IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: LILA, J.A., KENTE, J.A. And MWAMPASHI, J.A.)

CIVIL APPEAL NO. 166 OF 2025

BANK OF AFRICA TANZANIA LIMITED ..... APPELLANT

VERSUS

COMMISSIONER GENERAL
TANZANIA REVENUE AUTHORITY..... RESPONDENT

[Appeal from the Judgment and Decree of the Tax Revenue Appeals Tribunal at Dar es Salaam]

(Hon. Ngimilanga – Vice Chairman)

dated the 28th day of February, 2025
in
Tax Appeal No. 57 of 2024

JUDGMENT OF THE COURT

13th November & 19th December, 2025

MWAMPASHI, J.A.:

In this appeal, Bank of Africa Tanzania Limited, the appellant herein challenges the decision of the Tax Revenue Appeals Tribunal ("the TRAT") dated 28.02.2025 in Tax Appeal No. 57 of 2024. In the said decision, the TRAT upheld the decision of the Tax Revenue Appeals Board ("the Board") which had confirmed the decision by the Commissioner General, Tanzania Revenue Authority, the respondent herein. In its decision, the TRAB had, **one**, imposed Pay As You Earn (PAYE) on taxable benefits paid to the appellant's two expatriate employees, **two,** included Group Life Insurance contribution in the determination of the employees' taxable income for

the year 2019 and **three**, it had included school fees paid by the appellant in calculation of the employees' taxable income for the year 2019.

Briefly, the historical background of the matter goes thus; In August, 2020, the respondent conducted a desk examination audit for the year of income 2019 in respect of the appellant's tax affairs. The audit exercise resulted into the issuance by the respondent of a PAYE certificate dated 11.12.2020 claiming from the appellant TZS.225,615,432.00 as principal tax and TZS. 14,906,712.00 as interest thereon. In January, 2021, the appellant objected to the PAYE certificate basically on two grounds: **one**, that the respondent had wrongly calculated PAYE on tax benefits arrangement she had with her two expatriate employees and **two,** that in determining employees' taxable income, the respondent had wrongly included group insurance costs and expenses incurred on school fees for her employees. The objection was dismissed. The respondent maintained its position that, the PAYE on tax benefits was imposed in terms of section 27 (1) of the Income Tax Act, 2004 ("the ITA") and also that the Group Life Insurance and school fees are taxable on the hands of the employee.

On appeal to the Board, it was found that, the respondent was correct in computing PAYE on the tax benefit in relation to the two expatriate employees, that the payment for Group Life Insurance made

by the appellant for her employees does not fall within the excluded payments in determining the employees' taxable income and further that the school fees paid by the appellant for her employees are benefits to the employees. The appeal was thus, dismissed. Dissatisfied, the appellant appealed to the TRAT. However, as we have alluded to earlier, the TRAT upheld the Board's decision and dismissed the appellant's appeal. Undaunted, the appellant has preferred the instant appeal before the Court challenging the decision of the TRAT.

The memorandum of appeal filed in this Court by the appellant raises four grounds of complaint as follows:

1. *That the Tax Revenue Appeals Tribunal erred in law in failing to analyse the evidence on record properly and in wrongly interpreting the provisions of section 27(1) (d) read together with section 18(2)(b) of the Income Tax Act in concluding that the Respondent's decision to calculate PAYE on tax benefits in respect of two expatriate employees was correct.*
2. *That the Tax Revenue Appeals Tribunal erred in law in its interpretation of section 7(2)(b) of the Income Tax Act, in concluding that the premiums paid by the Appellant under group life insurance forms part of the inclusions in calculating employees gains or profits from employment.*
3. *That the Tax Revenue Appeals Tribunal erred in law in failing to evaluate the evidence on record properly and in wrongly interpretating the provisions of section 7(2)(c) of the Income*

Tax Act, 2004 in concluding that school fees paid by the Appellant for its employees are benefits to the employees.

4. *That the Tax Revenue Appeals Tribunal erred in law in concluding that the imposition of interest for late payment under section 76 of the Tax Administration Act and penalty was justified.*

When the appeal came on for hearing before us, the appellant was represented by Mr. Stephen Axwesso, learned advocate. On the other side, the respondent had the services of Mr. Hospis Maswanyia, learned Principal State Attorney, together with Messrs. Baraka Mwakyalabwe and Marcely Kanoni, both learned State Attorneys.

In compliance with rule 106 (1) and (7) of the Tanzania Court of Appeal Rules, 2009, both parties filed written submissions in support and against the appeal. In addition, the respondent did also file a list of authorities. At the hearing of the appeal, the counsel for the parties adopted their respective written submissions and list of authorities to form part of their respective brief oral submissions made to clarify some of the points.

While the 3rd ground of appeal was abandoned by Mr. Axwesso, the 1st ground was attacked by Mr. Kanoni, learned State Attorney, who addressed us on behalf of the respondent. It was argued by Mr. Kanoni that, the 1st ground of appeal offends section 25 (2) of the Tax Revenue

Appeals Act ("the TRAA") which requires appeals to the Court to lie on matters involving questions of law only. Mr. Kanoni contended that, the 1st ground of appeal raises factual issues and calls upon the Court to review the evidence tendered before the Board and analyse it which is not within the mandate of the Court. It was insisted that, the Court cannot ascertain whether or not the TRAT failed to properly analyse the evidence on record without revisiting the evidence. To buttress his point, Mr. Kanoni referred us to the decisions of the Court in **Serengeti Breweries Limited v. Commissioner General, Tanzania Revenue Authority** [2025] TZCA 685 and **Williamson Diamonds Limited v. Commissioner General, Tanzania Revenue Authority** [2025] TZCA 436. It was thus, prayed by Mr. Kanoni that, for lack of jurisdiction, the Court should refrain from determining the 1st ground of appeal.

In response to the above attack on the 1st ground of appeal, it was argued by Mr. Axwesso that, the ground is not offensive to the law. He contended that, the ground raises a question of law because what is being complained of is an improper evaluation and analysis of evidence resulting into wrong interpretation of the law. He thus insisted that, the 1st ground of appeal is based on a question of law and the Court has jurisdiction to determine it.

The appellate jurisdiction of the Court in tax matters is restricted by section 25 (2) of the TRAA under which it is provided 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].

It is crystal clear from the above provisions of the law that, it is only matters involving questions of law in tax cases, that are appealable to the Court. As a matter of law, the Court has no jurisdiction to entertain grounds of appeal raising factual complaints or even complaints raising points of mixed both law and facts. Furthermore, a complaint that there was an improper evaluation or analysis of evidence is not a question of law. See- **Insignia Limited v. Commissioner General, Tanzania Revenue Authority** [2011] TZCA 246, **Atlas Copco Tanzania Limited v. Commissioner General, Tanzania Revenue Authority** [2020] TZCA 317 and **Serengeti Breweries Limited** (supra). In the former case, the Court stated that:

> *"It is therefore evident that appeals to this Court from the Tribunal should involve only questions of law. The appellant is not permitted to re-open*

factual issues in support of the appeal. The appeal should be decided upon a consideration of the law only and nothing else. We are therefore not persuaded that the first and fourth grounds of appeal concern point of law. The first and fourth grounds of appeal relate to an evaluation of the fact in exhibits RE 2, RE 3 and RE 4. For instance, exhibit RE 2 concerns a determination of whether or not the figures therein are actual sales or projections."

As to what is a question of law within the meaning of section 25 (2) of the TRAA, the Court in the case of **Atlas Copco Tanzania Limited** (supra) defined the phrase to mean:

*"Thus, for the purpose of section 25 (2) of the TRAA, we think, a question of law means any of the following: **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".*

Guided by the relevant law and the above cited decisions of the Court, we are in agreement with Mr. Kanoni that, the complaint in the 1st ground of appeal that the TRAT did not analyse the evidence properly, invites the Court to revisit the evidence on record and see whether the same was really not properly analysed and evaluated or not. The task we are being invited to undertake is clearly beyond the jurisdiction of the Court. The way the 1st ground of appeal is crafted does not make it confined to the requirements of section 25 (2) of the TRAA. The ground raises both matters of law and facts. That being the case, as the 1st ground is offensive of section 25 (2) of the TRAA, we refrain from entertaining it for lack of jurisdiction.

Done with the 1st ground of appeal, we now turn to the 2nd ground in which it is complained that, section 7(2)(b) of the ITA was misinterpreted by the TRAT leading to a wrong conclusion that, the premium paid by the appellant under the Group Life Insurance Policy formed part of the inclusions in calculating employees' gains or profits from employment. However, having examined the complaint in view of how the 1st ground is crafted and in consideration of the undisputed relevant facts on record, we think the bone of contention is really not on the misinterpretation of section 7(2)(b) of the ITA but rather it is on its application to the evidence on record. We are of that view because in this

case, the fact that the appellant paid the premium for the Group Life Insurance Policy for its employees for the year of income 2019, is not in dispute. Not in dispute is also the fact that, in computing the taxable income of the employees, the respondent included the premium paid by the appellant for the Group Life Insurance Policy. In doing so, the respondent relied on the provisions of section 7 (2) (b) of the ITA.

To the respondent, since the payment made for the Group Life Insurance Policy was primarily the employees' obligation and as the payment was made by the appellant on behalf of the employees then, the employees gained or profited from their employment and the payment provided discharge of employees' obligation by the appellant. On the other side, it was the appellant's stand point that, the payment of the relevant premium is a kind of payment which is excluded under section 7 (3) (i) of the ITA. As alluded to above, we think, the issue before us thus, centres on the application of section 7 (2) (b) and 7 (3) (i) of the ITA.

In support of the 2nd ground of appeal, it is argued in the written submissions that, the TRAT erred in agreeing with the Board and concluding that, the premium paid by the appellant under the Group Life Insurance Policy formed part of the inclusions in calculating the employees' gains and profits from employment. The TRAT's conclusion is faulted on two grounds; **one**, that he payment of the premium was made

in lump-sum covering all employees under a single policy hence the difficulty in determining specific premium attributable to each employee. Mr. Axwesso contended that, the payment made could not be allocated to each employee and further that, it was unreasonable or administratively impracticable to account for the payment. It was further submitted that, since section 7 (3)(i) of ITA allows exclusion of such payments from taxable income where the payment is either unreasonable or administratively impracticable for an employer to allocate or account for, then it was both unreasonable and contrary to the law for the respondent not to exclude the relevant payment of the premium in computation of the employees' taxable income.

Two, that the premium paid under the Group Life Insurance Policy was exempted under section 7 (3) (c) of the ITA because the Policy covered, as well, for medical services related to critical illnesses made available to employees on a non-discriminatory basis. It was thus, insisted that, the TRAT ought to have concluded that, the premium paid by the appellant under the Group Life Insurance Policy was excludable from the computation of employees' gains and profits from their employment.

For the respondent, it was submitted that the TRAT properly and correctly applied the relevant law in concluding that, the premium paid by the appellant under the group life insurance policy for its employees

formed part of the inclusions in computing employees' gains and profits from employment. It was further submitted that, the argument that the payment was excludable under section 7 (3) (i) of the ITA because the premium paid could not be allocated to individual employees, is misleading. It was insisted that, as stated under clause 14 of the Policy, the premium paid for each individual employee could be computed.

It was further submitted by the respondent that, the payment of the relevant premium could not be excluded under section 7 (3) (c) of the ITA because under that provision, what is excluded is payment for medical insurance services for individual employees for purposes of PAYE if conditions under subsections (i) and (ii) are met. It was insisted that Group Life Insurance does not fall under the above cited provision because it is not on medical benefits and further that, life insurance is not and it is quite different from medical insurance. Finally, Mr. Kanoni prayed for the appeal to be dismissed with costs.

In consideration of the gravamen of the complaint at hand and also for purposes of ease of reference, we think our starting point should be to reproduce section 7 (1) (2)(b) (3) (c) and (i) of the ITA, thus:

"7(1) An individual's income from an employment
for a year of income shall be the individual's gains

or profits from the employment of the individual for the year of income.

(2) Subject to the provisions of subsection (3), (4) and (5) in calculating an individual's gains or profits from an employment for a year of income, the following payments made to or on behalf of the individual by the employer or an associate of the employer during that year of income, shall be included-

(a) payments of wages, salary, payment in lieu of leave, fees, commissions, bonuses, gratuity or any subsistence travelling entertainment or other allowance received in respect of employment or service rendered;

(b) payments providing any discharge or reimbursement of expenditures incurred by the individual or an associate of the individual;

(c) to (h) N/A

(3) In calculating an individual's gains or profits from an employment, the following shall be excluded;

(a) N/A

(b) N/A

(c) medical services, payment for medical services and payments for insurance for medical services to the extent that the services or payments are:

(i) *available with respect to medical treatment of the individual, spouse of the individual and up to four of their children and*

(ii) *made available by the employer and any associate of the employer conducting a similar or related business on a non-discriminatory basis.*

(d) to (f) N/A

(i) payment that it is unreasonable or administratively impracticable for the employer to account for or to allocate to their recipients."

It is plain from the provisions of section 7(1) and (2)(b) of the ITA that, the income of an employee for a year of income is comprised of his gains or profits from his employment for that particular year of income. In computing the employee's income or his total gains or profits from the employment for a year of income, the law requires some of the payments made by the employer or an associate of the employer, either to the employee himself or to any other person but in the employee's behalf, to

be included in computation of the employee's taxable income. Payments made by the employer providing discharge of the employee from what would have been the employee's obligation, is one of the payments which is required to be included under section 7 (2) (b) of the ITA.

In the instant case, it was the obligation of the appellant's employees to pay the premium for their respective life insurance policies. However, on behalf of the employees, the appellant paid the premium under the Group Life Insurance Policy. The payment made by the appellant did not only provide discharge within the meaning of section 7 (2) (b) of ITA but it was also a gain or profit to the employees comprising the employees' taxable income within the meaning of section 7 (1) of the ITA. That being the case, the TRAT cannot be faulted in including the payment made by the appellant for the Group Life Insurance Policy in calculating the taxable income.

Regarding the appellant's complaint that the payment for the Group Life Insurance Policy ought to have been excluded under section 7 (3) (c) of the ITA, it is our considered view that, the complaint is baseless. Under the provisions of section 7 (3) (c) what is excluded, among others, are payments made for insurance for medical services and not payments made for life insurance policies. In the instant case, the payment made was for Group Life Insurance Policy and not for insurance for medical

services. According to the relevant Group Life Insurance Policy, appearing at page 39 of the record of appeal, the Policy was for life, disability and critical illness insurance. The benefits from the said insurance policy were dependent on occurrence of certain events. According to the First Schedule to the Policy, events on which the insured sum was to become payable are; occurrence of death of an employee or his dependant, total permanent disability of an employee, temporary total disability, permanent partial disability and critical illness of an employee. As we have alluded to above, the Group Life Insurance Policy in question was not for medical services which is the kind of insurance covered under section 7 (3) (c) of the ITA.

It was also the appellant's argument that, the payment made for the Group Life Insurance Policy was excludable under section 7 (3) (i) of the ITA because the payment was paid in lump-sum making it administratively impracticable for the appellant to account for or allocate it to individual employees. As correctly argued by Mr. Kanoni, this complaint is also meritless. It is our considered view that, since the amount paid in lump-sum was undoubtedly known and as according to Clause 2 of the Group Life Insurance Policy, the number of employees eligible were those present at the commencement date, the argument

that it was administratively impracticable to account for or allocate the amount paid for each employee, holds no water.

For the above given reasons, it is our decided view that, the 2nd ground of appeal is without merit and it is thus, accordingly dismissed.

On the 4th ground of appeal that the TRAT erred in law in concluding that the imposition of interest for late payment under section 76 of the Tax Administration Act, 2015 ("the TAA") and the penalty was justified, it was briefly submitted by Mr. Axwesso that, the imposition of interest was based on an incorrect principal and therefore that, the interest imposed was flawed.

In response to the above, it was submitted by Mr. Kanoni that, imposition of interest is a matter of law under section 76 (1) of the TAA. He insisted that, the law requires payment of interest where the taxpayer fails to pay the tax due on time and further that, imposition of interest is consequential to the principal tax amount established.

On our part, we agree with Mr. Kanoni that, imposition of interest where there is a failure in payment of the tax due, is consequential after the principal tax amount is established. It is a requirement of the law under section 76 (1) of the TAA that, there should be imposition of interest where a taxpayer fails to pay the imposed tax. Imposition of interest on

tax liability where a taxpayer fails to pay the imposed tax, is an inevitable consequence which the taxpayer is liable to pay in addition to the tax liability. In that regard, the 4th ground of complaint that, the TRAT erred in blessing the imposition of interest and penalty, is baseless and for that reason, it is hereby dismissed.

In the event, for the above given reasons, we find the appeal devoid of merit and dismiss it in its entirety with costs.

DATED at **DODOMA** this 18th day of December, 2025.

S. A. LILA
JUSTICE OF APPEA

P. M. KENTE
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

Judgment delivered this 19th day of December, 2025 in the presence of Mr. Norbert Mwaifwani, learned counsel for the appellant and Mr. Marcely Kanoni, learned State Attorney for the respondent through Virtual and Ms. Gloria Masige, Court Clerk; is hereby certified as a true copy of the original.

R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL