

**REPUBLIC OF KENYA**  
**TAX APPEALS TRIBUNAL AT NAIROBI**  
**TAX APPEAL NO. 281 OF 2019**

**SHIVAM COMMODITIES LTD..... APPELLANT**

**AND**

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

**JUDGEMENT**

1. The Appellant is a limited liability company incorporated in Kenya. The Appellant's core business is the importation and wholesale of rice.
2. The Respondent is the Commissioner of Domestic Taxes duly appointed under Section 11(4) of the Kenya Revenue Authority Act and is responsible for the control and management of the Domestic Taxes Department and accounting for tax under the applicable tax statutes.

**BACKGROUND**

3. The Respondent, by an email dated 2<sup>nd</sup> November, 2018 invited the Appellant for a meeting to review their PAYE and Income Tax returns. The initial meeting was held on 9<sup>th</sup> November, 2018 at the Appellant's Tax Agent's Offices.
4. Previously by an email dated 5<sup>th</sup> November, 2018 the Appellant had notified the Respondent, that they were under scrutiny by the Investigation and Enforcement Department of Kenya Revenue Authority.

5. Subsequently vide a letter dated 23<sup>rd</sup> January 2019, the Respondent furnished the Appellant with its Notice of Intention to Assess pursuant to Sections 29 and 31 of the Tax Procedures Act (TPA). Consequently on 12<sup>th</sup> February 2019, the Respondent raised additional assessments on the Appellant's iTax platform in the sum of Kes.302,897,793 on account of principal taxes.
6. By their letter of 11<sup>th</sup> March 2019, the Appellant's Tax Agent objected to the said Assessment in accordance with Section 51 of the TPA citing the grounds for the said objection. The Tax Agent, by an email dated 8<sup>th</sup> May 2019, requested the Respondent to allow for an extension of time to submit all records. This request was premised on the ground that, at the material time, the Appellant did not have an Accountant to provide all the relevant records.
7. Despite the foregoing request, by a letter dated 9<sup>th</sup> May 2019, the Respondent confirmed the Assessment and notified the Appellant of its decision and went ahead to demand the taxes in the sum of Kes.302,897,793. The Appellant was left with no option but to file its Notice of Appeal which it did on 7<sup>th</sup> June, 2019.

## **APPEAL**

8. The Appeal was premised on the condensed ground that the Respondent made its decision based on estimated turnovers without taking into consideration all the costs incurred by the Appellant. Secondly, the Appellant without justification, failed to consider the Appellant's request for an extension of time to submit all records.

9. As an expression of goodwill, the Appellant made payments in the sum of Kes.1,638,121 between 12<sup>th</sup> February, 2019 and 19<sup>th</sup> June 2019, notwithstanding the Respondent's actions.
10. It is the Appellant's case that the Assessment is way above the Appellant's profits and excessive and ought to be vacated.

### **RESPONSE**

11. The Respondent did not dispute the facts as outlined by the Appellant. The Respondent went on to state that it was duty bound, pursuant to Section 51(ii) of the TPA, to issue an Objection Decision within Sixty (60) days from the date of objection basing its reliance on the information in its possession.

### **ANALYSIS**

12. The Tribunal notes that it is not in dispute that the Assessment was made without the exhaustive input of the Appellant by way of all available documentation. The Appellant's Tax Agent brought to the Respondent's attention, the absence of the Appellant's Accountant at the material time. Having come on record the Appellant's Tax Agent sought an extension from the Appellant to submit all the required records, which request was not favoured with a response. Indeed the confirmation was made a day after the request for extension of time to submit further records. This was done ostensibly to beat the deadline of 60 days set out in the TPA.
13. Bearing in mind that the Respondent did not get a chance to interrogate all the records in the Appellant's possession and given the significant amount involved, the Tribunal is of the view it lacks sufficient basis to determine the Appeal in either party's favour.
14. Noting no prejudice will be occasioned to either party and the interests of justice will be served, we make the following orders;
  - i) The Respondent's Objection Decision dated 9<sup>th</sup> May, 2019 is hereby vacated.

- ii) The Appellant is hereby allowed to submit further records in response to the Assessment of Kes.302,897,793 by the Respondent.
- iii) Each party shall bear its own costs.

**DATED and DELIVERED at NAIROBI this 27<sup>th</sup> day of March 2020.**



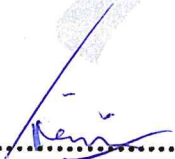
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**MOSES B. OBONYO**  
**CHAIRMAN**



.....  
**MAHAT SOMANE**  
**MEMBER**



.....  
**PATRICIA MAGIRI - ANAMPTU**  
**MEMBER**



.....  
**TIMOTHY K. CHESIRE**  
**MEMBER**



.....  
**ROSE WAMBUI NAMU**  
**MEMBER**