

IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

(CORAM: MWARIJA, J.A., MASOUD, J.A. And NANGELA, J.A.)

CIVIL APPEAL NO. 08A OF 2025

**THE COMMISSIONER GENERAL,
TANZANIA REVENUE AUTHORITY (TRA)..... APPELLANT**

VERSUS

BEACH PETROLEUM (TANZANIA) LIMITED.....RESPONDENT

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

(Herbert, Vice Chairperson)

Dated the 12th day of March, 2024

in

Appeal No. 22A of 2022

JUDGMENT OF THE COURT

10th November, 2025 & 23rd September, 2026

MWARIJA, J.A.:

The respondent, Beach Petroleum Tanzania Limited is a limited liability company incorporated under the Companies Act, Chapter 212 of the Revised Laws. It engages in petroleum and gas exploration in Tanzania under the Production Sharing Agreement (PSA) dated 23/6/2010 between it and the Government of the United Republic of Tanzania.

The dispute giving rise to this appeal resulted from a routine audit conducted on the respondent's accounts by the appellant, the Commissioner General of the Tanzania Revenue Authority, a Government Agency responsible for administration of tax laws, having the duties of, *inter alia*, assessing and collecting taxes from the taxpayers in the country.

The audit was for the years of income 2014 - 2016 and the taxable amount, the subject matter of the dispute, was based on the return for the year of income 2015. The appellant had deducted from its income depreciation expenditure for its assets. The respondent disallowed the deducted depreciation on account that, the project was still at the pre-production stage and, for that reason, the assets for which the depreciation allowance was deducted were not employed in the production of the respondent's income. In the circumstances, the appellant issued Agency notice to the respondent with corporate Tax assessment No. F. 421624003 through the respondents Bank, the City Bank for an adjusted amount of TZS 6,403,621,783.90 (six billion four hundred and three million six hundred and twenty one thousand seven hundred eighty three shillings and ninety cents) comprising of TZS 5,249,775,600.00 (five billion, two hundred forty nine million seven

hundred seventy five thousand six hundred shillings, being the principal amount of tax and 1,153,846,183.90 (one billion one hundred fifty three million eight hundred forty six one hundred eighty three shillings and ninety cents) being the interest.

Aggrieved by the decision of the appellant of disallowing the deduction, the appellant appealed to the Tax Revenue Appeals Board (the Board). At the Board, the following issues were framed for determination:

- "1. Whether the respondent was justified in denying the appellant depreciation allowance on exploration expenses.*
- 2. Whether the respondent was justified in denying unrelieved expenses.*
- 3. Whether the respondent was justified in imposing interest.*
- 4. Whether the respondent was justified in issuing the Agency notice.*
- 5. Reliefs to which the parties are entitled."*

During the hearing, the respondent relied on the evidence of two witnesses, Narsis Mng'ong'o (AW1) who was the respondent's Country Manager, an accountant by profession and Donald Msanyiwa (AW2) also an accountant by profession who was, at the material time, a Tax

Director working with KPMG, a professional audit and tax advisory firm. On its part, the appellant also called two witnesses; Shigela Josephat (RW1) who was, at the material time, the TPDC's Senior Geologist and Elias Temu (RW2) who was the head of Medium Taxpayer's Unit, Ilala Tax Region.

The substance of the evidence and arguments on the part of the appellant centred on the issue of depreciation allowance. It was contended that, the appellant was entitled to depreciation allowance notwithstanding the fact that the project was still at the pre-production stage. According to AW1, the respondent was entitled to depreciation allowance because, when read with paragraph 1 (3) of the Third Schedule to the Income Tax Act, 2004 (the Act), the conditions that the asset must be owned and used in the production of the income were satisfied, given the nature of the respondent's business, that of natural resource prospecting, exploration and development (the extractive industry). It was submitted that, under the PSA the respondent's business of exploration involved geological and geophysical data gathering, processing, mapping and drilling preparation, the activities which were wholly and exclusively undertaken to ascertain the project viability and, for that reason, the assets were deemed, under paragraph 1 (3) of the

Third Schedule to the Act (hereinafter "the paragraph of the schedule") to be used in the production of the income. The decision in the Indian case of **Whittle Anderson Ltd v. CIT, Grasim Industries Ltd v. CIT**, was cited to support the respondent's position. It was also the contention of the respondent that, the disallowance was catalized by the transaction of USD 10,000,000,000.00 received by the respondent from Woodside Energy (Tanzania) Limited for sale of data and historical cost contribution under a farm-out agreement. The respondent had also made deduction for unrelieved losses on account that the same were allowable under section 19 (1) (a) of the Act.

On its part, the appellant disputed the respondent's contention that it was entitled to depreciation allowance on the basis of the paragraph of the schedule notwithstanding the fact that the company had not started production. It was the appellant's contention that, pursuant to the deeming fiction as per the paragraph of the schedule read together with section 17 of the Act, depreciation allowance is deductible where the asset is owned and used by the person in the production of the income. On unrelieved losses, it was the appellant's case that, the same depended on the disallowed depreciation allowance and in that respect, the claim was devoid of merit. The appellant stressed that, the agency notice was

properly issued as tax recovery measure in terms of section 67 of the Tax Administration Act, 2015.

In its decision, the Board considered the provisions of the Act which govern deduction of depreciation allowance, that is section 17 of the Act read together with the paragraph of the schedule. It was of the view that, while section 17 requires compliance with two conditions for entitlement to depreciation allowance in respect of the business, that is; ownership and employment of the assets in the production of the income, the paragraph of the schedule provides for an exception to the conditions set under section 17 of the Act.

It was the Board's view further that, the appellant's decision to disallow depreciation was wrongly based on the ground that, the respondent was not carrying out business. It held that, from the activities undertaken by the respondent, even though the business was at the pre-production stage, it earned income, such as the USD 10 million from Woodside Energy (Tanzania) Limited, which was a taxable income. In the circumstances, the Board found that, the respondent which had a business licence, was obviously a company doing business in terms of the provisions of section 3 of the Act and was, for that reason, entitled to depreciation allowance.

Upholding the decision of the Board, the Tribunal endorsed the meaning and intent of section 17 read together with the paragraph of the schedule as construed by the Board, that; the respondent's activities prior to the production stage constituted business which, in the extractive industry is, by virtue of the provisions of the paragraph of the schedule deemed to amount to the use of its assets in the production of income.

In its submission in support of the appeal before the Tribunal, the learned Principal State Attorney who appeared for the appellant cited the decisions of this Court, including the case of **Panafrican Energy Tanzania Ltd v. Commissioner General, TRA** (Civil Appeal No.192 of 2018) [2018] TZCA 41 in which, an issue based on the interpretation of section 17 of the Act read together with the paragraph of the schedule was made. The Tribunal declined to be bound by that decision on account that, the same was irrelevant to the case at hand. Thus like the Board, the Tribunal found that, the respondent was entitled to depreciation allowance, vacated the charged interest and ordered the appellant to refund the money seized through the Agency notice.

The appellant was further aggrieved by the decision of the Tribunal hence this appeal which is predicated on the following three grounds of appeal:

- "1. The Honourable Tribunal erred in law for wrongly interpreting the provisions of section 17 and paragraph 1 (3) of the Third Schedule to the income Tax Act, 2004.*
- 2. The Honourable Tribunal erred in law by disregarding the Court of Appeal authorities submitted by the appellant without giving reasons thereby contravening the principle of precedent and stare decisis.*
- 3. The Honourable Tribunal erred in law for delivering judgment which differs with one of the Tribunal member without assigning the reasons of his disagreement contrary to section 20 of the Tax Revenue Appeals Act, Cap 408 R.E. 2019."*

At the hearing of the appeal, the appellant was represented by Ms. Grace Makoa, learned Principal State Attorney assisted by Mr. James Igakinga also learned Principal State Attorney, Mr. Octavian Kichenje, learned Senior State Attorney, Mses. Catherine Mwanilwa and Sabina Yongo, both learned State Attorneys. On its part, the respondent was represented by Drs. Abel Mwiburi and Hamza Ismail Abdulrahman, learned advocates.

Ms. Makoa had filed written submissions in support of the appeal in terms of rule 106 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules) and on their part, Drs. Mwiburi and Abdulrahman had jointly filed written reply submissions in terms of rule 106 (7) of the Rules. During the hearing, Ms. Makoa, Messrs Kichenje and Igakinga as well as Ms. Mwanilwa made oral submissions highlighting the submissions filed in support of the appeal. Likewise, Drs. Mwiburi and Abdulrahman made oral arguments highlighting their written reply submissions.

In their written submissions, Ms. Makoa abandoned the 3rd ground of appeal and thus adopted the submissions in respect of the 1st and 2nd grounds. The submissions on these two grounds were based on the interpretation of section 17 and the paragraph to the schedule. She argued that, the Tribunal erred in holding that the respondent's business was covered by the paragraph of the schedule because the business was in respect of extractive industry and that, though not in use, the expenditure incurred in the production of income is deemed to have been incurred in securing the acquisition of the assets. The learned Principal State Attorney went on to argue that, the Tribunal erred in interpreting the two provisions, more so because, it disregarded the principle of precedent and *stare decisis* by holding that, the cited cases including the

one in which this Court interpreted the same provisions of the law, **Panafrican Energy Tanzania Ltd** (supra), was irrelevant to the case at hand.

According to the learned Principal State Attorney, depreciation allowance is deductible upon fulfillment of the conditions stated under section 17 of the Act and the paragraph of the schedule. The paragraph of the schedule does not provide for exception to those conditions on account that, the expenditure incurred in the production of the income in extracting industry is treated as if it were incurred in acquiring the asset used in the production of the income even where such asset is not used in the production of that income. It was her argument that, if that was the case, the exception should have been clearly stated under section 17 of the Act, not in the schedule as held by the Tribunal. She referred the Court to section 3 of the Act which defines the term "depreciable asset", to be an asset which has the characteristic of *inter alia*, being employed wholly and exclusively in the business that produced the income. The learned Principal State Attorney stressed that, the respondent did not realize the income from use of any depreciable assets but from normal business activities such as the income from Woodside Energy (T) Ltd which was a realization of 70% as a settlement for that company's failure

to complete the farm-out agreement in which it was to acquire petroleum rights under the PSA but decided to pull out. On the basis of the foregoing submissions, Ms. Mwanilwa prayed that the appeal be allowed.

In reply, the learned advocates for the respondent submitted, in their joint written reply submissions that, the two ground argued by the learned Principal State Attorney are without merit. Starting with the argument that, the Tribunal erred in its interpretation of section 17 read together with the paragraph of the schedule. They submitted that, section 17 of the Act cannot be construed independently and given primacy over the paragraph of the schedule which, they said, is a specific provision. They stated as follows at page 6 of their written submissions:

*"It is a settled principle of statutory interpretation that where a general provision co-exists with a more specific one, the specific provision prevails. This is embodied in the latin maxim **generalia specialibus non derogant** which reflects a presumption that the legislature, in enacting a specific provision, intends to qualify the broader rule in respect of the subject matter to which the specific provision applied."*

To bolster their argument, the learned advocates cited the case of **Permanent Secretary (Establishment) and Another v. Hilal**

Hemed Rashid and Others (Civil Appeal No. 64 of 2002) [2004] TZCA 54.

It was submitted further that section 17 of the Act is a general provision which lays down the criteria for deduction of depreciation allowance in respect of an asset owned and used in the production of a person's income establishing "a broad baseline for deductibility of depreciation, without tailoring its application to the distinctive characteristics of particular industries or line of business." It was argued further that, the paragraph of the schedule is specific to extractive industry recognizing tangible and intangible assets and treat them to be eligible for depreciation, the intention being to facilitate recovery of capital given the nature of extractive industry. In the circumstances, it was argued, the Tribunal properly interpreted the two provisions and gave effect to the qualifying paragraph of the schedule to the Act thereby applying it accordingly.

It was the submissions of the respondent's advocates further that, the paragraph of the schedule is not a duplicate of section 17 of the Act but a specific provision to extractive industry, the purpose being to ensure the tax payers recover the costs of their investments in both tangible and intangible assets, emphasizing that a restrictive reading of

section 17 of the Act to the exclusion of the paragraph of the schedule will have the effect of defeating the purpose of enabling recovery of upstream investment. They added that, the deduction was not based on the income from Woodside Energy (Tanzania) Limited but in respect of the capital costs that was incurred by the respondent in earlier years while pursuing its petroleum operations.

Apart from the notion relating to the source of the income from the Woodside Energy (Tanzania) Limited, they argued that, the deduction was based on the purpose of the paragraph of the schedule, which provides for how the conditions under section 17 of the Act are to be satisfied, regard being had to the risky nature of a business in extractive industry. Giving a detailed reasoning on what they conceived as being the purpose of the paragraph of the schedule and its application in the extractive industry, the learned advocates argued that, when it comes to the expenditure incurred in the production of income in the said sector, physical use of an asset is immaterial because the expenses prior to the production are deemed to have been incurred in securing that asset and the taxpayer is entitled to depreciation allowance. On the cited case of **Panafrican Energy Ltd**, the learned advocates supported the Tribunal's view that, the same was inapplicable and proceeded to give their own

reasons, first, that the issue in that case was in respect of proving whether the asset was actually acquired and used in the production of income and secondly, that while in the cited cases, what was at issue was a tangible asset, in the present case, the issue is on intangible assets.

Elaborating, they submitted that, the **Panafrican Energy Ltd** case is distinguishable because it dealt with the issue concerning the burden of proof on whether the taxpayer actually did put in use the already acquired depreciable asset. However, they went on to state, in the case at hand, the issue was on "whether the exploration expenditure incurred by the respondent while holding a valid participating interest under petroleum agreement with the Government of Tanzania qualifies as capital expenditure of a depreciable assets by virtue of paragraph 1 (3) of the Third Schedule."

In that respect, it was their argument that, an authority is only binding where the facts and legal issues are materially the same. To support that argument, they cited the cases of **Ally Moshi Lubanguka v. Zulfa Heri and 2 Others** (Civil Appeal No. 56 of 2013) [2013] TZCA 2440 and **Acer Petroleum (T) Ltd v. B.P. (T) Ltd** (Civil Application No. 60 of 2020) [2022] TZCA 393. On those submissions, Dr. Abdulrahman prayed for dismissal of the appeal with costs.

Having duly considered the rival submissions of the learned counsel for the parties on the two grounds of appeal, which were argued together, we now proceeded to determine two issues which arise from the grounds of appeal and the parties' submissions. The first, is whether the Tribunal erred in law in its interpretation of section 17 of the Act and paragraph 1 (3) of the paragraph of the schedule thereby holding that, the respondent was entitled to depreciation allowance which was disallowed by the appellant. And the second is whether, in its decision, the Tribunal acted in disregard of the authority of this Court hence breaching the doctrine of precedent.

To begin with the first issue, from the grounds of appeal and the submissions, the parties' discord centred on the interpretation of section 17 of the Act and the paragraph of the schedule. Section 17 provides as follows:

"17. For the purpose of calculating a person's income for a year of income from any business, there shall be deducted in respect of depreciation of depreciable assets owned and employed by the person during the year of income wholly and exclusively in the production of the person's income from the business the allowances granted under the Third Schedule."

The section allows for deduction from a person's income from any business in a year of income, depreciation allowance. It lays down two conditions for the asset to qualify for depreciation allowance, **one**; it must be owned by a person from whose business the income is chargeable in the year of income and, **two**; the asset must have been employed wholly and exclusively in the production of income from the business during the year of income.

From their submissions, the learned counsel for the parties did not have any dispute that depreciation allowance is deductible upon satisfaction of the two conditions stated under section 17 of the Act. The provisions of section 17 of the Act states further that, the grantable allowances are classified under the Third Schedule to the Act. With regard to the expenses incurred in the extractive industry, the relevant provision is the paragraph of the schedule which provides as follows:

"1 - (1)

(2)

(3) To the extent not otherwise provided, expenditure incurred by a person wholly and exclusively in the production of the person's income from a business in respect of natural resources prospecting, exploration and

*development shall be treated as if it were incurred in security the acquisition of **an asset that is used by the person in that production.***"

[Emphasis added]

As shown above, it is the application of this paragraph of the schedule which gave rise to the dispute between the parties. Both the Board and the Tribunal interpreted it to have the effect of allowing depreciation allowance notwithstanding the non-use of an asset in the production of the person's income. The Tribunal had this to say in its judgment at pages 970 - 971 of the record of appeal, as regards the import of that paragraph:

"The respondent's business is thus covered by paragraph 1 (3) of the Third Schedule to ITA which provides that expenditure by a person wholly and exclusively in the production of the person's income from a business in respect of natural resource prospecting, exploration and development shall be treated as if it were incurred in securing the acquisition of an asset that is used by the person in that production."

It went on to state that:

*"It is our firm view that, exploration and development costs incurred by a person and in this appeal, the respondent, who is dealing with natural resources exploration and development and treated as if they are **expenditures used to acquire assets to be employed in the production of income.** There is no dispute that the expenditure were incurred."*

[Emphasis added]

There was no dispute that the respondent's business was at the pre-production stage and thus the assets had not yet started to be used. This is supported by the above quoted part of the judgment of Tribunal, that the assets were acquired so as to be employed in the production. Actually, in the decision of the Board, which was confirmed by the Tribunal, it was observed at page that:

*".... the law has considered the peculiarity of the exploration industry and the nature of upfront expenses **before the production** of income. Having a look on the purpose of the said costs **there is no doubt that those expenses were wholly and exclusively incurred for the purpose of ascertaining the validity of the project that is, production of income.**"*

[Emphasis added]

In their submissions, the respondent's advocates argued that, under the paragraph of the schedule, which qualifies section 17 of the Act, depreciation is deductible not only with respect to physical assets such as machinery but also with respect to non-tangible assets. At page 8 of the written submissions for instance, they stated as follows:

*"Paragraph 1 (3) was not enacted to duplicate or restate section 17. It was introduced to establish sector specific eligibility criteria for depreciation allowance, in recognition of the substantial and unique nature of capital expenditure in upstream operations. It provides that where a person holds a participating interest in a petroleum agreement and has incurred qualifying expenditure, that expenditure is treated as the cost of an asset for the purpose of granting depreciation. This is a deliberate legislative choice, tailored to ensure that taxpayers in the petroleum sector can recover the cost of their investments in exploration and development **even if those investments do not result in traditional tangible assets like machinery or building.**"*

[Emphasis added]

With regard to the cited decisions of this Court, including the case of **Panafrican Energy Limited**, the subject matter of the second issue,

the Tribunal declined to be bound by that decision on account that, the same is irrelevant in the case at hand. It stated as follows in its judgment at page 971 of the record of appeal:

"....it is our view that the authorities relied on [by] the appellant to support her assertion though relevant in a fit case but [are] irrelevant in the case at hand."

In the cited decision of **Panafrican Energy case** the Court interpreted section 17 and the paragraph of the schedule. At page 15 of the judgment we stated as follows:

"From our interpretation of these provisions which have been relied upon by the learned counsel for the appellant, we are with respect, of the view that, as submitted by the respondent's counsel, the same entitles a person to depreciation allowance only upon meeting the two conditions stipulated under section 17 of the Act. The depreciable asset must be owned and employed in the production of the income in question."

We went on to state that:

"It is true that paragraph 1 (3) of the schedule provides that expenditure incurred by a person in the production of income from the business of

*natural resource prospecting, exploration and development shall be treated as if it were incurred in securing the acquisition of an asset. **The provision goes on to state however, that such an asset must be an asset that is used by the person in that production.***"

The Tribunal's view that, the authority is inapplicable is, with respect, unfortunate and misguided. In their submissions, the learned advocates for the respondent contended that, the Tribunal expressly considered the authority and declined to follow it "on the basis that the case involved materially different facts and raised distinct legal issues." That contention is not supported by the record. There is no such reasoning in the Tribunal's judgment.

In fact, after the Tribunal had declined to follow the Court's decision, it went on to express its own interpretation of the paragraph of the schedule, that:

"We are unable to sail along the appellant's argument that paragraph 1 (3) of the Third Schedule to ITA has to be invoked after meeting the condition under section 17 of ITA taking the peculiarity of the oil and gas industry which is undeniably the riskiest business in the world and involve intensive capital. We are equally unable to

agree with the appellant's submission that costs incurred by the respondent are normal expenses."

In support of that view, the learned advocates for the respondent cited the case of **Permanent Secretary (Establishment) and Another** (supra). With respect, the principle of statutory interpretation relied upon by the learned advocates does not apply to the case at hand. Unlike the provisions in question, which were co-existing sections of the statute, in this case, it is a paragraph which qualifies a section of the statute. Although in principle, paragraph 1 (3) is part of the Act, being a provision of a schedule, cannot override the parent section. Even if it conflicts with it, which is not the case here, the section, which is in the body of the Act, would prevail. - See Justice G. P. Singh, **Principles of Statutory Interpretation**, 12th Edn. Lexis Nexis Butterworths Wadhwa at page 216. The comment by the learned author at that page, to which we subscribe, is that, a provision of the schedule which qualifies a section of the law cannot override the qualified section.

It is common ground that, the purpose of the paragraph of the schedule is to facilitate recovery of capital investment in the extractive industry through immediate deduction of depreciation allowance. We do not however, subscribe to the contrary interpretation by the Tribunal and

the learned advocates for the respondent that, under the paragraph of the schedule, deduction is allowed even where an asset is not used in the production of the income or that depreciation is deductible regardless of whether it related to physical or non-tangible assets.

According to section 11 (3) read together with section 114 (b) of the Act, expenditure of a capital nature in respect of natural resource prospecting, exploration and development does not qualify for deduction of depreciation allowance. The paragraph of the schedule treats that type of expenditure "as if it were incurred in securing the acquisition of an asset ...". In effect, therefore, it qualifies capital expenditure for immediate deduction of depreciation allowance. However, as stated in the **Panafrican Energy case**, the two main conditions stated under section 17 and restated in the paragraph of the schedule, the asset must be that which "is used by the person in that production." The paragraph of the schedule does not dispense with these conditions. As stated above, it qualifies capital expenditure for immediate deduction of depreciation allowance. In this case therefore, the asset would have qualified for depreciation allowance if it was used in the production of the income.

For the foregoing reasons, we find merit in the two grounds of appeal. In the event, we allow the appeal. The decision of the Tribunal is

accordingly reversed to the effect that, the appellant was justified to disallow the deducted amount. It is thus entitled to the adjusted amount of TZS 6,403,621,783.90 inclusive of the interest of TZS 1,153,846,183.90 as per the agency notice No. F 421624003. Costs to be borne by the respondent.

DATED at DODOMA this 15th day of September, 2026.

A. G. MWARIJA
JUSTICE OF APPEAL

B. S. MASOUD
JUSTICE OF APPEAL

D. J. NANGELA
JUSTICE OF APPEAL

The Judgment delivered this 23rd day of September, 2026 in the presence of Ms. Akwila Mroso, learned State Attorney for the appellant and Ms. Esta Mligwa, learned counsel for the respondent linked via virtual facility and Mr. Shafii Kassim, Court Clerk present in Court, is hereby certified as a true copy of the original.




D. P. KINYWAFU
DEPUTY REGISTRAR
COURT OF APPEAL