LEGAL UPDATE

FB ATTORNEYS

14 June 2019

Court of Appeal delivers first ever Judgment on waiver appeals

- **Court ruled that relevant provision to support appeals before Board is section 53(1) of TAA**
- **Held that right to appeal restricted to objection decisions only**
- **Court holds denial of waiver not objection decision, hence not appealable**
- **Appeal struck out, all proceedings at Tribunal and Board nullified**

Brief Background

The Appellant in Civil Appeal No 121 of 2018 at the Court of Appeal was issued with tax assessments by the Respondent (Commissioner General (CG), TRA). Subsequently, the Appellant wrote to the CG requesting for the granting of a full waiver on the mandatory one-third deposit requirement so that the objection filed against the assessments could be admitted and determined. The CG refused to grant the Appellant's request for full waiver on the ground that no good reasons had been advanced by the Appellant.

Aggrieved by this decision of the CG, the Appellant preferred an appeal to the Tax Revenue Appeals Board (the Board) whereas the Appellant was, again, aggrieved with the decision and subsequently appealed to the Tax Revenue Appeals Tribunal (the Tribunal). The Tribunal sided with the Board by granting only a partial waiver and the Appellant further appealed to the Court of Appeal of Tanzania (the Court).

Arguments of Parties

When the appeal came for hearing before the Court, a point of law was raised by the Court *suo motto* regarding the competence of the appeal before the Board and onwards. In justifying the competence of the appeal before the Board, the Appellant argued that based on section 53(1) of the Tax Administration Act 2015 (TAA), the denial of waiver is termed as 'other decisions' under the said provisions, hence appealable to the Board. The Respondent argued that the decision of the CG on waiver is final and may only be questioned by way of judicial review.

Decision of the Court

Having considered the arguments by the parties, the Court ruled that much as the relevant provision is section 53(1), the right to appeal must be exercised in accordance with the provisions of the Tax Revenue Appeals Act (TRAA).

The Court further held that section 16(1) of the TRAA as amended by TAA 2015 restricts the right to appeal available under section 53(1) of the TAA 2015 to objection decisions only. Since the decision on denial of waiver is not an objection decision, the Appellant's appeal to the Board was held by the Court as being incompetent. As a result, the Court invoked its revisional powers to strike out the appeal before it and consequently nullified the proceedings and decisions of both the Board and the Tribunal. Furthermore, based on the above finding, the Court did not look at the merits of the purported waiver appeal.

This new decision by the Court means that all waiver appeals pending at the Board, Tribunal and Court of Appeal will now likely collapse and a new wave of judicial review applications at the High Court or objection to the denial of the waiver will have to be filed by aggrieved taxpayers.

To read a copy of the Judgment click here.

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