IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
ACCRA, GHANA – AD 2023

CORAM: CECILIA HANZZY SOWAH, JA – PRESIDING
CYRA PAMELA C. A. KORANTENG, JA
CHRISTOPHER ARCHER, JA

SUIT NO: H1/30/2023
DATE: 16TH NOVEMBER 2023

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

VRS

THE COMMISSIONER-GENERAL ..... RESPONDENT/ APPLICANT/RESPONDENT

JUDGMENT

KORANTENG, J.A:

1.0 INTRODUCTION

This is an appeal against the ruling of the High Court, Commercial Division, Court 8, delivered on 5th April 2022 which struck out and dismissed the tax appeal filed by the Appellant. In this judgment, for ease of reference the Appellant/Respondent/Appellant will be referred to as "the Appellant" and the Respondent /Applicant/ Respondent, as the "Respondent." The notice of Appeal found at pages 116-121 of Volume 3 of the Record of Appeal, was filed on 25th April 2022.

2.0 BACKGROUND FACTS

2.1 The Appellant was a subcontractor to Tullow Ghana Limited, providing a drilling unit and associated drilling services under a Petroleum Agreement dated 10th March 2006. The parties to the agreement were Tullow Ghana Limited and its JV Partners on the one part and the Government of the Republic of Ghana and the Ghana National Petroleum Corporation on the other part.

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2.2 The Respondent is the head of the Ghana Revenue Authority, a statutory body established by the Ghana Revenue Authority Act, 2009 (Act 791) to provide a holistic approach to tax and customs administration in Ghana.

2.3 In 2019, the Respondent in exercise of its statutory duty conducted a tax audit on the Appellant's business operations from January 2012 to December 2018.

2.4 Upon completion of the audit the Respondent in a letter dated November 8, 2019, assessed the tax liability of the Appellant to be **US$305,606,164.19**. **See Exhibit PM 3 Pg 20 Vol 3 ROA** (hereinafter referred to as "**the first assessment**").

2.5 The Appellant dissatisfied with the first assessment, lodged an objection to same in a letter dated 11th December 2019. **See Exhibit PM 4 Pg 31 Vol 3 ROA.**

2.6 As a condition precedent to hearing the appeal, the Appellant was required to pay an objection deposit of 30% of the assessed tax to the Respondent. The Appellant's application for a reduction resulted in a reduced payment of **US$12,500,000.00** representing 4.09% of the tax in dispute.

2.7 The Respondent proceeded to consider the objection and by a letter dated 8th July 2020 reduced the Appellant's tax liability from **US$ 305,606,164.19** to **US$10,222,849.35** considering the **US$12,500,000.00** already paid as the objection deposit. **See Exhibit PM6 Pg 38 Vol 3 ROA** (hereinafter referred to as the **Objection Decision**).

2.8 The Appellant, dissatisfied with the objection decision, objected against this decision in a letter dated 28th July 2020. **See Exhibit PM7 Pg 50 Vol 3 ROA**

2.9 The Appellant's second objection again received a favourable response, and by a letter dated 1st December 2020, which was served on the Appellant on 1st December 2020, the Respondent further reduced the Appellant's assessed tax liability from **US$10,222,849.35** to **US$ 5,448,152.65. See Exhibit PM8 Pg 57 ROA**. This new figure also excluded the objection deposit of **US$12,500,000.00**.

2.10 The Appellant still being dissatisfied with the second decision, lodged another objection to the Decision by a letter dated 30th December 2020. **See: Exhibit PM9 Pg 68 Vol 3 ROA** (hereinafter referred to as **the third objection**).

2.11This time the Respondent wrote back by a letter dated 24th March 2021 disallowing the third objection and stating as follows: "*We are of the*

*considered opinion that the Commissioner-General has no power to further review your request. Furthermore, your request for review is also not supported by any law. Commissioner-General, therefore stands by the position communicated to you on **1st December 2020**. Accordingly, your request is declined.*" **See: Exhibit PM10 Pg 75 Vol 3 ROA**

2.9 The Respondent in a letter dated 8th October 2021 issued a further letter, maintaining its position in the 24th March 2021 letter **See Exhibit PM 11 page 77 Vol 3 ROA**.

2.10 The Appellant on 8th November 2021 proceeded to file a notice of appeal against the tax assessment at the Commercial Division of the High Court Accra. **See Pg.1 - 300 Vol 1 ROA.** The Appellant further filed an application for an interlocutory injunction on 26th November 2021. The application together with the exhibits can be found at pages 155 to 252 of Vol. 2 of the ROA.

2.11 The Respondent upon being served with the Notice of Appeal, filed an application dated 23rd November 2021 for an order to strike out and dismiss the Appellant's notice of tax appeal. The Respondent contended that the appeal was filed out of time and in contravention of section 44 of Act 915 and Order 54 rule 2(1) & (2) of the High Court Civil Procedure Rules C.I 47 which requires a person to appeal against a decision of the Commissioner-General within 30 days of the decision. **See Pg 127 Vol 2 ROA**

2.12 The Appellant also filed an Affidavit in opposition to the Respondent's Motion on Notice. **See Pg 1 to 6 Vol 3 ROA**

2.13 The Appellant filed written submissions in respect of the pending Motion on Notice.

2.14 The Trial Judge following a careful consideration of the processes filed and the arguments canvassed by the parties in a ruling dated 5th April 2022 upheld the objection of the Respondent and struck out the Appellant's appeal as incompetent. **See Pg 107 to 115 Vol 3 ROA**.

2.15 The Appellant aggrieved by the ruling of the High Court, on 25th April 2022 filed a Notice of Appeal to the Court of Appeal. **See Pg 116 Vol 3 ROA**

3.0 DECISION OF THE HIGH COURT

3.1 The Learned Judge upon considering the relevant provisions on tax appeals, particularly Section 44 and 45 of Act 915 as well as Order 54 rule 2(1) of the High Court Civil Procedure Rules (C.I 47) stated 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 again as being canvassed by the learned lawyer for the Appellant" **See Pg 113 Vol 3 ROA**

3.2 The trial judge therefore found that the only objection raised in the instant case is the first objection filed on 11th December 2019, by the Appellant and it is this objection that the Respondent considered after the Appellant had paid the objection deposit of **US$12,500,000.00** which is a prerequisite for the hearing of the tax objection and came out with the objection decision on 8th July 2020.

3.3 The High Court determined that the further review of the first objection decision falls under Section 42 (9) of Act 915 which states that:

" a "tax decision" means the decision objected to, as may have been amended by an objection decision.

The trial judge then concluded as follows:

"This to me was to be the end of the road for 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 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." ***See Pg 114 Vol 3 ROA***

The trial judge thus upheld the legal objection filed by the Respondent and struck out the appeal as incompetent. Aggrieved by the decision of the High Court the Appellant on 25th April 2022 filed a Notice of Appeal (**See Pg 116 Vol 3 ROA**) on the grounds outlined below:

4.0 GROUNDS OF APPEAL AND RELIEFS SOUGHT

4.1 GROUNDS OF APPEAL

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 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 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 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.

VI. The ruling is against the weight of the evidence.

4.2 RELIEFS SOUGHT FROM THE COURT OF APPEAL

a. An order setting aside the decision of the High Court

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

c. An order of this Court upholding the Appellant's tax appeal dated 8th November 2021 against the Respondent's objection decision of 8th October 2021 and granting all the reliefs thereon.

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

5.0 ISSUE TO BE DETERMINED

The issue to be determined is a preliminary one without delving into the substantive appeal. We are required in the present appeal to determine whether the High Court was right in striking out the notice of tax appeal filed by the Appellant as being out of time, in contravention of S.44 of the Revenue

Administration Act (2016), Act 915 and Order 54 Rule 2(1) of the High Court (Civil Procedure) Rules, 2004.

The determination of this issue however requires an examination and interpretation of the pertinent provisions of the Revenue Administration Act, 2016, (Act 915).

6.0 PERTINENT LEGAL PROVISIONS OF THE REVENUE ADMINISTRATION ACT, 2016 (ACT 915)

For easy reference we outline below the pertinent legal provisions of the Revenue Administration Act, 2016 (Act 915), which is the statutory authority which governs the dispute resolution process on tax assessments and upon which the grounds of Appeal have been hinged.

"*Section 37 Assessment*

37. (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, wilful 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."

"Section 39 **Adjusted assessment**

39.(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."

Section 108 defines an assessment as "*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*

Section 41 Tax decisions

41. (1) A "tax decision" is 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.

(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 decide 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.

(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 deciding 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 Objection to a Tax Decision

42. (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 percent 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 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 tax decision objected to, as may have been amended by an objection decision.

Section 43 Objection decision

43. (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 made 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.

Section 44 Appeal against objection decision

44. 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.

(*This provision has been amended by the Revenue Administration (Amendment) Act, 2020 Act 1029 to include an appeal to the Independent Tax Appeals Board*)

Section 45 Effect of Appeal

45. An appeal against an objection decision does not operate as a suspension of the objection decision.

7.0 DETERMINATION OF APPEAL

Appeals generally are by way of rehearing. Rehearing means the Appellate Court must carefully consider all the relevant facts, law, and evidence on record before arriving at a decision. In Appeals, the Court of Appeal is seized with the jurisdiction over the whole proceedings as though the proceedings were instituted before the Court of Appeal as the court of first instance. In **Mamudu Wangara vs Gyato Wangara [1982-83] GLR 639** the court pointed out that:

> "An appeal is by way of rehearing and rehearing means having a look at and taking into consideration all the relevant evidence on record. The appellate court, so far as appeals are concerned, is virtually in the same position as if the rehearing were the original hearing and may review the whole case and not merely the points as to which the appeal was brought.

See also the cases of **Koglex Ltd (NO.2) v. Field [2000] SCGLR 175**, **Tuakwa vs Bosom [2001-2002] SCGLR 61** and **Djin v Musah Baako [2007-2008] SCGLR 686.**

The above decisions are a true reflection of the statutory requirements at Rule 8(1) of the Court of Appeal Rules, 1997 (C.I. 19) as amended. The rule provides as follows:

'An appeal to the Court shall be by way of rehearing and shall be brought by a notice of appeal.'

Also, Rule 31 of C.I. 19 as amended provides the general powers of the Court of Appeal in relation to appeals brought before it, as follows:

"The Court shall generally have full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court as a court of first instance."

In this appeal, the Appellate Court is being called upon to determine whether the appeal was filed within the statutory time limit and to set aside the decision of the High Court which struck out the Appeal as having been filed out of time.

It must be stated that no one has the inherent right of appeal. The Appellate jurisdiction of the courts is clearly circumscribed by statute. A person who files an appeal shall ensure that he complies with the enactment creating the appeal together with the procedural laws of the court seised with appellate jurisdiction. In the case of **Sandema-Nab v. Asangalisa and Others {1996-97} SCGLR 302,** the Supreme Court stated on 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."

See also **Nye v. Nye (1967) GLR 76 CA** (Full Bench) and **Bosompem & Others v. Tetteh Kwame {2011} 1 SCGLR 397.**

The Appellant maintains in this appeal that it lodged its appeal to the High Court against the decision of the Commissioner-General within the statutory 30-day period, a claim strongly contested by the Respondent. According to Section 92 of the Revenue Administration Act, 2016, (Act 915) in proceedings on appeal under sections 41 to 45 for the recovery of tax under a tax law, the burden of proof is on the taxpayer or person making an objection to show compliance with the provisions of the tax law.

The relevant provisions on appeals disclose that the right to appeal an objection decision by a taxpayer arises within 30 days of receiving service of

the objection decision. This is provided for under Section 44 of Act 915 as follows:

"Appeal against objection decision

44. 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."

Also, Order 54 rules 1 and 2 of the High Court (Civil Procedure) Rules 2004 C.I 47

"1. Tax appeals to the High Court

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 the provisions of this Order shall apply to the appeal.

2. Notice of appeal

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

The right of the taxpayer accrued to lodge an appeal to the High Court within 30 days of being served with the objection decision. This is provided under Section 43(4)(a) of Act 915 as follows:

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

(a) on the date the person is served with notice of the decision; or..."

The Court of Appeal is expected in this instant appeal to review the facts and the law to determine if the tax appeal was filed within time. It should be stated that if an appellant fails to comply with the rules regulating the appeal, regardless of the statutory rights conferred on the appellant by the Constitution, Courts Act, or any other enactment, and regardless of the merits of the appeal, an appellate court will not proceed to hear the appeal. Francois JA (as he then was) expressed similar views in **KARLETSE – PANIN V NURO** [1979] GLR CA at 209 as follows:

> "Numerous decisions have settled conclusively that the merits notwithstanding, if an appellant fails to avail himself of a statutory dispensation to appeal within the time limit or abide by rules regulating the appeal, he would be forever barred from re-litigating his cause".

The learned judge continued in his judgment on the same page to conclude on this point as follows:

> "In such an event, the court is not called upon to view the hardships that might flow in consequence. It may be said that the court's judicial vision is circumscribed by statutory blinkers".

Based on the law discussed above and the position in Ghana that tax statutes ought to be interpreted strictly, I will proceed to analyze the merits of the present appeal.

8.0 DETERMINATION OF GROUNDS OF APPEAL

I will consider Grounds I, II and III together followed by Grounds IV and V as presented by the Parties in their written submissions.

9.1 Grounds I, II and III (See Supra for Particulars of Error)

GROUND I

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

GROUND 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.

GROUND 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 subject of an objection.

APPELLANT

The Appellant in arguing these grounds advanced three reasons why in its opinion the trial Judge erred in holding that the Respondent's letter dated 1st December 2020 is not a tax decision that could be objected to.

Firstly, the Appellant contended that the Trial Judge failed to apply Section 41(1), 37(3) and 37(6) of the Revenue Administration Act, 2016 (Act 915) to hold that an adjusted tax assessment is a tax decision that can be objected to.

It is the case of the Appellant that applying these provisions will lead to the conclusion that the 1st December 2020 letter which adjusted the tax liability of the Appellant was a tax decision, that it could have objected to.

The Appellant relied on the definition of tax decision as provided for in Sections 41(2) and 42(9) of Act 915. The Appellant submitted that its interpretation of the effect of the provisions was evident from the face of the 1st December 2020 letter. The reason for this being that the letter was a reissuance of the entire audit report which amended the tax decision. These adjustments meant that the total tax liability of the Appellant moved from $10,222,849.35 to $5,448,152.65. Furthermore, the 1st December 2020 letter was titled "FINAL TAX AUDIT REPORT ON SEADRILL GHANA OPERATORS LTD FOR 2012 TO 2018 YEARS OF ASSESSMENT (TIN:C0004518683)

Secondly, the Appellant contended that by reason of sections 37(5)(b)(ii) and (iii), and Section 39(3) the Respondent had the power to adjust its tax assessment. Consequently, the Respondent could adjust its 1st December 2020 decision.

Thirdly, having argued that the 1st December 2020 letter was a tax decision as defined in Section 42(1) of Act 915 the Appellant could object to that decision. This the Appellant submitted was by common sense to ensure that a taxpayer is only liable for the correct amount of tax in any year period of assessment.

RESPONDENT

The Respondent in response contended that the trial judge did not err in his judgment as he gave due regard to all relevant provisions as well as all the attached Exhibits and submissions made by the parties.

The Respondent submitted that the Commissioner-General under Section 37(5)(b)(ii) and Section 39(3) of Act 915 had the power to adjust any tax assessment, the exercise of that power is in respect of self-assessment, or where the person failed to file a tax return on time as required by law. The adjustment is thus carried out by the Commissioner-General using his best judgment or based on the discovery of fraud, wilful default, or serious omission by or on behalf of a taxpayer. The Respondent therefore contended that the above-mentioned provisions were inapplicable or had no relevance in the determination of the present appeal.

In the Respondent's view, a decision made after an objection does not constitute a tax decision within the meaning of section 43 of Act 915.

The respondent therefore strongly rejected the interpretation of the Appellant, which is to the effect that, once the Respondent makes an objection decision

reviewing or adjusting the tax decision, then the objection decision qualifies as a tax decision within the meaning of section 37(5)(b)(ii) and 39(3) of Act 915.

The Respondent invited the Court to be guided in interpreting the relevant statutory provisions by the case of **Multichoice Ghana Ltd v Internal Revenue Service [2011] 2 SCGLR 783** where the Supreme Court referred to the case of **Cape Brandy Syndicate v IRC [1921] 1 KB 64** where Rowlatt J stated that tax legislation being fiscal legislation ought to be construed strictly.

DETERMINATION OF GROUNDS I, II, AND III

The law is clear that where an enactment had prescribed a special procedure by which something was to be done, it was that procedure alone that was to be followed. See: **Boyefio v NTHC properties Ltd [1997-98]1 GLR 768.** In this instant Appeal, sections 41 to 44 of the Revenue Administration Act, 2016 (Act 915) provides for procedures and mechanisms to be followed in challenging and resolving tax disputes in Ghana.

These provisions have been set out supra.

The Respondent outlines the import of these provisions clearly in paragraphs 40 – 42 of its submissions as follows:

"..... before an objection can be lodged, there must be a tax decision in the form of an assessment, made by the Commissioner-General under section 41 of Act 915 and once the tax decision is made any taxpayer who is dissatisfied with it has a right to lodge an objection in accordance with section 42 of the Act.

Thereafter, the Commissioner-General will make a determination in accordance with section 43 of Act 915, which may include varying the 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.

Where the taxpayer is dissatisfied with an objection decision made by the Commissioner-General under section 43, the taxpayer has the right to further lodge an appeal to the High Court within 30 days of the decision."

Having examined the above-mentioned provisions critically and in line with **Article 174 (1) of the Constitution of Ghana, 1992** and the approved principles expounded in the case of **Multichoice Ghana Limited v The Commissioner, Internal Revenue Service (2011) 2 SCGLR 787** referred to

supra, we are of the view for the reasons stated below that the Learned Judge considered and applied Sections 42 (9), 35 (b)(ii) and 39 (3) of the Revenue Administration Act, 2016 (Act 915) in reaching his decision.

The Learned Judge in his Ruling which can be found at page 114 Vol 3 ROA observed 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 PM 5 which revised the tax liability to USD$17,945,152.15. The said decision was served on the Appellant which receipt was acknowledged on the same 1st December 2020. Now to me, this reviewed or whatever description one will give 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 the objection decision".*
> >
> > *This to me was to be the end of the road for administrative redress and if still the taxpayer was dissatisfied, then his right under section 45 of Act 915 kicks in".*

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**."

So, whereas Section 41 of Act 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 states that a tax decision means *a "tax decision objected to,* ***as may have been amended by an objection decision"***. The Appellant's interpretation of this final part indicates 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 taxpayer may further object to a new amended decision even if this 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 liability.

It is clear from the submissions presented that the interpretation being placed by the Appellant on Section 42(9) of Act 915 will lead to a result that is unreasonable. The reason for this being that once the amended objection decision becomes a tax decision the Appellant would have been 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 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."***

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 PM 7 Pg 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 letter (Exhibit PM 9 Pg 68 Vol 3 ROA).

This is a clear indication that the letters lodged after the objection decision were not considered as objections to tax decisions. They may have been categorized as new/additional information on which basis the Commissioner-General could review an assessment within the meaning prescribed in Section 37 and 39 of Act 915. The adjustment of the objection decision was in line with the Commissioner-General's duty to ensure that a taxpayer pays the correct amount of tax. The correct amount of tax payable is not what the taxpayer admits 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] QB 619** where it was stated that:

"But the duty to collect tax cannot be limited to collecting only the tax that taxpayers admit to owing. It must be a duty to collect, so far as reasonably possible, the correct amount of tax from taxpayers. Ms. Nathan referred in this context to the statement by Henderson J in Tower MCashback LLP 1 v HMRC [2008] EWHC 2837 (Ch) at [115] (cited with approval by Lord Walker in the same case on 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 taxpayers paying the correct amount of tax, and it is one of the duties of the commissioners in exercise of their statutory functions to have regard to that public interest."

For these reasons, we dismiss Grounds I, II and III as unmeritorious.

9.2 Consideration of Ground IV

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

Under this ground, the Appellant submitted that the Learned judge misapplied Section 42 of Act 915 in holding that a single objection to a tax decision is allowed under Act 915. The Appellant contended that nowhere in Act 915 is the number of objections a taxpayer can file limited to only one.

The Appellant further argued that the Respondent is constrained by the principle of legitimate expectation from arguing that its 28th July 2020 objection that resulted in the 1st December 2020 decision was its final objection since previous objections by the Appellant had resulted in a reduction of its tax liability.

The Appellant argued therefore that both its 28th July 2020 and its 30th December 2020 letters to the Respondents qualified as tax objections.

In responding to the Appellant's submissions, the Respondent observed that the Appellant had misconstrued and misapprehended the difference between what a tax decision was as defined in Section 41(1) and an objection decision as defined in Section 43 of Act 915. The Respondent explained its position in paragraphs 39 to 45 of its submissions carefully outlining the import of sections 41 to 43 of Act 915. (See determination of Grounds I, II and III)

a. Having examined the above-mentioned provisions carefully; we align ourselves with the Respondent's position as outlined.

From the position expounded above, it is our view that a tax decision can be objected to in the first instance. If this objection yields an amendment or

adjustment it becomes an objection decision. Should the taxpayer be dissatisfied with the objection decision made by the Commissioner-General, he may Appeal against the decision to the Court within thirty days. See Section 44 Revenue Administration Act, 2016 (Act 915) This is also in line with Order 54 rules 1 and 2 of the High Court (Civil Procedure) Rules 2004 C.I. 47.

b. It is also our considered view that the Appellant by arguing that both the 28th July 2020 and the 30th December 2020 letters are objections to tax decisions then it must have of necessity followed the requirements of section 42 (5) & (6) of Act 915 which provides as follows:

> ***(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) 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).*

Before a taxpayer can lodge an objection to a tax decision, he is mandated by Section 42(5) of Act 915 to pay an objection deposit, in the case of import duties and taxes, pay all outstanding taxes including the full amount of the tax in dispute; and in the case of other taxes, pay all outstanding taxes including thirty percent of the tax in dispute.

Section 42(5) of Act 915 has been the subject of four recent decisions by the Supreme Court as to the constitutionality of the provision, where it was held that the provision was not a fetter to the right to a fair hearing. See: **KWASI AFRIFA VRS GHANA REVENUE AUTHORITY AND ANOR WRIT NO J1/23/2021 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 WRIT NO: J1/07/2021 DATED 30TH NOVEMBER 2022 (unreported).

The Supreme Court in **KWASI AFRIFA VRS GHANA REVENUE AUTHORITY AND ANOR WRIT NO J6/02/2022 DATED 30TH NOVEMBER 2022** (unreported) speaking per Torkornoo JSC (as she then was) stated 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."*

From the evidence on record, the only objection deposit paid by the Appellant was made on 13th December 2019 (**Exhibit PM 5 Pg 37 Vol 3**) which was in respect of the first objection filed on 11th December 2019 against a Tax decision.

We are therefore of the position that the "second objection" lodged on 28th July 2020 by the Appellant which resulted in a revision of its tax liability on 1st December 2023 did not attract an objection deposit since the adjusted tax liability was an objection decision and not a tax decision which could be objected to.

The Appellant also argued that the Respondent was constrained by the principle of legitimate expectation since its first and second objections had revealed inaccuracies in the tax assessed leading to the Respondent adjusting its original assessments.

In our view this argument does not hold since there are specific provisions in the Revenue Administration Act, 2016 (Act 915) which deal with resolution of Tax disputes. These provisions cannot be sidestepped for an expectation which is not backed by law.

Having determined that the 1st December 2023 letter is an objection decision and not a Tax decision, it is our view that the Learned Judge was right in upholding that the Appellant's letter of 30th December 2020 is not an objection to a tax decision.

Ground IV of the appeal is hereby dismissed.

GROUND V

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

The Appellant submitted that pursuant to Section 43 of Act 915 and a reading of the Respondent's letter to the Appellant dated 8th October 2021, the said letter was an objection decision. The fact that the objection was disallowed did not change its character as an objection decision. As such, the trial judge erred in holding that it was not an objection decision.

It is our view that having previously concluded that the Appellant's letter of 30th December letter did not constitute an objection, it follows that the Respondent's letter of 8th October 2021 could not be considered as an objection decision. The 8th October 2021 and 24th March 2021 letters from the Respondent both maintained the position outlined in the 1st December 2020 letter which was the objection decision.

The Learned Judge was therefore right in holding that the 8th October 2021 letter was not an objection decision.

The objection decision was the Respondent's letter dated 1st December 2020. This was served on the Appellant on 1st December 2020, which instead of filing an appeal as provided in S. 44 Revenue Administration Act, 2016 (Act 915) and Order 54 Rules 1 and 2 High Court (Civil Procedure) Rules, 2004 within thirty (30) days of receipt of the decision, rather requested a review of the objection decision. The Learned Judge therefore was not in error when striking out the Appeal as having been filed out of time.

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REGISTRAR
COURT OF APPEAL, ACCRA

DECISION

We are of the opinion for the reasons outlined above that the appeal is without merit and same is hereby dismissed.

CYRA PAMELA C. A. KORANTENG
(JUSTICE OF APPEAL)

CECILIA H. SOWAH (J.A.)
I agree

CECILIA H. SOWAH
(JUSTICE OF APPEAL)

CHRISTOPHER ARCHER (J.A.)
I also agree

CHRISTOPHER ARCHER
(JUSTICE OF APPEAL)

Revenue
att/20