IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: NDIKA, J.A., MWANDAMBO, J.A., And KAIRO, J.A.)

CIVIL APPEAL NO. 401 OF 2020

UNILEVER TEA TANZANIA LIMITED ..... APPELLANT

VERSUS

COMMISSIONER GENERAL,

TANZANIA REVENUE AUTHORITY (TRA) ..... RESPONDENT

(Appeal from the Judgment and Decree of the Tax Revenue Appeals Tribunal at Dar es Salaam)

(Mjemmas, J. - Chairman)

dated the 12th day of August, 2020
in
Tax Appeal No. 36 of 2018

.....

JUDGMENT OF THE COURT

26th October & 1st November, 2021

NDIKA, J.A.:

The appellant, Unilever Tea Tanzania Limited, challenges the judgment of the Tax Revenue Appeals Tribunal ("the Tribunal") dated 12th August, 2020 in Tax Appeal No. 36 of 2018 partly affirming the decision of the Tax Revenue Appeals Board ("the Board") in Consolidated Income Tax Appeals Nos. 22, 23 and 24 of 2014.

We begin with the facts of the case as succinctly summarized by the Tribunal. The appellant is a company incorporated in Tanzania, engaged in agricultural tea growing and production in Mufindi, Iringa. On diverse dates,

the appellant lodged her income tax returns for the years of income 2008, 2009 and 2010. Sometime in 2010, the respondent conducted an audit on the appellant's tax affairs to ascertain her tax compliance. The audit covered, among others, corporate tax for the respective years, which ended up with the respondent issuing notices of adjusted assessments for the aforesaid years of income.

Resenting the assessments, the appellant duly filed notices of objection for the respective years of income alleging that the respondent had wrongly disallowed certain costs incurred wholly and exclusively for the production of her income. It was further alleged that the assessments did not consider actual provisional tax paid and withholding tax remittance made by the appellant. In response to the objections and after several correspondences and meetings between the parties, the respondent issued amended assessments portraying a downward change in the amounts assessed. In particular, the respondent disallowed 50% of the management entertainment cost and rejected the appellant's claim that there was a double disallowance of the expense.

Still dissatisfied, the appellant lodged Income Tax Appeals Nos. 22, 23 and 24 of 2014 in the Board, which were consolidated and determined conjointly. In its decision dated 28th June, 2018, the Board partly allowed the

appeals. With regard to management entertainment cost, the Board ruled that the appellant failed to prove the alleged double disallowance reasoning that she did not present to the Board the respondent's computations to substantiate her claim.

Still aggrieved, the appellant appealed to the Tribunal on four grounds. As hinted earlier, the Tribunal partly allowed the appeal as it determined the first two grounds in the appellant's favour. In that regard, the Tribunal held that the Board erred in law in dealing with and determining a new issue raised by the respondent in the course of submissions but was not one of the issues framed for trial without hearing the appellant on it. The issue was whether certain expenditure items were wholly and exclusively used in the production of the appellant's income. In consequence, the Tribunal vacated the Board's finding against the appellant on that issue and ordered that the matter be remitted to the Board for it to hear both parties and determine the issue accordingly. So far as the other two grounds were concerned, the appeal was dismissed. Specifically on management entertainment cost, the Tribunal upheld the Board's finding that the appellant failed to demonstrate how the respondent computed allowable expenditure items improperly.

The appeal is predicated on two grounds questioning the Tribunal's appreciation and examination of the evidence on record as follows:

1. *That, on the evidence adduced before the Board, the Tribunal erred in law and in fact in holding that the Board was correct to hold that the appellant failed to prove double taxation/double adding back of the management fee.*
2. *That, the Tribunal erred in fact and law by holding that the appellant failed to demonstrate on how the respondent improperly computed the allowable expenditure because the appellant ought to have submitted computations from both parties.*

At the hearing of the appeal, Mr. Alan Nlawi Kileo, learned counsel, teamed up with Messrs. Wilson Kamugisha Mukebezi and Stephen Axwesso, learned advocates, to represent the appellant. The respondent had the services of Ms. Gloria Achimpota and Mr. Harold Gugami, learned Senior State Attorneys.

Addressing us on behalf of the appellant, Mr. Kileo fully adopted the written submissions lodged in support of the appeal proposing one main issue for determination: whether the Tribunal properly examined the evidence on record in holding that the Board was correct to find that the appellant failed to prove double taxation/disallowance of the management entertainment cost and to demonstrate how the respondent improperly computed allowable expenditure.

It was the appellant's contention that the Tribunal's examination of the evidence on record was erroneous and the conclusion it reached equally erroneous. Referring to the appellant's income tax returns and accompanying computations (Exhibit A-1), at pages 158 through 197 of the record of appeal, counsel submitted that the appellant had disallowed 50% of the management entertainment cost but the respondent further disallowed 50% of the cost despite agreeing that such cost was partly incurred for business purposes. It was, therefore, argued that the respondent's decision to disallow 50% of the management entertainment cost which had already been disallowed by 50% by the appellant amounted to double disallowance.

The appellant's counsel also made reference to the respondent's proposals on management entertainment cost and proposal to settle the objections (Exhibits A-4, A-5 and A-7). It was strongly contended that the said evidence pointed out that despite the respondent acknowledging that the appellant added back/disallowed 50% of the management entertainment cost, the respondent still disallowed 50% of the management entertainment cost, resulting in double disallowance which the Tribunal failed to appreciate. Moreover, it was argued that the respondent's tax computations were unnecessary to prove double disallowance whereas Exhibit A-7 (letters from the respondent to the appellant on the final determination of the objections)

clearly showed that the respondent disallowed 50% of the management entertainment cost despite the undisputed fact that the same amount had been added back/disallowed by the appellant in her tax computations.

The Tribunal was also faulted for endorsing the Board's finding that the appellant failed to demonstrate that the respondent improperly computed allowable expenditure by failing to produce before the Board the respondent's computations. The contention was that the law does not oblige the respondent to issue its computation after the final determination. That notwithstanding, it was claimed, the appellant demonstrated on the evidence on record that the respondent improperly computed allowable expenditure. In conclusion, the Court was urged, on the authority of **Deemay Daati & Two Others v. Republic**, Criminal Appeal No. 80 of 1994 (unreported), to re-appraise the evidence on record in view of the alleged misapprehension by the Tribunal of the substance, nature and quality of the evidence. Accordingly, the learned counsel implored us to allow the appeal with costs.

In rebuttal, Ms. Achimpota argued, based on the written submissions filed in opposition to the appeal, that the grounds of appeal raise mainly matters of fact, which the Court is precluded from dealing with by section 25 (2) of the TRAA.

It was Ms. Achimpota's contention that the appellant had the onus to prove, in terms of section 18 (2) (b) of the TRAA as interpreted in **Insignia Limited v. Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 14 of 2007 (unreported), that the impugned assessment was excessive or erroneous. She supported the concurrent findings of the Board and the Tribunal on the ground that the appellant failed to provide the respondent's tax computations as evidence to substantiate the alleged double taxation/disallowance of the management fee and improper computation of the allowable expenditure. It was her further argument that Exhibit A-1 was not sufficient and that the absence of the respondent's tax computations rendered the appellant's claims of double taxation of management entertainment cost and improper computation of allowable expenditure mere speculations.

As regards the substance and totality of Exhibits A-1 to A-7, it was contended that the exhibits did not prove the appellant's claims. While A-1 constituted the appellant's income tax returns and computations, Exhibits A-4, A-5 and A-7 could not resolve the dispute in the appellant's favour. On this basis, she urged us to reject the claim that the Tribunal's misapprehended the evidence on record and proceed to uphold its findings. Moreover, she submitted that **Deemay Daati** (*supra*), relied upon by the appellant, was

inapplicable to the appeal at hand as no misapprehension of the substance, nature and quality of the evidence on record by the Tribunal is discernible. Accordingly, the learned Senior State Attorney urged us to dismiss the appeal with costs.

In a brief rejoinder, Mr. Kileo referred us, once again, to Exhibit A-1, at page 231 of the record of appeal, that it was clear that the appellant had disallowed 50% of the management entertainment cost and that this strand of evidence served as sufficient proof. He made further reference to Exhibit A-7, which was the final determination by the respondent, showing a 50% disallowance of the management entertainment cost. He reiterated that the failure to attach the respondent's computations was inconsequential.

We have examined the record of appeal and considered the oral and written submissions for and against the appeal. At the outset, we agree with the parties that the crisp issue for our determination is whether the Tribunal properly examined the evidence on record in holding that the Board was correct to find that the appellant failed to prove the alleged double taxation/disallowance of the management entertainment cost and to demonstrate how the respondent improperly computed allowable expenditure.

To be resolved first is the disagreement between the learned counsel whether the appeal is purely predicated on matters of fact in contravention of section 25 (2) of the TRAA, which enacts that the right of appeal to the Court from the decision of the Tribunal lies on "matters involving questions of law only." In **Atlas Copco Tanzania Limited v. Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 167 of 2019 (unreported), the Court defined the phrase "question of law" for the purpose of section 25 (2) of the TRAA, to 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.**"* [Emphasis added]

See also **Insignia Limited** (*supra*); and **Kilombero Sugar Company Ltd. v. Commissioner General (TRA)**, Civil Appeal No. 261 of 2018 (both unreported).

As hinted earlier, the appellant's complaint in the two grounds of appeal is that the Tribunal's decision was based on a misapprehension of the evidence on record on the disallowance of the management entertainment cost and computation of allowable expenditure. Guided by **Atlas Copco** (*supra*), we are satisfied that the two grounds raise a question of law deserving the Court's attention and consideration.

The contest between the parties herein centres on the Tribunal's finding in its judgment, at page 317 of the record of appeal, after it had examined Exhibits A-1, A-4, A-5 and A-7. The conclusion reads thus:

> *"We have carefully analysed the exhibits quoted above but we have not been able to see how they prove that there was double addition. In those documents or exhibits the respondent kept on insisting that the disallowed 50% while the appellant kept on insisting that 50% had already been disallowed in 2008. We are, therefore, satisfied that the appellant failed to prove that there was double taxation/double adding back of the management fee. Issues (iii) and (iv) are therefore answered in the affirmative."*

The Tribunal came to the above conclusion after it had rejected the appellant's argument that the Board should have invoked its powers under

section 17 (2) of the TRAA and Rule 16 (10) of the Tax Revenue Appeals Board Rules, 2018 to call for the production of the respondent's calculation sheet in order for it to examine if the alleged double addition was proven. It was maintained that the appellant had the onus of establishing its case before the Board and that it was not the duty of the Board to assist her in doing so.

On our part, we examined the record of appeal and paid particular attention to Exhibits A-1, A-4, A-5 and A-7. It is evident that Exhibit A-1, at pages 172, 173, 182, 184 and 185 of the record of appeal, shows 50% disallowances of the management entertainment cost made by the appellant for the year of income 2008. We also examined Exhibit P.7, at pages 231 through 236. We noted, for instance, from the respondent's letter, at page 231 of the record, that the management entertainment cost amounting to TZS. 34,163,080.00 for the year of income 2008 was disallowed by 50%, which translated into TZS. 17,081,540.00. The letter states further that the determination of the appellant's objection *"was based on the attached income tax computation."* We wonder why the appellant did not produce the computations to rationalize its claim of double taxation as well as improper computation of allowable expenditure. Under the circumstances, we share the Tribunal's view that the claimed double taxation could not be proven before the Board without it having the benefit of examining the respondent's

tax computations rationalizing the disallowances. As held by the Board and the Tribunal and submitted by Ms. Achimpota, the appellant had the onus to establish its case and that she ought to have produced the aforesaid tax computations. In the premises, we are unpersuaded that the Tribunal misapprehended the evidence on record on the alleged improper computation of allowable expenditure. The two grounds of appeal fail.

In fine, we hold that the appeal is unmerited. We dismiss it with costs.

DATED at **DODOMA** this 30th day of October, 2021.

G. A. M. NDIKA
JUSTICE OF APPEAL

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

L. G. KAIRO
JUSTICE OF APPEAL

The Judgment delivered this 1st day of November, 2021 in the presence of Ms. Emma Lyamuya, learned counsel for the Appellant and also holding brief of Mr. Cherubin Chuwa, learned counsel for the Respondent, is hereby certified as true copy of the original.

THE COURT OF APPEAL OF TANZANIA

B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL