THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 77 OF 2011

TEMBO STEELS [U] LTD :::::::::::::::::::::::::::::: APPELLANT

VERSUS

UGANDA REVENUE AUTHORITY :::::::::::::::::: RESPONDENT

CORAM: HON. JUSTICE ALFONSE OWINY DOLLO, DCJ

HON. JUSTICE KENNETH KAKURU, JA

HON. JUSTICE STEPHEN MUSOTA, JA

JUDGMENT OF JUSTICE STEPHEN MUSOTA, JA.

The appellant filed this appeal against the Judgment and orders of the High Court before Justice Christopher Madrama in Civil Appeal No. 9 of 2007.

Background

The appellant company is engaged in the production of steel products and was registered for VAT in 2001. On 2nd February 2004, Special Revenue Protection Services together with the respondent carried out an audit exercise where they concluded that Ushs. 14,465,609= was refundable to the appellant. Another audit was commenced on 1/11/2004 based on power consumption. The respondents issued a fresh VAT assessment of 681,500,089/= based on the ratio of power consumption to output of steel. The appellant objected to the assessment and the respondent revised it to 494,432,219= to which the appellant still objected. The applicant filed an application for review of the assessment under section 16 of the Tax Appeals

Tribunals Act and the tribunal found in favour of the appellant and held that the assessment was wrong unlawful. The respondents filed an appeal in the High Court and the High Court found in favour of the respondent that the assessment of 491,742,042/= though arbitrary, was valid.

The appellant being dissatisfied with the decision of the High Court filed this appeal on the following grounds;

1. The learned trial Judge erred in law when he held that the term 'best information' in section 32(3) of the VAT Act means the same thing as 'best judgment' used in the case of **Argosy Co. Ltd V Inland Revenue Comr. [1971]1 WLR 514 at 516.**
2. The learned trial Judge erred in law when he held that the assessment though arbitrary, in the eyes of the tribunal was still a valid assessment.
3. The learned trial judge erred in law when he held that the input/output method used in the assessment was still a valid assessment.
4. The learned trial judge erred in law when he held that the decision of the tribunal did not amount to varying the decision of the commissioner as provided in section 19 of the VAT Act.

Representation

At the hearing of the appeal, Mr. Martin Mbanza Kalemera and Oscar Kamusiime appeared for the appellant while the respondent was represented by Ms. Patricia Ndagire and Mr. Tony Kalungi.

Preliminary objection

The respondent raised a preliminary objection that grounds 1, 2 and 3 of the Memorandum of Appeal do not reflect the true position of the decision of the 1st appellate court. That the appellant quotes the first appellate court out of context contrary to what was held in the judgment which contravenes Rule 86 of the rules of this court. The respondent's argument is that grounds 1, 2 and 3 of the Memorandum of Appeal do not reflect the holding of the trial Judge and should be struck out.

Rule 86 (1) of the **Court of Appeal Rules Directions** states that;

> *"(1) A memorandum of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, specifying the points which are alleged to have been wrongfully decided, and the nature of the order which it is proposed to ask the court to make."*

For the appellant, it is submitted that the preliminary objections raised by the respondents are incompetent. Under Rule 82 of the Rules of this court, the respondent should have applied to have the Notice of Appeal struck out when they were served. **Rule 82** states that;

> *"A person on whom a notice of appeal has been served may at any time, either before or after the institution of the appeal, apply to the court to strike out the notice or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time."*

The respondent was served the notice of appeal on 18th March 2011 but never raised an objection under Rule 82 above. The preliminary objection raised implies that no appeal lies and therefore should have been raised thereunder.

In addition, the appellant submitted that the preliminary objection should only have been raised with leave of court under Rule 102 (b) of the rules of this court. **Rule 102 (b)** states that;

> *"At the hearing of an appeal in the court—*
>
> *(b) A respondent shall not, without the leave of the court, raise any objection to the competence of the appeal which might have been raised by application under rule 82 of these Rules;"*

The appellant's argument is that the respondents raised the preliminary objections without leave of court and as such, they are incompetent and should be dismissed. In addition, the preliminary objections raised do not amount to preliminary objections because they are based on facts of the appeal and not on points of law. Counsel relied on **Mukisa Biscuit Manufacturing Co. Vs West End [1969] EA**

696 in which court defined a preliminary objection as one that raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct.

I have carefully considered the law applicable and the submissions of both counsel on the preliminary objection. In my view, Rules 82 and 102(b) of the Rules of this court make it a mandatory requirement for a party that seeks to raise a preliminary objection to seek leave of court. Having raised the preliminary objections without seeking leave, I find that they are incompetent and are accordingly struck out. Had I not struck out the preliminary objection on that account, I would have found that the memorandum of appeal does not offend the provisions of Rule 82 of the Rules of this court as it sets out coincisely the reason why the appellant objects to the decision appealed from. I am able from reading of the memorandum to determine the issues that required to be determined in this appeal. I would thus have still dismissed the preliminary objection. I shall proceed to resolve the grounds of appeal.

Consideration of the appeal

This being a second appeal from the decision of the Tax Appeals Tribunal, I remind myself of the law governing the powers of this Court in a second appeal of this nature.

I have also considered the submissions of both parties and the authorities cited therein.

Rule 32(2) of the ***Judicature (Court of Appeal Rules) Directions*** provides that on any second appeal from a decision of the High Court acting in exercise of its appellate jurisdiction, the court shall have power to appraise the inferences of fact drawn by the trial court, but shall not have discretion to hear additional evidence.

In addition, **Section 11** of the **Judicature Act Cap 13** provides for the "*Court of Appeal to have powers of the Court of original jurisdiction. For the purpose of hearing and determining an appeal, the Court of Appeal shall have all the powers, authority and jurisdiction vested under any written law in the court from the exercise of the original jurisdiction of which the appeal originally emanated*".

This provision was further echoed in **Beatrice Kobusingye Vs Fiona Nyakana & anr SCCA No. 18 of 2001** in which it was held that;

"I now return to the general applicability of the Civil procedure Act. As I will explain, this is to be found in the old S.12 (now 11) of the Judicature Act. The section reads as under: 'for the purpose of hearing and determining an appeal, the Court of Appeal shall have all the powers, authority and jurisdiction vested under any written law in the court from the exercise of original jurisdiction of which the appeal originally emanated. The powers, authority and jurisdiction referred to are those of any trial court whose decisions are appealed up to the Court of Appeal'. This provision vests in the Court of Appeal the same powers, authority and jurisdiction which for instance in this case, the Grade 1 Magistrate exercised when he tried and determined the case."

Grounds 1, 2 and 3

The respondent's argument is that the appellant misquoted the trial Judge on ground one of the appeal. The ground states that "*the learned trial Judge erred in law when he held that the term 'best information' in section 32 (3) of the Value Added Tax Act Cap 349 means the same thing as 'best judgment'.*" The respondent submitted that the trial Judge held that the commissioner was entitled to make an estimate of tax based on the best information available as prescribed by section 32 (3) of the VAT Act.

The trial Judge held on page 308 of the record that;

"What is distinguishable is the wording 'best judgment' as contradistinguished from the phrase 'best information' yet their meaning is approximately the same."

The respondent's argument is that the first appellate court used the word 'approximate' thus acknowledging the difference between the two terms.

It is clear that the appellant's submission on this ground is not a true reflection of the decision of the 1st appellate court.

The appellant argues that the learned trial Judge held that the assessment, though arbitrary in the eyes of the tribunal was still a valid assessment. On the contrary, the trial court held that it would not interfere with the conclusions of the Tribunal that the assessment in dispute should be set aside. The trial court ordered that;

"The order of the Tribunal setting aside the assessment is affirmed."

The respondent's argument is that the trial court does not anywhere in the judgment expressly refer to the assessment as arbitrary but only provides that the method would be arbitrary if it was not used in conjunction with other relevant and available records. The trial judge was in agreement with the findings of the tribunal that the assessment should be set aside and re-assessment of the correct tax made.

The appellant states that the learned trial Judge erred in law when he held that the input/output method used in the assessment was the same as that defined in the VAT Act. The respondent argues that this is contrary to what the trial Judge held. The trial Judge held that the input/output methodology is a statutory method for arriving at VAT. At page 618 of the record of appeal, the trial Judge held that;

"it is clear that input/output methodology is a statutory method for Arriving at VAT"

The respondent argues that the appellant wrongly quoted the trial Judge's findings on grounds 1, 2 and 3.

It is clear from the judgment of the trial court that the appellant, while raising grounds 1, 2 and 3 of the memorandum of appeal, misquoted the trial judge. I cannot, therefore, fault the trial Judge on errors of the appellant.

Grounds 1, 2 and 3 of the memorandum of appeal are dismissed as they are misconceived and have no merit.

Ground 4

The appellant's argument is that the trial judge held that the tribunal failed to carry out its duties as provided for by the Tax Appeals Tribunal Act. Further that, the tribunal made a decision varying the

decision of the commissioner in its ruling. In the Tribunal ruling, it was held that;

"By virtue of these court decisions, the finding of the Tribunal is that the input/output ratio method of materials is non-existent under the VAT Act and finds the assessment to have no merits."

The tribunal, in deciding that the appellant is not liable to pay tax worth 491,742,042/= assessed tax, varied the decision under review.

For the respondent, it was argued that the trial judge rightly held that the decision of the tribunal did not amount to varying the decision of the commissioner. The tribunal set aside the decision of the commissioner but did not either make a decision substituting the decision or remit the matter back to the commissioner with any directions or recommendations.

Section 19 (1) (c) of the **Tax Appeals Tribunals Act** provides that;

19. Review by the tribunal.

(1) For the purpose of reviewing a taxation decision, a tribunal may exercise all the powers and discretions that are conferred by the relevant taxing Act on the decision maker and shall make a decision in writing—

a) affirming the decision under review;
b) varying the decision under review; or
c) setting aside the decision under review and either—
(i) making a decision in substitution for the decision so set aside; or
(ii) remitting the matter to the decision maker for reconsideration in accordance with any directions or recommendations of the tribunal.

Under section 19(1) (c) above, a decision to set aside is not enough. The tribunal must, after setting aside a decision, either make a decision in substitution or remit the matter for reconsideration. The learned trial Judge held on page 619 of the record thus;

"Section 19 of the TAT Act Cap 345 of the Laws of Uganda, does not permit the quashing of a decision without additional orders to follow. The relevant provision under which the Tribunal acted is section 19 (1) (c). Section 19(1) provides as follows:

For the purpose of reviewing a taxation decision, a tribunal may exercise all the powers and discretions that are conferred by the relevant taxing Act on the decision maker and shall make a decision in writing—

a) affirming the decision under review;
b) varying the decision under review; or
c) setting aside the decision under review and either—

(iii) making a decision in substitution for the decision so set aside; or

(iv) remitting the matter to the decision maker for reconsideration in accordance with any directions or recommendations of the tribunal.

In this case the tribunal did not affirm or vary the decision under review... consequently, proceeding under section 19(1) (c) they had either to substitute the decision with their own or remit it back to the decision maker"

It is clear from the above excerpt that the trial Judge rightly found that the decision of the tribunal did not amount to varying the decision of the commissioner for the reasons he gave. I therefore find no reason to interfere with the findings of the learned trial judge.

Consequently, this appeal fails and is dismissed accordingly and with costs.

Dated this 28th day of Aug 2020

Stephen Musota, JA

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL AT KAMPALA

CORAM: OWINY - DOLLO, DCJ; KAKURU AND MUSOTA, JJA.

CIVIL APPEAL NO 77 OF 2011

(Appeal from the judgment of Madrama J; in High Court (Commercial Division) Civil Appeal No. 9 0f 2007)

TEMBO STEELS (U) LIMITED } ..... APPELLANT

VERSUS

UGANDA REVENUE AUTHORITY } ..... RESPONDENT

JUDGMENT OF OWINY - DOLLO; DCJ

I have had the benefit of reading the judgment of my learned brother, Musota, JA, in draft. I need not reproduce here the facts of the case; which he has set out quite succinctly in his judgment. The appeal really turns on the interpretation of the provisions of section 19 of the Tax Appeals Tribunal Act; which empowers the Tribunal to review the taxation decisions made by a taxing official. The provision of the said section of the Act gives the Tribunal the mandate to exercise powers and discretions conferred on the taxing decision maker by any Act of Parliament. In the exercise of the powers of review, the Tribunal has the discretion to either affirm the decision of the taxing official under review, or vary such decision, or set the decision aside.

In the event that the Tribunal sets aside the decision before it for review, it then has to exercise the discretion to either substitute its own decision for the one it has set aside, or remit the matter in contention to the taxing official whose decision has been set aside, for reconsideration in accordance with any recommendation or directions of the Tribunal. In the instant case, the Tribunal had faulted the decision of the taxing official brought before it for review. In effect, it set it aside.

However, it failed to exercise the discretion required of it upon setting aside the decision under review, by either making its own decision in substitution, or remitting the matter back to the tax authority with clear directives or recommendations on what it had to do. In this regard, the order by the first appellate Court, directing the Tribunal to exercise the discretion conferred upon it by the provisions of section 19 of the Tax Appeals Tribunal Act, is well founded.

The other matter that was in contention was the import of the provision in section 32 (3) of the Value Added Tax Act. Sub section (1) of this section provides as follows: -

"Where -

(a) a person fails to lodge a return as required by section 31;

(b) the Commissioner General is not satisfied with a return lodged by a person; or

(c) the Commissioner General has reasonable grounds to believe that a person will become liable to pay tax, but is unlikely to pay the amount due,

the Commissioner General may make an assessment of the amount of tax payable by that person."

Then sub section (3) of the section provides that: -

"The Commissioner General may, based on the best information available, estimate the tax payable by a person for the purposes of making an assessment under subsection (1)." **(emphasis mine)**

The provision of section 32 of the Act comes into operation when the taxpayer has not satisfied the Commissioner General with information that would persuade him or her of the correctness of the information intended to form the basis of assessment. In his judgment, Madrama J

(as he then was) reasoned that the phrase *"based on the best information available"* used in the Ugandan VAT Act, and the phrase *"best judgment available"* used in the English legislations referred to by the learned judge in the first appellate Court, are approximately the same in meaning. I would however put this differently that the two phrases could be used interchangeably without doing damage to the import of the provisions in the Act. The best judgment can only be arrived at or is informed by the best information. Thus, the use of the phrase "best information" is meaningless unless it is considered together with the consequence of that information. Similarly, the best judgment" made only makes proper sense, or best be understood in the light of the value of the information that results in arriving at the judgment

The decision of the Privy Council in ***Argosy Co. Ltd. vs Inland Revenue Comm [1971] 1 WLR 514***, cited by the first appellate Court is most relevant for appreciating the use of the two phrases. Therein, at pp. 516-517, Lord Donovan stated as follows: -

> *"Once a reasonable opinion that liability exists is formed, there must necessarily be guess-work at times as to the quantum of the liability. A resident may be known to be living well above the standard which his declared income would support. The Commissioner must make some estimate, or guess, at the amount by which the person has understated his income. Or reliable information may reach the Commissioner that the books of account of some particular taxpayer have been falsified so as to reduce his tax.*
>
> *Again, the Commissioner may have to make some guess of the extent of the reduction. Such estimates or guesses may still be to the best of the Commissioner's judgment - a phrase which their Lordships think simply means to the best of his judgment on the information available to him. The contrast is not between a guess and a more sophisticated*

estimate. It is between, on the one hand, an estimate or a guess honestly made on such materials as are available to the Commissioner, and on the other hand some spurious estimate or guess in which all elements of judgments are missing." **(emphasis mine)**

I am therefore in agreement with Musota J.A. that this appeal should fail. Accordingly, then, by majority decision of this Court, this appeal fails and is dismissed with costs. The decision of and orders given by the learned judge of the first appellate Court is hereby upheld.

Dated, and signed at Kampala this 28th day of Aug 2020

Alfonse C. Owiny - Dollo

Deputy Chief Justice

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 77 OF 2011

TEMBO STEELS (U) LTD ..... APPELLANT

VERSUS

UGANDA REVENUE AUTHORITY ..... RESPONDENT

(An appeal from the decision of the High Court of Uganda (Commercial Division) by Hon. Mr. Justice Christopher Madrama, J dated 25th January, 2011 from High Court Civil Appeal No. 9 of 2007)

CORAM: Hon. Mr. Justice Alfonse C. Owiny-Dollo, DCJ
Hon. Mr. Justice Kenneth Kakuru, JA
Hon. Mr. Justice Stephen Musota, JA

JUDGMENT OF JUSTICE KENNETH KAKURU, JA

This is second appeal arising from the decision of the High Court in High Court *Civil Appeal No. 9 of 2007,* dated 25th February 2011, by Madrama, J (as he was then). The matter originated from a decision of Tax Appeals Tribunal (TAT) Number 22 of 2005 dated 14th October 2005.

Background

The background to this appeal was set out well by Madrama J (as he then was) on appeal as follows:- This matter arose from an assessment of the Respondent for VAT. In a letter dated 14 October of 2005, Uganda Revenue Authority notified the respondent that it had assessed VAT arrears of Uganda shillings 491,786,679/=and the Respondent had to make arrangements to have it paid by the 13th of October, 2005. The Respondent was also notified that the tax arrears accrued interest as long as it remained unpaid. The Respondent was aggrieved by the assessment and wrote

a letter to the Commissioner Domestic Taxes Department Uganda Revenue Authority, dated 28 October, 2005. In that letter the Respondent wrote inter alia "we also would like to bring to your attention that the company has from inception disputed the method used to arrive at the tax. We strongly disputed the tax and shall continue to prove that it is not legally tenable." On the 17th of November, 2005, the Respondent filed an application for review under *Section 16 of the Tax Appeals Tribunals Act* and *Rule 10* of the regulations thereunder. The application indicates the date of the taxation decision as the 14 of October 2005. The facts in support of the application were that "an audit team from the Uganda Revenue Authority conducted an interview with three staff of Tembo Steels Uganda Ltd. During which, Uganda Revenue Authority claimed that it had discovered under declarations of sales of Steel Products to the tune of 10,378 tons. Uganda Revenue Authority stated that the basis of the under declaration was determined from electricity consumption of the applicant. The applicant's protested the method used to remove or dispose values in spite of the various audit findings by other Uganda Revenue Authority teams that had been availed all the records of the Applicant. The respondent maintained her position that tax was assessed based on electricity consumption.

The issues on which decision were sought:-

1. Whether the methods used to arrive at taxable supplies is legally acceptable.
2. Whether the respondent had sufficient grounds to estimate the sales of the applicant when all the records of the applicant were availed.
3. Remedies available to the applicant.

The Tax Appeals Tribunal found in favour of the Respondent and held that the assessment was wrong in law and respondent was not liable to pay the tax assessed. The appellants subsequently filed an appeal to the High Court under

Section 27 of the Tax Appeals Tribunal Act Cap 345. The grounds of the appeal in the notice of appeal are as follows:

1. That the tribunal erred in law when it made a ruling that the taxpayer had no tax liability.
2. That the tribunal erred in law when it failed to evaluate all the evidence thereby reaching a wrong conclusion that the assessment raised on the taxpayer had no merits.
3. That the tribunal erred in law when it held that the input/output method of assessment had no legal basis."

The appellant prays that the ruling and order of the Tribunal be set aside with costs. They also pray that the assessment of the Respondent by the Appellant be upheld with interest.

The parties filed written submissions and submitted orally before me on the highlights of the written submissions.

In the written submissions of the Appellants, the grounds of appeal are as follows:

1. Whether the tribunal members erred in law when they held that the input/output ratio is an illegal method under the VAT Act.
2. Whether the tribunal members erred in law when they held that the assessment had no merit.
3. Whether the tribunal members failed to evaluate the evidence before them thereby reaching a wrong conclusion."

After a protracted legal battle, the learned Judge determined the appeal as follows:-

> *"In conclusion, it is the order of this court that the Appellants appeal succeeds in part in following terms:-*
>
> 1. *Ground 1 of the notice of appeal is dismissed.*

2. *Ground 2 of the notice of appeal succeeds to the extent stated in the judgment that the Commissioner was entitled to assess the Respondent for VAT based on Section 32 (3) of VAT Act.*

3. *Ground 3 succeeds in part on points of law. However, the order of the Tribunal setting aside the assessment is affirmed for the reasons of the court given on ground 3 of the notice of appeal.*

4. *In light of the provisions of section 19 (1) (c) of the Tax Appeals Tribunal Act, the dispute is remitted back to the Tribunal for reassessment of the correct tax payable by the Respondent.*

5. *The Tribunal may in its discretion further refer the matter back to the Commissioner for reassessment after giving the Commissioner directions to follow in conducting the reassessment.*

6. *The Respondent shall be paid one third of the taxed costs of the Appeal."*

Being dissatisfied with the above decision, the appellant herein preferred this second appeal on the following grounds:-

1. *The learned trial judge erred in law when he held that the term "best information" in section 32 (3) of the VAT Act Cap 349 means the same thing as "best judgment" used in the case of Argosy Co Ltd v Inland Revenue Comr [1971]1 WLR 514 at 516-517.*

2. *The learned trial judge erred in law when he held assessment though arbitrary, in the eyes of the Tribunal was still a valid assessment.*

3. *The learned trial judge erred in law when he made a held that the Input/ Output method used in the assessment was the same as that defined in the VAT Act.*

4. *The learned trial judge erred in law when he held that the decision of the Tribunal did not amount to varying the decision of the Commissioner as provided in section 19 of the TAT Act.*

The representations, the submissions of Counsel and the duty and jurisdiction of this Court as a second appeal have already been set out in the Judgment of my learned brother Musota JA. I find no reasons to repeat them, I will however, where necessary refer to them. I shall therefore proceed to determine the grounds of appeal as set out above.

This is a second appeal as it arises from the decision of the High Court while exercising its appellate jurisdiction. I will therefore restrict myself to only issues of law under Section 72 of the Civil Procedure Act

Ground one

Under this ground the meaning, extent and application of *Section 32* of Value Added Tax (CAP 340) in general and subsection (3) of that Section in particular are in contention.

Section 32(1), (2) and (3) of the Value Added Tax Act provides:-

> *32. (1) Where-*
>
> *(a) a person fails to lodge a return as required by section 31;*
> *(b) the Commissioner General is not satisfied with a return lodged by a person; or*
> *(c) the Commissioner General has reasonable grounds to believe that a person will become liable to pay tax but is unlikely to pay the amount due,*
>
> *the Commissioner General may make an assessment of the amount of tax payable by that person.*
>
> *(2) An assessment under subsection (1) –*
>
> *(a) where fraud, or gross or wilful neglect has been committed by, or on behalf of, the person, may be made at any time; or*
>
> *(b) in any other case, shall be made within 5 years after the date on which the return was lodged by the person.*

> *(3) The Commissioner General may, based on the best information available, estimate the tax payable by a person for the purposes of making an assessment under subsection (1).*

In a nutshell *Section 32* grants power to the Commissioner General Uganda Revenue Authority on the basis on the best information available to him or her make a tax assessment payable by a person who has failed to lodge a tax return, where the Commissioner General is not satisfied with the return made, or where there exist reasonable grounds to believe that a person may not pay tax due.

It is the appellant's case that the Judge in interpreting the above Section held that the term "best information" appearing in Clause 3 of *Section 32* means the same thing as 'best judgment' used under the English law.

In his Judgment at pages 36 and 37 Justice Madrama, in respect of the two terms set out in ground one observed and held as follows:-

> *"The appellant criticised the Tribunal on the ground that they ought not to have interfered with the assessment of the Commissioner made on the "best information" or "best judgment available" without a finding that the Commissioner's assessment was arbitrary, or dishonest, vindictive or capricious or is based on a spurious estimate or guess, or is wholly unreasonable. That because there was no such finding, the assessment could not be interfered with as has been done by the Tribunal by quashing the same in this case. I agree with the Respondents counsel to the extent that the authorities relied on by the Appellant dealt with the provisions of a statute whose wording is slightly different and may be distinguished. I do not however agree that the entire provisions interpreted in the cases cited by the Appellant on "best judgment" are irrelevant. What is distinguishable is the wording "best judgment" as contradistinguished from the "best information" yet their meanings is a approximately the same.*

The cases referred to by the Applicant and Respondent are English cases namely Hindle and Another v. Customs and Exercise Commissioners [2004] STC 412 at 422, C and E Commissioners versus Pegasus Birds [1998] STC 826, Public and Commercial Services Union v. Customs and Exercise Commissioners [2004] STC. Analysis of the provisions interpreted show that while there may be some difference, this is of not much significance. The cases refer to different English enactments over the years, whose wording may not have changed much. The relevant statutory provision considered in the English cases is the Value Added Tax Act 1994 section 73 (1) or the previous provisions (Section 31) repealed by that Act, The previous provisions which are similar are exhaustively considered in Van Boecke v Customs and Excise Commissioners [1981] 2 All ER 505 by Woolf J. The equivalent provision was Section 31(1) of the Finance Act 1972 of the UK.

In the above case an appeal arose from the decision of the London Value Added Tax Tribunal which decided that the assessment of VAT made by the Commissioners of Customs and Excise for the sum of £2,656 should be recomputed and an allowance should be made of £50 per week throughout the three year period of assessment for pilferage of stock. The appellant/taxable person contended on appeal that the assessment which led to the appeal before the tax Tribunal should be quashed because it was made ultra vires.

Woolf J quotes the relevant statutory provision which empowered the Commissioners to make the assessment:

> *The power of the commissioners to assess value added tax which is due is contained in s 31(1) in these terms:*
>
> > *'Where a taxable person has failed to make any returns required under this Part of this Act or to keep any documents and afford the facilities necessary to verify such returns or where it appears to the Commissioners that such returns are incomplete or incorrect they may assess the*

amount of .tax due from him to the best of their judgment and notify it to him.'

It is very clear that these provisions are the same or similar to the Ugandan provision save for use of the phrase "best 'Judgment" as distinguished from the Ugandan phrase "best information". According to Woolf J the provision sets out various preconditions to an assessment using "best judgment"

Further in his Judgment at page 39 the learned trial Judge observed and held as follows:-

"Because of the element of guesswork or estimate there is some arbitrariness in the assessment. However these must come out of a default by the taxable person to supply the necessary materials to make the assessment. It should not be capricious or vindictive or without the element of judgment as to what would be the proper tax payable.

Reference was also made to the Privy Council holding in ***Argosy Co Ltd v Inland Revenue Comr [1971] 1 WLR 514,*** *where the words 'to the best of his judgment' was considered per Lord Donovan, at pages 516-517):*

'Once a reasonable opinion that liability exists is formed there must necessarily be guess-work at times as to the quantum of liability. A resident may be known to be living well above the standard which his declared income would support. The commissioner must make some estimate, or guess, at the amount by which the person has understated his income. Or reliable information may reach the commissioner that the books of account of some particular taxpayer have been falsified so as to reduce his tax. Again the commissioner may have to make some guess of the extent of the reduction. Such estimates or guesses may still be to the best of the commissioner's judgment-a phrase which

their Lordships think simply means to the best of his judgment on the information available to him. The contrast is not between a guess and a more sophisticated estimate. It is between, on the one hand, an estimate or a guess honestly made on such materials as are available to the commissioner, and on the other hand some spurious estimate or guess in which all elements of judgment are missing. The former estimate or guess would be within the power conferred by section 48(4): the latter without." (Emphasis added).'

What is pertinent to note is that the words best of judgment or best of his information are used approximately with the same meaning in the above case.

Secondly an estimate should e based on all available records and materials and an honest assessment or estimate should be made based on these materials.

With all due respect to the learned trial Judge I am unable to find that the words *'best information'* used in the Value Added Tax Act (CAP 340) of laws of Uganda are the same or similar to the words 'best Judgment' used under the English Law.

"Best information" is defined by *Dictionary.Com* as "knowledge gained through study, communication, research, instruction e.t.c"

Oxford Advanced Dictionary 8th Edition defines 'information' as:- on/about facts or details collected, gathered, obtained, received, provided...

On the other hand, 'best Judgment' is defined as:-

> "the ability to Judge, make decision or form an opinion objectively, authoritatively and wisely, especially in matters affecting action, good sense, discretions".

Oxford Advanced learner's Dictionary defines Judgment as:-

"the ability to make sensible decisions after carefully considering the best thing to do."

Best information clearly refers to an objective test as opposed to 'best Judgment' which is a subject test. Whereas 'best Judgment' is associated with qualitative method of research, best information is associated with quantitative method. The two methods of fact finding and decision making are not the same. In fact they are distinct. The distinction in the wording of Value Added Tax Legislation in Uganda and in United Kingdom (U.K) appears to have been deliberate. The history of taxation and tax assessment in Uganda would help underscore the sharp difference.

I take liberty to refer to a study on a subject by The Danish Institute for International Studies in a research paper titled "The Rise and Fall of Mass Taxation in Uganda 1900-2005" by OLE Therkildsen Copenhagen 2006. I have considered it important to reproduce excerpts of this research paper in *extenso*. In a historical comparative analysis, Therkildsen states as follows at page 4 and 5.

> *"To collect taxes in a reliable and efficient manner requires quasi-voluntary compliance: taxpayers must be encouraged to 'volunteer' to pay, while the non-compliant must be coerced to pay if they are caught (Levi 1988, 52-70). Unless constituents are coerced, induced or motivated in other ways to pay tax, they will minimize payment or, if the situation permits, not pay at all.*
>
> *Imprisonment is, of course, at the hard end of this spectrum. It is costly both to the tax authority (in terms of police, courts, prisons, etc) and to the taxpayer (in terms of the economic, social and psychological costs of being caught and, perhaps, locked up). Hence less coercive approaches are preferable. Such quasi-voluntary compliance depends, Levi argues, on many factors: perceptions of the fairness of taxes (compliance by other taxpayers); perceptions about the benefits (services in a broad sense) that the tax authorities provide in exchange for tax revenues; and perceptions of the legitimacy of rulers based not only on the material benefits of tax payment but also on the norms and beliefs, that is ideology, of constituents vis-à-vis authorities.*
>
> *Levi underplays, however, one additional factor of importance for compliance. If the tax system is regarded as unfair because of very many free riders, then*

enforcement of compliance through harsh methods, such as imprisonment, may not improve compliance as it is intended to do, but may undermine it further.

In Western Europe, quasi-voluntary compliance emerged through a bargaining process. This brought rulers and potential taxpayers together to negotiate about who was to be taxed, the basis for assessing taxes, how taxes should be collected, and the purposes of revenue use. Where this bargaining process succeeded, it enhanced the effectiveness and legitimacy of the state in three ways. Consultation promoted quasi-voluntary compliance so that taxes could be collected more effectively. Revenues were enhanced as a result. Bargaining also helped to generate consensus about and coherence of national policies and priorities for revenue use. Finally, paying tax became a valid basis for claiming political influence and where this took root the foundation for an eventual move towards electoral democracy was established. In other words: taxation eventually gave birth to institutionalised democracy.

Moore and Rakner (2002), who have outlined these points, are keen to point out that this is a very crude representation of Western European experiences with taxation and governance. After all, that experience was influenced, among other things, by competition among states for survival through war, whose financing forced rulers to negotiate with constituents for revenues."

On the other hand at page 6 in reference to Uganda he states as:-

"Uganda's present tax system has colonial roots. The prime objective of colonial taxation was financial self-sufficiency of the colony. At the same time taxation of Africans was seen as a way to push them into the monetary economy – at first by compelling them to grow cotton. Coercion and imprisonment were integral parts of taxation of Africans but not of non-Africans (Mamdani 1996; Thompson 2003).

The dual system of taxation described by Adam Smith and Lord Hailey started with the hut tax imposed on Africans in 1900 followed by the poll tax in 1905. At first revenues went to the colonial government. Native local authorities achieved their initial taxing powers in 1925, when they were allowed to commute work obligations (known as "luwalo") into cash. But local government taxation proper first came about when GPT was gradually introduced across all districts between 1954 and 1960 (Davey 1974, 35-38). Non-Africans were tax-free until 1919 when a poll tax was levied on them. A graduated personal tax for non-Africans was introduced in 1940 but substituted by income tax in 1945.

For the 20th century as a whole, the most significant change in Uganda's system of direct taxation was the abolition, at independence in 1962, of discrimination based on race. Not only did this discrimination mean that Africans were subjected to different types and rates of taxes than non-Africans. The tax burden was different, too. As Jamal (1978, 428) shows, it went from 23 percent of African cash income in 1927 to an astonishing 55 percent in 1947 (these figures cover all taxes including the effects of marketing board deductions, export taxes, etc). Non-Africans were taxed much lighter relative to their cash income.

While race discrimination in taxation stopped at independence, class discrimination continued as shown below. Thus, Uganda's present system of direct taxation still consists of two very different types of direct taxes: GPT and income tax. They are applied in a country with widespread poverty. Around forty percent of the population lives below the one-dollar-a-day poverty line (Okidi and Mugambe 2002, 10). Peasant agriculture and informal activities provide the livelihood basis for the majority of people. Only relatively few are fully engaged in the formal economy. To this should be added that in northern Uganda where civil unrest has ravaged for years, tax collection has remained extremely low."

This history Therkildsen argues, informed tax policies and legislation in subsequent years up to the present.

In respect of compliance and assessment he observes at P11 as follows:-

"For GPT has always been a controversial tax: incomes of poor people are notoriously difficult to estimate correctly and the assessment is based on an ambiguous mixture of wealth and income parameters; registers of tax payers are mostly incomplete and inaccurate; tax payers are reluctant to pay; and there is a fusion of powers of those responsible for assessing incomes.

Dissatisfaction with GPT is perennial. Taxpayers complain about the arbitrary nature of the assessment: poverty is not adequately considered and the result often seems to depend more on the individual's appearance than on their actual income or property possession. Similar incomes are therefore taxed unequally and arbitrarily depending on the location as indicated by the significant variation in GPT collections across districts (Overseas Development Administration 1996, 9, 47 and table 2.3). Consequently, many people regard assessments as unfair. Moreover, bribing is thought to be widespread both in assessment and collection (UPAPP 2002, 160).

He argues that with the advent of democracy in Uganda since 1986 and the subsequent regular elections, inevitably the tax collection and enforcement regime inherited from the Colonial past and had to be dismantled. He writes

> *No surprise, therefore, that riots to protest against local government taxation have a long history in Uganda. Since the early colonial times every tax rebellion, including that which occurred in Bukedi district in 1960 just before independence, as well as the Busoga district riots in 1983, were caused by dissatisfaction with the power of the chief – especially his lack of accountability in tax matters, both discriminative over and under-assessment, and use of imprisonment (Davey 1974, 36; GOU 1987, 13 and chapter 7). Furthermore, Mamdani (1991, 354) thinks that a growing peasant rebellion against the Obote II regime, which eventually led to its downfall in 1986 when the National Resistance Movement (NRM) took power, was fuelled by a dramatic increase in GPT collection. Not only were rates raised significantly in 1984; people also revolted because of the increased coercion used to collect the GPT. Riots against local government taxes also took place in Iganga district in the early 1990s – again in protest against unfair assessment (ODA 1996). There has been no GPT assessment in this district since then (Kjær 2003, 10).*
>
> *However, it is only recently, in 2001, that GPT has been substantially reduced to a very modest flat rate of shs. 3000 for most people (approximately $2 compared to the prior minimum rate of around $8). Furthermore, following presidential intervention, a less aggressive approach to enforcement was practiced. Finally, in 2005, GPT was abolished. What has brought such changes about at this particular time? There are several possible explanations.*
>
> *Donor funding may help to explain why the government has decided to first reform and then to abolish GPT. Aid has increased significantly over the last twenty years. Debt relief has also been substantial in recent years. A significant proportion of both types of funds are earmarked to services provided through local governments (e.g. education, health). Funding of local governments has therefore improved significantly during the 1990s and is set to improve further (Steffensen & Tidemand 2004). In that situation, the government (central and local) may decide*

that the political cost of enforcing tax collection outweighs the benefits gained from controlling own revenues. This relation between donor funds and recipient tax effort sounds plausible. Yet, analyses of that linkage with respect to central government taxation are not conclusive (World Bank 2003a, 138-140). No similar analyses have been made with respect to local government tax effort. There are, however, two reasons why the linkage may not be strong at local government level either. One is, in Levi's (1988, 10) words, that "rulers maximize revenue to the state" although subject to various constraints because control of funds is a key instrument in mobilising support and undermining resistance to their rule. Own generated revenues come without conditionalities and other restrictions that are typically imposed by donors or – in the case of local government – by central government grants. The other reason why large inflows of funds may not affect local government taxation significantly is that efforts are driven by the need for funding of the bureaucrats themselves (salaries for certain staff categories, per diems, etc).
Typically, donor or central government grants do not fund these expenses so generously.

Increased external funding of local governments is therefore not a likely cause of the dismantling of GPT in 2001.

A second possible explanation concerns the social contract that is regarded as important for quasi-voluntary tax compliance. If people perceive that they get limited benefits from paying tax,
they will try to escape that obligation. Fjeldstad and Semboja (2001) argue, in the case of Tanzania, that this mechanism is clearly at work with respect to local government taxes and that it helps to explain widespread avoidance of local government taxes. Faced with that situation the government may simply give up collecting them. Yet, service provision in Uganda - partly funded by significant inflows of donor funds as described above - has improved dramatically since the NRM took power in 1986 (World Bank 2003).This does not rule out that many people are still dissatisfied with the services provided (UPAPP 2002), but there is no evidence that this dissatisfaction is bigger today than it was earlier.

Quasi-voluntary compliance also rests, as discussed earlier, on accountability and justice in taxation. This is particularly well illustrated by discussions between the so-called Mamdani

commission on local government and taxpayers in a rural district right after NRM took power in 1986 (GOU 1987, 93): direct taxes, such as GPT, are preferred over less visible taxes, such as sales taxes, because the former is easier to see, resist payment of, and follow rate changes in. Discussions with taxpayers and observers of the Ugandan scene today confirm this concern. People are not necessarily against paying taxes, but they dislike the lack of accountability in assessing and collecting it. Moreover, ss demonstrated above, collection is often coercive and characterised by violent and extortive forms of enforcements, including imprisonment, which infringe on taxpayer rights. The regular tax riots through time illustrate the continuing taxpayer concern with accountability.

Thus, few regard the GPT as fair. Who pays and who escapes payment is fairly accidental. There is little correlation between actual payment and ability to pay (Mamdani 1991, 355; ODA 1996). 23 The northern part of the country, where the decade-long civil strife and upheavals continue, has not benefited. Recent surveys show that this continues to be of concern (UPAPP 2002, chapter 8). And while some taxpayers may accept coercion against defaulters in principle (Kjaer 2003, 19), there seems to be a widespread acknowledgement that some of the poorest people, who are unlucky enough to get caught in the tax net, are subject to a treatment that is too rough. Kjaer (2003, 5) also notes that local politicians sometimes put pressure on their tax collectors to reduce their use of jail and coercion in tax collection.

See also: *Taxation and State Building in Developing Countries: Capacity and Consent Cambridge University Press (2008).*

This long history in my humble opinion explains why in 1996, when Value Added Tax Law was enacted as Statute 8 of 1996. Under that law the Commissioner was required to assess tax objectively based on the 'best information' available and not subjectively on the basis of his or her own 'best Judgment'.

I am inclined to find that the use of the words 'best information' as opposed to 'best Judgment' was deliberate, based on our Country's history outlined above.

My finding therefore is that *Section 32* of the Value Added Tax, which has remained unchanged since the inception of Value Added Tax in 1996, compels the Commissioner General Uganda Revenue Authority to assess tax on the basis of 'best information' available and not on his 'best Judgment'

This begs the question as what the Commissioner General has to do, when faced with the scenario set out in *Section 32 (1)* and *(2).*

As clearly set out in *Section 32(3)* the Commissioner General may make an assessment based on the best information available. This information invariably may not directly relate to the tax returns or the ordinary tax accounting records. The Commissioner General is obliged to seek this information from elsewhere.

In this particular case the Commissioner General on the basis of other information available determined the Value Added Tax payable by the appellant by applying input/output ratio or method of assessment.

The Tax Appeals Tribunal held by majority that:-

> *"The input /output ratio prescribed by the respondent as a method of determining Value Added Tax was illegal."*

In respect of the above finding the learned appellate Judge observed and found as follows 40-41:-

> *"Ground 3 of the notice of appeal is that the tribunal erred in law when it held that the input/output method of assessment had no legal basis." This ground was argued as ground 1 in the written submissions.*
>
> *From the outset it must be noted that the Respondents Counsel does not contend that the use of input/output methodology to arrive on tax due is illegal per se. On the contrary the Respondents submissions deal with the*

question of whether the method was properly used in the circumstances of the case. As I have noted on ground 1, I am only entitled to deal with the grounds or questions of law stated in the notice of appeal. The first question is whether the tribunal did hold that the input/output method had no legal basis. This is a narrower issue than argued by the parties. The ruling of the tribunal on this issue is at page NN - 00 which I hereby quote:

> *"further nowhere in the VAT Act is the input/output ratio prescribed as a method of determining value added tax.*

It is noted that input/output ratio which has been called the method by the respondent is a result of the number of units of electricity consumed to produce a ton of steel from scrap.

The words "input" and "output" in the relation to tax act clearly defined in the VAT Act. It appears there is some element of confusion on how to use and apply these words. Nevertheless in the absence of legal backing, the use of the two words variously or interchangeably so as to conveniently create tax liability for a citizen is improper.

Before coming to a conclusion reference is to be made to the assertion that the information available was not sufficient. The evidence adduced shows that all the documents required to be kept under the VAT Act were made available. The respondent ought to have used them to the best of its ability, come out with an assessment which is legally acceptable instead the respondent preferred a shortcut the materials input/output ratio which has no legal backing. Moreover if the method is convenient to the respondent or is generally used then it is used wrongly hence the need to amend the law. In reaching its decision the tribunal has followed the authorities cited by Counsel of the applicant of...

By virtue of these court decisions the finding of the tribunal is that the input/output ratio method of materials is none existent under the VAT Act, and finds the assessment to have no merits."

The unfortunate use of words in the Tribunal's ruling is that because the method of assessment of tax using input/output ratio is none existent under the VAT Act, it cannot be used in the assessment of tax. That if it is used it is used wrongly. The authorities cited deal with the rules for strict interpretation of tax legislation have already referred substantially to the submissions of counsel when dealing with grounds 2 and 3. Contrary to the submissions of the Respondent's counsel the issue is not whether the consumption of electricity cannot be used to assess VAT payable. I have already found that the Commissioner was not satisfied with the tax returns of the Respondents and were therefore entitled to estimate tax 3 under section 32 (3) of the VAT Act."

The appellate Judge did not, as showed above expressly determine the issue as to whether the input/output method was legal. He appears to have accepted the argument that, indeed that method is legal but was wrongly applied.

Section 3 (3) of the Value Added Tax Act, leaves the door open, for the Commissioner General on the basis of the best information available to him or her to assess the tax payable by any tax payer who falls within the category of persons described in Section 32(1) and (2).

The law does not specify the methods the Commissioner General must use. Therefore the Commissioner General is at liberty to use any method of assessment he/she considers desirable or justifiable on the basis of the best information available to him or her. Therefore, the Commissioner General determines an appropriate method of tax assessment depending on the information available to him or her. The input/out is one of such methods is the input/output of assessment.

It appears clearly to me that, the input/output methods of assessment applicable under Section 32 is not the same as the "input tax" and the "output tax" defined

under *Section 1(L)* of the VAT Act. The Tax Appeals Tribunal appears to have confused the two.

The input /output method applicable under Section 32 of the Value Added Tax Act is a mathematical or scientific method of arriving at an output on the basis of the input in a process of production of goods and services. This is an internationally recognised method of revenue assessment among other resources.

The method is complex especially the engineering model. However, it appears to be a principle of common sense that can be understood by all when presented in simple terms. A water bottling company has both water as a raw material and water as a finished product. The finished product is bottled water. The quality of water bottled must invariably correspond to that bottled less the impurities removed through process.

Therefore in the absence of sales records, one would be able to use the information relating to the amount of water procured as raw materials (input) to arrive at the number of bottles produced at the end of the bottling line (output) at a given period of time. Similarly, a grain miller may be able to determine the quantity of flour produced from the records of the grain purchased and milled at a given time.

Therefore in the absence of the records relating to the quantities of flour sold, one would be able to accurately determine the sales using only the records relating to the grain purchased and milled at a given period.

In both the above examples, the same results may be obtained by applying only the power input to the process. Where in a flour milling plant, the machine requires an input of X units of power to mill Y tons of grain into Z tons of flour, in the absence of records relating to the sales of the final product and or the purchases of the raw

materials, production may determine on the basis of power consumed where the information as to the power consumed is available.

In principle therefore under Section 32 of Value Added Tax, the Commissioner General maybe able, in the absence of proper records, determine the sales on the basis of records relating only to the power consumed in the production process.

As a principle of law, I find that the input/output method of assessing taxes is legal and in the absence of other records, information relating to power consumed or power input maybe accurately used to determine production and therefore the relevant taxes relating thereto including Value Added Tax.

Likewise in other sectors such as the services the same principle is applicable. Where for instance a law firm is unable to avail accounting records, the Commissioner General may assess tax using other available information such as payrolls, rent receipts, running costs and other such expenses to arrive at income generated over a specified period. The relevant tax may thereafter be assessed on that basis.

Be that as it may, there is a caveat. The method is not fool proof and may present different challenges. The Commissioner General must while making such an assessment consider the peculiar facts of each case and apply the method objectively. It is not a "one size fits all", but rather a principle of general application, the result of which depends on the peculiar facts of each case.

This first ground of appeal therefore succeeds.

The second ground of appeal is very poorly drafted and offends Rule 66 of the Rules of this Court specifically as it does not set out the specific points of law which are alleged to have been wrongly decided.

Be that as it may, I am satisfied that the appellate Judge properly evaluated he evidence before coming to the decision that he did. I find no reasons to fault him in this regard,

Ground 3 succeeds, as the input/output method used in assessment of tax is not the same as "input tax" and "output" tax defined in Section 1(L) and 1(O) respectively.

Ground 4 is in respect of the interpretation of *Section 19* of Tax Appeals Tribunal Act.

That Section stipulates as follows:-

> ***19. Review by the tribunal.***
>
> *(1) For the purpose of reviewing a taxation decision, a tribunal may exercise all the powers and discretions that are conferred by the relevant taxing Act on the decision maker and shall make a decision in writing—*
>
> *(a) affirming the decision under review;*
>
> *(b) varying the decision under review; or*
>
> *(c) setting aside the decision under review and either—*
>
> *(i) making a decision in substitution for the decision so set aside; or*
>
> *(ii) remitting the matter to the decision maker for reconsideration in accordance with any directions or recommendations of the tribunal.*

Interpreting *Section 19* of the Tax Appeals Tribunal Act the appellate Judge observed and held as follows at page 46 of his Judgment.

> *"Thirdly because the Commissioners were entitled to assess, the duty of tribunal was to establish the correct amount of tax payable which duty they did not perform by merely quashing the assessment without regard to the mandate under section 19 of the Tax Appeals tribunal Act. I agree with the interpretation*

offered by the appellants Counsel. Section 19 of the Tax Appeals tribunal Act cap 345 laws of Uganda, does not permit the quashing of a decision without additional orders to follow. The relevant provision under which the Tribunal acted is section 19 (1) (c). Section 19 (1) provides as follows:

> *(1) For the purpose of reviewing the taxation decision, the tribunal may exercise all the powers and discretions that are conferred by the relevant taxing Act on the decision maker and shall make a decision in writing-*
>
> *a) Affirming the decision under review;*
>
> *b) Varying the decision under review; or*
>
> *c) Setting aside the decision under review and either-*
>
> *a. Making a decision in substitution of the decision to set aside;*
>
> *or*
>
> *b. Remitting the matter to the decision maker for reconsideration in accordance with any directions or recommendations of the tribunal."*

In this case the Tribunal did not affirm or vary the decision under review. They set the decision aside. Consequently proceeding under section 19 (1) (c) they had either to substitute the decision with the own or remit the matter back to the decision maker with any directions or recommendations on how to handle."

With respect, I do not agree with the above interpretation of this law. The Tax Appeals Tribunal is vested with the powers of a Court law. Its functions are not limited to making comments on decisions of the Commissioner General of Uganda Revenue Authority. Where one of the grounds of appeal is that, the Tax is illegal or the tax payer is exempted from paying such a tax or that the assessment of such tax is time barred in such other circumstances, the Tribunal has the power under *Section 19(1)C* to set aside the decision under review and hold no tax is payable, or the assessment was illegal or the assessment was not applicable to that particular tax payer or such other circumstances.

To suggest that the Tax Appeals Tribunal can only set aside and thereafter remit the matter for reconsideration has no legal basis.

Under *Section 19(1) (c)*, the Tax Appeals Tribunal shall make a decision in substitution of the decision to set aside. There is no limitation as to what kind, nature or extent in substitution of the decision under review is.

The first step therefore in my view once the Tax Appeals Tribunal has set aside a decision under review is to make its own decision in substation thereof.

That decision includes a decision that no tax is payable or that the assessment was illegal or that the tax does not apply to that particular tax payer. The decision under *Section 19(1) (C)* is not limited to adjusting the amount of tax under review. Finding otherwise would create an absurdity. In any case if the legislature had intended to limit the power of the Tax Appeals Tribunal only to the adjustment of the amount of tax assessed by the commissioner it would have clearly stated so in the law that, the Tribunal has no power to make a final order regarding the assessment other than affirming it. It does not state so. It is not trite law that, nothing is read into and nothing is read out of a Tax Statute

This appeal therefore substantially succeeds.

I would make the following orders and declarations:-

1. *The Judgment of the High Court is hereby set aside and substituted with this Judgment.*
2. *The majority decision of Tax Appeals Tribunal is hereby affirmed only in respect of questions of fact.*
3. *It is declared that, the Commissioner General can only take a decision under Section 32(3) on the basis of the 'best information' available and not the 'best Judgment'.*

4. *The input/output method of assessing tax is legal and applicable in Uganda.*

5. *That the input/output method of assessing tax, differs from what is defined as 'input tax and output tax' in Section 1 of Value Added Tax Act*

6. *That the Tax Appeals Tribunal may make a final order under Section 19(1) disposing of the matter without having to remit to the Commissioner General.*

7. *Costs of this appeal shall be borne by the respondent here and below.*

Dated at **Kampala** this 28th day of Aug 2020.

.....

Kenneth Kakuru
JUSTICE OF APPEAL