IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: KEREFU, J.A., KHAMIS, J.A. AND NANGELA, J.A.)

CIVIL APPEAL NO. 182 OF 2025

AGGREKO INTERNATIONAL PROJECTS LIMITED TANZANIA BRANCH.....APPELLANT

VERSUS

COMMISSIONER GENERAL, TANZANIA REVENUE AUTHORITY ..... RESPONDENT

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

(Mutungi, Chairperson.)

Dated the 11th day of April, 2025

in

Tax Appeal No. 73 of 2024

JUDGMENT OF THE COURT

3rd & 12th December, 2025

KEREFU, J.A.:

This appeal arises from the decision of the Tax Revenue Appeals Tribunal (the Tribunal) delivered on 11th April, 2025 in Tax Appeal No. 73 of 2024. In that appeal, the Tribunal upheld the decision of the Tax Revenue Appeals Board (the Board) dated 4th April, 2024 in Tax Appeals Nos. 57, 58, 59 and 61 of 2023 which decided the matter in favour of the respondent, the Commissioner General, Tanzania Revenue Authority (the TRA).

The material background facts obtained from the record of appeal are straight forward and mostly not in dispute. That, the appellant is a registered company in Tanzania as a branch of Aggreko International Project Limited, a company incorporated in the United Kingdom. The primary activities of the appellant (the Tanzanian Branch) are electric power generation, transmission and distribution in Tanzania. The respondent, on the other hand, is the head of the Tanzania Revenue Authority being a government entity vested with powers of collecting revenue and related matters in the URT.

That, sometimes in 2022, the respondent in exercising her mandate, conducted a comprehensive audit assessment on the tax affairs of the appellant's income for the years 2018 and 2019 which covered various taxes including corporate income tax. Upon completion, among other things, the respondent disallowed the head office expenses attributed to the appellant's regional hub in Dubai on account of failure by the appellant to provide documentation evidencing a clear and verifiable allocation of such costs in terms of section 11 (2) of the Income Tax Act, [Cap. 332, R: E 2004] (the ITA). Thus, the respondent issued several notices for adjusted assessment for the respective years of income.

Dissatisfied, on 6th July, 2022, the appellant objected to the said assessment on the ground that, the head office costs allocated to the branch were incurred wholly and exclusively for the production of its income and allocation is carried out on a pro rata basis according to revenue generated in each country. Therefore, the appellant contended that, the principal tax, interest and penalties imposed following the respondent's disallowances of those costs, were erroneous both in law and facts.

Subsequently, the respondent and the appellant exchanged several correspondences to iron out their differences on the tax dues, where some of the calculations were revised but the respondent maintained its position on most of the issues. Thereafter, the respondent issued a final determination of the objection with the tax liability of TZS 1,484,658,281.00 for year of income 2018 and, for the tax – late payment for year of income 2018, showing a tax liability of TZS 90,526,624.00; a notice of confirmation of assessment for corporate income tax liability of TZS 432,176,241.00 for year of income 2019; and tax-late payment showing a tax liability of TZS 55,416,037.00, for year of income 2019.

Aggrieved, the appellant, unsuccessfully, lodged four statements of appeal in the Board which were later consolidated into Income Tax

Appeal Nos. 57, 58, 59 and 61 of 2023. The Board determined the said consolidated appeals based on the parties' pleadings on the following issues:

(1) *Whether the respondent was justified to disallow expenses incurred by the appellant in furtherance of business for the years of income 2018 and 2019;*
(2) *Whether the respondent was justified to impose interest for late payment of tax for the years of income 2018 and 2019;*
(3) *Whether the respondent's inclusion of late filling penalty for the years 2018 and 2019 was correct in law and fact; and*
(4) *What reliefs were the parties entitled to.*

Having considered parties' submissions on the above issues, the Board decided the appeal in favour of the respondent. Specifically, the Board, at pages 1724 to 1725 of the record of appeal stated that:

> *"Therefore, based on the analysis of evidence available on record, and the test of the deduction of expenses given under the provisions of section 11 (2) of the ITA, 2004, we are of the considered view that, the head office costs incurred by Aggreko International Project Limited, the head office in Dubai, on behalf of the appellant, the permanent establishment in Tanzania, are not allowable for deduction as they glaringly fail to meet the conditions for deduction of expenses prescribed under the provisions of section 11 (2) of the ITA, 2004. As such, we find the*

respondent was justified to disallow the expenses (head office costs) incurred by the appellant during the years of income 2018 and 2019."

Undaunted, the appellant appealed to the Tribunal vide Tax Appeal No. 73 of 2024. The Tribunal, like the Board, decided the matter in favour of the respondent.

Still, dissatisfied, the appellant has preferred the current appeal on the following grounds:

1. *That, the Tribunal erred in law in misinterpreting the provisions of section 11(2) of the ITA, 2004 by holding that the appellant did not sufficiently demonstrate that the entirety of the head office costs were incurred solely for income generation;*
2. *That, the Tribunal erred in law in misinterpreting the provisions of section 71(6) of the ITA, 2004, read together with Regulation 10(1)(c) of the Tax Administration (Transfer Pricing) Regulations, 2018 in holding that the appellant did not sufficiently prove that its shared costs allocation qualified as a recognized arrangement under section 71(6) of the ITA. For failing to comply with the requirement of section 11(2) of the ITA by showing that the expenses were wholly and exclusively incurred in Tanzania;*
3. *That, the Tribunal erred in law in its interpretation of section 76 of the Tax Administration Act, by holding that the interests and penalties imposed were justified; and*

4. *That the Tribunal erred in law in its failure to analyse, and evaluate the evidence adduced before the Board.*

At the hearing of the appeal, Mr. Norbet Mwaifwani, learned counsel represented the appellant whereas the respondent was represented by Ms. Gloria Chimpota, learned Principal State Attorney assisted by Mr. Achileus Charles Kalumuna, learned State Attorney. The learned counsel for the parties had earlier on filed their respective written submissions in accordance with Rule 106 (1) and (8) of the Court of Appeal Rules, 2009 the contents of which each adopted before addressing us orally and by way of emphasis, highlighted some of the points which they considered to be of vital importance in support of their positions.

We have noted that in the said submission, the learned counsel for the appellant argued the first, second and third grounds conjointly and the fourth ground separately. The learned counsel for the respondent also responded to the grounds of appeal in the same manner proposed by his learned friend.

At the outset, we wanted to satisfy ourselves on the propriety of the first and second grounds of the appeal which raised factual complaints and or mixed points of both law and facts and invited the Court to re-evaluate the entire evidence on record contrary to the

provisions of section 26 (2) of the Tax Revenue Appeals Act, Cap. 408 of the Revised Laws (the TRAA). On that basis, we invited the iearned counsel for the parties to address us on the said issue.

In his response, Mr. Mwaifwani did not submit much on this issue but only argued that all appellant's grounds of appeal are properly before the Court as, among other things, they raise legal issues worth of being entertained by the Court.

On her part, Ms. Chimpota challenged the submission made by her learned friend by arguing that, the first and second grounds are improperly before the Court, as they raise factual issues and or mixed points of law and facts. She contended further that, the said grounds also violated the provisions of section 26 (2) of the TRAA, as they sought re-evaluation of evidence, which is beyond the Court's jurisdiction. To support her proposition, she cited the cases of **Serengeti Breweries Limited v. Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 453 of 2023 [2025] TZCA 685 and **Atlas Copco Tanzania Limited v. The Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 167 of 2019 [2020] TZCA 317 and urged us to disregard the first and second grounds of appeal.

Having revisited the grounds of appeal indicated above and considered the arguments by the learned counsel for the parties, we agree with the submission made by Ms. Chimpota that, indeed, the first and second grounds contained factual issues and had as well mixed both, issues of law and facts contrary to section 26 (2) of the TRAA. For the sake of clarity, the said section provides that:

> *"Appeal to the Court of Appeal* ***shall lie on matters involving questions of law only*** *and the provisions of the Appellate Jurisdiction Act and the rules made thereunder shall apply mutatis mutandis to appeals from the decision of the Tribunal." [Emphasis added].*

This Court, has had occasions, previously, to deliberate on the applicability of the above provisions. See for instance, the cases of **Geita Gold Mining Limited v. Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 132 of 2015 [2019] TZCA 177; **Insginia Limited v. Commissioner General, Tanzania Revenue Authority,** Civil Appeal No. 14 of 2007 [2011] TZCA 246; **Serengeti Breweries Limited** (supra); and **Atlas Copco Tanzania Limited** (supra). Specifically, in the case of **Serengeti Breweries Limited** (supra), the Court, having been faced with an akin situation, stated that:

"Strictly therefore, as a matter of law not of choice, this Court has no jurisdiction to entertain grounds of appeal raising factual complaints. Presently, this Court has interpreted matters of law referred to at the above section as; ***one,*** *issues of interpretation of the Constitution of the United Republic of Tanzania (the Constitution), the laws of Tanzania or relevant legal doctrines;* ***two****, the manner the Tribunal applies a relevant provision of the Constitution, or of the statute or a relevant legal doctrine, and;* ***three****, a question on a decision reached consequent to a complete failure to consider evidence, or its complete misconception culminating into a plain and clear failure of justice..."*

Thereafter, and having made cross-references to other decisions of the Court on the same subject, at page 10 of the said judgment, the Court, emphasized that:

"...we wish to stress four more points; ***one, a complaint that evaluation of the evidence by the Board or Tribunal was improper, is not a question of law****; two, in view of section 25 (2) of the TRAA, (now section 26 (2) of the same law),* ***this Court has no jurisdiction to determine a complaint raising a point of mixed both law and fact.*** *The complaint must*

be a pure point of law, must be apparent on the face of the memorandum of appeal..." [emphasis added].

Being guided by the above authorities, and taking into account that, in the instant appeal, the appellant's main complaint under the first, and second grounds are on factual matters and or had mixed both, points of law and fact, we refrain from resolving them.

With the above finding, we now turn our attention to the third and fourth grounds of appeal.

Submitting in support of the said grounds, Mr. Mwaifwani faulted the Tribunal for failure to analyze and evaluate the evidence on record and ended up to conclude that the appellant failed to sufficiently demonstrate the entirety of the head office costs and on how the same were incurred solely for income generation. That, similarly, the Tribunal erroneously concluded that, the appellant's costs sharing arrangement with its Dubai counterpart did not qualify as a recognized arrangement under sections 11 (2), 71 (3) and (6) of the ITA. It was his argument that, the tribunal having failed to properly evaluate the evidence on record it was erroneous for it to conclude that the respondent was justified in its decision to disallow the appellant's head office costs. To amplify further on this point, he referred us to pages 2139 to 2144 of

the record of appeal and cited the case of the **Registered Trustees of Holy Spirit Sisters Tanzania v. January Kamili Shayo & 136 Others**, Civil Appeal No. 193 of 2016 [2018] TZCA 773 and urged us to find the third and fourth grounds of appeal with merit.

Responding to the above grounds, Ms. Chimpota argued that, the Tribunal properly evaluated the evidence on record and arrived at the correct finding that the appellant did not comply with the requirement of section 11 (2) of the ITA as she failed to adduce sufficient evidence for the head office costs to qualify as deductible under the said provision. She clarified that, in terms of that provision, for any expenditure to be deductible for tax purposes, (i) the expenditure must have been incurred during the year of income; and (ii) it must have been incurred 'wholly' and 'exclusively' in the production of income from the business or investment. She contended that, since in the instant appeal, the appellant only produced documentation describing the methodology for costs allocation without proving the above condition, it was proper for the Tribunal to arrive at that conclusion. To buttress her proposition, she referred us to our previous decision in **Aggreko International Projects Limited v. Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 456 of 2021 [2023] TZCA 17606, where we concluded that '*for the head office costs to qualify as deductible, strictly*

compliance with section 11 (2) of the ITA is required.' She therefore distinguished the case of the **Registered Trustees of Holy Spirit Sisters Tanzania** (supra) relied upon by Mr. Mwaifwani by arguing that, in that case, the trial Court, indeed, neglected to assess the evidence on record, which is not the case herein. She therefore added that, the failure by the appellant to pay the applicable tax within time, it became due, hence a statutory obligation to pay interest on late payment as provided for under section 76 (1) of the TRAA. Based on her submission, she urged us to dismiss the appeal, in its entirety for lack of merit.

In a brief rejoinder, Mr. Mwaifwani reiterated his earlier submission and insisted for the appeal to be allowed with costs.

Having closely considered the rival arguments by the learned counsel for the parties, the record of appeal together with the decision of the Tribunal, we agree with the submission made by Ms. Chimpota that, the Tribunal properly evaluated the evidence on record and arrived at a correct conclusion that the appellant had failed to adduce and avail sufficient evidence for the head office costs to qualify as deductible under the section 11(2) of the ITA. We say so, because, the said concern started with the respondent when she conducted the tax audit on the appellant's tax affairs. Then, the Board, while it upheld the

respondent's decision, observed that due to the available evidence on record, the respondent was justified to disallow the expenses (head office costs) incurred by the appellant in the years of income 2018 and 2019. Again, the Tribunal having re-evaluated the evidence on record concluded, at page 2144 of the record of appeal, that:

> *"The appellant's reliance on transfer pricing regulations does not override the statutory requirement under section 11(2) that expenses must be 'wholly and exclusively' incurred in Tanzania. Since the appellant failed to show that these costs were incurred in direct relation to its Tanzania business, the Tribunal no basis to overturn the Board's decision."*

On that basis, we find that the Tribunal properly analyzed and evaluated the evidence on record and arrived to the correct conclusion. We wish to emphasize that a mere allocation of pooled head office costs does not make them deductible under section 11 (2) of the ITA. As correctly argued by Ms. Chimpota, for the head office costs to qualify as expenditure deductible under section 11 (2) of the ITA, there must be evidence proving that, the said expenditure was incurred during the year of income and it must be incurred 'wholly' and 'exclusively' in the production of income from the business or investment. Since, the appellant herein failed to prove that aspect, we find no justification to

fault the finding of the Tribunal. In **Aggreko International Project Limited** (supra), cited to us by Ms. Chimpota, i.e Civil Appeal No. 456 of 2021, when faced with similar matter, we concluded that:

> *"Our close and thorough examination of the iegal provision relating to aliowabie deductions, that is section 11 of the ITA, we do not see how the same can accommodate the appellant's argument relating to his claim for deductions, a mere mentioning or listing the activities referred by the appellant, a management services alleged to have been rendered to the appellant does not suffice for the respondent as well as this Board to accept it as service rendered and costs incurred wholly and exclusively in the production of income of the appellant, thus eligible for deductions. That, proof is lacking in this particular case. We therefore, dismiss the appellant's argument. The appellant is not entitled to deductions of management fees under the ITA."*

In terms of the above decision and on account of failure by the appellant to avail sufficient evidence for the head office costs to qualify as deductible under the section 11(2) of the ITA, it is our settled view that, the Tribunal was justified in upholding the Board's decision on that

aspect. As such, we find the third and fourth grounds of appeal devoid of merit.

In the circumstances, we uphold the decision of the Tribunal and dismiss the appeal, in its entirety, with costs.

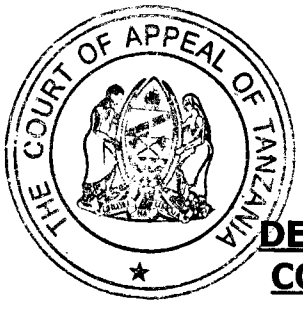
DATED at **DODOMA** this 12th day of December, 2025.

R. J. KEREFU
JUSTICE OF APPEAL

A. S. KHAMIS
JUSTICE OF APPEAL

D. J. NANGELA
JUSTICE OF APPEAL

Judgment delivered this 12th day of December, 2025 via Virtual Court in the presence of Mr. Noel Mosha, learned counsel for the Appellant, Ms. Akwila Mrosso, learned State Attorney for the Respondent and Musa Amry, Court Clerk is hereby certified as a true copy of the original.



W. A. HAMZA
DEPUTY REGISTRAR
COURT OF APPEAL