IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: KEREFU, J.A., MDEMU, J.A. And MANSOOR, J.A.)

CIVIL APPEAL NO. 296 OF 2024

DANGOTE CEMENT LIMITED.....APPELLANT

VERSUS

COMMISSIONER GENERAL

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

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

(Ngimilanga, Vice Chairperson)

dated the 31st day of October, 2023

in

Tax Appeal No. 29 of 2022

.....

JUDGMENT OF THE COURT

10th & 26th November, 2025

MDEMU, J.A.:

In the first appeal, Dangote Cement Limited (the appellant) challenged successfully, to the Tanzania Revenue Appeals Board (the TRAB), the decision of the Commissioner General, Tanzania Revenue Authority (the respondent) for disallowing interest expenses and fixed assets written off in the tax affairs of the appellant. It was in the course of auditing the tax affairs of the appellant for the year 2016, when the respondent revealed that the appellant incorrectly deducted fixed assets

written off for the year 2015 into the year 2016. After hearing the parties, the TRAB ordered the respondent to re-calculate the interests allowable based on the debt equity ratio in terms of section 12 (2) of the Income Tax Act, Cap. 332 (the ITA). Being dissatisfied, the respondent thereafter sought an intervention through an appeal to the Tanzania Revenue Appeals Tribunal (the TRAT) which, after examining the evidence on record, came up with the following holding:

> *"Therefore, at this juncture we tend to agree with the appellant who submitted that it was right for the appellant to disallow the expenses termed as fixed asset in the year 2016 after observing that documents submitted by the respondent related to the year 2015. Section 11 (2) of ITA allows deduction of expenses incurred during that year of income and not otherwise."*

The respondent thus became victorious. Such decision of the TRAT as appearing above, disturbed the appellant. He thus appealed to the Court armed with the following two grounds of appeal:

1. *That, the Tax Revenue Appeals Tribunal erred in law by failing to analyse the evidence on record properly in failing to hold that, the respondent raised a new issue of disallowance under section 11 (2) of the Income Tax Act, 2004 in its final*

determination of objection which denied the appellant a right to be heard.

2. *That, the Tax Revenue Appeals Tribunal erred in law in failing to properly interpret the provisions of section 21 of the Income Tax Act, 2004 and International Accounting Standards (IAS 8) and hold that, the respondent was right to disallow the expenses termed as fixed assets in the year 2016 in terms of section 11 (2) of the Income Tax Act, 2004.*

At the hearing of the appeal on 10th November, 2025, Mr. Stephen Axweso, learned advocate, appeared to represent the appellant. On the respondent's side, Mr. Thomas Buki, learned Senior State Attorney, assisted by Messrs. Chizaso Minde, Trofmo Tarimo and Taragwa Michael, all learned State Attorneys, teamed up to represent it.

Mr. Axweso commenced by standing with the contents of his written submissions he had filed in that behalf. In both written and oral submissions, the main thrust is twofold. **One**, that section 11 (2) of the ITA is a new matter which was introduced in the final determination of the objection and **two**, that section 21 of the ITA was improperly interpreted.

In the former, he stated that, the respondent in its decision, found that all documents and information submitted were in respect of the year of income 2015 and that, in terms of section 11 (2) of the ITA, they cannot be deployed as evidence for deductions in the year of income 2016. To Mr.

Axweso, this was a new issue which featured for the first time in the final determination of the objection, as such, the appellant had no opportunity to respond. He referred us to page 537 of the record of appeal underscoring that, **first**, the said documents should have been allowed in any of the years, that is 2015 and 2016 for deductions of expenses and **second**, the contentious issue all along during the objection proceedings was that the fixed assets claimed for related to mining, thus disallowing expenses termed as fixed assets write off.

In his rejoinder submissions Mr. Axweso argued that, a mere mention of section 11 of the ITA in exhibit A-4 without being so specific to the relevant subsection (2), does not, in itself, make section 11 (2) not a new issue.

Mr. Axweso finally argued by making reference to pages 476 (the notice of objection) and 511 (final tax assessment) of the record of appeal alleging that, the appellant was not fairly heard because in terms of section 52 of the Tax Administration Act, Cap. 438 (the TAA), a tax payer has a final opportunity to respond in the event of disagreement on the contents of the objection and that certainly becomes the last chance for him to provide evidence in support of the objection before the Commissioner General. He urged us to allow this ground of appeal.

Having stood by the filed written submissions, Mr. Buki's submissions in this ground was twofold, **first**, on failure to analyse evidence, it seemed to him to be a factual issue and not a legal undertaking permissive for appealing in terms of section 25 (2) of the Tax Revenue Appeals Act, Cap. 408 (TRAA). He also cited to us the case of **Bulyanhulu Gold Mine Limited v. Commissioner General TRA** (Consolidated Civil Appeal No. 89 and 90 of 2015) [2016] TZCA 571 (8 March 2016; TanzLII) arguing that, matters of facts in tax disputes ends at the TRAT level.

Second, regarding section 11 (2) of the ITA which the appellant had raised a complaint that it was alien to the tax dispute, Mr. Buki replied that, the issue relating to application of the said section is not new because the appellant in the raised tax assessment objection (exhibit A3) and further in exhibit A4, a general discussion in those documents was on section 11 of the ITA. He further submitted that, in exhibit A5, the appellant and the respondent discussion over the submitted documents hinged mainly on the application of section 11 (2) of the ITA. He added that, the appellant was accorded the right to be heard by submitting documents to substantiate the occurrence of expenses but were found to be of the year of income 2015, the reason why they were considered under section 11 (2) of the ITA for the disallowance. The latter, according

to the learned State Attorney, requires deduction of expenses incurred during the particular year of income, that is, 2016 in the instant appeal. The expenses should also wholly and exclusively be for the generation of income in the respective year. On that account, we were invited by Mr. Buki to attach no merit to the ground of appeal and urged us to proceed in dismissing it.

On our part, we have given due consideration of the record of appeal and the written and oral submissions by the counsel to the appeal. To begin with, is the resistance of Mr. Buki that ground one of appeal is partly coached on factual matters not permitted for appeal to the Court. This first realm of argument should not detain us. Much as we agree with Mr. Buki that in terms of section 26 (2) of the TRAA in the 2023 Revised Edition, appeals to the Court are restricted on matters of law only, ground one of appeal is not phrased on matters of fact. What the appellant did at it's best in the complained analytical phraseology, is its dissatisfaction in the interpretation of section 11 (2) of the ITA which, to him, it was a new issue all together. It is not factual as complained by Mr. Buki within the meaning of section 26 (2) of the TRAA. We have the feeling to rest it in this way, as we hereby do.

Turning to the second realm, Mr. Axweso considers the import of section 11 (2) of the ITA to be a new issue because, all through the documentation in the tax dispute, the said section did not feature anywhere and instead, section 11 appears to surface, which, to him, is different to section 11 (2). Mr. Buki, on the other hand, was of the contrary interpretation. We are with him as we shall come to light shortly, much as we agree with Mr. Axweso that, sub section (2) of section 11 was not mentioned specifically. We find it apposite to reproduce the said section as follows:

> *"11 (2) Subject to this Act, for purposes of calculating a person's income for a year of income from any business or investment, there shall be deducted all expenditure incurred during the year of income, by the person wholly and exclusively in the production of income from the business or investment."*

With the above excerpt, the **first criteria** to deploy in the determination as to whether section 11 (2) of the ITA was a new matter, is the nature of the tax dispute and the purpose of enactment of the section. As stated above, the genesis of the tax dispute at hand in the objection was tax deduction for fixed assets written off to the profit and loss account

disallowed by the respondent. Let the record of appeal speak by itself at page 478 as hereunder:

> *"1. TRA has incorrectly disallowed a deduction for the "fixed assets written off. Dangote has claimed a tax deduction for fixed assets written off of TZS 3.9 bn charged to the profit and loss account. The TRA has disallowed this claim on the basis that the supporting information to verify the cost has not been provided to them. Initially, TRA has requested for the list of items written off, which was provided to them by Dangote. This was followed by an updated request for supporting documents (in terms of invoices or other associated documents) for the below items:*
>
> *a. Clearing and forwarding (TZS 1,152,152,070);*
> *b. Site security expenses (TZS 594,488,446);*
> *c. Mining expenses (TZS 632,571,083);*
> *d. Mining operational expenses (TZS 337,242,592) and*
> *e. Rock blasting expenses (TZS 347,249,263)."*

Since the appellant claimed for deductions of expenses, as rightly argued by Mr. Buki, the proper provision to invoke in deducting such expenses is section 11 (2) of the ITA which we have just quoted above. It is from such a claim, parties to the TRAT at page 721 through 728 of the record of appeal had argued that:

"It is the Appellant's submission that discussion on section 11 was not new and introduced in the final determination. In its objection (Exhibit A3) at page 5 last paragraph under item No. 1, page 1 of Exhibit A4 (Proposal), all of them discussed Section 11 in general. The Appellant in its proposal for determination of the objection found the submitted evidence were not sufficient to warrant the costs claimed (see page 2 of Exhibit A4). The Respondent in its response to proposal (Exhibit A5) at page 2, responded the Appellant's proposal by submitting documents such as invoices (see paragraph 2 and 3 of page 2 of Exhibit A5). ***It is from the examination of the submitted documents which were submitted together with the reply to proposal, the Appellant found the submitted documents didn't qualify the requirement of Section 11 (2) ITA 2004. The discussion was on the evidence to substantiate the costs and sections 11 (2) was quoted out of the findings of the document submitted.***"

[emphasis supplied]

According to the TRAT, it was in the course of analysing the evidence submitted, when it found that such documents do not meet the test stipulated in section 11 (2) of the ITA. The section was accordingly

quoted. We may add that, in the law of evidence, parties and the courts are not precluded to apply and interpret facts fitting in certain legal provision depending on the circumstances of those facts. This is the rigorous fact-finding process on matters of relevancy and admissibility in the law of evidence. Under such state of affairs, the argument that section 11 (2) of the ITA is a new issue become misplaced as per the revelation of the TRAT at page 732 of the record of appeal on what actually was at stake regarding the said tax dispute:

> *"This Tribunal passed through the submission by the Appellant and the Respondent in this case. There is only one issue for determination before this Tribunal which is whether the Appellant was correct to disallow the expenses termed as fixed asset write off of 2015 in the year 2016 without considering the requirement of the law on accounting of expenses."*

The **second criteria** is the interpretative one, that is, Mr. Axweso thought it was mandatory for subsection (2) of section 11 to the ITA to be mentioned so specific. Mr. Buki was of a different argument of which we entirely tie with him as we will explain soon. **One**, without going to the rules of statutory interpretation, the omission to include subsection (2) of section 11 in all the documents is defeated by the purposes of the

deductions of expenses which the appellant condemned the respondent for the disallowance.

Two, there is no any other subsection in section 11 of the ITA which is responsible for deductions of expenses and the only subsection relevant in the circumstances is subsection (2). So, whether or not it was mentioned, its application in the matter before the Commissioner and in both tribunals was inevitable. **Three**, from the initial engagement between the appellant and the respondent, mostly after the objection of tax assessment, the question of deduction became key. In essence, this is what compelled the TRAT to come up with the observation that, the only issue before it, was whether the respondent was justified to disallow the expenses termed as fixed assets written off of 2015 in the year 2016, without taking into account the requirement of the law. That law, in our view, and as correctly argued by Mr. Buki, was and is section 11 (2) of the ITA.

Four, basing on the evidence as submitted, which was for the year of income, 2015, the TRAT was right to use section 11 (2) to see to it if such expenses can be disallowed in the year of income 2016. We are saying so because, as correctly argued by Mr. Buki, in calculating income from any business or investment, section 11 (2) of ITA allows deduction of

all expenditures incurred in the respective year of income and which were wholly and exclusively engaged in the production of that income or investment.

For the foregoing analysis, with due respect to Mr. Axweso, section 11 (2) of the ITA, was and is not, in our respective view, a new issue. The TRAT, on that account, correctly put the letters of the law to light. This ground of appeal is bound to fail, as we hereby hold.

In the second ground of appeal, the main thrust, as reproduced in the ground of appeal above, is on improper interpretation of section 21 of the ITA. It has been explained at pages 7 through 8 of the appellant's written submissions that, the main complaint is on failure of the TRAT to consider the appellants submissions regarding the import of section 21 of the ITA. According to him therefore, the basis of the appellant's submissions regarding section 21 of the ITA was for the accounting of income basing on IAS 8 accounting principles which allows correction of errors or reclassification of costs.

Mr. Axweso concluded in this ground by submitting that, the appellant has managed to justify that, the expenses were incurred in business, and therefore, the appellant discharged the burden of proof entrusted to her by section 18 of the TRAA. He cited, in that behalf, the

case of **Insignia Limited v. Commissioner General** (Civil Appeal No. 14 of 2007) [2011] TZCA 246 (30 May 2011; TanzLII) that, in the burden of proof in tax disputes, the taxpayer is only required to give reasonable explanation and after that undertaking, the burden shifts to the revenue assessor for the rationale of maintaining the tax assessment made.

Replying to the second ground of appeal, Mr. Buki's submission was to the effect that, the main thrust of the TRAT's decision based on the interpretation of section 11 (2) of the ITA. For that matter, complaints of the appellant that costs were incorrectly capitalized as work in progress for the year 2015 because they were not yet engaged in the production of business income, hence no depreciation allowance on capitalized assets in terms of section 17 of the ITA, are unfounded. Importantly to Mr. Buki was that, the issue before the TRAB was not on the depreciation allowance but rather on the expenses covered under the provisions of section 11 (2) of the ITA for deduction of expenses purposes.

On his understanding therefore, section 21 (1) of the ITA and 1AS8 on correction of expense costs, cannot rescue the situation because under section 91 (2) (e) (iii) of the ITA, financial statements form part of returns of income. It thus cannot be amended unless as specified within the meaning of section 41 (2) of the TAA, which, to him, is not the case in the

instant tax dispute. He, in the end, concluded that, section 21 of ITA relates to the basics regarding the basis of accounting for income tax purposes while section 11 of the same Act is on general principles of deductions of expenses. He thus cited the case of **Pan African Energy Tanzania v. TRA** (Civil Appeal No. 81 of 2019) [2020] TZCA 54 (6 March 2020; TanzLII) imploring us to give plain meaning in our interpreting of sections 21 and 11 (2) of the ITA. Mr. Buki, for that matter, invited us to dismiss this ground of appeal for want of merits.

We invested our time over the entire record of appeal together with the written and oral submissions for and against the raised ground of appeal. The rival between and among the parties hinged on section 21 of the ITA. Without reproducing it, our take from the marginal notes of the said section, directs us to the basis of accounting for income tax purposes. We think this suffices to explain what the section is all about. Mr. Buki argued, and rightly so, that, for purposes of principles of deductions of expenditures wholly and exclusively incurred in the production of income or investment in the respective year of income, section 11 (2) of the ITA is the relevant provisions. Therefore, Mr. Axweso's concern on the TRAT's inaction to consider and interpret section 21 of the ITA was and is far beyond what was before the TRAT. As it was, the respondent's action for

disallowing the expenditures based on the ground that, what was submitted as evidence was in respect of the year of income 2015, while the deductions of expenditures sought for was in respect of the year of income 2016.

We are therefore not in agreement with Mr. Axweso's interpretation of section 11 (2) of the ITA when arguing the import of section 21 of the same Act that, the respondent be at liberty to use any evidence be it from the year 2015 or 2016 to determine expenses deductible in the year of income 2016. As argued by Mr. Buki, the plain meaning of words as used in section 11 (2) of the ITA require expenses to be deducted be those incurred in the respective year of income and must wholly and exclusively be incurred in the production of that income or investment and no more. Essentially, what the TRAT did with regard to section 21 of the ITA is rightly stated at pages 730 and 731 of the record of appeal, that:

> *"In respect of the point that accounting corrections are permitted by the law, it is the Appellant's submission that what the Respondent did was not an error which can be corrected by accounting correction but failed to comply with the tax laws especially section 11 of ITA. The Respondent cited Section 21 (1) of ITA 2004 and General accounting principles (1AS8) to move this Tribunal that failure*

to expense cost in the relevant year can be corrected. The law under section 91 (2) (e) (iii) of ITA, the financial statements form part of Returns of income. It is also the position of law that, after being filed, the Returns of income cannot be amended or corrected unless as specified under the relevant tax law as provided for under section 41 (2) of the Tax Administration Act, Cap. 438. In this regard, since the governing law is the Income Tax Act, Cap. 332 and there is no any provision which allows the correction of the return income then, the Board's holding that it is an accepted practice that genuine mistake cannot be the basis of taxation, lacks legal basis."

That being the position of the TRAT regarding the interpretation of section 21 of the ITA, Mr. Buki argued to be the proper interpretation. On our part, we are of the considered view that the TRAT took hold of the letters of the law rightly. As we stated above, section 21 of the ITA was legislated to provide basis of accounting for income tax purposes. As the appellant's main complaint falls on deductions of expenses incurred in the production of income, the proper section as rightly observed by the TRAT, is section 11 (2) of the ITA. On that note, the TRAT properly interpreted the provision of section 21 of the ITA, thus the appellant's complaint on

improper interpretation of that section is without substance. This ground too is bound to fail.

In the light of the foregoing, the appeal before us in its totality is without merit, accordingly, it is dismissed with costs.

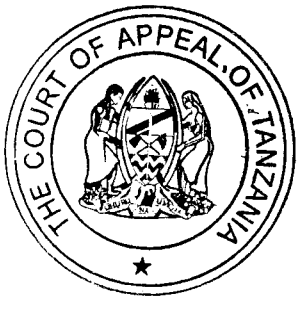
DATED at **DODOMA** this 25th day of November, 2025.

R. J. KEREFU
JUSTICE OF APPEAL

G. J. MDEMU
JUSTICE OF APPEAL

L. A. MANSOOR
JUSTICE OF APPEAL

The Judgment delivered virtually this 26th day of November, 2025 in the presence of Ms. Suleina Salum, learned counsel for the Appellant, Mr. Erasto Ntondokoso, learned State Attorney for the Respondent and Mr. Leopard Mabugo, Court Clerk; is hereby certified as a true copy of the original.



F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL