounts to an objection decision, the decision of the 12th of August 2008 at page 74 of the record of appeal is the objection decision of the respondent pursuant to the objection of the appellant dated 16th of May 2008 and found at page 51 of the record of appeal. Objection decisions are governed by sections 99 and 100 of the Income Tax Act cap 340 laws of Uganda 2000. Section 100 (1) of the Income Tax Act provides that a tax payer dissatisfied with an objection decision of the respondent may at their own option:

> "(a) appeal the decision to the High Court; or

(b) apply for review of the decision to the tax appeals tribunal established by Parliament by law for the purpose of settling tax disputes in accordance with article 152 (3) of the Constitution."

Section 99 (5) of the Income Tax Act provides that:

> "After consideration of the objection, the Commissioner may allow the objection in whole or in part and amend the assessment accordingly, or disallow the objection; and the Commissioner's decision is referred to as an "objection decision"."

The question of the powers of the respondent to revise its decision arises from interpretation of the issues. This question is whether the respondent can review its own objection decision after another objection to it. It is possible to argue that where the respondent chooses to review its own decision and upon application of the tax payer as in this case, no prejudice is occasioned to the tax payer if the tax burden of the tax payer is lessened by the review.

It is also possible to argue that article 152 (3) of the Constitution referred to in section 100 of the Income Tax Act, envisages the settlement of tax disputes by tribunals established there under but where the respondent by review reduces the tax payable arising from its own objection decision, there would be no tax dispute as far as that portion reduced is concerned and no one is prejudiced (and no one would complain). I sympathise with the above hypothetical argument.

However, I must note that the Commissioner who decides an objection decision is required to consider the objection judicially. That is to decide using all skill, objectivity and act fairly in deciding the merits of the objection before coming up a decision. This role is not adversarial.

The objection decision is not an exposition of tax law but does the following: It may allow the objection in whole; or in part wherein when allowed in part, the Commissioner amends the assessment accordingly. The Commissioner may also disallow the objection in whole which means that the assessment remains as it is. This is the crux of an objection decision. It is a decision agreeing or disagreeing in part or in whole with an objection made by a tax payer under section 99 (1) of the Income Tax Act. The objection decision may be based on points of fact or interpretation and enforcement of tax law applicable to the matter.

By analogy the High Court has power to review its own judgments and decisions under certain grounds under section 82 of the Civil Procedure Act and order 46 of the Civil Procedure Rules. As far as the Respondent is concerned a review would go unchallenged if the tax payer is not aggrieved with it. This is a practical point of fact. As far as doctrine is concerned the Commissioner has power to make a private ruling upon application of a tax payer setting out the commissioner's position about the application of the Income Tax Act to any particular transaction under section 161 of the Income Tax Act. Such a ruling is binding on the Commissioner and takes precedence over a practice note in that particular transaction. An

objection decision by its nature is made pursuant to a challenge to the assessment and is equivalent to a review of an assessment.

The matter which aggrieves the tax payer from the objection decision becomes a dispute and where it is in dispute as in the appellants case, it is in my opinion the general rule that the Commissioner or the Respondent as in this case may be considered to be *functus officio* after making the objection decision provided for under section 99 (5) and 100 (1) of the Income Tax Act. Obviously the Commissioner should have powers to correct errors made in an objection decision.

What I want to emphasise is that the Income Tax Act specifically gives powers of review of an objection decision to the Tax Appeals Tribunal. As we shall later on establish, this is further supported by the Tax Appeals Tribunal Act. It is a question of jurisdiction. The Commissioner exercises judicial or quasi judicial powers when making an objection decision under section 99 of the Income Tax Act and should give a hearing (even if in writing) to the tax payer. After the objection decision is made, it shall be communicated to the tax payer who may accept it or take further measures to oppose the same. Generally the commissioner would after communicating the objection decision exhausted its jurisdiction on the matter and further jurisdiction is vested in the High Court or the Tax Appeals Tribunal.

The textbook **Words and Phrases Legally Defined** 3rd Edition volume D – J page 301 defines the term *functus officio* by referring to Canadian cases at page 301:

> Where wish to comment on the use of the term *functus officio* in the following portion of the judgment of Macfarlane J In *Herman Sawmill* [*Re: Herman Sawmill Ltd and Minister of Finance* (1972) 24 DLR (3d) 476] (see 483): "it was further contended by the appellant that the minister, having exercised his discretion when the original assessments were made, *and there being no new relevant facts brought to his attention with respect to the matter* that he was *functus officio* and could not re-exercise his discretion: See Clarke vs. MNR (1952) 1 Tax ABC 137 at 152. In my opinion they were no grounds upon which the minister could properly re-exercise his discretion in regard to the granting of capital cost allowance in this case." [the Italics are mine.] I think it is inappropriate to use the term *functus officio* in that context. To me the term means that the person who decides something is precluded from again considering the matter even if new evidence or arguments are presented to him. An example would be a judge who reaches retirement age and cannot thereafter consider a decision made before retirement." *MacMillan Bloedel Ltd vs. Minister of Finance* (1985), 60 BCLR 145 at 162 – 163 (British Columbia Court of Appeal) Per Taggard JA.

BLACK'S LAW DICTIONARY Revised Fourth Edition Pg 802 defines the term *functus officio* as "*a task performed*." Referring to the case of **Blanton Banking Company vs. Taliaferro** defines it as:

> "Having fulfilled the function, discharged the office, accomplished the purpose, and therefore of no further force or authority. Applied to an officer whose term has expired, and who has consequently no further official authority; and to also an instrument, power, agency, etc which has fulfilled the purpose of its creation, and is therefore of no further virtue or effect"

In the case of in Re: **An Application by Hirji Transport Service [1961] E.A. 88**, at page 90 Biron Ag. J held:

> "On the face of the record, the appeal tribunal in restoring the appeal, appear to have acted without jurisdiction, as it will not, I think, be disputed that once the appeal tribunal has properly dismissed an appeal, it has no power to restore it, and on the face of the record there would appear to have been an appearance by the appellant company when the appeal was dismissed.
>
> In the circumstances I consider that the applicant firm has made out a prima facie case for the issue of a writ of certiorari to remove into this court and quash the order of the appeal tribunal made on August 2, restoring the appeal it had dismissed."

The Respondent having exercised its powers under the Income Tax Act and made an objection decision is generally *functus officio*. A tax payer aggrieved with the objection decision has two option, that is either to apply for a review before the Tax Appeals Tribunal under section 100 (1) (a) of the Income Tax Act or appeal to the High Court on questions of law only as provided for under section 100 (1) and (4) of the Income Tax Act.

The authorities cited above give the principle that in the absence of an enabling statute once an authority exercising judicial or quasi judicial functions such as an arbitrator decided a matter, the authority becomes *functus officio* and cannot revisit that decision again. Any person aggrieved with the decision of the authority can only apply for review to the Tax Appeals Tribunal or appeal to the High Court. If the respondent authority has power to review its decision, the scope of this power and its limitations have to be carefully set out and should not be left to expediency of the parties and any practices of officials.

I will however not make any final pronouncement about this point but only wish to point out that it should be of serious concern in the administration of tax law in view of the clear alternative remedies by appeal or review pointed out above. Moreover the Tax Appeals tribunal exercises statutory supervisory powers over the respondent. For revenue officers to be able to revisit their decisions at will or on the request of the tax payer after an objection decision may lead to undesirable practices and shoddy work. After all it can be said that the Revenue Authority can always change their decision. The undesirable and possible effect is demonstrated by the following questions: Will it not encourage corrupt practices? What principles of law or policy or standards will Uganda Revenue Authority use to review its own objection decision pursuant to a

further objection to it by the tax payer? Does a tax payer have a right to object to an objection decision to the same authority? How many times can tax payer object to an objection decision?

This leads me to the consideration of whether the application for review before the Tax Appeals Tribunal was time barred. As far as the decisions of the 12th of August 2008 and 23rd of September 2008 are concerned, I do not need to consider whether the decision was an objection decision or a taxation decision because an application has to be made in any case either within 30 days from the service of the objection decision under rule 11 of the Tax Appeals Tribunals (Procedure) Rules S.I. 345 – 1 or within 30 days from service of the taxation decision under section 16 (1) (c) of the Tax Appeals Tribunal Act.

As far as the limitation period is concerned the distinction between an *objection decision* and a *taxation decision* is not important because both have a limitation period of 30 days for purposes of applications for review. Further distinctions would be niceties showing that save for original suits, an appeal to the High Court can only be made pursuant to an *objection decision* under section 100 of the Income Tax Act, whereas taxation decisions other than objections decisions can only be initially reviewed by the Tax Appeals Tribunal under the Tax Appeals Tribunal Act within the context of the Income Tax Act. An appeal lies from the Tax Appeals Tribunal to the High Court.

There seems to be a conflict between section 16 (1) (c) of the Tax Appeals Tribunal Act which provides for an appeal within 30 days of service of the taxation decision and section 16 (7) of the Tax Appeals Tribunal Act cap 345 Laws of Uganda. However this apparent conflict is resolved by distinguishing what the two provisions apply to. Section 16 (1) (c) comes into play and time is reckoned from the date of service of the taxation decision. It means that only when a tax payer has been served with a taxation decision should time begin to run up to 30 days. On the other hand section 16 (7) clear delimits any other appeal to 6 months from the date of the taxation decision. Section 16 (7) caters for situations where the tax payer was not served with the taxation decision. In such circumstances time is reckoned from the date of the taxation decision and not from the date of service. In either case the matter arose at the end of 2008 and the applicant filed the application for review which is the subject of this appeal on the 26th of March 2010.

I have already set out at the beginning of this judgment the definitions of an “Objection Decision” and “a Taxation Decision.” An objection decision is a decision in respect to a taxation objection made to the Commissioner against a notice of assessment while a “taxation decision” means any assessment, determination, decision or notice. The word *decision* in the definition of taxation decision should be restricted as *objection* decision is separately and specifically defined so that it does not refer to an *objection decision.* The word taxation decision is however loosely used under section 16 of the Tax appeals tribunal Act to encompass both kinds of decisions defined above. This use is to be regretted as the proper terminologies are defined by the definition section of the Tax Appeals tribunal Act. In each case the Tax Appeals tribunal Act should be read in conjunction with the relevant tax act such as the Income Tax Act. Therefore as

far as the letters of the Respondent dated 12th August 2008 communicating an objection decision and that of 23rd of September purporting to communication a decision made on revisiting the objection decision is concerned, on the face of the documents and their time of service on the appellant, the matters decided therein are time barred because the application for review was made more than 30 days after communication of the decision.

There is apparently no dispute as to whether the matters communicated by the respondent to the appellant on the 12th August and 23rd September 2008 which amount to an objection or taxation decision are time barred by the time the appellant applied for review in the tribunal.

The appellants counsel narrowed down the question to another avenue and is whether by the letter of 23rd of September 2008 a new assessment had been made and the appellant subsequently corresponded on this new assessment whereby it made a "*taxation decision*" on the 26th of February 2010 after a period of over one year. Pursuant to using this avenue that the question is whether deferred interest and withholding tax had not been finally determined or had been opened for re-examination and no final decision had been taken thereon until February 2010. This issue can be resolved following different routes of analysis.

In the first route of analysis it is sufficient to start with the questions of fact. From the review of facts above the matter in contention was deferred interest and withholding tax thereon. The respondent decided this controversy pursuant to the objection of the appellant specified in its letter dated 16th of May 2008. The objection is at page 51 of the record of appeal and specifically the matter of deferred interest and withholding tax is handled at page 2 of the letter found at page 52 of the record. The appellant was still aggrieved by the decision of the respondent made pursuant to its objection which decision is at page 74 of the record and is dated 12th August 2008 and is served on the appellant on the same day. The respondent decided that the question of deferred interest for the years 1999 – 2006 was not exempted from withholding tax. This decision is item number 1 on page 74. That a decision was made is admitted before the tribunal in the written and signed scheduling notes of the Appellant. This is at page 64 of the record of appeal where the appellants counsel writes:

> "3. On the 16th of May, 2008 the applicant objected to the assessment on grounds that the interest expense of Uganda shillings 1,207,774,051/= on interest and management fees is an allowable deduction.
>
> 4. The respondent by letter dated 12th of August, 2008 made an objection decision disallowing the deduction on the grounds that the interest expensed in the years 1999 – 2006 was not exempt from withholding tax."

According to the same scheduling notes of the appellant's counsel filed before the tribunal, one out of the two disagreed facts was "*that the deferred interest expense incurred by the applicant for the period of 1999 to 2006 is an allowable deduction*." By another letter dated 22 October, 2008 which is found at page 18 of the record of appeal, the appellant objected to the position of

the URA that the interest was not exempted from withholding tax and that the ministers letter did not waive the withholding tax on interest. The respondent's response is also found at page 60 of the record of appeal in its letter dated 23 September, 2008. We have already noted that item 1 of that letter on deferred interest reads: "*we still maintain our position as communicated to you in our objection decision and letter (both of 12th of August, 2008) that the interest you expensed in the years 1999 to 2006 was not exempted from withholding tax. The ministers letter of 9th of May, 2008 further reaffirms the above position in that it simply waived the withholding tax due on interest and management fees payable prior to 13th of March, 2008 thus acknowledging the fact that the tax was properly assessed in accordance with the law.…*" By this letter the respondent further confirmed and decided that it would stand by its position of the 12th of August, 2008. Therefore as a question of fact or the respondent decided that the withholding tax was chargeable on the deferred interest which was the subject-matter of the appellant's application for review before the Tribunal.

The tribunal decided that the letter of 23 September, 2008 finally concluded the matter. In this appeal it is the appellants position that there was no finality in that decision. There was further correspondence from the appellant after the 23rd of September, 2008. There is however nor evidence on record that the respondent ever responded to the various letters of the appellant after the said date. I agree that the last letter of the respondent on the matter is the letter dated 26 February, 2010 and found at page 13 of the record. This letter responds to the letter of the appellant dated 16 February, 2010. Again it is necessary to quote the appellants letter dated 16 February, 2010 in full:

> "We refer to our letters dated 22 October, 2008 and 16 October, 2009 (copies are attached) regarding our disagreement to the treatment of interest payable by Cable Corporation Ltd of **Uganda shillings 1,207,774,051/=** to Mehta Group management LTD. This accrued interest was rejected as an allowable deduction for corporation tax purposes by Uganda Revenue Authority.
>
> This is a second reminder requesting for your response to our request to review the decision taken by Uganda revenue authority. Our client is in the process of preparing their accounts and the tax computation for the year 2009, but is not able to finalise this process because of this outstanding issue.…"

The response of the respondent on the 26th of February, 2010 reminds the appellants that they made an objection decision on the 12th of August, 2008 and that they reaffirmed this decision on the 23rd of September, 2008. At the hearing of the appeal, the appellants counsel made a two pronged submission. On the first leg he maintained that there was no finality in the matter. On the second leg is the argument that there was an accrual of a fresh cause of action because the matter remained open. This is further bolstered with the argument that the letter did not in law amount to an objection decision by virtue of who wrote it and its format and content. As far as

the first limb of the argument is concerned I have already demonstrated above that there was finality in the decision of the respondent. This is a question of fact.

On the second leg of the argument, the respondent never reopened its decision at any one time. The subsequent letters of the appellant after the 23rd of September, 2008 requested the respondent to review its decision. The respondent maintained a silence on the appellant's correspondence and never responded. The appellant relied on the case of **Uganda Revenue Authority vs. Uganda Consolidated Properties Ltd civil appeal No. 31 of 2000** decided by the Court of Appeal at Kampala. The decision of the court was delivered in the lead judgment of Twinomujuni JA. The appeal arose from the judgment of the High Court and I have had the privilege of reading the High Court judgment from the record of appeal at pages 94 (f). This is **High Court Civil Appeal No. 75 of 1999 between Uganda Consolidated Properties and Uganda Revenue Authority** was decided by Hon. Mr. Justice Okumu Wengi. The facts as stated by the High court judge were that Uganda Revenue Authority levied a tax of Uganda shillings 504,152,054/= on the appellants by notice of February 1, 1999. The appellant objected to the assessment on the 23rd of March, 1999. Then on the 14th of June, 1999 the respondent moved to collect taxes by directly reaching the respondents bank accounts. Thereafter the meeting was held between the parties which resulted in the deposit of 30 per cent of the tax assessed and this was reduced into writing by the letter of the respondent to the appellant dated 17th of June, 1999. By this letter the respondent made a final declaration that the taxes were payable as assessed. The appellant then filed two applications for review before the Tax Appeals Tribunal. The first application was filed on the 6th of July, 1999 and the second application on the 9th of August, 1999. The first application was not served upon the respondent within the requisite period of five days.

The issue before the tribunal and the appeal was to establish the date of the taxation decision from which the limitation period began to run.

The tribunal found that the date of the decision was March 23, 1999 and therefore the application for review was time barred. On the other hand if the decision of the respondent was communicated on the 15th of June or 17th of July, 1999, then the applicant's application was not time barred. The High Court found that after the letter of objection dated 23rd of March, 1999 and by the 15th of June, 1999 no reply by way of an objection decision had been communicated by the respondent to the appellant. The court found that the appointment of Uganda Commercial Bank as agent by third party notice under the provisions of section 107 of the Income Tax Act 1997 became the notice of the objection decision. The high court allowed the appeal and Uganda Revenue Authority appealed to the court of appeal. The first ground of appeal was that "the honourable judge erred in law and in fact in holding that the agency notice was a taxation decision". The third ground was that "the honourable judge erred in law and in fact in holding that the appellant's subsequent correspondences revived the dates of the objection decision". The Court of Appeal found as a question of fact that the taxation decision was notified by the agency notice on the 17th of June, 1999 and thereafter revived by a subsequent meeting and

notice issued thereafter on the 17th of June 1999 and was therefore in time. The decision rested on the requirement to notify the objection decision on the taxpayer which notice was deemed effected much later than the date of the objection decision.

The facts of the above case are clearly distinguishable from the current appeal. In the current appeal the objection decision was immediately communicated to the appellant. Secondly, after the 23rd of September, 2008, the respondent never made any further communication to the appellant. In any case, the letter of the 23rd of September, 2008 confirmed the objection decision of the 12th of August, 2008 which the respondent had made pursuant to the objection of the appellant in its letter dated 16th of May, 2008.

Lastly the appellant attacked the form of the objection decision in that he contended that it was not according to the form prescribed by the guidelines and procedures for management of objections and appeals for income taxes issued by Uganda Revenue Authority Domestic Taxes Department. This document is found at page 78 of the record of appeal. I agree with the respondents counsel that this is an internal document that cannot substitute the provisions of section 99 of the Income Tax Act. Section 99 (6) of the Income Tax Act is very explicit as to the requirement of notice of the taxation decision. It provides: "*as soon as is practicable after making an objection decision, the commissioner shall serve the taxpayer with notice of the decision.*" This provision must be read in conjunction with section 99 (5) of the income tax act. As I have noted above the ingredients of an objection decision are that it may contain the actual decision in which the objection is allowed in whole or in part and when it is allowed in part an amendment to the assessment. The decision may also disallow the objection. It is of course good practice to give the grounds of the decision. As far as the question in controversy is concerned both the decision of the 12th of August 2008 and that of the 23rd of September 2008 give the grounds why withholding tax on deferred interest for the relevant period was not exempted. I have already held that the person who signed the letter is deemed to have acted on behalf of the Commissioner General who is liable for the acts. In this case the question is not whether the reasons given by the respondent were sound or correct since they were appealable or subject to review. The question is whether the appellants rights of appeal expired by the statutory period of limitation under the Tax Appeals Tribunal Act.

Last but not least as far as the submission of the appellant that the letter of 26th February 2010 which founded the basis of the application to the Tribunal is a taxation decision, I have already established that it did not raise any new matters. To hold otherwise would open the respondent to correspondence from tax payers requesting for review of objection decisions. If the respondent heeds to the requests of taxpayers they could contend that the objection decision is nullified and therefore a new cause of action had arisen. Looking at the flip side, a new cause of action by necessary implication means that the old decision does not stand and a new decision should be made. In this case the appellant purported to made a further objection to the objection decision in its letter of the 22nd of August 2008 under section 99 (1) of the Income Tax Act. Even if the decision of the Respondent dated 23rd of September 2008 can be held to be a taxation decision by

way of a new assessment, the way to object to it would be by objection to assessment which has to be made to the commissioner within 45 days. Thereafter the respondent would have to deliver an objection decision within 90 days. I have already found that there was a decision embodied in the appellant's letter of the 23rd of September 2008. The question of form of the decision cannot be raised so long as its contents amount to an objection decision and addressed the specific question of deferred interest and withholding tax. This is commanded by section 43 of the Interpretation Act cap 3 Laws of Uganda 2000. Section 43 of the Interpretation Act provides that:

> "Where any form is prescribed by any Act, an instrument or document which purports to be in such form shall not be void by reason of any deviation from that form which does not affect the substance of the instrument or document or which is not calculated to mislead."

Upon perusal of the letter the essential ingredients of the law as to the contents of an objection decision have been fulfilled. I therefore agree with the respondents position that section 99 (5) of the Income Tax Act permits the respondent to serve an amended assessment in the objection decision and such an amended assessment is part of the objection decision as envisaged by the said section 99 (5) of the Income Tax Act. In conclusion the respondent having made a firm decision on the 12th of August 2008 and reaffirmed the same decision in unequivocal language on the 23rd of September 2008, it cannot be said to have left the matter open to negotiations or further review. Neither can its correspondence of 26th of February 2010 to the appellant and responding to the letter of the Appellant's Tax Consultants of the 16th February 2010 be said to have reopened the matter. In the final result I have not found any grounds to interfere with the decision of the Tribunal that the application for review of the appellant was time barred.

For the above reasons the appellant's appeal lacks merit and is dismissed with costs in the High Court and in the Tax Appeals Tribunal.

Judgment read in court on the 29th of July 2011.

Hon. Mr. Justice Christopher Madrama

Delivered in the presence of:

Cephas Birungye for the Appellant,

No body for the Respondent,

Ojambo Makoha Court Clerk,

Hon. Mr. Justice Christopher Madrama

29th July 2011