IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
[COMMERCIAL DIVISION]
HELD IN ACCRA ON 27TH MARCH, 2024
BEFORE HIS LORDSHIP JUSTICE EMMANUEL ATSU LODOH

CM/TAX/0235/2022

IN THE MATTER OF AN APPEAL AGAINST TAX ASSESSMENT BY THE COMMISSIONER-GENERAL

AND

IN THE MATTER OF BETWEEN

SCANCOM PLC — **APPELLANT**
MTN HOUSE
INDEPENDENCE AVENUE
ACCRA

AND

THE COMMISSIONER-GENERAL — **RESPONDENT**
GHANA REVENUE AUTHORITY
ACCRA-GHANA

JUDGMENT

The Appellant filed the instant Tax Appeal filed on 9th November, 2021 against the decision of the Respondent ordering the Appellant to pay an amount of GHS 281,509,171.65 to the Respondent as withholding tax for payment made to non-resident persons for international interconnect and roaming services provided to it.

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.......REGISTRAR
HIGH COURT
COMMERCIAL DIVISION, LLC-ACCRA

The instant appeal by the Appellant was filed pursuant to section 44 of the Revenue Administration Act, 2016 (Act 915) as amended by section 1 of the Revenue Administration (Amendment) Act, 2020 (Act 1029) which provides follows:

> 44 (1) A person who is dissatisfied with a decision of the Commissioner-General may, within thirty days, appeal against the decision to the Independent Tax Appeals Board referred to in this Act as "the Appeals Board" as set out in the Fourth Schedule.
>
> (2) A person who is dissatisfied with the decision of the Appeals Board may appeal against the decision to the Court within thirty days from the date the decision was served on the person.

My understanding of the said provision is that an appeal cannot lie to this court in respect a decision of the Commissioner-General. This was the rendering of the law under the repealed section under section 44 of Act 915. Under the new law, the jurisdiction of the Court in respect of this subject matter, can only be invoked against the decision of the Independent Tax Appeals Board.

This question was subsequently put to both counsels. Both lawyers submitted to the court that at the time the instant appeal was filed by the Appellant, the Independent Tax Appeals Board was had not been set up, so the practice was to file the tax appeals in line with the provisions of the repealed law until the Appeals Board was established.

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I have subsequently sighted decisions of High Court assuming jurisdiction over tax appeals. Even though I find this procedure inconsistent with law, I suppose that was a practical approach to dealing with matters which required quick resolutions since such delays impact on investments and the revenue collection agencies.

Grounds of Appeal

The Appellant on 9th November, 2021 filed the instant tax appeal against the Respondent as a result of being aggrieved at the Tax objection decision of the Respondent dated 8th October, 2021. The appellant following the said decision has invoked the jurisdiction of this court in this appeal on the following grounds:

A. The Respondent erred in law and wrongly applied the Internal Revenue Act, 2000 (Act 592) and the Income Tax Act, 2015 (Act 896) in imposing taxes on international interconnect charges that the Appellant had paid to non-resident persons, when: (i) a non-resident person is required to pay income tax only if the income accrued in, was derived from, or was sourced from, Ghana; (ii) the income of a telecommunications operator in a foreign country accrues in, is derived from, or sourced from, Ghana only if the income is generated from an "apparatus which is located in Ghana"; and (iii) the international interconnect charges paid by the Appellant to telecommunication operators in foreign countries (i.e. non-resident persons) were payment for services provided 10 through apparatus which were located outside Ghana.

B. The Respondent erred in law in imposing additional tax liability (plus interests and penalties) on the Appellant for the 2014 to 2018 financial years, on the basis that the Appellant had failed to

withhold taxes on payments it had made to non-resident entities for international interconnect charges, when: (i) the obligation to withhold tax components of any payments must be created expressly by law; (ii) no Ghanaian law (including Act 592, Act 896 and related regulations) expressly creates an obligation on a resident person to withhold tax on payments made to non-resident persons for telecommunication services; and (iii) the Appellant is a resident entity which made payments to non-resident persons for telecommunications services.

C. The Respondent erred in law and wrongly applied the Internal Revenue Act, 2000 (Act 592) and the Income Tax Act, 2015 (Act 896) in imposing taxes on roaming charges that the Appellant had paid to non-resident persons, when: (i), a non-resident person is required to pay income tax only if the income accrued in, was derived from or was sourced from Ghana; (ii) the income of a telecommunications operator in a foreign country accrues in, is derived from, or sourced from, Ghana only if the income is generated from an "apparatus which is located in Ghana"; and (iii) the roaming charges paid by the Appellant to telecommunication operators in foreign countries (i.e. non- resident persons) were payment for services provided through apparatus which were located outside Ghana.

D. The Respondent erred in law in imposing additional tax liability (plus interests and penalties) on the Appellant for the 2014 to 2018 financial years, on the basis that the Appellant had failed to withhold taxes on payments it had made to non-resident entities for roaming charges, when (i) the obligation to withhold tax components of any payments must be created expressly by law; (ii)

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no Ghanaian law (including Act 592, Act 896 and related regulations) expressly creates an obligation on a resident person to withhold tax on payments made to non-resident persons for roaming charges; and (iii) the Appellant is a resident entity which made payments to non-resident persons for telecommunication services.

Appellant' Reliefs

From these grounds of Appeal the appellant seeks the underlisted reliefs from the Court:

(a) An order reversing the Respondent's decision to impose a principal withholding tax liability of GHS97, 280, 487.57, as well as penalty and interest GHS142, 554, 063.98 on international interconnect charges paid by the Appellant to non-resident persons.

(b) An order reversing the Respondent's decision to impose a principal withholding tax liability of GHS 16, 351, 199.35, as well as penalty and interest of GHS 25, 323, 420. 76 on roaming charges paid by the Appellant to non-resident persons.

(c) An order quashing parts of the GRA's tax assessment dated 4th May, 2021 relating to withholding taxes on international interconnect charges and roaming charges.

(d) An order overturning the Respondent's objection decision dated 8th October, 2021 relating to withholding taxes on interconnect charges and roaming charges.

(e) Any other order (s) that the justice of the case requires.

Facts Grounding Appeal

The facts grounding the appeal are that the appellant is a company incorporated under the laws of Ghana which operates under the brand name MTN Ghana. The appellant further states that engages in the business of telecommunications which provides telephony, data communication and other associated services.

The appellant also state particularly that in providing international calls and roaming services for its customers domiciled outside Ghana, they rely on non-resident entities to provide telecommunication services in those countries. This is so because they do not have the necessary apparatus outside Ghana to provide the said telecommunication services outside Ghana. That in exchange for the non-resident service providers using their apparatus in foreign countries to provide services to the appellant, the Appellant pays international interconnect charges and roaming charges to the non-resident service providers.

Regarding the genesis of this matter before the Court, the Appellants states that in early 2022, the Ghana Revenue Authority (GRA) commenced a comprehensive tax audit of the Appellant spanning the period between January, 2014 and December, 2018. That the coverage of the audit exercise touched on all aspects of the Appellant's business including payments made to non-resident persons for international interconnect and roaming services.

The Appellant stated further that a report returned after the audit and dated on 4th May, 2021 with reference number LTO/MTN/TAR/05/2021 assessed the tax liability of the Appellant as GHS 617, 072, 509.88 of which they accepted a liability of GHS18, 650, 860 and objected to GHS 571, 466,177.

Thus dissatisfied with the reasons given by GRA in respect of the disputed figure of GHS 571, 466,177 they lodged an objection with the Respondent on or about

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3rd June, 2021 under section 42 of Act 915 challenging the reasons underlying the Assessment, including withholding of international interconnect costs and roaming costs.

The Appellant then rested its case in paragraphs 17, 18, 19, and 20 as follows:

17. By a notice of decision dated 9 September 2021 (the "First Objection Decision") the Respondent gave a decision on the Objection. The First Objection Decision was served on the Appellant on the same day. But the Respondent did not make a decision on the part of the Objection relating to withholding tax on International Interconnect costs and International Roaming costs, which the Respondent deferred. The total amount under the two deferred heads was GHS 281,509,171.65.

18. By a letter dated 8 October 2021 (the "Second Objection Decision"), which was received by the Appellant on 11 October 2021, the Respondent subsequently made his decision on the two deferred heads under the Objection.

19. In the Second Objection Decision, the Respondent stated that he had acted wrongly in deferring his decision on the part of the Objection relating to withholding tax on International Interconnect costs and International Roaming costs.

20. Further, in the Second Objection Decision, the Respondent decided to maintain the withholding tax liability on International Interconnect costs and International Roaming costs. The Respondent proceeded to demand the immediate payment of the taxes he had imposed under those two heads amounting to GHS 281,509,172.

According to the Appellant the instant appeal is against the decision of the Respondent against the tax objection it raised in respect of the demand for the payment of the GHS 281,509,172.

Case of the Respondent

The Respondent filed their reply on 29th November, 2021. In their reply the admitted carrying out a "comprehensive tax audit" on the business of the Appellant covering the period January, 2014 to December, 2018. That the audit was related to the Appellant's Direct and Indirect tax obligations under the respective Tax/Revenue laws of Ghana. That a Tax Audit/Assessment report dated 4th May, 2021 disclosed a tax liability of GHS 617, 072, 509.88 for the period of assessment was duly served on the Appellant.

The Respondent stated further that upon receipt of the Tax Assessment, the Appellant in a letter dated 3rd June, 2021 "objected" to the tax assessment by the Respondent. The Respondent stated further in the said objection letter some of the amounts and there legal basis thereof were accepted by the Appellant.

The Respondent subsequently communicated its decision in the objection letter to the Appellant, upholding some of the grounds raised by the Appellant by rejecting others, while the decision on specifically the withholding tax on international inter-connect charges and international Roaming Charges were deferred. The Respondent then rested on paragraph 5, 6, 8 and 9 of their Reply as follows:

5. The Respondent again in a letter dated 8th October, 2021 gave its final decision in respect of the outstanding or deferred matters and communicated some to Appellant. Attached as "Appendix GRA IV"

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is Respondent's decision on the "deferred/outstanding matters'. The Respondent in "Appendix GRA IV" affirmed its earlier Tax decision in respect of those specific matters as communicated to Appellant via APPENDIX GRA I.

6. It is against the Objection Decision of Respondent on "deferred/outstanding matters" ie (Withholding Tax on International Interconnect charges and International Roaming Charges) that the instant Appeal arises in line with Appellant's rights under section 44 of Act 915 and Order 54 of the C.I. 47.

8. Flowing from the grounds of Appeal as captured, it is clear that the Appellant is dissatisfied with the Respondent's position and basis of assessment relating to withholding tax on payment for services on international interconnect and international roaming.

9. This equates in terms of value, a challenge by Appellant of part of the total assessment with respect to the withholding taxes in the amount of GHC281, 509, 172 representing principal withholding tax liability of GHC97, 280, 487. 57 as well as interest of GHC142, 554, 063.98 on international interconnect charges and a principal withholding tax of 16, 351, 199.35 as well as penalty and interest thereon of GHC25, 323, 420.76 on international roaming charges.

It is quite clear from the narrations supra that they are no factual disputes regarding the processes leading to the instant appeal. Particularly that the Appellants made payments for services rendered in respect of international interconnect and international roaming to non –resident entities but did not withhold any taxes. I further find from the processes filed that the main issue for determination in this appeal is whether or not the Appellants in law are obligated to withhold taxes in respect of payments made to non-resident

entities for the provision of international interconnect and international Roaming services in the amount of GHS281, 509, 172. It is against this issue that I will consider the grounds of appeal set down by the Appellant.

Counsel for the Respondent in paragraph 10 of his written legal submissions filed on 9th January, 2023 took pains to remind the court as follows:

> 10. My Lord, it is significant to state from the onset that the entire process with respect to the instant facts begins with the telecommunication services (whether international interconnect calls or roaming services) offered by Appellant to its subscribers. It is with Appellant that the subscribers have a binding, contractual relationship with, to provide telecommunication services, which services include roaming and international interconnect services. And it is to the Appellant that the subscribers will pay their fees/charges. The subscribers do not have a legal, contractual relationship with the non-resident persons who Appellants made the payments to.
>
> 11. This fact was confirmed by the witnesses form the Chartered Institute of Taxation (CIT) when he testified before the Court on the 16th day of November, 2023.
>
> Q: Do you recognize that the entire process in respect of the present facts begins with telecommunications services offered by Appellant to its subscribers.
>
> A: Yes.
>
> Q: So that it is the subscribers of Appellant who have a binding agreement with the Appellant and who make

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any payment for interconnect international call services or roaming to the Appellant.

A: Yes.

Q: The subscribers of Appellant who enjoy the international call services and roaming services from Appellant do not have any legal relationship with the non-resident person

A: Yes.

A reading of the entirety of the evidence does not show that this factual premise is in dispute. In the instant matter, the Appellant has clearly stated that it made payments to its non-resident contractors for the provision of international interconnect and international roaming services. Accordingly, I find no dispute in assuming the position that customers or subscribers of the Appellant are the persons who have contracted with the Appellants to provide telecommunication services.

I also find however that, the dynamics for providing these front end services to the Appellant customers or subscribers is a back end matter involving a relationship between the Appellant and its service providers and therefore has nothing to do with the Appellants customers. In the limited scope of this appeal, the nature of the services which established the relationship between the appellant and its service providers touches on the provision of international interconnect and international roaming services. Therefore to my mind the customers or subscribers of the Appellant do not subscribe directly to the providers of these services and therefore do not pay the providers of these services directly. At the risk of repeating myself, it is my considered view that the stream of payment is between the appellant and the providers of these services.

Legal Frame Work

Before I proceed to deal with the issues, it is imperative to my mind to set out the legal framework which will support my decision. The first source of law will be Article 174 (1) of the 1992 Constitution which provides that:

> 174(1). No taxation shall be imposed otherwise than by or under the authority of an Act of Parliament.

Again it is my considered view that the tax laws are to be construed narrowly, leaving no room for intendment or inferences. In the unreported case of **Multichoice Ghana Ltd. vs. The Commissioner, Internal Revenue Service,** Suit number J4/16/2010 and delivered on 16th March, 2011 Wood C.J. stated as follows:

> *"My conclusion has been dictated by the strict constructionist approach to the interpretation of statutes reserved for fiscal legislation. The general principle is that tax statutes are to be construed strictly. Viscount Simon LC in the Privy Council case of Canadian Eagle Oil Company Limited and The King [1946 AC 119 at 140] relied on Rowlatt J's formulation of the rule in Cape Brandy Syndicate v IRC [1921 1KB 64, 71]. He observed: "In the words of the late Rowlatt J whose outstanding knowledge of this subject was coupled with a happy conciseness of phrase, "in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing*

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is to be read in, nothing is to be implied. One can only look fairly at the language used."

The next source of law is to consider the subject matter legal regime circumscribing withholding taxes. It is not in dispute that the basis for this appeal is that the Respondent has unlawful made demands on the Appellant for withholding taxes for payment made for international interconnect and roaming services to non-resident person.

It is my further view that the payments were made to the non-resident persons because they owned the apparatus which interfaced with that of the Appellant. Indeed unless evidence on the contrary is put before this court by the respondent, the presumption that the appellant made payments to the non-resident persons because these non-resident persons were the owners of the apparatus which enabled the service can be presumed against the Respondents.

Flowing from the decision by the Respondent that the Appellants were expected to withhold taxes on payment made to the non-resident entities, it is my understanding that per the books of the Respondent the Appellant for purposes of payment of fees to the non-resident persons were withholding agents within the meaning of 93 of the Internal Revenue Act, 2000 (Act 592).

The relevant provisions therefore to my mind are section 63 (4) of the Internal Revenue Act, 2000 (Act 592) which provides as follows:

63(4) The gross receipts of a non-resident person who carries on a business of transmitting messages by cable, radio, optical fibre, or satellite communication from the transmission of messages by apparatus established in Ghana, whether or not

the messages originated in Ghana, shall be treated as accruing in or derived from Ghana.

Sections 67 (3) of Act 592 which provides as follows:

> 67 (3) The assessable income for a year of assessment of a non-resident person who carries on a business of transmitting messages by cable, radio, optical fibre, or satellite communication includes the gross receipts derived during a basis period ending within the year from the transmission of messages by apparatus established in Ghana, whether or not the messages originated in Ghana

And section 105 (h) of the Income Tax Act, 2015 (Act 896) as amended, which also provides as follows:

> 105. The following payments have a source from the country:
>
> (h) payments received by a person who conducts a business of transmitting or receiving messages by cable, radio, optical fibre or satellite or electronic communication in respect of the transmission, reception or emission of messages by an apparatus located in the country, whether or not the messages originate, terminate or are used in the country;

My understanding of the combined effect of these provisions is that the first ingredient which is necessary to attach any payment to non-resident persons for

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purposes of withholding taxes is that the apparatus for the provision of electronic communication must be located within the territory of Ghana.

This position is further supported by the opinion of the Court Expert from Chartered Institute of Taxation, Ghana who in his report filed on 21st April, 2023 responded to a question on the issue as follows:

Question No. 7

Are the payments, referred to in Question 6, above, made to the Foreign Service Provider solely for the use of or right to use the apparatus owned by the Ghanaian Service Provider which is located in Ghana.

No. Payments to foreign telecommunications service providers for international interconnect services are not for the use of or right to use apparatus owned by the Ghanaian telecommunications service provider located in Ghana. They are rather payments for the use of or the right to use the apparatus of foreign telecommunications service providers which are located outside Ghana.

I find no alternative finding on the record, regarding the location and use of the apparatus used in the provision of the international interconnect services, accordingly, I will accept the finding of the court experts in this regard.

Given these set of fact the relevant issue for determination is whether or not the international interconnect charges paid by the Appellant to telecommunication operators in foreign countries (i.e. non-resident persons), which were payment for services provided through an apparatus which were located outside Ghana was subject to withholding tax.

Question No. 8

Are payments, referred to in Question 6, above, made to the Foreign Service Provider solely for the use of or right to use the apparatus owned by the Ghanaian Service Provider which is located in Ghana?

No. Payment to foreign telecommunication service providers for international interconnect services are not for the use of or right to use apparatus owned by the Ghanaian telecommunications service provider located in Ghana. They are rather payments for the use of or the right to use the apparatus of foreign telecommunication service providers which are located outsider Ghana.

Question 9

Assuming, hypothetically, that there was a tax incidence on the payments referred to in Question 6 (above) is there any statutory provision which expressly or specifically creates an obligation on the part of the Ghanaian Service provider to withhold taxes when paying the Foreign Service Provider.

Hypothetically, yes but with conditions.

Using the Income Tax Act, 2015 (Act 896) as amended as authority, the combined reading of section 2, section 3 (specifically section 3(2b), section 105 (h) and subparagraph 4 of paragraph 8 of the first schedule, a Ghanaian service provider is obliged to withhold tax at the rate of 15% when making payment to a foreign service provider provided the payment has a source in Ghana (i.e the apparatus used in the provision of the service giving rise to the payment is located in Ghana).

During the cross-examination of the Expert from CIT by counsel for the respondent, affirmed his understanding of the law as follow:

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Q: I refer you to page 11 of the documents marked 'CIT' specifically our answer to question numbered '10'. I am suggesting to you that, per relevant provisions in our revenue laws, the tax is imposed on non-resident recipient as in the case of this present facts.

A: That is not correct. Per my reading of income tax Act, and regulations, Ghana currently does not oblige resident persons to withhold tax from payments made to non-resident persons who provide telecommunications services using apparatus not located in Ghana.

Counsel for the Respondent in paragraph 21 of his written legal submission submitted as follows:

21. Section 67 (4) of the Internal Revenue Act, 2000 (Act 592) as amended by Internal Revenue (Amendment) Act, 2008 (Act 757) provides that:

"A person who makes payment to or for non-resident person in respect of any business referred to in subsection (1) or (2) shall withhold a final tax on the gross amount in accordance with the prescribed rate"

Section 67(4) of the Internal Revenue Act, 2000 (Act 592) was further amended via the Internal Revenue (Amendment) Act, 2013 (Act 859) by the substitution of a new subsection (4) and insertion of a new subsection (5) as follows:

(4) "A person who has gross receipts for non-resident person in respect of a business referred to in this section shall withhold tax at

the prescribed rate from the gross receipts and pay the tax withheld to the Commissioner-General;

(5) The withholding tax is a final tax and shall be paid within thirty day after receipt of the gross amount. "

With all due respect to counsel for the Respondent, my understanding of the laws referred to and in particular the amendments did not take away the statutory pre-condition under section 67 (3) of Act 592 which provided that the apparatus for which payment is made must be establish in Ghana.

My understanding of to be established in Ghana is that the apparatus, for purposes of the issues in this judgment, must be located in Ghana.

Analysis and Determination of Grounds of Appeal

I will proceed to determine the grounds of Appeal raised by the Appellants. But before I do that I hereby state that under section 91 (2) of Act 915 it is provided that the burden of proof is on the Tax payer or person making an objection to show compliance with the provisions of the tax law. The section provides as follow:

> **92. (1) Subject to subsection (2), in proceedings on appeal under section 41 to 45 or for the recovery of tax under a tax law, the burden of proof is on the taxpayer or person making an objection to show compliance with the provisions of the tax law.**

In the unreported Court of Appeal case of **Perseus Mining (GH) Ltd v The Commissioner General, Suit number H1/137/2022 and 1st June, 2023**, Justice Bright Mensah, JA stated how section 92 (1) of Act 915 is to be applied in the

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evaluation of the totality of the evidence before the Court. He learned Justice of the Court of Appeal stated as follows:

> *"The true and correct interpretation of that provision of the law is that it is by the nature of evidence put forward by a tax payer, and the Commissioner General objectively applying the tax laws and other relevant statutes and conventions to the evidence provided in accordance with law, that settles the issue as to whether or not the tax payer has been able to discharge the burden placed on him."*

The central theme in the instant appeal is whether or not the apparatus for which payment was made to the non-resident entities in respect of the international inter-connect and roaming services is located outside the Ghana.

The Appellant in their legal submission filed on 10th January, 2024 described how their operations are carried out in respect of international inter-connect services as follows:

2. Much like MTN Ghana's equipment is located in Ghana, the foreign telecoms company owns and operates equipment (apparatus) located in the foreign country. So MTN Ghana's facilities 'connect' with the foreign company's facilities, to enable MTN Ghana's customer to continue to have access to mobile phone services outside Ghana or to make calls to recipients abroad. These services are known as International Interconnect' and 'Roaming'. International Interconnect in the telecommunications industry refers to the arrangement between different telecommunications operators at an international level to allow customers of one network to communicate with customers of another network. This

is crucial for global communication, as it enables calls, messages, and data services to be transmitted across countries and continents. On the other hand, Roaming in the telecommunications business refers to the ability of a cell phone or other mobile device to make and receive voice calls, send and receive data, or access other services when travelling outside the geographical coverage area of the home network, by using a visited network.

3. The foreign telecoms company charges MTN Ghana a fee for using its equipment located outside Ghana to provide the services that make International Interconnect or Roaming services possible.

4 While MTN Ghana's customer is using the mobile phone service abroad or is calling someone abroad, it is clear that the equipment enabling such usage is all located abroad (outside Ghana). But GRA wants to create an artificial and unrealistic position, in which GRA alone sees the equipment of the foreign company, located in the foreign country, as generating income in Ghana. In creating this artificial and unrealistic position, GRA relies on the fact that MTN Ghana's own equipment plays a part in the process for the provision of the International interconnect and Roaming services. GRA therefore says that even the payments MTN Ghana makes to the foreign telecoms company (for the services the foreign telecoms company provide by their own equipment outside of Ghana) are subject to income tax in Ghana.

Location of Apparatus

I will now deal with whether or not the Appellant has put before this court evidence to show that the apparatus for which payment were made is located

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outside the Ghana. In evaluating the evidence of the Appellant I take the view as correctly stated by counsel for the Respondent that the standard of proof is proof on the balance of probabilities. In the case of **Okudzeto Ablakwa (No. 2) vs. Attorney General & Another [2012] 2 SCGLR 845 at 867,** the court explained the law governing proof as follows:

> *"If a person goes to court to make an allegation, the onus is on him to lead evidence to prove that allegation, unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in court if the case is based on an allegation which he fails to prove or establish."*

The case of the Appellant is that the apparatus for which the made payments to the non-resident citizens is located outside Ghana. I do not however find on the record any other showing by the Respondent that this is not the case. A reading of the tax decision does not show that this question was adequately considered by the Respondent.

The National Communication Authority (NCA) was one of the experts appointed by the Court in this matter. They filed a supplementary report on 23rd May, 2023 (Exhibit NCA 1). In the said report, they responded to certain questions regarding what an apparatus is and matters related thereto as follows

3. **The meaning of apparatus in sections 63 (4) and 67 (2) of the Internal Revenue Act, 2000 (Act 592) and section 105 (h) of the Income Tax Act, 2015 (ACt 896).**

   Telecommunications' apparatus means any equipment used in connection with the transmission of communications service. The nature

of the service determine the required relevant apparatus to effectively deliver the service.

4. **Whether the practical manifestation of "interconnection' within the context of telecommunication entails the connection/linkage between one telecommunication apparatus and another**

"Yes, interconnection within the context of telecommunication entails the connection/linkage between one telecommunications apparatus and another. However, the specific and relevant apparatus for the interconnection in the service provision will depend on whether it is local, international or roaming. Thus, depending on specific service provision, relevant apparatus will be required for connection/linkage.

6. **Whether or not the payments made by the Appellant to non-resident persons were income accrued/sourced in Ghana and therefore liable to tax per the combined effect of Sections 63 (4) and 67 (2) of the Internal Revenue Act, 2000 (Act 592)**

The income accrued/sourced in this regard is rather the service cost for the carrier service provider since the relevant apparatus for the provision of International service is not owned by the Foreign Service operator nor the local Operator in Ghana. The said apparatus for the provision of the service is neither owned by the Foreign Service provider nor located in Ghana. Thus, the Third-party service provider (interconnect Carrier Service Provider) owns the relevant apparatus and it is located outside Ghana.

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7. **Whether or not the payment made by the Appellant to non-resident persons were income accrued/sourced in Ghana and therefore liable to tax per section 105 (h) of the Income Tax Act, 2015 (Act 896).**

The income accrued/sourced in this regard is rather the service cost for the carrier service provider since the relevant apparatus for the provision of the international service is not owned by the Foreign Service operator nor the local Operator in Ghana.

The said relevant apparatus for the provision of the service is neither owned by the Foreign Service provider nor located in Ghana

Thus, the Third-Party Service Provider (Inter connect Carrier Service Provider) owns the relevant apparatus and it is located outside Ghana.

I also find from the opinion of the NCA expert a no dispute that the apparatus in Ghana, which is owned by the Appellant interfaces with that of the Foreign Service providers. But as stated in earlier paragraphs, the fact that the Appellant apparatus participates in the linkage in order to complete a call or roaming service does not mean that the payment made to the non-resident entities is sourced from the apparatus located in Ghana and controlled by the Appellant.

Indeed it cannot be said that in roaming and international interconnect services the appellant will be paying non-resident entities when the apparatus of the non-resident entities had not been used.

Therefore fundamentally, the question is whether they is evidence on the record to show that the said apparatus owned and used for the international inter-

connect and roaming services is located in Ghana for the payment to be considered as income sourced from Ghana within the meaning of the law.

As indicated earlier, I do not find sufficient evidence to the contrary that the apparatus for which payments were made is located in Ghana and not outside Ghana.

Conclusion

In conclusion I find that the payments made by the Appellant to the non-resident persons were in respect of international interconnect and roaming services using an apparatus not located in Ghana. I therefore find that the said payment under the tax legal regime in Ghana is not amenable to withholding tax sourced or derived from apparatus located outside Ghana.

The Appeal is accordingly allowed in its entirety and the reliefs of the appellant granted as follows:

(a) The decision of the Respondent imposing a principal withholding tax liability of GHS97, 280, 487.57, as well as penalty and interest of GHS142, 554, 063.98 on international interconnect charges paid by the Appellant to non-resident persons is hereby reversed.

(b) The decision of the Respondent imposing a principal withholding tax liability of GHS 16, 351, 199.35, as well as penalty and interest of GHS 25, 323, 420. 76 on roaming charges paid by the Appellant to non-resident persons is hereby reversed.

(c) It is further order that parts of the GRA's tax assessment dated 4th May, 2021 relating to withholding taxes on international interconnect charges and roaming charges is hereby quashed.

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(d) The prayer for an order overturning the Respondent's objection decision dated 8th October, 2021 relating to withholding taxes on interconnect charges and roaming charges is hereby granted.

(e) Cost of GHS200,000.00 in favour of the Appellant in favour of the Respondent.

(SGD.)

EMMANUEL ATSU LODOH J.
HIGH COURT JUDGE

Lawyers

1. David Asiedu, Esq. for the Appellant
2. Maxwell Owusu Boadi, Esq. for the Respondent.