THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

APPLICATION 10 OF 2019

AIRTEL UGANDA LIMITED ……APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY ……RESPONDENT

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

RULING

This ruling is in respect of an application challenging income tax, Value Added Tax (VAT) and Withholding Tax (WHT) additional assessments issued against the applicant by the respondent.

The applicant deals in telecommunication services. In 2013, it acquired 100% of Warid Telecom Limited which was effective 1st February 2014. In 2018, the respondent conducted an audit on the applicant for the period June 2007 to June 2017. It disallowed input tax credit of Shs. 1,288,219,863 and issued VAT of Shs. 643,114,70 on interconnect invoices on the applicant. The respondent adjusted the WHT rate on roaming services from 5 to 15% and issued an additional Withholding tax (WHT) assessment of Shs. 208,817,971 on the applicant. The applicant's objection was disallowed by the respondent.

The following issues were set down for determination.

1. Whether the assessments are time barred?
2. Whether the applicant is liable to pay VAT as assessed?
3. Whether the applicant is entitled to input VAT credit as claimed?
4. Whether the applicant is liable to pay the WHT assessed?
5. What remedies are available to the parties?

The applicant was represented by Ms. Belinda Nakiganda and Mr. Jonathan Rukikaire while the respondent by Ms. Charlotte Katutu.

The applicant's first witness, Ms. Esther Nantambi, its tax and compliance accountant testified that the applicant deals in telecommunication services. It acquired Warid Telecom in 2013 effective 1st February 2014. The applicant took over the assets and liabilities of Warid Telecom. The respondent conducted a comprehensive audit on the applicant before the merger was finalised. In 2018, the respondent conducted another audit of the applicant for the period 2007 to 2014. She testified that the applicant claimed input VAT of Shs. 1,413,191,344 in respect of Warid Telecom. The applicant presented invoices issued by Warid Telecom to support its VAT claim. The respondent rejected them on the ground that they had not been declared in the supplier's VAT returns and issued a VAT assessment of Shs. 643,114,709. She admitted that dates and invoice numbers of 7 invoices in issue did not correspond to those in the VAT returns made to the respondent.

The applicant's second witness, Mr. Timothy Kirabira, its tax manager testified that the applicant has contracts with Tata Communications UK Limited and Belgacom International Carrier Services Limited for provision of carrier services. Carrier services means roaming services. The applicant when paying the companies did not subject it to tax. He contended that under the International Telecommunications Regulations Melbourne Treaty 1988 and the Dubai Regulations 2012, of which Uganda is a signatory, and the Double Taxation agreements between Uganda and the United Kingdom and between Uganda and Belgium, tax shall be only levied on international services in that country. The respondent issued a WHT assessment of Shs. 208,817,971.

The applicant's third witness Mr. Solomon Ssali, a financial analyst with MTN Uganda Limited testified that the applicant was invoiced MTN for outgoing services as follows:

TABLE A

Description	Minutes	Rates	Amount
Direct local voice	16,988,831.88	115	1,953,715,655.63
National Transit voice	17,973.87	500	8,986,935
International transit voice	2661.05	500	1,280,522.50
Inbound Roamers Voice	10,522.28	500	5,261,137.50
		Sub-Total	1,969,244,261
		VAT	354,473,967
		Total	**2,323,708,288**

TABLE B

Description	Minutes	Rates	Amount
Direct local voice	13,834,010.93	115	1,590,911,257.37
National Transit voice	15,855.82	500	7,927,907.50
International transit voice	2958.32	500	1,479157.50
Inbound Roamers Voice	6,593.82	500	3,296,911.75
		Sub-Total	1,603,615,234
		VAT	288,650,742
		Total	**1,892,265,976**

The respondent`s first witness, Mr. Mujabi Geoffrey, a supervisor in its Large Taxpayers Office stated that the respondent notified Warid of its intention to audit it. Despite several reminders, Warid did not provide records required for an audit to commence. On 8th September 2014, the respondent informed the applicant that it would not be entitled to the tax losses by Warid. The applicant challenged the decision in HCCS 25 of 2014 where the court decided in its favour, that it was entitled to use the tax losses by Warid of Shs. 372 billion.

He testified that on 15th February 2018, audit findings, after an audit had been done, were communicated to the applicant. The audit revealed that:

a. Payments to foreign-service providers were made without deducting WHT of Shs. 341,592,438 for November 2011 to October 2013. The applicant argued that no WHT was payable under international telecom agreements. The respondent contended that the transactions are subject to tax under the Income Tax Act. He testified that the applicant is liable for WHT of Shs. 208,219,863 as the regulations relied by the applicant are not international agreements.
b. As regards Pay As You Earn (PAYE), an analysis of its ledger revealed a liability of Shs. 45,098,209. An assessment of Shs. 196,033,662 was issued. The applicant argued that the amounts deemed as overdue payments related to termination of staff. The respondent contended that interest of Shs. 29,293,194 was computed.
c. Excise due. Tax liability of Shs. 95,906,020 was computed including interest. The applicant had conceded to Shs. 47,953,100 but disputed interest.
d. VAT of Shs. 1,458,645,868 was assessed for Warid invoices claimed by taxpayers after the takeover and Shs. 201,339,300 for foreign-service providers. The applicant

argued that invoices were never issued in Warid names and VAT on imported services did not arise. The respondent contended that it disallowed tax not declared. Income from disposal of asset was subject to VAT of Shs. 615,685,599. Undeclared income was assessed to VAT of Shs. 324,370,772

e. As regards income tax, he stated that the loss position of Shs. 212,577,178,736 at time of court ruling was reduced to Shs 183,123,761,000. The applicant contended that the loss has increased to Shs. 372,636,793,636.

Mr. Mujabi testified that the applicant is not entitled to input tax credit because it was not declared by the suppliers and efforts to verify it were futile. He testified that the 7 invoices claimed by MTN dated 23rd April 2014 were not declared by Warid. The invoices bore different serial numbers from those declared in the returns.

The respondent`s second witness, Ms. Agnes Busingye, an officer its Objections and Appeals Unit testified that the applicant did not dispute some of the tax assessed and made payments of Shs. 242,096,704 for PAYE, Shs. 47,953,010 for excise duty and Shs. 179,734,756 for WHT. She stated that the applicant objected to the WHT assessment on the ground that the law applicable was Article 6.3 of the Dubai Regulations. She reiterated that the applicant was liable to pay the WHT of Shs. 208,219,863 because the Regulations are not international agreements under the income tax Act. She stated further that the applicant was not entitled to the input tax claimed because the output tax had not been declared and efforts by the respondent to verify it were unsuccessful. She testified that the applicant is liable for tax on undeclared interconnect invoices to MTN because the 7 invoices claimed by MTN dated 23rd April 2014 and their corresponding output were not declared by Warid. She stated that invoices with serial numbers WTU/MTN/077 and WTU/MTN/078 bore in the return invoice numbers 13203 and 13203. The said invoices were not declared in the VAT returns for April 2014. The applicant failed to provide the original invoices.

The applicant submitted that S. 23(2) of the Tax Procedure Code Act provides that an additional assessment should be made within three years from the date of service of the notice of the additional assessment: or after the date the taxpayer furnished the self-assessment return to which the original assessment relates. It submitted that statutory timelines should be strictly adhered to. It cited *Cable Corporation v Commissioner General Uganda Revenue Authority*. It submitted further that the

income tax and VAT assessments issued by the respondent for the years June 2007 to June 2014 were out of time. It argued that the respondent cannot argue it received new information, as it was notified of the acquisition and it did an audit.

In respect of the applicant's liability of Shs. 643,114,709 for undeclared output tax, the applicant submitted that there was an error in generating invoices to MTN, invoice Nos. 13202 and 13203 of 24th April 2014 of Shs. 2,323,708,228 and Shs. 1,892,265,976 respectively. It submitted that its clerk made a mistake by recording the applicant`s system generated invoice in the tax return instead of the manual invoices Nos. WTU/MTN.0077 and WTU/MTN/078 of 26th March 2014 of Shs. 2,323,708,228 of Shs. 1,892,265,976 respectively. The mistake in the dates and invoice numbers was because of a confusion resulting from an acquisition and system integration process. It submitted that it declared and paid output tax of Shs. 643,114,709 the amount assessed by the respondent. It prayed that the matter is remitted to the respondent for reconsideration so that it can rectify the error and amend its returns.

Without prejudice, in the alternative, the applicant contended that the output VAT of Shs. 643,114,709 should be refunded as it is an overpayment under S. 37 of the Tax Procedure Code Act. It argued that the applicant cannot pay twice for the same transactions namely, the respondent`s assessment of Shs. 643,114,709 and the same amount it declared and remitted to the respondent in the return of 2014. The monies should be refunded since the respondent denies they belong to the same transaction.

The applicant submitted that it is entitled to claim input VAT of Shs. 1,288,219,863. It submitted that Warid Telecom and it were registered for VAT. It submitted that S.28 (3)(a)(b) of the VAT Act provides that a credit is allowed to a taxable person on becoming registered for VAT. The respondent`s objection to its claim is that the suppliers did not declare output tax. The applicant cited in *Target Well Uganda Ltd v URA* HCCS No. 751 of 2015, *East African Investment Property v URA* Application 6 of 2019 and *Enviroserv (U) Ltd v URA* TAT 24 OF 2017 which confirm that it is the duty of the respondent to ensure that the suppliers remit the VAT and not the taxpayer.

In respect of the WHT assessment, the applicant submitted that it entered into interconnect agreements with Tata Communications UK Ltd (based in the United

Kingdom) and Belgacom International Carrier Services Ltd (based in Belgium or the United Kingdom). It submitted that it is entitled to tax treatment under the International Telecommunication Regulations (Melbourne 1988) (WATTC-88) (ITR) ratified by Uganda on 27th July 1994 and The International Telecommunications Regulations (Dubai) 2012 Treaty ratified on 1st January 2018. The applicant contended that S. 88(1) of the income tax Act provided that international treaties entered into between the Government of Uganda and the Government of a foreign country or foreign countries are treated as if they had been codified into the Act. It cited S. 88(2) of the income tax Act which in certain cases gives precedence to the terms of international agreements ratified by Uganda over the provisions of the income tax Act. It submitted the Melbourne and Dubai agreements prevail over the provisions of the income tax Act. The applicant argued that Article 6.1.3 of the Melbourne Agreement provides that telecom companies like the applicant should only charge tax on interconnect services billed to its customers in Uganda and no other tax should apply on the said interconnect services. The applicant submitted that it has been charging its customers 5% which was lawful while the additional 10% charged was unlawful under the Melbourne and Dubai treaties.

The applicant cited S. 21(6) of the Tax Appeals Tribunal Act and Civil Appeal No. 08 of 1999, for the proposition that it is entitled to general damages of Shs. 100,000,000. The applicant also prayed for interest and the costs of the application.

In reply, the respondent submitted that an assessment can be raised any time in case of fraud, wilful neglect, or discovery of new information. It submitted that S. 23(2) of the Tax Procedure Code Act allows the Commissioner to make an additional assessment where fraud or wilful neglect has been committed by, or on behalf of the taxpayer, or new information has been discovered. It quoted the definition of `neglect` and `wilful neglect` in *Black`s Law Dictionary* 8th Edition at p. 1061 as `the omission of proper attention to a person or thing, whether inadvertent, negligent, or wilful: the act or condition of disregarding` and `intentional or reckless failure to carry out a legal duty` respectively. It cited *Uganda Electricity Transmission Company Ltd v Commissioner General, Uganda Revenue Authority*, HCCS 423 of 2010 on `discovery of new information` It submitted that the applicant did not fulfil its legal duty to avail the respondent with all information necessary for conducting of the audit timely. The

respondent stated a chronology of events where the applicant did not comply with reminders. It submitted that the protracted audit of the applicant`s tax affairs for seven years was due to the applicant`s wilful neglect. Therefore, the applicant could not challenge its tax liability due to its own neglect. The respondent submitted that discovery of new information means any information that shows that the return was false or misleading. The respondent argued that the limitation period is inapplicable because of the use to the word “anytime” in S. 97 of the income tax Act which is similar to S. 23 of the Tax Procedure Code Act.

The respondent submitted the applicant is liable to pay VAT of Shs. 633,114,709 arising from undeclared output in respect of MTN interconnect invoices which were not declared in the latter’s VAT returns. It submitted that the applicant made taxable supplies to MTN Uganda Ltd and therefore had a duty to declare output VAT. The respondent submitted that MTN declared the invoices in its return of 23rd April 2014. The respondent contended that the said invoices were not declared in the applicant’s returns thought the latter states it declared them.

The respondent contended that the applicant did not explain the discrepancies in the invoice numbers and dates. It submitted that S. 29(1) of the VAT Act defines a tax invoice to contain the particulars in S. 2 of the 4th Schedule. 2(d) of the Schedule requires them to have individualised serial number and the date the invoice was issued. A tax invoice should contain a description of the goods and services supplied, the date on which they were supplied, and the quantity or volume of the goods or services supplied. The respondent cited *Red Concept Ltd v URA* Application 36 of 2018, where it was stated that the burden lies on the taxpayer to prove that the transactions in question were not fictitious. The respondent contended that invoices with serial numbers WTU/MTN/077 and WTU/MTN/078 dated 26th March 2014 are different from 13202 and 13203 dated 26th April 2014. The applicant failed to bring any evidence to show that there was a genuine mistake.

The respondent submitted further that it disallowed the applicant`s VAT input claim of Shs. 1,288,219,863 because its output VAT was not declared by the suppliers and the transactions could not be authenticated. Citing *Margaret Rwaheru Akiiki & 13945 others v URA* Civil Suit 117 of 2013 and S. 28(1) of the VAT Act, the respondent

submitted that before a taxable person can be granted an input tax credit, such a person is required to provide evidence of the input tax credit claimed. It submitted that the applicant availed copies of invoices issued to Warid Telecom. The respondent's efforts to contact the suppliers was in vain. The respondent submitted that the applicant failed to prove payment. Citing *Rubya Investors Ltd v URA* Application 105 of 2020 and *Enviroserv (U) Ltd v URA* Application 24 of 2017, the respondent submitted that the applicant had failed to show that it was entitled to the VAT input credit. The respondent also contended that the applicant claims for output VAT be refunded as overpaid tax is contrary to S. 42 of the VAT Act which sets a limitation period of three years.

The respondent submitted that the applicant did not charge WHT on internet connectivity services offered by Tata Communications UK Ltd and Belgacom International Carrier Services Ltd. It submitted that S. 86(4) of the income tax Act imposes a levy of 5% on the payments of non-resident persons engaged in the transmission of messages by cable, radio, optical fibre, satellite communication and the provision of internet. Article 6.1.3 of the International Telecommunications Regulations restricts the collection of fiscal taxes to customers (final consumers) of a telecommunication service if the same is provided by an international telecommunication service provider. The respondent submitted that the International Telecommunications Regulations was not an `International agreement` within the meaning of S. 88(6) of the Income Tax Act. The definition under S. 88(6) does not include agreements which establish general principles relating to the provision and operation of international telecommunications services. The respondent submitted that a strict reading of S. 86(4) implies that non-residents carrying on the business of transmitting messages by cable, radio, optical fibre, or satellite communication are liable to tax at 5% of the gross amount derived by the person from transmission of such messages. The respondent prayed that the application be dismissed with costs.

In rejoinder, the applicant submitted that the respondent admitted to input tax of Shs. 124,971,481 which was part of a larger claim of Shs. 1,413,191,344. It submitted that no consent was entered in respect of the admission. It prayed that judgement be entered in respect thereof.

The applicant submitted that it should not be held liable for the conduct of Warid Telecom prior to February 2014. It submitted that the documents before the tribunal show that two separate audits were conducted. From the time of its acquisition of Warid Telecom in 2014, the respondent only conducted a single audit in 2017. There was a delay and negligence by the respondent.

Having considered the evidence adduced by and the submissions of the parties the following is the ruling of the tribunal.

In 2013, the applicant acquired 100% of Warid Telecom Limited which was effective 1st February 2014. There were two audits. The first one before the merger. In 2018, the respondent conducted another audit on the applicant for the period June 2007 to June 2014. As a result of the audits disputes arose.

The first dispute was in respect of assessments issued by the respondent. The applicant contended that the assessments were time barred. The period in issue is July 2007 to June 2014. The assessments referred to are in relation to income tax and VAT Act.

The assessments referred to in the objection decision were WHT of 208,817,971 and VAT of 643,114,709. The Tribunal noted that there are certain additional income assessments stated in the applicant's submissions (p.3). The said assessments arose from the audit findings but the applicant did not object to them and they were not part of the objection decision. No evidence was adduced on them apart from the letters of the audit findings. Under S. 16(4) of the Tax Appeals Tribunal Act an applicant is unless the Tribunal orders otherwise limited to the grounds stated in the taxation objection to which the decision relates. There was no leave granted to include any additional income and VAT assessments arising from the audit findings but not part of the objection decision as a ground to be determined by the Tribunal. The issue of time barred when granted by the Tribunal should be restricted to the income and VAT assessments raised in the objection and objection decision. This fate also applies to any assessments stated by the respondent's witness, Mr. Mujabi Geoffrey, in respect of PAYE liability of Shs. 45,098,209, excise duty liability of Shs. 95,906,020, and the

loss position of Shs. 372,636,793,636. They may have been part of the audit findings but were not part of the objection and objection decision.

Both parties cited S. 23 of the Tax Procedure Code Act for when an additional assessment maybe issued. It reads.

"(1) The Commissioner may make an additional assessment amending a tax assessment made for a tax period to ensure that –

a) For an assessed loss under the Income Tax Act, the taxpayer is assessed in respect of the correct amount of the assessed loss for the period.

b) For an excess input tax credit under the Value Added Tax Act, the taxpayer is assessed in respect of the correct amount of the excess input tax credit for the period, or

c) In any other case, the taxpayer is liable for the correct amount of tax payable in respect of the period.

(2) An additional assessment under subsection (1) may be made-

a) At any time, if fraud or any gross or wilful neglect has been committed by, or on behalf of the taxpayer, or new information has been discovered in relation to the tax payable by the taxpayer for a tax period,

b) In the case of an additional assessment, within three years from the date of service of the notice of the additional assessment, or

c) In any other case, within three years after the date-

i. The taxpayer furnished the self-assessment return to which the original assessment relates, or

ii. The Commissioner served notice of the original assessment on the taxpayer.

(3) Subject to subsection (1), a taxpayer who has furnished a self-assessment return, other than a taxpayer whose return is being investigated, may upon discovering an error within twelve months after the date of furnishing the return, apply to the Commissioner for leave to make an additional assessment."

The period in issue is July 2007 to June 2014. The Tax Procedure Code Act was assented to on 19th October 2014, and it commenced on 1st July 2016. Both parties did not notice that at the time the applicant may have made its self-assessments the Tax Procedure Code Act may not have been applicable. The self-assessments were not tendered in as exhibits. The tribunal cannot determine whether the self-assessments were made before or after the Tax Procedure Code Act so as to ascertain whether it was applicable or the law prior to it. In the absence of the self-

assessments, it is difficult for the Tribunal to state that any additional assessments, which were also not tendered in court as exhibits were time barred.

In respect of the WHT assessment, there is no evidence that there was a self-assessment by the applicant. In any case, it is doubtable that there was a self-assessment as the applicant is disputing its liability to pay WHT on roaming services. If the applicant paid any self-assessment on WHT, they were not tendered in as exhibits for the Tribunal to compute the time limits. Therefore, the first issue is answered in the negative in respect of the income tax assessments in the objection decision. In respect of VAT, the time limits will be discussed later.

The second dispute is in respect of the VAT assessment of Shs. 643,114,709 issued against the applicant. The assessment was issued on the ground that the applicant had failed to declare output VAT in respect of interconnect services supplied to MTN Uganda Ltd. The dispute arose from discrepancies in the invoice numbers and dates arising from two sets of invoices as stated in the tables below.

TABLE C

Date	Invoice No	Amount	VAT	Total
26/3/2014	WTU/MTN/077	1,969,244,261	354,463,967	2,324,708,228
26/3/2014	WTU/MTN/078	1,603,615,234	288,650,742	1,892,265,976
VAT Due			**643,114,709**	

The breakdown of the said amounts is in Table A and B. The said invoices were issued in the applicant's name and not Warid. The applicant stated that the above invoices were declared in the tax returns but given different invoice numbers and dates as stated below

TABLE D

Date	Invoice No	Amount	VAT	Total
24/4/2014	13202	1,969,244,261	354,463,967	2,324,708,228
24/4/2014	13203	1,603,615,234	288,650,742	1,892,265,976
VAT Due			**643,114,709**	

A comparison of the said tables show that the amounts are the same, but the invoice numbers and dates are different. The applicant, in its submission and not during the hearing (which is not permissible), claimed that there was an error made by the clerk on the dates and numbers resulting from confusion in the process of acquisition and integration of systems. The argument by the applicant that the differences in the

invoice numbers and dates in the invoices sent to MTN and those in the applicant`s returns were as a result of an honest mistake maybe credible.

When an invoice is issued, it means a supply has been made. Different invoices refer to different supplies. If the invoices related to different supplies, VAT is due on all. In this case the applicant contends the two sets of invoices related to similar supplies. However, the Tribunal by looking at the invoices is not a position to state that they related to similar or different supplies. If the invoices issued in error related to similar supplies, the applicant ought to have cancelled one set using credit notes under S. 22 and S. 30 of the VAT Act. S. 22(1) of the VAT Act applies to taxable supply by a taxable person where the supply is cancelled. S.30 provides that the taxable person shall provide the recipient of the supply with a credit note. No credit notes cancelling one set of invoices were adduced in evidence. In the absence of credit notes the Tribunal is not in a position to state which invoices were issued in error or and which supplies were cancelled. The applicant ought to have also amended its returns.

One set of invoices were issued in March 2014 while the other in April 2014. They were supposed to be included in the return of April 2014 or May 2014 respectively. Therefore, the Tribunal has to determine whether the assessment by the respondent in 2019 was time barred. The Tax Procedure Code Act became effective in July 2016 and is inapplicable to a return made by the applicant in 2014.The applicant`s remedy fell under the VAT Act as of 2014. S. 31 of the said Act read:

> "(1) A taxable person shall lodge a tax return with the Commissioner General for each tax period within fifteen days after the end of the period.
>
> (2) A tax return shall be in the form prescribed by the Commissioner General and shall state the amount of tax payable for the period, the amount of input tax credit refund claimed, and such other matters as may be prescribed.

The applicant ought to have included the VAT on the disputed invoices in its returns of April or May 2014. The Commissioner being dissatisfied issued an additional assessment S. 32 of the VAT Act as of 2014 provided as follows:

> "1. Where—
>
> (a) a person fails to lodge a return under section 31.
>
> (b) the Commissioner General is not satisfied with a return lodged by a person; or
>
> (c) the Commissioner General has reasonable grounds to believe that a person will become liable to pay tax but is unlikely to pay the amount due, the

Commissioner General may make an assessment of the amount of tax payable by that person.

2. An assessment under subsection (1)—

(a) where fraud, or gross or wilful neglect has been committed by, or on behalf of, the person, may be made at any time; or

(b) in any other case, shall be made within five years after the date on which the return was lodged by the person."

The Tribunal does not think that there was fraud involved. The Tribunal has to ask itself if the actions of the applicant were gross or amounted to wilful neglect. The term `wilful` was defined as follows *in Lomas v Peek* (1947) 2 All ER 574

> `If a man permits a thing to be done, it means that he gives permission for it to be done, and if a man gives permission for a thing to be done, he knows what is to be done or is being done, and, if he knows that, it follows that it is wilful.`

In *R v Senior* (1899) 1 QB 283 in defining `wilfully neglects` the court stated that:

> "wilfully` means that the act is done deliberately and intentionally, not by accident or inadvertence, but so that the mind of the person who does the act goes with it`.

Using the said definition, though the applicant in its submission (which we found impermissible) stated that there was an error, from the evidence adduced it has not been established that the applicant acted grossly or with wilful neglect. Therefore, the Tribunal will not consider the option of the respondent issuing an assessment "at any time." It leaves the tribunal with the time limit, in any other case as provided in S. 31(2)(b) of the Act which should be within five years after the date of the return was lodged by a taxpayer or ought to have been lodged. In this case the limit should have expired in April or May 2019. In a letter dated 17th January 2019 the respondent wrote to the applicant informing that it failed to provide satisfactory evidence that invoices were declared. Therefore, the tax was upheld. This was within the time limit.

Though the applicant submitted that it declared and paid the output tax of Shs. 643,114,709, the amount assessed by the respondent, it did not avail proof of payment. It would be difficult in the absence of such proof of payment to say that the applicant is paying the same tax twice. The applicant prayed that the matter be remitted back for reconsideration. The time for remitting the matter to the respondent for reconsideration so that the applicant can rectify the error and amend its returns expired. If we are to use the Tax Procedure Code Act S.23(2)(c)(i) the time expired

after 3 years from the date of self-assessment or when it ought to have been made. If we are to go by the VAT Act as of 2014, S. 47 states

> "A registrant who has filed a VAT return in accordance with this section may apply in writing to the Comptroller as prescribed, within one year after the date the return was filed, to vary such return and the Comptroller may, in accordance with criteria prescribed in regulations, permit the registrant to vary the return."

The time expired one year from the time the applicant ought to have rectified the return. So, the return cannot be varied or the matter remitted back. We accordingly find that the applicant is liable to pay the VAT assessed of Shs. 643,114,709

The third dispute is in respect of whether the applicant is entitled to input VAT credit of Shs. 1,288,219,863. Input tax is defined under S. 1(l) of the VAT Act as `the tax paid or payable in respect of a taxable supply to or an import of goods or services by a taxable person`. The right to claim input tax credit is provided for under S. 28(1) of the VAT Act, which states as follows:

> "Where Section 25 applies for the purposes of calculating the tax payable by a taxable person for a tax period, a credit is allowed to the taxable person for the tax payable in respect of –
> (a) All taxable supplies made to that person during the tax period:
> (b) All imports of goods made by that person during the tax period,
> If the supply or import is for use in the business of the taxable person."

S. 28(11) of the VAT Act states as follows:

> "Subject to subsection (13), an input tax credit allowed under this Section may not be claimed by the taxable person until the tax period in which the taxable person has-
> (a) An original tax invoice for the taxable supply: or
> (b) A bill of entry or other document prescribed under the East African Community Customs Management Act, 2004 evidencing the amount of input tax."

In this case the reason by the respondent for disallowing the applicant`s VAT input credit is that the corresponding output VAT was not declared by the suppliers and the transactions could not be authenticated despite the former`s best efforts. This position was echoed by RW1, Agnes Busingye, who testified that

> `That we made several efforts, by email and letters, to contact the suppliers as regards the VAT input credit claimed by Warid.`
>
> `That however, none of the said suppliers confirmed the output claimed by Warid while others could not be found at their addresses and the registered phone numbers could not go through`.

The question which arises is whether non-declaration of corresponding output VAT by suppliers is a ground for the disallowance by the respondent of an applicant`s claim for input tax credit? In *Target Well Control Uganda Ltd vs. Commissioner General Uganda Revenue Authority* HCCS 751 of 2015, it was held as follows:

> `The tax laws make it clear that collection of tax is the sole responsibility of the Defendant. Where a taxable person claimed for VAT, it was the Defendant`s duty to take on the party that received the money from the person. It is as I said before could never be the duty of the payer to ensure that the money was remitted`.

In *Enviroserv (U) Ltd v URA* Application 24 of 2017,

> "The tribunal observed that the applicant presented evidence of invoices that were issued, and VAT was paid to the suppliers for the respondent to pay input VAT. It is not a duty of the taxpayer to follow up with the suppliers to declare input. Taking all the above decision into mind, the applicant is required is to present the invoices and payments. There is no evidence from the respondent disputing the presence of the suppliers."

Therefore, if a taxpayer adduces evidence that an invoice was issued and payment was made, it is entitled to input VAT. A respondent cannot chase a supplier when no payment was made. In *Rubya Investors Limited v URA* Application 105 of 2020 the Tribunal disallowed input credit claimed where there is no evidence available to show proof of payment.

The applicant tendered in invoices issued to Warid Telecom by various suppliers at pages 68-94 of the joint trial bundle as seen in the table below.

TABLE E

ITEM	PURCHASER	INVOICE NO.	DATE	Amount
208	Warid Uganda Ltd.	WTU077DV	23/4/2014	1,953,715,665.61
209	Warid Uganda Ltd.	WTU077INBNDRMV	23/4/2014	5,261,137.50
210	Warid Uganda Ltd.	WTU077INTV	23/4/2014	1,280,522.50
211	Warid Uganda Ltd.	WTU077NTV	23/4/2014	8,986,935.00
212	Warid Uganda Ltd.	WTU078DV	23/4/2014	1,590,911,257.39
213	Warid Uganda Ltd.	WTU078INBNDRMV	23/4/2014	3,296,911.78
214	Warid Uganda Ltd	WTU078INTV	23/4/2014	1,479,157.90
215	Warid Uganda Ltd	WTU078NTV	23/4/2014	7,927,907.50

The invoices complied with item 2(d) of the 4th Schedule of the VAT Act, namely, they had the words `tax invoice`. They showed the commercial names, addresses, places

of business, the tax payer identification and VAT registration numbers of the taxable persons making the supplies and Warid Telecom as the party receiving the taxable supply. The invoices showed serial numbers and dates on which the tax invoice was issued. The invoices had a description of the goods and services supplied and the dates on which the supplies were made. However, as admitted by the applicant's witness, Esther Nantambi, the dates and invoice numbers of the 7 (of the 8) invoices in issue did not correspond to those in the VAT returns made to the respondent. This anomaly may have been rectified under the Tax Procedure Code Act by amending the returns within the prescribed time. However, the VAT Act of 2014, provided for one year. A Tribunal cannot allow a taxpayer to collect input VAT on erroneous returns. If such information has such serious discrepancies how will the respondent collect the said input VAT from suppliers or and effect payment to the taxpayer claiming input VAT. It may raise audit queries.

The respondent contended that there was no proof of payment. The respondent stated that it could not trace the suppliers. Such evidence cannot be ignored especially where the information supplied by the taxpayer has discrepancies where the information in the invoices is different from the returns. Details of a supplier are usually stated in the receipts or proof of payment. There are no receipts or proof of payment of the VAT invoices. The respondent cannot chase suppliers when there is no evidence of payment. It may also be an exercise in futility where a supplier when traced states that Warid never paid it. Agnes Busingye the respondent's witness testified that some suppliers did not confirm the output tax claimed by Warid. This evidence was not challenged. The Tribunal cannot insist that the respondent should pay input VAT to a taxpayer where suppliers claims it was not paid and the information provided is contradictory. To avoid such disputes, the Tribunal requires a taxpayer claiming input VAT, to present invoices and proof of payment. Of the original input VAT claimed, the respondent was able to authenticate Shs. 124,971,481 of the Shs. 1,413,191,344 claimed leaving a balance of Shs. 1,288,219,863 showing the difficulty a tax collecting body faces where information may not be accurate. For the Tribunal to order the respondent to pay input VAT because invoices were declared but where suppliers may not be in existence would be to encourage trading in fictious invoices. A genuine receipt or proof of payment is evidence that a supplier is existing. Where a supplier refuses to declare VAT, the respondent has the powers to issue it a VAT assessment. A supplier may deny the authenticity of the receipt. In *Target Well Control Uganda Ltd*

vs. Commissioner General Uganda Revenue Authority (supra), the High Court stated that it was the defendant`s duty to take on the party that received the money from the person. The defendant cannot execute its duty if there is no evidence that the person received money. Therefore, the applicant by not availing evidence of payment has not discharged the burden that it is entitled to input VAT of 1,288,219,863.

Ms. Agnes Businge testified that the applicant is liable to pay for tax on undeclared interconnect invoices to MTN because the 7 invoices claimed by MTN dated 23rd April 2014 and their corresponding output were not declared by Warid. The Tribunal has not seen any assessments in respect thereof. It was not part of the objection decision nor referred to the Tribunal for determination during the scheduling nor was it prayed for.

The last issue is whether the applicant is liable to pay the WHT assessed of Shs. 208,817,971 for the period July 2007 to June 2014. The applicant entered into interconnect agreements with Tata Communications UK Limited and Belgacom International Carrier Services Limited. The respondent issued a WHT assessment being WHT on international roaming services under S. 86 (4) of the income tax Act. The applicant objected on the ground that international roaming services are not subject to tax in Uganda under the International Telecommunications Regulations (Melbourne, 1988) and the International Telecommunications Regulations (Dubai 2012) of which Uganda is a party, which she ratified on 27th July 1994 and 1st January 2018, respectively. The respondent does not seem to dispute that Uganda is a party to said Regulations. However, the International Telecommunications Regulations (Dubai) were ratified on 1st January 2018, the WHT in dispute is for the period 2007 to June 2014 before the said Regulations could apply to Uganda. Hence, they will not be considered.

Both parties agree that Article 6.1.3 of the International Telecommunication Regulations, which is the same in the Melbourne and Dubai versions, provides that:

> "Where in accordance with the national law of a country, a fiscal tax is levied on collection charges for international telecommunication services, this tax shall normally be collected only in respect of international services billed to customers in that country, unless other arrangements are made to meet special circumstances."

This restricts collection of fiscal taxes to customers or final consumers.

So, the question is whether the International Telecommunications Regulations Melbourne applied to Uganda? The applicant cited S. 88(1) and (2) of the income tax Act which read:

> "(1) `An international agreement entered into between the Government of Uganda and the government of a foreign country or foreign countries shall have effect as if the agreement was contained in this Act.
>
> (2) To the extent that the terms of an international agreement to which Uganda is a party are inconsistent with the provisions of this Act, apart from subsection (5) of this Section and Part X which deals with tax avoidance, or any other law of Uganda dealing with matters covered by this agreement, the terms of the international agreement prevail over the provisions of this Act and any other law of Uganda dealing with matters covered by this agreement."

The applicant argued that the International Telecommunication Regulations are international agreements and have effect of law in Uganda as if they have been codified in the income tax Act and further, they prevail over the provisions of the Act with the exceptions stated. The respondent disputes that

An international agreement is defined under S. 88(6) of the income tax Act: It reads

> "(6) In this Section, `international agreement` means-
>
> (a) An agreement with a foreign government providing for the relief of international double taxation and the prevention of fiscal evasion, or
>
> (b) A bilateral or multilateral agreement with a foreign government or foreign governments or foreign organisation providing for administrative assistance in tax matters.
>
> (c) The Inter-Governmental Agreement on the East African Crude Oil Pipeline."

Though the International Telecommunications Regulations may prevent a foreign telecom company from being double taxed, it is not an agreement between Uganda and a foreign government making S. 88(6)(a) inapplicable. S. 88(6)(b) provides for a multilateral agreement with a or foreign governments or organisations providing for administrative assistance in tax matters. The respondent contended that the International Telecommunications Regulations establish general principles which relate to the provision and operation of international telecommunication services. S. 88(6)(b) of the income tax Act does not define what it means by providing administrative assistance in tax matters. The word "provide" is defined by *Oxford Advanced Learner's Dictionary* p. 1199 as "to give something to somebody, or make it available for them to use. The word provide should not be confused with aim or

purpose of the agreement. While the purpose of the International Telecommunications Regulation may not be handling tax matters it provides administrative assistance in tax matters relating to taxation of international telecom companies. Such assistance should not be ignored especially when Uganda is a signatory of an international agreement. One of the principles of construction of international agreements is that they should be read in good faith. The principle of good faith "jus Mund" requires parties "to deal honestly and fairly with each other and to refrain from taking unfair advantage" in international agreements. This is as opposed as to giving a literal meaning to a statute enacted by Parliament. Interpretation of international treaties is not the same as that of statutes. Since the term administrative assistance is not limited, a party should read it in good faith.

S. 86(4) of the income tax Act provides that

> "(4) Where a non- resident person carries on the business of transmitting message by cable, radio, optical fibre, or satellite communication, or the business of providing internet connectivity services, the tax payable by the person shall be five percent of the gross amount derived by the person in respect of-
>
> (a) the transmission of messages by apparatus established in Uganda;
>
> (b) the provision of direct to home pay services to subscribers in Uganda; or
>
> (c) the provision of internet connectivity services to subscribers in Uganda."

The respondent contended that S. 86(4)(b) provides for direct to home services of subscribers in Uganda. The Tribunal notes the invoices was in respect to roaming services to persons who were not in Uganda. Therefore, the WHT in respect of roaming services for subscribers not in Uganda cannot stand or where there is provision of services to foreign users roaming in Uganda, they are not subscribers.

Furthermore, without prejudice Article 27 of the Vienna Convention on the Law of Treaties provides that a party may not invoke the provisions of its internal law as a justification for its failure to perform a treaty. Therefore, the respondent cannot argue that the International Telecommunication Regulations are not an international agreement within the meaning of the income tax Act. S.88(2) of the income tax Act provides that the terms of the international agreement shall prevail over the provisions of this Act Taking the above into consideration, the Tribunal finds that the respondent did not have any justification to issue the WHT assessment of Shs. 208,817,971 for the period July 2007 to June 2014.

In its submission, the respondent admitted that at mediation, the parties were able to authenticate VAT input credit of Shs. 124,971,481 relating to Exquisite Solutions. It stated that disallowed credit was reduced from 1,413,191,344 to Shs. 1,288,219,863. Admissions are allowed under Order 13 of the Civil Procedure Rules. Order 13 Rule 6 reads:

> "Any party may at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he or she may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon the application make such order, or give such judgment, as the court may think just."

Therefore, judgment of Shs. 124,971,481 will be entered for the applicant.

In the circumstances, this application is allowed or dismissed in part as follows.

1. The applicant is liable to pay the assessed VAT of Shs. 643,114,709 on the interconnect invoices.
2. The applicant is entitled to input VAT of Shs. 124,971,481
3. The applicant is not entitled to Shs. 1,288,219,863 being input tax credit.
4. The applicant is not liable to pay WHT of Shs. 208,817,971.
5. The applicant will pay half the costs of the application to the respondent.

Dated at Kampala this day of 2022.

DR. ASA MUGENYI	**DR. STEPHEN AKABWAY**	**MR. SIRAJ ALI**
CHAIRMAN	**MEMBER**	**MEMBER**