URA WINS SH155.6B TAX CASE AGAINST BUJAGALI ENERGY

By Michael Odeng

The Uganda Revenue Authority (URA) has won a landmark tax dispute against Bujagali Energy Limited, with the Tax Appeals Tribunal upholding a revised tax assessment of sh155.6b against the power producer.

In a ruling delivered on April 30, a three-member panel of the tribunal chaired by Ali Siraj dismissed Bujagali's appeal and upheld URA's sh155.6b revised assessment in income and withholding tax against the operator of Uganda's flagship 250MW Bujagali hydroelectric dam. The tribunal also awarded URA costs of the suit.

Other members of the panel, were Christine Katwe and Willy Nangosyah.

COURT PROCEEDINGS

The dispute arose from a comprehensive URA audit covering the period between 2008 and 2022 following recommendations by a parliamentary ad hoc committee.

According to URA, the audit established that power producer converted its entire US dollar construction costs into Uganda shillings using the 2012 Bank of Uganda exchange rate of sh2,501 per dollar the year the dam was commissioned, instead of applying the lower historical exchange rates prevailing when the costs were incurred between 2005 and 2012.

URA argued that the conversion inflated the shilling value of Bujagali's depreciable assets, resulting in overstated capital allowance deductions and under-declaration of taxable income over several years of operation.


URA's Musinguzi

The Tribunal members agreed with URA's interpretation of Section 56(2) of the Income Tax Act, holding that foreign currency expenditure must be converted using the exchange rate applicable on the date the expenditure was incurred and not at the commissioning date of the project.

The members rejected .Bujagali's argument that the law allowed it discretion to apply the 2012 exchange rate, describing the interpretation as legally untenable.

The power producer had also challenged the assessments on grounds that they were time-barred, arguing that some dated back to 2005, spanning over 18 years. However, the tribunal ruled that URA properly relied on the "discovery of new information" exception under the Tax Procedures Code Act.

"The detailed asset registers and exchange rate schedules were not apparent in Bujagali's self-assessment returns and only emerged during the audit process, constituting genuinely new information sufficient to extend the limitation period," Siraj noted.

The Tribunal further upheld URA's reclassification of about $31.5m (about sh117b) in construction-related expenses, including site camp establishment, access roads, reservoir clearing and community programmes, from start-up costs to industrial buildings and land, attracting lower or no deduction rates.

The members also disallowed the travel and accommodation expenses amounting to about sh14b paid to Bujagali's shareholders after the company reportedly failed to provide written contracts proving a legitimate business arrangement.

In addition, the Tribunal upheld the ruling on withholding tax assessments worth sh239.7m on foreign services due to insufficient documentary evidence.

URA commissioner for legal services and board affairs Catherine Donovan Kyokunda commended the Tribunal panel for what she described as a thorough and well-reasoned decision on complex tax and accounting issues spanning more than a decade.

COMMENT

URA Commissioner General John Musinguzi welcomed the Tribunal's decision, describing it as a significant affirmation of fair and consistent tax administration.

"This ruling sends a clear message that Uganda's tax laws apply equally to all taxpayers, regardless of size or sector. It reinforces the principle that transparency and accuracy in tax reporting are non-negotiable. As URA, we remain committed to strengthening compliance, protecting the country's revenue base, and ensuring that investments in Uganda operate within the established legal framework. We commend the Tribunal for upholding the rule of law and providing clarity on critical tax treatment issues, particularly in infrastructure financing," he said.

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