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SUPREME COURT OF GHANA

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Corporate Attorneys
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IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA- A.D. 2024

CIVIL APPEAL NO:

SEADRILL GHANA OPERATIONS ---
Plot 82A, Off Agostino Neto Road
Airport Residential Area
Accra

APPELLANT/ RESPONDENT/
APPELLANT/APPELLANT

VRS

THE COMMISSIONER-GENERAL ---
Ghana Revenue Authority
Starlets 91 Road,
Ministries-Accra

RESPONDENT/APPLICANT/
RESPONDENT/RESPONDENT

STATEMENT OF CASE FILED ON BEHALF OF THE RESPONDENT/
APPLICANT/RESPONDENT/RESPONDENT

A. INTRODUCTION

1. **MAY IT PLEASE YOUR Lordships;** this is an appeal brought by the Appellant/Respondent/Appellant/Appellant (hereinafter referred to as “the Appellant) against the Judgment of the Court of Appeal dated 16th November, 2023 which unanimously affirmed the ruling of the High Court, (Commercial Court 8) Accra, dated the 5th April, 2022, presided over by **His Lordship Justice Justin Kofi Dorgu.**
2. The Judgment of the Court of Appeal, dated 16th November, 2023, can be found at pages 91 to 114 of Volume 4 of the Record of Appeal. The ruling of the High Court, dated 5th April 2023, can also be found at pages 107 to 115 of Volume 3 of the Record of Appeal.
3. Your Lordships, the Appellant’s Notice of Appeal set out the following Grounds of Appeal and the Reliefs, which can be found at pages 115 to 119 of volume 4 of the Record of Appeal.

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B. GROUNDS OF APPEAL

4. Your Lordships, the following grounds of appeal have been set out in the notice of appeal filed by the Appellant:

I. The Learned judge erred in holding that the Respondent's letter dated 1st December, 2020 (the "1st December 2020 letter") is not a tax Decision that could be objected to.

Particulars of error

- a. The Court of Appeal should have held that an adjusted tax assessment is a tax decision that can be objected to.
- b. The Court of Appeal should have held that since the 1st December 2020 letter is an adjusted tax decision.
- c. The Court of Appeal should have held that since the 1st December 2020 letter is an adjusted tax assessment, the 1st December 2020 letter qualified as a tax decision that can be objected to by the Appellant.

II. The Learned judge erred in holding that the Appellant's letter of 30th December, 2020 (the "30 December 2020 Letter") is not an objection to a tax decision.

Particulars of error.

- (a) The Court of Appeal should have held that compliance with section 42(5) of the Revenue Administration Act, 2016 (Act 915) is not a condition precedent for the 30th December 2020 Letter to qualify as an objection to a tax decision.

- (b) The Court of Appeal should have held that without an objection to a tax decision, there can be no objection decision
- (c) The Court of Appeal should have held that once the 1st December 2020 Letter is an objection decision, the Appellant's letter of 28th July 2020(the "second objection") is an objection to a tax decision.
- (d) The Court of Appeal should have held that once the second objection is an objection to a tax decision, the 30th December 2020 Letter is an objection to a tax decision.
- (e) The Court of Appeal failed to consider that the Respondent admitted in its letter dated 8th October 2021 that the 30th December 2020 Letter is an objection decision.

III. The Court of Appeal erred in holding that the Respondent's letter of 8th October 2021 is not an objection decision.

Particulars of error.

- (a). The Court of Appeal should have held that the 1st December 2020 letter is an objection decision.
- (b). The Court of Appeal should have held that the 30th December 2020 Letter is an objection to the 1st December 2021 letter.
- (c). The Court of Appeal should have held that the Respondent's letter of 8th October 2021 is an objection decision on the 30th December, 2020 letter

C. RELIEFS BE SOUGHT FROM THE SUPREME COURT.

The following reliefs are being sought by the Appellant:

- i. An order setting aside the judgment on the Appeal of Appeal dated 16th November 2023.

ii. An order restoring the Appellant's tax appeal dated 8th November 2021 against the Respondent's objection decision against the Respondent's objection decision dated 8th October 2021.

iii. Any further order(s) as this Honourable Court considers fair and just.

D. BRIEF BACKGROUND OF THE CASE:

Respectfully your Lordships, the background facts to this instant appeal admit no controversies as has been succinctly stated by the Appellant in its Statement Case.

5. The Appellant is a Ghanaian registered branch of an external incorporated company under the law of Bermuda and operates as subcontractor to provide works and services in the nature of a drilling unit and associated drilling services to Tullow Ghana Ltd under the Petroleum Agreement (PA) entered into among the Government of the Republic of Ghana and the Ghana National Petroleum Corporation (GNPC) on one hand and Tullow Ghana Limited and its JV Partners (contractors) on the other hand.
6. The Respondent is the head of the Ghana Revenue Authority (GRA), a statutory body established by an Act of Parliament by the Ghana Revenue Authority Act, 2009 (Act 791) to administer taxes in Ghana.
7. Pursuant to the Respondent's mandate under sections 3 and 36 of the Ghana Revenue Authority Act, 2009 (Act 791) and Revenue Administration Act, 2016 (Act 915) respectively, the Petroleum Unit of Large Taxpayer Office of the Domestic Tax Revenue Division (LTO) of Ghana Revenue Authority (GRA) in 2019 conducted an audit into the tax affairs of the Appellant business operations in Ghana for the 2012 to 2018 Years of Assessment, the Tax Audit resulted in a tax liability of US\$305,606,164.19 made of the following: (i) Direct Taxes – USD\$ 65,908,534.05 and (ii) Indirect Taxes- USD\$ 239,697,630.19 attached as **Exhibit "PM3"** and can be found at page 20 to 30 of Volume 3 of the Record of Appeal.
8. Following the service of Exhibit PM3 on the Appellant, the Appellant, through its consultants, KPMG, per a letter dated 11th December, 2019, objected to the Respondent's tax assessment. A copy of Appellant's objection letter attached as **Exhibit "PM4"**. This can be found on pages 31 to 36 of Volume 3 of the Record of Appeal

9. The Appellant also made a payment USD\$ 12,500,000 as agreed by both parties as part of condition precedent for determination of the objection lodged in line with section 42 (5) and (6) of Act 915. copy of payment attached as **Exhibit “PM5”**. This can be found on pages 37 to 37 of Volume 3 of the Record of Appeal
10. Subsequently, on 8th July, 2020, the Respondent made objection decision as prescribed in section 43 of Act 915 revising the tax assessment from the original figure of US\$305,606,164.19 to US\$. 22,722,849.35 after taking into consideration the payment of USD 69,198,750.00 by the Appellant on 13/12/2020, and the same was communicated to the Appellant. A Copy of the objection decision is attached as **Exhibit PM 6** and can be found on pages 38 to 49 of Volume 3 of the Record of Appeal.
11. The Appellant, still dissatisfied with the Respondent objection decision per a letter dated 28th July, 2020, written on its behalf by KPMG, the Tax advisor purported to object to it. Even though there is no legal basis under dispute resolution procedure set out in Act 915 to support that objection. Copy of the purported objection is attached as **Exhibit PM 7** and can be found on pages 50 to 56 of Volume 3 of the Record of Appeal.
12. The Respondent, per the letter dated 1st December 2020, further revised its objection decision and issued the final audit report to that effect. Copies of the revised final audit report of the Respondent are attached as **Exhibits PM 8 and CG “1”** and can be found on pages 57 to 67 of Volume 3 and on pages 135 to 144 of Volume 2 of the Record of Appeal.
13. Again, the Appellant had issues with the Respondent’s revised final audit report, dated 1st December, 2020, and per letter dated 30th December,2022, the Appellant purported to further object to it. Copies of the purported objection are attached as **Exhibits C. G2 and PM 9** and can be found on pages 145 to 151 of Volume 2 and on pages 68 to 74 of Volume 3 of the Record of Appeal.
14. The Respondent responded to the purported objection by the Appellant per the letter dated 24th March, 2021 affirming his earlier position communicated to the Appellant on 1st December, 2020. Copies of the response letter from the Respondent and served on the Appellant are attached as **Exhibits C.G 3 and PM 10** and can be found on page 152 of the Volume 2 and on page 75 of Volume 3 of the Record of Appeal.

15. The Appellant, still dissatisfied with Respondent's response, repeated the same 30th December, 2020 letter to the Office of the Commissioner, Domestic Tax Revenue Division (DTRD), appealing to the office to reconsider the objection.
16. The Commissioner, DTRD, refused to consider the appeal of the Appellant and communicated the same to the Appellant per letter dated 8th October, 2021. A Copy of the said response letter from the Commissioner, DTRD served on the Appellant is attached as **Exhibits C.G 4 and PM 11** and can be found on pages 153 to 154 of the Volume 2 and pages 77 to 78 of Volume 3 of the Record of Appeal.
17. On the 8th November, 2021, the Appellant filed notice of appeal against tax assessment by the Respondent at the Commercial Division of the High Court and followed it with the filing of interlocutory injunction on the 26th of the same month. **Copies** of the interlocutory injunction application, Statement of Case together with all exhibits can be found on pages 155 to 252 of Volume 2 of the Record of Appeal.
18. The Respondent upon being served with the process, also filed motion on notice together with Affidavit in support for an order to strike out the Appellant's notice of tax appeal on the basis that the appeal was filed out of time in contravention of section 44 of Act 915 and Order 54 rule 2(1) & (2) of C.I 47.
19. The Appellant also filed Affidavit in opposition to the Respondent's Motion on notice. The said Affidavit can be found on pages 1 to 6 of Volume 3 of the Record of Appeal.
20. The Honourable judge of the High Court, after listening to oral submission of the Respondent's counsel and also after considering the written submission filed by the Appellant's counsel, ruled striking out the Notice of Tax Appeal filed by the Appellant as being filed out of time in contravention of section 44 of Act 915 and Order 54 rule (1) & (2) of C.I. 47. Copy of the Respondent's oral submission can be found on pages 103 to 107 of Volume 3 of the Record of Appeal. A copy of the Appellant's written submission can also be found on pages 79 to 102 of Volume 3 of the Record of Appeal.
21. The Appellant dissatisfied with the ruling of the High Court (Commercial Division 8) filed an appeal against the Ruling at the Court of Appeal and the Court of Appeal, on 16th November, 2023, unanimously dismissed the Appeal and affirmed the ruling of the High Court

22. The Appellant, aggrieved and dissatisfied with the Judgment of the Court of Appeal, has filed the instant appeal pursuant to the special leave granted by the Supreme Court under article 131(2) of the Constitution of Ghana, 1992 on the 11th July, 2024.

E. LEGAL ARGUMENTS IN RESPONSE TO THE GROUNDS OF APPEAL

23. Your Lordships, the Respondent would like to respond to and argue on the grounds of appeal in the same manner or sequence as canvassed by the Appellant. That is ground(I), (II) and followed by grounds (III).

Ground(I)

The Learned judge erred in holding that the Respondent's letter dated 1st December, 2020 (the "1st December 2020 letter") is not a Tax Decision that could be objected to.

24. Your Lordships, the Respondent denies this ground of appeal together with the argument made by the Appellant in its written submission in support this is because it has no merit and lacks any basis whatsoever. The learned justices of the Court Appeal were, therefore, right in holding that the **Respondent's letter dated 1st December, 2020 (the "1st December 2020 letter") also referred to as second objection decision was not a Tax Decision that could be objected to.**

25. The holding of the learned justices of the Court of Appeal is consistent and accords with the correct position or dictates of the objection and appeals procedures set out in sections 41 to 45 of the Revenue Administration Act, 2016 (Act 915) as amended, for challenging and resolving tax dispute. Specifically, sections 42(9) and 43 as rightly held by the learned justice of the High Court in his ruling at pages 7 to 9 which can be found on pages 107 to 115 of Volume 3 of the Record of Appeal and affirmed by the Court of Appeal.

26. The learned justice of the High Court in his ruling held as follows:

"The Objection Decision on this was rendered through a letter dated 8th July, 2020 whereupon the Applicant's liability was reduced from USD\$22,722,849.35

On 28th July, 2020 the appellant again wrote to the Respondent drawing his attention to some lapses in the Auditor's Report which was again duly considered and a decision issued on it per the Respondent's letter dated 1st December, 2020.

This is the Exhibit PM5 which revised the tax liability to USD\$ 17,945,152.12. The said decision was served on the Appellant which was receipt was acknowledged on the same 1st December, 2020. Now, to me, this reviewed or whatever description one will give to it, falls under section 42(9) of Act 915 (Revenue Administration Act, 2016) which Learned Counsel for the Appellant quoted as

“In this section, ‘tax decision’ means the tax decision objected to as may have been amended by Objection Decision”

This to me was to be the end of the road for the administrative redress and if still the taxpayer was dissatisfied, then his rights under section 45 of Act 915 kicks in. The time for filing the appeal therefore started running on the 1st December, 2020 when the Objection Decision was served on the Appellant. This also means that from that 1st December, 2020, the Appellant had 30 days within which to file an appeal to the High Court. If the taxpayer after the expiration of the 30 days period was unable to file but still desirous of filing, then it ought to seek leave to file out of time. This is the position of the law as expounded in the case of NYE VRS, NYE [1967] GLR76 at 79(see also the cited case of INTERNATIONAL ROM VRS VODAFONE). All these cases emphasis the need for parties to act within the four corners of the law/ statute that confer the right of appeal on the party.

Reading through the various provisions on this tax appeal, I do not see any provision that empowers the taxpayer to continue to engage the Respondent repeatedly on the exercise of his discretion and to treat each response as an objection decision. As I indicated earlier on, I hold the view the first and only objection filed was that of 11th December, 2019 and determined with issuance of the Amendment tax decision given on 1st December, 2020’

27. Your Lordships, the learned Justices of the Court of Appeal in their holding at pages 17 to 19 of the judgment which can be found on pages 107 to 109 of Volume 4 of the Record of Appeal also held as follows:

“it is our view that after the objection decision under section 43 of Act 915 was made, the judgment of amendment did not convert the amended or adjusted objection decision into a tax decision. Our interpretation is based on a careful reading of section 41 of act 915 and giving the words their ordinary meaning. What constitute a tax decision is clearly and unambiguously spelt out in section 41(1) of 915 as set out supra.

A strict reading of the provision reveals that, a tax decision is a decision made by the Commissioner General under a tax law including an assessment or omission. The slight difficulty regarding what constitute a tax decision arises when one looks at section 42 of act 915 which is headed “objection to tax decision”. It is under subsection 9 of section 42 that the legislature placed under definition of tax decision by statute that a “tax decision” means the tax decision objected to, as may have been amended by an objection decision.

So, whereas section 41 of act of 915 which is the specific provision dealing with tax decisions excludes objection decisions under section 43 as constituting a tax decision (see section 41(1)(d) of act 915), section 42(9) of act 915 which deals with an objection to a tax decision state that, a tax decision means a “decision objected to as may have been amended by an objection decision”. The appellant interpretation of this final part indicate that after every amendment to a tax decision by an objection, that new amended decision becomes a tax decision. If this interpretation is to stand, then a tax payer may further object to a new amended decision even if this new amendment is as a result of additional information to the Commissioner General or omissions which should have been taken into account when determining the tax liabilities. It is clear from the submission presented that the interpretation being placed by the appellant on section 42(9) of act 915 will lead to a result that is reasonable. The reason for this being that, once the amended objection decision become the tax decision the appellant would have being mandated by section 42(5) of act 915 to pay 30% of the tax in dispute as the objection deposit. Section 42(5) of act 915 provides as follows:

“(5) an objection against a tax decision shall not be entertain unless the person has

- a. In the case of import duties and taxes, paid all outstanding taxes including the full amount of the tax in dispute; and
- b. In the case of other taxes, paid all outstanding taxes including 30% of the tax in dispute”

There is no evidence on the record that the appellant paid 30% of the tax in dispute upon submission of its letter dated 28th July 2020 (exhibit PM7PG 50 vol.3 ROA) before receiving the amended objection decision on 1st December 2020. Neither is there any evidence that the appellant paid 30% of the disputed tax upon submission of the 30th December 2020 (Exhibit PM9PG68 VOL. 3 ROA).

This is a clear indication that the letters lodged after the objection decision were not considered as objections to tax decision. They may have been categorized as new or additional information on which basis the Commissioner General could review the assessment within the meaning prescribe in section 37 and 39 of act 915. The adjustment of the objection decision was in line with the Commissioner General’s duties to ensure that a tax payer pays the correct amount of tax. The correct amount of tax payable is not what the tax payer admit owing but what is determined by the commissioner general. This point has been captured in JJ Management LLP v. The Commissioners for HM Revenue and Customs [2020] QB619 where it was stated that “but the duty to collect tax cannot be limited to collecting only the tax that the tax payers admit to owing. It must be a duty to collect, so far as reasonably possible, the correct amount from tax payers Ms. Nathan referred in this context by Henderson J in Tower Mcashback LLP1 v. HMRC [2018]EWHC 2837 (Ch) at (115) (cited with approval by Lord walker in the same case o appeal to the supreme court at (2017) UKSC 19 at [15]) that: “there is a venerable principle of tax law to the general effect that, there is a public interest in tax payers paying the correct amount of tax and it is one of the duties of the commissioners in exercise of the their duties as statutory functions to have regards to that public interest.”

28. Section 42 of the Act 915, “headed Objection to a tax decision” provides as follows:

“(1). Subject to a tax law to the contrary, a person who is dissatisfied with a tax decision that directly affects that person may lodge an objection to the decision with the Commissioner- General within thirty days of being notified of the tax decision.

(2). An objection to a tax decision shall be in writing and state precisely the grounds upon which the objection is made.

(3). A person may before the expiration of the period specified in subsection (1) apply in writing to the Commissioner-General for an extension of time to file an objection.

(4). Where the Commissioner-General is satisfied that there are reasonable grounds for the extension, the Commissioner-General may grant the application for extension and shall serve notice of the decision on the applicant.

(5). An objection against a tax decision shall not be entertained unless the person has

(a). In the case of import duties and taxes, paid all outstanding taxes including the full amount of the tax in dispute; and

(b). In the case of other taxes, paid all outstanding taxes including thirty percentage of the tax in dispute.

(6). Despite subsection (5) the Commissioner- General may waive, vary or suspend the requirements of subsection (5) pending the determination of the objection or take any other action that the Commissioner-General considers appropriate including the deposit of security.

(7). The Commissioner-General shall consider the need to maintain the integrity of the dispute resolution procedure and the need to protect Government revenue and the integrity of the tax system as a whole in exercising a discretion under subsection (6).

(8). A tax decision to which an objection is not made within thirty days is final.

(9). In this section "tax decision" means the decision objected to, may have been amended by the objection decision.

28. Section 43 of Act 915, also deals with Objection decision provides as follows:

(1). After consideration of an objection, the Commissioner- General may **vary** the tax decision in **whole** or **in part** or **disallow** the objection.

(2). The Commissioner- General shall, within sixty days of receipt of an objection, serve the objector with a notice of the decision including the reasons for the decision.

(3) where the Commissioner- General does not serve the person with notice of the decision within sixty days, the person may, by notice in writing to the Commissioner- General elect to treat the Commissioner- General as having a decision to disallow the objection.

(4). A decision is made in respect of an objection

(a). On the date the person is served with notice of the decision or

(b). If a person makes an election under subsection (3), thirty days from the date the person files the election with the Commissioner-General.

(5). A notice served on a person in respect of an objection is conclusive evidence that a decision has been made and is correct.

29. Your Lordships, section 44 of Act 915 which deals with an appeal against an objection decision, provides as follows: A person who is dissatisfied with a decision of the Commissioner-General may appeal against the decision to the Court within thirty days of the decision.

30. A "tax decision" is defined in section 41(1) of the Act 915 as a decision made by the Commissioner-General under a tax law, including an assessment or omission, but does not include

(a). a practice note, class ruling, or private ruling;

(b). a decision or omission to issue, refuse or revoke a practice note, class ruling or private ruling;

(c). a decision or omission that affects a person only as a tax officer or employee or agent of the Authority;

(d). a decision or omission of the Commissioner-General, including an objection decision under section 43; or

(e). a decision to compound an offence under a tax law.

31.. Your Lordships, the types of tax assessments that can be raised under tax laws are provided in and paragraphs 2 and 3 of the Second Schedule to Act 915.

Section 108 of the Act 915 defined to means "assessment **a determination of the amount of tax liability made under a tax law, whether by the Commissioner-General or by way of self – assessment, and includes the matters identified in the second Schedule.**"

32. Under section 37 of Act 915, it is provided that:

(1) assessment of tax is made by way of

(a) self- assessment, where a person is obliged to file a tax return; and

(b) the Commissioner- General making an assessment in other cases, including where a self –assessment is adjusted.

(2) where a person fails to file a tax return on time, the Commissioner –General may, using best judgment and information reasonably available to the Commissioner-General, assess the person.

(3) the Commissioner –General may adjust an assessment

(4) the Commissioner –General may make an assessment at any time, including an adjusted assessment where the commissioner- General discovers a case of fraud, willful default or serious omission by or on behalf of a taxpayer.

(5) subject to subsection (4), the power of the Commissioner-General to make

(a) an original assessment expires six years from the date on which the Commissioner General was first entitled to make the assessment;

(b) an adjusted assessment expires six years from

(i) the due date for filing the tax return that gives rise to the assessment or, if later, the date the tax return is filed where a self-assessment is adjusted;

(ii) the date on which the Commissioner-General serves the notice of assessment on the taxpayer where any other original assessment is adjusted;
or

(iii) the date referred to in subparagraph (i) or (ii) in respect of the original assessment that is adjusted where an adjusted assessment is adjusted.

(6) An assessment made under this section is treated as an assessment made under the tax law that charges the person or subject matter assessed.

33. Section 38 - Pre-emptive assessment and security

(1) The Commissioner-General may, in the circumstances specified in section 28 (3), make a pre-emptive assessment of tax payable or to become payable by a person under a tax law whether or not the person is required to file a tax return.

(2) The Commissioner-General may, instead of making a pre-emptive assessment, accept from a person security for outstanding and future tax liabilities as the Commissioner-General considers appropriate.

(3) The Commissioner-General shall use best judgement and information reasonably available in making a pre-emptive assessment or fixing the amount of security.

(4) A pre-emptive assessment may be for a period or with respect to an event or subject matter that the Commissioner-General may specify in the notice of assessment.

(5) Unless the Commissioner-General specifies otherwise in the notice of assessment, a pre-emptive assessment does not relieve a person from the obligation to file a tax return or otherwise report a taxable event as required by a tax law.

(6) The filing of a tax return, including where the filing of the return results in a self-assessment, does not affect a pre-emptive assessment.

(7) A tax paid with respect to a pre-emptive assessment is credited against tax payable with respect to a self-assessment that covers the same period, event or tax.

34. Section 39 - Adjusted assessment

(1) The Commissioner-General may adjust an assessment in a manner that ensures that the taxpayer is liable for the correct amount of tax in the circumstances to which the assessment relates.

(2) The Commissioner-General shall use best judgement and information reasonably available in making an adjusted assessment.

(3) The Commissioner-General shall not adjust an assessment that has been adjusted pursuant to a decision of a court unless the decision is vacated.

(4) An assessment ceases to have effect to the extent to which it is adjusted.

35. Your Lordships, reading the dispute and appeals procedures and types of assessments that a taxpayer is liable to under the tax laws as set out in the aforementioned sections of Act 915 and juxtaposing that with the Appellant's grounds of appeal and written submission, reveals that the Appellant, with due respect, does not appreciate the issue. In other words, the Appellant's lack of appreciation of the difference between a tax decision as defined in section 41(1) and objection decision as has also been defined in section 43 of Act 915 vis-à-vis adjusted assessment as provided in section 39 and defined in section 108 of Act 915 seem to have combined to confuse the Appellant as to the requirements of the above provisions of the tax law.

36. Your Lordships, the adjusted assessment as provided in section 39 of Act 915 is the type of assessment that the Respondent under Act 915 can raise against a taxpayer liable to pay tax based on the best judgement of the Respondent and reasonable information available and therefore form part of an assessment, which

constitutes a tax decision as defined in section 41 of Act 915. This is different from an objection decision as explained in section 43 of Act 915. Under the Act, it is a tax decision that can be objected to by the taxpayer and not objection decision.

37. Indeed, the power of the Commissioner-General under sections 37(5)(b)(ii) and 39(3) of the Revenue Administration Act, 2016 (Act 915) to adjust any tax assessment is exercised in respect of a self-assessment by a taxpayer or where a person fails to file a tax returns on time as required by a tax law.

38. Adjustment of an assessment by the Commissioner-General is usually carried out through an audit or Commissioner-General using his best judgment or is based on discovery of fraud, willful default or serious omission by or on behalf of a taxpayer.

39. Your Lordships, an adjusted assessment carried out by the Commissioner-General constitutes a tax decision within the meaning of section 41 of Act 915 and it is done before an objection is made and not after objection since under the Act, specifically section 43, decision made by the Respondent after determination of an objection lodged in accordance with section 42 constitutes objection decision which cannot be further objected to with the same Respondent.

40. Your Lordships, in the instant case, an adjusted assessment as provided in the aforementioned sections are inapplicable or has no relevancy in the determination of the appeal because the case is bothered on whether or not after objection has been made against a tax decision of the Commissioner-General, and Commissioner-General having made objection decision, same can be further objected to under Act 915 instead of an appeal to Court as enshrined in section 44 of Act 915 and Order 54(1) of C.I. 47.

41. It is the considered view of the Respondent that once an objection decision is made by the Commissioner-General pursuant to an objection lodged, and the person is dissatisfied with the decision, the person can only appeal to Court and not lodging further objection with the Commissioner-General.

42. The Respondent therefore rejects the interpretation being placed by the Appellant to the effect that once the Respondent has made an objection decision reviewing or adjusting the tax decision after objection, it qualifies as tax decision within the meaning of sections 37(5)(b)(ii) and 39(3) of Act 915. If such interpretation is accepted, it would lead to absurdity and confusion in the appeal processes as set out in Act 915, since there will not be appeal to Court against the objection decision of the Respondent, as anytime the Respondent makes an objection decision, it would be objected to, resulting in an unending administrative procedure of challenging and resolving tax dispute and we do not

think that it is the intention of the maker of the Act for an appeal process to drag on forever.

43. Your Lordships, per the evidence on record, the Appellant resorted to a repetitive objections and same were indulged by the Respondent, even though, there were no legal basis for such indulgence, this created an impression in the Appellant that the Respondent has that power to continue entertaining further objections after objection decision has been made under Act 915. However, there is no such power conferred on the Respondent in the Act.

44. Besides, further impression was created in the Appellant through the entertainment of its repetitive objection applications by the Petroleum Unit of the Large Taxpayer Office of the Domestic Tax Revenue Division at the head office that, there are different levels of objection decision within the Ghana Revenue Authority (GRA). However, there is nothing of that sort. By virtue of section 2 of Act 915, the powers and functions vested in the Respondent can be delegated and exercised by any authorized officer or an officer of the rank of senior revenue and above on behalf of the Commissioner-General including making objection decision on tax decision objected to. The exceptions are the functions provided in subsection 3 of section 2

45. Your Lordships, as stated supra, section 42 of Act 915 provides that:

“(1). Subject to a tax law to the contrary, a person who is dissatisfied with a tax decision that directly affects that person may lodge an objection to the decision with the Commissioner- General within thirty days of being notified of the tax decision

Subsection (5) of 42 further provides that, an objection against a tax decision shall not be entertained unless the person has

(a). In the case of import duties and taxes, paid all outstanding taxes including the full amount of the tax in dispute; and

(b). In the case of other taxes, paid all outstanding taxes including thirty percent of the tax in dispute.

46. Again, section 43 of Act 915 provides that, after consideration of an objection, the Commissioner-General may **vary** the tax decision in **whole** or **in part** or **disallow** the objection.

39. Your Lordships, the import of these provisions are that, before an objection can be lodged, there must be tax decision in the form of an assessment including adjusted assessment as provided in section 39 of the Act, made by the Commissioner-General, which within the meaning of section 41 of Act 915 constitutes a tax decision, and once the tax decision is made, any taxpayer who is dissatisfied with it has a right to object to the decision in accordance with section 42 of the Act.

47. Thereafter, the Commissioner-General may make a determination in accordance with section 43 of Act 915, which will include **varying** of tax decision either in **whole** or **in part** or **disallowing** the objection. The decision made by the Commissioner-General constitutes an “objection decision” within the meaning of section 43 of Act 915 and not “tax decision” that can be objected to further as it is being claimed by the Appellant.

48. Where the taxpayer is dissatisfied with objection decision made by the Commissioner–Ghana under section 43, the taxpayer has the right to further lodge an appeal with the High Court within 30 days of the decision. But it is not required to keep repeating an objection to the objection decision of the Respondent. As was held by the High Court and affirmed by the Court of Appeal. **See the last paragraph of page 17 of the Court of Appeal judgment.**

49. The learned justice of the High Court held as follows:

“The above provisions do not to my mind make room for an ad infinitum repeat objections by an aggrieved taxpayer. The law says that if you are dissatisfied, go to Court. The resort to the repetitive correspondence with the respondent after an objection decision has been given and delivered or served on an objector to me cannot qualify as fresh and new objections whose response or reply would amount to a new decision over which further objections could be raised and ruled over and again as being canvassed by the learned lawyer for the Appellant. That cannot also mean the intention and convention of section 44(2) of Act 915 which I would quote here under. Applying these principles to the instant case, I hold that the only objection raised in the instant case is the objection filed on the 11th December, 2019 by the Appellant. It is this objection that the Commissioner, the Respondent in this case considered upon the Respondent paid the objection Deposit which is a prerequisite for hearing of the objection so filed.

There is no evidence that another objection was subsequently filed for which a deposit was demanded by the Respondent herein. The Objection Decision on this was rendered through a letter dated 8th July, 2020 whereupon the Applicant's liability was reduced from USDS 22,772,849.35.

50. Your Lordships, that was the position of the law until the year 2020, when an amendment was made to section 44 of Act 915 by the Revenue Administration (Amendment) Act, 2020 (Act 1029). Act 1029 introduced another layer of appeal, which is the Independent Tax Appeals Board (ITAB) to handle an appeal against an objection decision made by the Respondent (Commissioner-General) before it can be further escalated to the High Court, if any of the party is dissatisfied with the decision rendered by the ITAB.

51. Consequently, the 8th November, 2019 tax audit assessments report on the Appellant for 2012 to 2018 constitutes a tax decision within the meaning of section 41 of Act 915, which was objected to by the Appellant on 11th December, 2019, in line with section 42 of Act 915. All subsequent decisions including revision, amendment or variation of tax decision in this case 2012- 2018 tax audit assessment made by the Commissioner- General after the objection constitutes objection decision within the meaning of section 43 of Act 915 and not tax decision to qualify for an objection as alleged by the Appellant.

52. Thus the characterization by the Appellant of an objection decision as first, second and third objection has no legal basis in Act 915 and same must be rejected by this Honourable Court.

Ground (II).

53. The Respondent rejects the Appellant's ground (II) of appeal that Learned judge erred in holding that the Appellant's letter of 30th December, 2020 (the "30th December 2020 Letter") is not an objection to a tax decision.

In response, the Respondent says that, he agrees with the learned justices of the Court of Appeal in holding that the 30th December, 2020 letter of the Appellant was not an objection to a tax decision. This is because an objection cannot be made to an objection decision made by the Respondent after the person has made an objection to tax decision of the Respondent under section 41 of Act 915. Since such process is not known or provided for in the Act.

54. Your Lordships, under Act 915 particularly section 44, once the Respondent has made an objection decision under section 43, and the taxpayer is dissatisfied, the taxpayer must appeal to the High Court within thirty days of the decision. In the opinion of the Respondent, It is not the law for the taxpayer to object to an

objection decision before the same Respondent as was done by the Appellant. See section 44 of Act 915 and Order 54 rules (1) and (2) (1), (2), and (3). **As stated supra, that was the** position of the law, until 2020, when an amendment was made to section 44 of Act 915 by the Revenue Administration (Amendment) Act, 2020 (Act 1029).

55. The 30th December 2020 Letter of the Appellant, **Exhibits CG2 and PM 9**, the purported objection, that is the the 2nd objection, was submitted to the Respondent after the Respondent had made his final objection decision on the 30th November, 2020, by the issuing of the “1st December, 2020 Letter”, **Exhibits PM 8** revising the audit report. This followed the determination of another purported objection submitted on the Appellant’s behalf by KPMG, the Tax advisor on 28th July, 2020. Even though there is no legal basis under the dispute resolution procedure set out in Act 915 to support that objection and determination. A Copy of the purported objection is attached as **Exhibit PM 7** and can be found on pages 50 to 56 of Volume 3 of the Record of Appeal.
56. Your Lordships, the 30th December 2020 Letter does not qualify as an objection letter within the meaning of section 42(1) of Act 915 since the objection was not lodged against the tax decision made by the Respondent under section 41 of Act 915. Rather, the purported objection, that is 30th December 2020 Letter, was submitted after the objection decision of the Respondent per the 1st December, 2020 Letter.
57. Again, your Lordships, it important to reiterate the point that, there is clear difference between the adjusted assessment made pursuant to a tax decision and variation or adjustment made based on objection decision. Whereas, the adjusted assessment is a tax decision within the meaning of section 41 of Act 915 and therefore can be objected to under section 42(1) of the Act, an adjustment or variation made after consideration of an objection is an objection decision within the meaning of section 43(1) of Act 915 and not a tax decision and consequently cannot be objected to.
58. Accordingly, the learned justices of the Court of Appeal were right in their holding that the 30th December, 2020 of the Appellant (the “30th December 2020 Letter”) is not an objection to a tax decision.

59. Respectfully, your Lordships, assuming without admitting that, the 30th December, 2020 Letter was an objection as it is being claimed by the Appellant, then the Appellant was required to have paid all outstanding taxes including thirty percent of the tax in dispute as prescribed in section 42(5) of Act 915. **As held by Court of Appeal at page 18 of the judgment and can be found on pages 91 to 112 of volume 4 of the Record of Appeal.**
60. Alternatively, the Appellant ought to have applied to the Respondent for a waiver, variation or suspension of the payment of thirty percent under subsection 6 of section 42 of Act 915.
61. These two requirements are condition precedent for the determination of an objection lodged by the taxpayer as affirmed by the Supreme Court in the following cases **Kwasi Afrifa vrs Ghana Revenue Authority and Anor Writ No J1/28/2021 dated 30th November, 2022 (unreported). Kwasi Afrifa vrs Ghana Revenue Authority and Anor Writ No J6/02/2022 dated 30th November, 2022 (unreported), Richard Amo-hene vrs Ghana Revenue Authority and 2 Others Writ No J1/08/2021 dated 30th November, 2022 (Unreported) and Export Finance Company Ltd vrs Ghana Revenue Authority and Anors Writ No J1/07/2021 dated 30th November, 2022 (Unreported).**
62. In the **Kwasi Afrifa vrs Ghana Revenue Authority and Anor Writ No J6/02/2022 dated 30th November, 2022 (unreported)**, the Supreme Court speaking per Torkornoo JSC (as she then was) held as follows:
“ A simple reading of Section 42(5) shows that as part of the objection procedure, both the taxed citizen, and the Commissioner-General carry responsibilities. The taxed citizen is required to first pay previous taxes that were not dispute. And where the subject of the objections is duties that have been assessed on goods imported by the citizen, s/he is to pay the duties prior to commencement of consideration of the objection. Where the subject of the objections are other taxes, the citizen is required to pay 30% of the assessed tax prior to commencement of consideration of the objection. These are the conditions that have to be fulfilled before the hearing of the written objection”
63. That notwithstanding, the Respondent submits that he responded to the 30th December, 2020 by a letter dated 24th March, 2021 as evidenced by **Exhibits C.G 3 and PM 10** which can be found on page 152 of the Volume 2 and page

75 of Volume 3 of the Record of Appeal. In the letter the Respondent was emphatic and clear as follows:

“Reference to your letter dated 30th December, 2020 with reference number TS1833/EOA/JHU and all prior correspondence.

We have examined your request in accordance with relevant provisions of our tax laws particularly, the dispute resolution procedures in the Revenue Administration Act, 2016 (Act 915) and wish to respond as follows:

- 1. Having objected to assessment made on 8th November, 2019 and 8th July 2020 and*
- 2. Commissioner-General (C.G) having made objection decision in accordance with section 43 of the Revenue Administration Act,2016(Act 915)*

We are of the considered opinion that C.G has no power to further review your request.

Furthermore, your request for review is not supported by any law, Commissioner- General therefore, stands by the position communicated to you on 1st December2020. Accordingly, your request is declined.

64. This 24th March, 2021 letter brought the closure to the administrative objection procedure set out in sections 41 to 43 of the Revenue Administration Act, 2016 (Act 915). Thus, if the Appellant was dissatisfied and had intended to appeal to the Court, it ought to have done so within thirty days upon having been served with the 24th March, 2020 letter as required by section 44 of Act 915 as amended and Order 54 rules 2(1) of the High Court (Civil Procedure) Rules 2004 (C.I 47) as amended, or applied for extension of time to appeal in accordance with Order 54 rules 2(2) of (C.I.47) but not wait until 8th November, 2021.

65. The Appellant by chosen to file the appeal to the Court on 8th November, which is more than six months, instead of thirty days after 24th March, 2021, filed out of time in contravention of section 44 of Act 915 and Order 54 Rules 2(1), (2) & (3) of C.I.47 as well as settled authorities.

66. The Appellant, **surprisingly** and **disingenuously** has failed to comment and admit the existence of the 24th March, 2021 letter from the Respondent throughout its written submission because the Appellant knows that such an admission of the existence of the letter would weaken its case. This is because that letter was very instructive and actually brought closure to the Respondent’s dealing with any objection from the Appellant in respect of his entertaining further any objection to the 2012 to 2018 audit assessment report served on the Appellant.

67. Your Lordships, it is trite that taxation is a creature of a Statute and legislation is the main source of tax law. See Article 174(1) of the Constitution of Ghana, 1992. This means what has not been clearly authorized by statute, that is the Act creating the tax, cannot be read into or inferred from it, in its construction since in construing the law there is no room for intendment. In the same vein, what the Act creating the tax has expressly provided for must be construed strictly because tax legislation being fiscal legislation is construed strictly as succinctly stated by **Rowlatt J.** in *Cape Brandy Syndicate vs. IRC* [1921] 1KB64, cited with approval by the Supreme Court of Ghana in **Multi -Choice Ghana Limited v The Commissioner, Internal Revenue Service (2011) G. M. J, or [2011] 2 SCGLR 787.** It is also settled that where an enactment provides procedure for do something, it must be complied with and not otherwise.

68. Your Lordships, just as taxation is the creature of a statute, equally, an appeal is also the creature of a statute or Constitution. In other words, it is the Constitution or the statute that conferred the right to appeal as stated by the Supreme Court in the case *NYE VS. NYE (1967) GLR 76-91.* **The Court held as follows:**

” the right to appeal and the power of the Court to hear appeals are the creature of the statute” it must be appreciated that there is no inherent right of appeal in a litigant nor indeed is there an inherent power in any Court to hear an appeal. Both rights and the power are creatures of a statute and unless the enactment creating the right of appeal and power to hear an appeal is explicit, clear and unambiguous in its language, no such right and no such power can ever materialize. When however, the right and power to materialize, they are exercisable only within the framework of the conditions imposed on their exercise”.

Similarly, the Supreme Court held in the case of *INTERNATIONAL ROM VRS VODAFONE GHANA LTD & ANO.* Civil Appeal No: J4/2/2016, unreported. that “every step taken in an appeal must be measured against among other things the rules of procedure governing the appeal” see also the case *SANDAMA-NAB VRS ASANGALIA & OTHERS (1996-97) SC GLR 302 -306.*

69. Your Lordships, the principles espoused by the Supreme Court in the above stated cases is in accord with section 44 of Act 915 and Order 54 rules (1) & (2)(1),(2)&(3) of C.I. 47.

Section 44 of Act 915 provides that a person who is dissatisfied with a decision of the Commission-General may appeal against the decision to the Court within thirty days of the decision.

Similarly, under Order 54 rules (1) & (2)(1) ,(2)&(3) of C.I. It is also provided as follows:

Tax appeals to the High Court

(1) where in any enactment provision is made for an appeal to be made to the High Court against a decision or order of the Commissioner (Commissioner-General) the provision of this Order shall apply to the appeal.

Notice of appeal

(2)(1). The appeal shall be commenced by the filing of five copies of the notice of appeal together with copies of all relevant documents with the Registrar within thirty days of receipt of service of the decision or order of the Commissioner.

(2). Where the aggrieved person does not an appeal within the time prescribed in rule 2(1), he may apply for an extension of time to do within 3months from the date of the expiry fixed in subrule (1), and the court may, if satisfied that the delay in filing in the notice of appeal was due to his absence from the country, sickness or other reasonable cause and that there has been no unreasonable delay on his part, grant him extension of time to file his Notice of Appeal.

(3). No application for extension of time shall be entertained after the time specified in subrule (2).

70. My Lords, per the evidence on record as contained in the respective Affidavit in Support and in opposition to the application to strike out and dismiss tax appeal and same reiterated herein, the respondent made tax decision on 8th November, 2019 and the Appellant objected to it on 11th November, 2019 and by various correspondences and exchanges between the Respondent and the Appellant, the Respondent made his final objection decision on 1st December, 2020. The Respondent contends that if the Appellant wanted to appeal to the Court it ought to have filed the appeal within thirty days of the decision, that is not later than 1st February, 2021 as required under section 44 of Act 915 and Order 54 of C.I. 47. These requirements are also in line with the decisions espoused by the Supreme Court in the cases stated supra.

71. Under the Revenue Administration Act, 2016 (Act 915), the Act regulating tax Administration in Ghana and upon which the Appellant case is anchored, it is provided in sections 41 to 44, procedures and mechanisms, to be followed in challenging and resolving the tax dispute in Ghana. However, in the instant case, the Appellant has failed to follow these laid down procedures to challenge to object and appeal against the tax decision of the Respondent thereby extinguished its right to appeal under section 44 of Act 915 and Order 54 rule 2 of C.I. 47.

72. In addition, The Respondent relies on his arguments under Ground (I) of the Grounds of appeal

73. My Lords, flowing from the above, it is submitted that the observations and conclusion of the learned justices of the Court Appeal are profound and sound and therefore must not be disturbed

Ground III

The Court of Appeal erred in holding that the Respondent's letter of 8th October 2021 is not an objection decision.

74. Your Lordships, the Respondent denies that the 8th October, 2021 letter was final objection decision, since in that letter the Respondent did not make any determination on any objection as prescribed in section 43 of Act 915 to qualify as objection decision. Rather the Respondent only reiterated his position in earlier decisions dated 1st December, 2020 and 24th March, 2021 respectively. Copy of the response letter from the Commissioner DTRD and served on the Appellant as **Exhibits C.G 4 and PM 11** can be found on pages 153 to 154 of Volume 2 and pages 77 to 78 of the Volume 3 of the Record of Appeal.

75. Your Lordships, as already stated supra in my Responses to the grounds (I) and (II) of the appeal, the Respondent did not consider 1st December, 2020 Letter as a tax decision which could be objected to. Equally, the Respondent did not also consider the 30th December, 2020 Letter as an objection letter under objection and appeal procedures set out in Act 915, specifically section 41 to 45 of the Act meant for the challenging and resolving tax dispute.

76. The reasons for holding so have been adequately articulated in my submissions in response to the above stated grounds and the Respondent relying on the same

to support this ground of appeal and therefore, respectfully, Your Lordships, there is no need to bother this Honourable Court by repeating the same.

77. Your Lordships, both the Courts below affirmed that the 8th October, 2021 Exhibits C.G 4 and PM 11 were not objection decisions to be challenged in Court. And that actual **objection decision according the learned justice of the High Court was rendered by the Respondent through a letter dated 8th July, 2020 whereupon the Applicant's liability was reduced from USDS 22,772,849.35**
78. **The holding of the learned justice of High Court and which was affirmed by the Court of Appeal accords with section 43 of the Act 915 and therefore must not be disturbed by this Honourable Court.**

Conclusions

79. It is submitted that the Appellant has failed to prove that it complied with the laid down procedures enshrined in the Revenue Administration Act, (Act 915) the High Court rules and case laws to object and appeal against tax decision.
80. Under section 92 of the Revenue Administration Act, 2016 (Act 915), the taxpayer (Appellant) bears the burden of proof in respect of tax appeals brought under section 41 to 45 of the Act. This means for the taxpayer (Appellant) to successfully challenge an objection decision made by the Respondent, the taxpayer must demonstrate that it has complied with the provisions of the tax laws. In other words, the Appellant must demonstrate that, it did not file the notice of tax appeal out of time in contravention of section 44 and Order 54 rules 2(1), (2) and (3)
81. Your Lordships, the appellant having failed to discharge this burden in the instant case, then the findings of fact, the law and conclusion arrived at by the learned judge of the High Court and which was affirmed by the Court of Appeal ought not to be disturbed by this Honourable Court.
82. My Lords, the principle that an appellate court should not interfere with the findings of a trial court, or court below so far as it is supported by evidence applied to this appeal.

83.. Additionally, the principle that a party that seeks the judgment/ruling of a trial court to be set aside has the great burden of proving that there are certain pieces of evidence present or absent in the judgment that would have substantially turned the case in his/ her favour had same been considered as stated by this Court in the case of **DJIN VRS MUSAH BAAKO (2007-2008) SCGLR686**, is equally applicable to the instant case. In the **DJIN VRS MUSAH BAAKO**, the **Supreme Court** held per R.K Aninakwah JSC as he then was thus: “it has been held in several decided cases... The onus is on such an appellant to clearly and properly demonstrate to the appellate court the lapses in judgment being appealed against”.

84. We therefore, pray this Honourable Court to;

1. Dismiss the Appellant/Appellant’s appeal as unmeritorious
2. Affirm the sound judgment of the Court of Appeal.
3. Award cost for the Respondent/Respondent/ Respondent.

Respectfully submitted.

DATED AT THE LEGAL AFFAIRS AND TREATIES DEPARTMENT OF THE
GHANA REVENUE AUTHORITY, HEAD OFFICE, MINISTRIES, ACCRA,
THIS
10TH DAY OF MARCH

LEGAL AFFAIRS AND TREATIES DEPARTMENT
GHANA REVENUE AUTHORITY
P. O. BOX 2202
KUMASI ROAD, ACCRA
IBRAHIM MOHAMMED ESQ
LAWYER FOR THE RESPONDENT
PRACTISING CERTIFICATE No. e GAR 01139/25

THE REGISTRAR
THE SUPREME COURT

AND TO:

THE APPELLANT OR ITS LAWYER KIMATHI &
PARTNERS, Corporate Attorney, Accra.

AUTHORITIES CITED

1. Constitution of the Republic of Ghana, 1992.
2. **High Court (Civil Procedure) Rules, 2004 (C.I. 47)**
Statutes
3. Revenue Administration Act, 2016(Act 915)

Case Law

Ghanaian Cases.

1. MultiChoice Ghana Limited v The Commissioner, Internal Revenue Service (2011) G. M. J, or [2011] 2 SCGLR 787
2. **NYE VRS, NYE [1967] GLR76**
3. INTERNATIONAL ROM VRS VODAFONE GHANA LTD & ANO. Civil Appeal No: J4/2/2016, unreported.
4. SANDAMA-NAB VRS ASANGALIA & OTHERS (1996-97) SC GLR 302 -306
5. DJIN VRS MUSAH BAAKO (2007-2008) SCGLR686,
6. **Kwasi Afrifa vrs Ghana Revenue Authority and Anor Writ No J1/28/2021 dated 30th November, 2022(unreported).**
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8. **Richard Amo-hene vrs Ghana Revenue Authority and 2 Others Writ No J1/08/2021 dated 30th November, 2022(Unreported)**
9. **Export Finance Company Ltd vrs Ghana Revenue Authority and Anors Writ No J1/07/2021 dated 30th November, 2022(Unreported).**

Foreign cases

10. Brandy Syndicate vs. IRC [1921] 1KB64 Cape