

**REPUBLIC OF KENYA**  
**IN THE TAX APPEALS TRIBUNAL**  
**TAX APPEAL NO. 405 OF 2023**

**SIRROM TRADING COMPANY LIMITED.....APPELLANT**

**-VERSUS-**

**COMMISSIONER OF DOMESTIC TAXES..... RESPONDENT**

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**JUDGMENT**

**BACKGROUND**

1. The Appellant is a limited liability company duly incorporated in Kenya under the Companies Act, 2015. Its principal activity is general supplies of goods and services.
2. The Respondent is a principal officer appointed under Section 13 of the Kenya Revenue Authority Act, 1995. Under Section 5 (1) of the said Act, the Kenya Revenue Authority is an agency of the Government for the collection and receipt of all revenue.
3. The Respondent issued the Appellant with additional income tax company assessment of Kshs. 1,596,830.14 inclusive of interest on 31<sup>st</sup> August 2018.
4. The Appellant lodged its objection to the additional income tax assessment on 3<sup>rd</sup> April 2019.
5. The Respondent disallowed the Appellant's objection and confirmed the additional assessment vide confirmation of assessment notice dated 30<sup>th</sup> May 2019.
6. Aggrieved, with the Respondent's decision the Appellant lodged this Appeal on 4<sup>th</sup> July 2023.

**THE APPEAL**

7. The Appeal is premised on the Appellant's Memorandum of Appeal filed on 4<sup>th</sup> July 2023 stating the following grounds: -
- a) That the assessment of income tax is wrong and malicious since the Respondent did not request for documents from the Appellant.
  - b) That the Respondent did not consider purchases, opening stock, closing stock and expenses while issuing the assessment.
  - c) That the audited accounts for the year 2013 clearly shows net profit was Kshs. 39,970.00.

### **Appellant's prayers**

8. The Appellant prayed to the Tribunal for the following orders: -
- a) That the assessment be amended to reflect the actual position.
  - b) That all penalties and interests accrued from the erroneous assessment be removed.
  - c) That the agency notice be lifted immediately.
  - d) Costs.

### **THE RESPONDENT'S CASE**

9. The Respondent's case is premised on the following documents filed before the Tribunal: -
- a) The Respondent's Preliminary Objection dated 3<sup>rd</sup> July 2023 and filed on 4<sup>th</sup> July 2023; and
  - b) The Respondent's Statement of Facts dated 3<sup>rd</sup> July 2023 and filed on 4<sup>th</sup> July 2023.
10. The Respondent filed a Notice of Preliminary Objection on 4<sup>th</sup> July 2023 questioning the validity of the Appeal raising the following grounds:

- a) That the Appellant's Appeal was filed out of time and in contradiction to Section 52(1) of the TPA, 2015 as read together with Sections 13(1)(b) & 3 of the TAT Act, 2013 and Rule 3(1)(b) of the TAT (Procedure) Rules, 2015.
  - b) That the Appeal is invalid as there is no evidence of a tax decision challenged contrary to Section 13(2) of the TAT Act.
  - c) That the Appeal is invalid as it offends Sections 12 and 13 of the Tax Appeals Tribunal Act, 2013.
  - d) That the Appeal is an abuse of the process of the Tribunal and a waste of resources.
  - e) That the Appeal lacks merit and must fail.
11. The Respondent averred that the Appellant failed to adduce any evidence to challenge the basis of the additional income tax assessment as envisaged under Section 51(3) of the Tax Procedures Act.
  12. The Respondent further averred that the Tax Procedures Act places onus of proof on the Appellant, which in this case failed to avail evidence that would support a contrary position to the assessment that would have guided the Respondent to arrive at a different decision.
  13. The Respondent averred that it is not bound by the Appellant's returns, information, or self-assessment as it is empowered to vary assessments using any available information as envisaged under Section 24(2) of the Tax Procedures Act, 2015.
  14. The Respondent averred that the Appellant is undeserving of the prayers sought.

## **Respondent's prayers**

15. The Respondent prayed to the Tribunal for the following orders: -
- a) That the Respondent's decision is proper in law.
  - b) That the Appeal lacks merit and should be dismissed with costs to the Respondent.

## ISSUES FOR DETERMINATION

16. The Tribunal, having carefully reviewed the pleadings and filings made by the parties and the supporting documents, is of the view that the following issues fall for its determination: -
- a) *Whether the Appeal is valid.*
  - b) *Whether the Respondent erred in confirming Additional Income Tax Company Assessment vide Confirmation of Assessment Notice dated 30<sup>th</sup> May 2019.*

## ANALYSIS AND FINDINGS

- a) *Whether the Appeal is valid.*
17. Having identified the issues for its determination, the Tribunal proceeds to analyze them as hereunder.
18. As highlighted above, the Respondent raised a Preliminary Objection on the validity of the Appeal and raised the following grounds: -
- a) That the Appeal was filed out of time and in contradiction to Section 52(1) of the TPA, 2015 as read together with Sections 13(1)(b) & 3 of the TAT Act, 2013 and Rule 3(1)(b) of the TAT (Procedure) Rules, 2015.
  - b) That the Appeal is invalid as there is no evidence of a tax decision challenged contrary to Section 13(2) of the TAT Act.

- c) That the Appeal is invalid as it offends Sections 12 and 13 of the Tax Appeals Tribunal Act, 2013.
  - d) That the Appeal is an abuse of the process of the Tribunal and a waste of resources.
  - e) That the Appeal lacks merit and must fail.
19. In summary, the Tribunal notes that the preliminary objection raises the question of whether the instant Appeal is valid. The Respondent contended that this Appeal is invalid as it offends Section 52(1) of TPA and Sections 12 and 13 of the TAT Act amongst other regulations, which fundamentally raises the question of the procedure for invoking jurisdiction of the Tribunal.
20. The relevant law for invoking the jurisdiction of the Tribunal is found in Sections 52(1) of the TPA and Section 13 of the TAT Act.
21. On the other hand, Section 13 (1) (b) and (3) The Tax Appeals Tribunal Act specifically stipulates the process and timelines for filing a competent appeal as follows:
- “ (1) A notice of appeal to the Tribunal shall –*
- a) be in writing or through electronic means;*
  - b) be submitted to the Tribunal within thirty days upon receipt of the decision of the Commissioner.*
- (3) The Tribunal may, upon application in writing or through electronic means, extend the time for filing the notice of appeal and for submitting the documents referred to in subsection (2).”*
22. It is the unrebutted contention of the Respondent that the instant Appeal is invalid as it was filed out of time and no leave was sought by the Appellant in terms of Section 13(3) of the TAT Act.
23. The Tribunal notes that it is not contested that the Appellant filed the Appeal on 4<sup>th</sup> July 2023 against a confirmation of assessment notice dated 30<sup>th</sup> May 2019. That is a period of over four (4) years and is certainly an unexplained

inordinate delay. Indeed, it offends the statutory timelines of 30 days envisaged under the Section 52(1) of the TPA and Section 13 (1)(b) of the TAT Act.

24. In addition, the Tribunal notes that there is no application on record in terms of Section 13(3) of the TAT Act to extend time so that the Appellant could file its Appeal out of the statutory timelines.
25. The Tribunal reiterates its holding on the question of timelines in **W.E.C. Lines Ltd vs. The Commissioner of Domestic Taxes [TAT Case No.247 of 2020]** where it was held at paragraph 70 while reiterating the holding in **Krystalline Salt Ltd vs KRA [2019] eKLR** that: -

*“Where there is a clear procedure for redress of any particular grievance prescribed by the constitution or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures. The relevant procedure here is the process of opposing an assessment by the Commissioner.”*

26. Accordingly, the Tribunal finds that the instant Appeal is invalid.
- b) Whether the Respondent erred in Confirming Additional Income Tax Company Assessment vide Confirmation of Assessment Notice dated 30<sup>th</sup> May 2019.*
27. Having determined that the instant Appeal is invalid, the Tribunal did not delve into the second issue for determination as the same was rendered moot.

## FINAL DECISION

28. Accordingly, it is the determination of the Tribunal that the Appeal is incompetent and the Tribunal proceeds to make the following Orders: -

- a) The Appeal be and is hereby struck out.
  - b) Each party to bear its costs.
29. It is so ordered.

**DATED and DELIVERED at NAIROBI this 17<sup>th</sup> day of May, 2024**

**GRACE MUKUHA  
CHAIRPERSON**

**DR. ERICK KOMOLO  
MEMBER**

**JEPHTHAH NJAGI  
MEMBER**

**DR. WALTER J. ONGETI  
MEMBER**

**GLORIA A. OGAGA  
MEMBER**