

## AMSAR v. RWANDA REVENUE AUTHORITY

[Rwanda SUPREME COURT–RCOMA 0056/10/CS (Mukanyundo, P.J., Havugiyaremye and Kayitesi R, J.) August 5, 2011]

*Tax Law – Determination of Corporate Income Tax based on the principle of independence of taxation – Each year is taxed independently – Law n°16/2005 of 18/08/2005 2005 on direct taxes on income, article 2(7°).*

*Tax Law – Determination of depreciation – The depreciation of a working tool is computed when it was used on direct purpose of what it was meant for – Law n° 8/97 of 26/6/1997 on Code of Direct Taxes on Different Profits and Professional Income, as modified and complemented to date, article 10 (2°);( 5°).*

**Facts:** The Appellant was assessed on corporate Income tax of the year 2003 and was imposed the tax of 25,703,169 Rwf resulting from an assessment procedure without notice. He made appeal to the Commissioner General and it was held that his appeal has merit in part and the tax of 1,372,044 Rwf was reduced, then, the remaining was 24,331,125 Rwf. AMSAR filed a case to the Commercial High Court requesting the exemption of the tax it was imposed, since during that fiscal year he had incurred a loss equal to 31,862,937 Rwf. The Commercial High Court ruled that the claim is without merit; therefore the tax fixed by Commissioner General in response to the appellant's administrative complaints is maintained.

AMSAR appealed to the Supreme Court objecting that the Commercial High Court did not consider the debit note of 69,583,125 Rwf related to spare parts and various machines, and refused its deduction from the taxable profits of the year 2003 while it had paid that money. The court refused to deduct the depreciation of the “generator” which was used where Deputy Director General of the company resided from taxable business profit.

The RRA alleges that the AMSAR's grounds of appeal are without merit, because no fiscal year shall be mixed with another.

Concerning the depreciation of the power generator that was used at the residence of the Deputy Director General of the company, cannot be deducted from taxable business profit, because the deductible expenses should have been used for direct purpose of, and in the normal course of the business; which never happened.

**Held:** 1. The sum of 69,583,838 Rwandan Francs which appears on debit note, provided by the appellant cannot be deducted from taxable business profit of the fiscal year 2003, because it was paid after that period. Therefore, the principle of the independence of financial year shall be respected.

2. In order to deduct the depreciation of the power generator from the taxable profit, the power generator should have been used for the direct purpose of, and in the normal course of the business. If the depreciation of that power generator cannot be considered as expenses related to the business for being deducted from taxable profits.

**Appeal without merit.  
Appealed case remains valid.  
Court fees to the appellant.**

**Statutory instruments referred to:**

Law n°16/2005 of 18/08/2005 on direct taxes on income, article 2(7°).

Law n° 15/2004 of 12/6/2004 relating to evidence and its production, article 35, paragraph 3.

Law n° 8/97 of 26/6/1997 on Code of Direct Taxes on Different Profits and Professional Income as modified and complemented to date, article 10(2°);( 5°).

**No case referred to.**

## **Judgment**

### **I. BRIEF BACKGROUND OF THE CASE**

[1] AMSAR BURUNDI SA Company, Rwanda branch office, was assessed on corporate Income tax (Impôt sur les Bénéfices des Sociétés) of fiscal year 2003 and was subject to pay tax of 25,703,169 Rwf resulting from an assessment procedure without notice (imposition d'office). AMSAR made appeal to the Commissioner General and it was held that his appeal has merit in part, the tax of 1,372,044Rwf imposed was reduced and the remaining amount to pay was 24,331,125 Rwf. Unsatisfied with the decision, AMSAR filed a case to Commercial High Court requesting the exemption of the tax it considers was imposed while in that fiscal year it had incurred a loss amounting to 31,862,937 Rwf.

[2] The Commercial High Court ruled that AMSAR's claim is without merit, that the tax fixed by Commissioner General of Rwanda Revenue Authority in response to AMSAR's administrative complaints is maintained.

[3] Among the grounds relied on, the court found that, concerning the fact that AMSAR had been imposed through the assessment procedure without notice, , was in accordance with the law, especially the article 19 paragraph 1 and article 24 of the Law n° 8/97 of 26/6/1997 on Code of Direct Taxes on Different Profits and Professional Income. Concerning the fact that Rwanda Revenue Authority refused to deduct the depreciation expenses of the power generator from taxable profits, the Court found that those expenses should not be deducted from the profits considering the provisions of article 10, paragraph 1 of the Law stated above. Regarding 69,583,858 Rwf mentioned in the debit note that AMSAR requested to be deducted from taxable profits of the fiscal year it was paid, the Court finds that AMSAR does not produce any evidence that the expenses were spent in the year 2003, despite it recognized it owed money to someone.

[4] AMSAR appealed against the ruling to the Supreme Court objecting that the court did not consider the debit note of 69,583,125 Rwf related to spare parts and various machines, which it rejected to be deduct from the taxable profits of the year 2003 while AMSAR had paid that money to SOBIMAC, and that the court rejected the depreciation of the power generator which was used at the residence Deputy Director General of the company to be deducted from taxable business profit. According to Rwanda Revenue Authority, those grounds of appeal are baseless.

[5] The case was heard on 30/06/201, AMSAR represented by Counsels Munderere Léopold and Mugemana J.M.V while Rwanda Revenue Authority was represented by State attorney, Gasana Raoul A.

## II. ANALYSIS OF LEGAL ISSUES

### **a. Whether 69,583,858 Rwf on the debit note n° 004/2003/MAT should be deducted from the taxable profits of the year 2003 .**

[6] The Counsel, Munderere Léopold who represents AMSAR alleges that it paid that money to SOBIMAC, but it postponed its payment in 2004 due to the fact that it was at its very beginning because of many formalities it was required to fulfill in order to start operating in Rwanda .and basing on the losses it incurred, he found that the money appearing on debit note should be recorded as having been spent in 2003.

[7] The State Attorney, Gasana Raoul A. who represents Rwanda Revenue Authority recalls the time period independence principle which means that no fiscal year should be mixed with another. He explains that the money which appears on the debit note had not been paid in 2003, it is obvious that AMSAR was supposed to pay to someone, that is why it should not be deducted from taxable profits for that year based on article 10 paragraph 2 of the Law n° 8/97 of 26/6/1997 that regulated the Code of Direct Taxes on Different Profits and Professional income.

[8] Concerning invoices issued by AMSAR which it requests to be considered as evidence that the materials related to that money had been purchased and paid. he explains that they do not comply with the provisions of article 35 paragraph three of the Law n° 15/2004 of 12/6/2004, especially with regards to the uncertified copies, and that some of them indicates that the money therein was paid in 2005, other in 2006; therefore, they cannot reduce the tax of 2003.

[9] The Counsel, Mugemana also explains that this money was paid for materials that SOBIMAC had bought from ASTALDI company, and afterwards, it sold them to AMSAR by lending it money in order to facilitate it for their smooth collaboration as related companies

[10] Article 10 of the Law n° 8/97 of 26/06/1997 establishing the code of Direct Taxes on Different Profits and Professional Income, that was in force in 2003 provides that the profits is established after subtracting all expenses. It specifies that for the money relating to those expenses and others that decrease assets to be deducted from taxable profits, the following conditions shall be fulfilled:

- 1° The money was used for the direct purpose of, or in the normal course of the business;
- 2° The money spent correspond to services decidedly of the business and has sufficient evidence showing the veracity of what is written in the books of accounts.
- 5° Have been recorded in compliance with governing laws, expenses paid for the purpose of services in the year are considered as an indisputable debt in description and in quantity.

[11] Basing on that article and especially in its point (2) and (5), the Court finds that expenses of 69,583,858 Rwf noted on the debit note, provided by AMSAR cannot be deducted on taxable profits in year 2003, as indicated by that debit note, that money was not really paid in 2003, but was paid later.

[12] The court again finds that other evidences produced by AMSAR including invoice, apart from not complying with the provision of article 35, paragraph 3 of the Law n° 15/2004 of 12/6/2004 relating to evidence and its production, they also indicate that a portion of the money was paid in 2005 while the other was paid in 2006. Furthermore, the payment was made for another reason, since it was for reimbursement of the fees (*remboursement des frais*) instead of paying those materials, hence the ground of appeal of AMSAR requesting the money on debit note be deducted from taxable profits earned in 2003 is baseless.

**b) Whether the depreciation of the power generator which was used in the residence of the Deputy Director General can be deducted from taxable profits.**

[13] On this issue Counsel Munderere find that there is no way ,Rwanda Revenue Authority would have accepted depreciation for some products and refuses for the generator on the grounds that it is not “business expense” he explains the problem of electricity experienced in 2003 sometime the deputy director general use to work in his office and also sometimes at his residence, Thus due the responsibilities of a person of that level, the money incurred for that generator has to be considered as expense on the same level with others expenses incurred in relation to the business and therefore be deducted from taxable profits

[14] The Counsel, Gasana Raoul alleges that the provision of first point of article 10 of the Law n° 8/97 of 26/6/1997 on Code of Direct Taxes on Different Profits and Professional Income, is clear, where it explains the scope of deductible expenses, and determines in particular that the charges deducted are those incurred for the direct purpose of the business. He adds on that what should be considered, as held by Rwanda Revenue Authority is depreciable equipment, the reason why, it admitted the depreciation of some equipments and rejected that of the power generator which was used by the Deputy Director General of the company since the provision of the law states about equipments which have direct and not indirect relation to profits as it is the case of power generator which was used at the residence of the Deputy Director General, because separation direct interests and those that have not may be difficult.

[15] the first point of article 10 of the law n° 8/97 of 26/06/1997 stated above, which was into force in 2003, provides that the profits are established after deducting all expenses, thus for the amount of expenses to be deducted from profits, it should have been used for the direct purpose of, or in the normal course of the business.

[16] Based on this article, the court finds that the power generator referred to, although it was generally used to facilitate the Deputy Director General to fulfill its job obligations; the fact that it was also used for other domestic activities which may not be related to its job obligations, this brings about doubt on the direct connection (*lien direct*) provided for by the law, therefore, the depreciation for that power generator cannot be deducted from taxable profits.

[17] The court finds that on the part of AMSAR, its representatives failed to show what were allocated to its Deputy Director General as facilities in connection to its job including the use of the power generator in particular.

[18] Basing on what has been said above; the court finds that the depreciation of the power generator cannot be considered as expenses related to the business to be deducted from taxable profits. Therefore, the appeal of AMSAR even on this ground is without merit.

### **III. DECISION OF THE COURT**

[19] Decides to admit the appeal of the branch of AMSAR BURUNDI SA, in Rwanda, for it was legally introduced, but finds it without merit

[20] Rules that the case RCOM 0115/09/HCC rendered by Commercial High Court on 29/04/2010 is sustained;

[21] Orders the branch of AMSAR BURUNDI SA in Rwanda, to pay court fees amounting to 23,300 Rwf, failure to do so within eight days it will be deducted from its assets through government coercion.