TANZANIA REVENUE AUTHORITY

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LEGAL SERVICES DEPARTMENT

CASE NOTES ON DECIDED TAX CASES

FIRST EDITION

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FOREWORD

This is the first edition of the Legal Services Department (LSD) summary of tax court cases (Case Notes) decided in favour of the Tanzania Revenue Authority by the Court of Appeal of Tanzania for the period of 2018 through 2022. However, some cases from other years, have also been included.

These Case Notes are intended to assist Legal Counsel with first hand court case authorities for purpose of conducting court cases and providing legal opinions on matters related to taxes. It is also intended to facilitate administration of tax laws by Revenue Departments through established judicial legal positions on various decided tax issues.

The Case Notes are complemented by Case Index to provide convenience for users to search for and find Court decisions they want.

While using these Case Notes, users may wish to refer to related copies of judgments available in the TRA's website and the website of the Judiciary of Tanzania (TanzLII) for further reading and understanding. Users are also advised to consult or seek further guidance from the LSD in case of clarifications or changes on the legal positions in the Case Notes.

The LSD will continue to issue revised Case Notes periodically and expand the coverage of decided tax cases from other judicial bodies in order to facilitate litigation of tax cases and administration of tax laws on the broader range of decided tax issues.

The LSD will appreciate receiving feedback from users for purpose of improvement or corrections of these Case Notes and development of the next edition of the Case Notes.

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49.	Court of Appeal of Tanzania at Dodoma	Civil Appeal No. 255 of 2020 The Hellenic Foundation of Tanzania Limited t/a St. Constantine's	Pleadings	• *Whether the Respondent's noting some of the facts in the Appellant's Statement of Appeal amounts to an admission that the Appellant is a*	*105 – 106*

		International School versus Commissioner General(TRA)	Skills & Development Levy	*charitable organization doing business for the public good and thus eligible for SDL exemption under section 19 (2) of the VETA Act.* • *Whether the Appellant has met the conditions under section 19 (2) of the VETA Act for SDL exemption as a charitable organization hence not liable for the SDL assessed by the Respondent.*	
50.	Court of Appeal of Tanzania at Dodoma	Civil Appeal No. 21 of 2018 The School of St. Jude Limited versus Commissioner General(TRA)	Income Tax	• *Whether provision of free education by the Appellant which is paid for by third parties on behalf of students from poor families leading to a surplus income in the Appellant's bank statement amounts to doing business with a view of deriving profit in terms of section 3, 8 (1)(2) and (3) read together with Paragraph 1(k) of the second schedule to the Income Tax Act, 2004.*	*107 – 108*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 56 of 2018

Celtel Tanzania Limited
versus
Commissioner General Tanzania Revenue Authority
06th May, 2019
Mwarija, J.A,

Practice and Procedure: *Applicability of OECD Commentary to Domestic Laws.*
Income tax: *Whether the use of computer software attracts royalty under Income Tax Act of 1973 and 2004*

Statutory Provisions Referred to:

Section 2 (1) of the Income Tax Act of 1973
Section 3 of the Income Tax Act of 2004
Section 2 of the Kenyan Income Tax Act
Article 12 paragraphs 12.2 and 14.2 of the Organization for Economic Cooperation and Development Commentary on the Model Tax Convention on Income and Capital

Facts of the Case:

The Appellant in this case currently known as Airtel Tanzania Limited is a Company incorporated in Tanzania, dealing with telecommunications business. In the year 2004 the Appellant made two payments to two foreign companies namely, Alcatel France and Ericsson AB for software and software licence at total cost of TZS 830,115,584.00. Later in the year 2008 the Respondent conducted a tax audit in respect of the Appellant's accounts for the year of income 2004 and demanded withholding tax amounting to TZS 217,907,341.00 arising from royalty the Appellant paid to the two companies. The Appellant was aggrieved by the Respondent's decision to demand withholding tax hence appealed to the Tax Revenue Appeals Board which decided in favour of the Appellant. The Respondent was aggrieved by the decision of the Board hence appealed to the Tax Revenue Appeals Tribunal which overturned the decision of the Board and ruled in favour of the Respondent. The Appellant was aggrieved by the decision of the Tribunal hence appealed to the Court of Appeal.

Issues:

i. Whether the Tribunal erred in law by ignoring to determine an issue brought before it namely; the relevance of the authorities placed before it which if considered the Tribunal would have decided the matter in favour of the Appellant.

ii. Whether the Tribunal erred in law in holding that the computer software in issue purchased from two foreign companies are intangible intellectual properties protected through patent arrangement.

iii. Whether the Tribunal erred in law by holding that a mere right to use software program constitutes a use of copyright giving rise to royalty.

iv. Whether the Tribunal erred in law by holding that the payment made for the purchase of computer software licence were subject to withholding tax on royalty in terms of Section 2(1)(a) of the ITA 1973 and 2004.

Held:

i. Interpretation of the term royalty under our law sufficiently cover the character of the payments in question and therefore, the Commentary and foreign decisions were not applicable.

ii. There was no evidence that the software was a patented property. However, the decision of the Tribunal was correct since the payments constituted royalty for use of copyright under Section 2(1)(a) of ITA 1973 and Section 3 (a) of the ITA 2004.

iii. Third and fourth issues; The payments made to Ericsson AB and Alcatel France were consideration by the Appellant for making use of the computer software, as such, they constituted royalty and therefore subject to withholding tax under the respective Income Tax Acts.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Bulyanhulu Gold Mine Ltd vs. Commissioner General (TRA), consolidated Civil Appeals No. 89 and 90 of 2015.*
- *Tullow Tanzania BV vs. Commissioner General, Tanzania Revenue Authority, Civil Appeal No. 24 of 2018.*
- *BP Tanzania vs. The Commissioner General of the Tanzania Revenue Authority, Civil Appeal No. 125 of 2015*
- *Bank of Kenya Limited vs. Kenya Revenue Authority [2009] e KLR*
- *Commissioner of Income Tax & another vs. Sumsung Electronics Co. Ltd & others (accessed through www.taxpundit.org).*
- *Kenya Commercial Bank Limited vs. Kenya Revenue Authority [2016] e KLR*
- *Infra Soft Ltd vs. Assistant Director of India, 2009*

Court of Appeal of Tanzania
at Dodoma
Civil Appeal No. 392 of 2020

Shana General Store Limited
versus
Commissioner General Tanzania Revenue Authority
03rd November, 2021
Maige, J.A,

Customs Procedure:	*Whether certificate of origin is a conclusive evidence on the originality for purpose of preferential tariff treatment in the EAC*
Customs Procedure:	*Test of Originality – Whether goods under duty remission scheme within EAC are subject to the test of originality*
Customs Procedure:	*Whether selling of goods under duty remission scheme within EAC is exempted from duties.*
Practice and Procedure:	*Burden of Proof – Who has a burden of proof in tax matters*

Statutory Provisions Referred to:

Section 111(1) and 111(2) of the East African Community Customs Management Act, 2004
Section 18(2)(b) of the Tax Revenue Appeals Act, Cap. 408
Article 25(1) and 25(3) of the East African Customs Union Protocol as per Legal Notice No. EAC/45/2011
Rules 4(1), 12(1) and 12(2) of the East Africa Community Rules of Origin, 2009

Facts of the Case:

The Appellant in this case is a Company duly incorporated under the laws of the United Republic of Tanzania. The Appellant deals with retail and wholesale trade. In the course of its ordinary business, between January to December 2012, the Appellant imported assorted edible oil fresh and soap from Pwani Oil Products Kenya Limited, a company based in the Republic of Kenya ("the supplier"). The supplier was the beneficiary of the duty remission scheme under the East African Customs Union Protocol. The Protocol requires goods that benefit from the duty remission scheme be exported outside the East Africa Community ("EAC") free from duty and in the event the goods are sold within the East African Community Customs Union, they should attract full duties, levies and other charges provided in the Common External Tariffs.

The Respondent discovered that the imported goods did not originate from Kenya but benefited from the duty remission scheme. Following this, the Respondent demanded duties from the Appellant at the rate of TZS 855,697,789.00. The Appellant was aggrieved by the demand hence challenged the demand on account that the imported goods originated from Kenya as per certificate of origin issued by the Kenyan Revenue

Authority. However, the Respondent confirmed its decision but adjusted the quantum of the import duty to TZS 457,855,601.25.

The Appellant was dissatisfied by the final decision of the Respondent and appealed to the Tax Revenue Appeals Board which ruled in favour of the Respondent. The Appellant further appealed to the Tax Revenue Appeals Tribunal which confirmed the Board's decision, hence, this appeal.

Issues:

i. Whether certificate of origin is a conclusive evidence on the originality of the goods for the purpose of preferential tariff treatments.

ii. Whether importation of goods under duty remission within EAC is free from duties.

iii. Whether goods consigned directly from a Partner State qualify them as originating from East Africa Community Customs territory for purpose of preferential tariff treatment.

Held:

i. A Certificate of Origin alone would not suffice to establish originality of the goods for the purpose of preferential tariff treatment. The Appellant was expected to produce other documents to substantiate that the goods were not manufactured using raw materials imported under the scheme.

ii. The mere production of certificate of origin cannot justify selling of goods under duty remission scheme within the EAC without payment of duties.

iii. The mere fact that goods are consigned directly from a Partner State does not qualify them to be classified as goods originating from EAC for purpose of preferential tariff treatment hence must pass the test of originality.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Commissioner General Tanzania Revenue Authority vs. Aggreko International Project Ltd, Civil Appeal No. 148 of 2018 (Unreported)*
- *Insignia Limited vs. Commissioner General, Tanzania Revenue Authority Civil Appeal No. 7 of 2007 (Unreported)*
- *Republic vs. Mwesige Godfrey and Another, Criminal Appeal No. 355 of 2014 (Unreported)*
- *Resolute Tanzania Limited vs. The Commissioner General, Tanzania Revenue Authority Civil Appeal No. 125 of 2017 (Unreported)*
- *Tanzania Revenue Authority vs. Bright Choice Limited, Tax Appeal No. 38 of 2013 (Unreported)*

Court of Appeal of Tanzania
at Dodoma
Civil Appeal No. 430 of 2020

Mantra (Tanzania) Limited
versus
Commissioner General Tanzania Revenue Authority
05th November, 2021
Maige, J.A,

Practice and Procedure: *Which decision is required to be followed when there are two conflicting decisions*

Income Tax: *Whether a taxpayer is obliged to withhold tax on payments made to non-residents if the source of payments is in the United Republic of Tanzania irrespective of place of rendering the services.*

Statutory Provisions Referred to:

Section 6(1)(b), 69(i)(i) and 83(1)(b) of the Income Tax Act, 2004.
Article 7 of the DTA between the United Republic of Tanzania and South Africa.

Facts of the Case:

The Appellant is a company duly registered under the Laws of the United Republic of Tanzania. Its principal business is exploration minerals. In carrying out its business the Appellant procured services from non-resident service providers from South Africa.

On 31st July, 2014 the Appellant wrote to the Respondent requesting for a refund of withholding taxes of USD 1,450,920.00 incorrectly paid in relation to services that were rendered outside Tanzania by non-resident service providers from South Africa for the period between July 2009 and December 2012. The Appellant claimed that the services in question were not subject to withholding taxes because they were not rendered in the United Republic of Tanzania but also the service providers being residents of the Republic of South Africa were exempted from withholding tax under Article 7 of the DTA. The Respondent maintained the final position that the services in question were rendered in the United Republic of Tanzania and Article 7 of the DTA was irrelevant in as much as it was limited to business profits and not service fees.

The Appellant was aggrieved by the final decision of the Respondent hence appealed to the Tax Revenue Appeals Board. The Appellant claimed that the imposition of withholding tax was in violation of the provisions of the Income Tax Act, Cap. 332 and the assessment of withholding tax on services rendered in South Africa by South African entities was in breach of the provisions of the DTA. The Board dismissed the appeal and the Appellant was aggrieved by the decision hence appealed to the Tax Revenue Appeals Tribunal which upheld the decision of the Board. The Appellant further appealed to the Court of Appeal.

Issues:

i. Whether a recent decision of the Court should be followed where there are two conflicting decisions of the court on a similar matter.

ii. Whether service fees paid to non-resident service providers from South Africa are exempted from withholding tax under *Article 7 of the DTA between the United Republic of Tanzania and South Africa*.

Held:

i. Unless otherwise justified, where there are two conflicting decisions of the Court on the similar matter, the most recent decision of the Court must be followed.

ii. Service fees do not qualify as business profits under *Article 7 of the DTA* but qualify as other income under Article 21 of the DTA hence subject to withholding tax under *Section 83(1)(b) of the Income Tax Act, 2004*.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Commissioner General Tanzania Revenue Authority vs. Pan Africa Energy Tanzania Ltd, Civil Appeal No. 146 of 2015 (unreported)*
- *Tullow Tanzania BV vs. Commissioner General Tanzania Revenue Authority, Civil Appeal No. 24 of 2018 (unreported)*
- *Commissioner General Tanzania Revenue Authority vs. Pan Africa Energy Tanzania Ltd, Civil Appeal No. 146 of 2015 (unreported)*
- *Shell Deep Water Tanzania BV vs. Commissioner General Tanzania Revenue Authority, Civil Appeal No. 123 of 2018 (unreported)*
- *Commissioner General Tanzania Revenue Authority vs. Aggreko International Projects Ltd, Civil Appeal No. 148 of 2018 (unreported)*
- *Cape Brandy Syndicate vs. IRC [1921] 1 KB 64*
- *Ishikawajima-Harima Heavy Industries Limited vs. Director of Income Tax (288 ITR 408)*
- *Ardhi University vs. Kiundo Enterprises (T) Limited, Civil Appeal No. 58 of 2018 (unreported)*
- *Geita Gold Mining Ltd vs. Jumanne Mtafuni, Civil Appeal No. 30 of 2019 (unreported)*
- *Mabula Damalu & Another vs. Republic, Criminal Appeal No. 160 of 2015 (unreported)*
- *Kilombero Sugar Company vs. Commissioner General, Tanzania Revenue Authority, Civil Appeal No. 218 of 2019 (unreported)*

Court of Appeal of Tanzania
at Dodoma
Consolidated Civil Appeals Nos. 78 & 79 of 2018

Commissioner General Tanzania Revenue Authority
versus.
JSC Atomredmetzoloto (ARMZ),
09th June, 2020

Mugasha, J.A,

Practice and Procedure: *What amounts to a preliminary objection?*

Practice and Procedure: *Whether the court can strike out an incompetent appeal which contains prevalent illegalities on the face of record.*

Jurisdiction: *Whether the court has jurisdiction to raise matters of illegality suo motu and where possible invoke revisional jurisdiction to correct anomalies in the decisions of the lower courts.*

Stamp Duty: *Whether the Tax Revenue Appeals Board has jurisdiction to entertain an appeal on stamp duty.*

Statutory Provisions Referred to:

Section 4(2) and (3) of the Appellate Jurisdiction Act, Cap. 141(the AJA)
Sections 7A and 25 (1) and (2) of the Tax Revenue Appeals Act, Cap. 408 (the TRAA)
Part VII of the Tax Administration Act, 2015 (the TAA)
Section 43 (1) and (2) of the Stamp Duty Act, Cap. 189
Rules 16, 96 (1)(h), 96 (7) and 97 (8) of the Court of Appeal Rules, 2009 (the Rules)

Facts of the Case:

The Appellant is the Commissioner General of the Tanzania Revenue Authority charged with the duty of assessing and collecting various taxes and revenues for the Government of the United Republic of Tanzania. The Respondent is a chartered open Joint Stock Company incorporated in the Russian Federation. The principal business of the Respondent is uranium mining. On 15th December, 2010, the Respondent purchased from the Australia Stock Exchange all shares in Mantra Resources Australia, a company incorporated in Australia and a parent company that owns Mantra Tanzania Limited, the owner of Mkuju River Uranium project located in Namtumbo District, Ruvuma Region. In December 2010, the Respondent entered into a Scheme Implementation Agreement with Mantra Resources Australia.

The Respondent became a sole registered and beneficiary owner of shares in Mantra Resources Australia making Mantra Resources Australia a wholly owned subsidiary of the Respondent and consequently, the Respondent took control of Mantra Tanzania

Limited and Mkuju River Uranium Project. Meanwhile, the Respondent was a majority shareholder by 51.4% in Canadian Uranium exploration and mining company named Uranium One Inc. The Respondent opted to invest in the Mkuju River Uranium project through Uranium One Inc. based in Canada. As a result, the Respondent entered into a put/call option agreement with Uranium One Inc. to sell and transfer the shares it had acquired in Mantra Resources Australia to Uranium One Inc. for consideration equal to the Respondent's acquisition costs of the scheme shares.

The Appellant viewed the acquisition of shares by the Respondent in Mantra Resources Australia as an acquisition of interest in the Mantra's Core asset, that is, Mkuju River Uranium Project located in Tanzania. The Appellant formed the view on the ground that the subsequent sale and the transfer of the said shares to Uranium One Inc. was a realization of Interest in the Mkuju River Uranium project by the Respondent therefore, the Appellant concluded that the said transaction was subject to taxation in Tanzania.

On 30th November, 2011 the Appellant notified the Respondent through a letter on existence of tax liability of USD 196,000,000.00 assessed on investment income which has a source in the United Republic of Tanzania since the transaction involved a domestic asset. Further, the Appellant demanded the Respondent to pay Stamp Duty of USD 9,800,000.00 arising from the conveyancing of the domestic asset in Tanzania.

The Respondent successfully appealed to the Board. The Appellant appealed to the Tribunal which upheld the decision of the Board hence the present appeals. When the matter came for hearing, the Court invited the parties to submit on the preliminary points of objection raised by the Respondent that the appeals were incompetent on the grounds that the record of appeal was not endorsed by the Registrar contrary to Rules 6, 14, 18 and 90 (1)(a) & (b) of the Rules and that the Supplementary record of appeal was filed and served out of time.

Issues:

i. What amounts to a preliminary objection?
ii. Whether the court can strike out an incompetent appeal which contains prevalent illegalities on the face of record.
iii. Whether the court has jurisdiction to raise matters of illegality *suo motu* and where possible invoke revisional jurisdiction to correct anomalies in the decisions of the lower courts.
iv. Whether the Tax Revenue Appeals Board has jurisdiction to entertain an appeal on stamp duty.

Held:

i. A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on assumption that all facts pleaded by the other side are correct It cannot be raised if any fact has to be ascertained.

ii. The court cannot strike out an incompetent appeal which contains prevalent illegalities on the face of record because striking them out on ground of incompetency would be tantamount to perpetuating illegalities.

iii. In terms of section 25 (2) of TRAA read together with section 4 (2) and (3) of AJA, the court has jurisdiction to raise matters of illegality *suo motu* and where possible invoke revisional jurisdiction to correct anomalies in the decisions of the lower courts in order to avert perpetuating illegalities otherwise the decision of the Board and the Tribunal will remain intact.

iv. The Tax Revenue Appeals Board has no jurisdiction to entertain an appeal on Stamp Duty as per *Section 43 (1) and (2) of the Stamp Duty Act.* The dispute in relation to Stamp Duty has to be adjudicated by the Stamp Duty Officer and the appeal therefrom lies to the Commissioner and finally a reference may be made to the Board. Therefore, the Board illegally entertained the Respondent's appeal on stamp duty and what ensued thereafter is indeed a nullity.

Conclusion:

The Court invoked its revisional jurisdiction and nullified proceedings of the Board and the Tribunal. No order as to cost.

Cases Referred to:

- *Chama Cha Walimu Tanzania vs. The Attorney General, Civil Application No. 151 of 2008 (unreported)*
- *Fanuel Mantiri Ng'unda vs. Herman Mantiri Ng'unda & 20 Others Civil Appeal No. 8 of 1995 (unreported)*
- *Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd EARL [1969]*
- *Ngerengere Estate Ltd vs. Edna William Sita Civil Appeal No. 209 of 2016 (unreported)*
- *Nundu Omari Rashid vs. The Returning Officer Tanga Constituency and Two Others, Civil Application No. 3 of 2016 (unreported)*
- *P.9219 Abdon Edward Rwegasira vs. The Judge Advocate General, Criminal Application No. 5 of 2011 (unreported)*
- *Puma Energy Tanzania Limited Vs. Ruby Roadways (T) Limited, Civil Appeal No. 86 of 2015 (unreported)*
- *Richard Julius Rukambura Vs. Issack Ntwa Mwakajila and Another, Civil Application No. 3 of 2004 (unreported)*
- *SGS Societe Generale De Survellance SA and Another Vs. Vipa Engineering and Marketing and Another, Civil Appeal No. 124 of 2017 (unreported)*
- *Tanzania Heart Institute Vs. The Board of Trustee of NSSF Civil Application No. 109 of 2008 (unreported)*
- *The Director of Public Prosecutions Vs. Elizabeth Michael Kimemeta @Lulu, Criminal Application No. 6 of 2012 (unreported)*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 49 of 2008
Roshani Meghjee & Co. Ltd
versus
Commissioner General Tanzania Revenue Authority,
18th July, 2011

Nsekela, J.A,

The Doctrine of estoppel: *Whether there can be an estoppel against a statute.*

Statutory Provisions Referred to:

Article 138 (1) of the Constitution of the United Republic of Tanzania as amended

Section 70 of the Value Added Tax Act, Cap 146 R. E. 2002

Section 25(2) of Tax Revenue Appeals Act, Cap. 408 R. E. 2002

Facts of the Case:

Following the proposed amendment of the VAT Act, 1977 by the Finance Bill of 2003, one Christopher Msuya, the managing director of Grant Thornton Tax Consultant Ltd, on behalf of the Appellant; sought a clarification from the Commissioner General-TRA (the Respondent) on whether the Appellant would be entitled to a refund of input tax incurred on non-reimbursable costs paid by the Appellant on behalf of the principals in overseas. An official of the Respondent Mr. P. J. Kiatu through a letter dated 3rd November 2003; responded that the Appellant would be entitled to the VAT refund in view of the proposed amendments. However, after the amendment, the Respondent realized that the Appellant was not entitled to a refund of input tax on non-reimbursable costs hence by a letter dated 29/03/2005 rescinded the earlier letter dated 3rd November 2003. The Appellant appealed to the Tax Revenue Appeals Board on the ground that the Respondent was bound by the earlier advice hence obliged to refund the Appellant input tax of TZS 59,345,168.00. The Tax Revenue Appeals Board ruled in favour of the Appellant and ordered the Respondent to refund the Appellant. The Respondent appealed to the Tax Revenue Appeals Tribunal which allowed the appeal on the principle that the Respondent was not bound by an incorrect advice in view of the express provisions of the amended VAT Act, 1977 (Section 70 of the Act). The Respondent appealed to this Court.

Issue:

i. Whether there can be an estoppel against a statute.

Held:

i. There can be no estoppel against statute. No estoppel whatever its nature can operate to annul statutory provisions and a person exercising statutory powers cannot be estopped from performing his statutory duty or from denying that he entered into agreement which was ultra- vires for him to make.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Income Tax Commissioners vs AK [1964] EA 648*
- *Chatrath vs Shah [1967] EA 93*
- *Tarmal Industries Ltd vs Commissioner of Customs and Excise [1968] EA 479*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 57 of 2020
Singita Trading Store (EA) Limited
versus
Commissioner General Tanzania Revenue Authority
6th May, 2021

Kerefu, J.A,

Jurisdiction: *Whether the Court of Appeal can entertain matters which were not addressed in the lower courts.*

Jurisdiction: *Whether the Court of Appeal can entertain matters of facts in tax disputes.*

Statutory Provisions Referred to:

Section 25(2) of Tax Revenue Appeals Act, Cap. 408 R.E 2019

Facts of the Case:

The Appellant is a registered company which operates retail shops in rented premises within the tourists' hotels owned by Grumeti Reserve Limited in Serengeti National Park. On 1st July, 2007 the Appellant entered into a management agreement with Singita Trading Stores (Pty) Ltd based in South Africa (sister company) to manage the Appellant's retail business.

In 2013 the Respondent conducted tax audit on the Appellant's business for the years of income 2010, 2011 and 2012, respectively. The Respondent found that the Appellant had not withheld and remitted to the Respondent withholding tax on management fees paid to its sister company for management services rendered in Tanzania for the respective years of income. On 04th October, 2013 the Respondent issued to the Appellant Withholding Tax Certificates demanding withholding taxes and interests to the tune of TZS 12,573,422.59, TZS 20,153,424.45 and TZS 33,693,792.15 for the respective years of income.

The Appellant was aggrieved by the decision of the Respondent hence appealed to the Tax Revenue Appeals Board on the ground that the Respondent applied wrong currency in the computation of tax liability and the Appellant's right to be heard was infringed. The Tax Revenue Appeals Board and later the Tribunal decided in favour of the Respondent. The Appellant appealed to the Court of Appeal and during the trial raised an argument on arithmetical errors on Respondent's computation of tax liability for the respective years of income.

Issues:

i. Whether the Court of Appeal can entertain matters of facts in tax disputes.
ii. Whether the Court of Appeal can entertain matters which were not addressed in the lower courts (Tax Revenue Appeals Board and the Tribunal).

Held:

i. Tax appeals to the Court of Appeal are only on matters of law and not fact as provided under Section 25(2) of the Tax Revenue Appeals Act Cap. 408 R.E 2019.

ii. Matters not raised and addressed by the lower courts cannot be raised and entertained by the Court of Appeal.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Deemay Daati and 2 others vs Republic*, Criminal Appeal No. 80 of 1994
- *Blue Line Enterprises Limited vs East african Development Bank*, Civil Application No. 21 of 2012.
- *Haystead vs Commissioner of Taxation* [1920] A.C 155
- *Georgio Anagnostou and Another vs Emmanuel Marangakis and Another*, Civil Application No. 464/01 of 2018.
- *Chacha Jeremiah Murimi & 3 others vs Republic*, Criminal Application No. 69/08 of 2019

Court of Appeal of Tanzania
At Dar es Salaam

Civil Appeal No. 172 of 2020

Pan African Energy Tanzania Ltd

versus

Commissioner General Tanzania Revenue Authority

09th July, 2021

Mugasha, J.A,

Practice and Procedure: *Whether a refusal to grant a waiver to deposit one third of assessed tax for admission of an objection is a tax decision appealable to the Tax Revenue Appeals Board.*

Interpretation of Statutes: *Whether the Court can apply the literal or plain meaning rule of interpretation when the words of statute are clear and unambiguous.*

Statutory Provisions Referred to:

Section 50, 52 and 53(1) of the Tax Administration Act, 2015
Section 7, 16 (1), (3) and 19 of Tax Revenue Appeals Act, Cap. 408 R.E 2019
Rule 6 of the Tax Revenue Appeal Board Rules, 2018

Facts of the Case:

The Appellant is a company registered in the United Republic of Tanzania. The principal business of the Appellant is production, supply of natural gas and power generation at the Ubungo power plant in Dar es Salaam.

On 2nd March, 2016 the Respondent issued to the Appellant a notice of assessment No. F 420838951 indicating a tax liability of TZS 84,228,425,565.50 for the year of income 2014. Further, the Respondent issued to the Appellant notice of adjusted assessment No. F14040 and notice of amended assessment No. F4210471999 for the year of income 2013. The Appellant lodged notices of objection against the assessments and applied for waiver of one third of the assessed tax required for admission of the objection.

The Respondent declined to grant the application for waiver for reasons that the Appellant pleaded the same grounds for waiver and Notices of Objection, as such, grating the Application for Waiver would pre-empt the determination of Notices of objections. The Appellant lodged three appeals before the Tax Revenue Appeals Board against the Respondent's refusal for waiver. The Board dismissed the appeals.

The Appellant appealed to the Tax Revenue Appeals Tribunal which struck out the appeals on the ground that the appeals before the Board did not arise from an objection decision of the Respondent. The Appellant then appealed to the Court of Appeal.

Issues:

i. Whether the refusal to grant waiver to deposit one third of the assessed tax for admission of a notice of objection is a tax decision appealable to the Board.
ii. Whether the Court can apply the literal or plain meaning rule of interpretation when the words of statute are clear and unambiguous.

Held:

i. Refusal to grant waiver is neither a tax decision nor an objection decision since it is excluded from sections 50, 51 and 53 of the Tax Administration Act, 2015 and Rule 6 of the Tax Revenue Appeals Board Rules, 2018. (Expresio Unius est exclusion ulterius).

ii. As the refusal to grant waiver is neither a tax decision nor an objection decision it is not appealable to the Board in terms of Section 53 (1) of the Tax Administration Act, 2015 and Section 16 (1) of the Tax Revenue Appeals Act, Cap. 408 R.E 2019.

iii. When the words of a statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning irrespective of the consequences.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Commissioner General Tanzania Revenue Authority vs. Ecolab East Africa (Tanzania) Limited, Civil Appeal No. 35 of 2020 (unreported)*
- *Mbeya Cement Company Limited vs. Commissioner General Tanzania Revenue Authority Civil Appeal No. 160 of 2017 (unreported)*
- *Pan Africa Energy Tanzania Ltd vs. Commissioner General Tanzania Revenue Authority, Civil Appeal No. 121 of 2018 (unreported)*
- *Republic vs. Mwesige Godfrey and Another, Criminal Appeal No. 355 of 2014 (unreported)*
- *Resolute Tanzania Limited vs. Commisioner General Tanzania Revenue Authority, Civil Appeal No. 125 of 2017 (unreported)*
- *Tanzania Revenue Authority vs. Kotra Company Limited, Civil Appeal No. 12 of 2009 (unreported)*
- *Tanzania Revenue Authority vs. Tango Transport Company Limited, Civil Appeal No. 84 of 2009 (unreported)*

Court of Appeal of Tanzania
at Dar es Salaam

Civil Appeal No. 159 of 2021

Dominion Tanzania Limited

versus

Commissioner General Tanzania Revenue Authority

28th June, 2022

Mkuye, J.A,

Income Tax: *Whether payments made by a resident person to a non-resident person have a source in the United Republic of Tanzania and subject to withholding tax irrespective of the place of rendering the services.*

Income Tax: *Whether the Finance Act No. 8 of 2020 did not change the position of the law in Section 69(i)(i) of the Income Tax Act 2004.*

Statutory Provisions Referred to:

Sections 6(1)(b), 69(i)(i) and 83(1)(b) of the Income Tax Act 2004

Facts of the Case:

The Appellant is a company incorporated in the United Republic of Tanzania dealing with exploration oil and gas. It operates in one offshore exploration block (Block 7). The operations involve acquisition of raw seismic data from Tanzania which is sent to oversees entities mostly in the United Kingdom for processing, production, interpretation and developing drilling programmes. The processed data is sent back to the Appellant who engages sub-contractors to undertake the drilling programme in Tanzania. In doing this, the Appellant was charged fees on the basis of time spent by each entity in the process.

On 11th November, 2013 the Respondent issued a withholding tax certificate with a liability of TZS 1,089,269,761/= arising from payments made by the Appellant to the oversees entities which process the raw seismic data. The Appellant objected the decision of the Respondent on the ground that the processing services of the data were rendered outside the United Republic of Tanzania before the amendment of section 69 (1) of the Income Tax Act, 2004 by the Finance Act No. 8 of 2020 hence the payments have no source in the United Republic of Tanzania and are not subject to withholding tax. The Appellant appealed to the Tax Revenue Appeals Board on the ground that the processing service were rendered outside Tanzania. The Board and later Tribunal decided in favour of the Respondent hence this appeal.

Issues:

i. Whether the Tax Revenue Appeals Tribunal was right in law when it held that payments made by the Appellant to non-resident persons for services rendered outside Tanzania are subject to withholding tax.

ii. Whether the Finance Act No. 8 of 2020 did not change the position of the law in Section 69(i)(i) of the Income Tax Act 2004.

Held:

i. Services rendered or delivered by a non-resident irrespective of the place where they are rendered, provided that such services are utilized or consumed in the URT and have a source in the United Republic of Tanzania in terms of Sections 6(1)(b) and 69 (i)(i) and therefore subject to withholding tax under section 83 (1) (b) of the Income Tax Act, 2004.

ii. The Finance Act No. 8 of 2020 did not change the position of the law but clarified the position of the law that payments made by a resident to a non-resident for services rendered outside the URT for consumption in United Republic Tanzania are subject to withholding tax.

Conclusion:

Appeal dismissed with costs.

Cases referred to:

- *Bidco Oil and Soap Ltd vs. Commissioner General Tanzania Revenue Authority, Civil Appeal No. 89 of 2009 (unreported)*
- *Bon Tew vs. Kndraan Bas Mar (1983) 1 AC 553*
- *Commissioner General Tanzania Revenue Authority vs. Pan Africa Energy Tanzania Ltd, Civil Appeal No. 146 of 2015 (unreported)*
- *Geita Gold Mining Limited vs. Commissioner General Tanzania Revenue Authority, Civil Appeal No. 9 of 2019 (unreported)*
- *Ophir Tanzania (Block 1) Limited vs. Commissioner General Tanzania Revenue Authority, Civil Appeal No. 58 of 2020 (unreported)*
- *Shell Deep Water Tanzania BV vs. Commissioner General Tanzania Revenue Authority, Civil Appeal No. 123 of 2018 (unreported)*
- *Tullow Tanzania BV vs. Commissioner General Tanzania Revenue Authority, Civil Appeal No. 24 of 2018 (unreported)*

Court of Appeal of Tanzania
at Dodoma
Civil Appeal No. 52 of 2018

National Bank of Commerce
versus
Commissioner General Tanzania Revenue Authority

09th July, 2018

Juma, C.J.

Income Tax: *Which sections of the Income Tax Act, 2004 are Applicable to the Deductibility of Impairment Provisions between Section 25(5) and Sections 18 (b) and 39 (d) of the Income Tax Act, 2004*

Interpretation of Statutes: *Whether Sections 25 (4), (5), and Sections 18 and 39 (d) of the Income Tax Act, 2004 are in conflict*

Statutory Provisions Referred to:

Sections 18 (b), 25(4), (5)(a) and 39 (d) of the Income Tax Act, 2004

Facts of the Case:

The Appellant is a financial institution engaging in banking business in Tanzania. The Respondent issued the Appellant with Notices of Income Tax Assessments No. F42015050544, F420150547 and F420150227 for the total amount of TZS 4,749,673,077.00 for the Years of Income 2005, 2006 and 2007, respectively.

The Appellant lodged an objection against the assessments on the ground that the Respondent was wrong in disallowing the deduction of impairment provisions on bad and doubtful debts allowable under the financial regulations prescribed by the Bank of Tanzania. The Respondent determined the objection against the Appellant. Still aggrieved, the Appellant preferred an appeal to the Tax Revenue Appeals Board and subsequently to the Tax Revenue Appeals Tribunal. Decisions of both the Board and the Tribunal were to the effect that the Respondent was correct in disallowing the impairment provisions of bad and doubtful debts as the Appellant had failed to prove that the bad debts were actually written off. Aggrieved by the decision of the Tribunal, the Appellant preferred this appeal.

Issues:

i. Whether Sections 25 (4), (5), and Sections 18 and 39 (d) of the Income Tax Act, 2004 are in conflict;

ii. Which provisions of *the Income Tax Act, 2004* are applicable to the deductibility of impairment provisions (bad and doubtful debts) between *section 25 (5)* and *Sections 18 (b) and 39 (d) of the Income Tax act, 2004*.

Held:

i. *Section 25 (4) & (5) and sections 18 & 39 (d) of the Income Tax Act, 2004* are not in conflict with each other. While section 25 (4) & (5) provides for the preparation of accounts, returns and proposal for deductions, sections 18 & 39 (d) confer the Respondent the leverage to receive returns and accounts from taxpayers and empower the Respondent to finally issue an assessment, that is to say, either allowing or disallowing deductions upon fulfilment of the requisite conditions.

ii. Since section 25 (4) & (5) and sections 18 & 39 (d) are not in conflict, in order for a taxpayer to enjoy deductibility of impairment provisions under *section 25 (5)(a) of the Income Tax Act, 2004,* the taxpayer must discharge the burden of proof in terms of either disclaimer on any entitlement resulting from bad debt or an approval from the Bank of Tanzania (BOT) confirming any loan loss which should be written off as bad debt.

Conclusion:

Appeal dismissed with costs.

Cases and Books Referred to:

- *Bulyanhulu Gold Mines Limited vs. Commissioner General, Tanzania Revenue Authority, Consolidated Civil Appeals No. 89 & 90 of 2015 (Unreported)*
- *Chiriko Haruna David vs. Kangi Alphaxard Lugora & 2 others, Civil Appeal No. 36 of 2012 (Unreported)*
- *Colorado General Assembly, Office of Legislative Legal Services,* ***"Common Applied Rules of Statute Construction."***

Court of Appeal of Tanzania
at Dodoma
Civil Appeal No. 89 of 2019

Geita Gold Mining Limited
versus
Commissioner General Tanzania Revenue Authority

15th June, 2020

Levira, J.A,

Value Added Tax: *Whether a supply of fuel by the Appellant to her contractor is a taxable supply*

Practice and Procedure: *Whether a winning party is entitled to costs upon dismissal of an appeal in tax matters*

Statutory Provisions Referred to:

Sections 4(1), 5(1) and 57 of the Value Added Tax Act, 1997.

Facts of the Case:

The Appellant owns and operate a gold mine in Geita. For smooth running of the operations, the Appellant contracted Golden Construction Limited (GCL) for construction of a power plant, supply and installation of 7 big generators. The Appellant also contracted Geita Power Plant Limited (GPPL) to manage and operate the power plant. The 7 generators collapsed upon installation. This prompted Rolls Royce the parent company of GCL to enter into hire Agreement with Aggreko International Project Ltd (AIPL) to install 24 small generators as an alternative to the collapsed 7 generators.

The agreement for management of the power plant between the Appellant (GGML) and GPPL imposed fuel consumption cap. It was also agreed that excessive use of fuel would be subject to penalty by the Appellant. In the course of operations, the consumption of fuel by the 24 small generators exceeded the contractual fuel limit which prompted the Appellant to invoice GCL for the excess fuel for the period from January 2001 to September 2002 to the tune of USD 5, 527,553.85 plus 20% Value Added Tax (VAT) amounting to USD 1,105,510.77.

During audit, Respondent's officers discovered the invoice in the Appellant's books of accounts and demanded payment of the charged VAT. Aggrieved by the Respondent's decision to demand VAT, the Appellant objected to the demand contending that the excessive fuel was not subject to VAT. The Appellant was not successful, as a result, appealed to the Tax Revenue Appeals Board and further to the Tax Revenue Appeals Tribunal which upheld the decision of the Board hence this appeal.

Issues:

i. Whether fuel supplied by the Appellant to the GCL for the running of the 24 small generators was a taxable supply subject to VAT in terms of the provisions of the VAT Act, 1997;

ii. Whether a winning party is entitled to costs upon dismissal of an appeal.

Held:

i. The supply of fuel by the Appellant to GCL was a taxable supply under *Section 5(1) of VAT Act, 1997* since the supply was made by a taxable person and the amount charged in the invoice in respect of the supply included VAT, then such invoice was a clear proof of existence of a taxable supply chargeable to VAT in terms of section 57 of the VAT Act, 1997.

ii. It is common ground that in prosecuting tax disputes parties do incur some costs which are supposed to be paid by a losing party.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Cape Brandy Syndicate vs. Inland Revenue Commissioner (1921) 1 KB 64*
- *Resolute Tanzania Limited vs. Commissioner General, Tanzania Revenue Authority, Civil Appeal No. 125 of 2017 (Unreported)*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 107 of 2020

Vodacom Tanzania Public Limited Company (Formerly Vodacom Tanzania Limited)
versus
Commissioner General Tanzania Revenue Authority,

5th October, 2020

Levira, J.A.

Income Tax:	*Whether Capital Expenditure can be 100% Deducted in Computation of Chargeable Income for Taxpayers with Certificates of Incentive issued by the Tanzania Investment Centre (TIC).*
Income Tax:	*Whether interest on Shareholder's Loan is deductible on Payment or Accrual Basis.*
Income Tax:	*Which Law is Applicable between the Repealed Income Tax Act, 1973 and the existing Income Tax, 2004 in relation to Investors Agreements with the Government in Form of Certificates of Incentive.*
Practice and Procedure:	*Whether failure to record opinion of a dissenting member at the tribunal vitiates entire proceedings.*

Statutory Provisions Referred to:

Section 17 (1) of the Tanzania Investment Act, 1997
Sections 16 (2)(w) & 16 (3)(a) of the Income Tax Act, 1973
Sections 142 (1) & 143 (1)(2)(3) & (4) of the Income Tax Act, 2004
Sections 31 & 32 of the Interpretation of Laws Act, Cap.1 [R.E 2019]
Section 20 of the Tax Revenue Appeals Act, Cap. 408 [R.E 2019]
Rule 14 (5) of the Tax Revenue Appeals Tribunal Rules, 2001

Facts of the Case:

The Appellant (Vodacom) is a company registered under the laws of Tanzania dealing with telecommunication business.

The Respondent (Commissioner General) conducted an audit on the Appellant's business for the Years of Income 2006 and 2007 and discovered that the Appellant claimed 100% deduction of capital expenditure based on the Income Tax Act, 1973. Further the Respondent discovered that the Appellant claimed deduction on interest on shareholder's loan on accrual basis in terms of the Income Tax Act, 2004. The Respondent disallowed both claims and consequently adjusted the assessment on corporate income tax for the respective years of income.

The Appellant lodged an objection to the Respondent against the adjusted assessments on the ground that 100% deduction of capital expenditure was based on the Income Tax Act, 1973 and Certificates of Incentive issued by the Tanzania Investment Centre (TIC) under section 17 (1) of the Tanzania Investment Act, 1997. The Certificates covered the years 2000, 2004, 2005, 2006 and 2008. As regards deductibility of shareholders' loan on accrual basis, the Appellant relied on the Income Tax Act, 2004. The Respondent determined the objection by maintaining the previous position.

The Appellant appealed to the Tax Revenue Appeals Board which allowed the appeal. The Respondent appealed to the Tax Revenue Appeals Tribunal which ruled in favour of the Respondent hence this appeal.

Issues:

i. Which law is applicable between the repealed *Income Tax Act, 1973* and the existing Income Tax Act, 2004 in relation to Certificates of Incentive issued by TIC before and after the commencement of Income Tax Act, 2004;
ii. Whether the deduction of capital expenditure by 100% under the Income Tax Act, 1973 is allowable for taxpayers with Certificates of Incentive issued by TIC after the commencement of the Income Tax Act, 2004;
iii. Whether Interest on Shareholders Loan before the commencement of the Income Tax Act, 2004 is deductible on Payment or Accrual Basis;
iv. Whether failure to record opinion of a dissenting member in tax proceedings before tribunal vitiates entire proceedings.

Held:

i. The Income Tax Act, 2004 applies to a new set of Certificates of Incentive issued by TIC after the commencement of the Act while the Income Tax Act, 1973 applies to Certificates of Incentive issued by TIC prior to the commencement of the Income Tax Act, 2004 on the basis of a saving clause under section 143 (1) of the Income Tax Act, 2004.

ii. Since *the Income Tax Act, 2004* is the law applicable in respect of the new Certificates of Incentive issued by the TIC after commencement of the Income Tax Act, 2004, the deduction of capital expenditure by 100% is not allowable under the Act.

iii. Interest on shareholder's loan is deductible on payment basis under the Income Tax Act, 1973 since the Appellant was required to pay the interest prior to the commencement of the Income Tax Act, 2004.

iv. There was no a dissenting opinion from Mr. Ndyetabula, one of the Tribunal's members but a different opinion by which the chairperson was not bound in terms of *section 20 of the Tax Revenue Appeals Act,* Cap. 408 R.E 2019.

Conclusion:

Appeal dismissed with costs.

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 123 of 2018

Shell Deep Water Tanzania BV
versus
Commissioner General Tanzania Revenue Authority

11th April, 2019

Mugasha, J.A.

Withholding Tax: *Whether Payments made by a resident person to a Non-Resident Service Provider for provision of Management Services have a source in the United Republic of Tanzania hence subject to Withholding Tax*

Income Tax: *Whether the imposition of interest on the unpaid Withholding Tax was legally correct*

Jurisdiction: *Whether the Court of Appeal has jurisdiction to entertain factual matters in tax disputes*

Statutory Provisions Referred to:

Sections 6 (1)(b), 69(i)(i) and 83(1)(b) of the Income Tax Act, 2004

Facts of the Case:

The Appellant is a company registered in Tanzania as a branch conducting offshore oil and gas exploration. Between December, 2011 and October, 2012 the Appellant received management services from several sister non-resident companies and in return paid the sum of TZS 5,513,286,819.00 for the services.

The Respondent examined the Appellant's tax affairs for the years of income 2011 and 2012 and discovered that the Appellant did not remit to the Respondent withholding tax of TZS 888,156,206 plus interest of TZS 61,163,183.00 in respect of the payments for management services. The Respondent issued to the Appellant a Tax Demand Notice for the tax liability in question.

The Appellant objected to the assessment on the ground that the payments had no source in the United Republic of Tanzania hence not subject to withholding tax. The Respondent maintained that the payments had a source in the United Republic of Tanzania hence subject to withholding tax. The Appellant appealed to the Tax Revenue Appeals Board which dismissed the Appeal and further appealed to the Tax Revenue Appeals Tribunal which upheld the decision of the Board hence this appeal.

Issues:

i. Whether payments made by the Appellant to non-resident service providers for provision of management services have a source in the United Republic of Tanzania hence subject to withholding tax;
ii. Whether the imposition of interest on the unpaid Withholding Tax was legally correct;
iii. Whether the Court of Appeal has jurisdiction to entertain factual matters in tax disputes.

Held:

i. The payments have a source in the United Republic of Tanzania in terms of *Sections 6 (1)(b) and 69 (i)(i) of the Income Tax Act, 2004* since the services were supplied (rendered) to Tanzania and the payer of such services resides in Tanzania, therefore the payments are subject to withholding tax under *section 83 (1)(b) of the Income Tax Act, 2004.*

ii. Since there was delay in the payment of the withholding tax, the Respondent was legally correct to impose interest and the Appellant was obliged to pay the same.

iii. As the issue of where services were performed was a factual matter which required evidence, the Court of Appeal had no jurisdiction to entertain the issue in terms of *section 25 (2) of the Tax Revenue Appeals Act, Cap. 408 R.E 2019.*

Conclusion:

Appeal dismissed with costs.

Cases and Books Referred to:

- *Cape Brandy Syndicate vs. Inland Revenue Commissioner (1921) 1 KB 64*
- *Tullow Tanzania BV vs. The Commissioner General Tanzania Revenue Authority, Civil Appeal No. 146 of 2015 (Unreported)*
- *Commissioner General Tanzania Revenue Authority vs. Pan African Energy Tanzania Limited, Civil Appeal No. 146 of 2015 (Unreported)*
- *Republic vs. Mwesige Geofrey and Another, Criminal Appeal No. 335 of 2014 (Unreported)*
- *Arvind P. Datar,* ***Kanga and Pakhivala's the Law and Practice of Income Tax****, 9th Edition.*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 146 of 2021

Tanga Cement Public Limited Company
versus
Commissioner General Tanzania Revenue Authority

17th June, 2022

Galeba, J.A.

Income Tax: *Payment made as Compensation for Cessation of Marketing Agreement – Whether the Payment was Made Wholly and Exclusively in the Production of Income.*

Income Tax: *Whether Imposition of Interest for Underestimated Tax Payable was Legally correct.*

Income Tax: *Whether a Letter Informing the Respondent of the Anomaly in the provisional return of income and Purports to Amend the return amounts to a proper application for extension of time to pay tax.*

Statutory Provisions Referred to:

Sections 11 (2), 79 (2)(b), 83 & 99 (1) of the Income Tax Act, Cap. 332 [R.E 2019]

Facts of the Case:

The Appellant hired her wholly owned subsidiary company namely Cement Distributors East Africa Limited (CDEAL) to provide marketing services and distribution of her products. However, due to market dynamics, the Appellant terminated the Distribution and Marketing Agreement with CDEAL to the effect that such activities would be carried out by the Appellant. Following cessation of the agreement, the Appellant paid to CDEAL TZS 1,270,298,073.00 (the disputed amount) as compensation for termination of the agreement.

The Respondent carried out a tax audit of the Appellant's tax affairs where, among others, the Respondent disallowed the deduction of compensation and proceeded to issue an adjusted assessment on the ground that the amount was not wholly and exclusively expended in the production of the Appellant's income.

The Appellant objected against the adjusted assessment and the Respondent maintained her position. The Appellant appealed to the Tax Revenue Appeals Board which dismissed the appeal and further appealed to the Tax Revenue Appeals Tribunal which upheld the decision of the Board hence this appeal.

Issues:

i. Whether a payment made to CDEAL as compensation for Cessation of Marketing and Distribution Agreement were incurred wholly and exclusively in the production of income of the Appellant;

ii. Whether the Imposition of Interest for Underestimated Tax Payable was Legally correct;

iii. Whether a Letter Informing the Respondent of the anomaly in the provisional return of income and Purports to Amend the return amounts to a proper application for extension of time to pay tax.

Held:

i. For an expenditure to qualify as allowable under *section 11 (2) of the Income Tax Act,* it must be expended wholly and exclusively in the production of income. As the Appellant failed to establish a nexus between the compensation and its exclusivity and wholesomeness in the production of the income, the compensation was not incurred wholly and exclusively in the production of the Appellant's income hence not an allowable deduction.

ii. *Section 99 (1) of the Income Tax Act, 2004* (the applicable law by then) requires an instalment taxpayer to pay at least 80% of the tax due in a particular Year of Income, since the Appellant's payment of tax was below the mandatory threshold, the Respondent was correct to impose the interest for the underestimation of tax payable.

iii. *Section 79 (2) (a) & (b) of the Income Tax Act, 2004* requires an instalment taxpayer to apply for extension of time to pay tax in respect of filed provisional tax returns. The Respondent has powers to either grant or refuse the application. As the letter by the Appellant did not apply for extension of time but only informed the Respondent about the delay to pay tax and purported to amend the return, the letter was not a proper application.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Bulyanhulu Gold Mine Limited vs. Commissioner General Tanzania Revenue Authority, Consolidated Civil Appeals No. 89 & 90 of 2015 (Unreported)*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 211 of 2019

Star Media (Tanzania) Limited
versus
Commissioner General Tanzania Revenue Authority

07th May, 2021

Kitusi, J.A.

Practice and Procedure: *Illegality as a Ground for Extension of Time – Whether denial of right to be heard constitutes illegality*

Tax Procedure: *Whether the Respondent followed objection settlement procedures under section 52 of the Tax Administration Act, 2015*

Statutory Provisions Referred to:

Sections 16 (5) of the Tax Revenue Appeals Act, Cap. 408 [R.E 2019]

Section 52 of the Tax Administration Act, 2015

Rule 3 (1) and (2) of the Tax Revenue Appeals Board Rules, 2018

Facts of the Case:

On 31st March, 2017 the Respondent served the Appellant with income tax assessments of TZS 8,443,993,166.00 in respect of the years of income 2013, 2014 and 2015. The Appellant objected against the assessment. The objection was admitted for determination.

In the course of determining the objection, the Respondent required the Appellant to submit audited financial statements for the years under scrutiny within a period of three days. The Appellant did not comply sighting a reason that the audited financial statements were submitted to the Controller and Auditor General (CAG), a fact which the Appellant disclosed to the Respondent by a letter dated 17th August, 2017. However, the letter reached the Respondent after the determination of objection.

Subsequently, the Respondent issued a Notice of Intention to confirm the Assessments unless the Appellant within 30 days makes a submission against the intended confirmation. Nevertheless, the Appellant did not make any submission which prompted the Respondent to confirm the assessment on 10th July, 2017. The Appellant had a right of appeal and should have done so within 30 days in line with *Rule 3 (1) and (2) of the Tax Revenue Appeals Board Rules, 2018* but she did not do so within the stipulated time.

Aggrieved by the Respondent's confirmation and being out of time to appeal, the Appellant on 25th August, 2017 lodged at the Tax Revenue Appeals Board an application for extension of time within which to lodge a Notice of Intention to Appeal against the Respondent's decision. The Appellant relied on illegality (denial of the right to be heard) as a ground for extension of time. The Board dismissed the Application and upon further appeal to the Tribunal the appeal was dismissed hence this appeal.

Issues:

i. Whether the denial of right to be heard constitutes illegality as a ground for extension of time;

ii. Whether the Respondent followed the procedures for determination of objection under section 52 of the Tax Administration Act, 2015.

Held:

i. There was no a denial of the right to be heard which constituted illegality since the Appellant did not submit the signed audited financial statements within 3 days as required by the Respondent and further the Appellant did not file its submission within 30 days in response to the Respondent's Notice of Intention to Confirm the Assessments. Furthermore, the pleaded illegality was not obvious on the face of record as it involved a long drawn argument hence could not be relied as a ground for extension of time.

ii. The Respondent followed all objection determination procedures as laid down under the cited *section 52 of the Act*.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Principal Secretary Ministry of Defence and National Service vs. Devran Valambia [1991] T.L.R 387*
- *Lyamuya Construction Company Limited vs. The Board of the Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010 (unreported)*
- *Ngao Godwin Losero vs. Julius Mwarabu, Civil Application No. 10 of 2015 (unreported)*
- *Republic vs. Donatus Dominic @ Ishengoma and 6 others, Criminal Appeal No. 262 of 2018 (unreported)*
- *Credo Siwale vs. Republic, Criminal Appeal No. 417 of 2013 (unreported)*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 218 of 2019

Kilombero Sugar Company Limited
versus
Commissioner General Tanzania Revenue Authority,

25th May, 2021

Mwambegele, J.A.

Withholding Tax: *Whether Costs incurred by a non-resident service provider and reimbursed by a local entity form part of service fee and are subject to Withholding Tax*

Double Taxation Agreement: *Whether Service fee paid by a local entity to a South African entity forms part of business profit under Article 7 of the Double Taxation Agreement between South Africa and Tanzania hence not subject to withholding tax*

Statutory Provisions Referred to:

Sections 3, and 83(1)(b) of the Income Tax Act, 2004

Section 9 of the Tax Administration Act, 2015

Articles 7 (1), 20 and 21 of the Double Taxation Agreement between South Africa and Tanzania (DTA)

Facts of the Case:

The Appellant is a Tanzanian company dealing with sugar cane farming and sugar production. On 09th April, 1998, the Appellant entered into an Operational and Technical Services Agreement with a South African company Illovo Project Services Limited (IPSL) for the management and control of her factories and agricultural land. Among the terms of the Agreement was that the Appellant would pay a fixed monthly fee of USD 30,000.00 for services rendered by IPSL.

The Respondent conducted an audit of the Appellant's tax affairs for the years of income 2004/2005 to 2007/2008 and 2009/2010 which revealed that the Appellant had an obligation to pay withholding tax on the reimbursements and service fee paid to IPSL for management services. The Respondent also observed that the payment does not form part of business profits under Article 7 of the DTA hence not exempted. Consequently, the Respondent issued two Withholding Tax Certificates for the respective years of income demanding a total payment of TZS 469,739,833.00 for taxes not withheld.

The Appellant objected the assessment but the Respondent maintained her position. Aggrieved, the Appellant preferred two appeals to the Tax Revenue Appeals Board ("Board") which also ruled in favour of the Respondent. Undeterred, the Appellant appealed to the Tax Revenue Appeals Tribunal ("Tribunal") which dismissed her appeal for being unmeritorious hence the present appeal.

Issues:

i. Whether Costs incurred by a non-resident service provider and reimbursed by a local entity form part of service fee and are subject to Withholding Tax;

ii. Whether Service fee paid by a local entity to a South African entity forms part of business profit under Article 7 of the Double Taxation Agreement between South Africa and Tanzania hence not subject to withholding tax.

Held:

i. Where services are provided and payments are made to withholdee (IPSL) in form of service fee and reimbursements, the withholding tax base will be the full amount comprising of the service fee plus reimbursement amount. Since the Appellant paid reimbursement costs in form of air tickets, air charter and hotel accommodation to IPSL, the payment formed part of the service fee which is subject to Withholding Tax under *section 83 (1) (b)* read together with the definition of the word *"service fee"* under *section 3 of the Income Tax Act, 2004*.

ii. *Article 7 of the DTA* does not cover "service fee" but rather "business profits" which is not the subject of the present appeal. The proper provision in respect of the service fee was *Article 20 of the DTA* which covers *"other income"*. Moreover, *Article 20* should be read together with *Article 21 of the DTA* which provides to the effect that costs incurred by IPSL and reimbursed by the Appellant are subject to withholding in Tanzania in accordance with *section 83 (1) (b) of the Income Tax Act, 2004*.

Conclusion:

Appeal dismissed with costs.

Books and other Materials Referred to:

- *Practice Note No. 01/2019, Withholding Tax on Payment for Goods and Services as per Income Tax Act, Cap. 332*
- *Arvind P. Datar,* ***Kanga and Pakhivala's the Law and Practice of Income Tax****, 11th Edition at P.35*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 356 of 2021

Mwenga Hydro Limited
versus
Commissioner General Tanzania Revenue Authority

29th September, 2022

Mugasha, J.A.

Jurisdiction: *Whether the Tax Revenue Appeals Tribunal as an Appellate Court can step into the shoes of the Tax Revenue Appeals Board and determine issues to their finality*

Practice and Procedure: *What is the Proper Recourse in relation to Judgments which do not finally determine all issues*

Statutory Provisions Referred to:

Section 16 of the Tax Revenue Appeals Act, Cap. 408 [R.E 2019]

Section 76 (1) & (2) of the Civil Procedure Code, Cap. 33 [R.E 2019]

Section 4 (2) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019]

Facts of the Case:

The Appellant is a Tanzanian company engaged in the construction of Mwenga 3 Hydro Electric Plant Project together with its partner Mufindi Tea Company (MTC). MTC had entered into a contract of energy facility grant with the European Community for the implementation of the Project. The project entailed the construction of the power plant and ensuring that the institutional settings are in place for the operation and maintenance of the power plant.

According to *Item 2 of the Third Schedule to the Value Added Tax Act, 1997*, supplies or importation of goods and services under donor funded schemes are eligible for special reliefs. In this regard, on 13th January, 2011, the Ministry of Finance requested the Respondent to exempt the Appellant from payment of import duty for the goods and services procured under the project in terms of *Article 31 of Annex IV of the ACP – EU Partnership Agreement of Cotonou*. The Respondent replied that the Project was to be exempted import duty in terms of *the East African Community Customs Management Act, 2004 paragraph 10 in the 5th Schedule and the 3rd Schedule to the Value Added Tax Act, 1997*. On 24th November, 2011, the Respondent also informed the Appellant that as the project was co-financed by European Union and MTC, entitlement to relief was on the fund from European Union only.

In 2014, the Respondent conducted a tax audit which discovered that the Appellant did not account for VAT on imported services for the month of October, 2012. Consequently, the Respondent imposed VAT amounting to TZS 218,700,000 plus interest of TZS 75,162,899.14.

The Appellant unsuccessfully objected the assessment. Afterwards, the Appellant unsuccessfully appealed to the Board and the Tribunal hence the present appeal.

At the hearing of the present appeal, the Court wanted to satisfy itself on the propriety of the Tribunal's decision which only determined four grounds of appeal and ordered remission of the file to the Board for determination of the fifth ground of appeal.

Issues:

i. Whether the Tax Revenue Appeals Tribunal as an Appellate Court can step into the shoes of the Tax Revenue Appeals Board and determine issues to their finality;

ii. What is the Proper Recourse in relation to Judgments which do not finally determine all issues?

Held:

i. In terms of *section 16 of the Tax Revenue Appeals Act*, the Tribunal is clothed with appellate jurisdiction to determine appeals from the Board in relation to all proceedings of civil nature in respect of disputes arising from revenue laws administered by the Respondent. Since the unresolved issue in question related to reduction of value of imported services which was a factual issue, the Tribunal was vested with powers to determine the same to its finality. Remission of the file to the Board for determination of the fifth issue was wrong.

ii. *The Tax Revenue Appeals Act* does not provide for the proper recourse in respect of Judgments which do not finally determine the issues raised by the parties during appeal. In that regard, reference should have been made to *section 76 (1)(a) of the Civil Procedure Code* which vested the High Court with powers to determine cases to their finality in the exercise of its appellate jurisdiction. Since the Tribunal was sitting as an appellate Court, it was incumbent upon it to determine the appeal to finality and with certainty.

Conclusion:

Appeal struck out with no orders as to costs.

Cases Referred to:

- *Peter Mwafrika v. Republic. Criminal Appeal No. 413 of 2013 (Unreported)*
- *Bermax v. Austin Motors Company Limited [1955] ALL ER 326*
- *Patrick Jeremiah v. Republic, Criminal Appeal No. 34 of 2006 (Unreported)*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 372 of 2020

Statoil Tanzania AS (Currently Known as Equinor Tanzania AS)
versus
Commissioner General Tanzania Revenue Authority

24th October, 2022

Kihwelo, J.A.

Stamp Duty:	*Whether a Farm Out Agreement executed outside Mainland Tanzania is chargeable to Stamp Duty*
Stamp Duty:	*Whether a Production Sharing Agreement can automatically exempt a taxpayer from payment of Stamp Duty*
Burden of Proof:	*Whether the Appellant discharged the Burden of Proof*
Tax Procedure:	*Whether the Appellant properly followed Procedures for exemption of payment of Stamp Duty*
Tax Procedure:	*Whether the Respondent's failure to issue Notice of Final Determination contravened section 52 of the Tax Administration Act, 2015*

Statutory Provisions Referred to:

Sections 5 (1)(b), 16 (1) and 26 of the Stamp Duty Act, Cap. 189 [R.E 2019]

Section 143 of the Income Tax Act, Cap. 332 [R.E 2019]

Section 18 (2) (b) of the Tax Revenue Appeals Act, Cap. 408 [R.E 2019]

Section 52 of the Tax Administration Act, 2015

Facts of the Case:

The Appellant is a company incorporated in Tanzania whose principal activity is exploration of oil and gas in Tanzania since 2007. On 18th April, 2007 the Appellant signed a Production Sharing Agreement (PSA) with the Government of the United Republic of Tanzania and Tanzania Petroleum Development Corporation (TPDC) in respect of Block 2 situated within Tanzania's Exclusive Economic Zone.

On 19th August, 2013 the Respondent conducted an audit in respect of the Appellant tax affairs for the year of income 2013 covering various taxes including Stamp Duty. On conclusion of the audit, the Respondent demanded for the payment of unpaid Stamp Duty amounting to TZS 170,414,448.000. The tax liability arose from an agreement for

Farm Out Transaction on Block 2 between the Appellant and ExxonMobil where the Appellant assigned her petroleum rights to ExxonMobil under the PSA.

The Appellant unsuccessfully objected to the Respondent's demand for Stamp Duty citing *Article 27 (e) of the PSA* as exempting her from payment of any liability connected with assignment and operation of Block 2. On further appeals to the Board and the Tribunal, it was held that the transaction was subject to Stamp Duty in accordance with the law. The Appellant was aggrieved hence the current appeal.

Issues:

i. Whether a Farm Out Agreement executed outside Mainland Tanzania is chargeable to Stamp Duty;

ii. Whether a Production Sharing Agreement can automatically exempt a taxpayer from payment of Stamp Duty;

iii. Whether the Appellant discharged the burden of proof;

iv. Whether the Appellant properly followed Procedures for exemption of payment of Stamp Duty;

v. Whether the Respondent's failure to issue Notice of Final Determination contravened section 52 of the Tax Administration Act, 2015.

Held:

i. Any instrument executed outside Mainland Tanzania (including a Farm-Out Agreement) in relation to any property in Mainland Tanzania is chargeable to Stamp Duty under *section 5 (1)(b) of the Stamp Duty Act*.

ii. *Article 27 (e) of the PSA* could not automatically exempt a taxpayer from payment of Stamp Duty in respect of the Farm-Out Agreement. To qualify for an exemption, the Appellant ought to have produced a Government Notice exempting her from payment of Stamp Duty.

iii. Since the Appellant had failed to produce the Government Notice, it was concluded that she failed to discharge the burden of proof under *section 18 (2)(b) of the Tax Revenue Appeals Act* to the extent that the Appellant is exempted from payment of Stamp Duty.

iv. The Appellant did not follow the procedures for exemption of payment of Stamp Duty by failing to register the PSA under *section 143 of the Income Tax Act* and failure to obtaining a Government Notice under *section 16 (1) of the Stamp Duty Act*.

v. Based on the merits of this case, the Respondent did not contravene section 52 of the Tax Administration Act, 2015 since the Appellant during hearing of the Preliminary Objection before the Board conceded that the Notice of Confirmation was as good as a Notice of Final Determination. Thus the Appellant is now estopped from complaining on

Respondent’s failure to issue Notice of Final Determination which she had benefitted from during early stages of the proceedings in the Board which did not strike out the appeal.

Conclusion:

Appeal dismissed with costs.

Court of Appeal of Tanzania
at Dodoma
Civil Appeal No. 425 of 2020

Vodacom Tanzania Public Limited Company (Formerly Vodacom Tanzania Limited)
versus
Commissioner General Tanzania Revenue Authority

5th November, 2021

Mwambegele, J.A.

Withholding Tax:	*Whether payments made for acquisition of software licence constitute royalty*
Withholding Tax:	*Whether payments made for acquisition of software licence are subject to withholding tax*
Interpretation of Tax Statutes:	*Whether the respondent violated strict rule of interpretation*

Statutory provisions referred to:

Sections 2 and 34 (1)(c) of the Income Tax Act, 1973

Facts of the Case:

The Appellant is a company incorporated in Tanzania. Its principal activities are provision of telecommunication and wireless services.

On 10th November, 2006, the Respondent served the Appellant with Preliminary Audit Findings for the same year. A meeting between the two parties was convened to consider the Appellant's complaints regarding the Preliminary Audit Findings. The Respondent revised the findings based on Appellant's complaints. Still, the Appellant was not satisfied with the revised findings. Accordingly, on 29th December, 2007 the Respondent issued the Final Audit Report followed by the assessments on Withholding Tax of TZS 1,028,644,778.87 and penalties of TZS 1,917,171,792 thereof regarding payments which the Appellant made to Siemens for the purchase and use of software licence.

The Appellant unsuccessfully objected against the assessment and further appealed to the Board and the Tribunal hence the instant appeal.

Issues:

i. Whether payments made for acquisition of a software licence constitute royalty.

ii. Whether payments made for acquisition of software licence are subject to Withholding Tax.

iii. Whether the Respondent violated Strict Rule of Interpretation in its interpretation of the word *"royalty"* as provided under *section 2 of the Income Tax Act, 1973*.

Held:

i. Under *section 34 (1)(c) of the Income Tax Act, 1973,* payment for the right to use a computer software which is non-exclusive and non-transferable, as was the case with the Appellant, has all hallmarks of royalty, and as such, constitutes royalty.

ii. In terms of the same *section 34 (1) (c) of the Income Tax Act, 1973,* payment for the right to use a computer software was taxable and, as such, the Tribunal was correct to uphold decision of Board on imposition the Withholding Tax and penalties.

iii. The Tribunal had correctly applied the strict rule of interpretation regarding the word *"royalty"* as provided under *section 2 of the Income Tax Act, 1973*. There was no intendment, presumption, equity nor interpolation on the interpretation of the word *"royalty"*.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Kenya Commercial Bank Limited v. Kenya Revenue Authority [2016] eKLR.*
- *Cape Brandy Syndicate v. Inland Revenue Commissioner [1921] 1 KB 64*
- *Celtel Tanzania Limited v. Commissioner General, Tanzania Revenue Authority, Civil Appeal No. 56 of 2018 (unreported)*
- *National Microfinance Bank Tanzania Limited v. Commissioner General, Tanzania Revenue Authority, Civil Appeal No. 168 of 2018 (unreported)*

Court of Appeal of Tanzania
at Dodoma
Civil Appeal No. 426 of 2020

Pan African Energy Tanzania Limited
versus
Commissioner General Tanzania Revenue Authority,

2nd November, 2021

Kerefu, J.A.

Value Added Tax:	*Whether procurement and transfer of goods in return for reimbursement under operatorship agreement constitutes a taxable supply for Value Added Tax (VAT).*
Value Added Tax:	*Whether the Appellant's correction of errors on the VAT returns after being prompted by the Respondent amounted to "contact" and constitutes involuntary disclosure in terms of the VAT (Correction of Errors) Regulations, 2000.*
Value Added Tax:	*Whether a person who fails to account and file VAT returns for imported services is liable to VAT under the VAT Act, 1997.*
Jurisdiction:	*Whether the Court of Appeal has jurisdiction to entertain factual matters in tax disputes.*

Statutory Provisions Referred:

Sections 5 (1), 29 (1) & 59 (3) of the Value Added Tax Act, 1997

Section 25 (2) of the Tax Revenue Appeals Act, Cap. 408 [R.E 2019]

Regulation 6 (1) of the Value Added Tax (Imported Services) Regulations, 2001

Regulation 4 of the Value Added Tax (Correction of Errors) Regulations, 2000

Facts of the Case:

The Appellant is a company incorporated in Tanzania whose primary activities include production and marketing of natural gas produced in Songo Songo gas fields under the Production Sharing Agreement (PSA) executed in October, 2001 between the Government of the United Republic of Tanzania, Tanzania Petroleum Development Corporation (TPDC) and the Appellant. The Appellant also operates the gas processing plant owned by Songas Limited under the Operatorship Agreement entered between the Appellant and Songas.

In the year 2013, the Respondent conducted tax audit on Appellant's tax affairs for the years of income 2008 through 2012. In the audit, the Respondent raised a number of queries including, over-claimed Input Tax and unaccounted VAT on imported services under Songo Songo Operatorship Services. On 19th December, 2013 the Respondent issued an assessment for additional VAT payable of TZS 6,012,588,034.00 as principal tax and interest of TZS 6,250,662,880.00.

On 24th January, 2014, the Appellant objected to the Respondent's assessment on various grounds including that the materials, equipment and services procured by the Appellant on behalf of Songas were not taxable supply, as a result, not subject to the VAT imposed. The Respondent maintained her position that such supply is taxable. Aggrieved by the Respondent's decision, the Appellant unsuccessfully challenged it before the Board and Tribunal hence the instant appeal.

Issues:

i. Whether procurement and transfer of goods in return for reimbursement under operatorship agreement constitutes a taxable supply for Value Added Tax;

ii. Whether the Appellant's correction of errors on the VAT returns after being prompted by the Respondent amounted to *"contact"* and constitutes involuntary disclosure in terms of the VAT (Correction of Errors) Regulations, 2000;

iii. Whether a person who fails to account and file VAT returns for imported services is liable to VAT under the VAT Act, 1997;

iv. Whether the Court of Appeal has jurisdiction to entertain factual matters in tax disputes.

Held:

i. The procurement and transfer of goods in return for reimbursement under operatorship agreement constitutes a taxable supply under *section 5 (1)(a) - (c) of the Value Added Tax Act, 1997* since the goods (equipment and materials) were a taxable supply made by a taxable person (the Appellant) in her own name in the course of business. The Appellant as a taxable person was required to issue an invoice in respect of the transaction. Her failure to issue the invoice could not exonerate the transaction from being a taxable supply which is subject to the VAT.

ii. Since the Appellant was on 25th November, 2011 notified by the Respondent of the pending tax audit upon which she decided to correct the errors on 29th November, 2011, there was a *"contact"* and the subsequent correction of errors was an involuntary disclosure hence liable for interest.

iii. A person who fails to account or file VAT Returns in respect of imported services is liable to VAT under the VAT Act, 1997 as the Respondent cannot ascertain whether there is no tax due and payable on the basis of input and output tax.

iv. The Court of Appeal has no jurisdiction to determine factual matters in tax disputes in terms of *Section 25 (2) of the Tax Revenue Appeals Act* which confines appeals to the Court of Appeal only on matters involving questions of law.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Geita Gold Mining Limited vs. Commissioner General, Tanzania Revenue Authority, Civil Appeal No. 89 of 2019 (Unreported)*
- *Shell Deep Water Tanzania BV vs. Commissioner General, Tanzania Revenue Authority, Civil Appeal No. 123 of 2018 (Unreported)*
- *Mbeya Cement Company Limited vs. Commissioner General, Tanzania Revenue Authority, Civil Appeal No. 19 of 2008 (Unreported)*
- *Insignia Limited vs. Commissioner General, Tanzania Revenue Authority, Civil Appeal No.14 of 2007 (Unreported)*

Court of Appeal of Tanzania
at Dodoma
Civil Appeal No. 314 of 2017

Access Bank Tanzania Limited
versus
Commissioner General, Tanzania Revenue Authority

30th July, 2018

Mziray, J.A,

Income Tax Act: *Whether the provision for impairment of doubtful debts and reserves are allowable deductions under the Income Tax Act, 2004.*

Income Tax Act: *Whether a doubtful debt amounts to a bad debt for income tax purposes that qualifies for a write off under the Income Tax Act.*

Income Tax Act: *Whether the approval of doubtful debts by Bank of Tanzania (BoT) is an automatic approval by the Respondent.*

Statutory Provisions Referred to:

Sections 3, 13, 18, 25 and 39 (d), of the Income Tax Act, 2004 (the ITA 2004).

Facts of the Case:

The Appellant is a limited liability company incorporated in Tanzania. The principal business of the Appellant is provision of banking services. The Appellant received from the Respondent a final tax assessment for the year 2009. The Respondent disallowed an impairment loss on loans and specific provision amounting to TZS 355,709,641.00. Further, the Respondent adjusted the taxable income before tax by adding back TZS 240,420,330.00 being part of the disallowed TZS 355,709,641.00 approved by the BOT as an impairment loss on loans which the appellant claims it was charged to the reserve.

Furthermore, the Respondent disallowed the written off operating assets amounting to TZS 58,071,547.00, borrowing costs amounting to TZS 53,356,112.00 and costs relating to bank officer's tax provision amounting to TZS 216,892,787.00 on the basis that, they were not incurred wholly and exclusively in the production of income of the appellant for the year of income 2009. It was also alleged by the Appellant that; the Respondent did not take into consideration the loss brought forward in the year 2008 amounting to TZS 1,383,626,613.00.

The Appellant lodged an objection with the Respondent. However, the Respondent rejected the objection. The Appellant appealed to the Board and Tribunal which decided in favour of the Respondent hence the current appeal.

Issues:

i. Whether the provision for impairment of doubtful debts and reserves are allowable deductions under the Income Tax Act, 2004;

ii. Whether a doubtful debt amounts to a bad debt for income tax purposes that qualifies for a write off under the Income Tax Act;

iii. Whether the approval of doubtful debts by Bank of Tanzania (BoT) is an automatic approval by the Respondent.

Held:

i. Impairment provisions for financial institutions are trading stocks as per section 3 of ITA, 2004 and therefore, deductible under section 13 and not sections 18 and 39 (d) of ITA 2004. This includes loans made by financial institutions in the ordinary course of business. Section 18 of ITA, is limited to the losses on realization of business assets and liabilities and the definition of business assets explicitly excludes trading stocks.

ii. A doubtful debt is under impairment, it is yet to become a bad debt for income tax purposes and therefore not ready for being written off.

iii. The approval by Bank of Tanzania (BoT) after a taxpayer has complied with GAAP, is not an automatic approval by Respondent. The Respondent still retains power to examine the justifications for the provisions of bad and doubtful debts and make its own decision.

iv. The reserves provisions were disallowed for the Appellant's own failure to adduce evidence to justify the said amounts. The Tribunal properly so decided and there is no reason to fault both the Board and the Tribunal.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Commissioner General, TRA vs. M/s Barclays Banks Limited, Income Tax Appeals No. 3 of 2011 (Unreported); and*
- *Commissioner General (TRA) vs. National Microfinance Bank PLC, Appeal No. 19 of 2013 (Unreported).*

Court of Appeal of Tanzania
at Dodoma
Civil Appeal No. 431 of 2020

Universal African Logistics Limited
Versus
Commissioner General, Tanzania Revenue Authority

4th November, 2021

Ndika, J.A,

Contract: *Whether there was an agency relationship between the Appellant and Universal Weather and Aviation Inc (UWA)*

Value Added Tax: *Whether the supply of services by the Appellant was made outside mainland Tanzania hence zero-rated*

Doctrine of Estoppel: *Whether there can be an estoppel against a statute.*

Statutory Provisions Referred to:

Sections 4 (1), 7 (4) and 9 (1) together with Paragraph 9 (2) (b) (ii) of the First Schedule to the Value Added Tax Act, Cap. 148 R.E. 2002 (VAT Act);

Regulation 6 (1) of the Value Added Tax (Export of Goods and Services) Regulations, 2009, G.N. No. 91 of 2009 ("the VAT Export Regulations").

Facts of the Case:

The Appellant is a company incorporated in Tanzania whose principal activities (services) are coordination and organization of permits for landing and navigation for private aircraft within the African continent. The Appellant assisted her customers secure the necessary permits, approvals, and permissions for their entire trips via her local expertise and continent-wide network of proven suppliers.

On 24th August 2010, the Appellant through her tax consultant sought from the Respondent the interpretation and application of the relevant provisions of the VAT Act, Cap. 148 R.E. 2002 in respect of taxability of her business arrangement. The Respondent confirmed that, based on the presented facts, the entire business activities are made outside Tanzania. Thus, the arrangement will not be considered as a taxable supply.

In the year 2014, the Respondent conducted a tax audit on the Appellant's tax affairs for the years of income 2011 through 2013. The audit revealed that, the Appellant had not paid VAT in respect of the supply of the aforesaid services claiming that they were zero-rated. The Respondent issued an assessment for additional VAT of TZS 1,617,932,388.00 and interest of TZS 411,972.225.00.

The Appellant unsuccessfully objected the assessment on the ground that, she acted upon the ruling of the Respondent that the said services were zero-rated. The Appellant further contended that, she was acting as an agent of her affiliate, a non-resident principal company called Universal Weather and Aviation, Inc. ("UWA"). The Appellant appealed to the Board and Tribunal which turned down the appeals hence the current appeal.

Issues:

i. Whether there was an agency relationship between the Appellant and Universal Weather and Aviation Inc (UWA);

ii. Whether the supply of services by the Appellant was made outside mainland Tanzania hence zero-rated;

iii. Whether there can be an estoppel against a statute.

Held:

i. There was no agency relationship between the Appellant and UWA because the alleged agency relationship was unproven. Under the law of contract, agency relationship can be established by either an express appointment by the principal or can be inferred from the conduct of the parties. The Appellant did not produce any document showing that she was appointed or given express authority by her affiliate UWA to act as her agent.

ii. Since the appellant's principal business of coordinating, organising, arranging, processing and obtaining landing and navigation permits is what constitutes her underlying business and is centred in Mwanza, the services were rendered in Mainland Tanzania hence subject to VAT in terms of section 4 (1) of the VAT Act. This is to say, the services were standard rated rather than zero-rated.

iii. No estoppel whatsoever can operate to annul statutory provisions. Likewise, a statutory person cannot be estopped from carrying out his statutory duties or from denying that, he entered into an agreement that was beyond his statutory authority.

Conclusion:

Appeal dismissed with costs.

Cases referred to:

- *Babulal Swarupchand Shah vs. South Satara (Fixed Delivery) Merchants Assan Ltd (1960) Bom 671 AIR 1960 Bom 48, 62 Bom LR 304;*
- *Income Tax Commissioner vs. AK [1964] EA 648 at 652; and*
- *Roshani Meghjee & Co. Ltd. vs. Commissioner General, Tanzania Revenue Authority, Civil Appeal No. 49 of 2008 (unreported).*

Court of Appeal of Tanzania
at Dodoma
Civil Appeal No. 401 of 2020

Unilever Tea Tanzania Limited
versus
Commissioner General Tanzania Revenue Authority

01st November, 2021

Ndika, J.A,

Jurisdiction: *Whether the Court of Appeal has jurisdiction to entertain factual matters in tax disputes.*

Practice and Procedure: *Whether the Appellant discharged the burden of proof*

Statutory Provisions Referred to:

Sections 11(2) of the Income Tax Act, 2004 (the ITA);
Sections 18 (2)(b) and 25 (2) *of the Tax Revenue Appeals Act [CAP 408 R.E. 2019] ("the TRAA").*

Facts of the Case:

The Appellant is a company incorporated in Tanzania engaged in agricultural tea growing and production in Mufindi, Iringa. In 2010, the Respondent conducted an audit on the Appellant's tax affairs for the years of income 2008 through 2010. Upon conclusion of the audit, the Respondent issued the Appellant with Notices of Adjusted Assessment for Corporate Income Tax for the respective years of income.

The Appellant objected the said assessment on the ground that the Respondent had wrongly disallowed certain costs incurred wholly and exclusively in production of her income. The Respondent issued amended assessments which disallowed 50% of the management entertainment cost and rejected the Appellant's claim that there was a double disallowance of the expense.

The Appellant appealed to the Board which partly allowed the appeals. The Board ruled that the appellant failed to prove the alleged double disallowance as she failed to present to the Board the respondent's computations. Further, the Appellant appealed to the Tribunal which upheld the Board's decision hence this appeal.

Issues:

i. Whether the Court of Appeal has jurisdiction to entertain factual matters in tax disputes;

ii. Whether the Appellant discharged the burden of proof.

Held:

i. The Court of Appeal has no jurisdiction to entertain factual matters in relation to tax appeals in terms of section 25 (2) of the TRAA which confines appeals to the Court of

Appeals only on matters involving questions of law. The question of law for the purpose of section 25 (2) of the TRAA, include:

> *First*, an issue on the interpretation of a provision of the Constitution, a statute, subsidiary legislation or any legal doctrine on tax revenue administration.
>
> *Secondly*, a question on the application by the Tribunal of a provision of the Constitution, a statute, subsidiary legislation or any legal doctrine to the evidence on record.
>
> *Finally*, a question on a conclusion arrived at by the Tribunal where there is failure to evaluate the evidence or if there is no evidence to support it or that it is so perverse or so illegal that no reasonable tribunal would arrive at it.

ii. The Appellant has failed to discharge the burden of proof as the claim of double disallowance could only be proved if the Appellant had submitted the Respondent's tax computations rationalizing the disallowances.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Atlas Copco Tanzania Limited vs. Commissioner General, Tanzania Revenue Authority, Civil Appeal No. 167 of 2019 (unreported).*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 163 of 2021

Q – Bar Limited
versus
Commissioner General, Tanzania Revenue Authority

16th June, 2022

Kwariko, J.A,

Jurisdiction: *Whether the Court of Appeal has jurisdiction to entertain factual matters in tax disputes*

Statutory Provisions Referred to:

Sections 11(2), 21 and 23(1) (b) & (2) of the Income Tax Act, 2004 (the ITA); and

Section 25 (2) of the Tax Revenue Appeals Act [CAP 408 R.E. 2019] ("the TRAA").

Facts of the Case:

The Appellant is a company incorporated in Tanzania engaged in various businesses namely; guest house, bar and restaurant. The Respondent conducted a tax audit on the Appellant's tax affairs for the years of income 2009 through 2011. The audit revealed that, the appellant used both the Electronic Cash Register (ECR) and the Electronic Fiscal Device (EFD) in multiple transactions.

The information retrieved from ECR machine indicated that, there were about TZS 334,000,000.00 of unreported sales between 2009 and 2011. On 06th December, 2012, the Respondent served the Appellant with VAT Certificates amounting to TZS 160,427,856.00, and Corporate Tax Assessments amounting to TZS 66,828,495.58, TZS 112,490,554.46, and TZS 76,447,996.00 for the respective years of income.

The Appellant unsuccessfully objected the assessments. Further, the Appellant appealed to the Board which ruled in favour of the Respondent reasoning that the onus of proving whether the assessment or decision made by the Respondent is erroneous falls on the Appellant. The Appellant appealed to the Tribunal hence the present appeal.

Issue:

i. Whether the Court of Appeal has jurisdiction to entertain factual matters in tax disputes.

Held:

i. The Court of Appeal has no jurisdiction to entertain to determine factual matters in relation to tax appeals in terms of section 25 (2) of the TRAA which confines appeals to

the Court of Appeals only on matters involving questions of law. The Appellant's claims in all four grounds of appeal raise factual issues, that have already been adequately addressed and resolved by the Board and the Tribunal, and as a result, they ought to end there.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Atlas Copco Tanzania Limited v. Commissioner General, TRA, Civil Appeal No. 167 of 2019 (*unreported);
- *Shoprite Checkers (T) Limited v. The Commissioner General TRA, Civil Appeal No 307 of 2020 (*unreported); and
- *Jovet Tanzania Limited v. Commissioner General, TRA, Civil Appeal No. 217 of 2019 (*unreported).

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 121 of 2018

Pan African Energy Tanzania Limited
versus
Commissioner General, Tanzania Revenue Authority

12th June, 2019

Mussa, J.A,

Practice and procedure: *Whether the Respondent's refusal to grant waiver is an objection decision appealable to the Board in terms of section 16 (1) of the Tax Revenue Appeals Act.*

Statutory Provisions Referred to:

Section 51(1) and (5) of the Tax Administration Act, No. 10 of 2015 (the TAA);

Section 16 (1) of the Tax Revenue Appeals Act [CAP 408] ("the TRAA");

Rule 6 (2) of the Tax Revenue Appeals Rules comprised in G.N. 57 of 2001; and

Section 4 (2) of the Appellate Jurisdiction Act, Cap. 141.

Facts of the Case:

The Appellant is a company incorporated in Tanzania whose primary activities are production and supply of natural gas in Tanzania. In 2016, the Respondent served the Appellant with two tax assessments amounting to TZS 46,547,072.80 and TZS 7,071,095,810.33.

The Appellant objected the assessments and simultaneously requested for waiver of tax deposit required to validate the objection. The Respondent rejected the application arguing that, the Appellant did not adduce good reasons to warrant granting a waiver of tax deposit.

The Appellant appealed to the Board which ruled for the Appellant to pay 5% of assessed tax as a tax deposit. Further, the Appellant appealed to the Tribunal which upheld the decision of Board hence the present appeal.

Issue:

i. Whether the Respondent's refusal to grant waiver is an objection decision appealable to the Board in terms of section 16 (1) of the Tax Revenue Appeals Act.

Held:

i. The Respondent's refusal to grant an application for waiver is not among the objection decision hence not appealable to the Board in terms section 16(1) of TRAA. Thus, the appeal before the Board was incompetent. The proper provision which governs appeals to the Board is section 53(1) of the TAA. After the amendment of Section 16(1) of the

TRAA, an appeal to the Board is presently narrowed down to an objection decision of the Commissioner General made under the TAA.

Conclusion:

Appeal struck out with no orders as to costs.

Court of Appeal of Tanzania
at Dodoma
Civil Appeal No. 388 of 2020

John Epimaki Kessy
versus
Commissioner General, Tanzania Revenue Authority

02nd November, 2021

Mwandambo, J.A,

Jurisdiction:	*Whether the higher courts can interfere with lower courts/tribunals findings while exercising their discretionary powers.*
Rules of Evidence:	*Whether the Tribunal can admit fresh evidence.*
Income Tax:	*Whether transfer of a property/asset between associates is accorded with preferential tax treatment under the Income Tax Act.*

Statutory Provisions Referred to:

Sections 3, 39 (a), 44 (2) and (4) (e)of the Income Tax Act, 2004 [Cap. 332 R.E. 2006] ("the ITA");
Section 17 (2) of The Tax Revenue Appeals Act, [Cap. 408 R.E. 2010] ("TRAA");
Section 49(2) of the Tax Administration Act, 2015 ("TAA");
Rules 6 (4) and 7(1) of the Tax Revenue Appeals Board Rules, 2001 G.N. No. 57 of 2001; and
Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977.

Facts of the Case:

The Appellant was the registered owner of a landed property Plot No. 21, Mikocheni Light Industrial Area, Dar es Salaam City with Certificate of Title No. 4352. He acquired the land in 1992 while operating as a sole proprietor in the name of J.E. Construction. The sole proprietorship continued to operate until 1999, when the Appellant and Beda J. Kessy launched J.E. Construction Company Limited ("company"), a limited liability company with 99% of shares owned by the Appellant. In this regard, the Appellant qualified as an associate as per section 3(c) of the ITA. On 18th April 2011, the Appellant conveyed his land to the company. This triggered liability of Capital Gain Tax (CGT) since it amounted to realization under section 39 (a) of the ITA.

The transaction between associates was eligible for the preferential tax treatment under section 44 (2) of the ITA provided that, both parties moved the Respondent in that behalf, and complied with the requirements under section 44 (4) of the ITA. Then the

Appellant submitted to the Respondent a declaration of gain from realization. This was followed by a letter from the Respondent inquiring about certain details, such as the owner of the asset and errors in the calculation of gain. Through that letter The Respondent issued a new tax assessment after revoking the previous one.

The Appellant unsuccessfully objected the assessment on the ground that the transfer of the asset complied with the conditions under section 44 (4) of ITA therefore eligible for preferential tax treatment under section 44(2) of ITA. Further the Appellant appealed to the Board and Tribunal which upheld Respondent's decision hence the current appeal.

Issues:

i. Whether the higher courts can interfere with lower courts/tribunals findings while exercising their discretionary powers.

ii. Whether the Tribunal can admit fresh evidence.

iii. Whether transfer of a property/asset between associates is accorded with preferential tax treatment under the Income Tax Act.

Held:

i. The Court can interfere with the lower courts/tribunals exercise of their discretion, only when it is satisfied that, the decision is clearly wrong, because it has misdirected itself; or it has acted on matters on which it should not have acted; or it has failed to take into consideration matters which it should have taken into consideration and in so doing arrived at a wrong conclusion.

ii. The Tribunal has powers to admit fresh evidence subject to conditions under section 17 (2) of the TRAA. The Appellant failed to meet the conditions precedent for admission of additional evidence hence, could not fault the Tribunal for the alleged improper exercise of its discretion under section 17 (2) of the TRAA.

iii. The provisions of section 44 (2) of ITA accord an associate exemption from payment of CGT. However, the section can be applied upon proof that both the transferor and transferee associates have made the election in writing as provided for under section 44(4) (e) of ITA.

Conclusion:

Appeal dismissed with costs.

Cases Referred to*:*

- *Mbogo & Another vs. Shah [1968] E.A 93; and*
- *Commissioner General, TRA vs. New Musoma Textile Limited, Civil Appeal No. 119 of 2019* (unreported).

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 443 of 2020

Kilombero Sugar Company Limited
versus
Commissioner General, Tanzania Revenue Authority

19th October, 2022

Lila, J.A,

Withholding Tax: *Whether payments made by the Appellant to non-resident service providers for provision of management services have a source in the United Republic of Tanzania hence subject to withholding tax;*

Statutory Provisions Referred to:

Sections 6(1) (b), 69 (i)(i) and 83 (1) (b) of the Income Tax Act, 2004 ("ITA"); and

Article IV (1) of the Double Taxation Agreement between the United Republic of Tanzania and Zambia (DTA).

Facts of the Case:

The Respondent is a company incorporated in Tanzania dealing with sugar cane farming and sugar production. The Respondent conducted an audit which revealed that, the Appellant paid TZS 188,000,00.00 to Zambia Sugar Company Limited (ZSCL), a company based in Zambia for the directorate/management service but did not remit the relevant withholding tax. The Respondent issued a Withholding Tax Certificate to the Appellant notifying her tax liability in the sum of TZS 32,006,125.00.

The Appellant objected the demand but the Respondent maintained her position on the ground that management services fees paid to ZSCL do not constitute industrial and commercial profit in terms of Article IV (1) of the DTA hence subject to withholding tax under Section 84 (1) (b) of the ITA. The Appellant appealed to the Board and Tribunal which ruled in favour of the Respondent hence the present appeal.

Issue:

i. Whether payments made by the Appellant to non-resident service providers for provision of management services have a source in the United Republic of Tanzania hence subject to withholding tax;

Held:

i. The Appellant paid service fees (management fees) to the ZSCL, which, applying the source and residence tests, would be subject to withholding tax in Tanzania under sections 6(1)(b), 69(i)(i) and 83(1)(b) of the ITA not only because the Appellant is a company resident in Tanzania but also because the income paid to ZSCL has a source in Tanzania.

Conclusion:

Appeal partly allowed with no order as to costs.

Cases and Bookd Referred to:

- *Cape Brady Syndicate vs. Inland Revenue Commissioner (1921) 1KB 64;*
- *Kilombero Sugar Company Limited vs Commissioner General, TRA, Civil Appeal No. 218 of 2019* (unreported);
- *Pan African Energy Tanzania Ltd Vs Commissioner General, TRA, Civil Appeal No. 81 of 2019* (unreported); *and*
- *Tullow Tanzania BV Vs The Commissioner General Tanzania Revenue Authority, Civil Appeal No. 24 of 2018 (unreported).*
- *Income Tax in Tanzania by Paul Joseph published in1990.*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 265 of 2021

Mlimani Holdings Limited
versus
Commissioner General Tanzania Revenue Authority,

18th July, 2022

Mwandambo, J.A,

Double Taxation Agreement: *Whether Service fee paid by a local entity to a South African entity forms part of business profits under Article 7 of the Double Taxation Agreement between South Africa and Tanzania hence not subject to Withholding Tax*

Practice and Procedure: Whether the Court can depart from its previous decision.

Statutory Provisions Referred to:

Sections 83 (1) (b) and 128 of the Income Tax Act, 2004; (the ITA)

Articles 7 and 20 of the Double Taxation Agreement between the United Republic of Tanzania and South Africa (DTA)

Facts of the Case:

The Appellant is a company incorporated in Tanzania. Between the year 2013 and 2016, the Appellant made payments to a South African entity, MDS Architecture, a foreign consultant in the sum equivalent to TZS 1,500,549,808.00 as service fees for architectural services to its project in Tanzania.

In 2017 the Respondent conducted tax audit on the Appellant's tax affairs. The audit revealed that, the Appellant had made the payments to MDS Architecture amounting to TSZ 1,500,549,808.00 without deducting the 15 percent as withholding tax and remit it to the Respondent subject to Section 83(1) (b) of the ITA. The Respondent issued three withholding tax certificates demanding a total of TZS 346,492,916/= for the period of 2013 through 2016.

The Appellant unsuccessful objected against the demand on the ground that service fee aid to MDS Architecture constitute business profit in terms of Article 7 of the DTA hence not subject to withholding tax of the ITA. Further the Appellant appealed to the Board and Tribunal hence the instant appeal

Issues:

i. Whether Service fee paid by a local entity to a South African entity forms part of business profits under Article 7 of the Double Taxation Agreement between South Africa and Tanzania hence not subject to Withholding Tax
ii. Whether the Court can depart from its previous decision.

Held:

i. *Article 7 of the DTA* does not cover "service fee" but rather "business profits" which is not the subject of the present appeal. The proper provision in respect of the service fee was *Article 20 of the DTA* which covers *"other income"*. Moreover, *Article 20* should be read together with *Article 21 of the DTA* which provides to the effect that costs incurred by IPSL and reimbursed by the Appellant are subject to Withholding Tax in Tanzania in accordance with *section 83 (1) (b) of the Income Tax Act, 2004*.

ii. The court can depart from its previous decision however the party that intends to invite the Court to depart from one of its own decisions, should clearly state so in a separate paragraph of the submissions, as required under Rule 106 (4) of the Court of Appeal Rules. Departing from a previous decision of this Court cannot be undertaken by an ordinary court rather, a full bench empanelled by five justices which may entail overruling the previous decision if the Court sees justification to depart.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Kilombero Sugar Company Limited against TRA (Civil Appeal No. 218 of 2019 (unreported).*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 174 of 2019

Tanzania Tobacco Processors Limited
versus
Commissioner General Tanzania Revenue Authority,

17th May, 2021

Levira, J.A,

Jurisdiction: *Whether the Court of Appeal has jurisdiction to entertain factual matters in tax disputes.*

Practice and Procedure: *Whether the Appellant discharged her burden of proof.*

Statutory Provisions Referred to:

Sections 11(2), 12 and 33(1) of the Income Tax Act, 2004 (the ITA)

Section 18(2)(b) and 25(2) of the Tax Revenue Appeals Act [CAP 408] (the TRAA).

Facts of the Case:

The Appellant is a company incorporated in Tanzania. The Respondent conducted an audit on the Appellant's tax affairs in respect of the years of income 2006, 2007 and 2008. At the end of the audit the Respondent served the Appellant with the adjusted tax assessments in which, the Respondent disallowed interest expenses on loan allegedly paid by the Appellant to the Universal Leaf Tobacco Co. Inc. of the USA (the ULTC) in terms of a Loan Agreement.

The Appellant objected against the assessments where the Respondent maintained his position on the ground that the interest rate was not at arm's length. Further the Appellant appealed to the Board and Tribunal hence the instant appeal

Issues:

i. Whether the Court of Appeal has jurisdiction to entertain factual matters in tax disputes.

ii. Whether the Appellant discharged her burden of proof.

Held:

i. The Court of Appeal has no jurisdiction to determine factual matters in tax disputes in term of Section 25 (2) of the TRAA, which confines appeals to the Court of Appeals only on matters involving questions of law. The Court cannot entertain factual issues because the same was conclusively dealt with, by the Board and the Tribunal.

ii. The Appellant failed to discharge her burden of proof in terms of section 18(2)(b) of the TRAA by failure to substantiate that the interest rate was at arm's length therefore the assessment of the Respondent was erroneous. The Appellant's claim that, the loan arrangement was an accepted business practised globally and that, it had been accepted by the BOT and TIC, was not sufficient to substantiate that, the interest charged is not above the market rate as required by law under section 33(1) of the ITA.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Insignia Limited vs. Commissioner General (TRA), Civil Appeal No. 14 of 2007 (unreported);*
- *Alliance One Tobacco Tanzania Limited vs. Commissioner General TRA, Civil Appeal No. 118 of 2018 (both unreported);*
- *Kilombero Sugar Company Ltd vs. Commissioner General (TRA), Civil Appeal No. 261 of 2018 (unreported);*
- *Barclays Bank (T) Limited vs. Jacob Muro, Civil Appeal No. 357 of 2019 (unreported);*
- *Samwel Kimaro v. Hidaya Didas, Civil Appeal No. 271 of 2018 (unreported);*
- *Geita Gold Mining Limited vs. Commissioner General Tanzania Revenue Authority, Civil Appeal No. 132 of 2017 (unreported);*
- *Shell Deep Water Tanzania BV vs. Commissioner General (TRA), Civil Appeal No. 132 of 2017 (unreported); and*
- *Bulyanhulu Gold Mine Limited vs. Commissioner General (TRA), Consolidated, Civil Appeals Nos. 89 and 90 of 2015 (unreported).*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 118 of 2018
Alliance One Tobacco Tanzania Limited
versus
Commissioner General Tanzania Revenue Authority

07th August, 2019

Ndika, J.A,

Practice and procedure: *Whether the Tribunal was right in law and in fact to uphold the decision of the Respondent to disallow costs on direct sales as the Appellant failed to discharge her burden of proof.*

Statutory Provisions Referred to:

Sections 11(2) and 97 (c) of the Income Tax Act, 2004 (ITA); and

Sections 18 (2)(b) and 17 (1) (b) of the Tax Revenue Appeals Act [CAP 408] (TRAA).

Facts of the Case:

The Appellant is a company incorporated in Tanzania. In 2011, the Respondent conducted a tax audit in respect of the Appellant's tax affairs for the years of income 2009 and 2010. At the conclusion of the audit, the Respondent disallowed several corporate tax items including costs on direct sales and later issued Notices of Adjusted Assessment.

The Appellant objected the assessment contending that, the disallowed costs were deductible as they were wholly and exclusively incurred in the production of income. The Respondent confirmed the assessment on the ground that the Appellant failed to produce documentary evidence to support how she arrived on the costs on direct sales.

The Appellant appealed to the Board and the Tribunal which ruled in favour of the Respondent in respect of the issue at hand hence the present appeal.

Issue:

i. Whether the Tribunal was right in law and in fact to uphold the decision of the Respondent to disallow costs on direct sales as the Appellant failed to discharge her burden of proof.

Held:

i. The Appellant failed to discharge her burden of proof therefore the Tribunal was right in law and in fact to uphold the decision of the Respondent to disallow costs on direct sales

as the onus to prove that the disallowance was erroneous lied on the Appellant as per *Section 18 (2)(b) of TRAA.*

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Insignia Limited vs. Commissioner General (TRA),* Civil Appeal No. 14 of 2007 (unreported)

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 58 of 2020

Ophir Tanzania (Block 1) Limited
Versus
Commissioner General Tanzania Revenue Authority,
06th August, 2021

Wambali, J.A,

Withholding Tax: *Whether payments made by the Appellant to non-resident service provider have a source in the United Republic of Tanzania hence subject to withholding tax*

Statutory Provisions Referred to:

Sections 6 (1) (b), 69 (i) (i) and 83 (1) (b) of the Income Tax Act, 2004 (ITA)

Facts of the Case:

The Appellant is a company incorporated in Tanzania. In March, 2014 the Respondent conducted tax audit on the Appellant tax affairs covering the years of income 2010 through 2013. The audit revealed that there was a difference between the Appellant's figures on imported services reported in the Value Added Tax (VAT) returns compared to those reported in the withholding tax returns for the respective years under the audit.

The Appellant objected the assessment on the ground that the payments have no source in the United Republic of Tanzania. The Respondent maintained his position that the payments have source in the United Republic of Tanzania since the services were supplied/delivered to a resident of the United Republic of Tanzania.

The Appellant appealed to the Board and the Tribunal which ruled in favour of the Respondent hence the present appeal.

Issue:

i. Whether payments made by the Appellant to non-resident service provider have a source in the United Republic of Tanzania hence subject to withholding tax.

Held:

i. The payments have a source in the United Republic of Tanzania in terms of sections 6 (1) (b) and 69 (i) (i) of ITA since the services were supplied to Tanzania and the payer of such services resides in Tanzania therefore the payments are subject to withholding tax under section 83 (1)(b) of ITA.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Commissioner General, TRA vs. Pan African Energy, Civil Appeal No.146 of 2015 (Unreported);*
- *Tullow Tanzania BV vs. Commissioner General, Civil Appeal No 24 of 2018;*
- *Shell Deep Water TZ BP vs. Commissioner General (TRA), Civil Appeal No. 123 of 2018 (unreported);*
- *The Commissioner General (TRA) vs. Aggreko International Projects Limited, Civil Appeal No. 148 of 2018 (unreported);*
- *BP Tanzania Limited vs. The Commissioner General (TRA), Civil Appeal No. 125 of 2015; and*
- *Barrick Gold PLC vs. The Commissioner General (TRA), Civil Appeal No. 16 of 2015.*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 132 of 2017

Geita Gold Mining Limited
versus
Commissioner General Tanzania Revenue Authority
25th June, 2019

Kitusi, J.A,

Tax Exemption: *Whether for the Appellant to enjoy fuel exemption and remission under the MDA and GN the fuel must solely be used by the Appellant*

Tax Exemption: *Whether the supply of fuel to contractors by the Appellant amounts to transfer or sale or disposition of the fuel which invalidates the remission under the MDAs and GNs.*

Statutory Provisions Referred to:

Section 25(2) of the Tax Revenue Appeals Act, Cap. 408 R.E 2002;

Section 5(2) (c) of the Appellate Jurisdiction Act, Cap. 141 R.E 2002;

Rules 2(1) and 3(1) of the Road and Fuel Tolls (Remission) (Holders of Special Mining Licence for Gold Order, 2009 GN. No. 218 Of 2009;

Rules 2 and 3 of the Excise (Management and Tariff) Remission of Fuel Imported by Mining Companies Order, 2010 GN. No. 268 of 2010.

Facts of the Case:

The Appellant is a company incorporated in Tanzania whose principal activities are mining operations within Geita region. The Appellant is a party to a Mining Development Agreement (MDA) signed between the Appellant and the Government of the United Republic of Tanzania. Under Article 6 of the MDA, the Appellant is entitled to import all items required for the design, construction, installation and operation of the gold mine, including fuel. The Appellant is also a holder of Special Mining Licence for Gold, under GN. No. 218 of 2009, which exempts holders from paying road tolls and fuel levy provided the fuel is used in the mining operation of the licensed area. The Appellant is also exempted from paying excise duty on fuel imported solely for use in the mining activities. The remission on the fuel is only valid as long as there is no transfer, sale or disposition of the said fuel in any way to a person other than those entitled to the exemption.

The Appellant's operation involves use of various contractors whereby the Appellant has an obligation to supply inputs, including fuels and lubricants. The Appellant supplied fuel and lubricants to the said contractors.

The Respondent served the Appellant with a demand for payment of TZS 2,039,696,116.00 on the ground that the exemption was solely for the party to the MDA and as the fuel in question was consumed by persons other than the appellant the exemption was unavailable.

The Appellant objected the demand on the ground that since she supplied fuel to contractors to perform mining activities on her behalf therefore there was no transfer or sale or disposition of the fuel such as to invalidate the remission under the MDAs and GNs. However, the Respondent maintained her position. The Appellant appealed to the Board and the Tribunal which ruled in favour of the Respondent hence the present appeal.

Issues:

i. Whether for the Appellant to enjoy fuel exemption and remission under the MDA and GN the fuel must solely be used by the Appellant;

ii. Whether the supply of fuel to contractors by the Appellant amounts to transfer or sale or disposition of the fuel which invalidates the remission under the MDAs and GNs.

Held:

i. For the Appellant to enjoy fuel exemption and remission under the MDA and GN, the fuel must solely be used by the Appellant.

ii. The act of the Appellant giving the fuel to the contractors amounted to disposition, which is a breach of the conditions under the GNs, and there is no justification for reading into the MDA and the GNs a meaning other than what is clear from the plain language of those instruments. The MDA mentions both the Appellant and the contractors. However, the exclusion of the contractors in the GN must have been intentional and it cannot be implied that the GN includes contractors. The transfer would only have been permissible if it had been done to another holder of a Special Mining Licence.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Geita Gold Mining Limited v Commissioner General Tanzania Revenue Authority, Civil Appeal No. 103 of 2017;*
- *Resolute Tanzania Limited v Commissioner General (TRA), Civil Appeal No 125 of 2017;*
- *Shell Deep Water Tanzania BV V. Commissioner General (TRA), Civil Appeal No 123 of 2018;*

- *Bulyanhulu Gold Mine Limited V Commissioner General (TRA), Consolidated Civil Appeals Nos 89 and 90 of 2015;*
- *Republic vs Mwesige Godfrey and Another in Criminal Appeal No. 355 of 2014(unreported)*

Court of Appeal of Tanzania
at Dodoma
Civil Appeal No. 391 of 2020

Establissments Maurel & Prom
versus
Commissioner General Tanzania Revenue Authority,
02nd November, 2021

Kerefu, J.A,

Value Added Tax: *Whether Article 12 (a) of the PSA read together with section 11 and Third Schedule to the VAT Act can relieve the Appellant from filing VAT Returns on imported services.*

Statutory Provisions Referred to:

Sections 11 & 26 (1) of the Value Added Tax, 1997; and

Regulations 5 and 6 (1), (a) and (b) of the Value Added Tax (Imported Services) Regulations, 2001.

Facts of the Case:

The Appellant is a Tanzanian registered branch of Establissments Maurel & Prom, an entity incorporated and registered in France whose principal activities are exploration of oil and gas in Tanzania. The said activities are carried through a Production Sharing Agreement (PSA) executed on 18th May 2004, between the Government of the United Republic of Tanzania, Tanzania Petroleum Development Corporation (TPDC), and Artumas Group & Partners Limited (GAS). Pursuant to Article 24 (a) of the PSA, the GAS assigned and transferred rights, privileges, duties and obligations under the PSA to the Appellant. As such, the terms and conditions of the PSA are applicable directly to the Appellant.

The Respondent conducted a tax audit on the Appellant's tax affairs for the years of income 2010 and 2011. The audit revealed that the Appellant had not filed VAT returns on imported services received from the head office in France. The Respondent served the Appellant with an assessment for additional VAT for the respective years of income.

The Appellant objected the assessment on the ground that by virtue of Article 12(a) of the PSA read together with section 11 and Third Schedule of the VAT Act 1997, she is relieved from filing VAT Returns on imported services. The Respondent maintained her position on the ground that since the procedures which were to be stipulated by the Minister of Finance for relieved persons to enjoy special reliefs were not in place, the Appellant was required to comply with the conditions for special reliefs under the Act, that is, to record in the VAT Account the tax due on imported services as input tax and then claim it as output tax.

The Appellant appealed to the Board and the Tribunal which ruled in favour of the Respondent hence the present appeal.

Issues:

i. Whether Article 12 (a) of the PSA read together with section 11 and Third Schedule to the VAT Act can relieve the Appellant from filing VAT Returns on imported services.

Held:

i. In accordance with section 11 of the VAT Act, the relief provided to the Appellant under Article 12 (a) of the PSA was not automatic but subject to the procedures to be prescribed by the Minister of Finance which were yet in place. In the absence of those procedures or conditions for enjoying special VAT relief, the Appellant was still required to comply with the conditions for special relief which is to record in the VAT account the tax due on imported services as input tax and then claim it as output tax as per section 26 (1) of the VAT Act. Without having duly filed proper VAT Returns that were required under the law, the Appellant cannot validly contend that there was no tax due and payable by seeking shelter under Regulation 5 and 6 of the VAT (Imported Services) Regulations, 2001.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Mbeya Cement Company Limited vs. Commissioner General (TRA), Civil Appeal No.19 of 2008.*

Court of Appeal of Tanzania
at Dodoma
Civil Appeal No. 181 of 2020

Geita Gold Mining Limited
Versus
Commissioner General Tanzania Revenue Authority,
02nd November, 2021

Mwandambo, J.A,

Value Added Tax: *Whether special relief from the payment of VAT granted to the Appellant in respect of imported fuel extends to the third parties*.

Value Added Tax: *Whether the Appellant's supply of fuel to the contractors for exclusive use in the appellant's mining activities constituted a taxable supply which is chargeable to VAT*.

Statutory Provisions Referred to:

Sections 11 and 58 of the Value Added Tax Act, 1997, Cap. 148 R.E. 2002*; and*

Section 15 of the Mining Act, 1979.

Facts of the Case:

The Appellant is a company incorporated in Tanzania whose principal activities are mining operations within Geita region. The Appellant is a party to a Mining Development Agreement (MDA) signed between the Appellant and the Government of the United Republic of Tanzania. The MDA granted the Appellant some tax reliefs for the purpose of the mining activities. The Appellant is also a holder of Special Mining Licence for Gold. As part of the incentives, the Value Added Tax Act, 1997, Cap. 148 R.E. 2002 (now repealed) exempted the holders of such licence from payment of VAT on imported fuel for exclusive use in their mining activities.

The Appellant operations involved the use of various contractors including Geita Power Limited (GPL) who was contracted to operate an electricity power station and DTP Terrassment (DTP) who was contracted to provide mining services on behalf of the Appellant. Through specific agreements with its contractors, the Appellant had an obligation to supply fuel to GPL and DTP whose charges were not included in the rate charged by the contractors for the services rendered.

The Respondent conducted tax audit in the Appellant's tax affairs which revealed that, she supplied fuel to GPL and DTP for which VAT was chargeable but not remitted. The Respondent served the Appellant with an assessment for additional VAT of TZS 6,256,005,237.00.

The Appellant objected the assessment contending that the supply of fuel to the contractors was not a taxable supply as she was exempted from VAT on imported fuel for exclusive use in the mining activities by virtue of Article 6 of the MDA and Section 11 read together with the Third Schedule to the VAT Act. The Respondent rejected the objection maintaining that, the exemption from payment of VAT for imported fuel did not extend to the Appellant's contractors therefore there was a taxable supply of fuel to the Appellant's contractors which was chargeable with VAT.

The Appellant appealed to the Board and the Tribunal which ruled in favour of the Respondent hence the present appeal.

Issues:

i. Whether special relief from the payment of VAT granted to the Appellant in respect of imported fuel extends to the third parties;

ii. Whether the Appellant's supply of fuel to the contractors for exclusive use in the appellant's mining activities constituted a taxable supply which is chargeable with VAT.

Held:

i. Special relief by way of exemption from payment of VAT on imported fuel granted to the Appellant did not cover the Appellant's contractors. Section 11 of the VAT Act clearly talks of relief from VAT on "importation by" and "supply to" a registered mining company. The section does not cover "supplies by" such company to any other person, including her contractors, as is the case herein.

ii. The supply of fuel to the Appellant's contractors for exclusive use in the Appellant's mining activities constituted a taxable supply for which the Appellant was bound by section 58 of the VAT Act to charge VAT from the contractors for the supply and remit it to the Respondent.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Geita Gold Mining Limited v Commissioner General Tanzania Revenue Authority, Civil Appeal No. 89 of 2019; and*
- *Resolute Tanzania Limited v Commissioner general (TRA), Civil Appeal No 125 of 2017.*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 148 of 2018

Commissioner General Tanzania Revenue Authority
Versus
Aggreko International Projects Ltd
04th July, 2019

Korosso, J.A.,

Withholding Tax: *Whether a company has an obligation to withhold tax on payments made to its non-residents service providers outside of the United Republic Tanzania for services rendered in the United Republic.*

Statutory Provisions Referred to:

Sections 6(1)(b), 69 (i)(i) and 83 (1) (b) of the Income Tax Act, 2004 (ITA).

Facts of the Case:

The Appellant is the Commissioner General of the Tanzania Revenue Authority charged with the duty of assessing and collecting various taxes and revenues for the Government of the United Republic of Tanzania. The Respondent is a company registered in Tanzania which operates as a branch of Aggreko International Projects Limited, a company registered in the United Kingdom. The Respondent is engaged in generation of emergency/temporary power, and her main customer is Tanzania National Electricity Supply Company Limited (TANESCO). The Respondent's administrative functions are executed by the head office situated in Dubai, United Arab Emirates.

In the financial year 2013-2014, the Appellant conducted tax audit on the Respondent's tax affairs for the years of income 2011 and 2012. The audit revealed that the Respondent head office provided a number of services on behalf of the Respondent. The Respondent in return paid management fees in respect of the allocated cost and failed to withhold tax on the payment made. The Appellant served the Respondent with a Withholding Tax Certificate demanding a total of TZS 2,220,852,775.00.

The Respondent objected the demand on the ground that she had no obligation to withhold tax on payments made for services rendered by its head office offshore since the payments have no source in the United Republic of Tanzania. The Appellant maintained his position that the payments have a source in the United Republic of Tanzania since the services were supplied/delivered to a resident of the United Republic of Tanzania.

The Respondent appealed to the Board which upheld the decision of the Appellant. Further, the Respondent appealed to the Tribunal which reversed the decision of the Board hence the instant appeal.

Issue:

i. Whether payments made by a resident person to a non-resident service provider have source in the United Republic of Tanzania hence subject to withholding tax.

Held:

i. The payments have a source in the United Republic of Tanzania in terms of sections 6 (1) (b) and 69 (i) (i) of ITA since the services were supplied to Tanzania and the payer of such services resides in Tanzania therefore the payments are subject to withholding tax under section 83 (1)(b) of ITA.

Conclusion:

Appeal allowed with costs.

Cases Referred to:

- *Commissioner General, TRA vs. Pan African Energy, Civil Appeal No.146 of 2015 (Unreported).*
- *Tullow Tanzania BV vs. Commissioner General, Civil Appeal No 24 of 2018;*
- *Shell Deep Water TZ BP vs. Commissioner General (TRA), Civil Appeal No 123 of 2018 (unreported); and*
- *Republic vs. Mwesige Godfrey and Another in Criminal Appeal No. 355 of 2014 (unreported)*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 217 of 2019

Jovet Tanzania Ltd
Versus
Commissioner General Tanzania Revenue Authority,
01st April, 2021

Kwariko, J.A,

Customs Procedure: *Whether overstay of goods in the Bonded Warehouse by Appellant's failure to pay duties and taxes amounts to automatic abandonment of goods in the absence of the Commissioner General's permission in terms of section 16 (3) and 56 of the EACCMA read together with Regulation 143 of the Regulations.*

Statutory Provisions Referred to:

Sections 16(3), 56, 57 of East African Community Customs Management Act, 2004 (EACCMA)

Regulation 143 of the East African Community Customs Management Regulations, 2010 (Regulations)

Facts of the Case:

The Appellant is a company incorporated in Tanzania engaged in the business of importation and supply of beverages named Bavaria (the goods). The Appellant is the sole agent for the said goods for her manufacturer, Bavaria N.V, a company registered in the Netherlands.

Between September and November 2014 the Appellant imported the goods and warehoused them at Modern Warehouse No. 570 pending payment of import duties and taxes. The Appellant sought extension for warehousing of the goods which was granted by the Respondent. The Appellant claimed that some of the goods had developed flakes thus not fit for sale in Tanzania though the manufacturer certified that the identified flakes were only organic materials and the goods were 100 percent safe for consumption.

The Appellant wrote a letter to TFDA and Kinondoni Municipality copying the respondent, requesting the addressees to inspect and destroy the goods which had developed flakes. However, the Respondent reminded the Appellant to pay duties and taxes in respect of the said goods before their disposal. The Appellant then unsuccessfully applied to the Respondent for remission of custom duties in order to allow their disposal. Further, the Appellant unsuccessfully applied for abandonment of

goods and later on review of the Respondent's decision to refuse abandonment which was also rejected.

The Appellant appealed to the Board and Tribunal which ruled in favour of the Respondent hence the present appeal.

Issues:

i. Whether overstay of goods in the Bonded Warehouse by Appellant's failure to pay duties and taxes amounts to automatic abandonment of goods in the absence of the Commissioner General's permission in terms of section 16 (3) and 56 of the EACCMA read together with Regulation 143 of the Regulations.

Held:

i. The overstay of goods of goods in the Bonded Warehouse by Appellant's failure to pay duties and taxes does not amount to automatic abandonment of goods in absence of the Commissioner's permission. According to section 56 of the EACCMA the Commissioner has discretionary powers subject to the conditions he may impose to permit abandonment of warehoused goods. Similarly, under section 16 (3) of EACCMA and Regulation 143 of the Regulations, the abandonment of goods should be done with the permission of the Commissioner. Since there was no such permission, it cannot be said with certainty that the goods were abandoned therefore the Appellant was liable to pay the duties and taxes.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Commissioner General TRA vs. Mamujee Products Limited & Two Others, Civil Appeal No. 10 of 2018 (unreported);*
- *Nirmal Kumar Parsan vs. Commissioner of Commercial Taxes & Others, Civil Appeal No. 7864 of 2009*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 117 of 2019
Vodacom Tanzania Public Ltd Company (Formerly Vodacom Tanzania Limited)
versus
Commissioner General Tanzania Revenue Authority
14th July, 2020

Mugasha, J.A,

Practice and Procedure: *Whether an appeal accompanied by two Certificates of Delay is competent in terms of Rule 90 (1) of the Rules*

Statutory Provisions Referred to:

Rule 90 (1) of the Tanzania Court of Appeal Rules, 2009 (Rules)

Facts of the Case:

The Appellant is a company incorporated in Tanzania and its pricincipal activities are provisions Telecommunication and Wireless Services. provider registered in Tanzania. The Appellant entered into an agreement with Siemens Telecommunications (PTY) Limited for purchase of software.

The respondent conducted tax audit in respect of the Appellant's tax affairs for the years of income 2001 through 2004. Upon conclusion of the audit the Respondent served the Appellant with Demand Notices for withholding tax and penalties with respect to the services and royalty amounting to TZS. 1,028,644,778.87 and TZS. 1,917,171,792.00 respectively. The Appellant unsuccessfully objected the demand. Further, the Appellant appealed to the Board and the Tribunal which ruled in favour of the Respondent hence this appeal.

When the appeal came for hearing the Court wanted to satisfy itself on the propriety of the appeal which is accompanied by two different certificates of delay. In that regard, the Court invited counsel for the parties to address it on the matter.

Issue:

i. Whether an appeal accompanied by two Certificates of Delay is competent in terms of Rule 90 (1) of the Rules.

Held:

i. An appeal accompanied by two Certificates of Delay is incompetent as there cannot be two certificates of delay concurrently applicable in respect of the same matter. It was also wrong for the Registrar to issue a second certificate while the first one had not been withdrawn. The first certificate of delay is a valid one in terms of the proviso to Rule 90

(1) of the Rules and the second certificate was of no legal consequence as it amounted to extending the time to file appeal, something the Registrar had no power to do.

Conclusion

Appeal struck out with no order to costs.

Cases Referred to:

- *Maneno Mengi Limited and three others vs. Farida Said Nyamachumbe and the Registrar of Companies [2004] TLR 391*
- *Omary Shaban S. Nyambu, as Administrator of Estate of the late Iddi Moha vs. Capital Development Authority and two others.*

Court of Appeal of Tanzania
at Dodoma
Civil Appeal No. 24 of 2018
Tullow Tanzania BV
Versus
The Commissioner General Tanzania Revenue Authority

Mziray.J.A,

5th July, 2018

Withholding Tax: *Whether payments made by Appellant to non-residents service providers have a source in the United Republic of Tanzania hence subject to Withholding Tax.*

Statutory Provisions Referred to:

Sections 6(1) (b), 69 (i) (i) and 83 (1) (b) of the Income Tax Act, 2004 (the ITA)

Facts of the Case:

The Appellant is a company registered in Tanzania. Between 18th November, 2010 and 1st February the Respondent conducted audit on the Appellant's tax affairs. Among other things, the audit revealed that the Appellant had made payments to a non-resident in respect of services supplied to her. Upon completion of the audit, the Respondent issued certificates and assessment demanding TZS 792,394,929.18, TZS 29,429,113.09 and TZS 4,298,960.26 being withholding tax, PAYE and VAT respectively. The Appellant paid the amount in respect of PAYE and VAT.

However, the Appellant objected the demand for withholding tax contending that the supplier of the services was non-resident and therefore the payments for the services had no source in Tanzania therefore not liable to the withholding tax nevertheless The Respondent maintained his position that the payments made by the Appellant to the non-resident for services performed outside Tanzania had a source in Tanzania hence liable to withholding tax.

The Appellant appealed to the Board and Tribunal which ruled in favour of the Respondent hence the present appeal.

Issue:

i. Whether payments made by Appellant to a non-resident service provider have a source in the United Republic of Tanzania hence subject to Withholding Tax

Held:

i. The payments have a source in United Republic of Tanzania in terms of section 6(1)(b) and 69(1)(i) of the ITA since the services were supplied to Tanzania and the payer of

such services resides in Tanzania therefore the payments are subject to Withholding tax under Section 83(1)(b) of the ITA.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Commissioner General, TRA v. Pan African Energy, Civil case No. 146 of 2015 (unreported)*
- *BP Tanzania v. Commissioner General, TRA Civil Appeal No. 125 of 2004 (unreported)*
- *Barrick Gold PLC v. Commissioner General, TRA Tax Appeal No. 16 of 2015 (unreported)*

Court of Appeal of Tanzania
at Dar es Salaam
Civil appeal No. 192 of 2018
Pan African Energy Tanzania
Versus
Commissioner General, Tanzania Revenue Authority
Mwarija. J.A,

5th July 2018

Depreciation Allowance: Whether expenditure incurred in respect of natural resource prospecting, exploration and development is treated as if it was incurred in securing the acquisition of assets and therefore qualifying for depreciation allowance under section 17 read together with paragraph 1(3) of the Third schedule to the Income Tax Act.

Statutory Provisions Referred to:

Section 17 read together with Paragraph 1(3) of the Third schedule to the Income Tax Act, 2004 (ITA)

Facts of the Case:

The Appellant is a company registered in the United Republic of Tanzania. The principal business of the Appellant is production, supply of natural gas and power generation. The Respondent conducted tax audit on the Appellant's tax affairs for the year of income 2009. Upon conclusion of the audit, the Respondent disallowed the amount of USD 9,294,832.00 which was claimed by the Appellant as depreciation allowance in respect of wells SS 10 and SSW (the assets) on the ground that the same did not meet the conditions for depreciation allowance as stipulated under section 17 of ITA.

The Appellant objected the Respondent's disallowance contending that in the context of oil and gas industry, the term "employed" as used in section 17 of ITA connotes that the expenditure incurred in respect of natural resource prospecting, exploration and development is treated as if it was incurred in securing the acquisition of assets and therefore qualifying for depreciation allowance under section 17 read together with paragraph 1(3) of the Third schedule to ITA. However, the Respondent maintained his position that the assets were not employed in the production of Appellant's income during the relevant year of income.

The Appellant appealed to the Board and Tribunal which ruled in favour of the Respondent hence the present appeal.

Issue:

i. Whether expenditure incurred in respect of natural resource prospecting, exploration and development is treated as if it was incurred in securing the acquisition of assets and

therefore qualifying for depreciation allowance under section 17 read together with paragraph 1(3) of the Third schedule to ITA.

Held:

i. Although the expenditure incurred by a person in the production of income from the business of natural resource prospecting, exploration and development shall be treated as if it were incurred in securing the acquisition of an asset hence entitling a person to depreciation allowance on assets, such asset must be used by that person in the production of income during the relevant year of income as per section 17 (1) read together with paragraph 1 (3) of the Third Schedule to ITA. Since the Appellant did not use such assets in the production of income during the relevant year of income, she was not entitled to depreciation allowance on the assets.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Roshan Meghjee and Company Limited vs. Commissioner General Civil Appeal No. 49 of 2008 (Unreported)*
- *Commissioner of Income Tax vs. Bharat Aluminium Co ltd 9 (High Court Delhi)*
- *Swati Synthetics Ltd vs. Income Tax Officer, ITA No 1165/M/2006 (Income Tax Appellate Tribunal, Mumbai)*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 81 of 2018
Pan African Energy Tanzania Ltd
Versus
Commissioner General Tanzania Revenue Authority

Mugasha.J.A,

6th March 2020

Pay as You Earn (PAYE): *Whether the use of Grossing-Up method in the computation of Pay as You Earn is permissible as per section 81 (1) of the Income Tax Act, 2004.*

Statutory Provisions Referred to:

Sections 6 (1), 7 (1) and 81 (1) of the Income Tax Act, 2004 (ITA)

Facts of the Case:

The Appellant is a company registered in the United Republic of Tanzania. The principal business of the Appellant is production, supply of natural gas and power generation. In 2013, the Respondent conducted tax audit on the Appellant's tax affairs. The audit revealed that the Appellant used the grossing up method in computation of PAYE and remitted to the Respondent without withholding the same from the employees' taxable income from employment earnings. The Respondent served the Appellant with PAYE Certificate demanding the payment of PAYE amounting to TZS 1,166,197,808.00.

The Appellant objected the demand contending that the grossing up method on PAYE was justified because the practice is internationally accepted and not prohibited by the law. Further, it does not adversely impact the employees' liability to PAYE regardless of the modality of Withholding Tax. However, the Respondent maintained his position that the grossing up method used by the Appellant in computation of PAYE is not justifiable in law. The method is tantamount to giving taxable benefits to employees hence attracts PAYE as it is not exempted under section 7 (3) of ITA.

The Appellant appealed to the Board which partly disallowed the appeal on the ground that the Appellant applied gross up method in computation of PAYE which is not recognized under the tax laws in Tanzania. As for the interest, the Board found no justification to penalize the Appellant because she had not wilfully neglected or attempted to evade tax. As such, the Board waived interest in favour of the Appellant. Further, the Appellant appealed to the Tribunal which ruled in favour of the Respondent hence the instant appeal.

Issue:

i. Whether the use of Grossing-Up method in the computation of PAYE is permissible as per section 81 (1) of the Income Tax Act, 2004.

Held:

i. The Grossing Up method used by the Appellant in computation of PAYE is not justifiable in law. In view of the clear language of sections 7, 81 and 84 of ITA, the Appellant is mandatorily required to withhold the employees' chargeable tax from employment earnings and remit the same to the Respondent. Thus, the Appellant's assertion on non-prohibition of the grossing up method is Interpolation of what is not stated in the law and negates the principle of giving full effect to the language used in the law.

Conclusion:

Appeal dismissed with costs.

Cases and Books Referred to:

- *Resolute Tanzania Ltd versus Commissioner General, TRA Civil Appeal No. 125 of 2017(both unreported);*
- *Mbeya Cement Company Limited vs. Commissioner General, Civil Appeal No 160 of 2017 (unreported);*
- *Commissioner General Tanzania Revenue Authority vs. Kilombero Sugar Limited, Tax Appeal No. 32 of 2013, TRAT;*
- *Cape brandy Syndicate vs. Inland Revenue Commissioners [1921] 1 KB 64;*
- *Charles Herbert Withers Brothers- Payne vs. The Commissioner of Income Tax, Civil Appeal No. 55 of 1968 EACA (unreported);*
- *Republic vs. Mwesige Geofrey and Another, Criminal Appeal No. 355 of 2014;*
- *Law and Practice of Income Tax by Kanga, Palkhivala and Vyas, Volume 1, Ninth Edition;*
- *Kenya Revenue Authority Employer's Tax Guide on Pay as You Earn.*

Court of Appeal of Tanzania
at Dodoma
Civil Appeal No. 167 of 2019

Atlas Copco Tanzania Limited
versus
Commissioner General Tanzania Revenue Authority

17th June, 2020

Ndika, J.A,

Question of Law:	*What is a question of law?*
Practice and Procedure:	*What should be contained in grounds of appeal for a tax appeal from the Tax Revenue Appeals Tribunal to the Court of Appeal?*
Jurisdiction:	*Whether Court of Appeal has jurisdiction to entertain factual matters in relation to tax appeals.*

Statutory Provisions Referred to:

Section 25(2) of the Tax Revenue Appeals Act, Cap. 408 [R.E 2019]

Rule 93 (1) of the Court of Appeal Rules, 2009

Facts of the Case:

The Appellant is a company incorporated in Tanzania whose principal activity is the supply of generators in Tanzania. The Appellant is part of Atlas Copco Group, a conglomerate of multinational companies headquartered in Sweden. The Appellant sold generators as an agent of its sister companies which had no presence in Tanzania and earned commission from the sales.

The Appellant posted in its sales ledgers commission income amounting to TZS 134,413,682,281.00 for the years of income 2007 and 2008 but did not file VAT returns for the respective years. Through the VAT returns filed in 2009, the Appellant then accounted for VAT on the commission income for the years of income 2007 and 2008 amounting to TZS 5,692,574,000.00. This amount was much smaller than the sum of TZS 13,413,682,281.00 originally booked in the sales ledger for the two accounting years. The Appellant reduced the amount on ground that there was an overstatement of the commission by TZS 7,721,108,281.00 which was corrected through an accounting reversal based on ordinary accounting practices. The Respondent disputed the alleged overstatement and reversal and issued a Notice of Additional Assessment on VAT amounting to TZS 2,118,115,834.00.

The Appellant unsuccessfully objected the assessment. Further, the Appellant appealed to the Board and the Tribunal which ruled in favour of the Respondent on the grounds

that: one, the Appellant failed to provide evidence that the commission income was properly reversed as the law required; two, there was equally no evidence of overstatement of commission income or how the figure was arrived at; and three, there was no convincing evidence that the alleged reversal was a result of adjustment intended to comply with the Appellant's transfer pricing policy.

The Appellant preferred this appeal. Before hearing of the present appeal, the Respondent raised a preliminary objection on point of law that the appeal is based upon matters of facts in contravention of section 25 (2) of the Tax Revenue Appeals Act, Cap. 408 R.E 2019.

Issues:

i. What amounts to question of law?

ii. What should be contained in grounds of appeal in a tax appeal from the Tax Revenue Appeals Tribunal to the Court of Appeal?

iii. Whether the Court of Appeal has jurisdiction to entertain factual matters in relation to tax appeals.

Held:

i. For purpose of *Section 25 (2) of the Tax Revenue Appeals Act,* a question of law means any of the following: first, an issue on the interpretation of the constitution, a statute, subsidiary legislation or any legal doctrine on tax revenue administration, second, a question on the application by the Tribunal of a provision of the Constitution, a statute, subsidiary legislation or any legal doctrine to the evidence on record; Finally, a question on a conclusion arrived at by the Tribunal where there is failure to evaluate the evidence or if there is no evidence to support it or that it is so perverse or so illegal that no reasonable tribunal would arrive at it.

ii. In so far as tax appeals to the Court are concerned, an intending appellant must specify the grounds of law upon which the decision appealed against is objected. Further, the Appellant must specify the points of law which are alleged to have been wrongly decided, in other words, matters of law must be evident on the face of the Memorandum of Appeal.

iii. The Court of Appeal has no jurisdiction to entertain factual matters in relation to tax appeals in terms of *section 25 (2) of the Tax Revenue Appeals Act* which confines appeals to the Court of Appeal only on matters involving questions of law.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Meenakshi Mills, Madurai vs. The Commissioner of Income Tax, Madras (1957) AIR 49, 1956 SCR 691*
- *Gatirau Peter Munya vs. Dickson Mwenda Kithinji & Three Others [2014] eKLR*
- *Bulyanhulu Gold Mine Limited vs. Commissioner General, Tanzania Revenue Authority, Consolidated Civil Appeals No. 89 and 90 of 2015 (unreported)*
- *Mbeya Cement Company Limited vs. Commissioner General, Tanzania Revenue Authority, Civil Appeal No. 160 of 2017 (unreported)*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Reference No. 21 of 2017

Karibu Textile Mills Limited
versus
Commissioner General Tanzania Revenue Authority

10th June, 2021

Ndika, J.A,

Practice and Procedure: *Whether Court's refusal to grant extension of time for Applicant's failure to account for each and every day of delay is legally justified.*

Statutory Provisions Referred to:

Rule 10, 62 (1)(b) of the Court of Appeal Rules, 2009

Facts of the Case:

The Applicant is a company incorporated in Tanzania whose principal activities is apparel manufacturing. The Applicant lost her appeal before the Tribunal in Tax Appeal No. 12 of 2010. Aggrieved, the Applicant instituted an appeal to the Court of Appeal. While the said appeal was pending the Court of Appeal ruled in Midcom Tanzania Limited vs. Commissioner General (TRA), Civil Appeal No. 11 of 2011 (unreported), that pursuant to Rule 21 of the Tax Revenue Appeals Rules, 2001, the proceedings, decisions and drawn orders of the Tribunal would only be valid if signed and certified by the Chairman or Vice chairman and all members who presided over the matter. As the applicant's appeal suffered these deficiencies, the Applicant withdrew it on 28th May, 2015.

The Applicant then applied for duly signed and certified papers from the Tribunal. The Applicant also sought and obtained extension of time to lodge a fresh notice of appeal. Which was lodged on 25th April, 2016. While waiting to be supplied with properly signed and certified decrees by the Board and the Tribunal, the Court of Appeal handed down yet another ruling in G.S Contractors Limited vs. Commissioner General (TRA), Civil Appeal No. 80 of 2015 ("G.S Contractors I"), which ruled that an appeal to it from the Tribunal was a third appeal and thus it required a certificate on a point or points of law by the Tribunal. To comply with this decision, the Applicant sought and obtained a certificate from the Tribunal on 31st May, 2016.

"G.S Contractors I" was varied upon review in G.S Contractors Limited vs. Commissioner General (TRA), Civil Application No. 155 of 2016 ("G.S Contractors II") as the Court held that appeals from the Tribunal are not third appeals but second appeals lying to the Court without any certificate on a point or points of law.

Following a ruling delivered by the Court on 16th September, 2016 vide African Barrick Gold Mine PLC vs. Commissioner General (TRA), Civil Appeal No. 77 of 2016 (unreported), the Applicant also discovered that an omission to include in the record of appeal documents enumerated under Rule 96 of the Rules would make the record incomplete, rendering the appeal incompetent. This compelled the Applicant, again, to apply for certified opinions of individual members of the Board and Tribunal as well as certified copies of exhibits tendered at the Board. The Applicant was supplied with a copy of the decree duly signed by members of the Board on 22nd March 2017 and with certified exhibits on 27th March, 2017.

Although at that point the Applicant had a complete set of the required documents for appealing, she was already out of time, hence the application before the learned single Justice of the Court for extension of time to institute the intended appeal. The Application was dismissed by the Court on ground that the Applicant failed to account for thirty days between receipt of requisite documents for purpose of the appeal on 27th March, 2017 and 27th April, 2017 when the application was actually filed.

Following the dismissal, the Applicant preferred the present reference before three justices of appeal seeking the same order, that is, the Court be pleased to extend time within which the Applicant can lodge a memorandum and record of appeal so as to institute appeal against the judgment and decree of the Tribunal in Tax Appeal No. 12 of 2010.

Issue:

i. Whether Court's refusal to grant extension of time for Applicant's failure to account for each and every day of delay is legally justified.

Held:

i. An Applicant for enlargement of time under Rule 10 must account for each day of the delay involved so as to allow the Court to determine the degree of the delay involved, the party's diligence in the pursuit of the matter, the soundness of the reason for the delay as well as whether the Applicant acted expeditiously. Since the Applicant failed to account for each day of the delay involved from 27th March, 2017 until when the application for extension of time was filed, the single justice of appeal was justified to refuse the application for extension of time.

Conclusion:

Reference dismissed with costs.

Cases Referred to:

- *Mbogo and Another vs. Shah [1968] EA 93;*
- *Arjun Singh vs. Mohindra Kumar and Others [1964] 5 SCR 946; [1964] AIR 993*

- *Dar es Salaam City Council vs. Jayantilal P. Rajani, Civil Application No. 27 of 1987 (unreported);*
- *Tanga Cement Company Limited vs. Jumanne D. Masangwa and Amos A. Mwalwanda, Civil Application No. 6 of 2001 (unreported);*
- *Amada Batenga vs. Francis Kataya, Civil Reference No. 1 of 2006 (unreported);*
- *Mexon Energy Limited vs. Mogas Tanzania Limited, Civil Application No. 264/16 of 2017 (unreported);*
- *Mgombaeka Investment Company Limited & Two Others vs. DCB Commercial Bank PLC, Civil Application No. 500/16 of 2016 (unreported);*
- *Vodacom Foundation vs. Commissioner General (TRA), Civil Application No. 300/17 of 2016 (unreported);*
- *Mwita Mataluma Ibaso vs. Republic, Criminal Application No. 6 of 2013 (unreported);*
- *Bariki Israel vs. Republic, Criminal Application No. 4 of 2011 (unreported);*
- *Sebastian Ndaula v. Grace Rwamafa (Legal Personal Representative of Joshwa Rwamafa), Civil Application No. 4 of 2014 (unreported);*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 11 of 2020

Commissioner General Tanzania Revenue Authority
versus
African Barrick Gold PLC

17th March, 2022

Mugasha, J.A,

Jurisdiction: *Whether the Board has jurisdiction to entertain an appeal emanating from Appellant's Notice on Existence of Liability to Pay Tax.*

Tax Procedure: *What is the proper procedure to be followed by a taxpayer who is aggrieved with a Notice of Liability to pay Tax?*

Statutory Provisions Referred to:

Section 35 of the Income Tax Act [CAP 332 R.E. 2002]

Section 6 of the Tanzania Revenue Authority Act, Cap. 399 [R.E 2019]

Sections 12, 13, 14(2) and 16 (1) & (2) of the Tax Revenue Appeals Act, Cap. 408.

Facts of the Case:

The Respondent is a company incorporated in the United Kingdom (UK) and registered in Tanzania to carry on mining and exploration business through her subsidiaries including Nyanzaga Exploration Company Limited which operates the Nyanzaga Gold Exploration (Nyanzaga Project) located in Sengerema District, Mwanza. The project was initially jointly owned by Tusker Gold Limited incorporated in Australia through her subsidiary company named Sub-Sahara Resources Limited registered in Tanzania on one hand, and the Respondent through Barrick Exploration African Limited, a company registered in Tanzania on the other hand. Tusker Gold Limited owned 49% interest, whereas, the Respondent owned the remaining 51% interest in the in the Nyanzaga Project.

In 2010, the Respondent through her subsidiary company registered in UK named BUK Holdco Limited acquired 49% interest owned by Tusker Gold Limited on Australian Stock Exchange under a compulsory acquisition scheme. Following the acquisition, the Nyanzaga Project became wholly owned by the Respondent.

The Appellant notified the Respondent that the transaction involved acquisition of interest in Nyanzaga Project located in Tanzania and it attracted tax in Tanzania. The Respondent disputed the tax liability on the ground that, the share sale transaction was between the companies registered outside the United Republic of Tanzania. Thus, the

Appellant invoked the provisions of section 35 of the Income Tax Act [CAP 332 R.E. 2002] and notified the respondent that, the share sale transaction was a tax avoidance arrangement and required her to settle the unpaid tax immediately upon receipt of the notice.

The Respondent appealed to the Board. The Appellant raised a notice of preliminary objection premised on one ground that, the appeal was bad in law for being instituted prematurely before issuance of a Tax Assessment. The Board ruled that the notice of the Appellant was appealable since it was couched in a manner constituting an assessment and imposed tax liability on the Respondent. Further, since the share sale transaction took place outside Tanzania involving two foreign companies registered abroad, it was not subject to tax under the laws of Tanzania.

The appellant unsuccessfully appealed to the Tribunal which sustained the decision of the Board hence the present appeal.

Issues:

i. Whether the Board has jurisdiction to entertain an appeal emanating from Appellant's Notice on Existence of Liability to pay Tax.

ii. What is the proper procedure to be followed by a taxpayer who is aggrieved with a Notice of Liability to pay Tax?

Held:

i. The Board has no jurisdiction to entertain an appeal emanating from a Notice on Existence of Liability to pay Tax as the same is not appealable to the Board in terms of section 14 (2) of the Tax Revenue Appeals Act, Cap.408.

ii. A taxpayer who is aggrieved by a Notice of existence of liability to pay tax ought to approach the Board by way of reference as stated under the provisions of section 14 (2) of the Tax Revenue Appeals Act, Cap. 408.

Conclusion:

Appeal allowed with costs.

Cases and Books Referred to:

- *Commissioner General Tanzania Revenue Authority vs. JSC Atomredmetzoloto, Consolidated Civil Appeals No. 78 & 79 of 2018, (Unreported);*
- *Richard Julius Rukambura vs. Issack Ntwa Mwakajila and Another, Civil Application No. 3 of 2004 (unreported);*
- *Tanzania Revenue Authority vs. Tango Transport Company Ltd, Civil Appeal No. 84 of 2009 (unreported);*

- *Fanuel Mantiri Ng'unda vs. Herman Mantiri Ng'unda and 20 Others, Civil Appeal No. 8 of 1995 (unreported).*
- ***Introduction to Interpretation of Statutes**, Avtar Singh and Harpreet Kaur, 4th Edition.*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 109 of 2020

National Bank of Commerce Limited
versus
Commissioner General Tanzania Revenue Authority

24th March, 2022
Levira, J.A,

Jurisdiction: *Whether the Tribunal as an Appellate Court can step into the shoes of the Board and determine undecided issues raised before the Board.*

Practice and Procedure: *Whether failure by the Tribunal to require further clarification from the parties on undecided issues raised before the Board amounts to denial of a right to be heard.*

Statutory Provisions Referred to:

Section 6(1)(b), 69(i)(i) and 83(1)(b) of Income Tax Act, 2004.
Article 13(6)(a) of Constitution of the United Republic of Tanzania of Cap. 2

Facts of the Case:

The Appellant is a company incorporated in Tanzania. The principal business of the Appellant is provision of banking services. In 2012, the Respondent conducted tax audit on the Appellant's tax affairs. The audit revealed that the Appellant made certain payments to non-resident persons in respect of services supplied to her as well as on rentals on various lease agreements. The Respondent served the Appellant with Certificates demanding Withholding Taxes on the said payments and rentals.

The Appellant unsuccessfully objected the demand on the grounds that the payments made for the services performed outside Tanzania by non-residents are not subject to withholding tax. Also, the Respondent did not take into consideration withholding tax remittances on rental payments when making withholding tax demand.

The Appellant appealed to the Board which partly allowed the appeal by ordering the parties to reconcile accounts; specifically, withholding tax remittances on rental payments allegedly made by the Appellant. Further, the Appellant appealed to the Tribunal which discovered that the Board did not make specific findings on the two issues raised by the Appellant before the Board. Based on the available evidence and submissions presented before the Board, the Tribunal decided to step into the shoes of the Board and determine the undecided issues together with other grounds of appeal. However, the Tribunal dismissed the appeal hence the instant appeal.

Issues:

i. Whether the Tribunal as an Appellate Court can step into the shoes of the Board and determine undecided issues raised before the Board;

ii. Whether failure by the Tribunal to require further clarification from the parties on undecided issues raised before the Board amounts to denial of a right to be heard.

Held:

i. The Tribunal as an Appellate Court can step into the shoes of the Board and determine undecided issues raised before the Board. among the grounds of appeal presented before the Tribunal was that: *"The Board erred in law for failure to properly determine the issues before it.* "Constructively, the appellant was inviting the Tribunal to step into the shoes of the Board and determine those issues, a task which was correctly performed by the Tribunal.

ii. The decision of the Tribunal was based on materials which were presented by the parties to answer all the three issues which were raised before the Board. In the circumstances, the Appellant cannot claim that it was not accorded the right to be heard.

Conclusion:

Appeal dismissed with costs.

Cases Referred to;

- *Hassan Mzee Mfaume vs. Republic [1981] TLR 167*
- *The Registered Trustees of Joy in the Harvest vs. Hamza K. Sungura, Civil Appeal No. 149 of 2017 (unreported)*
- *Tullow Tanzania BV. vs. Commissioner General (TRA), Civil Appeal No. 24 of 2018 (unreported)*

Court of Appeal of Tanzania
at Dodoma
Civil Appeal No. 251 of 2018

National Bank of Commerce Limited
versus
Commissioner General Tanzania Revenue Authority
16th June, 2020
Mugasha, J.A,

Income Tax: *Whether an approval of impaired loan losses by the Bank of Tanzania is the only evidence of bad debts claims qualifying deduction in terms of section 39 (d) of the ITA, 2004.*

Income Tax: *Whether a financial institution can deduct impaired loan losses prior to proving that it has in vain taken recovery measures in accordance with section 39 (d) of ITA.*

Doctrine of Precedent: *Whether the Court can depart from its previous decisions in the cases of National Bank of Commerce vs. Commissioner General-TRA, Civil Appeal No. 52 of 2018 and Access Bank Tanzania Limited vs Commissioner General-TRA, Civil Appeal No. 314 of 2017.*

Statutory Provisions Referred to:

Article 138(1) of Constitution of the United Republic of Tanzania of Cap. 2
Section 18(b), 25(5) and 39(d) of Income Tax Act, 2004 (ITA)

Facts of the Case:

The Appellant is a company incorporated in Tanzania. The principal business of the Appellant is provision of banking services. Between 2012 and 2013, the Respondent, conducted tax audit on the appellant's tax affairs covering the years of income 2008 through 2010. At the conclusion of the audit, the Respondent served the Appellant with adjusted assessments for the respective years and disallowed among others, impairment of loan losses and bad debt claims written off.

The Appellant unsuccessfully objected the assessment whereas the Respondent maintained his stance to disallow the deduction on the ground that the Appellant failed to exercise laid down legal requirements which include taking recovery measures and obtaining Board of Directors Approval before writing the debt off as bad.

Further, the Appellant appealed to the Board and the Tribunal which ruled in favour of the Respondent hence the present appeal.

Issues:

i. Whether an approval of impaired loan losses by the Bank of Tanzania is the only evidence of bad debts claims qualifying deduction in terms of section 39 (d) of the ITA, 2004.

ii. Whether a financial institution can deduct impaired loan losses prior to proving that it has in vain taken recovery measures in accordance with section 39 (d) of ITA.

iii. Whether the Court can depart from its previous decisions in the cases of *National Bank of Commerce vs. Commissioner General-TRA, Civil Appeal No. 52 of 2018* and *Access Bank Tanzania Limited vs Commissioner General-TRA, Civil Appeal No. 314 of 2017.*

Held:

i. The Approval of impaired loan losses by the Bank of Tanzania (BOT) is not the only evidence of bad debts claims qualifying deduction in terms of section 39 (d) of the ITA. The Respondent still retains powers to examine the justification for provision of impaired loan losses and make his own decision.

ii. A financial institution cannot deduct impaired loan losses prior to proving that it has in vain taken recovery measures in accordance with section 39 (d) of ITA. Further, it must be established that, recovery measures were taken but the debt claim is absolutely uncollectible and finally written off from the books of accounts as prescribed under Sections 18 (b), 25 (5) and 39 (d) of the ITA.

iii. The Court cannot depart from its previous decisions if they are still good law. The cases of *National Bank of Commerce vs. Commissioner General-TRA, Civil Appeal No. 52 of 2018* and *Access Bank Tanzania Limited vs. Commissioner General-TRA, Civil Appeal No. 314 of 2017* are still good law having interpreted the ITA, 2004 on conditions warranting allowable deductions on loan impairment losses or what constitutes bad debt claims.

Cases Referred to:

- *Tullow Tanzania BV. vs. Commissioner General (TRA), Civil Appeal No. 146 of 2015 (Unreported)*
- *Barclays Bank Limited vs. Commissioner of Income Tax, Tax Appeal No. 3 of 2011(Unreported)*
- *KCB Bank Tanzania Limited vs. The Commissioner General Tanzania Revenue Authority, Civil Appeal No. 19 of 2018 (Unreported)*
- *National Bank of Commerce Limited vs. Commisioner General-TRA Civil Appeals No. 52 of 2018 (Unreported)*
- *Access Bank Tanzania Limited vs Commisioner General-TRA, Civil Appeals 314 of 2017 (Unreported)*

Court of Appeal of Tanzania
at Dodoma
Civil Appeal No. 307 of 2020

Shoprite Checkers (T) Limited
versus
Commissioner General Tanzania Revenue Authority
29th October, 2021
Maige, J.A,

Burden of Proof: *Whether in imposing AMT the Respondent is required by the law to adduce evidence to show that loss was attributed to tax incentives or otherwise.*

Alternative Minimum Tax: *Whether unrelieved loss in the years of income 2012 and 2013 was attributable to tax incentive hence subject to AMT.*

Statutory Provisions Referred to:

Sections 4(1) (a) and 19(1)(a) and (b) of Income Tax Act, 2004 as amended by Finance Act No. 13 of 2008 and Finance Act No. 8 of 2012 (ITA)
Section 18(2)(b) and 25(2) of Tax Revenue Appeals Act Chapter 408. (TRAA)
Section 17 of the Tanzania Investment Act, 1997

Facts of the Case:

The Appellant is a company incorporated in Tanzania operating a chain of 2 retail stores in Arusha and Dar es Salaam. The Appellant is also a strategic investor in possession of a Certificate of Incentive issued by the Tanzania Investment Centre (the TIC) on 24th May, 2001. The Appellant enjoyed special incentives on import duties, withholding taxes and eligibility of capital allowances. The Appellant though utilized the tax incentives in the initial two years of investment, she did not, throughout the period of her operation, declare any profit. As such, the Appellant had been a loss-making business from her inception to the closure of her business.

In 2014, the Respondent conducted a tax audit in respect of the Appellant's tax affairs for the years of income 2012 and 2013. The Respondent served the Appellant with tax assessments subjecting the Appellant to Alternative Minimum Tax (AMT) at the rate of 0.3% on her turnovers for the respective years of income. The Appellant unsuccessfully objected the assessments on the ground that, her perpetual unrelieved loss in the respective years of income was not attributable to tax incentive but normal operational loss.

The Appellant appealed to the Board and the Tribunal which ruled in favour of the Respondent on the ground that, the appellant did not adduce any evidence demarcating between loss attributable to tax incentives or not before July 2012, there is no way that

the Respondent could exonerate the Appellant from the disputed tax liability, hence the instant appeal.

Issues:

i. Whether in imposing AMT the Respondent is required by the law to adduce evidence to show that loss was attributed to tax incentives or otherwise.

ii. Whether unrelieved loss in the years of income 2012 and 2013 was attributable to tax incentive hence subject to AMT.

Held:

i. In imposing AMT the Respondent is not required by the law to adduce evidence to show that loss was attributed to tax incentives. This is because in accordance with *Section 18(2)(b)* of the TRAA, the burden of proof in tax matters lies on the taxpayer, in this case, the Appellant.

ii. Considering the fact that the unrelieved loss was perpetual from the inception to the closure of the Appellant's business, evidence of non-use of the tax incentive or payment of the relevant taxes for the period of 2012 and 2013, was inevitable in drawing a line of demarcation between loss attributable to the incentives and that attributable to other factors. Since the Appellant failed to provide evidence showing such demarcation, unrelieved loss in the years of income 2012 and 2013 was attributable to tax incentive hence subject to AMT

Conclusion:

The Appeal was dismissed with costs.

Cases Referred to;

- *Insiginia Limited vs. The Commissioner General, Tanzania Revenue Authority, Civil Appeal No. 14 of 2007 (unreported*)
- *Bulyanhulu Gold Mine Limited vs. Commissioner General, Tanzania Revenue Authority, Consolidated Civil Appeals Nos. 89 16 and 90 of 2015 (unreported)*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Appeal No. 168 of 2022

National Microfinance Bank Limited
versus
Commissioner General Tanzania Revenue Authority
01st July, 2019

Mussa, J.A,

Withholding Tax: *Whether the Software Licence Agreement between the Appellant and NSP amounts to a lease agreement and the payments thereto constitutes royalty hence subject to withholding tax;*

Withholding Tax: *Whether the payments made by the Appellant to NSP in respect Software Licence Agreement have source in the United Republic of Tanzania hence subject to withholding tax.*

Statutory Provisions Referred to:

Section 3, 6 (1)(b), 69 (i)(i) and 83 (1) of the Income Tax Act, 2004 (ITA).

Facts of the Case:

The Appellant is a company incorporated in Tanzania. The principal business of the Appellant is provision of banking services. In 2006, through Software the Licence Agreement, the Appellant made two payments to a foreign company namely, Neptune Software PLC (NSP). The payments comprised the licensor investment costs of USD 165,117.00 and a lump sum annual licence fee of USD 29,716.20.

In 2009, the Respondent conducted tax audit on the Appellant's tax affairs for the years of income 2004 through 2007. Upon completion of the audit, the Respondent served the Appellant with a withholding tax certificate demanding the sum of TZS 680,042,401.00 arising from royalty and service fees the Appellant made to NSP for licence fees in respect of software and related IT services.

The Appellant unsuccessfully objected the demand. The Appellant appealed to the Board which ruled in her favour on the grounds that payments made in relation to software do not represent royalty thus not subject to withholding tax. Also, payments made in relation to IT services were not subject to withholding tax because the services were performed outside Tanzania. The Respondent appealed to the Tribunal which overturned the decision of the Board hence the instant appeal.

Issues:

i. Whether the Software Licence Agreement between the Appellant and NSP amounts to a lease agreement and the payments thereto constitutes royalty hence subject to withholding tax;

ii. Whether the payments made by the Appellant to NSP in respect Software Licence Agreement have source in the United Republic of Tanzania hence subject to withholding tax.

Held:

i. The Agreement between the Appellant and NSP was a lease agreement and the payments made thereto were consideration by the Appellant for making use of the computer software, as such, they constituted royalty subject to withholding tax under section 83 (1) of the ITA.

ii. Since the services of which the payments were made, were consumed or utilized by the Appellant in the United Republic of Tanzania for the purposes of earning income in the United Republic of Tanzania, then the payments have source in the United Republic of Tanzania irrespective of the place where the services were performed hence subject to withholding tax.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Commissioner General (TRA) vs. Pan African Energy (T) Limited, Civil Appeal No. 146 of 2015 (Unreported).*
- *Tullow Tanzania BV vs. The Commissioner General (TRA), Civil Appeal No. 24 of 2018 (Unreported).*
- *Shell Deep Water Tanzania BV vs. The Commissioner General (TRA), Civil Appeal No. 123 of 2018 (Unreported).*
- *Tata Consultancy Services vs. The State of Andra Pradesh, Civil Appeal No. 2582 of 1998.*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Application No. 245/20 of 2021

Dianarose Spareparts Limited
versus
Commissioner General, Tanzania Revenue Authority

19th December, 2022

Kente, J.A,

Practice and Procedure: *Whether sickness can be considered to be a good cause for extension of time.*

Practice and Procedure: *Whether where an affidavit mentions another person on a material point that other person should also take an affidavit.*

Statutory Provisions Referred to:

Rule 10, 83 (1), 84 (1) and 91 (1) of the Court of Appeal Rules, 2009.

Facts of the Case:

The Applicant is a Company duly incorporated under the laws of the United Republic of Tanzania, dealing with transportation of transit goods. In 2016, the Applicant entered into a contract with F. W. Wambua a Kenyan national whereby the applicant undertook to carry assorted beverages which were on transit from South Africa to Kenya.

The Respondent conducted an investigation which revealed that, the said goods were illegally diverted into the Tanzanian local market which amounts to an offence. Upon mutual agreement, the said offence was compounded and the Applicant was ordered to pay the related duties and penalty and its business licence was suspended.

The Applicant who had yet to come to terms with compounding order, appealed to the Board and the Tribunal which struck out the appeal on the ground that the Board and Tribunal had no jurisdiction to determine the appeal.

Further, the Applicant appealed to the Court of Appeal where on 9th April, 2021 she lodged a notice of appeal. By virtue of Rule 91 (1), the Applicant was supposed to lodge the memorandum and record of appeal within sixty days but she could not do so hence, the present application for extension of time.

Issues:

i. Whether sickness can be considered to be a good cause for extension of time.

ii. Whether where an affidavit mentions another person on a material point, that other person should also take an affidavit.

Held:

i. Good cause depends on facts and circumstances of each case and each case must be approached from its own facts. Therefore, sickness can be considered to be a good cause for extension of time depending on what is furnished by the Applicant and gauged from a legal standpoint.

ii. The stance of the law is that, where an affidavit mentions another person on a material point, that other person should also take an affidavit. A person cannot purport to depose on another person's alleged illness and recovery without any supporting evidence by way of deposition from that person.

Conclusion:

Application dismissed with costs.

Cases Referred to:

- *Seif Store Limited v. Zulfikar H. Karim, Civil Application No. 181 of 2013 (Unreported).*
- *Mantrac Tanzania Limited v. Raymond Costa, Civil Application No. 11 of 2010 (Unreported).*
- *National Bank of Commerce v. Alfred S. Mwita, Civil Application No. 226 of 2014) (Unreported).*
- *Benedict Kiwanga v. Principal Secretary Ministry of Health, Civil Application No. 31 of 2000 (unreported).*
- *National Bank of Commerce Limited v. Superdoll Trailler Manufacturing Company Limited, Civil Application No. 13 of 2002.*
- *Franconia Investments Limited v. TIB Development Bank Ltd Civil Application No. 270/1 of 2020 (unreported).*
- *Geita Gold Mining Limited v. Twalib Ally Civil Application No. 14 of 2012 (unreported).*
- *P.B. Patel v. The Star Mineral Water and Ice Factory (Uganda) Ltd (1961) E.A. 454.*

Court of Appeal of Tanzania
at Dar es Salaam
Civil Application No. 350 of 2019

African Barrick Gold Plc
versus
Commissioner General, Tanzania Revenue Authority
29th July, 2020

Kerefu, J.A,

Practice and Procedure: *Whether the decision of the Honourable Court to dismiss the application for leave to adduce additional evidence on the ground that it was predicated under Rule 4 (2) (a) instead of Rule 36 (1) (b) of the Rules has serious manifest errors on the face of the record resulting in miscarriage of justice.*

Practice and Procedure: *Whether the applicant has been wrongly deprived of an opportunity to be heard when the Honourable Court ruled that, the Applicant's Application for leave to adduce additional evidence which was before it, be made at the hearing of the pending Civil Appeal No. 144 of 2018 and proceeded to dismiss the application (not struck out) which effectively means it will no longer be open to the Applicant to go back to the same Court and revive the matter which is already dismissed.*

Statutory Provisions Referred to:

Section 4 (4) of the Appellate Jurisdiction Act, Cap. 141.
Rules 4 (2)(a), 36 (1)(b) and 66 (1)(a) and (b) of the Tanzania Court of Appeal Rules, 2009 (Rules).

Facts of the Case:

The Applicant is a company incorporated in the United Kingdom with its headquarters in London. The Applicant was dissatisfied with the decision of the Tax Revenue Appeals Tribunal dated 9th July, 2015 in Tax Appeals No. 128 of 2013 hence she appealed to the Court of Appeal in Civil Appeal No. 144 of 2018. Further, the Applicant lodged Civil Application No. 177/20 of 2019 under Rule 4 (2) (a) of the Rules seeking for a leave to adduce additional evidence in Civil Appeal No. 144 of 2018.

During hearing of the application, the Court invited the parties to address it on the propriety or otherwise of the application after noting that, it was not predicated under Rule 36 (1)(b) of the Rules which is the specific Rule regulating the modality of parties applying to adduce additional evidence in respect of an appeal pending before the Court.

However, the said application was dismissed on the ground that, the proper provision for the Applicant to address the Court on the question of adducing additional evidence is

Rule 36 (1) (b) of the Rules which can be invoked at the hearing of the pending Civil Appeal No. 144 of 2018. After the dismissal, the Applicant lodged the present application for review.

Issues:

i. Whether the decision of the Honourable Court to dismiss the application for leave to adduce additional evidence on the ground that it was predicated under Rule 4 (2) (a) instead of Rule 36 (1) (b) of the Rules has serious manifest errors on the face of the record resulting in miscarriage of justice;

ii. Whether the applicant has been wrongly deprived of an opportunity to be heard when the Honourable Court ruled that, the Applicant's Application for leave to adduce additional evidence which was before it, be made at the hearing of the pending Civil Appeal No. 144 of 2018 and proceeded to dismiss the application (not struck out) which effectively means it will no longer be open to the Applicant to go back to the same Court and revive the matter which is already dismissed.

Held:

i. The Applicant has failed to disclose anything akin to a manifest error on the face of record resulting in the miscarriage of justice which would have required the court to grant this application for review. The term an 'error on the face of record' signifies an error which is evident from the record of the case and it does not require detailed examination, scrutiny and clarification either of facts or legal exposition. Thus, if an error is not self-evident and its detection requires a long debate and process of reasoning, it cannot be treated as an error on the face of record.

ii. The Court did not deny the Applicant's right to be heard as both parties were given ample time and opportunity to address the Court as to why Rule 36 (1) (b) was not applicable. The Court properly directed the Applicant to utilize her right at the hearing of the pending appeal, in terms of section 36 (1) (b) of the Rules, because it is for the Court, when hearing the appeal, to decide whether to allow the respective party who seeks to adduce additional evidence to either submit the application formally or informally.

Conclusion:

Application dismissed with costs.

Cases Referred to:

- *Joseph Ntongwisangu and Another v. The Principal Secretary Ministry of Finance and Another, Civil Reference No. 10 of 2005 (unreported).*
- *Emmanuel Luoga v. Republic, Criminal Appeal No. 281 of 2013 (unreported).*

- *Nguza Vikings @ Babu Seya and Another v. Republic, Criminal Appeal No. 5 of 2010 (unreported).*
- *Sheikh Issa Seif Gulu and 3 Others v. Rajabu Mangara and 10 Others, Civil Application No. 63 of 2007 (unreported)*
- *Chandrakant Joshubhai Patel v. Republic [2004] TLR 218.*

Court of Appeal of Tanzania
at Dodoma
Civil Appeal No. 255 of 2020

The Hellenic Foundation of Tanzania Ltd t/a St. Constantine's International School
versus
Commissioner General Tanzania Revenue Authority

4th November, 2021

Kairo, J.A

Pleadings: *Whether the Respondent's noting some of the facts in the Appellant's Statement of Appeal amounts to an admission that the Appellant is a charitable organization doing business for the public good and thus eligible for SDL exemption under section 19 (2) of the VETA Act.*

Skills & Development Levy: *Whether the Appellant has met the conditions under section 19 (2) of the VETA Act for SDL exemption as a charitable organization hence not liable for the SDL assessed by the Respondent.*

Statutory Provisions Referred to:

Section 14(1), 19(1) and (2) of the Vocational Education and Training Act, Cap. 82 R.E. 2006 [as amended by the Finance Act, 2014] (the VETA Act)

Section 11 of the Tax Administration Act, 2015 (the TAA)

Facts of the Case:

The Appellant is a company incorporated in Tanzania engaged in provision of education services to the public. The Appellant operates nursery, primary and secondary schools in the name of St. Constantine's International School in Arusha. On 20th June, 2017, the Respondent served the Appellant with a letter indicating that the Appellant had defaulted in the payment of Skills and Development Levy (SDL) for years of income 2013 through 2017. The Respondent issued the Appellant Certificates of Assessment on SDL for the respective years of income.

The Appellant unsuccessfully objected the assessments to the Respondent. The Appellant appealed to the Board on the ground that she was exempted from paying the SDL. The Board ruled in favour of the Respondent on the reason that the Respondent conducted due diligence on the status of the Appellant and was satisfied that the Appellant did not qualify for exemption as a charitable organization under the provisions of Section 19 (2) of the VETA Act. Further, the Appellant appealed to the Tribunal which sustained the Board's decision hence the present appeal.

Issues:

i. Whether the Respondent's noting some of the facts in the Appellant's Statement of Appeal amounts to an admission that the Appellant is eligible for SDL exemption under section 19 (2) of the VETA Act;

ii. Whether the Appellant has met the conditions under section 19 (2) of the VETA Act for SDL exemption as a charitable organization hence not liable for the SDL assessed by the Respondent.

Held:

i. The Respondent's noting some of the facts in the Appellant's Statement of Appeal did not amount to an admission that the Appellant is eligible for SDL exemption under section 19 (2) of the VETA Act as the Respondent categorically pleaded that the Appellant was liable to pay SDL under paragraph 7 of her Reply to the Statement of Appeal which negated any impression that the respondent admitted the claimed exemption from SDL.

ii. Since the Appellant failed to furnish the Respondent with necessary documentation or other evidence to establish that it is a charitable organization providing education for the public good, the Appellant has failed to meet the conditions set out under section 19 (2) of the VETA Act to qualify for SDL exemption as a charitable organization and therefore the Respondent was correct to rule that the Appellant was liable for the assessed SDL.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Pauline Samson Ndawavya vs. Theresia Thomas Madaha, Civil Appeal No. 45 of 2017 (unreported)*
- *North Mara Gold Mine Limited vs. Commissioner General, TRA, Civil Appeal No. 78 of 2015 (unreported)*
- *Bulyanhulu Gold Mine Ltd vs. Commissioner General, TRA, Consolidated Civil Appeals Nos. 89 & 90 of 2015 (unreported)*

Court of Appeal of Tanzania
at Dodoma
Civil Appeal No. 21 of 2018

The School of St. Jude Limited
versus
Commissioner General Tanzania Revenue Authority
10th July, 2018

Mwarija, J.A,

Income Tax: *Whether provision of free education by the Appellant which is paid for by third parties on behalf of students from poor families leading to a surplus income in the Appellant's bank statement amounts to doing business with a view of deriving profit in terms of section 3, 8 (1)(2) and (3) read together with Paragraph 1(k) of the second schedule to the Income Tax Act, 2004.*

Statutory Provisions Referred to:

Sections 3, 8, 64 (8) and 131 read together with paragraph 1(k) of the Second Schedule to the Income Tax Act, 2004 (ITA)

Facts of the Case:

The Appellant is a company incorporated in Tanzania. The Appellant principal business is provision of free education services to students from poor families. On 23rd August, 2012, the Respondent served the Appellant with two Notices of Income Tax Assessments demanding payment of TZS 1,991,672,238.90 and TZS 2,251,655,919.90 derived from the Appellant's surplus income for the years of income 2009 and 2010, respectively.

The Appellant objected the two assessments on the ground that the company was not doing business or conducting either investment or employment and therefore did not have any taxable income. The Respondent maintained the position that the Appellant was doing business and therefore was liable to pay the assessed tax.

Further, the Appellant applied for a private ruling from the Respondent under the provisions of section 131 of ITA on the ground that the Appellant was a charitable organization. The Respondent refused the application contending that the Appellant did not meet the requirements of section 64 (8) of ITA so as to be recognized as a charitable organization for income tax purposes and proceeded to issue notices of confirmation of the assessments.

The Appellant appealed to the Board and the Tribunal which ruled in favour of the Respondent hence the present appeal.

Issue:

i. Whether provision of free education by the Appellant which is paid for by third parties on behalf of students from poor families leading to a surplus income in the Appellant's bank statement amounts to doing business with a view of deriving profit in terms of Section 3, 8 (1)(2) and (3) read together with Paragraph 1(k) of the second schedule to the Income Tax Act, 2004.

Held:

i. Provision of free education by the Appellant which is paid for by third parties through donations, gifts and gratuity, which qualify as income in terms of Section 8 (1) and (2)(f) of ITA, leading to a surplus income in the Appellant's bank statement amounts to doing business under Section 3 of ITA since the surplus income derived from donations, gifts and gratuity constitutes a profit derived from business and therefore chargeable to income tax.

Conclusion:

Appeal dismissed with costs.

Cases Referred to:

- *Ransom vs. Higgs (and Associated Appeals) HL 1974 and 50 TC*