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IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MKUYE, J.A., MWAMPASHI. J.A. And NGWEMBE, J.A.)

CIVIL APPEAL NO. 455 OF 2021

TPC 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 – Vice Chairperson)

dated the 29th day of September, 2021

in

Tax Appeal No. 36 of 2020

.....

JUDGMENT OF THE COURT

25th October 2024 & 11th April, 2025

MKUYE, J.A.:

This is an appeal against the judgment and decree of the Tax Revenue Appeals Tribunal (TRAT), in Tax Appeal No. 36 of 2020 which was handed down on 29/9/2021 by Hon. Kamuzora, Vice Chairperson.

The brief facts of the matter leading to this appeal are as follows:

The appellant, Tanzania Planters Corporation Limited (TPC Limited) is a company incorporated under the laws of United Republic of Tanzania in acronym known as the TPC. The Company is engaged in growing sugar cane and sugar production. 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 United Republic of Tanzania (URT).

Sometimes in 2016, the respondent in exercising her mandate conducted tax audit of the affairs of the appellant for the years of income 2013 to 2016. On the basis of such tax audit, the appellant was in 2017, served with a withholding tax certificate No. 437432028 with tax liability worth TZS 198,673,477.00 comprising of both principal and interest chargeable for late payment.

The appellant promptly expressed her dissatisfaction with the tax assessment which led to negotiations in view of resolving some of the issues. However, the said negotiations did not bear any fruitful results in favour of the appellant, as the respondent maintained its stance.

Then, the appellant made a formal objection to the Commissioner in terms of section 52 (4) of the Tax Administration Act, 2015 (the TAA). On 10/3/2018, the respondent communicated to the appellant its decision confirming the assessment. Being aggrieved with that outcome, the appellant lodged an appeal with the Tax Revenue Appeals Board (the TRAB) vide Tax Appeal No. 105 of 2018.

Before the TRAB, the appellants' argument was based on the existing Double Taxation Agreement (the DTA) between the

URT and the Republic of South Africa that, payments made by the appellant for services rendered to her by South African Companies with no permanent establishment in the URT are not subject to withholding tax. The appellant sought reliance on Article 7 of the DTA. On her part, the respondent held a view that such payments were subject to withholding tax pursuant to Article 20 of the DTA. The respondent also sought reliance on the decision of TRAT in the case of **Tullow Tanzania BV v. The Commissioner General TRA**, Civil Appeal No. 14 of 2015 where it was held that Article 7 of the Double Taxation Agreement between South Africa and Tanzania does not apply in withholding tax on service fee.

The TRAB, having heard both parties, observed that payments in respect of services rendered by South African entities to the appellant were not business profit within the scope of Article of 7 the DTA. Further, relying on **Tullow Tanzania BV's** case (supra), it found that the position was well settled.

The appellant, being aggrieved with that decision, lodged an appeal to the TRAT which upon hearing the parties, observed that, service fee paid out by the appellant to South African entities did not amount to business profit within the context of Article 7 of the DTA. It

therefore held that, the service fee was subject to withholding tax under section 83 (1) (c) (i) of the Income Tax, Cap 332 (ITA).

Still undaunted, the appellant has appealed to this Court based on three grounds of appeal as hereunder:

1) *That, the Tax Appeals Tribunal erred in law in holding that the appellant was obligated to withhold tax from the payment made to South African entities in terms of section 83 (1) (c) (i) of the Income Tax Act, 2004.*

2) *The Tax Revenue Tribunal erred in law in holding that payments made by the appellant to South African entities are not business profits and are out of scope of Article 7 of the South African Tanzania Income Tax Treaty, 2005.*

3) *That the Tax Revenue Appeal Tribunal erred in law for holding that the imposition of interest by the Respondent was correct in law.*

When the appeal was called on for hearing, Mr. Wilson Kamugisha Mukebezi, learned advocate, appeared representing the appellant whereas Ms. Grace Makoa, learned Principal State Attorney, teaming up with Ms. Grace Lupondo, learned Senior State Attorney and Mr. Andrew Kombo, learned State Attorney, represented the respondent.

On being called upon to amplify his grounds of appeal, Mr. Mukebezi, in the first place sought to adopt his written submissions lodged on 31/1/2022 to form part of his submission.

In his written submissions, Mr. Mukebezi dropped the 1st ground of appeal and proposed to argue the remaining grounds of appeal on the basis of the following issues:

i) Whether the Tribunal was correct in law in holding that payments made by the appellant to the South African entities are not business profits and are out of scope of Article 7 of the Double Taxation Treaty Agreement between South Africa and Tanzania, hence liable to withholding tax in Tanzania.

ii) What reliefs are the parties entitled to.

According to both appellant's written and oral submissions, it was argued that, the payments made by the appellant to South African entities are not subject to withholding tax in Tanzania because, **one,** section 128 of the Income Tax Act, 2004 (the ITA) gives effect to the Double Taxation Agreement (DTA) to override the provisions of ITA, **Two**, the interpretation of the DTA treaty is in accordance with the Vienna Convention on Law of Treaties 1969 (VCLT) under which Article 31 of VCLT requires the terms in the Treaty to be given ordinary meaning in their context; the purpose of treaty being avoidance of

double taxation and prevention of fiscal evasion in respect to taxes on income. **Three**, the interpretation of Article 7 of the DTA as opposed to Article 20 of the DTA exempts taxation on business profits unless the profits are attributed to permanent establishment. That, the respondent's justification of taxation relying on Article 20 of the DTA was wrong as Article 7 of the DTA does not include business profit. It was therefore argued that, the appellant's payment of service fee to South African entities are incomes derived by South African companies in carrying out their businesses and hence are not profits as envisaged under Article 7 (1) of the DTA and are taxable in South Africa, the contracting state, under Article 7 (2) of the DTA.

According to the appellant, the profit / income could only be taxable in Tanzania if South African entities had permanent establishments in Tanzania under Article 7 (1) of DTA. To bolster her argument, she referred us to the Kenyan Tax Appeals Tribunal case of **Mckinsey and Company INC. Africa Proprietary Ltd v. Commissioner General of Legal Services and Board Coordination**, Appeal No. 199 of 2020 (unreported), in which the said Tribunal emphasized that the income was taxable in country were the enterprise is resident (SA) unless it had permanent establishment in

Kenya. Thus, it was found that the right to tax such income fell with South Africa.

In her view, as the service fee paid by the appellant had been dealt with under Article 7 (1) of the DTA, then Article 20 of the DTA was inapplicable in the matter at hand as it applies to income not dealt with under other provisions of the DTA.

The appellant admits that the term profit is not defined under the ITA. But the terms "gains" and "profits" are defined under section 8 (1) of the ITA in that "*a person's income from business for a year of income is person's gains or profits from conducting business*". And, under section 8 (2) of ITA, service fee is included in calculating a person's gains or profits. In that case, it is their argument that service fee form part of business profit.

The appellant went on submitting that, in the matter at hand, payments were for both "professional" and in the nature of trade because the services were professionally provided with a view to deriving profit and South African entities were not employed by the appellant. In that case, it was argued, the amounts paid were business profits to South African entities and for that matter, the TRAT decision that service fees are not business profit envisaged under Article 7 of the DTA is misconceived.

Further to that, the appellant being mindful of the decisions in **Kilombero Sugar Company Limited v. Commissioner General TRA**, Civil Appeal No. 218 of 2019 [2021] TZCA 213 (25 May 2021) to be referred as **"Kilombero Sugar Company Limited No. I"** and **Mantrac (Tanzania) Limited v. Commissioner General Tanzania Revenue Authority**, Civil Appeal No. 430 of 2020 [2021] TZCA 657 (5 November 2021), urged the Court to consider departing from them because the interpretation of Article 7 of the DTA did not take into account the object and purpose as per VCLT but relied on domestic law. In his oral submission Mr. Mukebezi beseeched the Court to rely on **Kilombero Sugar Company Limited v. Commissioner General TRA**, Civil Appeal No. 443 of 2020 [2022] TZCA 636 (19 October (unreported) (hereinafter to be referred as **"Kilombero Sugar Company Limited No. II")**, in which the Court held that the fees paid in Zambia by Kilombero Sugar Company Limited under Article IV of the Double Taxation Agreement, which is in *parimateria* with Article 7 of the DTA, were business profits not subject to withholding tax. He also, implored the Court to rely on it having regard to the fact that it was determined after the two earlier cases (principle of most recent decision) (See: **Arcopar (O.M.) S.A. v. Harbet Marwa and Family Investment Co. Ltd and 3 Others**, Civil Application No. 94 of 2013

[2015] TRLA 554 (3 February 2015); **Afritoki Enterprises Co. Ltd v. Pacific International Lines**, Civil Application No. 193 of 2012 TZCA 206 (5 July 2017) and **Tanzania Game Trackers Limited v. Brayan Priestley,** Civil Application No. 17/02 of 2019 [2023] TZCA 17569 (31 August 2023). Mr. Mukebezi, therefore, urged the Court to follow suit and allow the appeal.

In response, the counsel for the respondent also adopted the written submissions filed earlier on to form part of their submission in opposing the appeal. Before responding to the appellant's written submissions, the respondent posed two questions to which she thought to be the basis of the appellants' submissions, which are:

> *1) Whether payments made by appellant to South African entities are in respect of business profit hence exempted under Article 7 of DTA.*
>
> *2) Whether section 128 of ITA gives overriding effect to the DTA in case there appears to be an inconsistence between the two.*

Otherwise, it was their submission that, the TRAT correctly found that payments by the appellant for the years under dispute to South African entities for services received are out of scope of Article 7 of the DTA between Tanzania and South Africa, and hence, the respondent correctly imposed the withholding tax and interest on such payments.

The respondent reasoned out that, **one**, payments were in respect of business profit not covered under Article 7 of DTA; **two**, neither the DTA, OECD or UNVCLT define business profit. **Three**, accordingly, business profit can be determined once tax returns are filed to a tax authority whereby costs and expenses incurred by a tax payer in production of income are exempted and the remaining amounts are counted as business profits which are liable for taxation. **Four**, what the respondent taxed was the amount paid by appellant to South African entities as service fee which is cost inclusive not covered by Article 7 of the DTA and not business profit. The respondent made reliance on the case of **Kilombero Sugar Company Ltd**, **No. I** (supra), where it was held that:

> *"Article 7 is not applicable in the present situation because it provides for business profit which is cost exclusive while in the case at hand, the item at issue is service fee which is cost inclusive".*

Also, the respondent referred to us the case of **Mantrac Tanzania Limited** (supra), where the Court discussed a similar issue and stated that:

> *"As the service fee is an item which does not feature anywhere in the double taxation*

agreement, Article 20 of the DTA becomes handy..."

It was argued that, Article 20 of DTA essentially deals with imposing withholding tax on incomes not dealt with under Article 7 of the DTA.

The respondent was also at one with the appellant in that business profit is determined only once tax returns have been filed to tax authority but stressed that Article 20 of DTA caters for situations or incomes other than those dealt with by other articles in the DTA; and for that matter it is not applicable in respect of chargeability of business profit.

The respondent submitted further that, Article 7 of the DTA is applicable only where actual profit has been made by an enterprise. As service fee is not mentioned in DTA, it falls under the category of other income as per Article 20 of DTA.

The respondent's further response on section 128 of ITA was that, it gives overriding effect to the DTA where there is inconsistence between ITA and international treaty and that as there was no inconsistence in the matter at hand, such argument by the appellant was misconceived.

As regards invocation of the Vienna Convention on Law of Treaty, the respondent acknowledged that, Article 31 (1) of the VCLT, 1969 requires the international treaty to be interpreted in good faith and in accordance with ordinary meaning of the respective treaty. However, it was argued that, it was also properly adhered to by TRAT to find that Article 7 of the DTA requires contracting states not to tax the profit of enterprises which do not have permanent establishment.

The respondent further dismissed the appellants' proposition for the Court to depart from its earlier decisions in **Kilombero Sugar Company Limited No. I** and **Mantrac (Tanzania) Limited** cases (supra) as not tenable as the procedure for raising it has not been followed.

Submitting orally in clarification to the written submissions, Ms. Makoa contended that, the service fee paid by the appellant is not part of business profit and that it is inclusive of costs or expenses or costs and gain. On the other hand, she argued, profit is a gain after deducting the expenses.

As regards the decision of the Court in **Kilombero Sugar Company Limited No. II** (supra), she agreed with the principle of the recent decision to take precedence, but she was of the view that, the case of **Mlimani Holdings Limited v. Commissioner General TRA,**

Civil Appeal No. 265 of 2021 was the most recent decision which followed the decisions in **Kilombero Sugar Company Ltd No. 1** and **Mantrac (Tanzania) Limited** case (supra).

Nevertheless, the learned Principal State Attorney distinguished the latter case of **Kilombero Sugar Company Limited No. II** (supra) which was on DTA between Tanzania and Zambia from the case at hand as the wording of Article IV of the DTA thereof is different from Article 7 of the DTA under discussion.

Apart from that, Ms Lupondo submitted in clarification that, under section 8 of ITA, service fee includes both gain and profit, but profit does not include all payments. She added that, despite the fact that the Court in **Kilombero Sugar Company Limited No. II** (supra) ruled out that Article IV of the DTA thereof was applicable to service fee but the same Court went further to find that the service fee paid to Zambia (managing fee) was subject to withholding tax.

She concluded by urging the Court to dismiss the appeal because service fee paid to South Africa entity was not profit as per Article 7 of DTA and that the respondent rightly charged the withholding tax under Article 20 of the DTA read together with section 83 of ITA.

In rejoinder, Mr. Mukebezi submitted that even if **Mlimani Holding Limited's** case (supra) is the most recently decided case, it did not discuss the case of **Kilombero Sugar Company Limited No. II** (supra) but discussed the cases of **Kilombero Sugar Company Limited No. I** (supra) and **Mantrac (Tanzania) Limited** (supra). He also stressed that, section 128 of ITA was applicable since there was a contradiction as to whether service fee is profit under Article 7 of the DTA so that the respondent could not impose withholding tax. He lastly, insisted to the Court to allow the appeal.

As we hinted earlier on, the dispute between the parties hinges around the issue whether service fee payment by the appellant to South African entities amounted to business profit or not and is out of scope of Article 7 of the DTA, or rather, whether the payments made by the appellant (service fee) to South African entities are not business profits envisaged under Article 7 of the Double Taxation Treaty Agreement between South Africa and Tanzania so as to attract withholding tax payment in Tanzania. The parties are not in agreement. Whereas the appellant holds a view that under Article 7 of the DTA, the service fee amounts to profit, hence not subject to withholding tax otherwise it would amount to double taxation, the respondent maintains that such service fee is not profit within the scope of Article 7 of the DTA, rather,

is a matter that falls within the scope of Article 20 of the DTA, hence, subject to withholding tax.

In the first place, before embarking on the said issue, we wish to state, at the outset, matters which are not in dispute. **One**, it is not disputed that the appellant made payment of service fee to South African entities for services rendered to her. **Two**, business profit is not defined under the DTA. **Three**, business profit is determined after the tax returns are filed to tax authority whereby costs and expenses incurred by the tax payer in production of income are excluded/exempted and the remaining amount is counted as business profit. **Four**, international treaties are to be interpreted in good faith and according to their ordinary meaning of such treaties as per the VCLT.

We wish to begin with Article 7 of the DTA as it seems to us to be the centre of the controversy between the parties. For ease of reference, we reproduce it as hereunder:

> *"The profits of an enterprises of a contracting state shall be taxable only in that state unless the enterprise carries on business in the other contracting state through a permanent establishment situated therein. If the enterprises carries on business as aforesaid, the profit of the*

enterprise may be taxed in the other state but only so much of them as it is attributable to that permanent establishment".

The gist of the above cited Article is that the profit of an enterprise is taxable in the contracting state (state of establishment), unless the business concerned is carried out to another contracting state through a permanent establishment there, (Tanzania) which was not the position in this case.

It is the appellant's argument that, the service fee paid by the appellant to South African entities formed part of business profit covered under Article 7 so that it cannot be liable for withholding tax. Fortunately, this Court had an opportunity to deal with a similar scenario in the case of **Kilombero Sugar Company Limited No. I** (supra) in which like in this case, the appellant having entered into an Operational and Technical/Services Agreement with Illovo Project Services Limited, a South African Company, for the management and control of her factories and agricultural land from time to time, paid some fixed amount of money for the services rendered to her but did not pay withholding tax for payments made for services rendered to her. The issue was whether the payment made to South African Company formed part of service fee and thus subject to withholding tax in terms of the

Tanzania - South Africa Double Taxation Agreement. Mindful of Article 7 of DTA *vis a vis* Article 20 of DTA, the Court stated that:

> *"Flowing from the above, as service fee is an item which does not feature anywhere in the Double Taxation Agreement, Article 20 becomes handy. The costs incurred by Illovo and reimbursed by the appellant (which we have already found and held to be part of service fee) will be taxable in Tanzania as per Article 21 of the Double Taxation Agreement. Put differently, it is our considered view that, as per the Double Taxation – Agreement, service fees by a South Africa entity for provision of professional services to a Tanzanian entity, do not form part of business profits as provided for under Article 7 of the Double Taxation Agreement which is not taxable in Tanzania but fall under Article 21 of the Double Taxation Agreement and thus subject to withholding tax in terms of section 83 (1) (b) of the ITA, 2004".*

This decision was followed by the decision in the case of **Mantrac (Tanzania) Limited** (supra), whereby the Court was confronted with an akin situation in which the issue centred on payments made to a South African entity by a resident person in Tanzania for services rendered that were not subject to withholding tax under Article 7 of the

DTA. While relying on the case of **Kilombero Sugar Company Limited No. I** (supra), the Court stated as follows:

> *"It is our firm opinion that the Tribunal was right in holding that the exception under Article 7 of the DTA was not applicable to the appellants".*

Again, in the case of **Mlimani Holding Limited** (supra), the Court grappled with a similar situation and relying on **Kilombero Sugar Company Limited No. I** (supra) held that:

> *"...we hold that the service fees the appellant paid to MDS Architecture did not constitute part of the business profits of the payee and thus liable to withholding tax in Tanzania. Consequently, as the appellant did not remit the withholding tax in accordance with section 83 (1) (b) of the Act (ITA 2004), the respondent was entitled to issue the impugned withholding tax certificates as he did".*

As it is, according to the above authorities, the position regarding business profit that it is not covered under Article 7 of the DTA. However, we are mindful of the appellant's concern that the DTA provisions were interpreted narrowly in disregard of the Article 3 (1) of the VCLT requiring liberal interpretation. But having gone through the decision of TRAT particularly at pages 357 – 358 of the record of appeal,

we agree with Ms. Makoa that the same was taken into account in interpreting Article 7 of the DTA. The TRAT in the first place acknowledged the applicability of OECD and UN (Conventions) on Law of Treaties in interpreting international tax agreements like the DTA and found that both documents did not define the term "business profit" which was at issue (See pages 357 - 358 of record of appeal). It observed that, the omission to define the business profit and not to include service fee in the definition of the term business under Article 7 of the DTA was not accidental as it was intended to exclude all other payments rather than business profits to taxation under the provisions of the DTA.

In that regard, it cannot be said that the TRAT interpreted the provisions of Article 7 of the DTA narrowly as the appellant seems to suggest.

It was also submitted by the appellant that section 128 of the ITA gives overriding effect to DTA over domestic laws or provision of ITA. The focus here being the invocation of section 83 (1) (c) (i) of the ITA in relation to payment to a non-resident of a service fees with a source in the URT to withhold income tax from payment at the required rate.

Section 83 (1) (c) (i) of the ITA reads:

"(1) Subject to sub section (2), a resident person who –

(a) .....n/a.....

(b) .....n/a.....

(c) pays to –

(i) a non-resident a service fee with a source in United Republic; or

(ii) .....n/a.....

(d) .....n/a.....

shall withhold income tax from the payment at the rate provided for in paragraph 4 (c) of the First Schedule".

On the other hand, section 128 of the ITA relied upon by the appellant provides as follows:

"To the extent that the terms of an international agreement to which the United Republic is a party are inconsistent with the provisions of this Act, apart from subsection (5) and Subdivision B of Division II of Part III, the terms of the agreement prevail over the provisions of this Act".

The gist of the above cited provision is that the terms of international agreement will prevail only where there is an inconsistence with the provisions of ITA.

In the circumstances of this case, we agree with Ms. Lupondo that section 128 of the ITA was inapplicable since there was no inconsistence between Article 7 of the DTA and the provisions of ITA in relation to withholding tax. The argument by the appellant that there was a contradiction whether service fee was profit under Article 7 of the DTA, in our view, does at amount to inconsistence since it is a matter of interpretation of the law. We, therefore, find that this argument is indeed misconceived.

The other concern raised by the appellant is that, the Court be inspired by decision of the Court in **Kilombero Sugar Company Limited No. II** (supra), where the Court interpreted the fees paid by the appellant to Zambia under Article IV of the DTA to be business profit which was not subject to withholding tax. The respondent, besides assailing it for being distinguishable to the case in hand, argued that the case of **Mlimani Holdings Corporation** (supra) was the most recently decided case. However, with due respect to the learned Principal State Attorney, we think, that is not the correct situation.

Much as we have no qualms with the settled principle that in case of conflicting decisions of the Court, the most recently decided position will prevail, as was held in **Arcopar (O.M.) S.A.** (supra), **Tanzania Game Trackers Limited** (supra) **and Afritoki Enterprises Co. Ltd**

(supra), we do not agree with her that **Mlimani Holding Corporation** case (supra) was decided after **Kilombero Sugar Company Limited No. II** case (supra). Our scrutiny of the said cases has revealed that, the **Mlimani Holding Corporation** case (supra) was decided earlier on 18/7/2022 while the **Kilombero Sugar Company Limited No. II's** case (supra) was decided later on 19/10/2022. Under normal circumstances it is the **Kilombero Sugar Company No. II** decision which would prevail.

We take note that in **Kilombero Sugar Company No. II's** case (supra), the issue of whether service fee amounted to business profits was dealt with in the affirmative. It was observed that; **one,** in both the Tanzania - Zambia and Tanzania – South African DTAs, it is the profit from the enterprise which is chargeable to tax. **Two,** that there is no substantial and material differences between the two respective Articles (Artcle IV and 7) of the DTAs. **Three,** service fees (management fees) was indeed, commercial profit derived from business undertakings. In particular, the Court stated that:

> *"Without implying or involving ourselves in intendment and giving the words their literal meaning, it is plain therefore that business includes provision of service for gain or profit and*

the latter is a commercial transaction motivated by obtaining profit".

With the above finding of the Court in **Kilombero Sugar Company No. II's** (supra), we are partly in agreement with the argument by Mr. Mukebezi to follow the holding in the said case that service fee to business profit. It should however be noted that in that case, the provisions of Section 83 (1) of the ITA were applied, whereby the residence and source of fee tests were invoked and thereby it was found that the appellant was liable to withhold tax in respect of the service fee paid to a non-resident (Zambia) with no permanent establishment in the URT.

Based on the above observations, we find no reason to depart from the ultimate finding of the Court in **Kilombero Sugar Company No. II** (supra). We find that the appellant had an obligation to withhold tax in respect of payments made to South African entities.

We are still mindful of the appellant's invitation to depart from the cases of **Kilombero Sugar Company Limited No. I** (supra) and **Mantrac (Tanzania) Limited** (supra) in view of the decision of **Kilombero Sugar Company Limited II** (supra). Essentially, the position taken in those two cases was that service fee was not catered for by Article 7 of DTA instead if fell under other income to be catered

for by Article 20 of DTA unlike in **Kilombero Sugar Company Limited II** case where profit was found to be catered by Article IV of DTA.

However, as was rightly submitted by the respondent's counsel, the invitation is not tenable as it did not comply with the law guiding such an invitation. Hence, we decline it. We also note that similar attempt was advanced in the case of **Mlimani Holdings Limited** (supra) but the Court declined such prayer and it stated as follows:

> *"... it is now settled that departing from a previous decision cannot be undertaken by an ordinary Court, rather, a full bench ..... by five justices which may entail overruling the previous decision if the Court sees justification to depart."*

Now, on the basis of the above decision to which we subscribe, we do not accept such invitation as it would amount to usurpation of our mandate.

All in all, as already hinted earlier on, we find that the service fee paid by the appellant to South African entities for services rendered in Tanzania did not amount to business profit within the scope of Article 7 of the DTA. Nevertheless, since the appellant is a resident of Tanzania and carries her business in Tanzania and has no permanent establishment in another contracting state (South Africa) as per Article 7

of the DTA, it is our view that it ought to withhold tax. In other words, we uphold the decision of TRAT that the respondent rightly imposed such withholding tax to the appellant though on a different reason.

As regards the second issue as to what reliefs are the parties entitled, we find the appeal to be unmerited and we hereby dismiss it with costs.

It is so ordered.

DATED at **DAR ES SALAAM** this 10th day of April, 2025.

R. K. MKUYE
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

P. J. NGWEMBE
JUSTICE OF APPEAL

The Judgment delivered this 11th day of April, 2025 in the presence of Mr. Wilson Mukebezi, learned counsel for the Appellant and Mr. Elinihaki Kabura, learned State Attorney for the Respondent both linked via video from Dar es Salaam, is hereby certified as a true copy of the original.

A. S. CHUGULU
DEPUTY REGISTRAR
COURT OF APPEAL