



Rongai Furniture Centre Limited v Commissioner of Domestic Taxes (Income Tax Appeal E048 of 2023) [2025] KEHC 1124 (KLR) (Commercial and Tax) (27 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1124 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E048 OF 2023
PM MULWA, J
FEBRUARY 27, 2025

BETWEEN

RONGAI FURNITURE CENTRE LIMITED APPELLANT

AND

COMMISSIONER OF DOMESTIC TAXES RESPONDENT

(Appeal from the judgment of the Tax Appeals Tribunal dated 17th March 2023)

RULING

1. The respondent conducted investigations into the appellant's tax affairs for the years 2014 and 2015 and established that the appellant had under-declared VAT and Corporation Tax. Subsequently the appellant was issued with a notice of default assessment on 14th June 2017 for Kshs.10,311,620.00 for both corporation tax and VAT inclusive of penalties and interest.
2. On 25th June 2020, the respondent confirmed the assessment raised on 14th June 2017.
3. The appellant was aggrieved by the assessment and filed an appeal on 4th August 2020 before the Tax Appeal Tribunal (the tribunal).
4. Upon considering the appeal before it, the tribunal found no merit in the appeal and dismissed it. Further it upheld the respondent's objection decision dated 25th June 2020.
5. The appellant being dissatisfied with the judgement of the tribunal filed an appeal to this court on the following grounds:
 1. The Honourable Tribunal erred in law by holding that the Objection by the Appellant was not valid and failed to take into account the provisions of section 51(3) of the *Tax Procedures Act, 2015* as the appellant had precisely stated the grounds of objection, the amendments required



to be made to correct the decision, and the reasons for the amendments and had paid the entire amount of taxes under the assessment which is undisputed.

2. The Tribunal erred in law by assessing the Default Tax based on the total credits recorded in the Appellant's bank accounts at Rafiki Microfinance and I & M banks, without taking into account the pre-tax deductions provided for under Section 15 of the *Income Tax Act*.
 3. The Tribunal erred in law by upholding the decision of the Respondent of assessing Default Tax based on Banking Method and applying the total credits records in the Appellant's Bank accounts at Rafiki Microfinance bank and I&M bank as the taxable income of the company for purposes of the default assessment of tax, in violation of the express provisions of section 3 (2) (a) (i) of the *Income Tax Act* which describes taxable income for business as other gains or profits.
 4. The Tribunal erred in law by failing to appreciate that Section 17 of the *Value Added Tax Act* No. 35 of 2013 provides for the deduction of input VAT against output VAT for taxable supplies and imports.
 5. The Tribunal erred in law by failing to recognize the Appellant's evidence pursuant to section 56(1) of the *Tax Procedure Act*, 2015 in which the Appellant had demonstrated during the hearing and in its submissions that the tax assessment relied upon by the Respondent was erroneous and inaccurate.
 6. The Honourable Tribunal erred in law by failing to appreciate the evidence submitted by the Appellant that the assessment by the Respondent was erroneous and the burden shifted to the Respondent to show that the assessment was valid.
 7. The Tribunal erred in law by upholding the Respondent's decision of not taking into account the input VAT in the default assessment that is deductible by statute irrespective of whether a taxpayer has filed the monthly VAT returns.
 8. The tribunal erred in law by denying the Appellant an opportunity to rely on its evidence pertaining to the issues raised by the Respondent.
 9. The Tribunal erred in law in the Respondent's decision that the VAT assessed by the Respondent when it was not based on any specific taxable supply or sale in accordance with section 5 as read with section 2 of the *Value Added Tax Act*, 2013.
 10. The Tribunal erred in law by holding that the appellant failed to supply certain documents when no notice under section 48(1) of the *VAT Act* was issued to the appellant for compliance.
 11. The Tribunal erred in law by holding that the Appellant's documents were filed late, notwithstanding the provisions of section 17 of the *Tax Appeals Tribunal Act*, which empowers the Tribunal jurisdiction to call for additional evidence.
 12. The Tribunal erred in law in formulating issues of determination, which departed from the parties' pleadings contrary to the principle of Law.
 13. The Honourable Tribunal erred in law by failing to appreciate that the Appellant was never issued with a written notice or in electronic form notified of the intention by the Respondent to raise an assessment or carry out an audit as required by *Tax Procedures Act* 2015.”
6. Based on the foregoing grounds, the appellant prayed to have the appeal allowed and the judgment of the tribunal delivered on 17th March 2023 set aside.



7. The respondent opposed the appeal by filing its statement of facts dated 31st August 2023.
8. It stated that the tribunal rightly addressed itself on the issues before it in endorsing the respondent's objection decision dated 25th June 2020 that confirmed the assessed corporation tax and VAT in the sum of Kshs.10,311,620.00 as due from the appellant after computation and that the tribunal acted within the law in adjudicating the appeal in accordance with the principles of law that govern taxation as provided for under the VAT Act Cap 476, the VAT Act 2013, the Income Tax Act 2012 and the amendments thereto.
9. Further that the tribunal duly interpreted the relevant provisions of the tax statutes that were in dispute thereby arriving at a sound decision in fact and in law. The respondent prayed to have the appeal dismissed and the tribunal's judgment dated 17th March 2023 upheld.

Analysis and determination:

10. The appellant and respondent filed written submissions dated 5th October 2023 and 15th November 2023 respectively. The court has analyzed and considered the record of appeal together with the submissions filed by the parties.
11. A background of this dispute is that the respondent carried out investigations into the appellant's tax affairs for the years 2014 and 2015 and established that the appellant had under-declared VAT and corporation tax.
12. Consequently, the appellant issued a notice of default of assessment on 14th June 2017 for Kshs.10,311,620.00 for both corporation tax and VAT inclusive of penalties and interest. The appellant filed a notice of objection on 29th April 2020 and the appellant confirmed the assessments on 25th June 2020.
13. Aggrieved by the respondent's objection decision, the appellant filed its appeal to the tribunal which delivered its judgement in favour of the respondent finding that the appellant had failed to adduce any documentary evidence when they lodged their objection and that introducing the same before the tribunal during the appeal was too late.
14. The tribunal further noted that the appellant had ample time to avail documents in support of its objection but failed to do so. These findings by the tribunal are the subject of this appeal.
15. Having analyzed the grounds of appeal, I believe that the same can be distilled to the following issue for determination; whether the demanded tax is due and payable.
16. Vide its objection decision dated 25th June 2020, the respondent confirmed its assessment of Kshs.10,311,619.00. In the decision, the respondent stated that it had considered the appellant's notice of objection dated 28th April 2020.
17. The respondent confirmed the assessment noting that the appellant had requested for some documents which were availed to it but no feedback had been received from it regarding the said documents.
18. Under paragraph 53 of its judgment, the tribunal stated: "The tribunal notes that between the appellant's first appeal and the current one where the first notice of objection was done on 15th July 2017 which is more than 5 years, the appellant failed to adduce any documentary evidence then and even during the lodging of the notice of objection during the current appeal. Its attempt to provide some documents during the appeal stage is coming too late in the day."



19. Under Section 51(3) of the *Tax Procedure Act*:
- “A notice of objection shall be treated as validly lodged by a taxpayer under subsection (2) if-
- a. The notice of objection states precisely the grounds of objection, the amendments required to be made to correct the decision, and the reasons for the amendments;
 - b. In relation to an objection to assessment, the taxpayer has paid the entire amount of tax due under the assessment that is not in dispute or has applied for an extension of time to pay the tax not in dispute under section 33(1) and
 - c. All the relevant documents relating to the objection have been submitted.”
20. In this case, the appellant disputed the respondent’s assessment of the taxes due as it relied on the banking method to determine corporation tax and VAT.
21. Certain documents were availed to the appellant after a meeting was held between the parties. The appellant had the opportunity to provide evidence to rebut the documents availed by the respondent and to support its objection notice dated 28th April 2020. However, the record indicates that the appellant did not provide such documents to support its notice of objection even after the respondent reminded it of the statutory timeline to provide the same.
22. The burden of proof is on the taxpayer to prove a tax assessment wrong. This is provided for under Section 30 of the *Tax Appeals Tribunal Act* which states:
- “In a proceeding before the Tribunal, the appellant has the burden of proving—
- a. where an appeal relates to an assessment, that the assessment is excessive; or
 - b. in any other case, that the tax decision should not have been made or should have been made differently.”
23. Further, Section 56(1) of the *Tax Procedures Act*, states that:
- “In any proceedings under this Part, the burden shall be on the taxpayer to prove that a tax decision is incorrect.”
24. In the circumstances, I agree with the tribunal’s finding that the appellant did not discharge the burden of proof placed upon it and the respondent could not be faulted for confirming the assessment and demanding the tax due in its objection decision dated 25th June 2020.
25. For this reason, I uphold the decision of the tribunal and find no merit in the appeal which I dismiss with costs.

JUDGMENT DELIVERED, DATED AND SIGNED AT NAIROBI THIS 27TH DAY OF FEBRUARY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Isutsa h/b for Mr. Chabala for Appellant



N/A for Respondent

Court Assistant: Carlos

