

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CUSTOMS TAX APPEAL NO. E017 OF 2025

**FAR EAST CONNECTIONS
LIMITED.....APPELLANT**

VERSUS

**COMMISSIONER OF INVESTIGATIONS
&
ENFORCEMENT.....RESPONDE
NT**

(An Appeal from the judgment of the Tax Appeals Tribunal Nairobi delivered on 21st March 2025, in Nairobi Tax Appeal No. E613 of 2024)

JUDGMENT

1. This appeal arises from the judgment of the Tax Appeals Tribunal delivered on 21st March 2025 in Nairobi Tax Appeal No. E613 of 2024, by which the Tribunal dismissed the Appellant’s appeal and upheld the Respondent’s objection decision dated 7th May 2024.
2. The dispute concerns a tax assessment issued by the Respondent through a notice of assessment dated 9th February 2024 for the years 2020- 2022, imposing a total tax liability of Kshs 48,988,514, comprising income tax and VAT. Following an objection dated 8th March 2024 by the Appellant, the Respondent revised the liability to Kshs. 41,810,605, which was subsequently upheld by the Tribunal.

3. Aggrieved by the decision, the Appellant filed the Memorandum of Appeal raising 5 grounds as follows:

- i. That the Tribunal erred in law and in fact in failing to consider the issues of evidence raised by the appellant and employing the wrong analysis in coming up with its determination.*
- ii. That the Honourable Tribunal fundamentally erred by failing to consider the issues, facts and elaborate evidence placed before it. In particular, the Tribunal failed to appreciate the provision of Section 15 of the Income Tax Act on the deduction of expenses incurred towards the generation of the Appellant's income for the tax period in question.*
- iii. That the Honourable Tribunal misconstrued the provisions of both Section 30 of the Tax Appeals Tribunal Act and Section 107 of the Evidence Act in concluding that the Appellant failed to discharge its burden of proof.*
- iv. That the Honourable Tribunal erred in finding at paragraph 51 & 52 of its judgment that the Appellant failed to discharge its burden of proving that the objection decision was incorrect while the Appellant indeed furnished the Respondent with the necessary documents.*
- v. That the Tribunal erred in law and in fact by failing to consider the Appellant's contention that the*

Respondent's decision violates the Appellant's right to fair administrative action as provided in Article 47 of the Constitution and the provisions of the Fair Administrative Action Act.

4. The Appellant challenges the judgment of the Tax Appeals Tribunal delivered on 21st March 2025, which upheld a tax assessment arising from investigations conducted by the Respondent for the years 2020–2022. The appeal is anchored on alleged errors of law and fact in the assessment and the Tribunal's determination.
5. The Appellant's case is that it duly filed its VAT returns and declared output VAT of Kshs. 21,859,418, while incurring input VAT of Kshs. 25,733,559, thereby placing it in a net credit position under Section 17 of the VAT Act. It contends that this position was ignored by the Respondent and the Tribunal
6. The Respondent's assessment was primarily based on a withholding tax (WHT) turnover analysis, which treated gross payments from government entities as taxable turnover. The Appellant contends that this methodology is fundamentally flawed as it taxes gross receipts rather than value added, contrary to the structure of VAT.
7. The Appellant further argues that the Respondent failed to properly consider the objection and supporting documentation, including invoices, financial statements, and import records. It is contended that both the Respondent

and the Tribunal selectively disregarded this evidence, leading to an erroneous assessment.

8. It is also the Appellant's case that allowable expenses incurred wholly and exclusively in the production of income were wrongly disallowed, contrary to Section 15 of the Income Tax Act, and that the Tribunal failed to properly address this issue.
9. On procedure, the Appellant contends that its right to fair administrative action under Article 47 of the Constitution and the Fair Administrative Action Act was violated. In particular, it asserts that the assessment lacked transparency, adequate reasons, and a fair opportunity to be heard.
10. The Appellant relies on judicial authorities to argue that tax assessments based on gross turnover or indirect methods must be rational, evidence-based, and consistent with statutory principles, and that failure to account for input VAT renders such assessments legally untenable.
11. On the basis of the foregoing, the Appellant urges the Court to find that the Tribunal erred in law, set aside the impugned judgment insofar as it relates to VAT, quash the VAT assessment, and grant the reliefs sought, including costs.
12. Opposing the appeal, the Respondent avers that, pursuant to its statutory mandate under the Kenya Revenue Authority Act and the Tax Procedures Act, it conducted investigations into the Appellant's tax affairs to ascertain whether all income had been declared and corresponding

taxes accounted for. In the course of the investigations, the Respondent relied on internal databases, including iTax, and the Appellant's bank statements

13. The investigations revealed that the Appellant received substantial payments from various government agencies amounting to Kshs. 149,816,330, while analysis of its bank accounts reflected net banking of Kshs. 194,041,176 for the period under review. Based on adjustments made to these figures, the Respondent computed expected sales and identified variances between declared income and actual receipts.
14. Applying the withholding tax (WHT) test and banking analysis, the Respondent established discrepancies which formed the basis for additional tax assessments comprising Income Tax of Kshs. 28,596,575 and VAT of Kshs. 20,391,939, totaling Kshs. 48,988,514.
15. The Respondent further avers that although the Appellant lodged an objection, the same was invalid for non-compliance with Section 51(3) of the Tax Procedures Act. Nevertheless, the Respondent partially considered the objection and confirmed the tax amounting to Kshs. 41,810,605.
16. It is the Respondent's case that the Appellant failed to furnish adequate supporting documentation, particularly invoices and proof of import-related expenses, despite being afforded multiple opportunities. Consequently, certain claimed expenses were disallowed, and the assessments

were made on the basis of information available to the Respondent.

17. In response to the grounds of appeal, the Respondent maintains that the Tribunal properly evaluated the evidence and correctly found that the Appellant had not discharged its burden of proof. It is contended that the Appellant failed to demonstrate that the assessments were erroneous, as required under Section 56(1) of the Tax Procedures Act.
18. The Respondent asserts that the Appellant was accorded an opportunity to be heard and to present its case both at the assessment and objection stages, but failed to do so satisfactorily. It urges the court to find that the appeal is devoid of merit and dismiss the same in its entirety.

Analysis and determination

19. The parties herein recorded a Partial Consent dated 16th May 2025 by which the income tax component of the dispute was compromised and settled.
20. The effect of that consent is that the question of income tax is no longer in controversy before this Court. It is trite that a consent order is binding upon the parties unless set aside on recognized grounds, and the Court will not reopen issues thereby settled.
21. In the premises, the only issue falling for determination is whether the VAT assessment of Kshs 20,391,939 issued by the Respondent and upheld by the Tribunal was lawful, proper, and justified in law and fact.

22. Before considering the issues raised in this appeal, it is important to point out that the jurisdiction of this court is circumscribed by statute. In this regard, section 56 of the TPA is relevant, and because the said provision stipulates a pertinent jurisdictional question, it is only proper that I reproduce the entire section below.

56. General provisions relating to objections and appeals

(1) In any proceedings under this Part, the burden shall be on the taxpayer to prove that a tax decision is incorrect.

(2) An appeal to the High Court or to the Court of Appeal shall be on a question of law only.

(3) In an appeal by a taxpayer to the Tribunal, High Court or Court of Appeal in relation to an appealable decision, the taxpayer shall rely only on the grounds stated in the objection to which the decision relates unless the Tribunal or Court allows the person to add new grounds.

23. An appeal limited to matters of law does not permit the appellate court to substitute the Tribunal's decision with its own conclusions based on its own analysis and appreciation of the facts.

24. The Respondent's assessment was principally founded on a withholding tax (WHT) and banking analysis, by which it treated payments received by the Appellant and bank deposits as indicative of taxable turnover.

25. There is no dispute that the Commissioner is empowered under the Tax Procedures Act to make assessments based on the information available, including the use of indirect methods where a taxpayer's records are inadequate. However, that power is not at large; it must be exercised within the confines of the substantive tax law governing the particular tax in question.
26. VAT, is a tax on value addition. Under the VAT Act, liability arises from output VAT on taxable supplies, less allowable input VAT incurred in making those supplies. Any assessment must therefore reflect this statutory architecture.
27. The methodology adopted by the Respondent, as borne out by the record, largely equated gross receipts with taxable supplies without a clear reconciliation of input VAT. In effect, it risked converting VAT into a tax on turnover, which is inconsistent with the design and purpose of VAT.
28. This Court accepts that where records are deficient, the Commissioner is entitled to fall back on indirect methods such as banking analysis. Even so, the resulting assessment must remain tethered to the statutory framework and must represent a reasonable approximation of the taxpayer's true VAT position. It cannot be a mechanical exercise divorced from the nature of the tax.
29. The Tribunal, in upholding the assessment, did not sufficiently interrogate whether the methodology adopted by the Respondent properly accounted for input VAT or whether

it yielded a fair and reasonable reflection of value added. That omission was not a mere oversight; it went to the heart of the legality of the assessment.

30. The Tribunal's mandate is not simply to affirm the Commissioner's decision. It is required to re-evaluate the evidence and satisfy itself that the assessment is both factually and legally sustainable. This entails an examination not only of the evidentiary basis of the assessment but also of its conformity with the governing statute.

31. The Appellant's case before the Tribunal was that it was in a net VAT credit position, having declared output VAT of Kshs. 21,859,418 and input VAT of Kshs. 25,733,559. The Tribunal nevertheless upheld the assessment on the basis that the Appellant had failed to substantiate its claims.

32. While it is correct that the burden of proof rests upon the taxpayer under Section 56(1) of the Tax Procedures Act, that burden does not operate to relieve the Tribunal of its obligation to examine whether the assessment itself is legally tenable. The inquiry is twofold: whether the taxpayer has displaced the assessment, and whether the assessment, on its own terms, complies with the law.

33. A tax assessment must not only be supported by evidence but must also conform to the applicable statutory framework. A failure on either limb renders the assessment vulnerable.

34. In this case, the Tribunal did not subject the Respondent's methodology to that level of scrutiny. In

particular, it failed to examine whether the apparent disregard of input VAT resulted in an assessment that was inconsistent with the VAT regime.

35. In the circumstances, I am satisfied that the Tribunal fell into error in law. Its failure to interrogate the legality and structural soundness of the VAT assessment warrants the intervention of this Court.

36. Having reached the foregoing conclusion, the question that remains is the appropriate relief to grant in the circumstances of this case.

37. This Court is mindful that it is exercising appellate jurisdiction from the Tax Appeals Tribunal. It is therefore not the role of the Court to undertake a fresh assessment of tax or to substitute its own computation for that of the Commissioner. Rather, where an assessment is found to be legally flawed, the proper course is ordinarily to set it aside and remit the matter for reconsideration in accordance with the law.

38. In the present case, the deficiency identified does not lie merely in the quantum of the assessment, but in the methodology employed and the failure to properly account for input VAT within the statutory framework. That defect goes to the root of the assessment and renders it unsustainable.

39. At the same time, the record shows that the Respondent did undertake investigations and that the Appellant's documentation was, at least in part, contested.

In those circumstances, it would not be appropriate for this Court to conclusively determine the Appellant's VAT position without the benefit of a proper evaluation at the administrative level.

40. The ends of justice will therefore be best served by setting aside the impugned VAT assessment and remitting the matter to the Respondent for a fresh assessment. Such reassessment must be conducted strictly in accordance with the VAT Act and the Tax Procedures Act, and must include a reasoned evaluation of the Appellant's input VAT claims based on the documentation available.
41. For the avoidance of doubt, the Respondent shall, in undertaking the fresh assessment, afford the Appellant a reasonable opportunity to present all relevant documentation and shall render a decision that is reasoned, transparent, and compliant with the requirements of Article 47 of the Constitution and the Fair Administrative Action Act.
42. In the result, I make the following orders:

- a. The appeal, to the extent that it relates to VAT, is hereby allowed;***
- b. The judgment of the Tax Appeals Tribunal dated 21st March 2025, insofar as it upheld the VAT assessment, is hereby set aside;***
- c. The VAT assessment of Kshs. 20,391,939 is hereby quashed;***
- d. The matter is remitted to the Respondent for fresh assessment confined to VAT and to be undertaken***

in accordance with the law and the findings of this Court;
e. Each party shall bear its own costs of the appeal.

It is so ordered.

JUDGMENT delivered virtually, dated and signed at **NAIROBI**
This **30th** day of **April** 2026.

P.M. MULWA
JUDGE

In the presence of:

Ms. Githinji h/b for Mr. Mutuma for Appellant

Ms. Mulinge for Respondent

Court Assistant: Lispa