IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2026

CORAM: PWAMANG JSC (PRESIDING)

AMADU JSC

ASIEDU JSC

GAEWU JSC

AMALEBOBA JSC

CIVIL APPEAL NO. J4/31/2024

3RD JUNE, 2026

SEADRILL GHANA OPERATIONS LIMITED .... **APPELLANT/RESPONDENT/ APPELLANT/APPELLANT**

VRS

THE COMMISSIONER-GENERAL GHANA REVENUE AUTHORITY .... **RESPONDENT/APPLICANT/ RESPONDENT/RESPONDENT**

JUDGMENT

TANKO AMADU, JSC:

INTRODUCTION

1. Tax legislations, and their construction continue to engage our courts in the effort to provide certainty in the law. The entrenched position at common law remains that, tax statutes must be strictly construed and implied. The Legislature should be deemed to have intended only what they have expressed in a tax statute. It is no function of the court, to urge a certain purposive or benevolent construction at variance with the strict terms of a tax statute. In the recent decision of this court in the case of **MAERSK DRILLSHIP IV SINGAPORE PTE LTD. VS. THE**

COMMISSIONER GENERAL GHANA REVENUE AUTHORITY, CIVIL APPEAL NO. J4/59/2024 DATED 2 APRIL 2025, where I had the privilege of delivering the lead majority opinion, I observed *inter alia* as follows:-

> ***"Tax law is one area of law where enforcement and interpretation of regulatory provisions command strict construction. Under our constitutional and legislative regimes, unless the legislature or such other person empowered by the Constitution and relevant statute sanctions the payment of taxes, or exemptions from payment, no person can deviate nor evade compliance. Any deviation or evasion will attract enforcement and potential sanctions as provided by regulating statutes. Therefore, in any adjudication regarding issues of tax, the adjudicator must confine himself to the law which imposes or dispenses with the element of tax. Upon ascertainment, the statute must be strictly construed and enforced."***
>
> ***Baring the abuse of the rights of individuals regarding tax obligations, as well as the attempt by persons to evade their tax obligations, the legislature has carefully delineated a legislative framework to address compliance. What this simply means is that, the tax officer does not wield unregulated power in the administration and enforcement of tax laws. The powers invested in the officer are statutorily and procedurally limited, and hence, any unfair application inconsistent with the due process must not be countenanced.***

2. This dispute, which has travelled from the High Court, through to the Court of Appeal, and now to this Court revolves around the construction of a simple and common, but, within context of the disputants, a convoluted phrase, ***tax decision.*** The core issue for determination is to ascertain the meaning of a ***tax decision*** as provided under the relevant provisions of the **Revenue Administration Act, 2016 (Act 915)** and in the context of tax objections.

BACKGROUND AND FACTS

3. The facts in this matter are largely undisputed and they are re-stated herein as follows. On 10th of March 2026, Tullow Ghana Limited and its Joint Venture Partners entered into a Petroleum Agreement with the Government of Ghana and the Ghana National Petroleum Corporation (GNPC). The Appellant herein was engaged as a subcontractor to provide a drilling unit and associated services. As a Ghanaian registered branch of an external company incorporated under the laws of Bermuda, the Appellant was subject to Ghanaian tax obligations.

4. Following a tax audit by the Respondent's Large Taxpayer Office covering the 2012 to 2018 of assessment, the Respondent on the 8th November 2019 served on the Appellant a tax audit assessment (the first assessment) totaling USD305,606,164.19 comprising direct taxes of USD65,908,534.05 and indirect taxes of USD239,697,630.19.

5. On 11th December 2019, the Appellant, through its tax consultants KPMG, lodged an objection to the first assessment, (the first objection). The Respondent exercised its discretion under Section 42(6) of Act 915 and allowed the Appellant to pay USD12,500,000 as an objection deposit, in lieu of the 30% ordinarily required under Section 42(5) of the Act.

6. On 8th July 2020, the Respondent issued its first objection decision under Section 43 of Act 915, revising the assessed liability from USD305,606,164.19 to USD22,722,849.35 inclusive of the objection deposit (the first objection decision). On 28th July 2020, the Appellant wrote to the Respondent raising further objections to aspects of the audit report (the second objection). It is worth noting that no additional deposit was paid or demanded at this stage. On 1st December 2020, the Respondent issued another letter reducing the tax liability to USD17,948,152.65 inclusive of the objection deposit (the second objection decision), served on the Appellant on the same date.

7. Thereafter, on 30th December 2020, the Appellant wrote again disputing the second objection decision (which will be referred to as the third Objection). On 24th March 2021, the Respondent expressly declined to entertain any further review, indicating that the Commissioner-General had no power to do so and that the 1st December 2020 position stood (i.e. the third objection decision). On 8th October 2021, the Commissioner, Domestic Tax Revenue Division, issued a further letter maintaining the Respondent's position, directing payment of USD5,448,152.65 (exclusive of the objection deposit) from 8th October 2021, and stating that the 1st December 2020 liability was final, that is, the final objection decision.
8. On 8th November 2021, the Appellant filed a Notice of Tax Appeal at the High Court against the Final Objection Decision. The Respondent applied to strike out the appeal on the ground that same was filed out of time. The High Court upheld the application on 5th April 2022, and the Court of Appeal unanimously affirmed same on 16th November 2023. The Appellant has now appealed to this Court.

JUDGMENT OF THE HIGH COURT

9. The Appellant in the instant appeal filed a notice of appeal against the tax assessment audit conducted by the Respondent on 8th November 2021 and its consequential objection decision on the 8th October 2021. The High Court upheld the Respondent's preliminary legal objection and struck out the appeal as incompetent having been filed out of time. The High Court held that, the only valid objection by the Appellant was the one filed on 11th December 2019, and that the Respondent's decision, as finally revised and served on the Appellant on 1st December 2020, constituted the operative objection decision for purposes of any appeal. Accordingly, time began to run from 1st December 2020, and the Appellant had 30 days within which to appeal to the High Court, unless extension of time is sought within the period permissible by law.

10. The High Court rejected the Appellant's contention that, subsequent correspondence with the Respondent gave rise to fresh objection decisions

capable of restarting the clock in respect of the time within which to appeal. In the view of the High Court, the governing tax legislation did not permit repeated objections or endless administrative exchanges after an objection decision had been made and served. Since the notice of appeal was filed only on 9th November 2021, without any application for extension of time, the appeal was incompetent. In reaching this conclusion, the High Court relied on the principle that statutory provisions on tax appeals must be strictly complied with, consistent with the decision in **MULTI-CHOICE (GH) LTD. VS. COMMISSIONER, INTERNAL REVENUE SERVICE (2011)2 SCGLR 787**

11. In the delivery, the Learned High Court Judge held *inter alia* as follows

> ***"Reading through the various provisions on this tax appeal, I do not see any provision that empowers the tax payer 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 that the first and only objection filed was that of 11th December, 2019 and determined with the issuance of the Amended tax decision given on 18th December, 2020. All other correspondences from the Appellant were inconsequential and do not amount to separate objections over which the Respondent was expected to give separate decisions. It is in that vein that will go along with the Respondent's preliminary legal objection that as at the time the Appellant filed his notice of appeal on 8th November, 2021, he was woefully out of time and since he did not seek an extension of time as provided by the Rules of Court, the said appeal is incompetent and cannot invoke there jurisdiction of this Court."***

<u>APPEAL TO THE COURT OF APPEAL</u>

12. On appeal to the Court of Appeal, the Appellant sought to set aside the ruling of the High Court on the following grounds;

i. *The Learned Judge erred in his interpretation and application of the Commissioner-General's powers of review under the law.*

PARTICULARS OF ERROR

a) The Learned Judge failed to consider and apply Sections 42(9), of the Revenue Administration Act, 2016 (Act 915).

b) The Learned Judge failed to consider that under sections 37(5) (b) (ii) and 39(3) of the Revenue Administration Act, 2016 (Act 915) the Respondent had the power to adjust any tax decision to ensure that the correct amount of tax is paid.

ii. *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 Learned Judge failed to consider and apply Sections 41(1), 41(2), 41(4)(c), 37(3), 37(6), 39(1) and (2) of the Revenue Administration Act, 2016 (Act 915) to hold that an adjusted tax assessment (the 1st December 2020 Letter) is a tax decision that can be objected to.

b. The Learned Judge failed to consider that under Sections 37(5) (b) (ii) and 39(3) of the Revenue Administration Act, 2016 (Act 915) the Respondent had the power to adjust its tax decision of 1st December 2020.

c. The Learned Judge should have held that the 1st December 2020 Letter, as a tax decision, could be objected to by the Appellant before the Respondent.

iii. *The Learned Judge erred in holding that although the 1st December 2020 Letter is an amended tax decision under Section 42(9) of the Revenue Administration Act, 2016 (Act 915), the 1st December 2020 Letter cannot be the subject of an objection.*

PARTICULARS OF ERROR

a. ***The Learned Judge misapprehended and misapplied the true import of Section 42(9) of the Revenue Administration Act, 2016 (Act 915), When he found that the 1st December 2020 Letter is an amended tax decision, but held that it could not be the subject of an objection.***
b. ***The Learned Judge misapprehended the effect of the law when he failed to hold that any tax decision that is amended by an objection decision qualifies as a tax decision that can be objected to under Section 42(1) of the Revenue Administration Act, 2016 (Act 915).***

iv. *The Learned Judge erred in holding that the Appellant's letter of 30th December 2020 is not an objection to a tax decision.*

PARTICULARS OF ERROR

a. ***The Learned Judge misapplied section 42 of the Revenue Administration Act 2016 (Act 915) in holding that a single objection to a tax decision is allowed under the Revenue Administration Act, 2016 (Act 915).***

b. ***The Learned Judge wrongfully held that the Applicant's letter of 28th July 2020 is not an objection to the Respondent's tax decision of 8th July 2020, while at the same time holding that the 1st December 2020 Letter is an objection decision in respect of the Appellant's letter of 28th July 2020.***

c. ***The Learned Judge should have held that the Respondent's letter of 30th December 2020 qualified as an objection to a tax decision***

under section 42 of the Revenue Administration Act, 2016 (Act 915).

v. *The Learned Judge erred in holding that the Respondent's letter of 8th October 2021 is not an objection decision.*

PARTICULARS OF ERROR

a. ***The Learned Judge failed to consider and apply Section 43 of the Revenue Administration Act, 2016 (Act 915), to hold that the Respondent's letter of 8th October 2021 is an objection decision.***

13. In its decision, the Court of Appeal unanimously affirmed the ruling of the High Court dated 5th April 2022. The Court of Appeal held *inter alia* that;

> ***"It is our view that after the objection decision under Section 43 of Act 915 was made, the adjustment or 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 therein their ordinary meaning. What constitutes a tax decision is clearly and unambiguously spelt out in Section 41(1) of Act 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 constitutes a tax decision arises when one looks at Section 42 of Act 915 which is headed "Objection to a tax decision". It is under subsection 9 of Section 42 that the legislature placed another definition of tax decision by stating that a "tax decision" means the tax decision objected to, as may have been amended by an objection decision."***

APPEAL TO THE SUPREME COURT

14. Dissatisfied with the judgment of the Court of Appeal, the Appellant mounted the instant appeal per a Notice of Appeal dated 4th December 2023 and where the following grounds have been formulated and set out;

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 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 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.***

THE REGULATING STATUTE

The determination of this dispute turns on the identification and interpretation of the relevant applicable tax legislations. The statutory framework is found in the **Revenue Administration Act, 2016 (Act 915)** and the **High Court (Civil Procedure) Rules, 2004 (C.I. 47).** The following provisions are directly in issue;

Section 41(1) of Act 915 ;-

"A tax decision means 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."

Section 41(5) of Act 915:

"For the purpose of this section, a reference to the Commissioner-General making a decision includes the Commissioner-General exercising a discretion, making a judgement, giving a direction, expressing an opinion, granting an approval or consent, or being satisfied in respect of a matter."

Section 42(1), (5), (6), (8) and (9) of Act 915;

"(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...

(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 percent of the tax in dispute.

(6) Despite subsection (5) the Commissioner-General may waive, vary or suspend the requirements of subsection (5)...

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

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

Section 43 of Act 915;

"(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.

(4) A decision is made in respect of an objection (a) on the date the person is served with notice of the decision...

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

Section 44 of Act 915;-

"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."

Section 39 of Act 915;-

"(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 judgment 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."

Order 54 Rule 2(1), (2) and (3) of C.I. 47:

"(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 file an appeal within the time prescribed in rule 2(1), he may apply for an extension of time to do so within 3 months from the date of the expiry fixed in subrule (1)...

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

SUMMARY OF APPELLANT'S STATEMENT OF CASE

15. The Appellant advances three principal grounds in support of its case. On the first ground, it submitted that, the second objection decision of 1st December 2020 is a tax decision susceptible to further objection because it constitutes an adjusted tax assessment within the meaning of **Sections 37(3), 39 and 108 of Act 915**. The Appellant relies on **Sections 42(1) and 42(9)** read together to contend that an objection decision that amends a prior tax decision thereby becomes a new tax decision open to further objection. It argues further that, **Section 41(1)(d)** does not exclude objection decisions from the broader definition of ***"tax decision"*** for the purposes of **Section 42(9).**

16. On ground two, the Appellant submits that the Court of Appeal erred in treating the 30% objection deposit under **Section 42(5)** as a fresh condition precedent for each successive objection. It argues that, the initial objection deposit was sufficient throughout and that, the Respondent waived any additional deposit requirement under **Section 42(6)** by entertaining the subsequent objections. The Appellant contends further that, the Court of Appeal was internally inconsistent in recognising the second objection decision while simultaneously denying the validity of the Second Objection which generated it. The Appellant relies on the principle that, there can be no objection decision without an antecedent valid objection.

17. On ground three, the Appellant contends that, since the Final Objection Decision of 8th October 2021 satisfies all prerequisites of an objection decision under section 43, there was a valid antecedent Third Objection which the Respondent considered, and the Respondent served notice of its determination. The Appellant accordingly submits that, the 30-day appeal window began to run from 12th October 2021 *(service of the Final Objection Decision)*, making the 8th November 2021 appeal within time.

RESPONDENT'S STATEMENT OF CASE

18. The Respondent on the other hand supports the concurrent findings of the two lower courts. The Respondent proceeded first to draw a fundamental distinction between an ***"adjusted assessment"*** made on the Commissioner-General's own initiative under Section 39, a tax decision under Section 41, a variation made in the course of determining a taxpayer's objection under Section 43 of Act 915. An objection decision is expressly excluded from the definition of tax decision by Section 41(1)(d) of the Act. To permit each objection decision to generate a fresh cycle of objections, the Respondent submits, would result in an absurd, endless administrative loop contrary to the legislative intent and contrary to the principle of finality in tax proceedings.

19. On Grounds two and three, the Respondent maintains that, no valid tax decision existed against which any subsequent objection could be lodged. Further that, the 30% deposit requirement was not met for the Second and Third Objections. Furthermore, the 8th October 2021 letter was not an objection decision but merely a reiteration of the Respondent's earlier positions. The Respondent argues that the administrative process was conclusively closed by the letter of 24th March 2021, from which date the 30-day appeal period had ran out.

20. The law is settled that, where there are concurrent decisions of the two lower courts, this court must be very slow and circumspect in disturbing them. However, where there are demonstrable exceptional situations warranting interference, the court should not hesitate to do so in ensuring a just dispensation of justice. The burden however falls on the Appellant to demonstrate the lapses, both factual and legal, characterising the decisions and which warrants a favourable overturn.

EVALUATION OF THE GROUNDS OF APPEAL

21. Before addressing the specific grounds before us, we shall first make certain preliminary observations on the principles of statutory construction applicable in tax matters.

22. First, it is well settled that, tax legislation must be construed strictly given its fiscal character. As Rowlatt J. stated in **CAPE BRANDY SYNDICATE VS. IRC [1921] 1 KB 64**, a decision cited with approval and later adopted by this Honourable Court in **MULTI-CHOICE GHANA LIMITED VS. THE COMMISSIONER, INTERNAL REVENUE SERVICE (SUPRA)** one can only look fairly at the language used and cannot infer any charge of tax not clearly imposed by that language. The same principle applies equally to procedural provisions conferring rights of objection and appeal.

23. Second, this Court held in **NYE VS. NYE [1967] GLR 76** at page 79 that, the right of appeal and the power of a court to hear appeals are creatures of statute, exercisable only within the framework and conditions prescribed by the enabling enactment. There is therefore no inherent right of appeal. It is a

statutory right and regulated within the confines of the statutes which created the right. This principle was reaffirmed in **INTERNATIONAL ROM VS. VODAFONE GHANA LTD. & ANOR. (Civil Appeal No. J4/2/2016, unreported) dated 6th June 2016**, and the principle is of direct application to the time limits prescribed by **Section 44 of Act 915 and Order 54 of C.I. 47.** This court speaking through Akamba JSC sustained that;

> ***"This court is the highest court of the land. Its jurisdiction is conferred by the Constitution of Ghana 1992, the supreme law of the land. It is also governed in its day to day deliberations by enactments made under the authority of Parliament established by the Constitution; any orders rules and regulations made by any authority or person under powers conferred by the constitution; the common law and existing law. (See Article 11 of the Constitution 1992.) By this undertaking, every step or application before our courts should be measured against the appropriate law, statute, regulation, instrument or legal principle which permits the step. The present application before us is an appeal from the decision of the Court of Appeal. Appeal is the creature of statute as no one has an inherent right of appeal. Thus, the statute that created this right of appeal has also provided rules of procedure for seeking or obtaining this remedy. The governing statute or instrument for mounting an appeal to this court is the C.I 16, the Supreme Court Rules." See also; FRIMPONG VS. POKU [1963] 2GLR 1; KUMAH VS. KYERAAH & ORS [1965] GLR 235.***

24. Much later in time, this Court re-iterated these principles in the case of **TORGBENU & OTHERS V DUGBAZA VIII [2017-2018] SCGLR 801.** At page 804, Marful-Sau JSC (of blessed memory) expressed on behalf of this Court as follows:

> ***"It is trite that an appeal is a creature of statute or the Constitution and for that matter a party who intends to***

invoke the appellate jurisdiction of a court must strictly comply and or satisfy the law that grants him or her right of appeal."

In the case of ***SANDEMA-NAB VS. ASANGALISA AND OTHERS [1996-97] SCGLR 302,*** *this court delivered at page 306 of the report as follows:*

> ***"Now it must be appreciated that an appeal is a creature of statute and therefore no one has an inherent right to it. Where a statute does not provide for right of appeal, no court has jurisdiction to confer that right in a dispute determined under that statute. Similarly, where a right of appeal is conferred as of right or with leave or with special leave, the right is to be exercised within the four corners of that statute and the relevant procedural regulations, as a court will not have jurisdiction to grant deviations outside the parameters of that statute."***

25. Third, this Court has insisted that statutory provisions must be construed purposively and as a whole, in order to advance the legislative purpose and not to defeat it. This principle has been consistently applied in cases such as **PROFESSOR STEPHEN KWAKU ASARE VS. THE ATTORNEY-GENERAL WRIT NO.3/2002 dated 28th January, 2004; HALLE AND SONNS S. A VS. BANK OF GHANA & ANOR CIVIL MOTION J7/11/2010 dated 15th December, 2010.** The defining principle is that, rigid technicalism should be avoided, and flexibility extended to ensure justice. The remarks of Prof. Modibo Ocran JSC *(of blessed memory)* in the case of **GIHOC REFRIGERATION & HOUSEHOLD PRODUCTS LTD. VS. JEAN HANNA ASSI [2005-2006] SCGLR 458** becomes instructive; There His Lordship held *inter alia* that:

> ***"At any rate, even at the trial level, the High Court Rules have maintained sufficient flexibility both in the old and the new Rules of procedure to allow courts to make such***

orders dealing with the proceedings as it considers just, or necessary for doing justice to the case."

26. Fourth, however purposive, construction must not become a vehicle for overriding plain statutory language. Where the text is clear, the court must give effect to it; See the case of **ATTORNEY-GENERAL VS. FAROE ATLANTIC CO. LTD [2005-2006] SCGLR 271.** As this Court confirmed in **OCCUPY GHANA VS. ATTORNEY-GENERAL [2017] SCGLR 58,** the Directive Principles of State Policy including the mandate in **Article 36(2)(c)** for equitable contribution to national obligations, guide interpretation but cannot be invoked to read positive rights into legislation where the legislature has not conferred them. With these principles in mind, this Court turns to the resolution of the grounds of appeal as set out by the Appellant.

Ground 1; This can be conveniently reframed as whether the second objection decision of 1st December 2020 is a **'tax decision'** capable of further objection.

27. This particular issue is at the heart of the entire appeal; the resolution of which turns on the proper construction of **Sections 41(1), 41(1)(d), 42(9), 39, and 43 of Act 915,** read as a whole. The architecture of Act 915 dispute resolution mechanism is sequential, purposeful, and finite. The Commissioner-General raises a tax assessment or makes a tax decision under Section 41 of the Act. A dissatisfied taxpayer objects under Section 42, subject to the payment of the 30% deposit or a waiver thereof. The Commissioner-General determines the objection under Section 43, either varying the decision or disallowing the objection. That determination is the objection decision. A taxpayer dissatisfied with the objection decision appeals to the courts under Section 44 within 30 days. The legislature has thus structured a single round of administrative review followed by judicial oversight.

28. In a more nuanced manner, the Act further outlines when a tax decision is made under Subsections (2) and (3) of Section 41, by providing as follows:

(2) A tax decision is made

(a) in the case of an assessment made by the Commissioner- General, when the notice of assessment is served on the taxpayer; and

(b) in the case of any other tax decision, when the Commissioner-General serves the affected person with written notice of the decision.

(3) In the absence of the notice referred to in subsection (2)(b), a person may elect to treat the Commissioner-General as having made an unfavourable tax decision, if

(a) the tax law specifies a time by which the Commissioner- General is to make a decision and that time expires; or

(b) a time frame is not specified in the tax law and ninety days have elapsed after the affected person files a request for the Commissioner-General to make the decision.

29. The provision goes ahead to set out in subsection (4) what a conclusive evidence means whenever a tax decision has been made. This provision is restated as;

(4) The following are conclusive evidence that a tax decision has been made and is correct:

(a) in the case of a self-assessment, the tax return that resulted in the assessment or a document under the hand of the Commissioner-General purporting to be a copy of the tax return;

(b) in the case of other assessments, the notice of assessment or a document under the hand of the Commissioner- General purporting to be a copy of the notice; and

(c) in the case of any other tax decision, written notice of the decision under the hand of the Commissioner-General or a document under the hand of the Commissioner-General purporting
to be a copy of the decision.

(5) For the purpose of this section, a reference to the Commissioner-General making a decision includes the Commissioner-General exercising a discretion, making a judgement, giving a direction, expressing an opinion, granting an approval or consent, or being satisfied in respect of a matter.

30. The Appellant's case on this issue rests principally on Section 42(9), which provides that in Section 42, ***"tax decision" means "the tax decision objected to, as may have been amended by an objection decision."*** The Appellant construes this provision as creating a type of rolling cycle of rights such that, once an objection decision amends a prior tax decision, the amended version becomes a new tax decision susceptible to fresh objection, generating another round of administrative review. This could then result in an indefinite cycle as the case may be.

31. This Court can hardly accept that construction such that, Section 42(9) is a definitional provision confined to the operation of Section 42 itself. Its function is in our view, limited and specific to clarify the identity of the ***"tax decision"*** to which any particular objection under Section 42 relates, namely the original tax decision as it may have been varied by an earlier objection decision. The clause "***as may have been amended by an objection decision***" is a qualifying phrase acknowledging that prior adjustments may have occurred. It

does not in our opinion purport to transform an objection decision into a new tax decision, nor to create a new right of objection. When in context, the provision answers a narrow definitional question; it does not confer a substantive right.

32. As was the position in the **MULTICHOICE GHANA LTD. VS. THE COMMISSIONER, INTERNAL REVENUE SERVICE case (supra),** the Appellant company earned interest income when it invested subscription fees it received from customers. Despite making profits on the investment, the Financial Statements of the company showed that the company made a loss in its main business operation of providing pay TV services to subscribers. The loss from the business operations exceeded the profits the Appellant made on its investment and thus the Appellant reported a loss for its entire operations. The Respondent disputed the method employed by the Appellant in arriving at the loss. The Respondent argued that the Appellant could not aggregate income from its business and investment or set-off the loss made in its business operations against the profits from the investment since under the provisions of the Income Tax Decree 1975 which was the relevant statute at the time, business and investment income were liable to tax separately.

33. In that case under reference, the High Court Judge agreed with the Appellant and held that under the provisions of SMCD 5, the Appellant was entitled to aggregate income from business and investment and deduct all expenses from the total income before arriving at either a profit or loss. The Court of Appeal set aside the judgment of the High Court. This Court agreed with the judgment of the High Court and reversed the decision of the Court of Appeal.

34. In delivering the judgment of this court, Wood CJ stated *inter alia* which we reproduce in extenso for its relevance 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 I's formulation of the rule in CAPE BRANDY SYNDICATE V IRC [1921 1KB 64, 71]. He observed: "In the words of the late Rowlatt I 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 is to be read in, nothing is to be implied. One can only look fairly at the language used." I am not disposed to straining the words of SMCD5 to conclude, as argued by the respondent that, on the facts, the two incomes, so in extrinsically linked cannot be grossed to constitute the company's assessable income. It bears emphasis that as in this instant case, where the interest income of a company not another (separate and distinct entity, but the same company) accrued in the course of their business; it constitutes part of the company's revenue and consequently, at law, forms part of its assessable income. Apply these principles to the s.1 ss (1) and 11 of SMCD5, and the conclusion I arrive at is that upon a true and proper construction, the respondent's argument must fail."

35. More emphatically, the instant Appellant's construction is directly and unambiguously negated by Section 41(1)(d) of Act 915. That provision expressly states that a ***"tax decision" for the purposes of the Act "does not include... a decision or omission of the Commissioner-General, including an objection decision under Section 43."*** An objection decision under Section 43 is expressly declared not to be a tax decision. It follows with inexorable logic that an objection decision cannot be the subject of a fresh objection under Section 42, since Section 42 operates only in respect of a ***"tax decision."*** An objection decision is expressly not a tax decision.

36. The Appellant further contends that, an objection decision which reduces the quantum of a tax liability is, in substance, an ***'adjusted assessment'*** within the meaning of Section 39 of the Act, and therefore qualifies as a tax decision under Section 41 of the Act. This argument conflates two distinct statutory powers. Section 39 empowers the Commissioner-General to adjust an assessment in the exercise of independent administrative judgment, typically in the course of audit proceedings or on discovery of an error to ensure the taxpayer pays the correct amount. This power operates independently of any taxpayer objection.

37. However, Section 43 of the Act, by contrast, is the power to determine a taxpayer's objection and to vary or uphold the challenged assessment in that context. These are functionally very distinct powers. The fact that both may result in a revision of the tax figure does not integrate them. The variation effected under section 43 in determining an objection is an exercise of the objection-determination power, not the Section 39 adjusted-assessment power, and the legal characterisation of the resulting decision follows accordingly.

38. The Respondent correctly relies on the case of **JJ MANAGEMENT LLP VS. THE COMMISSIONERS FOR HM REVENUE AND CUSTOMS [2020] QB 619**, where the English Court of Appeal confirmed the principle cited with approval from **TOWER MCASHBACK LLP 1 VS. HMRC [2011] UKSC 19** that, the duty to collect tax extends to collecting the correct amount, not merely what the taxpayer admits. The Commissioner-General's power to vary an assessment in determining an objection serves this duty, but it does not transform the determination into a new taxable event susceptible of re-objection.

39. If every objection decision that reduces a tax liability generates a new tax decision susceptible to fresh objection, then there would never be finality to administrative proceedings. Each reduction would beget a new objection, which would beget a new determination, which would beget another objection, *ad*

infinitum. The 30-day appeal window under Section 44 would be rendered meaningless, and the mechanism of judicial review over administrative tax decisions would be supplanted entirely by an unending administrative loop. This could never have been the legislative intent. As the Learned High Court Judge correctly observed, the law ***"does not make room for ad infinitum repeat objections by an aggrieved taxpayer."*** We endorse this observation with unreserved commendation.

40. It is also instructive that **Section 42(8) of Act 915** provides that; ***"a tax decision to which an objection is not made within thirty days is final."*** This express provision shows the premium the legislature places on finality and on compliance with time limits in the tax dispute resolution process. The first ground of appeal consequently fails, and is accordingly dismissed.

41. On Ground (b) the emerging issue for determination is whether or not the third objection of 30th December 2020 is a valid objection to a tax decision? Given the holding on the first ground, the second ground of appeal renders itself for easier resolution. The Appellant's letter of 30th December 2020 purported to object to the Second Objection Decision of 1st December 2020. Since we have held that the Second Objection Decision is an objection decision under Section 43 and not a ***'tax decision'*** within the meaning of Section 41 of the Act, it cannot be the subject of a fresh objection under Section 42. The Third Objection accordingly did not constitute a valid objection under Act 915.

42. The Appellant raises the argument that the Court of Appeal characterised the 1st December 2020 letter as an ***"objection decision",*** yet simultaneously held the Second Objection of 28th July 2020 which allegedly prompted it to be invalid. If the Second Objection Decision is an objection decision, that argument means, there must logically have been a valid antecedent objection, namely the Second Objection. The Appellant thus contend that, the Court of Appeal was self-contradictory, and the Third Objection, as a further link in the same chain must also be valid.

43. In our considered view however, The Court of Appeal's characterisation of the 1st December 2020 letter as an ***'objection decision'*** was descriptive of the substance of that letter, a determination varying the prior assessed liability and was not a positive finding that the 28th July 2020 letter was a legally valid objection under Section 42. The Respondent, in issuing the 1st December 2020 letter, may plausibly have been exercising its general power under Section 39 to adjust the assessment in furtherance of its duty to ensure the correct tax liability, a power exercisable independently of any taxpayer objection. As the Respondent's own letter of 24th March 2021 explicitly stated, it considered the Commissioner-General to have had no power to further review requests after the objection decision had been made on 1st December 2020. This is not the language of a body that regarded the 28th July 2020 letter as a valid objection.

44. Therefore, even if the 28th July 2020 letter were treated as an objection, the Appellant did not pay the 30% objection deposit required under Section 42(5) of Act 915, and no formal waiver was sought nor expressly granted under Section 42(6). In the case of **KWASI AFRIFA VS. GHANA REVENUE AUTHORITY AND ANOR (WRIT NO.J1/28/2021 AND WRIT NO. J6/02/2022, both unreported, delivered 30th November 2022)** this court affirmed the position that, the 30% deposit requirement or the formal grant of a waiver is a condition precedent for the entertainment of an objection. In that decision this court observed 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 disputed. 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 objections. Now what happens if an objector is unable to fulfil these new obligations? Does Act 915 close the door to their objections being heard at all? Not at all. What is significant about this statutory arrangement in Section 42(5) is that immediately after directing that the tax commissioner ought to see that there are no outstanding previous taxes unpaid before 'entertaining' an objection, as well as the objected import duty or 30% of the objected tax, Section 42 (6) grants avenues for the exercise of discretion regarding these conditions by providing further thus: 42(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' (emphasis ours). So there is no absoluteness about Section 42(5). It places a duty for the interim mobilization of tax assessed pending the hearing of an objection on both the tax authority and the tax objector, while Section 42(6) allows the Commissioner General to exercise discretion to waive, vary or suspend the requirements of Section 42(5), in the particular case of an objector to assessed tax. Very importantly, Section 42 (7) provides further statutory standards for the exercise of the discretion that the Tax Commissioner is given in Section 42 (6) towards the hearing of a tax objection."

45. The Respondent's mere act of responding to the Appellant's correspondence did not, in the circumstances of this case, amount to a waiver under Section 42(6) of the Act, as the Respondent has at all material times denied that the subsequent letters had any legal standing as valid objections. As a matter of settled judicial policy there is no concept of implied waiver of a statutory

condition precedent where the party alleged to have waived it has expressly maintained that the condition was never triggered.

46. The settled jurisprudence by this court on the scope of the application of statutes is relevant in the instant appeal. In **NETWORK COMPUTERS LIMITED VS. INTELSAT GLOBAL SALES [2012] 1 SCGLR 218,** Atuguba JSC, articulated on the issue in the following words: ***"Unless a substantive Act can be regarded as directory and not mandatory or its infraction is so minimial that it can be observed that it can be covered by the maxim de minimis non curat lex or such that the complaint about it is mere fastidious stiffness in its construction or the breach relates to part of it which in relation to others, can be regarded as subsidiary and therefore should not be allowed to prejudice the operation of the dominant part or purpose thereof, or the strict enforcement of the statute would amount to a fraudulent or inequitable use of the statue or some other compelling reason, I do not see how a court can gloss over the breach of a statue."***

47. Earlier in time, in **ABABIO AND OTHERS VS. KARIKARI AND ANOTHER [2001-2002] 1 GLR 381,** this court held that:

> ***Estoppel of all kinds was subject to the general rule that it could not override the laws of the land, i.e. where a particular formality was required by statute, no estoppel could cure the defect nor give jurisdiction to a court where statute denied it. Therefore,***
>
> > ***[U]nless the provisions in the statute are so manifestly and incurably bad, no Judge or court for that matter has the right or authority to grant immunity to a party from the consequences of the breach of an Act of Parliament or disable the enforcement of the provisions of an Act of Parliament.* See *REPUBLIC VS. MICHAEL CONDUAH, EX-PARTE GEORGE SUPI ASMAH, Unreported judgment of***

the Supreme Court in Civil Appeal No.J4/28/12 dated 15th August 2013.

48. Clearly therefore, the arguments founded on estoppel in this regard are completely misconceived. The argument ultimately fails on the analysis to the effect that, the Appellant's letter of 30th December 2020 did not constitute a valid objection to a tax decision under Act 915. Ground (ii) together with all the particulars set out in the notice of appeal is consequently dismissed.

49. With respect to Ground (iii), the issue distilled from the ground for determination is whether the Respondent's letter of 8th October, 2021 was on **Objection Decision?** The resolution of this issue requires a determination of the legal character of the Respondent's letter of 8th October 2021. This is the issue on which the Appellant most forcefully anchors and presses its case. The 8th October 2021 letter was issued by the Commissioner, Domestic Tax Revenue Division. According to the record, it referred to the Appellant's letter of 30th December 2020 and stated that, the matter had been examined in accordance with relevant tax laws, affirmed the position taken on 1st December 2020, and directed that the outstanding tax liability of USD5,448,152.65 (exclusive of the objection deposit) was payable from 8th October 2021, with interest at 125% of the statutory rate compounded monthly accruing on any unpaid amount after 14 days.

50. The Appellant places particular weight on the broad definition of ***"decision"*** in Section 41(5) of Act 915, and on the decision of this court in **NDK FINANCIAL SERVICES VS. AHAMAN ENTERPRISES LTD. AND OTHERS (unreported), Suit No.J8/29/2016 dated 10th March 2016** where Anin Yeboah JSC *(as he then was)* held, drawing on **Black's Law Dictionary,** that a ***"decision"*** is any determination by an authority after consideration of facts and law, not limited to formal judgments. The Appellant argues by analogy that the 8th October 2021 letter constitutes a ***"decision"*** that triggers the Section 44 appeal window. The Appellant further relies on the notable practical

difference between the 24th March 2021 letter and the 8th October 2021 letter, the former directed payment from 1st December 2020 (accruing nine months of compounded interest), while the latter directed payment only from 8th October 2021. This difference, the Appellant submits, constitutes a meaningful fresh determination.

51. We accept the broad reach of the term ***"decision"*** as articulated in Section 41(5) and confirmed in the **NDK FINANCIAL SERVICES VS. AHAMAN ENTERPRISES LTD. AND OTHERS (SUPRA).** We further accept that, the 8th October 2021 letter contained elements bearing the characteristics of a decision, a direction, a recalibrated payment date, and a declaration of finality. As observed by Benin JSC in **NII KOJO DANSO II VS. LANDS COMMISSION & 2 OTHERS (UNREPORTED), Suit No.J4/35/2017 dated 28TH November 2018** the formal label attached to a communication does not determine its legal character. What matters is whether it constitutes a determination of issues before the decision-maker. Applying this principle, the 8th October 2021 letter can reasonably be characterised as a determination.

52. However, the question for determination before us is not whether the 8th October 2021 letter is a ***"decision"*** in the broad sense of Section 41(5) of the Act, but whether it is an ***"objection decision"*** within the specific meaning of Section 43 of Act 915 that triggers the appeal right under Section 44. This is the more precise demanding question for our determination.

53. An objection decision under Section 43 is the outcome of a defined statutory process which follows the lodgment of a valid objection under Section 42, after which the Commissioner-General considers the objection and either varies the tax decision or disallows the objection. The objection decision is the product of this statutory process and can only exist if the statutory process is validly engaged.

54. As we have held on the first and second grounds, the Third Objection of 30th December 2020 was not a valid objection under Section 42 because it purported to challenge an objection decision (not a tax decision) without any new objection deposit. Since the Third Objection was not a valid objection, the Respondent could not have been ***'considering an objection'*** within the meaning of Section 43 when it issued the 8th October 2021 letter. Without a valid antecedent objection under Section 42 of the Act, there can be no valid objection decision under Section 43 of the Act.

55. The breadth of Section 41(5) of the Act does not resolve this difficulty. That provision expands the concept of ***"decision"*** for the purposes of Section 41, it defines when the Commissioner-General ***"makes a decision"*** in the broad sense. It does not and cannot expand the conditions under which Section 43 of the Act operates, nor substitute for the requirement that a valid Section 43 objection decision must be founded on a valid Section 42 objection. Section 44 of the Act applies to objection decisions validly made under Section 43. It does not extend to every communication issued by the Commissioner-General regardless of its provenance.

56. The Appellant's reliance on **ABU RAMADAN & NIMAKO (NO.3) VS. ELECTORAL COMMISSION & ATTORNEY-GENERAL (NO. 3) (UNREPORTED) Writ No/J5/108/2016 dated 5th July 2016** for the proposition that the true meaning of a decision must be ascertained by construing it as a whole and not disjunctively does not avail. That principle applies to the construction of the content of decisions already validly made; it does not bear on the anterior question of whether a valid Section 43 objection decision exists in the first place. The third ground of appeal also lacks merit, and we accordingly dismiss same.

57. Upon our consideration of this appeal in the round, we hold that, the Respondent's letter of 8th October 2021 does not constitute an *objection decision* within the meaning of Section 43 of Act 915. In our view, it was, at

best, an administrative communication reiterating a prior position and providing updated payment directions. It does not ground a right of appeal under Section 44 of the Act.

CONCLUSION

58. For all the foregoing reasons, this Court holds and orders as follows:

   i. **The Respondent's letter of 1st December 2020, that is the Second Objection Decision is an objection decision within the meaning of Section 43 of Act 915 and, by virtue of Section 41(1)(d) of Act 915, does not constitute a "tax decision" capable of further objection under Section 42 of Act 915.**

   ii. **The Appellant's letter of 30th December 2020 which also is the Third Objection did not constitute a valid objection to a tax decision under Sections 41 and 42 of Act 915.**

   iii. **The Respondent's letter of 8th October 2021 does not constitute an objection decision within the meaning of section 43 of Act 915 and does not ground a right of appeal under Section 44 of Act 915.**

59. In the premises, this appeal wholly fails and it is accordingly dismissed. The judgment of the Court of Appeal dated 16th November 2023, affirming the ruling of the High Court dated 5th April 2022 striking out the Appellant's Notice of Tax Appeal, is hereby affirmed.

(SGD.) **I. O. TANKO AMADU**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **G. PWAMANG**
(JUSTICE OF THE SUPREME COURT)

(SGD.) S. K. A. ASIEDU
(JUSTICE OF THE SUPREME COURT)

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