

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
INCOME TAX APPEAL NO. E140 OF 2024

IMARA STEEL MILLS LIMITED.....APPELLANT

VERSUS

COMMISSIONER OF INVESTIGATIONS

AND ENFORCEMENT.....RESPONDENT

*(An Appeal from the judgment of the Tax Appeals Tribunal
delivered on 26th April 2024 in TAT E015 of 2023)*

JUDGMENT

1. The facts leading to this dispute are largely uncontested. The Respondent, the Kenya Revenue Authority (KRA), conducted a tax audit on the Appellant for the income years 2015 to 2019 and subsequently issued additional assessments for Income Tax and Value Added Tax amounting to Kshs. 681,350,937/= excluding penalties and interest, vide a notice dated 25th March 2022.
2. The Appellant lodged an objection dated 27th April 2022, which was acknowledged by the Respondent on the same date. The Respondent thereafter issued an Objection Decision dated 24th June 2022, which the Appellant states was only received on 23rd December 2022.
3. Dissatisfied with the said decision, the Appellant appealed to the Tax Appeals Tribunal. The Tribunal delivered its judgment on 26th April 2024, upholding the Respondent's assessments.

Aggrieved, the Appellant filed the present appeal vide a Memorandum of Appeal dated 21st May 2024, citing fifteen (15) grounds which may, however, be condensed into the following three issues:

- i. Whether the Tribunal erred in failing to find that the Objection Decision was issued beyond the sixty (60) days prescribed under Section 51(11) of the Tax Procedures Act (TPA);*
- ii. Whether the Tribunal erred in failing to find that the Respondent's assessments for the years 2015 and 2016 were time-barred under Section 29(5) of the TPA; and*
- iii. Whether the Tribunal erred in failing to consider and determine the issues raised in the Appellant's pleadings and submissions.*

4. The Appellant's case, in summary, is that the Respondent erred in issuing additional tax assessments without due consideration of the Appellant's records and explanations, and that the decision was made contrary to the principles of fairness, natural justice, and the provisions of the Tax Procedures Act.

5. In opposition to the appeal, the Respondent filed a Statement of Facts dated 24th July 2024, in which it contends that it conducted a review and analysis of the Appellant's tax compliance covering the period between 2013 and 2019. The review involved a reconciliation of purchases claimed by purchasers and sales declared by suppliers as reflected in the

KRA iTax system. Pursuant to Section 59 of the Tax Procedures Act, a notice of investigation was duly issued.

6. Based on the identified inconsistencies and undeclared income, the Respondent issued additional assessments on 25th March 2022 and a further demand notice dated 13th December 2022 in the sum of Kshs. 3,906,239,926.30, inclusive of penalties and interest.

Appellant's Submissions

7. The Appellant contends that the Objection Decision was communicated to a non-existent email address (*info@imarasteel.co.ke*) instead of its registered iTax address (*imarasteel@gmail.com*), leading to its delayed receipt beyond the 60-day statutory limit under Section 51(11) of the TPA. It submits that the failure to issue the decision within time rendered the objection allowed by operation of law.
8. Reliance was placed on **Eastleigh Mall Ltd v Commissioner of Investigations & Enforcement (2023)** and **Commissioner of Domestic Taxes v Ashok Shah (2024)**, where the courts affirmed that the 60-day timeline under Section 51(11) is mandatory.
9. The Appellant further submits that the Respondent's assessments for 2015 and 2016 were time-barred, having been issued beyond the five-year limit under Section 29(5) and 31(4)(a) of the TPA. It argues that no evidence of fraud, evasion, or neglect was adduced to justify reopening those years. Reliance was placed on **Commissioner of Domestic Taxes v Unga Ltd (2021)**.

10. It faults the Tribunal for failing to consider these jurisdictional issues and instead focusing on matters framed by the Respondent. The Appellant also submits that the Respondent's computation led to double taxation, disallowed genuine input VAT, and applied an arbitrary 23% profit margin. It asserts that it had availed sufficient documentation to support its position.
11. The Appellant therefore prays that the appeal be allowed, the Tribunal's judgment be set aside, and the objection be deemed allowed by operation of law.

Respondent's Submissions

12. The Respondent maintains that it conducted a lawful audit in accordance with Section 59 of the TPA after detecting inconsistencies between sales declared by the Appellant and purchases declared by third parties on the iTax system. It discovered that the Appellant had failed to file returns for several years between 2015 and 2019, thereby justifying the issuance of additional assessments on 25th March 2022.
13. The Respondent asserts that the Appellant's objection dated 27th April 2022 was filed out of time and that the taxpayer failed to provide supporting documents such as financial statements, invoices, and bank records to substantiate its claims.
14. It relies on Sections 42, 43, 93, and 97 of the TPA, which require taxpayers to maintain proper books of account for at least five years, and on Sections 15 and 16 of the Income Tax

Act, which only allow deduction of expenses wholly and exclusively incurred in generating income.

15. The Respondent further invokes Section 24(2) of the TPA, granting it authority to assess taxes based on available data when a taxpayer fails to keep or produce records.
16. On burden of proof, the Respondent relies on Section 56(1) of the TPA and several decisions including **Monaco Engineering Ltd v Commissioner of Domestic Taxes (TAT 67/2017)**, **KRA v Man Diesel & Turbo SE (2021)**, and **Ken Iron & Steel Ltd v Commissioner of Investigations & Enforcement (2021)**, to assert that tax assessments are presumed correct until proved otherwise.
17. It therefore urges this Court to find that the Appellant failed to discharge its evidential burden, and that the Tribunal correctly upheld the Respondent's assessments.

Analysis and determination

18. Having considered the record of appeal, the statement of facts and the submissions by the parties, the issues for determination are as set out earlier.

Whether the Objection Decision was issued outside the statutory period

19. On the first ground, it is not disputed that the objection decision was issued after the lapse of 60 days. The Respondent argues that the objection decision was communicated to the Appellant.

20. Section 51 (11) of the Tax Procedure Act provides:

“The Commissioner shall make the objection decision within sixty days from the date of;

a. The notice of objection; or

b. Any further information the Commissioner may require from the tax payer, failure to which the objection shall be deemed to be allowed.”

21. It is a trite law that if the Commissioner does not render a decision within the stipulated period, the objection is deemed as allowed by operation of the law. (See **Vivo Energy Kenya Limited v Commissioner of Customs & Border Control, Kenya Revenue Authority & Anor 2020 EKLR.**)

22. It is clear from the foregoing that the provisions of section 51(11) of the Tax Procedure Act are mandatory and not a procedural technicality so as to enable the tax payer to plan on their business properly.

23. It is not in dispute that the Appellant lodged its objection on 27th April 2022, acknowledged by the Respondent on the same day. The Objection Decision is dated 24th June 2022 within the sixty-day window, but the Appellant contends that it was sent to an incorrect email and was only received on 23rd December 2022.

24. The Respondent did not controvert the allegation that it sent the decision to *info@imarasteel.co.ke* instead of the

Appellant's registered iTax email address. The statutory obligation to communicate a decision is not merely to issue it but to ensure proper service upon the taxpayer through the channels recognized under Section 75 of the TPA and the iTax system.

25. Service through an incorrect or inactive email address cannot be deemed effective service and that a decision not properly communicated within sixty days is void for purposes of Section 51(11). The effect is that the objection stood allowed by operation of law. In the absence of such proof, this Court is persuaded that the Appellant was not duly notified within the statutory period.

26. The tribunal in its judgment did not address these issues. I find that the Respondent's failure to transmit the Objection Decision to the Appellant's correct iTax address rendered the decision ineffective. Consequently, the objection stood allowed by operation of law.

Whether the assessments for 2015 and 2016 were time-barred

27. Section 29(5) of the TPA restricts the Commissioner from making an additional assessment after five years from the end of the reporting period unless there is evidence of fraud, evasion, or willful neglect.

28. The Respondent's assessment notice was dated 25th March 2022. The tax periods in question were 2015 and 2016, which fell outside the five-year window. The Respondent did

not produce any evidence demonstrating fraud or willful neglect by the Appellant to justify reopening those years.

29. This Court is guided by the reasoning in **Commissioner of Domestic Taxes v Unga Limited (2021)**, where it was held that in the absence of fraud or evasion, assessments beyond the statutory limit are invalid. Consequently, the assessments for 2015 and 2016 were time-barred and unlawful.

Whether the Tribunal failed to consider the Appellant's issues

30. From the record, it is evident that the Tribunal focused on the Appellant's failure to provide documents rather than determining the threshold issues of timeliness and jurisdiction. The Tribunal therefore erred in law by failing to address material issues raised in the Appellant's pleadings, contrary to the duty imposed under Section 29 of the Tax Appeals Tribunal Act.
31. In light of the foregoing analysis, this Court finds merit in the appeal and the same is allowed with costs. The judgment of the Tax Appeals Tribunal delivered on 26th April 2024 is hereby set aside in its entirety as well as the Respondent's decisions dated 24th June 2022.

JUDGMENT delivered virtually, dated and signed at **NAIROBI**

This **30th** day of **October** 2025.

P.M. MULWA
JUDGE

In the presence of:

Mr. Tanui for Appellant

Mr. Osoro for Respondent

Court Assistant: *Carlos*