REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & TAX DIVISION TAX APPEAL NO. E278 OF 2024 AS

CONSOLIDATED WITH TAX APPEAL NO. E280 OF 2024

(CORAM: HON. CHARLES KARIUKI – J)

(Being an appeal against the judgment of the Tax Appeals Tribunal delivered on 23rd August 2024 in Tax Appeal No. E555 of 2023)

BLUEJAY LIMITED ….....… APPELLANT

VERSUS

COMMISSIONER OF DOMESTIC TAXES .....RESPONDENT

JUDGMENT

A. INTRODUCTION

1) These consolidated appeals arise from the judgment of the Tax Appeals Tribunal ("the Tribunal") delivered on 23rd August 2024 in Tax Appeal No. E555 of 2023, Bluejay Limited v Commissioner of Legal Services & Board Coordination.

2) The first appeal, Tax Appeal No. E278 of 2024 was lodged by Bluejay Limited ("the Appellant") on 18th October 2024, while the second appeal, Tax Appeal No. E280 of 2024 was filed by the Commissioner of Domestic Taxes ("the Respondent") on 22nd October 2024.

3) Both appeals challenge the same Tribunal decision, involve identical parties, and raise common questions of law and fact. In the interests of consistency, judicial economy, and to avert the risk of conflicting outcomes, this Court ordered the consolidation of the two

appeals, with Tax Appeal No. E278 of 2024 (Bluejay Limited v Commissioner of Domestic Taxes) was designated as the lead file.

4) In the impugned judgment, the Tribunal upheld the Respondent's objection decision confirming additional tax assessments against the Appellant in respect of Corporation Income Tax, Withholding Tax on winnings, Excise Duty, Betting and Gaming Tax, and Transfer Pricing Adjustments for the period 2018–2022.

5) Aggrieved by the said decision, the Appellant filed this appeal seeking to set aside the Tribunal's findings and to have the impugned tax assessments annulled.

B. BACKGROUND

6) The Appellant, Bluejay Limited, is a company incorporated in Kenya and licensed to operate within the betting and gaming sector under the "Betway" global brand. The brand is owned by Merryvale Limited, an intellectual property holding company ultimately owned by Super Group (SGHC) Ltd, a company incorporated in Guernsey and listed on the New York Stock Exchange.

7) The Respondent, the Commissioner of Domestic Taxes, is a statutory officer appointed under Section 13 of the Kenya Revenue Authority Act and mandated under Section 5 thereof to assess, collect, and account for all revenues due to the Government of Kenya pursuant to the various tax laws set out in the First Schedule to the Act.

8) The dispute arose after the Respondent conducted an audit of the Appellant's tax affairs for the years 2018 to 2022, culminating in the issuance of an assessment dated 12th April 2023 demanding Kshs—5,272,752,325.00 in additional taxes, penalties, and interest.

9) The Appellant objected to the assessment through a letter dated 12th May 2023, contending that the Respondent had misapplied the law, misinterpreted its financial records, and exceeded the statutory time limits for assessment. The Objection Decision, dated 10th July 2023, however, confirmed the additional assessments in full.

10) Dissatisfied, the Appellant lodged an appeal to the Tribunal on 4th September 2023, raising several grounds of appeal, including:

i) That the Respondent issued amended assessments beyond the five-year statutory limit under Section 31 of the Tax Procedures Act (TPA);

ii) That the Objection Decision failed to demonstrate due consideration of the Appellant's evidence contrary to Section 51(8) and (10) of the TPA;

iii) That the Respondent violated the Appellant's right to fair administrative action in computing Withholding Tax on winnings;

iv) That the Respondent erroneously applied WHT on stakes instead of winnings;

v) That the Respondent failed to accord differential treatment to casino games as distinct from other betting activities;

vi) That the penalties and interest imposed were excessive and contrary to law; and

vii) That the Respondent disallowed legitimate business expenses and made transfer pricing adjustments and loan recharacterizations unsupported by evidence.

11) Upon hearing the parties, the Tribunal dismissed the appeal and upheld the Respondent's position in its entirety, prompting the present appeal before this Court.

C. THE TRIBUNAL'S DECISION

12) Upon hearing the parties, analyzing the pleadings, and considering the evidence adduced, the Tax Appeals Tribunal rendered its judgment on 23rd August 2024. The Tribunal found the appeal partially merited and made the following key determinations:

a. The assessment for the year 2016 was set aside as being outside the statutory limitation period.

b. The Respondent's decision disallowing expenses incurred by the Appellant in transactions with six (6) related companies was set aside.

c. The disallowance of alleged double-claimed expenses was set aside.

d. The penalty of Kshs. 162,653,035.00 imposed on Withholding Tax (WHT) was set aside.

e. However, the Tribunal upheld:

i. The transfer pricing adjustments relating to the six related companies;
ii. The taxation of the loan received from Rosehall Global;
iii. The assessment on WHT on winnings;
iv. The assessment on Gross Gaming Revenue (GGR);
v. The assessment on Excise Duty; and
vi. The assessment on Corporation Tax.

f. The Tribunal further directed the Respondent to recompute the tax assessments in line with its findings within sixty (60) days from the date of the judgment.

g. Each party was ordered to bear its own costs.

13) In essence, the Tribunal upheld the bulk of the Respondent's assessments but granted the Appellant partial relief in respect of certain disallowed expenses, penalties, and the 2016 assessment year.

14) Both parties, being dissatisfied with different aspects of the Tribunal's judgment, filed the present consolidated appeals before this Court. The Appellant contests the Tribunal's affirmation of the substantive tax assessments, while the Respondent challenges the setting aside of certain disallowances and penalties.

D. DIRECTIONS OF THE COURT

15) The Court directed that the appeal be disposed of by way of written submissions. Accordingly, both parties filed and exchanged their respective submissions, which the Court has duly considered.

E. **THE APPELLANT'S SUBMISSIONS**

16) The Appellant faulted the Tribunal for upholding the Respondent's assessments and for failing to properly evaluate the evidence and the law applicable to the dispute. It was the Appellant's case that the Tribunal erred in law and in fact by sustaining assessments that were based on unsupported, abstract, and unverified data, and by failing to hold that the Respondent had not discharged its burden of proving that the additional taxes were lawfully due. The Appellant maintained that the Respondent's decision to confirm assessments on withholding tax (WHT) on winnings, excise duty on gross gaming revenue (GGR), and corporation tax was unreasonable, procedurally unfair, and contrary to the requirements of Article 47 of the Constitution and Section 51(10) of the Tax Procedures Act (TPA).

17) It was the Appellant's submission that the Respondent's assessment of WHT on winnings and excise duty on GGR was founded on arbitrary computations derived from incomplete or non-existent data. The Respondent, it argued, had admitted during the audit that it lacked access to primary transactional data linking wagers and winnings and, instead of obtaining the same from the Appellant's system, relied on estimates and unverified assumptions. The Appellant contended that it had fully cooperated with the Respondent during the audit and granted access to its systems, but the Respondent failed to base its assessment on verified records, resulting in erroneous and inflated tax demands.

18) The Appellant argued that the Tribunal erred by concluding that it had not provided sufficient documentary proof, such as betting slips or transactional data, to rebut the Respondent's position. It is submitted that this conclusion disregarded the evidence that the Respondent's own assessments were not supported by actual data. Relying on ***Republic v Ministry for Agriculture, Livestock, Fisheries and Irrigation; Agriculture and Food Authority & Another (Interested Parties) Ex parte Susan Wanjiku & 80 others [2021] eKLR*** and ***Geothermal Development Company Limited v Attorney General & 3 others [2013] eKLR,*** the Appellant emphasized that administrative fairness requires that decisions be reasoned and grounded on verifiable facts. It further relied on ***Republic v Kenya Revenue Authority Ex-parte Althus Management & Consultancy Limited [2017] eKLR***, where the court held that a taxing authority cannot "pluck figures from the air," and ***Republic v Retirement Benefits Appeals Tribunal & 5 others Ex parte Kenya Airports Authority Staff Superannuation Scheme [2015] eKLR***, which held that failure to provide reasons renders a decision procedurally improper.

19) With regard to the computation of excise duty on GGR, the Appellant submitted that the Tribunal erred in affirming an assessment based on unexplained data and methodology whose source remained unclear. Despite furnishing the Respondent with audited financial statements and reconciliations during the objection process, the Respondent ignored the material evidence and reiterated its earlier assessment without justification. The Appellant argued that this omission breached Article 47 of the Constitution and Section 51(10) of the TPA. In support, it cited ***Usafi Services Limited v Commissioner of Domestic Taxes, PZ Cussons East Africa Limited v Kenya Revenue Authority [2013] eKLR, and Richard Bonham Safaris Limited v Commissioner of Income Tax [2006] eKLR,*** all of which affirm that a taxpayer is entitled to receive written reasons and that failure to provide such reasons renders an administrative decision invalid.

20) The Appellant also faulted the Tribunal for failing to find that the Respondent had erred in the computation of WHT and excise duty, as the assessments were based on unreliable and abstract data without a factual foundation. It argued that the Tribunal ought to have set aside the impugned assessments in their entirety, having found that the Respondent's audit methodology lacked clarity and evidentiary support.

21) On the issue of WHT on casino games, the Appellant contended that the Tribunal erred in upholding the Respondent's discriminatory actions and in failing to apply the differential treatment that has historically governed the taxation of casino operations. The Appellant argued that, unlike sports and pool betting, where a clear tax point exists, the rapid and repetitive nature of casino gaming makes it impractical to apply WHT on each game played. Instead, WHT should be computed on the net position of winnings and losses at the point of withdrawal from a player's gaming wallet. This approach, the Appellant submitted, was

expressly endorsed by the Respondent in a letter dated 29th April 2014, which provided that casino operators should compute WHT by offsetting total winnings ("winning days") against total losses ("losing days") and then applying the tax rate to the resulting net amount.

22) The Appellant relied on the Tribunal's reasoning in ***Resort Kenya Limited v Commissioner of Domestic Taxes,*** where it was held that the term "transaction-by-transaction" in the Respondent's correspondence could not be interpreted to mean each individual game, given the practical realities of casino operations. The Appellant submitted that it had operated its casino business in compliance with this guidance, and that the Respondent's subsequent departure from its earlier position amounted to a breach of the doctrine of legitimate expectation and an act of bad faith. In support, it cited ***Republic v Kenya Revenue Authority Ex parte Shake Distributors Limited [2012] eKLR, Kenya Revenue Authority v Universal Corporation Limited [2020] eKLR***, and the ***Supreme Court decision in Kenya Revenue Authority v Export Trading Company Limited [2022],*** all of which affirmed that a taxpayer is entitled to rely on clear and unambiguous representations made by a public authority, and that such representations create enforceable legitimate expectations.

23) The Appellant maintained that it fell within the class of persons entitled to rely on the Respondent's 2014 guidance as a member of the Association of Gaming Operators of Kenya, to whom the letter was addressed. It is submitted that the Respondent's selective enforcement of a contrary interpretation — while allowing other operators in the gaming sector to continue applying the earlier methodology — amounted to discrimination contrary to Article 27 of the Constitution and violated the principles of fairness, equality, and non-arbitrariness in tax administration.

24) The Appellant further submitted that the Tribunal erred in failing to make a substantive determination on this issue on the ground that the 29th April 2014 letter had not been adduced. It maintained that the document was part of its Bundle of Authorities dated 26th March 2024 (pages 2887–3207, specifically page 3131), and the Tribunal's finding that it had not been produced was factually incorrect. The Appellant argued that the Tribunal's failure to consider this material evidence resulted in a miscarriage of justice and a flawed determination.

25) The Appellant also contended that the Tribunal failed to appreciate that the Respondent had misunderstood its books of account, resulting in the wrongful disallowance of betting and gaming tax expenses and the imposition of an erroneous corporation tax assessment. The Appellant submitted that it had provided the Respondent with adequate reconciliations and explanations, but these were disregarded. The Respondent thereafter issued an objection decision that merely reiterated its earlier assessment without giving reasons, in violation of the Appellant's right to fair administrative action under Article 47 of the Constitution. The Appellant relied on ***PZ Cussons East Africa Limited v KRA, Richard Bonham Safaris Limited v Commissioner of Income Tax, and Usafi Services Limited v Commissioner of Domestic Taxes,*** which held that failure by the KRA to provide written reasons invalidates an objection decision.

26) In conclusion, the Appellant urged the Court to find that the Tribunal's judgment was erroneous both in law and in fact. It prayed that the appeal be allowed with costs, and that the portions of the Tribunal's judgment upholding the Respondent's assessments on WHT, GGR, excise duty, and corporation tax be set aside. The Appellant further prayed that the

Respondent's impugned assessments be vacated in their entirety, and that the Court grant such further orders as it may deem fit.

F. THE RESPONDENT'S SUBMISSIONS

27) The Respondent, the Commissioner of Legal Services & Board Coordination, opposed the appeal and urged the Court to dismiss it with costs, maintaining that all tax assessments and objection decisions were properly issued in accordance with the law.

28) On the statutory time limit for amended assessments, the Respondent submitted that all the additional assessments covered the years of income 2017 to 2021 and were issued within the five-year limitation period prescribed under section 31 of the Tax Procedures Act (TPA). The Respondent emphasized that the 2017 self-assessment was filed on 30th June 2018, and the additional assessment was issued on 12th April 2023—thus within five years. It was further argued that the reference to 2016 expenses in the assessment notice did not amount to a chargeable assessment for that year.

29) On the alleged invalidity of the objection decision, the Respondent maintained that it complied fully with sections 51(8) and 51(10) of the TPA, having been issued on 10th July 2023—within sixty days of the Appellant's objection lodged on 12th May 2023. The Respondent contended that the decision was duly transmitted to the Appellant and its tax agent and that all documents submitted were considered but found insufficient to support the Appellant's objections.

30) Regarding the computation of Withholding Tax (WHT) on winnings, the Respondent relied on the decision in ***Pevans East Africa Limited & 5 Others v Commissioner of Domestic Taxes [2021] eKLR,*** where Majanja J. held that WHT should be computed on "net

winnings." The Respondent stated that the assessments were based on data extracted from the Appellant's own system audit, which reflected net payouts per bet slip rather than gross figures. The Respondent also referred to ***Resort Kenya Limited v Commissioner of Domestic Taxes,*** where the Tribunal directed the application of the Pevans principle.

31) On the claim that WHT was wrongly applied on stakes, the Respondent maintained that the definition of "winnings" as established in the Pevans case—being the amount paid out less the amount staked—was properly applied. The Appellant, it was argued, failed to provide evidence showing any error in the system audit data.

32) In response to the argument on differential treatment for casino games, the Respondent contended that the Appellant failed to provide verifiable primary records supporting the Excel workbook used to compute winnings and losing days. Consequently, the figures in the "Casino Summary of Losing Day 2020" could not be verified, and the assessment was confirmed.

33) On penalties and interest, the Respondent asserted that these were lawfully imposed under the TPA—specifically, a 5% penalty and 1% interest per month on principal tax due.

34) Concerning the computation of Gross Gaming Revenue (GGR), the Respondent submitted that the figures were derived from the Appellant's own IT system through a joint audit and were therefore not speculative. The Respondent invoked section 24(2) of the TPA, which allows the Commissioner to assess tax liability based on any available information and not to be bound by the taxpayer's self-assessment.

35) On disallowed betting and gaming tax expenses, the Respondent maintained that the Appellant had double-claimed certain expenses and failed to provide ledgers, invoices, or bank statements to substantiate them. Consequently, the disallowance was justified.

36) On transfer pricing and arm's length transactions, the Respondent stated that the Appellant failed to furnish documentation proving that six entities involved in the transactions were independent or that the transactions were conducted at arm's length. The Appellant provided invoices, but no mapped bank statements or benchmarking analysis.

37) Regarding the loan from Rosehall Global Limited, the Respondent submitted that the Appellant failed to demonstrate that the loan was from an unrelated entity or that it was not taxable. The lack of transfer pricing documentation and benchmarking meant the Commissioner was entitled to treat it as a related-party transaction.

38) In conclusion, the Respondent argued that the assessments were lawfully issued, the objection decision was procedurally sound, and all documents provided by the Appellant were duly considered but found inadequate. The Respondent thus prayed that the Court uphold the Tax Appeals Tribunal's decision and dismiss the appeal with costs.

G. ISSUES ANALYSIS AND DETERMINATION

39) After a meticulous review of the record of appeal, the Tribunal's judgment, and the pleadings and submissions of the parties, the following issues have been carefully considered and are for determination:

i. Whether the Respondent's additional assessments were issued outside the statutory limitation period under section 31 of the Tax Procedures Act (TPA);

ii. Whether the Respondent's Objection Decision dated 10th July 2023 complied with the requirements of section 51(8) and (10) of the TPA and Article 47 of the Constitution;

iii. Whether the Tribunal erred in upholding the Respondent's assessment of Withholding Tax (WHT) on winnings and Excise Duty on Gross Gaming Revenue (GGR);

iv. Whether the Appellant was entitled to differential treatment in the computation of WHT on casino games based on legitimate expectation and administrative consistency;

v. Whether the transfer pricing adjustments and disallowance of certain expenses were justified; and

vi. Whether the penalties and interest imposed were lawful.

40) I now consider each issue in turn.

H. ANALYSIS AND DETERMINATION

(i) Whether the assessments were time-barred under section 31 of the TPA

41) Section 31(4) of the Tax Procedures Act provides that the Commissioner shall not amend an assessment after five years from the end of the reporting period to which the assessment relates, except in cases involving fraud or willful neglect. The limitation period is designed to provide finality and certainty to taxpayers, as recognized in ***Republic v Kenya Revenue Authority ex parte Bata Shoe Company (Kenya) Ltd [2014] eKLR.***

42) The Respondent's position was that the impugned assessments covered the income years 2017–2021 and were therefore issued within the five-year statutory limit. The Tribunal found that only the 2016 component was out of time and accordingly set it aside.

43) This Court has examined the chronology of events. The 2017 self-assessment return was filed on 30th June 2018; the additional assessment was issued on 12th April 2023—clearly within five years from the end of 2018. The same applies to subsequent years. Although the audit referenced some 2016 transactions, the assessment itself did not purport to raise a charge for 2016.

44) Accordingly, I find no merit in the Appellant's argument that the assessments were time-barred. The Tribunal's finding on this point was correct and is hereby affirmed.

(ii) Whether the Objection Decision complied with section 51(8) and (10) of the TPA and Article 47 of the Constitution

45) Section 51(8) of the TPA obliges the Commissioner, in making an objection decision, to consider the grounds of objection and all relevant evidence, and section 51(10) requires that the decision be communicated in writing with reasons.

46) The principle of fair administrative action is enshrined in Article 47 of the Constitution and further elaborated upon by the Fair Administrative Action Act, which mandates procedural fairness, transparency, and reasoned decision-making. The Court of Appeal in ***Kenya Revenue Authority v Doshi Ironmongers Ltd [2018] eKLR*** emphasized that a taxpayer is entitled to a reasoned response showing due consideration of the issues raised.

47) The Appellant contended that the Respondent merely reiterated its earlier assessment without engaging with the evidence presented. The Respondent, on its part, maintained that all documents were considered and that the decision contained adequate reasons.

48) On perusal of the Objection Decision dated 10th July 2023, it sets out the tax heads, summarizes the Appellant's grounds of objection, and restates the Commissioner's position. While the format is terse, it nonetheless records the reasoning underlying the confirmation of the assessments—namely, insufficiency of primary records and inconsistencies in reconciliations.

49) Although the decision could have been more elaborate, I am not persuaded that it was devoid of reasons or that it violated Article 47. The standard under section 51(10) is that reasons be provided, not that they conform to a particular length or form. Consequently, the Objection Decision was procedurally valid, respecting the rights of the Appellant.

(iii) Whether the Tribunal erred in upholding the assessment of WHT on winnings and Excise Duty on GGR

50) The central dispute concerns whether the Respondent's computation of WHT on winnings and Excise Duty on Gross Gaming Revenue (GGR) was based on verifiable data or on estimates.

51) The law governing WHT on winnings is section 10(1)(g) of the Income Tax Act as read with paragraph 3(f) of the Third Schedule, while Excise Duty on betting and gaming is imposed under Part III of the First Schedule to the Excise Duty Act, at 7.5% of the amount wagered or the GGR, depending on the period in question.

52) The Respondent relied heavily on data extracted from the Appellant's own IT systems during a joint audit, while the Appellant contended that the figures were unverified and speculative.

53) The Tribunal, having examined the audit trail, accepted that the data originated from the Appellant's platform and that the Respondent's computation was therefore not arbitrary. It was further found that the Appellant did not provide sufficient reconciliations or documentary proof to rebut the Commissioner's position.

54) Under section 56(1) of the TPA, the burden of proving that a tax decision is incorrect rests upon the taxpayer. The Court of Appeal in ***Kenya Revenue Authority v Man Diesel & Turbo SE [2021] eKLR*** reaffirmed that once the Commissioner has issued an assessment supported by available information, the evidentiary burden shifts to the taxpayer to disprove it by documentary evidence.

55) In the present case, while the Appellant argued that the audit data was incomplete, it did not produce alternative verified figures. Having considered the entire record, I am satisfied that the Respondent's methodology—though imperfect—was within the permissible bounds of section 24(2) of the TPA, which allows assessment based on "any available information."

56) Accordingly, I find no basis to disturb the Tribunal's conclusion on WHT and GGR assessments.

(iv) Whether the Appellant was entitled to differential treatment for casino games based on legitimate expectation

57) The Appellant urged that, pursuant to a letter issued by the Respondent on 29th April 2014 to the Association of Gaming Operators of Kenya, casino operators were permitted to

compute WHT by offsetting winnings and losses on a daily net basis. It contended that the Respondent's departure from this position violated the doctrine of legitimate expectation and amounted to discrimination under Article 27 of the Constitution.

58) The doctrine of legitimate expectation is firmly entrenched in Kenyan jurisprudence. The Court of Appeal in ***Keroche Industries Ltd v Kenya Revenue Authority & 5 others [2007] KLR 240*** held that a taxpayer who has been led to expect a specific administrative treatment is entitled to protection from arbitrary departure without due notice or consultation. This doctrine was later reaffirmed by the Supreme Court in ***Kenya Revenue Authority v Export Trading Company Ltd [2022] KESC 19 (KLR).***

59) For an expectation to crystallize, however, the representation must be unambiguous. Within the power of the authority to make, and the expectation must be legitimate in the public law sense—see ***Communications Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others [2014] eKLR.***

60) The 29th April 2014 letter, although not disputed in principle, was a general communication providing interpretative guidance under the tax framework prevailing at the time. Subsequent amendments to the Income Tax Act and Excise Duty Act, including the introduction of Excise Duty on betting stakes, materially altered the tax regime. In such a dynamic context, reliance on an earlier administrative interpretation cannot ground a perpetual legitimate expectation.

61) Furthermore, the Tribunal noted that the Appellant did not produce contemporaneous primary data—such as betting slips or system extracts—verifying the daily netting

methodology. Without such proof, the Respondent could not validate the claimed computation.

62) The Appellant's claim of legitimate expectation cannot be sustained. While the Respondent should ideally provide clear transitional guidance when changing its administrative stance, the changes herein were anchored in statute and applied uniformly across the sector.

(v) Whether the transfer pricing adjustments and disallowance of expenses were justified

63) Section 18(3) of the Income Tax Act empowers the Commissioner to adjust profits where transactions between related parties are not conducted at arm's length. The Appellant bore the burden of demonstrating compliance with the Transfer Pricing Regulations, 2006, including the preparation of contemporaneous documentation and benchmarking analysis.

64) The Respondent's audit revealed transactions with six related entities and a loan from ***Rosehall Global Limited.*** The Appellant provided invoices, but no transfer pricing documentation or a comparability analysis was provided.

65) The Tribunal held—and I agree—that in the absence of sufficient proof of arm's-length terms, the Commissioner was entitled to make appropriate adjustments. This position finds support in ***Unilever Kenya Ltd v Commissioner of Income Tax [2005] eKLR,*** where the Court upheld the Commissioner's discretion to adjust profits where related-party pricing was inadequately substantiated.

66) As to disallowed expenses, the burden rested on the Appellant to prove that the expenses were wholly and exclusively incurred in the production of income under section 15(1) of the

Income Tax Act. In the absence of underlying ledgers, vouchers, or bank statements, the Commissioner was justified in disallowing them.

67) Accordingly, I uphold the Tribunal's findings on transfer pricing and expense disallowances.

(vi) Whether the penalties and interest were lawful

68) Penalties and interest flow automatically from principal tax under sections 83 and 84 of the TPA. They are statutory consequences, not discretionary sanctions. The Tribunal correctly noted that the penalty of Kshs. 162,653,035 relating to WHT was irregular, but it was set aside, and the rest was upheld. I find no error in that reasoning.

I. DISPOSITION

69) From the foregoing analysis, this Court finds as follows—

a) The additional tax assessments for the years 2017–2021 were issued within the statutory limitation period under section 31 of the TPA.

b) The Respondent's Objection Decision dated 10th July 2023 complied with sections 51(8) and (10) of the TPA and Article 47 of the Constitution.

c) The Tribunal did not err in upholding the Respondent's assessments on Withholding Tax on winnings, Excise Duty on Gross Gaming Revenue, and Corporation Tax.

d) The Appellant's claim to differential treatment for casino games based on legitimate expectation is without merit.

e) The Tribunal correctly affirmed the Respondent's transfer pricing adjustments and disallowance of unsupported expenses; and

f) The penalties and interest (save for the portion already set aside by the Tribunal) were lawfully imposed.

J. FINAL ORDERS

70) **In light of the above findings, the Court orders as follows**:

i. **The Appellant's appeal (Tax Appeal No. E278 of 2024) is dismissed.**

ii. **The Respondent's cross-appeal (Tax Appeal No. E280 of 2024) is similarly dismissed.**

iii. **The judgment of the Tax Appeals Tribunal delivered on 23rd August 2024 in TAT Appeal No. E555 of 2023 is affirmed in its entirety.**

iv. **Each party shall bear its own costs of the appeal.**

71) Orders accordingly.

DATED, SIGNED, AND DELIVERED AT NAIROBI THROUGH TEAMS APPLICATION, THIS 14TH DAY OF NOVEMBER 2025

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CHARLES KARIUKI

JUDGE