IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA

(CORAM: KEREFU, J.A., FIKIRINI, J.A. AND MASOUD, J.A.)

CIVIL APPEAL NO. 126 OF 2022

LETSHEGO TANZANIA LIMITED ..... APPELLANT

VERSUS

COMMISSIONER GENERAL OF
TANZANIA REVENUE AUTHORITY.....RESPONDENT

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

(Kamuzora, Chairperson)

dated the 28th day of September, 2021

in

Tax Appeal No. 38 of 2020

.....

JUDGMENT OF THE COURT

14th & 21st February, 2025

MASOUD, J.A.:

Going by the record of appeal before us, the appellant, a limited company incorporated in Tanzania, is an instalment payer of income tax that files her Statement of Estimated Tax Payable (the SETP) on last day of the quarter of her year of income that is 30th March of each year. It is not in dispute that the SETP for January to March 2015 was filed on 29th June, 2015 and not on or before 31st March 2015 as required by section 89 (1) of the Income Tax Act, 2004 (the ITA) although the estimated instalment tax amounting to TZS 2,280,170,388 was duly paid as per exhibit A3. It is therefore, not disputed that the SETP was not filed in

time. Having however been filed on 29th June, 2015, the SEPT was revised on 30th September, 2015 and 21st December, 2015.

The respondent on 23rd February, 2017 required the appellant to furnish the evidence that SETP for the year of income 2015 was duly submitted to her. The evidence that was eventually submitted by the appellant undisputedly revealed that the SETP was not timeously filed on or before 31st March, 2015.

As a result, the parties were engaged in series of correspondences and discussions involving assessment of appellant's tax for the year of income 2015, objection by the appellant of the amount initially assessed and demanded, consideration of the quarterly instalment already paid, and appropriateness of interest involved and charged which at the end of the day, saw the respondent computing and maintaining in its final determination a penalty amount of TZS 220,833,177.90 against the appellant.

For the appellant was discontented by the respondent's determination as to the amount of penalty payable imposed upon her pursuant to section 98 (1) (d) of the ITA, she lodged her appeal in the Tax Revenue Appeals Board (the Board). The Board handed down its judgment on 26th February, 2020, upholding the respondent's decision. The Board was satisfied that since the appellant failed to file the SETP

on time, the failure entitled the respondent to invoke section 98 (1) (d) of the ITA to impose the penalty on the appellant.

Still aggrieved, the appellant appealed before the Tax Revenue Appeals Tribunal (the Tribunal) challenging the correctness of the penalty imposed on her based on an incorrect amount of income, and the correctness of the application of the provision of section 98 (1) (d) of the ITA to impose the penalty. Having heard the parties and appraised the rival submissions against the evidence on the record, the Tribunal affirmed the decision of the Board and dismissed the appeal.

It is against the above backdrop that the appellant is now before us challenging the interpretation and application of section 98 (1) (d) instead of section 98 (1) (e) of the ITA to impose the disputed penalty on her. The appeal is founded only on one ground which is to the effect that the Tribunal erred in law in holding that, the respondent was correct to invoke the provision of section 98 (1) (d) of the ITA to impose the penalty on the appellant for under payment of tax.

The hearing commenced with the presence of Mr. Wilson Kamugisha Mukebezi who teamed up with Mr. Alan Nlawi Kileo, and Mr. Norbert Mwaifwani, all learned advocates for the appellant on one hand, and Mr. Hospis Maswanyia, accompanied by Mr. Moses Kinabo, both Principal State Attorneys and Mr. Athuman Mruma, learned State

Attorney for the respondent on the other hand. Both parties had earlier on lodged their written submissions in accordance with Rule 106 (1) and (7) of the Tanzania Court of Appeal Rules, 2009. The learned counsel for both sides respectively adopted their submissions before clarifying the same to us orally.

From the submissions, it became clear to us that the bone of contention is on the interpretation of section 98 (1) (d) and 4 (1)(a) and (b) of the ITA and it is application to the appellant's case. It is not without relevancy to recall that the Board and the Tribunal concurrently found that the respondent's position as to the interpretation of the relevant provisions with regard to imposition of penalty on the appellant in respect of corporate tax for the year of income 2015 was correct and not flawed. The same maintained that there is difference between "*income tax payable by the person for the year of income under section 4 (1) (a) and (b)*" and "*the amount of that income tax that has been paid by the start of the month.*"

Accordingly, the total income tax payable by the appellant for the year of income 2015 was TZS 6,696,833,946.00 and the amount of that income tax paid by the appellant by the start of the month (i.e the quarterly instalment payment) was TZS 2,280,170,388.00. Consequently, it was the concurrent view of the Board and the Tribunal

that, pursuant to section 98 (1) (d) of ITA, the 2.5% of the resulting difference between the two amounts, which is higher than the amount of penalty calculated under section 98(1) (e) of the ITA is the penalty which was properly imposed by the respondent on the appellant for her failure to file the estimate for the relevant year of income as required by section 89 (1) of the ITA.

Before us and as was in the Board and the Tribunal, all what the appellant's counsel said in their length submission is that it was incorrect to impose the penalty under section 98 (1) (d) of the ITA instead of section 98 (1) (e) of the ITA because the difference has to be computed from the instalment payment of the tax payable for the year 2015 which is TZS 2,280,170,388.00 and which had already been paid by the start of the month by the appellant and not the whole amount of income tax payable for the year of income which is TZS 6,696,833,946.00 The argument by the respondent is based on the fact that she is an instalment tax payer who pays income tax under section 4 (1) (a) and (b) in quarterly instalment pursuant to section 88 (1) (a) of the ITA. Thus, her estimated tax of TZS 6,696,833,946.00 is payable in four instalments of TZS 2,280,170,388.00 each which is accordingly, the appellant's income tax payable by her for the year of income.

We simply understood the appellant as reading the phrase *"income tax payable...for the year of income" under the first limb of section 98(1) (d) to mean "the instalment payment of the income tax payable for the year 2015".* In that respect, it is the argument of the appellant's counsel, therefore, that the amount of quarterly instalment payable, to wit, TZS 2,280,170,388.00 and the amount of quarterly instalment that had already been paid, namely, TZS 2,280,170,388.00 are the basis for computing the difference which should have given way to invoking the provision of section 98(1) (e) instead of section 98(1) (d).

On the other hand, the respondent's counsel maintained a contrary view to the effect that the difference has to be computed from the total tax payable for the year of income which is TZS 6,696,833,946.00 and not quarterly instalment payable which is TZS 2,280,170,388.00. The argument of the respondent is hinged on the provisions of section 98 (1) (d) read together with section 4 (1) (a) and (b) of the ITA which use the phrase "*the income tax payable by the person for the year of income*" and not the quarterly instalment which was TZS 2,280,170,388.00 and which had already been paid by the start of the relevant month as per exhibit A3.

Mindful of the competing arguments we have briefly pointed out herein above, we took trouble of reading the entire provisions of sections 4 (1) (a) and (b), 88 (1) (a) and (2) (a), and 98 (1) (d) and (e) of the ITA which we were referred to by the learned counsel for both sides. For ease of understanding, we have reproduced the said provisions in their entirety hereunder thus:

> *4.-(1) Income tax shall be charged and is payable for each year of income in accordance with the procedure in Part VII by every person:*
> *(a) who has total income for the year of income or is a corporation which has a perpetual unrelieved loss determined under section 19 for the year of income and the previous two consecutive years of income;*
> *(b) who has a domestic permanent establishment that has repatriated income for the year of income;*
> *88.-(1) A person an "instalment payer" who derives or expects to derive any chargeable income during a year of income-*
> *(a) from a business or investment, or*
> *(b) from an employment where the employer is not required to withhold tax under section 81 from payments received by the person that are included in calculating the person's income from the employment, shall pay income tax for the*

year of income by quarterly instalments as provided for by this section.

(2) An instalment payer shall pay instalments of income tax –

(a) in the case of a person whose year of income is a twelve-month period beginning at the start of a calendar month, on or before the last day of the third, sixth, ninth and twelfth months of the year of income;

89.-(1) Subject to the provisions of subsection (7) and section 39 of the Tax Administration Act, every person who is an instalment payer for a year of income under section 88 shall file with the Commissioner-

(a) in the case of a resident person to whom section 88(5) applies, by the end of September, of the year of income; and

(b) in any other case, by the date for payment of the first tax instalment an estimate of tax payable for the year of income.

98(1) A person who fails to-

(a) N/A

(b) File an estimate for a year of income as required by section 89(1); or

(c) N/A

Shall be liable for a penalty for each month and

(d) 2.5 percent of the difference between the income tax payable by the person for the year of income under section 4(1)(a) and (b) and the amount of that income tax that has been paid by the start of the month; or

(e) Tshs 10,000 in the case of an individual or Tsh 100,000 in the case of a corporation.

We read them whilst aware and mindful of the relevant rules of interpretation of tax statutes. We in particular took cognizance of the strict rule of interpretation where the language of words used in a statute is plain. See for instance, **Pan African Energy Tanzania Ltd v. Commissioner General, Tanzania Revenue Authority** (Civil Appeal No. 172 of 2020) [2021] TZCA 287 (9 July 2021); **Commissioner General (TRA) v. Mamujee Products Ltd & 2 Others** (Civil Appeal No. 10 of 2018) [2018] TZCA 27 (2 August 2018); and **Commissioner General Tanzania Revenue Authority v. Ecolab East Africa (Tanzania) Limited** (Civil Appeal 35 of 2020) [2021] TZCA 283 (2 July 2021). In the latter case, this Court held thus:

"The Courts are enjoined to look at what is clearly said in the language used in the tax statute and interpret the statute in the letter of the law because there is no room for looking at the intention of the statute. This is what is envisaged in applying the strict rule of interpretation as it was emphasized in the case of

Cape Brandy Syndicate v. Inland Revenue Authority *[1921] 1 KB 64 as it was held:*

> *In taxing clear words are necessary in order to tax the subject....It simply means that in taxing one has to look merely at what is clearly said. There is no room for intendment. There is no equity about tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied.*

With the above guidance, we got back to the above provisions. As regards to the applicable penalty for one who fails to file an estimate for a year of income as required by section 89 (1) of the ITA reproduced herein above, the relevant provision is section 98 (1) (b) and (e) of the ITA which we have also extracted herein above. It is however clear that the provision makes reference to the income tax payable by a person for the year of income under section 4 (1) (a) and (b) of the ITA for purposes of computing the penalty applicable. It does not make similar reference to quarterly instalment payable by a person under section 88 (1) (a) and (b) and (2) (a) of the ITA.

It therefore means that the argument by the appellant's learned counsel that the income tax payable by an instalment payer of income tax for the year of income ought to be understood to mean the quarterly instalment payment by that person is misplaced as it is not supported by

the plain language of the respective provision. Since the words used are clear, there is no room to read in or imply what is clearly not there. The learned counsel for the appellant simply purported to read in *"quarterly installment payable"* in the place of *"the income tax payable by a person for the year of income."*

Consequently, since the income tax payable by a person for the year of income under section 4 (1) (a) and (b) of the ITA is clearly and unambiguously mentioned under section 98 (1) (d), the argument that it should be read to mean *"quarterly instalment payable"* by an instalment payer of income tax for the purposes of computing the penalty is of no avail. We accordingly reject the argument.

Furthermore, and as found by the Tribunal at page 298 of the record of appeal, since the penalty calculated under section 98 (1) (d) was clearly higher than one under section 98 (1) (e), the former was indeed correctly invoked by the respondent to impose appropriate penalty on the appellant. In this respect, it is plain that the provision establishes the criterion of higher result of the calculated penalty payable in sections 98 (1) (d) and 98 (1) (e) as the penalty to be imposed. This criterion was clearly used by the respondent as is clear in the concurrent findings of the Board and the Tribunal. For those

reasons, the ground of appeal raised by the appellant is of no merit and must fail.

In the event, we are satisfied that the appeal is devoid of merit. Accordingly, we dismiss it with costs.

It is so ordered.

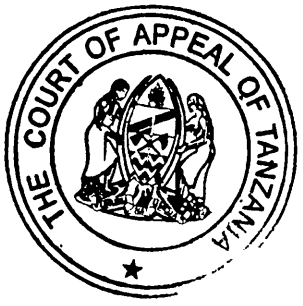
DATED at **DODOMA** this 19th day of February, 2025.

R. J. KEREFU
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

B. S. MSOUD
JUSTICE OF APPEAL

The Judgment delivered this 21st day of February, 2025, in the presence of Ms. Suleina Salim, learned counsel for the Appellant linked via Video Conference from Dar es salaam and Ms. Agnes Makubha and Mr. Yohana Ndila, both learned State Attorney for the Respondent, is hereby certified as a true copy of the original.



C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL