THE COMMISSIONER GENERAL TANZANIA REVENUE AUTHORITY v. SOFT TECH CONSULTANTS LIMITED

COURT OF APPEAL OF TANZANIA

AT MWANZA

(M. C. Levira, J.A., P. F. Kihwelo, J.A., and P. J. Ngwembe, J.A.)

CIVIL APPEAL NO. 153 OF 2025

(Appeal from the Judgment and Decree of the Tax Revenue Appeals Tribunal at Dar es Salaam by Herbert - Vice Chairperson dated 14th day of February, 2025 in Tax Appeal No. 41 of 2024)

Tax Practice and Procedure – Requirement for the Tribunal to record and give reasons when departing from members' opinions – whether failure to comply with ***section 20 of the Tax Revenue Appeals Act*** *renders the decision a nullity.*

Tax Practice and Procedure – Withholding tax on payments to non-resident service providers – applicability of section 83(1)(c)(i) of the Income Tax Act Vis-à-vis Double Taxation Agreements – whether such payments are taxable in Tanzania.

This appeal arises from the decision of the Tax Revenue Appeals Tribunal at Dar es Salaam (the Tribunal) in Tax Appeal No. 41 of 2024, delivered by Herbert- Vice Chairperson on 14th February 2025. In that appeal, the Tribunal reversed the decision of Tax Appeals Board (the Board) in Appeal No. 148 of 2022, which required the Respondent to withhold tax on service fee to non-resident service providers for the years of income 2016, 2017 and 2018 pursuant to section 83 (1) (c) (i) of the Income Tax Act, 2004 (ITA).

The Respondent, Soft Tech Consultants Limited, is a Tanzanian company engaged in IT services. The Appellant (TRA) conducted a tax audit and found that the Respondent had made payments to non-resident service providers (from India and South Africa) without withholding tax. Therefore, TRA assessed withholding tax under **section 83(1)(c)(i) of the Income Tax Act, 2004**. The Respondent objected to Tax Appeals Board relying on **Double Taxation Agreements (DTAs)**, arguing that such payments were not taxable in Tanzania. Tax Appeals Board ruled in favour of TRA, being dissatisfied with that decision, the Respondent then appealed to the Tax Revenue Appeals Tribunal, which reversed the Board's decision in favour of the Respondent. Dissatisfied, TRA appeals to the court of appeal.

Held:

(i) In terms of section 20 of the TRAA the tribunal was supposed to comply with two things; (i) to record the member's opinion in the Tribunal's decision and (ii) to give reasons for the disagreement with the opinion.

(ii) Non - compliance with the above two mandatory requirements of the law was a fatal defect with negative impact to the judgment of the Tribunal contrary to what the respondent would wish us find.

(iii) Apart from making the work and or analysis done and conclusions by members redundant, it affected the fairness of the decision-making process and the outcome thereof.

(iv) In the circumstances of the present matter, it is impossible to gauge the scope of Tribunal's deliberation of issues brought before it, the reasons for disagreeing with the members opinions vis-a-vis the reasons for the Vice Chairperson's decision.

(v) The judgment of the Tribunal is inappropriate for failure to comply with the mandatory requirements of section 20 of the TRAA.

(vi) The first ground of appeal was allowed. The Court quashed the judgment and set aside the order of the Tribunal.

(vii) The case file to be remitted back to the Tribunal for re-composition of a proper judgment as per the law by the same Vice Chairperson within 30 Days.

Statutory provisions referred to

(i) Section 20 of the TRAA.

(ii) Section 83 (1) (c) (i) of the ITA

Appellant (Commissioner General, TRA) Juliana Ezekiel, assisted by Hadija Senzia, Nyamkingira Mgune, Rashid Kiliza, and Catherine Mwanilwa.

Respondent (Soft Tech Consultants Limited), Shabani Ramadhani Mwaita Assisted by Esther Zachary Misso.