IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MWANDAMBO, J.A., MDEMU, J.A. And MGEYEKWA, J.A.)

CIVIL APPEAL NO. 174 OF 2025

NYOTA TANZANIA LIMITED.....APPELLANT

VERSUS

THE COMMISSIONER GENERAL

TANZANIA REVENUE AUTHORITY..... RESPONDENT

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

(Ngimilanga, Vice Chairperson)

dated the 24th day of February, 2025

in

Tax Appeal No. 48 of 2024

.....

JUDGMENT OF THE COURT

3rd & 17th December, 2025

MDEMU, J.A.:

Nyota Tanzania Limited (the appellant) appeals to the Court so as to challenge the decision of the Tax Revenue Appeals Tribunal (the Tribunal) which dismissed her claim on deductions, of expenses allegedly to be incurred for the production of income. In the record of appeal, both the Tanzania Revenue Appeals Board (the Board) and the Tribunal, arrived at a concurrent finding for disallowing expenditure deductions

mainly because they were not incurred to generate income for the year 2020.

The background of the instant tax dispute goes that; the appellant, a company engaged in shipping agencies, filed a self-assessment tax return for the year of income 2020. On the other hand, the respondent conducted the usual tax audit on the appellant's tax affairs for the same year. In the course, the respondent identified incorrect deductions of interest expenses and information technology (IT) costs. Consequently, it issued a notice of an adjusted assessment in respect of corporate income tax. The appellant objected on account that, the interests on loan secured from a third party were expenses wholly and exclusively incurred in the production of business income in the 2020 year of income. That notwithstanding, the respondent issued a final determination maintaining the disallowance of both the IT costs and the interest expenses because were not wholly and exclusively incurred for the production of the appellant's income within the meaning of section 11(2) of the Income Tax Act (the ITA).

As we alluded to above, both the Board and the Tribunal were of the concurrent finding that, although the expenses in issue occurred in 2020, the loan was obtained purposely for settling tax liabilities of the

appellant arising between the years 2011 and 2014, consequently, did not constitute expenditure wholly and exclusively incurred in the production of the appellant's income for the year of income 2020. Being further aggrieved, the appellant has now appealed to the Court on the following grounds, that is:

1. *The Tax Revenue Appeals Tribunal erred in law in holding that the appellant's interest expense was not deductible expenses in terms of section 11(2) of the Income Tax Act.*
2. *The Tax Revenue Appeals Tribunal erred in law in disallowing information and technology costs charged by Maersk A/S IT department to the appellant.*
3. *The Tax Revenue Appeals Tribunal erred in law in holding that the appellant failed to discharge her burden of proof as per the requirement of section 18 (2) of the Tax Revenue Appeals Act, Cap. 408 R.E. 2019.*
4. *The Tax Revenue Appeals Board erred in law in holding that the interest imposed by the respondent is correct.*

At the hearing of the appeal, Ms. Catherine Mokiri, learned advocate appeared for the appellant. Messrs Baraka Mwakyalabwe, Sylvester Sebastian and Erasto Baluwa, all learned State Attorneys, appeared to represent the respondent.

We note parties' written submissions for and against the raised grounds of appeal. Looking at the phraseology of the grounds of appeal, the decisions of both the Board and the Tribunal and the manner through which counsel for the parties related and connected the raised grounds of appeal with their respective submissions, we are indeed inclined to agree with them that, the following facts are not in dispute: **one**, that, the appellant's tax liability as per the audit conducted and the tax returns filed are for the year of income 2020. **Two**, that, in the year 2020, the appellant received a loan facility from a related party to clear her tax liabilities. **Three**, that, the appellant incurred interest expenses on the loan. **Four**, that, the acquired loan facility was used by the appellant to pay of the appellant's tax liabilities. **Five**, that, the appellant's tax liability serviced by the acquired loan facility was for the years of income 2011 to 2014 and not 2020, being the years, the loan facility was secured.

The above agreed factual matters aided us to narrow down our deliberation mostly to one issue, that is, whether in terms of section 11 (2) of the ITA, the loan facility obtained by the appellant in the year of income 2020 to pay of the appellant's tax liability for the years of income 2011 to 2014 are deductible expenditures wholly and exclusively

incurred in the production of income in the year 2020. The second issue revolves around the 2nd and 3rd grounds on IT expenditure.

Our starting point in resolving the above issue is section 11 (2) of the ITA which we reproduce as hereunder:

> *"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."*

Our interpretation of the above quoted section and as also submitted by both counsel is threefold. **First**, as we stated in **Dangote Cement Limited v. Commissioner General, Tanzania Revenue Authority** (Civil Appeal No. 296 of 2024) [2025] TZCA 1215 (26 November 2025; TanzLII), expenses incurred for the production of income or investment are deductible under the section. **Second**, the expenses must be incurred in the respective year of income and **third**, such expenses must wholly and exclusively be incurred for the generation of the particular income or investment and no more.

Turning to the instant appeal, and as per the appellants concession in her written submissions and a further amplification and elaboration by Ms. Mokiri at the hearing, interests in the income incurred to pay tax liabilities of the appellant was for the years of income 2011 to 2014. Mr. Mwakyalabwe for that matter argued that, since the expenses were incurred to pay tax liabilities of the appellant for the years of income 2011 to 2014, then they have nothing to do with production of income for the year 2020. He added that, such state of affairs disqualifies the said expenditures to be deductible under section 11 (2) of the ITA for the year of income 2020.

Given the above positions, counsel are in agreement that, interest expenses incurred were for the production of income of the appellant. At page 10 of the appellant's written submissions, the appellant submitted:

> *"It is our submission that the appellant has satisfied each of the above principles. The interest expenditure was incurred wholly and exclusively in the production of the appellants income, therefore, deductible."*

The intriguing question is which year of income? Here is where divergent argument seem to stem. Ms. Mokiri appears to be in favour of the argument that, they were for the production of appellant's income for the year 2020. The basis of her argument is not straightly clear, but

entering into her shoes, she appears to base her argument on the year which the loan facility was acquired, that is, 2020.

Mr. Mwakyalabwe took a different stance on account that, since the loan facility was to facilitate the payment of appellant's tax liability for the years of income 2011 to 2014, then that should be the years of income under consideration and not 2020. He submitted this legal stance as appearing at page 5 of the written submissions, thus:

> *"We humbly state that the expenses in the present appeal was used wholly and exclusively for the production of income in the years 2011 to 2014 and not 2020 which is the year of income under dispute."*

On our part, we perceive section 11 (2) of the ITA to be clear and straight forward that, deductions of expenses allowable under the section are those incurred in the production of income of the respective year, which is the year 2020 in the instant tax dispute and again, that such expenses should have been incurred wholly and exclusively for the production of that income. See **Dangote Cement Limited** (supra).

In a bid to persuade us to hold the deductibility of such expenses was for the production of income for the year 2020, the appellant's counsel referred us to the Indian case of **Harrods (Buenos Aires) Ltd**

v. Taylor-Gooby (HM Inspector of Taxes) (1964) 41 TC 450 cited in **Commissioner of Income Tax-Kerala v. Malayalam Plantation** 1964 AIR 1722 in which the bottom line lies on a distinction between expenditure incurred in obtaining capital and interests on borrowed capital for purposes of deductibility. It was then held that:

> *"To conclude, we hold that the expenditure of Rs. 84,633 was not in the nature of capital expenditure and was laid out or expended wholly and exclusively for the purpose of assessee's business. The answer to the question referred, therefore, must be in the affirmative..."*

Much as the **Harrods case** (supra) is persuasive, the scope of its application differs materially in that, whereas there the issue was on capital expenditure, the instant matter rests on using expenses of income production of the years 2011 to 2014 as expenses for the production of income in another year of income, which is, 2020. This, we said, section 11 (2) of the ITA does not permit because, in it, as we have demonstrated, only expenses incurred in the particular year for the production of income are deductible. It is our view that, the broad approach of interpretation of section 11 (2) of the ITA which the learned counsel for the appellant invites us to do, is beyond the laid down

jurisprudence of interpretation of tax legislations, that, tax legislations have to be read as they are and must unreservedly receive strict interpretation. See, for instance, **BP v. Commissioner General, Tanzania Revenue Authority** (Civil Appeal No. 125 of 2015) [2016] TCZA 749 (29 February 2016; TanzLII) and **Commissioner General, Tanzania Revenue Authority v. Ecolab East Africa (Tanzania) Limited** (Civil Appeal No. 35 of 2020) [2021] TZCA 283 (2 July 2021; TanzLII).

To this end, the findings of both the Board and the Tribunal that expenses sought to be deducted were not incurred by the appellant for the generation of income for the year of income 2020, cannot, by all standards, be disturbed.

Regarding IT expenses, we shall begin with the findings of the Tribunal at pages 1232 through 1233 of the record of appeal that:

> *"From the above argument, this Tribunal join hands with the respondent that the* ***appellant failed to discharge her burden of proof as per the requirement of section 18 (2) of the Tax Revenue Appels Act, Cap. 408 R.E. 2019****. The appellant has also referred this honorable Tribunal to the case of* ***M/S MDN Tanzania Limited vs. Commissioner General, TRA****, which held*

that the transfer pricing is a subject of evidential proof and cannot be established by mere assumption of the respondent. In this matter ***the appellant never provided sufficient evidence to substantiate that it incurred such costs and that the said costs were at arm's length****. About paragraph 7.14 of the OECD TP Guidelines and arguing that the said paragraph recognizes computer services as intragroup transactions that an enterprise would be willing to procure or perform for itself.* ***The respondent states that the issue of whether or not IT services was not, is a matter of facts which need to be proved through documentary evidence and not mere words and the appellant failed to adduce evidence to the satisfaction of the respondent and Board that the said services was actually rendered and costs were incurred therefrom****. Basing on the case of* ***Insignia Limited v. Commissioner General,*** *TRA, Civil Appeal No. 14 of 2007, this Tribunal also support the argument by the respondent that the appellant never provided such explanation to the respondent and later on to the Board that are reasonable to justify her assertion that IT costs was incurred by her and that the same was at arm's length."* [emphasis added]

What we gather from the above excerpt is that, the appellant failed to prove regarding IT expenses, and how it was incurred and by

whom. As analysed by the Tribunal, there was failure to produce evidence which would have been analysed by the Board regarding those expenditures. This was conceded by the respondent's counsel in the written submissions to be factual and not on points of law thus not within the jurisdiction of the Court in terms of section 26 (2) of the Tax Revenue Appeals Act, Cap.408. It is provided in that section that:

> *"Appeals to the Court of Appeal shall lie on matters involving law only and the provisions of the Appellate Jurisdiction 'Act and the Rules made thereunder shall apply mutatis mutandis to appeals from the tribunal"*

In our considered view, the respondent took hold of the letters of the law rightly. We are saying so because, in the passage of the Tribunal we reproduced above, the controversy was not on failure to analyse or evaluate the evidence but rather, there was no evidence adduced from which the Board could have analysed and come to its conclusion regarding the status of IT expenses and who actually was the incurring entity between the appellant and Maersk A/S IT Department. The tests of what amounts to question of law within the purview of section 26 (2) of the TRAA was pronounced by the Court in **Atlas COPCO Tanzania Limited v. Commissioner General, Tanzania Revenue Authority**

(Civil Appeal No. 167 of 2019) [2020] TZCA 317 (17 June 2020; TanzLII) in the following version:

> *"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 the 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 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 no evidence to support it or that it is so perverse or so illegal that no reasonable tribunal would arrive at it."*

Applying the above principle in the instant appeal, the finding of the Board which was upheld by the Tribunal in this regard was that the respondent was correct to disallow IT costs charged by Maersk/A/S IT Department for want of evidence. As therefore found by the Board and the Tribunal, the appellant failed to satisfy the evidential requirement regarding IT expenses. We therefore hold that, grounds two of the appellant's appeal is not on the question of law permissive for appealing to the Court in terms of section 26 (2) of the TRAA. The ground was improperly raised before the Court.

Having deliberated on grounds one, two and three which are decisive on the entire appeal, we find no compelling reason to consider ground four of the appeal. For the forgoing, the appeal before us has no merit and we proceed to dismiss it with costs.

DATED at **DODOMA** this 16th day of December, 2025.

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

G. J. MDEMU
JUSTICE OF APPEAL

A. Z. MGEYEKWA
JUSTICE OF APPEAL

The Judgment delivered virtually this 17th day of December, 2025 in the presence of Mr. Mohamed Z. Nazarali, learned counsel for the Appellant, Mr. Richard Gida, learned State Attorney for the Respondent and Mr. Julias Kilimba, Court Clerk; is hereby certified as a true copy of the original.

R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL