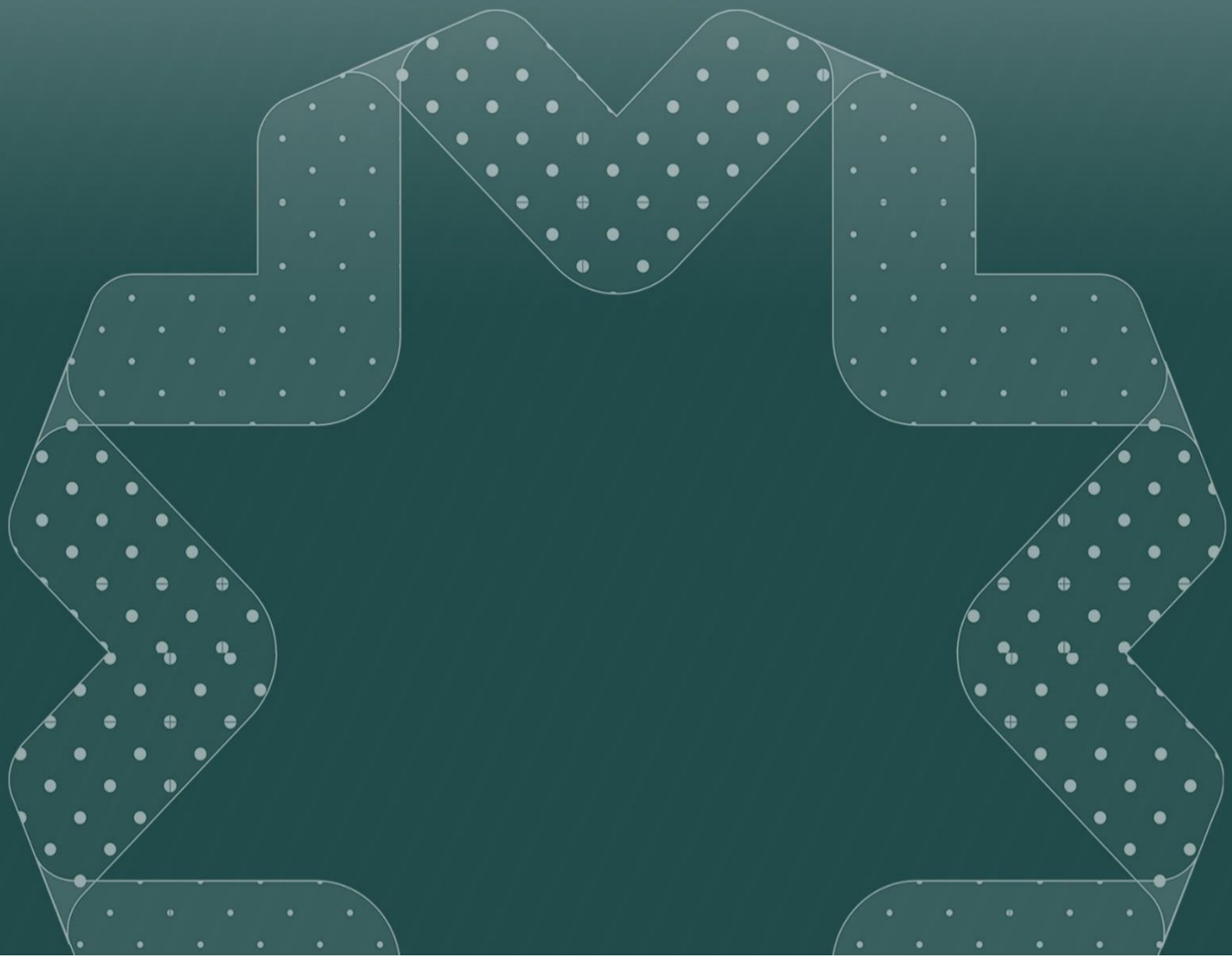
الأمانة العامة للجان الزكوية والضريبية والجمركية
General Secretariat of Zakat, Tax and Customs Committees

Tax Committee Decisions for 2023 (Zakat) Volume (2)



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(Zakat)
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In the Name of Allah, Most Gracious, Most Merciful

List of Decisions

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Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1853)
Issued in Appeal No. (Z-83368-2021)

Key words:

- Zakat Assessment – Accounts – Life Insurance Expense – Gifts Expenses – Hospitality Expense – End of Service Gratuity Provision – Over-stated Social Insurance Expenses – Pharmacy Closure Provision- Fines Expense – Accounts Payable – Accrued Expenses – Advance Payments – Credit Balances – Acceptance of Case in Form and Dismissal in Substance.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding the zakat assessment from 2016 to 2018 AD. The Plaintiff's objection is related to the following items: (Life Insurance Expense for the Years 2016 – 2017): The Plaintiff objects to adding these amounts to the zakat base for the years 2016 – 2017. (Gifts Expenses for the Years 2016-2017): The Plaintiff objects to adding these amounts to the zakat base for the years 2016-2017. (Hospitality Expense for the Years 2016-2017-2018): The Plaintiff objects to adding this item to the adjusted net profit for the years 2016-2018. (End of Service Gratuity Provision for the years 2016-2017-2018): The Plaintiff objects to adding this item to the adjusted net profit for the years 2016, 2017 and 2018. (Over-stated Social Insurance Expenses for the Years 2016-2017): The Plaintiff objects to adding the differences in social insurance expenses to the adjusted profit for the years 2016 and 2017. (Pharmacy Closure Provision for the Years 2016-2017-2018): The Plaintiff objects to adding this item to the adjusted profit for the years 2016-2018. (Fine Expenses for the Years 2017-2018): The Plaintiff objects to adding this item to the zakat base for the years 2017 and 2018. (Accounts Payable to Related parties, Accrued Expenses, Advance Payments and Credit Balances for the Years 2016-2017-2018): The Plaintiff objects to adding this item to the zakat base. ZATCA responded in respect of the item (Life Insurance Expense for the Years 2016-2017) that it is considered additional insurance to compensate workers for work injuries covered by the social insurance law, and accordingly, these expenses are considered unnecessary for running the activity. As for the item (Gifts Expenses for the Years 2016-2017), ZATCA requested the Plaintiff to clarify its policy regarding the item and to provide a detailed statement, but the Plaintiff did not provide the required documents and clarifications. As for the item (Hospitality Expense for the Years 2016-2017-2018), The Plaintiff did not provide during the hearings any further arguments beyond those stated in its objection filed with ZATCA. As for the item (End of Service Gratuity Provision for the Years 2016-2017-2018), ZATCA replied that it has found that end of service provision had been added to the income statement according to the document submitted by the Plaintiff, which is a breakdown of salary differences. As for the item (Over-stated Social Insurance Expenses for the years 2016-2017), ZATCA replied that it has detected over-stated social insurance expenses when comparing the social

insurance certificate with the stated accounts, where the stated amounts exceeded the legal ratios for the year 2016. As for the item (Pharmacy Closure Provision for the Years 2016-2017-2018): ZATCA took its decision after referring to the trial balance and finding that a provision had been made and that component had been added to the income statement. As for the item (Fine Expenses for the Years 2017-2018): The Plaintiff did not provide during the hearings any further arguments beyond those stated in its objection filed with ZATCA. As for the item (Accounts Payable to Related Parties, Accrued Expenses, Advance Payments and Credit Balances for the Years 2016-2017-2018), ZATCA replied that it had added the aforementioned items for having a year passed over all balances based on the statement submitted by the Plaintiff. The Department established as for the item Life Insurance Expense for the Years 2016-2017 that the Plaintiff submitted an insurance policy issued by ..... Insurance Company for the year 2018, which is a year subsequent to the two years in question. As for the item (Gifts Expenses for the Years 2016-2017), It was found that the Plaintiff did not provide proof that they were expenses related to its activity or that those expenses were deductible from the net profit, but rather settled for classifying them in order to deduct them from the adjusted net profit. As for the item (Hospitality Expense for the Years 2016-2017-2018), It was found that the Plaintiff did not provide proof that they were expenses related to its activity or that those expenses were deductible from the zakat base, but rather settled for classifying them in order to deduct them from the zakat base. As for the item (End of Service Gratuity Provision for the Years 2016-2017-2018), It was found that the Plaintiff submitted a detailed statement of salary differences, which included the end-of-service provision added to the income statement, and on that basis, the assessment was made. The Plaintiff also did not submit the financial statements for the years in dispute to match the balance with the difference added to the adjusted net profit in the assessment. As for the item (Over-stated Social Insurance Expenses for the Years 2016-2017), The Plaintiff did not submit the financial statements, nor did it submit the insurance certificate for the same period to prove its objection to the social insurance expenses to be deducted. As for the year 2017, differences in excess have been identified and added to the net profit. Upon reviewing the attached documents, it was found that the Plaintiff attached the zakat declaration for the year 2017, which has been found to contain over-stated social insurance expenses. Therefore, ZATCA added the excess differences to the net profit compared with the ratios provided for in the Social Insurance Law. Moreover, the Plaintiff did not submit the social insurance certificate for the year 2017 and the financial statements for the same year and a settlement indicating the grounds for differences. As for the item (Pharmacy Closure Provision for the Years 2016-2017-2018): The Plaintiff did not submit the financial statements for all periods, nor did it submit the trial balance and an account statement for this item to match the balances and verify that there is no provision and balances formed during the year. Also, if the error in this provision was adjusted, it did not provide evidence of such adjustment. As for the item (Fine Expenses for the Years 2017-2018): It was found that the Plaintiff did not submit the documents supporting the disputed fines. As for the item (Accounts Payable to Related Parties, Accrued Expenses, Advance Payments and Credit Balances for the Years 2016-2017-2018), A detailed statement indicating the dates of receipt of payments and the amount paid from these payments has not been provide. Accordingly, the Department ruled to: Accept case in form, and dismiss the case as on merits and the decision is final and enforceable.

Instruments:

- Articles (4/2, 4, 5, 9 of Clause First), (5/1), (6/2), and (20/3) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution (2082) of 01/06/1438 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday 08/08/2022, the First Department for Determination of Income Tax Violations and Disputes in Dammam, stipulated in Article (67) of the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH as amended, and formed by Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted by Royal Order No. (26760) dated 14/05/1442 AH, held its session remotely via video conference to hear the above-mentioned case. Since the case was found to have met the prescribed legal conditions, it was deposited with the General Secretariat of Tax Committees under the above number.

The facts of this case are summed up in that Mr....., National ID No. …, in his capacity as the legal representative of the Plaintiff ..... Medical Corporation, registered under C.R. No..... as per its articles of association submitted an objection to the zakat assessment from 2016 to 2018 issued by ZATCA. The objection was limited to eight items: Item First Life Insurance Expense for the Years 2016-2017: The Plaintiff objects to the Defendant's decision to add Life Insurance Expense item to the zakat base for the year 2016 (in the amount of SAR 1,034,441) and for 2017 (SAR 989,624), arguing that this item is an actual expense supported by supporting documents and is a deductible expense. The Plaintiff attached a statement of life insurance expenses in addition to the detailed statement and the life insurance contract for the two years in dispute requesting that this item not be added to the net zakat profit for the years 2016 and 2017. Item Second: Gifts Expenses for the Years 2016 and 2017: The Plaintiff objects to the Defendant's decision to add the Gifts Expenses item to the net profit for the year 2016 (SAR 1,150,128) and for 2017 (SAR 24,250) arguing that this item is an actual expense supported by supporting documents and is a deductible expense based on Article 5.1 of the Implementing Regulations for the year 1438 AH. The Plaintiff also added that the Implementing Regulations do not contain a provision that prohibits the deduction of this type of expenses, and accordingly it requested that the Gifts Expenses item not be added to the net profit. Item Third: Hospitality Expenses for the Years (2016-2017-2018): The Plaintiff objects to the Defendant's decision to add the hospitality expense item to the adjusted net profit for the year 2016 in the amount of (SAR 12,851,886), for 2017 (in the amount of SAR 27,902,582), and for 2018 (in the amount of SAR 7,811,171) arguing that this is an actual expense supported by supporting documents and is a deductible expense. The Plaintiff added that these expenses are used to provide lunch one day a week throughout the year for all the company's employees numbering 20,000 employees, and accordingly it requested that the hospitality expense item not be added to the adjusted net profit. Item Fourth: End of Service Gratuity Provision for the Years (2016-2017-2018). The Plaintiff objects to the Defendant's decision to add the item of End of Service Gratuity Provision to the adjusted profit in the amount of SAR 9,701,578(for the year 2016), SAR 8,946,421 (for 2017) and SAR 15,000,000 (for 2018) arguing that the Defendant did not clarify the grounds based on which the differences were estimated, and it was found that the company added the end of service expense accrued based on the financial statements of the adjusted profit, and accordingly the Plaintiff requests that the differences in the end of service gratuity provision not added to the adjusted profit. Item Fifth: Adding Over-stated Social Insurance Expenses for the Years (2016-2017): The Plaintiff objects to the Defendant's decision to add social insurance expense differences to the adjusted profit in the amount of SAR 1,926,230(for the year 2016) and in the amount of SAR 1,943,185 (for the year 2017), where it claims in its objection that it had added the differences to the adjusted profit in the zakat declaration for the years (2016&2017) indicating that the Defendant did

not clarify the grounds based on which the differences were calculated, and accordingly it requested that the social insurance expenses differences not be added to the adjusted profit. Item Sixth: Pharmacy Closure Provision for the Years 2016-2017-2018: The Plaintiff objects to the Defendant's decision to add the pharmacy closure provision item to the adjusted profit in the amount of SAR 4,231,859 (for the year 2016), in the amount of SAR 4,200,000 (for 2017) and in the amount of SAR 11,600,000 (for 2018), submitting that this item is an actual expense supported by supporting documents and is a deductible one. The Plaintiff explained that the company mistakenly recorded the pharmacy closure expenses as a pharmacy closure provision classifying them in the financial position statements as accrued expenses. The Plaintiff added that it had submitted documents supporting the closure of pharmacies for the years in dispute, and accordingly it requested that the amounts in dispute not be added because they are expenses and not a provision. Item Seventh: Fines Expense for the Years 2017 and 2018: The Plaintiff objects to the Defendant's decision to add the fines expense item to the zakat base in the amount of SAR 1,024,059 (for the year 2017) and SAR 2,000,000 (for the year 2018), arguing that this item is an actual expense supported by supporting documents and is a deductible expense. The Plaintiff added that these fines were incurred by the company as a result of the company's operational processes, and accordingly, it requested that the fines expense item not be added to the zakat base. Item Eighth: Accounts Payable to Related Parties, Accrued Expenses, Advance Payments and Credit Balances for the Years (2016 - 2017 - 2018): The Plaintiff objects to the Defendant's decision to add the item of Accounts Payable to Related Parties, Accrued Expenses, Advance Payments and Credit Balances to the zakat base, arguing that the credit balances are not loans and were not used to finance acquisitions assets, and that the amounts payable by the company are not money held in its possession, but rather a liquidity deficit, and thus they should not be subject to zakat. The Plaintiff also added that the credit balances arose as a result of commercial transactions the result of which are reflected in the net profit, which is a component of the zakat base, and accordingly, it requested that the Defendant's decision be canceled and to not add these items to the zakat base.

Having presented the statement of claims to the Defendant, it responded with a reply, whereby it replied to the items of objection as follows. With regard to Item First: Life Insurance Expense for the Years (2016-2017): The Plaintiff added a life insurance expense, which is an extra insurance to compensate workers for work injuries covered by the social insurance law, and accordingly, these expenses are considered unnecessary to run the activity, and it was also found that the Plaintiff's activity is limited to retail and wholesale trade of cosmetics, pharmaceutical products, medical equipment and operating pharmacies, and accordingly the Defendant maintained the validity of its decision based on Articles 5.1, 6.1 and 20.3 of the Implementing Regulations for Zakat Collection issued in 1438 AH. Item Second: Gifts Expenses for the Years 2016 and 2017: The Defendant replied that it requested the Plaintiff to state its policy regarding the item and to provide a detailed statement, and the Plaintiff did not provide the required documents / statements, and accordingly the Defendant maintained the validity of its decision based on Articles 5.1, 6.1 and 20.3 of the Implementing Regulations for Zakat Collection issued in 1438 AH. Item Third: Hospitality Expenses for the Years (2016-2017-2018): The Defendant replied that the Plaintiff did not provide during the hearing any arguments other than those contained in its objection filed with the Defendant, and accordingly the Defendant maintained the validity of its decision based on Articles 5.1, 6.1 and 20.3 of the Implementing Regulations for Zakat Collection issued in 1438 AH. Item Fourth: End of Service Gratuity Provision for the Years (2016-2017-2018): The Defendant replied that based on the document submitted by the Plaintiff, which is a detailed statement of salaries differences, it was plain that there is an end of service provision added to the income

statement, and therefore the difference was added to the zakat base as a component. During the hearing, the Plaintiff explained its procedure regarding this item, and stated that it would submit the statements and documents that support its claims raised against the Defendant, but it however didn't submit those documents. Accordingly, the Plaintiff's objection was rejected, and the Defendant maintained the validity and soundness of its decision based on Article 6.6 and Article 20.3 of the Implementing Regulations for Zakat Collection issued in 1438 AH. Item Fifth: Adding Over-stated Social Insurance Expenses for the Years (2016-2017): The Defendant clarified that it has added over-stated the social insurances expenses, which was discovered by comparing the social insurance certificate with the amount stated. It was found that there were amounts in excess of the legal ratios specified at (12%) for Saudi employees and (2%) for non-Saudi employees according to the social insurance law. Accordingly, the difference is an expense that cannot be deducted from the zakat base (SAR 1,926,229.56 for 2016) and (SAR 1,943,185.27 for 2017). Accordingly, the Defendant maintained the validity of its decision based on Article 6.4 of the Implementing Regulations for Zakat Collection issued in 1438 AH. Item Sixth: Pharmacy Closure Provision for the Years 2016-2017-2018: The Defendant stated that it has added a pharmacy closure provision to the adjusted profit on grounds that it, having referred to the trial balance, found that a provision had been made and added to the income statement. Then having reviewed and examined the documents submitted by the Plaintiff, they were found to concern written-off assets and no other documents were submitted. Accordingly, the Defendant maintained the validity of its decision based on Articles 6.6 and 20.3 of the Implementing Regulations for Zakat Collection issued in 1438 AH. Item Seventh: Fine Expenses for the Years (2017-2018): The Defendant indicated that the Plaintiff had not submitted during the hearing any arguments other than those stated in the objection filed with the Defendant, which were found to be insufficient to support its claims and thus the objection was rejected based on Articles 5.1, 6.1 and 20.3 of the Implementing Regulations for Zakat Collection issued in 1438 AH. Item Eighth: Accounts Payable to Related Parties, Accrued Expenses, Advance Payments and Credit Balances for the Years (2016 - 2017 - 2018): The Defendant stated that it had added the aforementioned items for the passage of a year over them based on the statement submitted by the Plaintiff, indicating that the credit balances stated in the Plaintiff's objection are higher than the Defendant's assessment by SAR 3,063,433. That amount represents the letters of guarantee as per the schedule prepared by the Plaintiff. ZATCA also found that the Plaintiff did not add that amount to the credit balances for all the years in issue. Accordingly, the Defendant maintained the validity of its decision based on Articles 4.5 of the Implementing Regulations for Zakat Collection issued in 1438 AH.

On Thursday 08/08/1443 AH, the Department held its session remotely to consider the case. For the Plaintiff appeared Mr. ....., National ID No. ..., in his capacity as the attorney for the Plaintiff as per the PoA No..... For the Defendant appeared Mr....., National ID No. ..., in his capacity as the Defendant's representative by virtue of the Authorization No. .....dated .../.../.... AH issued by ZATCA's Deputy Governor for Legal Affairs. Having asked Plaintiff's Attorney about his claims, he maintained his statements contained in the statement of claims submitted to General Secretariat of Tax Committees. Having asked the Defendant's representative about his reply, he answered that he maintains the replies provided in his plea submitted to the General Secretariat of Tax Committees requesting that no further documents that were not submitted during the objection and inspection stage be accepted. Having asked both litigants if they had any other statements, they responded that they are satisfied with their earlier submissions presented to the Department. Consequently, the Department decided to close the pleadings and deliberation.

Grounds

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: In form, since the Plaintiff instituted this case moving to annul the decision of ZATCA regarding the zakat assessment for the years from 2016 to 2018, and given that this dispute is a tax dispute, it falls within the jurisdiction of the Committee for determination of income tax violations and disputes as per the Royal Order No. (26040) of 21/04/1441 AH, and since this case has been filed within the period prescribed by law and by a person with a capacity, it is then accepted in form.

On Merits: On Merits: Having taken cognizance of documents included in Case file, requests, defense and arguments raised by the parties, the Department found that the dispute concerns the tax assessment for the years from 2015 to 2018. The Plaintiff's claims are related to eight items:

Item First Life Insurance Expense for the Years (2016-2017):

The Plaintiff objects to the Defendant's decision to add a Life Insurance Expense item to the zakat base for the years 2016 and 2017. The Defendant replied that the Plaintiff added a life insurance expense, which is an extra insurance to compensate workers for work injuries covered by the social insurance law, and accordingly, these expenses are considered unnecessary to run the activity, and it was also found that the Plaintiff's activity is limited to retail and wholesale trade of cosmetics, pharmaceutical products, medical equipment and operating pharmacies, and accordingly the Defendant maintained the validity of its decision based on Article 5.1 of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH that states: "The following expenses can be deducted to determine the net result of activity: 1. Expenses ordinary and necessary for an entity to engage in business activity, subject to meeting the following criteria: a. Expenses should be actual expenses as supported by relevant documents and other evidential matter to enable the Authority to verify the accuracy of expenses, even if related to prior years. b. Expenses should be related to Zakat Payer's business activity rather than personal expenses or other than Zakat Payer's own activities. c. It should not be of a capital nature "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it". In light of the foregoing and with regard to the Plaintiff's claim to deduct life insurance expenses, these expenses are considered deductible if they are proven to be actual expenses and supported by supporting documents, and since the dispute over this item is a documentary dispute, and having reviewed the documents contained in the case file, it was found that the Plaintiff submitted an insurance policy issued by .....Insurance Company for the year 2018 AD, which is a year subsequent to the two years in question. Accordingly, this Department concludes to dismiss the Plaintiff's objection regarding this item.

Item Second: Gift Expenses for the Years (2016-2017)

The Plaintiff objects to the Defendant's decision to add the Gifts Expenses item to the net profit for the years (2016-2017), while the Defendant replied that it requested the Plaintiff to state its policy regarding the item and to provide a detailed statement, and the Plaintiff did not provide the required documents / statements, and accordingly the Defendant maintained the validity of its decision relying on Articles 5.1 of the Implementing Regulations for Zakat Collection, which provides that: "The following expenses can be deducted to determine the net result of activity: 1. Expenses ordinary and necessary for an entity to engage in business activity, subject to meeting the following criteria: a. Expenses should be actual expenses as supported by relevant documents and other evidential matter to enable the Authority to verify the accuracy of expenses, even if related to prior years. b. Expenses should be related to Zakat Payer's business activity rather than personal expenses or other than Zakat Payer's own activities. c. It should not be of a capital nature "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it". As such, with regard to the Plaintiff's request to deduct gift expenses for the years (2016-2017), since these expenses are deductible if they are proven to be actual expenses supported by supporting documents, and since the dispute over this item is a documentary dispute, and having reviewed the documents attached to the case file, it was established that the Plaintiff did not provide evidence that these expenses are related to its activity or that they are deductible from the net profit, but rather settled for classifying them in order to deduct them from the adjusted net profit. Therefore, this Department concludes to dismiss the Plaintiff's objection regarding this item.

Item Third: Hospitality Expenses for the Years (2016-2017-2018):

The Plaintiff objects to the Defendant's decision to add the hospitality expense item to the adjusted net profit for the years from 2016 to 2018, while the Defendant argued that the Plaintiff did not provide during the hearing any arguments other than those contained in its objection filed with the Defendant. Based on Article 5.1 of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution (2082) dated 01/06/1438 AH, which provides that: "The following expenses can be deducted to determine the net result of activity: 1. Expenses ordinary and necessary for an entity to engage in business activity, subject to meeting the following criteria: a. Expenses should be actual expenses as supported by relevant documents and other evidential matter to enable the Authority to verify the accuracy of expenses, even if related to prior years. b. Expenses should be related to Zakat Payer's business activity rather than personal expenses or other than Zakat Payer's own activities. c. It should not be of a capital nature "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it" Accordingly, with regard to the Plaintiff's claim to deduct the hospitality expenses and since these expenses are deductible if they are proven to be actual expenses supported by supporting documents, and since the dispute over this item is a documentary dispute, and having reviewed the documents attached to the case file, it was established that the Plaintiff did not provide evidence that these expenses are related to its activity or that they are deductible from the zakat base, but rather settled for classifying them in order to deduct them from its zakat base. Therefore, this Department concludes to dismiss the Plaintiff's objection regarding this item.

Item Fourth: End of Service Gratuity Provision for the Years (2016-2017-2018):

The Plaintiff objects to the Defendant's decision to add the item of End of Service Gratuity Provision to the adjusted profit for the year 2016, 2017 and 2018, while the Defendant

argued that the document submitted by the Plaintiff, which is a detailed statement of salary differences, indicates that an end of service gratuity provision is added to the income statement, and based on Paragraph (9) of Item (First) of Article (4) of the Implementing Regulations for Zakat Collection issued by the Minister of Finance Resolution No. (2082) of 01/06/1438 AH, which stipulated: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 9. Beginning of year provisions (except for provisions for doubtful debts of banks) after deducting the used part during the year". Additionally, Article (20.3) of the same Regulations states that: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it". Based on the above, it was established that the dispute over this item is a documentary dispute. Then upon referring to the case file and the defenses and documents it contains, particularly the reply submitted by the Defendant, it was found that the Defendant, having examined the detailed statement of salary differences, found an End of Service provision added to the income statement, and thus there was a difference that was added by the Defendant to the adjusted profit being a component thereof. While the Plaintiff indicated that it has added the amount of the end of service expense to the adjusted profit as per the financial statements, it was found that the Plaintiff did not provide a detailed statement of the salary differences that included the end of service provision added to the income statement. On those grounds the assessment was made. Moreover, the Plaintiff has not submitted the financial statements for the years in dispute to match that component balance with the difference added to the adjusted net profit of the assessment issued. Therefore, this Department concludes to dismiss the Plaintiff's objection regarding this item.

Item Fifth: Adding Over-stated Social Insurance Expenses for the Years (2016-2017):

The Plaintiff objects to the Defendant's decision to add social insurance expense differences to the adjusted profit for the years (2016 and 2017), while the Defendant argued that it had added over-stated social insurance expenses by comparing the social insurance certificate with the amounts stated in the Plaintiff's accounts, and it was found that there were amounts in excess of the legal percentages specified at (12%) for Saudi employees and (2%) for non-Saudi employees according to the social insurance law. As for the year 2016, where Article 20.3 of the Implementing Regulations for Zakat Collection stipulates that: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it", and since the Plaintiff did not submit the financial statements, nor did it submit the social insurance certificate for the same period to prove the validity of the insurance expenses subject matter of its objection, this Department concludes to dismiss the Plaintiff's objection regarding this item.

As for the year 2017: Differences in excess have been identified in the social insurance expenses and they were added to the net profit. Having examined the case papers, the Department established that the Plaintiff has attached the zakat declaration for the year 2017, which shows that there are social insurance expenses that are overstated. As a result, the Defendant added the differences to the net profit while referring to the percentages specified by the social insurance law as a reference. Given that the Plaintiff did not submit the social insurance certificate for the year 2017 and the financial statements for the same year and a settlement regarding the reasons for differences, the Department concludes to dismiss the Plaintiff's objection regarding this item.

Item Sixth: Pharmacy Closure Provision for the Years 2016-2017-2018:

The Plaintiff objects to the Defendant's decision to add the pharmacy closure provision item to the adjusted profit for the years from 2016 to 2018, while the Defendant argued that it added the pharmacy closure provision to the adjusted profit on ground that it has found, by referring to the trial balance, a provision for that expense that has been added to the income statement, and based on Article 6.2 of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution (2082) of 01/06/1438 AH regarding in deductible expenses, which provides that: "2. Expenses that Zakat Payer cannot prove they have been spent with supporting documents or other evidence", as well as paragraph (6) which states "6- All provisions except: A. Provision for doubtful debts to banks, provided that the bank submits a certificate from its board of directors that specifies the amount of doubtful debts and subject to the Saudi Arabian Monetary Authority. B. Unearned premium reserves, and existing risk reserves in insurance and/or reinsurance companies (technical reserves) provided that they are added to the zakat base in the following zakat year, and that the determination thereof is in accordance with the professional standards followed for the activity", and based on Article 20.3 of the same regulations, which states that. "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it". As such and having reviewed pleas and documents submitted by the parties, it was established that the dispute between the two parties is a documentary dispute, where the Plaintiff objects to adding the pharmacy closure provision for the years in dispute to the zakat base claiming that it has mistakenly recorded the expenses related to the closure of pharmacies as a pharmacy closure provision. The Defendant argued that it has added a pharmacy closure provision to the adjusted profit on grounds that it, having referred to the trial balance, found that a provision had been made and added to the income statement. Then having reviewed and examined the documents submitted by the Plaintiff including circulars issued by the company and signed by the Financial Controller, CEO and CFO, it was established that there were assets deleted of closed pharmacies during the years in dispute with attached detailed statement for those assets that were deleted from the books including a description of those assets and their details and book value, it was found through these circulars that there is a provision for closing pharmacies for all the years in dispute, and where the Plaintiff argues that these expenses were recorded by mistake as a provision for closing pharmacies and did not submit the financial statements for all periods and the trial balance and an account statement for this item to match the balances and verify that there is no provision and balances formed during the year, and proof for rectifying this mistake if any, therefore, this Department concludes to dismiss the Plaintiff's objection regarding this item

Item Seventh: Fine Expenses for the Years (2017-2018):

The Plaintiff objects to Defendant's decision to add the fines expense to the zakat base for the years (2017 and 2018), while the Defendant argued that the Plaintiff did not submit during the hearing any argument other than those stated in its statement of objection filed with ZATCA, and accordingly, the objection was rejected. While Paragraph (1/a) of Article (5) of the Implementing Regulations for Zakat Collection issued by the Minister of Finance's Resolution No. (2082) of 01/06/1438 AH in relation to the deductible expenses, which stipulated: "The following expenses can be deducted to determine the net result of activity: 1. Expenses ordinary and necessary for an entity to engage in business activity, subject to meeting the following criteria: a. Expenses should be actual expenses as supported by relevant documents and other evidential matter to enable ZATCA to verify the accuracy of expenses, even if related to prior years". Paragraph (2) of Article (6) of the same Regulations related to deductible expenses states: "Expenses that the Zakat Payer

fails to prove by supporting documents or other evidential matter acceptable to ZATCA". Paragraph (3) of Article (20) thereof states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it". In light of the foregoing, fines are considered deductible expenses if they are incurred due to a violation of contractual terms such as fines for late implementation or poor implementation, provided that they are documented by the contracting party or are related to the activity. Since, the dispute over this item is a documentary dispute, and having reviewed the documents attached to the case file, it is established that the Plaintiff did not submit the documents supporting the disputed fines. Therefore, this Department concludes to dismiss the Plaintiff's objection.

Item Eighth: Accounts Payable to Related Parties, Accrued Expenses, Advance Payments and Credit Balances for the Years (2016 - 2017 - 2018):

The Plaintiff objects to Defendant's decision to add "Accounts Payable Owed to Related Parties, Accrued Expenses, Advance Payments and Credit Balances" to the zakat base, while the Defendant argued that it added the aforementioned items due to the passage of a year over them, based on the statement submitted by the Plaintiff, and whereas Paragraph First/5 of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates that: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans, along with other similar financing sources, such as creditors, notes payable and overdrafts owed by Zakat Payer as follows: (a) Sources that remained as cash and completed a full year. B. were used to finance acquisition assets. C. The portion used for trading assets and for which a full year has passed". In addition, Paragraph (3) of Article (20) of the same Regulations states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it". Paragraph First/2 of Article (4) of the same Regulations also stipulate that: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 2. The current credit account of the owner or partner at the beginning or end of the year, whichever is less, as well as the increase in the current account if its source is from equity, or if it was finance for an acquisition asset.". Moreover, Paragraph First/4 of Article (4) stipulates that: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 4. Advance revenues that have a year passed over them". Based on the above, and since the "accounts payable owed to related parties, accrued expenses, advance payments and credit balances" are components of the zakat base, regardless of their type, source or usage, as long as a year has passed over them according to Item (First/5) of Article (4) of the Implementing Regulations for Zakat Collection, and since there is no detailed statement that indicates the dates of receipt of payments and the amounts paid of these payments, the Department concludes to dismiss the Plaintiff's objection regarding this item.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

Dismiss Zakat Payer's objection in all the items in question.

This decision was made in presence of parties. The date on which decision was uploaded to General Secretariat of Zakat, Tax and Customs Committees is the date of decision delivery. Parties to the case may request to appeal the decision in accordance with the law within 30 days from the day following date specified for its receipt. The decision shall

become final and enforceable after the end of this period in the event of failure to lodge an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2023-97656)
Issued in Appeal No. (I-97656-2022)

Key words:
Zakat Assessment - Accounts - Carried Forward Profits - Capital Lease Liabilities- Creditors - Net Accounting Profit - Accounts Payable One of Zakat Base Provided that One Year has Passed over them.

Abstract

The Plaintiff objects to ZATCA's decision regarding the Zakat assessment for the year 2015, which covers four items, Item 1: Carried Forward Profits, Item 2: Capital Lease Liabilities, Item 3: Creditors. Item Fourth: Net Accounting Profit. - ZATCA argued that: It has added this item to the zakat base according to the financial statements submitted by the Plaintiff. Regarding Item 1, the Department established that: The profits carried forward from previous years are a component of the zakat base, and since the Defendant added the carried forward profits recognized at the beginning of the year as per the financial statements in the amount of SAR 5,295,017 according to Paragraph (First/8) of Article (4) of the Implementing Regulations for Zakat Collection. Second: Item (Capital Lease Liabilities): The Defendant determined that these loans must be added because they were used to finance fixed assets, and the Plaintiff did not provide supporting documents to prove that they were not used to finance the deducted assets. Third: Item (Creditors): Accounts payable are one of the components of the zakat base, provided that a full year has passed on them or they are used to finance assets deducted from the zakat base. Upon reviewing the case file, the Department found that the Plaintiff did not submit any supporting documents for this item. Fourth: Item (Net Accounting Profit) Since the Defendant addressed certain items but omitted this one, this indicates that it accepted part of Plaintiff's objection and only provided responses for the items where it did not accept the objection, therefore, the Department ruled to: Dismiss the Defendant's decision against the Plaintiff related to the net accounting profit item subject matter of this case. Dismiss other objections of the Plaintiff to Defendant's decisions in relation to the assessment in issue. - Deem the decision final and enforceable.

Instruments:

- Paragraphs (First/5, 8), (20/3), (22/3) of Article (4) of the Implementing Regulations for Zakat Collection, issued by Ministerial Resolution (2082) dated:01/06/1438 AH.

Facts:

All praise is due to Allah, prayers and peace be upon the last Prophet Mohammad, and upon his family and all his companions.

On Thursday 11/07/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated in Article (67) of the Income Tax Law, issued

by Royal Decree No. (M/1) dated: 15/01/1425 AH, as amended, and formed by Royal Order No. (13957) dated 26/02/1444 AH, held its session remotely via video conference to hear the above-mentioned case. Since the case has met the prescribed legal requirements, it was filed with the General Secretariat of Tax Committees under the above number and date of 11/03/2022 AH.

The facts of this Case are summed up in that Plaintiff (...), holder of National ID No. (...), in his capacity as the owner of .....Contracting Company (one person company), C.R. No. ....., filed an objection to the Zakat assessment for the year 2015 issued by the ZATCA concerning four items, Item 1: Carried Forward Profits, Item 2: Capital Lease Liabilities, Item 3: Creditors, Item 4: Net Accounting Profit.

Having presented the statement of claims to the Defendant, it answered as follows: As for Carried Forward Profits, it stated that it added the item to the Zakat base according to the financial statements submitted by the Plaintiff, and by referring to the financial statements, it was found that there were carried forward profits at the beginning of the year in the amount of SAR 5,295,017 for 2015, which were added in full. Accordingly, the Plaintiff's objection was dismissed. As for the item: Capital Lease Liabilities, the Defendant answered that it added the item to the Zakat base in the amount of SAR 1,196,074 based on the documents submitted by the Plaintiff, which was requested to submit documents that support its position, namely: (Trial Balance - Rents - Creditors - Capital Lease Contracts), but the Plaintiff did not submit the required documents, nor did it submit any justification or documents with its objection, thus bearing the burden of proof.

By referring to the financial statements, the Department found that there were bank facilities. Then having reviewed the statements submitted by the Plaintiff, it was found that these loans are financing for a deductible item, and accordingly the Plaintiff's objection was dismissed. As for the item (Creditors), ZATCA stated that it added the amounts that had a year passed on them to the zakat base based on the documents submitted by the Plaintiff, and the Plaintiff did not provide sufficient premises for its objection, and accordingly the burden of proof falls on the Plaintiff, and the Defendant insists on the validity and soundness of her procedure in rejecting the objection.

On Thursday, 11/07/1444 AH, the Department held an e-session to consider the case. The session was attended by Plaintiff personally. The Defendant was represented by Mr. ....., holder of National ID No. by virtue of Authorization No. ..... dated .../.../..., issued by Deputy Governor for Legal Affairs. Legal Affairs. When the Plaintiff was asked about his claims, he maintained his statements contained in the statement of claims filed with the General Secretariat of Tax Committees. Having asked Defendant representative about Plaintiff claims, he maintained the statements contained in Defendant plea and requested that no documents that were not submitted during the inspection and objection period be accepted. When asking the two parties if they had any further statements, they replied “no”. Therefore, the Department decided to close the pleadings and deliberation.

Grounds

Having perused Zakat Law promulgated by Royal Decree No. (17/28/577) dated 14/03/1376 AH, and its Implementing Regulations issued pursuant to the Minister of Finance’s Decision No. (2082) dated 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. M/1, dated 15/01/1425 AH as amended, and its Implementing Regulations issued pursuant to the Minister of Finance’s Decision No. (1535) dated 11/06/1425 AH, and having taken cognizance of Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH. and the relevant Laws and regulations.

In Form: The Plaintiff instituted this case to cancel ZATCA's decision regarding the estimated Zakat assessment for 2015 AH, and given that this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040) dated 21/04/1441 AH, and since it is evident from the case documents that the case was filed within the prescribed period and from by a person with a legal capacity, therefore, this case is accepted in form.

On Merits: Having examined the papers and documents contained in the case file, as well as the requests, defenses and pleas made by its parties, the Department found that the Plaintiff objects to the zakat assessment made by the Defendant for the year 2015 AD, specifically in respect of four items, namely:

First: Carried Forward Profits:

The Plaintiff objects to Defendant's decision to add the retained profits in the amount of SAR 5,295,017 to the zakat base for the year 2015 AD, indicating that the item was subject to the zakat base submitted in the declaration within the item of "other additions". Therefore, this is considered double taxation. The Defendant argued that it added the item to the zakat base according to the financial statements submitted by the Plaintiff, and based on paragraph (First/8) of Article (4) of the Implementing regulations for zakat Collection, which states: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 8. Carried forward profits from previous years at the end of the year". Based on the above, the carried forward profits from previous years are a component of the zakat base, and the Defendant added the carried forward profits at the beginning of the year in the amount of SAR 5,295,017 as per the financial statements in accordance with the provisions of Paragraph (First/8) of Article (4) of the Implementing Regulations for Zakat Collection referred to above. Therefore, this Department decides to dismiss the Plaintiff's objection.

Second: Capital Lease Liabilities Item:

The Plaintiff objects to the Defendant's decision to add the Capital Lease Liabilities in the amount of SAR 1,196,074 to the zakat base for the year 2015 AD, claiming that the item was subject to the zakat base submitted in the declaration within the item of "other additions", hence it is double taxed. The Defendant argued that it added the item to the zakat base according to the financial statements submitted by the Plaintiff, and based on Paragraph (First/5) of Article (4) of the Implementing Regulations for Zakat Collection, which states that the components of the zakat base include: "Government and commercial loans and similar other sources of financing such as creditors, payment papers, and overdraft accounts owed by the Zakat payer which: A. remained in cash and had a year passed on it, B. were used to finance acquisition assets, and C. were used in trade assets and had a year passed on it". Moreover, Article 20.3 of the same Regulations stipulates that: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, the Authority may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it". Accordingly, loans are considered a component of the Zakat base, regardless of their type, source or classification, provided that a year has passed on them, or that they are used to finance assets deducted from the Zakat base without requiring that a year pass on them. The Department, having reviewed the case file, found that the Defendant's point of view in adding the balances of those loans is that they were used to finance fixed assets, and since the Plaintiff did not provide documents supporting the item, which prove that they were not used to finance the deducted assets, the Department hereby concludes to dismiss the Plaintiff's objection.

Third: Creditors Item:

The Plaintiff objects to the Defendant's decision to add the item (Creditors) in the amount of SAR 79,356, which has a year passed on them to the zakat base for the year 2015 AD, claiming that the item was subject to the zakat base submitted in the declaration within the item of "other additions", and hence it is double taxed. The Defendant argued that it added the item to the zakat base according to the financial statements submitted by the Plaintiff, and based on paragraph (First/5) of Article (4) of the Implementing Regulations for Zakat Collection, which states that the components of the zakat base include: "Government and commercial loans and similar other sources of financing such as creditors, payment papers, and overdraft accounts owed by the Zakat payer which: A. remained in cash and had a year passed on it, B. were used to finance acquisition assets, and C. were used in trade assets and had a year passed on it". Moreover, Article 20.3 of the same Regulations stipulates that: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, the Authority may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it". Accordingly, accounts payable are considered a component of the zakat base, provided that a year has passed on them or they are used to finance assets deducted from the zakat base. Upon reviewing the case file, the Department found that the Plaintiff did not submit documents supporting the item, and as such it determined to dismiss the Plaintiff's objection regarding this item.

Fourth: Net Accounting Profit item:

The Plaintiff objects to the Defendant's decision to add the net profit amounting to SAR 9,736,405 to the zakat base for the year 2015, claiming that the net book profit according to the audited balance sheet by the certified auditor amounts to SAR 3,917,669, which contradicts the company's accounts and the reality. Therefore, the Plaintiff requested to approve the net book profit according to the balance sheet approved by the chartered accountant. Based on Paragraph 22.3 of the Implementing Regulations for Zakat Collection, issued by Minister of Finance Decision No. (2082) of 01/06/1438 AH, related to the objection procedures, which provides that: "The Authority shall study the objection, and if it is convinced of its validity according to the justifications and documents presented to it, it may accept the objection or part of it, and notify Zakat Payer of the amendment, and if the dispute continuing between Zakat Payer and the Authority, the Authority shall raise the objection to the Primary Committee". Accordingly, and based on the above, and having reviewed the financial statements, it was found that that the net book profit is in the amount of SAR 3,917,669, and not the amount added by the Defendant. Since the Defendant responded to some of the items, and this item was not among them, this means that it accepted part of its objection, and it raised its response in respect of the non-accepted items. Therefore, the Department rules to cancel Defendant's decision.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

First: Cancel Defendant (ZATCA) decision against Plaintiff (...), TIN (...), related to the net accounting profit item in question.

Second: Dismiss other objections submitted by the Plaintiff.... TIN (...), to Defendant's decisions regarding zakat assessment subject matter of the Case.

This decision was made in presence of both parties. The date the decision is filed in the electronic system of the General Secretariat of Zakat, Tax, and Customs Committees shall be considered the date of delivery of this decision. The parties involved have the right to appeal the decision within thirty days from the day after its receipt. If no appeal is submitted within this period, the decision shall become final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1854)
Issued in Appeal No. (Z-81543-2021)

Key words:
Zakat assessment - Accounts - Advance payments - Deduction of lands in the name of the company - Rejection of the Plaintiff's objection.

Abstract

The Plaintiff's request to cancel the decision of ZATCA regarding the Zakat assessment for the year 2018 AD, in two items: Item First Advance payments, and Second Item: Deduction of lands owned by the Company. ZATCA responded that with regard to the First Item, it was found that the Zakat Payer only submitted a table comparing the due balances and the advance payments from the Ministry of Education. As for the Second Item, ZATCA answered that the lands not owned by the Company were removed from the negative base. The Zakat Payer submitted a copy of the Land Deed of ..... Owned by the Company and the deduction of the land was accepted, and also submitted other land sale deeds without attaching any deeds in the name of the Company or proof of any obstacle preventing the transfer of ownership and using the land in its activity. The legal texts required that the objection be submitted within the legally prescribed period calculated from the date of notification. As for the First Item, the Department found that the dispute was documentary, and the Plaintiff did not submit any documents supporting its point of view, nor did it submit an account statement for those advance payments. With regard to the Second Item, it was found that the dispute was documentary, and that the Plaintiff did not submit proof that those lands were used in its activity, nor did it provide grounds for not registering them in the name of the Company. Department ruled to Dismiss the Plaintiff's objection regarding the two items in question, and the decision is final and enforceable.

Instruments:

- Articles (4/First/4, Second/1), (20/3) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Monday, 08/08/2022 AD, the First Department for Determination of Income Tax Violations and Disputes in the City of Dammam, stipulated in Article (67) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, constituted by Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted by Royal Order No. (26760) dated 14/05/1442 AH, held its session remotely via video conference, to hear the above-mentioned case. Since the case was found to have met its legal

requirements, it was filed with the General Secretariat of the Tax Committees under the above number on 10/11/2020 AD.

Facts of the case are summarized that ....., holder of National ID number (....), in his capacity as the legal representative of Plaintiff ... Company, C. R. No. (...) According to the memorandum of association, filed an objection to the zakat assessment for 2018 issued by ZATCA. The objection was made regarding two items: Item First Advance Payments: The Plaintiff objects to the Defendant's decision to add the balance of the payments received in advance to the zakat base for the year 2018. The Plaintiff argued that these payments were received at the beginning of the project and two accounts were opened for the same client. The first account was for the advance payments received and the second was for the Ministry's debt according to the payment requests. The Plaintiff claimed that amount SAR 4,812,808, which the Defendant assumed was a credit balance for the clients and was added to the zakat base, is actually recognized as liabilities on the Ministry of Education for all the projects implemented for it, which totaled SAR 159,214,948, and thus the difference between the two amounts is SAR 154,402,140, which is a debit balance on the client. The Plaintiff added that the attached table compares the advance payment balance and the balance of payment requests, which indicate that the client owes an amount of SAR 19,384,905, and he is not a creditor. Accordingly, the Plaintiff requests that the debit balances with the Ministry of Education be deducted. Item Second: Deduction of Lands Owned by the Company: The Plaintiff objects to the Defendant's decision to not deduct lands in the name of the Company, claiming that land..... and land ... were purchased for the benefit of the Company, but due to administrative issues and rejection of some notaries, the title of these lands was transferred to Mr..... the Chairman of the Board of Directors. The Plaintiff added that the Company is still using these lands to implement its projects. The Company is still in the process of transferring ownership. The ownership of .....land has been transferred to the Company. The Zakat Payer has attached a copy of the title deed after transfer. Based on those grounds, the Plaintiff requested that the land ..... is deducted from Zakat Base

Having presented the statement of claims to the Defendant, it answered as follows. For the First Item: Advance Payments: The Defendant claimed that it has added the balances that had a year passed on them based on the statements provided during the discussion letter dated 04/11/1442 AH. The Defendant argued that it has found that the Zakat Payer had only submitted a table showing a comparison of the due balances and the balances of advance payments from the Ministry of Education, and accordingly the objection was rejected based on Article (4/First/5) of the Implementing Regulations for Zakat Collection issued by the Ministerial Decision No. (2082) of 01/06/1438 AH. Item Second: Deduction of Lands Owned by the Company: The Defendant argued that lands not registered in the name of the Company were removed from the negative base based on the land title deeds submitted during the discussion letter. Then, after considering the objection, the Zakat Payer submitted a copy of the title deed of ... land, which was registered in the Company's name and the deduction of land was accepted based on Article (4/Second/1) of the Implementing Regulations for Zakat Collection, while the Plaintiff submitted sale deeds for other lands without submitting any deeds in the name of the Company or proving any obstacle preventing the transfer of title or that the Company had used these land in its business activity. Accordingly, the deduction of plots .....and ..... was rejected based on Article (20/3) of the Implementing Regulations of Zakat Law of the year 1438 AH.

On Monday 08/08/2022 AD, the Department held its session remotely to consider the case. For the Plaintiff appeared Mr. ....., in his capacity as a legal representative under the attached Memorandum of Association, and for the Defendant ..... appeared Mr. ....., holder of National ID No. ..... in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. ..... dated …/…/…, issued by Deputy

Governor for Legal Affairs. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claims submitted to General Secretariat of Tax Committees. When Defendant's representative was confronted with the above details, it responded that it stands by the reply previously submitted to the General Secretariat of Tax Committees and does not accept any new documents that were not presented during the objection and review stages. Having asked both litigants if they had any other statements, they responded that they are satisfied with their earlier submissions presented to the Department. Consequently, the Department decided to close the pleadings and deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: **The Plaintiff instituted this case to annul the decision of ZATCA regarding 2018 zakat assessment and given that this dispute falls under the category of tax-related disputes, it falls within jurisdiction of the Committee for determination of income tax violations and disputes, in accordance with Royal Order No. (26040) dated 21/04/1441 AH. Additionally, as the case was filed by an authorized party and within the legally prescribed period, it must be accepted in form.**

On Merits: Having taken cognizance of documents included in Case file, requests, defense and arguments raised by the parties, the Department found that the dispute involves Defendant's procedure outlined in issuing zakat assessment for 2018, where the Plaintiff objects to two items:

Item First Advance Payments:

The Plaintiff objects to the Defendant's decision to add the balance of advance payments to the zakat base for the year 2018, while the Defendant argued that it added the balances that had a year passed on them based on the statements provided during the discussion letter dated 04/11/1442 AH, and based on Paragraph (4/First/4) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH, stating that: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 4- Advance revenues that had a year passed on them", as well as Article 20.3, which stipulated: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the above, and upon reviewing the defenses and documents presented by both parties, it was found that the dispute between the parties is documentary in nature. The dispute revolves around the addition of the credit balance of SAR 4,812,808 to the Plaintiff's zakat base, which is the advance payments from the client (Ministry of Education). The Plaintiff states that there are outstanding debts (Debts due according to payment requests) from the Ministry of Education amounting to SAR 24,197,417, as per the table included in the statement of claims.

The proper zakat treatment requires offsetting between the debit and credit balances if there are both debit and credit accounts for the same client. When considering the

Defendant's action, as explained in its Reply, we find that it added the credit balance for having a year passed on them based on the statements submitted to it. The Plaintiff did not provide any other documents but rather relied solely on the table included in the objection statement. Upon reviewing the case file and the documents provided, the Department found that Plaintiff did not submit the supporting documents that would substantiate its position, such as an account statement for those debts from the Ministry of Education and verification of the debit balances mentioned by the Plaintiff. Additionally, the Plaintiff did not provide an account statement for the advance payments. As a result, due to the failure to submit the required documents and insufficiency of the contents of the table included in the statement of claims, the Department concluded to dismiss the Plaintiff's objection.

Item Second: Deduction of Lands Owned by the Company:

The Plaintiff objects to the Defendant's decision to not deduct lands belonging to the Company, claiming that the plots ...and .... were purchased and land ... for the benefit of the Company, but due to administrative issues and rejection of some notaries, the title of these lands was transferred to Mr..... the Chairman of the Board of Directors. The Defendant however argued that the lands removed from the negative base were not in the Company's name according to the land deeds submitted during the discussion letter, and based on Paragraph No. (4/Second/1) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) of 01/06/1438 AH, which provides that: "The following items shall be deducted from the zakat base: 1. Net fixed assets, including, for example though not limited to, the following: Net value of fixed assets (acquisition assets) and any payments for purchase of fixed assets, and value of spare parts not intended for sale, provided that such assets are owned by Zakat Payer, unless there is an impediment to transfer of ownership, and are used in the activity". In accordance with Paragraph (1) of Clause (Second) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH that states: "The following items shall be deducted from the Zakat Base: 2- The Zakat Payer's capital constructions under implementation that are built for being used in the business activity and not for selling them". Moreover, Article 20.3 of the same Regulations provide that: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Taxpayer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the Foregoing, it is evident that assets in the names of the partners can be deducted from the zakat base, provided they are used in the business, provided that supporting evidence justifying why ownership has not been transferred to the Company. Since the dispute over this issue is documentary in nature and having reviewed the case file and the documents contained therein, it was found that the Plaintiff did not provide evidence proving that these lands are used in the business, nor did it present any reasons for not registering them in the Company's name in order to be deducted from the zakat base for the year 2018. The Plaintiff only submitted a deed for Al-Kharj land valued at SAR 5,536,571, proving the transfer of ownership, but this occurred after the year in dispute, i.e., in 1443 AH. Therefore, due to the lack of evidence showing that these lands are used in the business and reasonable grounds for not registering them in the Company's name, the Department concludes to dismiss the Plaintiff's objection.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

- Dismiss the Plaintiff's objection regarding the two items.

This decision was issued in the presence of both parties, and the date of depositing the decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of the decision. The parties to the case may request to appeal against the decision as per the law within thirty (30) days from the day following the date specified for its receipt, whereafter, the decision will be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1865)
Issued in Appeal No. (Z-58570-2021)

Key words:
Zakat Assessment - Accounts - Zakat Base - Bad Debts - Carried Forward Losses - Acceptance of Case in Form.

Abstract

The Plaintiff instituted this case moving to cancel the decision of ZATCA regarding the Zakat assessment for the year 2018. The Plaintiff's objection was made regarding two items: Bad Debts and Carried Forward Losses. The Plaintiff based its objection regarding the First Item "Bad debts" on the Defendant's decision to add bad debts in the amount of SAR 81,500 to the zakat base for the year 2018, claiming that it had no bad debts in the year in dispute. As for the Second Item "Carried Forward Losses", The Plaintiff objected to the Defendant's decision to not deduct the carried forward losses in the amount of SAR 357,679 from the zakat base of the year 2018. The Plaintiff clarified that carried forward losses are deductible items; however, there was an issue with the website during the entry process. The losses were deducted twice—once under carried forward profits (Table No. 18) and again under adjusted carried forward losses (Table No. 19-B). To correct this, the Plaintiff added the losses once more under "Other Additions" (Table 12) to offset the double deduction, while the reviewer excluded the entire carried forward losses from the zakat base for the year 2018. As for First Item, ZATCA replied as follows: Having reviewed the assessment issued on 22/09/1442 AH, ZATCA found that the assessment didn't reflect the adjustment of the net profit with bad debts amounting to SAR 81,500, but rather the adjustment to the net profit was only with the item of land sale and purchase commission expenses in the amount of SAR 81,750 as per the financial statements, and therefore the Zakat Payer's objection is baseless; accordingly, the Zakat Payer's objection was dismissed and ZATCA maintained the validity and soundness of its procedure. As for Item Second (Suppliers): The Defendant explained that it rejected the deduction of book losses totaling SAR 357,679, stating that the net carried forward losses are deducted based on the final assessment by ZATCA. This deduction is made after adjusting the losses with provisions and reserves, which had already been subtracted from the losses in the year they were incurred. Upon reviewing the Zakat Payer's account statement, it was found that there has been no previous assessment for the Zakat Payer, and therefore no final approved losses to carry forward. ZATCA has the authority to issue the assessment for the Zakat Payer for prior years in accordance with Article 21 of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. 2082. If final losses are approved by ZATCA for previous years after the final assessment, the Zakat Payer may request to carry them forward. As a result, the Zakat Payer's objection was dismissed, and ZATCA maintained the validity and soundness of its procedure. The Department determined that ZATCA should have verified the accuracy of the carried forward losses reflected in the

financial statements. Since ZATCA failed to provide evidence that the carried forward losses the Plaintiff is requesting to be deducted stem from items that are not deductible, these losses should be deducted based on the financial statements of 2018 as these losses were not adjusted by ZATCA to align with the Implementing Regulations for Zakat Collection. Additionally, it is not acceptable to rely on the absence of final assessments as a justification for disregarding the carried forward losses included in the financial statements according to Implementing Regulations for Zakat Collection. The Department ruled to: Dismiss the Plaintiff's objection regarding the bad debts item and cancel the Defendant's decision regarding the carried forward losses.

Instruments:

- Articles (4/Second/9), (20/3) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Monday 22/08/2022 AD, the First Department for Determination of Income Tax Violations and Disputes in Dammam stipulated in Article (67) of the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, constituted by Royal Order No. (65474) of 23/12/1439 AH, and reconstituted by Royal Order No. (26760) dated 14/05/1442 AH, held its session remotely via video conference to hear the above case. Since the case was found to have met its prescribed legal conditions, it was deposited with the General Secretariat of Tax Committees under the above number and the date of 10/07/2021 AD.

The facts of this case are summed up in that Mr..... ID No..... in his capacity as the legal representative of Plaintiff ..... Company, C.R. No. (...), filed this case objecting to the zakat assessment for the year 2018 issued by ZATCA. The Plaintiff's objection is related to following items: Item First "Bad debts" The Plaintiff objects to the "bad debts" item in the amount of SAR 81,500 added by ZATCA to the zakat assessment for 2018. The Plaintiff indicated that it does not have any bad debts that were previously included in the year of dispute. Item Second: "Carried Forward Losses", The Plaintiff objects to the Defendant's decision to not deduct the carried forward losses in the amount of SAR 357,679 from the zakat base for the year 2018, explaining that the carried forward losses are among the deductible items according to Article 5.8 of the Regulations No. (2082), claiming that there was an issue with the website during the entry process. The losses were deducted twice—once under carried forward profits (Table No. 18) and again under adjusted carried forward losses (Table No. 19-B). To correct this, the Plaintiff added the losses once more under "Other Additions" (Table 12) to offset the double deduction, while the reviewer excluded the entire carried forward losses from the zakat base for the year 2018.

Having presented the case to the Defendant, it submitted a plea whereby it responded regarding "bad debts" item that: having reviewed the assessment issued on 22/09/1442 AH, it found that the assessment didn't reflect the adjustment of the net profit with bad debts amounting to SAR 81,500, but rather the adjustment to the net profit was only with the item of land sale and purchase commission expenses in the amount of SAR 81,750 as per the financial statements, and therefore the Zakat Payer's objection is baseless; accordingly, the Zakat Payer's objection was dismissed and ZATCA maintained the validity and soundness of its procedure. "Carried Forward Losses", The Defendant stated that it did not accept the deduction of book losses amounting to SAR 357,679, explaining that

the net carried forward losses are deducted according to ZATCA's final assessment after adjusting them with the provisions and reserves, which had already been subtracted from the losses in the year they were incurred. Upon reviewing the Zakat Payer's account statement, it was found that there has been no previous assessment for the Zakat Payer, and therefore no final approved losses to carry forward. ZATCA has the authority to issue the assessment for the Zakat Payer for prior years in accordance with Article 21 of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. 2082. If final losses are approved by ZATCA for previous years after the final assessment, the Zakat Payer may request to carry them forward. As a result, the Zakat Payer's objection was dismissed based on Article (4/Second/9) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH, and ZATCA maintained the validity and soundness of its procedure.

On Tuesday, 22/08/2022 AD, the Department held its session remotely to hear the case. For the Plaintiff appeared Mr..... ID No..... In his capacity as the Company's legal representative as per the Company's articles of association. While for the Defendant appeared Mr....., Mr. ....., holder of National ID No. ..... in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. ..... dated …/…/…, issued by Deputy Governor for Legal Affairs. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claims submitted to General Secretariat of Tax Committees. When Defendant's representative was confronted with the above details, it responded that it stands by the reply previously submitted to the General Secretariat of Tax Committees and does not accept any new documents that were not presented during the objection and review stages. Having asked both litigants if they had any other statements, they responded that they are satisfied with their earlier submissions presented to the Department. Consequently, the Department decided to close the pleadings and deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff aims with its claim to cancel ZATCA decision regarding zakat assessment for 2018 and given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the legally prescribed period. Therefore, the Department accepts the Case in form.

On merits, upon Department's review of the documents and evidence contained in the case file, as well as the requests, defenses, and arguments presented by the parties, it became evident that the dispute centers on Defendant's issuance of the zakat assessment for 2018, specifically concerning the objection related to the following items:

Item First "Bad debts"

The Plaintiff objects to the Defendant's decision to add bad debts in the amount of SAR 81,500 to the zakat base for the year 2018 AD, while the Defendant believes that after reviewing the assessment issued on 22/09/1442 AH, it found that the assessment did not include the adjustment of the net profit with bad debts in the amount of SAR 81,500. Since Article 20.3 of the Zakat Regulations states that: "The burden of prove of correctness of

information in Zakat Payer's Declaration regarding items and any other data rests on Zakat Payer. If Zakat Payer fails to prove correctness of the items in its Declaration, ZATCA may disapprove the item whose correctness has not been proven by Zakat Payer or make an Estimated Assessment according to ZATCA's opinion based on relevant circumstances and facts and available information." and based on the foregoing, and since the dispute is related to documents; and since Plaintiff has failed to provide evidence that ZATCA's decision to add the bad debts in the amount of SAR 81,500 to 2018 zakat assessment was invalid; Therefore, the Department concludes to dismiss Plaintiff's objection.

Item Second: "Carried Forward Losses",

The Plaintiff objects to the Defendant's decision to not deduct the carried forward losses amounting to SAR 357,679 from the zakat base for the year 2018, while the Defendant believes that the deduction of the book losses amounting to SAR 357,679 is not acceptable, explaining that the net carried forward losses are deducted according to the final assessment of ZATCA after adjusting them with the provisions and reserves that the loss was previously subtracted from them in the year they were incurred. Article (4/Second/9) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution (2082) dated 01/06/1438 AH, regarding determining the zakat base for those who maintain regular accounts, stipulates: "The following items shall be deducted from the Zakat Base: The net carried forward loss adjusted according to ZATCA's assessment after adding to it the provisions or reserves only, which were subtracted from the loss in the year they were incurred" Based on the above, and considering that the audited financial statements are a crucial piece of evidence and a primary basis for calculating the zakat base, and since carried forward losses are among the items that can be deducted from the zakat base, these losses must be adjusted according to the assessments issued by ZATCA, after accounting for provisions and reserves that had previously been subtracted in the year the losses occurred. This adjustment ensures that zakat is not duplicated. Therefore, for zakat purposes, only the carried forward losses that have been adjusted in accordance with the zakat regulations are considered, not the losses reported in the financial statements. Upon reviewing the zakat assessment for the year 2018, it is found that ZATCA's procedure to not deduct the carried forward losses was based on the ground that no final assessments had been issued for the years prior to the year in dispute. In light of the above, it was found that ZATCA should have verified the accuracy of the carried forward losses reflected in the financial statements. Since ZATCA failed to provide evidence that the carried forward losses the Plaintiff is requesting to be deducted arose from items that are not permissible for deduction, these losses should be deducted based on the financial statements for the year 2018. It has not been demonstrated that these losses were adjusted by ZATCA to comply with the Zakat Regulations. This does not affect ZATCA's claim that the Zakat Payer is not entitled to deduct these losses in his zakat declarations. However, ZATCA should have reviewed the Zakat Payer's objection and the audited financial statements, challenging their validity if necessary. Relying on the lack of final assessments to justify not considering the carried forward losses shown in the financial statements is not acceptable according to the Zakat Regulations. Hence, the Department concluded to cancel the Defendant's decision regarding this item.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

- Dismiss Plaintiff's objection regarding Bad Debts item.
- Cancel the Defendant's decision regarding the carried forward losses item.

This decision was delivered in presence of the parties. The date of entering decision in the e-system of the General Secretariat is considered the date of decision delivery. Either party to the Case may appeal against the decision within (30) thirty days from the day following

the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1915)
Issued in Appeal No. (Z-81925-2021)

Key words:
Zakat Assessment - Accounts - Import Difference - Rental Difference - Expenses Added to Zakat Base - Credit Balances and Related Parties - Acceptance of Case in Form and Dismissal on merits.

Abstract

The Plaintiff requests to cancel the decision of ZATCA regarding the zakat assessment for the year 2011. The Plaintiff's objection was related to the following items: "Import Difference", where the Plaintiff objected to ZATCA's decision to add amounts to the net profit, the item "Rental Difference", where the Plaintiff objected to ZATCA's decision to add Rental Differences for the years 2011 and 2012 to the net profit, the item "Expenses returned to Zakat Base", where the Plaintiff objected to ZATCA's decision to add the net profit expenses, and the item "Credit Balances and Related Parties", where the Plaintiff objected to ZATCA's decision to add the item to the zakat base. With regard to the item "Import Difference" ZATCA replied that it found a difference between the amount declared in the declaration and the amount registered with ZATCA. As for the items "Rental Difference and Expenses Added to Zakat Base), the Plaintiff did not provide supporting documents that prove his claims. As for the item "Credit Balances and Related Parties", ZATCA stated that it has added credit balances and related parties to the zakat base for having a year passed on them. For the item "Import Difference", the Department found that despite the Plaintiff's claims that the differences resulted from an error in preparing the declaration, it did not provide the necessary reconciliation of the import differences, nor did it provide the documents supporting its point of view. For the item "Rental Difference", the Department found that the Plaintiff did not provide the documents supporting the disputed expenses, such as rental contracts and payment receipts. For the item "Expenses Added to Zakat Base, the Department found that the Plaintiff did not provide the documents supporting the disputed expenses. For the item "Credit Balances and Related Parties", the Department found that the Plaintiff did not provide a detailed statement of the related parties account to prove its claims regarding the non-rotation of a zakat year on those amounts. ZATCA acknowledged that it had added the amounts that had a year passed on them, and the Plaintiff did not provide anything to refute ZATCA's procedure. The Department ruled to: Accept case in form and dismiss the case as on merits and the decision is final and enforceable.

Instruments:

- Articles (4/First/5), (5/1/A), (6/2), (13/First/3), (20/3) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Wednesday, 14/08/2022 AD, the First Department to Adjudicate Excise Tax Violations and Disputes in Riyadh, convened pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH.

The facts of this case are summed up in that Mr..... ID No..... in his capacity as the legal representative of Plaintiff ..... Company, C.R. No. (...), submitted its objection to the zakat assessment for the year 2010 issued by ZATCA. The objection is focused on the following item: Item First Import Difference for the Years 2011 and 2012, The Plaintiff objects to the Defendant's decision to adding an amount of SAR 21,048,569 for 2011 and adding SAR 20,733,902 for 2012 to the net profit. The Plaintiff indicated that the difference represents the difference between the imported goods as stated in the customs declaration, and this difference appeared as a result of an error in preparing the declaration, where the cost of all purchases was added to the "External Purchases" item. Accordingly, the Plaintiff requested that this item no be added to the net profit. Item Second: Rental Difference for the Years 2011 and 2012, The Plaintiff objects to Defendant's procedure to add rental difference to the net profit. The Plaintiff stated that ZATCA added that expense on grounds that it was not listed in the rental statement attached to the declaration, despite the fact that it was charged to direct expenses. This difference occurred due to the rentals being added only to the general expenses item of the rental statement by mistake, while the rentals included in direct expenses were actual rentals supported by documents. Accordingly, the Plaintiff requested that this item no be added to the net profit. Item Third: Expenses Added to Zakat Base for the years 2011 and 2012: The Plaintiff objects to the Defendant's decision to add the expenses to the net profit for the years 2011 and 2012, explaining in its statement of claims that expenses are actual expenses. Accordingly, the Plaintiff requested that this item no be added to the net profit. Item Fourth: Credit Balances and Related Parties for the years 2011 and 2012: The Plaintiff objects to the Defendant's decision to add the item to the zakat base for the years 2011 and 2012, Explaining that this these amounts are compensation for actual work, or services provided to the Company. Accordingly, the Plaintiff requests that these amounts not be added to the zakat base.

Having presented the statement of claims to the Defendant, it submitted a plea to respond to the Plaintiff's claims. As for the item "Import Difference", ZATCA replied that it added the import difference to the net profits, as it was found that there was a difference between the amounts declared in the zakat declaration and that was registered with ZATCA. When examining the objection, ZATCA found that the Zakat Payer provided non-compelling justifications for the fact that all internal and external purchases were added to the "external purchases" item. This item was discussed during the examination of the objection on 03/11/1439 AH; however, the Plaintiff did not provide ZATCA with the documents supporting its point of view. Therefore, ZATCA maintained the validity and soundness of its procedure as attached and rejected the zakat payer's objection for not submitting the supporting documents based on Article 20.3 of the Implementing Regulations for Zakat Collection. As for the item "Rental Difference", ZATCA stated that it added the Rental Difference to the net profit, for the Plaintiff having failed to submit supporting documents to support its claims. Upon examining the objection, it was found that the Zakat Payer stated that they were actual expenses that were not included -by mistake- in the rental statement attached to the declaration. The Zakat Payer did not submit supporting documents from the lease contracts, payment receipts, and records supporting his point of view. Accordingly, the Zakat Payer's objection was rejected due to the failure to submit

supporting documents based on Article 20.3 of the Implementing Regulations for Zakat Collection. As for the item "Expenses Added to Zakat Base", ZATCA stated that it added the expenses to the net profit due to the Plaintiff's failure to submit supporting documents requested on 22/06/1437 AH. Upon examining the objection, it was found that the Zakat Payer stated that they were actual expenses and did not submit supporting documents for his point of view. Accordingly, the Zakat Payer's objection was dismissed due to the failure to submit supporting documents for his objection based on Article 20.3 of the Implementing Regulations for Zakat Collection. Regarding the objection to the item "Credit Balances and Related Parties", ZATCA stated that it added the "Credit Balances and Related Parties" item to the zakat base for having one year passed on them. Upon examining the objection, it was found that ZATCA added the balances that had a year passed on them to the zakat base. Accordingly, ZATCA maintained the validity and soundness of its procedure to dismiss the Zakat Payer's objection regarding this item based on Article (4/First/5) of the Implementing Regulations for Zakat Collection.
On Sunday, 14/08/1443 AH, the Department held its session remotely to hear the Case. The session was attended by Ms....., holder of National ID No. (...), in his capacity as Plaintiff Attorney, by POA No. (.....), and .Mr. ..... National ID No. (...), attended in his capacity as a representative of the Defendant/ZATCA, pursuant to an authorization No. (....) dated ../../.....issued by ZATCA Deputy Governor for Legal Affairs, Having asked Plaintiff's Attorney about his case, he maintained his statements contained in the statement of claims submitted to General Secretariat of Tax Committees. When Defendant's representative was confronted with the above details, it responded that it stands by the reply previously submitted to the General Secretariat of Tax Committees and does not accept any new documents that were not presented during the objection and review stages. Having asked both litigants if they had any other statements, they responded that they are satisfied with their earlier submissions presented to the Department. Consequently, the Department decided to close the pleadings and deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.
In Form: Since Plaintiff aims with its claim to cancel ZATCA decision regarding zakat assessment for 2011 and given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the legally prescribed period. Therefore, the Department accepts the Case in form.
On merits, upon Department's review of the documents and evidence contained in the case file, as well as the requests, defenses, and arguments presented by the parties, it became evident that the dispute centers on Defendant's issuance of the zakat assessment for 2011, specifically concerning the objection related to the following items:
Item First Import Difference for the Years 2011 and 2012,
The Plaintiff objects to the Defendant's decision to add an amount of SAR 21,048,569 for the year 2011 and SAR 20,733,902 for the year 2012 to the net profit, while the Defendant believe that the import difference should be added to the net profit as it found a difference between the amount added in the declaration and the amount registered with ZATCA.

Article (13/First/3) entitled "Importers" of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution (2082) dated 01/06/1438 AH stipulated: "The net import profit for a year shall be estimated by multiplying the total imports for the year by the percentage specified for each category of imports ...., and 10% of otherwise" Moreover, Article 20.3 of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH states: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". In light of the above, it is evident that the import declaration issued by the Saudi Customs Authority is a basic presumption from a neutral third party. The Department, having reviewed the case file, found that ZATCA's procedure to amend the Plaintiff's business outcomes is due to differences in the value of imports included in the Plaintiff's declaration compared to the imports included in the customs declaration. Upon reviewing the documents attached to the case file, it was found that the Plaintiff explained that the differences resulted from an error in preparing the declaration, but it did not provide the necessary reconciliation to verify the import difference, nor did it provide the documents supporting its claims. Therefore, the Defendant's procedure to adjust the Plaintiff's business outcomes to reflect those differences is valid; and hence the Department concludes to dismiss the Plaintiff's objection regarding this item.

Item Second: Rental Difference for the Years 2011 and 2012,

The Plaintiff objects to the Defendant's procedure to add the Rental Difference for the years 2011 and 2012 to the net profit, while the Defendant believes that the Rental Difference should be added to the net profit, due to the Plaintiff's failure to provide supporting documents. Article (5/A/1) of the Implementing Regulations for Zakat Collection issued by Ministry of Finance Decision No. (2082) dated 01/06/1438 AH, concerning deductible expenses, stipulates: "The following expenses can be deducted to determine the net result of activity: 1. Expenses ordinary and necessary for an entity to engage in business activity, subject to meeting the following criteria: a. Expenses should be actual expenses as supported by relevant documents and other evidential matter to enable ZATCA to verify the accuracy of expenses, even if related to prior years". Paragraph (2) of Article (6) of the same Regulations related to deductible expenses states: "Expenses that the Zakat Payer fails to prove by supporting documents or other evidential matter acceptable to ZATCA". Paragraph (3) of Article (20) thereof states: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Taxpayer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the foregoing, these expenses are considered deductible if they are found to be actual expenses incurred and supported by documentary evidence. Since the dispute regarding this item is a documentary one, and upon reviewing the documents in the Case file, it was found that the Plaintiff has failed to provide the supporting documents for the expenses in dispute, such as the lease agreements and payment receipts. Therefore, the Department concludes to dismiss the Plaintiff's regarding this item.

Item Third: Expenses Added to Zakat Base for the years 2011 and 2012:

The Plaintiff objects to the Defendant's decision to add expenses to the net profit for the years 2011 and 2012, while the Defendant considers that those expenses should be added to the net profit for the Plaintiff's failure to provide supporting documents. Article (5/A/1)

of the Implementing Regulations for Zakat Collection issued by Ministry of Finance Decision No. (2082) dated 01/06/1438 AH, concerning deductible expenses, stipulates: "The following expenses can be deducted to determine the net result of activity: 1. Expenses ordinary and necessary for an entity to engage in business activity, subject to meeting the following criteria: a. Expenses should be actual expenses as supported by relevant documents and other evidential matter to enable ZATCA to verify the accuracy of expenses, even if related to prior years". Paragraph (2) of Article (6) of the same Regulations related to deductible expenses states: "Expenses that the Zakat Payer fails to prove by supporting documents or other evidential matter acceptable to ZATCA". Paragraph (3) of Article (20) thereof states: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Taxpayer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the foregoing, these expenses are considered deductible if it is proven that they were actually incurred and supported by documentary evidence. Since the dispute regarding this item is a documentary one, and upon reviewing the documents in the Case file, it is evident that the Plaintiff has failed to provide the supporting documents for the disputed expenses. Therefore, the Department concludes to dismiss the Plaintiff's objection regarding this item.

Item Fourth: Credit Balances and Related Parties for the years 2011 and 2012:

The Plaintiff objects to the Defendant's decision to add this item to the zakat base for the years 2011 and 2012, while the Defendant believes that the credit balances and related parties should be added to the zakat base for having a year passed on them. whereas Paragraph (5) of Section (First) of Article (4) of Implementing Regulation for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Additionally, Article (20.3) of the same Regulations states that: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Taxpayer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the above, the amount payable to related parties are considered a source of finance that should be treated as equity in terms of zakat treatment, and therefore they should be subject to zakat whenever a year has passed on them. Upon reviewing the case papers, it was found that the Plaintiff did not provide the detailed statement of the account of related parties to prove it claims regarding the non-rotation of a year on those amounts, and since ZATCA acknowledged that it had added the amount that had a year passed on them to the zakat base and the Plaintiff did not provide any proof that refute ZATCA's procedure; therefore, the Department concludes to dismiss the Plaintiff's objection regarding this item.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

- Dismiss the Plaintiff's objection in all the items subject matter of this case for the years 2011 and 2012.

This decision was delivered in presence of the parties. The date of entering decision in the e-system of the General Secretariat is considered the date of decision delivery. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1923)
Issued in Appeal No. (Z-62495-2021)

Key words:
Zakat Assessment - Accounts - Zakat Base - Income Tax - Credit Balances - Accounts Payable - Acceptance of Case in Form.

Abstract

The Plaintiff instituted this case to cancel the decision of ZATCA regarding the zakat assessment for the year 2015. The Plaintiff based its objection on the following items: Item First Credit Balances (Contractor Retentions): The Plaintiff objects to the Defendant's decision to add the balance of Credit Balances (Contractor Retentions) for the year in dispute that have not had a year passed on them. This item amounted to SAR 4,072,062 based on the attached statement that was submitted to ZATCA (attached), and accordingly, the Plaintiff requests that the aforementioned amounts not be added to the zakat base. Item Second: Other Deductions in the amount of SAR 318,938,730: The Plaintiff objects to the Defendant's decision to not accept other deductions of SAR 318,938,730 on the grounds that they are projects under implementation. The Plaintiff indicated that ZATCA relied on the financial statements without studying the real situation to identify if any of these assets are saleable and without requesting any documents supporting the company's claims regarding the impossibility of sale in addition to the fact that these projects, once completed, will be income-generating. The Plaintiff indicated that these deductions are projects with completion periods exceeding ten years, and therefore these projects are not intended for resale. Regarding the item Credit Balances (Contractors' Retentions), ZATCA responded that it added the amounts that had a year passed on them (SAR 2,819,846) from the item of "Accounts Payable" according to the statement submitted by the Zakat Payer, and added the item of "Other Credit Balances" by comparing the opening balance with the closing balance and taking the lower balance due to the passage of a zakat year with the Zakat Payer not submitting an account statement of this item. Upon studying the objection and referring to the account statement submitted by the Zakat Payer for the "Accounts Payable" item, it was found that ZATCA's adding the amounts that have a year passed on them by ZATCA in the amount of SAR 2,819,846 is valid procedure. There was a meeting with the Zakat Payer on 17/06/2021, where he was asked to submit a statement for the "Other Credit Balances" item, but he did not submit it. Rather, he submitted only the Accounts Payable statement, which was the same as submitted by him during the examination phase. Accordingly, the Zakat Payer's objection was rejected, as ZATCA believed that its procedure is valid. As for the item "Other Deductions" (the difference): ZATCA stated that it deducted real estate investments in the amount of SAR 69,328,807 from the zakat base, including House No. 7 in the amount of SAR 4,803,350 and House No. 54 in the amount of SAR 64,525,457, on grounds that it accepted the deduction of these assets in 2018, in addition to the fact

that they are rented and intended for acquisition. It however did not accept the deduction of the remaining real estate investments valuing SAR 318,938,730, which are under construction and development. The Department found that ZATCA's procedure to deduct the real estate investments in the amount of SAR 69,328,807 used for leasing is valid and sound, for being acquisition assets, and so is its decision not to deduct the remaining balance amounting to SAR 318,938,730, as it represents projects intended for sale (trade assets). These facts are evident as per the Zakat Payer's statements, note 2.5 (attached). A similar Zakat Payer's objection for the years 2017-2018 was rejected, and this objection was rejected as well. Department ruled to Dismiss the Plaintiff's objection regarding the item (Credit Balances (Contractor Retentions)) and cancel the Defendant's decision regarding the item "Other Deductions".

Instruments:

- Articles (4/First/5, Second/1), and (20/3) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Tuesday 08/23/2022, the First Department for Determination of Income Tax Violations and Disputes in Dammam, stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, constituted by Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted by Royal Order No. (26760) dated 14/05/1442 AH, held its session remotely via video conference to hear the above case. Since the case was found to have met its prescribed legal conditions, it was deposited with the General Secretariat of the Tax Committees under the above number and date of 28/07/2021 AD.

The facts of this Case are summed up in that Mr..... (...) in his capacity as the legal representative of Plaintiff ..... Company, C.R. No. (...), filed its objection to the zakat assessment for the year 2017 issued by ZATCA. The objection concerns the following items: Item First Credit Balances (Contractor Retentions): The Plaintiff objects to the Defendant's decision to add the balance of credit balances of Contractor Retentions that have not yet reached one year and were completed during the year in the amount of SAR 4,072,062. Based on the attached statement according to the statement sent to ZATCA (attached), the Plaintiff demands that the aforementioned amounts not be added to the zakat base. Item Second: Other Deductions (SAR 318,938,730): The Plaintiff objects to the Defendant's decision to not accept other deductions in the amount of SAR 318,938,730, on grounds that they are projects under implementation. The Plaintiff indicated that ZATCA relied on the financial statements without studying the reality of the situation and identifying whether these projects are saleable or requesting any documents supporting the company's point of view regarding the impossibility of sale and the fact that these projects are income-generating projects once completed. The Plaintiff indicated that these deductions are projects with completion periods extending to ten years; therefore, these projects are not intended for resale.

Having presented the statement of claims to the Defendant, it responded with a Reply. For the item Credit Balances (Contractor Retentions), the Defendant replied that it added the amounts that had a year passed on them from the item (Accounts Payable) according to the account statement submitted by the Zakat Payer. These amounts totaled SAR 2,819,846, and it added the item "other Credit Balances" by comparing the opening balance with the closing balance and taking the lower balance due to the passage of a year with the Zakat Payer not submitting an account statement of this item. Upon studying the objection

and referring to the account statement submitted by the Zakat Payer for the Accounts Payable item, it was found that ZATCA's decision to add the amounts that had a year passed on them in the amount of SAR 2,819,846 was valid. There was a meeting with the Zakat Payer on 17/06/2021, where he was asked to submit a statement for the "Other Credit Balances" item, but he did not submit it. Rather, he submitted only the "Accounts Payable" statement, which was the same as he submitted during the examination phase. on that basis, ZATCA rejected the Zakat Payer's objection deciding that its procedure was valid to add the amounts that had a year passed on them from the accounts payable item according to the statement submitted, which amounted to SAR 2,815,846, as it is considered a source of financing. As for the item "Other Deductions" (the difference): ZATCA stated that it deducted real estate investments from the zakat base in the amount of SAR 69,328,807, which included House No. 7 in the amount of SAR 4,803,350 and House No. 54 in the amount of SAR 64,525,457, on grounds that it has accepted the deduction of these assets in 2018, as well as the fact that they are rented and intended for acquisition. ZATCA also clarified that it did not accept the deduction of the remaining real estate investments under construction and development, which amounted to SAR 318,938,730. After examination, it was confirmed that ZATCA's decision was valid and sound, namely, to deducting the real estate investments used in leasing amounting to SAR 69,328,807 for being intended for acquisition and not to deduct the remaining balance amounting to SAR 318,938,730 because they represent projects intended for sale (trade assets). This was evident from the Zakat Payer's financial statements, note 2.5 (attached). ZATCA also indicated that the Zakat Payer's similar objection was previously rejected for the years 2017-2018, and hence this objection was rejected.

On Tuesday, 23/08/2022 AD, the Department held its session remotely to hear the case. For the Plaintiff appeared Mr....., National ID No..... in his capacity as the legal representative of the Plaintiff company under the attached commercial registration. For the Defendant appeared Mr....., holder of National ID No. ....., in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. ..... dated …/10/1443 AH, issued by Deputy Governor for Legal Affairs. Having asked the Plaintiff's Attorney about his case, he maintained his statements contained in the statement of claims submitted to General Secretariat of Tax Committees. When Defendant's representative was confronted with the above details, it responded that it stands by the reply previously submitted to the General Secretariat of Tax Committees and does not accept any new documents that were not presented during the objection and review stages. Having asked both litigants if they had any other statements, they responded that they are satisfied with their earlier submissions presented to the Department. Consequently, the Department decided to close the pleadings and deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff aims with its claim to cancel ZATCA decision regarding zakat assessment for 2015 and given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040)

dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the legally prescribed period. Therefore, the Department accepts the Case in form.
On merits, upon Department's review of the documents and evidence contained in the case file, as well as the requests, defenses, and arguments presented by the parties, it became evident that the dispute centers on Defendant's issuance of the zakat assessment for 2015, specifically concerning the objection related to the following items:
Item First Credit Balances (Contractor Retentions):
The Plaintiff objects to the Defendant's decision to add to the Credit Balances (Contractor Retentions) that did not have a year passed on them and accrued during the year in issue, while the Defendant argued that it added the amounts that had a year passed on them from the accounts payable according to the statement submitted by the Zakat Payer. whereas Paragraph (5) of Section (First) of Article (4) of Implementing Regulation for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Additionally, Article (20.3) of the same Regulations states that: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Taxpayer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the above, the suppliers' payables are considered one of the components of the zakat base provided that a year has passed on them or they are used to finance assets deducted from the zakat base. Upon reviewing the documents included in the case file, it was found that the Plaintiff did not provide a detailed statement of suppliers' payables to prove that a year has not passed on the disputed amounts. Based on Paragraph (4/First/5) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH mentioned above, it was found that the procedure to be followed is to take the opening balance and closing balance, whichever is less. Accordingly, the Department concludes to dismiss the Plaintiff's objection regarding this item.
Item Second: Other Deductions (SAR 318,938,730).
The Plaintiff objects to the Defendant's decision to not accept other deductions in the amount of SAR 318,938,730, on grounds that they are projects under implementation, while the Defendant believes that the real estate investments in the amount of SAR 69,328,807 that has been leased are to be deducted because they are acquisition assets, but the remaining balance amounting to SAR 318,938,730 should not be deducted as they are intended for sale (trade assets) Paragraph (4/Second/1) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH provides: "The following items shall be deducted from the Zakat Base: 2. Taxpayer's capital constructions under implementation which is established for the purpose of being used for the activity and not for the purpose of being sold." Accordingly, it is concluded that there are two basic conditions that must be met to consider projects under implementation as acquisitions assets that may be deducted from the zakat base; namely the documented intention of the authorized person to invest, and the absence of sales operations that took place during the year under assessment. The Department, having reviewed the documents attached to the case file, including the financial statements, Note No. (2.5) related to real estate investments under implementation, found that the Company classifies real estate investments as "real estate investments not prepared for sale and are not considered as

trade assets except upon completion", and upon considering the matter, it was found that the intention of this investment was realized and the first condition was met, which is the documented intention of the authorized person before the investment, and that the purpose of projects under implementation is to develop and build residential units to sell and rent them after completion, and based on the Appeal Decision No. 38-2020-IR, this Department concludes to cancel the Defendant's decision regarding this item.
For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

- Dismiss the Plaintiff's objection regarding the Credit Balances (Contractors' Retentions) Item.
- Cancel the Defendant's decision regarding the "other Deductions" Item.

This decision was issued in the presence of both parties, and the date of depositing the decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of the decision. The parties to the case may request to appeal against the decision as per the law within thirty (30) days from the day following the date specified for its receipt, whereafter, the decision will be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1959)
Issued in Appeal No. (Z-75123-2021)

Key words:
Zakat Assessment - Accounts - Fixed Assets - Deduction of Land Equivalent from Capital - End Dispute - Dismiss Plaintiff's Objection.

Abstract

The Plaintiff instituted this case to cancel the decision of ZATCA regarding the Zakat assessment for the year 2015 AD, in two items; First Item: First: Fixed Assets (Lands), and Second: Deduction of Land Equivalent from Capital. ZATCA responded that regarding the First Item, the Plaintiff didn't submit any evidence that the lands have been used in the company's activity, and it was found that the lands were used in the Company's activity. As for the Zakat Payer's request to reduce the value of the additional capital of the partner..... in exchange for excluding the lands, it responded that this request is not based on valid grounds as the additional capital is to be added upon the passage of one year. ZATCA maintained the validity and soundness of its procedure. Regarding the First Item, the Department ruled that the dispute has ended with the Defendant accepting the Plaintiff's requests, while for the Second Item, the Department determined that the Plaintiff's request does not comply with the Implementing Regulations for Zakat Collection. Department ruled to End the dispute regarding the First Item, and dismiss the Plaintiff's objection regarding the Second Item, and consider the decision as final and enforceable.

Instruments:

- Article (70) of the Law of Civil Procedures promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH
- Articles (4/First/1, Second/1), (20/3) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Sunday 28/08/2022, the First Department for Determination of Income Tax Violations and Disputes in Dammam, stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, and its amendments, constituted by Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted by Royal Order No. (26760) dated 14/05/1442 AH, held its session remotely via video conference, to hear the above case. Since the case has met the prescribed legal conditions, it was filed with the General Secretariat of the Tax Committees under the above number and date of 11/10/2021 AD.

The facts of this case are summed up so as... ID No..... in his capacity as the legal representative of Plaintiff ..... Company, C.R. No. (...), filed its objection to the zakat assessment for the year 2017 issued by ZATCA. The objection concerns the following items: Item First Fixed Assets (Land). Item Second: Deduction of Land Equivalent from Capital: The Plaintiff objects to the Defendant's decision, indicating that the partner provided these lands to the help the Company obtain bank facilities and loans (as a guarantee for banks). These bank facilities were used to finance the Company's projects and operations, so how can the examiner deduct them while they are a major reason for obtaining these loans and bank facilities. The Plaintiff also argued that the lands are recognized at book cost and are added to the assets (debit) and are added to the additional capital (credit). This is an accounting principle; the debit side and the credit side, so how can the examiner violate this principle and deduct these lands (debit) only without deducting the corresponding value from the additional capital account (credit).

Having presented the statement of claims to the Defendant, it responded with a Reply. For the item "Fixed Assets (Lands)", it responded that the value of the lands registered in the partner's name was previously rejected due to the lack of evidence showing that the lands were used in the Company's activities, or an explanation as to why the title was not transferred to the Company. Upon reviewing the documents contained in the case file, it has been found a statement clarifying the lands and their uses as stated in ZATCA's Reply -2-, and it was concluded that these lands are used in the Company's activity and accordingly ZATCA accepted the deduction of these lands. Regarding the Zakat Payer's request to reduce the value of additional capital of the Partner..... for removing the lands, this request is unacceptable as the additional capital is to be added upon the passage of one year based on Paragraph (4/First/2) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. 2082 dated 01/06/1438 AH, which stipulated: 2. The current credit account of the owner or partner at the beginning or end of the year, whichever is less, as well as the increase in the current account if its source is from equity, or if it was finance for an acquisition asset.". Accordingly, ZATCA maintained the validity and soundness of its procedure.

On Sunday, 07/08/2022 AH, the Department held its session remotely to hear the Case. For the Plaintiff appeared Mr....., National ID No.....in his capacity as the Plaintiff's legal representative under a power of attorney for a legal entity. For the Defendant appeared Mr....., National ID No....., in his capacity as the Defendant's representative under Authorization No....., dated .../.../..... At the opening of the session, the Plaintiff's representative submitted an additional memorandum and a docket of documents related to the Plaintiff instituted this case moving to deduct the value of the lands from the zakat base. Having presented those submissions to the Defendant's representative, he requested a period to reply. The Department accepted his request and accordingly it set a 14-day period for receiving the litigants' submissions and then decided to adjourn the case to Sunday, 28/08/2022, 12:00 PM.

On Sunday, 28/08/2022 AH, the Department held its session remotely to hear the Case. For the Plaintiff appeared Mr....., National ID No.....in his capacity as the Plaintiff's legal representative under a power of attorney for a legal entity. For the Defendant appeared Mr....., National ID No....., in his capacity as the Defendant's representative under Authorization No....., dated.../.../..... Having asked the Plaintiff's representative about the case, he gave answers corresponding to his statement of claims submitted to the General Secretariat of Tax Committees. When Defendant's representative was confronted with the above details, it responded that it stands by the reply previously submitted to the General Secretariat of Tax Committees and does not accept any new documents that were not presented during the objection and review stages. Having asked both litigants if they had any other statements, they responded that they are satisfied with

their earlier submissions presented to the Department. Consequently, the Department decided to close the pleadings and deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff aims with its claim to cancel ZATCA decision regarding zakat assessment for 2015 and given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the legally prescribed period. Therefore, the Department accepts the Case in form.

On merits, upon Department's review of the documents and evidence contained in the case file, as well as the requests, defenses, and arguments presented by the parties, it became evident that the dispute centers on Defendant's issuance of the zakat assessment for 2015, specifically concerning the objection related to the following items:

Item First Fixed Assets (Land):

Article (70) of the Law of Civil Procedures, issued by Royal Decree No. (M/1) dated 22/01/1435 AH, states that: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgement, settlement, or the like in the case record, and the court shall issue a deed to that effect" and based on paragraph (1) of Article (70) of the Implementing Regulations of the Law of Civil Procedures issued by Minister of Justice Decision No. (39933) dated 19/05/1435 AH stipulating that: "If an agreement is reached prior to entering the case, the text of the case and the answer shall be entered prior to entering such agreement, provided that the original case falls within the jurisdiction of the circuit, even if the text of the agreement falls within the jurisdiction of another court or circuit and the object of the case or portion thereof is agreed upon". Based on the above, the Department determined that the dispute regarding the First Item has ended with the Defendant accepting the Plaintiff's requests as stated in the letter it sent in the response memorandum dated -2-, which includes: ".....Accordingly, it is concluded that these lands are used in the Company's activity, and therefore, ZATCA accepts the deduction of these lands." As a result, the Department concludes that dispute over this item has been resolved.

Item Second: Deduction of Land Equivalent from Capital:

The Plaintiff objects to the Defendant's decision claiming that the partner provided these lands to the Company to help it obtain banking facilities and loans (as a guarantee for those facilities), which were used to spend on the Company's projects and operations, while the Defendant believes that the Zakat Payer's request to reduce the value of the additional capital of Partner.... for excluding the lands is ill-grounded, as the additional capital is added for the passage of one year over it. Paragraph (4/Second/1) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates that: "The following items shall be deducted from the Zakat Base: 1- Fixed assets including the following: Net value of fixed assets (acquisition assets) and any payments for purchase of fixed assets, and value of spare parts not intended for sale, provided that such assets are owned by Zakat Payer, unless there is an impediment to transfer of ownership, and are used in the activity". Additionally, Article (20.3) of the same Regulations states that: "The burden of proof regarding the accuracy of the items listed in

the Zakat payer's declaration, as well as any other data, lies with the Taxpayer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". and based on Paragraph (4/First/1) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, which provides that: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: -1. The capital that has completed one year as well as any increase therein, even if such increase does not complete a year, as long as it is attributed to an equity element or aimed at financing an acquisition asset deductible from zakat base". AS such, and since the procedure requested by the Plaintiff contradicts Paragraph (4/First/1) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH mentioned above, and since the capital is considered one of the components of the zakat base and the portion thereof that has a year passed on it must be added, this Department concludes to dismiss the Plaintiff's objection regarding this item.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

1. End dispute regarding the item of Fixed Assets (Lands).
2. Dismiss the Plaintiff's objection regarding the item of Deduction of Land Equivalent from Capital:

This decision was issued in the presence of both parties, and the date of depositing the decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of the decision. The parties to the case may request to appeal against the decision as per the law within thirty (30) days from the day following the date specified for its receipt, whereafter, the decision will be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1962)
Issued in Appeal No. (Z-112708-2022)

Key words:
Zakat Assessment - Accounts - Insurance Policies Deferred Underwriting Costs - Adjusted Carried Forward Losses for Saudi Partner - Acceptance in Form.

Abstract

The Plaintiff instituted this case moving to cancel the decision of ZATCA regarding the zakat assessment for the years 2019 and 2020. The Plaintiff based its objection regarding the Item (Insurance Policies Deferred Underwriting Costs for the years 2019 and 2020) on claims that these costs should have been deducted from the zakat base. Regarding the Item (Adjusted Carried Forward Losses for Saudi Partner for the Year 2020), the Plaintiff claimed that the Saudi partner's share of the adjusted carried forward losses was not deducted from the zakat base at the full value of the claimed losses. With regard to the First Item, ZATCA responded that the item of Insurance Policies Deferred Underwriting Costs for the years 2019 and 2020 was not deducted from the zakat base because the nature of the item is similar to prepaid expenses. Regarding the Item (Saudi Partner's Adjusted Carried Forward Losses), ZATCA recalculated the Carried Forward Losses from 2015 to the years in dispute concluding that no losses are to be deducted from the zakat base for 2019. In 2020, the adjusted losses for 2019 were deducted after being adjusted with the provisions created in 2019. For the Item (Insurance Policies Deferred Underwriting Costs), the Department found that these deferred expenses, according to accounting standards, are, in nature for insurance companies, general costs incurred by the Company to complete the sales of insurance policies, i.e., they generate future revenues, and accordingly they are considered acquisition assets. This view is supported by ZATCA's acceptance of deducting this item from the zakat base in previous years according to the decision of the primary committee submitted by the Zakat Payer. As for the item (Saudi Partner's Adjusted Carried Forward Losses), it was found that ZATCA deducted the Adjusted Carried Forward Losses as per its assessment, after adjusting them with the provisions that were added in the year they were created, which was less than the value of the Carried Forward Losses included in the financial statements. - Appeals Chamber ruled to: Accept the case in form, accept the case on merits for the item (Insurance Policies Deferred Underwriting Costs for the Years 2019 and 2020), and dismiss the case on merits for the item (Saudi Partner's Adjusted Carried Forward Losses for the Year 2020), and consider the decision final and enforceable.

Instruments:

- Article (5/8) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2216) dated 07/07/1440 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Tuesday, 06/09/2022 AD, First Department for Determination of Income Tax Violations and Disputes in Riyadh, constituted pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH has convened.

The facts of this case are summed up in that Mr....., ID No....., in his capacity as the attorney for the Plaintiff ..... Company, C.R. No....., under PoA No..... dated. /../.... filed its objection to the tax assessment for the year 2010, issued by ZATCA. The Plaintiff's objection was related to the following item: Item First Insurance Policies Deferred Underwriting Costs for the Years 2019 and 2020: The Plaintiff objects to the Defendant's decision to not deduct the Insurance Policies Deferred Underwriting Costs for the Years 2019 and 2020 from the zakat base. The Plaintiff believes that ZATCA did not deduct the costs of underwriting insurance policies, typically covering more than one year, i.e. They are long-term assets, and these deferred costs are amortized in the items of insurance operations and accumulated surplus over the relevant insurance period. Thus, these costs are long-term assets because the insurance industry requires such costs to generate profit, and therefore they are considered long-term assets or acquisition assets that should be treated as fixed assets for industrial and commercial companies and are deducted from the zakat base. This is the practice approved and followed by ZATCA for insurance companies. The Plaintiff also argued that the Primary Objection Committee has approved the validity of the Company's procedure for dealing with these costs, as stated in its Decision No. (36/1/78) issued on 12/10/1436 AH (the decisions of the Primary Committee for the years 2008 to 2011 are attached as Attachment No. 3, Pages 12 and 13). This approval was based on ZATCA's approval of the Company's procedure for dealing with these costs, considering them long-term assets that are amortized in the insurance operations over the relevant insurance period. Item Second: Saudi Partner's Adjusted Carried Forward Losses for the years 2019 and 2020: The Plaintiff objects to the Defendant's decision on grounds that the Defendant did not deduct the Saudi partner's share of the adjusted carried forward losses from the zakat base at the full value of the claimed losses within the amended declaration for the year 2019, which is held in violation of the Article (5) of the Implementing Regulations for Zakat Collection, which specified the items that may be deducted from the zakat base, including Item No. (8): "Net carried-forward loss adjusted for the purpose of zakat collection in accordance with the provisions of the Regulations after adding the provisions that were previously used to reduce the loss in the year they were created or the carried-forward losses according to the commercial books, whichever is less". This is also evident in the Statement No. (19-B) of the Standard Form for Zakat and Tax issued by ZATCA in 2015, which included taking the Saudi partners' share from the opening balance of the Adjusted Carried Forward (accumulated) Losses according to the financial statements and then adding its share of the provisions formed during the previous year, adding / deducting the previous year's consumption differences. Accordingly, the Company requests that the Saudi partner's share of the losses carried forward according to the financial statements be deducted from the zakat base.

Having presented these claims to the Defendant, it responded with a Reply, whereby it replied to the First Item as follows: The Defendant stated that it did not accept the deduction of this item from the zakat base because the nature of this item is similar to prepaid expenses, and the Zakat Regulations did not provide for deducting such items from the zakat base. ZATCA explains that the nature of this item in insurance companies in general is various costs incurred by the Company in order to sell insurance policies, and the recognition of these costs is deferred according to the Matching Principle (matching

revenues with expenses), and then they are amortized as per the insurance premiums collected in relation to those costs. ZATCA also confirmed that ZATCA has approved the amortization expenses as stated in the Zakat Payer's declaration, which amounted to SAR 17,622,031 and SAR 20,812,671 for the years 2019 and 2020, respectively. In light of the above, and since the amount claimed to be deducted by the Zakat Payer is deferred costs, and since the accounting treatment according to the accrual basis and matching basis requires that the expenses that are paid in advance and did not generate revenues be recognized as an asset that is periodically amortized and the amortization expenses are deducted from the income for the relevant year. This means that this expense was taken into account when calculating the zakat base, as the net income is one of the components of the zakat base. Thus, the deferred costs must not be deducted in full from the zakat base, but rather the expense realized periodically is deducted. The item is not considered among the elements or items that are deducted from the base according to Article (5) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2216) of 07/07/1440 AH, and no such item or item with the same nature was among the deductible items. Accordingly, the Zakat Payer's objection was dismissed. As for the Zakat Payer's claims contained in his statement of claims, it is not legally accepted for the grounds provided by ZATCA. Moreover, the Plaintiff's arguments are based on weak grounds, especially that this item is not among the elements or items that are deducted from the base as per the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2216). On the other hand, the primary decision that the Plaintiff build its argument is irrelevant and related to different circumstances. Additionally, the Plaintiff relied on the old Regulations for Zakat Collection issued by Ministerial Resolution No. (2082). This is not the same case nor the same circumstances. Accordingly, ZATCA maintains the validity and soundness of its procedure. Regarding the objection to the Item of the (Saudi Partner's Adjusted Carried Forward Losses for the years 2019 and 2020): The Defendant stated that it had recalculated the carried forward losses from 2015 to the years in dispute, and the calculation resulted in no losses to be deducted from the zakat base for the year 2019. In 2020, the adjusted losses for the year 2019 were deducted after being adjusted with the provisions created in 2019 based on Article 5.8 of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. 2216 dated 07/07/1440 AH. Then upon studying the objection and during the hearing session held with the Zakat Payer on 08/02/2022, the Zakat Payer explained that ZATCA accepted the deduction of carried forward losses according to the assessments issued by it for the previous years. Upon reviewing ZATCA's 2018 assessment, it was found that ZATCA had approved the deduction of adjusted carried forward losses from the zakat base in the amount of SAR 14,168,691, of which the Saudi partner's share is 68.60%, which is SAR 9,719,722. When taking this into account, the calculation is as shown in the attached statement. Based on the foregoing, and since Article 5.8 of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2216) dated 07/07/1440 states: "The following items shall be deducted from the zakat base of the Zakat Payer who holds commercial books: Net carried-forward loss adjusted for the purpose of zakat collection in accordance with the provisions of the Regulations after adding the provisions that were previously used to reduce the loss in the year they were created or the carried-forward losses according to the commercial books, whichever is less". Accordingly, part of the item was accepted by deducting the Saudi partner's share amounting to SAR 5,434,452 from the zakat base for the year 2019 AD and SAR 31,419,610 from the zakat base for the year 2020 AD.

On Tuesday, 06/09/2022 AD, the Department held its session remotely to hear the case. For the Defendant appeared Mr....., holder of National ID No. (...), in his capacity as the Attorney by POA No. ..... For the Defendant appeared Mr....., holder of

National ID No. .....in his capacity as the Defendant's Representative, by virtue of Authorization No. ..... dated …/…/…, issued by Deputy Governor for Legal Affairs. When the Plaintiff's representative was asked about the Plaintiff's claim, he stated that he objects to the zakat assessment issued by the Defendant, and its objection is represented in two items: The Item "Insurance Policies Deferred Underwriting Costs for the Years 2019 and 2020", and the Item "Saudi Partner's Adjusted Carried Forward Losses for the year 2020", referring to the statement of claims for the details of objection. When Defendant's representative was confronted with the above details, it responded that it stands by the reply previously submitted to the General Secretariat of Tax Committees and does not accept any new documents that were not presented during the objection and review stages. Having asked both litigants if they had any other statements, they responded that they are satisfied with their earlier submissions presented to the Department. Consequently, the Department decided to close the pleadings and deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In form, since the Plaintiff aims with its case to annul decision of ZATCA regarding the zakat assessment for the years 2019 and 2020 and given that this dispute falls within the category of tax disputes, it lies within jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) dated 21/04/1441 AH. Furthermore, the case was filed by an authorized party and within the legally prescribed period, which necessitates acceptance of the case in form by the Department.

On merits, the Department, having reviewed the documents and evidence contained in the case file, as well as the requests, defenses, and arguments presented by the parties, found that the dispute centers on Defendant's issuance of the zakat assessment for the years 2019-2020, specifically concerning the following items:

Item First Insurance Policies Deferred Underwriting Costs for the Years 2019 and 2020: The Plaintiff objects to the Defendant's decision to not deduct the Insurance Policies Deferred Underwriting Costs for the Years 2019 and 2020 from the zakat base, while the Defendant believes that the item should not be deducted from the zakat base, given that the nature of the item is similar to prepaid expenses. Article (5) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2216) dated 07/07/1440 AH states: "The following items shall be deducted from the zakat base of the Zakat Payer who holds commercial books: 6. Net establishment and pre-operation expenses and similar capital expenses". the decision of the First Primary Objection Committee in Riyadh No. 34 of 1436 AH delivered in respect of the same Zakat Payer provides for:

"5. Deducting the insurance policies deferred underwriting costs for the years 2009, 2010 and 2011 AD..... B. ZATCA's opinion: Having reviewed the Zakat Payer's objection and the balances of the item in the financial statements and their notes and understanding the mechanism for their creation and amortizations, ZATCA agrees to reduce the zakat base with its balances at the end of each year. Committee Opinion: The dispute is settled with ZATCA's approval to reduce the zakat base with the balances of deferred insurance policy underwriting costs at the end of the year. Based on the above, and by referring to the case file and the defenses and documents it contained, and since these deferred expenses,

according to accounting standards, are, in nature for insurance companies, general costs incurred by them to sell insurance policies, and they contribute to generating future revenues, and accordingly, they are considered as acquisition assets. This view is supported by ZATCA's acceptance of deducting this item from the zakat base in previous years according to the decision of the primary committee submitted by the Zakat Payer. Therefore, the Department concludes to cancel the Defendant's decision regarding this item.

Item Second: The Saudi partner's Adjusted Carried Forward Losses for the Year 2020:

The Plaintiff objects to the Defendant's decision to not deduct the full value of the Saudi partner's share of the adjusted carried forward losses from the zakat base, while the Defendant stated that it recalculated the carried forward losses from 2015 until the years in question, and this calculation resulted in no losses to be deducted from the zakat base for the year 2019 AD. In 2020 AD, the adjusted losses for the year 2019 AD were deducted after being adjusted with the provisions created in 2019 AD based on Article 5.8 of the Implementing Regulations for Zakat Collection. Since Article 5.8 of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) of 07/07/1440 stipulates: "The following items shall be deducted from the zakat base of the Zakat Payer who holds commercial books: "Net carried-forward loss adjusted for the purpose of zakat collection in accordance with the provisions of the Regulations after adding the provisions that were previously used to reduce the loss in the year they were created or the carried-forward losses according to the commercial books, whichever is less" Based on the above, and by referring to the case file and the defenses and documents it contained, and since the carried forward losses are among the elements that may be deducted from the zakat base, and they represented the net loss adjusted for the purpose of zakat collection in accordance with the provisions of the Regulation after adding the provisions that were previously used to reduce the loss in the year they were created or the carried-forward losses according to the Zakat Payer's commercial books, whichever is less, and accordingly, the carried-forward losses for zakat purposes are those that have been adjusted according to the Zakat Law requirements or the carried-forward losses listed in the financial statements, whichever is lower. Referring to the Zakat calculation provided by the Defendant, it is evident it deducted the carried-forward losses adjusted according to ZATCA's Assessment, after adjusting them with provisions that were added in the year they were created, and the value of these provisions was lower than the value of the carried-forward losses listed in the financial statements. This proves that ZATCA's decision is valid and therefore, this Department concludes to dismiss the Plaintiff's objection regarding this item.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

1. Cancel the Defendant's decision regarding the item of Insurance Policies Deferred Underwriting Costs for the Years 2019 and 2020.
2. Dismiss the Plaintiff's objection regarding the item of the Saudi Partner's Adjusted Carried Forward Losses for the Year 2020.

This decision was issued in the presence of both parties, and the date of depositing the decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of the decision. The parties to the case may request to appeal against the decision as per the law within thirty (30) days from the day following the date specified for its receipt, whereafter, the decision will be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1688)
Issued in Appeal No. (Z-55097-2021)

Key words:
Zakat Assessment – Accounts – Zakat Base – Goodwill Deduction – Intangible Assets – International Accounting Standard – Cost of Purchasing Facility – Dismissal of Plaintiff's Objection.

Abstract

The Plaintiff filed this case requesting that ZATCA's decision regarding the zakat assessment for the year 2015 be canceled. For its objection regarding the goodwill item, the Plaintiff objects to the Defendant's decision to not accept the deduction of goodwill from the zakat base, claiming that the goodwill item amounting to SAR 8,258,000 of ..... Company included in the financial statements is a goodwill asset evaluated on 07/09/2008, when the company was transformed from a sole proprietorship to a limited liability company and a new partner entered, and the goodwill balance was recorded against the increase in the current account of the partner ..... according to the budget audited by the external auditor. The goodwill balance is funded from the partner's current account and is included among the positive items in the zakat base within the partners' current account, when switching from the Saudi accounting standards to the international standard for small and medium-sized enterprises (SMEs); therefore, the goodwill balance must be deducted from the audit differences for the year 2015. - ZATCA responded that upon assessment on 13/04/2021, it requested (a statement from the company's accounting system for the goodwill and the grounds on which it is accounted for while attaching the supporting documents), and on 27/05/2021, during the objection stage, ZATCA requested the Plaintiff to provide it with documents supporting its claims. The Plaintiff submitted the same documents previously submitted to ZATCA. Upon reviewing the submissions of the Plaintiff, it was found that the goodwill was re-evaluated by the management due to the company being transformed from a sole proprietorship to a limited liability company in 2015. The chartered accountant who prepared the statements (..... Chartered Accountants) had reservations about the goodwill in their report on grounds that the company had recognized goodwill in the amount of SAR 8,258,000, despite the absence of an event that would allow that goodwill to be recognized in the Company's records, which violates the accounting standards issued by the Saudi Organization for Certified Public Accountants (SOCPA). Additionally, the goodwill was not present in 2018 financial statements when applying International Accounting Standards. Accordingly, the item was not accepted for deduction as the deduction conditions were not met as stated in Article (4/Second/3) of the Implementing Regulations for Zakat Collection. Accordingly, ZATCA maintained the validity of its procedure. - The Department found that the goodwill was re-evaluated by the management as a result of the institution's transformation into a limited liability company on 15/06/2008 and the entry of a new partner (.....). The

auditor's report was also issued with reservations on the financial statements for 2008/1429 AH due to the inability to measure and verify the goodwill in accordance with the requirements of generally accepted accounting standards. Goodwill is proven as the difference between the purchasing cost of the facility or part of it and the fair value that is calculated when combining businesses for purchasing another facility as a result of a merger or acquisition. Goodwill generated internally as a result of the company's valuation of its assets, or the entry of a new partner is not accounted for. The IAS No. (38) "Intangible Assets" prohibits the recognition of goodwill generated internally, as it is not a resource that can be reliably identified, as it is not identifiable and cannot be separated, and does not arise from a contractual obligation or legal right that can be measured reliably. Department ruled to 3. Dismiss Plaintiff's objection regarding goodwill item of 2015.

Instruments:

- Article (4/Second/3) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 it was found that.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Monday 01/08/2022 AD, the First Department for Determination of Income Tax Violations and Disputes in Dammam stipulated in Article (67) of the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, constituted by Royal Order No. (65474) of 23/12/1439 AH, and reconstituted by Royal Order No. (26760) dated 14/05/1442 AH, held its session remotely via video conference to hear the above case. Since the case was found to have met its prescribed legal conditions, it was deposited with the General Secretariat of Tax Committees under the above number and the date of 17/06/2021 AD.

The facts of this case are summed up in that Mr..... ID No..... in his capacity as the legal representative of Plaintiff ..... Company, C.R. No. (...), (C.R. No. …), filed an objection to the tax assessment for the year 2015, issued by ZATCA, in which he objected to the Goodwill Item. The Plaintiff objects to the Defendant's decision to not accept the deduction of goodwill from the zakat base, arguing that this item amounting to SAR 8,258,000 of ..... Company included in the financial statements is a goodwill asset evaluated on 07/09/2008, when the Company was transformed from a sole proprietorship to a limited liability company and a new partner entered, and the goodwill balance was recorded against the increase in the current account of the partner ..... according to the budget audited by the external auditor. The goodwill balance is funded from the partner's current account and is included among the positive items in the zakat base within the partners' current account, when switching from the Saudi accounting standards to the international standard for SMEs; therefore, the goodwill balance must be deducted from the audit differences for the year 2015.

Having presented the statement of claims to the Defendant, it responded with a Reply in which it stated that: Upon assessment on 13/04/2021, it requested (a statement from the Company's accounting system for the goodwill and the grounds on which it is accounted for while attaching the supporting documents), and on 27/05/2021, during the objection stage, ZATCA requested the Plaintiff to provide it with documents supporting its claims. The Plaintiff submitted the same documents previously submitted to ZATCA. Upon reviewing the submissions of the Plaintiff, namely the chartered accountant opinion (other than the one who prepared the financial statements), it was found that the goodwill was re-evaluated by the management due to the Company being transformed from a sole

proprietorship to a limited liability Company in 2015. The chartered accountant who prepared the statements (..... Chartered Accountants) had reservations about the goodwill in their report on grounds that the Company had recognized goodwill in the amount of SAR 8,258,000, despite the absence of an event that would allow that goodwill to be recognized in the Company's records, which violates the accounting standards issued by the Saudi Organization for Certified Public Accountants (SOCPA). Additionally, the goodwill was not present in 2018 financial statements when applying International Accounting Standards. Accordingly, the item was not accepted for deduction as the deduction conditions were not met as stated in Article (4/Second/3) of the Implementing Regulations for Zakat Collection. Accordingly, ZATCA maintained the validity of its procedure.

On Monday, 01/08/1443 AH, the Department held its session remotely to hear the case. No one appeared for the Plaintiff despite being duly notified of the session. For the Defendant appeared Ms....., holder of National ID No. ....., in her capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. ..... dated …/…/…, issued by Deputy Governor for Legal Affairs. dated ... When asking Defendant representative about Plaintiff Case, it adhered to Defendant responses previously submitted to General Secretariat of Zakat, Tax and Customs. Having asked the Defendant representative if it had any other statements, it replied "no". Therefore, the Department decided to close the pleadings and deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In form, since the Plaintiff instituted this case moving to cancel the decision of ZATCA regarding the tax assessment for the year 2015 and given that this dispute falls within the category of tax disputes, it lies within jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) dated 21/04/1441 AH. Furthermore, the case was filed by a person with standing and within the legally prescribed period; therefore, it is acceptable in form.

On merits: The Department, having reviewed the documents contained in the case file, as well as the requests, defenses, and arguments presented by the parties, it was plain that the Plaintiff objects to the zakat assessment for 2015 issued by ZATCA. The objection pertained to the Goodwill item. The Plaintiff objects to the Defendant's decision to not accept the deduction of goodwill from the zakat base, while the Defendant believes that the deduction of the item is not acceptable as the conditions for deduction were not met as stated in Article (4/Second/3) of the Implementing Regulations for Zakat Collection. Paragraph (113) of the Accounting Standard No. (17) "Intangible Assets" approved by SOCPA stipulates that "Intangible assets that are not identifiable independently (goodwill) resulting from the purchase of an entire facility must be measured and recognized as the difference between the cost of purchasing the facility or part thereof, and the fair value of the net assets acquired". Moreover, Paragraphs (48, 49) of IAS No. (38) - Intangible Assets stipulate that: 48. Internally generated goodwill shall not be recognised as an asset. 49- In some cases, expenditure is incurred to generate future economic benefits, but it does not result in the creation of an intangible asset that meets the recognition criteria in this Standard Such expenditure is often described as contributing to internally generated

goodwill. Internally generated goodwill is not recognised as an asset because it is not an identifiable resource (i.e., it is not separable, nor does it arise from contractual or other legal rights) controlled by the entity that can be measured reliably at cost. The same standard defined "goodwill" in paragraph (130) as: "A group of factors that affect the value of the entity or its ability to generate revenues that cannot be separated independently from the entity or from each other or from the entity's other assets." Based on the above, and by reviewing the Transformation Agreement of the company to a limited liability company, it was found that that goodwill was re-evaluated by management as a result of transforming the company into a limited liability Company on 15/06/2008 and the entry of a new partner named ..... The auditor's report was issued with reservations on the financial statements for the year 2008/1429 due to the inability to measure and verify goodwill according to the requirements of generally accepted accounting standards. given that the goodwill is recognized as the difference between the cost of purchasing the entity or part thereof and the fair value that arises from combining businesses when purchasing another entity as a result of a merger or acquisition and internally generated goodwill is not recognized as a result of the Company's valuation of its assets or the entry of a new partner. IAS 38 "Intangible Assets" prohibits the recognition of internally generated goodwill as it is not a resource that can be reliably identified because it is undefinable and cannot be separated and does not arise from a contractual obligation or legal right that can be reliably measured. Therefore, this Department concludes to dismiss the Plaintiff's objection regarding this item.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

– 3. Dismiss Plaintiff's objection regarding goodwill item of 2015.

This decision was delivered in presence of the parties. The date of entering decision in the e-system of the General Secretariat is considered the date of decision delivery. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1707)
Issued in Appeal No. (Z-51690-2021)

Key words:
Zakat Assessment - Accounts - Undeclared Revenues - Advance Payments - Maintenance Costs - Development Housing - Non-profit Organizations- Field Inspection - Charity Spending - Zakat base.

Abstract

The Plaintiff instituted this case to cancel the decision of ZATCA regarding the zakat assessment for the year 2015. The Plaintiff's objection is related to the following items: Item First Undeclared Revenues: The Plaintiff stated that ZATCA's argument that the assessment was made based on the results of the field inspection and according to the documents submitted during the inspection, which revealed that there were advance payments that had not been reflected in the closing balance, indicating that they have become sales that must have been closed during the year within the year's revenues. ZATCA also claimed that the statement it received included two accounts for advance payments, future maintenance and management costs. Item Second: Share of ..... Development Housing Foundation: The Plaintiff argued that as for ZATCA's decision to not deduct the share of ... Development Housing Foundation from the zakat base, it would like to clarify the following: The Secretary-General of .... Development Housing Foundation had sent Letter No. ... dated ... to ZATCA to confirm the exemption of the Foundation's profits resulting from its share in ... Company from zakat, and ZATCA replied with letter No. (1433/16/451) dated 11/01/1433 AH (Exhibit No.3), confirming that there is no zakat on the funds of charities or similar funds that no one owns and are intended for spending on public charitable causes; As it is considered endowments. ZATCA responded that with regard to the item of Undeclared Revenues: The assessment was made based on the results of the field inspection (a copy is attached), according to the documents submitted to the field inspection team, which shows the following (as mentioned in the Reply), and it was found that that there are advance payments in the amount of SAR 22,390,403, which was not reflected in the closing balance. This confirms that they have become sales that must be closed during the year within the year's revenues, which the Company did not do. Accordingly, the amount was added to the Company's net profits, and what was stated in the Company's objection contradicts the field inspection of the Company's accounts and books, and therefore, ZATCA adheres to the validity and soundness of its procedure. With regard to the item of Development Properties: ZATCA stated that the dispute was resolved by the Zakat Payer accepting ZATCA's argument. With regard to the item of the share of the ... Foundation Development Housing Foundation: ZATCA stated that it did not accept the deduction of the share of the ... Foundation due to not meting the endowment conditions. The exemption of the Foundation from zakat does not mean exempting it from other regulatory obligations,

foremost of which registration with ZATCA, submitting zakat declarations for information purposes on the regular date, and reporting contracts concluded with the private sector. For the First Item Undeclared Revenues: The Department found that the Defendant stated in the field inspection result that the payments made by customers during the year amounted to SAR 56,004,064, and the Department found that it was a calculation error committed by the Defendant, as it mistakenly took the opening balance for the payments made by customers, and considered that the payments made by customers amounting to SAR 56,004,064, while the Plaintiff explained that the opening balance amounted to SAR 31,531,853 and the payments made by customers during the year amounted to SAR 27,592,256, with a total of SAR 59,124,109; Accordingly, the payments made at the beginning of the year are not what ZATCA mentioned in its Reply, and the Plaintiff explained the reasons for this difference and indicated that they are not undeclared revenues, while the Defendant did not prove that they were actually paid. As for Second Clause: Share of ..... Development Housing Foundation: It was found that that the aforementioned controls must be applied to accept the deduction of the share of non-profit organizations. As for the Defendant's argument about registration and submission of financial statements and declarations, this is a regulatory procedure, and is not one of the conditions for accepting the deduction of the share of non-profit organizations. Accordingly, the Department concludes to cancel the Defendant's decision regarding this item. Department ruled to Dismiss the Defendant's decision regarding the items in dispute.

Instruments:

- Articles (9/Second/1, 2) and (20/3) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Thursday, 07/28/2022, the First Department for Determination of Income Tax Violations and Disputes in Dammam, stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and its amendments, and constituted by Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted by Royal Order No. (26760) dated 14/05/1442 AH, held its session remotely via video conference, to hear the case; and since the case met the prescribed legal conditions, it was deposited with the General Secretariat of Tax Committees under the above number and the date of 24/05/2021 AD.

The facts of this case are summed up in that Mr..... ID No..... (C.R. No. …) under the power of attorney No. (…) dated../../…, submitted its objection to the tax assessment for the year 2015, issued by ZATCA, represented in the following items: Item First Undeclared Revenues: The Plaintiff objects to the Defendant's action; The Plaintiff states that what ZATCA stated in its argument that the assessment was made based on the results of the field inspection, and according to the documents submitted during the inspection, which shows that there are advance payments for which no balance appeared at the end of the year, which confirms that they have become sales that must be closed during the year within the basket revenues, and that the statement that was previously provided to ZATCA includes an account for advance payments and an account for future maintenance and management costs, and when preparing the audited financial statements it separated the balance of each account. When ZATCA examined the aforementioned statement, it calculated the total credit movement amounting to SAR 56,004,046 without taking into account the total debit movement amounting to SAR 87,535,899, as stated in

its case. The difference shown in the table amounting to SAR 22,300,385 does not represent undeclared revenues, but rather represents the net debit and credit movement from the aforementioned statement as part of the calculation. Item Second: Share of ..... Development Housing Foundation: The Plaintiff objects to the Defendant's decision arguing that what ZATCA stated in its argument is that it refused to deduct the share of the ... Developmental Housing Foundation from the zakat base according to the declaration based on Article 9 of the Implementing Regulations is invalid conclusion, stating that it would like to draw attention to the following: The Secretary-General of .... Developmental Housing Foundation sent a letter No. ..... dated .../01/1433 AH to ZATCA to confirm the exemption of the Foundation's profits resulting from its contribution to the ..... Company from zakat. ZATCA issued a letter No. ..... dated .../01/1433 AH (Exhibit No.3) confirming that there is no zakat on the funds of charities or similar funds that no one owns and are intended for spending on public charitable causes, as they are considered endowments, whether these charities generated revenues on their own or by establishing a commercial corporates, as long as these profits are spent with their assets on public charitable causes, based on Fatwa No. (4460) dated 16/03/1402 AH of the Permanent Committee for Scholarly Research and Ifta, and ZATCA's Circular No. (9/4827) dated 20/10/1425 AH. According to ZATCA's letter to the Company, the .....Economic City Company has excluded the share of the ... Development Housing Foundation from the zakat base before calculating zakat.

Having presented the statement of claims to the Defendant, it responded with a Reply, whereby it replied as follows: As for the Undeclared Revenues Item, the assessment was made based on the results of the field inspection (copy attached), according to the documents submitted to the field inspection team, which shows the following (as mentioned in the Reply). There are advance payments in the amount of SAR 22,390,403 that had not been reflected in the closing balance. This confirms that these payments become sales that must be closed during the year within the year's revenues. however, the Company didn't do so. Accordingly, the amount was added to the Company's net profits. Moreover, the Company's objection contradicts the field inspection of the Company's accounts and books, and therefore, ZATCA maintained the validity and soundness of its procedure. With regard to the item of Development Properties: ZATCA replied that the dispute was settled with the Zakat Payer accepting ZATCA's decision. With regard to the item of the share of the ... Foundation Development Housing Foundation: ZATCA stated that it did not accept the deduction the entire share of ..... due to not meeting the conditions of endowed asset. The fact that an institution is not obligated to pay zakat does not mean that it is exempted from other regulatory obligations, the most important of which is registration with ZATCA and submission of zakat declarations on the due date, and reporting contracts concluded with the private sector in accordance with Ministerial Circular No. (185/4293) dated 06/07/1425 AH, and based on Article (9) of the Implementing Regulations for Zakat Collection, which states: The charity societies and non-profit organizations shall comply with the following: 1. Registering in GAZT before the end of their first fiscal year, filling a declaration of information based on the regulatory accounts within 120 (one hundred and twenty days) from the ending date of its fiscal year per annum according to the form prepared by GAZT. B. Providing GAZT with the information needed in accordance with the applicable laws, such as the obligation to GAZT with the information about the contracts concluded with any third parties and any other information. D. Withholding the due tax for non-residents who generate income from any source in the Kingdom in accordance with the provisions of Article (68) of Income Tax Law". Accordingly, ZATCA maintained the validity and soundness of its procedure.

On Thursday 28/07/2022 AD, the Department held its session remotely to hear the case. For the Plaintiff appeared Mr....., National ID No....., in his capacity as the attorney under power of attorney No...., while for the Defendant appeared Mr..... Mr. ....., holder of National ID No. ..... in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. ..... dated …/…/…, issued by Deputy Governor for Legal Affairs. Having asked the Plaintiff's attorney about its case, he stated that the Plaintiff objects to 2015 zakat assessment, specifically regarding the item of Undeclared Revenues, and the item of Share of ..... Developmental Housing Foundation, regarding which he refers to the statement of claims filed with the General Secretariat of Tax Committees. When Defendant's representative was confronted with the above details, it responded that it stands by the reply previously submitted to the General Secretariat of Tax Committees and does not accept any new documents that were not presented during the objection and review stages. Having asked both litigants if they had any other statements, they responded that they are satisfied with their earlier submissions presented to the Department. Consequently, the Department decided to close the pleadings and deliberation.

Grounds

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: Since Plaintiff aims with its claim to cancel ZATCA decision regarding zakat assessment for 2015 and given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the legally prescribed period. Therefore, the Department accepts the Case in form.

On merits, upon Department's review of the documents and evidence contained in the case file, as well as the requests, defenses, and arguments presented by the parties, it became evident that the dispute centers on Defendant's issuance of the zakat assessment for 2015, specifically concerning the objection related to the following items:

Item First Undeclared Revenues:

The Plaintiff objects to the Defendant's decision to adjust the year accounts with the advance payments item that the Defendant considered to be undeclared revenues, while the Defendant argued that the assessment was made based on the results of the field inspection, according to the documents submitted to the field inspection team. Since Article 20.3 of the Implementing Regulations for Zakat Collection issued by H.E. Minister of Finance Resolution No. (2082) dated 01/06/1438 AH states: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Taxpayer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the above, and since the Defendant stated in the field inspection result that the payments made by customers during the year amounted to SAR 56,004,064, which the Department found to be a calculation error by the Defendant, as it mistakenly took the

opening balance for the payments made by customers, and considered that the payments made by customers amounted to SAR 56,004,064, while the Plaintiff explained that the opening balance amounted to SAR 31,531,853 and the payments made by customers during the year amounted to SAR 27,592,256, bringing the total to SAR 59,124,109; Accordingly, the payments made at the beginning of the year are not those specified by ZATCA in its Reply. The Plaintiff explained the reason for this discrepancy indicating that were not undeclared revenues. The Defendant did not prove the validity of their payment. Accordingly, the Department concluded to cancel the Defendant's decision.

Item Second: Share of ..... Development Housing Foundation:

The Plaintiff objects to the Defendant's decision to not accept the deduction of the share of ..... Developmental Housing Foundation, while the Defendant believes that the Foundation's share should have not been deducted for not meeting the conditions of endowment. Since Article (9/Second/1) the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH provides that: "The income of Charity Societies and Non-profit Organizations is not subjected to Zakat, including their shares in the other facilities, provided that the following controls are available: A. The funds are not owned to a specific person and its interests thereof do not belong to a certain person or persons. B. The funds and revenues therefrom are determined for the activities of righteousness, charity and goodness or determined for the scientific and charity fields. C. The funds and revenues therefrom are determined for serving its personnel or the community, and not determined for a commercial purpose such as the chambers of commerce and professional entities. D. The charity society or non-profit organization is licensed by the concerned authorities with defined purposes and objectives in the articles of associations thereof. Moreover, Article (9/Second/2) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH that states: The charity societies and non-profit organizations shall comply with the following: A. Registering in GAZT before the end of their first fiscal year, filling a declaration of information based on the regulatory accounts within 120 (one hundred and twenty days) from the ending date of its fiscal year per annum according to the form prepared by GAZT. B. Providing GAZT with the information needed in accordance with the applicable laws, such as the obligation to GAZT with the information about the contracts concluded with any third parties and any other information. D. Withholding the due tax for non-residents who generate income from any source in the Kingdom in accordance with the provisions of Article (68) of Income Tax Law". Based on the above, and since Article (9/Second/1) of the Regulations that the said conditions must be met to accept the deduction of the share of non-profit organizations. As for provision of Article (9/Second/2 that the Defendant invoked, this is a regulatory procedure, and is not among the conditions for accepting the deduction of the share of non-profit organizations. Therefore, the Department concludes to cancel the Defendant's decision regarding this item.

For those grounds and after deliberation, the Department unanimously decided to:

Decision:

- Dismiss the Defendant's decision regarding the items in dispute.

This decision was issued in the presence of both parties, and the date of depositing the decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of the decision. The parties to the case may request to appeal against the decision as per the law within thirty (30) days from the day following the date specified for its receipt, whereafter, the decision will be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1675)
Issued in Appeal No. (Z-82664-2021)

Key words:
Zakat Assessment – Accounts – Legally-prescribed Period – Purchase Differences – Year's Dividends – Credit balances – Asset Differences – Investment Differences – Accepting the Case in Form and Canceling ZATCA's Decision.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding the zakat assessment for the years from 2009 to 2013. The Plaintiff based its objection regarding this item (Statutory Period for Zakat Assessment) on the grounds that ZATCA issued the zakat assessment for the years from 2009 to 2013, after the expiry of the period specified in the Implementing Regulations for Zakat Collection. The assessment was issued by ZATCA on 25/02/2021. The Plaintiff also objected to the items of (Purchases Differences, Year's Dividends, Credit Balances, Asset Difference, Investment Difference). ZATCA responded regarding this item (Statutory Period for Zakat Assessment) that its procedure was in accordance with the provisions of the Implementing Regulations for Zakat Collection. The Department established regarding this item (Statutory Period for Zakat assessment) that the Plaintiff issued the zakat assessment after the expiry of the statutory period, and therefore it lost the right to make the zakat assessment as per the law. the Additionally, the Defendant did not provide any sound evidence that the Plaintiff's declaration contained invalid information, which would entitle it to issue the zakat assessment without adhering to the time limit. Department ruled to Accept the Plaintiff's case and annul the Defendant's decision – the decision is considered final and enforceable.

Instruments:

- Article (21/8, 10) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Monday, 15/08/2022 AD, the First Department for Determination of Income Tax Violations and Disputes in Dammam convened pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH.

The facts of this Case are summed up that ..., National ID No. (.....) in his capacity as attorney of Plaintiff (...), C.R. No. (...), by virtue of Power of Attorney No. (...) dated ... an objection to the tax assessment for the years 2009 to 2013 issued by ZATCA. The objections raised by the Zakat Payer pertained to the following items: Item First Statutory

Period for Zakat assessment: The Plaintiff objects to the Defendant's decision related to the zakat assessment for the years 2009 to 2013, due to the expiration of the period specified in the Implementing Regulations for Zakat Collection, where the assessment was issued by the Defendant on 25/02/2021. Item Second: (Purchases Difference for the Period 2009-2013 AD): Item Third: Year's Dividends for the year 2013. Item Fourth: Credit Balances (Accounts payable - Accrued Expenses - Payables to Related Parties - Unrealized Revenues) for the years 2009 to 2013. Item Fifth: Asset Difference for the Year 2009. Item Sixth: Investment Difference for the year 2013.

Having presented the statement of claim to Defendant, it answered as follows: Prescription: The Defendant held that its procedure is valid and sound, as the disputed assessment is subject to the provisions of Article (21) of the Implementing Regulations for Zakat Collection. The Defendant found in the Zakat Payer's declaration zakat treatments that contradict the provisions of Zakat Regulations, which makes the declaration invalid, and therefore ZATCA has the right to amend it to conform to the relevant laws, regulations instructions at any time without being bound by a period. Regarding Item Second: (Purchases Difference for the Period 2009-2013 AD): Item Third: Year's Dividends for the year 2013. Item Fourth: Credit Balances (Accounts payable - Accrued Expenses - Payables to Related Parties - Unrealized Revenues) for the years 2009 to 2013. Item Fifth: Asset Difference for the Year 2009. Item Sixth: Investment Difference for the year 2013.

On Tuesday, 08/08/2022 AD, the Department held its session remotely to hear the case/. For the Plaintiff appeared Mr..... (National ID Number.) appeared in his capacity as Plaintiff's attorney under POA No. (...). In addition, ..., Mr. ....., holder of National ID No. ..... in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. ..... dated …/…/…, issued by Deputy Governor for Legal Affairs. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claims submitted to General Secretariat of Tax Committees. Having presented these claims to the Defendant's representative, he requested for some time to submit a Reply. The Department accepted his request instructing that the Reply is submitted in the case file no later than Thursday 11/08/2022, and that the Plaintiff's representative review the Defendant's Reply and submit his answer, if any. Accordingly, the Department decided to adjourn the case to the hearing of Monday 15/08/2022 AD.

On Tuesday, 15/08/2022 AD, the Department held its session remotely to hear the case/. For the Plaintiff appeared Mr..... National ID No. (.....) appeared in his capacity as Plaintiff's attorney under POA No. (...). In addition, ..., Mr. ....., holder of National ID No. ..... in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. ..... dated …/…/…, issued by Deputy Governor for Legal Affairs. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claims submitted to General Secretariat of Tax Committees. When Defendant's representative was confronted with the above details, it responded that it stands by the reply previously submitted to the General Secretariat of Tax Committees and does not accept any new documents that were not presented during the objection and review stages. Having asked both litigants if they had any other statements, they responded that they are satisfied with their earlier submissions presented to the Department. Therefore, the Department decided to close the pleadings and deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations

issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In form: **since the Plaintiff aims through its case to annul the decision of ZATCA regarding zakat assessment for the period from 2009-2013, and given that this dispute falls under the category of tax-related disputes, it falls within jurisdiction of the Committee for determination of income tax violations and disputes, in accordance with Royal Order No. (26040) dated 21/04/1441 AH. Additionally, as the case was filed by an authorized party and within the statutory timeframe, it must be accepted in form.**

On Merits: Having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Department found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of Zakat Assessment for the period from 2009-2013. The objection is related to two items:

Item First Prescription for the Period 2009-2013 AD:

The Plaintiff objects to the zakat assessment issued by the Defendant for the years 2009 to 2013 after the expiry of the legally prescribed period. The Plaintiff stated that Article (21) of the Implementing Regulations for Zakat Collection does not apply to the Company's case, as all the information included in the zakat declaration is valid and based on audited financial statements certified by a certified public accountant's office. The Plaintiff also argued that the assessment was issued by the Defendant on 25/02/2021, i.e., five years after the end of the deadline for submitting the declaration. The Defendant argued that its action was in accordance with the provisions of the Implementing Regulations for Zakat Collection, especially Article (21), which stipulated that: "The Authority may make or modify the assessment at any time without being bound by the time limit specified in the following cases: A. The zakat payer agrees in writing to conduct or amend the assessment, B. The zakat payer did not provide his declaration, or C. If it is found that the declaration contains invalid information. 10. GAZT may correct the error in applying the Law and instruction during five years as of the end of the term defined for the provision of zakat declaration for the zakat year upon his request, or if such errors were detected by GAZT or supervisory entity. 11. If GAZT detected any error relating to the zakat payer's zakat following the termination of the previous periods, the zakat payer shall be notified to release himself from any legal liability". In light of the foregoing, it is concluded that the Defendant has the right to make zakat assessment within five years from the final date specified for submitting the declaration, in accordance with the provisions of the Implementing Regulations for Zakat Collection referred to above. Then, the Department, having reviewed the case file, established that the Defendant issued the zakat assessment after the expiry of the legally-prescribed period on 22/06/2021, while the prescribed period for 2009 ends on 30/04/2015, for 2010 ends on 30/04/2016, for 2011 on 30/04/2017, for 2012 on 30/04/2018 AD, and for 2013 AD on 30/04/2019 AD. Accordingly, the Defendant's right to make the zakat assessment is forfeited according to the legal texts. As for the Defendant's argument that there were invalid zakat treatments in the Plaintiff's declaration that do not conform to the Zakat Regulations, and accordingly the declaration is deemed invalid, without providing any valid material evidence of the existence of invalid information in the Plaintiff's declaration that gives it the right to issue the zakat assessment without being bound by a period. Moreover, he adjustments it made resulted either due to an error in applying the zakat instructions or due to a difference in viewpoints in calculating zakat between the two parties, and in both cases it has the right to make the zakat assessment within 5 years from the end of the deadline specified for submitting the zakat declaration based on paragraph (10) of Article (21) of the Implementing Regulations for Zakat Collection, and therefore paragraph (8) of Article (21)

does not apply to the Plaintiff's case. The modification of some items in the zakat declaration cannot be relied upon as a proof for invalidity of information contained in the declaration, especially that the Defendant did not provide any valid evidence to verify that the Plaintiff's declaration contains incorrect information. Therefore, the Department concludes to cancel the Defendant's decision.

Item Second: Purchases Differences, Year's Dividends, Credit Balances, Credit Balances (Accounts payable - Accrued Expenses - Payables to Related Parties - Unrealized Revenues), Asset Difference and Investment Difference.

Where regarding the First Item related to the Prescription, the Department concluded to cancel the Defendant's decision,

For those grounds and after deliberation, the Department unanimously decided to:

Decision:

- Cancel the Defendant's decision on all items subject matter of the case for the years from 2009 to 2013.

This decision was issued in the presence of both parties, and the date of depositing the decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of the decision. The parties to the case may request to appeal against the decision as per the law within thirty (30) days from the day following the date specified for its receipt, whereafter, the decision will be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1685)
Issued in Appeal No. (Z-53573-2021)

Key words:
Zakat Assessment – Accounts – Zakat Base – Payables – Sister Companies – Accrued Expenses – Short-term Loans – Accepting the Case in Form.

Abstract

The Plaintiff claimed that ZATCA's decision regarding the zakat assessment for the years 2009 to 2011 be canceled. The Plaintiff's objection to the zakat assessment pertained to the following items: First Item (Accounts Payable for the Years 2009 to 2011), Second (Sister Companies for the Years 2009 and 2010), Third (Accrued Expenses for the Years 2009 and 2010), Fourth (Short-term Loans for the Years 2009 to 2011): The Plaintiff challenged the Defendant's decision to add Accounts Payable for the years 2009 and 2010 in the amount of SAR 202,791 and SAR 118,777 respectively, as well as adding the item of Sister Companies for the years 2009 and 2010 in the amount of SAR 4,625,686 and SAR 17,525 respectively, and adding the item of Accrued Expenses for the years 2009 and 2010 in the amount of SAR 279,088 and SAR 120,460 respectively, and adding the item of Short-term Loans for the years 2009 to 2011, on grounds of the irregularities found in the books including the alteration and erasure of some information. The Plaintiff objects to this procedure considering that the Company was keeping physical books, and it is normal that there would be erasure and alteration in the physical books, and accordingly it believes that ZATCA's argument is ill-based and pleads with the Department to review the supporting documents that support its argument. The Plaintiff also indicated that ZATCA relied on the Zakat Regulation issued by Ministerial Resolution (2082) dated 01/06/1438 AH, which is not right, arguing that the said Zakat Regulations, according to the Ministerial Resolution, apply to the zakat payer effective from the date of issuance of the Regulations. As such, the Regulations do not apply to the Company, but rather ZATCA's Circular No. (2/8443/1) dated 08/08/1392 AH applies, which specifies the zakat base for zakat payers who keep regular accounts. The Plaintiff also pointed out that a year has not passed on the Short-term Loans, nor were these loans used to finance fixed assets. As for the Accounts Payable, ZATCA replies that upon assessment, it added the lesser of opening and closing balances as reported in the financial statements, due to the passage of the year on these balances according to the Implementing Regulations for Zakat Collection issued by Ministerial Resolution (2082), specifically Article (4/First/5). After due examination and review, additional details were requested by Request No....., by letter No..... dated ....., requesting that a detailed statement be submitted from the general ledger. However, the Company's representative responded by letter no..... dated ... attaching the financial statements. The Zakat Payer's objection was rejected, and he was notified to pay the due amount for not submitting any detailed statements or documents. After that, the Zakat Payer submitted copies of books containing alterations and erasure as per the

sample reviewed. The Zakat Payer was told that these statements are not sufficient and was given a grace period, but the Zakat Payer did not submit anything, and accordingly the Zakat Payer's objection was rejected. The same thing happened for the rest of items. - For Item First (Accounts Payable for the Years 2009 and 2010), the Department established that trade payables are a component of the zakat base provided that a year has passed on them or they are used to finance assets deducted from the zakat base. The Department found that the Plaintiff did not submit the detailed statements for the disputed item to prove that a year has not passed on the amounts in dispute. As for Item Second (Sister Companies for the Years 2009 and 2010), the Department established that the credit balances of sister companies are a component of the zakat base, provided that a year has passed on them or that they are used to finance assets deducted from the zakat base. The Department found that the Plaintiff did not provide the detailed movement of the credit balances of the sister companies in dispute to prove that a year has not passed on the amounts in dispute. As for Item Third (Accrued Expenses for the Years 2009 and 2010): The Department held that the accrued expenses are considered a component of the zakat base, provided that a year has passed on those balances. This dispute is documentary, and the Plaintiff did not provide the detailed account statement of the disputed accrued expenses to prove that a year has not passed on the disputed amounts. As for Item Fourth (Short-term Loans for the Years 2009 to 2011): The Department held that loans are a component of the zakat base, regardless of their type, source or classification, provided that a year has passed on them, or that they are used to finance assets deducted from the zakat base without requiring the passage of a year. It was found that the Plaintiff did not provide detailed statement supporting its argument that these loans had not a year passed on them. Due to the lack of detailed statement for these loans that shows that the opening balances were paid during the year, the procedure that should be taken is to add the balance of this item as a source of financing, foe being a component of the zakat base, by taking the lesser of the opening and closing balances for the purpose of adding the balances that had a year passed on them. Department ruled to Dismiss the Plaintiff's objection regarding all the items in question.

Instruments:

- Articles (4/First/5), (20/3) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday 01/08/2022, the First Department for Determination of Income Tax Violations and Disputes in Dammam, stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, and its amendments, constituted 1by Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted by Royal Order No. (26760) dated 14/05/1442 AH, held its session remotely via video conference, to hear the case; and since the case met the prescribed legal conditions, it was deposited with the General Secretariat of Tax Committees under the above number and date of 06/07/2021 AD.

The facts of this case are summed up in that Mr..... ID No..... in his capacity as the legal representative of Plaintiff ..... Company, C.R. No. (...), objected to the zakat assessment for the years 2009 to 2011 issued by ZATCA. The Plaintiff's objection is related to the following items: Item First Accounts Payable for the Years 2009 to 2011: The Plaintiff objects to the Defendant's procedure to add accounts payable for the years 2009

and 2010 in the amount of SAR 202,791 and SAR 118,777 respectively, on grounds that the copies of books are not in good order and contain erasures and alteration. The Company objects to this procedure considering that the Company was keeping physical books, and it is normal that there would be erasures in the physical books. Accordingly, it believes that ZATCA's argument is ill-based pleading with the Department to review the supporting documents that support its argument. The Plaintiff also indicated that ZATCA relied on the Zakat Regulation issued by Ministerial Resolution (2082) dated 01/06/1438 AH, which is not right, arguing that the said Zakat Regulations, according to the Ministerial Resolution, apply to the zakat payer effective from the date of issuance of the Regulations. As such, the Regulations do not apply to the Company, but rather ZATCA's Circular No. (2/8443/1) dated 08/08/1392 AH applies, which specifies the zakat base for zakat payers who keep regular accounts. This is on the one hand, and on the other hand, these accounts payable did not have a year passed on them. Item Second: Sister Companies for the Years 2009 and 2010: The Plaintiff objects to the Defendant's decision to add the item of Sister Companies for the Years 2009 and 2010 to the zakat base, which amounted to SAR 4,625,686 and SAR 17,525 respectively, on grounds that the copies of the books are not in good order and contain erasures as per the sample reviewed. The Company objected to that conclusion arguing that it keeps physical books, and it is normal that there would be erasures in the physical books, so it believes that ZATCA's argument is ill-based pleading with the Department to review the supporting documents that support its argument and also indicating that a year has not passed on the "sister companies" item. The Plaintiff also indicated that ZATCA relied on the Zakat Regulation issued by Ministerial Resolution (2082) dated 01/06/1438 AH, which is not right, arguing that the said Zakat Regulations, according to the Ministerial Resolution, apply to the zakat payer effective from the date of issuance of the Regulations. As such, the Regulations do not apply to the Company, but rather ZATCA's Circular No. (2/8443/1) dated 08/08/1392 AH applies. Item Third: Accrued Expenses for the Years 2009 and 2010: The Plaintiff objects to the Defendant's decision to add the item of Accrued Expenses to the zakat base for the years 2009 and 2010 in the amount of SAR 279,088 and SAR 120,460 respectively, on grounds that the copies of the books are not in good order and contain erasures as per the sample. The Company objects to this action arguing that the Company was keeping physical books, and it is normal that there would be erasures in the physical books. Accordingly, it believes that ZATCA's argument is ill-based pleading with the Department to review the supporting documents that support its argument, and also indicating that a year has not passed on that item. The Plaintiff also indicated that ZATCA relied on the Zakat Regulation issued by Ministerial Resolution (2082) dated 01/06/1438 AH, which is not right, arguing that the said Zakat Regulations, according to the Ministerial Resolution, apply to the zakat payer effective from the date of issuance of the Regulations. As such, the Regulations do not apply to the Company, but rather ZATCA's Circular No. (2/8443/1) dated 08/08/1392 AH applies, which specifies the zakat base for zakat payers who keep regular accounts. Item Fourth: Short-term loans for the years 2009 to 2011: The Plaintiff objects to the Defendant's decision to add a short-term loans item to the zakat base for the years 2009 to 2011, on ground that the copies of the books are not in good order and contain erasures as per the sample. The Company objects to this action arguing that the Company was keeping physical books, and it is normal that there would be erasures in the physical books. Accordingly, it believes that ZATCA's argument is ill-based pleading with the Department to review the supporting documents taken from the physical books that support its argument, and also indicating that a year has not passed on that item. The Plaintiff also indicated that ZATCA relied on the Zakat Regulation issued by Ministerial Resolution (2082) dated 01/06/1438 AH, which is not right, arguing that the said Zakat Regulations, according to the Ministerial Resolution, apply to the zakat payer effective from the date of

issuance of the Regulations. As such, the Regulations do not apply to the Company, but rather ZATCA's Circular No. (2/8443/1) dated 08/08/1392 AH applies, which specifies the zakat base for zakat payers who keep regular accounts, and these loans did not have a year passed on them nor were they used to finance fixed assets.
Having presented the statement of claims to the Defendant, it responded with a Reply, whereby it responded to the item of Accounts Payable that upon making the assessment, it added the lesser of the opening and closing balance of accounts payable as stated in the financial statements, due to the passage of a year pursuant to Article (4/First/5) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution (2082), and after examination and review, ZATCA requested additional details under Request No. ....., made by letter No. ..... dated ..., requesting the Defendant to submit a detailed statement from the general ledger account, but the Company's representative responded by Letter No. ..... dated ... attaching the financial statements. Accordingly, the Zakat Payer's objection was rejected, and he was requested to pay the due amount for not submitting any detailed statements or documents. Then, the Zakat Payer submitted copies of books containing erasures and alteration according to the sample reviewed. The Zakat Payer was addressed that his submissions are insufficient, and he was given a grace period, but the Zakat Payer did not submit any thing. Upon reviewing the documents by the secretariat during the escalation stage, he did not submit any supporting documents within the case; Accordingly, the Zakat Payer's objection was rejected based on Article (20.3) of the Implementing Regulations for Zakat Collection No. (2082) dated 01/06/1438 AH. Regarding Sister Companies Item: ZATCA stated that upon conducting the assessment, it added the lesser of the opening and closing balances of sister companies according to the financial statements, due to the passage of a year based on Article (4/First/5) of the Implementing Regulations for Zakat Collection No. (2082) dated 01/06/1438 AH. After Due examination, additional statements were requested under Request No. ....., made by letter No. ..... dated ....., where the Plaintiff was requested to provide a detailed statement from the general ledger account, but the Company's representative responded by Letter No. ..... dated (.....) attaching the financial statements, and the Zakat Payer's objection was rejected and he was notified to pay the due amount. Regarding the Accrued Expenses Item: ZATCA stated that upon assessment, it added the lesser of the opening and closing balances of accrued expenses according to the financial statements, due to the passage of a year based on Article (4/First/5) of the Implementing Regulations for Zakat Collection. After Due examination, additional statements were requested under Request No. ....., made by letter No. ..... made by letter No. ..... dated ....., requesting that a detailed statement be submitted from the general ledger. However, the Company's representative responded by letter no..... dated (.....) attaching the financial statements, and the Zakat Payer's objection was rejected, and he was notified to pay the due amount for not submitting any detailed statements as requested. After that, the Zakat Payer submitted copies of books that contained erasures and alterations as per the sample reviewed, and the Zakat Payer was notified that the statements were insufficient and was given a grace period, but the Zakat Payer did not submit any documents. Upon reviewing the documents at the Secretariat during the escalation stage, the Plaintiff did not submit any supporting documents as appeared in the status; Accordingly, ZATCA concluded to dismiss the Zakat Payer's objection based on Article (20.3) of the Implementing Regulations issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH. Regarding Short-term Loans: ZATCA stated that upon assessment, it added the lesser of the opening and closing balances of the short-term loans balance according to the financial statements, due to the passage of a year based on Article (4/First/5) of the Implementing Regulations No. (2082). After Due examination, additional statements were requested under Request No. ....., made by letter No. ..... dated ....., where the Plaintiff was requested to

provide a detailed statement from the general ledger account, but the Company's representative responded by Letter No. ..... dated ..... attaching the financial statements, and the Zakat Payer's objection was rejected, and he was notified to pay the due amount for not submitting any detailed statements as requested. After that, the Zakat Payer submitted copies of books that contained erasures and alterations as per the sample reviewed, and the Zakat Payer was notified that the statements were insufficient and was given a grace period, but the Zakat Payer did not submit any documents. Upon reviewing the documents at the Secretariat during the escalation stage, the Plaintiff did not submit any supporting documents as appeared in the status; Accordingly, ZATCA concluded to dismiss the Zakat Payer's objection based on Article (20.3) of the Implementing Regulations issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH.

On Monday, 01/08/2022 AD, the Department held its session remotely to hear the case. At that session, ..., holder of National ID No. ....., appeared in his capacity Plaintiff's attorney under POA No. ..... For the Defendant appeared Mr..... holder of National ID No. ....., in her capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. ..... dated …/…/…, issued by Deputy Governor for Legal Affairs. When the Plaintiff's representative was asked about her claims, it replied that they are as stated in the statement of claims previously filed with the General Secretariat of the Tax Committees and stated that the Company has books proving its argument and the Company is ready to submit them. When Defendant's representative was confronted with the above details, it responded that it stands by the reply previously submitted to the General Secretariat of Tax Committees and does not accept any new documents that were not presented during the objection and review stages. Having asked both litigants if they had any other statements, they responded that they are satisfied with their earlier submissions presented to the Department. Consequently, the Department decided to close the pleadings and deliberation.

Grounds

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In form: The Plaintiff instituted this case moving to cancel ZATCA's decision regarding the zakat assessment for the years from 2009 to 2011, and since this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040) dated 21/04/1441 AH, and since the case was filed by a person with a capacity, and within the period stipulated by the Law, it is then accepted in form.

On Merits: The Department, having reviewed the documents and evidence contained in the case file, and examined the requests, defenses, and objections presented by the parties, has determined that the dispute is related to the zakat assessments made by the Defendant for the years 2009 to 2011. The Plaintiff's objections to these assessments pertained to the following items:

Item First Accounts Payable for the Years 2009 and 2010:

The Plaintiff objects to the Defendant's decision to add accounts payable for the years 2009 and 2010 in the amount of SAR 202,791 and SAR 118,777 respectively, on grounds that the copies of the books contain erasures. The Defendant responded that it has added

the lesser of opening and closing balances of accounts payable according to the financial statements, due to the passage of one year over them. whereas Paragraph (5) of Section (First) of Article (4) of Implementing Regulation for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5- Government and commercial loans and other similar sources of financing, such as: creditors, payment papers, and overdraft accounts owed by the Zakat payer which: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Additionally, Article (20.3) of the same Regulations states that: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Taxpayer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the above, commercial accounts payable are a component of the zakat base, provided that a year has passed on them or they are used to finance assets deducted from the Zakat base. Upon reviewing the documents attached to the case file, where the Plaintiff indicated that the Company maintains physical books, and upon reviewing the attachments, it was plain that the Plaintiff did not provide the detailed statement of the accounts payable in dispute to prove that a year has not passed on the disputed amounts; therefore, this Department concludes to dismiss the Plaintiff's objection regarding this item.

Item Second: Sister Companies for the Years 2009 and 2010:

The Plaintiff objects to the Defendant's decision to add a "sister companies" item to the Zakat base for the years 2009 and 2010 in the amount of SAR 4,625,686, and SAR 17,525 respectively, on grounds that the copies of the books contained erasures and alterations as per the sample reviewed. The Defendant responded that it has added the lesser of the opening and closing balances according to the financial statements, due to the passage of one year on them. whereas Paragraph (5) of Section (First) of Article (4) of Implementing Regulation for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5- Government and commercial loans and other similar sources of financing, such as: creditors, payment papers, and overdraft accounts owed by the Zakat payer which: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Additionally, Article (20.3) of the same Regulations states that: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Taxpayer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the above, the credit balances of sister companies are a component of the zakat base provided that a year has passed on them or they are used to finance the assets deducted from the zakat base. Upon reviewing the documents attached to the case file in which the Plaintiff indicated that the Company maintains physical books, and upon reviewing the attachments, it was clear that the Plaintiff did not provide the detailed statement of the credit balances of the sister companies in dispute to prove that a year has not passed on the disputed amounts; therefore, the Department concludes to dismiss the Plaintiff's objection regarding this item.

Item Third: Accrued Expenses for the Years 2009 and 2010:

The Plaintiff objects to the Defendant's decision to add the item of Accrued Expenses to the zakat base for the years 2009 and 2010 in the amount of SAR 279,088 and SAR 120,460 respectively, on grounds that the copies of the books contained erasures and alterations as per the sample reviewed. The Defendant responded that it added the lesser of the opening and closing balance of Accrued Expenses according to the financial statements, due to the passage of a year on them. Article (4/First/5) of Implementing Regulation for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5- Government and commercial loans and other similar sources of financing, such as: creditors, payment papers, and overdraft accounts owed by the Zakat payer which: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Since Article 20.3 of the Zakat Regulations states that: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Taxpayer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the above, the balances of the accrued expenses are a component of the zakat base provided that a year has passed on those balances, and since the dispute over this item is a documentary dispute, and upon reviewing the documents attached to the case file in which the Plaintiff indicated that it keeps physical books, it was found that the Plaintiff did not provide the detailed statement of the accrued expenses in dispute to prove that a year has not passed on those amounts; therefore, the Department concludes to dismiss the Plaintiff's objection regarding this item.

Item Fourth: Short-term loans for the years 2009 to 2011: The Plaintiff objects to the Defendant's decision to add a short-term loans item to the zakat base for the years 2009 to 2011, on the grounds that the copies of the books contained erasures and alterations as per the sample. The Defendant responded that it added the lesser of the opening and closing balances of the short-term loans according to the financial statements due to the passage of a year on them. Article (4/First/5) of Implementing Regulation for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5- Government and commercial loans and other similar sources of financing, such as: creditors, payment papers, and overdraft accounts owed by the Zakat payer which: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Also Article 20.3 of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH, stipulates: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Taxpayer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the above, loans are considered a component of the zakat base, regardless of their type, source or classification, provided that a year has passed on them or that they are used to finance assets deducted from the zakat base without requiring a year to pass on them. Upon reviewing the documents attached to the case file, it was found that the Plaintiff did not submit the detailed statement supporting its argument that those loans did not have a year passed on them, and due to the lack of detailed statement for those loans that shows that their opening balance were paid during the year, the balance of this item should be added as a source of financing for being one of the components of the base Zakat, by taking the

lesser of the opening and closing balance for the purpose of adding the balances that had a year passed on them; accordingly, this Department concludes to dismiss the Plaintiff's objection regarding this item.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

– Dismiss the Plaintiff's objection regarding all the items in question.

This decision was issued in the presence of both parties, and the date of depositing the decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of the decision. The parties to the case may request to appeal against the decision as per the law within thirty (30) days from the day following the date specified for its receipt, whereafter, the decision will be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1687)
Issued in Appeal No. (Z-54502-2021)

Key words:
Zakat Assessment - Accounts - Zakat Base - Prescription of Assessment Procedure - Failure to Notify the Company of the Adjustment of Zakat Declarations - Import Profits - Hospitality Expenses - Loans - Accounts Payable.

Abstract

The Plaintiff claimed that ZATCA's decision regarding the zakat assessment for the years 2012 to 2017 be canceled. The Plaintiff's objection to the zakat assessment pertained to the following items: Item First Prescription of assessment procedure for the years 2012 to 2015: The Plaintiff objects to the zakat assessment made by ZATCA for the years 2012 to 2015, for being issued after the expiry of the legally prescribed period of five years from the date of submitting the zakat declaration for the years 2012 to 2015. Item Second: Failure to notify the Company of the adjustments to the Company's zakat declarations for the years 2012 to 2017: The Plaintiff objects to the Defendant's decision to not notify the Company of the grounds for the adjustment of its zakat declarations, claiming that ZATCA's decision to amend the Company's zakat declarations for the years in dispute be cancelled. Item Third: Import Profits for the Years 2012 to 2017: The Plaintiff objects to the Defendant's decision to add import profits to the adjusted net profit for the years in dispute. The Plaintiff based its claims on grounds that the Company's activity involves importing pharmaceuticals from abroad to supply them within the Kingdom, and that the differences between customs and purchases registered with the Company are due to replacement quantities for damaged goods, which are replaced by the exporting company. Item Fourth: Hospitality Expenses for the Years 2012 to 2014. Item Fifth: Loans for the Years 2015 and 2016: The Plaintiff objects to the Defendant's decision to add a loans item to the zakat base for the years 2015 and 2016, claiming that these loans are not revolving, as the Company closes the loan in full after it is repaid, which indicates that a year has not passed on them. Item Sixth: Accounts Payable for the Years 2015, 2016 and 2017: The Plaintiff objects to the Defendant's decision to add the accounts payable to the zakat base for the years 2015 to 2016, arguing that these are balances owed by the company in the course of its ordinary activities. ZATCA responded that, with regard to the ZATCA's entitlement to adjust the Company's declarations for the years 2012 to 2015 that zakat is one of the pillars of Islam, and this obligation does not lapse with the passage of time. zakat is obligatory and binding and the passage of time does not prescribe this established obligation. The assessment in dispute is subject to the provisions of Article (21/8/C) of the Implementing Regulations for Zakat Collection. ZATCA established that there are zakat treatments in the Zakat Payer's declaration that do not conform to the texts of the Zakat Regulations; Therefore, the declaration is deemed invalid, and ZATCA has the right to amend the Zakat Payer's declaration to comply with the relevant regulations, rules and

instructions at any time without being bound by a period. As such, ZATCA's procedure for making the assessment and adjusting the declaration was in accordance with the law and prescription doesn't apply here. Therefore, the Zakat Payer's objection was rejected. ZATCA insists on accuracy and correctness of its procedure. Regarding the item of not notifying the Company of the grounds for adjusting the Company's zakat declarations: ZATCA stated that it issued an initial assessment and sent it to the Zakat Payer and gave the Zakat Payer a period to respond. In that assessment, the adjustments were explained in detail, and the Zakat Payer responded and submitted documents that were studied and then the final assessment was issued. Thus, ZATCA adhered to the regulatory procedures, so the Zakat Payer's objection was rejected based on Article (21/7) of the Implementing Regulations for Zakat Collection and ZATCA maintained the validity and soundness of its procedure. Regarding the Import Profit Item: ZATCA stated that upon assessment, it added the import profit because the Zakat Payer did not submit the approved reports on the damaged goods from the Ministry of Commerce (General Directorate for Licensing and Control and the General Directorate for Combating Commercial Fraud) and did not submit documents or accounting books that prove the amounts declared in the submitted statements. Meanwhile, ZATCA provided in its Reply a table for calculating the increase or decrease in the imports/foreign purchases item. After studying the objection, ZATCA met with the Zakat Payer on April 22, 2021, where the Zakat Payer explained his argument as stated in his letter, and it was found that the differences were due to grounds, including: There are goods in transit and damaged goods that the Zakat Payer deducted from foreign purchases and deducted within the expenses, as well as inventory differences that were also deducted from purchases and deducted within the expenses, and for this ground the imports appeared in the Zakat Payer's declaration are less than they are in the customs declaration, with the exception of the year 2017, when the imports in the Zakat Payer's declaration were higher due to local purchases. The Zakat Payer's objection is summarized in the difference in damaged goods that was deducted from the purchases. The Zakat Payer submitted the same documents submitted during the inspection stage, namely reports of the destruction of baby milk cartons for several years and by several entities such as the Ministry of... and the Ministry of... in Aseer. Upon reviewing these reports, the facts detailed below are found. Accordingly, ZATCA maintains the validity and soundness of its procedure. With regard to the item Hospitality Expenses for the Years 2012 to 2014, ZATCA stated that upon assessment, it disallowed the deduction of the item from the net profit due to its ineligibility for deduction. With regard to the Item Loans for the Years 2015 and 2016, ZATCA stated that it added the balance of loans that had a year passed on them according to the statement submitted by the Zakat Payer, and that it requested the Zakat Payer to submit specific documents, and upon reviewing these submissions, it was found that the Zakat Payer takes loans regularly and also repays them regularly throughout the year. Accordingly, these loans are considered revolving loans, so ZATCA claimed that its decision was sound and valid. With Regard to the First Item, the Department established that with regard to the first item: The Prescription of the assessment procedure for the years 2012 to 2015, ZATCA did not notify the Plaintiff of the zakat assessment for the years 2012 to 2014 until after (5) years from the end of the period specified for submitting zakat declarations. ZATCA did not submit any valid evidence supporting its argument that the Plaintiff's declaration contains invalid information pursuant to Article (21/10) of the Implementing Regulations for Zakat Collection. As for the year 2015, the legally prescribed period has not expired considering that the adjustment letter was issued on 01/02/2021, while the legally prescribed period ends on 30/04/2021; therefore, the assessment for the year 2015 was made within the statutory period. Item Second: Failure to notify the Company of the adjustments to the Company's zakat declarations for the years 2012 to 2017: It was found that ZATCA has made an initial assessment and explained

the adjustments in detail to the Zakat Payer, and the Zakat Payer responded to the initial assessment and submitted documents that were studied and then the final assessment was issued; therefore, the Plaintiff has been aware of the grounds for the adjustment. Regarding the years from 2012 to 2014, these years are related to the first item of this decision and given that the Department decided to cancel the Defendant's decision for not being entitled to making the assessment, this item takes the same effect. The third item (Import Profits for the Years 2012 to 2017), regarding the years from 2012 to 2014, these years are related to the first item of this decision and takes the same effect. therefore, the Department concludes to cancel the Defendant's decision for this period. As for the import profits for the years 2015, 2016 and 2017, and since the import statement issued by the Saudi Customs Authority is a material evidence from a neutral third party, and upon reviewing the case file, the Department found that ZATCA's procedure to adjust the Plaintiff's business results is due to differences in the value of imports included in the Plaintiff's declaration compared to imports stated in the customs declaration. As for the import difference for the years 2015 and 2016, it was found that the Plaintiff did not provide the necessary documents to clarify the grounds and justifications for the import differences, and that the difference is replacement for damaged goods. Moreover, the Plaintiff submitted letters to the General Directorate for Licenses and Commercial Control to instruct the authorized person to assign a date for destroying the expired goods, and submitted destruction reports that were reviewed by ..... Company and .....Ministry, but these reports pertained to previous years and not to the years 2015 and 2016. Accordingly, the Department concludes to dismiss the Plaintiff's objection regarding this item due to insufficient supporting documents. As for the Import Differences for the Year 2017, it was found that the Plaintiff had provided the necessary documents that clarify the grounds and justifications for the import differences. The difference was found to be due to local purchases and damaged goods, and the amounts matched the differences mentioned by ZATCA. The Plaintiff also submitted letters to the General Directorate for Licenses and Control to assign a date for destroying the expired goods, and submitted destruction reports that were reviewed by the .....Company and .....Ministry, however, these reports pertained to previous years and not to the year 2017. Accordingly, the Department concludes to dismiss the Plaintiff's objection regarding the item due to insufficient supporting document. Item Fourth: Accrued Expenses for the Years 2008 to 2014: This item is related to the first item of this decision and given that the Department decided to cancel the Defendant's decision for not being entitled to the assessment, this item takes the same effect. Therefore, the Department concludes to cancel the Defendant's decision. Item Fifth: Loans for the Years 2015 and 2016: Since loans are one of the components of the zakat base, regardless of their type, source or classification, provided that a year has passed on them or that they are used to finance assets deducted from the zakat base without requiring the passage of a year on them, and since it was found that the Plaintiff did not provide a detailed statement of short-term loans, nor did it provide a bank statement indicating the date of receipt and repayment of the loan; therefore, this Department concludes to dismiss the Plaintiff's objection regarding this item. Item Sixth: Payables for the years 2015, 2016 and 2017: Trade payables are one of the components of the zakat base provided that a year has passed on them or that they are used to finance assets deducted from the zakat base, and since it was found that the Plaintiff did not provide a detailed statement of payables to prove that a year has not passed on the amounts in dispute; therefore, this Department concludes to dismiss the Plaintiff's objection regarding this item. Department ruled to Regarding the Prescription Item: A. Cancel the Defendant's decision for the years 2012 to 2014. B. Dismiss the Plaintiff's objection for the year 2015. Regarding the item of not notifying the Company of the adjustment of zakat declarations: A. Cancel the Defendant's decision for the years 2012 to 2014. B. Dismiss

the Plaintiff's objection for the years 2015 to 2017. Regarding the import profits item: A. Cancel the Defendant's decision for the years 2012 to 2014. B. Dismiss the Plaintiff's objection for the years 2015 to 2017. 1. Cancel the Defendant's decision on item Hospitality Expenses for the years from 2012 – 2014). Dismiss the Plaintiff's objection regarding the loans item for the years 2015 and 2016. Dismiss the Plaintiff's objection regarding the item (Accounts Payable for the period from 2015 to 2017).

Instruments:

- Articles (4/First/5), (3/20), (21/8/C, 10, 11) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 01/08/2022 AD, the First Department for Determination of Income Tax Violations and Disputes in Dammam, stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH , as amended, and constituted by Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted by Royal Order No. (26760) dated 14/05/1442 AH, held its session remotely via video conference, to hear the case; Since the case has met the prescribed legal requirements, it was filed with the General Secretariat of the Tax Committees under the above number and date of 06/14/2021.

The facts of this case are summed up in that Mr..... ID No..... in his capacity as the legal representative of Plaintiff ..... Company, C.R. No. (...), objected to the zakat assessment for the years 2012 to 2017 issued by ZATCA. The Plaintiff's objection is related to the following items: Item First Prescription of assessment procedure for the years 2012 to 2015: The Plaintiff objects to the zakat assessment issued by ZATCA for the years from 2012 to 2015 after the expiry of the five-year period from the date of submitting the zakat declaration. Referring to Article (21/11) of the Implementing Regulations for Zakat Collection, the Plaintiff indicated that ZATCA does not have the right to adjust the Company's declarations for the years in dispute, and it should have only notified the Company to discharge itself from liability. Item Second: Failure to notify the Company of the adjustments to the Company's zakat declarations for the years 2012 to 2017: The Plaintiff objects to the Defendant's action of not notifying the Company of the grounds for adjusting the Company's zakat declarations, as it made some adjustment adding and removing some items without clarifying the grounds for those adjustments. The Plaintiff invoked the text of Article (21/7) of the Implementing Regulations for Zakat Collection, as well as Article (59/7) of the Implementing Regulations for the Income Tax Law. The Implementing Regulations for Zakat Collection stipulated that the administrative decision issued by ZATCA (notice of adjustment of declaration) shall be justified, this procedure (justifying the administrative decision) is considered a basic element of the decision, the omission of which deems the decision invalid. Since ZATCA did not follow the formal rules stipulated in the Implementing Regulations for Zakat Collection, the Zakat Payer requested that ZATCA's action be cancelled for years in dispute. Item Third: Import Profits for the Years 2012 to 2017: The Plaintiff objects to Defendant's decision to add import differences to the net profit. The Plaintiff stated that the Company's activity involved import of pharmaceuticals to sell them within the Kingdom, and as is well known, the pharmaceutical business involves the destruction of medicines every year for expiration reasons, and the exporting Company compensates the Company with other medicines in exchange for these medicines, and these differences appear between customs and purchases registered with the Company due to the presence of a replacement quantity

instead of damaged ones. Item Fourth: Hospitality Expenses for the Years 2012 to 2014. Item Fifth: Loans for the Years 2015 and 2016: The Plaintiff objects to the Defendant's decision to add the loans item to the zakat base for the years 2015 and 2016: The Plaintiff stated that these loans are not revolving, as the Company closes the loan in full after paying it, and then obtains a new loan when needed, which indicates that a year has not passed on those loans. The Plaintiff also referred to Article 4 of the Implementing Regulations for Zakat Collection. Item Sixth: Accounts Payable for the Years 2015, 2016 and 2017: The Plaintiff objects to the Defendant's decision to add the accounts payable to the zakat base for the years 2015 to 2016, invoking the text of Article (4) of the Implementing Regulations for Zakat Collection, related to the amounts obtained from third parties for the purpose of financing, while the items added by ZATCA are not for the purpose of financing, but rather balances payable from the Company in the context of practicing its normal activity. By presenting the statement of claims to the Defendant, it responded with a Reply. As for ZATCA's authority to adjust the zakat declarations for the years 2012 to 2015, it stated that its zakat is one of the pillars of Islam, and a right that Allah has made obligatory for the benefit of the poor and needy. This right does not prescribe with the passage of time being an obligation on zakat payers. ZATCA also believes that the assessment in dispute is subject to the provisions of Article (21/b/C) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH. ZATCA found that there are zakat treatments in the Zakat Payer's declaration that do not conform to the texts of the Zakat Regulations; therefore, the declaration is deemed invalid, and therefore ZATCA has the right to adjust the Zakat Payer's declaration to conform to the relevant laws, regulations and instructions at any time without being bound by a time limit. Accordingly, ZATCA's procedure for making the assessment and adjusting the Zakat Payer's declaration was in accordance with the legal texts and prescription does not apply to this case. Accordingly, the Zakat Payer's objection was rejected. ZATCA insists on accuracy and correctness of its procedure. Regarding the item of not notifying the Company of the grounds for adjusting the Company's zakat declarations: ZATCA stated that it issued an initial assessment and sent it to the Zakat Payer and gave the Zakat Payer a period to respond. In that assessment, the adjustments were explained in detail, and the Zakat Payer responded and submitted documents that were studied and then the final assessment was issued. Thus, ZATCA adhered to the regulatory procedures, so the Zakat Payer's objection was rejected based on Article (21/7) of the Implementing Regulations for Zakat Collection issued by the Ministerial Resolution No. (2082) dated 01/06/1438 AH and ZATCA maintained the validity and soundness of its procedure. Regarding the Import Profit Item: ZATCA stated that upon assessment, it added the import profit because the Zakat Payer did not submit the approved reports on the damaged goods from the Ministry of Commerce (General Directorate for Licensing and Control and the General Directorate for Combating Commercial Fraud) and did not submit documents or accounting books that prove the amounts declared in the submitted statements. Meanwhile, ZATCA provided in its Reply a table for calculating the increase or decrease in the imports/foreign purchases item. After studying the objection, ZATCA met with the Zakat Payer on April 22, 2021, where the Zakat Payer explained his argument as stated in his letter, and it was found that the differences were due to grounds, including that there are goods in transit and damaged goods that the Zakat Payer deducted from foreign purchases and deducted within the expenses, as well as inventory differences that were also deducted from purchases and deducted within the expenses, and for this reason the imports appeared in the Zakat Payer's declaration are less than they are in the customs declaration, with the exception of the year 2017, when the imports in the Zakat Payer's declaration were higher due to local purchases. The Zakat Payer's objection is summarized in the difference in damaged goods that was deducted from the purchases. The Zakat Payer

submitted the same documents submitted during the inspection stage, namely reports of the destruction of baby milk cartons for several years and by several entities such as the Ministry of... and the Ministry of... in Aseer. Upon reviewing these reports, the facts detailed below are found. 1. With regard to the year 2012: The Zakat Payer submitted destruction reports of destroyed goods totaling SAR 857,439.71, which were accepted in the assessment. However, the Zakat Payer did not submit any proof for the remaining amount, which is SAR 61,476,208.29. 2. With regard to the year 2014: The Plaintiff submitted reports of destruction of goods totaling SAR 28,001,263.13, which ZATCA did not approve in the assessment due to non-conformity with the difference reconciliation submitted by the Zakat Payer, which were allegedly recognized as expenses. ZATCA was unable to confirm that allegation due to the Zakat Payer failure to provide details of the cost of sales. With regard to the years 2013, 2015, 2016 and 2017: No destruction reports from official authorities were submitted. For the destruction of pharmaceuticals or baby milk to be accepted, it must be carried out in the presence of an official authority. This is the regular procedure followed by the authorities concerned with medical or health materials. Nonetheless, the Zakat Payer did not clarify if the damaged product was subject to the supervision of SFDA, which stipulated in paragraph (Third/3/C) in its "Guide Control of Handling Manufactured Breastmilk; substitutes and supplementary milk products and Infant Food for Special Medicinal Use" that the products shall not be destroyed except after submitting a request to SFDA and setting a date for a representative of SFDA to attend and issue a destruction report. Since the Zakat Payer did not submit sufficient documents, the Zakat Payer's objection was rejected based on Article (20/3) of the Implementing Regulations for Zakat Collection; accordingly, ZATCA maintained the validity and soundness of its procedure. With regard to the item Hospitality Expenses for the Years 2012 to 2014, ZATCA stated that upon assessment, it disallowed the deduction of the item from the net profit due to its ineligibility for deduction. With regard to the Item Loans for the Years 2015 and 2016, ZATCA stated that it had added the loan balance that had a year passed on it according to the statement submitted by the Zakat Payer, and when studying the objection, a meeting was held with the Zakat Payer on April 22, 2021, and the Zakat Payer explained his argument as stated in his letter, and he was requested to submit a bank facilities certificate and a bank statement indicating the date of receipt and repayment of the loan. The Zakat Payer submitted the required documents, and upon reviewing the submissions made by him, it was found that the Zakat Payer takes loans on an ongoing basis, and repays them regularly throughout the year, and accordingly these loans are considered revolving loans, that remains payable by the Company throughout the year. Accordingly, the Zakat Payer's objection was rejected based on Article (4/First/5) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH. ZATCA also indicated that its decision is confirmed by many appellate decisions, including Appeal Committee Decision No. (1694) issued in 1438 AH. Accordingly, ZATCA maintained the validity and soundness of its procedure.

On Tuesday, 01/08/2022 AD, the Department held its session remotely to hear the case. For the Plaintiff appeared Mr....., national ID No....., in his capacity as the Plaintiff's attorney under PoA No..... For the Defendant appeared Ms....., national ID No..... in her capacity as the Defendant's representative holder of National ID No. ....., in her capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. ..... dated …/…/…, issued by Deputy Governor for Legal Affairs. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claims submitted to General Secretariat of Tax Committees. When the Defendant's attorney was asked about its reply, she answered that it maintains the reply previously filed with the General Secretariat of the Tax Committees, adding that the Plaintiff did not submit its declarations within the prescribed period, and the five-year

period stipulated in the Regulations beginning from the date of submitting the declaration by the Plaintiff. Having asked both litigants if they had any other statements, they responded that they are satisfied with their earlier submissions presented to the Department, requesting that no further documents that were not submitted during the objection and inspections stages by accepted. Accordingly, the Department decided to close the pleadings and deliberation.

Grounds

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: Since Plaintiff aims with its claim to cancel ZATCA decision regarding zakat assessment for years from 2012 to 2017 and given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Given that the Case was filed by a party having capacity and within the legally prescribed period. Therefore, the Department accepts the Case in form.

On Merits: The Department, having reviewed the documents and evidence contained in the case file, and examined the requests, defenses, and objections presented by the parties, has determined that the dispute is related to the zakat assessments made by the Defendant for the years 2012 to 2017. The Plaintiff's objections to these assessments pertained to the following items:

Item First Prescription of assessment procedure for the years 2012 to 2015:

The Plaintiff objects to zakat assessment made by ZATCA for the years 2012 to 2015 after the expiry of the specified period of five years from the date of submitting the zakat declaration for the years 2012 to 2015, while the Defendant believes that the assessment in dispute is subject to the provisions of Article (21/8/c) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH. Article (21/8) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates that: "The Authority may make or modify the assessment at any time without being bound by the time limit specified in the following cases: A. The zakat payer agrees in writing to conduct or amend the assessment, B. The zakat payer did not provide his declaration, or C. If it was found that the declaration contains invalid information". Moreover, Article (21/10) of the same Regulations states: "10. GAZT may correct the error in applying the Law and instruction during five years as of the end of the term defined for the provision of zakat declaration for the zakat year upon his request, or if such errors were detected by GAZT or supervisory entity". Article (21/11) also provides that "11. If GAZT detected any error relating to the zakat payer's zakat following the termination of the previous periods, the zakat payer shall be notified to release himself from any legal liability." Accordingly, and since ZATCA claims that it has the right to make the zakat assessment without being bound by a specific period based on the fact that the Implementing Regulations for Zakat Collection allowed it to do so. However, this is not absolute right, being restricted by a set of conditions and cases that, when met, ZATCA may conduct the zakat assessment without being bound by a specific period, including the provision of Article (21/8/c) of the Implementing Regulations for

Zakat Collection, which gives ZATCA the right to make the zakat assessment or adjust it without being bound by a specific period in the event that the declaration contains invalid information. However, in the event that the Plaintiff's declaration is invalid due to an error in applying the zakat instructions or a different viewpoint in the zakat treatment, its right to make the zakat assessment lapses after (5) years from the end of the deadline for submitting the zakat declaration according to Article (21/10) of the Implementing Regulations. This however is not affected by ZATCA claims that the Plaintiff's declaration is invalid merely because it has adjusted substantive items affecting the assessment. ZATCA did not provide any valid material evidence of the existence of invalid information in the Plaintiff's declaration that gives it the right to issue the zakat assessment without being bound by a period. Rather, the adjustments it made resulted either from an error in applying the zakat instructions or from a difference in viewpoints in calculating zakat between the two parties. In both cases, ZATCA has the right to conduct the zakat assessment within (5) years from the end of the deadline specified for submitting the zakat declaration based on Article (21/10) of the Implementing Regulations for Zakat Collection, and therefore Article (21/8) does not apply to the Plaintiff's case. It is not reasonable to rely on mere claim that due to the adjustment of some items in the zakat declaration, it is concluded that the declaration contained incorrect information, and since ZATCA did not notify the Plaintiff of the zakat assessment for the years from 2012 to 2014 until after (5) years had passed from the end of the deadline specified for submitting zakat declarations, as the assessment letter was issued 01/02/2021, and since it did not provide any valid evidence supporting its argument that the Plaintiff's declaration contains incorrect information, and according to Article (21/10) of the Implementing Regulations for Zakat Collection, the Department concludes to accept the Plaintiff's objection and cancel the Defendant's procedure to reissue the zakat assessment for the years from 2012 to 2014 As for the year 2015, where the prescribed period has not passed, considering that the adjustment letter was issued on 01/02/2021, while the legally-prescribed period ends on 30/04/2021. Accordingly, the assessment for the year 2015 was made within the legally prescribed period. Therefore, the Department concludes to dismiss the Plaintiff's objection to the prescription claim for the year 2015.

Item Second: Failure to notify the Company of the adjustments to the Company's zakat declarations for the years 2012 to 2017:

The Plaintiff objects to the Defendant's decision to not notify the Company of the grounds for adjusting its zakat declarations, while the Defendant stated that it issued an initial assessment that it sent to the Zakat Payer, and the Zakat Payer was given a period to respond to the initial assessment, and the adjustments were explained to the Zakat Payer in detail. The Zakat Payer also responded to the initial assessment and submitted documents that were studied and then the final assessment was issued based on the above As for the item of not notifying the Company of the adjustment to the Company's zakat declarations for the years 2015, 2016 and 2017, upon reviewing the case file, it was found that ZATCA made an initial assessment, and the adjustments were explained to the Zakat Payer in detail, and the Zakat Payer responded to the initial assessment and submitted documents that were studied and then the final assessment was issued. Accordingly, it was found that the Plaintiff is aware of the grounds for the adjustment, that's why the Department concludes to dismiss the Plaintiff's objection for the years 2015, 2016 and 2017. With regard to the years from 2012 to 2014, since these years are related to the first item of this decision, and since the Department decided to cancel the Defendant's decision regarding that item; this item takes the same effect; therefore, the Department concludes to dismiss the Defendant's decision regarding these years.

Item Third: Import Profits for the Years 2012 to 2017:

The Plaintiff objects to the Defendant's decision to add import profits to the adjusted net profit for the years in dispute, while the Defendant argues that the import profits should be added because the Zakat Payer did not submit the approved reports on the damaged goods from the Ministry of Commerce (General Directorate for Licensing and Control) and the General Directorate for Combating Commercial Fraud. Since Article 20.3 of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) of 01/06/1438 stipulates: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Taxpayer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the above, and with regard to the years from 2012 to 2014, since these years are related to the first item of this decision, and since the Department decided to cancel the Defendant's decision for non-eligibility to make the assessment, and this item takes the same effect. Accordingly, the Department concludes to cancel the Defendant's decision. As for the import profits for the years 2015, 2016 and 2017, and since the import statement issued by the Saudi Customs Authority is a material evidence from a neutral third party, and upon reviewing the case file, it was found that ZATCA's procedure to adjust the Plaintiff's declaration is due to differences in the value of imports included in the Plaintiff's declaration compared to imports statement from the customs authority. Import difference for the years 2015 and 2016: Having reviewed the documents attached to the case file, it was found that the Plaintiff did not provide the necessary documents to identify the grounds and justifications for the import differences, where the difference is found to be due to damaged goods. The Plaintiff also submitted letters to the General Directorate for Licenses and Control to assign a date for destroying the expired goods, and submitted destruction reports that were reviewed by the .....Company. and .....Ministry, but these reports pertained to previous years and not to the years 2015 and 2016. Accordingly, the Department concludes to dismiss the Plaintiff's objection regarding this item due to insufficient supporting documents. Import Difference for the year 2017: Having reviewed the documents attached to the case file, it was found that the Plaintiff provided the necessary documents to clarify the grounds and justifications for the import differences. It was found that the difference is in the form of local purchases and damaged goods, and the amounts are identical to the differences mentioned by ZATCA. The Plaintiff also submitted letters to the General Directorate for Licenses and Control to assign a date for destroying the expired goods, and submitted destruction reports that were reviewed by the .....Company. and .....Ministry, however, these reports pertained to previous years and not to the year 2017. Accordingly, the Department concludes to dismiss the Plaintiff's objection regarding the item due to insufficient supporting document.

Item Fourth: Accrued Expenses for the Years 2008 to 2014:

This item is related to the first item of this decision and given that the Department decided to cancel the Defendant's decision for not being entitled to the assessment, this item takes the same effect. Therefore, the Department concludes to cancel the Defendant's decision.

Fifth Item: Loans for the Years 2015 and 2016:

The Plaintiff objects to the Defendant's decision to add loans item to the zakat base for the years 2015 and 2016, while the Defendant argues that the loans balance that have a year passed on them should be added according to the statement submitted by the Zakat Payer. Article (4/First/5) of Implementing Regulation for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5- Government and commercial loans and other similar sources of financing, such as: creditors, payment

papers, and overdraft accounts owed by the Zakat payer which: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Based on the above, and since loans are one of the components of the zakat base, regardless of their type, source or classification, provided that a year has passed on them or they are used to finance assets deducted from the zakat base without requiring the passage of a year. Then upon reviewing the case file, it was found that the Plaintiff did not provide a detailed statement of short-term loans, nor did it provide a bank statement indicating the date of receipt and repayment of the loan; therefore, the Department concludes to dismiss the Plaintiff's objection regarding this item.

Item Sixth: Payables for the years 2015, 2016 and 2017:

The Plaintiff objects to the Defendant's decision to add the item of payables to the zakat base for the years 2015 to 2017, while the Defendant argues that it had added the amount that had a year passed on it based on the statement submitted by the Zakat Payer during the examination period. whereas Paragraph (5) of Section (First) of Article (4) of Implementing Regulation for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5- Government and commercial loans and other similar sources of financing, such as: creditors, payment papers, and overdraft accounts owed by the Zakat payer which: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Additionally, Article (20.3) of the same Regulations states that: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Taxpayer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA".

Based on the above, trade payables are considered one of the components of the zakat base provided that a year has passed on them or they are used to finance assets deducted from the zakat base. Upon reviewing the documents attached to the case file, it was found that the Plaintiff did not provide a detailed statement of the payables to prove that a year has not passed on the disputed amounts. Therefore, the Department concludes to dismiss the Plaintiff's objection regarding this item.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

1. Regarding the Prescription Item:
   a. Cancel the Defendant's decision for the years 2012 to 2014.
   b. Dismiss the Plaintiff's objection for the year 2012.
2. Regarding the item of not notifying the Company of the adjustment to the Company's zakat declarations:
   a. Cancel the Defendant's decision for the years 2012 to 2014.
   b. Dismiss the Plaintiff's objection for the years 2015 to 2017.
3. Regarding the import profits item:
   a. Cancel the Defendant's decision for the years 2012 to 2014.
   b. Dismiss the Plaintiff's objection for the years 2015 to 2017.
4. 1. Cancel the Defendant's decision on item Hospitality Expenses for the years from 2012 – 2014).
5. Dismiss the Plaintiff's objection regarding the loans item for the years 2015 and 2016.
6. Dismiss the Plaintiff's objection regarding the item (Accounts Payable for the period from 2015 to 2017).

This decision was issued in the presence of both parties, and the date of depositing the decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of the decision. The parties to the case may request to appeal against the decision as per the law within thirty (30) days from the day following the date specified for its receipt, whereafter, the decision will be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1565)
Issued in Appeal No. (Z-48723-2021)

Key words:
Zakat Assessment - Accounts - Company's Share of Joint Venture Profits - Joint Venture Investment - Amounts due from a Joint Venture - Undeclared Profit from External Purchases - Advance Payments from Customers - Payables for the Passage of One Year - Debtors - Payable Retentions - Short-term Loans - Amounts Payable to Related Parties - Burden of Proving Validity of Declaration on the Zakat Payer - Dismissal of Plaintiff's Objection.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding the zakat assessment for the year 2016. The Plaintiff's objection is related to the following items: First: Company's Share of Joint Venture Profits: The Plaintiff objects to ZATCA's decision to remove the Plaintiff's share in joint venture profits amounting to SAR 1,660.42 from the zakat base for the year 2016. Item Second: Joint Venture Investment: The Plaintiff objects to ZATCA's decision to not deduct the closing balance of joint venture investment item in the amount of SAR 111,905,963 from the zakat base for the year 2016. Item Third: Amounts Due from a Joint Venture: The Plaintiff objects to the non-deduction of amounts due from a joint venture amounting to SAR 208,814,216 from the zakat base for the year 2016. Item Fourth: Undeclared Profit from External Purchases (Undeclared Import Profit): The Plaintiff objects to ZATCA's decision to add import differences amounting to SAR 194,760 to the net profit for the year 2016. Item Fifth: Advance Payments from Customers: The Plaintiff objects to the addition of the item advance payments from customers amounting to SAR 234,779,030, as this item did not have a year passed on it. Item Sixth: Payables for the Passage of a Year: The Plaintiff objects to the addition of the item Payables amounting to SAR 11,426,698 to the zakat base for the year 2016, as it indicated that ZATCA's procedure is invalid, as these payables are trade payables and have not has a year passed on them. Item Seventh: Debtors: The Plaintiff objects to ZATCA's decision to add "debtors" item in the amount of SAR 224,202,673 to the zakat base for the year 2016, as this amount is accounts receivable. Item Eighth: Payable Retentions: The Plaintiff objects to the addition of the item Payable Retentions in the amount of SAR 31,213,448 to the zakat base for the year 2016, as that item did not have a year passed on it. Regarding Item (9): Short-term Loans: The Plaintiff objects to the addition of the item loans in the amount of SAR 300,524 for passage of a year to the zakat base for the year 2016. This loan is a bank facility used to finance working capital. With regard to Item (10): Amounts Payable to Related Parties: The Plaintiff objects to adding the item amounts payable to related parties in the amount of SAR 45,747,007 to the zakat base for the year 2016. This amount represents commercial transactions with related parties. Item (11): Other (Accrued Expenses): The Plaintiff objects to adding Accrued Expenses in the

amount of SAR 718,326 to the zakat base for the year 2016, for being expenses relating to the year 2016. ZATCA responded with regard to the first item that it did not deduct the item from the net profit because the joint venture is not subject to zakat, and a statement of information was submitted without paying zakat based on the zakat base. With regard to the second item, ZATCA argued that it added the item to the net profit as an undeclared import profit after comparing the imports in the customs declaration with the foreign purchases in the declaration. Regarding the third, fourth, sixth, seventh, eighth and ninth items: ZATCA claimed that it added these items to the zakat base for the passage of a year on the opening balance as per the account statement of the item. Regarding the fifth item, it was found that it is a debit balance carried over from the previous year that had not been paid. The Plaintiff didn't name the debtors or the reasons for non-payment, nor did it provide supporting documents regarding this item, which is a detailed statement of the item clarifying the debtors, whether they are government or private entities, and the reasons for non-payment. As for the item of joint venture investment, this item does not represent acquisition assets. In addition, the company did not pay zakat on that project, and it only submitted an information declaration without paying zakat. Regarding the item Amounts Due from a Joint Venture: The Zakat Payer's objection was rejected due to the failure to prove the Company's entitlement to deduct the amounts due from a joint venture from the zakat base, and ZATCA adhered to the validity and soundness of its procedure. Regarding the item of Liabilities under a Capital Lease Contract, and the fact that ZATCA's procedure to add the closing balance is based on the fact that the liability under a capital contract results from a single contract. These obligations have been classified to current and non-current in the financial statements due to the application of accounting standards related to the disclosure of these items and recognition of them in the financial statements. The Zakat Payer requested that the opening balance be adopted; however, he didn't provide an account statement of the item, and only referred to the financial statements. Regarding this item, the Department held that the principle for dealing with partners in ..... Company is based on treatment as if they were partners in a partnership, where the tax and zakat are on the members of this company individually, and the Zakat Payer is required to submit accounts and information related to the contract according to each party's declaration of his income and expenses as included in his zakat and tax declarations. Therefore, the Department concludes to dismiss the Plaintiff's objection regarding this item. Regarding the second item: The Department found that these investments were not subject to zakat because they pertain to the joint venture. Therefore, the Department concluded to dismiss the Plaintiff's objection regarding this item. Regarding the third item, it was found that the Plaintiff did not submit the financial statements of the subsidiary company and its zakat declarations, nor did it submit the articles of association to verify the percentage of the shares it owns in the Company. As such, the loans and advances provided to the subsidiary company are not deducted from the zakat base. Therefore, the Department concludes to dismiss the Plaintiff's objection regarding this item. Regarding the fourth item, it was found that the Plaintiff submitted a breakdown of the value of external and internal purchases that does not match the amounts declared in the declaration. The Plaintiff explained that the difference is due to recognizing the purchases within the inventory and the released quantity is added to the cost of sales. The Plaintiff didn't provide proof for its claims and under which category they were recognized within the inventory. Regarding the fifth item, it was found that the Plaintiff did not submit an analytical statement of the debit and credit balances to verify the balance that had a year passed on it. Regarding the sixth item, it is found that the Plaintiff submitted an aggregate statement of this item but did not submit a detailed statement of the accounts payable to prove that the amounts in dispute did not have a year passed on them. Regarding the seventh item, in principle, the Plaintiff's objection to deduct the balance of government

receivables is accepted if the Plaintiff proves that there are government debit balances that have been held by these entities for a full year. After reviewing the attached detailed statement, it was found that the Plaintiff's claim to deduct the amount of SAR 224,202,673 is invalid. Regarding the eighth item, The Department established that the Plaintiff did not provide a detailed statement of the item payable retentions for the year in dispute to prove that a year has not passed on the amounts added to the zakat base. Regarding the ninth and tenth items, the Plaintiff attached an aggregate statement of loans to its objection, which is not sufficient. The Plaintiff did not provide the detailed statement supporting its argument that those loans had a year passed on them, and there was no detailed statement of those loans that shows that the opening balance were paid during the year. Regarding the eleventh item, the dispute over this item is a documentary dispute, it was found that the Plaintiff did not provide the documents supporting the disputed expenses. Finally, regarding the item of Liabilities under a Capital Lease Contract, the Zakat Payer requests that the opening balance be adopted and did not provide a detailed account statement of that item and only referred the information included in the financial statements. Therefore, the Department concludes to dismiss the Plaintiff's objection regarding this item. Department ruled to Dismiss the Plaintiff's objection regarding all the items in dispute and consider the decision final and enforceable.

Instruments:

- Articles (4/First/5), (5/1/A), (6/2), (20/3) of the **Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated** 01/06/1438 AH.
- Fatwa No. (23408) issued by the Permanent Committee for Scholarly Research and Ifta on 11/18/1426 AH.
- Fatwa No. (22665) issued by the Permanent Committee for Scholarly Research and Ifta on 15/04/1424 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday 24/07/2022, the First Department for Determination of Income Tax Violations and Disputes in Dammam, stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and constituted by Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted by Royal Order No. (26760) dated 14/05/1442 AH, held its session remotely via video conference, to hear the case. Since the case met the prescribed legal conditions, it was deposited with the General Secretariat of Tax Committees under the above number and date of 26/04/2021 AD.

The facts of this case are summed up in that Mr..... ID No..... in his capacity as attorney of Plaintiff (...), C.R. No. (...), under POA No. (...), dated ....., submitted its objection to the zakat assessment for the year 2016 issued by ZATCA. The objection is focused on the following items: Item First Company's Share of Joint Venture Profits: The Plaintiff objects to the Defendant's decision to not add a share in a joint venture profit amounting to SAR 1,660,422 from the Zakat base for the year 2016, claiming that this amount is stated in the income statement in the audited financial statements and as per the practice adopted by ZATCA, this share should be deducted from the zakat base. Item Second: Joint Venture Investment: The Plaintiff objects to ZATCA's decision to not deduct the closing balance of joint venture investment item in the amount of SAR 111,905,963 from the zakat base for the year 2016, claiming that these amounts are long-term investments, and the Company may deduct these investments from the zakat base,

and that the investment companies pay their zakat due to ZATCA, noting that they are classified in the financial statements as non-current assets. Item Third: Amounts Due from a Joint Venture: The Plaintiff objects to the Defendant's decision to not deduct amounts due from a joint venture amounting to SAR 208,814,216 from the zakat base for the year 2016, as the Plaintiff indicated that they represent long-term investments and the Company has the right to deduct these investments from the zakat base, and that the companies invested in pay the zakat due to ZATCA, noting that they are classified in the financial statements as non-current assets. Item Fourth: Undeclared Profit from External Purchases (Undeclared Import Profit): The Plaintiff objects to the Defendant's decision to add an import difference amounting to SAR 194,760 to the net profit for the year 2016, claiming that this decision is invalid because it does not apply to those who do not have regular accounts (estimated assessment). The Plaintiff stated that .....Company is a Saudi Company registered with ZATCA and has regular accounts audited by a certified chartered accountant. Thus, it should not be treated with estimated assessment. The Company's imports, representing its purchases, are recognized as inventory, and the consumed portion is added to the cost of sales, which forms part of the income statement. Accordingly, the full value of purchases during the year is recognized as inventory, while the sold and consumed portion is recognized under profits and losses, as detailed below: External Purchases: (SAR 13,451,241), Internal purchases: (SAR 167,177,671), Total: SAR (180,628,912). The Plaintiff replied to the plea submitted by ZATCA, maintaining its objection to ZATCA's decision to add to the net profit the import difference in the amount of SAR 194,760. Attached is a statement requested by ZATCA's representative extracted from the Company's accounting system for external and internal purchases. Item Fifth: Advance Payments from Customers: The Plaintiff objects to the Defendant's decision to add the item advance payments from customers in the amount of SAR 234,779,030, claiming that this action is invalid, as the advance payments from customers did not have a year passed on them, and whereas ZATCA has added the advance payments that had a year passed on them, it should have deducted from the zakat base advance payments to suppliers and subcontractors in the amount of SAR 91,949,187. Item Sixth: Payables for the Passage of a Year: The Plaintiff objects to the Defendant's decision to add to the zakat base the payables item in the amount of SAR 11,426,698 for the year 2016, claiming that ZATCA's action is invalid, as these payables are trade payables and did not have a year passed on them, nor do they include any amounts for financing fixed assets, and according to the movement of payables, there is no balance that has been held for a year, and therefore this item should not be subject to zakat. Item Seventh: Debtors: The Plaintiff objects to the Defendant's decision to add to the zakat base the item receivables amounting to SAR 224,202,673 for the year 2016, indicating that this amount is receivables, and referring to Fatwa No. (20452) dated 07/09/1415 AH regarding the debts owed by third parties to the Zakat Payer. The Plaintiff also referred to Fatwa No. (23408) dated 18/11/1426 AH. These fatwas required that long-term debts received for more than 354 days be added to the zakat base of the Company's customers for being receivables that had a lunar year passed on them. Accordingly, failure to deduct these receivables will lead to double payment of zakat (double taxation). The Plaintiff also stated that ZATCA added the payables that had a year passed on them in the amount of SAR 11,426,698 to the zakat base, and this amount is payables by the Company to other suppliers, which are also receivables from the Company's suppliers. The Plaintiff also replied to ZATCA's plea, maintaining its objection to not deducting the receivables in the amount of SAR 224,202,673 from the zakat base for the year 2016. According to the request of ZATCA's representative, attached is a list of the government agencies that did not pay the Company its dues. Item Eighth: Payable Retentions: The Plaintiff objects to the Defendant's decision to add the item of Payable Retentions in the amount of SAR 31,213,448 to the zakat base

for the year 2016, claiming that ZATCA's action is invalid, as it should have added the balance that has a year passed on it, and according to the account statement of the item Payable Retentions, there is no balance that has a year passed on it. Regarding Item (9): Short-term Loans: The Plaintiff objects to the addition of the item loans in the amount of SAR 300,524 for passage of a year to the zakat base for the year 2016, claiming that this loan is a bank facility used to finance working capital was not used to finance the purchase of fixed assets, and it did not remain in the Company's possession for a full lunar year. The Plaintiff also referred to Fatwa No. (22665) dated 15/04/1424 AH, concluding that this item should not be added to the zakat base. With regard to Item (10): Amounts Payable to Related Parties: The Plaintiff objects to the Defendant's decision to add the item payables to related parties in the amount of SAR 45,747,007 to the zakat base for the year 2016, claiming that this amount is commercial transactions with related parties, and that ZATCA's action was invalid as it should have added the balance that had a year passed on it. Item (11): Other (Accrued Expenses): The Plaintiff objects to the Defendant's decision to add the item accrued expenses in the amount of SAR 718,326 to the zakat base for the year 2016, claiming that ZATCA's action is invalid, and that the accrued expenses pertain to the year in dispute, and are recognized according to the accrual principle, and are usually paid to employees during the first months of the following year, like salaries and wages. They are not provisions such as the provision for end-of-service gratuity or the provision for inventory and bad debts to be added to the net profit. According to Article (12) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, the expenses are recognized when become due based on the accrual principle. The Plaintiff also indicated that Articles (23.c) and (23.b) of the new tax law mandated the accrual principle. Article (25) stipulates that the Zakat Payer who uses the accrual principle records income and expenses when due, and also referred to Article (9) of the Implementing Regulations and Paragraph (6) of the same article. Item (12): Liabilities under a Capital Lease Contract: The Plaintiff objects to the Defendant's decision to add the closing balance of Liabilities under a Capital Lease Contract in the amount of SAR 1,009,951 to the zakat base for the year 2016, claiming that this procedure is invalid, as ZATCA should have added the opening balance amounting to SAR 569,680.

Upon presenting the case to the Defendant, it responded with a Reply, whereby it responded to the item the Company’s share of joint venture profits as follows: It stated that it did not deduct the item from the net profit because the joint venture is not subject to zakat, and an information statement was submitted without paying zakat according to the zakat base. Upon examining the objection, it was found that the Company had concluded an agreement with .....company to establish a joint venture as part of ..... development project. The venture was registered with ZATCA under TIN No..... The Zakat Payer submitted an information statement for the year only, and no zakat or tax was charged on the venture considering it as an independent activity. The Zakat Payer did not submit with his objection anything indicating payment of zakat or tax on the joint venture, and only indicated in the objection memorandum that there were financial statements for that joint venture. Accordingly, the Zakat Payer's objection was dismissed, and the Company's share of the joint venture profits was not deducted because no zakat was paid on it in the joint venture. Moreover, in the joint venture file, there is no zakat assessment nor is zakat charged. Rather, the joint venture is only required to submit an information statement, while zakat is charged to each partner of the joint venture in its original file. For that ground, the Defendant maintained the validity of its procedure. Regarding the item undeclared foreign purchase profit (undeclared import profit): ZATCA stated that it added the item to the net profit as undeclared import profit after comparing imports in the customs declaration and the foreign purchases in the zakat declaration (comparison table attached). Regarding the item advance payments from customers: ZATCA stated that it

added the item to the zakat base for the passage of a year on the opening balance according to the account statement of that item based on Note No. (13) of the financial statements (table attached). Since the Zakat Payer did not submit a detailed statement of the advance payments from customers, the account statement of that item was derived from the financial statement notes, which resulted in adding the amount that had a year passed on it, which is SAR 234,779,030. Upon studying the objection, ZATCA found that the Zakat Payer did not submit a statement of advance payments from customers and settled for requesting the deduction of advance payments to suppliers, which is an inapplicable requirement due to the lack of a partnership between the suppliers and the company. Since the Zakat Payer did not submit supporting documents for the item, the Zakat Payer's objection was rejected based on Article (20/3) of the Implementing Regulations for Zakat Collection, as well as Article (4/First/5). Therefore, the Defendant maintained the validity of its procedure. Regarding the item of payables for the passage of a year, ZATCA stated that it added to the zakat base the Payables item in the amount of SAR 11,426,698 for having a year passed on the opening balance according to the account statement of payables submitted by the Zakat Payer for the year 2016. Upon studying the objection, the statement of payables was reviewed and the opening and closing balances were matched with the item's balance in the financial statements. The balances of receivables that had a year passed on it were also identified, and it was found that ZATCA's procedure was valid as to adding the balance that had a year passed on it, which is SAR 11,426,698. Accordingly, the Zakat Payer's objection was rejected due to the passage of a year on the balance added to the zakat base according to the payables account statement submitted by the Zakat Payer in the examination stage. Therefore, and based on Article (4/First/5) of the Implementing Regulations for Zakat Collection, the Defendant maintained the validity of its procedure. Regarding the receivables item, ZATCA stated that it did not deduct the item from the zakat base, and upon examining the objection, this item was examined in the financial statements, Note No. (5). It was found that it was a receivables balance carried over from the previous year, as the Defendant explained in its Reply. the account statement showed that the balance was carried over from the previous year and was not paid. However, the Plaintiff did not specify the debtors and the grounds for non-payment, nor did it provide supporting documents of the item, i.e., a detailed statement of the item clarifying the debtors and whether they are government or private entities, and the grounds for non-payment, so that the Defendant can verify that these debts are bad debts, and that the Zakat Payer has no control over them and that they are not collectible in the short term. Accordingly, the Zakat Payer's objection was dismissed for not providing supporting documents based on Article (20/3) of the Zakat Regulations, and the Defendant maintained the validity of its procedure. Regarding the item payable retentions, ZATCA stated that it added the item to the zakat base for the passage of a year on the opening balance according to the account statement of payable retentions submitted by the Zakat Payer. Upon examining the objection, ZATCA reviewed the account statement of payable retentions, and ensured that its balances match the balances of the item stated in the financial statements. The balances that had a year passed on them were also calculated and ZATCA's procedure was found to be valid as to adding the balance that had a year passed on it, which amounted to SAR 31,213,448. Accordingly, the Zakat Payer's objection was rejected due to the passage of a year on the balance added to the zakat base according to the account statement of the item submitted by the Zakat Payer and based on Article (4/First/5) of the Implementing Regulations. Thus, the Defendant maintained the validity of its procedure. Regarding the item short-term loans, ZATCA stated that it added the item to the zakat base for the passage of a year on the opening balance according to the account statement of accrued expenses submitted by the Zakat Payer. Upon studying the objection, ZATCA reviewed the balance of short-term loans, and ensured that it matches

the balances of the item contained in the financial statements. The balances that had a year passed on them were calculated by ZATCA and ZATCA's procedure to add to the zakat base the amount of SAR 300,524 was found to be sound. Accordingly, the Zakat Payer's objection was rejected due to the passage of a year on the balance added to the zakat base according to the account statement of the item submitted by the Zakat Payer and based on Article (4/first/5) of the Implementing Regulations for Zakat Collection. Therefore, the Defendant maintained the validity of its procedure. Regarding the item payables to related parties, ZATCA stated that it added the item to the zakat base for the passage of a year on the opening balance according to the account statement of related parties submitted by the Zakat Payer. Upon examining the objection, ZATCA reviewed the account statement of related parties and ensured that its balance matches the balances contained in the financial statements. The balances that had a year passed on them were calculated and it was found that ZATCA's procedure to add the balance amounting to SAR 45,747,007 that had a year passed on it was valid and sound. Accordingly, the Zakat Payer's objection was rejected due to the passage of a year on the balance added to the zakat base according to the account statement of the item submitted by the Zakat Payer and based on Article (4/First/5) of the Implementing Regulations for Zakat Collection, the Defendant maintained the validity of its procedure. Regarding the item accrued expenses, ZATCA stated that it added the item to the zakat base for having a year passed on the opening balance according to the account statement of accrued expenses submitted by the Zakat Payer. Upon examining the objection, ZATCA reviewed the account statement of accrued expenses, and ensured that its balance matches the balances contained in the financial statements. The balances that had a year passed on them were calculated and ZATCA's procedure to add the balance amounting to SAR 718,326 was found to be valid. Accordingly, the Zakat Payer's objection was rejected due to the passage of a year on the balance added to the zakat base according to the account statement of the item submitted by the Zakat Payer and based on Article (4/first/5) of the Implementing Regulations for Zakat Collection. Therefore, the Defendant maintained the validity of its procedure. Regarding the item joint venture investment, ZATCA stated that it did not deduct the joint venture investment from the zakat base because the balances and receivables shown in the budget of the joint venture were used in trade assets for implementing the .... venture contract..., and therefore this item is not an acquisition asset. Moreover, the joint venture was not subject to zakat, and the Company only submitted an information statement without paying zakat based on the zakat base. Upon examining the objection, ZATCA found that the investment is a joint venture with .....Company. to establish a joint venture as part of ..... development project. Project. The joint venture was registered with ZATCA under TIN No..... The Plaintiff submitted an information statement for the year only and no zakat or tax was charged to the venture for being an independent activity. The Zakat Payer did not submit with his objection anything indicating payment of zakat or tax on the joint venture. He only referred to the existence of financial statements for the joint venture, despite the fact that the joint venture is considered one of the Company's projects, and therefore it is not considered an investment that must be deducted because it was only registered with ZATCA for the purposes of submitting the information statement, and zakat is charged on the file of each partner in the joint venture. Accordingly, the Zakat Payer's objection was rejected for the joint venture not being subject to zakat during the previous and current period based on Article (4/Second/4-A) of the Implementing Regulations for Zakat Collection; and therefore, the Defendant insists on the validity of its procedure. Regarding the item Amounts Due from a Joint Venture: ZATCA stated that it did not deduct the item from the zakat base. Upon examining the objection, ZATCA found that the item was classified in the financial position within non-current assets, representing a debt on the joint venture. The Zakat

Payer's request to deduct it not based on a legal provision whether from the Zakat Regulations or from any other law. The Zakat Payer did not clarify the nature of the item and the grounds for non-payment, and whether it could be considered a bad debt that he has no control over, or loans to a subsidiary or an investment company, and it was not subject to zakat in the file of the joint venture, which only submitted financial statements and did not submit a declaration. Accordingly, the Zakat Payer's objection was rejected for not providing evidence of the Company's entitlement to deduct the amounts due from the joint venture from the zakat base, and ZATCA maintained the validity and soundness of its procedure. Regarding the item liabilities under a capital lease contract, ZATCA stated that it added to the zakat base the item in the amount of SAR 1,009,951 for the passage of a year on it. Upon examining the objection, ZATCA found that the item was included in Note No. (24) of the financial statements and was disclosed (attached is an explanatory table). ZATCA also held that its procedure to add the closing balance is based on the fact that the liability under a capital contract results from a single contract. The division of these liabilities in the financial statements into current and non-current results from the application of accounting standards related to the disclosure of these items and their presentation in the financial statements. The Zakat Payer also requested that the opening balance be adopted and did not provide an account statement of the item and only settled for what was stated in the financial statements. Accordingly, the Zakat Payer's objection was rejected for failure to provide evidence based on Article (20/3) of the Zakat Regulations, as well as Article (4/First/5) of the Implementing Regulations for Zakat Collection; and therefore, the Defendant maintained the validity of its procedure.

On Sunday, 24/07/1443 AH, the Department held its session remotely to hear the case. For the Defendant appeared Mr.....in his capacity as the Plaintiff's Attorney, by POA No. (.....). For the Defendant appeared Mr....., National ID No....., in his capacity as the Defendant's representative under authorization No..... dated .../.../.... issued by ZATCA's deputy governor for legal affairs. Having asked the Plaintiff's attorney about its claims, it referred to the statement of claims filed with the General Secretariat for Tax Committees. When Defendant's representative was confronted with the above details, it responded that it stands by the reply previously submitted to the General Secretariat of Tax Committees and does not accept any new documents that were not presented during the objection and review stages. Having asked both litigants if they had any other statements, they responded that they are satisfied with their earlier submissions presented to the Department. Consequently, the Department decided to close the pleadings and deliberation.

Grounds

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and Regulations.

In Form: Since Plaintiff aims with its claim to cancel ZATCA decision regarding zakat assessment for 2016 and given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the legally prescribed period. Therefore, the Department accepts the Case in form.

On merits, upon Department's review of the documents and evidence contained in the case file, as well as the requests, defenses, and arguments presented by the parties, it became evident that the dispute centers on Defendant's issuance of the zakat assessment for 2016. The objection pertained to the following items:

Item First Company's Share of Joint Venture Profits:

The Plaintiff objects to the Defendant's action of deducting the share in joint venture profits amounting to SAR 1,660,422 from the zakat base for the year 2016. The Defendant believes that the item should not be deducted from the net profit because the joint venture is not subject to zakat, and an information statement was submitted without paying zakat according to the zakat base. Article (17/5) of the Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1438 AH stipulates that: "5. The obligations related to the partnership apply to the consortium of companies .... including what relates to registration with the Authority, submitting the information statement and the fines resulting from non-compliance." Moreover, Paragraph (3) of Article (57) of the Implementing Regulations of Income Tax Law stated that: "The burden of proof of correctness of information in the Zakat Payer's return regarding its revenues, expenses and any other data, rests on the Zakat Payer. If a Zakat Payer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the Zakat Payer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information". Based on the above, and since the principle of dealing with partners in ... is to deal with them as if they were partners in a partnership, and to apply the obligations stipulated by the tax law regarding partnerships to register and submit information statements. The tax and zakat are charged on the members of those partnerships individually, and the Zakat Payer is required to submit accounts and declare information related to this contract as per his share in the revenues and expenses in his accounts and zakat and tax declarations. Accordingly, the Department concludes to dismiss the Plaintiff's objection regarding this item.

Item Second: Joint Venture Investment:

The Plaintiff objects to the Defendant's decision to not deduct the closing balance of joint venture investment amounting to SAR 111,905,963 from the zakat base for the year 2016. ZATCA stated that it did not deduct the joint venture investment from the zakat base because the balances and receivables shown in the budget of the joint venture were used in trade assets Paragraph (4.A) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH states: "Investments in establishments inside the Kingdom - in partnership with others - if such investments are subject to collection of Zakat under these Regulations, if investment in such establishments is not subject to collection, then it shall not be deducted from base". Article (20/3) of the same Regulations stipulates that: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Taxpayer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the above, and since two basic conditions must be met for investments to be considered as acquisition assets that may be deducted from the zakat base, namely the documented intention of the authorized person that clarifies the purpose of investment, and the absence of any sales operations related to those investments that took place during the year. Upon reviewing the documents attached to the case file, it was found that these investments were not subject to zakat because they are joint venture investment, and that the information

statement was for the purpose of applying the provisions of Article (17/5) of the Implementing Regulations of the Income Tax Law in order to comply with the requirements of ..... Therefore, the Department concludes to dismiss the Plaintiff's objection regarding this item.

Item Third: Amounts Due from a Joint Venture:

The Plaintiff objects to the Defendant's decision to not deduct amounts due from a joint venture in the amount of SAR 208,814,216 from the zakat base for the year 2016, The Defendant believes that this item should not be deducted from the zakat base. Upon examining the objection, the Department found that the item was classified in the financial position within non-current assets and represents a debt owed by the joint venture. Paragraph (4.A) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH states: "A. Investments in an entity within the Kingdom in partnership with other parties if those investments are subject to zakat according to these Regulations; otherwise, these investments shall not be deducted from the tax base. Additionally, Article (20.3) of the same Regulations, states that: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Taxpayer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the above, and upon reviewing the documents attached to the case file, it was found that the Plaintiff did not submit the financial statements of the subsidiary company and its zakat declarations, nor did it submit the articles of association to identify the percentage of shares held in that company. Since the Plaintiff failed to submit documents supporting the Plaintiff's argument that these amounts were subject to zakat in the subsidiary company's base, the loans and advances provided to the subsidiary company are not deducted from the zakat base. Therefore, the Department concludes to dismiss the Plaintiff's objection regarding this item.

Item Fourth: Undeclared Profit from External Purchases (Undeclared Import Profit):

The Plaintiff objects to the Defendant's decision to add an import difference of SAR 194,760 to the net profit for the year 2016, while the Defendant argues that this item should be added to the net profit as an undeclared import profit after comparing the imports from the customs declaration with the foreign purchases in the zakat declaration. In addition, Article (57/3) of the Implementing Regulations of the Income Tax Law states: "The burden of proof of correctness of information in the taxpayer's return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information." Based on the above, the import statement issued by the Saudi Customs Authority is considered material evidence from a neutral third party, and upon reviewing the case file, it was found that ZATCA's procedure to adjust the Plaintiff's business outcomes is due to differences in the value of imports included in the Plaintiff's declaration compared to imports in the customs declaration. Then having reviewed the study, it was found that the Plaintiff provided an analysis of the value of external and internal purchases that does not match the amounts declared in the declaration. The Plaintiff explained that the difference is a result of recording the purchases in the inventory, and the released amount is added to the cost of sales, which is part of the income statement. Thus, the entire value of the purchases during the year was recognized in the inventory, and the disbursed sales were recognized in the profits and losses. The Plaintiff did not provide

supporting documents of its claims, nor did it specify under a category the item was recognized in the inventory. Since the cost of goods sold equals (beginning of period goods + external purchases + internal purchases - end of period goods). Therefore, the Department concludes to dismiss the Plaintiff's objection regarding this item.

Item Fifth: Advance Payments from Customers:

The Plaintiff objects to the Defendant's decision to add the item advance payments from customers in the amount of SAR 234,779,030, while the Defendant argued that it has added that item for having a year passed on the opening balance according to the account statement of the item as per Note No. (13) of the financial statements. Since Paragraph (4/First/4) of Implementing Regulation for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 4. Submitted revenues on which a year has passed." Moreover, Article (4/Second/5) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH, related to determining the Zakat base for those who maintain regular accounts, stipulated that... " Second: The following shall be deducted from Zakat base: 5. Owners'/partners' current account debit balance subject to Zakat, up to a maximum of their share in the carried forward profits. Additionally, Article (20.3) of the same Regulations states: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Taxpayer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the above, and since the correct zakat treatment requires clearing between the debit and credit balances if one current account (one financial liability) has two debit and credit accounts, which results in adding the net amount to the zakat base after deducting the debit balance, and upon reviewing the documents submitted by the Plaintiff, it was found that the Plaintiff did not submit a detailed statement of the debit and credit balances to verify the balance that has a year passed on it. Therefore, the Department concludes to dismiss the Plaintiff's objection regarding this item.

Item Sixth: Payables for the Passage of a Year:

The Plaintiff objected to the Defendant's decision to add the Payables item to the zakat base in the amount of SAR 11,426,698 for the year 2016, while the Defendant argued that it has added to the zakat base the Payables item in the amount of SAR 11,426,698 for the passage of a year on the opening balance according to the account statement of Payables submitted by the Zakat Payer for the year 2016. whereas Paragraph (5) of Section (First) of Article (4) of Implementing Regulation for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5- Government and commercial loans and other similar sources of financing, such as: creditors, payment papers, and overdraft accounts owed by the Zakat payer which: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Based on the above, trade payables are considered one of the components of the zakat base provided that a year has passed on them or they are used to finance assets deducted from the zakat base. Since the dispute over this item is a documentary dispute, upon reviewing the Plaintiff's objection, it was found that the Plaintiff submitted an aggregate account statement of this item but did not submit a detailed statement of the payables to prove that a year has not passed on the amounts in dispute. Therefore, this Department concludes to dismiss the Plaintiff's objection regarding this item.

Item Seventh: Debtors:

The Plaintiff objects to the Defendant's decision to add the item receivables to the zakat base in the amount of SAR 224,202,673 for the year 2016, while the Defendant believes that the item should not be deducted from the zakat base. When examining the objection, the Department reviewed the financial statements and the account statement of the item in light of Note No. (5) of the financial statements. It was found that this balance is receivables carried over from the previous year, as the Defendant explained in its Reply. Since Fatwa No. (23408) dated 18/11/1426 AH issued by the Permanent Committee for Scholarly Research and Iftaa regarding debts owed by government agencies stipulated the following: "Amounts due to a person from any government entity, if their payment is delayed for any reason by the liable entity, even if the rightful owner is aware of the delay, are not subject to Zakat until they are received and a full lunar year passes after their receipt, based on the words of Allah Almighty: (So fear Allah as much as you can), and because Zakat is an act of solidarity and does not become obligatory on someone who is unable to collect it or does not have any control over it" Article (20/3) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH also states: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the above, and having reviewed Attachment No. 1 pertaining to Item No. 7 (Receivables), the Department found that the detailed statement is specific to the Plaintiff's request including the deduction of the government debit balances in the amount of SAR 224,202,673 (accounts payable balance + accounts receivable closing balance), and in principle, the Plaintiff's objection to deducting the balance of government accounts receivables is accepted if the Plaintiff proves the existence of government debit balances that had a year passed on them held with those entities. After reviewing the attached analysis, it was found that the Plaintiff's claim to deduct the amount of SAR 224,202,673 is baseless, because the aforementioned amount includes amounts of a credit nature amounting to SAR 61,351,048 (considered bill reduction), and it is valid for the Plaintiff to request a deduction of SAR 162,851,625. The Department also established that the opening balance of government debit balances amounted to SAR 263,420,575, and the balance collected (credit balance) during the year from those entities amounted to SAR 872,133,151, which reduced the balance of government receivables by its credit nature, and accordingly it was found that the amounts collected from those entities covered the opening balance. Accordingly, the closing balance amounting to SAR 162,851,625 is made up from the debit balance formed during the year from amounts due from those government entities. As for the Plaintiff's claim to deduct the balance of receivables in the amount of SAR 11,426,698 corresponding to the credit balances that ZATCA added as stated in item No. 6, the Plaintiff did not provide any valid analyses to consider the debit balances corresponding to those credit balances. The Plaintiff may have made set off between the two balances if they are for the same financial liability. Therefore, the Department concludes to dismiss the Plaintiff's objection regarding this item.

Item Eighth: Payable Retentions:

The Plaintiff objected to the Defendant's decision to add the item payable retentions in the amount of SAR 31,213,448 to the zakat base for the year 2016, while the Defendant argued that it added to the zakat base this item for the passage of a year on the opening balance according to the detailed statement payable retentions submitted by the Zakat Payer. Article (4/First/5) of Implementing Regulation for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: The Zakat base shall

comprise all Zakat Payer's funds subject to Zakat, including: 5- Government and commercial loans and other similar sources of financing, such as: creditors, payment papers, and overdraft accounts owed by the Zakat payer which: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Since Article 20.3 of the Zakat Regulations states that: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Taxpayer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the above, the amounts withheld from suppliers to ensure good performance are considered one of the components of the zakat base provided that a year has passed on them or they are used to finance assets deducted from the zakat base. Upon reviewing the documents attached to the case file, it was found that the Plaintiff did not provide the detailed statement of the item of payable retentions for the year in dispute to prove that a year has not passed on the amounts added to the zakat base. Therefore, the Department concludes to dismiss the Plaintiff's objection regarding this item.

Regarding Item (9): Short-term Loans:

The Plaintiff objected to the Defendant's decision to add the item of short-term loans in the amount of SAR 300,524 to the zakat base for the passage of a year for the year 2016, while the Defendant argued that it added that item to the zakat base for the passage of one year on the opening balance according to the detailed statement of accrued expenses submitted by the Zakat Payer. Article (4/First/5) of Implementing Regulation for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5- Government and commercial loans and other similar sources of financing, such as: creditors, payment papers, and overdraft accounts owed by the Zakat payer which: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Also Article 20.3 of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH, stipulates: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Taxpayer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the above, loans are considered one of the components of the zakat base, regardless of their type, source or classification, provided that a year has passed on them or that they are used to finance assets deducted from the zakat base without requiring the passage of a year on them. Upon reviewing the case file, it was found that the Plaintiff stated that this loan is a bank facility and was used to finance working capital and was not used to finance the purchase of fixed assets, and it did not remain in the Company's possession for a full year and a lunar year did not pass on it. the Plaintiff attached an aggregate statement of loans to its objection, which is not sufficient. The Plaintiff did not provide the detailed statement supporting its argument that those loans had a year passed on them, and there was no detailed statement of those loans that shows that the opening balance were paid during the year. Therefore, this Department concludes to dismiss the Plaintiff's objection regarding this item.

With regard to Item (10): Amounts Payable to Related Parties:

The Plaintiff objects to the Defendant's decision to add the item payables to related parties in the amount of SAR 45,747,007 to the zakat base for the year 2016. The Defendant argued that it added this item to the zakat base for having a year passed on the opening balance as per the account statement of related parties submitted by the Zakat Payer. Article (4/First/5) of Implementing Regulation for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5- Government and commercial loans and other similar sources of financing, such as: creditors, payment papers, and overdraft accounts owed by the Zakat payer which: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. The portion used for trading assets and for which a full year has passed". Additionally, Article (20.3) of the same Regulations states: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Taxpayer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the above, the payables to related parties are considered a source of financing and are treated as property rights in terms of zakat treatment, and therefore the portion that has a year passed on it should be added to the zakat base. Upon reviewing the documents attached to the case file, it was found that the Plaintiff did not submit the detailed account statement of related parties to prove its claims regarding the non-passing of a year on those amounts, and due to the lack of detailed account statement of related parties, the Department concludes to dismiss the Plaintiff's objection regarding this item.

Item (11): Other (Accrued Expenses):

The Plaintiff objects to the Defendant's decision to add the item accrued expenses in the amount of SAR 718,326 to the zakat base for the year 2016. The Defendant argued that it added this item to the zakat base for having a year passed on the opening balance as per the account statement of accrued expenses submitted by the Zakat Payer. Article (5/A/1) of the Implementing Regulations for Zakat Collection issued by Ministry of Finance Decision No. (2082) dated 01/06/1438 AH, concerning deductible expenses, stipulates: "All regular and necessary expenses required for the activity, whether paid or due, shall be deducted up to the net result of the activity, provided that the following controls are met: a. Expenses should be actual expenses as supported by relevant documents and other evidential matter to enable ZATCA to verify the accuracy of expenses, even if related to prior years". Paragraph (2) of Article (6) of the same Regulations related to deductible expenses states: "Expenses that the Zakat Payer fails to prove by supporting documents or other evidential matter acceptable to ZATCA". Paragraph (3) of Article (20) thereof states: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Taxpayer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the foregoing, these expenses are considered deductible if it is proven that they were actually incurred and supported by documentary evidence. Since the dispute regarding this item is a documentary one, and upon reviewing the documents in the Case file, it is evident that the Plaintiff has failed to provide the supporting documents for the disputed expenses. Therefore, the Department concludes to dismiss the Plaintiff's objection regarding this item.

Item (12): Liabilities under a Capital Lease Contract:

The Plaintiff objects to the Defendant's decision to add the closing balance of Liabilities under a Capital Lease Contract in the amount of SAR 1,009,951 to the zakat base for the year 2016. The Defendant argued that it added this item to the zakat base for having a year passed on the balances. Article (4/First/5) of Implementing Regulation for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5- Government and commercial loans and other similar sources of financing, such as: creditors, payment papers, and overdraft accounts owed by the Zakat payer which: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it". Moreover, Article 20.3 stipulates that: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Taxpayer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the above, and since the Plaintiff requested that the opening balance in the amount of SAR 569,680 be added to the zakat base rather than the closing balance. ZATCA claimed that its procedure to add the closing balance of the period is based on the fact that the obligation under a capital contract results from a single contract and its division in the financial statements into current and non-current is due to the application of accounting standards related to the disclosure of these items and their presentation in the financial statements, since the Zakat Payer requests to take the opening balance and did not provide an account statement of the item and only settled for referring to what was stated in the financial statements. Therefore, ZATCA concludes to dismiss the Plaintiff's objection regarding this item.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

Dismiss Zakat Payer's objection in all the items in question.

This decision was issued in the presence of both parties, and the date of depositing the decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of the decision. The parties to the case may request to appeal against the decision as per the law within thirty (30) days from the day following the date specified for its receipt, whereafter, the decision will be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Primary Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1561)
Delivered in Case No. (ZI-2021-58368)

Key words:
Zakat Assessment – Accounts – Zakat Base – Non-Current Assets – Related-Party Creditors – Employee Ownership of Housing Units – Employee Receivables – Accounts Receivable – Outstanding Receivables – Dismissing Plaintiff's Objection.

Abstract

Plaintiff requests annulling ZATCA decision regarding zakat and tax assessment for years from 2016 to 2018. Plaintiff's objection is limited to two items. Regarding the first item: Non-Current Assets (Employee Housing Ownership Program for 2017 and 2018): Plaintiff objects to Defendant's procedure outlined in disallowing deduction of Saudi partner's share of the amounts related to other non-current assets, amounting to SAR 94,507,398 for 2017 and SAR 95,058,510 for 2018, from zakat base in the final assessments. In addition, Plaintiff requested allowing deduction of the corresponding amounts under Employee Housing Ownership Program for the above-mentioned years. Thereupon, if ZATCA does not allow deduction of Employee Housing Ownership Program from zakat base, it should cancel adding amounts due to related parties, which were used to finance Employee Housing Ownership Program and did not remain in Company's possession for a zakat year for 2017 and 2018. Item Second: Related-Party Creditors for 2017 and 2018: Plaintiff objects to Defendant's procedure outlined in adding Saudi partner's share of the opening or closing balance, whichever is lower, of amounts due to related parties, amounting to SAR 89,101,382 for 2016 and SAR 120,817,258 for 2017. In addition, Plaintiff stated that the amounts due to related parties were not used to finance any deductible assets for 2016 and 2017, except for SAR 91,061,497 for 2017, which was used to finance Employee Housing Ownership Program. Accordingly, the Company added Saudi partner's share amounting to SAR 91,061,497 to zakat base on the ground that Employee Housing Ownership Program would be deducted from zakat base for 2017. Thereupon, Plaintiff requests annulling ZATCA procedure regarding this item. ZATCA answered that regarding (Non-Current Assets (Employee Housing Ownership Program) for 2017 and 2018) item: Defendant stated that at the time of making assessment, loans receivable was not deducted from zakat base, as it turned out that: A. Employee Advances: Based on this classification, Employee Housing Ownership Program cannot be deducted as it is handled as loans to third parties. B. Deferred Costs: The source of such costs may be related parties, for which Zakat Payer has not provided evidential matters or supporting documents to prove the association of costs with such related parties to warrant their deduction. Therefore, ZATCA considers loans granted to employees as debit items that are not deductible and insists on its position. Regarding (Related-Party Creditors for 2017 and 2018) item: ZATCA stated that at the time of making assessment, it added (Related Parties) item to zakat base by adding lower balance between the opening and closing

balances, due to discrepancies between balances reported in the breakdown provided by Plaintiff along with the financial statements. Having reviewed (Related Parties) item, it turned out that funding for Employee Housing Ownership Program during the two mentioned years (as stated in Plaintiff's answer to the preliminary assessment). A review of the provided breakdown revealed that it was general rather than detailed, in addition to discrepancies between the provided breakdown and balances reflected in the financial statements. In addition, ZATCA insists on validity of its procedure due to the lack of alignment between Plaintiff's breakdown and the financial statement balances. Moreover, Plaintiff did not provide the supporting documents for its stance, contrary to Paragraph (3) of Article (20) of the Implementing Regulations for the Collection of Zakat. The Department found that Plaintiff did not provide the financial statements for 2015 and 2016 to verify its position. Therefore, the provided analytical statement cannot be relied upon to prove the claim that a zakat year has passed on such amounts, given the non-alignment of balances with the audited financial statements for 2016 and 2017. Thereupon, and due to the lack of a detailed breakdown of related party account matching financial statement balances, the amount added to zakat base is the lower of opening or closing balances. This approach was followed by ZATCA in zakat assessment for years in question. Department ruled to Dismiss the Plaintiff's objection regarding the two items.

Instruments:

- Articles (4. First. 2 and 3, Second.1) and (20.3) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Sunday, 24/07/2022 AD, the First Department for Determination of Income Tax Violations and Disputes in Dammam, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended, formed by Royal Order No. (65474) dated 23/12/1439 AH and reformed by Royal Order No. (26760) dated 14/05/1442 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 08/07/2021 AD.

The facts of this Case are summed up that ..., holder of National ID No. (...) in his capacity as attorney of Plaintiff (... Company), C.R. No. (...), under POA No. (...), dated ..., filed an objection to ZATCA zakat assessment for years from 2016 to 2018. Plaintiff's objection is limited to the following items: Item First Non-Current Assets (Employee Housing Ownership Program for 2017 and 2018): Plaintiff objects to Defendant's procedure outlined in disallowing deduction of Saudi partner's share of other non-current asset amounts of SAR 94,507,398 for 2017 and SAR 95,058,510 for 2018 from zakat base in the final assessments. The company dissatisfied with ZATCA calculation and stated that the item outlines (Employee Housing Ownership Program) as detailed in Notes 2-4 (r) and 2-2 (r) to the audited financial statements for 2017 and 2018 (Exhibit No. 3 and 4). The Company has a program named "Employee Housing Ownership Program in...", which provides eligible Saudi employees with the opportunity to purchase housing units constructed by the Company through a series of installments over a specified number of years. The Company provides the following excerpt from Notes 2-4 (r) and 2-2 (r) to the audited financial statements for ease of reference: "(r) Employee Housing Ownership

Program: The Company has a program named "Employee Housing Ownership Program in...", which provides eligible Saudi employees with the opportunity to purchase housing units constructed by the Company through a series of installments over a specified number of years. Ownership of housing units is transferred upon full payment. Under Employee Housing Ownership Program in ..., the amounts paid by employee to purchase the housing unit are refunded to the employee after applying some deductions, in the event of employee's leaving of work, and the housing unit is returned to the Company. In addition, employee long-term receivables under Employee Housing Ownership Program in ... are primarily recognized under non-current financial assets at fair value. They are subsequently measured at amortized cost using the effective interest rate method. The variance between the fair value and actual amount of receivables from the employee is recorded under "Non-Current Prepaid Employee Benefits" and amortized as an expense over service period. The same amount is amortized as financing revenue against receivables due from employees. The deferred costs related to Employee Housing Ownership Program in ... are recognized as non-current prepaid employee benefit expenses at the time the housing units are allocated to employees and are amortized over the period during which the employees pay costs of such housing units". As for the accounting treatment, the Company records the cost of constructing housing units as construction work in progress. The construction work in progress is then transferred to housing ownership receivables as soon as the housing units are allocated for eligible employees. The ownership of housing unit is transferred to the employee only upon full payment of the amount by employee, whether upon the completion of payment term, resignation or retirement. In addition, such costs are financed from the following sources added to zakat base: - The cash flow from operating activities (representing part of adjusted profit). - Equity. - Term loan. Since the residential units are owned by … Companies, and since the construction costs outline long-term cash outflows, the amounts related to Employee Housing Ownership Program receivables should be accepted as deductions from zakat base. Since the purpose of employee loans is to retain and develop the Saudi employees. In addition, Plaintiff stated that it added the amounts due to related parties, amounting to SAR 91,061,497 and SAR 88,176,707 to zakat base in its tax returns / zakat declarations based on the fact that such amounts were used to finance the above-mentioned amounts under Employee Housing Ownership Program. Moreover, Plaintiff requested that the corresponding amounts are deducted from zakat base for the above-mentioned years under Employee Housing Ownership Program. Accordingly, if ZATCA does not allow deduction of Employee Housing Ownership Program from zakat base, it should cancel adding amounts due to related parties, which were used to finance Employee Housing Ownership Program, and which did not remain in Company's possession for a full zakat year for 2017 and 2018. Item Second: Related-Party Creditors for 2017 and 2018: Plaintiff objects to Defendant's procedure outlined in adding Saudi partner's share of the opening or closing balance, whichever is lower, of the amounts due to related parties, amounting to SAR 89,101,382 for 2016 and SAR 120,817,258 for 2017. Plaintiff stated that the Company disagrees with Defendant's arbitrary treatment, which lacks any justification. Plaintiff stated that it submitted (The breakdown of amounts due to related parties under Letter No. ... dated November 29, 2020 AD for 2016 and 2017) and attached a copy of response letter (Appendix 5). It is noted that the breakdown of amounts shows that they did not remain in Company's possession for a full zakat year, indicating that Defendant did not properly review the detailed breakdown provided by Plaintiff. In addition, Plaintiff pointed out that the detailed breakdown of amounts due to related parties in (Appendix 5.2). Moreover, ZATCA rejected the objection under the pretense that the analysis of breakdown provided does not match the balances reflected in the audited financial statements. In this regard, Plaintiff believes that Defendant compared the opening balance of the breakdown of

amounts due to related parties for 2017, which is an amount of SAR 11 million, with the comparative figures in the audited financial statements for 2017, which are SAR 120 million, instead of comparing it with the closing balance in the audited financial statements for 2016. In this regard, according to the detailed breakdown analysis, the opening balance and the closing balance for 2017 were SAR 117,602,667 and SAR 194,531,648 respectively. The closing balance in the audited financial statements for 2016 differs from the opening balance in the audited financial statements for 2017 due to the reclassification of the opening balance to apply International Financial Reporting Standards (IFRS) to the financial statements. In addition, Plaintiff referred to (Note No. 3) to the audited financial statements for 2017 and pointed out that the amounts due to related parties were not used to finance any deductible assets for 2016 and 2017, except for the amount of SAR 91,061,497 for 2017, which was used to finance Employee Housing Ownership Program. Accordingly, the Company added Saudi partner's share amounting to SAR 91,061,497 to zakat base on the basis that Employee Housing Ownership Program would be deducted from zakat base for 2017. Thereupon, Plaintiff requests annulling ZATCA procedure regarding this item.

Having presented the statement of claim to Defendant, Defendant submitted an answer wherein replies that regarding (Non-Current Assets (Employee Housing Ownership Program for 2017 and 2018) item: Defendant stated that at the time of making assessment, Defendant did not deduct receivable loans from zakat base after reviewing documents and reconciling information provided by Zakat Payer with the financial statements, which revealed the following: A. Employee Advances: Based on this classification, Employee Housing Ownership Program cannot be deducted as it is handled as loans to third parties. B. Deferred Costs: The source of such costs may be related parties, for which Zakat Payer has not provided evidential matters or supporting documents to prove the association of costs with such related parties to warrant their deduction. Therefore, Defendant maintains that the loans granted to employees are considered as receivables that are deductible, and there is no provision in the Implementing Regulations for the Collection of Zakat that permits deducting such receivables, as no addition or deduction is allowed without explicit text. In addition, ZATCA insists on its position. Regarding (Related-Party Creditors for 2017 and 2018) item: Defendant stated that at the time of making assessment, it added (Related Parties) item to zakat base by adding lower balance between the opening and closing balances, due to the mismatch between balances reflected in the breakdown provided by Plaintiff and balances reflected in the financial statements. Plaintiff requests deducting related parties from zakat base, except for the amount of SAR 91,061,497 for 2017, which was used to finance Employee Housing Ownership Program. Having reviewed (Related Parties) item, it turned out that it includes financing for Employee Housing Ownership Program over the two years in question (as stated in Plaintiff's response to the preliminary assessment). The provided breakdown appears to be aggregate rather than detailed, and there is a discrepancy between the breakdown provided and the balances reflected in the financial statements. In addition, Defendant insists on validity of its procedure due to the mismatch between the breakdown provided by Plaintiff and balances reflected in the financial statements. In addition, Plaintiff did not provide the supporting documents for its position, which contradicts Paragraph (3) of Article (20) of the Implementing Regulations for the Collection of Zakat.

On Sunday, 24/07/1443 AH, the Department held its session remotely to hear the case. For the Plaintiff appeared Mr....., holder of National ID No. (...), in his capacity as the Attorney by POA No. ..... For the Defendant appeared Mr....., holder of National ID No. ..... in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. ..... dated …/…/…, issued by Deputy Governor for Legal Affairs. Having asked Plaintiff's Attorney regarding his case, he maintained his statements

contained in the statement of claims submitted to General Secretariat of Tax Committees. When Defendant's representative was confronted with the above details, it responded that it stands by the reply previously submitted to the General Secretariat of Tax Committees and does not accept any new documents that were not presented during the objection and review stages. Having asked both litigants if they had any other statements, they responded that they are satisfied with their earlier submissions presented to the Department. Consequently, the Department decided to close the pleadings and deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the Case moving for annulling ZATCA decision regarding zakat assessment for years from 2016 to 2018. Given that this dispute is a tax dispute. Therefore, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the statutory period. Therefore, the Department accepts the Case in form.

On Merits: The Department, having taken cognizance of documents included in Case file, requests, defense and arguments raised by the parties, found that the dispute involves Plaintiff's objection to Defendant's procedure outlined in making zakat and tax assessment for years from 2016 to 2018. Plaintiff's objection is limited to the following items:

Item First Non-Current Assets (Employee Housing Ownership Program for 2017 and 2018): Plaintiff objects to Defendant's decision outlined in disallowing deduction of Saudi partner's share of the amounts from other non-current assets, amounting to SAR 94,507,398 for 2017 and SAR 95,058,510 for 2018, from zakat base in the final assessments. On the other hand, Defendant maintains that loans receivable should not be deducted from zakat base following a review of documents and matching Plaintiff's statements with the financial statements. Paragraph (4/Second/1) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH provides: "The following items shall be deducted from the zakat base: 1. Net fixed assets, including, for example though not limited to, the following: Net fixed assets (property assets), any payments for the purchase of fixed assets, and spare parts and materials not prepared for sale, provided that such assets be owned by the Zakat payer, unless an obstacle to the transfer of ownership exists, and be used in the activity". In addition, Paragraph (1) of (Second) of Article (4) thereof stipulates: "The following items shall be deducted from the Zakat Base: 2. Taxpayer's capital constructions under implementation which is established for the purpose of being used for the activity and not for the purpose of being sold." As such, it turns out that in order to deduct assets from zakat base, such assets should be used in the business activity. Having taken cognizance of Case file and documents included therein, it turns out that Plaintiff did not provide lease agreements for residential units for the purpose of ownership made with employees and housing loan agreements. Having taken cognizance of Plaintiff's answer, it turns out that the amounts that Plaintiff requests to be deducted do not outline assets intended for Company's use but are rather loans granted to employees, which are not deductible from zakat base. Therefore, the Department dismisses Plaintiff's objection and upholds Defendant's procedure regarding this item. Regarding Plaintiff's claim to cancel addition

of amounts due to related parties in the event that the deduction of Employee Housing Ownership Program from zakat base is not accepted, which were used to finance Employee Housing Ownership Program and did not remain in Company's possession for a full zakat year for 2017 and 2018. Having taken cognizance of Case file, it turned out that Plaintiff did not provide evidence that such (Amounts Due to Related Parties) pertain to Employee Housing Ownership Program. In addition, having reviewed the attached financial statements for 2017 and 2018, it does not turn out that the amounts were used to finance Employee Housing Ownership Program. Therefore, the Department dismisses Plaintiff's objection to this item.

Item Second: Related-Party Creditors for 2016 and 2017: Plaintiff objects to Defendant's procedure outlined in adding Saudi partner's share from either the opening or closing balance, whichever is lower, of amounts due to related parties for the years in question. On the other hand, Defendant maintains that the item should be added to zakat base by including the lower of the opening or closing balance due to the discrepancy between the balances in the breakdown provided by Plaintiff and those reflected in the financial statements. Paragraphs (2 and 3) of (First) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 2. The credit current account of owners/ partners at the beginning or end of the year, whichever is less, including any increase in the current account if the source of such increase is a proprietorship item or a funding to an asset of the property. 3. Loans by owners/ partners to the establishment, and shall be accorded similar treatment as Capital". In addition, Paragraph (3) of Article (20) of the same Regulations stipulates: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". As such, the amounts due to related parties are considered a source of finance and are handled as equity for zakat purposes. Therefore, the amount on which a zakat year has passed should be added to zakat base. Having taken cognizance of documents included in Case file, it turns out that Plaintiff provided the financial statements for 2017, along with an analytical statement of amounts due to related parties for 2016 and 2017 (Exhibit No. 5.2). Having reviewed the provided breakdown, it turned out it is aggregate rather than detailed, and there is a discrepancy between the provided breakdown and the balances reflected in the financial statements for 2016 and 2017. Plaintiff justified the discrepancies by stating that ZATCA compared the opening balance of amounts due to related parties with the comparative figures reflected in the audited financial statements for 2016 and 2017, instead of comparing it with the closing balance reflected in the audited financial statements for 2015 and 2016 (the previous year). Having taken cognizance of Case file, it turns out that Plaintiff did not provide the financial statements for 2016 and 2015 to verify its position. Thereupon, the analytical statement provided by Plaintiff cannot be used to support the claim that a zakat year has passed on such amounts, as their balances do not match the audited financial statements for 2016 and 2017. As such, and due to the lack of a detailed breakdown for related party account that matches the financial statement balances, the amount added to zakat base is the lower of the opening or closing balance, which was done by Defendant in zakat assessment for the years in question. Therefore, the Department dismisses Plaintiff's objection to this item.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

- Dismiss the Plaintiff's objection regarding the two items.

This decision was issued in the presence of both parties, and the date of depositing the decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of the decision. The parties to the case may request to appeal against the decision as per the law within thirty (30) days from the day following the date specified for its receipt, whereafter, the decision will be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period in accordance with Article 33.2 of Tax Dispute and Violation Committee Procedures).

Primary Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1563)
Delivered in Case No. (Z-2021-54298)

Key words:
Zakat Assessment – Accounts – Zakat Base – Company's Share from Business Results of Subsidiaries – Variance Due by Related Parties – Zakat Calculation – Dismissing Plaintiff's Objection.

Abstract

Plaintiff requests annulling ZATCA decision regarding zakat assessment for 2016 and 2017. Plaintiff's objection involves the following items: Item First Company's Share from Business Results of Subsidiaries for 2016: Plaintiff stated that the correct zakat calculation of investments and Company's share from business results of subsidiaries is to exclude the share from business results of subsidiaries, amounting to SAR 2,883,082 for 2015 and SAR 672,088 for 2016, from the net profit subject to zakat and from investments due to the fact that such share is subject to zakat in the investee companies. In addition, Plaintiff stated that ZATCA deducted the investment in subsidiaries after excluding Company's share in profits of such subsidiaries, which is a correct procedure. However, ZATCA did not complete the procedure by deducting the same share from net profit. This resulted in levying zakat on that share at the Company, despite the fact that it was subject to zakat at the investee company, effectively subjecting it to zakat twice, which is not permissible under Sharia. As for the Second Item Variance Due by Related Parties for 2016 and 2017: Plaintiff objects to Defendant's procedure regarding (Variance Due by Related Parties for 2016 and 2017) item. Plaintiff stated that the balance of related parties essentially outlines an investment to finance the working capital of the investee company. This balance appears in the investee company as a credit balance and is subject to zakat in that company. Therefore, Plaintiff objects to levying zakat on such balance, as this would result in calculating zakat on the same amount twice: Once in the investee company and once in zakat base of the Company. In addition, Plaintiff stated that the balance of related parties amounting to SAR 7,027,155 was subject to zakat within the balance due to related parties. ZATCA answered, regarding (Company's Share from Business Results of Subsidiaries) item, that: It deducted the closing investment balance amounting to SAR 14,520,170, which includes Company's share from business results of amounting to SAR 572,088. However, Company's share from business results of subsidiaries was not deducted from profit base. Accordingly, Zakat Payer's objection was rejected, and ZATCA insists on validity and correctness of its procedure. Regarding Zakat Payer's objection to (Variance Due by Related Parties): ZATCA stated that it deducted (Variance Due by Related Parties) item from zakat base within the limits of retained earnings added to zakat base, as such retained earnings are considered a debit current account. In addition, it turned out that the item is labeled as (Transactions with Related Parties) and that the nature of such transactions involves expenses paid on behalf of the Company. Moreover, it turns out

from Note (8.A) to the financial statements for 2017 that there were both debit and credit transactions, indicating that such transactions are commercial transactions between the two companies and outline an investment. In addition, the commercial transactions are not deductible from zakat base. As such, Zakat Payer's objection was rejected, and ZATCA insists on validity and correctness of its procedure. The Department found, regarding the first item (Company's Share from Business Results of …), that: Defendant deducted the closing investment balance, but it did not adjust the net profit of investment losses, which renders its procedure valid. As for Item Second (Suppliers): (Variance Due by Related Parties): It turns out from Note No. (8.A) to the financial statements for 2017 that there were both debit and credit transactions. In addition, it turns out from Note No. (15) to the financial statements that such transactions are mutual services and purchases, indicating that these are commercial transactions. Moreover, the nature of transactions is that they are expenses paid on behalf of the Company. Given that these are commercial transactions between the two parties, zakat would be due on investment amount, considering it as a debt on which zakat is due for both the lender and borrower once the zakat year passes. This view is supported by Fatwa that stipulates: "The evidence of the obligation of zakat is general and includes all zakatable assets because the creditor pays zakat on the funds that he owns, which is in debtor's custody, while the debtor pays zakat on other funds that he owns, holds and is able to dispose of. There is a difference between the funds in the possession of a person and the funds that are owed to him". Department ruled to Dismiss Plaintiff's objection to all items, subject matter of the Case, for 2016 and 2017.

Instruments:

- Articles (4.Second.4.a) of the Implementing Regulations of for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Sunday, 24/07/2022 AD, the First Department for Determination of Income Tax Violations and Disputes in Dammam, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended, formed by Royal Order No. (65474) dated 23/12/1439 AH and reformed by Royal Order No. (26760) dated 14/05/1442 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 13/06/2021 AD.

The facts of this case are summed up in that …, holder of National ID No. (...) in his capacity as attorney of Plaintiff (...), C.R. No. (...), under POA No. (...), dated ..., filed an objection to ZATCA zakat assessment for 2017 and 2018. Plaintiff's objection is limited to the following items: Item First Company's Share from Business Results of Subsidiaries for 2016: Plaintiff objects to Defendant's procedure regarding Company's share from business results of subsidiaries for 2016. Plaintiff pointed out that according to Note No. (6.B) to the financial statements, the company follows equity method for its investments, as the investments were reflected in the said note in accordance with this accounting method. As such, the correct zakat calculation of investments and Company's share from business results of subsidiaries, in light of Company's use of equity method, is to exclude the share from business results of subsidiaries, amounting to SAR 2,883,082 for 2015 and SAR 672,088 for 2016, from net profits and from the investments. This is because this share is subject to zakat in the investee companies. Therefore, levying zakat on such share

again within the net profit would result in double payment of zakat, which is prohibited by Sharia. In addition, Plaintiff stated that ZATCA had deducted the investment in subsidiaries after excluding Company's share from business results of subsidiaries, and this procedure is correct. However, ZATCA did not complete the procedure by deducting the same share from net profit, which resulted in levying zakat on such share at the Company, despite the fact that it was subject to zakat in the investee company. In other words, the share was subject to zakat twice, which is prohibited by Sharia. Item Second: Variance Due by Related Parties for 2016 and 2017: Plaintiff objects to Defendant's procedure regarding (Variance Due by Related Parties for 2016 and 2017) item. Plaintiff pointed out that the balance due by related parties essentially outline an investment to finance the working capital in the investee company, appearing as a credit balance in that company, which is subject to zakat in that company. Therefore, Plaintiff objects to levying zakat on such balance, as this would result in calculating zakat twice on the same amount. Once in the investee company and once in zakat base of the Company. Moreover, Plaintiff stated in Note No. (15) to the financial statements of … Company (investee company) that it turns out that zakat was levied on related party balance amounting to SAR 7,027,155 as part of the balance due to related parties.

Having presented the statement of claim to Defendant, Defendant submitted an answer wherein replied that regarding Zakat Payer's objection to (Company's Share from Business Results of Subsidiaries) item: Defendant stated that it deducted the closing investment balance, amounting to SAR 14,520,170, which included Company's share from business results of subsidiaries, amounting to SAR 572,088. However, Company's share from business results of subsidiaries was not deducted from profit base. Thereupon, ZATCA rejected Zakat Payer's objection and insists on validity and correctness of its procedure. Regarding Zakat Payer's objection to (Variance Due by Related Parties): Defendant stated that it deducted (Amounts Due from Related Parties) item from zakat base, within the limits of retained earnings added to zakat base, considering such item as debtor account. Having taken cognizance of Zakat Payer's objection and reviewed Note No. (8.A) to the financial statements, it turns out that the item is labeled (Transactions with Related Parties). In addition, it turns out that the nature of such transactions is identified as expenses paid by the Company. Moreover, it turns out from Note No. (8.A) to the financial statements for 2017 that there was a debit and credit transactions, indicating that such transactions are commercial transactions between the two companies, involving a share in the capital and outlining an investment. In addition, the commercial transactions are not deductible from zakat base in accordance with Paragraph (C) Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH. Therefore, Zakat Payer's objection was rejected, and ZATCA insists on validity and correctness of its procedure.

On Sunday, 24/07/1443 AH, the Department held its session remotely to hear the case. For the Plaintiff appeared Mr....., holder of National ID No. (...), in his capacity as the Attorney by POA No. ..... For the Defendant appeared Mr....., holder of National ID No. ..... in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. ..... dated …/…/…, issued by Deputy Governor for Legal Affairs. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claims submitted to General Secretariat of Tax Committees. When Defendant's representative was confronted with the above details, it responded that it stands by the reply previously submitted to the General Secretariat of Tax Committees and does not accept any new documents that were not presented during the objection and review stages. Having asked both litigants if they had any other statements, they responded that they are satisfied with their earlier submissions presented to the Department. Consequently, the Department decided to close the pleadings and deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In form, since the Plaintiff aims with its case to annul decision of ZATCA regarding the zakat assessment for the years 2016 and 2017, and given that this dispute falls within the category of tax disputes, it lies within jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) dated 21/04/1441 AH. Furthermore, the case was filed by an authorized party and within the legally prescribed period, which necessitates acceptance of the case in form by the Department.

On merits, the Department, having reviewed the documents and evidence contained in the case file, as well as the requests, defenses, and arguments presented by the parties, found that the dispute centers on Defendant's issuance of the zakat assessment for the years 2016-2017, specifically concerning the following items: Item First Company's Share from Business Results of Subsidiaries for 2016: Plaintiff objects to Defendant's procedure regarding Company's share from business results of subsidiaries for 2016. On the other hand, Defendant asserts that it deducted the closing investment balance, which includes Company's transaction in the business results of subsidiaries, and that Company's share from business results of subsidiaries was not deducted from profit base. Since Paragraph (4.a) of (Second) of Article of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The following items shall be deducted from the Zakat Base: (A): "Investments in an entity in the Kingdom, in participation with others, if such investments are subject to Zakat according to this Regulations. If the investment in such entities is not subject to Zakat, no deductions will be made from the Zakat Base". As such, and having taken cognizance of Case file, arguments and documents included therein, the Department found that Plaintiff stated that it applies equity method in its subsidiaries. In addition, zakat calculation of profits/losses of investments according to equity method can be done in two ways. The first method: Adjusting net profit by profits (losses) of investments in subsidiaries and deducting investments at the beginning of period (as part of negative items). The second method: The second method is not to adjust the net profit by profits (losses) of investments in subsidiaries and to deduct the investments at the end of period. In both cases, Plaintiff concludes that these profits/losses should not be subject to zakat in the holding company's zakat base, as they have already been subject to zakat at subsidiaries' base to avoid double zakat calculation. Since Defendant deducted the investment balance at the end of period but did not adjust the net profit by the investment losses. Thereupon, Defendant's procedure is correct. Therefore, the Department dismisses Plaintiff's objection to this item. Item Second: Variance Due by Related Parties for 2016 and 2017: Plaintiff objects to Defendant's procedure regarding (Variance Due by Related Parties for 2016 and 2017) item. On the other hand, Defendant deducts (Amounts Due by Related Parties) item from zakat base within the limits of the retained earnings added to zakat base, considering such earnings as debit current account. Since Paragraph (4.a) of (Second) of Article of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The following items shall be deducted from the Zakat Base: (A): "Investments in an entity in the Kingdom, in participation with others, if such investments are subject to Zakat according to this

Regulations. If the investment in such entities is not subject to Zakat, no deductions will be made from the Zakat Base". As such, and having taken cognizance of documents included in Case file, which include the documents provided by Plaintiff, namely the financial statements and zakat declarations of … Company (investee company), as it turns out from Note No. (8.A) to the financial statements for 2017 that there were both debit and credit transactions. In addition, it turns out from Note No. (15) to the financial statements that such transactions are mutual services and purchases, indicating that these are commercial transactions. Moreover, the nature of transactions is that they are expenses paid on behalf of the Company. Given that these are commercial transactions between the two parties, zakat would be due on investment amount, considering it as a debt on which zakat is due for both the lender and borrower once the zakat year passes. This view is supported by Fatwa issued by Letter No. (3077/2) dated 08/11/1426 AH that stipulates: "The evidence of the obligation of zakat is general and includes all zakatable funds, with no authentic evidence allowing deduction of debts from them. This does not result in levying zakat twice on the same funds because the creditor pays zakat on the funds that he owns, which is in debtor's custody, while the debtor pays zakat on other funds that he owns, holds and is able to dispose of. There is a difference between the funds in the possession of a person and the funds that are owed to him". Accordingly, the court concludes to reject Plaintiff's objection on this item.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

- Dismiss the Plaintiff's objection in all the items subject matter of this case for the years 2016 and 2017.

This decision was delivered in presence of the parties. The date of entering decision in the e-system of the General Secretariat is considered the date of decision delivery. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not file an objection

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period in accordance with Article 33.2 of Tax Dispute and Violation Committee Procedures).

Primary Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1566)
Delivered in Case No. (ZI-2021-52566)

Key words:
Zakat Assessment – Accounts – Zakat Base – Surplus from Insurance Operations Owed to Policyholders – Available-for-Sale Investments in Securities – Fair Value Reserve – Dismissing Plaintiff's Objection.

Abstract

Plaintiff requests annulling ZATCA decision regarding zakat assessment for 2017 and 2018. Plaintiff grounded the objection to the first item: Surplus from Insurance Operations Owed to Policyholders for 2017 and 2018: Plaintiff argues that the surplus of policyholders is retained according to the guidelines issued by the Saudi ... Bank. In addition, the surplus of insurance operations owed to policyholders is retained in accordance with the requirements of the Implementing Regulations for Cooperative Insurance Companies Law, as 90% of the net surplus is transferred to the shareholders' statement of income, while the remaining 10% is allocated to policyholders. In addition, the company may donate the surplus amount to charities if written consent is obtained from the policyholder. Plaintiff adds that, according to Surplus Distribution Policy of insurance operations, any unclaimed surplus exceeding (5) years is added back to the statement of income for insurance operations. Accordingly, Plaintiff requests annulling ZATCA decision by disallowing addition of surplus of insurance operations to zakat base. As for the Second Item Available-for-Sale Investments in Securities for 2017 and 2018: Plaintiff objects to Defendant's procedure outlined in disallowing deduction of investments from zakat base for 2017 and 2018, amounting to SAR 89,864,743 and SAR 152,503,237, respectively. Plaintiff objects to ZATCA procedure outlined in disallowing deduction of available-for-sale investments and requests annulling ZATCA decision by deducting investments from zakat base. Regarding the third item: Fair Value Reserve for 2017 and 2018: Plaintiff objects to Defendant's procedure outlined in disallowing deduction of fair value reserve of investments from zakat base for 2017 and 2018, amounting to SAR 16,442,680 and SAR 3,238,448, respectively. In addition, Plaintiff requests deducting fair value reserve of investments from zakat base. ZATCA answered, regarding (Surplus of Insurance Operations Owed to Policyholders) item, that: ZATCA stated that it made assessment by adding surplus of insurance operations owed to policyholders to zakat base. In addition, ZATCA adds that Plaintiff was asked to provide a certificate from the bank confirming existence of the amounts in a separate account. Accordingly, Plaintiff provided IBAN certificate certified from the International Bank of ... indicating a bank account under the name "Insurance Surplus Operations". ZATCA further adds that in accordance with Paragraph (2.e) of Article (70) of the Implementing Regulations of the Cooperative Insurance Companies Control Law, it turns out that the percentage that Plaintiff claims not to be added to zakat base of 10% pertains to the net surplus distribution to customers.

Since Plaintiff neither distributed the surplus nor decreased policyholders' premiums in the subsequent year, as such amounts are reflected in the financial statements for more than a year, this indicates the passage of a zakat year on such amounts, making them subject to zakat. Regarding Plaintiff's claim that the funds are retained, and that there is no perfect ownership, ZATCA rejected this argument, asserting that Plaintiff retains full authority over bank accounts holding such amounts and can access and utilize them. ZATCA also adds that such item is handled as undistributed profits subject to zakat unless they are actually distributed or conclusively proven to have been placed in an independent account beyond Company's control. Since these amounts appear under Company's liabilities in the statement of financial position and in accordance with Paragraph (First) of Article (4), ZATCA affirms the validity of its procedure. Regarding (Investments) item: ZATCA stated that it did not deduct available-for-sale investments in securities from zakat base. In addition, ZATCA adds that it deducted non-traded shares, which are a contribution in … Company amounting to SAR 1,822,116. ZATCA adds that it asked Plaintiff to provide details of investment, including the name of investment, opening balance, additions, exclusions, distributions, profits, losses, closing balance and a portfolio statement generated from the system. Having taken cognizance of documents, it turned out that the investments involved buying and selling activities and included both traded and non-traded shares in investment portfolios and funds. ZATCA clarified that these investments were available for sale with the intention of trading, rather than acquisition. Therefore, Plaintiff's objection was rejected. Regarding (Fair Value Reserve) item: Defendant stated that at the time of making assessment, it did not deduct fair value reserve of investments from zakat base due to disallowing deduction of investments. In addition, Defendant added that if the investment does not meet the conditions for deduction from zakat base, there is no need to address its impact on the base. Moreover, Zakat Payer was asked to provide clarification on reserve amount and its impact on the investments. Furthermore, Zakat Payer stated that they would provide a statement of the portfolio account with Al-Rajhi Capital, but it has not been provided to date. In addition, Defendant adds given that this item is related to investment in securities, and that Item No. (2) was rejected. Therefore, Plaintiff's objection was dismissed. - The Department found, regarding (Surplus of Insurance Operations Owed to ...) item: The principal rule for allowing deduction of distributable surplus requires evidence that it has been removed from Company's accounts and placed in a separate account over which the Company has no control, similar to undistributed profits. In addition, it turned out that Plaintiff did not provide a bank certificate confirming that the surplus had been set aside in a separate bank account inaccessible to the Company. Since Plaintiff did not provide the required evidence and in accordance with Appellate Decision No. (IR-2022-15). Therefore, the Department dismisses Plaintiff's objection to this item. Item Second: (Available-for-Sale Investments ...): It is allowable to deduct investments if they outline property rather than trade bids, and if no sale transactions were made on those investments during the year. In addition, it turned out that Plaintiff did not provide evidence demonstrating that the purpose of such investments was for acquisition, such as: (A statement of investments elaborating breakdown of sales and purchases of investments). Regarding the third item (Fair Value Reserve ...): It turned out from the statutory provisions that, for zakat purposes, the results of investment reassessment based on fair value reflected in the financial statements are taken into consideration. In addition, it turned out that this item is related to Item No. (2) regarding available-for-sale investments in securities. Since the decision on this matter concluded with dismissing Plaintiff's objection due to failure to provide the supporting documents that such investments were intended for acquisition. Therefore, the Department rules: Dismiss the Plaintiff's objection regarding all the items in question.

Instruments:

- Articles (4.First.7, 11, 4.a) and (20.3) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 07/07/1440 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Saturday, 23/07/2022 AD, the First Department for Determination of Income Tax Violations and Disputes in Dammam, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended, formed by Royal Order No. (65474) dated 23/12/1439 AH and reformed by Royal Order No. (26760) dated 14/05/1442 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 31/05/2021 AD.

The facts of this Case are summed up in that …, holder of National ID No. (...) in his capacity as attorney of Plaintiff (...), C.R. No. (...), under POA No. (...), dated ..., filed an objection to ZATCA zakat assessment for 2017 and 2018. Plaintiff's objection is limited to the following items: Regarding the first item: Surplus from Insurance Operations Owed to Policyholders for 2017 and 2018: Plaintiff objects to Defendant's procedure outlined in adding surplus of insurance operations owed to policyholders to zakat base for 2017 and 2018, amounting to SAR 13,783,041 and SAR 2,035,230, respectively. Plaintiff stated that the surplus allocated for policyholders is retained in accordance with the guidelines issued by the Saudi … Bank and kept in a separate bank account in accordance with Article (9) of compliance requirements for Surplus Distribution Policy. Plaintiff added that the surplus is retained in accordance with the Implementing Regulations of Cooperative Insurance Companies Control Law, where 90% of the net surplus is transferred to shareholders' statement of income, and 10% is allocated to policyholders. In addition, Plaintiff adds that such amounts are neither used in operations nor for financing any asset; rather, they are a legal liability to the policyholder, disbursed or distributed directly upon request through bank transfer or deducted from renewal amounts due. Moreover, the Company may donate the surplus to charities if written consent is obtained from the policyholder. Plaintiff states that, in accordance with Surplus Distribution Policy, any unclaimed surplus after more than five years is returned to insurance operations income statement. If a customer claims the amount after five years, it is paid and deducted from the insurance operations income statement. Furthermore, the Company is required to retain surplus records for 10 years, after which it must seek approval from the Saudi … Bank to dispose of any remaining amounts. Thereupon, Plaintiff requests annulling Defendant's decision by disallowing addition of surplus of insurance operations to zakat base. Item Second: Available-for-Sale Investments in Securities for 2017 and 2018: Plaintiff objects to Defendant's procedure outlined in disallowing deduction of the investments from zakat base for 2017 and 2018, amounting to SAR 89,864,743 and SAR 152,503,237 respectively. Plaintiff stated that it objects to ZATCA procedure outlined in disallowing deduction of available-for-sale investments, and that in accordance with Paragraph (Second.4. a) of Article (4) of the Implementing Regulations for the Collection of Zakat, all local investments shall be deducted from the base, whether they are long-term or short-term. Plaintiff further adds that the available-for-sale investments do not include any bonds, sukuk, currencies, deposits or futures contracts that are not allowed. Such

investments only outline shares in listed companies and private companies. Plaintiff adds that available-for-sale investments are intended to be held for an indefinite period and sold in response to liquidity requirements. In addition, Plaintiff states that it turns out from the financial statements that Company's intention for available-for-sale investments is long-term. Therefore, Plaintiff requests annulling ZATCA decision by deducting investments from zakat base. Item Third: Fair Value Reserve for 2017 and 2018: Plaintiff objects to Defendant's procedure outlined in disallowing deduction of fair value reserve of investments from zakat base for 2017 and 2018, amounting to SAR 16,442,680 and SAR 3,238,448 respectively. In the statement of claim, Plaintiff stated that it deducted local investments as reported in the filed declarations. However, such deductions were recorded in Erad System due to technical system constraints that restrict the Company from recording such amounts under the correct items. Plaintiff further stated that the fair value reserve amount was recorded in compliance with the standards set by the Saudi Organization for Chartered and Professional Accountants (SOCPA), whereby publicly traded securities are recorded at their fair value at year-end, with unrealized gains and losses being recorded in the equity account under shareholders' equity. In addition, Plaintiff adds that such amounts pertain to investments in entities within the Kingdom that are subject to zakat and should be deducted from zakat base. Thereupon, Plaintiff requests that the value of fair value reserve of investments is deducted from zakat base.

Having presented the statement of claim to Defendant, Defendant submitted an answer wherein replies regarding (Surplus of Insurance Operations Owed to Policyholders) item that: ZATCA stated that it made assessment by adding surplus of insurance operations owed to policyholders to zakat base. In addition, ZATCA adds that Plaintiff was asked to provide a certificate from the bank confirming existence of the amounts in a separate account. Accordingly, Plaintiff provided IBAN certificate certified by the International Bank of ... indicating a bank account under the name "Insurance Surplus Operations". ZATCA further adds that in accordance with Paragraph (2.e) of Article (70) of the Implementing Regulations of Cooperative Insurance Companies Control Law, it turns out that the percentage that Plaintiff claims not to be added to zakat base of 10% pertains to the net surplus distribution to customers. Since Plaintiff neither distributed the surplus nor decreased policyholders' premiums in the next year, as such amounts are reflected in the financial statements for more than a year, this indicates the passage of a zakat year on such amounts, making them subject to zakat. Regarding Plaintiff's claim that the funds are retained, and that there is no perfect ownership, ZATCA rejected this argument, asserting that Plaintiff retains full authority over bank accounts holding such amounts and can access and utilize them. ZATCA also adds that such item is handled as undistributed profits subject to zakat unless they are actually distributed or conclusively proven to have been placed in a separate account beyond Company's control. Since these amounts appear under Company's liabilities in the statement of financial position and in accordance with Paragraph (First) of Article (4), ZATCA affirms the validity of its procedure. Regarding (Investments) item: ZATCA stated that it did not deduct available-for-sale investments in securities from zakat base. In addition, ZATCA adds that it deducted non-traded shares, which are a contribution in … Company, amounting to SAR 1,822,116. ZATCA adds that it asked Plaintiff to provide details of investment, including the name of investment, opening balance, additions, exclusions, distributions, profits, losses, closing balance and a portfolio statement generated from the system. Having taken cognizance of documents, it turned out that the investments involved buying and selling activities and included both traded and non-traded shares in investment portfolios and funds. ZATCA clarified that these investments were available for sale with the intention of trading, rather than acquisition. Therefore, Plaintiff's objection was rejected. Regarding (Fair Value Reserve) item: Defendant stated that at the time of making assessment, it did not deduct fair value

reserve of investments from zakat base due to disallowing deduction of investments. In addition, Defendant added that if the investment does not meet the conditions for deduction from zakat base, there is no need to address its impact on the base in accordance with Paragraph (Second.4.c) of Article (4) of the Implementing Regulations for the Collection of Zakat. Moreover, Zakat Payer was asked to provide clarification on reserve amount and its impact on the investments. Furthermore, Zakat Payer stated that they would provide a statement of the portfolio account with ... Capital, but it has not been provided to date. In addition, Defendant adds since this item is related to investment in securities, and that Item No. (2) was rejected. Therefore, Plaintiff's objection was dismissed.

On Saturday, 23/07/2022 AD, the Department held e-hearing session to consider the Case. At that session, ..., holder of National ID No. (...), appeared in his capacity as Plaintiff's attorney under POA No. (...). In addition, ..., holder of National ID No. (...) in his capacity as Defendant (ZATCA) Representative, by virtue of Authorization No. ..... dated …/…/…, issued by Deputy Governor for Legal Affairs. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claims submitted to General Secretariat of Tax Committees. When Defendant's representative was confronted with the above details, it responded that it stands by the reply previously submitted to the General Secretariat of Tax Committees and does not accept any new documents that were not presented during the objection and review stages. Having asked both parties if they had further statements, they replied by reiterating their earlier submissions presented to the Department. Therefore, the Department decided to close the pleadings and deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the Case moving for annulling ZATCA decision regarding zakat assessment for 2017 and 2018. Given that this dispute is a tax dispute. Therefore, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the statutory period. Therefore, the Department accepts the Case in form.

On Merits: The Department, having taken cognizance of documents included in Case file, requests, defense and arguments raised by the parties, found that the dispute involves Plaintiff's objection to Defendant's procedure outlined in making zakat and tax assessment for 2017 and 2018. Plaintiff's objection is limited to the following items:

Item First Surplus from Insurance Operations Owed to Policyholders for 2017 and 2018: Plaintiff objects to Defendant's procedure outlined in adding surplus of insurance operations owed to policyholders to zakat base for 2017 and 2018. On the other hand, Defendant maintains that the surplus should be added to zakat base, arguing that Plaintiff neither distributed the surplus nor decreased policyholders' premiums in the next year, as such amounts are reflected in the financial statements for more than a year, this indicates the passage of a zakat year on such amounts, making them subject to zakat. In addition, Paragraph (2.e) of Article (70) of the Implementing Regulations of Cooperative Insurance Companies Control Law promulgated by Royal Decree No. (M/32) dated 02/06/1424 AH

stipulates: "10% of the net surplus shall be distributed to the policyholders directly, or in the form of reduction in premiums for the next year. The remaining 90% of the net surplus shall be transferred to the shareholders' income statement". Moreover, Paragraph (9) of Surplus Distribution Policy issued by the Saudi ... Bank stipulates: "9. The company shall deposit the Policyholders' Surplus amounts in a separate bank account". Furthermore, Paragraph (11) of (First) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Minister of Finance Resolution No. (2082) dated 01/06/1438 AH stipulates: "11. Profits being distributes, excluding profits declared for distribution but have not been collected by owners provided they be deposited in a private account of which the company may not dispose". In addition, Paragraph (3) of Article (20) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it" As such, since the principal rule for allowing deduction of distributable surplus requires evidence that it has been removed from Company's accounts and placed in a separate account over which the Company has no control, similar to undistributed profits. Having taken cognizance of Case file, arguments and documents included therein, it turns out that Plaintiff did not provide a bank certificate confirming that the surplus had been set aside in a separate bank account inaccessible to the Company. Since Plaintiff did not provide the required evidence and in accordance with Appellate Decision No. (IR-2022-15), the Department dismisses Plaintiff's objection to this item.

Item Second: Available-for-Sale Investments in Securities for 2017 and 2018: Plaintiff objects to Defendant's procedure outlined in disallowing deduction of investments from zakat base for 2017 and 2018. On the other hand, Defendant maintains disallowing deduction of available-for-sale investments from zakat base. It turned out that the investments involved buying and selling activities and included both traded and non-traded shares in investment portfolios and funds. ZATCA clarified that these investments were available for sale with the intention of trading, rather than acquisition. Paragraph (4.A) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH states: "Investments in an entity in the Kingdom, in participation with others, if such investments are subject to Zakat according to this Regulations. If the investment in such entities is not subject to Zakat, no deductions will be made from the Zakat Base". Article (20/3) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH also states: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". As such, it turns that it is allowable to deduct investments if they outline property rather than trade bids, and if no sales transactions were made on those investments during the year. Having taken cognizance of documents included in Case file, it turned out that Plaintiff did not provide evidence demonstrating that the purpose of such investments was for acquisition, such as: (A statement of investments elaborating breakdown of sales and purchases of investments). Therefore, the Department dismisses Plaintiff's objection to this item.

Item Third: Fair Value Reserve for 2017 and 2018: Plaintiff objects to Defendant's procedure outlined in disallowing deduction of fair value reserve of investments from zakat base for 2017 and 2018. On the other hand, Defendant did not deduct the fair value reserve

of investments from zakat base due to disallowing deduction of investments. Paragraph (First.7) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 7. Reserves deferred from previous years (Year opening balance)". In addition, Paragraph (h) thereof stipulates: "For zakat purposes, re-assessment results of profit or loss shall be taken into account at the market value". As such, it turns out from the statutory provisions that, for zakat purposes, the results of investment reassessment based on fair value reflected in the financial statements are taken into consideration. Having taken cognizance of Case file, it turned out that this item is related to Item No. (2) regarding available-for-sale investments in securities. Since the decision on this matter concluded with dismissing Plaintiff's objection due to failure to provide the supporting documents that such investments were intended for acquisition. Therefore, the Department dismisses Plaintiff's objection to this item.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

– Dismiss the Plaintiff's objection regarding all the items in question.

This decision was issued in the presence of both parties, and the date of depositing the decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of the decision. The parties to the case may request to appeal against the decision as per the law within thirty (30) days from the day following the date specified for its receipt, whereafter, the decision will be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period in accordance with Article 33.2 of Tax Dispute and Violation Committee Procedures).

Primary Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1570)
Delivered in Case No. (Z-2021-52561)

Key words:
Zakat Assessment – Accounts – Statute of Limitations for Two Years – Local and Foreign Investments – Deducting Company's Share of Profits and Losses – Import Variances – Depreciation Variances – Fixed Assets – Spare Parts – Leave Provisions – Zakat Base.

Abstract

Plaintiff requests annulling ZATCA decision regarding zakat assessment for years from 2009 to 2021. Plaintiff's objection is limited to the following items: The first item: Statute of Limitations for 2009 and 2010. The second item: Local and Foreign Investments for Years from 2009 to 2012. The third item: Deducting Company's Share of Subsidiaries' Profits and Losses for Years from 2009 to 2012. The fourth item: Temporary Labor Expenses for Years from 2009 to 2012. The fifth item: Rolled-Over Travel Ticket Provision for Years from 2009 to 2012. The sixth item: Import Variances for Years from 2009 to 2012. Item Seventh: Depreciation Variances for Years from 2009 to 2012. Item Eighth: Long-Term Loans for Years from 2009 to 2012. Regarding Item (9): Fixed Assets for Years from 2009 to 2012. With regard to Item (10): Spare Parts for Years from 2009 to 2012. Item (11): Leave Provision for Years from 2009 to 2012. ZATCA answered regarding (Deducting Company's Share of Subsidiaries' Profits and Losses) item: It did not deduct Company's share of profits and losses from its subsidiaries' business result for years from 2009 to 2012 in the stated amounts due to Zakat Payer's failure to provide title deeds, elaborate the nature of such investments, and provide ZATCA with data of investee companies. Having taken cognizance of the objection and examined files of the investee companies, the objection was accepted, and the investment results were deducted from zakat base. Accordingly, such investments were deducted, and the acceptance result was reflected in the assessment for 2009. Regarding assessments for 2010, 2011 and 2012, there is no impact since zakat is based on the result of year. In addition, the deductions were limited to equity. Therefore, ZATCA insists on validity and correctness of its procedure by rejecting this item. Regarding the deduction of local and foreign investments: Defendant stated that it allowed deduction of local investments, but a material error occurred in the revised assessment for years subject matter of objection. Regarding foreign investments, Plaintiff did not abide by deduction conditions stipulated by the Regulations, as Plaintiff did not provide calculation or evidence on zakat payment for foreign investments. Accordingly, ZATCA disallowed deduction of foreign investments and insists on validity and correctness of its procedure. Regarding (Temporary Labor Expenses) item: Defendant stated that it adjusted (Temporary Labor) item by the specified amounts due to Plaintiff's failure to provide supporting documents. Regarding (Rolled-Over Travel Ticket Provision) item: Defendant stated that (Travel Tickets) item does not meet the conditions for allowing deduction of the expense, as this expense will only be realized if the employee actually

takes his annual leave. In addition, the employee may receive compensation less than the amount estimated in the financial statements if he does not take the leave. Therefore, this item is considered an estimated expense and is handled as a provision. The component is added back to net profit throughout the year and is deducted throughout the year from the net profit in tax files or from the opening balance of the item in zakat files. Regarding (Statute of Limitations and Expiry of Statutory Period for Amending Zakat Declarations for 2009 and 2010) item: Defendant stated that Plaintiff filed its zakat declaration for 2009 and 2010 as follows: On 08/05/2010 AD as for zakat declaration for 2009, and on 29/05/2011 AD as for zakat declaration for 2010. It is noted from the above filing dates that Zakat Payer failed to file its declarations within the specified deadlines, as the deadline for filing declaration for 2009 was 30/04/2010 AD, and regarding declaration for 2010 was 30/04/2011 AD. If Zakat Payer delays in filing its declarations, ZATCA shall be entitled to make or amend the assessment at any time without being bound by a time limit. Furthermore, the declarations filed by Zakat Payer for such two years includes incorrect information reflected in the items for which a comment is provided above, which directly impact revenues and their costs. The Department found that the dispute involves Defendant's procedure outlined in making zakat assessment for years from 2009 to 2012. Plaintiff's objection is limited to the following items. Regarding the first item: Statute of Limitations for 2009 and 2010: Plaintiff argues that ZATCA is entitled to make tax assessments after expiry of (5) years from the deadline for filing declaration. The Department found that ZATCA is not entitled to make assessments at any time, as this right is restricted to cases where it is proven that the declaration is incorrect with the intention of tax evasion. Having taken cognizance of ZATCA answer, it turned out that ZATCA did not provide any substantial material evidence demonstrating that the declaration was incorrect with the intention of tax evasion. Second: Local and Foreign Investments for Years from 2009 to 2012: It turned out that Plaintiff did not provide the financial statements of the investee company situated outside the Kingdom that were prepared by a chartered accountant. In addition, no evidence was provided to prove paying zakat on such investment for 2011 and 2012. As for 2009 and 2010, since these years are related to the first item. Since the related matters shall have the same effect. Regarding Local Investments: It was established that the dispute was resolved when Defendant accepted Plaintiff's objection. Third: Deducting Company's Share of Subsidiaries' Profits and Losses for Years from 2009 to 2012: Since the investment in the (second) item was deducted within the limits of net balances after deducting profits, which is the optimal method for calculating investment. Therefore, the Department annuls Defendant's decision regarding this item. Fourth: Temporary Labor Expense for Years from 2009 to 2012: It turned out that Plaintiff did not provide the supporting documents for expenses in question. As for 2009 and 2010, since these years are related to the first item of this decision. Since the related matters shall have the same effect. Fifth Rolled-Over Travel Ticket Provision for Years from 2009 to 2012: It turned out that Plaintiff did not provide the supporting documents for its claim. As for 2009 and 2010, since these years are related to the first item of this decision. Since the related matters shall have the same effect. Sixth: Import Variances for Years from 2009 to 2012, Depreciation Variances for Years from 2009 to 2012, Long-term Loans for Years from 2009 to 2012, Fixed Assets for Years from 2009 to 2012, Spare Parts for Years from 2009 to 2012 and Leave Provisions for Years from 2009 to 2012: It was established that the dispute was resolved when Defendant accepted Plaintiff's objection. Department ruled to Annul Defendant's decision regarding (Statute of Limitations for 2009 and 2010) item. Regarding (Investments) item: A. Annul Defendant's decision regarding (Local and Foreign Investments for 2009 and 2010) item. B. Dismiss Plaintiff's objection to (Local and Foreign Investments for 2011 and 2012) item. C. Establish resolution of the dispute over (Local and Foreign Investments for 2011

and 2012) item, and annul Defendant's decision regarding (Deducting Company's Share of Subsidiaries' Profits and Losses for Years from 2009 to 2012) item. Regarding (Temporary Labor Expense) item: A. Dismiss Plaintiff's objection for 2011 and 2012. B. Annul Defendant's decision for 2009 and 2010. Regarding (Rolled-Over Travel Ticket Provision) item: A. Dismiss Plaintiff's objection for 2011 and 2012. B. Annul Defendant's decision for 2009 and 2010. Establish resolution of the dispute over (Import Variances) item, (Depreciation Variances) item, (Long-term Loans) item, (Fixed Assets) item, (Spare Parts) item and (Leave Provision for Years from 2009 to 2012) item.

Instruments:

- Article (70) of the Law of Civil Procedure promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH.
- Articles (4.A.4), (5.A.1), (6.2), (20.3) and (21.8 and 10) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH.
- Article (70.1) of the Implementing Regulations of the Law of Civil Procedure issued by Minister of Justice Resolution No. (39933) dated 19/05/1435 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Thursday, 28/07/2022 AD, the First Department for Determination of Income Tax Violations and Disputes in Dammam, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended, formed by Royal Order No. (65474) dated 23/12/1439 AH and reformed by Royal Order No. (26760) dated 14/05/1442 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 31/05/2021 AD.

The facts of this case are summed up in that ..., holder of National ID No. (…) in his capacity as attorney of Plaintiff (...), C.R. No. (...), under POA No. (...), dated 04/06/14441 AH, filed an objection to ZATCA zakat assessment for years from 2009 to 2012. Plaintiff's objection is limited to the following items: Item First Statute of Limitations for 2009 and 2010: Plaintiff objects to Defendant's procedure outlined in making zakat assessment the above-mentioned years, claiming that the assessment was made after more than (5) five years from the deadline for filing zakat declarations for 2009 and 2010. The assessments were issued on 28/12/2016 AD, while the deadline for issuing assessments was 30/04/2015 AD and 30/04/2016 AD respectively. Plaintiff asserts that there are no substantial or material errors in the declaration that would require issuing assessments after the statutory period. In addition, there are several decisions that support its objection and annul Defendant's procedure in cases where the assessments are issued after expiry of the statutory period. Thereupon, Plaintiff requests annulling Defendant's procedure and annulling assessments for 2009 and 2010. Item Second: Local and Foreign Investments for Years from 2009 to 2012: Plaintiff objects to Defendant's procedure outlined in disallowing deduction of local and foreign investment balances from zakat base for years from 2009 to 2012. Plaintiff added that it has no objection to paying zakat on foreign investments according to the financial statements of investee companies, with which ZATCA was provided. Thereupon, Plaintiff requests annulling Defendant's procedure. Item Third: Deducting Company's Share of Subsidiaries' Profits and Losses for Years from 2009 to 2012: Plaintiff objects to Defendant's procedure outlined in disallowing deduction

of company's share of net profits and losses of local investee companies from the net book profits for years from 2009 to 2012. Such share was subject to zakat for the same years as part of the net book profits in accordance with zakat declarations of … Company LTD and … Specialized Company. Thereupon, Plaintiff requests annulling Defendant's procedure. Item Fourth: Temporary Labor Expense for Years from 2009 to 2012: Plaintiff objects to Defendant's procedure outlined in adding temporary wages to accounting profit for the years in question. Plaintiff stated that such expenses outline actual, true and necessary costs related to the business activity. These wages outline temporary labor hired from various local parties specialized in recruiting and hiring labor, and the amounts in question outline income for leasing parties, which are subject to zakat. Moreover, such expenses are directly related to Plaintiff's business activity, and adding such expenses to the net profit results in double payment of zakat. Plaintiff added that the documents required by ZATCA were submitted, including copies of confirmations from the leasing parties. Thereupon, Plaintiff requests annulling Defendant's procedure. Item Fifth: Rolled-Over Travel Ticket Provision for Years from 2009 to 2012: Plaintiff objects to Defendant's procedure outlined in adding travel ticket entitlements to zakat base for the years in question. Plaintiff stated that such expenses are actual, true and necessary for the business activity, outlining accrued expenses at the year-end rather than provisions. These amounts are calculated based on employee contracts and are typically paid in the next year. In addition, Plaintiff attached a system-generated report along with its objection before ZATCA. Thereupon, Plaintiff requests annulling Defendant's procedure. Item Sixth: Import Variances for Years from 2009 to 2012. Item Seventh: Depreciation Variances for Years from 2009 to 2012. Item Eighth: Long-Term Loans for Years from 2009 to 2012. Regarding Item (9): Fixed Assets for Years from 2009 to 2012. With regard to Item (10): Spare Parts for Years from 2009 to 2012. Item (11): Leave Provision for Years from 2009 to 2012:

Having presented the statement of claim to Defendant, Defendant submitted an answer wherein replies regarding (Deducting Company's Share of Subsidiaries' Profits and Losses) item that: Defendant stated that it did not deduct Company's share of profits and losses from its subsidiaries' business result for years from 2009 to 2012 in the stated amounts due to Zakat Payer's failure to provide title deeds, elaborate the nature of such investments, and provide ZATCA with data of investee companies. Having taken cognizance of the objection and examined files of the investee companies, the objection was accepted, and the investment results were deducted from zakat base. Accordingly, such investments were deducted, and the acceptance result was reflected in the assessment for 2009. Regarding assessments for 2010, 2011 and 2012, there is no impact since zakat is based on the result of year. In addition, the deductions were limited to equity. Therefore, ZATCA insists on validity and correctness of its procedure by rejecting this item in accordance with Paragraph (3) of Article (20) of the Implementing Regulations for the Collection of Zakat. Regarding (Deducting Local and Foreign Investments) item: Defendant stated that it allowed deduction of local investments, but a material error occurred in the revised assessment for years subject matter of objection. Regarding foreign investments, Plaintiff did not abide by deduction conditions stipulated by the Regulations, as Plaintiff did not provide calculation or evidence on zakat payment for foreign investments. Accordingly, ZATCA disallowed deduction of foreign investments and insists on validity and correctness of its procedure. Regarding (Temporary Labor Expenses) item: Defendant stated that it adjusted (Temporary Labor) item by the specified amounts due to Plaintiff's failure to provide the supporting documents. Thereupon, ZATCA rejected Zakat Payer's objection in accordance with Paragraph (3) of Article (20), and insists on validity and correctness of its procedure. Regarding (Rolled-Over Travel Ticket Provision) item: Defendant stated that (Travel Tickets) item does not meet the conditions for allowing

deduction of the expense, as this expense will only be realized if the employee actually takes his annual leave. In addition, the employee may receive compensation less than the amount estimated in the financial statements if he does not take the leave. Therefore, this item is considered an estimated expense and is handled as a provision. The component is added back to net profit throughout the year and is deducted throughout the year from the net profit in tax files or from the opening balance of the item in zakat files in accordance with Paragraph (6) of Article (6) of the Implementing Regulations for the Collection of Zakat. Regarding (Statute of Limitations and Expiry of Statutory Period for Amending Zakat Declarations for 2009 and 2010) item: Defendant stated that Plaintiff filed its zakat declaration for 2009 and 2010 as follows: On 08/05/2010 AD as for zakat declaration for 2009. On 29/05/2011 AD as for zakat declaration for 2010. It is noted from the above filing dates that Zakat Payer failed to file its declarations within the specified deadlines in accordance with Paragraph (2) of Article (20) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/07/1438 AH that stipulates: "The zakat payer shall provide the zakat declaration and its attachments after filling out all the blanks, and paying the zakat according thereto following the end of the fiscal year. Zakat payer may be delayed only within the limits of his accounting procedures, provided that such delay must not exceed (120) days. He shall disclose all elements of his zakat base during the declaration period. Such declaration shall be deemed submitted in the date of receipt under a formal notice from the Authority or any authorized entity. Once the regular period for the declaration terminates during official holidays, the declaration shall be acceptable if delivered and paid thereunder in the first working day following such holidays". Since the deadline for filing declaration for 2009 was on 30/04/2010 AD and declaration for 2010 was on 30/04/2011 AD. If Zakat Payer delays in filing declarations, provision of Paragraph (8) of Article (21) of the Implementing Regulations for the Collection of Zakat shall apply, stipulates: "The Authority shall conduct or amend the assessment at any time without being restricted to any periods if: A. The zakat payer agrees in writing to conduct or amend the assessment; B. The zakat payer did not provide his declaration; or C. The declaration contained any incorrect information". Moreover, the declarations filed by Zakat Payer for such two years contain incorrect information reflected in the items on which the above-mentioned comment is provided, which directly affect revenues and costs. Accordingly, the assessment was made in accordance with Paragraph (8) of Article (21) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH, which granted ZATCA the right to make or amend the assessment at any time without being bound by a time limit in the following cases. Since Paragraph (C) stipulates: (The declaration contained any incorrect information). Therefore, ZATCA insists on validity and correctness of its procedure.

On Thursday, 28/07/2022 AD, the Department held e-hearing session to consider the Case. At that session, ..., holder of National ID No. (...), appeared in his capacity as Plaintiff's attorney under POA No. (...). In addition, ..., holder of National ID No. (...) in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. ..... dated …/…/…, issued by Deputy Governor for Legal Affairs. Having asked Plaintiff's Attorney about his case, he maintained his statements contained in the statement of claims submitted to General Secretariat of Tax Committees. When Defendant's representative was confronted with the above details, it responded that it stands by the reply previously submitted to the General Secretariat of Tax Committees and does not accept any new documents that were not presented during the objection and review stages. Having asked both litigants if they had any other statements, they responded that they are satisfied with their earlier submissions presented to the Department. Consequently, the Department decided to close the pleadings and deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the Case moving for annulling ZATCA decision regarding zakat assessment for years from 2009 to 2012. Given that this dispute is a zakat dispute. Therefore, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the statutory period. Therefore, the Department accepts the Case in form.

On Merits: The Department, having reviewed the documents and evidence contained in the case file, and examined the requests, defenses, and objections presented by the parties, has determined that the dispute is related to the zakat assessments made by the Defendant for the years 2009 to 2012. The Plaintiff's objections to these assessments pertained to the following items:

First: Statute of Limitations for 2009 and 2010:

Plaintiff objects to Defendant's procedure outlined in making zakat assessment for the above-mentioned two years, as the assessment was made more than (5) years after the statutory deadline for filing zakat declarations. On the other hand, Defendant argues that Plaintiff filed its zakat declarations for 2009 and 2010 as follows: On 08/05/2010 AD as for zakat declaration for 2009, and on 29/05/2011 AD as for zakat declaration for 2010. It is noted from the above filing dates that Zakat Payer failed to file its declarations within the specified deadlines. Article (21/8) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates that: "The Authority may make or modify the assessment at any time without being bound by the time limit specified in the following cases: A. The zakat payer agrees in writing to conduct or amend the assessment; B. If the Zakat Payer does not submit his declaration. C. If it is found that the declaration contains invalid information. In addition, Paragraph (10) of Article (21) thereof stipulates: "10. GAZT may correct the error in applying the Law and instruction during five years as of the end of the term defined for the provision of zakat declaration for the zakat year upon his request, or if such errors were detected by GAZT or supervisory entity". As such, and since it turns out from the statutory provisions that Defendant's entitlement to make tax assessments expires after (5) years from the deadline for filing declarations. Since the Department found that ZATCA made zakat assessment for 2009 and 2010 on 28/12/2016 AD, while the statutory period expired on 30/04/2015 AD for 2009 and on 30/04/2016 for 2010. Therefore, it turns out that ZATCA made assessment after expiry of the statutory period. Thereupon, ZATCA right to make zakat assessment for such years is extinguished according to the above-mentioned statutory provisions. This is not undermined by ZATCA claim that it is entitled to make zakat assessment without being bound by a statutory period due to the fact that Plaintiff filed the declaration after expiry of the statutory period. Since the statutory period of (5) years is calculated from the deadline for filing Zakat Payer's declaration. In addition, ZATCA is not entitled to make assessments at any time, as this right is limited to cases where it is proven that the declaration was incorrect with the intention of tax evasion. Having taken cognizance of ZATCA answer, it turns out that no substantive evidence has been provided to elaborate that the declaration was incorrect with the intention of tax

evasion. Since Defendant did not provide evidence that the declarations were incomplete or incorrect with the intention of tax evasion. Therefore, the Department annuls Defendant's decision regarding this item.

Second: Local and Foreign Investments for Years from 2009 to 2012:

Plaintiff objects to Defendant's procedure outlined in disallowing deduction of local and foreign investment balances from zakat base for years from 2009 to 2012. On the other hand, Defendant allowed deduction of local investments, but a material error occurred in the revised assessment for years subject matter of objection. Regarding foreign investments, Plaintiff did not abide by deduction conditions stipulated by the Regulations. The Ministerial Resolution No. (1005) dated 28/04/1428 AH stipulates: "Second: Investments in entities outside the Kingdom, in participation with others, shall be deducted from Zakat Payer's declaration, provided that Zakat Payer provides audited accounts from a chartered accountant in the country of investment in order to calculate zakat due on these investments and to remit them to ZATCA. Alternatively, Zakat Payer may provide proof that zakat has been paid in the country of investment, and accordingly deducting such investment from zakat base of the Saudi investing company to avoid double payment of zakat on these companies. If Zakat Payer does not provide the required documents above-mentioned, the investments shall not be deducted from zakat base". In addition, Paragraph (3) of Article (20) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Regarding Foreign Investments: As such, and in accordance with provisions of the Ministerial Resolution No. (1005) above-mentioned, Plaintiff is entitled to deduct foreign investment from its zakat base, provided that Plaintiff provides Defendant with accounts audited by a chartered accountant in the country of investment in order to calculate zakat due on such investments and to remit them to ZATCA. Alternatively, Zakat Payer may provide proof that zakat has been paid in the country of investment and accordingly deducting such investments from zakat base of the investing company to avoid double payment of zakat. If Zakat Payer does not provide the above-mentioned documents, such investments shall not be deducted from its zakat base. Since the dispute over this item is document-based. Having taken cognizance of documents included in Case file, it turned out that Plaintiff did not provide the financial statements of the investee company situated outside the Kingdom that are audited by a chartered accountant, and that Plaintiff did not attach documents that prove paying zakat on such investment for 2011 and 2012. Therefore, the Department dismisses Plaintiff's objection.

As for 2009 and 2010, since these years are related to the first item of this decision. Since the Department decided annulling Defendant's decision due to the fact that Defendant is not entitled to make assessment. Since the related matters shall have the same effect. Therefore, the Department annuls Defendant's decision.

Regarding Local Investments: Article (70) of the Law of Civil Procedures, issued by Royal Decree No. (M/1) dated 22/01/1435 AH, states that: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgement, settlement, or the like in the case record, and the court shall issue a deed to that effect" and based on paragraph (1) of Article (70) of the Implementing Regulations of the Law of Civil Procedures issued by Minister of Justice Decision No. (39933) dated 19/05/1435 AH stipulates that: "If an agreement is reached prior to entering the case, the text of the case and the answer shall be entered prior to entering such agreement, provided that the original case falls within the

jurisdiction of the Department, even if the text of the agreement falls within the jurisdiction of another court or Department and the object of the case or portion thereof is agreed upon". As such, the Department found that the dispute was resolved when Defendant accepted Plaintiff's requests and deducted local investments as stated in Defendant's answer, which states: "ZATCA allowed deduction of local investments, but a material error occurred in the revised assessment for the years subject matter of objection". Therefore, the Department establishes resolution of the dispute.

Third: Deducting Company's Share of Subsidiaries' Profits and Losses for Years from 2009 to 2012:

Plaintiff objects to Defendant's procedure outlined in disallowing deduction of Company's share of net profits and losses of local investee companies from the net book profits for years from 2009 to 2012. On the other hand, Defendant argues that it did not deduct Company's share of profits and losses from its subsidiaries' business result for years from 2009 to 2012 in the stated amounts due to Zakat Payer's failure to provide title deeds, elaborate the nature of such investments, and provide ZATCA with data of investee companies. Paragraph (4.A) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH states: "Investments in an entity in the Kingdom, in participation with others, if such investments are subject to Zakat according to this Regulations. If the investment in such entities is not subject to Zakat, no deductions will be made from the Zakat Base". As such, and after review and consideration, it turns out that Plaintiff requests deducting profits of the investee companies from the adjusted net profit, as such profits have already been subject to zakat in the investee companies. Having reviewed Item No. (2) and Defendant's answer, it turns out that Defendant did not reject the investment but accepted it. Since the investment in Item No. (2) was deducted within the limits of net balances after deducting profits, which is the optimal method for calculating investment. Therefore, the Department annuls Defendant's decision regarding this item.

Fourth: Temporary Labor Expense for Years from 2009 to 2012:

Plaintiff objects to Defendant's procedure outlined in adding temporary wages to the accounting profit for the years in question. On the other hand, Defendant argues that the temporary labor expense was rejected due to Zakat Payer's failure to provide the supporting documents. Article (5/A/1) of the Implementing Regulations for Zakat Collection issued by Ministry of Finance Decision No. (2082) dated 01/06/1438 AH, concerning deductible expenses, stipulates: "All regular and necessary expenses required for the activity, whether paid or due, shall be deducted up to the net result of the activity, provided that the following controls are met: a. Expenses should be actual expenses as supported by relevant documents and other evidential matter to enable ZATCA to verify the accuracy of expenses, even if related to prior years". Paragraph (2) of Article (6) of the same Regulations related to deductible expenses states: "Expenses that the Zakat Payer fails to prove by supporting documents or other evidential matter acceptable to ZATCA". Paragraph (3) of Article (20) thereof states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it" Thereupon, such expenses would be considered deductible if it is proven that they were actually incurred and supported by documents. Since the dispute over this item is document-based. Having taken cognizance of documents included in Case file, it turns out that Plaintiff did not provide the supporting documents for expenses in question. Therefore, the Department dismisses Plaintiff's objection for 2011 and 2012.

As for 2009 and 2010, since these years are related to the first item of this decision. Since the Department decided annulling Defendant's decision due to the fact that Defendant is not entitled to make assessment. Since the related matters shall have the same effect. Therefore, the Department annuls Defendant's decision.

Fifth Rolled-Over Travel Ticket Provision for Years from 2009 to 2012:

Plaintiff objects to Defendant's procedure outlined in adding travel ticket entitlements to zakat base for the years in question. On the other hand, Defendant argues that (Travel Ticket Expense) item does not meet the conditions for accepting expense. In addition, Paragraph (2) of Article (6) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH, regarding non-deductible expenses, stipulates: "2. Expenses that the Zakat Payer fails to prove by supporting documents or other evidential matter". In addition, Paragraph (6) of the same Article stipulates: "6. The entire provisions except for the following: a. Provisions for the doubtful debts for banks, provided that the Bank issues a certificate identifying the sum of the doubtful debts and that the Saudi Arabian Monetary Authority approves thereof. b. Provisions for unearned premiums reserve and current risk in insurance and/or reinsurance companies (technical reserves). The same shall be returned to the Zakat Base in the following Zakat Year and determined in accordance with the standards adopted for this particular business activity". Moreover, Paragraph (3) of Article (20) of the same Regulations stipulates: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". As such, and having taken cognizance of documents included in Case file, it turns out that Plaintiff's arguments are limited to claiming that the accrued travel tickets outline an actual expense supported by documents and do not constitute a provision without providing supporting documents for its claim. Therefore, the Department dismisses Plaintiff's objection for 2011 and 2012.

As for 2009 and 2010, since these years are related to the first item of this decision. Since the Department decided annulling Defendant's decision due to the fact that Defendant is not entitled to make assessment. Since the related matters shall have the same effect. Therefore, the Department annuls Defendant's decision.

Sixth: Import Variances for Years from 2009 to 2012, Depreciation Variances for Years from 2009 to 2012, Long-term Loans for Years from 2009 to 2012, Fixed Assets for Years from 2009 to 2012, Spare Parts for Years from 2009 to 2012 and Leave Provisions for Years from 2009 to 2012:

Article (70) of the Law of Civil Procedures, issued by Royal Decree No. (M/1) dated 22/01/1435 AH, states that: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgement, settlement, or the like in the case record, and the court shall issue a deed to that effect" and based on paragraph (1) of Article (70) of the Implementing Regulations of the Law of Civil Procedures issued by Minister of Justice Decision No. (39933) dated 19/05/1435 AH stipulates: "If an agreement is reached prior to entering the case, the text of the case and the answer shall be entered prior to entering such agreement, provided that the original case falls within the jurisdiction of the circuit, even if the text of the agreement falls within the jurisdiction of another court or circuit and the object of the case or portion thereof is agreed upon". As such, it is established that the dispute was resolved when Defendant accepted Plaintiff's requests as stated in the letter issued by Defendant in the answer, which states: "ZATCA accepted all items except for four items". As a result, the Department concludes that dispute over this item has been resolved.

For those grounds and after deliberation, the Department unanimously decided to:

Decision:

1. Annul Defendant's decision regarding (Statute of Limitations for 2009 and 2010) item.
2. Regarding (Investments) item:
   a. Annul Defendant's decision regarding (Local and Foreign Investments for 2009 and 2010) item.
   b. Dismiss Plaintiff's objection to (Foreign Investments for 2011 and 2012) item.
   c. Establish resolution of the dispute over (Local Investments for 2011 and 2012) item.
3. Deducting Company's Share of Subsidiaries' Profits and Losses for Years from 2009 to 2012:
4. Regarding (Temporary Labor Expense) item:
   a. Dismiss Plaintiff's objection for 2011 and 2012.
   b. Annul Defendant's decision for 2009 and 2010.
5. Regarding (Rolled-Over Travel Ticket Provision) item:
   a. Dismiss Plaintiff's objection for 2011 and 2012.
   b. Annul Defendant's decision for 2009 and 2010.
6. Establish resolution of the dispute over (Import Variances for Years from 2009 to 2012) item.
7. Establish resolution of the dispute over (Depreciation Variances for Years from 2009 to 2012) item.
8. Establish resolution of the dispute over (Long-term Loans for Years from 2009 to 2012) item.
9. Establish resolution of the dispute over (Fixed Assets for Years from 2009 to 2012) item.
10. Establish resolution of the dispute over (Spare Parts for Years from 2009 to 2012) item.
11. Establish resolution of the dispute over (Leave Provision for Years from 2009 to 2012) item.

This decision was delivered in presence of the parties. The date of entering decision in the e-system of the General Secretariat is considered the date of decision delivery. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period in accordance with Article 33.2 of Tax Dispute and Violation Committee Procedures).

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1571)
Issued in Appeal No. (Z-50567-2021)

Key words:
Zakat assessment – Accounts – Salaries and wages – Advertising expenses, selling expenses, marketing expenses, general expenses, and other administrative expenses – Utilization of debt provision – Credit balances – Loans – Accounting profit adjustment – Short-term loans – Social insurance differences – Zakat base – Strategic spare parts – Deferred expense burdens – Investments.

Abstract

Plaintiff's claim seeks to cancel the decision of Zakat, Tax, and Customs Authority regarding zakat assessment for the years 2015 to 2018 is based on the following objections: Item First Salaries and Wages (2015-2018): The Plaintiff objects to Defendant's action of adding unsupported employee costs to the adjusted net profit as non-deductible expenses for the disputed years. Item Second: Advertising, Selling, Marketing, General, and Administrative Expenses (2015-2018): The Plaintiff objects to Defendant's action of disallowing the deduction of advertising, marketing, general, administrative, and project expenses due to the absence of supporting documents for the disputed years. Item Third: Utilization of Debt Provision (2015-2018): The Plaintiff objects to Defendant's action of not approving the deduction of the utilized portion of the doubtful debt provision for the disputed years. Item Fourth: Credit Balances (2015-2018). Item Fifth: Loans (2015-2018): The Plaintiff objects to Defendant's action of adding several loans for the disputed years to the zakat base. Item Sixth: Adjustment of Accounting Profit by Specific Items (Social Insurance Differences) Amounting to SAR 2,539,326 for the Year 2017: The Plaintiff objects to Defendant's action of disallowing the deduction of investments available for sale and investments in equity instruments from the zakat base for the years 2015 to 2018. The Plaintiff argues that, based on the financial statements of the investee company, these investments are long-term equity investments (capital) in ... Company. The Plaintiff confirms that the investment balance remained unchanged from 2015 to 2018, indicating no intent for trading. Regarding these external investments in non-traded shares, the Plaintiff refers to an Appellate Department decision that supported Plaintiff's view on deductibility. The Department also affirmed that the absence of a certified accountant's certificate does not affect Plaintiff's right to deduct these investments from the zakat base. Regarding the first item: "Salaries and Wages (2015-2018), ZATCA responded as follows: ZATCA states that during the assessment phase, it requested detailed analyses of employee cost expenses for the years 2015-2018 along with supporting documents. Despite reminders on 18/11/2020, the Plaintiff did not provide the required data. Consequently, ZATCA rejected the item due to the lack of supporting documents, maintaining the validity of its procedure. Regarding the item of Advertising, Selling, and Marketing Expenses (2015-2018): It stated that it had requested an extract from the accounting system

(general ledger) for all related accounts. A sample was selected based on the extract submitted with the objection, and the Plaintiff was asked to provide supporting documents for the selected sample. However, the Plaintiff only submitted copies of two invoices, which were unrelated to the requested sample. Additionally, the Plaintiff did not provide the requested account statement extracted from the accounting system. Upon reviewing the data submitted with the objection, it was found to consist of manual expense records that included only the amount and account number without any description of the nature of the expense, the party incurring the expense, or any other details. In light of the above, and since Zakat Payer did not provide the supporting documents, the claim was rejected. Regarding the item of not deducting the utilized portion of the debt provision for the years 2015 to 2018: It was stated that during the review of the objection and the hearing session, the Plaintiff was requested to provide a statement identifying the parties whose debts were written off, in addition to a certified accountant's statement confirming the write-off of these debts from the records based on a decision by the authorized party. However, the Plaintiff did not provide the required documents, making it impossible to verify the fulfillment of the conditions for deducting bad debts. Accordingly, the Defendant upholds the validity and accuracy of its procedure. As for the item of credit balances for the years 2015 to 2018: It was stated that amounts that had remained for a full lunar year were added, based on the movement records submitted by Zakat Payer. Regarding the item of loans for the years 2015 to 2018: It was stated that during the assessment phase, the Defendant requested an account statement extracted from the accounting system for long-term and short-term loans. The Plaintiff provided the statement, which revealed the existence of revolving loans and loans that had remained for a full lunar year. Additionally, the Defendant identified significant additions to assets in the cash flow statement, along with a cash deficit during the year. Therefore, the Defendant added the loans used to finance assets to the zakat base, as reflected in the table included in the response memorandum. Upon reviewing the objection and the statements submitted by the Plaintiff, the Defendant clarified its position regarding the loans as follows: A - Short-term revolving loans: The Defendant considers its procedure valid, as these loans, by their nature, are renewable and continuous, with the amounts remaining outstanding in Plaintiff's records throughout the year. In accordance with Paragraph 5 of Clause 1 of Article 4 and Appellate Decision No. 1694 issued in 1438 AH, these loans were required to be added to the zakat base. B - Long-term loans that exceeded a full lunar year and creditor banks: The Defendant considers its procedure valid with respect to long-term loans, as it aligns with Paragraph 5 of Clause 1 of Article 4. As for creditor banks, the amounts that exceeded a full lunar year were added based on the lesser balance between the beginning and end of the period, due to the absence of detailed movement records for creditor banks. C - Loans used to finance assets deducted from the zakat base: Upon reviewing the financial statements, particularly the cash flow statement, it was noted that there was a cash deficit during the disputed years, along with asset purchases that exceeded the available cash for the year. This was particularly evident as the company experienced negative cash flow from operational activities in some of the disputed years. This confirms that the amounts received during the year from loans were used to finance capital assets. The Defendant included a table analyzing cash flow in its response memorandum and thus maintains the validity and accuracy of its procedure regarding the loans added as described above. Regarding the item of investments (2015-2018): It was stated that the deduction for the investment in .... Company– USA was not accepted because it consisted of available-for-sale securities, which are not deductible from the zakat base. It was found that the Plaintiff had deducted the investment from the zakat base without accounting for the zakat base or paying the zakat dues. In light of the above, Plaintiff's request to deduct foreign investments that are not subject to zakat, while failing to meet the conditions for deducting investments in

foreign entities as stipulated in the executive regulations for zakat collection, was rejected. Regarding the adjustment of accounting profit by import profits for the years 2015 and 2018: It was stated that a customs statement was requested from the General Authority of Customs (formerly), and a comparison was made between Zakat Payer's declaration and the customs statement. The comparison revealed an increase in the value of imports, as per the customs data provided by Zakat Payer, compared to what was reported in the declarations for 2015. Consequently, the differences not declared in the statement were calculated at a profit margin of 15% and added to the profit. The dispute was resolved as the Plaintiff accepted the Defendant's procedure. As for Item Second (Suppliers): It was found that spare parts not intended for sale are deductible from the zakat base, provided their nature is proven and that they are used for the maintenance of fixed assets and not for sale. ZATCA deducted the inventory of spare parts in accordance with the audited financial statements, and there is no dispute on this matter. However, the Plaintiff did not provide supporting documents to clarify its position. Regarding the third item: The expenses in question are deferred financial costs incurred to obtain a loan from the Industrial Fund and are amortized over the loan period. These expenses are settled annually from the value of the loan. The expenses in question are not directly deductible from the zakat base, as they are capital in nature. Instead, they adjust the activity result, and the portion realized during the year is amortized. The Plaintiff added these expenses to the loans, indicating that it adjusted the modified profit result by including these expenses. Regarding the fourth item: It was found that the dispute over this item is documentation-related. The Plaintiff did not provide the movement details of the provisions and only attached a table showing the provisions as per the declarations and the provisions as per ZATCA's assessment (Annex 3). The Plaintiff did not provide the detailed movement that would allow verification of the provision balances that exceeded a full lunar year and should be added to the zakat base. Regarding the fifth item: Adjustment of accounting profit for specific items (non-operational expenses) amounting to SAR 391,878 for 2017: It was found that the dispute over this item lies in whether these expenses are deductible or not. It was determined that they are entertainment expenses and therefore not related to the activity and are not deductible. Regarding the sixth item, Investments (2015-2018): The Plaintiff objects to Defendant's action of disallowing the deduction of available-for-sale investments and equity instrument investments from the zakat base for the years 2015 to 2018. The Department ruled to: reject Plaintiff's objection regarding the following items: salaries and wages, advertising, selling, marketing, general, and administrative expenses, and the utilized portion of the doubtful debt provision for the years 2015 to 2018, acknowledge resolution of the dispute regarding credit balances for the years 2015 to 2018. Regarding loans and creditor banks: Plaintiff's objection concerning short-term loans and creditor banks for the years 2015 to 2018 is rejected. The resolution of the dispute concerning long-term loans exceeding a full lunar year for the years 2015 to 2018 is acknowledged. Defendant's decision regarding loans used to finance assets and investments for the years 2015 to 2018 is annulled.

Instruments:

- Article (70) of the Law of Civil Procedure promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH.
- Article (70/ 1) of The Implementing Regulations of Procedure before Sharia Departments issued by the Minister of Justice Resolution No. (39933) dated 05/19/1435 AH.

- Articles (4/First/9, 5, 4/Second/b), (5/1/a), (6/2), (16/1, 5), (20/3) of the Implementing Regulations for Zakat Collection, issued by the Ministerial Decision No. (2082) dated 01/06/1438 AH

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Thursday, 28/07/2022 AD, the First Department for Determination of Income Tax Violations and Disputes in Dammam, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended, formed by Royal Order No. (65474) dated 23/12/1439 AH and reformed by Royal Order No. (26760) dated 14/05/1442 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 10/05/2021 AD.

The facts of this case are summed up in that Mr..... ID No..... in his capacity as the legal representative of Plaintiff ..... Company, C.R. No. (...), objected to the tax assessment for the years 2009 to 2012 and 2019 issued by ZATCA. Plaintiff's objection is related to the following items: Item First Salaries and Wages (2015-2018): The Plaintiff objects to Defendant's action of adding unsupported employee costs to the adjusted net profit as non-deductible expenses, with a total balance of SAR 176,933,418 for the disputed years. The Plaintiff asserts that the Defendant did not provide the company with the calculation methodology for these differences or the basis for the rejection. Furthermore, the adjustment notice contained some material errors, as some amounts were duplicated across years, and the analysis did not clarify how these differences were determined. The Plaintiff requests clarification of the reasons and justification for the discrepancies in salaries, which arose from the differences between the amounts of salaries and wages reported in the income statement and those recorded in the company's account with the Social Insurance system. The Plaintiff objects to Defendant's exclusion of salaries and employee costs on the grounds that they were unsupported, based on discrepancies between the Social Insurance records and the company's records, deeming Defendant's reasoning unjustified. The Plaintiff also states that the actual discrepancies are significantly less than the amounts mentioned in the zakat assessment. In this regard, the Plaintiff attaches Annex 2, detailing the amounts used to calculate the Social Insurance contributions. From the table attached to the claim before the Defendant and the General Secretariat of the Zakat, Tax, and Customs Committees, it is evident that there are discrepancies for the years 2015 to 2018 amounting to a total of SAR 43,063,580. These discrepancies arise from differences between the salaries and wages according to the company's analysis and those according to the Social Insurance Law. The Plaintiff explained that these discrepancies are due to timing differences in recording employees' entry and exit dates. For example, the registration of new employees in the Social Insurance system may be delayed due to sponsorship transfer procedures from another company. Accordingly, this timing factor does not constitute a sufficient reason to reject the large amounts disallowed by the Defendant. The Plaintiff was unable to obtain a copy of the Social Insurance certificate but attached monthly payment notifications for Social Insurance contributions (Annex 3) to demonstrate that the amounts recorded in the accounts match the amounts declared in the Social Insurance system. The Plaintiff states in response to the claims in the Defendant's memorandum that the Plaintiff did not provide the required data, leading to the rejection of the Plaintiff's objection. The Plaintiff clarifies that it provided supporting documents for the payment of employees' salaries, based on payroll records, bank transfers, and the Wage Protection System (WPS) report

through the Plaintiff's emails attached in Annex 1. This evidence confirms and demonstrates to the Defendant that the costs of salaries and wages are actual expenses paid to the employees via the company's bank accounts, which were sent to ZATCA by email. Furthermore, the company also submitted documentary evidence supporting the Wage Protection System and monthly payment statements extracted from the Social Insurance system for all periods in dispute, as included in Annex 3 of the claim documents submitted to the objection committees. Item Second: Advertising, Selling, Marketing, General, and Administrative Expenses (2015-2018): Advertising, Selling, Marketing, and Other General and Administrative Expenses (2015-2018): The Plaintiff objects to the Defendant's action of disallowing the deduction of advertising, marketing, general and administrative expenses, and project expenses due to the absence of supporting documents for the disputed years, with a total balance of SAR 57,930,848. The Plaintiff asserts that these expenses are related to its economic activity. However, ZATCA did not deduct these expenses. The Plaintiff wishes to address Defendant's response regarding the failure to submit the requested documents, explaining that providing the requested samples required additional time due to the short time frame given by the Defendant. It also notes that other samples were submitted to ZATCA, including copies of invoices for different samples. The Plaintiff further clarifies that the records sent were not manual but were extracted from the company's system, along with a copy of the general ledger for the same items. Item Third: Utilization of Debt Provision (2015-2018): The Plaintiff objects to the Defendant's action of not approving the deduction of the utilized portion of the doubtful debt provision for the disputed years, amounting to a total of SAR 16,798,105. The Plaintiff disagrees with this procedure and wishes to explain the reasoning that supports its position for accepting the deduction of the utilized doubtful debt provisions. It refers to Paragraph (9) of Clause (First) of Article Four of the Implementing Regulations for Zakat Collection. The Plaintiff argues that the utilized provisions no longer exist in the company's accounts and, therefore, should not be subject to zakat. The Plaintiff also wishes to respond to Defendant's memorandum, which indicated that the requested documents are only required in cases of bad debts deducted from revenue and shown as expenses. However, in this case, the objection pertains to the utilization of provisions that were excluded in the year they were formed and are no longer present in the company. The common practice by the Defendant has been to deduct the utilized portion from the opening balance of the period. Based on the foregoing, the Plaintiff demands deduction of the utilized portion of the doubtful debt provision for the disputed years. Item Fourth: Credit Balances (2015-2018). Item Fifth: Loans (2015-2018): The Plaintiff objects to Defendant's action of adding several loans for the disputed years to the zakat base. The Plaintiff wishes to clarify its position regarding these loans as follows: - Short-term revolving loans: The company stated that it submitted a detailed analysis of loan movements to the Defendant, which demonstrates that these loans did not complete a full lunar year. This analysis is included in Annex 8 of the claim document for the disputed years, supporting the stated position. The analysis shows, based on the submitted movement records, that the opening balances of the loans were repaid before completing a full lunar year. The amounts that did complete a cycle or were used to finance deductible assets were already included by the company in the zakat declarations it submitted. - Long-term loans that completed a full lunar year: The Plaintiff mentioned that it included long-term loans in the zakat declarations for the periods under objection, according to the analysis attached to the claim document. Regarding creditor banks, the company provided the Defendant with a detailed analysis of the account movements, which demonstrates that these balances did not complete a full lunar year, as shown in Annex 8. - Loans used to finance deductible assets: Regarding the Defendant's position on loans used to finance deductible assets, the Plaintiff argues that the Defendant's justification in the response

memorandum is unfounded and incorrect. Assuming that the company used part of the cash generated from operating activities to finance added assets, it is unreasonable to subject loans equivalent to all asset additions during the year to zakat. The Defendant provided a calculation showing that loans equivalent to the deductible assets were included in the zakat base, which is illogical. The Defendant assumed that dividend distributions for the disputed years were paid from available operating cash. However, the company clarified that dividends were paid using cash generated from financing activities. The financing used to pay dividends should not be added to the zakat base. In light of the above, the company requests an adjustment to the zakat assessment based on the evidence it submitted, which proves that the loans added to the zakat base did not complete a full lunar year.

Item Sixth: Investments (2015-2018): The Plaintiff objects to Defendant's action of disallowing the deduction of available-for-sale investments and equity instrument investments from the zakat base for the years 2015 to 2018. The Plaintiff disagrees with the Defendant's decision and argues that, according to Paragraph 2 of Article (4/Second) of the Executive Regulations for Zakat Collection, these investments should be deductible from the zakat base. The Plaintiff further explains that, based on the financial statements of the investee company, these investments are long-term equity investments (capital) in the company. The Plaintiff also indicates that the investment balance remained unchanged from 2015 to 2018, demonstrating the absence of any intention to trade. Regarding the fact that these investments consist of external shares in unlisted companies, the Plaintiff references an Appellate Department decision that supported its view. The Department confirmed the validity of Plaintiff's position on deducting these investments and noted that the absence of a certified accountant's statement does not impact Plaintiff's right to deduct these investments from the zakat base.

Upon presenting the case to the Defendant, the Defendant responded with a memorandum stating the following regarding the item of salaries and wages for the years 2015 to 2018: The Defendant indicated that during the assessment phase, it requested analytical data from Zakat Payer regarding employee cost expenses for the years 2015 to 2018, along with supporting documents. A reminder was sent on 18/11/2020. It was noted in the preliminary assessment that the employee costs were unsupported, and the Plaintiff did not provide any data related to this item. Consequently, the Defendant disallowed the deduction for lack of supporting documents, based on Paragraph 2 of Article 6 of the regulations. During the review of the objection, the Plaintiff was asked to submit a certified statement from a company official clarifying the discrepancies between the salaries and wages recorded in the accounts and those reported in the declaration. The Plaintiff was also requested to provide payroll records for April 2017 and August 2018, detailing basic salaries, allowances, deductions, and net salaries, as well as supporting payment documents from the company's bank accounts. However, the Plaintiff only submitted an analytical statement without the requested payroll records. Upon reviewing the statement, it was found that the reported costs included social insurance expenses, commissions, bonuses, various allowances, and other benefits. Based on the submitted data, there was no clear basis to determine that these expenses were eligible for deduction. The Defendant wishes to respond to Plaintiff's claim regarding the lack of clarification on the calculation basis. The Defendant confirms that the item was included in the preliminary assessment sent to the Plaintiff, and the Plaintiff did not provide any data related to it. Furthermore, the amounts reported in the audited financial statements under the same title as in the Defendant's assessment, "Employee Costs," are consistent with the figures provided. In light of the above, and since the Plaintiff did not submit supporting documents to confirm that the employee costs are eligible for deduction under the provisions of Article 5 of the Implementing Regulations for Zakat Collection, ZATCA maintains the validity and accuracy of its procedures. Thereupon, ZATCA insists on accuracy and correctness of its

procedure. Regarding the item of Advertising, Selling, and Marketing Expenses (2015-2018): Regarding the item of advertising, selling, and marketing expenses for the years 2015 to 2018:
The Defendant stated that it requested an extract from the accounting system (general ledger) for all related accounts. A sample was selected based on the extract submitted with the objection, and the Plaintiff was asked to provide supporting documents for the selected sample. However, the Plaintiff submitted only two invoices, which did not pertain to the selected sample. Moreover, the Plaintiff did not provide the requested account statement extracted from the accounting system. Upon reviewing the data submitted with the objection, it was found to consist of manual expense records that included only the amount and account number, without any description of the nature of the expense, the party incurring the expense, or any additional details. In light of the above, and since Zakat Payer did not provide supporting documents to confirm that these expenses are eligible for deduction under the provisions of Article 5 of the Implementing Regulations for Zakat Collection, ZATCA maintains the validity and accuracy of its procedures. Regarding the item of not deducting the utilized portion of the debt provision for the years 2015 to 2018: It was stated that during the review of the objection and the hearing session, the Defendant requested the Plaintiff to provide a statement identifying the entities whose debts were written off, in addition to a certified accountant's statement confirming the write-off of these debts from the records based on a decision by the authorized party. However, the Plaintiff did not provide the required documents, making it impossible to verify the fulfillment of the conditions for deducting bad debts in accordance with Article 5, Paragraph 3. Accordingly, the Defendant maintains the validity and accuracy of its procedure. As for the item of credit balances for the years 2015 to 2018: It was stated that amounts that had remained for a full lunar year were added, based on the movement records submitted by Zakat Payer. Regarding the item of loans for the years 2015 to 2018: It was stated that during the assessment phase, the Defendant requested an account statement extracted from the accounting system for both long-term and short-term loans. The Plaintiff provided the requested statement, which revealed the existence of revolving loans and loans that had completed a full lunar year. Additionally, the Defendant identified significant additions to assets in the cash flow statement, along with a cash deficit during the year. As a result, the Defendant included loans used to finance assets deductible from the zakat base. Accordingly, the loans were added to the zakat base as outlined in the table included in Defendant's response memorandum. Upon reviewing the objection and the statements submitted by the Plaintiff, the Defendant clarified its position regarding the loans as follows: A - Short-term revolving loans: The Defendant considers its procedure valid, as these loans are essentially renewable and continuous in nature, with the amounts remaining outstanding in the Plaintiff's accounts throughout the year. In accordance with Paragraph 5 of Clause 1 of Article 4 and Appellate Decision No. 1694 issued in 1438 AH, these loans were required to be added to the zakat base. B - Long-term loans that exceeded a full lunar year and creditor banks: The Defendant considers its procedure valid with regard to long-term loans, as it aligns with Paragraph 5 of Clause 1 of Article 4. As for creditor banks, the amounts that completed a full lunar year were added based on the lesser balance between the beginning and end of the period, due to the absence of detailed movement records for creditor banks. C - Loans used to finance assets deducted from the zakat base: Upon reviewing the financial statements, particularly the cash flow statement, it was observed that there was a cash deficit during the disputed years, along with the purchase of assets exceeding the available cash during the year. This was especially evident as the company experienced negative cash flows from operational activities in some of the years under objection. This confirms that the amounts received during the year from loans were used to finance capital assets. The Defendant also included a table analyzing the cash

flow in the response memorandum. Accordingly, the Defendant maintains the validity and accuracy of its procedure regarding the loans added to the zakat base as described above. Regarding the item of investments (2015-2018): It was stated that the deduction for the investment in .... Company– USA as it consists of available-for-sale securities, which are not deductible from the zakat base. Upon reviewing the objection and examining Plaintiff's declarations, it was found that the Plaintiff had deducted the investment from the zakat base without calculating the zakat base or paying the zakat due. In light of the above, and considering that Plaintiff's request involves the deduction of foreign investments that are not subject to zakat, while also failing to meet the conditions for deducting investments in foreign entities as stipulated in the Implementing Regulations for Zakat Collection, the Defendant rejected the request.

On Thursday, July 28, 2022, the Department convened a remote session to review the case. Present were … (National ID No. …), acting as Plaintiff's attorney under Power of Attorney No. …, and … (National ID No. …), acting as attorney of the Defendant, Zakat, Tax, and Customs Authority, under authorization issued by the Deputy Governor of the Zakat, Tax, and Customs Authority for Legal Affairs No. (…), dated (…). When asked about the case, Plaintiff's attorney stated that the case remains consistent with the claims outlined in the case previously submitted to the General Secretariat of Tax Committees. Upon presenting this to Defendant's attorney, they requested additional time to submit a supplemental memorandum addressing the item of investments for the disputed years. However, the Department did not grant this request, as the Defendant had already been given the opportunity to provide supporting arguments during the memorandum exchange phase. Additionally, it was noted that the Plaintiff has two related cases that were reviewed on 27/ 6/ 2022, and were postponed along with the present case. Since then, the Defendant has not submitted any responses. When both parties were asked if they had any additional statements, they affirmed that they had nothing further to add beyond what was already included in their submitted memoranda. Based on this, the Department decided to close the pleadings and proceed to deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the Case moving for annulling ZATCA decision regarding zakat assessment for years from 2015 to 2018. Given that this dispute is a zakat dispute. Therefore, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the statutory period. Therefore, the Department accepts the Case in form.

On Merits: The Department, having reviewed the documents and evidence contained in the case file, and examined the requests, defenses, and objections presented by the parties, has determined that the dispute is related to the zakat assessments made by the Defendant for the years 2015 to 2018. The Plaintiff's objections to these assessments pertained to the following items:

Item First Salaries and Wages (2015-2018):

The plaintiff objects to defendant's action of adding unsupported employee costs to the adjusted net profit as non-deductible expenses. The defendant, on the other hand, stated

that during the assessment phase, it requested data from the plaintiff, but the plaintiff did not provide any information related to this item. Consequently, the defendant disallowed the item due to the lack of supporting documents. Article (5/A/1) of the Implementing Regulations for Zakat Collection issued by Ministry of Finance Decision No. (2082) dated 01/06/1438 AH, concerning deductible expenses, stipulates: "The following expenses can be deducted to determine the net result of activity: 1. Expenses ordinary and necessary for an entity to engage in business activity, subject to meeting the following criteria: a. Expenses should be actual expenses as supported by relevant documents and other evidential matter to enable ZATCA to verify the accuracy of expenses, even if related to prior years". Paragraph (2) of Article (6) of the same Regulations related to deductible expenses states: "Expenses that the Zakat Payer fails to prove by supporting documents or other evidential matter acceptable to ZATCA". Paragraph (3) of Article (20) thereof states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it" Based on the above, and after reviewing the submissions from both parties, it is clear that the dispute is documentation-related. Upon examining the case file, it appears that the Plaintiff submitted several documents, including payroll records, bank transfer confirmations, Wage Protection System reports, copies of monthly payment notifications, and various other documents. These documents relate to discrepancies between salaries and wages as analyzed by the company and those recorded in the Social Insurance Law. However, it is evident that the salaries and wages appear under amounts different from those listed under the "Employee Costs" item, and the submitted documents are not directly linked to this item. These documents were required during the audit phase, but it is evident that the Plaintiff did not provide the financial statements for the disputed years, the account statements for this item, or the supporting documents necessary to consider these expenses deductible from the adjusted net profit. Therefore, due to the failure to provide the required and relevant supporting documents for this item, the Department concludes that Plaintiff's objection regarding this item is rejected.

Item Second: Advertising, Selling, Marketing, and Other General and Administrative Expenses (2015–2018):

The Plaintiff objects to Defendant's action of disallowing the deduction of advertising, marketing, general and administrative expenses, and project expenses due to the alleged lack of supporting documents for the disputed years. On the other hand, the Defendant maintains that Zakat Payer did not provide the required supporting documents. Since Paragraph (1), Article (5) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH provides that: "All regular and necessary expenses required for the activity, whether paid or due, shall be deducted up to the net result of the activity, provided that the following controls are met: a. Expenses should be actual expenses as supported by relevant documents and other evidential matter to enable the Authority to verify the accuracy of expenses, even if related to prior years. b. Expenses should be related to Zakat Payer's business activity rather than personal expenses or other than Zakat Payer's own activities. C. It should not be of a capital nature and, if an expense of a capital nature is included in expenses, result of activity shall be adjusted and includes fixed assets and consumed in accordance with the legal ratios." Additionally, Article (6), Paragraph (2) of the same Regulations, regarding non-deductible expenses, which states: "Expenses that the Zakat Payer fails to prove by supporting documents or other evidential matter." Based on Paragraph 1 of Article (16) concerning books and records from the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, which states: "each Zakat Payer shall keep in

The Kingdom and in Arabic, the accounting books and records necessary to accurately determine Zakat Base. Further, the Zakat Payer shall keep the documents, information/explanatory notes confirming the accuracy of such accounting books and records. It rests with the Zakat Payer to prove the accuracy of the information reported in the declaration". Based on Paragraph 5 of the same article concerning books and records from the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, which states: "Books must be maintained through a computer system according to the following conditions: a. The computer system must be located within the Kingdom of Saudi Arabia. b. The data entered into these books via the computer system must be in Arabic and must reflect the same format as the books specified in the Law of Commercial Books. c. All original documents supporting the entries recorded in the accounting books must be preserved. d. Final accounts and the balance sheet must be extracted directly from the computer system. If traditional accounts are used with the assistance of a computer system for some account items, all adjustment entries must be attached and must be in Arabic." Additionally, Paragraph (3), Article (20) of the same Regulations states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it" Based on the above, and given that the dispute between the parties is documentation-related, a review of the case file reveals that the Plaintiff submitted an analytical statement and account ledger prepared manually in an Excel file. However, the Plaintiff did not provide the required documents from the accounting system, as requested by the Defendant, nor did it submit the requested samples. Instead, the Plaintiff submitted two samples to the Defendant, which were not compliant due to time constraints. In light of this and based on Article (16) mentioned above and Article (20), Paragraph 3, the Department concludes that Plaintiff's objection regarding this item is rejected.

Item Third: Utilization of Debt Provision (2015-2018):

The Plaintiff objects to Defendant's action of not approving the deduction of the utilized portion of the doubtful debt provision for the disputed years. The Defendant maintains that the Plaintiff did not submit the required documents, making it impossible to verify compliance with the conditions for deducting bad debts in accordance with Article (5), Paragraph (3). Since Paragraph (9), Clause (First) of Article (4) the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH provides that: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 9. Beginning of year provisions (except for provisions for doubtful debts of banks) after deducting the used part during the year". Additionally, Paragraph (3), Article (20) of the same Regulations states: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, the Authority may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at Authority's discretion in view of the surrounding circumstances, facts and information available with the Authority". Based on the above, and upon review, it is evident that the dispute between the parties is documentation-related. It appears that the Defendant's action involves not approving the deduction of the utilized portion as bad debts, as the conditions for deducting bad debts in accordance with the Implementing Regulations for Zakat Collection were not met. The Plaintiff argues that the utilized portion is not bad debts but rather debts that were excluded from the provision in the year it was formed. However, upon reviewing the case file, the Plaintiff did not submit supporting documents to substantiate its position, clarify that the utilized portion does not represent debts, confirm

whether these debts were collected and subjected to zakat, or explain the nature of the utilized portion along with supporting documents. Additionally, the Plaintiff failed to submit the financial statements and zakat declarations for the disputed years. In light of this, the Department concludes that Plaintiff's objection regarding this item is rejected.

Item Fourth: Credit Balances (2015–2018):

Article (70) of the Law of Civil Procedures, issued by Royal Decree No. (M/1) dated 22/01/1435 AH, states that: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgement, settlement, or the like in the case record, and the court shall issue a deed to that effect" and based on paragraph (1) of Article (70) of the Implementing Regulations of the Law of Civil Procedures issued by Minister of Justice Decision No. (39933) dated 19/05/1435 AH stipulating that: "If an agreement is reached prior to entering the case, the text of the case and the answer shall be entered prior to entering such agreement, provided that the original case falls within the jurisdiction of the circuit, even if the text of the agreement falls within the jurisdiction of another court or circuit and the object of the case or portion thereof is agreed upon". Based on the foregoing, it has been established that the dispute was resolved upon Plaintiff's acceptance of Defendant's action, as reflected in Plaintiff's letter in response to the memorandum of reply, which included the following: "The company wishes to inform You that it has agreed to Defendant's procedure and has paid the due amount based on the assessment..." As a result, the Department concludes that dispute over this item has been resolved.

Item Fifth: Loans (2015-2018):

The Plaintiff objects to Defendant's action of adding several loans for the disputed years to the zakat base. The Defendant stated that it had requested an account statement extracted from the accounting system for both long-term and short-term loans. Upon reviewing the statement, it was found that there were revolving loans and loans that had completed a full lunar year. Additionally, the Defendant observed from the cash flow statement that there were significant additions to assets, along with a cash deficit during the year. Article (4/First/5) of Implementing Regulation for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it". Additionally, Paragraph (3), Article (20) of the same Regulations states: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, the Authority may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at Authority's discretion in view of the surrounding circumstances, facts and information available with the Authority".

(a) Short-term Loans: Based on the above, loans are considered part of the zakat base regardless of their type, source, or classification, provided they have completed a full lunar year or were used to finance deductible assets, without requiring the completion of a full lunar year. The dispute is limited to the addition of short-term loans, which were classified as revolving loans, with a total amount of SAR 696,400,000 for all disputed years. The Plaintiff argues against their inclusion, claiming they did not complete a full lunar year. Upon reviewing the documents attached to the case file, including the detailed movement of short-term loans in Excel format for the disputed years, it was found that, for some bank loans, the amount borrowed during the year (credit movement) was repaid in the same year (debit movement) or with amounts

close to it for other loans, with no change in the opening balance compared to the closing balance. The Plaintiff relied on this movement data but did not provide an account statement extracted from the accounting system to verify and confirm its claim that these loans did not complete a full lunar year and were not revolving or renewable. Defendant's action involved adding the short-term loans on the basis that they were revolving and renewable, as evidenced by the account statement provided by the Plaintiff from its accounting system. As it is not possible to form an opinion based solely on the submitted data due to insufficient supporting documentation, the Department concludes that the Plaintiff's objection should be rejected and ZATCA's action upheld regarding the addition of short-term loans with a total amount of SAR 696,400,000 for the years 2015 to 2018, on the basis that these loans are revolving.

(b) Long-term Loans that Completed a full lunar year: Based on the above, it is evident that the Defendant added long-term loans with a total amount of SAR 196,570,864 for all disputed years, as these loans completed a full lunar year. Upon reviewing the case file, Plaintiff's claim document, and its response to Defendant's memorandum, it was found that the Plaintiff included long-term loans in its zakat declarations for the disputed years, as indicated in the Excel-based analysis attached to the claim. This analysis matches the additions made by the Defendant. Therefore, the Department concludes that the dispute regarding this item is resolved, as the Plaintiff accepted Defendant's action and the addition of these loans, which completed a full lunar year for all periods, as stated in Plaintiff's response to the memorandum: "The company wishes to inform You that it has included long-term loans in the zakat declarations for the aforementioned years, in accordance with the analysis attached to the claim document."

(c) Creditor Banks: Creditor banks are considered part of the zakat base regardless of their type, source, or classification, provided they have completed a full lunar year or were used to finance deductible assets without requiring the completion of a full lunar year. The dispute revolves around the addition of creditor bank balances, calculated as the lesser of the opening or closing balance, due to the absence of detailed movement records for this item for all disputed years, with a total balance of SAR 172,126,262 for the periods in question (2015 to 2018). The Plaintiff requests their exclusion on the grounds that they did not complete a full lunar year. Upon reviewing the documents attached to the case file, including Annex 8, it was found that the Plaintiff did not provide detailed movement records for creditor banks. These records would have clarified the opening and closing balances, as well as the debit and credit movements, to verify the accuracy of Plaintiff's claim. The Plaintiff claims to have submitted the detailed movement records to the Defendant in Annex 8, but upon examination, this was found to be incorrect. Therefore, the Department supports Defendant's action in adding the disputed amount for all years, totaling SAR 172,126,262, and rejects the Plaintiff's objection due to the failure to provide supporting documents to substantiate its position.

(d) Loans Used to Finance Assets Deductible from the Zakat Base: Loans used to finance assets deductible from the zakat base are considered part of the zakat base. The dispute between the parties centers on the method of calculating the amount added to the zakat base, representing loans that financed deductible assets for the years 2015 to 2018. The Defendant added a total amount of SAR 282,867,723 after reviewing the financial statements and cash flow statements, which showed a deficit during those years, asset purchases exceeding the available cash, and negative cash flows related to operational activities in some years. The Defendant calculated the amount to be added by comparing the difference between the cash used during the year and the cash available during the year with the assets purchased, adding the lesser of the two

amounts. Based on this method, the Defendant added a total amount of SAR 269,959,381. The Plaintiff, however, argues that Defendant's analysis is flawed and provided a table showing its analysis of cash flows and loan amounts used to finance deductible assets, totaling SAR 137,649,040. Upon reviewing the case file and the Defendant's response memorandum, it was found that the Plaintiff had cash inflows from the sale of properties and the disposal of investments, as well as cash generated in some years. Additionally, the Plaintiff had already added part of the loans that financed deductible assets, as previously mentioned. This indicates that Defendant's action was incorrect in assuming that all purchased assets were funded by loans due to the cash deficit. Accordingly, the Department concludes that Defendant's action should be annulled.

Item Sixth: Investments (2015–2018):

The Plaintiff objects to Defendant's action of disallowing the deduction of available-for-sale investments and equity instrument investments from the zakat base for the disputed years. The Defendant, however, maintains that the deduction of the investment in ... Company - USA is not acceptable because it consists of available-for-sale securities, which are not deductible from the zakat base. The Ministerial Resolution No. (1005) dated 28/04/1428 AH stipulates: "Second: Investments in entities outside the Kingdom, in partnership with others, shall be deducted from Zakat Payer's declaration, provided that Zakat Payer submits audited accounts from a certified public accountant in the country of investment in order to calculate zakat due on these investments and to remit them to the Authority. Alternatively, Zakat Payer may provide proof that zakat has been paid in the country of investment, and accordingly deducting such investment from zakat base of the Saudi investing company to avoid double payment of zakat on these companies. If Zakat Payer does not provide the required documents above-mentioned, the investments shall not be deducted from zakat base". In accordance with Paragraph (4/b), Clause (Second) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH that states: "The following items shall be deducted from the Zakat Base: Investments in an entity outside the Kingdom – in partnership with others – provided that Zakat Payer includes the zakat due on these investments in its zakat declaration in accordance with the rules stipulated in these regulations and pays it to ZATCA. This must be accompanied by audited accounts from a certified accountant in the country of investment, certified by official authorities. If the taxpayer fails to calculate and pay zakat accordingly, the investments cannot be deducted from the zakat base." Based on the above, and in accordance with Ministerial Decision No. (1005) and Paragraph (4/b) of Clause (Second) of Article (4) of the Implementing Regulations for Zakat Collection referenced above, the Plaintiff is entitled to deduct the foreign investment from its zakat base, provided it complies with the stipulated requirements. This includes submitting audited accounts from a certified accountant in the country of investment to ZATCA, in order to calculate the zakat due on these investments and pay it to ZATCA, or submitting proof that zakat has been paid on these investments in the country of investment. This ensures the avoidance of double zakat payments, and the investments can then be deducted from the zakat base of the investing company. Given that the dispute over this item is documentation-related, and upon reviewing the case documents, it was found that the Plaintiff submitted the financial statements of the investee company outside the Kingdom, audited by a certified accountant for the disputed years (2015–2018). Accordingly, the Department concludes that Defendant's decision regarding this item should be annulled.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

1. Reject Plaintiff's objection regarding the item of salaries and wages for the years 2015 to 2018.
2. Reject Plaintiff's objection regarding the item of advertising, selling, marketing, and general and administrative expenses for the years 2015 to 2018.
3. Reject Plaintiff's objection regarding the item of the utilized portion of the doubtful debt provision for the years 2015 to 2018.
4. Acknowledge resolution of the dispute regarding the item of creditor balances for the years 2015 to 2018.
5. Regarding loans and creditor banks:
   a. Reject Plaintiff's objection regarding the item of short-term loans for the years 2015 to 2018 is rejected.
   b. Establish resolution of the dispute regarding the item of long-term loans that completed a full lunar year for the years 2015 to 2018.
   c. Reject plaintiff's objection regarding the item of creditor banks for the years 2015 to 2018.
   d. Annul Defendant's decision regarding loans used to finance assets for the years 2015 to 2018.
   e. Annul defendant's decision regarding the item of investments for the years 2015 to 2018.

This decision was delivered in presence of the parties. The date of entering decision in the e-system of the General Secretariat is considered the date of decision delivery. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not file an objection

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1572)
Issued in Appeal No. (Z-49061-2021)

Key words:
Zakat Assessment - Accounts - No Deduction of Deferred Expenses - Decrease in Net Assets - Shortage of Spare Parts - Non-Operating Expenses - Adjustment of Accounting Profit by Provisions - Social Insurance Differences - Zakat Base

Abstract

Plaintiff's Claim to Annul the Decision of Zakat, Tax, and Customs Authority Regarding Zakat Assessment for the Year 2017 - The Plaintiff based its objection on the following items: Item First A shortfall in net assets and strategic spare parts as per the financial statements compared to zakat assessment for the year 2017, amounting to SAR 15,469. Item Second: A shortage of spare parts in zakat base for the year 2017, amounting to SAR 50,419,519. Third Item: Non-deduction of deferred expenses from zakat base, amounting to SAR 14,650,835, and adjustment of accounting profit by writing off non-deductible deferred expenses, amounting to SAR 2,082,383 for the year 2017. Fourth Item: Adjustment of accounting profit by provisions and adding them to zakat base in excess of the required amount, totaling SAR 1,235,345 for the year 2017. Fifth Item: Adjustment of accounting profit with certain items (expenses unrelated to the activity), amounting to SAR 391,878 for the year 2017. Sixth Item: Adjustment of accounting profit with certain items (social insurance differences), amounting to SAR 2,539,326 for the year 2017 - Regarding the adjustment of accounting profit with import profits for the years 2015 and 2018, ZATCA clarified that it had previously requested customs statements from the Authority previously known as the "General Customs Authority". A comparison was conducted between the data in Zakat Payer's declaration and the customs statement. The comparison revealed an increase in the value of imports based on customs data provided by Zakat Payer compared to the declared amounts for the year 2015. Consequently, the undeclared differences in the declaration were subject to a 15% profit margin adjustment and were added to the profit. Findings of the Department Regarding the First Item: The dispute was resolved as the Plaintiff accepted the Defendant's procedure. As for Item Second (Suppliers): Spare parts not intended for sale are considered deductible items from zakat base, provided their nature is proven and they are shown to be used for maintaining fixed assets rather than for sale. ZATCA deducted the inventory of spare parts based on audited financial statements, and there is no dispute regarding this. However, the Plaintiff did not provide supporting documents related to the nature of the spare parts or the audited financial statements for 2017 to substantiate its position. Regarding the third item: The expenses in question represent deferred financial charges incurred to obtain a loan from the Industrial Fund. These expenses are amortized over the loan period and thus adjusted annually against the loan value. The disputed expenses are not directly deductible from zakat base as they are of a capital nature. Instead, they are used to adjust the activity results,

with the portion realized during the year being amortized. The Plaintiff indicated in its response memorandum that these expenses were added to the loans, implying that the adjusted profit was modified by these expenses. Regarding the fourth item: Adjustment of accounting Profit by Provisions and Adding Them to Zakat Base in Excess of the Required Amount of SAR 1,235,345 for the Year 2017: It was found that the dispute is documentation-related, as the Plaintiff did not provide the detailed movement of provisions. Instead, it attached a table showing the provisions as stated in the declarations and the provisions as per ZATCA's assessment (Attachment 3). However, the detailed movement, which would allow verification of provisions' balance that has been held for a full year and must be added to the zakat base, was not submitted. Item Fifth: The dispute concerns whether these expenses are deductible or not. It was found that they are entertainment expenses and, therefore, are unrelated to the activity and not eligible for deduction. Regarding the sixth item, the acceptable deduction of social insurance contributions for zakat purposes is limited to amounts calculated according to the specified percentages outlined in the Social Insurance Law and its Implementing regulations. These percentages are based on salaries and wages as reflected in the certificate issued by the Social Insurance Organization. This certificate serves as an official document to verify the fairness of salaries and wages charged to the accounts. Any excess contributions beyond the legally accepted percentages, for which the Plaintiff cannot provide acceptable justification, are considered non-deductible expenses. It was noted that the Plaintiff submitted the Social Insurance certificate and zakat declaration for the year 2017, referenced in Attachments 5 and 7. It was evident that the company had paid the social insurance contributions as shown in the Social Insurance certificate. The Department ruled to: Confirm resolution of the dispute regarding the shortage of net assets item, reject Plaintiff's objection regarding non-deduction of spare parts inventory from zakat base, reject Plaintiff's objection regarding non-deduction of deferred expenses from zakat base, and adjust accounting profit by amortizing non-deductible deferred expenses. Reject Plaintiff's objection regarding the adjustment of accounting profit by adding provisions to zakat base in excess of the required amount. Reject Plaintiff's objection regarding the adjustment of accounting profit for certain items (expenses unrelated to the activity). Cancel Defendant's decision regarding the adjustment of accounting profit for certain items (social insurance differences).

Instruments:

- Article (70) of the Law of Civil Procedure promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH.
- Article (70/ 1) of The Implementing Regulations of Procedure before Sharia Departments issued by the Minister of Justice Resolution No. (39933) dated 05/19/1435 AH.
- https://ncar.gov.sa/document-details/eyJpdiI6IkhjR1RIYjkwMGlDYm40OFpJUUpac1E9PSIsInZhbHVlIjoiM3Z3WEJKRFp4ZFhTTVNzM2hsbXMvZz09IiwibWFjIjoiOGY0Zjk3YjIwMmQwYmQzMTZhNDQ0NWVkYjQzOGE5YWU2M2UxNWQxMWJlNTc5YTIyZDdjNGE2Njk5MGMwYjhmYSIsInRhZyI6IiJ9Articles (4/First/9, Second/1), (5/1/B, 1/C), and (20/3) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Tuesday, 26/07/2022, the First Department for Determination of Income Tax Violations and Disputes in Dammam, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted under Royal Order No. (26760) dated 14/05/1442 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 28/04/2021.

The facts of this Case are summed up that ..., ID No..... in his capacity as attorney of Plaintiff (...), C.R. No. (...), under POA No. (...), dated ... submitted its objection to the tax assessment for the year 2017, issued by ZATCA. The objection is focused on the following item: Item First Shortage of Net Assets and Strategic Spare Parts According to the Financial Statements Compared to What Was Included in the Assessment for the Year 2017 Amounting to SAR 15,469. Item Second: Shortage of Spare Parts in the Zakat Base Compared to What It Should Be for the Year 2017 Amounting to SAR 50,419,519: The Plaintiff objects to Defendant's action in deducting spare parts in zakat base under the "Other" item within the negative base elements (Item 20799 "Other") by less than what is required, as is evident from the financial statements (an explanatory table is attached in the objection memorandum). It objects to this because it is considered contrary to the text of Article (5) in Clause (Second), Paragraph (1-b) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. 2082 dated 01/06/1438 AH, concerning determination of zakat base for those who keep regular accounts, which states in the item as follows: Second: The following shall be deducted from Zakat base: 1. Net Fixed Assets and Their Equivalents, including but not limited to the following: a. Fixed assets acquired for use in Zakat Payer's activity, recorded at their book value as shown in the financial statements. b. Payments for the purchase of fixed assets. c. Spare parts and materials not intended for sale. d. Assets financed for the lessee under finance lease contracts in projects such as Build-Operate-Transfer (BOT), Build-Own-Operate (BOO), Build-Own-Operate-Transfer (BOOT), and similar arrangements. In light of the above, the Plaintiff requests that zakat assessment be adjusted to deduct strategic spare parts so that the deducted spare parts in zakat assessment align with the financial statements. Item Third: Non-Deduction of Deferred Expenses from the Zakat Base Amounting to SAR 14,650,835 and Adjustment of Accounting Profit by Amortizing Non-Deductible Deferred Expenses Amounting to SAR 2,082,383 for the Year 2017: The Plaintiff objects to Defendant's action of not deducting deferred financial expenses from the zakat base and adjusting the accounting profit by amortizing non-deductible deferred expenses, stating the following: 1. ZATCA excluded deferred financial expenses, as reported in the financial statements, from the deduction from zakat base. Instead, these expenses were deducted from the loans. According to financial statement disclosures: Deferred expenses primarily represent fees and expenses incurred to obtain a loan from the Saudi Industrial Development Fund. These deferred expenses are amortized over the loan period. This adjustment was made to present the loans at their net liability instead of showing the total liability and presenting the deferred financing expenses as a separate asset under assets in the financial statements. 2. ZATCA also adjusted the accounting profit by amortizing non-deductible deferred expenses, which are considered necessary expenses for the activity and meet the conditions specified by ZATCA for deductible expenses. In light of the above, Plaintiff's objection pertains to two items: A. The non-deduction of deferred financial expenses from the zakat base amounting to SAR 14,650,835. B. Adjustment of accounting profit by amortizing deferred financial expenses amounting to SAR 2,082,383. The Plaintiff objects to this, arguing that it violates the provisions of Article (5), Clause (Second), Paragraph (6) of the Implementing Regulations for Zakat Collection Rules and Procedures

issued by Ministerial Decision No. 2082 dated 01/06/1438 AH. These regulations pertain to the determination of zakat base for those maintaining regular accounts and state the following: Second: The following shall be deducted from Zakat base: Net Pre-Operating and Establishment Expenses and Their Equivalent Capital Expenditures. Item Fourth: Adjustment of Accounting Profit by Provisions and Adding Them to Zakat Base in Excess of the Required Amount of SAR 1,235,345 for the Year 2017: The Plaintiff objects to Defendant's action of adjusting the accounting profit by provisions and adding them to zakat base in excess of the required amount. ZATCA added provisions to zakat base exceeding the required amount by SAR 1,235,345, concerning two components of the provision: 1. The portion of the provision for the year that has been adjusted in the profit. 2. The amount added to zakat base (Opening balance on 1/1 – utilized portion). A detailed statement of the above is attached (Attachment 2). The Plaintiff objects to ZATCA's action in amending the final assessment. Item Fifth: Adjustment of Accounting Profit by Certain Items (Expenses Unrelated to the Activity) Amounting to SAR 391,878 for the Year 2017: The Plaintiff objects to Defendant's action of adjusting the accounting profit by SAR 391,878. The objection is based on the claim that all the expenses included in the adjustment of accounting profit are deductible expenses, as they are actual expenses that meet the conditions for deductibility as outlined in Paragraph (1) of Article (5) of the Implementing Regulations for Zakat Collection Rules and Procedures issued by Ministerial Decision No. 2082 dated 01/06/1438 AH, which states: "1. Expenses ordinary and necessary for an entity to engage in business activity, subject to meeting the following criteria: a. Expenses should be actual expenses as supported by relevant documents and other evidential matter to enable ZATCA to verify the accuracy of expenses, even if related to prior years. b. Expenses should be related to Zakat Payer's business activity rather than personal expenses or other than Zakat Payer's own activities. C. It should not be of a capital nature and, if an expense of a capital nature is included in expenses, result of activity shall be adjusted and includes fixed assets and consumed in accordance with the legal ratios." Item Sixth: Adjustment of Accounting Profit by Specific Items (Social Insurance Differences) Amounting to SAR 2,539,326 for the Year 2017: The Plaintiff objects to Defendant's action of adjusting the annual profit by adding an overstated social insurance expense. The Plaintiff stated in its objection that the amount reported in the social insurance certificate matches the social insurance expense declared in Zakat Payer's filing, amounting to SAR 5,223,317 for the year 2017. The social insurance certificate and Zakat Payer's declaration for 2017 have been attached for verification.

Upon presenting the statement of claim to the Defendant, they responded with a memorandum that included the following item; regarding the Insufficient Deduction for Fixed Assets for the Years 2015 and 2016: Regarding Non-Deduction of Spare Parts Inventory: The Defendant stated that they accepted the deduction for spare parts related to fixed assets as disclosed in the financial statement notes. However, they rejected the deduction for spare parts inventory, as Zakat Payer did not provide documentation clarifying the nature of this item. When the objection was raised, Zakat Payer was consulted on March 11, 2021, and was requested to provide a detailed analytical statement for the spare parts item. Zakat Payer submitted the statement, which detailed the opening balance, additions during the year, disposals, and the closing balance. After review and analysis, it was found that Zakat Payer disclosed spare parts in Disclosure 7 and Disclosure 8 of the financial statements (attached as evidence in ZATCA's memorandum). ZATCA confirmed that they accepted the deduction for strategic spare parts related to fixed assets only. However, consumable materials and spare parts were classified as part of inventory. A review of the cost of sales from the financial statements and the general ledger provided showed that it included spare parts inventory and consumable materials. Thus, the duplication of deduction for this item could not occur. It was also observed that Zakat

Payer included both the opening and closing inventory balances, which contained spare parts inventory. Accordingly, treating spare parts inventory as part of current inventory confirmed that these spare parts were related to operational activities and not fixed assets eligible for zakat base deductions. As a result, the criteria outlined in Article (4), Clause (Second/1) of Zakat Collection Regulations did not apply. Therefore, Zakat Payer's objection was rejected, and ZATCA maintains the legality and correctness of its actions. Regarding the Item of Non-Deduction of Deferred Expenses: ZATCA stated that it rejected the deduction of deferred expenses because Zakat Payer did not provide documentation clarifying the nature of this item, leading ZATCA to exclude it from deductions. Upon reviewing the financial statements and Disclosure No. 11 (attached image), it was found that the nature of this item involves fees and expenses incurred to obtain a loan, which are amortized periodically, with the amortized expense charged to income annually. This means that the amortized expense is accounted for when calculating the zakat base since net income is one of its components. Therefore, it is not permissible to deduct the entire balance of deferred expenses from the zakat base; only the periodically realized expense is deductible. These expenses are not considered among the items deductible from the zakat base. Regarding the Adjustment of Accounting Profit by Provisions: ZATCA stated that during the audit phase, it reviewed the financial statements and the trial balance provided by Zakat Payer. Accordingly, it added provisions that Zakat Payer had not included in its declaration. Upon objection, Zakat Payer did not provide journal entries for the shipping provision and customs provision to allow verification of the nature of the items and whether the income statement was affected by them. Thus, verification was not possible because Zakat Payer failed to provide the movement of the provisions, despite ZATCA's request. Based on the above, Zakat Payer's objection was rejected in accordance with Article (6), Paragraph (2) of Zakat Collection Regulations, which states: (Expenses that are not deductible: 2. "Expenses that Zakat Payer fails to prove by supporting documents or other evidential matter"), Additionally, the rejection was based on Article (20), Paragraph (3) of Zakat Collection Regulations, which states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it", ZATCA maintains the legality and correctness of its actions. Regarding the Adjustment of Accounting Profit by Certain Items: ZATCA stated that it included certain items in net profit during the assessment, specifically expenses unrelated to the activity. These expenses were identified as gift expenses, marriage allowances, and new baby allowances, which are classified as entertainment expenses not related to Zakat Payer's activity. ZATCA reversed these items as reflected in the trial balance, and Zakat Payer's objection was rejected based on Article (10) of the Implementing Regulations of the Income Tax Law. "The following expenses may not be deducted: ... 3. Entertainment Expenses, such as expenses for parties, sports events, recreational activities, trips, and similar items. ZATCA upholds the validity and correctness of its actions. Regarding the Adjustment of Accounting Profit for Import Profits for the Years 2015 and 2018: ZATCA stated that it had requested customs statements from the Authority previously known as the "General Customs Authority". A comparison was conducted between the data in Zakat Payer's declaration and the customs statements. The comparison revealed an increase in the value of imports based on customs data submitted by Zakat Payer compared to the declared amounts for 2015. Consequently, the undeclared differences in the declaration were subject to a 15% profit margin adjustment and were added to the profit.

On Tuesday, 26/07/2022 AD, the Department held its session remotely to hear the case. For the Defendant appeared Mr./..... holder of National ID No. (...), appeared in his

capacity as Plaintiff's attorney under POA No. (...). In addition, Mr. ....., holder of National ID No. ..... in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. ..... dated …/…/…, issued by Deputy Governor for Legal Affairs. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claims submitted to General Secretariat of Tax Committees. When the case was presented to Defendant's representative, he responded that ZATCA adheres to its previously submitted response in the system. He further added that the Plaintiff failed to provide an analytical statement detailing the social insurance differences they seek to deduct. Defendant's representative emphasized ZATCA's earlier response lodged with the General Secretariat for Tax Committees and objected to the acceptance of any new documents not presented during the objection and examination phases. Having asked both litigants if they had any other statements, they responded that they are satisfied with their earlier submissions presented to the Department. Consequently, the Department decided to close the pleadings and deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff aims with its claim to cancel ZATCA decision regarding zakat assessment for 2017, and given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the legally-prescribed period. Therefore, the Department accepts the Case in form.

On merits, upon Department's review of the documents and evidence contained in the case file, as well as the requests, defenses, and arguments presented by the parties, it became evident that the dispute centers on Defendant's issuance of the zakat assessment for 2017, specifically concerning the objection related to the following items:

Item First A shortage in net assets and strategic spare parts according to the financial statements compared to what was included in the assessment for the year 2017, amounting to SAR 15,469.

Article (70) of the Law of Civil Procedures, issued by Royal Decree No. (M/1) dated 22/01/1435 AH, states that: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgement, settlement, or the like in the case record, and the court shall issue a deed to that effect" and based on paragraph (1) of Article (70) of the Implementing Regulations of the Law of Civil Procedures issued by Minister of Justice Decision No. (39933) dated 19/05/1435 AH stipulating that: "If an agreement is reached prior to entering the case, the text of the case and the answer shall be entered prior to entering such agreement, provided that the original case falls within the jurisdiction of the circuit, even if the text of the agreement falls within the jurisdiction of another court or circuit and the object of the case or portion thereof is agreed upon". Based on the above, the end of the dispute has been proven by Plaintiff's acceptance of the defendant's action as stated in the letter issued thereby in the response memorandum attached to case file, which states: "We agree with ZATCA and withdraw our objection to this item." As a result, the Department concludes that dispute over this item has been resolved.

Item Second: Shortage of Spare Parts in Zakat Base Compared to What It Should Be for the Year 2017 Amounting to SAR 50,419,519:

The Plaintiff objects to Defendant's action of deducting spare parts in the zakat base under the "Other" category within the negative base elements by less than what is required, as evidenced by the financial statements. On the other hand, the Defendant holds that only spare parts related to fixed assets disclosed in the financial statement notes are eligible for deduction, while the deduction of spare parts inventory is rejected because Zakat Payer did not provide documentation clarifying the nature of this item. Paragraph (4/Second/1) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates that: "The following items shall be deducted from the Zakat Base: 1- Fixed assets including the following: Net Value of Fixed Assets (Capital Assets) and Any Payments for the Purchase of Fixed Assets, and the Value of Spare Parts Not Intended for Sale, provided that these assets are owned by Zakat Payer—unless there is an impediment preventing the transfer of ownership—and are used in the activity. Paragraph (3) of Article (20) states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it.". Based on the above, spare parts not intended for sale are among the deductible items from zakat base, provided their nature is proven and they are used for maintaining fixed assets rather than for sale. The dispute regarding this item concerns the non-deduction of spare parts declared under the item "20799 Other" in the zakat declaration for the year 2017. Upon reviewing the arguments presented by both parties, it is evident that the Defendant (ZATCA) deducted spare parts inventory as reflected in the audited financial statements (as mentioned in ZATCA's memorandum), and there is no disagreement on this point. However, the dispute centers around the spare parts inventory linked to the cost of sales, which does not qualify as spare parts for fixed assets not intended for sale. Since the Plaintiff did not provide supporting documents regarding the nature of the spare parts and the audited financial statements for the year 2017 to clarify its position, the Department concludes to reject Plaintiff's objection to this item.

Item Third: Non-Deduction of Deferred Expenses from the Zakat Base Amounting to SAR 14,650,835 and Adjustment of Accounting Profit by Amortizing Non-Deductible Deferred Expenses Amounting to SAR 2,082,383 for the Year 2017:

The Plaintiff objects to Defendant's action of not deducting deferred financial expenses from zakat base and adjusting the accounting profit by amortizing non-deductible deferred expenses. The Defendant, however, argues that the deferred expenses were not deducted because Zakat Payer failed to provide documentation clarifying the nature of this item, leading to its exclusion from the deductions. Paragraph (1/c) of Article (5) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, regarding deductible expenses, states: "The following expenses can be deducted to determine the net result of activity: 1. Expenses ordinary and necessary for an entity to engage in business activity, subject to meeting the following criteria: c. Expenses shall not be of capital nature. Where a capital expenditure is included in the expenses such expenditure shall be adjusted against the result of activity, added to fixed assets and accordingly depreciated as applicable". Regarding paragraph (3) of Article (20) of the Implementing Regulation for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, which states:" "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts

as well as the data available to it". Based on the above, the disputed expenses represent deferred financial charges incurred to obtain a loan from the Industrial Fund. These charges are amortized over the loan period and are adjusted annually against the loan value. Upon reviewing the documents attached to the case file, the Plaintiff did not provide a detailed movement of the loan, which would enable verification of the adjustment of the financial charges added to zakat base. Therefore, it is evident that the disputed expenses are not directly deductible from zakat base as they are capital expenses. Instead, they are used to adjust the activity results, with the realized portion amortized during the year. The Plaintiff indicated in its response memorandum that these expenses were added to the loans, which suggests that the adjusted profit was modified by these expenses. Accordingly, the Department concludes to reject Plaintiff's objection regarding this item.

Item Fourth: Adjustment of accounting Profit by Provisions and Adding Them to Zakat Base in Excess of the Required Amount of SAR 1,235,345 for the Year 2017: The Plaintiff objects to Defendant's action of adjusting the accounting profit by provisions and adding them to the zakat base in excess of the required amount. In contrast, the Defendant stated that during the audit phase, it reviewed the financial statements and trial balance provided by Zakat Payer. Based on this review, the defendant added provisions that Zakat Payer had not included in its declaration. Since Paragraph (9), Clause (First) of Article (4) the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH provides that: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 9- Provisions at the beginning of the year (excluding doubtful debt provisions for banks) after deducting the utilized portion during the year". Article (20.3) of the Implementing Regulations for Zakat Collection, issued by Minister of Finance Decision No. (2082) dated 01/06/1438 AH states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it". Based on the above, it is evident that the dispute regarding this item is documentation-related. Upon reviewing the case file and the submissions and evidence contained therein, it is clear that the Plaintiff did not provide the movement of provisions and merely attached a table showing the provisions as stated in the declarations and those as assessed by ZATCA (Attachment 3). The Plaintiff did not attach the detailed movement that would allow verification of the provisions balance that has been held for a full year and must be added to zakat base. Accordingly, the Department concludes to reject Plaintiff's objection regarding this item.

Item Fifth: Adjustment of accounting profit for specific items (non-operational expenses) amounting to SAR 391,878 for 2017:

The Plaintiff objects to Defendant's action of adjusting the accounting profit by SAR 391,878. The Defendant, however, asserts that certain items were added to the net profit, specifically expenses unrelated to the activity. Article (5), Paragraph (1/b) of the Implementing Regulations for Zakat Collection, issued by Minister of Finance Decision No. (2082) dated 01/06/1438 AH, concerning deductible expenses, stipulates: "The following expenses can be deducted to determine the net result of activity: 1. Expenses ordinary and necessary for an entity to engage in business activity, subject to meeting the following criteria: b. Expenses should be related to Zakat Payer's business activity rather than personal expenses or other than Zakat Payer's own activities. Based on the above, it is evident that the dispute regarding this item lies in whether these expenses are eligible for deduction. Upon reviewing case file, including the objection memorandum and the nature of the expenses, it was found that these are gift expenses, marriage allowances, and new baby allowances. These are classified as entertainment expenses and are therefore unrelated to the activity and not eligible for deduction. This conclusion is based on Paragraph (1/b)

of Article (5) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, as mentioned above. Accordingly, the Department concludes to reject Plaintiff's objection regarding this item.

Item Sixth: Adjustment of Accounting Profit by Certain Items (Social Insurance Differences) Amounting to SAR 2,539,326 for the Year 2017: The Plaintiff objects to Defendant's action of adjusting the annual profit by adding overstated social insurance expenses. The Defendant, however, bases its actions on Article (9) of the Implementing Regulations of the Income Tax Law regarding deductible expenses for determining taxable income (Paragraph 8) and Article (10) of the same regulations concerning non-deductible expenses (Paragraph 9). whereas Paragraph (1) of Article (5) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: "The following expenses can be deducted to determine the net result of activity: 1. Expenses ordinary and necessary for an entity to engage in business activity, subject to meeting the following criteria: a. Expenses should be actual expenses as supported by relevant documents and other evidential matter to enable the Authority to verify the accuracy of expenses, even if related to prior years. b. Expenses should be related to Zakat Payer's business activity rather than personal expenses or other than Zakat Payer's own activities. C. It should not be of a capital nature and, if an expense of a capital nature is included in expenses, result of activity shall be adjusted and includes fixed assets and consumed in accordance with the legal ratios." In addition, Paragraph (3) of Article (20) thereof states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it.". Based on the above, it is evident that the allowable deduction for social insurance contributions for Zakat purposes is calculated based on the percentages specified under the Social Insurance Law and Implementing Regulations thereof. These percentages are calculated on salaries and wages as reflected in the certificate issued by the General Organization for Social Insurance (GOSI), which is considered an official document used to verify the fairness of the salaries and wages recorded in the accounts. Any excess expense beyond the legally acceptable percentages, for which the Plaintiff cannot provide valid justifications, is deemed a non-deductible expense. Upon reviewing the documents attached to case file, it is evident that the Plaintiff submitted the Social Insurance Certificate and the zakat declaration for the year 2017, referenced as Attachments (5) and (7). It was found that the company made payments for social insurance expenses as reflected in the Social Insurance Certificate. Accordingly, the Department concludes to annul the defendant's decision regarding this item.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

1. Confirm resolution of the dispute regarding the shortage of net assets as per the financial statements compared to the assessment.
2. Reject Plaintiff's objection regarding the non-deduction of spare parts inventory from zakat base.
3. Reject Plaintiff's objection regarding the non-deduction of deferred expenses from zakat base and the adjustment of accounting profit by amortizing non-deductible deferred expenses.
4. Reject Plaintiff's objection regarding the adjustment of accounting profit by provisions and their addition to the zakat base in excess of the required amount.

5. Reject Plaintiff's objection regarding the adjustment of accounting profit by certain items (expenses unrelated to the activity).
6. Annul Defendant's decision regarding the adjustment of accounting profit by certain items (social insurance differences).

This decision was issued in the presence of both parties, and the date of depositing the decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of the decision. The parties to the case may request to appeal against the decision as per the law within thirty (30) days from the day following the date specified for its receipt, whereafter, the decision will be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1578)
Issued in Appeal No. (Z-50535-2021)

Key words:
Zakat Assessment – Accounts – Non-Deduction of Fixed Assets – Deduction of Investments – Zakat Base – Foreign Investments – Investments in Available-for-Sale Securities – Investments in External Sukuk and Funds.

Abstract

Plaintiff's Claim to Annul the Decision of Zakat, Tax, and Customs Authority Regarding Zakat Assessment for the Year 2014 - The Plaintiff based its objection on the following items: Item First Non-Deduction of Fixed Assets: The Plaintiff objects to Defendant's action of deducting the net fixed assets from zakat base at a value lower than what is stated in the financial statements for the year 2014. Regarding the Second Item: Deduction of Investments from Zakat Base at a Value Lower Than Required for the Year 2014: ZATCA responded to the first item by stating: It requested a detailed statement of investments and found that Zakat Payer had deducted investments in sukuk and funds, in addition to foreign investments that were not subject to zakat. ZATCA accepted the deduction of eligible investments, specifically local investments in the following companies: ..... Company, ... Company, ...Company, ... Company, upon reviewing and analyzing the investments, ZATCA found that Zakat Payer's claim regarding the investment in Company ... was inaccurate, as ZATCA had already approved its deduction, as shown in the attached table (Table attached hereto). Regarding Zakat Payer's request to deduct foreign investments in .... Company for the year 2014, Zakat Payer confirmed that financial statements for those years were unavailable. Additionally, Zakat Payer deducted the investment in their declaration without adhering to Article (4), Paragraph (4/b), Clause (Second). Regarding Zakat Payer's request to deduct investments in sukuk and funds, these are not deductible according to Article (4) of Zakat Collection Regulations. Regarding Second Item: Deduction of Investments from Zakat Base at a Value Lower Than Required: ZATCA stated that it relied on the net value deducted by Zakat Payer in their declaration. The assets were processed as follows: Depreciation differences added back to net profit: SAR 74,568,142 - Fixed assets deducted from zakat base: SAR 1,333,832,066 = Net amount deducted: SAR 1,259,263,923 ZATCA approved the net value deducted by Zakat Payer and did not adjust this item. Upon review of Zakat Payer's declarations for 2013 and 2014, it was found that Zakat Payer had processed the assets according to the pooling method. By using this method in their declaration, Zakat Payer effectively requested its adoption. Accordingly, ZATCA rejected this item and maintains the validity and correctness of its actions. Regarding the Second Item, the Department established the following: The Plaintiff only submitted the zakat declaration without the schedules and statements detailing the data entered in the declaration, including Schedule No. (4) related to depreciation. Additionally, the financial statements for the disputed year were not

provided to verify the calculation of depreciation and fixed assets. As for Item Second (Suppliers): It was found that this item is divided into three sub-items: a. Investments in Available-for-Sale Securities: The dispute was resolved as the defendant accepted Plaintiff's request. B. Foreign investments It was found that the Plaintiff attached financial statements for the foreign-invested company issued by a certified public accountant within the Kingdom and not the country of the foreign investment. (... CO. and Partners, Accountants and Auditors), as the current situation in the investment country is unstable, making it impossible to comply with Zakat Collection Regulations to deduct these investments from Plaintiff's zakat base. The prevailing conditions in the investment country qualify as force majeure, as referenced above, due to their unpredictability, the impossibility of prevention or control, and the absence of any fault or negligence on the Plaintiff's part. The civil war in the investment country began during the statutory period for filing the zakat declaration for the disputed year, specifically on 26/03/2015, which made it impossible to provide financial statements from a licensed public accountant in the investment country. The Plaintiff also provided zakat calculation for the investment in question and requested its approval based on the submitted financial statements. This request is supported by the Islamic legal maxim: "Obligation is contingent on capability; there is no obligation in the case of incapacity, nor prohibition in the case of necessity." c. Investments in Real Estate Funds and Sukuk: It was found that real estate funds are characterized by pooling various sources of funds to invest in diverse sectors. These funds have separate financial standings from the issuing investment entities and are based on trading and managing money through buying and selling, rather than holding. Thus, investments in these funds are classified as trading assets and cannot be deducted from zakat base. The investment duration in the fund does not alter this classification. Upon reviewing the attached documents, it was noted that the Plaintiff did not provide financial statements or details of the investment account movement. The Department ruled to: Reject Plaintiff's objection regarding the non-deduction of fixed assets. a. Confirm resolution of the dispute related to investments in available-for-sale securities. b. Annul Defendant's decision related to foreign investments. c. Reject Plaintiff's objection concerning investments in real estate funds and sukuk.

Instruments:

- Articles (4/a, b/4, Second/4/b), (7/2), and (20/3) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) of 01/06/1438 AH
- Paragraph (2) of Zakat and Income Authority Circular No. (1724/9) dated 24/03/1427 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Tuesday, 26/07/2022, the First Department for Determination of Income Tax Violations and Disputes in Dammam, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted under Royal Order No. (26760) dated 14/05/1442 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 10/05/2021.

The facts of this case are summed up in that Mr..... (ID No. …) in his capacity as attorney of the Plaintiff/ (.....) Company, C.R. No. (...), under POA No. (...), submitted

its objection to the tax assessment for the year 2014, issued by ZATCA. The objection is focused on the following item: Item First Non-Deduction of Fixed Assets: The Plaintiff objects to Defendant's action of deducting the net fixed assets from the zakat base at a value lower than what is stated in the financial statements for the year 2014. The Plaintiff pointed out that ZATCA's actions contradict Article (4), Clause (First), Paragraph (1) of Zakat Collection Regulations. The Plaintiff further stated in its response memorandum to Defendant's reply that ZATCA violated General Authority of Zakat and Tax (currently Zakat, Tax, and Customs Authority) Circular No. (3299/16/1434) dated 26/05/1434 AH, as well as Article (7), Paragraphs (6 and 13) of the Implementing Regulations for Zakat Collection. Additionally, the Plaintiff highlighted that ZATCA's Circular No. (3299/16/1434) was issued on 06/04/2013, which is prior to 2014. To ensure uniform treatment, the Plaintiff requested ZATCA to amend declarations from 2013 to 2017. ZATCA had already agreed to amend the declarations for the years 2015 to 2017 to change the treatment of fixed assets from the pooling method to fixed assets as per the financial statements. Item Second: Deduction of Investments from Zakat Base at a Value Lower Than Required: The Plaintiff objects to Defendant's action of deducting investments from zakat base at a value lower than required for the year 2014. The Plaintiff pointed out that ZATCA deducted investments from zakat base at a lower value, resulting in zakat discrepancies. Regarding investments in available-for-sale securities, the Plaintiff stated that these were subject to zakat in the invested companies, which are Saudi companies with commercial registrations and zakat files, specifically the following companies: .... Company – ..... Company ..., company ... (...), and .... Company – Joint stock company and as for the issue of not deducting the investment in .... Company from zakat base, the investment began in 2010, with the purpose of achieving the highest possible return on investment. It was anticipated that commercial operations would commence by late 2011. An audited financial statement was issued by a certified public accountant for the year 2009, and internal financial statements were issued for the years 2010 through 2012. Zakat calculation for these years showed that no zakat was due for the last year, 2012. No financial statements for the investment have been issued since, due to the circumstances in Yemen. Given the continued losses and cessation of operations, the investment is considered entirely depleted and should not be subject to zakat. Due to the ongoing political situation in Yemen, commercial operations could not commence, and with the continuation of these circumstances to date, the Board of Directors decided to establish a provision for the impairment of the investment to address any potential decline in its value. The value of this provision increased over the years as follows: a. In 2012, the company established a provision for investment impairment amounting to 20% of its share in the capital of the ... Saudi ... Manufacturing Company, totaling SAR 15 million, to address any potential decline in investment value. b. In 2013, the company increased the provision by an additional SAR 15 million, representing 20% of its share in company's capital, bringing the total provision to SAR 30 million in order to meet any possible decrease in the value of the investment. c. In 2014, the company increased the provision by another SAR 15 million, with the provision balance at the end of the year totaling SAR 45 million. d. In 2015, the company increased the provision by an additional SAR 15 million, with the provision balance at the end of the year reaching SAR 60 million. e. In 2016, the company further increased the provision by SAR 15 million, bringing the provision balance to SAR 75 million by year-end. The provision for investment impairment was added to the zakat base, and therefore the investment itself should be deducted from zakat base. Moreover, no financial statements for .... Company have been issued due to the political situation in Yemen. Consequently, the Plaintiff believes the investment amount should be treated as a debt owed by an insolvent entity, based on Fatwa No. (20476) dated 02/07/1419 AH. Regarding investments in sukuk and real estate funds: These aim to invest in commercial

and residential properties, warehouses, and storage facilities, which are considered non-tradable assets that are not subject to zakat on their value. Zakat is only due on the income they generate, which is added to company's net income and subjected to zakat as part of the elements added to its zakat base. The Plaintiff referred to a letter from the Secretary of Shariah Board of .... Company stating that the Fund invests its resources in real estate assets prepared for leasing, which are not subject to zakat for the investors unless there are cash amounts in the fund. In such cases, the fund manager will provide investors with the amounts subject to zakat so that each investor can calculate and pay their zakat individually. Additionally, the investments in sukuk and real estate funds held by the company are long-term in nature. These investments are retained to achieve periodic fixed returns, with maturity dates exceeding three to four years. This clearly reflects the company management's intention to maintain investments in income-generating activities over the long term, rather than engaging in short-term speculation and profit-making through the buying and selling of these investments. The investment in sukuk and real estate funds meets the two conditions required to classify it as a long-term investment: A. The documented intent by the authorized decision-maker before issuing the investment decision, as stipulated in Paragraph (108) of the Financial Investment Standard issued by the Saudi Organization for Chartered and Professional Accountants (SOCPA). B. b. The absence of trading activity (movement) during the year on those investments. Funds invested from the capital should be deductible from zakat base as they are no longer part of the business operations, while the income generated from these investments is subject to zakat.

When Plaintiff's statement of claim was presented to the defendant, they responded they responded with a memorandum stating that regarding the deduction of investments from zakat base less than required for the year 2014: The Defendant stated that it had requested a detailed statement of investments. It was found that Zakat Payer had deducted investments in sukuk, funds, and foreign investments that were not subject to zakat. Consequently, ZATCA accepted the deduction of investments eligible for deduction, which represented investments in the following local companies: ... Company, ... Company, ... Company, and .... Company.

Upon reviewing and analyzing the investments, it was found that Zakat Payer's claim regarding the investment in ... Manufacturing Products Company was incorrect, as ZATCA had already accepted its deduction, as shown in the attached table (attached table included). Regarding Zakat Payer's request to deduct foreign investments in .... Company for the year 2014, Zakat Payer confirmed that no financial statements were available for those years. Furthermore, Zakat Payer deducted the investment in their declaration without adhering to Article (4), Paragraph (4/b), Clause (Second) of Zakat Collection Regulations. As for Zakat Payer's request to deduct investments in sukuk and funds, these are not deductible under Paragraph (4/c), Clause (Second), Article (4) of Zakat Collection Regulations. Based on the above, Zakat Payer's request involves deduction of investments in foreign entities that are not subject to zakat collection. Zakat Payer also failed to meet the conditions for deducting investments in foreign entities as outlined in Article (4), Paragraph (4/b), Clause (Second). ZATCA's action of disallowing the deduction of non-zakatable foreign investments was upheld by Decision No. (1776) issued in 1438 AH. Additionally, disallowance of investments in sukuk and funds was upheld by Decision No. (1941) of 1439 AH, Decision No. (1519) of 1437 AH, and Decision No. (1939) of 1439 AH. Regarding non-deduction of fixed assets as per the financial statements for the year 2014: ZATCA stated that it relied on the net value deducted by Zakat Payer in their declaration. The assets were processed as follows: Depreciation differences added back to net profit: SAR 74,568,142 - Fixed assets deducted from zakat base: SAR 1,333,832,066 = Net amount deducted: SAR 1,259,263,923 ZATCA approved the net value deducted by Zakat

Payer and did not adjust this item. Upon reviewing Zakat Payer's declarations for 2013 and 2014, it was found that Zakat Payer had processed the assets according to the pooling method. By using this method in their declaration, Zakat Payer effectively requested its adoption. Therefore, this item was rejected, and ZATCA maintains the validity and correctness of its actions.

On Tuesday, 26/07/2022 AD, the Department held its session remotely to hear the case. For the Defendant appeared /..... holder of National ID No. (...), In their capacity as Attorney by POA No. (.....), and ..... Mr. ....., holder of National ID No. ..... in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. ..... dated …/…/…, issued by Deputy Governor for Legal Affairs. Dated 18/10/1443 AH. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. When Defendant's representative was confronted with the above details, it responded that it stands by the reply previously submitted to the General Secretariat of Tax Committees and does not accept any new documents that were not presented during the objection and review stages. Having asked both litigants if they had any other statements, they responded that they are satisfied with their earlier submissions presented to the Department. Consequently, the Department decided to close the pleadings and deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the Case moving for annulling ZATCA decision regarding zakat assessment for years from 2014 to 2017. Given that this dispute is a zakat dispute. Therefore, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the statutory period. Therefore, the Department accepts the Case in form.

On merits, upon Department's review of the documents and evidence contained in the case file, as well as the requests, defenses, and arguments presented by the parties, it became evident that the dispute centers on Defendant's issuance of the zakat assessment for 2014, specifically concerning the objection related to the following items:

Item First Non-Deduction of Fixed Assets as per the Financial Statements for the Year 2014:

The Plaintiff objects to Defendant's action of deducting the net fixed assets from zakat base at a value lower than what is stated in the financial statements for the year 2014. In contrast, the Defendant asserts that it relied on the net value deducted by the Plaintiff in its declaration. Paragraph (2) of Circular No. (1724/9) issued by Zakat, Tax and Customs Authority on 24/03/1427 AH states: "Since the approach followed by the Authority in calculating the zakat base involves deducting the net total value of fixed assets from the base to determine the zakat amount due from Zakat Payer in compliance with Sharia provisions, the net book value of fixed assets to be deducted from the zakat base is determined as follows: (The remaining group value at the end of the year, as determined under Paragraphs (a–e) of Article 17 of the Tax Law, plus 50% of the deferred value of assets added during the year, minus 50% of the deferred value of compensations for assets

disposed of during the year)." Based on Circular No. (2574/9) dated 14/05/1426 AH, the financial years to which the circular applies are as follows: "The new Income Tax Law issued under Royal Decree No. (M/1) dated 15/01/1425 AH will apply to tax declarations filed for financial years ending on or after 25/06/1426 AH (31/07/2005)." Furthermore, Paragraph (2) of Article (7) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision (2082) on 01/06/1438 AH, states: "Fixed assets shall be depreciated according to the straight-line method and their depreciation ratio shall be as follows: ...". Based on the above, the Plaintiff demands the deduction of fixed assets as reflected in the financial statements, applying Circular No. (3299) dated 26/05/1436 AH, which allows Zakat Payers to choose between applying depreciation according to Article (17) of the Tax Law or the straight-line method. However, the Defendant stated in its response memorandum that the Plaintiff applied the pooling method (as outlined in Article 17 of the Tax Law) and thus chose not to apply the circular when filing its zakat declaration for 2014. Furthermore, the Plaintiff did not submit evidence of amending its zakat declaration for the disputed year. Upon reviewing the documents provided in case file, it is evident that the Plaintiff submitted only zakat declaration without the accompanying schedules and statements detailing the data entered in the declaration, including Schedule No. (4) related to depreciation. The financial statements for the disputed year were also not provided to verify the accuracy of depreciation and fixed assets calculations. Accordingly, the Department concludes to reject Plaintiff's objection regarding this item.

Item Second: Deduction of Investments from the Zakat Base at a Value Lower Than Required for 2014:

The Plaintiff objects to Defendant's action of deducting investments from zakat base at a value lower than required for 2014. In contrast, Defendant stated that it had requested a detailed statement of investments and noted that the Plaintiff, in its declaration, deducted investments in sukuk, funds, and foreign investments that were not subject to zakat. Paragraph (4/a, b) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH states: "The following items shall be deducted from the Zakat Base: "A. Investments in an entity within the Kingdom in partnership with other parties if those investments are subject to zakat according to these Regulations; otherwise, these investments shall not be deducted from the tax base. Investments in establishments outside the Kingdom, in partnership with others, provided that Zakat Payer, within its Zakat Declaration, calculates the Zakat due for these investments in accordance with the rules set forth in these Regulations and pays thereof to ZATCA, and attaches audited accounts from a chartered certified accountant in the country of investment, certified by official authorities. If Zakat Payer fails to do so, the investments will not be deducted from the Zakat Base."; and Article (20), Paragraph (3) of the same Regulations stipulates: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the above and after reviewing the case file, it is evident that this item is divided into three sub-items, as follows:

a. Investments in Available-for-Sale Securities: Upon reviewing the case file and the submitted arguments, it was found that the dispute regarding this sub-item was resolved, with the defendant accepting Plaintiff's request for investments in available-for-sale securities for the disputed year, as stated in Defendant's response memorandum.

B. Foreign investments Based on Ministerial Decision No. (1005) dated 28/04/1428AH, which stipulates: "Second: Investments in entities outside the Kingdom, in partnership

with others, shall be deducted from Zakat Payer's declaration, provided that Zakat Payer submits audited accounts from a certified public accountant in the country of investment in order to calculate zakat due on these investments and to remit them to the Authority, Zakat Payer may provide proof that zakat has been paid in the country of investment, and accordingly deducting such investment from zakat base of the Saudi investing company to avoid double payment of zakat on these companies. If Zakat Payer does not provide the required documents above-mentioned, the investments shall not be deducted from zakat base". In accordance with Paragraph (4/b), Clause (Second) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH that states: "The following items shall be deducted from the Zakat Base: Investments in establishments outside the Kingdom, in partnership with others, provided that Zakat Payer, within its Zakat Declaration, calculates the Zakat due for these investments in accordance with the rules set forth in these Regulations and pays thereof to the Authority attaches audited accounts from a chartered certified accountant in the country of investment, certified by official authorities. If Zakat Payer fails to do so, the investments will not be deducted from the Zakat Base."; And in accordance with Article (28) of the Mining Investment Law issued under Royal Decree No. (M/47) dated 20/08/1425 AH, which states: "If force majeure prevents, hinders or delays the Licensee from performing any of its obligations on time, the resulting disruption or delay shall not be considered negligence or default in work or performance. The period that was specified for the work that was suspended or disrupted shall be extended for a period no less than the period of force majeure, after the written approval of the minister. In the provisions of this Article, force majeure means events that are duly recognized as force majeure resulting from unforeseen circumstances at the time of issuance of the license, which are not attributable to either party and make it impossible for the licensee to implement its obligations specified in the license. The definition of Emergency "contained in Article (1) of (Government Tenders and Procurement Law) issued by Royal Decree No. (M/128) dated 13/11/1440 AH reads as follows: "Emergency: A situation in which the threat to public safety, public security, or public health is serious and unforeseen, or in which a breach portends loss of life or property, and cannot be dealt with by normal competition procedures. " Based on the above, the dispute between the two Parties concerns deduction of foreign investments. The Plaintiff argues that such investments should be deducted and treated as debt owed by an insolvent party since they are investments in Yemen and the political circumstances in that country must be taken into account. The Defendant, however, argues that these are non-zakatable foreign investments that do not meet the deduction conditions outlined in Paragraph (4/b), Clause (Second), Article (4) of the Implementing Regulations for Zakat Collection. Upon reviewing the case documents and facts, it appears that the Plaintiff is entitled to deduct the foreign investment from its zakat base, provided it complies with the requirements of Paragraph (4/b), Clause (Second), Article (4) of the Implementing Regulations for Zakat Collection. This includes submitting audited accounts from a certified public accountant in the country of investment to ZATCA to calculate and remit the zakat due on these investments. Only then can the investments be deducted from the zakat base of the investing company to avoid double zakat. If this condition is not met, the investments cannot be deducted from zakat base. Since this dispute is documentation-related, and the attached case documents show that the Plaintiff submitted the financial statements of the foreign-invested company issued by a certified public accountant in Saudi Arabia rather than one licensed in the foreign investment country (... and Partners, Certified Public Accountants and Auditors), the current unstable conditions in the investment country make it impossible to comply with the Implementing Regulations for Zakat Collection for deducting these investments from Plaintiff's zakat base. The prevailing circumstances in the investment country are

considered force majeure, as noted above, due to their unpredictability, the impossibility of avoidance or control, and the absence of any fault or negligence on the part of the Plaintiff. The civil war in the investment country began during the statutory period for filing zakat declaration for the disputed year on 26/03/2015, making it impossible to provide financial statements from a licensed accountant in the country of investment. The Plaintiff made an effort to provide audited financial statements certified by a licensed accountant in Saudi Arabia as a substitute and included a zakat calculation for the investment, requesting its acceptance based on the submitted financial statements. Since the regulations impose an unattainable burden on the Plaintiff, and based on the Islamic legal maxim:
"Obligation is contingent on capability; there is no obligation in the case of incapacity, nor prohibition in the case of necessity," the Department concludes to accept Plaintiff's objection to deduct the foreign investments and annul Defendant's decision.

c. Investments in Real Estate Funds and Sukuk: Upon review, it is found that two key conditions must be met for investments to be considered non-tradable assets and eligible for deduction from zakat base: Documented intent from the authorized decision-maker clarifying the purpose of the investment. The absence of any sales transactions during the year related to these investments.

Based on the above, real estate funds are characterized by pooling various sources of funds to invest in diverse sectors. These funds have independent financial standings separate from the issuing investment entities and are based on the trading of assets through buying and selling rather than holding. Consequently, investments in these funds are classified as trading assets and are not eligible for deduction from zakat base. Investment duration in the Fund does not alter this classification; the nature of investment determines its treatment, as these are trading funds, not holding assets. Upon reviewing case file documents, it was found that the Plaintiff did not provide financial statements or account activity records for these investments. Accordingly, the Department upholds Defendant's action in disallowing the deduction of investments in real estate funds from zakat base and rejects Plaintiff's objection.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- Reject Plaintiff's objection regarding the non-deduction of fixed assets.

Regarding (Investments) item:

a. Confirm resolution of the dispute related to investments in available-for-sale securities.
b. Annul Defendant's decision related to foreign investments.
c. Reject Plaintiff's objection regarding investments in real estate funds and sukuk.

This decision was issued in the presence of both parties, and the date of depositing the decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of the decision. The parties to the case may request to appeal against the decision as per the law within thirty (30) days from the day following the date specified for its receipt, whereafter, the decision will be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1631)
Issued in Appeal No. (Z-51645-2021)

Key words:
Zakat Assessment – Accounts – Donations – Loans – Partial Share of the Company's Profit/Loss in the Investee Company for Adjusted Profit – Non-Deduction of the Full Amount of Investments – Projects Under Construction – Investment in a Real Estate Project – Zakat Base – Non-Deferred Expenses – Previous Credit Retentions – Non-Deduction of Loan to Related Parties.

Abstract

Plaintiff's claim seeks to annul the decision of Zakat, Tax, and Customs Authority regarding zakat assessment for the years 2015 to 2017. The Plaintiff based its objection on the following items: Item First Donations: The Plaintiff objects to Defendant's action of not deducting donations from the net profit amounting to SAR 5,235,846, SAR 2,509,743, and SAR 1,273,482 for the years 2015, 2016, and 2017, respectively. Item Second: a. Reversal of part of company's share in the profit/loss of the investee company for adjusted profit for the years 2015 to 2017. b. non-deduction of the full amount of investments in companies accounted for using the equity method for the years 2015 to 2017. Item Third: Projects Under Construction and Investment in a Real Estate Project: a. non-deduction of the balance of projects under construction. b. non-deduction of the balance of investment in the land project (...) from zakat base Fourth: Non-deduction of a loan to related parties. Item Fifth: a. Previous Credit Retentions for the Years 2015 to 2017. b. Credit Balances with Related Parties. c. Accrued Expenses amounting to SAR 1,226,798, SAR 245,331, and SAR 484,598 for the years 2015, 2016, and 2017, respectively. d. Partners' Current Accounts. Item Sixth: Loans: Item Seventh: Non-Accounting for Depreciation Differences and the Value of Fixed Assets Deducted for Zakat Purposes for the Year 2015. ZATCA responded that it did not recognize the donation expenses, citing a non-stamped letter issued by the ... Charitable Community Service Organization stating that it received donations from Company .... Upon review, it was found that the partner ... owns a 95% share in .... Company. The Plaintiff was asked to provide a copy of the payment check and a receipt of the donation from the organization but failed to comply. Additionally, the organization receiving the donation was not exempted under an official letter from ZATCA. Accordingly, ZATCA confirmed the validity and correctness of its actions. Regarding the Reversal of Part of Company's Share in the Profit/Loss of the Investee Company for Adjusted Profit: ZATCA stated that it deducted investments in companies accounted for using the equity method but excluded shares of companies for which the Plaintiff did not provide supporting documentation. ZATCA requested a detailed statement of investments in the investee companies, of which the Plaintiff provided only part. Upon reviewing Plaintiff's objection, it was found that the Plaintiff requested deduction of its full share of

results from the investee companies. However, deductions were made only within the limits of the submitted data and Plaintiff's ownership percentage. The Plaintiff was asked to provide supporting documents for its claims and submitted an analytical statement of the investee companies. This revealed that some companies were deregistered, while others were not registered with ZATCA and were subject to zakat collection. ZATCA deducted company's share of investments previously subject to zakat collection under the regulations and excluded investments that were not subject to zakat, whether domestic or foreign. Regarding the Non-Deduction of the Full Amount of Investments in Companies Accounted for Using the Equity Method: The Defendant stated that during the assessment, it deducted approved domestic investments and the balance of investments at the end of the year after excluding the effect of year's profits (losses), which were adjusted in the net profit. This calculation equals (opening balance – distributions + additions). The Defendant added company's share in equity-method investments based on the financial statements of investee companies registered with ZATCA, and declarations and financial statements were submitted. The Defendant requested supporting documents from the Plaintiff, who provided an analytical statement of investee companies. The statement revealed that some companies were deregistered and others were not registered with ZATCA. Therefore, ZATCA approved domestic investments in registered companies subject to zakat and partially accepted Plaintiff's objection during the "objection phase." ZATCA deducted zakat-eligible investments under the regulations and excluded non-zakatable investments, whether domestic or foreign. Regarding Projects Under Construction and Investment in a Real Estate Project: The Defendant stated that it did not deduct land not registered in company's name from zakat base. Upon review, it was found that the lands for which the Plaintiff requested deductions were not in the company's name. The Defendant requested the Plaintiff to submit the following documents for Tower ...: 1. Land purchase agreement. 2. Financing agreement with ... Bank. The Plaintiff provided only the financing agreement and did not submit the land purchase agreement. Accordingly, ZATCA confirmed the validity of its action as the land was not registered in Zakat Payer's name. Regarding Non-Deduction of the Balance of Investment in the Land Project ... from Zakat Base: The Defendant reiterated that it did not deduct lands not registered in company's name from zakat base. Upon review, it was confirmed that the lands in question were not registered in company's name. ZATCA maintained the validity of its actions. Regarding Non-Deduction of Loans to Related Parties: The Defendant stated that it did not deduct loans to related parties because such deductions are not permitted. Upon review, it was found that the amounts, as reflected in Zakat Payer's financial statements and disclosures, represent loans and advances to subsidiaries. Upon examining the financial statements of the borrowing company, ... Agricultural Company, it was found that ... does not hold direct shares in it. However, the Plaintiff owns an indirect percentage in the capital of the borrowing company. Upon verifying the declaration of the borrowing company, ..., it was found that the Plaintiff added the opening balance to the zakat base. Accordingly, ZATCA deducted an amount proportional to its share in the capital (50% * 40%), considering that the loan within this percentage does not represent lending to another party. This conclusion was based on the financial statements of the investee company, showing that the Plaintiff indirectly owns a share in it. Regarding Accrued Expenses, Related Party Balances, Previous Credit Retentions, and Partner Current Accounts: The Defendant stated that it added credit retentions to zakat base for one full lunar year, based on the submitted movement. The Plaintiff expressed acceptance of this action during a meeting with ZATCA. For related party balances, these were added to zakat base for one full lunar year, based on the movement provided for 2016 and Plaintiff's declarations for 2015 and 2017. Accrued expenses were added to zakat base for one full lunar year, based on the submitted movement. Finally, regarding partner current

accounts, the Defendant stated that no adjustments were made, as the disclosed amount in the declaration was added. The Plaintiff requested exclusion of the previously declared amount but did not provide any additional supporting documents to justify its claim that it is not subject to zakat under the regulations. Accordingly, ZATCA confirmed the addition of the declared amounts for one full lunar year. Regarding the item of Loans: The Defendant stated that loans were added to zakat base for one full lunar year during the assessment as follows: In 2015: The loan amount declared was added. In 2016: The lower of the opening or closing balance was added due to discrepancies between the submitted movement during the review and the financial statements. In 2017: Loans subject to zakat for one full lunar year were added, based on the movement submitted during the review phase. The Plaintiff was requested to submit a detailed movement of the loans but failed to provide any supporting documents. Regarding Depreciation Differences – Net Assets for 2015: The Defendant argued that this item is inadmissible procedurally and should not be examined substantively, as it is protected by regulatory immunity. However, if the Department considers the claim admissible procedurally, ZATCA noted that the Plaintiff requested the deduction of depreciation differences and the value of fixed assets under the declining balance method. Based on this request, ZATCA accepted Zakat Payer's objection to this item. The Department determined that the dispute concerns Defendant's issuance of zakat assessment for the years 2015 to 2017, with Plaintiff's objections focused on the following items: Item First Donations: It is clear that donations eligible for deduction from zakat base must be supported by documentation verifying their validity and authenticity. Since this dispute is documentation-related and the Plaintiff did not provide supporting documents proving the payment of the disputed donations, the Department concludes to reject Plaintiff's objection on this item. Item Second: a. Reversal of part of company's share in the profits/losses of the investee company for adjusted profit, amounting to SAR 14,200,917, SAR 3,885,488, and SAR (3,299,877) for the years 2015, 2016, and 2017, respectively. b. non-deduction of the full investment amounts in equity-method investee companies, amounting to SAR 184,525,705, SAR 598,389,189, and SAR 143,611,308 for the years 2015, 2016, and 2017, respectively: It was found that the Plaintiff did not submit the financial statements and zakat declarations for the investee companies. Furthermore, the Plaintiff did not provide evidence confirming that zakat on its share in the capital of the investee companies was paid, either by the Plaintiff or the founders. Item Third: Projects Under Construction and Investment in a Real Estate Project: It was found that the Plaintiff did not provide supporting documents such as the land purchase agreement and the financing agreement with ... Bank, nor did it clarify the reasons preventing the land ownership from being transferred to company's name. In regards of: a. Non-Deduction of the Balance of Investment in the ..... Land Project from zakat base. The Plaintiff did not provide supporting documents to substantiate its claim regarding the reasons preventing the land ownership from being transferred to company's name. Item Fourth: Non-Deduction of Loans to Related Parties: It was found that these amounts represent loans (advances) provided to a subsidiary company. The subsidiary subjected these amounts to zakat based on its zakat declarations submitted to ZATCA. Accordingly, loans and advances provided to the subsidiary, which submits zakat declarations to ZATCA, require special zakat treatment to avoid double zakat. A portion of the loan or advance (based on the investment percentage) does not constitute lending to another party. Therefore, the Plaintiff (the lender) is entitled to deduct a portion of the loans and advances provided to the subsidiary from its zakat base, equivalent to its investment percentage in the subsidiary receiving the loan. Consequently, Defendant's action in deducting the long-term loan provided to the subsidiary proportionate to Plaintiff's ownership percentage from the zakat base was valid. Item Fifth: a. Previous Credit Retentions amounting to SAR 234,041, SAR

64,363, and SAR 64,363 for the years 2015, 2016, and 2017, respectively. b. Credit Balances with Related Parties.
c. Accrued Expenses amounting to SAR 1,226,798, SAR 245,331, and SAR 484,598 for the years 2015, 2016, and 2017, respectively. d. Partners' Current Accounts: a. Regarding Credit Balances with Related Parties: Amounts owed to related parties are considered a source of financing and are treated similarly to equity in zakat calculations. Therefore, amounts that have been held for a full lunar year should be added to the zakat base. The Plaintiff did not provide detailed account movements for related parties to substantiate its claim that the amounts had not been held for a full lunar year. In the absence of detailed account movements, the zakat base includes the opening balance or closing balance, whichever is lower. This approach was adopted by ZATCA in zakat assessments for the disputed years. Consequently, the Department concludes to reject Plaintiff's objection. a. Previous Credit Retentions and Accrued Expenses: Accrued expenses and previous credit retentions are considered components of the zakat base, provided they have been held for a full lunar year. Since this dispute is documentation-related, it was found that the Plaintiff did not provide detailed movements of accrued expenses and previous credit retentions for the disputed years to substantiate that these amounts had not been held for a full lunar year. b. Partners' Current Accounts: Partner's current account is a component of zakat base and is added to it if it has been held for a full lunar year, originates from equity, or is used to finance assets deducted from zakat base. Since this dispute is documentation-related, it was found that the Plaintiff did not provide detailed movements of partner's current account to demonstrate that the opening balance was settled during the year. Nor did the Plaintiff provide evidence that the amounts added by ZATCA to zakat base had not been held for a full lunar year. Item Sixth: Loans: It was found that the Plaintiff did not provide financial statements or detailed movements supporting its claim that the loans had not been held for a full lunar year. In the absence of detailed movements showing that the opening balances were settled during the year, the appropriate procedure is to add the balance of this item as a source of financing, as it constitutes a component of zakat base. This is done by taking the lower of the opening or closing balance to account for amounts held for a full lunar year. Regarding depreciation differences and the value of fixed assets, Department ruled that the claim is procedurally inadmissible, while all other claims are rejected.

Instruments:

- Articles (4/First/5, 4/Second/a, b/1, 2), (5/4/a), (6/2), (20/3) of https://ncar.gov.sa/document-details/eyJpdiI6IkhjR1RIYjkwMGlDYm40OFpJUUpac1E9PSIsInZhbHVlIjoiM3Z3WEJKRFp4ZFhTTVNzM2hsbXMvZz09IiwibWFjIjoiOGY0Zjk3YjIwMmQwYmQzMTZhNDQ0NWVkYjQzOGE5YWU2M2UxNWQxMWJlNTc5YTIyZDdjNGE2Njk5MGMwYjhmYSIsInRhZyI6IiJ9the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH.
- Article (2) of Tax Dispute and Violation Committee Procedures issued under Royal Decree No. (26040) dated 21/04/1441 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.
On Tuesday, 30/07/2022, the First Department for Determination of Income Tax Violations and Disputes in Dammam, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and

established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted under Royal Order No. (26760) dated 14/05/1442 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 24/05/2021.

The facts of this case are summed up in that Mr..... ID No..... in his capacity as attorney of Plaintiff (...), C.R. No. (...), under POA No. (...), dated 14/11/1443 AH, filed an objection to ZATCA zakat assessment for years from 2015 to 2017. Plaintiff's objection is limited to the following items: Item First Donations: The Plaintiff objects to Defendant's action of not deducting donations from the net profit amounting to SAR 5,235,846, SAR 2,509,743, and SAR 1,273,482 for the years 2015, 2016, and 2017, respectively. The Plaintiff explained in its petition that the company attached, as part of its objection, the registration certificate of the charitable association and a confirmation letter from the association acknowledging receipt of these amounts. Accordingly, the Plaintiff requests the deduction of these donations. Item Second: a. Reversal of part of company's share in the profit/loss of the investee company for adjusted profit for the years 2015 to 2017. b. non-deduction of the full amount of investments in equity-method investee companies for the years 2015 to 2017: The Plaintiff objects to Defendant's action of adding this item to the net profit for the years 2015 to 2017, stating in its petition that these amounts represent company's share in the profits or losses of local investee companies. The company reversed its share of profits from local investee companies to the profits and deducted its share of losses to avoid double taxation in the collection of zakat. The Plaintiff referred to Paragraph (4) of Article (8) of the Implementing Regulations for Zakat Collection and Decision No. (13) of the Second Primary Committee for the year 1436 AH. According to Circular No. 2/8443/2/1 dated 08/08/1392 AH, investments are deductible from zakat base if the following conditions are met: a. Investments are funded by capital and reserves. b. Investments are long-term, and the company intends to hold them for extended periods to earn returns. c. Investments are not acquired for trading or resale purposes. d. The income generated from these investments has been subject to zakat. The Plaintiff argued that these conditions are met for the investments in question. The Plaintiff also noted that before deregistering any company, the company obtains a clearance certificate from ZATCA as a prerequisite for deregistration with the Ministry of Commerce. As a result, zakat is calculated on these amounts both at the investing company and the investee company, which violates Sharia principles prohibiting double taxation in zakat collection. Accordingly, the Plaintiff requests that this item not be added to the net profit. Item Third: Projects Under Construction and Investment in a Real Estate Project: a. Non-Deduction of the Balance of Projects Under Construction: The Plaintiff objects to Defendant's action of adding this item to zakat base. The Plaintiff stated in its petition that the property mortgaged to ... Bank for financial facilities granted to Company ... is not merely land, as claimed in Defendant's memorandum, but a real estate tower named ... (formerly ...). The Plaintiff further explained that the regulatory procedures related to transferring the property's ownership to company's name are still in progress, as the deed is mortgaged to ... Limited Management (wholly owned by ... Bank) according to the requirements of the facilities agreement provided by the company. The ownership will be transferred to the company once the loan is settled. Therefore, the Plaintiff requests deduction of this item from zakat base. b. non-deduction of the balance of investment in the land project (...) from zakat base. The Plaintiff objects to Defendant's action of adding land not registered in company's name to zakat base. In its petition, the Plaintiff indicated that when it changed its intention to sell certain plots of land in the ... Land Project, it provided samples to ZATCA with orders to sell these lands. The sales were made between the first party (buyer) and the second party (seller), Company ..., which proves that the ownership of the lands

belongs to the company and not to the partner. The Plaintiff authorized ... to receive checks on behalf of the company and confirmed that these financial transactions had at least an accounting impact on two of the company's accounts. Therefore, it argues that the land should be deducted from zakat base even if it is registered under the partner's name. Fourth Item: Non-Deduction of Loans to Related Parties: The Plaintiff objects to Defendant's action of adding loans not registered in company's name to zakat base, amounting to SAR 9,616,719, SAR 9,661,320, and SAR 9,748,526 for the years 2015 to 2017, respectively. In its petition, the Plaintiff disagreed with Defendant's approach of allowing the deduction of loans to subsidiaries only up to the ownership percentage, arguing that these loans were already subjected to zakat at the subsidiary level and should not be subjected to zakat again at the parent company level. The Plaintiff referred to Decision No. 986 of 1431 AH by the Tax Appeals Committee, which allowed the deduction of all long-term assets from zakat base, provided they are supported by financial statements, even in the absence of supporting documents, because the funding source was already added to zakat base. Item Fifth: a. Previous Credit Retentions for the Years 2015 to 2017. b. Credit Balances with Related Parties. c. Accrued Expenses amounting to SAR 1,226,798, SAR 245,331, and SAR 484,598 for the years 2015, 2016, and 2017, respectively. d. Partners' Current Accounts: The Plaintiff objects to Defendant's action of adding accrued expenses, credit balances with related parties, previous credit retentions, and partners' current accounts to the zakat base. The Plaintiff stated that zakat should be calculated on invested funds belonging to the partner/owner in the company, not on funds obtained by the company from third parties. Accordingly, in principle, the Company objects to the inclusion of payables in Company's zakat base. The Plaintiff argued that there are two methods for calculating zakat: The equity method and the working capital method. Saudi Arabia applies the equity method for zakat calculation, which the company followed in its zakat declarations. The company added the opening balances of shareholders' equity (including capital, retained earnings, reserves, and provisions) and deducted fixed assets and long-term investments. Therefore, the Plaintiff requests exclusion of these items from zakat base. Item Sixth: Loans: The Plaintiff objects to Defendant's action of adding loans to the zakat base, amounting to SAR 110,000,000, SAR 110,000,000, and SAR 200,000,000 for the years 2015 to 2017, respectively. The Plaintiff referred to the Implementing regulations, ministerial decisions, and fatwas, arguing that loans should only be added to the zakat base if they have been held for a full lunar year or were used to finance long-term assets deducted from the zakat base. The Plaintiff contended that the amounts added by ZATCA do not meet these criteria, as some loans are short-term, were not held for a full lunar year, and were not used to finance long-term assets. Therefore, the Plaintiff requests exclusion of these loans from zakat base. Item Seventh: Non-Recognition of Depreciation Differences and Deduction of Fixed Assets for Zakat Purposes for 2015: The Plaintiff objects to Defendant's action of not recognizing depreciation differences and deducting fixed assets, stating that ZATCA issued Circular No. (3299/16/1434) dated 26/05/1434 AH, which allows zakat payers to choose between following ZATCA's circulars outlined in Paragraph (a) above or applying the straight-line method. This includes using groupings and depreciation rates specified in Article 17 of the Tax Law to calculate depreciation and fixed asset values deductible from the zakat base.

Having presented the statement of claim to the Defendant, it responded with a memorandum that addressed the item of donations as follows: ZATCA stated that it did not recognize the donation expenses as the Plaintiff submitted an unstamped letter from the ... Charitable Community Service Organization confirming receipt of donations from .... Company. Upon review, it was found that the partner ... owns a 95% share in .... Company. The Plaintiff was requested to provide a copy of the payment check and a receipt from the organization confirming the donation but failed to comply. Additionally,

the organization receiving the donation was not officially exempted by ZATCA, as required. Therefore, ZATCA confirmed the validity and correctness of its actions, in accordance with Article (5), Paragraph (4) of the regulations. Regarding the Reversal of Part of Company's Share in the Profit/Loss of the Investee Company for Adjusted Profit: ZATCA stated that it deducted investments in equity-method investee companies, excluding the shares of companies for which the Plaintiff did not provide supporting documentation. ZATCA requested the Plaintiff to provide an analytical statement detailing investments in investee companies, and the Plaintiff partially complied. Upon reviewing Plaintiff's objection, it was found that the Plaintiff sought the deduction of its entire share of the results of the investee companies. However, deductions were made only within the limits of the submitted data and Plaintiff's ownership percentage. The Plaintiff was asked to provide supporting documents for its claim and submitted an analytical statement of investee companies, which revealed that some companies had been deregistered and others were not registered with ZATCA. Additionally, ZATCA deducted company's share of investments previously subject to zakat collection under the regulations and excluded investments that were not subject to zakat, whether domestic or foreign, in accordance with Article (4, Second/4) and Paragraph (b) of the same article in the Implementing Regulations for Zakat Collection. Regarding the Non-Deduction of the Full Amount of Investments in Companies Accounted for Using the Equity Method: ZATCA stated that during the assessment, it deducted approved domestic investments and the balance of investments at the end of the year after excluding the effect of the year's profits (losses), which were adjusted in the net profit. This calculation equals (opening balance – distributions + additions). ZATCA added company's share in equity-method investee companies based on the financial statements of investee companies registered with ZATCA, and declarations and financial statements were submitted. ZATCA requested the Plaintiff to provide supporting data for its claim. The Plaintiff submitted an analytical statement of investee companies, which revealed that some companies had been deregistered and others were not registered. Consequently, ZATCA approved domestic investments for companies registered with ZATCA and subject to zakat collection. Plaintiff's objection was partially accepted during the "objection phase" as ZATCA deducted zakat-eligible investments under the regulations and excluded investments not subject to zakat, whether domestic or foreign, in accordance with Article (4, Second/4) of the Implementing Regulations for Zakat Collection. Projects Under Construction and Investment in a Real Estate Project: ZATCA stated that it did not deduct lands not registered in company's name from zakat base. Upon review, it was found that the lands for which the Plaintiff requested deductions are not registered in company's name. The Defendant requested the Plaintiff to submit the following documents for Tower ...: 1. Land purchase agreement. 2. Financing Agreement with .... Bank. The Plaintiff did not comply with the request to provide the land purchase agreement and instead submitted only the financing agreement. Consequently, ZATCA confirmed the validity of its action, as the land is not registered in Zakat Payer's name, in accordance with Article (4, Second), Paragraph (1). Regarding Non-Deduction of the Balance of Investment in the Land Project ... from Zakat Base: ZATCA stated that it did not deduct lands not registered in company's name from zakat base. Upon review, it was found that the lands for which the Plaintiff requested deductions are not registered in company's name. The Defendant relied on Article (4, Second), Paragraph (1), and this action has been upheld by decisions such as Appellate Decision No. 1733 of 1438 AH. ZATCA maintains the validity and correctness of its actions. ZATCA upholds the validity and correctness of its actions. Regarding Non-Deduction of Loans to Related Parties: ZATCA stated that it did not deduct loans as they are not eligible for deduction, in accordance with the fatwa cited in Letter No. (3077/2) dated 08/11/1426 AH. Upon review, it was found that these amounts, as reflected in Zakat

Payer's financial statements and notes, represent loans and advances provided to subsidiary companies. Referring to the financial statements of the borrowing company, ..., it was determined that ... does not directly own shares in the borrowing company. However, the Plaintiff indirectly owns a percentage of the capital of the borrowing company. Upon verifying the declaration of the borrowing company, ..., it was found that the Plaintiff added the opening balance to zakat base. Accordingly, ZATCA deducted an amount proportional to Plaintiff's share in the capital (50% * 40%), considering that the loan within this percentage does not constitute lending to another party. This conclusion was based on the financial statements of the investee company, which confirmed the Plaintiff's indirect ownership. Based on the above, the financing was treated within the scope of equity, as established by precedent. ZATCA maintains the validity and correctness of its actions. Regarding Accrued Expenses, Related Party Balances, Previous Credit Retentions, and Partner Current Accounts: ZATCA stated that it added the credit retentions to the zakat base for one full lunar year, based on the submitted movement. The Plaintiff expressed acceptance of this action during a meeting with ZATCA. For related party balances, these were added to zakat base for one full lunar year based on the movement provided for 2016 and Plaintiff's declarations for 2015 and 2017. Accrued expenses were added to zakat base for one full lunar year, based on the submitted movement. Finally, regarding partners' current accounts, ZATCA stated that no adjustments were made to the current account, as the amount declared in the declaration was added. The Plaintiff requested exclusion of the previously declared amount but did not provide any additional supporting documents to justify its claim that it is not subject to zakat under the regulations. Accordingly, ZATCA confirmed the addition of amounts held for a full lunar year to the zakat base. ZATCA relied on Article (4), Paragraph (First/5) of the Implementing Regulations for Zakat Collection to support its actions. Regarding the item of Loans: ZATCA stated that loans were added to the zakat base for one full lunar year during the assessment, as detailed below: In 2015: The loan amount declared was added. In 2016: The loan amount at the beginning or end of the year, whichever is lower, was added due to discrepancies between the movements submitted during the review and the financial statements. In 2017: Loans that had been held for one full lunar year were added based on the movements submitted during the review phase. The Plaintiff was requested to provide a detailed movement of loans but did not submit any supporting documents for its claim. ZATCA relied on Article (4), Paragraph (First/5) of the Implementing Regulations for Zakat Collection to support its actions. Regarding Depreciation Differences – Net Assets for 2015: ZATCA stated that this item is procedurally inadmissible and should not be reviewed substantively, as it is protected by regulatory immunity. However, if the Department deems the claim procedurally admissible, ZATCA clarified that the Plaintiff requested the deduction of depreciation differences and the value of fixed assets according to the declining balance method. Based on this request, ZATCA accepted Zakat Payer's objection for this item.

On Wednesday, 20/07/2022 AD, the Department held its session remotely to hear the case. The following individuals were present: ..... holder of National ID No. (...), in his capacity as the Attorney by POA No. ..... For the Defendant appeared Mr....., Mr. ....., holder of National ID No. ..... in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. ..... dated …/…/…, issued by Deputy Governor for Legal Affairs. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claims submitted to General Secretariat of Tax Committees. In response, Defendant's representative requested time to submit a supplemental memorandum. The Department granted this request and decided to allow an electronic exchange of memoranda for 10 days, requiring the defendant to submit its supplemental memorandum no later than Monday, July 25, 2022.

On Saturday, 30/07/2022 AD, the Department held e-hearing session to consider the Case. At that session, ..., holder of National ID No. (...), in his capacity as the Attorney by POA No. ..... For the Defendant appeared Mr....., Mr. ....., holder of National ID No. ..... in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. ..... dated …/…/…, issued by Deputy Governor for Legal Affairs. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claims submitted to General Secretariat of Tax Committees. When Defendant's representative was confronted with the above details, it responded that it stands by the reply previously submitted to the General Secretariat of Tax Committees and does not accept any new documents that were not presented during the objection and review stages. Having asked both litigants if they had any other statements, they responded that they are satisfied with their earlier submissions presented to the Department. Consequently, the Department decided to close the pleadings and deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff aims with its claim to cancel ZATCA decision regarding zakat assessment for years from 2015 to 2017, and given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Given that the Case was filed by a party having capacity and within the statutory period. Therefore, the Department accepts the Case in form. Regarding the non-accounting of depreciation differences and the value of fixed assets deducted for zakat purposes for the year 2015: An objection to the Defendant must be filed within the statutory period in accordance with Article (2) of Tax Violations and Disputes Committee Procedures. Upon reviewing case documents, it was found that the Plaintiff submitted its objection without including this item in its letter to ZATCA. Accordingly, the Department deems this item procedurally inadmissible.

On Merits: The Department, having reviewed the documents and evidence contained in the case file, and examined the requests, defenses, and objections presented by the parties, has determined that the dispute is related to the zakat assessments made by the Defendant for the years 2015 to 2017. The Plaintiff's objections to these assessments pertained to the following items:

Item First Donations:

The Plaintiff objects to Defendant's action of not deducting donations from the net profit, amounting to SAR 5,235,846, SAR 2,509,743, and SAR 1,273,482 for the years 2015, 2016, and 2017, respectively. The Defendant stated that it did not recognize donation expenses, as the Plaintiff provided an unstamped letter from the Charitable Community Service Organization confirming receipt of donations from .... Company Paragraph (4) of Article (5) of the implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, regarding deductible expenses, stipulates the following: "Donations are considered expenses that may be deducted whenever the supporting documents are submitted and their seriousness is verified."; While Article (6), Paragraph (2) thereof which relates to expenses that may not be deducted stipulates that: " Expenses that the Zakat Payer fails to prove by supporting documents or other evidential matter."

Moreover, Paragraph (3) of Article (20) of the same Regulations stipulates: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, the Authority may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at Authority's discretion in view of the surrounding circumstances, facts and information available with the Authority". Based on the above provisions, it is evident that donations eligible for deduction from zakat base must be supported by documentation verifying their validity and authenticity. Since this dispute is documentation-related and the Plaintiff did not provide supporting documents proving payment of the disputed donations, the Department concludes to reject Plaintiff's objection on this item.

Item Second: a. Reversal of part of company's share in the profits/losses of the investee company for adjusted profit, amounting to SAR 14,200,917, SAR 3,885,488, and SAR (3,299,877) for the years 2015, 2016, and 2017, respectively. b. non-deduction of the full investment amounts in equity-method investee companies, amounting to SAR 184,525,705, SAR 598,389,189, and SAR 143,611,308 for the years 2015 to 2017, respectively:

The Plaintiff objects to Defendant's action of adding this item to the net profit for the years 2015 to 2017. In contrast, the defendant argues for deducting investments in equity-method investee companies. It excluded the shares of companies for which the Plaintiff did not provide supporting documentation. Regarding the Non-Deduction of the Full Investment Amounts in Equity-Method Investee Companies: The Defendant explained that, during the assessment, it deducted approved domestic investments. Since Paragraph (4.a) of (Second) of Article of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The following items shall be deducted from the Zakat Base: -4 (A): "Investments in an entity in the Kingdom, in participation with others, if such investments are subject to Zakat according to this Regulations. If the investment in such entities is not subject to Zakat, no deductions will be made from the Zakat Base". Additionally, Article (20), Paragraph (3) of the same Regulations, states that: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the foregoing, and after reviewing the attached documents, it is evident that the Plaintiff did not submit the financial statements and zakat declarations of the investee companies. Furthermore, the Plaintiff did not provide evidence to verify the payment of zakat on its share in the capital of the investee companies, either by itself or by the founders. Accordingly, the Department concludes to reject Plaintiff's objection on this item.

Item Third: Projects Under Construction and Investment in a Real Estate Project:

î- Non-Deduction of the Balance of Projects Under Construction: The Plaintiff objects to Defendant's action of adding this item to zakat base. The Defendant stated that it did not deduct land not registered in company's name from zakat base. Paragraph (1), Clause (Second) of Article (4) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, states: "The following items shall be deducted from the Zakat Base: 1- Fixed assets including the following: Fixed assets obtained for use, payments for the purchase of fixed assets, spare parts and materials not for sale, provided that these assets are owned by Zakat Payer, unless there is a legal impediment to transferring ownership, and that they are used in the activity." Based on Paragraph (2), Clause (Second) of Article (4) of the

Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, which states: "The following items shall be deducted from the Zakat Base: 2- Zakat Payer's capital constructions under development, provided they are being constructed for use in the activity and not for sale.", and Paragraph (3) of Article 20, which states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it" Accordingly, it is permissible to deduct assets registered under the names of partners from zakat base, provided those assets are used in the business activity and justification is provided for the inability to transfer ownership to the company. Since this dispute is documentation-related and after reviewing case file and its supporting documents, it is clear that the Plaintiff did not provide supporting documents such as the land purchase agreement or the financing agreement with ... Bank, nor did the Plaintiff explain the reasons preventing the transfer of the land ownership to company's name. Accordingly, the Department concludes to reject Plaintiff's objection.

ب- Non-Deduction of the Investment Balance in the ... Land Project: from zakat base. Plaintiff objects to Defendant's action of adding land not registered in company's name to zakat base, while the Defendant stated that it did not deduct land not registered in company's name from zakat base. In accordance with Paragraph (1), Clause (Second) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH that states: "The following shall be deducted from zakat base: 1- Fixed assets including the following: Fixed assets obtained for use, payments for the purchase of fixed assets, spare parts and materials not for sale, provided that these assets are owned by Zakat Payer, unless there is a legal impediment to transferring ownership, and that they are used in the activity." Paragraph (3) of Article (20) thereof states: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the above, it is permissible to deduct assets registered under the names of partners from the zakat base, provided those assets are used in the business activity and that justification is provided for the inability to transfer ownership to the company. Since this dispute is documentation-related, and after reviewing the case file and its supporting documents, it is clear that the Plaintiff did not provide supporting documents to justify the reasons preventing the transfer of land ownership to the company's name. Accordingly, the Department concludes to reject Plaintiff's objection.

Item Fourth: Non-Deduction of Loans to Related Parties:

The Plaintiff objects to Defendant's action of adding loans not registered in company's name to zakat base, amounting to SAR 9,616,719, SAR 9,661,320, and SAR 9,748,526 for the years 2015 to 2017, respectively. The Defendant maintains that it did not deduct such loans because they are not eligible for deduction, based on the fatwa cited in Letter No. (3077/2) dated 8/11/1426 AH. Since Paragraph (4.a) of (Second) of Article of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The following items shall be deducted from the Zakat Base: -4 (A): "Investments in an entity in the Kingdom, in participation with others, if such investments are subject to Zakat according to this Regulations. If the investment

in such entities is not subject to Zakat, no deductions will be made from the Zakat Base". Based on the above, it is evident that these amounts represent a loan (advances) provided to the subsidiary company, and the subsidiary subjected these amounts to zakat based on its zakat declarations submitted to ZATCA. Therefore, loans and advances provided to the subsidiary, which submits declarations to ZATCA, require special zakat treatment to avoid double taxation. Since a portion of the loan and advances (based on the investment percentage) does not constitute lending to an external party, the Plaintiff (the lender) is entitled to deduct a portion of the loans and advances provided to the subsidiary from its zakat base, equivalent to its ownership percentage in the subsidiary to which the loan was provided. Accordingly, the validity of Defendant's action in deducting the long-term loan provided to the subsidiary from zakat base, equivalent to the ownership percentage, is affirmed. The Department thus concludes to reject Plaintiff's objection on this item.

Item Fifth: a. Previous Credit Retentions amounting to SAR 234,041, SAR 64,363, and SAR 64,363 for the years 2015, 2016, and 2017, respectively. b. Credit Balances with Related Parties.

c. Accrued Expenses amounting to SAR 1,226,798, SAR 245,331, and SAR 484,598 for the years 2015, 2016, and 2017, respectively. d. Partners' Current Accounts:

The Plaintiff objects to Defendant's action of adding accrued expenses, related parties, prior withholdings, and partners' current accounts to zakat base according to zakat regulations. Meanwhile, Defendant believes in adding a creditor withholding item to the zakat base and a due expenses item for the year-end based on the submitted transactions. As for the item concerning creditor related parties, it was added to the zakat base for the year-end based on the submitted transactions for 2016, and according to Plaintiff's declaration for the years 2015 and 2017. Regarding partners' current accounts, the Defendant clarified that there was no amendment to the current account as the declared amount was added in the declaration. Since Paragraph (2/First/4) of Implementing Regulation for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 2. The current credit account of the owner or partner at the beginning or end of the year, whichever is less, as well as the increase in the current account if its source is from equity, or if it was finance for an acquisition asset.". In accordance with Paragraph (5), Clause (First) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH that states: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Additionally, Paragraph (3), Article (20) of the same Regulations states: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA".

a. Regarding Related Party Balances (Credit): Based on the above, amounts owed to related parties are considered a source of financing and are treated as equity in zakat calculations. Therefore, amounts held for a full lunar year must be added to zakat base. Upon reviewing the documents attached to case file, it is evident that the Plaintiff did not provide detailed movements for the related party account to support its claim that these amounts had not been held for a full lunar year. In the absence of detailed movements for the related party account, the amount added to zakat base is the

opening balance or the closing balance, whichever is lower. This is the method used by ZATCA in the zakat assessments for the disputed years. Accordingly, the Department concludes to reject Plaintiff's objection.

b. Previous Credit Retentions and Accrued Expenses: Based on the above, accrued expenses and previous credit retentions are components of zakat base, provided that these balances have been held for a full lunar year. Since this dispute is documentation-related, and upon reviewing the documents attached to case file, it is evident that the Plaintiff did not provide detailed movements for accrued expenses and previous credit retentions for the years in question to prove that these amounts had not been held for a full lunar year. Accordingly, the Department concludes to reject Plaintiff's objection.

c. Partners' Current Accounts: Based on the above, partners' current accounts are considered components of zakat base and are added to the base if they have been held for a full lunar year, originated from equity, or were used to finance assets deducted from zakat base. Since this dispute is documentation-related, and upon reviewing the documents attached to case file, it is evident that the Plaintiff did not provide detailed movements for partners' current accounts to show that the opening balance had been settled during the year or to prove that the amounts added to the zakat base by ZATCA had not been held for a full lunar year. Accordingly, the Department concludes to reject Plaintiff's objection.

Item Sixth: Loans:

The Plaintiff objects to Defendant's action of adding loans to zakat base, amounting to SAR 110,000,000, SAR 110,000,000, and SAR 200,000,000 for the years 2015 to 2017. The Defendant maintains that loans were added to the zakat base as they had been held for a full lunar year. Whereas Paragraph (First/5) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates that: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it". In accordance with Paragraph (3) of Article (20) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH that states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it" Based on the above, loans are considered a component of zakat base regardless of their type, source, or classification, provided they have been held for a full lunar year or used to finance assets deducted from zakat base, without requiring that they have been held for a full lunar year. Upon reviewing the documents attached to case file, it is evident that the Plaintiff did not provide financial statements or detailed movements supporting its claim that these loans had not been held for a full lunar year. In the absence of detailed movements showing that the opening balances of these loans were settled during the year, the appropriate action is to add the balance of this item as a source of financing, as it is a component of the zakat base. This is determined by taking the opening balance or the closing balance, whichever is lower, to ensure the addition of balances that have been held for a full lunar year. Accordingly, the Department concludes to reject Plaintiff's objection on this item.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- The claim regarding depreciation differences and the value of fixed assets is inadmissible procedurally, and all other claims are rejected.

This decision was issued in the presence of both parties, and the date of depositing the decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of the decision. The parties to the case may request to appeal against the decision as per the law within thirty (30) days from the day following the date specified for its receipt, whereafter, the decision will be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1655)
Issued in Appeal No. (Z-72077-2021)

Key words:
Zakat Reassessment – Accounts – Import Discrepancies – Telephone and Electricity Expenses – Filing the Case by an Authorized Party Within the Prescribed Period to Ensure Formal Acceptance – Revocation of Defendant's Decision.

Abstract

Plaintiff's claim seeks to revoke the decision of Zakat, Tax, and Customs Authority regarding zakat reassessment for the year 2009 on two items: First: Import discrepancies. Second: Telephone and electricity expenses. ZATCA responded regarding both items by asserting the validity and correctness of its procedures. Regulatory texts indicated the necessity of filing objections within the statutory period from the date of notification. The Department found the following: Regarding the first item, the import discrepancies resulted from a typographical error that was subsequently corrected, and the Plaintiff submitted supporting documents aligning with its stance. Regarding the second item, it was found that the Plaintiff did not provide supporting documents for the disputed expenses. The Department ruled to: Revoke Defendant's decision regarding the first item and reject Plaintiff's objection regarding the second item – deeming the decision final and enforceable.

Instruments:

- Articles (5/1/a), (6/2), and (20/3) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) of 01/06/1438 AH

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Tuesday, 07/08/2022, the First Department for Determination of Income Tax Violations and Disputes in Dammam, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted under Royal Order No. (26760) dated 14/09/1442 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 21/05/2021.

The facts of this Case are summed up that ..., National ID No. (.....) in his capacity as Attorney of the Plaintiff.....Company, C.R. No. (...), submitted its objection to the tax assessment for the year 2009, issued by ZATCA. The objection is focused on the following two items: Item First the Plaintiff objects to Defendant's action of adding an amount

resulting from the difference between the value of imports recorded in company's books and the import value stated in the customs declaration, amounting to SAR 8,773,017. The Plaintiff stated that during the review of customs declaration for the year 2009, it discovered an error in customs declaration No. (…) recorded as SAR 8,057, reflecting the purchase of 4,883 tons of iron from .... Country. The Plaintiff further mentioned that the company clarified this error to ZATCA, whose response was that customs declaration is the primary reference. The Plaintiff stated that the company communicated with the Customs Authority to amend customs declaration, and Customs Authority revised the declaration to reflect the corrected value of SAR 8,057,280 instead of SAR 8,057.28. The Plaintiff explained to ZATCA that the company records in its books the value of goods purchased from abroad, including all expenses related to completing the transaction, such as customs duties, shipping, transportation, and clearance fees, until the goods reach the warehouse. Therefore, the Plaintiff requests cancellation of ZATCA's action. Item Second: Telephone and Electricity Expenses:
The Plaintiff objects to Defendant's action regarding the telephone and electricity expenses of the factory manager. The Plaintiff argued that factory manager is one of company's employees and not one of the factory owners. Therefore, the telephone bill and the electricity bill of the rented residence under the factory's name should be classified as administrative and general expenses related to the factory's activities, as they are employment benefits for this employee. Accordingly, the Plaintiff requests cancellation of ZATCA's action regarding this item.
Upon presenting the statement of claim to the Defendant, the Defendant responded with a memorandum that included: Item First Import Discrepancies: Upon reviewing customs declaration and noting that it was not included in the customs report, and since the customs declaration is considered the primary and approved reference for determining all foreign purchases, there is an indication that the goods in question may not belong to Zakat Payer and may have entered the Kingdom under the name of another individual or entity. Accordingly, Zakat Payer's objection was rejected, and ZATCA's action was upheld based on Article (20), Paragraph (3) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438H. ZATCA maintains the validity and correctness of its action. Item Second: Telephone and Electricity Expenses: Upon review, it was found that this expense is not related to Zakat Payer's activities, and therefore, it cannot be deducted for zakat purposes. This is based on Article (6), Paragraph (1) of the Implementing Regulations for Zakat Collection No. (2082) dated 01/06/1438 AH. ZATCA maintains the validity and correctness of its action.
On Sunday, 07/08/1443 AH, the Department held its session remotely to hear the case. For the Plaintiff appeared Mr....., ID No..... appeared in his capacity as Plaintiff's Attorney under POA No. (...) attached to case file, while ... also attended. Mr. ....., holder of National ID No. ..... in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. ..... dated …/…/…, issued by Deputy Governor for Legal Affairs. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claims submitted to General Secretariat of Tax Committees. When Defendant's Attorney was confronted with the above details, it responded that it stands by the reply previously submitted to the General Secretariat of Tax Committees and does not accept any new documents that were not presented during the objection and review stages. Having asked both litigants if they had any other statements, they responded that they are satisfied with their earlier submissions presented to the Department. Consequently, the Department decided to close the pleadings and deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In form, **since the Plaintiff aims through her case to annul the decision of ZATCA regarding 2009 tax assessment, and given that this dispute falls under the category of tax-related disputes, it falls within jurisdiction of the Committee for determination of income tax violations and disputes, in accordance with Royal Order No. (26040) dated 21/04/1441 AH. Additionally, as the case was filed by an authorized party and within the statutory timeframe, it must be accepted in form.**

On Merits: Having taken cognizance of documents included in Case file, requests, defense and arguments raised by the parties, the Department found that the dispute involves Defendant's procedure outlined in issuing zakat assessment for 2009, where the Plaintiff objects to two items:

Item First Import Discrepancies:

The Plaintiff objects to Defendant's action of adding an amount resulting from the difference between the value of imports recorded in company's books and the import value stated in the customs declaration. The Defendant argued that upon reviewing the customs declaration, and since it was not listed in the customs report, customs declaration is considered the primary and approved reference for determining all foreign purchases. This may indicate that the goods in question do not belong to Zakat Payer and may have entered the Kingdom under the name of another individual or entity. Accordingly, Plaintiff's objection was rejected in accordance with Paragraph (1.A) of Article (5) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH that states: "The following expenses can be deducted to determine the net result of activity: 1. Expenses ordinary and necessary for an entity to engage in business activity, subject to meeting the following criteria: A. That the expense must be an actual one supported by evidence or other indications that enable ZATCA to verify its validity, even if it pertains to previous years." Based on the above, and given that the dispute between the two parties is documentary in nature, and after reviewing the documents submitted by the Plaintiff, which include both the old and updated customs declarations, it is evident that the discrepancies in foreign purchases resulted from a typographical error that has been corrected. Therefore, there are no discrepancies. Consequently, since the Plaintiff has submitted documents supporting its stance regarding the import discrepancies, the Department concludes to annul Defendant's decision regarding the import discrepancies item.

Item Second: Telephone and Electricity Expenses:

The Plaintiff objects to Defendant's action regarding the telephone and electricity expenses of the factory manager, while the Defendant argued that this item of expenses is unrelated to the taxable activity and therefore cannot be deducted for zakat purposes. Paragraph (1/a) of Article (5) of the Implementing Regulations for Zakat Collection, issued by Minister of Finance's Decision No. (2082) dated 01/06/1438 AH, concerning deductible expenses, states: "The following expenses can be deducted to determine the net result of activity: 1. Expenses ordinary and necessary for an entity to engage in business activity, subject to meeting the following criteria: a. Expenses should be actual expenses as supported by relevant documents and other evidential matter to enable ZATCA to verify the accuracy of expenses, even if related to prior years". Paragraph (2) of Article (6) of the same Regulations related to deductible expenses states: "Expenses that the Zakat Payer

fails to prove by supporting documents or other evidential matter acceptable to the Authority". Paragraph (3) of Article (20) thereof states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, the Authority may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it" Based on the above, these expenses may be deductible if it is proven that they are actual expenses supported by documentary evidence. Since the dispute regarding this item is documentary in nature, and upon reviewing the documents attached to case file, it is evident that the Plaintiff did not submit supporting documents for the disputed expenses. Consequently, the Department concludes to reject Plaintiff's objection concerning the telephone and electricity expenses item.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

1. Revoke Defendant's decision regarding the import discrepancies item.
2. Reject Plaintiff's objection regarding the telephone and electricity expenses item.

This decision was delivered in presence of the parties. The date of entering decision in the e-system of the General Secretariat is considered the date of decision delivery. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not file an objection

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1656)
Issued in Appeal No. (Z-72436-2021)

Key words:
Zakat Reassessment – Accounts – Bad Debts – Accrued Expenses – Creditors – Filing the Case by an Authorized Party Within the Prescribed Period Ensures Its Formal Acceptance – Rejection of the Plaintiff's Objection – Revocation of the Defendant's Decision.

Abstract

The Plaintiff seeks to annul the decision of Zakat, Tax, and Customs Authority regarding zakat reassessment for the year 2015, addressing three items: Item First Bad Debts, Second Item: Accrued Expenses, Third Item: Creditors – ZATCA responded to the first item, stating that Zakat Payer provided all documents during the reassessment process, except for the most critical document: the bad debt write-off certificate from the certified accountant. ZATCA maintained the validity and correctness of its procedure. Regarding the second and third items, ZATCA noted that the analysis was prepared in an unclear manner and that the balances for the beginning and end of the period did not match the financial statements. ZATCA maintained the validity and correctness of its procedure. Regulatory provisions indicate that objections must be filed within the statutory period from the date of notification. Accordingly, regarding the first item, the Department concluded that the dispute is documentary in nature, and the Plaintiff did not provide evidence that it met the requirements for deducting bad debts. Regarding the second item, the dispute is also documentary, and the Plaintiff submitted an account statement that did not align with the financial statements. Regarding the third item, the dispute is documentary, and it was determined that only the amount of SAR 1,773,355 met the requirement of the passage of one year. The Department ruled to: reject Plaintiff's objection regarding items 1 and 2, and annul Defendant's decision regarding item 3. The decision is deemed final and enforceable.

Instruments:

- https://ncar.gov.sa/document-details/eyJpdiI6IkhjR1RIYjkwMGlDYm40OFpJUUpac1E9PSIsInZhbHVlIjoiM3Z3WEJKRFp4ZFhTTVNzM2hsbXMvZz09IiwibWFjIjoiOGY0Zjk3YjIwMmQwYmQzMTZhNDQ0NWVkYjQzOGE5YWU2M2UxNWQxMWJlNTc5YTIyZDdjNGE2Njk5MGMwYjhmYSIsInRhZyI6IiJ9Articles (4//First/5), (5/3), (6/2), and (20/3) of the Implementing Regulations for Zakat Collection issued under Ministerial Decision No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Tuesday, 07/08/2022, the First Department for Determination of Income Tax Violations and Disputes in Dammam, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted under Royal Order No. (26760) dated 14/05/1442 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 27/09/2021.

The facts of this Case are summed up in that (...), holder of National ID No. (...), in his capacity as attorney for the Plaintiff .....Company, C.R. No. (...), Pursuant to C.R. No. (.....), ... has filed an objection to the zakat assessment issued by ZATCA for the year 2015. The Plaintiff objected to three items: Item First Bad Debts, The Plaintiff objected to Defendant's action of adding bad debts to zakat base, stating that ZATCA acknowledged in its memorandum that the company submitted certain documents, including: A board resolution approving the write-off of bad debts, an analysis of the bad debts, an account statement extracted from the accounting system for bad debts, and a directive to the finance department to write off the bad debts. The Plaintiff noted that despite this, the expense was rejected because the company did not submit a certified accountant's certificate for the bad debts. The Plaintiff argued that the financial statements, particularly the cash expense statement, reflect the extent of bad debts recorded in the income statement, and that the certified accountant had conducted the necessary review to verify these debts. Additionally, the Plaintiff explained that obtaining a certified accountant's certificate could be challenging for some and that accountants often charge extra fees for issuing such certificates. The Plaintiff further asserted that the expense is directly related to the business activity and the revenues for the relevant year. Supporting documents from the accounting system were also provided, showing no relation to affiliated parties. Item Second: Accrued Expenses, The Plaintiff objected to Defendant's action of adding accrued expenses to zakat base, arguing that the concept of accrued expenses in accounting pertains to expenses related to the year under review but unpaid before the closing of accounts for that period. The Plaintiff asserted that such expenses lack one of the essential conditions for zakat, namely ownership, as they primarily consist of salaries and wages according to the submitted analysis. The Plaintiff further noted that ZATCA acknowledged receiving beneficiary statements from the company and argued that accrued expenses differ from loans in terms of ownership. The Plaintiff maintained that these funds are not utilized and that their non-payment to recipients might indicate financial distress within some companies. Item Third: Creditors, the Plaintiff objected to Defendant's action of adding creditors to zakat base for the year 2015, stating that these balances represent normal business transactions and that zakat obligation does not apply since one full lunar year (hawl) had not elapsed on them.

Having presented the statement of claim to the Defendant, it responded with a memorandum addressing the items as follows: Bad Debts, it has been reported that bad debts were settled in the amount of SAR (930,660), and the deduction was not accepted as part of the allowable expenses. This was after Zakat Payer was requested on 09/03/2021 to provide a detailed statement of the bad debts, specifying the entities owed debts, justifications for write-off, and all required documents. Zakat Payer was given a deadline to submit this statement but only provided a statement for the year 2014. Based on this, the expense item was not accepted. Upon reviewing the objection, Zakat Payer indicated that it was related to activity; however, only approval for the write-off of these debts from authorized individuals was submitted. Due to insufficiency of the provided document, additional requests were made during the audit, along with a certificate for the write-off of these debts from a certified accountant. This information was requested on 19/08/2020,

and Zakat Payer was reminded on 26/08/2021. A second reminder was issued on 02/09/2021, and on 08/09/2021, Zakat Payer submitted the following documents: Decision of the Chairman of the Board Regarding the Write-off of Debts, an analysis of the bad debts was provided, which Zakat Payer clarified were related to their activity, along with the account statement extracted from the accounting system for the bad debts. The financial department was directed to write off the bad debts amounting to (930,660 SAR). ZATCA clarifies that Zakat Payer presented all these documents during the audit, but did not submit the most important document, which is the certificate of the write-off of bad debts from the legal accountant. Consequently, the objection was rejected based on Article 5, paragraph (3) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082), and based on Article 20, paragraph (3) of the same regulations. ZATCA maintains the validity and integrity of its procedures. Item Second: Accrued Expenses, ZATCA added this item by taking the lesser of the opening or closing balance as indicated in the financial statement notes. This decision was made after requesting account statements and transaction records from Zakat Payer. While Zakat Payer provided these documents, they did not match the balances in the financial statements. Accordingly, ZATCA relied on the lesser of the opening or closing balance, as referenced in Zakat Payer's memorandum in note (9) of the financial statements. Upon review, it was found that the analysis was prepared in an unclear manner, and the opening and closing balances did not match the financial statements. Therefore, Zakat Payer's objection was rejected, and the lesser of the opening or closing balance was used in accordance with the financial statements due to the discrepancies and lack of clarity in the submitted statements. This was based on Article (4), Paragraph (5) of Clause (1) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. 2082 dated 01/06/1438 AH, as well as Article (20), Paragraph (3) of the same regulations, ZATCA maintains the validity and correctness of its procedures. Item Third: Creditors, ZATCA added this item by taking the lesser of the opening or closing balance as indicated in the financial statement notes. This was done after requesting account statements and transaction records from Zakat Payer during the audit. Although Zakat Payer provided these documents, they did not match the balances in the financial statements. As a result, ZATCA relied on the lesser of the opening or closing balance, as referenced in ZATCA's memorandum in note (8) of the financial statements. Upon review, it was found that the analyses were prepared in an unclear manner, and the opening and closing balances did not match the financial statements. Therefore, Zakat Payer's objection was rejected, and the lesser of the opening or closing balance was used in accordance with the financial statements due to the discrepancies and lack of clarity in the submitted statements during both the audit and objection process. This was based on Article (4), Paragraph (5) of Clause (1) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. 2082 dated 01/06/1438H, as well as Article (20), Paragraph (3) of the same regulations, ZATCA maintains the validity and correctness of its procedures.

On Sunday, 07/08/1443 AH, the Department held its session remotely to hear the case. For the Plaintiff appeared Mr....., holder of National ID No. (...), in his capacity as the Attorney by POA No. ..... For the Defendant appeared Mr....., Mr. ....., holder of National ID No. ..... in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. ..... dated …/…/…, issued by Deputy Governor for Legal Affairs. dated ...., when Plaintiff's representative was asked about their claim, they responded that it aligns with the contents of the statement of claim previously submitted to the General Secretariat of Tax Committees. When Defendant's representative was confronted with the above details, it responded that it stands by the reply previously submitted to the General Secretariat of Tax Committees and does not accept any new documents that were not presented during the objection and review stages. Having asked

both litigants if they had any other statements, they responded that they are satisfied with their earlier submissions presented to the Department. Consequently, the Department decided to close the pleadings and deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In form, **since the Plaintiff aims through her case to annul the decision of ZATCA regarding 2015 tax assessment, and given that this dispute falls under the category of tax-related disputes, it falls within jurisdiction of the Committee for determination of income tax violations and disputes, in accordance with Royal Order No. (26040) dated 21/04/1441 AH. Additionally, as the case was filed by an authorized party and within the statutory timeframe, it must be accepted in form.**

As Merits, having examined the case papers and the requests, defenses and pleas entered by the parties. The Department established that the dispute is centered around Plaintiff's objection to zakat assessment for the year 2015 issued by the Plaintiff, limiting its objection to three items, namely:

First Item: Bad Debts:

The Plaintiff objects to Defendant's action of adding bad debts to zakat base and requests cancellation of ZATCA's action. The Defendant argued that it disallowed the bad debts and did not accept them as deductible expenses due to Plaintiff's failure to provide the required documents. This decision was based on Paragraph (3) of Article (5) of the Implementing Regulations for Zakat Collection, issued under Ministerial Decision No. (2082) dated 01/06/1438 AH, which states: "Bad debts are expenses that may be deducted in accordance with the following controls: a. Debts should have been previously declared within revenues in the year the revenue was generated. b. Debts shall be the result of carrying out activities. c. The Zakat Payer shall provide a certificate from a certified public accountant licensed to operate in the Kingdom, confirming that the debts are written-off by resolution of the authorized person. d. The debts shall not be payable by bodies associated with the Zakat Payer. (f) Zakat Payer undertakes to reinstate as income any written off debt whenever collected". Additionally, Article (6), Paragraph (2) of the same Regulations, regarding non-deductible expenses, which states: "Expenses that the Zakat Payer fails to prove by supporting documents or other evidential matter acceptable to the Authority". Paragraph (3) of Article (20) thereof states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, the Authority may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it.". Accordingly, and after reviewing the case file, it is evident that the dispute regarding this item is documentary in nature. Upon examining the documents included in the case file, it is clear that the Plaintiff did not provide evidence to demonstrate that it met the conditions for deducting bad debts, specifically by failing to submit a certified accountant's certificate for the write-off of the bad debts. Consequently, the Department concludes to reject Plaintiff's objection.

Item Second: Accrued Expenses:

The Plaintiff objects to Defendant's action of adding accrued expenses to zakat base. The Defendant argued that it included this item by taking the lesser of the opening or closing

balance as stated in the financial statement notes, due to the lack of alignment and clarity in the submitted records. This was based on Paragraph (5) of Clause (First) of Article (4) of the Implementing Regulations for Zakat Collection, issued under Ministerial Decision No. (2082) dated 01/06/1438 AH, which states: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it". Since Article 20.3 of the Zakat Regulations states that: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, the Authority may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it". Based on the above, and considering that accrued expenses balances are part of the zakat base on the condition that one full lunar year (hawl) has passed on those balances, and since the dispute regarding this item is documentary in nature, a review of the documents submitted in case file reveals that the Plaintiff provided an account statement that does not align with the financial statements. Consequently, the Department concludes to reject Plaintiff's objection concerning the accrued expenses item.

Item Third: Creditors:

The Plaintiff objects to Defendant's action of adding the creditors' balances to zakat base for the year 2015. The Defendant argued that it included this item by taking the lesser of the opening or closing balance as indicated in the financial statement notes, due to the lack of alignment and clarity in the submitted records. This was based on Paragraph (5) of Clause (First) of Article (4) of the Implementing Regulations for Zakat Collection, issued under Ministerial Decision No. (2082) dated 01/06/1438 AH, which states: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. b. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it". Based on the above, trade payables are considered part of zakat base on the condition that one full lunar year (hawl) has passed on them or that they have been used to finance assets deducted from the zakat base. Since the dispute regarding this item is documentary in nature, and upon reviewing the documents included in case file, including the trade payables balance and financial statements, it is evident that the amount of SAR 1,773,355 is the only amount on which one full lunar year has passed, as stated in Plaintiff's objection. Consequently, the Department concludes to annul Defendant's decision.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

1. Dismiss Plaintiff's objection regarding the bad debts item.
2. Dismiss Plaintiff's objection regarding the accrued expenses item.
3. Cancel Defendant's decision regarding the creditors item.

This decision was delivered in presence of the parties. The date of entering decision in the e-system of the General Secretariat is considered the date of decision delivery. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not file an objection

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

First Department for Determination of Income Tax Violations and Disputes in Dammam

Decision No. (IZD-2022-1622)
Issued in Appeal No. (Z-50184-2021)

Key words:
Zakat Assessment - Accounts – Related Parties – Creditors and Liabilities – Net Asset Deficit – Zakat Provision – Fixed Assets – Creditor Balances – Zakat Base – Rejection of Plaintiff's Objection

Abstract

The Plaintiff seeks annulment of Zakat, Tax, and Customs Authority's decision regarding zakat assessment for the year 2015. The Plaintiff limited their objection to three items: (Related Parties Item for 2015 (SAR 2,452,047), Creditors and Liabilities Item for 2015 (SAR 24,186,600), and Zakat Provision Item for 2015 (SAR 8,482). The Plaintiff based their objections on the claim that the company is insolvent and unable to meet its obligations. They argued that, under zakat regulations, creditors should not be included in zakat base unless the debt is used to finance fixed assets. The Plaintiff identified creditor balances as follows: Related Parties: SAR 2,452,047, Creditors and Liabilities: SAR 24,186,600, Zakat Provision: SAR 8,482. Regarding the item of Related Parties; ZATCA stated that this amount was added to zakat base because one full lunar year had passed on it and because the Plaintiff failed to provide supporting documents. Regarding Creditors and Liabilities Items: ZATCA stated that this amount was added to zakat base due to the passage of one full lunar year and discrepancies between the submitted data and the financial statements as identified during the review process. The Plaintiff also failed to provide documents supporting their claim. As per Zakat Provision Item: ZATCA stated that this amount was added to zakat base because it is a carryover provision from the previous year. The amount included was subject to zakat as one full lunar year had passed on it. The calculation was based on the disclosures in the financial statements (Disclosure No. 13/b), reflecting the difference between the opening balance and the amount paid during the year. Regarding Item One and Two, the Department established the following: The Plaintiff failed to provide detailed transaction records for the related parties and creditors and liabilities items to prove that the amounts in question had not been subject to one full lunar year. Moreover, while the Plaintiff claimed that the company was insolvent, they did not provide evidence to substantiate this claim. Regarding the Third Item (Zakat Provision Item for the year 2015 (SAR 8,482): The Department determined that Defendant's action was justified because the provision was carried over from the previous year, and the amount included in zakat base had been subject to one full lunar year. The Department ruled to: Dismiss the Plaintiff's objection regarding all the items in question.

Instruments:

- https://ncar.gov.sa/document-details/eyJpdiI6IkhjR1RIYjkwMGlDYm40OFpJUUpac1E9PSIsInZhbHVlIjoiM3Z3WEJKRFp4ZFhTTVNzM2hsbXMvZz09IiwibWFjIjoiOGY0Zjk3YjIwMmQwYmQzMTZhNDQ0NWVkYjQzOGE5YWU2M2UxNWQxMWJlNTc5YTIyZDdjNGE2Njk5MGMwYjhmYSIsInRhZyI6IiJ9Articles (4/First/5, 9) and (20/3) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Tuesday, 26/07/2022, the First Department for Determination of Income Tax Violations and Disputes in Dammam, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted under Royal Order No. (26760) dated 14/05/1442 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 06/05/2021.

The facts of this case are summed up in that Mr..... ID No..... in his capacity as attorney of Plaintiff (...), C.R. No. (...), filed this case objecting to the zakat assessment for the year 2015 issued by ZATCA. The Plaintiff's objection is related to following items: Item First Related Parties for 2015 (SAR 2,452,047): The Plaintiff objects to Defendant's action, stating that the reason for the objection is that the company is insolvent and unable to meet its obligations. According to the new zakat regulations for commercial establishments, creditors shall not be included in zakat base unless the debt has been used to finance fixed assets. The Plaintiff identified creditor balances under related parties amounting to SAR 2,452,047. Item Second: Creditors and Liabilities for 2015 (SAR 24,186,600): The Plaintiff objects to Defendant's action, stating that the reason for the objection is that the company is insolvent and unable to meet its obligations. According to the new zakat regulations for commercial establishments, creditors should not be included in the zakat base unless the debt has been used to finance fixed assets. The Plaintiff identified creditor balances under creditors and liabilities amounting to SAR 24,186,600. Item Third: Zakat Provision for 2015 (SAR 8.482): The Plaintiff objects to Defendant's action, stating that the reason for the objection is that the company is insolvent and unable to meet its obligations. According to the new zakat regulations for commercial establishments, creditors shall not be included in zakat base unless the debt has been used to finance fixed assets. The Plaintiff identified creditor balances under the zakat provision amounting to SAR 8,482.

Having presented the statement of claim to the Defendant, it responded with a memorandum that addressed the matter of Related Parties as follows: It stated that this amount was added to zakat base because one full lunar year (hawl) had passed on it, and the Plaintiff failed to provide supporting documents. Upon reviewing the data submitted by the Plaintiff, it was evident that the amount in question had been subject to hawl. Therefore, Zakat Payer's objection was rejected. Regarding Creditors and Liabilities: ZATCA stated that this amount was added to zakat base because one full lunar year (hawl) had passed, and there were discrepancies between the data submitted and the financial statements as identified during Zakat Payer's responses in the examination phase. Upon reviewing the objection and due to the absence of supporting documents to substantiate Plaintiff's claims, the objection was rejected. As per Zakat Provision Item: ZATCA stated that this amount was added to zakat base because it is a carryover provision from the

previous year, and the portion included in the zakat base was subject to hawl. The calculation was based on the disclosures in the financial statements (Disclosure No. 13/b), reflecting the difference between the opening balance and the amount paid during the year. After reviewing the objection, ZATCA confirmed the validity of its procedure and rejected Zakat Payer's objection.

On Thursday 26/07/2022, the Department held its session remotely to consider the Case. No one appeared for the Plaintiff despite being duly notified of the session. For the Defendant, appeared Mr. ....., Mr. ....., holder of National ID No. ..... in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. ..... dated …/…/…, issued by Deputy Governor for Legal Affairs. When asking Defendant's attorney about Plaintiff Case, he adhered to Defendant's responses previously submitted to General Secretariat of Committees. Having asked Defendant's attorney if he had any other statements, he responded negatively. Since the Case was ripe for adjudication, the Department decided to close the pleading and deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff aims with its claim to cancel ZATCA decision regarding zakat assessment for 2015, and given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the legally-prescribed period. Therefore, the Department accepts the Case in form.

On merits, upon Department's review of the documents and evidence contained in the case file, as well as the requests, defenses, and arguments presented by the parties, it became evident that the dispute centers on Defendant's issuance of the zakat assessment for 2015, specifically concerning the objection related to the following items:

Item First Related Parties for 2015 (SAR 2,452,047):

The Plaintiff objects to Defendant's action of adjusting zakat assessment by adding the above-mentioned amount. The Defendant, however, considers it part of zakat base due to the passage of hawl (a full lunar year) and Plaintiff's failure to provide supporting documents. whereas Paragraph (5) of Section (First) of Article (4) of Implementing Regulation for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Based on the text of Paragraph (3), Article (20), which states the following: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it" Based on the above, related parties are considered part of zakat base provided that one full lunar year (hawl) has passed on the amounts or they have been used to finance assets

deducted from the zakat base. Upon reviewing the documents included in case file, it is evident that the Plaintiff did not provide detailed transaction records for the related parties to demonstrate that the disputed amounts were not subject to hawl. Additionally, the Plaintiff claimed that the company is insolvent but failed to provide evidence to substantiate this claim. Consequently, the Department concludes to reject Plaintiff's objection regarding this item.

Item Second: Creditors and Liabilities for 2015 (SAR 24,186,600):

The Plaintiff objects to Defendant's action of adjusting zakat assessment by adding the above amount. The Defendant, however, considers it part of zakat base because one full lunar year (hawl) has passed on the amount, and the Plaintiff failed to provide supporting documents. whereas Paragraph (5) of Section (First) of Article (4) of Implementing Regulation for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Additionally, Article (20.3) of the same Regulations states that: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the foregoing, Creditors and liabilities are considered part of zakat base provided that one full lunar year (hawl) has passed on the amounts or they have been used to finance assets deducted from zakat base. Upon reviewing the documents included in case file, it is evident that the Plaintiff did not provide detailed transaction records for the creditors and liabilities item to demonstrate that the disputed amounts were not subject to hawl. Additionally, the Plaintiff claimed that the company is insolvent but failed to provide evidence to substantiate this claim. Consequently, the Department concludes to reject Plaintiff's objection regarding this item.

Item Third: Zakat Provision for 2015 (SAR 8,482):

The Plaintiff objects to Defendant's action of adjusting the zakat assessment by adding the above amount. The Defendant, however, considers this amount part of zakat base because it is a carryover provision from the previous year, and the included portion had been subject to hawl. Since Paragraph (9), Clause (First) of Article (4) the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH provides that: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 9- Provisions at the beginning of the year (excluding doubtful debt provisions for banks) after deducting the utilized portion during the year". Article (20.3) of the Implementing Regulations for Zakat Collection, issued by Minister of Finance Decision No. (2082) dated 01/06/1438 AH states: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the above, and upon reviewing case file and the defenses and documents it contains, it is clear that the Plaintiff did not submit the financial statements nor provide a statement of the zakat provision. Consequently, the Department concludes to reject Plaintiff's objection regarding this item.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- Dismiss the Plaintiff's objection regarding all the items in question.

This decision was delivered in presence of the parties. The date of entering decision in the e-system of the General Secretariat is considered the date of decision delivery. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not file an objection

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1666)
Issued in Appeal No. (Z-66977-2021)

Key words:
Zakat Assessment – Accounts – Reassessment of Zakat Declaration – Discovery of Financial Statements Inconsistent with Those Submitted to ZATCA – Rejection of Plaintiff's Objection.

Abstract

Plaintiff's request to annul the decision of Zakat, Tax, and Customs Authority regarding the zakat assessment for the year 2014 – the Plaintiff based her objection on Defendant's action of re-assessing zakat declaration – the Defendant responded that conflicting financial statements were found compared to the statements submitted to ZATCA for the years in question. The Department established, through the minutes of the session held on 10/02/1444 AH, that there were several statements from the Plaintiff for the same year, and the Plaintiff did not contest them for forgery The Department ruled to: Dismiss Plaintiff's case, and consider the decision as final and enforceable.

Instruments:

- Articles (13/5), (16/1), and (21/8) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) dated 07/07/1440 AH.https://ncar.gov.sa/document-details/eyJpdiI6Ik5kTGY1a0M1NVZQNlFYTkt0L1phYnc9PSIsInZhbHVlIjoiMm5PdUhJMGtxY2gwNjd1T2xhdVB1dz09IiwibWFjIjoiZTRlMzY5NGE3MWFkZTcwOGE2ZWI4MzZkZDdjMjY5YTU5NWRlYzFhM2Y2ZTBhOTQyNjI5YjY2OTVjMjZjYTdhMiIsInRhZyI6IiJ9

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Tuesday, 10/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted under Royal Order No. (26760) dated 23/12/1439 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 25/08/2021.

The facts of this case are summed up in that Mr..... National ID No. (.....) in his capacity as attorney of Plaintiff (...), Contracting Company, (C.R. No. ....) under POA No. (...), dated 14/01/1443 AH, filed an objection against zakat reassessment for the year 2014

issued by Zakat, Tax, and Customs Authority. The Plaintiff objected to the reassessment, particularly the claim that the Defendant had discovered financial statements that conflicted with those submitted to ZATCA for the years under review. The Plaintiff asserted to the Department that the examiner representing the Defendant did not obtain any financial statements during the audit, and there were no financial statements other than those issued by certified accountants for all the relevant years, which were filed with Zakat Authority and the Ministry of Commerce. 2. Concerning Defendant's summary of the discussion in the hearing: The Plaintiff noted, "We were not provided with a copy of the minutes." They further explained that the company representative involved in the discussion had no financial or accounting expertise, which led to confusion. The Plaintiff clarified that the confusion originated from ZATCA's examiners, not the company representative, due to poorly phrased questions and unclear responses. 3. Regarding Defendant's claim: "If Zakat Payer's objection about their representative's competence is valid and their acknowledgment of issuing conflicting financial statements submitted to banks for loan purposes is accurate," the Plaintiff responded that their representative did not make such an acknowledgment but only indicated that estimated financial statements had been provided. 4. The Plaintiff also clarified that it engages with only one audit firm annually, paying audit fees in installments. Part of the payment is made during the audited year, while the remaining amount is settled after the issuance of the financial statements, which are always issued after the completion of the audit process and issuance of statements. 5. Concerning Zakat Payer's request for the Defendant to provide the certified financial statements they claim to have received (but which Zakat Payer denies), the Defendant provided some statements on 20/06/2021 for the years 2009, 2010, 2012, 2014, 2016, and 2017. However, the years under review spanned from 2009 to 2018. 6. The Plaintiff emphasized that the examination and reassessment procedures outlined in Zakat Collection Regulations (Ministerial Decision No. 2082, dated 01/06/1438 AH, and Ministerial Decision No. 2216, dated 07/07/1440 AH) are designed to protect the rights of all parties. Article 21, Paragraph 2, of the 1438 AH Regulations states: "In the event of transferring any ledgers, records, or documents from Zakat Payer's location, a receipt must be issued for them." The Plaintiff stated that it denies that Zakat Payer provided any financial statements during the field examination that differ from what was previously submitted to the Ministry of Commerce and Zakat, Tax, and Customs Authority (ZATCA). Therefore, it requests the esteemed Department to ask ZATCA to provide evidence of its claim that it received financial statements from Zakat Payer's premises, which contradicts what was previously submitted to the Ministry of Commerce and ZATCA. The Plaintiff further argued that, even assuming such statements existed (which they denied), ZATCA must substantiate the validity of these statements with documentation, as opposed to the certified financial statements already submitted to ZATCA and the Ministry of Commerce.

Upon presenting the statement of claim to the Defendant, it responded with a memorandum addressing Zakat Payer's objection to the zakat reassessment based on differing financial statements: ZATCA stated that during the reassessment process, a field audit was conducted for Zakat Payer, during which financial statements were discovered that contradicted those previously submitted to ZATCA for the years under review. Zakat Payer's representative, a partner, acknowledged issuing financial statements that were inconsistent with reality, and discrepancies in zakat amounts were identified. Zakat amounts in the hidden financial statements were higher than those submitted to ZATCA. As a result, the reassessment was based on the hidden financial statements, taking into account calculation errors in the statements (such as discrepancies in totals within the financial statements, which were corrected during the reassessment). During the objection phase, a meeting was held with Zakat Payer on June 2, 2021, during which Zakat Payer

explained their position. Zakat Payer also discussed the fact that the representative present during the field audit lacked expertise in financial and accounting matters, which may have caused confusion, especially regarding the presence of estimated, draft, and approved financial statements. However, ZATCA noted that Zakat Payer had been notified in advance of the field audit date and could have ensured the presence of representatives more familiar with company's accounts. ZATCA emphasized that if Zakat Payer's objection to their representative's competence is valid, the representative in question is Mr. ..., a partner holding 75% of company's capital. This representative acknowledged during the audit that different financial statements were issued and submitted to banks for obtaining loans and banking facilities. Furthermore, the representative confirmed their intention to provide the financial statements and the names of the firms that had prepared the financial statements, which had not been uploaded to "Qawaem" system or ZATCA's system from 2009 to 2019. During the audit phase, Zakat Payer submitted receipts from various firms engaged in preparing different financial statements for the same fiscal year, related to separate contracts. ZATCA requested that Zakat Payer's representatives provide the certified financial statements for the years 2009 through 2018, as Zakat Payer denied their existence. On June 20, 2021, ZATCA provided Zakat Payer with those financial statements. Zakat Payer subsequently reaffirmed their objection, stating that ZATCA had previously issued reassessments for the years 2009 to 2015, which had been settled. During the session, it was clarified to Zakat Payer that if ZATCA discovers incorrect information, it has the right to amend its assessments at any time, as stipulated in Article (21/8) of Zakat Implementing Regulations, which states: "ZATCA may make or modify the assessment at any time without being bound by the time limit specified in the following cases: A. The zakat payer agrees in writing to conduct or amend the assessment; b. If Zakat Payers fails to file its declaration". c) If it becomes evident that the declaration contains incorrect information." ZATCA maintains the validity and correctness of its procedure.

On Tuesday 10/02/1444 AH, the Department held its session remotely to consider the case. the Department convened its session remotely to review the case. Present were Mr. ..., acting as the representative of the Plaintiff under a power of attorney, a copy of which is included in the case file, and Ms. ..., representing the Defendant, Zakat, Tax, and Customs Authority, under a delegation, a copy of which is also included in case file. When Plaintiff's attorney was asked about the claim, he stated that it aligns with what was submitted in the statement of claim filed with the General Secretariat of Tax Committees. He added that the Plaintiff emphasizes three points, first of which: The Plaintiff prepared the financial statements upon which the declaration was based through a certified auditor in accordance with auditing and accounting standards in Saudi Arabia. Second: It submitted copies of all financial statements to the Ministry of Commerce. Third: If the Defendant insists that there are other financial statements not filed with the Ministry of Commerce, his client requests the appointment of an expert to examine the accuracy of the financial statements provided by both parties, and his client is willing to bear the costs of this process. When Defendant's attorney was confronted with this, she reiterated the arguments presented in Defendant's response memorandum and refused to accept any new documents that were not submitted to the Defendant during the audit and objection stages. She affirmed that the Defendant maintains the existence of additional financial statements for the Plaintiff that were not filed with the Ministry of Commerce but were submitted to the Defendant, thereby proving the validity of Defendant's position in this case. She also stated that the Defendant had submitted a number of documents indicating that the Plaintiff had different financial statements. Accordingly, the Department reviewed these documents, presented them to the Plaintiff's attorney, and requested his comments. He responded that he was unaware of these financial statements submitted by the Plaintiff during this session or their legal validity as evidence. He reiterated his request for the

appointment of an expert. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form, since the Plaintiff filed the case to abolish ZATCA's decision regarding Zakat Assessment of 2014 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On merits, upon reviewing the documents and evidence included in case file, as well as the requests, defenses, and arguments presented by the parties, the Department has determined that the dispute centers on Defendant's issuance of zakat reassessment for the year 2014. The Plaintiff objects to Defendant's action of reassessing the zakat declaration, while the Defendant stated that it discovered financial statements that were inconsistent with those submitted to ZATCA for the years under review. whereas Paragraph (5) of Article (13) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: "ZATCA has the right to hold Zakat Payers accountable regarding estimated manner in order to oblige them to comply with legal requirements in the following cases: A. If Zakat Payer fails to file its zakat declaration based on statutory books and records in the deadline. B. Failure to maintain accurate books and records in the Kingdom that reflect reality of Taxpayer's activity. C. Keep books and records in non-Arabic language in case Taxpayer is notified in writing of their translation to Arabic within a period specified by ZATCA not exceeding three months and does not comply with the same. D. Failure to comply with format, forms and method required in books and records of Taxpayer as prescribed by Law of Commercial Books. E. Failure of Zakat Payer to prove the validity of information recorded in its declaration based on supporting documents." F. Conceal essential information in declaration, such as concealment of revenues, inclusion of unreal expenses, or recording of assets not owned by Taxpayer." Paragraph (1) of the Article (16) thereof further states: "each Zakat Payer shall keep in The Kingdom and in Arabic, the accounting books and records necessary to accurately determine Zakat Base. Further, the Zakat Payer shall keep the documents, information/explanatory notes confirming the accuracy of such accounting books and records. It rests with the Zakat Payer to prove the accuracy of the information reported in the declaration".

Based on the above, as it became evident during the hearing held on 10/02/1444 AH that there are multiple financial statements for the Plaintiff for the same year, and the Plaintiff did not allege forgery, the Department concludes to reject Plaintiff's objection.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

- Reject the objection of Plaintiff/ ..... Company for Trade and Contracting (TIN. ...)." to Defendant/ (ZATCA)'s decision regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of Parties. The Department has set Monday 30/02/1444 AH for receiving and a copy of the decision. The Parties to this case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, this decision becomes final and enforceable

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2020-1750)
Issued in Appeal No. (Z-58075-2021)

Key words:
Zakat Reassessment – Accounts – Accounts Payable – Failure to Submit Required Financial Statements – Rejection of Plaintiff's Objection

Abstract

The Plaintiff seeks to annul the decision of Zakat, Tax, and Customs Authority regarding the zakat reassessment for the year 2018. The Plaintiff limited its objection to the accounts payable item, objecting to Defendant's addition of SAR 2,365,698 to company's zakat base. The Plaintiff claims that this amount represents purchases from commercial suppliers and not loans. The Defendant responded that the amount was added to the zakat base because the Plaintiff failed to provide the required documents. The Department determined that the Plaintiff did not attach the required financial statements or provide detailed account transactions. The Department ruled to: Dismiss Plaintiff's case, and consider the decision as final and enforceable.

Instruments:

- https://ncar.gov.sa/document-details/eyJpdiI6Ik5kTGY1a0M1NVZQNlFYTkt0L1phYnc9PSIsInZhbHVlIjoiMm5PdUhJMGtxY2gwNjd1T2xhdVB1dz09IiwibWFjIjoiZTRlMzY5NGE3MWFkZTcwOGE2ZWI4MzZkZDdjMjY5YTU5NWRlYzFhM2Y2ZTBhOTQyNjI5YjY2OTVjMjZjYTdhMiIsInRhZyI6IiJ9Article (4/First/5) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) dated 07/07/1440 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Saturday, 07/02/1444, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted under Royal Order No. (26760) dated 23/12/1439 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 06/07/2021.

The facts of this Case are summarized as follows: ... holder of Kuwaiti National ID No. (...), In their capacity as manager of the Plaintiff company/ .... Company for Trade and Contracting (C.R. No. ...), under memorandum of association, filed an objection to ZATCA zakat assessment for 2018. focused on the following item: Accounts Payable for

2018: The Plaintiff objects to Defendant's action of adding SAR 2,365,698 to company's zakat base while preparing the zakat assessment. The Plaintiff asserts that this amount represents purchases from commercial suppliers and not loans; it reflects the value of purchases with payments made to suppliers during the year.
Upon presenting the statement of claim to the Defendant, the Defendant responded with a memorandum dated 07/10/2021, stating that ZATCA added SAR 2,706,033 during the reassessment process because the Plaintiff failed to provide the required documents. After reviewing the objection and the attachments submitted during the examination and verifying their consistency with the financial statements, it was determined that employee accounts, VAT balances, and accrued expenses per the financial statements and account activity records had not been subject to hawl (a full lunar year). However, upon reviewing the suppliers' accounts, it was found that the amount subject to hawl for each supplier individually totaled SAR 2,365,698.44. Accordingly, Zakat Payer's objection was partially accepted based on Article 4, Paragraph (5/First) of the Implementing Regulations for Zakat Collection. The Defendant requests that the Department rule to dismiss the claim.
On Saturday, 07/02/1444 AH, the Department held its session remotely to review the case. Upon calling the parties, no representative for the Plaintiff appeared, despite evidence of proper legal notification. Ms. ..., representing the Defendant, Zakat, Tax, and Customs Authority, attended the session under a delegation, a copy of which is included in case file. Having asked Defendant's Representative regarding his reply, he maintained his answers previously contained in his Reply, and requested the Department not to accept any new documents that have not been submitted to Defendant during the examination and objection stage. Having asked Defendant's attorney if she had any other statements, they replied negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.
In Form, since the Plaintiff filed the case to abolish ZATCA's decision regarding Zakat Assessment of 2018 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.
On Merits, having taken cognizance of documents included in case file, requests, defenses, and pleas raised by parties thereto, the Department found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of Zakat Assessment of 2018 AD, which included the following:
First: Accounts Payable:
The Plaintiff objects to Defendant's action of adding SAR 2,365,698 to company's zakat base during the preparation of the zakat assessment. The Plaintiff asserts that this amount represents purchases from commercial suppliers, not loans, and that it reflects the value of purchases with payments made to suppliers during the year. The Defendant argued that the amount was added during the reassessment process due to Plaintiff's failure to provide the required documents. Paragraph (5) of Clause (First) of Article (4) of the Implementing Regulations for Zakat Collection, issued under Ministerial Decision No. (2082) dated 01/06/1438 AH, states: The Zakat base shall comprise all Zakat Payer's funds subject to

Zakat, including: 5. Government and commercial loans, along with other similar financing sources, such as creditors, notes payable and overdrafts owed by Zakat Payer as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Based on the above, and after reviewing the case file and the defenses and documents contained within, the Department finds the following: Regarding Plaintiff's argument that the funds are not owned by the company and therefore are not subject to zakat, the key consideration lies in the essence of the obligation and its resulting liability on the debtor, as the debtor benefits from the funds provided to or retained by them. Accordingly, zakat becomes due on the remaining balance at the end of the hawl (lunar year). For the creditor, the debt represents a rightful claim on their debtor and thus constitutes wealth owned in the debtor's liability. Therefore, the funds are not subject to double zakat. Consequently, any amount subject to hawl must be added to zakat base. Upon reviewing the attached documents, it was found that the Plaintiff did not submit the required financial statements or provide detailed account transactions. As a result, the Department concludes to reject Plaintiff's objection and uphold Defendant's decision.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- Reject the objection of Plaintiff/ ..... Company for Trade and Contracting (TIN. ...)." to Defendant (ZATCA) decision regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Sunday, 06/03/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not challenge the decision.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1677)
Issued in Appeal No. (Z-59200-2021)

Key words:
Zakat Assessment – Accounts – Rejection of Deduction for Real Estate Investment Balances – Real Estate Investments Are Not Fixed Assets – Assets Prepared for Trade – No Sales Transactions During the Year – Changes in Investment Value

Abstract

The Plaintiff seeks to annul the decision of Zakat, Tax, and Customs Authority regarding the zakat assessment for the year 2015, specifically concerning the real estate investments item for 2015. The dispute arises from Plaintiff's objection to Defendant's action of rejecting the deduction of the real estate investment balance, arguing that the intention of the project was to lease the villas and that no sales transactions occurred within the project. The Defendant countered that the item was not deducted from the zakat base because real estate investments are not fixed assets but are instead prepared for trade purposes. The Department found that the Plaintiff engages in leasing activities in addition to sales, as evidenced by the feasibility study for the .... project. Moreover, the investment activity related to the project, as detailed in Defendant's memorandum, shows no sales transactions during the year. Based on the above, it is evident that the changes in the investment values result from several factors, including government expropriation, and not from sales transactions. The Department ruled to: Cancel Defendant decision and Department decision shall be deemed final and enforceable.

Instruments:

- https://ncar.gov.sa/document-details/eyJpdiI6Ik5kTGY1a0M1NVZQNlFYTkt0L1phYnc9PSIsInZhbHVlIjoiMm5PdUhJMGtxY2gwNjd1T2xhdVB1dz09IiwibWFjIjoiZTRlMzY5NGE3MWFkZTcwOGE2ZWI4MzZkZDdjMjY5YTU5NWRlYzFhM2Y2ZTBhOTQyNjI5YjY2OTVjMjZjYTdhMiIsInRhZyI6IiJ9Article (1/4, Second / 2) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) dated 07/07/1440 AH.
- Fatwa No. (22644) dated 9/3/1424 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Tuesday, 03/02/1444, the First Department for Determination of Income Tax Violations and Disputes in Dammam, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, convened its

session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 14/07/2021.

The facts of this Case are summed up that ..., National ID No. (.....) in its capacity as the legal attorney of Plaintiff/ (...), Company Limited, C.R. No. (...), under memorandum of association, filed an objection to ZATCA zakat assessment for 2015 issued by Zakat, Tax, and Customs Authority. Plaintiff's objection is limited to the following item: Real Estate Investments for 2015: The Plaintiff objects to Defendant's action of rejecting the deduction of the real estate investment balance for the ... villas project amounting to SAR 90,566,022. The Plaintiff stated that the intention of the project was to lease the villas, and there were no sales transactions related to the project. The Plaintiff attached the partners' resolution regarding the project, indicating that the sales transactions referenced by the Defendant pertain to land expropriation and not actual sales. Additionally, the Plaintiff clarified that the sales transactions mentioned by the Defendant are related to a different villa project and not the project under dispute. Regarding the investment fund, the Plaintiff argued that it does not understand the basis for Defendant's assumption that the fund is for trading purposes, asserting that no sales transactions occurred on the shares. The Plaintiff further explained that the investment was in a Saudi company registered under the Companies Law and that no regulation issued by ZATCA prohibits the deduction of investments in funds. Accordingly, the Plaintiff requests cancellation of Defendant's action.

In a memorandum dated 29/09/2021, the Defendant responded that ZATCA did not deduct this item from the zakat base because real estate investments are not fixed assets but are instead prepared for trade purposes. After reviewing the movement of the item, the cash flow statement, and the company's activities, the Defendant found evidence of continuous buying and selling of land, indicating that these investments are prepared for trade purposes. Upon examining the disclosures related to real estate investments, ZATCA concluded that they are investments in real estate funds that qualify as trade goods ('Urood al-Tijarah) and, therefore, cannot be deducted from zakat base. The duration of the investment in the fund does not alter this determination, as the key factor is the nature of the investment. The Defendant rejected Plaintiff's objection and maintained the validity of its actions based on Paragraphs (1) and (2) of Article (4) of the Implementing Regulations for Zakat Collection. ZATCA insists on the correctness of its procedure and requests dismissal of the case.

On Tuesday, 03/02/1444 AH, the Department convened its session remotely to review the case. Upon calling the parties, ... appeared as the authorized representative of the Plaintiff company, based on the Articles of Incorporation, a copy of which is included in the case file. Ms. ..., representing the Defendant, Zakat, Tax, and Customs Authority, also attended, based on a delegation, a copy of which is included in case file. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal

Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form, since the Plaintiff filed the case to abolish ZATCA's decision regarding Zakat Assessment of 2015 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On Merits, having taken cognizance of documents included in case file, requests, defenses, and pleas raised by parties thereto, the Department found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of Zakat Assessment of 2015 AD, which included the following:

First: Real Estate Investments for 2015:

The dispute arises from Plaintiff's objection to Defendant's action of rejecting the deduction of the real estate investment balance. The Plaintiff argues that the intention of the project was to lease the villas and that no sales transactions occurred related to the project. The Defendant countered that the item was not deducted from zakat base because real estate investments are not fixed assets but are instead prepared for trade purposes. Paragraph (Second/2) of Article (4) of the Implementing Regulations for Zakat Collection, issued under Ministerial Decision No. (2082) of 1438 AH, states: "The following items shall be deducted from the Zakat Base: 2. Taxpayer's capital constructions under implementation which is established for the purpose of being used for the activity and not for the purpose of being sold." As stated in Fatwa No. (22644) dated 9/3/1424 AH: "What the company purchases in terms of real estate, vehicles, and similar items for the purpose of use and not for trade is not subject to zakat. This applies equally to items for which ownership has been transferred and those for which ownership has not been transferred, as ownership transfer has no bearing on the determination of ownership." For an investment to be considered a long-term investment eligible for deduction from zakat base, two essential conditions must be met: A documented intent from the authorized party clarifying the purpose of the investment and the absence of sales transactions during the year related to those investments.

Upon reviewing the documents attached to case file and the commercial registration, it was found that the business activity involves: "Purchasing land to construct buildings for sale or lease for the benefit of the company, purchasing and owning properties for company's benefit, managing, maintaining, operating, and developing residential and commercial buildings, general construction contracting, and undertaking electrical, mechanical, and general building contracting (construction, repair, demolition, and renovation) of residential and commercial buildings." This indicates that the Plaintiff engages in leasing activities in addition to sales. Furthermore, based on the feasibility study for ... project and the investment activity related to the project, as outlined in Defendant's memorandum, no sales transactions occurred during the year. Based on the above, it is evident that changes in the investment values are due to several factors, including government expropriation, rather than sales transactions. Therefore, the Department concludes to accept Plaintiff's objection and annul Defendant's action.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

- Cancel Defendant/ (ZATCA) decision against Plaintiff/ (...) Company Limited, (TIN ...), related to the real estate investments item for 2015, the year under dispute.

This decision was delivered in presence of the parties. The Department set Thursday, 24/03/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1686)
Issued in Appeal No. (Z-58009-2021)

Key words:
Zakat Assessment – Accounts – Creditors Subject to Hawl – Addition of Creditors Subject to Hawl – Addition of Advance Payments Subject to Hawl – Addition of Partner Current Account – The Burden of Proof Lies with Zakat Payer to Validate the Contents of the Zakat Declaration

Abstract

The Plaintiff seeks annulment of Zakat, Tax, and Customs Authority's decision regarding the zakat assessment for the year 2013, which includes the following items: Item First Creditors Subject to Hawl for 2013 and 2014: The Plaintiff objects to Defendant's action of adding creditors subject to completion of a full lunar year for 2013 and 2014. The Defendant argues that the addition of creditors is based on what is reflected in the financial statements. Item Second: Advance Payments Subject to completion of a full lunar year for 2013 and 2014: The Plaintiff objects to Defendant's action of adding advance payments subject to hawl for 2013 and 2014. The Defendant contends that the addition of advance payments is based on what is reflected in the financial statements. Item Third: Partner Current Account for 2013 and 2014: The Plaintiff objects to Defendant's action of adding the partner current account for 2013 and 2014. The Defendant maintains that the partner current account for the mentioned years is part of zakat base for the Saudi partner, amounting to SAR 842,029 and SAR 151,922, respectively. Regarding the First Item, The Department determined that ZATCA accepted the exclusion of the advance payments account but partially accepted the creditors account. Based on the submitted files, it is evident that there were transactions in the creditors account subject to completion of a full lunar year (hawl). As for Item Second (Suppliers): The Department found that ZATCA partially accepted the exclusion of the advance payments account. However, based on the submitted files, there were transactions in the advance payments account subject to hawl. Regarding the third item: The company is a single-member limited liability company. The Plaintiff did not clearly specify the foreign partner's balance in their objection to the General Secretariat and did not provide the financial statements for the years under dispute. The Department ruled to: Dismiss Plaintiff's case, and consider the decision as final and enforceable.

Instruments:

- https://ncar.gov.sa/document-details/eyJpdiI6Ik5kTGY1a0M1NVZQNlFYTkt0L1phYnc9PSIsInZhbHVlIjoiMm5PdUhJMGtxY2gwNjd1T2xhdVB1dz09IiwibWFjIjoiZTRlMzY5NGE3MWFkZTcwOGE2ZWI4MzZkZDdjMjY5YTU5NWRlYzFhM2Y2ZTBhOTQyNjI5YjY2OTVjM

jZjYTdhMiIsInRhZyI6IiJ9Article (4/First/2, 3, 5) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) dated 07/07/1440 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Wednesday, 11/02/1444, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 06/07/2021.

The facts of this Case are summed up that ..., Resident Permit No. ..., in his capacity as the legal attorney of Plaintiff Company/ ... Company for Manufacturing and Furniture, (Commercial Register No. …), submitted its objection to the tax assessment for the year 2013, issued by ZATCA. The objection is focused on the following items: Item First Creditors Subject to Hawl for 2013 and 2014: The Plaintiff objects to Defendant's action of adding creditors subject to completion of a full lunar year (hawl) for the years 2013 and 2014. The Plaintiff clarified that it had attached statements of creditors showing the opening balance, the amounts settled from the opening balance, amounts added during the year, amounts settled during the year, and the final balance. These statements demonstrate the carried-over balances that were subject to hawl. Item Second: Advance Payments Subject to completion of a full lunar year for 2013 and 2014: The Plaintiff objects to Defendant's action of adding advance payments subject to hawl for the years 2013 and 2014. The Plaintiff clarified that it had attached statements of advance payments showing the opening balance, the amounts settled from the opening balance, amounts added during the year, amounts settled during the year, and the final balance. These statements demonstrate the carried-over balances that were subject to hawl. Item Third: Partner Current Account for 2013 and 2014: The Plaintiff objects to Defendant's action of adding partners' current account item for the years 2013 and 2014. The Plaintiff clarified that a balance of SAR 842,029 and SAR 151,922 was added to partners' current account, which belongs to the foreign partner and is not subject to Zakat.

Upon presenting the case memorandum to the Defendant, it responded in a memo stating that regarding the objection to the "Creditors' Liabilities" and "Advance Payments" items for the years 2013 and 2014: The Defendant stated that the assessment for 2013 and 2014 included the addition of creditors' liabilities and advance payments items as shown in the financial statements, by adding the lower of the opening or closing balance since it had been due for Zakat after completion of a full lunar year. and SAR 758,438 for advance payments. Upon reviewing the objection, Zakat Payer submitted the movement of creditor accounts for 2013 and 2014, which matched the financial statements. The balances of accounts subject to Zakat after reviewing the detailed account statement were SAR 36,685 for creditors' liabilities in 2013 and SAR 2,536,893 for advance payments in 2013. For 2014, the total balance subject to Zakat was SAR 127,977 for creditors' liabilities and SAR 758,438 for advance payments. The submitted account movements (creditors' liabilities + advance payments) for 2013 and 2014 confirmed the accuracy of the amounts subject to Zakat as mentioned in Zakat Payer's objection for 2013, with the amounts for 2014 calculated accordingly. Therefore, a partial adjustment to the creditor items was made based on Article (4), Paragraph (5). Accordingly, partial acceptance and adjustment were made according to the above-mentioned due balances, subject to formal acceptance. Regarding what Zakat Payer stated in the case memorandum, it contradicts the legal

provision mentioned above and the clarified reasons, confirming the validity of ZATCA's procedure in rejecting Zakat Payer's objection. ZATCA reaffirms the correctness and legality of its actions. Regarding the objection to the partners' current account for 2013 and 2014: ZATCA explained that Zakat Payer demanded the exclusion of the partners' current account from the Zakat base for the Saudi partner for 2013 and 2014, amounting to SAR 842,029 and SAR 151,922, respectively, claiming it belongs to the foreign partner. Upon reviewing the Zakat/tax assessment for 2013 and 2014, it was found that the partners' current account for those years was included in the Zakat base for the Saudi partner, amounting to SAR 842,029 and SAR 151,922, respectively. Zakat was calculated only on the Saudi partner's share of 30%, based on Article (4/First) Paragraph (2) of the Zakat Regulations issued in 1438 AH. This confirms the correctness of ZATCA's action and the rejection of Zakat Payer's objection. Zakat Payer's claim that this balance belongs to the foreign partner and is not subject to Zakat is legally incorrect, as clarified by ZATCA above. Additionally, the argument presented in the case lacks any legal basis or valid evidence, further confirming the correctness and validity of ZATCA's procedures.

On Wednesday 11/02/1444 AH, the Department held its session remotely to consider the case. Neither the Plaintiff nor his attorney appeared, despite being duly notified of the date of session. For the Defendant, Ms. .....appeared in her capacity as Defendant (ZATCA)'s attorney by virtue of an authorization, a copy of which is included in the case file. When Defendant's attorney was asked about Plaintiff's claim, she responded by affirming what was stated in the Defendant's reply memorandum and rejecting the acceptance of any new documents that were not submitted to the Defendant during the examination and objection phase. Having asked Defendant's attorney if she had any other statements, they replied negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the case to abolish Defendant's decision regarding ZATCA's Zakat Assessment of 2013 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On merits, upon Department's review of the documents and evidence contained in the case file, as well as the requests, defenses, and arguments presented by the parties, it became evident to the Department that the dispute centers on Defendant's issuance of the tax assessment for 2013, specifically concerning the objection related to the following items:

Item First Creditors Subject to Hawl for 2013 and 2014:

The Plaintiff objects to Defendant's action of adding creditors subject to completion of a full lunar year for 2013 and 2014. The Defendant argues that the addition of creditors is based on what is reflected in the financial statements. Paragraph (2) of Article (4) of the Implementing Regulations for Zakat issued by Ministerial Decision No. (2216) dated 07/07/1440 AH states: "The Zakat base for a taxpayer who keeps commercial records consists of all their assets subject to Zakat collection, including the following: ... 2.

Revenues and advance payments to Zakat Payer at the beginning or end of the Zakat year, whichever is less".

According to the above, it is evident that the Plaintiff submitted to ZATCA a detailed account statement for the creditors' liabilities item, which shows the opening balances and the movements during the year. Based on its review of the financial statements and the detailed account statements,

ZATCA stated that it partially accepted the objection and determined that the total balance subject to Zakat was SAR 758,438. This amount was added to the Zakat base and pertains to the two years under dispute. Upon reviewing the creditors' liabilities statement, it becomes clear that ZATCA accepted the exclusion of the advance payments account but partially accepted the creditors' liabilities account. Based on the submitted files, it is evident that there were movements in the creditors' liabilities account that were subject to Zakat. Consequently, the Department concludes to reject the Plaintiff's objection regarding this item.

Item Second: Advance Payments Subject to completion of a full lunar year for 2013 and 2014:

The Plaintiff objects to Defendant's action of adding advance payments subject to hawl for 2013 and 2014. The Defendant contends that the addition of advance payments is based on what is reflected in the financial statements. Paragraph (2) of Article (4) of the Implementing Regulations for Zakat issued by Ministerial Decision No. (2216) dated 07/07/1440 AH states: "The Zakat base for a taxpayer who keeps commercial records consists of all their assets subject to Zakat collection, including the following: ... 2. Revenues and advance payments to Zakat Payer at the beginning or end of the Zakat year, whichever is less".

According to the above, the Plaintiff submitted to ZATCA a detailed account statement for the advance payments item, showing the opening balances and the movements during the year. Based on its review of the financial statements and the detailed account statements, ZATCA stated that it accepted the objection regarding the advance payments account. It determined that the total balance subject to Zakat was SAR 758,438, which was added to the Zakat base and pertains to the two years under dispute. Upon reviewing the advance payments statement, it becomes clear that ZATCA partially accepted the exclusion of the advance payments account. Based on the submitted files, it is evident that there were movements in the advance payments account that were subject to Zakat. Consequently, the Department concludes to reject the Plaintiff's objection regarding this item.

Item Third: Partner Current Account for 2013 and 2014:

The plaintiff objects to the defendant's action of adding the partners' current item for the years 2013 and 2014, while the defendant found that the partners' current account for those years was included in the Zakat base for the Saudi partner, amounting to SAR 842,029 and SAR 151,922, respectively. Zakat was calculated only on the Saudi partner's share of 30%, based on Article (4/First) Paragraph (2) of the Zakat Regulations. Paragraph (3) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) dated 07/07/1440 AH states: "Debts owed by Zakat Payer, classified as long-term and equivalent components of the Zakat base, such as: Government financing, Commercial financing, Creditors, Notes payable, Overdraft accounts and Loans from owners or partners (including their current accounts), shall be subject to the following considerations: a. If the debts owed by Zakat Payer or other sources of financing have a term of three hundred and fifty-four (354) days or more, overlapping the Zakat year and the following year, they shall be added to the Zakat base for each year in proportion to the number of days in each Zakat year. b. The Zakat year for debts shall not be interrupted by their renewal or rescheduling with the same creditor, or by substituting such debts with other debts or financing sources that fund what these debts were financing. c.

The total amount added as stated in this paragraph shall not exceed the total deductions from the Zakat base in accordance with Article (5) of the Regulations." Additionally, Paragraph (3) of Article (20) states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it"

According to the above, and upon reviewing case file, it is evident that the Plaintiff did not submit the financial statements or provide the movements in the detailed partners' current account statement. The Plaintiff is requesting the exclusion of the balance of the partners' current account. However, upon reviewing the articles of incorporation, it is apparent that the company is a single-member limited liability company. The Plaintiff did not clearly specify the foreign partner's balance in its objection submitted to the Secretariat and did not provide the financial statements for the two years under dispute. As a result, the Department concludes to reject Plaintiff's objection regarding this item.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

- Dismiss the objection of the Plaintiff/ ... Factory Company TIN No. (...) to Defendant/ (ZATCA)'s decision regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of Parties. The Department has set Monday 30/02/1444 AH for receiving and a copy of the decision. The Parties to this case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, this decision becomes final and enforceable

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1690)
Issued in Appeal No. (Z-60644-2021)

Key words:
Zakat Assessment – Accounts – Depreciation Differences – Depreciation Calculation using the Straight-Line Method – Principle of Non-Retroactivity of Laws – Net Fixed Assets and Similar Items – Failure to Submit Fixed Assets and Depreciation Statement.

Abstract

The Plaintiff is requesting annulment of Zakat, Tax, and Customs Authority's decision regarding the Zakat assessment for the year 2015. The objection is based on two items, the first being: Depreciation Differences: The Plaintiff objects to Defendant's action regarding the depreciation differences for the year 2015. The Defendant, however, considers the depreciation to be calculated using the straight-line method, as the Plaintiff had used the declining balance method for its calculations. Item Second: Net Fixed Assets and Similar Items and Other Deductions: The Plaintiff objects to Defendant's action of not providing the Plaintiff with the details of how it calculated the deductions, in order to understand the adjustments made by ZATCA to verify the accuracy of the fixed assets deductions in the contested assessment. The Defendant, on the other hand, considers the fixed assets deductions to have been made in accordance with the approved financial statements. Regarding the first item: It has been established that since Zakat Collection Regulations were issued after the Plaintiff submitted the disputed declarations, and based on the principle of non-retroactivity of laws, the regulations and laws are not applied retroactively unless otherwise stated. Therefore, the Department concludes to annul the Defendant's decision on this item. Item Second: As ZATCA failed to provide a statement of fixed assets and their depreciation prepared by it, this implies: Cancel Defendant decision and Department decision shall be deemed final and enforceable.

Instruments:

- Article (17) of the Income Tax Law issued by Royal Dehttps://laws.boe.gov.sa/BoeLaws/Laws/LawDetails/23576008-1ce4-4685-ac3e-a9a700f2cb02/1cree No. (M/1) dated 15/01/1425 AH
- Article (7/2) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2216) dated 07/07/1440 AH.
- Paragraph (2) of Zakat and Income Authority Circular No. (1724/9) dated 24/03/1427 AH.
- Circular No. (2574/9) dated 14/05/1426 AH.
- Circular No. (3299/16/1434) dated 26/05/1434 AH.
- Circular No. (2988/16/1436) dated 29/04/1436 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Wednesday, 11/02/1444, the First Department for Determination of Income Tax Violations and Disputes in Dammam, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 17/07/2021.

The facts of this Case are summed up that ..., National ID No. (.....) in his capacity as the legal representative of Plaintiff ..... Company, Limited (Commercial Register No. …), submitted its objection to the tax assessment for the year 2015, issued by ZATCA. The objection is focused on the following item: Depreciation Differences: The Plaintiff objects to the Defendant's action regarding the depreciation differences for the year 2015. In its memorandum, the Plaintiff indicated that the net book profit for the year was adjusted by adding an amount of SAR 617,109.75 (depreciation differences) under item No. (11002) in the Zakat declaration submitted to the Defendant. This amount was electronically calculated according to ZATCA's system after completing the fixed assets statement, a procedure the Plaintiff followed when submitting its financial statements and Zakat declaration to ZATCA for the year ending December 31, 2015. However, when ZATCA prepared the contested Zakat assessment, it removed this difference from the adjustment of the net book profit under item No. (11016) labeled as "Others," with the same amount (-SAR 617,109.75) but recorded as a negative value. Through this action, ZATCA's accountant nullified the impact of the depreciation differences on the net book profit for the year. Furthermore, ZATCA's Circular No. (2574/9) dated (14/05/1426H) confirmed the application of this procedure (the depreciation method) for Zakat payers. Additionally, ZATCA's Circular No. (1724/9) dated (24/03/1427H) reaffirmed the previous circular and specified the method for calculating fixed assets to be deducted from the Zakat base as follows: "The remaining value of the asset group at the end of the year as determined by paragraphs (A–E) of Article Seventeen of the Tax Regulations, plus the deferred 50% of the value of assets added during the year, minus the deferred 50% of compensation for assets disposed of during the year." Item Second: Net Fixed Assets and Similar Items and Other Deductions: The Plaintiff objects to Defendant's action regarding the Net Fixed Assets and Similar Items and the Other Deductions item. An amount of SAR 46,463,255.75 was deducted from the contested Zakat base as adjusted net fixed assets and similar items. Although this amount was deducted from the Zakat base as adjusted fixed assets and similar items, the Plaintiff objects to this action and demands the application of ZATCA's circulars and regulations as follows: Item No. (12001), titled "Net Fixed Assets and Similar Items," was calculated at SAR 57,082,210.75 electronically in the Zakat declaration submitted to ZATCA, according to ZATCA's system after completing the fixed assets statement. This procedure was followed by the Plaintiff when submitting its financial statements and Zakat declaration to ZATCA for the year ending December 31, 2015. However, when ZATCA prepared the contested Zakat assessment, it deducted part of this item under Item No. (12005), titled "Other Deductions," amounting to SAR 10,618,955, resulting in a final deducted amount of SAR 46,463,255.75 as net fixed assets and similar items from the Zakat base. Through this action, ZATCA's accountant reduced the net fixed assets and similar items to this amount. Moreover, ZATCA's Circular No. (2574/9) dated 14/05/1426H confirmed the application of this procedure (the depreciation method) for Zakat payers. Additionally, ZATCA's Circular No. (1724/9)

dated 24/03/1427H reaffirmed the previous circular and specified the method for calculating the fixed assets deductible from the Zakat base as follows: "The remaining value of the asset group at the end of the year, as determined by paragraphs (A–E) of Article (Seventeen) of the Tax Regulations, plus 50% of the deferred value of assets added during the year, minus 50% of the deferred compensation for assets disposed of during the year." Upon presenting the case memorandum to the Defendant, the Defendant responded with a memo stating the following regarding the Depreciation Differences item: The Defendant explained that during the assessment, depreciation was calculated using the straight-line method because the Plaintiff had used the declining balance method, which the Plaintiff confirmed in their statement dated May 24, 2021, where they clarified their perspective. Upon reviewing the relevant circulars, it was noted that Circular No. 3299/16/1434 dated 26/05/1434H allows Zakat payers to follow the depreciation method according to Article (17) of the Income Tax Law. Additionally, Circular No. 2988/16/1436 dated 29/04/1436H emphasized the necessity of consistency in the depreciation method used in declarations, granting Zakat Payer the right to choose the method. However, the Plaintiff, in their submitted calculation, did not account for the remaining book value of the assets as per their 2014 declaration. Instead, they calculated the net book value of the assets based on the 2014 financial statements. Accordingly, this item was rejected. Regarding the item of Net Fixed Assets and Similar Items and the Other Deductions item: The Defendant stated that during the assessment, fixed assets were deducted in accordance with the approved financial statements. Upon reviewing the relevant circulars, Circular No. 3299/16/1434 dated 26/05/1434H allows Zakat payers to follow the depreciation method according to Article (17) of the Income Tax Law. Circular No. 2988/16/1436 dated 29/04/1436H also emphasized the need for consistency in the method used in Zakat Payer's declarations, thereby granting Zakat Payer the right to choose. However, the Plaintiff, in their submitted calculation, did not account for the remaining book value of the assets as stated in their 2014 declaration, but rather calculated the net book value of the assets based on the 2014 financial statements. As a result, this item was rejected.

On Wednesday, 11/02/1444 AH, the Department held its session remotely to consider the case. the Department convened its session remotely to review the case. Present were Mr. ..., acting as attorney the Plaintiff company, based on the AOA, a copy of which is attached to the case file. ..... also attended as the attorney of the Defendant/ Zakat, Tax, and Customs Authority, based on an authorization letter, a copy of which is attached to case file. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the case to abolish Defendant's decision regarding Zakat Assessment of 2015 AD, and since this dispute is a Zakat dispute, it then falls within the

jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form. On merits, upon Department's review of the documents and evidence contained in the case file, as well as the requests, defenses, and arguments presented by the parties, it became evident that the dispute centers on Defendant's issuance of the tax assessment for 2015, specifically concerning the objection related to the following items:

Item First Depreciation Differences:

The Plaintiff objects to Defendant's action regarding the depreciation differences for the year 2015. The Defendant, however, considers the depreciation to be calculated using the straight-line method, as the Plaintiff had used the declining balance method for its calculations. Paragraph (2) of Circular No. (1724/9) issued by Zakat, Tax and Customs Authority on 24/03/1427 AH states: "Since the approach followed by the Authority in calculating the zakat base involves deducting the net total value of fixed assets from the base to determine the zakat amount due from Zakat Payer in compliance with Sharia provisions, the net book value of fixed assets to be deducted from the zakat base is determined as follows: (The remaining group value at the end of the year, as determined under Paragraphs (a–e) of Article 17 of the Tax Law, plus 50% of the deferred value of assets added during the year, minus 50% of the deferred value of compensations for assets disposed of during the year)". Based on Paragraph (2) of Article (7) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, which states that: "Fixed assets shall be depreciated according to the straight-line method and their depreciation ratio shall be as follows: ...".

Based on all of the above, it is evident that the aforementioned circular obligated Zakat Payers to adhere to the depreciation method outlined in Article (17) of the Tax Law. Fixed assets are calculated in accordance with the provisions stated in ZATCA's Circular No. 1724/9, as referenced above. Upon reviewing Plaintiff's declaration, it is clear that they applied the depreciation method stipulated in Article (17) of the Tax Law and calculated the deductible fixed assets from the base in accordance with the aforementioned circulars. Since the defendant relied on Paragraph (2) of Article (7) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) dated 01/06/1438 AH (February 28, 2017), and given that Zakat Collection Regulations were issued after the Plaintiff submitted the declarations under dispute, and based on the principle of "non-retroactivity of laws," regulations and laws are not applied retroactively unless explicitly stated otherwise. Therefore, the Department concludes to cancel Defendant's decision on this item.

Item Second: Net Fixed Assets and Similar Items and Other Deductions:

The Plaintiff objects to Defendant's action of not providing the Plaintiff with the calculation details necessary to understand the adjustments made by ZATCA and to verify the accuracy of the fixed assets deductions in the contested assessment. Meanwhile, the Defendant maintains that the fixed assets were deducted according to the approved financial statements. Based on the above and upon reviewing ZATCA's memorandum, it appears that ZATCA correctly applied the depreciation method but failed to provide the calculation details and the reasons for adjusting the Plaintiff's calculations. Since the burden of proof in this case lies with ZATCA to demonstrate the inaccuracy of the Plaintiff's fixed assets calculation—and given that ZATCA did not provide the statement of fixed assets and their depreciation prepared by it—the Department concludes to annul the Defendant's decision regarding this item.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

- Cancel Defendant (ZATCA)'s decision against Plaintiff (...) Company (TIN ...), related to the assessments subject matter of this case.

This decision was delivered in presence of Parties. The Department has set Monday 30/02/1444 AH for receiving and a copy of the decision. The Parties to this case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, this decision becomes final and enforceable

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1691)
Issued in Appeal No. (Z-57472-2021)

Key words:
Zakat Assessment – Accounts – Subjecting the Salary and Wage Differences Between the Social Insurance Statement and the Declared Amounts – Burden of Proof for the Accuracy of the Zakat Declaration Lies with Zakat Payer – Declared Expense in the Declaration is Unsubstantiated.

Abstract

The Plaintiff requests annulment of the decision issued by the Zakat, Tax, and Customs Authority regarding the 2019 Zakat assessment, specifically concerning the following item: Salaries and Wages: The Plaintiff objects to Defendant's action of subjecting the difference in salaries and wages between the Social Insurance Statement and what was declared in its Zakat declaration. The Defendant, however, argues for rejecting Zakat Payer's objection because the expense declared in the Zakat declaration was not supported by documents or evidence to verify its accuracy. The Department established that the Plaintiff did not provide a reconciliation for the difference between the salaries and wages recorded in the accounts and those reported in the Social Insurance Certificate. Additionally, the Plaintiff failed to submit supporting documents for its claim, such as the approved labor regulations by the Minister of Labor and employee contracts explaining the reasons for these discrepancies and proving that they represent actual expenses related to the business activity. As a result, the Department concludes to reject Plaintiff's objection regarding this item. The Department ruled to: Dismiss Plaintiff's case, and consider the decision as final and enforceable.

Instruments:

- Articles (5/1), (6/2), and (20/3) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) of 07/07/1438 AH

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Wednesday, 11/02/1444, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 03/07/2021.

The facts of this case are summed up in that Mr..... National ID No. (.....) in his capacity as the legal representative of Plaintiff ..... Company, for Advertising and Marketing (Commercial Registration No. ...), has submitted an objection to the 2019 Zakat assessment issued by Zakat, Tax, and Customs Authority, specifically concerning the following item: Salaries and Wages: The Plaintiff objects to Defendant's action of subjecting the difference in salaries and wages between the Social Insurance Statement and what was declared in its Zakat declaration. The Plaintiff indicated that during the assessment, the Defendant added the difference in salaries and wages by querying Zakat Payer's data and comparing the declared amounts in the Zakat declaration with the Social Insurance data. The difference of SAR 1,293,770 was added to the adjusted profit. The declared amount in the Zakat declaration was SAR 1,636,170, while the amount reported in the Social Insurance was SAR 342,400. Additionally, in its case memorandum, the Plaintiff included the salaries item it declared, with the total amount mentioned above, which consists of salaries and wages amounting to SAR 1,038,726 and other expenses such as rent, government fees and subscriptions, travel tickets, hospitality, etc., totaling SAR 597,444. The Plaintiff also noted in its case memorandum that a monthly amount of SAR 150,000 is paid to the Chairman of the Board, which is not registered in the Social Insurance records.

Having presented the statement of claim to the Defendant, it responded with a memorandum that addressed the matter of the Salaries and Wages item: It was mentioned that on 5/5/2021, Zakat Payer was requested to provide a detailed breakdown of salaries and wages according to the financial statements, a sample of five employee employment contracts, the approved labor regulations, and supporting documents explaining the reasons for the discrepancies between the financial statements and the Social Insurance records. Zakat Payer submitted the requested documents, except for the approved labor regulations. It was found that the employment contracts provided were dated after the year under objection (2021). During a phone discussion with Zakat Payer on June 8, 2021, Zakat Payer stated that there were no employee contracts for the year 2019 and that the company had rectified its status in 2021. Zakat Payer also mentioned in his letter, included in the additional information, that one of the reasons for the discrepancies was the salary of the retired company manager, which was not registered in the Social Insurance. In light of the above review, the objection was rejected because the expense declared in the Zakat declaration was not supported by documents or evidence to verify its accuracy. Therefore, Zakat Payer's objection was denied.

On Wednesday, 11/02/1444 AH, the Department held its session remotely to consider the case. the Department convened its session remotely to review the case. Present were Mr. ..., acting as attorney the Plaintiff company, based on the AOA, a copy of which is attached to the case file. ..... also attended as the attorney of the Defendant/ Zakat, Tax, and Customs Authority, based on an authorization letter, a copy of which is attached to case file. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal

Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form, since the Plaintiff filed the case to abolish ZATCA's decision regarding Zakat Assessment of 2019 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Department found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of Zakat Assessment of 2019 AD, which included the following: Salaries and Wages: The Plaintiff objects to Defendant's action of subjecting the difference in salaries and wages between the Social Insurance Statement and what was declared in its Zakat declaration. Meanwhile, the Defendant maintains the rejection of Zakat Payer's objection, arguing that the expense declared in the declaration was not supported by documents or evidence to verify its accuracy. Since Paragraph (1), Article (5) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH provides that: "All regular and necessary expenses required for the activity, whether paid or due, shall be deducted up to the net result of the activity, provided that the following controls are met: a. Expenses should be actual expenses as supported by relevant documents and other evidential matter to enable the Authority to verify the accuracy of expenses, even if related to prior years. b. Expenses should be related to Zakat Payer's business activity rather than personal expenses or other than Zakat Payer's own activities. c. Expenses shall not be of capital nature. Where a capital expenditure is included in the expenses such expenditure shall be adjusted against the result of activity, added to fixed assets and accordingly depreciated as applicable". In addition, Paragraph (2) of Article (6) of the same Regulations states: "Expenses that Zakat Payer fails to prove by supporting documents or other evidential matter acceptable to ZATCA may not be deducted."; and Paragraph (3) of Article (20), which stipulates: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with Zakat Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, the Authority may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at Authority's discretion in view of the surrounding circumstances, facts and information available with the Authority".

According to the above, the General Organization for Social Insurance (GOSI) certificate is considered one of the key pieces of evidence issued by a third party and is used to verify the fairness of the salaries, wages, and similar items recorded in the accounts. Since the dispute between both parties is a documentary one, and upon reviewing the documents attached to the case file, it is evident that the Plaintiff did not provide a reconciliation for the difference between the salaries and wages recorded in the accounts and those reported in the Social Insurance Certificate. Additionally, the Plaintiff did not submit supporting documents for its position, such as the approved labor regulations by the Minister of Labor or the employee contracts explaining the reasons for these discrepancies and confirming that they represent actual expenses related to the company's activities. As a result, the Department concludes to reject the Plaintiff's objection regarding this item.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- Reject the objection of Plaintiff/ ... Company for Advertising and Marketing (TIN ...). to Defendant/ (ZATCA)'s decision regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of Parties. The Department has set Monday 30/02/1444 AH for receiving and a copy of the decision. The Parties to this case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, this decision becomes final and enforceable

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1737)
Issued in Appeal No. (Z-57359-2021)

Key words:
Zakat Assessment – Accounts – Difference in Foreign Purchases – Adjustment of Foreign Purchases Difference to the Annual Net Profit – Difference in End-of-Service Provision Balance – Burden of Proof for the Accuracy of the Declaration Lies with Zakat Payer – Reject the Objection.

Abstract

The Plaintiff requests the annulment of the decision issued by the Zakat, Tax, and Customs Authority regarding the 2019 Zakat assessment, which involves two items, detailed as follows: First: Foreign Purchases Difference for 2019: This pertains to adjustment of the foreign purchases difference to the net profit for the disputed year. The Plaintiff claims that there was no section in the Zakat declaration to include these expenses. However, the Defendant argued that it adjusted the net profit by the foreign purchases difference based on the data submitted by the Plaintiff. Second: Item of Difference in End-of-Service Provision Balance: The Plaintiff argues that no balances were created during the year and that the amounts in question are carried over from previous years. In contrast, the Defendant asserts that it added this item to the Zakat base based on the statement of financial position in the financial statements. The Department established regarding the first item that the Plaintiff submitted a trial balance, but it is insufficient to support its position. Additionally, the Plaintiff did not provide supporting documents or evidence proving the disbursement of these expenses. This confirms the correctness of Defendant's action in adjusting the Plaintiff's operating results by these differences, leading the Department to reject Plaintiff's objection. Second: It is evident that the Plaintiff acknowledged that the provision was carried over from previous years, meaning it had completed its Zakat cycle. Therefore, the Department concludes to reject the Plaintiff's objection. The Department ruled to: Dismiss Plaintiff's case, and consider the decision as final and enforceable.

Instruments:

- Article (55) and (56) of the Law of Civil Procedures promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH
- Articles (4/6), (9/7), (10), and (18) and The Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) dated 07/07/1440 AH.
- Article (20/1) of Tax Dispute and Violation Committee Procedures issued under Royal Decree No. (26040) dated 21/04/1441 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Wednesday, 26/01/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 01/07/2021.

The facts of this Case are summed up in that (...), holder of National ID No. (...), in his capacity as the legal attorney of the company based on the AOA attached to case file, submitted an objection on behalf of ... Company for Commercial Investment (Commercial Registration No. ...) against the 2019 Zakat assessment issued by Zakat, Tax, and Customs Authority, concerning two items: First Item: The Foreign Purchases Difference for 2019. Second Item: The Difference in the End-of-Service Provision Balance.

Upon presenting the case memorandum to the Defendant, it responded with a reply memo stating that the claims are limited to two items: First Item: Regarding the Foreign Purchases Difference for 2019, ZATCA added this item to the Zakat base for the disputed year based on the data provided by the Plaintiff. Second Item: Regarding the Difference in the End-of-Service Provision Balance, ZATCA clarified that it added this item to the Zakat base for the disputed year based on the statement of financial position in the financial statements, due to the Plaintiff's failure to include the provision in its Zakat declaration. Therefore, ZATCA requested the rejection of the case while reserving its right to provide further responses and clarifications before the committees.

On Wednesday, 26/01/1444 AH, the Department held its session remotely to consider the case. Neither the Plaintiff nor his attorney appeared, despite being duly notified of the date of session. For the Defendant, Mr. .....appeared in his capacity as Defendant (ZATCA)'s attorney by virtue of an authorization, a copy of which is included in the case file. Having asked Defendant's Attorney regarding his reply, he maintained his answers previously contained in his Reply, and requested the Department not to accept any new documents that have not been submitted to Defendant during the examination and objection stage. Having asked Defendant's attorney if he had any other statements, he replied negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form, since the Plaintiff filed the case to abolish ZATCA's decision regarding Zakat Assessment of 2019 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Department found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of Zakat Assessment of 2019 AD. The dispute focuses on two items, outlined as follows:

First: Foreign Purchases Difference for 2019:
The dispute arises from Plaintiff's objection to Defendant's adjustment of the foreign purchases difference amounting to SAR 21,669,564 to the net profit for the year under dispute. The Plaintiff contends that this item does not pertain solely to the value of purchase invoices from abroad but also includes customs duties paid, port fees, shipping agent fees, customs fines, customs clearance fees, and other operating expenses that are part of the cost of goods. The Plaintiff argues that there is no section in the Zakat declaration to include these expenses. Conversely, the Defendant maintains that it adjusted the net profit by the foreign purchases difference based on the data provided by the Plaintiff. Article (9), Paragraph (7) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2216) dated 07/07/1440 AH, states: "The following expenses may not be deducted: (7) Import difference – resulting from comparing the value of imports declared in Zakat Payer's submitted declaration with the value stated in the General Authority of Customs' records, after deducting imports added to fixed assets during the Zakat year – shall be treated as follows: A. a. If the value of Zakat Payer's imports stated in the declaration is greater than the value recorded in the customs statement, the entire difference shall be added to the net profit. B. b. If the value of Zakat Payer's imports stated in the declaration is less than the value recorded in the customs statement, a profit shall be calculated for this difference according to procedures determined by the Authority, provided it is not less than the ratio of the gross profit in the declaration to the business revenues, and the business results shall be adjusted accordingly. Additionally, Article (18) of the Implementing Regulations for Zakat Collection, issued by the Minister of Finance under Decision No. (2216) dated 07/07/1440 AH, states: "Without prejudice to the provisions of Article (10) of the Regulations, every taxpayer must keep, within the Kingdom and in the Arabic language, the necessary commercial records to accurately determine the Zakat base, along with maintaining documents that verify their accuracy and the data and explanations that support them. The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, the Authority may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at Authority's discretion in view of the surrounding circumstances, facts and information available with the Authority". Based on the above, and since the Import Statement issued by the General Authority of Customs serves as essential evidence from a neutral third party, and after reviewing the case file and its arguments and documents, it is evident that ZATCA's action to adjust Plaintiff's operating results was due to discrepancies between the import values reported in Plaintiff's declaration and the imports recorded in the customs statement. Additionally, the Plaintiff acknowledged the actual import value of SAR 77,937,301 but claimed that the import differences represented operating expenses that were added to the cost of goods sold due to the absence of a specific section for these expenses, except under "Other Expenses." Upon reviewing the documents attached to the case file, it is clear that the Plaintiff submitted a trial balance, which is insufficient to support its position. Furthermore, the Plaintiff did not provide supporting documents or evidence proving the disbursement of those expenses. Accordingly, ZATCA's action in adjusting Plaintiff's operating results based on these differences is deemed correct. Therefore, the Department concludes to reject Plaintiff's objection.

Second: Item of Difference in End-of-Service Provision Balance:
The dispute arises from Plaintiff's objection to the addition of the Employee Benefits Provision Balance to Zakat base for the disputed year. The Plaintiff argues that no new balances were created during the year and that the amount consists of balances carried over from previous years. In contrast, the Defendant asserts that it added this item to the Zakat

base for the disputed year based on the statement of financial position in the financial statements because the Plaintiff did not include it in its Zakat declaration. Paragraph (6) of Article (4) of the Implementing Regulations for Zakat Collection, issued by Minister of Finance under Decision No. (2216) dated 07/07/1440 AH, states: "The Zakat base for a taxpayer who keeps commercial records consists of all their assets subject to Zakat collection, including the following: 9. "Provisions at the beginning of the year (excluding doubtful debt provisions for banks) after deducting those utilized during the year." Based on the provisions of Article (18) of the Implementing Regulations for Zakat Collection, issued under Minister of Finance's Decision No. (2216) dated 07/07/1440 AH, which states as follows: "Without prejudice to the provisions of Article (10) of the Regulations, every taxpayer must keep, within the Kingdom and in the Arabic language, the necessary commercial records to accurately determine the Zakat base, along with maintaining documents that verify their accuracy and the data and explanations that support them. The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, the Authority may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at Authority's discretion in view of the surrounding circumstances, facts and information available with the Authority". Based on the above, and since the dispute over this item concerns the principle of adding the End-of-Service Provision Balance to the Zakat base, and upon reviewing the case file and the arguments and documents it contains, it is clear that the Plaintiff acknowledged that the provision was carried over from previous years, meaning it had completed its Zakat cycle. Accordingly, the Department concludes to reject Plaintiff's objection.

As for failure of Plaintiff's attorney to attend the hearing despite of being duly notified and Department's decision in the Case subject matter of consideration in absentia without an excuse acceptable to the Department, the Department relied on Paragraph (1) of Article (20) of Tax Dispute and Violation Committee Procedures that states: "If a Plaintiff fails to attend any hearing after being notified of the date set for consideration of the suit without an excuse acceptable to the Department, the Department must decide the suit if it is ripe for judgment". In addition, the decision rendered in this case shall be deemed as if rendered in presence of Plaintiff in accordance with Article (56) of the Law of Civil Procedures that states: "If the Plaintiff fails to attend the court hearings, in accordance with Article 55 of this Law, the Defendant may petition the court to rule on the merits of the case. The court shall rule on the case if it is ripe for judgment and such judgment shall be deemed as if rendered in the presence of the Plaintiff". Since Plaintiff did not submit an acceptable excuse for failure to attend the session, and that the Department has deemed that the Case is ripe for adjudication according to Case documents. Therefore, the Department renders its decision in the Case as if in presence of Plaintiff.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

Reject the objection of Plaintiff/ ... Company for Commercial Investment (TIN No. .....) to Defendant/ (ZATCA)'s decision regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Sunday, 20/03/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not challenge the decision.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1738)
Issued in Appeal No. (Z-58495-2021)

Key words:
Zakat Assessment – Accounts – Failure to State Reasons for Adjustment – External Financing Sources – Long-Term Murabaha and Other Creditors – Provision for Doubtful Debts – Annul Defendant's Decision.

Abstract

The Plaintiff requests annulment of the decision issued by Zakat, Tax, and Customs Authority regarding the 2019 Zakat assessment, which consists of four items: First Item: Failure to state the reasons for the adjustment. Second Item: External financing sources (additional financing). Item Third: Long-term Murabaha and other creditors. Item Fourth: Provision for doubtful debts, due to the absence of any stated reasons for the adjustment of the contested assessment. ZATCA responded that it added the closing balance due to the Plaintiff's failure to provide any supporting documents. Regarding the second item (Long-term Murabaha and other creditors), the Defendant explained that it reviewed the documents submitted by the Plaintiff and found that the amounts had completed their Zakat cycle, thus the item was added to the Zakat base. Regarding the third item (Provision for doubtful debts), the Defendant clarified that after reviewing the movement of the provision, it found an existing provision at the end of the year after excluding the utilized and transferred amounts, in addition to the existence of a provision for doubtful debts. Legal texts indicate that if a case is filed by a party with standing and within the legally prescribed period, the case must be accepted procedurally. The Department determined that since the assessment did not include the reasons for the adjustment, which would have allowed the Plaintiff to submit a justified objection, ZATCA's assessment contained a procedural defect, rendering it invalid as a proper administrative decision. Accordingly, the Department ruled to: annul Defendant's decision. Since the Department concluded to annul Defendant's decision regarding the first item, and given that the remaining items are related and follow the same ruling, the Department also ruled to annul Defendant's decision for all items of the contested assessment. The Department ruled to: Cancel Defendant decision and Department decision shall be deemed final and enforceable.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Sunday, 23/01/1444, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case.

Since the Case fulfilled the established regulatory requirements, it was lodged with General Secretariat of Tax Committees on 09/07/2022 AD.
The facts of this case are summed up as follows: .... National ID No. (.....) in his capacity as the legal attorney of the Plaintiff company based on the commercial registration attached to the case file, submitted an objection on behalf of ... Company Ltd. (Commercial Registration No. ...) against the 2019 Zakat assessment issued by Zakat, Tax, and Customs Authority, which consists of four items: First Item: Failure to state the reasons for the adjustment. Second Item: External financing sources (additional financing). Item Third: Long-term Murabaha and other creditors. Item Fourth: Provision for Doubtful Debts.
Upon presenting the case memorandum to the Defendant, the Defendant responded with a reply memo stating that the claims in the case are limited to three items. First item: External Financing Sources (Additional Financing):
The Defendant explained that it added the closing balance due to the Plaintiff's failure to provide any supporting documents. Second Item: Long-term Murabaha and Other Creditors:
The Defendant clarified that it reviewed the documents submitted by the Plaintiff and found that the amounts had completed their full lunar year, and thus, the items were added to the Zakat base. Third Item: Provision for Doubtful Debts: The Defendant explained that after reviewing the movement of the provision, it was found that a provision amounting to SAR 496,466 existed at the end of the year after excluding the utilized and transferred amounts. Additionally, a provision for doubtful debts amounting to SAR 302,391 was identified for other debit balances and prepaid expenses. Consequently, the net book profit was adjusted. Therefore, ZATCA requested the rejection of the case while reserving its right to submit further responses and clarifications before the committees.
On Sunday, corresponding to 23/01/1444 AH, the Department held its session remotely to review the case. .... attended as Plaintiff's attorney based on a power of attorney, a copy of which is attached to the case file. .... also attended as attorney of the Defendant/ Zakat, Tax, and Customs Authority, based on an authorization letter, a copy of which is attached to case file. when Plaintiff's attorney was asked about their claim, they responded that it aligns with the contents of the statement of claim previously submitted to the General Secretariat of Tax Committees. Having referred to Defendant's representative for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.
In Form: Since Plaintiff filed the case to abolish Defendant's decision regarding Zakat Assessment of 2019 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On Merits: Having examined the papers and documents contained in case file, as well as the requests, defenses and pleas made by its parties, the Department found that the Plaintiff objects to the zakat assessment made by the Defendant for the year 2019AD, specifically in respect of four items, namely:

First: Item of Failure to State Reasons for the Adjustment:

The dispute arises from Plaintiff's objection to the Defendant's action of not providing any reasons for the adjustment of the contested assessment. Defendant's memorandum did not include a response regarding this item. After the Department reviewed the contents of the case file, particularly concerning the Zakat assessment for the disputed year, and upon reviewing the assessment letter issued by ZATCA, it was found that the letter did not fulfill its formal requirements as prescribed by regulations. Since the assessment did not include the reasons for the adjustment, which would have enabled the Plaintiff to submit a well-founded objection, the Department concluded that ZATCA's assessment contained a procedural defect, thereby stripping it of the status of a valid administrative decision. Accordingly, the Department ruled to: annul the Defendant's decision. Since the Department decided to annul Defendant's decision regarding the first item, and given that related items follow the same ruling, the Department also ruled to annul the Defendant's decision for all items of the contested assessment.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- Annul decision of the Defendant/ Zakat, Tax, and Customs Authority, against the Plaintiff/ ... Company Ltd. (TIN ...), regarding the decision to amend the assessment in dispute.

This decision was delivered in presence of the parties. The Department set Wednesday, 02/03/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1914)
Issued in Appeal No. (Z-53202-2021)

Key words:
Zakat Assessment – Accounts – Zakat Dispute – Statute of Limitations Item – Difference in Provisions Charged to the Zakat Base – Credit Balances – Deduction of Other Non-Current Assets – Annulment of Defendant's Decision.

Abstract

The Plaintiff requested annulment of the decision issued by Zakat, Tax, and Customs Authority regarding his objection to the 2013 Zakat assessment. The Plaintiff based his objection on four items: First: Statute of Limitations, Second Item: Difference in Provisions Charged to the Zakat Base – Specifically, the difference in the Employee Savings Plan usage. Third Item: Credit Balances, Fourth Item: Deduction of Other Non-Current Assets – Employee Housing Ownership Program the Plaintiff based its objection regarding the first item on the following grounds: With the expiration of the statute of limitations period, which is five years from the end date of the deadline for submitting the declaration, ZATCA is not entitled to make the assessment. Since the assessment was issued after five years, it is considered invalid due to exceeding the statute of limitations. Second Item: Employees' contributions to the savings plan should not be added to the adjusted profit and the Zakat base. Third Item: The company attached a schedule that includes the credit balances after comparing the beginning and ending balances of the period. Fourth Item: The company did not accept the deduction for the Employee Housing Ownership Program because these assets, at the end of the period, were prepared for employees and represent trading goods, making them ineligible for deduction. ZATCA responded regarding the first item: ZATCA stated that there were Zakat treatments in the Plaintiff's declaration that did not align with the provisions of the Zakat Collection Regulations. Therefore, the declaration contained incorrect information. If it is proven that the Plaintiff's declaration includes incorrect information, ZATCA has the right to conduct or amend the assessment without being bound by any specific time limit. The Department established regarding the first item: The amendments made by the Plaintiff resulted either from an error in applying the Zakat regulations or from a difference in opinion regarding the Zakat calculation. The right to conduct a Zakat assessment without being bound by a specific time frame is subject to certain conditions and situations that permit the assessment beyond the statute of limitations, including cases where the declaration contains incorrect information. However, if the incorrect information in the Plaintiff's declaration stems from an error in applying the Zakat regulations or from differing views on Zakat calculation, as in this case, ZATCA's right to conduct the assessment expires after five years from the end of the prescribed deadline. Moreover, the Defendant did not provide any valid evidence to support its claim that the Plaintiff's declaration contained incorrect information that would justify issuing the Zakat assessment without being bound

by the time limit. Accordingly, the Department must accept Plaintiff's objection and cancel Defendant's action regarding the statute of limitations for the year 2013. Regarding the second, third, and fourth items: The Department found that the remaining disputed items are related to the same year under the statute of limitations. Therefore, after accepting the Plaintiff's objection on the first item, the Department must also accept the Plaintiff's objections concerning the remaining items. Cancel Defendant's decision regarding the assessment in question, and the decision is considered final and enforceable.

Instruments:

- Articles (21/8)،(8/ 21/ C), and (21/10) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) of 01/06/1438 AH

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Thursday, 05/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted under Royal Order No. (26760) dated 23/12/1439 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 03/06/2021.

The events of this case are summarized as follows: Mr. (…) (National ID No. …), acting as the legal attorney of the Plaintiff (…) (Commercial Registration No. …) under Power of Attorney No. (…), submitted an objection to the Zakat assessment for the year 2013 issued by the Zakat, Tax, and Customs Authority. This objection covered five items: Statute of Limitations, Second Item: Difference in Provisions Charged to the Zakat Base – Difference in the opening balance of the employee savings plan. Third Item: Difference in Provisions Charged to the Zakat Base – Difference in the utilization of the employee savings plan. Fourth Item: Credit Balances. Fifth Item: Deduction of Other Non-Current Assets – Employee Housing Ownership Program.

Upon presenting the case to the Defendant, ZATCA responded with a reply memorandum dated 01/09/2021, stating that the case concerns four items. First Item: Statute of Limitations: ZATCA noted that the Plaintiff's Zakat declaration contained treatments inconsistent with the Zakat Collection Regulations issued in 1438 AH. Thus, the declaration included incorrect information, which, according to paragraph (8-c) of Article 21 of the Zakat Collection Regulations (Ministerial Resolution No. 2082 dated 01/06/1438 AH), grants ZATCA the right to amend the declaration. The regulation explicitly states that if the declaration includes incorrect information that affects its validity, ZATCA may conduct or modify the assessment without being bound by a specific time frame. This was evident in ZATCA's amendments, as the Plaintiff's filings were improperly prepared and did not comply with regulatory instructions. ZATCA argued that this justified their right to amend the declarations post-submission. Since the Plaintiff failed to prove the accuracy of the disputed items, ZATCA presented material evidence supporting the validity of its actions. Regarding Item Second: Difference in Provisions Charged to the Zakat Base – Opening Balance of the Employee Savings Plan:
ZATCA held a hearing with the Plaintiff on 27/04/2021 to discuss this item. The Plaintiff argued that employee contributions to the savings plan should not be included in the adjusted profit and the Zakat base. Item Third: Credit Balances, ZATCA added credit balances as outlined in the attached table, comparing the opening and closing balances and

including the lesser amount due to the absence of an analysis showing the opening balance, movements, and the ending balance. Fourth Item: Deduction of Other Non-Current Assets – Employee Housing Ownership Program: ZATCA rejected the deduction for the Employee Housing Ownership Program because the assets were prepared for employees at the end of the period and are considered trading goods, thus making them ineligible for deduction.

On Thursday, 05/02/1444 AH, the Department convened its session remotely to review the case. Upon calling the parties, ... appeared as the authorized attorney of the Plaintiff, based on an authorization, a copy of which is included in the case file. Ms. ..., representing the Defendant, Zakat, Tax, and Customs Authority, also attended, based on a delegation, a copy of which is included in case file. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. In response, Defendant's attorney reaffirmed ZATCA's defense and rejected any new documents not presented during the examination and objection phases. She also stated that ZATCA submitted several decisions issued by the First Appellate Department for Income Tax Violations and Disputes to the General Secretariat. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since the Plaintiff filed the case to abolish Defendant's decision regarding Zakat Assessment of 2013 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On Merits: Having examined the papers and documents contained in case file, as well as the requests, defenses and pleas made by its parties, the Department found that the Plaintiff objects to the zakat assessment made by the Defendant for the year 2013 AD, specifically in respect of four items, namely:

First: Statute of Limitations for the Year 2013: The dispute revolves around the Plaintiff's objection to the Defendant's action of conducting the Zakat assessment for the year 2013. The Plaintiff argued that, according to Article (21) of the Zakat Regulations, ZATCA is not entitled to conduct the assessment after the expiration of the statute of limitations, which is five years from the end date of the deadline for submitting the declaration. Since the assessment was issued after 20/04/2019, it is considered invalid due to exceeding the statute of limitations. In contrast, the Defendant argued that the Plaintiff's Zakat declaration contained treatments inconsistent with the provisions of the Zakat Collection Regulations issued in 1438 AH. Therefore, the declaration included incorrect information, which alone justifies ZATCA's right to amend the declaration. This argument is based on paragraph (8-c) of Article 21 of the Zakat Collection Regulations issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH. The regulation clearly states that if it is determined that the Plaintiff's declaration contains incorrect information that affects the accuracy of the declaration, the Authority has the right to conduct or amend the assessment at any time without being bound by any period for Zakat assessments. Paragraph (8) of

Article (21) of the Implementing Regulations for Zakat Collection, issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH, explicitly states: "The Authority has the right to conduct or amend the assessment at any time without being bound by a time limit in the following cases:" A. The zakat payer agrees in writing to conduct or amend the assessment; B. The zakat payer did not provide his declaration; or "c. if the error was discovered by the Authority or by the regulatory authorities". Paragraph (10) of Article (21) also states: "10- The Authority may correct errors in the application of the system and regulations within five years from the end of the deadline for submitting the Zakat declaration for the Zakat year, based on Zakat Payer's request or if the error is discovered by ZATCA or regulatory bodies." Based on the above, ZATCA's claim of its right to conduct the Zakat assessment without being bound by a specific period—citing that the Implementing Regulations for Zakat Collection permit this action—cannot be accepted in absolute terms. This right is restricted by specific conditions and circumstances under which the Zakat assessment can be conducted without a time limit, including what is stated in paragraph (8/c) of Article (21) of the Zakat Collection Regulations. This paragraph grants ZATCA the right to conduct or amend the Zakat assessment without a time limit only if the declaration contains incorrect information. However, if Plaintiff's declaration is incorrect due to an error in applying Zakat instructions or due to differences in opinions regarding Zakat treatment, ZATCA's right to conduct the assessment expires after five years from the end of the deadline for submitting the Zakat declaration, as stipulated in paragraph (10) of Article (21) of the Zakat Collection Regulations. ZATCA's claim that Plaintiff's declaration is incorrect merely because it amended fundamental items affecting the assessment is insufficient. ZATCA did not present any credible material evidence proving that the Plaintiff's declaration contained incorrect information, which would justify issuing the Zakat assessment without being bound by the time limit. The amendments made were either due to an error in applying Zakat instructions or due to differing views on the calculation of Zakat between both parties. In either case, ZATCA had the right to conduct the Zakat assessment within five years from the end of the deadline for submitting the Zakat declaration, according to paragraph (10) of Article (21) of the Zakat Collection Regulations. Therefore, paragraph (8) of Article (21) does not apply to the Plaintiff's situation. Simply stating that certain items in the Zakat declaration were amended does not necessarily imply that the declaration contained incorrect information. Since ZATCA did not notify the Plaintiff of the Zakat assessment for the disputed years until after five years had passed from the end of the deadline for submitting the Zakat declarations for those years—and given that the Defendant did not present any valid evidence supporting its claim that the Plaintiff's declaration contained incorrect information—applying paragraph (10) of Article (21) of the Zakat Collection Regulations requires the Department to accept the Plaintiff's objection and cancel the Defendant's action regarding the statute of limitations for the year 2013.

Second: Difference in Provisions Charged to the Zakat Base – Difference in the Opening Balance of the Employee Savings Plan. Third: Difference in Provisions Charged to the Zakat Base – Difference in the Utilized Amount of the Employee Savings Plan. Fourth: Credit Balances. Fifth: Deduction of Other Non-Current Assets – Employee Housing Ownership Program. Since the Department concluded in the first item to accept the Plaintiff's objection, it must also accept the Plaintiff's objection regarding the remaining disputed items.

Decision:

- Abolish Defendant's (ZATCA) decision against Plaintiff (....., TIN No. .....) regarding the Zakat Assessment in question.

- This decision was delivered in presence of the parties. The Department set Thursday, 17/03/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(The judgment has become final for expiration of the period prescribed for challenging it based on Paragraph (3) of Article 33 of the Rules of Procedure for Zakat, Tax, and Customs Committees).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1925)
Issued in Appeal No. (Z-58183-2021)

Key words:
Zakat Assessment – Accounts – Addition of Salary and Wages Differences – Failure to Verify Eligibility for Bonuses and Allowances – Objection Rejected.

Abstract

The Plaintiff's Request to Cancel the Zakat, Tax, and Customs Authority's Decision Regarding the Zakat Assessment for the Year 2015: The Plaintiff based its objection to Defendant's action of adding the salary and wage difference amounting to SAR 11,586,726 to the net profit on the grounds that the details of this difference are as follows: Overtime payments: SAR 7,081,256, Transportation allowances: SAR 2,708,392. Travel expenses: SAR 262,153
Employee bonuses: SAR 298,653 and Meal allowances: SAR 1,154,400. The Defendant argued that its decision was consistent with the provisions of Zakat Collection Regulations. The Department found that the Plaintiff failed to provide employee contracts to verify eligibility for the disputed bonuses and allowances. Additionally, the Plaintiff did not submit an internal bonuses policy approved by the Minister of Labor or documents proving that these bonuses were paid to employees. Accordingly, the Department must reject Plaintiff's objection. The Department ruled to: Dismiss Plaintiff's case, and consider the decision as final and enforceable.

Instruments:

- Article (55) and (56) of the Law of Civil Procedures promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH
- Articles (5), (6/2), and (20/3) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) of 07/07/1444 AH
- Article (20/1) of Tax Dispute and Violation Committee Procedures issued under Royal Decree No. (26040) dated 21/04/1441 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Saturday, 07/02/1444, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted under Royal Order No. (26760) dated 23/12/1439 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled

the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 07/07/2021.
The facts of this case are summed up so as... National ID No. (.....) in his capacity as the attorney for the Plaintiff/.....Company, C.R. No. (...), Under the power of attorney issued by the Eastern Province Chamber of Commerce and Industry (Asharqia Chamber) under No. (…), Dated 05/11/1442 AH, filed an objection to the zakat assessment issued by ZATCA for 2015.
Upon presenting the case to the Defendant, ZATCA responded that it had added the salary difference of SAR 11,586,726 to the net profit. This was based on a comparison between the salaries and wages recorded in the financial statements, totaling SAR 34,745,397, and the amount reported in the Social Insurance Certificate, totaling SAR 23,158,670, in accordance with Article (5) of the Zakat Collection Regulations issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH. Accordingly, the Defendant requested the rejection of the case while reserving its right to submit additional responses and clarifications before the closing of the pleadings.
On Sunday 08/02/1444 AH, the Department held its session remotely to hear the case. At that session, no one appeared for the Plaintiff despite being duly notified of the date of session. For the Defendant appeared Ms.…....., ..., holder of National ID No. (...), In her capacity as the representative of the Defendant, the Zakat, Tax, and Customs Authority, pursuant to an authorization issued by the Deputy Governor of ZATCA for Legal Affairs with No. (...), dated 18/10/1443 AH. Having asked the Defendant's representative about the Plaintiff's claims, she maintained the statements contained in the Defendant's plea and requested that no documents that were not submitted during the inspection and objection period be accepted. Having asked Defendant's attorney if she had any other statements, they replied negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.
In Form: Since Plaintiff filed the case to abolish Defendant's decision regarding Zakat Assessment of 2015 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.
Upon reviewing the documents and evidence contained in the case file, as well as the requests, defenses, and arguments presented by both parties, the Department found that the dispute centers on the Plaintiff's objection to the Defendant's action of adding the salary and wage difference amounting to SAR 11,586,726 to the net profit. The Plaintiff stated that the details of this difference are as follows: Overtime payments: SAR 7,081,256, Transportation allowances: SAR 2,708,392, Travel expenses: SAR 262,153, Employee bonuses: SAR 298,653 and Meal allowances: SAR 1,154,400. In contrast, the Defendant argued that its decision was consistent with the provisions of the Zakat Collection Regulations.
Moreover, Paragraph (2) of Article (6) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH states:

"Expenses that the Zakat Payer fails to prove by supporting documents or other evidential matter acceptable to the Authority". Paragraph (3) of Article (20) thereof states: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, the Authority may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at Authority's discretion in view of the surrounding circumstances, facts and information available with the Authority".

Based on the foregoing, and after the Department reviewed the information provided by both parties, it was found that the Plaintiff did not submit employee contracts to verify eligibility for the disputed bonuses and allowances. Additionally, the Plaintiff did not provide the internal bonus policy approved by the Minister of Labor or documents proving the payment of bonuses to employees. Accordingly, the Department must reject Plaintiff's objection.

As for the absence of the Plaintiff and his attorney from the hearing despite being duly notified, and based on Paragraph (1) of Article (20) of the Tax Dispute and Violation Committee Procedures, which stipulates that: "If a Plaintiff fails to attend any hearing after being notified of the date set for consideration of the suit without an excuse acceptable to the Department, the Department must decide the suit if it is ripe for judgment". Furthermore, Article 56 of the Law of Civil Procedures provides that: "In the cases provided for in Article 55 of this Law, if the Defendant attends the hearing from which the Plaintiff is absent, he may petition the court not to dismiss the case and to render a decision on its merits; in which case, the court shall rule on such case and the judgment shall be considered in absentia with respect to the Plaintiff"; and since the Plaintiff's attorney did not submit an acceptable excuse for absence from the session; and since the Department determined that the case is ripe for adjudication, it therefore delivers its decision in this case as in presence of the Plaintiff.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- Reject the objection of Plaintiff/ ... Company TIN No. (...) to Defendant/ (ZATCA)'s decision regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of Parties. The Department has set the date of (Thursday, 02/04/1444 AH) as the date for receipt of the decision copy. Parties hereto may request to appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision. In the event that objection is not submitted within this period, it shall become final and enforceable after expiration hereof.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1928)
Issued in Appeal No. (Z-58157-2021)

Key words:
Zakat Assessment – Accounts – Treating Partner Loans as Capital in Subsidiaries – Failure to Fully Deduct Loans Leads to Double Zakat – Plaintiff's Objection Rejected.

Abstract

The Plaintiff requested the cancellation of the decision issued by the Zakat, Tax, and Customs Authority regarding the Zakat assessment for the years 2017 and 2018 due to the treatment of partner loans as capital in subsidiary companies, thereby making them subject to Zakat. As a result, the failure to fully deduct these loans from the Zakat base of the lending or investing company leads to double Zakat on the amount granted to the invested companies. The Defendant stated that it partially accepted the Plaintiff's objection to avoid double Zakat. The Department confirmed the validity of the Defendant's action in deducting related party debts within the ownership percentage in the subsidiary company, which is 15%. Accordingly, the Department must reject Plaintiff's objection. The Department ruled to: Dismiss Plaintiff's case, and consider the decision as final and enforceable.

Instruments:

- Articles (55) and (56) of the Law of Civil Procedure promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH
- https://ncar.gov.sa/document-details/eyJpdiI6Ik5kTGY1a0M1NVZQNlFYTkt0L1phYnc9PSIsInZhbHVlIjoiMm5PdUhJMGtxY2gwNjd1T2xhdVB1dz09IiwibWFjIjoiZTRlMzY5NGE3MWFkZTcwOGE2ZWI4MzZkZDdjMjY5YTU5NWRlYzFhM2Y2ZTBhOTQyNjI5YjY2OTVjMjZjYTdhMiIsInRhZyI6IiJ9Article (4/First/4/A of Clause Second) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) dated 07/07/1440 AH.
- Article (20/1) of Tax Dispute and Violation Committee Procedures issued under Royal Decree No. (26040) dated 21/04/1441 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Sunday, 08/02/1444, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted under Royal Order No. (26760) dated 23/12/1439 AH, convened its session remotely via

audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 07/07/2021.

The facts of this Case are summed up that ..., National ID No. (.....) in his capacity as the attorney for the Plaintiff/.....Company, Limited, C.R. No. (...), Under the power of attorney issued by the notary/ ... No. (...), dated .../11/1442, filed an objection to ZATCA zakat assessment for 2017 and 2018.

Upon presenting the case to the Defendant, ZATCA responded that it did not accept the deduction of the related party debts item for loans amounting to SAR 51,452,747 for the year 2017 and SAR 50,872,189 for the year 2018. However, the deduction was partially accepted within the ownership percentage in ... Company Holding Ltd. and ... Company Investment Ltd., to avoid double Zakat. It was found that the investment share in these companies represented 15%. Accordingly, the Defendant requested the rejection of the case while reserving its right to submit further responses and clarifications before the closing of the pleadings.

On Sunday 08/02/1444 AH, the Department held its session remotely to hear the case. At that session, no one appeared for the Plaintiff despite being duly notified of the date of session. For the Defendant appeared Ms.…....., ..., holder of National ID No. (...), In her capacity as the representative of the Defendant, the Zakat, Tax, and Customs Authority, pursuant to an authorization issued by the Deputy Governor of ZATCA for Legal Affairs with No. (...), Dated .../10/1443 AH. Having asked Defendant's attorney about the Plaintiff's claims, she maintained the statements contained in the Defendant's plea and requested that no documents that were not submitted during the inspection and objection period be accepted. Having asked Defendant's attorney if she had any other statements, they replied negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the Case to abolish Defendant (ZATCA)'s decision regarding Zakat Assessment of 2017 and 2018 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On merits, upon reviewing the documents and evidence contained in the case file, as well as the requests, defenses, and arguments presented by both parties, the Department found that the dispute centers on the Plaintiff's claim that partner loans are treated as capital in subsidiary companies and are therefore subject to Zakat. Consequently, the failure to fully deduct these loans from the Zakat base of the lending or investing company leads to double Zakat on the amount granted to the invested companies. In contrast, the Defendant stated that it partially accepted the Plaintiff's objection for ... Saudi Holding Ltd. and ... Investment Ltd. to avoid duplication of Zakat. It was determined that the investment share in these companies represents 15%. This action was based on Paragraph (4/a) of Clause (Second) of Article (4) of the Implementing Regulations for Zakat Collection, issued by

Ministerial Decision No. (2082) dated 01/06/1438 AH, which states: "The following items shall be deducted from the Zakat Base: -4 (A): Investments in an entity within the Kingdom in partnership with other parties if those investments are subject to zakat according to these Regulations; otherwise, these investments shall not be deducted from the tax base". Based on the foregoing, and after the Department reviewed the information provided by both parties, it was found that the Plaintiff did not submit supporting documents for its claim.

The disputed amounts represent a loan (advance) granted to the subsidiary company. Therefore, the correct Zakat treatment requires subjecting the subsidiary company to Zakat based on its declarations submitted to the Defendant. Additionally, loans and advances granted to a subsidiary that submits its own declarations require specific Zakat treatment to avoid double Zakat. A portion of the loan and advance (according to the investment percentage) does not constitute lending to another party. Consequently, the Plaintiff (the lender) has the right to deduct part of the loans and advances provided to the subsidiary from its Zakat base, equal to its investment share in the subsidiary that received the loan. Since the Department confirmed the validity of Defendant's action in deducting related party debts within the ownership percentage in the subsidiary at 15%, the Department must reject Plaintiff's objection.

As for the absence of the Plaintiff and his attorney from the hearing despite being duly notified, and based on Paragraph (1), Article (20) of Tax Dispute and Violation Committee Procedures, which stipulates that: "If a Plaintiff fails to attend any hearing after being notified of the date set for consideration of the suit without an excuse acceptable to the Department, the Department must decide the suit if it is ripe for judgment". Furthermore, Article 56 of the Law of Civil Procedures provides that: "In the cases provided for in Article 55 of this Law, if the Defendant attends the hearing from which the Plaintiff is absent, he may petition the court not to dismiss the case and to render a decision on its merits; in which case, the court shall rule on such case and the judgment shall be considered in absentia with respect to the Plaintiff"; and since the Plaintiff's attorney did not submit an acceptable excuse for absence from the session; and since the Department determined that the case is ripe for adjudication, it therefore delivers its decision in this case as in presence of the Plaintiff.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- Reject the objection of Plaintiff/ ... Company (TIN ...), to Defendant/ (ZATCA)'s decision regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of Parties. The Department has set the date of (Thursday, 02/04/1444 AH) as the date for receipt of the decision copy. Parties hereto may request to appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision. In the event that objection is not submitted within this period, it shall become final and enforceable after expiration hereof.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1931)
Issued in Appeal No. (Z-58812-2021)

Key words:
Zakat Assessment – Accounts – Deduction of Related Party Debts – The Burden of Proving the Accuracy of Zakat Payer's Zakat Declaration Lies with Zakat Payer.

Abstract

The Plaintiff requested cancellation of Zakat, Tax, and Customs Authority's decision regarding the Zakat assessment for the year 2015. The Plaintiff limited its objection to Defendant's action of deducting related party debts amounting to SAR 744,795,511 instead of SAR 856,801,007. The Plaintiff argued that the balance of the disputed item consists of assets that were returned to the shareholder ...., as part of the company's capital increase, which the shareholder was unable to transfer ownership of or transfer usage rights to the company. Additionally, ... Saudi Holding Company, which is considered a related party due to the former board member and one of the shareholders of the aforementioned company being a major partner and board member in .... Company Holding, was involved. The Defendant argued that its action was in accordance with the provisions of the Zakat Collection Regulations. The Department determined that the Plaintiff failed to provide proof of the shareholders' ownership of their contributed shares due to difficulties in transferring them to the company. Furthermore, the Plaintiff did not prove the shareholders' ownership of the contributed shares. The deduction of related party debts for shareholders should correspond to their share in the retained earnings. The Department ruled to: Dismiss Plaintiff's case, and consider the decision as final and enforceable.

Instruments:

- Article (4/ Paragraph 5/Second, (20/ 3) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) dated 07/07/1438 AH

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Thursday, 12/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 12/07/2021 AD.

The facts of this case are summed up so as Prince ....., holder of ID No. ..., in his capacity as attorney of Plaintiff (... Company), C.R. No. ..., filed an objection to the zakat assessment for the year 2015 issued by ZATCA. Upon presenting the case to the Defendant, the Defendant responded that it deducted the related party debts item amounting to SAR 744,795,511 for the year 2015 after rejecting the deduction of the item differences totaling SAR 112,005,496. The debtor item in the financial statements and its disclosures, totaling SAR 856,801,007, represents claims and transactions between the company and its shareholders, as well as some affiliated entities, due to financial debts owed by the shareholders to the company in exchange for increasing their capital shares to SAR 2 billion, as reflected in the financial statements. ZATCA accepted the shareholders' contributions and rejected the remaining amounts, totaling SAR 744,795,511. The Defendant based its action on Article (4) of the Zakat Collection Regulations. Since there were no retained earnings during the year, as indicated in the article, ZATCA accepted the deduction of amounts related to the shareholder ... and ... Saudi Company, considering that the partner ... is a major shareholder in the company. This acceptance was based on additional information provided through email communications with the company, which convinced ZATCA to accept the financial obligations of the mentioned shareholder. However, the remaining amounts related to other shareholders directly linked to their contributed shares were rejected.

After reviewing the objection and referring to Zakat Payer's 2015 financial statements, and based on the auditor's reservations, it was revealed that there was a failure to prove the transfer of ownership of shareholders' in-kind and cash shares to the company and the absence of confirmations for outstanding balances. Additionally, there were judicial rulings issued against company's shareholders. Accordingly, the Defendant requested rejection of the case while reserving its right to submit further responses and clarifications before the closing of the pleadings.

On Thursday 12/02/1444 AH, the Department held its session remotely to consider the case. For the Plaintiff attended Mr....., National ID No. (.....) in his capacity as Plaintiff's attorney under power of attorney No. (…), Dated .../12/1443 AH, issued by Notary/ .... Additionally, ..., ..., holder of National ID No. (...), In her capacity as the representative of the Defendant, the Zakat, Tax, and Customs Authority, pursuant to an authorization issued by the Deputy Governor of ZATCA for Legal Affairs with No. (...), Dated .../10/1443 AH. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the case to abolish Defendant's decision regarding Zakat Assessment of 2015 AD, and since this dispute is a Zakat dispute, it then falls within the

jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.
On merits, upon reviewing the documents and evidence contained in the case file, as well as the requests, defenses, and arguments presented by both parties, the Department found that the dispute centers on the Plaintiff's objection to the Defendant's action of deducting related party debts amounting to SAR 744,795,511 instead of SAR 856,801,007. The Plaintiff based this objection on the claim that the balance of the disputed item consists of assets that were returned to the shareholder ... as part of company's capital increase, which the shareholder was unable to transfer ownership of or transfer usage rights to the company. Additionally, ...Saudi Holding Company is considered a related party since the former board member and one of the shareholders mentioned above is a major partner and a board member in ... Holding Company. The Plaintiff also indicated that a case was filed regarding the balance of SAR 48,667,456, and certain debts related to fixed assets owned by some shareholders were not deducted from the Zakat base, amounting to SAR 161,918,053, in addition to land purchased for the company valued at SAR 19,558,389. In contrast, the Defendant argued that its action was consistent with the provisions of Zakat Collection Regulations.
In accordance with Paragraph (5/Second) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH that states: "The following items shall be deducted from the Zakat Base: 5. Owners'/partners' current account debit balance subject to Zakat, up to a maximum of their share in the carried forward profits." As stated in Paragraph (3) of Article (20) thereof: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it"
Based on the foregoing, and after the Department reviewed the data submitted by both parties, it was found that the Defendant deducted the shareholder (...)'s debt balance amounting to SAR 694,882,954 and the shareholder ... Saudi Holding Company's balance amounting to SAR 48,667,456, along with an additional difference of SAR 1,245,101 related to the increase in partners' share contributions. However, the Defendant did not deduct the share of Prince ... amounting to SAR 19,558,389, nor the debts related to fixed assets owned by some shareholders from Zakat base, totaling SAR 161,918,053. Since the Plaintiff failed to provide proof of the shareholders' ownership of their in-kind contributions due to difficulties in transferring them to the company and did not prove the shareholders' ownership of the contributed shares—and considering that the deduction of shareholders' debt balances must correspond to their share in retained earnings—the Department must reject Plaintiff's objection.
Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- Dismiss objection filed by Plaintiff (... Company), TIN No. (...) to Defendant/ (ZATCA)'s decision regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of Parties. The Department has set the date of (Thursday, 02/04/1444 AH) as the date for receipt of the decision copy. Parties hereto may request to appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision. In the event that objection is not submitted within this period, it shall become final and enforceable after expiration hereof.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1932)
Issued in Appeal No. (Z-58481-2021)

Key words:
Zakat Assessment – Accounts – Calculation of the Zakat Base Based on VAT Sales and Purchases – Adjustment of the Assessment Based on Sales Reported in VAT Declarations.

Abstract

The Plaintiff requested the cancellation of the decision issued by the Zakat, Tax, and Customs Authority regarding the Zakat assessment for the year 1440 AH. The Defendant argued that its decision was consistent with the provisions of the Zakat Collection Regulations. The Department confirmed that the Defendant (ZATCA) adjusted the assessment based on the sales recorded in the VAT declarations. Accordingly, the Department must reject Plaintiff's objection. The Department ruled to: Dismiss Plaintiff's case - the decision shall be final and enforceable.

Instruments:

- Articles (55) and (56) of the Law of Civil Procedures promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH
- Article (13/6/b) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) dated 07/07/1440 AH.
- Article (20/1) of Tax Dispute and Violation Committee Procedures issued under Royal Decree No. (26040) dated 21/04/1441 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Thursday, 12/02/1444, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted under Royal Order No. (26760) dated 23/12/1439 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 09/07/2021.

The facts of this Case are summed up in that Plaintiff (...), National ID No. (.....) Being owner of ... Trading Company, C.R. No. ..., filed an objection to the zakat assessment for the year 1440 AH issued by ZATCA.

Having presented the statement of claim to Defendant, Defendant answered that its decision aligns with provisions of Article (13) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) dated 01/06/1438 AH. Since

the Zakat base was calculated based on the value of VAT sales and purchases, the Defendant requests a ruling to dismiss the case, while reserving its right to submit further responses and clarifications before the closing of the pleadings.
On Thursday 12/08/1444 AH, the Department held its session remotely to consider the Case. However, Plaintiff or their attorney did not attend, despite proper legal notification, while Ms. ....., holder of National ID No. ....., appeared in her capacity as Defendant's ZATCA) Representative, by virtue of Authorization issued by Deputy Governor for Legal Affairs under No. (...) dated .../10/1443 AH. Having asked Defendant's Representative regarding his reply, he maintained his answers previously contained in his Reply, and requested the Department not to accept any new documents that have not been submitted to Defendant during the examination and objection stage. Having asked Defendant's attorney if she had any other statements, they replied negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.
In Form: Since Plaintiff filed the case to abolish Defendant's decision regarding Zakat Assessment of 1440 AH, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.
On merits, upon reviewing the documents and evidence contained in the case file, as well as the requests, defenses, and arguments presented by both parties, the Department found that the dispute centers on the Plaintiff's objection to the estimated Zakat assessment for the year 1440 AH issued by the Defendant. In contrast, the Defendant argued that its decision was in accordance with the provisions of Zakat Collection Regulations, based on Paragraph (6) of Article (13) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, which states: "6. Estimate zakat base consists of the following unless Zakat Payer's declaration shows a larger base: a. Working capital, which shall be determined by any available method, whether from the commercial register, company contracts and bylaws, or any other supporting document. If it appears that the actual working capital differs, ZATCA shall determine it in a manner consistent with the size of the activity and the number of capital cycles according to the custom in each industry, trade, or business". b. The net profits realized during the year, which are estimated at a minimum of 15% of the total revenue"
Based on the foregoing, since the Plaintiff falls under the categories subject to the Zakat Calculation Rules for Estimated Zakat Payers, the Defendant has the right to collect information and calculate Zakat using the estimated method in accordance with Paragraph (6/b) of Article (13) of Zakat Collection Regulations, which states that the profit estimation for the Plaintiff's activity is set at 15%. In the absence of accurate information reflecting the actual scale of the Plaintiff's operations, the Defendant has the right to conduct or reassess the Zakat estimation if data or information arises that reflects the true scope of the Plaintiff's activity. This includes relying on the sales reported in the VAT declarations. Upon reviewing the case file, the Department confirmed that the Defendant had adjusted

the assessment based on the sales recorded in the VAT declarations. Accordingly, the Department must reject Plaintiff's objection.

As for the absence of the Plaintiff and his representative from the hearing despite being duly served a notice, where Paragraph (1), Article (20) of the Tax Dispute and Violation Committee Procedures provides that: "If a Plaintiff fails to attend any hearing after being notified of the date set for consideration of the suit without an excuse acceptable to the Department, the Department must decide the suit if it is ripe for judgment". Furthermore, Article 56 of the Law of Civil Procedures provides that: "If the Plaintiff fails to attend the court hearings, in accordance with Article 55 of this Law, the Defendant may petition the court to rule on the merits of the case. The court shall rule on the case if it is ripe for judgment and such judgment shall be deemed as if rendered in the presence of the Plaintiff". Since Plaintiff did not submit an acceptable excuse for failure to attend the session, and that the Department has deemed that the Case is ripe for adjudication according to Case documents. Therefore, the Department renders its decision in the Case as if in presence of Plaintiff.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- Reject the objection filed by Plaintiff/ (....), TIN No. (...) to Defendant/ (ZATCA)'s decision regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of Parties. The Department has set the date of (Thursday, 02/04/1444 AH) as the date for receipt of the decision copy. Parties hereto may request to appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision. In the event that objection is not submitted within this period, it shall become final and enforceable after expiration hereof.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1933)
Issued in Appeal No. (Z-58478-2021)

Key words:
Zakat Assessment – Accounts – Accrued Expenses and Other Credit Balances – Avoiding Double Zakat – Lease Liabilities – Deduction of Additions Within Deduction Limits.

Abstract

Plaintiff's claim seeks to annul the decision of Zakat, Tax, and Customs Authority regarding the Zakat assessment for the year 2019. The Plaintiff based its objection on four items, first of which: Advance Payments from Customers: The addition of the Advance Payments from Customers item amounting to SAR 4,088,271 to the Zakat base for the year 2019. The Plaintiff stated that it had already included this item in the Zakat base under the Accrued Expenses and Other Credit Balances category. Therefore, the Plaintiff requested the cancellation of the Defendant's decision to avoid double Zakat. In contrast, the Defendant argued that its action was in accordance with the provisions of the Zakat Collection Regulations. Second: Lease Liabilities Item: The addition of the Lease Liabilities item to the Zakat base for the year 2019. The Plaintiff claimed that it had already included the lease liabilities that had completed the lunar year within the Zakat base under the Accrued Expenses and Other Payables category. However, the Defendant argued that its action was consistent with the provisions of the Zakat Collection Regulations. Third and Fourth Items: Deduction of Additions Within Deduction Limits: Rejection of deducting additions from the Zakat base within the deduction limits. In response, the Defendant stated that it excluded a total amount of SAR 1,355,208 from external source additions, which consisted of SAR 1,273,880 and a difference in the addition of the ending balance of commercial liabilities amounting to SAR 81,328. Regarding the rejection of the deduction of actual dividend distributions during 2019 amounting to SAR 2,000,000, the Defendant argued that its action was in accordance with the provisions of the Zakat Collection Regulations. Regarding the first item: The Department found that the Plaintiff did not provide supporting documents to verify the inclusion of amounts from advance revenues that had completed the lunar year. Since advance payments are considered a source of financing, any amounts that have completed the lunar year must be added to the Zakat base. Therefore, the Department must reject the Plaintiff's objection. Second: The Plaintiff did not provide supporting documents to verify the inclusion of amounts that had completed the lunar year from the lease liabilities item. Since lease liabilities are considered a source of financing, any amounts that have completed the lunar year must be added to the Zakat base. Accordingly, the Department must reject the Plaintiff's objection. Third: The Department confirmed the validity of the Defendant's action in calculating total additions at SAR 2,315,255 and total deductions at SAR 960,047, resulting in a deducted difference of SAR 1,355,208. This difference reflects the Defendant's recognition of the ending balance of lease liabilities amounting to SAR 132,707. Fourth: It was found that the

Plaintiff did not provide supporting documents to verify the distribution of the disputed dividends or evidence that they were removed from the company's obligations before the completion of the lunar year. Therefore, the Department must reject the Plaintiff's objection. Conclusion: Dismiss Plaintiff's case, and consider the decision as final and enforceable.

Instruments:

- Article (55) and (56) of the Law of Civil Procedures promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH
- Article (4/Paragraph 2, A/3, and C/3), and (8/1), and (10), and (18) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) of 01/06/1438 AH
- Article (20/1) of Tax Dispute and Violation Committee Procedures issued under Royal Decree No. (26040) dated 21/04/1441 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Thursday, 12/02/1444, the First Department for Determination of Income Tax Violations and Disputes in Dammam, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 09/07/2021.

The facts of this Case are summed up that ..., National ID No. (.....) in his capacity as the legal representative of Plaintiff ..... Company, Trading Company, registered under C.R. No. (...) Under the AOA, filed an objection to ZATCA zakat assessment for 2019.

Having presented the statement of claim to Defendant, it answered as follows: Advance Payments from Customers: The Defendant added the beginning balance of the "Advance Payments" account as a source of internal financing in accordance with the provisions of Article (4) of the Implementing Regulations for Zakat Collection issued by the Minister of Finance's Decision No. (2216) dated 07/07/1440 AH. Item Second: lease liabilities: The Defendant added the ending balance of the "Lease Liability" account in the amount of SAR (132,708), as this item inherently represents a loan to the company in exchange for financing assets. It was added against asset deductions. The Defendant insists on the validity of this procedure, as the amount added from this item, along with accrued expenses as sources of external financing, does not exceed the deducted amount from the base in accordance with the provisions of Article (4) of Zakat Collection Regulations.

Item Third: Non-Deduction of Additions within Deduction Limits: The Defendant added external financing sources within the limits of the deducted amount from the base. While the Plaintiff demands the deduction of SAR (1,273,880), the Defendant excluded from the total additions related to external sources the amount of SAR (1,355,208), which includes both the SAR (1,273,880) and the difference in the addition of the ending balance of commercial obligations amounting to SAR (81,328). Item Fourth: Dividends: The Defendant did not approve the dividends distribution due to the failure to provide all supporting documents for the distribution, based on Article (18) of Zakat Collection Regulations. Accordingly, the Defendant requests a ruling to dismiss the case and reserves the right to present further responses and clarifications before the closure of the pleadings.

On Thursday 12/02/1444 AH, the Department held its session remotely to consider the Case. No one appeared for the Plaintiff despite being duly notified of the session. For the Defendant appeared Ms....., National ID No. (.....) In her capacity as Defendant/ZATCA representative by virtue of Authorization issued by the Deputy Governor for Legal Affairs under No. (...), dated .../10/1443 AH. Having asked Defendant's attorney about Plaintiff's claims, she maintained the statements contained in Defendant's response memorandum and requested that no documents that were not submitted during the inspection and objection period be accepted. Having asked Defendant's attorney if she had any other statements, they replied negatively.
Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.
In Form: Since Plaintiff filed the case to abolish Defendant's decision regarding Zakat Assessment of 2019 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.
On Merits: Having examined the papers and documents contained in case file, as well as the requests, defenses and pleas made by its parties, the Department found that the Plaintiff objects to the zakat assessment made by the Defendant for the year 2019 AD, specifically in respect of four items, namely:
First: Advance Payments from Customers: The dispute arises from Plaintiff's objection to Defendant's action of adding the "Advance Payments from Customers" item amounting to SAR (4,088,271) to Zakat base for the year 2019. The Plaintiff stated that it had included this item within the Zakat base under the "Accrued Expenses and Other Credit Balances" category. Therefore, the Plaintiff demands the cancellation of the Defendant's decision to avoid double counting in the Zakat calculation. In contrast, the Defendant argued that its action was in accordance with the provisions of the Zakat Collection Regulations. Paragraph (2) of Article (4) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2216) dated 07/07/1440 AH, states: "2. Revenues and advance payments to Zakat Payer at the beginning or end of the Zakat year, whichever is less". Additionally, based on Article (18) of the same regulations, which states: "Without prejudice to the provisions of Article (10) of the Regulations, every taxpayer must keep, within the Kingdom and in the Arabic language, the necessary commercial records to accurately determine the Zakat base, along with maintaining documents that verify their accuracy and the data and explanations that support them. The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, the Authority may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at Authority's discretion in view of the surrounding circumstances, facts and information available with the Authority". Based on the above and after reviewing the case file, it was found that the Plaintiff did not provide supporting documents to verify the inclusion of matured amounts from the advance revenues. Since advance payments are considered a source of financing

and any matured amounts must be added to the Zakat base, the Department must reject the Plaintiff's objection.

Second: Lease Liabilities Item:

The dispute arises from Plaintiff's objection to the Defendant's action of adding the "Lease Liabilities" item to the Zakat base for the year 2019. The Plaintiff stated that it had already included the matured lease liabilities in the Zakat base under the "Accrued Expenses and Other Payables" category. However, the Defendant argued that its action was in accordance with the provisions of the Zakat Collection Regulations. Paragraph (A/3) of Article (4) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2216) dated 07/07/1440 AH, states: "3 - Long-term debts owed by Zakat Payer and similar components of the base, such as government financing, commercial financing, creditors, notes payable, overdraft accounts, and loans from owners or partners (including their current accounts), provided that the following is observed: A - If the debts owed by Zakat Payer or other financing sources have a term of three hundred and fifty-four (354) days or more and overlap during the Zakat year and the following year, they shall be added to the Zakat base for each year in proportion to the number of days in each Zakat year." Additionally, based on Article (18) of the same regulations, which states: "Without prejudice to the provisions of Article (10) of the Regulations, every taxpayer must keep, within the Kingdom and in the Arabic language, the necessary commercial records to accurately determine the Zakat base, along with maintaining documents that verify their accuracy and the data and explanations that support them. The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, the Authority may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at Authority's discretion in view of the surrounding circumstances, facts and information available with the Authority". Based on the above and after reviewing the case file, it was found that the Plaintiff did not provide supporting documents to verify the inclusion of the matured amounts from the lease liabilities. Since lease liabilities are considered a source of financing, and any matured amounts must be added to the Zakat base, the Department must reject the Plaintiff's objection.

Third: Item of Deducting Additions within Deduction Limits:

The dispute arises from the Plaintiff's objection to the Defendant's action of not accepting the deduction of additions from the Zakat base within the deduction limits, amounting to SAR (51,379). The Plaintiff relies on Article (4) of the Zakat Collection Regulations, which stipulates that the amount added from outstanding debts should not exceed the total amount deducted from the base. However, the Defendant argued that it had excluded from the total additions related to external sources an amount of SAR (1,355,208), which consists of SAR (1,273,880) and the difference in the addition of the ending balance of commercial liabilities amounting to SAR (81,328). Paragraph (C/3) of Article (4) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2216) dated 07/07/1440 AH, states: "3 - Long-term debts owed by Zakat Payer and similar components of the base, such as government financing, commercial financing, creditors, notes payable, overdraft accounts, and loans from owners or partners (including their current accounts), provided that the following is observed: C - The total amount added from the items mentioned in this paragraph must not exceed the total amount deducted from the base in accordance with Article (5) of the regulations." Based on the above and after reviewing the case file, it was found that the difference represents the matured amounts from lease liabilities, as referenced in Item (Second) above. The Department confirmed the validity of the Defendant's action in calculating the total additions at SAR (2,315,255) and the total deductions at SAR (960,047), resulting in a net difference

deducted by the Defendant amounting to SAR (1,355,208). This difference is due to Defendant's recognition of the ending balance of lease liabilities at SAR (132,707). Accordingly, the Department must reject Plaintiff's objection.

Fourth: Item of Dividends:

The dispute arises from Plaintiff's objection to the Defendant's action of not accepting the deduction of actual dividend distributions during the year 2019 amounting to SAR (2,000,000). However, the Defendant argued that its action was in accordance with the provisions of the Zakat Collection Regulations. Paragraph (1) of Article (8) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2216) dated 07/07/1440 AH, states that: "The following expenses may be deducted to determine the net result of the activity: Ordinary and necessary expenses required for the activity, provided that the following conditions are met: A. A. If it is an actual expense, supported by documents other evidence which enable the Department to verify it, even if it is related to previous years. B. B. To Be related to the activity and not related to personal expenses or other activities No. C. (d) It is not of a capitalist nature." In the event a capital expense is included among the expenses, the result of the activity shall be adjusted accordingly, and it shall be added to fixed assets and depreciated as part of the asset's depreciation." Additionally, based on Article (18) of the same regulations, which states: "Without prejudice to the provisions of Article (10) of the Regulations, every taxpayer must keep, within the Kingdom and in the Arabic language, the necessary commercial records to accurately determine the Zakat base, along with maintaining documents that verify their accuracy and the data and explanations that support them. The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, the Authority may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at Authority's discretion in view of the surrounding circumstances, facts and information available with the Authority". Based on the above and after reviewing the case file, it was found that the Plaintiff did not provide supporting documents to verify the disputed dividend distribution or evidence proving that the amount was discharged from liability before the completion of the lunar year cycle. Accordingly, the Department must reject Plaintiff's objection.

As for the absence of the Plaintiff and his attorney from the hearing despite being duly notified, and based on Paragraph (1), Article (20) of Tax Dispute and Violation Committee Procedures, which stipulates that: "If a Plaintiff fails to attend any hearing after being notified of the date set for consideration of the suit without an excuse acceptable to the Department, the Department must decide the suit if it is ripe for judgment". Furthermore, Article 56 of the Law of Civil Procedures provides that: "In the cases provided for in Article 55 of this Law, if the Defendant attends the hearing from which the Plaintiff is absent, he may petition the court not to dismiss the case and to render a decision on its merits; in which case, the court shall rule on such case and the judgment shall be considered in absentia with respect to the Plaintiff"; and since the Plaintiff's attorney did not submit an acceptable excuse for absence from the session; and since the Department determined that the case is ripe for adjudication, it therefore delivers its decision in this case as in presence of the Plaintiff.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- Reject the objection of Plaintiff/ ... Company TIN No. (....) to Defendant/ (ZATCA)'s decision regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Thursday, 02/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1934)
Issued in Appeal No. (Z-58377-2021)

Key words:
Zakat Assessment – Accounts – Bad Debts – Failure to Provide Supporting Documents – Incorrect Calculation of Bad Debts – Loans as a Component of the Zakat Base

Abstract

Plaintiff instituted this case moving to cancel ZATCA's decision regarding the tax assessment for the year 2019, based on two items; the First: Bad Debts Item: The disputed amount of SAR (7,503) represents customer discounts that were mistakenly classified under the bad debts account. However, the Defendant argued that its action was in compliance with the provisions of the Zakat Collection Regulations due to Plaintiff's failure to provide supporting documents. Second: Short-Term Loans Item: The addition of short-term loans to the Zakat base was due to the fact that a full lunar year had not passed on them and because they were not used to finance deductible assets. The Defendant argued that its action complied with the Zakat Collection Regulations due to the lack of supporting documents. In regards of the first item, the Department found the following: The Plaintiff failed to provide supporting documents to verify the fulfillment of the conditions for deducting the disputed bad debts amount. Therefore, the Department must reject the Plaintiff's objection. Second: The Plaintiff did not provide supporting documents. Since loans are considered part of the Zakat base regardless of their type, source, or classification—provided that a full lunar year has passed on them or they have been used to finance deductible assets from the Zakat base without requiring the completion of the lunar year—the Department must reject Plaintiff's objection. Conclusion: Dismiss Plaintiff's case, and consider the decision as final and enforceable.

Instruments:

- Article (55) and (56) of the Law of Civil Procedures promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH
- https://ncar.gov.sa/document-details/eyJpdiI6Ik5kTGY1a0M1NVZQNlFYTkt0L1phYnc9PSIsInZhbHVlIjoiMm5PdUhJMGtxY2gwNjd1T2xhdVB1dz09IiwibWFjIjoiZTRlMzY5NGE3MWFkZTcwOGE2ZWI4MzZkZDdjMjY5YTU5NWRlYzFhM2Y2ZTBhOTQyNjI5YjY2OTVjMjZjYTdhMiIsInRhZyI6IiJ9Articles (4//First/5), (3/5), (6/2), and (18) of the Implementing Regulations for Zakat Collection issued under Ministerial Decision No. (2216) dated 07/07/1440 AH.
- Article (20/1) of Tax Dispute and Violation Committee Procedures issued under Royal Decree No. (26040) dated 21/04/1441 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Saturday, 12/02/1444, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 08/07/2021.

The facts of this case are summed up so as... National ID No. (.....) in his capacity as attorney of Plaintiff (... Company Limited), C.R. No. ..., filed an objection to the zakat assessment for the year 2019 issued by ZATCA.

Having presented the statement of claim to Defendant, it answered as follows: "Bad debts" The Plaintiff's objection was partially accepted by approving the amount of SAR (92,672) and rejecting the amount of SAR (7,503) due to the failure to provide supporting documents, based on Article (18) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) dated 07/07/1440 AH. Item Second: Short-term Loans: The Defendant added the lower of the beginning or ending balance of short-term loans, amounting to SAR (8,858,896), to Zakat base, without exceeding the deductible assets amounting to SAR (2,205,983), in accordance with Article (4) of the Zakat Collection Regulations. Accordingly, the Defendant requests a ruling to dismiss the case and reserves the right to present further responses and clarifications before the closure of the pleadings.

On Thursday 12/02/1444 AH, the Department held its session remotely to consider the Case. No one appeared for Plaintiff despite being duly notified of the session. For the Defendant appeared Ms....., National ID No. (.....) In her capacity as Defendant/ZATCA representative by virtue of Authorization issued by the Deputy Governor for Legal Affairs under No. (...), dated .../10/1443 AH. Having asked Defendant's attorney about Plaintiff's claims, she maintained the statements contained in Defendant's response memorandum and requested that no documents that were not submitted during the inspection and objection period be accepted. Having asked Defendant's attorney if she had any other statements, they replied negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form, since the Plaintiff filed the case to abolish ZATCA's decision regarding Zakat Assessment of 2019 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Department found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of Zakat Assessment of 2019AD, which included the following:

First: Bad Debts Item:

The dispute arises from Plaintiff's claim that the disputed amount of SAR (7,503) represents customer discounts that were mistakenly classified under the bad debts account. However, the Defendant argued that its action was in accordance with the provisions of the Zakat Collection Regulations due to Plaintiff's failure to provide supporting documents. Paragraph (3) of Article (5) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, states that: "Bad debts are expenses that may be deducted in accordance with the following controls: a. Debts should have been previously declared within revenues in the year the revenue was generated. b. Debts shall be the result of carrying out activities. c. The Zakat Payer shall provide a certificate from a certified public accountant licensed to operate in the Kingdom, confirming that the debts are written-off by resolution of the authorized person. d. The debts shall not be payable by bodies associated with the Zakat Payer. e. The Zakat Payer shall report the debts written off as revenue where such debts are recovered". In addition, Paragraph (2) of Article (6) of the same Regulations, related to non-deductible expenses, states: "Expenses that Zakat Payer is unable to substantiate with supporting documents or other evidence of proof." Based on the above and after reviewing the case file, it was found that the Plaintiff did not provide supporting documents to verify the fulfillment of the conditions for deducting the disputed bad debts amount. Accordingly, the Department must reject Plaintiff's objection.

Second: Short-Term Loans Item:

The dispute arises from the Plaintiff's objection to the Defendant's action of adding short-term loans to the Zakat base due to the lunar year cycle not being completed and the fact that they were not used to finance deductible assets. However, the Defendant argued that its action was in compliance with the provisions of the Zakat Collection Regulations due to the Plaintiff's failure to provide supporting documents. Paragraph (First/5) of Article (4) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, states that: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets which was used in trade goods and had completed the lunar year". Based on the above and after reviewing the case file, it was found that the Plaintiff did not provide supporting documents. Since loans are considered a component of the Zakat base regardless of their type, source, or classification—provided that a full lunar year has passed on them or they have been used to finance deductible assets from the Zakat base without requiring the completion of the lunar year—the Department must reject Plaintiff's objection.

As for the absence of the Plaintiff and his attorney from the hearing despite being duly notified, and based on Paragraph (1) of Article (20) of the Tax Dispute and Violation Committee Procedures, which stipulates that: "If a Plaintiff fails to attend any hearing after being notified of the date set for consideration of the suit without an excuse acceptable to the Department, the Department must decide the suit if it is ripe for judgment". Furthermore, Article 56 of the Law of Civil Procedures provides that: "In the cases provided for in Article 55 of this Law, if the Defendant attends the hearing from which the Plaintiff is absent, he may petition the court not to dismiss the case and to render a decision on its merits; in which case, the court shall rule on such case and the judgment shall be considered in absentia with respect to the Plaintiff"; and since the Plaintiff's attorney did not submit an acceptable excuse for absence from the session; and since the Department determined that the case is ripe for adjudication, it therefore delivers its decision in this case as in presence of the Plaintiff.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- Reject the objection of Plaintiff/ ... Company (TIN ...), to Defendant/ (ZATCA)'s decision regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Thursday, 02/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1935)
Issued in Appeal No. (Z-58823-2021)

Key words:
Zakat Assessment – Accounts – Adjusted Net Profit Difference – Creditors and Other Credit Balances – Retained Earnings – Spare Parts Difference – Fixed Assets Difference – Provisions Difference – End of Service – Doubtful Debts

Abstract

The Plaintiff is requesting cancellation of the decision issued by Zakat, Tax, and Customs Authority regarding the Zakat assessment for the year 2019, which includes six items: Adjusted Net Profit Difference Item: The Plaintiff stated that the adjusted net profit was revised in the final financial statements issued by the external auditor to SAR (2,656,581). Second: Provisions Difference (End of Service – Doubtful Debts) Items: The Plaintiff stated that the provisions added to the Zakat base were revised in the final financial statements issued by the external auditor to SAR (2,577,452). Third: Fixed Assets Difference Item: The Plaintiff stated that the deductible fixed assets from Zakat base were revised in the final financial statements issued by the external auditor to SAR (10,736,937). However, the Defendant argued that its action was in compliance with the provisions of Zakat Collection Regulations. Fourth: Spare Parts Difference Item: The Plaintiff stated that the deductible spare parts from Zakat base were revised in the final financial statements issued by the external auditor to SAR (849,428). Fifth Retained Earnings Item: The Plaintiff stated that the Defendant had added the entire balance of retained earnings at the beginning of the year. Sixth: Creditors and Other Credit Balances Item: The Plaintiff stated that the Defendant added external financing sources and other credit balances. However, the Defendant argued that its action was in compliance with the provisions of the Zakat Collection Regulations. The Department confirmed, regarding the first item, the validity of Plaintiff's claims after reviewing the approved financial statements and Zakat declaration. Regarding the Second, Third, and Fourth Items: Department's decision on the first item resulted in cancellation of the Defendant's decision. Fifth It was confirmed that the Plaintiff did not provide supporting documents for the distributed profits transferred to partners' current accounts and did not submit the checks or bank account statements. Sixth: It was found that the Plaintiff did not provide the detailed account statement. The Department ruled to: cancel Defendant's decision related to the Adjusted Net Profit Difference item under dispute, and rejection Plaintiff's objection concerning the Creditors and Other Credit Balances item and the Retained Earnings item under dispute. Annul Defendant's decision regarding all items in question and consider the decision as final and enforceable.

Instruments:

- https://ncar.gov.sa/document-details/eyJpdiI6Ik5kTGY1a0M1NVZQNlFYTkt0L1phYnc9PSIsInZhbHVlIjoiMm5PdUhJMGtxY2gwNjd1T2xhdVB1dz09IiwibWFjIjoiZTRlMzY5NGE3MWFkZTcwOGE2ZWI4MzZkZDdjMjY5YTU5NWRlYzFhM2Y2ZTBhOTQyNjI5YjY2OTVjMjZjYTdhMiIsInRhZyI6IiJ9Articles (4//First/ 6), (3/4, 5), (1/5), (13/e/5), and (20/3) of the Implementing Regulations for Zakat Collection issued under Ministerial Decision No. (2216) dated 07/07/1440 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Thursday, 12/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 12/07/2021 AD.

The facts of this Case are summed up that ..., National ID No. (.....) in his capacity as the legal attorney of Plaintiff (... Company), C.R. No. (...), under AOA, filed an objection to ZATCA zakat assessment for 2019.

Upon presenting the statement of claim to the Defendant, it responded regarding the Adjusted Net Profit Difference, Provisions Difference (End of Service – Doubtful Debts), Fixed Assets Difference, and Spare Parts Difference as follows: The Defendant assessed the Plaintiff based on the declaration and the draft unaudited financial statements, in accordance with Article (18) of the Zakat Collection Regulations. Regarding the Retained Earnings: The Defendant added the Retained Earnings item to the Zakat base for the year 2019 based on Plaintiff's declaration. This decision was made after reviewing the draft financial statements and the documents submitted by the Plaintiff, which showed that the retained earnings amounted to SAR (15,430,170) and prior years' revenues amounted to SAR (499,278), totaling SAR (15,929,448). The amount added by the Defendant to the Zakat base, according to the Plaintiff's declaration, was SAR (15,652,598), in accordance with Article (4) of the Zakat Collection Regulations. Regarding Creditors and Other Credit Balances: The Defendant added both items to the Zakat base after reviewing the draft financial statements and the movements of creditors and other credit balances, in accordance with Article (4) of Zakat Collection Regulations. Accordingly, the Defendant requests a ruling to dismiss the case and reserves the right to provide further responses and clarifications before the closure of the pleadings.

On Thursday 12/02/1444 AH, the Department held its session remotely to consider the case. For the Plaintiff attended Mr....., Holder of National ID No. (....), in his capacity as Plaintiff attorney, subject to POA No. (...) dated .../02/1444 AH, issued by the Electronic Agencies Services, and attended by Ms./ ... National ID No. (.....) In her capacity as Defendant/ZATCA representative by virtue of Authorization issued by the Deputy Governor for Legal Affairs under No. (...), Dated .../10/1443 AH. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the case to abolish Defendant's decision regarding Zakat Assessment of 2019 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On Merits: Having examined the papers and documents contained in case file, as well as the requests, defenses and pleas made by its parties, the Department found that the Plaintiff objects to the zakat assessment made by the Defendant for the year 2019 AD, specifically in respect of four items, namely:

First: Adjusted Net Profit Difference Item:

The dispute arises from Plaintiff's objection to Defendant's action of adding the Adjusted Net Profit Difference. The Plaintiff stated that the adjusted net profit was revised in the final financial statements issued by the external auditor to SAR (2,656,581). However, the Defendant argued that its action was in compliance with the provisions of Zakat Collection Regulations. Paragraph (E/5) of Article (13) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, states that: "5. ZATCA shall be entitled to account Zakat Payers on estimate basis in order to oblige them to comply with legal requirements in the following cases: E - Zakat Payer's inability to verify the accuracy of the information recorded in their declaration with supporting documents." Based on the above and after reviewing the case file, it was found that the Defendant assessed certain accounts in the Zakat base based on the financial statements submitted by the Plaintiff, despite rejecting the submitted declaration and financial statements. This constitutes evidence of Defendant's acceptance of the data contained in the financial statements. Therefore, the Defendant's action in disregarding these accounts is deemed unlawful. Since the Department confirmed the validity of the claims presented in the Plaintiff's statement of claim after reviewing the approved financial statements and the Zakat declaration, the Department must cancel the Defendant's decision.

Second: Provisions Difference (End of Service – Doubtful Debts) Items:

The dispute arises from Plaintiff's objection to Defendant's action of adding the Provisions Difference. The Plaintiff stated that the provisions added to the Zakat base were adjusted in the final financial statements issued by the external auditor to SAR (2,577,452). However, the Defendant argued that its action was in compliance with the provisions of the Zakat Collection Regulations. Paragraph (First/6) of Article (4) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2216) dated 07/07/1440 AH, states: "Provisions at the beginning of the Zakat year after deducting what was utilized during the Zakat year." Based on the above, and since Department's decision on the first item resulted in the cancellation of Defendant's decision, the Department must accordingly amend Defendant's decision regarding this item.

Third: Fixed Assets Difference Item:

The dispute arises from Plaintiff's objection to Defendant's action of adding the Fixed Assets Difference. The Plaintiff stated that the deductible fixed assets from the Zakat base were adjusted in the final financial statements issued by the external auditor to SAR

(10,736,937). However, the Defendant argued that its action was in compliance with the provisions of the Zakat Collection Regulations. Paragraph (1) of Article (5) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2216) dated 07/07/1440 AH, states: "The following items shall be deducted from the zakat base of the Zakat Payer who holds commercial books: 1. Net Fixed Assets and Their Equivalents, including but not limited to the following: a. Fixed assets acquired for use in Zakat Payer's activity, recorded at their book value as shown in the financial statements. b. Payments for the purchase of fixed assets. c. Spare parts and materials not intended for sale. D. Assets financed for the lessee in finance lease contracts in Build, Operate-Transfer (BOT) projects, Build-Own-Operate (BOO) projects, or Build-Own-Operate-Transfer (BOOT) projects, and similar arrangements." Based on the above, and since Department's decision on the first item resulted in the cancellation of Defendant's decision, the Department must accordingly amend Defendant's decision regarding this item.

Fourth: Spare Parts Difference Item:

The dispute arises from Plaintiff's objection to Defendant's action of adding the Spare Parts Difference. The Plaintiff stated that the deductible spare parts from the Zakat base were adjusted in the final financial statements issued by the external auditor to SAR (849,428). However, the Defendant argued that its action was in accordance with Zakat Collection Regulations. Paragraph (1) of Article (5) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2216) dated 07/07/1440 AH, states: "The following items shall be deducted from the zakat base of the Zakat Payer who holds commercial books: 1. Net Fixed Assets and Their Equivalents, including but not limited to the following: a. Fixed assets acquired for use in Zakat Payer's activity, recorded at their book value as shown in the financial statements. b. Payments for the purchase of fixed assets. c. Spare parts and materials not intended for sale. D. Assets financed for the lessee in finance lease contracts in Build, Operate-Transfer (BOT) projects, Build-Own-Operate (BOO) projects, or Build-Own-Operate-Transfer (BOOT) projects, and similar arrangements." Based on the above, and since Department's decision on the first item resulted in the cancellation of Defendant's decision, the Department must accordingly amend Defendant's decision regarding this item.

Fifth Retained Earnings Item:

The dispute arises from Plaintiff's objection to Defendant's action of adding the Retained Earnings item. The Plaintiff stated that the Defendant added the entire balance of the retained earnings at the beginning of the year, amounting to SAR (15,652,598). However, the Plaintiff explained that the entire retained earnings balance of SAR (13,447,075) was distributed and closed in the partners' debit account, and an amount of SAR (3,154,345) was distributed and paid in cash to the partners. On the other hand, the Defendant argued that its action was in compliance with the provisions of the Zakat Collection Regulations. Paragraph (5) of Article (4) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2216) dated 07/07/1440 AH, states that: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: "8. The balance of profits carried forward from previous years at the end of the year. Based on Paragraph (3) of Article (20) of the same regulations, which states: "The burden of prove of correctness of information in Zakat Payer's Declaration regarding items and any other data rests on Zakat Payer. If Zakat Payer fails to prove correctness of the items in its Declaration, ZATCA may disapprove the item whose correctness has not been proven by Zakat Payer or make an Estimated Assessment according to Authority's opinion based on relevant circumstances and facts and available information."; Based on the above and after reviewing the case file, it was found that the Plaintiff did not provide supporting documents for the distributed profits transferred to partners' current accounts, nor did it

submit checks or bank account statements. Accordingly, the Department must reject Plaintiff's objection.

Sixth: Creditors and Other Credit Balances Item:

The dispute arises from Plaintiff's objection to Defendant's action of adding Creditors and Other Credit Balances. The Plaintiff stated that the Defendant added external financing sources amounting to SAR (2,280,762) and other credit balances amounting to SAR (87,241). The Plaintiff relied on Article (4) of the Zakat Collection Regulations, arguing that external financing sources should only be considered if the deductions exceed the total partners' equity. However, the Defendant argued that its action was in compliance with the provisions of the Zakat Collection Regulations. Paragraph (3) of Article (4) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2216) dated 07/07/1440 AH, states that: "Debts owed by Zakat Payer, classified as long-term and equivalent components of the Zakat base, such as: Government financing, Commercial financing, Creditors, Notes payable, Overdraft accounts and Loans from owners or partners (including their current accounts), shall be subject to the following considerations: A - If the debts owed by Zakat Payer or other financing sources have a duration of three hundred and fifty-four (354) days or more and overlap during the Zakat year and the following year, they shall be added to the Zakat base for each year in proportion to the number of days in each Zakat year. b. The Zakat year for debts shall not be interrupted by their renewal or rescheduling with the same creditor, or by substituting such debts with other debts or financing sources that fund what these debts were financing. C - The amount added from what is mentioned in this paragraph must not exceed the total amount deducted from the base in accordance with Article (5) of the regulations." Based on Paragraph (3) of Article (20) of the same regulations, which states: "The burden of prove of correctness of information in Zakat Payer's Declaration regarding items and any other data rests on Zakat Payer. If Zakat Payer fails to prove correctness of the items in its Declaration, ZATCA may disapprove the item whose correctness has not been proven by Zakat Payer or make an Estimated Assessment according to Authority's opinion based on relevant circumstances and facts and available information." Based on the above and after reviewing the case file, it was found that the Plaintiff did not provide the detailed account statement. Accordingly, the Department must reject Plaintiff's objection.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

First: Cancel Defendant/ (ZATCA)'s decision, against the Plaintiff/ .... Company, TIN No. (...) related to the Adjusted Net Profit Difference item under dispute.

Second: Dismiss objection filed by Plaintiff (... Company), TIN No. (...) on the decision of Defendant/ZATCA, related to the item of Creditors and Other Credit Balances item under dispute.

Third: Dismiss objection filed by Plaintiff (... Company), TIN No. (...) on the decision of Defendant/ZATCA, related to the Retained Earnings item under dispute.

Fourth: Amend decision of Defendant/ ZATCA against Plaintiff/..... Company. TIN No. (...) related to the remaining disputed items, as explained in the reasoning.

This decision was delivered in presence of the parties. The Department set Thursday, 02/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1937)
Issued in Appeal No. (Z-64490-2021)

Key words:
Zakat Assessment – Accounts – Purchase of Units in the Housing Growth Real Estate Fund – Long-Term Investment – Investment Funds as Independent Financial Entities – Cancellation of the Defendant's Decision

Abstract

The Plaintiff is requesting the cancellation of the decision issued by the Zakat, Tax, and Customs Authority regarding the Zakat assessment for the year 2019, claiming that the company purchased units in the Housing Growth Real Estate Fund for the purpose of long-term investment and to generate future income from the fund's returns. ZATCA responded by rejecting the deduction of the investment in the Housing Growth Real Estate Fund amounting to SAR 10,000,000, due to Plaintiff's failure to provide evidence of the fund's registration with ZATCA. The Department confirmed that investment funds are defined as investment vehicles with independent financial liability, aiming to pool funds and invest them in specific sectors. The fund in question is closed-ended, with its primary activity focused on purchasing land, developing it through construction, and then selling it. It was also found that this fund is not available for trading, and its assets are not available for sale in their current state. Additionally, the Plaintiff treated the fund as a company in calculating and paying Zakat on behalf of the fund. Therefore, the Department must cancel Defendant's decision. The Department ruled to: Cancel Defendant decision and Department decision shall be deemed final and enforceable.

Instruments:

- https://ncar.gov.sa/document-details/eyJpdiI6Ik5kTGY1a0M1NVZQNlFYTkt0L1phYnc9PSIsInZhbHVlIjoiMm5PdUhJMGtxY2gwNjd1T2xhdVB1dz09IiwibWFjIjoiZTRlMzY5NGE3MWFkZTcwOGE2ZWI4MzZkZDdjMjY5YTU5NWRlYzFhM2Y2ZTBhOTQyNjI5YjY2OTVjMjZjYTdhMiIsInRhZyI6IiJ9Article (4/First/4/A) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) dated 07/07/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Saturday, 14/02/1444, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted under Royal Order No. (26760) dated 23/12/1439 AH, convened its session remotely via

audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 11/08/2021.

The facts of this case are summed up so as... National ID No. (.....) in his capacity as attorney of Plaintiff (...), C.R. No. (...), by virtue of Power of Attorney No. (...) Dated .../02/1443 AH issued by Notary/ ...., filed an objection to ZATCA zakat assessment for 2019.

Having presented the statement of claim to Defendant, it responded regarding the deduction of investments in the Housing Growth Real Estate Fund as follows: The Defendant, during the assessment, rejected the deduction of the investment in the Housing Growth Real Estate Fund amounting to SAR 10,000,000 due to the Plaintiff's failure to provide evidence of the fund's registration with ZATCA, based on Article (5) of the Zakat Collection Regulations. Accordingly, the Defendant requests a ruling to dismiss the case and reserves the right to provide further responses and clarifications before the closure of the pleadings.

On Saturday 14/02/1444 AH, the Department held its session remotely to consider the Case wherein ..... National ID No. (.....) in his capacity as Plaintiff's attorney under power of attorney No. (…), Dated .../02/1443 AH issued by Notary/.... The session was also attended by Ms. ..., National ID No. (.....) In her capacity as Defendant/ZATCA representative by virtue of Authorization issued by the Deputy Governor for Legal Affairs under No. (...), Dated .../10/1443 AH. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the case to abolish Defendant's decision regarding Zakat Assessment of 2019 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On Merits, upon reviewing the documents and evidence contained in the case file, as well as the requests, defenses, and arguments presented by both parties, the Department found that the dispute lies in the Plaintiff's claim that the company purchased units in the ...Real Estate Fund for the purpose of long-term investment and to generate future income from the fund's returns. On the other hand, the Defendant argued that its decision was in accordance with the provisions of Zakat Collection Regulations.

In accordance with Paragraph (4.A) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH that states: "Investments in establishments inside the Kingdom - in partnership with others -

if such investments are subject to collection of Zakat under these Regulations, if investment in such establishments is not subject to collection, then it shall not be deducted from base".

Based on the above, investment funds are defined as investment vehicles with independent financial liability aimed at pooling funds and investing them in specific sectors. These funds are characterized by collecting amounts from various sources to invest in diverse fields. The fund has an independent financial liability separate from the issuing investment entity and operates by rotating and trading funds through buying and selling, rather than holding assets. Upon reviewing case file, the Department found that the fund is closed-ended, with its primary activity focused on purchasing land for development through construction and then selling it. It was also determined that this fund is not available for trading, and its assets are not available for sale in their current state. Additionally, the Plaintiff treated the fund as a company in calculating and paying Zakat on behalf of the fund. Therefore, the Department must cancel the Defendant's decision.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- Cancel Defendant/ (ZATCA) decision against Plaintiff/ (...) Company Limited, TIN No. (...) related to the assessments subject matter of this case.

This decision was delivered in presence of the parties. The Department set Thursday, 02/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1940)
Issued in Appeal No. (Z-59159-2021)

Key words:
Zakat Assessment – Accounts – Payable Item to Related Parties – Audited Financial Statements – Partner's Current Account as a Component of the Zakat Base and Added Upon Completion of the Lunar Year – Rejection of the Plaintiff's Objection

Abstract

The Plaintiff requested cancellation of the decision issued by Zakat, Tax, and Customs Authority regarding Zakat assessment for the year 2015.ZATCA responded concerning the item of Payables to Related Parties by rejecting Plaintiff's objection, stating that partner's current account balance (partners' current account) added to the Zakat base was the lower balance, based on Article (4) of the Zakat Collection Regulations. Accordingly, ZATCA requested a ruling to dismiss the case. The Department confirmed that the dispute concerns the Defendant's issuance of the Zakat assessment for 2015. The Plaintiff objected to the addition of the beginning balance of the payable amount to a principal partner, amounting to SAR (92,939,126). Since the Plaintiff did not submit the financial statements to verify the accuracy of the submitted detailed movement, and given that the partner's current account is one of the components of the Zakat base and must be added once the lunar year has passed, the Department must reject Plaintiff's objection. The Department ruled to: Reject Plaintiff's objection related to the Zakat assessment under dispute. The decision is considered final and enforceable.

Instruments:

- Articles (4/First/2) and (20/3) of the Implementing Regulations for Zakat Collection issued by Minister of Finance Decision No. (2082) dated 01/06/1438 AH

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Saturday, 14/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 23/06/2021 AD.

The facts of this case are summed up so as... National ID No. (.....) attended in his capacity as attorney of Plaintiff/ (.....), C.R. No. (...), by virtue of Power of Attorney No. (...) dated

.../ .../1442 AH, issued by (...) Notary Public, filed an objection to ZATCA zakat assessment for 2015.
Having presented the statement of claim to Defendant, it responded regarding the item of Payables to Related Parties as follows: Plaintiff's objection was rejected because the balance of the principal partner (partners' current account) added to the Zakat base was the lower balance, in accordance with Article (4) of the Zakat Collection Regulations. Accordingly, the Defendant requests a ruling to dismiss the case and reserves the right to provide further responses and clarifications before the closure of the pleadings.
On Saturday 14/02/1444 AH, the Department held its session remotely to consider the Case wherein ... National ID No. (.....) in his capacity as Plaintiff's attorney under power of attorney No. (…), dated .../.../1442 AH issued by notary public/.... The session was also attended by Ms. ..., National ID No. (.....) In her capacity as Defendant/ZATCA representative by virtue of Authorization issued by the Deputy Governor for Legal Affairs under No. (...), dated .../.../1443 AH, she stated at the beginning of the session that there was an error in the case information and that she wished to correct it, clarifying that the Plaintiff is / .... Company. Having asked Plaintiff's attorney about the claim, he responded that it does not go beyond what was stated in the statement of claim filed with the General Secretariat of Tax Committees. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they answered "no". Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.
In Form, since the Plaintiff filed the case to abolish ZATCA's decision regarding Zakat Assessment of 2015 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.
On Merits, upon reviewing the documents and evidence contained in the case file, as well as the requests, defenses, and arguments presented by both parties, the Department found that the dispute lies in the addition of the beginning balance for the item of amounts payable to a principal partner amounting to SAR (92,939,126). Meanwhile, the Defendant argued that its decision was in accordance with the provisions of Zakat Collection Regulations.
In accordance with Paragraph (2/First) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH that states: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 2. The current credit account of the owner or partner at the beginning or end of the year, whichever is less, as well as the increase in the current account if its source is from equity, or if it was finance for an acquisition asset.". Moreover, Paragraph (3) of Article (20) of the same Regulations stipulates that: "The burden of proof regarding the accuracy of the

items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA".

Based on the above and after reviewing case file, it was found that the Plaintiff did not provide the financial statements to verify the accuracy of the submitted detailed transactions. Since the partner's current account is one of the components of the Zakat base and must be added to the base upon the completion of the lunar year, the Department must reject the Plaintiff's objection.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

- Reject the objection of Plaintiff/ ... Company TIN No. (...) to Defendant/ (ZATCA)'s decision regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Thursday, 02/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under Paragraph (3) of Article (33) of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1942)
Issued in Appeal No. (ZI-64862-2021)

Key words:
Zakat Assessment – Accounts – Procedural Aspect Item – Employee Benefits – Donations – Bad Debts – Distributed Profits – Inventory Balance – Late Payment Penalty – The Burden of Proving the Accuracy of the Zakat Declaration Lies with Zakat Payer

Abstract

The Plaintiff is requesting the cancellation of the decision issued by the Zakat, Tax, and Customs Authority regarding the Zakat and tax assessment for the years 2015 to 2017, which consists of seven items: First: In form: The Plaintiff claims that the Zakat and tax assessments for the disputed years violated the provisions of the Income Tax Law Regulations due to the failure to notify the Plaintiff of the amendments made to the declaration. Second: Employee Benefits Item (2015–2017): The objection concerns the failure to deduct employee benefits from the adjusted net profit. The Plaintiff noted that the Defendant accepted the addition of employee allowances and benefits amounting to SAR 13,135,602 but not the remaining amount. The Defendant partially accepted the Plaintiff's objection by deducting housing and transportation allowances for the years 2015 and 2016, as well as the end-of-service provision, since it had already been added to the adjusted profit to avoid duplication. Third: Donations Item for 2015: The objection concerns the failure to deduct the company's share in charitable and social contributions from the net book profit. Fourth: Bad Debts Item for 2017: ZATCA accepted Zakat Payer's objection during the objection phase, thereby resolving the dispute. Fifth Distributed Profits to the Saudi Partner for 2017: The Plaintiff objected to the failure to deduct the Saudi partner's share of the distributed profits from the beginning balance of retained earnings. Sixth: Inventory Balance for 2017 (Spare Parts): The objection concerns the failure to deduct the inventory balance of spare parts for fixed assets from the Zakat base. Sixth: Late Payment Fine: The Defendant argued that its actions were in accordance with the Zakat Collection Regulations and insisted on the validity and legality of its procedures. Regarding the first Item, the Department found that the amendment notice for the disputed years met the formal requirements as stipulated by law, including the justifications and reasons for the amendment issued by the Defendant. Second: It was established that the Plaintiff submitted employee contracts indicating employees' entitlement to bonuses but did not mention the allowances stated in the regulations. The Plaintiff also failed to provide an internal bonus policy approved by the Minister of Labor or documents proving the payment of bonuses to employees. Third: The Department confirmed that the Plaintiff had paid the donations after reviewing the submitted documents. However, only donations supported by documentation and verified for authenticity and seriousness may be deducted from the Zakat base. Fourth: The Department confirmed that the dispute over this item was resolved by the Defendant's

acceptance of the Plaintiff's action. Fifth The Department confirmed that the Plaintiff distributed profits before the completion of the lunar year, based on the submitted documents. Sixth: The financial statements and their disclosures revealed that the inventory balance consisted of spare parts retained for factory and machinery maintenance. The account statement for this item matched the balance shown in the financial statements, detailing the nature of the spare parts. Sixth: The Department determined that the dispute between the parties is document-based and does not arise from a significant difference in the interpretation of legal provisions. The Department ruled to: Confirm resolution of the Plaintiff's dispute regarding the Bad Debts Item for 2017, reject Plaintiff's objection related to the Procedural Aspect Item and the Employee Benefits Item for the years 2015 to 2017, amend Defendant's action regarding the Late Payment Penalty under dispute, and cancel the remaining decisions issued by the Defendant. The decision is considered final and enforceable.

Instruments:

- Article (70) of the Law of Civil Procedures promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH
- Article (70/ 1) of The Implementing Regulations of Procedure before Sharia Departments issued by the Minister of Justice Resolution No. (39933) dated 05/19/1435 AH.
- **Articles (76/A), (77/A) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH.**
- Articles (3/67) and (1/68) of the Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) and dated 11/06/1425 AH.
- Articles (4/First/5), (4/Second/1), (4/5), (4/8/First), (6/2), and (20/3) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) of 07/07/1440 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Saturday, 14/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 12/08/2021 AD.

Facts of the Case are summarized as follows: Mr. ....., holder of National ID No. ....., in his capacity as Director of Plaintiff/ ..... Company Limited, C.R. No. .....); has filed a statement of claim objecting to the decision issued by Zakat, Tax, and Customs Authority ("ZATCA") regarding Tax Assessment of 2015 to 2019 AD.

Having presented the statement of claim to Defendant, it answered as follows; First: Amendment of the Zakat and Tax Assessment for the Disputed Years: The assessment was conducted based on a review and examination of Zakat Payer's data and documents. Zakat Payer provided no evidence that ZATCA failed to review the submitted documents. This procedure was in accordance with Article (59) of the Income Tax Law Regulations and Article (21) of the Zakat Collection Regulations. Second: Employee Benefits for the

Years 2015 to 2017: The Defendant, during the assessment, did not deduct the item of Other Bonuses amounting to SAR (10,969,623) from the adjusted net profit, as the documents submitted by Zakat Payer only supported basic salaries and other benefits. However, the housing and transportation allowances for the year 2017 were accepted, while the remaining details were rejected. Due to Zakat Payer's failure to provide evidence supporting its position for the years 2015 and 2016, and upon reviewing Zakat Payer's submitted declaration and the Defendant's assessment, it was found that Zakat Payer had previously declared the End-of-Service Provision formed during the year under non-deductible expenses. Therefore, Zakat Payer's objection was partially accepted by approving the deduction of the housing and transportation allowances for the years 2015 and 2016, as well as the End-of-Service Provision, since it had already been added to the adjusted profit to avoid duplicating the same item in the Zakat base. Third: Donations Item for 2015: The Defendant, during the assessment, added the donations to the adjusted profit. Zakat Payer stated that the donations and social contributions were disbursed to the partner (... Holding Company) and that ... Holding Company distributed them to approved charitable organizations, rather than Zakat Payer (... Company Ltd.) directly. Accordingly, Zakat Payer's objection was rejected based on Article (5) of Zakat Collection Regulations. Fourth: Bad Debts for the Year 2017: ZATCA accepted Zakat Payer's objection during the objection phase, thereby resolving the dispute over this item. Fifth Distributed Profits to the Saudi Partner: The Defendant added only the Saudi partner's share of profits that had completed the lunar year while still owed by the company, amounting to SAR (11,103,928) for the year 2015, SAR (1,301,192) for 2016, and SAR (422,770) for 2017, in accordance with Article (4) of the Zakat Collection Regulations. Sixth: Inventory Balance for the Year 2017: The Defendant, during the assessment, did not deduct the inventory value amounting to SAR (365,076) because it did not represent spare parts for fixed assets but rather inventory classified under current assets. Zakat Payer's objection was rejected due to the failure to provide supporting documents, based on Article (20) of Zakat Collection Regulations. Seventh: Late Payment Fine: Late payment penalties were imposed for failing to pay tax differences by the statutory deadline, in accordance with Article (77) of the Income Tax Law and Article (68) of its implementing regulations. Accordingly, the Defendant requests a ruling to dismiss the case and reserves the right to present further responses and clarifications before the closure of the pleadings. On Saturday 14/02/1444 AH, the Department held its session remotely to consider the Case wherein .... holder of National ID No. ....., in his capacity as Plaintiff Company's attorney, by virtue of its Articles of Association and commercial Registration. Also attending was .... National ID No. (.....) In her capacity as Defendant/ZATCA representative by virtue of Authorization issued by the Deputy Governor for Legal Affairs under No. (...), Dated .../10/1443 AH. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having pursued Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance Resolution No. (2082) dated 01/06/1438 AH as amended. Having perused the Income

Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and its amendments, and its Implementing Regulations issued by virtue of
Minister of Finance's Decision No. (1535) dated 11/06/1425 AH, as amended, and having reviewed Tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.
In Form: The Plaintiff filed this case moving to cancel ZATCA's decision regarding the zakat assessment for the years from 2015 to 2017. Since this dispute is a zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH, and since the case was filed by a person with capacity, and within the period prescribed by law, it is therefore accepted in form.
On Merits: Having taken cognizance of documents included in Case file, requests, defense and arguments raised by the parties, the Department found that the dispute involves the fact that ZATCA issued zakat assessment for years from 2015 to 2017. In addition, Plaintiff objects to eight items as follows:
First: In form:
The dispute arises from Plaintiff's claim regarding the failure to state the reasons for the amendment in the amendment notice. The Plaintiff argues that the Zakat and tax assessments for the disputed years violated the provisions of the Income Tax Law Regulations due to the failure to notify the Plaintiff of the amendments made to the declaration. However, the Defendant argued that its action was in compliance with the provisions of both the Zakat Collection Regulations and the Income Tax Law Regulations. Based on the above and after reviewing the case file, the Department found that the amendment notice for the disputed years met the formal requirements as stipulated by law, including the justifications and reasons for the amendment issued by the Defendant. Accordingly, the Department must reject Plaintiff's objection.
Second: Employee Benefits Item (2015–2017):
The dispute arises from Plaintiff's objection to Defendant's action of not deducting employee benefits amounting to SAR (15,969,623) from the adjusted net profit. The Plaintiff indicated that the Defendant accepted the addition of employee allowances and benefits totaling SAR (13,135,602) but excluded the remaining amount. The Defendant added these expenses to the adjusted net profit and subjected them to Zakat and tax, considering them expenses unrelated to the company's core activities. However, the Defendant partially accepted Plaintiff's objection by deducting housing and transportation allowances for the years 2015 and 2016, as well as the End-of-Service Provision, since it had already been added to the adjusted profit to avoid duplication. Paragraph (2) of Article (6) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, regarding non-deductible expenses, states that: "Expenses that the Zakat Payer fails to prove by supporting documents or other evidential matter acceptable to ZATCA". Paragraph (3) of Article (20) thereof states: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, the Authority may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at the Authority's discretion in view of the surrounding circumstances, facts and information available with the Authority". Based on the above and after reviewing the case file, the Department found that the Plaintiff submitted employee contracts that specified employees' entitlement to bonuses; however, these contracts did not mention the allowances stated in the regulations. Additionally, the Plaintiff did not provide the internal bonus policy approved by the Minister of Labor or any documents proving the payment of bonuses to employees. Accordingly, the Department must reject Plaintiff's objection.

Third: Donations Item for 2015:
The dispute arises from Plaintiff's objection to Defendant's action of not deducting the company's share in charitable and social contributions amounting to SAR (735,298) from the net book profit. The Plaintiff stated that these were donations made to the Saudi partner (... Holding Company). However, the Defendant argued that its action was in accordance with the provisions of Zakat Collection Regulations. Paragraph (4) of Article (5) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, states: "Donations are considered deductible expenses if supporting documents are provided and their authenticity and seriousness are verified." Based on the above and after reviewing the case file, the Department confirmed that the Plaintiff had made the donations after reviewing the submitted documents. Since deductible donations from the Zakat base must be supported by verified and credible documentation, the Department must cancel the Defendant's decision.
Fourth: Bad Debts Item for 2017:
Based on Article (70) of the Law of Civil Procedures, issued by Royal Decree No. (M/1) dated 22/01/1435 AH, states that: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgment, settlement, or the like in the case record, and the court shall issue a deed to that effect". In addition, Paragraph (1) of Article (70) of the Implementing Regulations of the Law of Civil Procedures issued by Minister of Justice Decision No. (39933) dated 19/05/1435 states: "If an agreement is reached prior to entering the case, the text of the case and the answer shall be entered prior to entering such agreement, provided that the original case falls within the jurisdiction of the Department, even if the text of the agreement falls within the jurisdiction of another court or Department and the object of the case or portion thereof is agreed upon". Based on the above, the Department confirmed that the dispute was resolved by the Defendant's acceptance of the Plaintiff's action, as stated in the letter issued by the Defendant in the response memorandum, which included: "The Authority accepted Zakat Payer's objection during the objection phase, which is considered a resolution of the dispute."
Fifth Distributed Profits to the Saudi Partner for 2017:
The dispute arises from the Plaintiff's objection to the Defendant's action of not deducting the Saudi partner's share of distributed profits amounting to SAR (31,450,000) from the beginning balance of retained earnings. However, the Defendant argued that its action was in compliance with the provisions of Zakat Collection Regulations. Paragraph (8/First) of Article (4) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, states: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 8- The balance of retained earnings from previous years at the end of the year." Based on the above, and after reviewing the submitted documents, the Department confirmed that the Plaintiff distributed the profits before the completion of the lunar year. Therefore, the Department must cancel the Defendant's decision.
Sixth: Inventory Balance for 2017 (Spare Parts):
The dispute arises from the Plaintiff's objection to the Defendant's action of not deducting the inventory balance of spare parts for fixed assets amounting to SAR (365,076) from the Zakat base. The Plaintiff stated that the inventory represents spare parts and consumable materials used for asset maintenance and is not held for trading purposes. However, the Defendant argued that its action was in accordance with Zakat Collection Regulations. Paragraph (1/Second) of Article (4) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, states: "The following items shall be deducted from the Zakat Base: 1- Fixed assets including the following: Net value of fixed assets (acquisition assets) and any payments for purchase of fixed assets, and value of spare parts not intended for sale, provided that such assets are owned by Taxpayer,

unless there is an impediment to transfer of ownership, and are used in the activity". Based on the above, spare parts not intended for sale are among the items that can be deducted from the Zakat base, provided their nature is proven and they are used for the maintenance of fixed assets and not for resale. Upon reviewing the case file, the Department found through the financial statements and their disclosures that the inventory balance consists of spare parts retained for the maintenance of the factory and machinery. Additionally, the account statement for this item matched the balance shown in the financial statements, clearly indicating the nature of the spare parts. Therefore, the Department must cancel Defendant's decision.

Seventh: Late Payment Fine:

The dispute arises from Defendant's imposition of the late payment penalty. The Defendant argued that the penalty was imposed on unpaid tax differences that were not settled by the statutory deadline. Paragraph (1) of Article (68) of the Implementing Regulations of the Income Tax Law, issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, states that: "In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases: B. Delay in payment of due tax as per the Department's assessment". E. Delay in payment of tax required to be withheld within ten days of the following month during which payment was made to the beneficiary, as stipulated in Article (68) of the Law. The payment of the same shall be the responsibility of the withholding entity". Additionally, Paragraph (3) of Article (67) of the same regulations states that: "Unpaid tax shall mean the difference between the amount paid by Zakat Payer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment". Paragraph (A) of Article (68) of the same Implementing Regulations states: "A. In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment." Based on the above, and after reviewing the case file and the submitted defenses and documents, and considering that the late payment penalty is calculated from the due date for filing the declaration until the date of payment of the tax due as a result of applying the provisions of the system and the amendments made by the Defendant, and since the dispute between the parties is document-based and does not arise from a significant difference in the interpretation of legal provisions, the Department must support the Defendant's action in imposing the late payment penalty from the due date on the items for which the Plaintiff's objection was rejected. However, the late payment penalty shall be waived for the items where Defendant's decision was canceled, as the basis for imposing the tax no longer exists.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

First: Acknowledging the end of the dispute between the Plaintiff/ ..... Company, (TIN .....) with the Defendant/ Zakat, Tax and Customs Authority, regarding the Bad Debts Item for the year 2017, by Plaintiff's acceptance of Defendant's action in this regard.

Second: Dismiss Plaintiff's/ ..... Company Limited, (TIN. .....) to Defendant/ ZATCA's decision related to the procedural aspect under dispute.

Third: Reject the objections filed by the Plaintiff/ .... Company Ltd. (TIN ...), against the decision of the Defendant/ Zakat, Tax, and Customs Authority, related to the Employee Benefits item for the years 2015 to 2017.

Fourth: Amend the action of the Defendant/Zakat, Tax and Customs Authority, against the Plaintiff/ ..... Company Limited, (TIN Number.....), related to the Late Payment Penalty item under dispute, in accordance with the reasoning provided.

Fifth Cancel all other decisions of the Defendant/ ZATCA against the Plaintiff/ ..... Company (TIN ...), related to the assessments subject matter of this case.

This decision was delivered in presence of the parties. The Department set Thursday, 02/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1943)
Issued in Appeal No. (Z-67824-2021)

Key words:
Zakat Assessment – Accounts – Addition of Short-Term Loans Not Completing the Lunar Year in Excess of What Is Required – The Burden of Proof Lies with Zakat Payer – Non-Deduction of Investments in Closed Joint-Stock Local Companies – Loans as a Component of the Zakat Base

Abstract

The Plaintiff requests the cancellation of the decision issued by the Zakat, Tax, and Customs Authority regarding the Zakat assessment for the years 2015 to 2017, related to two items: First: Addition of Short-Term Loans Not Completing the Lunar Year in Excess of What Is Required (2015–2017): The Plaintiff argued that the disputed loans are specific to subsidiary companies and that the loans had not completed the lunar year. However, the Defendant maintained that its action was in compliance with the provisions of Zakat Collection Regulations. Second: Non-Deduction of Investments in Closed Joint-Stock Local Companies for 2016: The Defendant rejected the deduction of investments in closed joint-stock local companies from the Zakat base deductions. The Plaintiff requested the cancellation of the Defendant's action to prevent double counting in Zakat. Upon reviewing the case file, the Department found that the Plaintiff provided evidence showing that part of the disputed loans consisted of long-term loans, while the other part represented revolving and continuous loans. However, the Plaintiff did not provide evidence indicating the dates of obtaining and repaying the loans. Since loans are considered a component of the Zakat base—regardless of their type, source, or classification—provided they have completed the lunar year or are used to finance deductible assets, the Department must reject Plaintiff's objection. Second: It was found that the investments represent securities traded on the Saudi Stock Exchange, and the Plaintiff did not submit the Zakat declaration for the invested companies. Additionally, the Plaintiff failed to provide proof of Zakat payment for the investment or the audited financial statements to review the nature of the investment and the articles of incorporation. The Department ruled to: accept Plaintiff's objection regarding the deduction of fixed assets being less than required according to the financial statements for the years 2015 to 2017, and all other objections are rejected. The decision is considered final and enforceable.

Instruments:

- Article (4/First/5, and Second/4/A) and (20/3) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) dated 07/07/1440 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Saturday, 14/02/1444, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted under Royal Order No. (26760) dated 23/12/1439 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 30/06/2021.

Facts of the Case are summarized as follows: Mr. ....., holder of National ID No. ....., in his capacity as attorney of Plaintiff/..... Company, (C.R. No. .....), under POA No. ..... dated …/02/1444 AH, issued by the Notary Public in Riyadh Northern Region; has filed a statement of claim objecting to the decision issued by Zakat, Tax, and Customs Authority "ZATCA" regarding Zakat Assessment of 2015 to 2017 AD. Upon presenting the statement of claim to the Defendant, it responded regarding the Addition of Short-Term Loans Not Completing the Lunar Year in Excess of What Is Required as follows: The Defendant, during the assessment, added an amount of SAR 612,675,195 for the year 2015, SAR 764,610,941 for the year 2016, and SAR 813,555,731 for the year 2017 in relation to revolving loans. Since the cash balance in the net cash flows from operating activities was negative, there was no source for loan repayment except by withdrawing new loans to finance trading inventory. In this case, the loans are considered revolving loans, with the lower balance between the beginning and the end of the period being taken. The Defendant found that the loans were renewed and continuous, where the loan was obtained from the bank, repaid after a short period, and then another loan of the same amount was obtained. Therefore, the Plaintiff's objection was rejected based on Article (4) of Zakat Collection Regulations. Deduction of Fixed Assets Less Than Required According to Financial Statements: The Defendant argued that this item was procedurally inadmissible because the objection was not submitted to the Defendant, in accordance with Article (2) of Tax Disputes and Violations Committee Procedures. Non-Deduction of Investments in Closed Joint-Stock Local Companies for 2016: The Defendant rejected the deduction of SAR 141,120,000 from the Zakat base, which represents investments in listed companies, as these were classified as available-for-sale financial securities under Article (4) of the Zakat Collection Regulations. It was found that trading activities occurred during the year on these investments, indicating that Zakat Payer's investment in .... company was for trading purposes rather than for holding. This reinforced that the investments were not held for possession, leading to the rejection of Plaintiff's objection. Accordingly, the Defendant requests a ruling to dismiss the case and reserves the right to present further responses and clarifications before the closure of the pleadings.

On Saturday, 14/02/1444 AH, the Department held a remote session to hear the case. In attendance was ... (National ID No. ...) as Plaintiff's attorney under Power of Attorney No. ... dated .../02/1444 AH, issued by the Notary Public in North Riyadh. Also present was ... (National ID No. ...) as attorney of the Defendant/ Zakat, Tax, and Customs Authority, under an authorization issued by the Deputy Governor for Legal Affairs with Authorization No. (...) dated .../10/1443 AH. When Plaintiff's attorney was asked about his claim, he responded that it does not go beyond what was stated in the statement of claim filed with the General Secretariat of Tax Committees. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. When the Department repeatedly asked Plaintiff's representative whether his client had objected to

the deduction of fixed assets being less than required according to the financial data for the years 2015 to 2017 during the objection phase with the Defendant, or if the objection was raised only before the Department, Plaintiff's representative did not respond to the Department's inquiry. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having pursued Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance Resolution No. (2082) dated 01/06/1438 AH as amended. Having perused the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and its amendments, and its Implementing Regulations issued by virtue of
Finance Minister's Decision No. (1535) dated 11/06/1425 AH, as amended, and having reviewed tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) dated 21/04/1441 AH, as well as relevant laws and regulations.
In Form: The Plaintiff filed this case moving to cancel ZATCA's decision regarding the zakat assessment for the years from 2015 to 2017. Since this dispute is a zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH, and since the case was filed by a person with capacity, and within the period prescribed by law, it is therefore accepted in form. Regarding the deduction of fixed assets being less than required according to the financial data for the years 2015 to 2017, the Plaintiff did not provide evidence to the Department proving that it had submitted an objection on this item to the Defendant. Therefore, the Department must reject the Plaintiff's objection on this item.
On Merits: Having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Department found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of Zakat Assessment of 2015 to 2017 AH, which included the following:
First: Item of Addition of Short-Term Loans Not Completing the Lunar Year in Excess of What Is Required for the Years 2015 to 2017:
The dispute arises from Plaintiff's objection to Defendant's action of adding short-term loans amounting to SAR (612,675,195) for the year 2015, SAR (764,610,941) for 2016, and SAR (813,555,731) for 2017. The Plaintiff claimed that the disputed loans were specific to subsidiary companies and pointed out that the loans had not completed the lunar year. However, the Defendant argued that its action was in compliance with the provisions of Zakat Collection Regulations, based on Paragraph (First/5) of Article (4) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, which states that: "The Zakat base shall consist of the Zakat Payer's assessable funds, including: 5. Government and commercial loans, along with other equivalent financing sources, such as creditors, notes payable and overdraft owed by Zakat Payer as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it". Moreover, Article 20.3 stipulates that: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, the Authority may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at the Authority's discretion in view of the surrounding circumstances, facts and information available with the Authority". Based on the above, and after reviewing the case documents, the Department found that the Plaintiff

provided evidence showing that part of the disputed loans represented long-term loans while the other part represented revolving and continuous loans. However, the Plaintiff did not provide evidence indicating the dates of obtaining and repaying the loans. Since loans are considered a component of Zakat base—regardless of their type, source, or classification—provided that a full lunar year has passed on them or they are used to finance deductible assets, the Department must reject Plaintiff's objection.

Second: Non-Deduction of Investments in Closed Joint-Stock Local Companies for 2016: The dispute arises from Plaintiff's objection to Defendant's action of not accepting the deduction of investments in closed joint-stock local companies amounting to SAR (141,120,000) from the Zakat base deductions. The Plaintiff argued that these investments represent shares in Saudi companies that are subject to Zakat and, therefore, requested the cancellation of the Defendant's action to prevent double payment of Zakat. However, the Defendant argued that its action was in compliance with the provisions of the Zakat Collection Regulations, based on Paragraph (Second/4/A) of Article (4) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, which states that: "The following items shall be deducted from the Zakat Base: -4 (A): "Investments in establishments inside the Kingdom - in partnership with others - if such investments are subject to collection of Zakat under these Regulations, if investment in such establishments is not subject to collection, then it shall not be deducted from base". Paragraph (3) of Article (20) also states that: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, the Authority may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at the Authority's discretion in view of the surrounding circumstances, facts and information available with the Authority". Based on the above, and after reviewing the case documents, the Department found that the investments represent securities traded on the Saudi Stock Exchange. The Plaintiff did not submit the Zakat declaration for the invested companies, nor did it provide evidence of Zakat payment for the investment or audited financial statements to examine the nature of the investment and the articles of incorporation of the Saudi company in which the investment was made. For investments to be considered possessed assets and eligible for deduction from the Zakat base, two essential conditions must be met: Documented intent from an authorized person clarifying the purpose of the investment. No sale transactions conducted on the investment during the year. Accordingly, the Department must reject Plaintiff's objection.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

First: Reject the objection filed by Plaintiff/..... Co.), TIN No. (...) against the Defendant/ Zakat, Tax, and Customs Authority, related to the deduction of fixed assets being less than required according to the financial data for the years 2015 to 2017, due to the failure to object to this item before the Defendant within the statutory period.

Second: Dismiss otherwise objections filed by Plaintiff/ ... Company), TIN No. (...) to Defendant/ (ZATCA) decisions regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Thursday, 02/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1944)
Issued in Appeal No. (Z-64217-2021)

Key words:
Zakat Assessment – Accounts – Accumulated Losses – Zakat Provision – Available-for-Sale Investments – Land Investments – Long-Term Investment – The Burden of Proof for the Accuracy of Zakat Payer's Zakat Declaration Lies with Zakat Payer.

Abstract

The Plaintiff seeks cancellation of the decision issued by Zakat, Tax, and Customs Authority regarding the Zakat assessment for the years 2014 to 2017, which involves five items: Zakat Assessment for the Year 2014 After the Statutory Period: The Plaintiff stated that it submitted the Zakat declaration to the Defendant within the statutory deadline. Second: Land Investments for the Years 2016 and 2017: The Plaintiff claimed it engages in the ownership and purchase of land for long-term investment purposes, aiming to develop and lease it. The Plaintiff also stated that the classification of land in the 2015 financial statements was incorrect. Third: Available-for-Sale Investments for the Years 2014 to 2017: The Plaintiff objected to the non-deduction of investments in the German Fund during the years 2014 to 2017, asserting that it is a private equity fund. Fourth: Zakat Provision for the Years 2014, 2016, and 2017: The Plaintiff objected to the addition of the opening balance of the Zakat provision after deducting the debit movement. The Plaintiff requested the deduction of outstanding trade receivables, related party balances, prepayments, deposits, and other receivables from the Zakat base when adding current liabilities. Fifth Accumulated Losses for the Year 2015: The Plaintiff objected to the non-deduction of accumulated losses from the Zakat base for 2015. ZATCA insisted on the validity of its procedures. Regarding the first item, the Department found, regarding the first item, and due to Defendant's failure to provide substantial evidence supporting its claim that the Plaintiff's declaration contained incorrect information, and in accordance with Article (21/10) of Zakat Collection Regulations, that: Second: The Defendant did not provide evidence proving that the lands were used for trading purposes. Third: It was found that the financial statements of the real estate fund were not certified by a licensed auditor in the country of investment and were not approved by official authorities. Therefore, the investment did not meet the deduction requirements. Regarding the year 2014, the Department ruled in the first item related to the Zakat assessment for 2014 to cancel the Defendant's decision. Fourth: For the years 2016 and 2017, the treatment of provisions in Zakat involves adding the credited balance formed during the year to the net profit. Upon reviewing the case file and the financial statements for 2016 and 2017, the amount added to the Zakat base was the opening balance minus the amount used during the year. The Department confirmed the correctness of Defendant's action. As for the year 2014, since the Department ruled to: cancel Defendant's decision in the first item regarding the Zakat assessment for 2014, and concerning the Plaintiff's request to deduct trade

receivables that remained unpaid for more than a year from the Zakat base, in pursuit of fairness, the Plaintiff failed to provide supporting documents to verify and determine the debit and credit balances for each party. Fifth The Department confirmed the correctness of the Defendant's action in deducting the adjusted carried-forward losses according to Defendant's assessment, after adjusting them for the provisions that were reversed in the year they were formed. The Department ruled to: reject Plaintiff's objections related to the Available-for-Sale Investments for the years 2015 to 2017, Zakat Provision for the years 2016 and 2017, and the Accumulated Losses for the year 2015, and cancel all other decisions issued by the Defendant. The decision is considered final and enforceable.

Instruments:

- Article (76) of the Law of Procedures Promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH.
- **Articles (77/A) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH.**
- Article (60) of the Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH.
- Articles (4/1/Second, and 4/B of Item Second), (4/9/First and Second), (4/10), and (21/8/A, B, C), (21/10, 11) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) of 07/07/1440 AH
- Article (2) of Tax Dispute and Violation Committee Procedures issued under Royal Decree No. (26040) dated 21/04/1441 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Saturday, 14/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 10/08/2021 AD.

Facts of the case are summarized as follows: Mr. ....., holder of National ID No. ....., in his capacity as attorney of Plaintiff/ ..... Company, Real Estate Development Company (Commercial Registration No. ...), under Power of Attorney No. (...) dated .../09/1442 AH, issued by Notary/ ..., submitted an objection to Zakat assessment for the years 2014 to 2017 issued by Zakat, Tax, and Customs Authority.

Having presented the statement of claim to Defendant, it answered as follows; in regards of the first item: Zakat Assessment for the Year 2014 After the Statutory Period: The Defendant found that Zakat Payer's Zakat declaration included treatments inconsistent with the provisions of the Zakat Regulations. Therefore, the Defendant based its procedure on Article (21) of Zakat Collection Regulations. Item Second: Land Investments for the Years 2016 and 2017: Upon reviewing the audited financial statements for 2016 and 2017, the Defendant determined that the lands were prepared for sale and intended for trading purposes. Therefore, the Defendant did not accept the deduction of real estate investments from Zakat base for 2016 and 2017,

based on Article (4) of Zakat Collection Regulations. Item Third: Available-for-Sale Investments for the Years 2014 to 2017: The Defendant did not accept the deduction of

this item from the Zakat base, as it was found that the investments were in funds not registered with ZATCA, making them ineligible for deduction. Consequently, they are considered current assets classified as trading inventory. Item Fourth: Zakat Provision for the Years 2014, 2016, and 2017: The Defendant added amounts that had completed the lunar year according to the financial statements: SAR 852,012 for 2014, SAR 35,633,436 for 2016, and SAR 39,266,528 for 2017, in accordance with Article (4) of Zakat Collection Regulations. Item Fifth: Accumulated Losses for the Year 2015: The Defendant did not deduct this item from the Zakat base for 2015 due to the absence of carried-forward losses based on the Defendant's approved assessment for 2014, according to Article (4) of Zakat Collection Regulations. Accordingly, the Defendant requests a ruling to dismiss the case and reserves the right to present further responses and clarifications before the closure of the pleadings.

On Saturday, 14/02/1444 AH, the Department held a remote session to hear the case. In attendance was/ ..., holding National ID No. ..., in his capacity as attorney of the Plaintiff under Power of Attorney No. ... dated .../09/1442 AH, issued by Notary/.... Also present was/ ..., holding National ID No. ..., in her capacity as attorney of the Defendant/ Zakat, Tax, and Customs Authority, under an authorization issued by the Deputy Governor for Legal Affairs with Authorization No. ... dated .../10/1443 AH. When Plaintiff's attorney was asked about his claim, he responded that it does not go beyond what was stated in the statement of claim filed with the General Secretariat of Tax Committees. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the Case to abolish Defendant's decision regarding Tax Assessment of 2014 – 2017 AD; and since this dispute is a Tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes under Royal Decree No. (26040) of 21/04/1441 AH; and since the Case documents has established that Plaintiff filed the Case within the prescribed statutory period, the Case is then accepted in form.

On merits: having examined the case papers and documents included in the case file, as well as the requests, defenses and pleas made by the parties, the Department found that the dispute is related to the zakat assessment made by ZATCA for the years 2014 to 2017, which covers five items, namely:

First: Zakat Assessment for the Year 2014 After the Statutory Period:

The dispute arises from Plaintiff's objection to Defendant's action of issuing the Zakat assessment for the year 2014 after the expiration of the statutory period for assessment. The Plaintiff indicated that it had submitted the Zakat declaration to the Defendant within the statutory deadline. However, the Defendant argued that its decision was in compliance with the provisions of Zakat Collection Regulations. Article (21) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) dated

01/06/1438 AH, states that: "....8. The Authority may make or modify the assessment at any time without being bound by the time limit specified in the following cases: A. The zakat payer agrees in writing to conduct or amend the assessment; B. If the Zakat Payer does not submit his declaration. C. If it is found that the declaration contains invalid information. 10. GAZT may correct the error in applying the Law and instruction during five years as of the end of the term defined for the provision of zakat declaration for the zakat year upon his request, or if such errors were detected by GAZT or supervisory entity. 11. The Authority shall inform Zakat Payer of any error related to Zakat Assessment discovered by ZATCA after the lapse of the previous periods, whereby Zakat Payer can rectify the error and avoid any legal consequences." Based on the above, and after reviewing the case file, the Department found that the assessment issued by the Defendant was dated April 8, 2021, while the statutory deadline for issuing the assessment was April 30, 2020. The Defendant has the right to conduct the Zakat assessment without being bound by a specific period if one of the cases outlined in Paragraph (8/c) of Article (21) of Zakat Collection Regulations applies. This paragraph states that the Defendant may conduct or amend the Zakat assessment without a time limit if the declaration contains incorrect information. However, if Plaintiff's declaration is incorrect due to a misapplication of Zakat regulations or a difference in opinion regarding the Zakat treatment, Defendant's right to conduct the Zakat assessment expires after five (5) years from the statutory deadline for submitting the Zakat declaration, according to Paragraph (10) of Article (21) of the mentioned regulations. Defendant's claim that Plaintiff's declaration was incorrect merely because it disregarded Plaintiff's accounts and conducted an estimated assessment due to Plaintiff's failure to provide financial statements and supporting documents upon request does not justify Defendant's action. The Defendant failed to present any substantial material evidence proving that Plaintiff's declaration contained incorrect information that would grant it the right to issue the Zakat assessment without being bound by a specific period. The amendments made by the Defendant resulted either from a misapplication of Zakat instructions or a difference in interpretation between the parties. In both cases, the Defendant had the right to issue the Zakat assessment only within five (5) years from the end of the statutory deadline for submitting the declaration, according to Paragraph (10) of Article (21) of the Zakat Collection Regulations. Therefore, Paragraph (8) of Article (21) does not apply to Plaintiff's situation. Since the Defendant did not notify the Plaintiff of the Zakat assessment for the disputed years until after more than five (5) years had passed from the statutory deadline for filing the declarations, and due to the Defendant's failure to provide any substantial evidence supporting its claim that the Plaintiff's declaration contained incorrect information, and in application of Paragraph (10) of Article (21) of the Zakat Collection Regulations, the Department must cancel Defendant's decision.

Second: Land Investments for the Years 2016 and 2017:

The dispute arises from Plaintiff's objection to Defendant's action of not deducting land investments amounting to SAR (114,499,724) for the year 2016 and SAR (110,543,854) for the year 2017. The Plaintiff stated that it engages in the ownership and purchase of land for long-term investment purposes, intending to develop and lease it. The Plaintiff also explained that the classification of land in the 2015 financial statements was incorrect and was corrected in the 2018 financial statements by reclassifying the amounts as investment properties before transferring them during partner's exit. The Plaintiff further explained that the land ownership was transferred as part of the group restructuring arrangements, clarifying that (...) had exited the group. Accordingly, the land ownership was transferred to the exiting partner for a value of SAR (217,460,565), and it is now registered under the name of (...) Real Estate Company. The Plaintiff also indicated that .... Articles of Association were amended to reflect the change in ownership from (...) and his brothers

to two new entities. However, the Defendant argued that upon reviewing the financial statements, it was found that the lands were prepared for sale and intended for trading purposes. Therefore, the Defendant maintained that its action was in accordance with the provisions of Zakat Collection Regulations. Paragraph (1/Second) of Article (4) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, states that: "The following items shall be deducted from the Zakat Base: 1- Fixed assets including the following: Net value of fixed assets (acquisition assets) and any payments for purchase of fixed assets, and value of spare parts not intended for sale, provided that such assets are owned by Taxpayer, unless there is an impediment to transfer of ownership, and are used in the activity". Additionally, Paragraph (2) of the same article states: "The following items shall be deducted from the Zakat Base: 2- Zakat Payer's capital constructions under execution, which are being built for use in the activity and not for the purpose of sale." Based on the above, two essential conditions must be met for lands under development (projects under execution) to be considered possessed assets that are eligible for deduction from the Zakat base: Documented intent from an authorized person clarifying the purpose of the investment and absence of sale transactions occurred on the land during the year. Upon reviewing the case file, the Department found that the lands were registered in the company's name and were being used in the business, not for trading purposes. It was also confirmed that no sale transactions occurred on the disputed lands during the years 2014 to 2020, except for the transfer of ownership of part of the land to the partner/ ... as part of the group restructuring arrangements. The land was transferred to the exiting partner for a value of SAR 217,460,565 and is now registered under the name of (...) Real Estate Company, without affecting company's right to use the land, as confirmed by the exiting partner. The Plaintiff provided supporting documents proving the company's intention for investing in the land. Additionally, there were no sales of the land for trading purposes; the transfer of ownership was solely due to the restructuring process. Since the Defendant failed to provide evidence that the land was used for trading, the Department must cancel the Defendant's decision.

Third: Available-for-Sale Investments for the Years 2014 to 2017:

Available-for-Sale Investments for the Years 2014 to 2017:

The dispute arises from the Plaintiff's objection to Defendant's action of not deducting the investments in the German Fund for the years 2014 to 2017. The Plaintiff stated that it is a private equity fund managed by (...) Company. The Plaintiff added that these investments represent the company's cash flow and that the income generated from the fund is recognized as income and is subject to Zakat. The Plaintiff argued that since these are long-term investments, and the funding sources for purchasing these investments were already added to the Zakat base, the investments should be deducted from the base. The Plaintiff claimed that these investments exited the business in the form of investments and, therefore, did not remain in the business for a full twelve months. However, the Defendant argued that its procedure was in accordance with the provisions of the Zakat Collection Regulations. Paragraph (4/B) of Item Second of Article (4) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, states that: "The following items shall be deducted from the Zakat Base: Investments in establishments outside the Kingdom, in partnership with others, provided that Zakat Payer, within its Zakat Declaration, calculates the Zakat due for these investments in accordance with the rules set forth in these Regulations and pays thereof to ZATCA, and attaches audited accounts from a chartered certified accountant in the country of investment, certified by official authorities. If Zakat Payer fails to do so, the investments will not be deducted from the Zakat Base." Paragraph (3) of Article (20) also states: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's

failure to prove the accuracy of the information reported, the Authority may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at the Authority's discretion in view of the surrounding circumstances, facts and information available with the Authority". Based on the above, regarding the years 2015 to 2017, the Plaintiff has the right to deduct the foreign investment from its Zakat base, provided that it submits audited accounts from a licensed auditor in the country of investment. This is necessary for calculating the due Zakat on these investments and remitting it to the Defendant, thereby allowing the deduction from the investing company's Zakat base to avoid double Zakat payment. The dispute over this item arises from the Plaintiff's objection to the non-deduction of its investment in a real estate fund in Germany. Upon reviewing the case file, the Department found that the financial statements of the real estate fund were not audited by a licensed auditor in the country of investment and were not approved by official authorities. Therefore, the investment did not meet the deduction requirements stipulated in Paragraph (4/B) of Article (4) of Zakat Collection Regulations. As a result, the Department must reject Plaintiff's objection regarding this item for the years 2015 to 2017. Regarding the year 2014, since the Department previously ruled in the first item to cancel Defendant's decision concerning the Zakat assessment for 2014, the Department must also cancel Defendant's decision on this item for 2014 due to the expiration of the statutory period.

Fourth: Zakat Provision for the Years 2014, 2016, and 2017:

The dispute arises from Plaintiff's objection to Defendant's action of adding the opening balance of the Zakat provision, after deducting the debit movement amounting to SAR 852,012 for the year 2014, SAR 35,633,436 for the year 2016, and SAR 39,266,528 for the year 2017. The Plaintiff stated that these amounts represent due Zakat expenses classified as current liabilities in the financial statements, which were later settled in 2018. The Plaintiff demands the deduction of current trade receivables, related party balances, prepayments, deposits, and other receivables from the Zakat base in the event that current payables are added. On the other hand, the Defendant argued that its action was in compliance with the provisions of Zakat Collection Regulations. Paragraph (9/First) of Article (4) of the Implementing Regulations for Zakat Collection, issued by the Minister of Finance's Decision No. (2082) dated 01/06/1438 AH, states that: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 9. Provisions of year beginning (except provisions of doubtful debts for banks) after deducting the used provisions throughout the year". In addition, Paragraph (3) of Article (20) of the same Regulations states: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, the Authority may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at the Authority's discretion in view of the surrounding circumstances, facts and information available with the Authority". Based on the above, regarding the years 2016 and 2017, the treatment of provisions in Zakat involves adding the balance formed during the year (credit movement) to the net profit and adding the opening balance of provisions—after deducting the amount used during the year (debit movement)—to the positive elements of the base to determine the amount subject to Zakat. Upon reviewing the case file and the financial statements for the years 2016 and 2017, it was confirmed that the amount added to the Zakat base was the opening balance minus the amount used during the year, totaling SAR 35,633,436 for 2016 and SAR 39,266,528 for 2017. Since the Department confirmed the correctness of the Defendant's action, the Department must reject the Plaintiff's objection regarding this item for the years 2016 and 2017. Regarding the year 2014, as the Department previously ruled in the first item to cancel the Defendant's decision concerning the Zakat assessment for 2014, the

Department must also cancel the Defendant's decision on this item for 2014 due to the expiration of the statutory period. As for Plaintiff's request to deduct outstanding trade receivables that remained unpaid for more than one year from the Zakat base, in pursuit of fairness, the Plaintiff failed to provide supporting documents to verify and determine the receivable and payable balances for each party. Therefore, the Department must reject Plaintiff's objection in this regard.

Fifth Accumulated Losses for the Year 2015:

The dispute arises from Plaintiff's objection to Defendant's action of not allowing the deduction of accumulated losses amounting to SAR 13,445,479 from the Zakat base for the year 2015. The Plaintiff stated that the company identified certain accounting errors and decided to correct them retrospectively, amending the comparative figures for 2015, and used the revised financial statements as a basis for calculating Zakat. However, the Defendant did not consider the adjusted balances for the year 2016 to reflect the changes and added the opening balance of retained earnings for 2015, amounting to SAR 19,235,814. Accordingly, the Plaintiff demands that the amounts included in the restated financial statements be considered and that the above-mentioned treatment related to the accumulated losses claim for 2015 be approved. On the other hand, the Defendant argued that its action was in full compliance with the provisions of the Zakat Collection Regulations. Paragraph (9/Second) of Article (4) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, states that: "The following items shall be deducted from the Zakat Base: 9. The net adjusted deferred losses according to ZATCA's Assessments after adding the provisions or reserves only thereto, under which the loss was previously reduced in the year of its composition"; Based on the above, since carried-forward losses that may be deducted from the Zakat base are the adjusted losses according to the assessments issued by the Defendant—after adding back the provisions that were previously used to reduce the losses in the year they were created—to prevent double Zakat, the considered carried-forward losses for Zakat purposes are those adjusted in accordance with Zakat regulations, not the losses listed in the financial statements. Since the Department confirmed the correctness of Defendant's action in deducting the adjusted carried-forward losses according to Defendant's assessment—after adjusting them for the provisions that were reversed in the year they were formed—the Department must reject Plaintiff's objection.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

First: Reject the objections submitted by the Plaintiff, ... Real Estate Development Company (TIN ...), against the decision of the Defendant/ Zakat, Tax, and Customs Authority, regarding the item of available-for-sale investments for the years 2015 to 2017.

Second: Reject the objections submitted by the Plaintiff, ... Real Estate Development Company (TIN ...), against the decision of the Defendant/ Zakat, Tax, and Customs Authority, regarding the Zakat provision item for the years 2016 and 2017.

Third: Reject the objections submitted by the Plaintiff/ ... Real Estate Development Company (TIN ...), against the decision of the Defendant/Zakat, Tax, and Customs Authority, regarding the accumulated losses item for the year 2015.

Fourth: Cancel other decisions of the Defendant/Zakat, Tax and Customs Authority against the Plaintiff/ .... Real Estate Development Company ..... (TIN .....) related to the assessment at issue in the case.

This decision was delivered in presence of the parties. The Department set Thursday, 02/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt

of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Primary Committee

First Department for Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-1948)
Delivered in Case No. (Z-69400-2021)

Key words:
Zakat Assessment – Accounts – Saudi Partner's Share of Loans Added During the Year – Financing Company's Operations – Loans as Components of Zakat Base – Dismissing Plaintiff's Objection.

Abstract

Plaintiff requests annulling ZATCA decision regarding zakat assessment for 2015, due to adding Saudi partner's share of loans incurred during the year and used to finance Company's operations based on the filed zakat and tax return. Defendant answered that the Case is limited to loans added during the year and used to finance Company's operations. The Department found that Defendant relied in its procedure on loan movement statement for 2015. Since Plaintiff did not provide evidence to the contrary. Since loans are considered one of the components of zakat base, regardless of their type, source or classification, provided that such loans complete a zakat year or are used in financing assets deducted from zakat base. Department ruled to Dismiss Plaintiff's case, and consider the decision as final and enforceable.

Instruments:

- Articles (55) and (56) of the Law of Civil Procedure promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH.
- Article (4.5.First) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2216) dated 07/07/1440 AH.
- Article (21) of Tax Dispute and Violation Committee Procedures issued under Royal Decree No. (26040) dated 21/04/1441 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Sunday, 15/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 07/04/2021 AD.

The facts of this Case are summed up that ..., holder of National ID No. (.....) in his capacity as attorney of Plaintiff (... Company), C.R. No. (...), by virtue of Power of Attorney

No. (...) dated .../ 04/1443 AH issued from ... Notary, filed an objection to ZATCA zakat assessment for 2015.

Having presented the statement of claim to Defendant, Defendant answered that the claim is limited to loans added during the year and used in financing Company's operations. In addition, Defendant stated that it added long-term loans (current portion) amounting to SAR 459,809,767 and long-term loans (non-current portion) amounting to SAR 1,286,173,534 to zakat base. Accordingly, an amount of SAR 14,935,056.60 was added to zakat base, noting that such loans were used to finance fixed assets. Since Defendant added the variance stated in the financial statements, statement and figures reflected in Zakat Payer's declaration. Therefore, Plaintiff's objection was dismissed in accordance with Article (4) of the Implementing Regulations for the Collection of Zakat. Accordingly, the Defendant requests a ruling to dismiss the case and reserves the right to present further responses and clarifications before the closure of the pleadings.

On Sunday, 15/02/1444 AH, the Department held e-hearing session to consider the Case. At that session, (...), holder of National ID No. (...) in his capacity as Plaintiff's attorney under power of attorney No. (…) dated .../04/1443 AH issued by … Notary. The session was also attended by Ms. ..., holder of National ID No. (...) in his capacity as Defendant/ZATCA representative by virtue of Authorization issued by the Deputy Governor for Legal Affairs under No. (...), dated .../10/1443 AH. Having asked Plaintiff's attorney about the claim, he gave an answer that does not differ from the statements included in the statement of claim lodged with the General Secretariat of Zakat, Tax and Customs Committees. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form, since the Plaintiff filed the case to abolish ZATCA's decision regarding Zakat Assessment of 2015 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) dated 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defense and arguments raised by both parties, the Department found that the dispute involves Plaintiff's objection to Defendant's procedure outlined in adding Saudi partner's share of loans added during the year that are used in financing Company's operations based on the filed zakat declaration. Plaintiff stated that the added loans outline working capital support and were not used in financing fixed assets. It turns out from the audited financial statements that the closing cash balance amounted to SAR 27,891,761. Accordingly, no portion of the additions was used in financing fixed assets. On the other hand, Defendant argued that its procedure aligns with provisions of the Implementing Regulations for the Collection of Zakat.

In accordance with Paragraph (First.5) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH that stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: ... 5. Government and commercial loans, along with other similar financing sources, such as creditors, notes payable and overdraft accounts owed by Taxpayer as follows: (a) The remaining cash that has been saved or preserved. b. Parts thereof used to finance the property. C. were used in trade assets and had a year passed on it"

As such, the Department, having taken cognizance of Case file, found that Defendant relied in its procedure on loan movement statement for 2015, which revealed that the amount of SAR 39,425,730.24 outlines fixed assets. Since Plaintiff did not provide evidence to the contrary. Given that loans are considered one of the components of zakat base, regardless of their type, source or classification, provided that such loans complete a zakat year or they were used in financing assets deducted from zakat base. Therefore, the Department dismisses Plaintiff's objection.

As for the absence of the Plaintiff and his attorney from the hearing despite being duly notified, and based on Paragraph (1) of Article (20) of the Tax Dispute and Violation Committee Procedures, which stipulates that: "If a plaintiff fails to attend any hearing after being notified of the date set for consideration of the suit without an excuse acceptable to the circuit, the circuit must decide the suit if it is ripe for judgment". In addition, Article (56) of the Law of Civil Procedure stipulates: "If the plaintiff fails to attend the court hearings, in accordance with Article 55 of this Law, the defendant may petition the court to rule on the merits of the case. The court shall rule on the case if it is ripe for judgment and such judgment shall be deemed as if rendered in the presence of the plaintiff". Since Plaintiff did not submit an acceptable excuse for failure to attend the hearing session, and that the Department has deemed that the Case is ripe for adjudication according to Case documents. Therefore, the Department renders its decision in the Case as if in presence of Plaintiff.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

- Dismiss the objection filed by Plaintiff (Factory of ... Company), TIN No. (...) to Defendant/ (ZATCA)'s decision regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Thursday, 02/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period in accordance with Article 33.2 of Tax Dispute and Violation Committee Procedures).

Primary Committee

First Department for Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-1958)
Delivered in Case No. (Z-64564-2021)

Key words:
Zakat Assessment – Accounts – Investments – Advance Payment Item – Amending Zakat Base by Calculating Due Zakat Based on Audited Financial Statements – Submitting Financial Statements for Investing Companies – Right to Deduct Foreign Investment from Zakat Base – The burden of proving correctness of information reported in zakat declaration rests with Zakat Payer – Dismissing Objection.

Abstract

Plaintiff instituted this case moving to cancel ZATCA's decision regarding the tax assessment for the year 2015, based on two items; the First: Investments To amend zakat base by calculating the due zakat based on the audited financial statements of investee companies, which resulted in zakat variances. Second: (Advance Payments) item: To add advance payments from customers to zakat base for 2015, which resulted in zakat variances. Defendant argued that its procedure aligns with provisions of the Implementing Regulations for the Collection of Zakat. The Department found, regarding the first item, that Plaintiff submitted the financial statements of investee companies outside the Kingdom, prepared by a certified public accountant, without providing zakat calculation for such foreign investments or evidence of zakat payment. Since Plaintiff is entitled to deduct foreign investments from its zakat base, provided that Plaintiff submits audited accounts by a certified public accountant in the country of investment to calculate the due zakat and remit it to ZATCA, or provided evidence on zakat payment in the country of investment. Accordingly, such investments can be deducted from the investing company's zakat base to avoid double payment of zakat. Regarding the second item: Having taken cognizance of Case file, the Department found that Plaintiff did not provide supporting documents for its claim regarding the non-completion of zakat year on advance payments. Since advance payments are considered a source of financing, any portion of such payments on which zakat year has passed should be added to zakat base. Department ruled to Dismiss Plaintiff's case, and consider the decision as final and enforceable.

Instruments:

- Articles (4.Second.4.B) and (20.3) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2216) dated 07/07/1440 AH.
- Ministerial Resolution No. (1005) dated 28/04/1428 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Monday, 16/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 11/08/2021 AD.

The facts of this Case are summed up that ..., holder of National ID No. (...) in his capacity as the legal representative of Plaintiff (... Company LTD), C.R. No. (...), under AOA, filed an objection to ZATCA zakat assessment for 2015.

Having presented the statement of claim to Defendant, it answered as follows: Investments Defendant deducted the item from zakat base after making assessment for investee companies, as the assessment was made for ... Company - Qatar and ... Company - Bahrain, while adding zakat assessment in the amount of SAR 18,442,880 and deducting investment balance in the declaration in the amount of SAR 18,292,393 due to the fact that such investment are foreign investments in accordance with Article (4) of the Implementing Regulations for the Collection of Zakat. Item Second: Advance Payments: Defendant added the item amounting to SAR 432,062 to zakat base due to passage of zakat year in accordance with Article (4) of the Implementing Regulations for the Collection of Zakat. Accordingly, the Defendant requests a ruling to dismiss the case and reserves the right to present further responses and clarifications before the closure of the pleadings.

On Monday, 16/02/1443 AH, the Department held e-hearing session to consider the Case. At that session, (...), holder of National ID No. (...), in his capacity as Plaintiff's attorney, under POA No. (...) dated .../08/1443 AH issued by .... Notary. The session was also attended by Ms. ..., holder of National ID No. (...) in his capacity as Defendant/ZATCA representative by virtue of Authorization issued by the Deputy Governor for Legal Affairs under No. (...) dated .../10/1443 AH. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the Case moving for annulling ZATCA decision regarding zakat assessment for 2015. Given that this dispute falls within the category of tax disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since it is established from Case documents that Plaintiff filed the Case within the statutory period and by a party having capacity. Therefore, the Department accepts the Case in form. Regarding (Depreciation Variances and Long-Term Loans) items, Plaintiff did not provide evidence of filing its objection before Defendant and filed

its grievance directly to the Department. Therefore, the Department dismisses the Case filed by Plaintiff regarding (Depreciation Variances and Long-Term Loans) items in question due to failure to filed an objection before Defendant within the statutory period.
On Merits: Having taken cognizance of documents included in Case file, requests, defense and arguments raised by the parties, the Department found that the dispute involves the fact that ZATCA issued zakat assessment for 2015. In addition, Plaintiff objects to two items as follows:
First: Investments
Since the dispute involves Plaintiff's objection to Defendant's procedure outlined in amending zakat base by calculating due zakat based on the audited financial statements of the investee companies, resulting in zakat variances amounting to SAR 461,070. Plaintiff stated that the value of investments deducted from zakat base as per the filed declaration was correct and met deduction conditions. Thereupon, Defendant's procedure outlined in disallowing deduction of such investments from zakat base violated Article (4) of the Implementing Regulations for the Collection of Zakat. Plaintiff stated that such investments outline Company's share in the capital of investee companies in Bahrain and Qatar. In addition, profits from such investments were disclosed in Company's audited financial statements. Moreover, zakat and tax obligations of the investee companies were paid in their respective countries. Furthermore, reassessing zakat on these companies and demanding payment from the investing company constitutes a double payment of such tax and zakat obligations. On the other hand, Defendant argued that its procedure aligns with provisions of the Implementing Regulations for the Collection of Zakat. In addition, the Ministerial Resolution No. (1005) dated 28/04/1428 AH stipulates: "Second: Investments in entities outside the Kingdom, in partnership with others, shall be deducted from Zakat Payer's declaration, provided that Zakat Payer submits audited accounts from a certified public accountant in the country of investment in order to calculate zakat due on these investments and to remit them to ZATCA. Alternatively, Zakat Payer may provide proof that zakat has been paid in the country of investment, and accordingly deducting such investment from zakat base of the Saudi investing company to avoid double payment of zakat on these companies. If Zakat Payer does not provide the required documents above-mentioned, the investments shall not be deducted from zakat base". In addition, Paragraph (4.B) of (Second) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The following items shall be deducted from the Zakat Base: Investments in an entity outside the Kingdom, in participation with others, provided that the Zakat Payer remits and pays Zakat on such investments in his Zakat Declaration, according to the provisions of this Regulations. In addition, the Zakat Payer shall attach accounts audited by a chartered accountant licensed in the country of investment and approved by the official authorities. If the Zakat Payer fails to do so accordingly, such investments may not be deductible from the Zakat Base". As such, the Department, having taken cognizance of Case file, found that Plaintiff provided the financial statements of investee companies abroad, prepared by a certified public accountant, without providing zakat calculation for such foreign investments or proof of zakat payment. Since Plaintiff is entitled to deduct foreign investments from its zakat base, provided that it provided ZATCA with accounts audited by a chartered accountant in the country of investment to calculate the due zakat on such investments and remit it to ZATCA or provide proof of zakat payment in the country of investment. Subsequently, such investments can be deducted from investing company's zakat base to avoid double payment of zakat. Therefore, the Department dismisses Plaintiff's objection.
Second: (Advance Payments) item:

The dispute involves Plaintiff's objection to Defendant's procedure outlined in adding advance payments amounting to SAR 432,062 to zakat base for 2015, resulting in zakat variances on the Company amounted to SAR 10,802. On the other hand, Defendant argued that its procedure aligns with provisions of the Implementing Regulations for the Collection of Zakat. In addition, Paragraph (4) of (First) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 4. Submitted revenues on which a year has passed". In addition, Paragraph (3) of Article (20) of the same Regulations stipulates: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". As such, the Department, having taken cognizance of Case file, found that Plaintiff did not provide supporting documents for its claim regarding the non-completion of zakat year on such payments. Since advance payments are considered a source of financing, any portion of such payments on which zakat year has passed should be added to zakat base. Therefore, the Department dismisses Plaintiff's objection.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- Reject the objection of Plaintiff (... Company LTD), TIN No. (...) to Defendant (ZATCA) decision regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Thursday, 02/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period in accordance with Article 33.2 of Tax Dispute and Violation Committee Procedures).

Primary Committee

First Department for Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-1959)
Delivered in Case No. (Z-68056-2021)

Key words:
Zakat Assessment – Accounts – Adding Closing Balance of Loan Item to Zakat Base – Advance Payments to Customers – Failure to Submit Audited Financial Statements to Reconcile Opening and Closing Balances – The burden of proving authenticity of Zakat Payer's declaration shall be Zakat Payer's responsibility.

Abstract

Plaintiff instituted this case moving to cancel ZATCA's decision regarding the tax assessment for the year 2015, based on two items; the First: (Loans) item: Plaintiff objects to adding closing balance of (Loans) item to zakat base for 2015. In addition, Plaintiff stated that a zakat year has not passed on the item. Second: (Advance Payments to Customers) item: Plaintiff objects to adding (Advance Payments to Customers for 2015) item, arguing that zakat year has not passed on the item. On the other hand, Defendant argued that its procedure aligns with provisions of the Implementing Regulations for the Collection of Zakat. In addition, Plaintiff's objection was partially accepted. The Department found, regarding the first item, that Plaintiff did not provide the audited financial statements to verify total additions of fixed assets and capital projects. In addition, Plaintiff stated in the statement of claim that the additions of fixed assets and projects in progress during the year amounted to SAR 11,351,681, while the total additions included in its report amounted to SAR 1,851,226. Therefore, the Department dismisses Plaintiff's objection. Regarding the second item, it turned out that Plaintiff did not provide the audited financial statements to reconcile the opening and closing balances of (Advance Payments to Customers) item along with the report provided by Plaintiff. Department ruled to Dismiss Plaintiff's case, and consider the decision as final and enforceable.

Instruments:

- Articles (55) and (56) of the Law of Civil Procedure promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH
- Articles (4.First.4) and (20.3) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2216) dated 07/07/1440 AH.
- Article (20/1) of Tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) dated 21/04/1441 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.
On Sunday, 15/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law

promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the above-mentioned Case. Since the Case fulfilled the established regulatory requirements, it was lodged with General Secretariat of Tax Committees on 31/08/2021 AD.

The facts of this case are summed up so as ..., holder of National ID No. (...) in his capacity as the legal representative of Plaintiff (... Group), C.R. No. ..., filed an objection to the zakat assessment for the year 2015 issued by ZATCA.

Having presented the statement of claim to Defendant, it answered as follows; in regards of the first item: Loans: Defendant added closing balance of long-term loans based on the financial statements in accordance with Article (4) of the Implementing Regulations for the Collection of Zakat. Item Second: Advance Payments: Defendant added opening balance or closing balance, whichever is less. Having reviewed the provided movement statement, it turned out that the amounts on which a zakat year has passed is SAR 3,804. Therefore, Plaintiff's objection was partially accepted in accordance with Article (4) of the Implementing Regulations for the Collection of Zakat. Accordingly, the Defendant requests a ruling to dismiss the case and reserves the right to present further responses and clarifications before the closure of the pleadings.

On Sunday, 15/02/1444 AH, the Department held e-hearing session to consider the Case. The Department found that Plaintiff's attorney did not appear despite of being duly notified. In addition, ..., holder of National ID No. (...) in his capacity as Defendant (ZATCA) representative by virtue of Authorization issued by the Deputy Governor for Legal Affairs under No. (...) dated .../10/1443 AH. Having asked Defendant's attorney about Plaintiff's claims, she maintained the statements contained in Defendant's response memorandum and requested that no documents that were not submitted during the inspection and objection period be accepted. Having asked Defendant's attorney if she had any other statements, they replied negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) dated 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) dated 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) dated 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, as well as other relevant laws and regulations.

In Form, since the Plaintiff filed the case to abolish ZATCA's decision regarding Zakat Assessment of 2015 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) dated 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Department found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of Zakat Assessment of 2015 AD. The dispute focuses on two items, outlined as follows:

First: (Loans) item:

The dispute involves Plaintiff's objection to Defendant's procedure outlined in adding closing balance of (Loans) item, amounting to SAR 6,000,000, to zakat base for 2015. Plaintiff stated that the short-term loans outline facilities granted to the Company by local

banks to finance ongoing or future projects, purchase fixed assets or procure materials for operating activities. In addition, adding fixed assets and projects in progress during the year amounted to SAR 11,351,618. Moreover, Plaintiff stated that the item had not completed a zakat year. On the other hand, Defendant argued that its decision aligns with provisions of the Implementing Regulations for the Collection of Zakat. In addition, Paragraph (3) of Article (20) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". As such, the Department, having taken cognizance of Case file, found that Plaintiff did not submit the audited financial statements to verify total additions of fixed assets and capital projects. Since Plaintiff stated in the statement of claim that the additions of fixed assets and capital projects in progress that were completed in total amount of SAR 11,351,681. In addition, the total additions set out in the provided report amount to SAR 1,851,226. Therefore, the Department dismisses Plaintiff's objection.

Second: (Advance Payments to Customers) item:

The dispute involves Plaintiff's objection to Defendant's procedure outlined in adding (Advance Payments to Customers) item, amounting to SAR 222,381, to zakat base for 2015. Plaintiff stated that the item had not completed a zakat year. On the other hand, Defendant argued that its procedure aligns with provisions of the Implementing Regulations for the Collection of Zakat. In addition, Plaintiff's objection was partially accepted, as it turned out that an amount of SAR 3,804 had completed a zakat year. Paragraph (First.4) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 4. Submitted revenues on which a year has passed". In addition, Paragraph (3) of Article (20) of the same Regulations stipulates: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". As such, since the advance payments are considered a source of finance, and the amount on which a zakat year has passed shall be added to zakat base. In addition, the Department, having taken cognizance of Case file, found that Plaintiff did not provide the audited financial statements to reconcile opening and closing balances of (Advance Payments to Customers) item along with the report provided by Plaintiff. Therefore, the Department dismisses Plaintiff's objection.

As for the absence of the Plaintiff and his attorney from the hearing despite being duly notified, and based on Paragraph (1), Article (20) of Tax Dispute and Violation Committee Procedures, which stipulates that: "If a Plaintiff fails to attend any hearing after being notified of the date set for consideration of the suit without an excuse acceptable to the Department, the Department must decide the suit if it is ripe for judgment". Furthermore, Article 56 of the Law of Civil Procedures provides that: "If the plaintiff fails to attend the court hearings, in accordance with Article 55 of this Law, the defendant may petition the court to rule on the merits of the case. The court shall rule on the case if it is ripe for judgment and such judgment shall be deemed as if rendered in the presence of the plaintiff". Since Plaintiff did not submit an acceptable excuse for failure to attend the hearing session, and that the Department has deemed that the Case is ripe for adjudication

according to Case documents. Therefore, the Department renders its decision in the Case as if in presence of Plaintiff.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- Dismiss the objection filed by Plaintiff (... Group), (TIN ...), to Defendant (ZATCA) decision regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Thursday, 02/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period in accordance with Article 33.2 of Tax Dispute and Violation Committee Procedures).

Primary Committee

First Department for Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-1961)
Delivered in Case No. (ZI-68217-2021)

Key words:
Zakat Assessment – Accounts – Suppliers – VAT – Zakat year has not passed – The burden of proving authenticity of Zakat Payer's declaration shall be Zakat Payer's responsibility – Dismissing Objection.

Abstract

Plaintiff requests annulling ZATCA decision regarding zakat assessment for years from 1434 to 1440 on the ground that that a zakat year has not passed on the item. Defendant argued that the Case should not be accepted in form due to Plaintiff's failure to file an objection within the statutory period. The Department found that Plaintiff did not file the objection to Defendant but instead filed a grievance directly before the Department. Second: It turns out that Plaintiff did not provide the supporting documents, such as payment receipts or accounting entries, for ensuring that a zakat year has not passed. Department ruled to Dismiss Plaintiff's objection related to (Suppliers) item in question for years from 1434 to 1438, dismiss Plaintiff's objection to VAT item for 1439 and 1440, and consider the decision as final and enforceable.

Instruments:

- Articles (4.First.5) and (20.3) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2216) dated 07/07/1440 AH.
- Article (2) of Tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) dated 21/04/1441 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Saturday, 15/02/1444, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted under Royal Order No. (26760) dated 23/12/1439 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 01/09/2021.

The facts of this Case are summed up that Plaintiff (...), holder of National ID No. (...), filed an objection to ZATCA zakat assessment for years from 1434 to 1440.

Having presented the statement of claim to Defendant, Defendant argued that the Case is inadmissible in form due to failure to file an objection before Defendant within the

statutory period in accordance with Article (2) of Tax Dispute and Violation Committee Procedures issued by Royal Order No. (26040) dated 21/04/1441 AH. Substantively, for years from 1434 to 1438, Defendant added the balance of the item to zakat base due to Plaintiff's failure to provide supporting documents in accordance with Article (20) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH. Thereupon, Defendant requests dismissing the Case, while reserving right to submit further replies and clarifications until before closing of pleadings. On Sunday, 15/02/1444 AH, the Department held e-hearing session to consider the Case. At that session, ..., holder of National ID No. (...), appeared in his capacity as Plaintiff's attorney under POA No. (...) dated .../.../1444 AH issued from MOJ e-Services. At that session, ..., holder of National ID No. (...) in his capacity as Defendant (ZATCA) representative by virtue of Authorization issued by the Deputy Governor for Legal Affairs under No. (...), dated .../10/1443 AH. Having asked Plaintiff's attorney about the claim, he gave an answer that does not differ from the statements included in the statement of claim lodged with the General Secretariat of Zakat, Tax and Customs Committees. Having referred to Defendant's representative for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the Case moving for annulling ZATCA decision regarding zakat assessment for years from 1434 to 1438. Given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since it is established from Case documents that Plaintiff filed the Case within the statutory period and by a party having capacity. Therefore, the Department accepts the Case in form regrading years from 1434 to 1438. Regarding (VAT for 1439 and 1440) item, the Department found that Plaintiff did not file an objection before Defendant and instead directly filed a grievance before the Department. Thereupon, the Department dismisses Plaintiff's objection to (VAT) item for years from 1439 and 1440.

On Merits: Having taken cognizance of documents included in Case file, requests, defense and arguments raised by both parties, the Department found that the dispute involves Plaintiff's objection to Defendant's procedure outlined in disallowing deduction of (Suppliers for Years from 1434 to 1438) item. Plaintiff stated that zakat year has not passed on the item. On the other hand, Defendant argued that its procedure aligns with provisions of the Implementing Regulations for the Collection of Zakat. In addition, Paragraph (First.5) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: Zakat Base comprises the entire Zakat Payer's funds that are subject to Zakat collection, including: 5. Government and commercial loans or equivalent items of other sources of funds, such as creditors, bills payable, overdrafts due by the Zakat Payer in accordance with the following:

a. Remaining cash on which a Zakat year has passed. b. Parts thereof used to finance the property. c. Parts thereof used in trade bids on which a year has passed". In addition, Paragraph (3) of Article (20) of the same Regulations stipulates: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA".

As such, since trade payables are considered one of the components of zakat base, provided that a zakat year has passed on such trade payables or they are used to finance assets deducted from zakat base. In addition, the Department, having taken cognizance of Case file, found that no supporting documents, such as payment receipts or accounting entries, were submitted to ensure that a zakat year has not passed. Therefore, the Department dismisses Plaintiff's objection.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

First: Reject the objection filed by Plaintiff (...), TIN No. (...) to Defendant (ZATCA) decision regarding (Suppliers for Years from 1434 to 1438) item in question.

Second: Dismiss the objection filed by Plaintiff (...), TIN No. (...) against Defendant (ZATCA) regarding (VAT for 1439 and 1440) item due to Plaintiffs' failure to file an objection before Defendant within the statutory period.

This decision was delivered in presence of the parties. The Department set Thursday, 20/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period in accordance with Article 33.2 of Tax Dispute and Violation Committee Procedures).

Primary Committee

First Department for Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-1987)
Delivered in Case No. (Z-67224-2021)

Key words:
Zakat Assessment – Accounts – Adding (Amounts Due from Related Parties) Item – Debtor Account – Special Zakat Calculation to Avoid Double Payment of Zakat.

Abstract

Plaintiff requests annulling ZATCA decision regarding zakat assessment for 2017 and 2018. ZATCA argued that it had added (Amounts Due from Related Parties) item, as debtor account was not deducted because it does not pertain to the owner or partner. The Department found that loans and advances provided to a subsidiary that files its declarations to ZATCA require special zakat calculation to avoid double payment of zakat. Since part of loan and advances (based on investment rate) does not constitute lending to a third party. Therefore, Plaintiff is entitled to deduct a portion of loans and advances provided to the subsidiary from its zakat base, equivalent to its investment rate in the subsidiary that received the loan. Department ruled to Amend Defendant's procedure and consider the decision as final and enforceable.

Instruments:

- Articles (55) and (56) of the Law of Civil Procedure promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH.
- Article (4. Second.4. A) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2216) dated 07/07/1440 AH.
- Article (20.1) and (21) of Tax Dispute and Violation Committee Procedures issued by Royal Order No. (26040) dated 21/04/1441 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Monday, 16/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the above-mentioned Case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 26/08/2021.

The facts of this Case are summed up that ..., holder of National ID No. (...) in his capacity as the attorney for Plaintiff (... Company for Trading), C.R. No. (...), under Makkah Chamber POA No. (...), dated .../01/1443, filed an objection to ZATCA zakat assessment for 2017 and 2018.

Having presented the statement of claim to Defendant, Defendant answered that it had added (Amounts Due from Related Parties) item amounting to SAR 51,544,505 for 2017 and SAR 51,110,067 for 2018 to zakat base. Defendant stated that debtor account was not deducted because it does not pertain to the owner or partner. Thereupon, Plaintiff's objection was dismissed in accordance with Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH. Thereupon, Defendant requests dismissing the Case, while reserving right to provide further replies and clarifications until before closing of pleadings.

On Monday, 16/02/1444 AH, the Department held e-hearing session to consider the Case. The Department found that Plaintiff's attorney did not appear despite of being duly notified. In addition, ..., holder of National ID No. (...), in his capacity as the representative of the Defendant, the Zakat, Tax, and Customs Authority, pursuant to an authorization issued by the Deputy Governor of ZATCA for Legal Affairs with No. (...), dated .../10/1443 AH. Having asked Defendant's representative about Plaintiff's claim, he answered by insisting on the statements included in Defendant's answer and requested the Department to dismiss any new documents that were not provided to Defendant during examination and objection stage. Having asked Defendant's attorney if she had any other statements, they replied negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the Case moving for annulling ZATCA decision regarding zakat assessment for 2017 and 2018. Given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since it is established from Case documents that Plaintiff filed the Case within the statutory period and by a party having capacity. Therefore, the Department accepts the Case in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defense and arguments raised by the parties, the Department found that the dispute involves Plaintiff's objection to Defendant's procedure outlined in disallowing deduction of debit balances of related parties from zakat base. In addition, Plaintiff stated that the Company is ... Company Holding LTD in an amount of SAR 27,403,162 for 2017 and SAR 26,968,724 for 2018, and ... Company for Investment LTD in an amount of SAR 24,141,343 for 2017 and 2018. The balances were deducted on the ground that they are loans financed for the holding companies from main owner. In addition, Plaintiff stated that ... Company Saudi Arabia Holding filed its zakat declaration for 2017 and 2018 on the ground that it included all subsidiaries and 100% owned. Accordingly, the creditor balance outlined in loan from ... Company was added. On the other hand, Defendant argued that its decision aligns with provisions of the Implementing Regulations for the Collection of Zakat. In addition, Paragraph (4.A) of (Second) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438H stipulates: "The following items shall be deducted from the Zakat Base: -4 (A): Investments in an entity in the Kingdom, in participation with others, if such

investments are subject to Zakat according to this Regulations. If the investment in such entities is not subject to Zakat, no deductions will be made from the Zakat Base". As such, the Department, having taken cognizance of statements provided by both parties, found from the financial statements of the subsidiary and zakat declarations for 2017 and 2018 that the amounts in dispute outline a loan (advances) provided to the subsidiary. In addition, it turned out that the subsidiary subjected such amounts to zakat based on its filed zakat declarations. Accordingly, the loans and advances provided to the subsidiary, which files its declarations to ZATCA, require a special zakat calculation to avoid double payment of zakat. Since part of loan and advances (based on investment rate) does not constitute lending to a third party. Thereupon, Plaintiff is entitled to deduct a portion of loans and advances provided to the subsidiary from its zakat base, equivalent to its investment rate in the subsidiary that received the loan. Therefore, the Department amends Defendant's decision.

As for the absence of the Plaintiff and his attorney from the hearing despite being duly notified, and based on Paragraph (1), Article (20) of Tax Dispute and Violation Committee Procedures, which stipulates that: "If a Plaintiff fails to attend any hearing after being notified of the date set for consideration of the suit without an excuse acceptable to the Department, the Department must decide the suit if it is ripe for judgment". Furthermore, Article 56 of the Law of Civil Procedures provides that: "If the plaintiff fails to attend the court hearings, in accordance with Article 55 of this Law, the defendant may petition the court to rule on the merits of the case. The court shall rule on the case if it is ripe for judgment and such judgment shall be deemed as if rendered in the presence of the plaintiff". Since Plaintiff did not submit an acceptable excuse for failure to attend the hearing session, and that the Department has deemed that the Case is ripe for adjudication according to Case documents. Therefore, the Department renders its decision in the Case as if in presence of Plaintiff.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- Amend Defendant (ZATCA) procedure against Plaintiff (... Company), TIN No. (...), regarding the assessment subject matter of the Case as stated in grounds.

This decision was delivered in presence of the parties. The Department set Sunday, 05/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period in accordance with Article 33.2 of Tax Dispute and Violation Committee Procedures).

Primary Committee

First Department for Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-1988)
Delivered in Case No. (Z-68753-2021)

Key words:
Zakat Assessment – Accounts – Classification of Balances in Financial Statements – Current Liabilities – Amounts Due to Related Parties in Zakat Base – Submitting an Analytical Statement of Movement Without Providing a Printout from Accounting System – The burden of proving authenticity of Zakat Payer's declaration shall be Zakat Payer's responsibility – Dismissing Plaintiff's Objection.

Abstract

Plaintiff requests annulling ZATCA decision regarding zakat assessment for 2015, arguing that the due balances were classified under current liabilities in the financial statements for the year in question because they were payable within the year according to their terms. Plaintiff added that the balances pertain to service provisions and on which a zakat year has not passed. Defendant answered that it had added the closing balance (the lower amount) of (Amounts Due to Related Parties) item to zakat base in accordance with Article (4) of the Implementing Regulations for the Collection of Zakat. The statutory provisions stipulate that if the Case is filed by a party having capacity and within the statutory period, it should be accepted in form. The Department found that Plaintiff merely provided an analytical statement of movement without providing a printout from accounting system that elaborates the detailed account movement, which would clarify whether the opening balance was settled throughout the year. Furthermore, Plaintiff did not provide evidence that a zakat year has not passed on the amounts added by Defendant to zakat base. Department ruled to Dismiss Plaintiff's case, and consider the decision as final and enforceable.

Instruments:

- Articles (4.First.2) and (20.3) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2216) dated 07/07/1440 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Monday, 16/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 04/09/2021 AD.

The facts of this Case are summed up that ..., holder of National ID No. (...) in his capacity as the legal representative of Plaintiff (... Company Limited), C.R. No. (...), Under AOA, filed an objection to ZATCA zakat assessment for 2015.

Having presented the statement of claim to Defendant, Defendant answered by stating that it had added the closing balance (the lower amount) of the amounts payable to related parties to zakat base in accordance with Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH. Thereupon, Defendant requested dismissing the Case, while reserving right to provide further replies and clarifications until before closing of pleadings.

On Monday, 16/02/1443 AH, the Department held e-hearing session to consider the Case. At that session, ..., appeared in his capacity as Plaintiff's attorney under POA, a copy of which is attached to Case file. In addition, ..., holder of National ID No. (...), in his capacity as the representative of the Defendant, the Zakat, Tax, and Customs Authority, pursuant to an authorization issued by the Deputy Governor of ZATCA for Legal Affairs with No. (...), dated .../10/1443 AH. Having asked Plaintiff's attorney about the claim, he gave an answer that does not differ from the statements included in the statement of claim lodged with the General Secretariat of Zakat, Tax and Customs Committees. In addition, Plaintiff's attorney stated that his principal had sent a memorandum via e-mail to the General Secretariat of Zakat, Tax and Customs Committees yesterday, elaborating the documents that had already been submitted in Case file without including any new information. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the Case moving for annulling ZATCA decision regarding zakat assessment for 2015. Given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since it is established from Case documents that Plaintiff filed the Case within the statutory period and by a party having capacity. Therefore, the Department accepts the Case in form.

On Merits: Having taken cognizance of documents and included in Case file, requests, defense and arguments raised by both parties, the Department found that the dispute involves Plaintiff's objection to Defendant's procedure outlined in adding balance of related-party transactions amounting to SAR 3,188,572 to zakat base for 2015. Plaintiff stated that the due balances were classified under current liabilities in the financial statements for the year in question because they were payable within the year according to their terms. Plaintiff added that the balances pertain to service provision and on which a zakat year has not passed, and were not used to finance fixed assets. On the other hand, Defendant, argued that its decision aligns with provisions of the Implementing Regulations

for the Collection of Zakat. In addition, Paragraph (2) of (First) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 2. The credit current account of owners/ partners at the beginning or end of the year, whichever is less, including any increase in the current account if the source of such increase is a proprietorship item or a funding to an asset of the property". In addition, Paragraph (3) of Article (20) of the same Regulations stipulates: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". As such, since the partner's current account is one of the components of zakat base and is added to zakat base if a zakat year has passed on such account, or if its source is equity or it was used to finance deducted assets, and having taken cognizance of statements provided by both parties, the Department found that Plaintiff merely provided an analytical statement of movement without providing a printout from accounting system that elaborates the detailed account movement, which would clarify whether the opening balance was settled throughout the year. Furthermore, Plaintiff did not provide evidence that a zakat year has not passed on the amounts added by Defendant to zakat base. Therefore, the Department dismisses Plaintiff's objection.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- Reject the objection of Plaintiff (... Company), TIN (...), to Defendant (ZATCA) decision regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Sunday, 05/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period in accordance with Article 33.2 of Tax Dispute and Violation Committee Procedures).

Primary Committee

First Department for Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-1989)
Delivered in Case No. (Z-69072-2021)

Key words:
Zakat Assessment – Accounts – Import Variance – Classification of Shipping and Customs Clearance Fees as Part of the Cost of Imported Purchases – End-of-Service Benefit Provision – Customs Declaration as Key Evidence from a Neutral Third Party.

Abstract

Plaintiff requests annulling ZATCA decision regarding zakat assessment for 2018 outlined in two items. Regarding the first item: (Import Variances) item: Plaintiff stated that the Company classifies shipping and customs clearance fees as part of the cost of imported purchases in accordance with the accounting standards recognized in the Kingdom. Second: (End-of-Service Benefit Provision) item: Subjecting interest cost related to employee benefit obligations, amounting to SAR 40,994, twice, both under the accrued employee benefit provisions and the formed end-of-service benefit provision. Defendant argued that its procedure aligns with provisions of the Implementing Regulations for the Collection of Zakat. The Department found, regarding the first item, that Plaintiff did not provide the necessary reconciliation to elaborate reasons and justifications for import variances. In addition, Plaintiff did not provide the supporting documents for its claim. Since ZATCA import report is an evidence from a neutral third party. Therefore, the Department dismisses Plaintiff's objection. Second: Since Defendant added the formed end-of-service provision to the adjusted net profit in the amount of SAR 305,624 and added the accrued provision to zakat base in the amount of SAR 1,556,314, the Department found that there was a duplication in the added amounts. Accordingly, the balance to be added should be SAR 1,150,943 in accordance with the following zakat calculation equation: (opening balance - used/paid amount). Thereupon, Defendant's procedure should be amended accordingly. Therefore, the Department rules: Dismiss Plaintiff's objection to (Import Variance) item, amend Defendant's procedure regarding (End-of-Service Benefit Provision) item subject matter of the Case and consider the decision as final and enforceable.

Instruments:

- Articles (4.First.9) and (20.3) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2216) dated 07/07/1440 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Monday, 16/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law

promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements. Therefore, the Case was lodged with the General Secretariat of Zakat, Tax and Customs Committees on 06/09/2021 AD.

The facts of this Case are summed up that ..., holder of National ID No. (...) in his capacity as the legal representative of Plaintiff (... Company Trading), C.R. No. (...), under AOA, filed an objection to ZATCA zakat assessment for 2018.

Having presented the statement of claim to Defendant, it answered as follows: (Imported Purchases) item: Defendant found that the variance is shipping fees in the amount of SAR 3,992,232 and customs clearance fees in the amount of SAR 403,923. Since Plaintiff did not provide the supporting documents for paying expenses. Therefore, the objection was dismissed in accordance with Article (20) of the Implementing Regulations for the Collection of Zakat. Item Second: Interest Cost of Employee Benefits (End-of-Service Benefit Provision): Defendant adjusted the net book profit by end-of-service benefit provision in the amount of SAR 305,624 and zakat base by SAR 1,556,314 based on the financial statements. In addition, Plaintiff's objection was dismissed in accordance with Article (4) of the Implementing Regulations for the Collection of Zakat. Based on the foregoing, Defendant requests that Plaintiff's Case be dismissed, while preserving its right to present further responses and clarifications until pleadings closure.

On Monday, 16/02/1444 AH, the Department held e-hearing session to consider the Case. At that session, ... appeared in his capacity as Plaintiff's attorney under POA attached to Case file. In addition, ..., holder of National ID No. (...), in his capacity as the representative of the Defendant, the Zakat, Tax, and Customs Authority, pursuant to an authorization issued by the Deputy Governor of ZATCA for Legal Affairs with No. (...), dated .../10/1443 AH. Having asked Plaintiff's attorney about his principal's claim, he gave an answer that does not differ from the statements included in the statement of claim lodged with the General Secretariat of Zakat, Tax and Customs Committees. In addition, Plaintiff's attorney stated that Defendant asked his principal to provide several documents related to Plaintiff's objection to (Import Variance) item by a written request, a copy of which was attached to Case file. Moreover, Plaintiff's attorney stated that his principal provided Defendant with the required documents at that time. Since his principal noticed that Defendant had stated in its answer that Plaintiff did not provide the shipping and customs clearance invoices that support the objection to this item, Plaintiff provided and sent such invoices via e-mail to the General Secretariat of Zakat, Tax and Customs Committees yesterday. Having asked Defendant's representative about Plaintiff's claim, he replied by insisting on the statements included in Defendant's answer and requested the Department to dismiss any new documents that were not provided to Defendant during examination and objection stage. In addition, Defendant's representative added that regarding the statements of Plaintiff's attorney in this session, Defendant's decision is valid regarding this item. In addition, the burden of proving Plaintiff's position shall be Plaintiff's responsibility. Thereupon, Defendant requests the Department to dismiss such invoices due to failure to provide such invoices during objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing

Regulations issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the Case moving for annulling ZATCA decision regarding zakat assessment for 2018. Given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since it is established from Case documents that Plaintiff filed the Case within the statutory period and by a party having capacity. Therefore, the Department accepts the Case in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Department found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of Zakat Assessment of 2018 AD. The dispute focuses on two items, outlined as follows:

First: (Import Variances) item:

The dispute involves Plaintiff's objection to Defendant's procedure outlined in levying zakat on the cost of imported purchases amounting to SAR 4,049,814, resulting in a zakat variance of SAR 101,245.35. Plaintiff stated that the Company classifies shipping and customs clearance fees as part of the cost of imported purchases according to the accounting standards recognized in the Kingdom. On the other hand, Defendant argued that its procedure aligns with provisions of the Implementing Regulations for the Collection of Zakat. In addition, Paragraph (3) of Article (20) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". As such, the Department, having taken cognizance of Case file, found that Defendant's procedure outlined in amending results of Plaintiff's business activities is attributed to variance in the value of imports reported in its declaration compared to imports according to customs declaration. Since Plaintiff did not provide the necessary reconciliation to elaborate reasons and justifications for import variances. In addition, Plaintiff did not provide the supporting documents for its claim. Since ZATCA import report is evidence from a neutral third party. Therefore, the Department dismisses Plaintiff's objection.

Second: (End-of-Service Benefit Provision) item:

The dispute involves Plaintiff's objection to Defendant's procedure outlined in levying zakat on interest cost of employee benefit obligations, amounting to SAR 40,994, twice both under the accrued employee benefit provisions and the formed end-of-service benefit provision. On the other hand, Defendant argued that its procedure aligns with provisions of the Implementing Regulations for the Collection of Zakat. In addition, Paragraph (9) of (First) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 9. Beginning of year provisions (except for the questionable provisions collected by banks) after deducting the provisions used during the Zakat year". As such, since Defendant added the portion of end-of-service provision to the adjusted net profit amounting to SAR 305,624 and added the carried-over provision to zakat base in the amount of SAR 1,556,314. Therefore, the Department found that there was duplication of the amounts added. Accordingly, the correct balance to be added is SAR 1,150,943 according to the following zakat calculation equation: (Opening balance - used/paid amount). Therefore, the Department amends

Defendant's decision by recalculating zakat regarding (End-of-Service Benefit Provision) item, by excluding impact of the amount of SAR 264,630 and SAR 40,994 from the carried-over balance.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

First: Reject the objection of Plaintiff (... Company), TIN (....) to Defendant (ZATCA) decision regarding (Import Variance) item subject matter of the Case.

Second: Amend decision of Defendant (ZATCA) against Plaintiff (... Company), TIN (...) regarding (End-of-Service Benefit Provision) item, subject matter of the Case, as stated in grounds.

This decision was delivered in presence of the parties. The Department set Sunday, 05/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period in accordance with Article 33.2 of Tax Dispute and Violation Committee Procedures).

Primary Committee

First Department for Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-2003)
Delivered in Case No. (Z-69513-2021)

Key words:
Zakat Assessment – Accounts – Salary and Wage Variances – Fixed Assets – Collective Real Estate Investment Schemes – Failure to Provide Supporting Documents for Expense.

Abstract

Plaintiff requested annulling ZATCA decision regarding zakat assessment for 2016. Plaintiff's objection is represented in three items. Regarding the first item: (Salary and Wage Variance) item: Plaintiff stated that it provided ZATCA with the supporting documents for (Salaries and Remunerations) item in its previously submitted memorandum. Accordingly, the Company has provided the supporting documents for (Remunerations) item, and it believes that the deduction of such salaries should be accepted. On the other hand, Defendant argued that it rejected Plaintiff's objection due to the fact that Plaintiff did not provide the supporting documents for the expense. Second: (Fixed Assets) item: Plaintiff stated that the reason for failure to transfer the ownership is that the building permits were issued in the name of the partner who owns the land. Furthermore, all expenses and constructions carried out on the land after the date of the transfer were paid by the Company. In addition, all supporting documents were submitted to the chartered accountant. On the other hand, Defendant argued that it rejected Plaintiff's objection due to failure to provide the reasons for failure to transfer the ownership and register the land in the name of the Company. Third: (Collective Real Estate Investment Schemes) item: Plaintiff stated that the collective real estate investment schemes set out in the financial statements as non-current assets outline joint contributions of 50% with … Company LTD. In addition, the purpose of purchasing a group of lands in Makkah was to develop such lands. On the other hand, Defendant argued that Plaintiff's objection was rejected, since the collective real estate investment schemes with others involve constructions and assets intended for trading and sale, rather than use in … business activity. The Department found, regarding the first item, that Plaintiff did not provide the supporting documents for its position. Second: The Department, having reviewed the financial statements, found that all lands are registered in the name of the partners, and their ownership had not been transferred as of the date of issuing financial statements. Thereupon, it turns out that partners' resolution to transfer ownership is merely an internal resolution. Since Plaintiff did not provide the supporting documents for its position on the actual reasons for failure to transfer the ownership of properties to the Company, nor did it attach evidence proving that such properties are used in the business activity. Third: Since Defendant did not provide evidence that there are regular sale transactions for such projects, apart from a single sale occurring in a subsequent year (2017). Therefore, the Department concludes that there is no proof that the collective real estate investment schemes were prepared for sale during construction phase. Department ruled to Amend

Defendant's procedure regarding (Salaries and Wages) item, dismiss Plaintiff's objection to (Long-terms Assets) item, annul Defendant's decision regarding (Collective Real Estate Investment Schemes) item and consider the decision as final and enforceable.

Instruments:

- Articles (4.Second.1), (5.2), (6.2) and (20.3) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2216) dated 07/07/1440 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Monday, 16/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the above-mentioned Case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 08/09/2021.

The facts of this Case are summed up that ..., holder of National ID No. (...) in his capacity as attorney of Plaintiff (... Holding Company), C.R. No. (...), under POA No. (...) dated .../10/1442 AH issued from the Office of Notary Public in Eastern Riyadh, Al-Sulay Branch, filed an objection to ZATCA zakat assessment for 2016. Plaintiff's objection is limited to three items. The first item: Salaries and Wages, the section item: Long-term Assets and third item: Collective Real Estate Investment Schemes.

Having presented the statement of claim to Defendant, Defendant submitted an answer wherein replies to the Case involves objection to three items. Regarding the first item: Salaries and Wages: At the time of making assessment, Defendant added salary and wage variance of SAR 400,494 to the adjusted profit after Zakat Payer was asked, during examination stage, to provide a detailed breakdown of direct and indirect salaries and wages, along with a printout from the General Organization for Social Insurance (GOSI) reflecting total wages and contributions for comparison with amounts overstated in the accounts. Having taken cognizance of the objection, it turned out that the variance comprises the following: ... Managing Director: SAR 480,000 ... Information Technology: SAR 6,600 ... Doubt: Worker: SAR 7,800. Thereupon, ZATCA asked Zakat Payer to provide Work Organization Regulation approved by the Ministry of Human Resources and Social Development and GOSI Certificate for the above-mentioned employees. We were provided with a breakdown of (Salaries) item that includes (Remunerations) item with which ZATCA has already been provided during examination stage and GOSI Certificate for ... Employee. However, we were not provided with the approved Work Organization Regulation and GOSI Certificate for ... and ... Having taken cognizance of documents, it turned out that ... is not registered in Zakat Payer's social insurances, but he is registered in ... for Technology Localization. As such, Zakat Payer's objection was dismissed since Zakat Payer did not provide the supporting documents for expense. Item Second: Long-term Assets: ZATCA stated that it made assessment by derecognizing deduction of investment properties in value of SAR 5,575,629 since such properties are not registered in the name of the Company after Zakat Payer was asked, during examination stage, to identify the investment properties, while determining their nature and purpose and attaching their title deed, in addition to providing ZATCA therewith. At the time of considering objection, ZATCA asked Zakat Payer to provide the supporting documents for transfer of investment property ownership from the partner to the Company, such as

title deed and legal actions. In addition, ZATCA was provided with partner resolution regarding transfer of ownership from the partner to the Company, in addition to a copy of the deed. Having taken cognizance of documents and financial statements related to the investment properties, Zakat Payer pointed out that all lands are registered in the name of partners and their ownership were not transferred up to the date of preparing financial statements. Having taken cognizance of title deed, it turned out that the land, subject matter of the objection, is registered in the official deeds in the name of partner, (…), and not in the name of the Company. In addition, the partner resolution regarding internal sale and transfer, which was attached to the objection, is an internal document that cannot be relied upon for transfer of ownership of the land to Company's name. Furthermore, Zakat Payer did not provide reasons that prevented the transfer of ownership. Accordingly, Zakat Payer's objection was dismissed. It is stipulated for fixed assets to be deducted from zakat base that their ownership is registered in the name of the Company or providing convincing reasons that prevent thus. Item Third: Collective Real Estate Investment Schemes: ZATCA stated that it, at the time of making assessment, derecognized the collective real estate investment schemes with others in value of SAR 6,600,000 since they are intended for sale and were sold in 2017. This was made after Zakat Payer was asked to provide a statement of the collective real estate investment schemes in order to identify their nature and purpose, while attaching their title deed. In addition, ZATCA was provided with the deed during examination stage. Having taken cognizance of the objection and Zakat Payer's financial statements, it turns out that the collective real estate investment schemes with other are intended for sale rather than for use for Company's purposes. This is further supported by Zakat Payer's statements in objection memorandum that the lands will be sold after completing their development. This indicates that the collective real estate investment schemes are constructions and assets intended for trading and sale, rather than for use in business activity. As such, Zakat Payer's objection was dismissed.

On Tuesday, 16/02/1444 AH, the Department held e-hearing session to consider the Case. At that session, (...), holder of National ID No. (...), appeared in his capacity Plaintiff's attorney under POA No. (...) dated .../06/1441 AH issued from the Office of Notary Public in Eastern Riyadh, Al-Sulay Branch. In addition, ..., holder of National ID No. (...), appeared in his capacity as Defendant (ZATCA) representative, under Vice Governor for Legal Affairs POA No. (...) dated .../10/1443 AH. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the Case moving for annulling ZATCA decision regarding zakat assessment for 2016. Given that this dispute falls within the category of zakat

disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since it is established from Case documents that Plaintiff filed the Case within the statutory period and by a party having capacity. Therefore, the Department accepts the Case in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defense and arguments raised by the parties, the Department found that the dispute involves the fact that ZATCA issued zakat assessment for 2016. In addition, Plaintiff objects to three items as follows:

First: (Salary and Wage Variance) item:

The dispute involves Plaintiff's objection to Defendant's procedure outlined in disallowing deduction of the amount of SAR 494,400 from net profit. Plaintiff stated that it provided the supporting documents for (Salaries and Remunerations) item in its previous memorandum to ZATCA, which included the resolution for releasing Board Member's remunerations on 08/01/2014, as well as a copy of Managing Director's personal account statement, showing part of remuneration transferred to his personal account and the remainder transferred through the bank. In addition, the bank transfers of remunerations of were attached, with a monthly amount of SAR 550 for one employee and SAR 650 for another. Therefore, the Company provided the supporting documents for (Remunerations) item and believes it is necessary to allow deduction of such salaries. On the other hand, Defendant rejected Plaintiff's objection, arguing that Plaintiff did not provide the supporting documents for the expense. In addition, Paragraph (2) of Article (5) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH, regarding deductible expenses, stipulates: "2. Establishment (sole proprietorship, capital association, or partnership) owner's salaries, allowances, and the remuneration paid to Chairman, vice-chairman and directors may be deducted, provided that the owner's salaries and allowances are registered with General Organization of Social Insurance (GOSI)". In addition, Paragraph (2) of Article (6) of the same Regulations, regarding deductible expenses, stipulates: "Expenses that the Zakat Payer fails to prove by supporting documents or other evidential matter". As such, and since GOSI Certificate is considered an important piece of evidence from a third party, such certificate is used to verify the fairness of salaries, wages and similar overstated expenses. The Department, having taken cognizance of (Partner resolution regarding transfer of the property), found that the Member, …, is a partner. Therefore, the zakat calculation for (Salaries and Allowances Paid to Board Members (Partners)) item should be by allowing deduction of the equivalent salary. Since Defendant disallowed deduction of partners' remuneration on the grounds that the Saudi partner was not registered with GOSI in accordance with the Regulations issued in 1438 AH. Since these Regulations was issued after filing Plaintiff's declarations for the years in question. In accordance with the principle of (Non-retroactivity of Laws), laws and regulations are not applied retroactively unless explicitly stated otherwise. Therefore, the Department accepts Plaintiff's objection to Board Member's remuneration, provided that it is within the equivalent remuneration limits. As for employees' salaries, since Plaintiff did not provide the supporting documents for its position. Therefore, the Department dismisses Plaintiff's objection to employees' salaries.

Second: (Fixed Assets) item:

The dispute involves Defendant's procedure outlined in disallowing deduction of investment properties amounting to SAR 5,575,629 from zakat base. Plaintiff stated that the reason for failure to transfer the ownership is that the building permits were issued in the name of the partner who owns the land, and all expenses and constructions carried out on the land after transfer date were paid by the Company. In addition, the Company

provided all supporting documents to the chartered accountant, and thus, they were recognized as non-current assets. Since the Company provided evidence that it paid the value of such assets and that they are used in Company's business activity, given that ZATCA accepted the depreciation of such assets as part of Company's expenses. Therefore, Plaintiff requests that such assets are deducted from zakat base. On the other hand, Defendant argued that it rejected Plaintiff's objection, arguing that Plaintiff did not provide the reasons for preventing transfer of ownership and that such assets were not registered in Company's name. In addition, Paragraph (1) of (Second) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The following items shall be deducted from the Zakat Base: 1- Fixed assets including the following: Net fixed assets (property assets), any payments for the purchase of fixed assets, and spare parts and materials not prepared for sale, provided that such assets be owned by the Zakat payer, unless an obstacle to the transfer of ownership exists, and be used in the activity. 2. Zakat Payer's capital buildings under construction and being constructed for use in the activity not for sale". In addition, Paragraph (3) of Article (20) of the same Regulations stipulates: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". As such, and since it is permissible to deduct assets in the name of partners from zakat base, provided that such assets are used in the business activity and that justifications are provided for failure to transfer the ownership to the Company. Since the Department, having reviewed the financial statements, found that all lands are registered in the name of partners, and their ownership has not been transferred up until the date of issuing financial statement. Thereupon, partners' resolution regarding transfer ownership was only an internal decision. Since Plaintiff did not provide supporting documents for its position regarding the actual reasons for failure to transfer property ownership to Company's name, nor did it provide evidence that such properties are used in the business activity. Therefore, the Department dismisses Plaintiff's objection.

Third: (Collective Real Estate Investment Schemes) item:

The dispute involves Defendant's procedure outlined in disallowing deduction of the amount of SAR 6,600,000 from zakat base. Plaintiff stated that the collective real estate investment schemes reflected in the financial statements as non-current assets outline 50% partnership with … Company LTD. In addition, the purpose of purchasing a group of lands in Makkah was to develop such lands by building residential units in the form of villas or apartments for ownership. Moreover, this partnership was made under a real estate investment contract with the developer for an amount of SAR 6,600,000. In light of the documented intention to invest by decision-maker, the long-term holding of the investment without any movement, and the fact that the profits from this investment will be included in Company's revenue, Plaintiff requests that this amount be deducted from zakat base. On the other hand, Defendant rejected Plaintiff's objection, arguing that the collective real estate investment schemes with others are constructions and assets created with the purpose of trading and sale, rather than use in the business activity. In addition, Paragraph (1) of (Second) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The following items shall be deducted from the Zakat Base: 2. Zakat Payer's capital buildings under construction and being constructed for use in the activity not for sale". As such, since two primary conditions shall be met in order to consider projects in progress as trade bids deductible from zakat base: The documented intention of the authorized person indicating the purpose of investment, and the lack of sale transactions during the

year on such investments. Having taken cognizance of Case file, the Department found that Plaintiff stated that the purpose of purchasing a group of lands in Makkah was to develop such lands by constructing residential units in the form of villas or apartments for ownership. Since such projects are not offered for sale in their current state before being completed and offered for sale. Furthermore, due to the nature of such projects, the intention to sell is not confirmed until after completion and sale. As such, such projects cannot be considered trade bids. Since Defendant did not provide evidence that regular sale transactions occurred for such projects, though a sale did take place in a subsequent year (2017). Thereupon, the Department found that the collective real estate investment schemes were intended for sale during construction phase. Therefore, the Department annuls Defendant's decision and accepts Plaintiff's objection.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

First: Amend decision of Defendant (ZATCA) against Plaintiff (... Company Holding), TIN (...), regarding (Salaries and Wages) item, subject matter of the Case as stated in grounds.

Second: Dismiss the objection filed by Plaintiff (...), TIN (...), to Defendant (ZATCA) decision regarding (Long-term Assets) item.

Third: Annul Defendant (ZATCA) decision against Plaintiff (... Holding Company), TIN (...), Regarding (Collective Real Estate Investment Schemes) item, subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Sunday, 05/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not challenge the decision.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period in accordance with Article 33.2 of Tax Dispute and Violation Committee Procedures).

Primary Committee

First Department for Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-2004)
Delivered in Case No. (Z-69065-2021)

Key words:
Zakat Assessment – Accounts – Import Variances – Retained Earnings – Partner Current Account – Investments – The burden of proving authenticity of Zakat Payer's declaration shall be Zakat Payer's responsibility – Dismissing Plaintiff's Objections.

Abstract

Plaintiff requests annulling ZATCA decision regarding zakat assessment for 2015. Plaintiff's objection is limited to five items. Regarding the first item: (Import Variances for 2015) item: Plaintiff stated that the variance was due to an entry error when filing zakat declaration. On the other hand, Defendant rejected Plaintiff's objection and insisted on validity of its procedure due to Plaintiff's failure to provide the supporting documents for this variance. Second: (Retained Earnings for 2015) item: Plaintiff stated that all retained earnings from 2014 were transferred to partner current account, from which distributions were subsequently made. On the other hand, Defendant rejected Plaintiff's objection, arguing that the retained earnings were not closed in partner current account as claimed by the Company. Third: (Accrued Expenses for 2015) item: Adding (Accrued Expenses for 2015) item to zakat base, as Defendant argued that the item was added to zakat base due to the fact that a zakat year has passed. Fourth: (Investments for 2015) item: Since ... Company and the Branch registered in the Kingdom pay income tax independently. In addition, the wealth is not subject to zakat twice as a primary condition for levying zakat. Fifth (Investment Profits for 2015) item: Plaintiff stated that ... Company and the Branch registered in the Kingdom pay income tax independently. In addition, the wealth is not subject to zakat twice as a primary condition for levying zakat. Thereupon, investments in ... Company, including investment in the branch located in the Kingdom of Saudi Arabia, is deducted from zakat base. On the other hand, Defendant rejected Plaintiff's objection since Plaintiff did not report in its declaration the due zakat for such investments. In addition, Plaintiff did not remit zakat and did not provide accounts of the investee company. In addition, the Department found, regarding the first item, that Plaintiff did not provide the necessary reconciliation for reasons and justifications for import variances. Moreover, Plaintiff did not provide the supporting documents for its position. Second: Plaintiff did not provide the supporting documents for its position. In addition, the decisive factor for disallowing addition of dividend balance from zakat base is the actual disbursement of cash or in-kind distributions, or even evidence of depositing dividends into a dedicated account that restricts the Company from utilizing such dividends if such profits were not received by the owners. Third: Since Plaintiff did not provide the detailed movement of accrued expenses. Fourth: The dispute over this item is document-based, as Plaintiff did not provide the financial statements of the investee company outside the Kingdom certified by a chartered accountant, nor did it attach evidence proving payment

of zakat to ZATCA for that investment. Fifth Zakat calculation requires adding investment profits to net income. As for Plaintiff's argument for double payment of zakat, there is no double payment of zakat due to the difference in financial period. Department ruled to Dismiss Plaintiff's objection, and consider the decision as final and enforceable.

Instruments:

- Articles (55) and (56) of the Law of Civil Procedure promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH.
- Articles (4.First.2), (4.Second.b), (4.First.5 and 8) and (20.3) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2216) dated 07/07/1440 AH.
- Article (20.1) and (21) of Tax Dispute and Violation Committee Procedures issued by Royal Order No. (26040) dated 21/04/1441 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Monday, 16/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the above-mentioned Case. Since the Case fulfilled the established regulatory requirements, it was lodged with General Secretariat of Tax Committees on 06/09/2021 AD.

The facts of this Case are summed up that ..., holder of National ID No. (...) in his capacity as attorney of Plaintiff (... Company Trading and Contracting), C.R. No. (...), under Articles of Association "AOA", filed an objection to ZATCA zakat assessment for 2015. Plaintiff's objection is limited to five items: Item First Import Variances for 2015, the second item: Retained Earnings for 2015, the third item: Accrued Expenses for 2015, the fourth item: Investments for 2015, the fifth item: Investment Profits for 2015.

Having presented the statement of claim to Defendant, Defendant submitted an answer wherein replies that the Case involves an objection to five items. Regarding the first item: Import Variances for 2015: ZATCA added (Import Variances) item amounting to SAR 1,469,239 to the net book profit for the year in question. This was based on total imports amounting to SAR 46,448,445, declared imports of SAR 31,756,054, and an undeclared variance of SAR 14,692,391. The estimated profit at a rate of 10% amounted to SAR 1,469,239. During objection stage, a meeting was held with Plaintiff, who was asked to justify the objection. Therefore, Plaintiff stated that imports based on customs clearances amounted to SAR 19,215,212, while its company's declaration was SAR 31,756,054, indicating a variance of SAR 12,540,842 due to internal purchases mistakenly recorded as external purchases. In addition, Plaintiff submitted a printout of external purchases from the General Authority of Customs (previously) and an Excel sheet of domestic purchases. After review, it turned out that imports based on the customs reports provided by the Company amounted to SAR 10,337,904, pertaining to C.R. No. (...). In addition, the company has (18) effective commercial registers, and due to difficult identification of total imports resulting from Company's failure to provide complete data of all registers, and given that ZATCA obtained import reports from a reliable government agency, namely the General Authority of Customs (previously). In addition, the reports of internal purchased provided by Plaintiff were considered. It turned out that the Company had recorded customs duties, shipping fees from the port, and invoices for foreign companies. Thereupon, it turned out that the Company had been recording external purchases as

internal ones. Therefore, and due to Company's failure to provide supporting documents for this variance, ZATCA rejected Plaintiff's objection and insists on validity of its procedures. Second Item: Retained Earnings for 2015: ZATCA added (Retained Earnings) item in the amount of SAR 5,768,797 to zakat base for the year in question due to failure to provide the supporting documents for the full distribution of earnings, initially set at SAR 8,436,286. The Company only provided supporting documents for the distribution of SAR 2,667,489, leaving a variance of SAR 5,768,797, which was subsequently added to zakat base. Following a meeting with Plaintiff, Plaintiff stated that the retained earnings had been closed in partner current account and are disbursed to the partners. Having reviewed the financial statements and trial balance, it turned out that the retained earnings were not closed in partner current account as claimed by the Company. Furthermore, for the remaining dividends amounting to SAR 5,768,797, Plaintiff did not provide any bank transfers or checks to prove their distribution. Thereupon, ZATCA rejected Plaintiff's objection. Regarding the third item: Accrued Expenses for 2015: ZATCA added the accrued expenses amounting to SAR 9,733,331 to zakat base for the year in question. The opening balance was added after deducting amounts paid throughout the year, as a zakat year has passed on the remaining balance based on data and statements provided by the Company. In addition, a meeting was held with Plaintiff. During that meeting, Plaintiff stated that all accrued expenses at the beginning of the year were paid within the same year and that new accrued expenses were recorded, on which a zakat year has not passed. Having taken cognizance of the provided data, ZATCA found that its procedure is valid. Therefore, Plaintiff's objection was dismissed. Item Fourth: Investments for 2015: ZATCA stated that it did not deduct the value of investments in foreign companies, amounting to SAR 93,464,829, from zakat base for 2015, subject matter of the Case. In addition, the deduction was not accepted because the investee company is not subject to and did not pay the lawful zakat. After review, it turned out that the investee company is located outside the Kingdom, and that Plaintiff did not provide evidence that the Company paid lawful zakat, as zakat differs from income tax. In addition, the branch of investee company registered in the Kingdom is not subject to zakat but pays income tax. Plaintiff also did not include the zakat due on such investments in its zakat declaration, did not remit zakat, and failed to submit accounts of the investee company. Item Fifth: Investment Profits for 2015: ZATCA stated that it did not deduct the value of investments in foreign companies, amounting to SAR 300,329, from the net book profit. In addition, investment profits were not deducted from net income due to failure of the investee company to pay lawful zakat. After review, it turned out that the investee company is located outside the Kingdom, and that Plaintiff did not provide evidence that the Company paid lawful zakat, as zakat differs from income tax. In addition, the branch of investee company registered in the Kingdom is not subject to zakat but pays income tax. Plaintiff also did not include the zakat due on such investments in its zakat declaration, did not remit zakat, and failed to submit accounts of the investee company.

On Monday, 16/02/1444 AH, the Department held e-hearing session to consider the Case. The Department found that Plaintiff's attorney did not appear despite of being duly notified. In addition, ..., holder of National ID No. (...), appeared in his capacity as Defendant (ZATCA) representative under ZATCA Vice Governor for Legal Affairs No. (...) dated .../10/1443 AH. Having asked Defendant's representative about Plaintiff's claim, he answered by insisting on the statements included in Defendant's answer and requested the Department to dismiss any new documents that were not provided to Defendant during examination and objection stage. Having asked Defendant's attorney if she had any other statements, they replied negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the case to abolish Defendant's decision regarding Zakat Assessment of 2015 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) dated 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On Merits: Having examined the papers and documents contained in case file, as well as the requests, defenses and pleas made by its parties, the Department found that the Plaintiff objects to the zakat assessment made by the Defendant for the year 2015 AD, specifically in respect of four items, namely:

First: (Import Variances for 2015) item:

The dispute involves Plaintiff's claim that the value of imports, according to Fasah Platform's data, amounts to SAR 9,843,148.94. Plaintiff stated that the customs declaration was attached. In addition, the value of local purchases, according to local purchase report, amounts to SAR 102,323,367.72, with the local purchase report also attached. Moreover, Plaintiff stated that zakat declaration disclosed imports in the amount of SAR 31,756,054 and local purchases of SAR 80,410,463, attributing variance to an entry error when filing zakat declaration. On the other hand, ZATCA rejected Plaintiff's objection, maintaining validity of its procedure due to Plaintiff's failure to provide the supporting documents for this variance. In addition, Paragraph (3) of Article 20 of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". As such, and since import statement issued by the General Authority of Customs serves as primary evidence from a neutral third party, and the Department, having taken cognizance of Case file, it turns out that Defendant's procedure outlined in amending Plaintiff's business results is attributed to the fact that there are variances in the value of imports reported in Plaintiff's declaration compared to the imports recorded in customs report. Since Plaintiff did not provide the necessary reconciliation for reasons and justifications for import variances and did not provide the supporting documents for its position. Therefore, the Department dismisses Plaintiff's objection.

Second: (Retained Earnings for 2015) item:

The dispute involves Plaintiff's objection to Defendant's procedure outlined in adding retained earnings amounting to SAR 5,768,797 to zakat base. Plaintiff stated that all retained earnings from 2014 were transferred to partner current account and subsequently distributed from that account. According to the financial statements, the distributed earnings, amounting to SAR 8,436,286.02, were either transferred to partner accounts or disbursed based on their instructions, as supported by the attached accounting report. Plaintiff stated that the report includes 447 accounting transactions that outline dividends and provided a sample of 31 bank transfers that outline largest transactions exceeding SAR

50,000. In addition, Plaintiff stated that it attached the sample details along with bank transfer documents. On the other hand, Defendant argued that it rejected Plaintiff's objection, stating that the retained earnings were not closed in partner current account as claimed. Furthermore, Plaintiff did not provide any bank transfers or checks to substantiate the distribution of remaining earnings amounting to SAR 5,768,797. In addition, Paragraph (8) of (First) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 8. End of year balance for profits deferred from previous years". In addition, Paragraph (3) of Article (20) stipulates: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". As such, and having taken cognizance of Case file, the Department found that Plaintiff did not provide the supporting documents for its position. In addition, Plaintiff's claim that the retained earnings were closed in partner current account and hence distributed does not serve as evidence of disbursement. Thereupon, the Department finds that transferring retained earnings from retained earning account to partners' credit account does not mean that such funds have left company's possession. Such a transfer merely outlines a continuation of the funds under Plaintiff's control. Since the decisive factor in disallowing addition of distributed earnings from zakat base is the cash and in-kind disbursement of such earnings in cash or kind, or the proof of their deposit in a dedicated account that restricts the Company from accessing or using funds if the owners have not received the earnings. Therefore, the Department dismisses Plaintiff's objection.

Third: (Accrued Expenses for 2015) item:

The dispute involves Plaintiff's objection to Defendant's procedure outlined in adding accrued expenses for 2015, amounting to SAR 9,733,331, to zakat base. In addition, Plaintiff stated that all accrued expenses recorded in the opening balances for 2015 were paid to suppliers throughout the year, while new accrued expenses related to the fiscal year were recorded in the closing balances. On the other hand, Defendant argued that it added the amount of SAR 9,733,331 to zakat base due to the fact that a zakat year has passed on such amount. In addition, Paragraph (5) of (First) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans or equivalent items of other sources of funds, such as creditors, bills payable, overdrafts due by the Zakat payer in accordance with the following: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. c. Parts thereof used in trade bids on which a year has passed". Moreover, Paragraph (3) of Article (20) of the same Regulations stipulates: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". As such, and since the accrued expenses are considered one of the components of zakat base, provided that a zakat year has passed on such expenses, or such expenses are used to finance assets
deducted from zakat base. Having taken cognizance of Case file, the Department found that Plaintiff did not provide the detailed movement of accrued expenses. Therefore, the Department dismisses Plaintiff's objection.

Fourth: (Investments for 2015) item:

The dispute involves Plaintiff's objection to Defendant's procedure outlined in disallowing deduction of investment value in foreign companies, amounting to SAR 93,464,829. Plaintiff stated that … Company owns ... in the Islamic Republic of Pakistan, which in turn owns ..., registered as a foreign investor in Saudi Arabia. In addition, the branch of ... Company in the Kingdom of Saudi Arabia paid an amount of SAR 1,367,520 as income tax for 2015, while ... Company paid an equivalent amount of SAR 118,864 as income tax in the Islamic Republic of Pakistan in accordance with Article (2) of the Convention between the Government of the Kingdom of Saudi Arabia and the Government of the Islamic Republic of Pakistan for the Avoidance of Double Taxation and the Prevention of Tax Evasion with respect to Taxes on Income, which stipulates "The Convention shall apply to zakat" with Saudi Arabia mentioned before Pakistan in the preamble. In addition, … Company and the Branch registered in the Kingdom pay income tax independently. In addition, the wealth is not subject to zakat twice as a primary condition for levying zakat. Thereupon, investments in ... Company, including investment in the branch located in the Kingdom of Saudi Arabia, is deducted from zakat base. On the other hand, Defendant rejected Plaintiff's objection since Plaintiff did not report in its declaration the due zakat for such investments. In addition, Plaintiff did not remit zakat and did not provide accounts of investee company. In addition, Paragraph (4.b) of (Second) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The following items shall be deducted from the Zakat Base: Investments in an entity outside the Kingdom, in participation with others, provided that the Zakat Payer remits and pays Zakat on such investments in his Zakat Declaration, according to the provisions of this Regulations. In addition, the Zakat Payer shall attach accounts audited by a chartered accountant licensed in the country of investment and approved by the official authorities. If the Zakat Payer fails to do so accordingly, such investments may not be deductible from the Zakat Base". In addition, Paragraph (3) of Article (20) of the same Regulations stipulates: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". As such, and since the dispute over this item is document-based. Since Plaintiff did not provide the financial statements of the investee company outside the Kingdom certified by a chartered accountant. In addition, Plaintiff did not provide evidence that it paid zakat to ZATCA regarding such investment. Therefore, the Department dismisses Plaintiff objection.

Fifth (Investment Profits for 2015) item:

The dispute involves Plaintiff's objection to Defendant's procedure outlined in disallowing deduction of investment profit value in the amount of SAR 300,329 from the net book profit. Plaintiff stated that ... Company and the Branch registered in the Kingdom pay income tax independently. In addition, the wealth is not subject to zakat twice as a primary condition for levying zakat. Thereupon, investments in ... Company, including investment in the branch located in the Kingdom of Saudi Arabia, is deducted from zakat base. On the other hand, Defendant rejected Plaintiff's objection since Plaintiff did not report in its declaration the due zakat for such investments. In addition, Plaintiff did not remit zakat and did not provide accounts of investee company. In addition, Paragraph (First.2) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: ... 2. The credit current account of owners/ partners at the beginning or end of the year, whichever is less, including any increase in the current account if the source of such increase is a

proprietorship item or a funding to an asset of the property". As such, and since zakat calculation requires adding investment profits to the net income. As for Plaintiff's argument for double payment of zakat, there is no double payment of zakat, as the financial period is different. Therefore, the Department dismisses Plaintiff's objection.

As for failure of Plaintiff's attorney to attend the hearing session despite of being duly notified, Paragraph (1) of Article (20) of Tax Dispute and Violation Committee Procedures stipulates: "If a plaintiff fails to attend any hearing after being notified of the date set for consideration of the suit without an excuse acceptable to the circuit, the circuit must decide the suit if it is ripe for judgment". In addition, Article (56) of the Law of Civil Procedure stipulates: "If the plaintiff fails to attend the court hearings, in accordance with Article 55 of this Law, the defendant may petition the court to rule on the merits of the case. The court shall rule on the case if it is ripe for judgment and such judgment shall be deemed as if rendered in the presence of the plaintiff". Since Plaintiff did not submit an acceptable excuse for failure to attend the hearing session, and that the Department has deemed that the Case is ripe for adjudication according to Case documents. Therefore, the Department renders its decision in the Case as if in presence of Plaintiff.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

Dismiss the objection filed by Plaintiff (... Company for Trading and Contracting), TIN (...), to Defendant/ (ZATCA)'s decision regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Sunday, 05/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period in accordance with Article 33.2 of Tax Dispute and Violation Committee Procedures).

Primary Committee

First Department for Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-2013)
Delivered in Case No. (Z-63732-2021)

Key words:
Zakat Assessment – Accounts – Adding Import Profits to Net Profits – Salary Variance – Recreation Expenses – The burden of proving authenticity of Zakat Payer's declaration shall be Zakat Payer's responsibility – Provisions Transferred from Related Parties – Advance Payments from Customers – Supporting Documents for Salary Variances – Dismissing Plaintiff's Objection.

Abstract

Plaintiff requests annulling ZATCA decision regarding zakat assessment for 2015. Plaintiff's objection is limited to six items. Regarding the first item: (Import Profits) item: Defendant added import profits to net profits. Plaintiff stated that Defendant did not provide reasons for the added amount. Second: (Salary Variance) item: Defendant added salary variance to net profits. Plaintiff stated that there are no provisions that stipulate zakat calculation in the Implementing Regulations for the Collection of Zakat by comparing salaries and wages to the those registered with GOSI. Third: (Recreation Expenses) item: Defendant added recreation expenses to net profits. Plaintiff stated that there are no provisions that stipulate zakat calculation in the Implementing Regulations for the Collection of Zakat by considering recreation expenses as non-deductible expenses. Fourth: (Provisions Transferred from Related Parties) item: Defendant added provisions transferred from related parties to net profits. Fifth (Advance Payments from Customers) item: Defendant added advance payments from customers amounting to SAR 2,914,991 to zakat base and added amounts due to related parties amounting to SAR 2,954,585 to zakat base. Defendant argued that its procedure aligns with provisions of the Implementing Regulations for the Collection of Zakat. Regarding the first item, the Department, having taken cognizance of Plaintiff's statement of objection, found that Plaintiff contends that there are not external purchases throughout the year. In addition, Plaintiff did not provide the approved financial statements for the year in question to ensure whether there were inventory movements or additions to assets. Therefore, the Department dismisses Plaintiff's objection. Regarding the remaining items: The Department found that Plaintiff did not provide the supporting documents for salary variances, recreation expenses, advance payments from customers and amounts due to related parties to ensure that zakat year has not passed on such amounts. Department ruled to Dismiss the Case filed by Plaintiff, and consider the decision as final and enforceable.

Instruments:

- Articles (55) and (56) of the Law of Civil Procedure promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH

- Articles (4.First.5), (4.First.9), (5.1) and (20.3) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2216) dated 07/07/1440 AH.
- Article (20.1) of Tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) dated 21/04/1441 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Saturday, 14/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 08/08/2021 AD.

The facts of this Case are summed up that ..., holder of National ID No. (...) in his capacity as the legal representative of Plaintiff (... Company), C.R. No. (...), under AOA, filed an objection to ZATCA zakat assessment for 2015.

Having presented the statement of claim to Defendant, Defendant answered, regarding import profits amounting to SAR 20,993, as follows: Defendant added (Import Profits) item to net profits as reflected from import reports generated from its system due to failure to provide the supporting documents in accordance with Article (20) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH. Regarding salary variances amounting to SAR 2,908,830: At the time of making assessment, Defendant added (Salary Variance) item to net profits due to failure to provide the supporting documents. Therefore, Plaintiff's objection was dismissed in accordance with Article (20) of the Implementing Regulations for the Collection of Zakat. Regarding recreation expenses amounting to SAR 129,931: At the time of making assessment, Defendant added recreation expenses to net profits, as they appeared under general and administrative expenses, considering such expenses unrelated to the business activity and due to the lack of supporting documents. Accordingly, Plaintiff's objection was dismissed in accordance with Article (6) of the Implementing Regulations for the Collection of Zakat. Regarding provisions transferred from related parties: Defendant added (Provisions Transferred from Related Parties) item to net profits since such provisions are balances of provisions formed throughout the year and reflected in the statement of cash flows.

Regarding advance payments from customers amounting to SAR 2,914,991: Defendant added (Advance Payments from Customers) item to zakat base, as a zakat year has passed on the credit balances according to the provided movement. Therefore, Plaintiff's objection was dismissed in accordance with Article (4) of the Implementing Regulations for the Collection of Zakat. Regarding amounts due to related parties amounting to SAR 2,954,585: Defendant added (Amounts Due to Related Parties) item to zakat base, as a zakat year has passed on credit balances according to the provided movement in accordance with Article (4) of the Implementing Regulations for the Collection of Zakat. Accordingly, the Defendant requests a ruling to dismiss the case and reserves the right to present further responses and clarifications before the closure of the pleadings.

On Saturday, 14/02/1444 AH, the Department held e-hearing session to consider the Case. The Department found that Plaintiff's attorney did not appear despite of being duly notified. In addition, ..., holder of National ID No. (...) in his capacity as Defendant/ZATCA representative by virtue of Authorization issued by the Deputy

Governor for Legal Affairs under No. (...), dated .../10/1443 AH. Having asked Defendant's representative about Plaintiff's claim, he answered by insisting on the statements included in Defendant's answer and requested the Department to dismiss any new documents that were not provided to Defendant during examination and objection stage. Having asked Defendant's attorney if she had any other statements, they replied negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form, since the Plaintiff filed the case to abolish ZATCA's decision regarding Zakat Assessment of 2015 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) dated 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defense and arguments raised by the parties, the Department found that the dispute involves the fact that ZATCA issued zakat assessment for 2015. In addition, Plaintiff objects to six items as follows:

First: (Import Profits) item:

The dispute involves Plaintiff's objection to Defendant's procedure outlined in adding import profits amounting to SAR 20,993 to net profit. Plaintiff stated that Company's business activity outlines maintenance, management and operation of commercial and residential projects and buildings, with no external purchases. In addition, Plaintiff added that Defendant did not provide reasons for the added amount. On the other hand, Defendant argued that its procedure aligns with provisions of the Implementing Regulations for the Collection of Zakat. In addition, Paragraph (3) of Article (20) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438H stipulates: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". As such, the Department, having taken cognizance of Case file, found that Defendant stated that it calculated estimated profits of import variance according to information provided from the General Authority of Customs, and did not provide a copy of customs declaration. Having taken cognizance of Plaintiff's statement of objection, it turned out that Plaintiff asserted that there are no external purchases throughout the year. in addition, Plaintiff did not provide the approved financial statements for the year in question to ensure whether there were inventory movements or additions to assets. Therefore, the Department dismisses Plaintiff's objection.

Second: (Salary Variance) item:

The dispute involves Plaintiff's objection to Defendant's procedure outlined in adding salary variance amounting to SAR 2,908,830 to net profit. Plaintiff stated that there is no provision in the Implementing Regulations for the Collection of Zakat that stipulate zakat calculation by comparing salaries and wages to those registered with GOSI. On the other

hand, Defendant argued that its procedure aligns with provisions of the Implementing Regulations for the Collection of Zakat. In addition, Paragraph (1) of Article (5) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438H stipulates: "Ordinary and necessary expenses of business activity, whether paid or due, to the net result of activity shall be deducted, if meet the following criteria: a. Expenses should be actual expenses as supported by relevant documents and other evidential matter to enable the Authority to verify the accuracy of expenses, even if related to prior years. b. Expenses should be related to Zakat Payer's business activity rather than personal expenses or other than Zakat Payer's own activities. c. Expenses may not be of capital nature. Where a capital expenditure is included in the expenses such expenditure shall be adjusted against the result of activity added to fixed assets and accordingly depreciated as applicable". In addition, Paragraph (3) of Article (20) of the same Regulations stipulates: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". As such, the Department, having taken cognizance of Case file, found that Plaintiff did not provide the supporting documents for salary variance. Therefore, the Department dismissed Plaintiff's objection.

Third: (Recreation Expenses) item:

The dispute involves Plaintiff's objection to Defendant's procedure outlined in adding recreation expenses amounting to SAR 129,931 to net profit. Plaintiff stated that there are no provisions in the Implementing Regulations for the Collection of Zakat that consider recreation expenses as non-deductible expenses. On the other hand, Defendant argued that its procedure aligns with provisions of the Implementing Regulations for the Collection of Zakat. In addition, Paragraph (1) of Article (5) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438H stipulates: "Ordinary and necessary expenses of business activity, whether paid or due, to the net result of activity shall be deducted, if meet the following criteria: a. Expenses should be actual expenses as supported by relevant documents and other evidential matter to enable the Authority to verify the accuracy of expenses, even if related to prior years. b. Expenses should be related to Zakat Payer's business activity rather than personal expenses or other than Zakat Payer's own activities. c. Expenses may not be of capital nature. Where a capital expenditure is included in the expenses such expenditure shall be adjusted against the result of activity added to fixed assets and accordingly depreciated as applicable". In addition, Paragraph (3) of Article (20) of the same Regulations stipulates: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". As such, the Department, having taken cognizance of Case file, found that Plaintiff did not provide the supporting documents for recreation expenses. Therefore, the Department dismissed Plaintiff's objection.

Fourth: (Provisions Transferred from Related Parties) item:

The dispute involves Plaintiff's objection to Defendant's procedure outlined in adding provisions transferred from related parties amounting to SAR 170,344 to net profit. Plaintiff relied on Article (6) of the Implementing Regulations for the Collection of Zakat, arguing that only provisions charged to expenses are added to zakat base. On the other hand, Defendant argued that its procedure aligns with the Implementing Regulations for

the Collection of Zakat. In addition, Paragraph (First.9) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438H stipulates: "Zakat Base comprises the entire Zakat Payer's funds
that are subject to Zakat collection, including: 9. Beginning of year provisions (except for the questionable provisions collected by banks) after deducting the provisions used during the Zakat year". In addition, Paragraph (3) of Article (20) of the same Regulations stipulates: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". As such, since zakat calculation of (Provisions) item is made by adding opening balance after deducting provisions used throughout the year in accordance with Article (4) of the Implementing Regulations for the Collection of Zakat above-mentioned. Having taken cognizance of Case file, the Department found that Defendant's procedure is valid. Therefore, the Department dismisses Plaintiff's objection.

Fifth (Advance Payments from Customers) item:

The dispute involves Plaintiff's objection to Defendant's procedure outlined in adding advance payments amounting to SAR 2,914,991 to zakat base. On the other hand, Defendant argued that its procedure aligns with provisions of the Implementing Regulations for the Collection of Zakat. In addition, Paragraph (First.5) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "Zakat Base comprises the entire Zakat Payer's funds that are subject to Zakat collection, including: 5. Government and commercial loans or equivalent items of other sources of funds, such as creditors, bills payable, overdrafts due by the Zakat payer in accordance with the following: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" In addition, Paragraph (3) of Article (20) of the same Regulations stipulates: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". As such, since advance payments are considered a source of finance, and the amount on which a zakat year has passed shall be added to zakat base. The Department, having taken cognizance of Case file, found that Plaintiff did not provide the supporting documents for advance payments from customers. Therefore, the Department dismisses Plaintiff's objection.

Sixth: (Amounts Due to Related Parties) item:

The dispute involves Plaintiff's objection to Defendant's procedure outlined in adding amounts due to related parties amounting to SAR 2,954,585 to zakat base. On the other hand, Defendant argued that its procedure aligns with provisions of the Implementing Regulations for the Collection of Zakat. In addition, Paragraph (First.5) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans or equivalent items of other sources of funds, such as creditors, bills payable,
overdrafts due by the Zakat payer in accordance with the following: a. Remaining cash on which a Zakat year has passed. B. were used to finance acquisition assets. c. Parts thereof used in trade bids on which a year has passed". In addition, Paragraph (3) of Article (20) of the same Regulations stipulates: "The burden of proving the authenticity of the zakat

payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". As such, since the amounts due to related parties are considered a source of finance, and handled as equity in terms of zakat calculation. In addition, the amount on which a zakat year has passed shall be added to zakat base. The Department, having taken cognizance of Case file, found that Plaintiff did not provide the supporting documents for amounts due to related parties. Therefore, the Department dismisses Plaintiff's objection.

As for failure of Plaintiff's attorney to attend the hearing session despite of being duly notified, Paragraph (1) of Article (20) of Tax Dispute and Violation Committee Procedures stipulates: "If a Plaintiff fails to attend any hearing after being notified of the date set for consideration of the suit without an excuse acceptable to the Department, the Department must decide the suit if it is ripe for judgment". Furthermore, Article 56 of the Law of Civil Procedures provides that: "In the cases provided for in Article 55 of this Law, if the Defendant attends the hearing from which the Plaintiff is absent, he may petition the court not to dismiss the case and to render a decision on its merits; in which case, the court shall rule on such case and the judgment shall be considered in absentia with respect to the Plaintiff"; and since the Plaintiff's attorney did not submit an acceptable excuse for absence from the session; and since the Department determined that the case is ripe for adjudication, it therefore delivers its decision in this case as in presence of the Plaintiff.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- Reject the objection of Plaintiff (... Company), TIN (...), to Defendant (ZATCA) decision regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Wednesday, 08/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period in accordance with Article 33.2 of Tax Dispute and Violation Committee Procedures).

Primary Committee

First Department for Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-2014)
Delivered in Case No. (Z-66351-2021)

Key words:
Zakat Assessment – Accounts – Depreciation Variances and Long-Term Loans – Other Additions – Carried Forward Provisions – Carried Forward Zakat Provision – Shares in Real Estate Projects – Lands within Real Estate Investments – Capital Losses – The burden of proving authenticity of Zakat Payer's declaration shall be Zakat Payer's responsibility.

Abstract

Plaintiff requested annulling ZATCA decision regarding zakat assessment for 2015. Plaintiff's objection is represented in three items. Regarding the first item: (Lands within Real Estate Investments) item: Since the lands amounted to SAR 9,024,512 is used for leasing purposes and for Company's business activities, and the revenue from the buildings constructed on it has been recorded as part of the revenues. Second: (Shares in Real Estate Projects) item: Since investments in real estate projects amounting to SAR 55,574,000 are registered in Company's name, except for two projects in total amount of SAR 4,422,000, which are registered in the name of one of the shareholders. Third: (Other Additions, Carried Forward Provisions, Carried Forward Zakat Provision and Capital Losses) items: Plaintiff stated that there is no dispute with ZATCA over these items after ZATCA partially accepted the addition of amounts on which a zakat year has passed. The statutory provisions stipulate that if the Case is filed by a party having capacity and within the statutory period, the Case should be accepted in form. The Department found regarding the first item that it is permissible to deduct assets registered in shareholders' name from zakat base, provided these assets are used in business activity, while providing reasons that prevent transferring ownership to the Company. Therefore, the Department annuls Defendant's decision. Second: Since Plaintiff did not provide the detailed movement of the item in question, its value and the date of acquisition by Defendant during objection stage. Therefore, the Department dismisses Plaintiff's objection. Third: The Department found that the dispute was resolved when Defendant accepted Plaintiff's objection. Therefore, the Department rules: Dismiss the Case regarding (Depreciation Variances) item and (Long-term Loans) item in question due to failure to file an objection to such items with Defendant within the statutory period. Establish resolution of Plaintiff's dispute over (Other Additions) item and (Carried Forward Provisions) item, (Carried Forward Zakat Provisions) item and (Capital Losses) item subject matter of the Case, as Plaintiff accepted Defendant's procedure in this regard. Dismiss Plaintiff's objection to (Shares in Real Estate Projects) item. Annul Defendant's decision regarding (Lands within Real Estate Investments) item, subject matter of the Case, and consider the decision is final and enforceable.

Instruments:

- Article (70) of the Law of Civil Procedure promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH
- Article (70.1) of the Implementing Regulations of the Law of Civil Procedure issued by Minister of Justice Resolution No. (39933) dated 19/05/1435 AH.
- Articles (4.Second.1) and (20.3) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2216) dated 07/07/1440 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Sunday, 15/02/1444, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 23/08/2021.

The facts of this case are summed up so as... holder of National ID No. (...) in his capacity as attorney of Plaintiff (... Holding Group), C.R. No. (...), under Articles of Association "AOA", filed an objection to ZATCA zakat assessment for 2015.

Having presented the statement of claim to Defendant, it answered as follows: (Lands within Real Estate Investments) item: Defendant disallowed deduction of lands classified as part of real estate investments, as such lands are registered in shareholder's name with no objection that prevents the transfer of ownership. It turned out that land deeds are in shareholder's name. In addition, Zakat Payer did not provide any justification for non-transfer of ownership. Therefore, Zakat Payer's objection was rejected in accordance with Article (4) of the Implementing Regulations for the Collection of Zakat. Item Second: (Shares in Real Estate Projects) item: Defendant disallowed deduction of the item from zakat base on the grounds that it is classified as current assets. Having reviewed the financial statements, it turned out that such projects include real estate projects not registered in Company's name and foreign real estate projects classified as current assets in the financial statements, indicating that they are intended for sale. Accordingly, Zakat Payer's objection was rejected as the projects are not in Company's name, include external investments and do not meet the conditions stipulated by Article (4) of the Implementing Regulations for the Collection of Zakat. Item Third: (Other Additions) item (trade creditors + accrued expenses + advance payments from customers + other credit balances): Defendant added the amounts on which a zakat year has passed to the items mentioned, according to the breakdown provided by Zakat Payer. In addition, Zakat Payer's objection was partially accepted, and the correct amounts on which a zakat year has passed, including "Trade Creditors" item and "Other Credit Balances" item in accordance with Article (4) of the Implementing Regulations for the Collection of Zakat. Item Fourth: (Carried Forward Provisions) item: Defendant added the opening provisions after deducting used balances. In addition, Zakat Payer's objection was rejected since its procedure aligns with provisions of the Implementing Regulations for the Collection of Zakat. Item Fifth: Defendant added carried forward zakat provision to zakat base but did not add the formed provision, as the profit before zakat was subjected to assessment. Therefore, Zakat Payer's objection was rejected based on Article (4) of the Implementing Regulations for the Collection of Zakat. Item Sixth: (Capital Losses) item: Defendant disallowed deduction of capital losses, as fixed assets were deducted according to the financial statements. Thereupon, Defendant requests dismissing the Case, while reserving right to submit further replies and clarifications until before closing of pleadings.

On Sunday, 15/02/1444 AH, the Department held e-hearing session to consider the Case. At that session, (...), holder of National ID No. (...), in his capacity as Plaintiff's attorney under POA, a copy of which is attached to the Case file. In addition, ..., holder of National ID No. (...) in his capacity as Defendant (ZATCA) representative by virtue of Authorization issued by the Deputy Governor for Legal Affairs under No. (...), dated .../10/1443 AH. Having asked Plaintiff's attorney about the claim, he gave an answer that does not differ from the statements included in the statement of claim lodged with the General Secretariat of Zakat, Tax and Customs Committees. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the Case moving for annulling ZATCA decision regarding zakat assessment for 2015. Given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since it is established from Case documents that Plaintiff filed the Case within the statutory period and by a party having capacity. Therefore, the Department accepts the Case in form. Regarding (Depreciation Variances and Long-Term Loans) items, Plaintiff did not provide evidence of filing its objection before Defendant and filed its grievance directly to the Department. Therefore, the Department dismisses the Case filed by Plaintiff regarding (Depreciation Variances and Long-Term Loans) items in question due to failure to file an objection before Defendant within the statutory period.

On Merits: Having taken cognizance of documents included in Case file, requests, defense and arguments raised by the parties, the Department found that the dispute involves the fact that ZATCA issued zakat assessment for 2015. In addition, Plaintiff objects to three items as follows:

First: (Lands within Real Estate Investments) item:

The dispute involves Plaintiff's claim that the lands valued at SAR 9,024,512 are used for leasing purposes and for Company's business activity, with the revenue generated from buildings constructed on such lands recorded as part of Company's revenues. In addition, Plaintiff stated that the lands are registered in the name of one of shareholders who owns 95% of Company's capital, as it was converted from an enterprise owned by the shareholder to the Company in 2014. Moreover, Plaintiff proceeded with procedures for transferring title deeds of the lands, but due to the regulatory requirements, Plaintiff could not complete the transfer. Plaintiff relied on Article (4) of the Implementing Regulations for the Collection of Zakat, which stipulates that asset must be owned by the Company unless there is an impediment that prevents the transfer of ownership. On the other hand, Defendant argued that its procedure aligns with provisions of the Implementing Regulations for the Collection of Zakat. In addition, Paragraph (Second.1) of Article (4) of

the Implementing Regulations for the Collection of Zakat stipulates: "The following items shall be deducted from the zakat base: 1. Net fixed assets, including, for example though not limited to, the following: Net fixed assets (property assets), any payments for the purchase of fixed assets, and spare parts and materials not prepared for sale, provided that such assets be owned by the Zakat payer, unless an obstacle to the transfer of ownership exists, and be used in the activity". In addition, Paragraph (2) thereof stipulates: "2. Zakat Payer's capital buildings under construction and being constructed for use in the activity not for sale". As such, the Department, having taken cognizance of Case file, found that Plaintiff submitted a memorandum from the Ministry of Justice (regarding "Citizen Notification") to the Department regarding Jubail land, which indicates that the transfer of ownership to Company's name is pending a Royal Order. In addition, Plaintiff submitted a title deed for Tayba Land that has been transferred to Company's name, in addition to three other title deeds for lands also transferred to Company's name. since Plaintiff provided supporting documents for transferring some lands to the Company, while mentioning impediments that prevent the transfer of ownership from the partner to Plaintiff. Since it is allowable to deduct assets in the name of partners from zakat base, provided that such assets are used in Company's business activity and that justifications for failure to transfer ownership to the Company are provided. Therefore, the Department annuls Defendant's decision.

Second: (Shares in Real Estate Projects) item:

The dispute involves Plaintiff's claim that investments in real estate projects amounting to SAR 55,574,000 are registered in Company's name, except for two projects in the amount of SAR 4,422,000, which are registered in the name of one of the shareholders. In addition, Plaintiff added that these investments are within the Kingdom of Saudi Arabia and comprise investments and payments for purchasing lands, for which title deeds were issued in Company's name at a later period, supporting their classification as long-term investments. On the other hand, Defendant argued that its procedure aligns with provisions of the Implementing Regulations for the Collection of Zakat. In addition, Paragraph (3) of Article (20) of the Implementing Regulations for the Collection of Zakat stipulates: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". As such, the Department, having taken cognizance of Case file, found that Plaintiff did not provide the detailed breakdown of the item in question, its value and date of acquisition by Plaintiff during objection stage. Therefore, the Department dismisses Plaintiff's objection.

Third: (Other Additions, Carried Forward Provisions, Carried Forward Zakat Provision and Capital Losses) items:

In accordance with Article (70) of the Law of Civil Procedure promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgment, settlement, or the like in the case record, and the court shall issue a deed to that effect". In addition, Paragraph (1) of Article (70) of the Implementing Regulations of the Law of Civil Procedure issued by Minister of Justice Resolution No. (39933) dated 19/05/1435 stipulates: "If an agreement is reached prior to entering the case, the text of the case and the answer shall be entered prior to entering such agreement, provided that the original case falls within the jurisdiction of the Department, even if the text of the agreement falls within the jurisdiction of another court or Department and the object of the case or portion thereof is agreed upon". Based on the foregoing, and since the Department found that the dispute was resolved when Plaintiff accepted Defendant's procedure as stated in ZATCA letter in the supplementary

memorandum dated 07/11/2021 AD, which includes: "Plaintiff states that there is no dispute with ZATCA over these items after ZATCA partially accepted the addition of amounts on which a zakat year has passed and the Company accepted ZATCA calculation of the items: (Other Additions, Carried Forward Provisions, Carried Forward Zakat Provision and Capital Losses)".

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

First: Dismiss the Case filed by Plaintiff (... Group Holding), TIN (...), against Defendant (ZATCA) regarding (Depreciation Variances) item and (Long-Term Loans) in dispute due to Plaintiffs' failure to file an objection before Defendant within the statutory period.

Second: Establish resolution of the dispute of Plaintiff (... Group Holding), TIN (...), with Defendant (ZATCA) regarding (Other Additions, Carried Forward Provisions, Carried Forward Zakat Provision and Capital Losses) subject matter of the Case, when Plaintiff accepted Defendant's procedure in this regard.

Third: Dismiss the objection filed by Plaintiff (... Group Holding), TIN (...), to Defendant (ZATCA) regarding (Shares in Real Estate Projects) item, subject matter of the Case.

Fourth: Annul Defendant (ZATCA) decision against Plaintiff (... Group Holding), TIN (...), regarding (Lands within Real Estate Investments) item, subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Wednesday, 08/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period in accordance with Article 33.2 of Tax Dispute and Violation Committee Procedures).

Primary Committee

First Department for Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (IFR-2022-2045)
Delivered in Case No. (Z-57417-2021)

Key words:
Zakat Assessment – Accounts – Depreciation Variances – Capital Gains – Formed Provisions – Unsubstantiated Local Purchases – Overstated Social Insurance Variance for Saudi Employees – Expenses – Carried Forward Provisions – The burden of proving authenticity of Zakat Payer's declaration shall be Zakat Payer's responsibility.

Abstract

Plaintiff requests annulling ZATCA decision regarding zakat assessment for 2015 and 2016. Plaintiff's objection is limited to ten items. Regarding sixth, eighth and tenth items: Depreciation Variances for 2015, Capital Gains for 2015 and 2016, Formed Provisions and other applicable items. Regarding the second item: Depreciation Variances for 2016: Plaintiff indicated that the Law allows for filing declaration and calculating depreciation variances using group method and declining balance method. Accordingly, Plaintiff insists on its right to deduct depreciation variances as per the declaration. On the other hand, Defendant rejected Plaintiff's objection for 2016, asserting that Plaintiff was required to abide by "fixed installment method". Third: Unsubstantiated Local Purchases for 2015 and 2016: To add back amounts of expenses for 2015 and 2016 of SAR 10,848,035.27 and SAR 11,929,026.86 respectively due to failure to provide the supporting documents. On the other hand, Defendant rejected the expense on the grounds that the supporting documents for the expense were not provided. Fourth: Overstated Social Insurance Variances for Saudi Employees for 2015 and 2016: Since the Enterprise, in some cases, bears employee's share as additional benefits for low-salary workers. Therefore, we request that such amounts be recognized as part of the expenses. On the other hand, Defendant argued for adding overstated social insurance variance to the net profit, as the amount exceeded the statutory rates. Fifth Overstated Social Insurance Variances for Non-Saudi Employees for 2015 and 2016: The Enterprise affirms that the accounts include all amounts paid for social insurance contributions, including late payment fines, which have been charged to the account for non-Saudi employees' insurance contributions and are supported by documents. On the other hand, Defendant argued for adding overstated social insurance variances to the net profit, as the amount exceeded the statutory rates. In addition, such overstated costs and variances outline employees' share in pension funds, which are non-deductible expenses. Seventh: Carried forward provisions (Provision of Guarantee for ... Company and Provision of Carried Forward Losses for ...: As these provisions are statutory accounts that have not affected the income statement in any way, and no cost has been charged to profits and losses. Ninth: Accrued Expenses for 2015 and 2016: To add other accrued expenses to zakat base for 2015 and 2016, on some of which a zakat year has not passed. On the other hand, Defendant argued for adding amounts on which a zakat year has passed, considering them as sources of finance. Thereupon, ZATCA rejects Plaintiff's

objection and insists on validity of its procedure. The Department found, regarding the first, sixth, eighth and tenth items, that the dispute has been resolved when Plaintiff accepted Defendant's procedure. Regarding the second item: Plaintiff did not provide the supporting documents for its objection, nor did it provide depreciation method or evidence that the declaration was filed before the new regulations were issued. Therefore, Plaintiff is obligated to apply fixed installment method. Regarding the third item: The Department, having taken cognizance of Case file, found that Plaintiff did not provide the supporting documents for its statement of claim. Therefore, the Department dismisses Plaintiff's objection. Fourth: It turns out that Plaintiff did not provide the supporting documents for its position on reasons for overstated social insurance expense. Therefore, the Department dismiss Plaintiff's objection. Fifth: It turns out that Plaintiff bore employees' share of social insurance, which constitutes a variance in overstated contributions over the statutory rate and is considered among the non-deductible expenses. Therefore, the Department dismisses Plaintiff's objection. Sixth: It was established that the dispute has been resolved when Plaintiff accepted Defendant's procedure. Regarding the capital gains for 2016, Plaintiff insists on deducting such capital gains from zakat base. On the other hand, Defendant argued for disallowing deduction of capital gains from profit base, as the fixed assets had already been deducted at their value reflected in the financial statements and due to the use of declining balance method. Based on the principle of non-retroactivity of laws, the laws and regulations shall not apply retroactively unless explicitly stated otherwise. Therefore, the Department annuls Defendant's decision regarding capital gains for 2016. Seventh: It turns out that the dispute over this item is document-based. Having taken cognizance of Case file, it turns out that Plaintiff did not provide the breakdown of provisions through which the amount of provisions formed throughout the year could be verified. The profit of this amount should be adjusted as a non-deductible expense. Therefore, the Department dismisses Plaintiff's objection. Ninth: It turns out that Plaintiff did not provide the detailed breakdown of the accrued expenses for the years in question to prove that a zakat year has not passed on the amounts added to zakat base. Therefore, the Department dismisses Plaintiff's objection. The Department ruled to: Establish resolution of the dispute over (Formed Provisions) item, (Depreciation Variances for 2015) item, (Capital Gains for 2015) item and other applicable items. Annul Defendant's decision regarding (Capital Gains for 2016) item. Dismiss other objections filed by Plaintiff and consider the decision as final and enforceable.

Instruments:

- Article (70) of the Law of Civil Procedure promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH.
- Article (17) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH.
- Article (70.1) of the Implementing Regulations of the Law of Civil Procedure issued by Minister of Justice Resolution No. (39933) dated 05/19/1435 AH.
- Articles (4.First.5 and 9), (5.1), (6.4), (7.2) and (20.3) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2216) dated 07/07/1440 AH.
- Clause (1) and Paragraph (2) of ZATCA Circular No. (1724/9) dated 24/03/1427 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Wednesday, 17/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the above-mentioned Case. Since the Case met the statutory requirements. Therefore, the Case was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 01/07/2021 AD.

The facts of this case are summed up so as..., holder of National ID No. (…) in his capacity as the owner of (... Enterprise for Telecommunications), C.R. No. (...), filed an objection to ZATCA zakat assessment for 2015, which consists of ten items. Regarding the first item: Depreciation Variances for 2015, the second item: Depreciation Variances for 2016, the third item: Unsubstantiated Local Purchases for 2015 and 2016, the fourth item: Overstated Social Insurance for Saudi Employees for 2015 and 2016, the fifth item: Overstated Social Insurance for Non-Saudi Employees for 2015 and 2016, the sixth item: Capital Gains for 2015 and 2016, the seventh item: Formed Provisions, the eighth item: Carried Forward Provisions, the ninth item: Accrued Expenses for 2015 and 2016, and the tenth item: Applicable items.

Having presented the statement of claim Defendant, Defendant submitted an answer dated 05/11/2020 wherein replies that the Case is limited to ten items. Regarding depreciation variances for 2015, capital gains for 2015, formed provisions, and applicable items, it was established that the dispute had been resolved. As for depreciation variances for 2016, Defendant stated that it rejected Plaintiff's objection for 2016, as Plaintiff was required to apply "fixed installment method" in accordance with Paragraph (2) of Article (7) of the Implementing Regulations for the Collection of Zakat. In addition, Defendant insists on validity and correctness of its procedures. Regarding unsubstantiated local purchases for 2015 and 2016, Defendant stated that it discussed the issue with Plaintiff before making assessment and requested a system-generated statement of local purchases for 2015 and 2016 in Excel format. Moreover, Plaintiff did not provide the statement and supporting documents for part of the purchases for 2015 and 2016. Since this item is considered an expense that cannot be deducted without supporting documents, Defendant relied on Paragraph (2) of Article (6) of the Implementing Regulations for the Collection of Zakat and rejected the expense due to the lack of supporting documents. Regarding (Overstated Social Insurance Variances for Saudi and Non-Saudi Employees for 2015 and 2016) item, Defendant added overstated social insurance variance to the net profit during assessment process. This adjustment was made because an amount exceeding the regulatory percentages was charged. After review and consideration, such overstated costs and variances outline employees' share in pension funds, which are non-deductible expenses. Thereupon, Defendant rejected Plaintiff's objection and insists on validity of its procedures in accordance with Paragraph (4) of Article (6) of the Implementing Regulations for the Collection of Zakat. Regarding capital gains for 2016, Defendant stated that it disallowed deduction of capital gains from the profit base due to the deduction of fixed assets at the value reflected in the financial statements, in addition to the use of declining balance method based on reasons explained in the discussion of Item No. (1). Regarding (Carried Forward Provisions) item, Defendant stated that it rejected Plaintiff's objection to carried forward provisions, as such amounts are included in the financial statements and on which a zakat year has passed. Therefore, such amounts are subject to zakat base in accordance with Paragraph (5) of Article (4) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH. Regarding (Accrued Expenses for 2015 and 2016) item, Defendant stated that prior to making assessment, Defendant asked Plaintiff to provide additional information, including a detailed breakdown of accrued expenses, which Plaintiff provided. ZATCA added the amounts on which a zakat year has passed

based on the provided breakdown. Having taken cognizance of the objection and the provided breakdown, it turned out that ZATCA procedure is valid, as the amounts on which a zakat year has passed and are considered a source of financing were added. Thereupon, ZATCA rejects Plaintiff's objection and insists on validity of its procedures in accordance with Paragraph (2) of Article (4) of the Implementing Regulations for the Collection of Zakat.

On Wednesday, 17/02/1444 AH, the Department held e-hearing session to consider the Case. At that session, the Department found that ... appeared in his capacity as attorney of Plaintiff under POA attached to Case file. In addition, ..., appeared in his capacity as the representative of Defendant (ZATCA) under POA attached to Case file. Having asked Plaintiff's attorney about the claim, he gave an answer that does not differ from the statements included in the statement of claim lodged with the General Secretariat of Zakat, Tax and Customs Committees. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked Plaintiff's attorney whether his principal had provided the required documents to Defendant during objection stage regarding the objection to local purchases in dispute, despite the fact that Defendant stated in the answer that Plaintiff had not provided such documents during that stage, he requested time to approach his principal about the matter raised by the Department. Since the Department found that the request for adjournment submitted by Plaintiff's attorney is usefulness in accordance with Paragraph (1) of Article (53) of the Implementing Regulations of the Law of Civil Procedure. Therefore, Department dismissed this request. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) dated 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the Case moving for annulling ZATCA decision regarding zakat assessment for 2015 and 2016. Given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since it is established from Case documents that Plaintiff filed the Case within the statutory period and by a party having capacity. Therefore, the Department accepts the Case in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defense and arguments raised by the parties, the Department found that the dispute involves the fact that ZATCA issued zakat assessment for 2015 and 2016. In addition, Plaintiff objects to ten items as follows:

First: Depreciation Variances for 2015:

Article (70) of the Law of Civil Procedure promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgement, settlement, or the like in the case record, and the court shall issue a deed to that effect" and based on paragraph (1) of Article (70) of the Implementing Regulations of the Law of Civil Procedures issued by Minister of Justice

Decision No. (39933) dated 19/05/1435 AH stipulates: "If an agreement is reached prior to entering the case, the text of the case and the answer shall be entered prior to entering such agreement, provided that the original case falls within the jurisdiction of the circuit, even if the text of the agreement falls within the jurisdiction of another court or circuit and the object of the case or portion thereof is agreed upon". As such, the Department found that the dispute has been resolved when Plaintiff accepted Defendant's procedure as stated in the letter in ZATCA answer. Therefore, the Department establishes resolution of the dispute.

Second: Depreciation Variances for 2016:

The dispute involves Plaintiff's statements included in the attached statement of claim via the System, highlighting that upon reviewing tax assessment, it turned out that ZATCA applied fixed installment method to address depreciation variance. Plaintiff stated that the Law permits filing declaration and calculating depreciation variances using group system and declining balance method. Thereupon, Plaintiff maintains its right to deduct depreciation variances according to the declaration. On the other hand, Defendant rejected Plaintiff's objection for 2016, stating that the "fixed installment method" should have been applied. In addition, Paragraph (2) of Article (7) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "Fixed assets shall be depreciated in accordance with the fixed installment method, to be depreciated at the following rates: ...". As such, since Plaintiff did not provide the supporting documents for its objection, nor did it provide depreciation method or evidence that the declaration was filed before the new regulations were issued. Therefore, Plaintiff is obligated to apply fixed installment method in accordance with Article (7) of the Implementing Regulations for the Collection of Zakat. Therefore, the Department dismisses Plaintiff's objection.

Third: Unsubstantiated Local Purchases for 2015 and 2016:

The dispute involves Plaintiff's statements included in the attached statement of claim submitted via the System, indicating that ZATCA disallowed deduction of the amounts for 2015 and 2016 of SAR 10,848,035.27 and SAR 11,929,026.86, respectively due to the lack of supporting documents. Plaintiff stated that all Enterprise's purchases are supported by documents. However, direct purchases are sometimes made for site consumption as consumables. In addition, there are non-inventory purchase expenses that are not recorded in inventory system, making it impossible to provide ZATCA with a list of such purchases and expenses from inventory system. Nevertheless, all disbursement documents related to such items are available for the Enterprise. On the other hand, Defendant argued against allowing deduction of the expense due to the lack of supporting documents. Since this item is considered among the non-deductible expenses as Plaintiff failed to substantiate the expenditure with supporting documents. In addition, Paragraph (3) of Article (20) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". As such, the Department, having taken cognizance of Case file, found that Plaintiff did not provide the supporting documents for the statement of claim. Therefore, the Department dismisses Plaintiff's objection.

Fourth: Overstated Social Insurance Variance for Saudi Employees for 2015 and 2016:

The dispute involves Plaintiff's statements included in the attached statement of claim that the Enterprise, in some cases, bears employee's share as additional benefits for low-salary workers and thus requests its inclusion as deductible expenses. On the other hand,

Defendant argued that it added overstated social insurance variances to the net profit due to charging amounts exceeding statutory rates. Such overstated costs and variances outline employee's share in pension funds, which are non-deductible expenses. In addition, Paragraph (4) of Article (6) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "Non-Deductible Expenses: 4. Employee's share in retirement, pension, social insurance and saving funds". Moreover, Paragraph (1) of Article (5) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "Ordinary and necessary expenses of business activity, whether paid or due, to the net result of activity shall be deducted, if meet the following criteria: a. Expenses should be actual expenses as supported by relevant documents and other evidential matter to enable the Authority to verify the accuracy of expenses, even if related to prior years. b. Expenses should be related to Zakat Payer's business activity rather than personal expenses or other than Zakat Payer's own activities. c. Expenses may not be of capital nature. Where a capital expenditure is included in the expenses such expenditure shall be adjusted against the result of activity added to fixed assets and accordingly depreciated as applicable". In addition, Paragraph (3) of Article (20) thereof states: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". As such, it turns out that the deductible social insurance contributions for zakat purposes are limited to amounts calculated as per the percentages specified by Social Insurance Law and its Implementing Regulations. In addition, such percentages are calculated based on salaries and wages as reflected in the certificate issued by the General Organization for Social Insurance (GOSI), which serves as an official document for verifying the of salaries and wages charged to accounts. Any excess expense beyond the legally acceptable percentages, for which Plaintiff cannot provide acceptable justifications, is considered non-deductible. Having taken cognizance of Case file, it turns out that Plaintiff did not provide supporting documents for its position on reasons for overstated social insurance expense. Therefore, the Department dismisses Plaintiff's objection.

Fifth Overstated Social Insurance Variances for Non-Saudi Employees for 2015 and 2016: The dispute involves Plaintiff's statements included in the attached statement of claim via the System, asserting that the accounts include all amounts paid to GOSI, including late payment fines, which were charged to the account of non-Saudi employees' social insurance. Plaintiff also claims that such expenses are supported by documents and requests their inclusion as deductible expenses. On the other hand, Defendant argues that the overstated social insurance contributions added to the net profit due to charging amounts exceeding the statutory rates. In addition, such overstated costs and variances of employee's share in pension funds are considered as non-deductible expense. In addition, Paragraph (4) of Article (6) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "Non-Deductible Expenses: 4. Employee's share in retirement, pension, social insurance and saving funds". Moreover, Paragraph (1) of Article (5) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "Ordinary and necessary expenses of business activity, whether paid or due, to the net result of activity shall be deducted, if meet the following criteria: a. Expenses shall be actual expenses as supported by relevant documents and other evidential matter to enable the Authority to verify the accuracy of expenses, even if related to prior years. b. Expenses shall be related to Zakat Payer's business activity rather than personal expenses or other than Zakat Payer's own activities. c. Expenses may not be of capital nature. Where

a capital expenditure is included in the expenses such expenditure shall be adjusted against the result of activity added to fixed assets and accordingly depreciated as applicable". As such, it turns out that the deductible social insurance contributions for zakat purposes are those calculated in accordance with the percentages specified by Social Insurance Law and its Implementing Regulations. In addition, such percentages are calculated based on salaries and wages as reflected in GOSI certificate, which serves as an official document used to verify the fairness of salaries and wages charged to the accounts. Moreover, the overstated expense, for which Plaintiff fails to provide acceptable justifications for overstated expense, is considered a non-deductible expense. Having taken cognizance of Case file, it turns out that Plaintiff bore employees' share of social insurance, which constitutes a variance in overstated contributions over the statutory rate and is considered among the non-deductible expenses. Therefore, the Department dismisses Plaintiff's objection.

Sixth: Capital Gains for 2015 and 2016:

Regarding capital gains for 2015, Article (70) of Law of Civil Procedure promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgement, settlement, or the like in the case record, and the court shall issue a deed to that effect" and based on paragraph (1) of Article (70) of the Implementing Regulations of the Law of Civil Procedures issued by Minister of Justice Decision No. (39933) dated 19/05/1435 AH stipulates: "If an agreement is reached prior to entering the case, the text of the case and the answer shall be entered prior to entering such agreement, provided that the original case falls within the jurisdiction of the circuit, even if the text of the agreement falls within the jurisdiction of another court or circuit and the object of the case or portion thereof is agreed upon". As such, the Department found that the dispute has been resolved when Plaintiff accepted Defendant's procedure as stated in the letter included in ZATCA answer. Therefore, the Department establishes resolution of the dispute. As for the capital gains for 2016, the dispute involves Plaintiff's statements included in the attached statement of claim via the system, indicating that the capital gains amounting to SAR 11,800 were canceled. According to the calculation of depreciation using group method applied until the end of 2016, the capital gains should be deducted. Therefore, Plaintiff insists on deducting capital gains from zakat base. On the other hand, Defendant argued that it disallowed deduction of the capital gains from profit base due to the fact that the fixed assets are deducted at their book value as reflected in the financial statements, in addition to the use of declining balance method in line with the reasons explained in the discussion of Item No. (1). Furthermore, Paragraph (2) of ZATCA Circular No. (1724/9) dated 24/03/1427 AH stipulates: "Since the approach followed by the Authority in calculating the zakat base involves deducting the net total value of fixed assets from the base to determine the zakat amount due from Zakat Payer in compliance with Sharia provisions, the net book value of fixed assets to be deducted from the zakat base is determined as follows: (The remaining group value at the end of the year, as determined under Paragraphs (a–e) of Article 17 of the Tax Law, plus 50% of the deferred value of assets added during the year, minus 50% of the deferred value of compensations for assets disposed of during the year)." Furthermore, Paragraph (2) of Article (7) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision (2082) on 01/06/1438 AH, states: "Fixed assets are depreciated according to fixed installment method, with depreciation rates applied as follows ...". As such, it turns out that the above-mentioned circular obligates Zakat Payers to abide by depreciation method stipulated in Article (17) of Income Tax law. In addition, fixed assets are calculated according to provisions of ZATCA Circular No. (1724/9) above-mentioned. Having reviewed Plaintiff's declaration, it turns out that the required depreciation method was applied. Since Defendant relied on Paragraph (2) of Article (7)

of the Implementing Regulations for the Collection of Zakat issued in 1438 AH. Since Defendant did not prove whether Plaintiff filed its declaration before or after issuing the Implementing Regulations for the Collection of Zakat, and based on the principle of non-retroactivity of laws, wherein laws and regulations do not apply retroactively unless otherwise stated. Therefore, the Department annuls Defendant's decision regarding capital gains for 2016.

Seventh: Carried Forward Provisions (Provision of Guarantee for ... Company and Provision of Carried Forward Losses for ...):

The dispute involves Plaintiff's statements included in the attached statement of claim via the system that the provisions in question have been previously clarified to ZATCA. These provisions are statutory accounts that did not affect the statement of income at all, and no cost was charged to profits and losses. The main supplier sends free goods amounting to 2% of the value of each shipment in exchange for maintenance and supervision services. These goods are recorded in the warehouse as incoming goods, offset by the provision. When expended, these provisions are excluded from the provision and reduced from the inventory, i.e., they are statutory accounts and do not affect the statement of income. On the other hand, Defendant argued that it rejected Plaintiff's objection regarding the carried forward provisions, as they are amounts reflected in the financial statements and on which a zakat year has passed, thus subject to zakat base. In addition, Paragraph (5) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "Zakat Base comprises the entire Zakat Payer's funds that are subject to Zakat collection, including: Government and commercial loans or equivalent items of other sources of funds, such as creditors, bills payable, overdrafts due by the Zakat payer in accordance with the following: creditors, bills payable, overdrafts due by the Zakat Payer in accordance with the following: a. Remaining cash on which a Zakat year has passed. b. Parts thereof used to finance the property. c. Parts thereof used in trade bids on which a year has passed". In addition, Paragraph (9) of (First) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 9. Beginning of year provisions (except for provisions for doubtful debts of banks) after deducting the used part during the year". Moreover, Paragraph (3) of Article (20) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". As such, it turns out that the dispute over this item is document-based. Having taken cognizance of Case file, it turns out that Plaintiff did not provide the breakdown of provisions through which the amount of provisions formed throughout the year could be verified, and which should have been used to adjust the profit as non-deductible expense. Therefore, the Department dismisses Plaintiff's objection.

Eighth: Formed Provisions:

Article (70) of the Law of Civil Procedure promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgment, settlement, or the like in the case record, and the court shall issue a deed to that effect". In addition, Paragraph (1) of Article (70) of the Implementing Regulations of the Law of Civil Procedure promulgated by Minister of Justice Resolution No. (39933) dated 19/05/1435 AH stipulates: "If an agreement is reached prior to entering the case, the text of the case and the answer shall be entered prior to entering such

agreement, provided that the original case falls within the jurisdiction of the Department, even if the text of the agreement falls within the jurisdiction of another court or Department and the object of the case or portion thereof is agreed upon". As such, the Department found that the dispute has been resolved when Plaintiff accepted Defendant's procedure as stated in the letter included in ZATCA answer. Therefore, the Department establishes resolution of the dispute.

Ninth: Accrued Expenses for 2015 and 2016:

The dispute involves Plaintiff's statements included in the attached statement of claim via the systems that Defendant (ZATCA) added other accrued expenses to zakat base for 2015 and 2016 of SAR 18,250,962.96 and SAR 1,331,317.43, as on some of such a zakat year has passed. On the other hand, Defendant argued that it added only the amounts on which a zakat year has passed, which are considered sources of finance. Therefore, ZATCA rejects Plaintiff's objection and insists on validity of its procedure. Furthermore, Paragraph (5) of (First) of Article (4) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: ... 5- Government and commercial loans and other similar sources of financing, such as: creditors, payment papers, and overdraft accounts owed by the Zakat payer which: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. The portion used for trading assets and for which a full year has passed. Moreover, Paragraph (3) of Article (20) of the same Regulations stipulates: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it" As such, accrued expense balance is considered one of the components of zakat base, provided that a zakat year has passed on such balance. Since the dispute over this item is document-based. Having taken cognizance of Case file, it turns out that Plaintiff did not provide the detailed breakdown of the accrued expenses for the years in question to prove that a zakat year has not passed on the amounts added to zakat base. Therefore, the Department dismisses Plaintiff's objection.

Tenth: Other applicable items:

Article (70) of the Law of Civil Procedure promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgement, settlement, or the like in the case record, and the court shall issue a deed to that effect" and based on paragraph (1) of Article (70) of the Implementing Regulations of the Law of Civil Procedures issued by Minister of Justice Decision No. (39933) dated 19/05/1435 AH stipulates: "If an agreement is reached prior to entering the case, the text of the case and the answer shall be entered prior to entering such agreement, provided that the original case falls within the jurisdiction of the circuit, even if the text of the agreement falls within the jurisdiction of another court or circuit and the object of the case or portion thereof is agreed upon". As such, the Department found that the dispute has been resolved when Plaintiff accepted Defendant's procedure as stated in the letter in ZATCA answer. Therefore, the Department establishes resolution of the dispute.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

First: Establish resolution of the dispute between Plaintiff (...) TIN No. (...), and Defendant (ZATCA) regarding (Depreciation Variance for 2015) item when Defendant accepted Plaintiff's requests in this regard.

Second: Establish resolution of the dispute between Plaintiff (...) TIN No. (...), and Defendant (ZATCA) regarding (Capital Gains for 2015) item when Defendant accepted Plaintiff's requests in this regard.

Third: Establish resolution of the dispute between Plaintiff (...) TIN No. (...), and Defendant (ZATCA) regarding (Formed Provisions) item when Defendant partially accepted Plaintiff's requests in this regard.

Fourth: Establish resolution of the dispute between Plaintiff (...) TIN No. (...), and Defendant (ZATCA) regarding other applicable items when Defendant accepted Plaintiff's requests in this regard.

Fifth Annul Defendant (ZATCA) decision against Plaintiff (...) TIN No. (...), regarding (Capital Gains for 2016) item

Sixth: Dismiss otherwise objections filed by Plaintiff (...) TIN No. (...), to Defendant (ZATCA) decision regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of Parties. The Department has set Monday 13/04/1444 AH for receiving and a copy of the decision. The Parties to this case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, this decision becomes final and enforceable

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period in accordance with Article 33.2 of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2020-1644)
Issued in Appeal No. (Z-52548-2021)

Key words:
Zakat Assessment- Accounts - Related Party Receivables - Zakat Declaration - Zakat Base.

Abstract

The Plaintiff instituted this Case moving to cancel ZATCA's decision regarding Zakat assessment for 2019 AD. The Plaintiff limited its objection to the item "Related Party Receivables". The Plaintiff objects to the Defendant's action of adding the balance of related party receivables to Zakat base in Zakat assessment for 2019. The Plaintiff stated that it submitted Zakat declaration including an amount of SAR (45,500,000) as related party receivables, as the debtor/... is obligated to pay the aforementioned amount to the Company pursuant to Riyadh Enforcement Court's Enforcement Order No.(...), dated ... in implementation of Riyadh Commercial Court's Judgment No.(...), approved by Appeal Court's Judgment Deed No. (...), Dated.../.../... AH. The Plaintiff also stated that despite the debtor's failure to implement the Court's decision to date and its failure to pay any amounts to the Company, ZATCA did not accept the deduction of the aforementioned amount from Zakat base. The Plaintiff claimed that ZATCA added it on the basis that it was not included in the deductions. Based on the aforementioned, it is clear that Zakat Payer is requesting a deduction for these amounts based on agreements reached between the partners, citing a judgment in the case against the partner. However, this item (related party receivables) represents debts owed to the Company. For deductions to be allowed for debts, they must not be owed by parties related to Zakat Payer and must arise from the conduct of the business. Additionally, the investment between the partners has not been registered with ZATCA under any investment entity and has not been subject to Zakat in the past. Furthermore, loans, supporting or additional financing, and similar items provided to the investee entity are not considered investments that can be deducted from Zakat base. As such, Zakat Payer's objection was rejected. The Department established as follows: The Plaintiff stated that it was unable to collect the due amount and that it is uncollectible due to the debtor's delay. It added that there is a judgment from the Appeal Court against the debtor/ ... to pay the amount to the Company, and that the decision has been approved by the Appeal Court, but the debtor has not paid the amount. The Department also found that the Plaintiff did not present any of the judgments that it claimed were issued against the debtor. Department ruled to Reject the objection related to the assessment in question.

Instruments:

- Article (5) of The Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) dated 07/07/1440 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Wednesday, 11/02/1444 AH, the First Department for the Determination of Income Tax Violations and Disputes in Riyadh, stipulated in Article (67) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed by Royal Order No. (65474) dated 23/12/1439 AH, held its teleconference session to consider the Case filed by .... Company, against ZATCA. Since the Case met the prescribed legal requirements, it was filed with General Secretariat of Tax Committees on 31/05/2021.

The facts of this case are summed up in that Mr....., ID No. (.....) in her capacity as Attorney of the Plaintiff/ ... Company, C.R. No. (...), under POA No. (...), Dated. ...., filed an objection to ZATCA's Zakat assessment for 2019, centering on item "Related party receivables". The Plaintiff objects to the Defendant's action of including the balance of related parties as a receivable in Zakat base for 2019. The Plaintiff stated that it submitted Zakat declaration that included an amount of SAR (45,500,000) as related party receivables. The Plaintiff further stated that the debtor/ ... is obligated to pay the aforementioned amount to the Company pursuant to Riyadh Enforcement Court's Enforcement Order No.(...), dated ... in implementation of Riyadh Commercial Court's Judgment No.(...), approved by Appeal Court's Judgment Deed No. (...), dated .../.../… AH. The Plaintiff stated that despite the debtor's failure to execute the Court's decision to date and its failure to pay any amounts to the Company, ZATCA did not accept the deduction of the aforementioned amount from Zakat base. The Plaintiff stated that ZATCA added it on the basis that it was not included in the deductions in Article (5) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2216), dated 07/07/1440 AH. Accordingly, the Plaintiff requests the cancellation of ZATCA's action in this matter.

Having presented the statement of claim to the Defendant, it responded with a reply memorandum stating as follows with regard to item "related party receivables": The Defendant stated that it excluded these amounts from Zakat base because they were not included among the deductions in Article (5) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2216), dated 07/07/1440 AH. ZATCA clarifies its position regarding the financial statements in Note No. 5 (attached). Based on the aforementioned, it is clear that Zakat Payer is claiming a deduction for these amounts based on agreements between partners, citing a judgment in a case against a partner. However, this type of debt (receivables from related parties) represents debts owed to the Company. For debts to be deductible, they must not be owed by parties related to Zakat Payer and must arise from the conduct of business, according to Article (8.3.d) of the Implementing Regulations for Zakat Collection. Additionally, the investment between the partners has not been registered with ZATCA as an investee entity and has not been subject to Zakat in the past, according to Article (5.4) of the Implementing Regulations, which states: (Investments in an entity in the Kingdom for purposes other than trade, if the entity invested in is registered with the Authority and is subject to Zakat according to these Regulations .... loans receivable, subordinate loans, supplemental financing and similar items granted to the entity invested are not a zakat-deductible investment). As such, Zakat Payer's objection was rejected. Zakat Payer's claims mentioned in its statement are legally incorrect based on the explanations provided by ZATCA above. Furthermore, the arguments presented in its statement of claim lack a valid basis as they are not supported by any reliable evidence. Consequently, ZATCA maintains the correctness and validity of its action.

On Wednesday, 11/02/1444 AH, the Department held its session remotely to hear the Case. The Plaintiff's Attorney did not attend, despite the fact that they were legally notified. Ms. …. attended as Representative of the Defendant/ ZATCA, by virtue of an authorization, a copy of which is attached to the Case file. Having asked the Defendant's Representative regarding his reply, he maintained his answers previously stated in his Reply, and requested the Department not to accept any new documents that have not been submitted to the Defendant during the examination and objection stage. Having asked Defendant's attorney if she had any other statements, they replied negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form, since the Plaintiff filed the case to abolish ZATCA's decision regarding Zakat Assessment of 2019 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On merits: Having examined the documents included in the Case file, as well as the requests, defenses and pleas made by its parties, the Department found that the Plaintiff objects to Zakat assessment made by the Defendant for 2019 specifically in respect of item (Related party receivables): The Plaintiff objects to the Defendant's action of including the balance of related parties as a receivable in Zakat base for 2019. Meanwhile, the Defendant argues that these amounts were excluded from Zakat base because they were not included among the deductions in Article (5) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2216), dated 07/07/1440 AH.

Based on the aforementioned, and having reviewed the data provided by both parties, The Plaintiff stated that it was unable to collect the due amount and that it is uncollectible due to the debtor's delay. It added that there is a judgment from the Appeal Court against the debtor/ ... to pay the amount to the Company, and that the decision has been approved by the Appeal Court, but the debtor has not paid the amount. Upon reviewing the documents attached to the system, the Plaintiff has not provided any of the judgments it claimed were issued against the debtor. Therefore, we find it appropriate to reject its objection due to lack of supporting documents. Accordingly, the Department decided to reject the Plaintiff's objection.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

- Reject the objection of Plaintiff/ ... Company TIN No. (...) to Defendant/ (ZATCA)'s decision regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of Parties. The Department has set Monday 23/02/1444 AH for receiving and a copy of the decision. The Parties to this case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, this decision becomes final and enforceable

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1622)
Issued in Appeal No. (Z-48053-2021)

Key words:
Zakat Assessment- Accounts - Non-Deduction of Investments - Zakat Base - Long-term Investments - Amounts Due to Related Parties - Accrued Expenses - Non-Deduction of the Remaining Balance of the Statutory Deposit - Acceptance of the Case in Form.

Abstract

The Plaintiff instituted this Case moving to cancel ZATCA's decision regarding Zakat assessment for the period from 2015 to 2018 AD. In response, ZATCA stated that regarding non-deduction of investments from Zakat base totaling SAR (38,987,271), and non-deduction of term deposits from Zakat base totaling SAR (257,776,061): The Defendant did not accept the deduction of term deposits and investments, except for the deduction of investments in ... Company amounting to SAR (1,923,078). The Plaintiff stated that the investments are long-term and not intended for sale, and that the insurance company invests them in accordance with the terms set by .... Saudi Bank for insurance companies. Upon reviewing the financial statements, it was found that the investments consisted of investments in funds, sukuk, and bonds. The Plaintiff did not provide any evidence that these investments are subject to Zakat in the Kingdom. Furthermore, it was found that the purpose of these funds and their activities is trading in securities and commodities. The investor invests in these funds knowing their activities, which are based on buying and selling of assets, not mere acquisition. Therefore, investing in them is considered a form of commercial activity and is not eligible for deduction from Zakat base, just like sukuk and deposits. Regarding the addition of amounts due to related parties totaling SAR (39,189,216). The Defendant added the amounts that had completed one lunar year from the amounts due to related parties to Zakat base. The Plaintiff stated that there were outstanding amounts owed to related parties. Upon reviewing the analytical statement and transactions provided by the Plaintiff, it was determined that the due date had passed. However, the Implementing Regulations for Zakat Collection do not stipulate a set-off between related parties, nor do they allow for additions or deductions without a specific provision. Regarding the addition of accrued expenses for 2015 and 2016, totaling SAR (2,016,322): The Defendant added the amounts that had completed one lunar year from the accrued expenses for 2015 and 2016, totaling SAR (2,016,322), to Zakat base. Regarding the erroneous non-deduction of the remaining balance of the statutory deposit at the end of the period for 2017, amounting to SAR (10,500,000): The Defendant did not deduct the end-of-period balance of the statutory deposit, which amounted to SAR (33,000,000), and only allowed the deduction of the beginning-of-period balance of SAR (22,500,000). This is because the statutory period is capped at a maximum of 15% of the capital. Upon reviewing the capital in the financial statements for 2017, it was found that the capital was SAR (150) million. It became clear that the highest permissible ratio for the

statutory deposit for insurance companies is 15% of the capital, which is SAR (22,500,000). This is the amount that was allowed to be deducted by ZATCA. Therefore, the Defendant requests dismissal of the Case, while reserving its right to submit further responses and clarifications before the closing of the pleadings. The Department established that the dispute lies in the Defendant's issuance of Zakat assessments for the period from 2015 to 2018, centering on five items: First: Item (Non-Deduction of Investments from Zakat Base): It was found that the Plaintiff did not provide supporting documents to prove that the disputed investments were for long-term purposes, as claimed in its statement of claim. In order for investments to be considered capital assets and thus deductible from Zakat base, two essential conditions must be met: 1) documented intent from the authorized party clearly stating the purpose of the investment, and 2) no sales transactions occurred during the year. Since investment funds typically pool funds from various sources to invest in diverse areas, and the fund has a separate legal entity from the investing party, and is based on the turnover of funds through buying and selling, rather than acquisition, investment in these funds is considered a commercial transaction and cannot be deducted from Zakat base. The duration of the investment in the fund does not change this fact; rather, it is the nature of the investment that matters. Second: Item (Non-Deduction of Term Deposit from Zakat Base): Deposits with banks constitute a debt owed by the bank to the depositor (the Plaintiff) and are not considered assets subject to Zakat when calculating Zakat due from the bank holding these deposits. This is in accordance with the provisions of Article (4), which explicitly states that bank deposits cannot be deducted from Zakat base. Third: Item (Inclusion of Amounts Due to Related Parties to Zakat Base): Upon reviewing the Case file, the Department found that the dispute between the parties lies in whether the Plaintiff is entitled to offset the debtor balances. Article (4.9.a) of the Implementing Regulations for Zakat Collection stipulates that Zakat Payer is entitled to offset creditor and debtor balances. Fourth: Item (Inclusion of Accrued Expenses to Zakat Base): Upon reviewing the Case file, the Department found that the Plaintiff did not provide supporting documents to prove that a full lunar year did not pass on the disputed item. Given that accrued expenses are considered a component of Zakat base, provided that they completed a full lunar year or that they have been used to finance assets included in Zakat base. Fifth Item (Erroneous Non-Deduction of the Remaining Balance of the Statutory Deposit at the End of the Period): The Dispute lies in the Plaintiff's objection to the Defendant's action to disallow deduction of the end-of-period balance of the statutory deposit amounting to SAR (33,000,000). However, the Defendant argues that an amount of SAR (22,500,000) has been deducted, which represents 15% of the end-of-period capital balance as shown in the financial statements at a value of SAR (150,000,000). Upon reviewing the Case file, the Department found that the end-of-period balance of the statutory deposit was shown among the assets at a value of SAR (33,000,000). Furthermore, upon reviewing the Plaintiff's financial statements for 2018, the Department established that the Company requested ... Institution to reduce the statutory deposit from SAR (33,000,000) to SAR (22,500,000). The Department established that the Plaintiff's claim to deduct the statutory deposit is valid. - Appeals Chamber ruled to: Cancel ZATCA's decision regarding the addition of amounts due to related parties for the period from 2015 to 2017, cancel its decision regarding erroneous non-deduction of the remaining balance of the statutory deposit at the end of the period for 2017, and dismiss all other objections.

Instruments:

- Articles (58) of the Implementing Regulations for Cooperative Insurance Companies Control Law issued by Ministerial Resolution No. (1/596) dated 01/03/1425 AH.

- Articles (4.First.5/Second.4.a, 4.c, 9.a), (5.10), (20.3) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Monday, 09/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held its teleconference session to consider the Case filed by .... Company, against ZATCA. Since the Case met the prescribed legal requirements, it was filed with General Secretariat of Tax Committees on 20/04/2021.

The facts of this case are summed up as follows: Mr. ... National ID No. (.....) in his capacity as attorney of Plaintiff (...), C.R. No. (...), Under the power of attorney issued by the Eastern Province Chamber of Commerce and Industry (Asharqia Chamber) under No. (…), dated ... filed an objection to ZATCA's Zakat assessment for the period from 2015 to 2018.

Having presented the statement of claim to the Defendant, it answered as follows: the Defendant stated regarding non deduction of investments from Zakat base totaling SAR (38,987,271) and non-deduction of term deposits from Zakat base totaling SAR (257,776,061) that The Defendant did not accept the deduction of term deposits and investments, except for the deduction of investments in ... Company amounting to SAR (1,923,078). The Plaintiff stated that the investments are long-term and not intended for sale, and that the insurance company invests them in accordance with the terms set by .... Saudi Bank for insurance companies. Upon reviewing the financial statements, it was found that the investments consisted of investments in funds, sukuk, and bonds. The Plaintiff did not provide any evidence that these investments are subject to Zakat in the Kingdom. Furthermore, it was found that the purpose of these funds and their activities is trading in securities and commodities. The investor invests in these funds knowing their activities, which are based on buying and selling of assets, not mere acquisition. Therefore, investing in them is considered a form of commercial activity and is not eligible for deduction from Zakat base, just like sukuk and deposits. The Defendant based its action on Article (4) of the Regulations for Zakat Collection. Regarding the addition of amounts due to related parties totaling SAR (39,189,216). The Defendant added the amounts that had completed one lunar year from the amounts due to related parties to Zakat base. The Plaintiff stated that there were outstanding amounts owed to related parties. Upon reviewing the analytical statement and transactions provided by the Plaintiff, it was determined that the due date had passed. However, the Implementing Regulations for Zakat Collection do not stipulate a set-off between related parties, nor do they allow for additions or deductions without a specific provision. The Defendant based its action on Article (4) of the Regulations for Zakat Collection. Regarding the addition of accrued expenses for 2015 and 2016, totaling SAR (2,016,322): The Defendant added the amounts that had completed one lunar year from the accrued expenses for 2015 and 2016, totaling SAR (2,016,322), to Zakat base. The Defendant based its action on Article (4) of the Regulations for Zakat Collection. Regarding the erroneous non-deduction of the remaining balance of the statutory deposit at the end of the period for 2017, amounting to SAR (10,500,000): The Defendant did not deduct the end-of-period balance of the statutory deposit amounting to SAR (33,000,000) but only allowed the deduction of the beginning-of-period balance of SAR (22,500,000); this is because the statutory deposit is capped at a maximum of 15% of the capital, in

accordance with Article (58) of the Implementing Regulations of the Insurance Companies Control Law. Upon reviewing the capital in the financial statements for 2017, it was found that the capital amounted to SAR (150) million. Referring to Article (58) of the Implementing Regulations of the Insurance Companies Control Law, which pertains to the statutory deposit, it is clear that the maximum percentage allowed for the statutory deposit of insurance companies is 15% of the capital, which is SAR (22,500,000). This is the amount that ZATCA permitted to be deducted, basing its decision on Article (4) of the Regulations for Zakat Collection. Based on the foregoing, Defendant requests that Plaintiff's Case be dismissed, while preserving its right to present further responses and clarifications until pleadings closure.

On Monday, 09/02/1443 AH, the Department held its session remotely to hear the Case. The session was attended by Ms. ... National ID No. (.....) as the Plaintiff's Attorney pursuant to POA issued by Notary Public/... No. (...), dated ../../..., and the session was attended also by Ms. ... ID No. ....., in her capacity as the Representative of the Defendant/ ZATCA, by virtue of Authorization No. ...., issued by Deputy Governor for Legal Affairs and Compliance, dated ... when Plaintiff's attorney was asked about their claim, they responded that it aligns with the contents of the statement of claim previously submitted to the General Secretariat of Tax Committees. Having confronted the Defendant's Representative of the same, she answered by insisting on the statements included in the Defendant's Reply and requested the Department not to accept any new documents that were not provided to the Defendant throughout examination and objection phase. It requested the Plaintiff's Attorney to have her client submit the correspondence between her client and ... bank that indicates the date on which the disputed statutory deposit was reduced, in addition to a certificate from ... bank stating the balance of the disputed statutory deposit as of 31 December 2017. When the Defendant's Representative was asked why they had delayed in submitting this request until after the objection phase or the memorandum exchange phase, given that the Case was filed on 20/04/2021, and the impact of this delay on the progress of the Case and the potential harm it could cause to the Plaintiffs, as well as the burden it places on the Department in resolving pending cases, the Defendant's Representative responded that this issue was only raised yesterday by the Defendant's relevant department. The Plaintiff's Attorney responded to the Defendant's Representative's request by stating that the financial statements submitted by her client in the case file show that the disputed statutory deposit was reduced with the approval of ... bank. Therefore, these financial statements reflect what the Defendant's Representative requested in this session. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: The Plaintiff filed this case moving to cancel ZATCA's decision regarding Zakat assessment for the period from 2015 to 2018. Since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Resolution of Excise Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH, and since the case was

filed by a person with capacity, and within the period prescribed by law, it is therefore accepted in form.

On merits: having examined the case papers and documents included in the case file, as well as the requests, defenses and pleas made by the parties, the Department found that the dispute is related to the zakat assessment made by ZATCA for the period from 2015 to 2018, which covers five items, namely:

First: Item (Non-Deduction of Investments from Zakat Base):

The dispute lies in the Plaintiff's objection to the Defendant's action of not deducting investments in mutual funds and shares from Zakat base by an amount of SAR (4,899,461) for 2015, SAR (5,023,235) for 2016, SAR (5,114,952) for 2017, and SAR (23,949,623) for 2018. The Plaintiff indicated that it is an insurance company licensed by... Saudi bank and stated that the investments were made for long-term purposes, in line with the bank's guidelines and instructions, and have been removed from its liabilities. Moreover, the income earned from the investments is subject to Zakat as part of the profits. Therefore, the Plaintiff demands that the investment in the funds be deducted from Zakat base. Meanwhile, the Defendant argued that its action was in accordance with the provisions of the Regulations for Zakat Collection, as it was found that investment in funds is considered to be in the nature of commercial transactions and is not eligible for deduction from Zakat base, and as per Paragraph (a.4.Second) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH, stipulating that: "The following items shall be deducted from the Zakat Base: "Investments in establishments inside the Kingdom - in partnership with others - if such investments are subject to collection of Zakat under these Regulations, if investment in such establishments is not subject to collection, then it shall not be deducted from base". Based on the foregoing, and upon the Department 's review of the Case file, it appears that the Plaintiff has not provided any supporting documents to prove that the disputed investments were for long-term purposes as claimed in its Case. Given that two essential conditions must be met for investments to be considered capital assets eligible for deduction from Zakat base, namely a documented intent by the authorized party specifying the purpose of the investment and the absence of any sales transactions during the year, and considering that investment funds are characterized by pooling funds from various sources for investment in diverse areas, and the fund has a separate financial entity from the issuing investor and is based on the turnover of funds through buying and selling rather than acquisition, therefore, investment in these funds is considered to be in the nature of commercial transactions and is not eligible for deduction. The duration of the investment in the fund does not alter this fact; rather, the nature of the investment is what matters. Accordingly, the Department concludes by rejecting the Plaintiff's objection.

Second: Item (Non-Deduction of Term Deposit from Zakat Base):

The dispute lies in the Plaintiff's objection to the Defendant's action of not deducting investments in deposits from Zakat base by an amount of SAR (70,000,000) for 2015, SAR (37,900,084) for 2016, SAR (38,285,718) for 2017, and SAR (111,590,259) for 2018. The Plaintiff indicated that it is an insurance company licensed by... Saudi bank and stated that the investments were made for long-term purposes, in line with the bank's guidelines and instructions, and have been removed from its liabilities. Moreover, the income earned from the investments is subject to Zakat as part of the profits. Therefore, the Plaintiff demands that the investment in the funds be deducted from Zakat base. Meanwhile, the Defendant argued that its action was in accordance with the provisions of the Regulations for Zakat Collection, and Paragraph (a.4.ii) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH, stipulating that: "In all cases, if the investments—whether domestic or foreign—are in bonds, sukuk, currencies, deposits, or forward contracts, they are not deducted from the taxable base,

regardless of whether they are short-term or long-term". Based on the foregoing, since the deposits with the banks represent a debt owed by the bank to the depositor (the Plaintiff), and are not considered assets subject to Zakat when calculating Zakat base of the bank holding those deposits, in accordance with the provisions of Article (4) referred to above, which stipulates that bank deposits cannot be deducted from Zakat base; therefore, the Department concludes by rejecting the Plaintiff's objection.

Third: Item (Inclusion of Amounts Due to Related Parties to Zakat Base):

The dispute lies in the Plaintiff's objection to the Defendant's action of including amounts due to related parties in Zakat base by an amount of SAR (16,669,172) for 2015, SAR (8,210,064) for 2016, and SAR (14,309,980) for 2017. The Plaintiff indicated that the disputed balances represent an accounting entry resulting from the acquisition of an insurance portfolio and are not owned by the Company. Rather, they are amounts due that can only be settled according to the terms approved by ... Saudi bank. The Plaintiff added that the Company's shareholders approved entering into an agreement with (... Company) to acquire the insurance portfolio and net assets in exchange for a specific compensation, based on the instructions of .... Saudi bank. Meanwhile, the Defendant argued that its action was in accordance with the provisions of the Regulations for Zakat Collection, as it was evident that the amounts in dispute had completed the lunar year, and the aforementioned Regulations do not stipulate any offsetting between related parties. Therefore, the Defendant insists on the correctness of its actions. Additionally, Paragraph (5.i) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates that "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: ... 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. The portion used for trading assets and for which a full year has passed". In addition, Paragraph (9.a) of the same Regulations states: "a. In cases where Zakat Payer's declaration includes both a creditor's current account and a debtor's current account, the difference between the two is taken into consideration. If a creditor's current account appears for one partner and a debtor's current account for another partner, no settlement is made between them, and the creditor's current account of the partner or sole proprietor is added to Zakat base at the end of the lunar year". Based on the foregoing, upon reviewing the Case file, the Department found that the dispute between the parties lies in whether the Plaintiff is entitled to offset the debtor balances. The above-mentioned Article (4.9.a) of the Implementing Regulations for Zakat Collection stipulates that Zakat Payer is entitled to offset creditor and debtor balances. As such, the Department concludes by cancelling the Defendant's decision.

Fourth: Item (Inclusion of Accrued Expenses to Zakat Base):

The dispute lies in the Plaintiff's objection to the Defendant's action of including accrued expenses in Zakat base by an amount of SAR (1,165,941) for 2015 and SAR (850,371) for 2016. The Plaintiff indicated that the accrued expenses do not meet the conditions of ownership and are related to ordinary daily commercial transactions and working capital, and therefore should not be added to Zakat base. Meanwhile, the Defendant argued that its action was in accordance with the provisions of the Regulations for Zakat Collection, specifically Article (4), paragraph (5), of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH which states: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: ... 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance

acquisition assets. C. The portion used for trading assets and for which a full year has passed". In addition, Paragraph (3) of Article (20) of the same Regulations states: "The burden of proving validity of the items mentioned in Zakat Payer's declaration and any other data shall fall on Zakat Payer. In the event that Zakat Payer is unable to prove validity of the items mentioned in his declaration, ZATCA may not approve the item whose validity is not proven by Zakat Payer or make an estimated assessment according to its discretion in light of the circumstances and facts related to the case and the information available thereto". Based on the forgoing, having taken cognizance of the Case file, the Department found that the Plaintiff did not provide any documents to support the claim that a lunar year has not passed for the disputed item. Since the accrued expenses are considered a component of Zakat base, provided that a lunar year has passed or they have been used to finance assets deducted from Zakat base, the Department therefore concludes by dismissing the Plaintiff's objection.

Fifth Item (Erroneous Non-Deduction of the Remaining Balance of the Statutory Deposit at the End of the Period):

The dispute lies in the Plaintiff's objection to the Defendant's action of not allowing the deduction of the remaining balance of the statutory deposit at the end of the period from Zakat base by an amount of SAR (10,500,000) Riyals for 2017. The Plaintiff indicated that the Defendant had mistakenly deducted 15% of the capital as a statutory deposit during 2017, and relied on Article (5.10) of the Regulations for Zakat Collection, which permits insurance companies to deduct the statutory deposit for Zakat purposes. Meanwhile, the Defendant argued that its action was in accordance with the provisions of the Regulations for Zakat Collection, and based on Article (58) of the Implementing Regulations for Cooperative Insurance Companies Control Law issued by Ministerial Resolution No. (1/596) dated 01/03/1425 AH which states: "The statutory deposit shall be ten percent (10%) of the paid-up capital. The Agency, where the risk profile of the Company's business warrants it, shall increase this percentage to a maximum of fifteen percent (15%). The Company shall place the statutory deposit amount, within three (3) months period from the date of issuing the license, in a bank designated by the Agency. The Agency shall invest the statutory deposit and shall be entitled to its earnings". Based on the foregoing, the Dispute lies in the Plaintiff's objection to the Defendant's action to disallow deduction of the end-of-period balance of the statutory deposit amounting to SAR (33,000,000). However, the Defendant argues that an amount of SAR (22,500,000) has been deducted, which represents 15% of the end-of-period capital balance as shown in the financial statements at a value of SAR (150,000,000). Upon reviewing the Case file, the Department found that the end-of-period balance of the statutory deposit was shown among the assets at a value of SAR (33,000,000). Furthermore, upon reviewing the Plaintiff's financial statements for 2018, the Department established that the Company requested ... Institution to reduce the statutory deposit from SAR (33,000,000) to SAR (22,500,000). The Department established that the Plaintiff's claim to deduct the statutory deposit is valid. As such, the Department concludes by cancelling the Defendant's decision.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

First: Cancel Defendant (ZATCA)'s decision against Plaintiff (...) Company TIN No. (...) related to the inclusion of amounts due to related parties for the period from 2015 to 2017.

Second: Cancel Defendant (ZATCA)'s decision against Plaintiff (...) Company TIN No. (...) related to erroneous non-deduction of the remaining balance of the statutory deposit at the end of the period for 2017.

Third: Dismiss otherwise objections filed by Plaintiff/ ... Company), TIN No. (...) to the decision issued by the Defendant/ZATCA in relation to the assessment in question.

This decision was delivered in presence of the parties. The Department set the date (.... Corresponding to .../.../1443 AH) for receiving a copy of the decision. Either party to the Case may appeal against the decision within thirty days from the day following the date set for receipt of the decision, whereafter, the decision will be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1667)
Issued in Appeal No. (Z-40419-2021)

Key words:
Zakat Assessment- Accounts - Short-term Loans - Zakat Base - Revolving Loans - Supporting Documents - Accepting the Case in form, and rejecting it on merits.

Abstract

The Plaintiff instituted this Case moving to cancel ZATCA's decision regarding Zakat assessments for the period from 2015 AD to 2017 AD. In response, ZATCA stated that the Plaintiff is objecting to the inclusion of short-term items in Zakat base for the period from 2015 to 2017. The Defendant clarifies that it included the item in Zakat base for the disputed years because it was determined to be a revolving loan, based on the Plaintiff's statement and the loan movement provided by the Plaintiff. Therefore, the Defendant requests dismissal of the Case, while reserving the right to submit further responses and clarifications before the committees. The Department established that the dispute lies in the Plaintiff's objection to the inclusion of short-term loans in Zakat base for the disputed years. Based on the foregoing, and given that loans, regardless of their type, source, or classification, are considered a component of Zakat base provided that a lunar year has passed over them or they are used to finance assets deducted from Zakat base without the requirement of the lunar year passing, and upon reviewing the documents attached to the Case file, where the Plaintiff submitted an Excel file for the disputed years detailing the movement of short-term loans, but did not attach agreements or facilities with banks, nor did it attach financial statements, and given that what the Plaintiff provided cannot be relied upon to prove that the lunar year has not passed or that these loans do not essentially represent short-term loans but rather revolving loans. As such, the Department ruled to Reject the objection related to the assessment in question.

Instruments:

- Article (4.First.5) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Sunday, 01/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held its teleconference session to consider the Case filed by .... Company, against ZATCA. Since the Case met the prescribed

legal requirements, it was filed with General Secretariat of Tax Committees on 06/05/2021.

The facts of this Case are summed up that ..., (Legal Residence No. ...) in his capacity as the legal Representative of the Plaintiff, pursuant to the commercial register attached to Case file, filed on behalf of ... Company, CR. No.....) An objection to Zakat assessments for the period from 2015 to 2017, issued by ZATCA. The objection centers on the Short-term Loans item.

Having presented the statement of claim to the Defendant, it answered as follows: The Plaintiff objects to the inclusion of short-term loans in Zakat base for the period from 2015 to 2017. In response, the Defendant explains that it included this item in Zakat base for the disputed years because it was determined to be a revolving loan, based on the Plaintiff's own statement and the loan activity provided by the Plaintiff. Therefore, the Defendant requests dismissal of the Case, while reserving the right to provide further responses and clarifications before the committees.

On Sunday, 01/02/1444 AH, the Department held its session remotely to hear the Case, attended by Mr. ..., in his capacity as the Plaintiff's Attorney, under a POA. a copy of which is attached to the Case file. The session was also attended by Ms. ... In her capacity as Representative of the Defendant/ ZATCA by virtue of Authorization (a copy of which is attached to the Case file). Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having referred to Defendant's Representative for her reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In form: The Plaintiff filed this case moving to cancel ZATCA's decision regarding Zakat assessment for the period from 2015 to 2017. Since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH, and since the Case was filed by a person with capacity and within the period prescribed by Law, it is then accepted in form.

On merits: Having carefully examined the documents of the Case file and the requests, defenses, and arguments presented by the parties, the Department found that the dispute lies in the Plaintiff's objection to the inclusion of short-term loans in Zakat base for the disputed years. The Plaintiff stated that it did not include this item in its Zakat declaration because the lunar year had not passed over it. The Plaintiff further asserts that all balances in this item did not complete a full Hijri year and were all settled within the year. However, the Defendant argued that it included this item in Zakat base for the disputed years, considering it a revolving loan based on the Plaintiff's statement and the loan movement provided by the Plaintiff.

Based on Paragraph (i.5) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH, which provides that: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Based on the foregoing, and considering that loans, regardless of their type, source, or classification, are considered a component of Zakat base provided that a lunar year has passed over them or they are used to finance assets deducted from Zakat base without the requirement of the lunar year passing, and upon reviewing the documents attached to the Case file, where the Plaintiff submitted an Excel file for the disputed years detailing the short-term loans activity, but did not attach agreements or facilities with banks, nor did they attach financial statements, and given that what the Plaintiff provided cannot be relied upon to prove that the lunar year has not passed or that these loans do not essentially represent short-term loans but rather revolving loans, the Department concluded by dismissing the Plaintiff's claim.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

- Reject the objection of Plaintiff/ ... Company TIN No. (...) to Defendant/ (ZATCA)'s decision regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Thursday, 17/03/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1676)
Issued in Appeal No. (Z-38347-2021)

Key words:
Zakat Assessment- Accounts - Real estate Investments - Investment Returns - Material Error - Zakat Base - Financial Statements - Estimated - Net Profit.

Abstract

The Plaintiff instituted this Case moving to cancel ZATCA's decision regarding Zakat assessment for 2015 AD. The Plaintiff based its objection on the following item: Real Estate Investments for 2015: The Plaintiff objects to the Defendant's action of adding investment returns for 2015 amounting to SAR (5,442,160), as the Plaintiff indicated that the investments within the companies were previously subjected to Zakat. Therefore, a material error occurred in including the investments in Zakat base, as they were already subject to Zakat as part of the equity in the investee company (…) Trading Company Limited), TIN No (...). As such, we see that the inclusion of investments in Zakat base should be canceled. In response, ZATCA stated that it had, upon examination, assessed Zakat Payer according to the financial statements for 2015 due to failure to submit Zakat declaration. Upon submitting the objection, Zakat Payer requested the cancellation of the assessment and upon reviewing Zakat Payer's file, it was found that ZATCA's action of assessment was based on the financial statements due to failure to submit Zakat declaration, knowing that the last date for submitting the declaration was 30/04/2016, and therefore Zakat Payer was assessed on 04/04/2020. Since the estimated assessment was made due to Zakat Payer's failure to submit its Zakat declaration based on systematic books and records and its attachments and payment of Zakat due on Zakat Payer, the assessment was made through the data available to ZATCA. The Department established that the dispute lies in the Defendant's issuance of Zakat assessment for 2015 with regard to the following item: Real Estate Investments for 2015: It was found that the amount of SAR (5,442,160) represents returns from the affiliate company. It is not clear from the financial statements whether the Plaintiff uses the equity method or the cost method. Upon consideration, it was found that even if the cost method was used, the returns are considered dividends; and therefore, were not subject to Zakat in the affiliate company. If the equity method was used, the end-of-period investments were deducted by an amount of SAR (8,000,000), meaning that the profit was deducted, and therefore it must be returned to the net profit. The Department ruled to: Dismiss the Plaintiff's objection and uphold the Defendant's action.

Instruments:

- Articles (4.Second.a.4), (13.5.a), (20.2, 3), and (21.8) of the Implementing Regulations for Zakat Collection issued by Finance Minister's Resolution No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Thursday, 05/02/1444, the First Department for Determination of Income Tax Violations and Disputes in Dammam, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 22/02/2021.

Facts of the Case are summarized as follows: Mr. ...., ID No. ...., in his capacity as Manager of the Plaintiff's Company/ .... Ltd Co, (C.R. No. ....), by virtue of its Articles of Association; has filed an objection to Zakat assessment for 2015 issued by ZATCA regarding the item: Real Estate Investments for 2015: The Plaintiff objects to the Defendant's action of adding investment returns for 2015 amounting to SAR (5,442,160), as the Plaintiff indicated that the investments within the companies were previously subjected to Zakat. Therefore, a material error occurred in including the investments in Zakat base, as they were already subject to Zakat as part of the equity in the investee company (… Trading Company Limited), TIN No (...). As such, we see that the inclusion of investments in Zakat base should be canceled. Accordingly, the Plaintiff requests to cancel the Defendant's action.

Having presented the statement of claims to the Defendant, it responded with a reply dated 26/06/2022, whereby it stated as follows: ZATCA had, upon examination, assessed Zakat Payer according to the financial statements for 2015 due to failure to submit Zakat declaration. Upon submitting the objection, Zakat Payer requested the cancellation of the assessment and upon reviewing Zakat Payer's file, it was found that ZATCA's action of assessment was based on the financial statements due to failure to submit Zakat declaration, knowing that the last date for submitting the declaration was 30/04/2016, and therefore Zakat Payer was assessed on 04/04/2020. The estimated assessment was made due to Zakat Payer's failure to submit its Zakat declaration based on systematic books, records and its attachments as well as payment of Zakat due on Zakat Payer, in accordance with Paragraphs (2 and 3) of Article (20) of the Implementing Regulations of Royal Decree No. (M/40) dated 02/07/1405 AH issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, as well as Article (21.8) which granted ZATCA the right to make an assessment at any time, therefore, the assessment was made using the data available to ZATCA. Accordingly, Zakat Payer's objection was rejected based on subparagraph (a) of Article (13.5) of the Implementing Regulations for Zakat Collection, which stipulates that "the Authority has the right to assess Zakat Payers on an estimated basis if Zakat Payer fails to submit a zakat declaration based on systematic books and records". As such, ZATCA maintains the correctness and validity of its action and requests dismissal of the Case.

On Thursday, 05/02/1444 AH, the Department held a remote session to hear the Case. Calling the litigants, it was found that Mr. ....., was present in his capacity as Representative of the Plaintiff Company, as per AOA, a copy of which is attached to the Case file. The session was also attended by Ms. ....., as Representative of the Defendant/ ZATCA, under Authorization, a copy of which is attached to the Case file. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having confronted the Defendant's Representative of the same, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents

that were not submitted to the Defendant during the examination and objection stage. Furthermore, as the Plaintiff failed to submit its Zakat declaration within the prescribed period; the Defendant considered this to be evasion and therefore concluded that its decision was correct and in accordance with the law. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations. In Form, since the Plaintiff filed the case to abolish ZATCA's decision regarding Zakat Assessment of 2015 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On Merits: Having taken cognizance of documents included in case file, requests, defenses, and pleas raised by parties thereto, the Department found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of Zakat Assessment of 2015 AD, which included the following:

First: Real Estate Investments for 2015:

The Plaintiff objects to the Defendant's action of including investment returns, despite the fact that these returns were from companies that had already paid Zakat. In response, the Defendant argued that upon examination, it assessed Zakat Payer and calculated its Zakat based on the financial statements for 2015, as Zakat Payer had not submitted a declaration. Therefore, the assessment was made using the data available to ZATCA. Zakat Payer's objection was rejected based on subparagraph (a) of Article (13.5) of the Implementing Regulations for Zakat Collection, and Article (4.Second.4.a) of the Zakat Collection Regulations issued by Ministerial Resolution No. (2082) dated 06/01/1438 AH, which states that: "The following items shall be deducted from the Zakat Base: -4 (A): "Investments in establishments inside the Kingdom - in partnership with others - if such investments are subject to collection of Zakat under these Regulations, if investment in such establishments is not subject to collection, then it shall not be deducted from base". Moreover, Article (20.3) of the same Regulations states that: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the aforementioned and upon reviewing the Plaintiff's financial statements, it was found that the amount of SAR (5,442,160) represents returns from the affiliate company. It is not clear from the financial statements whether the Plaintiff uses the equity method or the cost method. Upon consideration, it was found that even if the cost method was used, the returns are considered dividends; and therefore, were not subject to Zakat in the affiliate company. If the equity method was used, the end-of-period investments were deducted by an amount of SAR (8,000,000), meaning that the profit was deducted, and therefore it must

be returned to the net profit. As such, the Department concluded by dismissing the Plaintiff's objections and upholding the Defendant's action.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- Dismiss the objection filed by the Plaintiff/ ... Ltd. Co, (TIN No. ....) against the decision of the Defendant/ ZATCA regarding the disputed Zakat Assessment.

This decision was issued in the presence of both parties. The Department set (Sunday, 29/02/1444 AH) as the date for receiving the copy of the decision. The parties to the lawsuit have the right to file an appeal within (30) thirty days from the day following the date set for receipt of the decision, which will become final and enforceable after the expiry of this period if no objection is filed.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1680)
Issued in Appeal No. (Z-53200-2021)

Key words:
Zakat Assessment- Accounts - Zakat Dispute - Statute of Limitations - Adjustments to adjusted profit - Difference in employee savings provision- Difference in provisions charged to Zakat base - Credit Balances - Deduction for other non-current assets.

Abstract

The Plaintiff instituted this Case moving to cancel ZATCA's decision regarding Zakat assessment for 2012 AD. The Plaintiff based its objection on the following five items: Item First Statute of Limitations, Second Item: Adjustments to adjusted profit. Third item: Difference in employee savings provision for 2012. Fourth item: Difference in provisions charged to Zakat base. Fifth item: Credit Balances for 2012. Sixth item: Deduction for other non-current assets - Home ownership program for 2012. The Plaintiff based its objection on the first item as follows: Upon the passage of the statute of limitations period, which is 5 years from the end of the deadline for submitting the declaration, it is not permissible for ZATCA to conduct an assessment. And since the assessment was issued after 5 years, the assessment is considered invalid for exceeding the statute of limitations period. In response, regarding the first item, ZATCA stated that There are Zakat calculations in the Plaintiff's declaration that do not conform to the provisions of the Regulations for Zakat collection Therefore, the declaration contains incorrect information. And whenever it is proven that the Plaintiff's declaration contains incorrect information, ZATCA has the right to conduct or adjust the assessment without being bound by a specific time period. Regarding the first item, the Department established that the adjustments made by the Plaintiff resulted either from an error in applying Zakat regulations or from a difference in viewpoints regarding the calculation of Zakat. And since the right to conduct Zakat assessment without being bound by a specific time period is subject to a number of conditions and circumstances under which Zakat assessment can be conducted without being bound by a specific time period, such as if the declaration contains incorrect information. However, in the case where the Plaintiff's declaration is incorrect due to an error in applying Zakat regulations or a difference in viewpoints regarding the calculation of Zakat, as in the case of the Plaintiff's declaration, its right to conduct Zakat assessment lapses after the expiration of 5 years from the end of the specified deadline. Moreover, the Defendant has not presented any substantial evidence to support its viewpoint that the Plaintiff's declaration contains incorrect information that would entitle it to issue Zakat assessment without being bound by a time limit; therefore, the Department concluded by accepting the Plaintiff's objection and canceling the Defendant's action regarding the statute of limitations for 2012. With regard to the remaining items, the Department found that the remaining items of dispute are related to the same statute of limitations. Therefore, the Department decided that after accepting the

Plaintiff's objection in the first item, it concluded by accepting the Plaintiff's objection with respect to the remaining items. Department ruled to Cancel the Defendant's decision regarding the disputed assessment - the decision shall be final and enforceable.

Instruments:

- Articles (10.21, 11) of the Implementing Regulations for the Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Thursday, 05/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/1/1425 AH, as amended, and formed by Royal Order No. (65474) dated 23/12/1439 AH, held its session via teleconference to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 03/06/2021.

The facts of this case are summed up as follows: Mr. ...., (ID No.....), appeared in his capacity as Attorney of the Company/ Plaintiff/ ...., CR. No. (...), as per POA No. (...), submitted its objection to ZATCA's Zakat assessment for 2012 AD, which consists of six items. The first item: Statute of Limitations for 2012. The second item: Adjustments to adjusted profit - Difference in Employee Savings Provision for 2012. The third item: Difference in provisions charged to Zakat base for 2012. Item Fourth: Difference in provisions charged to Zakat base for 2012. Item Fifth: Credit Balances for 2012. Item Sixth: Deduction for other non-current assets - Home ownership program for 2012.

Upon presenting the statement of claim to the Defendant, the Defendant responded in a memorandum dated 01/09/2021. Regarding the statute of limitations item, ZATCA based its action on subparagraph (8.c) of Article (21) of Zakat Collection Regulations. Regarding the adjustments to adjusted profit and Zakat base by adding employee contributions to the employee savings plan provision, ZATCA based its actions on Article (6.6) of Zakat Collection Regulations. Regarding item (addition of creditor balances), ZATCA based its action on Article (20.3) of Zakat Collection Regulations. As for item (disallowing of deduction of other non-current assets), ZATCA based its action on Article (4.1) of Zakat Collection Regulations. Regarding item (difference in net assets allowed to be deducted from Zakat base), ZATCA deducted fixed assets as stated in the financial statements, a procedure which was not initially objected to by the Plaintiff. Applying the same calculation, ZATCA dismissed the Plaintiff's objection, maintained the validity of its actions and requests dismissal of the Case.

On Thursday, 05/02/1444 AH, the Department held a remote session to consider the Case. Having called the litigants, the Department found that Mr. ... appeared in his capacity as the Plaintiff's Attorney under the POA attached to Case file. In addition, Ms. .... appeared in her capacity as Representative of the Defendant/ ZATCA under the Authorization attached to Case file. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having confronted the Defendant's Representative of the same, she answered by insisting on the statements included in the Defendant's Reply and requested the Department not to accept any new documents that were not provided to the Defendant throughout examination and objection phase. It stated that the Defendant deposited with the General Secretariat of the Committees a number of decisions issued by the First Appellate Department for Income Tax Violations and Disputes. Having asked

both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: The Plaintiff intended by filing its case to cancel ZATCA's decision regarding Zakat assessment for 2012. This dispute is Zakat disputes that fall within the jurisdiction of the Committee for the Resolution of Income Tax Violations and Disputes, pursuant to Royal Order No. (26040) dated 21/04/1441 AH. It is established from the Case documents that the Plaintiff filed the Case within the period stipulated by the law and by a person with legal capacity, which necessitates admitting the Case in form.

On Merits: Having examined the papers and documents contained in case file, as well as the requests, defenses and pleas made by its parties, the Department found that the Plaintiff objects to the zakat assessment made by the Defendant for the year 2012 AD, specifically in respect of four items, namely:

Item First Statute of Limitations for 2012: The dispute lies in the Plaintiff's objection to the Defendant's action of conducting Zakat assessment for 2012, as the Plaintiff stated that upon the passage of the statute of limitations period, which is five years from the end of the deadline for submitting the declaration, it is not permissible for ZATCA to conduct an assessment, in accordance with Article (21) of the Regulations for Zakat Collection. Meanwhile, the Defendant argued that its action is based on paragraph (8.c) of Article (21) of the Regulations for Zakat collection. Article (21.8) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH states that: "The Authority may make or modify the assessment at any time without being bound by the time limit specified in the following cases: A. If the Zakat Payer agrees in writing to the assessment being made or modified. B. If the Zakat Payer does not submit his declaration. C. If it is found that the declaration contains invalid information". Additionally, Article (21.10) of the same Regulations states: "The Authority may rectify such error of law and instructions within five years from the end of the time limit specified for submitting the zakat declaration for the zakat year based on the Zakat Payer's request, or if the error is discovered by the Authority or the regulatory authorities". Besides, Paragraph (11) of the same Article stipulates, "If the authority discovers any error related to the taxpayer's Zakat after the expiration of the previous deadlines, the taxpayer shall be notified to settle his or her dues as required by Islamic law". Based on the foregoing, and given that the Defendant's claim of its right to conduct Zakat assessment without being bound by a specific time period, based on the fact that the Implementing Regulations for Zakat Collection have granted it this right, cannot be accepted unconditionally, as this right is subject to a number of conditions and circumstances under which Zakat assessment can be conducted without being bound by a specific time period, including what is stated in paragraph (8.c) of Article (21) of the Zakat Collection Regulations, which grants ZATCA the right to conduct or adjust Zakat assessment without being bound by a specific time period in the event that the declaration contains incorrect information. However, in the case where the Plaintiff's declaration is incorrect due to an error in applying Zakat regulations or a difference in viewpoints regarding the calculation of Zakat, the Defendant's right to conduct Zakat assessment lapses after the expiration of five (5) years

from the end of the specified deadline for submitting Zakat declaration. This is not affected by the Defendant's argument that the Plaintiff's declaration is incorrect simply because it made substantial amendments affecting the assessment, as the Defendant has not presented any credible material evidence of the existence of incorrect information in the Plaintiff's declaration that would entitle it to issue Zakat assessment without being bound by a time limit. The adjustments it made resulted either from an error in applying Zakat regulations or from a difference in viewpoints regarding the calculation of Zakat between the parties. In both cases, it has the right to conduct Zakat assessment within 5 years of the end of the deadline for submitting Zakat declaration pursuant to Article (2110) of the Zakat Collection Regulations. Therefore, paragraph Article (21.8) does not apply to the Plaintiff's case. And since the Defendant has not presented any credible evidence to support its viewpoint that the Plaintiff's declaration contains incorrect information, the Department concludes by accepting the Plaintiff's objection and canceling the Defendant's decision regarding this item.

Regarding items (adjustments to net profit - difference in employee savings provision for 2012), (difference in provisions charged to Zakat base for 2012), (difference in provisions charged to Zakat base for 2012), (credit balances for 2012), and (deduction of other non-current assets - home ownership program for 2012), given that the Department has concluded regarding the statute of limitations for 2012 by accepting the Plaintiff's objection and canceling the Defendant's decision in accordance with the reasons stated in the first item above, and since the remaining items are related to the same year of the statute of limitations, it follows that. Based on this, the objection to the remaining items shall be accepted. As such, the Department concludes by accepting the Plaintiff's objection and canceling the Defendant's decision regarding the remaining items of the Case.

Decision:

- Abolish Defendant's (ZATCA) decision against Plaintiff …., (TIN No. .....) regarding Zakat Assessment in question.

This decision was delivered in presence of the parties. The Department set Sunday, 29/02/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not challenge the decision.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article (33.3) of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1692)
Issued in Appeal No. (ZI-46949-2021)

Key words:
Zakat Tax Assessment - Accounts - Depreciation Differences - Net Fixed Assets - Financial Statements - Deduction of the end-of-period balance - Zakat Base - Acceptance of the Case in Form.

Abstract

The Plaintiff instituted this Case moving to cancel ZATCA's decision regarding Zakat tax assessment for 2017 and 2018 with respect to the following item: Depreciation differences and net fixed assets for 2017-2018: The Plaintiff objects to the Defendant's action of failing to provide any basis or supporting documents for its position, nor did it provide evidence to prove the existence of errors in the calculation of the adjusted depreciation for 2017. In this regard, the Plaintiff draws attention to the fact that the deduction of the net book value of fixed assets was not fully approved by ZATCA after excluding construction work in progress. Therefore, the Plaintiff believes that either the deduction of the net book value of fixed assets as shown in the audited financial statements should be adopted after adjusting the adjusted profit for Zakat purposes by the current year's differences, or the deduction of the net book value of fixed assets should be adopted as requested by the factory in its declaration. In response, regarding the depreciation differences and net fixed assets, ZATCA stated that after studying, reviewing, and referring to the assessment issued by ZATCA and the declarations submitted by Zakat Payer, it was found that Zakat Payer's objection is unfounded. The value of the depreciation differences item and the net fixed assets item according to Zakat Payer's declaration and ZATCA's assessment is as follows: There is a discrepancy in depreciation differences between Zakat Payer's declaration and ZATCA's assessment for 2017 amounting to SAR (1,809,976) and for 2018 amounting to SAR (1,444,507). The difference between the net fixed assets according to ZATCA's assessment is SAR (7,307,790) for 2017 and SAR (5,863,284) for 2018. Considering the nature of Zakat Payer's objection, which pertains to the items of depreciation differences and net fixed assets, and after studying the depreciation schedule, an error in its preparation was discovered. Accordingly, the depreciation schedule was recalculated, which shows that the depreciation differences and net fixed assets for 2017 are SAR (271,179) and for 2018 are SAR (218,460). The difference in fixed assets for 2017 is SAR (4,660,369) and for 2018 is SAR (4,254,743), taking into account the deduction of the end-of-period balance of intangible assets as a separate item as follows: in 2017 by SAR (1,046,952) and in 2018 by SAR (859,785). Therefore, based on the foregoing regarding the items of the objection, the correctness and soundness of the action followed by ZATCA in accordance with the regulations and laws in force in the Kingdom of Saudi Arabia are evident; which necessitates the rejection of the Plaintiff's claim. The Department established that the dispute centers around the Defendant's issuance of the tax-Zakat assessment for 2017 and

2018, in relation to item: Depreciation differences and net fixed assets for 2017-2018: It has been shown that mixed companies have the option of applying either the depreciation method or the straight-line method. In the event that the Plaintiff chooses the depreciation method as stipulated in Article (17) of the Tax Law, the value of the assets that are deducted from Zakat base is calculated. Upon reviewing the Plaintiff's declarations, it is evident that it applied the depreciation method as stipulated in Article (17) of the Tax Law and calculated its assets deductible from Zakat base. The burden of proof lies with ZATCA as it has failed to present its method of calculating depreciation, its reason for not deducting certain fixed assets, and its procedure for calculating net assets at book value. This clearly shows that ZATCA's action of adjusting the value of assets deducted from Zakat base to conform to the financial statements is incorrect. Department ruled to Cancel ZATCA's decision regarding the disputed assessment.

Instruments:

- Article (14.17) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH.
- Article (7/13, 14) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Monday, 09/02/1444 AH, the First Department for the Determination of Income Tax Violations and Disputes in Riyadh, stipulated in Article (67) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed by Royal Order No. (65474) dated 23/12/1439 AH, held its teleconference session to consider the Case filed by .... Company, against ZATCA. Since the Case met the prescribed legal requirements, it was filed with General Secretariat of Tax Committees on 12/04/2021.

The facts of this case are summed up in that Mr..... National ID No. (.....) in his capacity as Attorney of Plaintiff/ ... Factory), C.R. No. (...), under POA No. (...), dated ...., filed an objection to ZATCA's zakat tax assessment for 2017 and 2018. The Plaintiff's objection is limited to the item: Depreciation differences and net fixed assets for 2017-2018: The Plaintiff objects to the Defendant's action of failing to provide any basis or supporting documents for its position, nor did it provide evidence to prove the existence of errors in the calculation of the adjusted depreciation for 2017. In this regard, the Plaintiff draws attention to the fact that the deduction of the net book value of fixed assets was not fully approved by ZATCA after excluding construction work in progress. Therefore, the Plaintiff believes that either the deduction of the net book value of fixed assets as shown in the audited financial statements should be adopted after adjusting the adjusted profit for Zakat purposes by the current year's differences, or the deduction of the net book value of fixed assets should be adopted as requested by the factory in its declaration.

Having presented the statement of claim to the Defendant, it submitted a memorandum that addressed depreciation differences and net fixed assets: The Defendant stated that after studying, reviewing, and referring to the assessment issued by ZATCA and the declarations submitted by Zakat Payer, it was found that Zakat Payer's objection is unfounded. The value of the depreciation differences item and the net fixed assets item according to Zakat Payer's declaration and ZATCA's assessment is as follows: There is a discrepancy in depreciation differences between Zakat Payer's declaration and ZATCA's assessment for 2017 amounting to SAR (1,809,976) and for 2018 amounting to SAR

(1,444,507). The difference between the net fixed assets according to ZATCA's assessment is SAR (7,307,790) for 2017 and SAR (5,863,284) for 2018. Considering the nature of Zakat Payer's objection, which pertains to the items of depreciation differences and net fixed assets, and after studying the depreciation schedule, an error in its preparation was discovered. Accordingly, the depreciation schedule was recalculated, which shows that the depreciation differences and net fixed assets for 2017 are SAR (271,179) and for 2018 are SAR (218,460). The difference in fixed assets for 2017 is SAR (4,660,369) and for 2018 is SAR (4,254,743), taking into account the deduction of the end-of-period balance of intangible assets as a separate item as follows: In 2017, an amount of SAR (1,046,952) and in 2018, SAR (859,785). Therefore, and based on the aforementioned items regarding the objections above, the actions followed by ZATCA are proven to be correct and sound in accordance with the regulations and laws in force in the Kingdom of Saudi Arabia. Therefore, it is ruled to dismiss the Plaintiff's claim.

On Monday, 09/02/1444 AH, the Department held a remote session to consider the Case. At that session, the Department found that Mr. .... appeared in his capacity as the Plaintiff's Attorney under POA attached to Case file. In addition, Ms. ... appeared in her capacity as the Representative of the Defendant/ ZATCA under the Authorization attached to Case file. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. When the Defendant's Representative was confronted with this, she responded by confirming what was stated in the Defendant's Response Memorandum and by not admitting any other documents that were not submitted to the Defendant during the examination and objection phase. She requested that the Case be adjourned for one-day to be able to present the depreciation schedule and its relationship, and to clarify the Defendant's assessment mechanism for the disputed item. Therefore, the Department adjourned the hearing of this Case until Thursday, 12/02/1444 AH, at 4:00 PM. The Defendant's Representative shall submit what she requested an extension for by the end of the working day tomorrow, Tuesday, 10/02/1444 AH, and deposit it in the Case file so that the Plaintiff's Attorney can review it and provide their opinion on it.

On Thursday, 12/02/1444 AH, the Department held a remote session to consider the Case. At that session, the Department found that Mr. .... appeared in his capacity as the Plaintiff's Attorney under POA attached to Case file. In addition, Ms. ... appeared in her capacity as the Representative of the Defendant/ ZATCA under the Authorization attached to Case file.

When the Defendant's Representative was asked about what she had requested an extension for in the previous session, she stated that she had deposited with the General Secretariat of the Committees the depreciation schedule related to the disputed item, and that the Defendant is satisfied with this. When the Plaintiff's Attorney was confronted with this, he responded by stating that his client had reviewed the depreciation schedule submitted by the Defendant's Representative and had filed its response to it with the General Secretariat. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures

promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: The Plaintiff filed the case to cancel the Defendant's decision regarding Zakat Assessment of 2017 and 2018 AD. Since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defense and arguments raised by the parties, the Department found that the dispute involves the claim that ZATCA issued zakat assessment for 2017 and 2018, centering on the following item: Depreciation differences and net fixed assets for 2017-2018: The Plaintiff objects to the Defendant's action of not providing any basis or documents to support its position, nor did it provide any evidence to prove the existence of errors in the calculation of the depreciation rate for 2017. Meanwhile, the Defendant argues that there is no validity to the Plaintiff's objection as explained in its responsive memorandum. Article (7.13) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH provides that: "Mixed companies shall adhere to the depreciation method outlined in Article (17) of the Income Tax Law for the purpose of determining the company's taxable base. They may, if they wish, apply the same method to determine Zakat base for the Saudi side and those treated as such, or they may use the method specified in the aforementioned paragraphs". Moreover, Article (7.14) of the same Regulations stipulates that "If a mixed company uses the depreciation method specified in the Income Tax Law to determine its Zakat base, it is entitled to determine the net fixed book value to be deducted from Zakat base as follows: (The remaining value of the pool at the end of the year as determined under paragraphs (a) to (e) of Article (17) of the Income Tax Law, after adjusting for any unapproved depreciation differences. Subsequently, 50% of the deferred value of assets added during the year is added, while 50% of the deferred compensations for assets disposed of during the year is deducted)".

Based on the aforementioned, it is indicated from Article (7.13) of the Zakat Collection Regulations that mixed companies have the option of applying either the depreciation method mentioned in Article (17) of the Tax Law or the straight-line method. In the event that the Plaintiff chooses the depreciation method as stipulated in Article (17) of the Tax Law, the value of the assets that are deducted from Zakat base is calculated according to Paragraph (14) of this Article. Upon reviewing the Plaintiff's declarations, it is evident that it applied the depreciation method as stipulated in Article (17) of the Tax Law and calculated its assets deductible from Zakat base as per Article (7.14) of the Zakat Collection Regulations. The burden of proof lies with ZATCA as it has failed to present its method of calculating depreciation, its reason for not deducting certain fixed assets, and its procedure for calculating net assets at book value. This clearly shows that ZATCA's action of adjusting the value of assets deducted from Zakat base to conform to the financial statements is incorrect. As such, the Department concluded by cancelling the Defendant's decision.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

- Cancel the decision of the Defendant/ ZATCA against the Plaintiff/... Factory, TIN No. (...) related to the assessments subject matter of this case.

This decision was delivered in presence of Parties. The Department has set Monday 30/02/1444 AH for receiving and a copy of the decision. The Parties to this case may

appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, this decision becomes final and enforceable

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1698)
Issued in Appeal No. (Z-40219-2021)

Key words:
Zakat Assessment - Accounts - Undeclared Contract Revenues - Net Profit - Suppliers - Zakat Base - Private Balance - Provision for employee turnover - Additional Financing.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding zakat assessment for 2017 and 2018 AD - The Plaintiff based its objection on the following items: Item First Undeclared Contract Revenues for 2017 and 2018: The Plaintiff objects to the Defendant's action of adding this item to the net profit, arguing that the percentage of completion method was already in use before the year-end closing and adjustments were made. Additionally, all contract revenues were declared according to the percentage of completion method, which is calculated based on the ratio of actual costs incurred to date to the total estimated cost of each contract. This is evident from the attached schedule, which clearly shows that the revenues included in the financial statements were calculated according to the percentage of completion method. Item Second: Suppliers for 2017 and 2018: The Plaintiff objects to Defendant's action of adding item Suppliers for 2017 and 2018. The Defendant subjected the 2017 private balance of SAR (850,420) to Zakat assessment for both 2017 and 2018, using the same 2017 private balance. However, this balance did not include all the final balances as only the opening balances matching the financial statements were sent, and only the balance that had completed its lunar year was shown to facilitate the Defendant's audit. Item Third: Provision for employee turnover for 2018: The Plaintiff objects to the Defendant's action of including the provision for employee turnover for 2018. The Defendant has subjected a provision of SAR (1,183,914) to Zakat, which includes an actuarial interest cost that is not charged to profit before Zakat calculation. In other words, the amount of SAR (290,828), resulting from the revaluation of employee benefits according to actuarial calculations and the requirements of the International Financial Reporting Standard for Small and Medium-sized Entities, is not subject to Zakat. Therefore, only the amount of SAR (718,874) is subject to Zakat, and the Plaintiff does not dispute this. Item Fourth: Additional Financing for 2018: The Plaintiff objects to the Defendant's action of adding the additional financing item to Zakat base for 2018. The Defendant subjected an amount of SAR (94,123,987), which resulted from financing the activity during the year, to Zakat. However, the Plaintiff argues that only SAR (35,066,328) should be subject to Zakat. The reason for the adjustment is unclear. ZATCA responded by stating that the Plaintiff did not provide supporting documents to substantiate its claim, and therefore its objection was rejected. Regarding item Suppliers for 2017 and 2018, ZATCA added the amount of this item to Zakat base. This was done by comparing the opening and closing balances and adding the lower of the two, given the inconsistency of the data provided by the Plaintiff during the audit and reassessment

process. After reviewing the Case and finding that the Plaintiff did not provide an analytical statement for this item that aligns with the financial statements and supports its claim, the objection was rejected. Regarding the provision for employee turnover for 2018, ZATCA added the amount of this item to Zakat base and to the net profit, based on Note (18) of the financial statements. Therefore, ZATCA partially accepted the Plaintiff's objection, as per the notification of the objection review results attached. Regarding additional financing for 2018, ZATCA added this item to Zakat base in accordance with the activity in the statement of changes in equity. The opening balance was added after deducting withdrawals, and upon reviewing ZATCA's assessment for 2017, it was found that there were no accumulated losses carried forward. The Department found that the dispute lies in Zakat assessment issued by the Defendant for 2017 and 2018, specifically regarding the following items: Undeclared Contract Revenues for 2017 and 2018: It has been established that the dispute regarding this item is a documentary dispute. Referring to the Case file and included defenses and documents, it is clear that the Plaintiff submitted an Excel spreadsheet showing the completion percentage of revenues and contracts as of 3112/2017, and 31/12/2018. It appears that the amount of contract revenues according to the financial statements in the Defendant's reply does not match the statement submitted by the Plaintiff for 2017. As for 2018, the amount of contract revenues matches the statement submitted by the Plaintiff, but the Plaintiff did not provide the accounting entries, adjustments, or financial statements that explain the reasons for these differences for the disputed years. As for item Suppliers for 2017 and 2018: It has been established that the dispute regarding this item is a documentary dispute. Upon reviewing the documents attached to the Case file, it is evident that the Plaintiff provided a detailed activity of suppliers for 2018 only, but did not provide the financial statements for the disputed year to verify whether the disputed amounts have completed a lunar year or not. As for item Provision for employee turnover for 2018: It is evident that the Plaintiff has not provided an explanation for the provision in the financial statements, nor a statement of the activity of provisions detailing the value of provisions created during the year. The Plaintiff has also not provided any evidence to demonstrate that the disputed item was charged to profit. Regarding item Additional Financing for 2018: It is evident that the Plaintiff has not provided a detailed activity for the additional financing item for 2018, which would clarify the activity during the year, nor has it provided the audited financial statements for 2018. Accordingly, the Department ruled to Dismiss the Plaintiff's objection regarding the disputed assessment.

Instruments:

- Articles (4.First.5.9) and (20.3) of the Implementing Regulations for Zakat Collection issued by Minister of Finance's Resolution No. (2082) dated 01/06/1438 AH

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Thursday, 05/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/1/1425 AH, as amended, and formed by Royal Order No. (65474) dated 23/12/1439 AH, held its session via teleconference to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 04/03/2021.

Facts of the case are summarized as follows: Mr. ...., (ID No. ...), in his capacity as Manager of the Plaintiff/ .... Contracting limited Company, C.R. No. ....; has filed a statement of claim objecting to ZATCA's Zakat assessment for 2017 and 2018 centering on the following items: Item First Undeclared Contract Revenues for 2017 and 2018: The Plaintiff objects to the Defendant's action of adding this item to the net profit, arguing that the percentage of completion method was already in use before the year-end closing and adjustments were made. Additionally, all contract revenues were declared according to the percentage of completion method, which is calculated based on the ratio of actual costs incurred to date to the total estimated cost of each contract. This is evident from the attached schedule, which clearly shows that the revenues included in the financial statements were calculated according to the percentage of completion method. Item Second: Suppliers for 2017 and 2018: The Plaintiff objects to the Defendant's action of adding item Suppliers for 2017 and 2018. The Defendant subjected the 2017 private balance of SAR (850,420) to Zakat assessment for both 2017 and 2018, using the same 2017 private balance. However, this balance did not include all the final balances as only the opening balances matching the financial statements were sent, and only the balance that had completed its lunar year was shown to facilitate the Defendant's audit. Item Third: Provision for employee turnover for 2018: The Plaintiff objects to the Defendant's action of including the provision for employee turnover for 2018. The Defendant has subjected a provision of SAR (1,183,914) to Zakat, which includes an actuarial interest cost that is not charged to profit before Zakat calculation. In other words, the amount of SAR (290,828), resulting from the revaluation of employee benefits according to actuarial calculations and the requirements of the International Financial Reporting Standard for Small and Medium-sized Entities, is not subject to Zakat. Therefore, only the amount of SAR (718,874) is subject to Zakat, and the Plaintiff does not dispute this. Item Fourth: Additional Financing for 2018: The Plaintiff objects to the Defendant's action of adding the additional financing item to Zakat base for 2018. The Defendant has subjected an amount of SAR (94,123,987), which resulted from financing the activity during the year, to Zakat. The Plaintiff argues that only SAR (35,066,328) should be subject to Zakat, as the reason for the adjustment is unclear.

Having presented the statement of claim to Defendant responded with a memorandum dated 26/05/2021. In it, regarding item (Undeclared contract revenues for 2017 and 2018), the Defendant stated that the Plaintiff did not provide any supporting documentary evidence to substantiate its claim. Therefore, the Plaintiff's objection was rejected based on Article (20.3) of the Zakat Collection Regulations. Regarding item Suppliers for 2017 and 2018, ZATCA added the amount of this item to Zakat base. This was done by comparing the opening and closing balances and adding the lower of the two, given the inconsistency of the data provided by the Plaintiff during the audit and reassessment process. After reviewing the Case and finding that the Plaintiff did not provide an analytical statement for this item that aligns with the financial statements and supports its claim, the objection was rejected based on Article (20.3) of the Zakat Collection Regulations. Regarding the provision for employee turnover for 2018, ZATCA added the amount of this item to Zakat base and to the net profit, based on Note (18) of the financial statements. Therefore, ZATCA partially accepted the Plaintiff's objection, as per the notification of the objection review results attached. Regarding additional financing for 2018, ZATCA added this item to Zakat base in accordance with the activity in the statement of changes in equity. The opening balance was added after deducting withdrawals, and upon reviewing ZATCA's assessment for 2017, it was found that there were no accumulated losses carried forward. As such, ZATCA rejected the Plaintiff's objection. Accordingly, ZATCA maintains the correctness and validity of its action and requests dismissal of the Case.

On Thursday 05/02/1444 AH, the Department held its session remotely to consider the case. Neither the Plaintiff nor his attorney appeared, despite being duly notified of the date of session. For the Defendant, Ms. .....appeared in her capacity as the Defendant's representative by virtue of an authorization, a copy of which is included in the case file. When Defendant's attorney was asked about Plaintiff's claim, she responded by affirming what was stated in the Defendant's reply memorandum and rejecting the acceptance of any new documents that were not submitted to the Defendant during the examination and objection phase. Having asked Defendant's attorney if she had any other statements, they replied negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the Case moving for annulling ZATCA decision regarding zakat assessment for 2017 and 2018. Given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since it is established from Case documents that Plaintiff filed the Case within the statutory period and by a party having capacity. Therefore, the Department accepts the Case in form.

On merits: Having taken cognizance of documents included in Case file, requests, defenses and arguments raised by the parties, the Department found that the dispute involves the Defendant's procedure outlined in issuing zakat assessment for 2017 and 2018, including the following items:

First: Undeclared Contract Revenues for 2017 and 2018:

The Plaintiff objects to the Defendant's action of adding this item to the net profit, arguing that all contract revenues have been declared in accordance with the percentage of completion. However, the Defendant countered by stating that it did not deduct this item because the Plaintiff failed to provide the supporting documentary evidence to substantiate its claim. Article (20.3) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decree No. (2082) dated 01/06/1438 AH, stipulates that "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, the Authority may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at the Authority's discretion in view of the surrounding circumstances, facts and information available with the Authority". Based on the aforementioned, it has been established that the dispute regarding this item is a documentary dispute. Referring to the Case file and included defenses and documents, it is clear that the Plaintiff submitted an Excel spreadsheet showing the completion percentage of revenues and contracts as of 3112/2017, and 31/12/2018. It appears that the amount of contract revenues according to the financial statements in the Defendant's reply does not match the statement submitted by the Plaintiff for 2017. As for 2018, the amount of contract revenues matches the statement submitted by the Plaintiff, but the Plaintiff did not provide the accounting entries, adjustments, or financial statements that explain the reasons for these differences for the disputed years. As such,

the Department concluded by dismissing the Plaintiff's objection and upholding the Defendant's action.

Second: Suppliers for 2017 and 2018:

The Plaintiff objects to the Defendant's action of adding this item to Zakat base; stating that the opening balances which match the financial statements were sent and only the balance subject to Zakat was shown to facilitate the Defendant's audit. However, the Defendant argued that it added the amount of the item to Zakat base after comparing the beginning and end balances and adding the lower of the two, due to the inconsistency in the data provided by the Plaintiff during the audit and reassessment process. Upon examination, Article (4. First) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH, provides that: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Additionally, Article (20.3) of the same Regulations states that: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, the Authority may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at the Authority's discretion in view of the surrounding circumstances, facts and information available with the Authority". Moreover, Fatwa No. (23408) dated 18/11/1426 AH states that "Advance revenues received by a Zakat-liable individual, such as advance payments to contractors or for supply contracts, become subject to Zakat when a lunar year has passed since their receipt and they reach Nisab (threshold) either on their own or when combined with the rest of their wealth. This is because they become part of their ownership and they can freely dispose of them" Based on the foregoing, it has been established that the dispute regarding this item is a documentary dispute. Upon reviewing the documents attached to the Case file, it is evident that the Plaintiff provided a detailed activity of suppliers for 2018 only, but did not provide the financial statements for the disputed year to verify whether the disputed amounts have completed a lunar year or not. As such, the Department concluded by dismissing the Plaintiff's objection and upholding the Defendant's action.

Third: Provision for employee turnover for 2018:

The Plaintiff objects to the Defendant's action of adding this item to Zakat base; stating that the Defendant has included the amount of the Provision for employee turnover charged to the income statement for 2018, which includes an actuarial interest cost that is not charged to profit before calculating Zakat. However, the Defendant argued that it added the amount of the item to Zakat base to the net profit based on Note (18) of the financial statements. Article (4. First.9) the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH states: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 9- Provisions at the beginning of the year (excluding doubtful debt provisions for banks) after deducting the utilized portion during the year". Based on the foregoing, it is clear that both the Plaintiff and the Defendant agree on adding an amount of SAR (718,874). However, they disagree on the interest cost on the defined benefit obligation amounting to SAR (174,212). Upon reviewing the Case file and the included defenses and documents, it appears that the Plaintiff did not provide a breakdown of the provision in the financial statements and a statement of the activity of the provisions, detailing the value of the provisions constituted during the year. Neither did the Plaintiff provide any evidence to prove that the disputed

item was charged to profit; therefore, the Department concludes by rejecting the Plaintiff's objection and upholding the Defendant's action.

Fourth: Additional Financing for 2018:

The Plaintiff objects to the Defendant's action of adding the additional financing item to Zakat base for 2018; stating that the Defendant has subjected amounts resulting from financing the activity during the year to Zakat. However, the Defendant argued that it added the item to Zakat base in accordance with the activity in the statement of changes in equity; as the beginning balance was added after deducting withdrawals, and upon referring to ZATCA's assessment for 2017, it was found that there were no accumulated losses carried forward, and therefore ZATCA rejected the Plaintiff's objection. Article (4.i.5) the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH states: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans or equivalent items of other sources of funds, such as creditors, bills payable, overdrafts due by the Zakat payer in accordance with the following: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Additionally, Article (20.3) of the same Regulations states that: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it.". Based on the foregoing, the additional financing item is considered a component of Zakat base, regardless of its type, source, or classification, provided that the lunar year has passed on it or if it is used to finance fixed assets included in Zakat base without the requirement of a lunar year passing. Upon reviewing the documents attached to the Case file, it is evident that the Plaintiff did not provide a detailed breakdown of the additional financing account for 2018, which would clarify the activity during the year, nor did it provide the audited financial statements for 2018. Therefore, the Department concludes by rejecting the Plaintiff's objection and upholding the Defendant's action.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

- Dismiss the objection filed by the Plaintiff/ ... Limited Contracting Company, (TIN No. ....) against the decision of the Defendant/ ZATCA regarding the disputed Zakat Assessment.

This decision was delivered in presence of Parties. The Department has set Monday 30/02/1444 AH for receiving and a copy of the decision. The Parties to this case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, this decision becomes final and enforceable

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1739)
Issued in Appeal No. (Z-43238-2021)

Key words:
Zakat Assessment - Accounts - Trade Payables - Carry-forward Losses - Zakat Base - Opening Balance - Credit Balances.

Abstract

The Plaintiff instituted this Case moving to cancel ZATCA's decision regarding Zakat assessment for 2018 AD. The Plaintiff based its objection to the following two items. The first item: Trade Payables for 2018. The second item: Carry-forward Losses. In response, ZATCA stated that items of the Case are limited to two items. The First: Trade Payables. ZATCA added the item to Zakat base for the disputed year because it became evident to it that the opening balance in the submitted statement did not match the financial statements. Additionally, the debit balance significantly corresponded to the credit balances at the beginning of the period. Regarding the second item: Carry-forward Losses. ZATCA clarified that the Plaintiff did not deduct the carry-forward losses in its declaration. The Department established that the dispute lies in the Defendant's issuance of Zakat assessment for 2018, specifically regarding two items, namely: Trade Payables for 2018: It is evident that trade payables are a component of Zakat base, provided that a lunar year has passed since they became due or they have been used to finance assets included in Zakat base. The dispute regarding this item is a documentary one. Upon reviewing the detailed movement of the trade payables, it is evident that the lunar year has not passed on the disputed amounts. Moreover, the debit balances within the transaction do not match the opening credit balance, and this does not constitute a reason to reject the transaction. Additionally, the difference between the financial statements and the transaction is due to the balance of the account of ... Food Company, which is not classified as a trade payable specified in the transaction and which the Plaintiff referred to in the transaction. Therefore, it is evident that the opening balance in the transaction would be (2,296,821 - 144,764 = 2,152,057), which matches what ZATCA added as the opening balance in the financial statements. Consequently, it is clear that the difference resulted from a reclassification of balances and does not constitute a reason to reject the transaction. As for Carry-forward Losses: It is evident that the carry-forward losses that can be deducted from Zakat base are those losses adjusted according to the assessment issued by ZATCA after adding provisions, and which were previously reduced by the loss in the year of their formation; this is to prevent double Zakat. Therefore, what is considered for carry-forward losses for Zakat purposes is what has been adjusted according to Zakat law's requirements and not the carry-forward losses listed in the financial statements. It is evident that ZATCA did not assess 2017, nor did the Plaintiff deduct it in its declaration. However, ZATCA's assessment and adjustment of Zakat Payers' declarations should include all adjustments, not just those in ZATCA's favor. Since these losses are legally deductible and the Plaintiff

has requested their deduction, their declaration should be amended to deduct the adjusted losses, not the losses included in the financial statements as claimed by the Plaintiff. Therefore, the Department ruled to: Cancel the Defendant's decision regarding the trade payables, and amend the Defendant's action regarding the disputed carry-forward losses.

Instruments:

- Articles (55) and (56) of the Law of Civil Procedures promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH.
- Article (4.First.5, Second.9) of the Implementing Regulations for Zakat Collection issued by Minister of Finance's Resolution No. (2082) dated 01/06/1438 AH
- Article (20.1) of Tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) dated 21/04/1441 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Wednesday, 26/01/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/1/1425 AH, as amended, and formed by Royal Order No. (65474) dated 23/12/1439 AH, held its session via teleconference to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 24/03/2021.

Facts of the Case are summarized as follows: Mr. ...., ID No. ...., in his capacity as the Legal Representative of the Company by virtue of its Articles of Association, has filed an objection on behalf of ... Co, Trading Company, (C.R. No. ...), to ZATCA's Zakat assessment for 2018 issued regarding the following two items. The first item: Trade Payables for 2018. The second item: Carry-forward losses.

Having presented the statement of claim to the Defendant, it responded with a Reply stating that items of the Case are limited to two items. The first item: Trade Payables. ZATCA added the item to Zakat base for the disputed year because it became evident to it that the opening balance in the submitted statement did not match the financial statements. Additionally, the debit balance significantly corresponded to the credit balances at the beginning of the period. Regarding the second item: Carry-forward losses, ZATCA stated that the Plaintiff did not deduct the carried-forward losses in its declaration, and ZATCA did not conduct an assessment for the previous year. Therefore, ZATC requests the dismissal of the Case, reserving its right to submit further responses and clarifications before the committees.

On Wednesday, 26/01/1444 AH, the Department held an e-hearing to consider the Case. The Plaintiff's Attorney did not appear despite of being duly notified of date of session. On the other hand, Mr. ..., appeared in his capacity as the Defendant's Representative under POA, a copy of which is included in the Case file. Having asked Defendant's Attorney regarding his reply, he maintained his answers previously contained in his Reply, and requested the Department not to accept any new documents that have not been submitted to Defendant during the examination and objection stage. Having asked Defendant's attorney if he had any other statements, he replied negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the case to abolish Defendant's decision regarding Zakat Assessment of 2018 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On Merits: Having taken cognizance of documents included in the Case file, requests, defenses, and pleas raised by parties thereto, the Department found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of Zakat Assessment of 2018, which included the following two items, namely:

First: Trade Payables for 2018:

The dispute lies in the Plaintiff's objection to the Defendant's action of adding the item to Zakat base for the disputed year. The Plaintiff argues that the balance has not completed a lunar year, while the Defendant countered that after a review, it became clear that the balances did not match the data provided by the Plaintiff. The Defendant further added that the opening balances did not match the audited financial statements, and therefore, the Defendant added the portion that had completed a lunar year. Additionally, Paragraph (First.5) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH states: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Based on the aforementioned, it is evident that trade payables are a component of Zakat base, provided that a lunar year has passed since they became due or they have been used to finance assets included in Zakat base. The dispute regarding this item is a documentary one. Upon reviewing the detailed movement of the trade payables, it is evident that the lunar year has not passed on the disputed amounts. Moreover, the debit balances within the transaction do not match the opening credit balance, and this does not constitute a reason to reject the transaction. Additionally, the difference between the financial statements and the transaction is due to the balance of the account of ... Food Company account, which is not classified as a trade receivable specified in the movement and which the plaintiff referred to in the movement. Therefore, it is evident that the opening balance in the movement would be (2,296,821 - 144,764 = 2,152,057), which matches what the authority added as the opening balance in the financial statements. Consequently, it is clear that the difference resulted from a reclassification of balances and does not constitute a reason to reject the movement. As such, the Department concluded by accepting the Plaintiff's objection.

Second: Regarding item carried forward losses:

The dispute lies in the Plaintiff's claim that the Defendant failed to deduct the item from Zakat base for the disputed year. However, the Defendant argues that it did not deduct the item because the Plaintiff did not deduct its carried-forward losses in its declaration. The Defendant further added that it did not conduct an assessment of the Plaintiff's declaration for the previous year. Additionally, Article (4. Second.9) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated

01/06/1438 AH states: "The following items shall be deducted from the Zakat Base: 9. the net adjusted carried forward loss calculated based on ZATCA's assessments after adding only provisions or reserves that were previously used to reduce the loss in the year they were created". Based on the aforementioned, it is evident that the carry-forward losses that can be deducted from Zakat base are those losses adjusted according to the assessment issued by ZATCA after adding provisions, and which were previously reduced by the loss in the year of their formation; this is to prevent double Zakat. Therefore, what is considered for carry-forward losses for Zakat purposes is what has been adjusted according to Zakat law's requirements and not the carry-forward losses listed in the financial statements. It is evident that ZATCA did not assess 2017, nor did the Plaintiff deduct it in its declaration. However, ZATCA's assessment and adjustment of Zakat Payers' declarations should include all adjustments, not just those in ZATCA's favor. Since these losses are legally deductible and the Plaintiff has requested their deduction, their declaration should be amended to deduct the adjusted losses, not the losses included in the financial statements as claimed by the Plaintiff. As such, the Department concluded by amending the Defendant's action.

As for failure of Plaintiff's attorney to appear at the hearing session and Department's decision in the Case subject matter of consideration in absentia without an excuse acceptable to the Department, the Department relied on Paragraph (1) of Article (20) of Tax Dispute and Violation Committee Procedures that stipulates: "If a Plaintiff fails to attend any hearing after being notified of the date set for consideration of the suit without an excuse acceptable to the Department, the Department must decide the suit if it is ripe for judgment". Additionally, the ruling issued in this Case will be considered a default judgment against it, in accordance with Article (56) of the Law of Civil Procedures, which states: "In the cases provided for in Article 55 of this Law, if the defendant attends the hearing from which the plaintiff is absent, he may petition the court not to dismiss the case and to render a decision on its merits; in which case, the court shall rule on such case and the judgment shall be considered in absentia with respect to the plaintiff". Since Plaintiff did not submit an acceptable excuse for failure to attend the session, and that the Department has deemed that the Case is ripe for adjudication according to Case documents. Therefore, the Department renders its decision in the Case as if in presence of Plaintiff.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

First: Cancel the decision issued by the Defendant/ ZATCA against the Plaintiff/ ... Co, Trading Company, (TIN No. ...) regarding the disputed item Trade Payables.

Second: Amend the action issued by the Defendant/ZATCA, the Plaintiff/ ... Co, Trading Company, (TIN No. ...) regarding the disputed item Carried-forward Losses in accordance with the reasons stated herein.

This decision was delivered in presence of the parties. The Department set Thursday, 17/03/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1825)
Issued in Appeal No. (Z-37518-2021)

Key words:
Zakat Assessment - Accounts - Wage Differences - Zakat Base - Financing of fixed assets of sister companies - Financing of fixed assets under construction of sister companies - Rejection of the Plaintiff's objection and upholding the Defendant's action.

Abstract

The Plaintiff instituted this Case moving to cancel ZATCA's decision regarding Zakat assessment for 2018 AD with respect to the following item: Wage Differences. In response, ZATCA stated that it had requested the Plaintiff to provide supporting documents but the Plaintiff failed to do so. Consequently, the Defendant compared the salaries and wages shown in the financial statements with the social insurance data. Due to the Plaintiff's failure to provide supporting documents, its objection was dismissed. The Department established that the dispute centers on the Plaintiff's objection to the Defendant adding wage differences based on social insurance data for the disputed year. The Plaintiff argues that the amount of SAR (4890171) represents bonuses, rewards, and commissions for the establishment's employees, for which social insurance contributions are not paid. However, the Defendant countered by stating that it had requested the Plaintiff to provide supporting documents but that the Plaintiff failed to comply. As a result, the Defendant compared the salaries and wages shown in the financial statements with the data appearing in the social insurance records and found a difference in the salaries and wages item. The Department ruled to: Dismiss the Plaintiff's objection and uphold the Defendant's action.

Instruments:

- Article (5.1) of the Implementing Regulations for Zakat Collection issued by Minister of Finance's Resolution No. (2082) dated 01/06/1438 AH

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Monday, 24/01/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held its session via teleconference to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 16/02/2021.

Facts of the case are summarized as follows: the Plaintiff/ Mr. ...., ID No. ...., in his capacity as the Owner of .... Pharmacy for Human Medicines, C.R. No. ....; has filed an objection to the decision issued by ZATCA regarding Zakat Assessment of 2018. The Plaintiff's objection centers on item: Wage Differences.

Having presented the statement of claim to the Defendant, it responded with a Reply that included its explanation. The Defendant requested the Plaintiff to provide supporting documents but the Plaintiff failed to do so. Consequently, the Defendant compared the salaries and wages shown in the financial statements with the social insurance data. Due to the Plaintiff's failure to provide supporting documents, his objection was dismissed. Therefore, the Defendant requests that the Department dismiss the Case, reserving the right to submit further replies and clarifications before the closure of pleadings.

On Sunday, 21/10/1443 AH, the Department held its session remotely to consider the Case. Neither the Plaintiff nor his attorney appeared, despite being duly notified of the date of session. For the Defendant, Ms. .... appeared in her capacity as the Defendant's Representative by virtue of an Authorization, a copy of which is included in the Case file. Since the Plaintiff or his attorney did not attend, despite proof of proper notification, and relying on Article (20) of the Tax Dispute and Violation Committee Procedures, the Department unanimously decided to dismiss the Case.

On 21/10/1443 AH, the Plaintiff filed a motion to initiate the Case. On Monday, 24/01/1444 AH, the Department held an e-hearing to consider the Case. At that session, the Department found that Mr. .... appeared in his capacity as the Plaintiff's Attorney under POA attached to the Case file. In addition, Ms. ... appeared in her capacity as the Representative of the Defendant/ ZATCA under an Authorization attached to Case file. Having asked the Plaintiff's Attorney about the claim, he gave an answer that does not differ from the statements included in the statement of claim lodged with the General Secretariat of Zakat, Tax and Customs Committees. When the Defendant's Representatives were confronted with this, they responded by confirming what was stated in the Defendant's Response Memorandum and by not admitting any other documents that were not submitted to the Defendant during the examination and objection phase. When the Plaintiff's Attorney was asked whether his client had submitted supporting documents for their claim during the objection phase with the Defendant, he stated that he had nothing further to provide and requested a postponement. When the Plaintiff's Attorney was questioned about why he had nothing further to present at this hearing, despite the Case having been ongoing for a considerable time and the Defendant arguing that the Plaintiff had failed to provide supporting documents for his objection during the pre-litigation phase, the Attorney simply stated that he had presented all the evidence he had in this hearing. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having perused Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In form: Since the Plaintiff intended by filing its case to cancel ZATCA's decision regarding Zakat assessment for 2018. This dispute is Zakat disputes that fall within the jurisdiction of the Committee for the Resolution of Income Tax Violations and Disputes, pursuant to Royal Order No. (26040) dated 21/04/1441 AH. It is established from the

Case documents that the Plaintiff filed the Case within the period stipulated by the law and by a person with legal capacity, which necessitates admitting the Case in form.

On merits: Having taken cognizance of documents included in the Case file, requests, defense and arguments raised by the parties, the Department found that the dispute centers on the Plaintiff's objection to the Defendant adding wage differences based on social insurance data for the disputed year. The Plaintiff argues that the amount of SAR (4890171) represents bonuses, rewards, and commissions for the establishment's employees, for which social insurance contributions are not paid. However, the Defendant countered by stating that it had requested the Plaintiff to provide supporting documents but the Plaintiff failed to comply. As a result, the Defendant compared the salaries and wages shown in the financial statements with the data appearing in the social insurance records and found a difference in the salaries and wages item.

Additionally, Article (5.1) of the Implementing Regulations for Zakat Collection issued by Minister of Finance's Resolution No. (2082) dated 01/06/1438 AH, concerning deductible expenses, stipulates: "All regular and necessary expenses required for the activity, whether paid or due, shall be deducted up to the net result of the activity, provided that the following controls are met: A. If it is an actual expense, supported by documents or other evidence which enable the Department to verify it, even if it is related to previous years".

Based on the foregoing, and since the Plaintiff did not submit the documents supporting his objection at the time of the objection, the Department decided to dismiss the Plaintiff's objection.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- Dismiss the objection filed by the Plaintiff/ ...., (TIN No. ....) to the decision issued by the Defendant/ ZATCA regarding the disputed Zakat Assessment.

This decision was delivered in presence of the parties. The Department set the date (.... Corresponding to .../.../1444 AH) for receiving a copy of the decision. Either party to the Case may appeal against the decision within thirty days from the day following the date set for receipt of the decision, whereafter, the decision will be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1887)
Issued in Appeal No. (Z-50433-2021)

Key words:
Zakat Assessment - Accounts - Raising a revised assessment according to financial statements - Unsettled Payment - Dividends - Advance payments that have completed a Zakatable year - Creditors - Travel ticket provision - Undeducted Real Estate Investments - Undeducted Lands within Property and Equipment - Differences added to Zakat base - Expenses added to net result.

Abstract

The Plaintiff filed this Case moving to cancel ZATCA's decision regarding tax zakat Assessments for the period from 2015 to 2017 AD, which consists of nine items. First item: Raising a revised assessment according to financial statements despite the existence of estimated declarations for the period from 1435 AH to 1437 AH. Second item: Unsettled payment from ZATCA for 2015 and 2016. Item Third: Deferred Dividends for 2015 and 2016. Item Fourth: Advance payments that have completed a Zakatable year for 2015, 2016, and 2017. Item Fifth: Creditors for 2015, 2016, and 2017. Item Sixth: Travel ticket provision for 2016. Seventh item: Undeducted Real Estate Investments for 2015 and 2016, Undeducted Lands within Property and Equipment for the period from 2015 to 2017. Eighth item: Differences, the nature of which was unknown, added to Zakat base for 2016 and 2017. Ninth Item: Expenses added to net result for the period from 2015 to 2017. In response, ZATCA stated that with regard to the first item: The Plaintiff's objection to Raising a revised assessment according to financial statements despite the existence of estimated declarations for the period from 1435 to 1437 AH, the Defendant argues that it has conducted an assessment for the period from 2015 to 2017 based on the approved financial statements. With regard to the second item: the Plaintiff's objection to the payment of unsettled amounts from ZATCA for the period from 2015 and 2016, the Defendant clarifies that it settled those amounts for the period from 1434 to 1437 AH and calculated them in 2015 based on its assessment for 2015. With regard to the third item, Dividends for 2015 and 2016, the Defendant states that it has added this item to Zakat base in accordance with the Plaintiff's declaration, as it is consistent with the statement of changes in partners' equity as presented in the financial statements. With regard to the fourth item, Advance payments that have completed a Zakatable year for 2015, 2016, and 2017, the Defendant affirms that it added this item to Zakat base based on the data provided by the Plaintiff. With regard to the fifth item, creditors for 2015, 2016, and 2017, the Defendant states that it included this item in Zakat base based on the data provided by the Plaintiff. With regard to the sixth item, Travel ticket provision for 2016, the Defendant clarifies that it added this item to Zakat base because it is an amount withheld for the employees' entitlement to tickets when they take their annual leave, and thus it is considered a provision. With regard to the seventh item: the Plaintiff's objection to

undeducted real estate investments for 2015 and 2016, and item undeducted lands within property and equipment for the period from 2015 to 2017, the Defendant states that it deducted acceptable real estate investments for 2015 and 2016 amounting to SAR (9,815,392) and SAR (9,999,142), respectively, from Zakat base, based on the land deeds provided and based on the discussion letter during the examination phase. With regard to the eighth item: Differences added to Zakat base for 2016 and 2017, the nature of which is unknown, the Defendant clarifies that these amounts are the result of summing up certain items of Zakat base elements. It also asserts that it has not reached the conclusion that there are differences as the Plaintiff claims. With regard to the ninth item: the Plaintiff's objection to expense items added to net income for the period from 2015 to 2017, the Defendant clarifies that it added these expenses to the net income for the period from 2015 to 2017 based on the data provided by the Plaintiff and based on the discussion letter during the examination phase. As such, the Defendant requests the Department to dismiss the Case, while reserving its right to submit further responses and clarifications before the committees. The Department established that the dispute lies in the Defendant's issuance of zakat and tax assessment for the period from 2015 to 2017, which consists of five items. First: Raising a revised assessment according to financial statements despite the existence of estimated declarations for the period from 1435 AH to 1437 AH: The Department found that the dispute raised by the Plaintiff lies in the claim that ZATCA's assessment was made twice, once as an estimate and another based on the financial statements. Based on the Defendant's Reply regarding this assessment, it affirms that it made the assessment relying on the declarations submitted by the Plaintiff. Thus, it made the assessment based on the financial statements, and given that ZATCA made the assessment twice, once as an estimate and again upon discovering the financial statements; the Defendant is entitled to do so, as the financial statements are the basis for submitting the declarations. Building on that, ZATCA has denied making the assessment twice. Second: With regard to the Plaintiff's objection to item Unsettled payment from ZATCA for 2015 and 2016: After reviewing the Case file and its attachments, it is clear that the Defendant settled those amounts for the period from 1434 AH to 1437 AH and calculated them in 2015 AD with a total amount of SAR (907,760,94), based on ZATCA's assessment for 2015. The Plaintiff was required to pay an amount of SAR (1,692,912.20). After deducting the settlement amount of SAR (907,760,94), the remaining balance of Zakat due is SAR (784,851,36), which is the subject of the dispute for 2015. Third: As for item Deferred Dividends for 2015 and 2016: The dispute over this item is a documentary dispute. Referring to the Case file, and included defenses and documents, it is evident that the Plaintiff has not attached any evidence to prove the disputed dividends. The Plaintiff has not presented a decision by the partners to distribute the profits nor bank statements to prove that the funds had left their account before the lunar year passed. Fourth: As for item Advance payments that have completed a Zakatable year for 2015, 2016, and 2017: Advance payments are considered a source of financing, and any portion of them that has completed a lunar year is added to Zakat base. Upon reviewing the Case file, it becomes evident that the nature of the dispute is documentary. Referring to the documents submitted by the Plaintiff, it appears that the Plaintiff has not provided the necessary documents to verify its claim regarding non-completion of the lunar year for these payments. Fifth: As for item Creditors for 2015, 2016, and 2017: Item Creditors is a Zakat base component, provided that a lunar year has passed on the item. Upon reviewing the documents attached to the Case file, it appears that the Plaintiff has not provided a detailed activity to prove that a lunar year has not passed on the disputed amounts. Sixth: As for item Travel ticket provision for 2016. The dispute lies in ZATCA's treatment of the accrued travel ticket expenses as a non-deductible provision. Upon reviewing the documents attached to the Case file, it appears that the Plaintiff's pleas were limited to arguing that the accrued travel tickets represent an

actual expense supported by documents and do not constitute a provision, without providing supporting documents to substantiate its claim. Seventh: As for item Undeducted Real Estate Investments for 2015 and 2016, and Undeducted Lands within Property and Equipment for the period from 2015 from 2017: It is evident that assets in the names of the partners can be deducted from Zakat base, provided that these assets are used in the business and that there is evidence to justify why the ownership has not been transferred to the Company. Since the dispute over this item is a documentary one, and after reviewing the Case file and its contents, it is clear that the Plaintiff has not provided the supporting documents for its viewpoint, such as deeds and financial statements, to prove the inclusion of additional financing from the owner. Furthermore, the Plaintiff has not attached any evidence to prove that these properties are used in the business. Eighth: As for item Differences, nature of which was unknown, added to Zakat base for 2016 and 2017: The Plaintiff claims that it was unable to determine the nature of the items that resulted in the amount of SAR (899,029). Meanwhile, the Defendant stated that this amount is the result of summing up certain elements of Zakat base. Furthermore, the Defendant has not reached the conclusion that there are any differences as claimed by the Plaintiff. Ninth: As for item Expenses added to net income for the period from 2015 to 2017: Upon reviewing the Case file, it is evident that the calculation of expenses for traffic violations, compensation, fines, and gratuities is correct. As for donation expenses, the Plaintiff has not provided documentary evidence to support the acceptance of this expense. As such, the Department decides to dismiss the Plaintiff's objection. As for bad debt expenses, the Plaintiff has not fulfilled the required conditions and has not attached any supporting documents to its objection to substantiate its claim. As for the provision for accrued travel allowances, the Plaintiff has not fulfilled the required conditions regarding non-deductible expenses, and has also not provided an analysis of the provision or financial statements for consideration of the provision. - Appeals Chamber ruled to: Cancel ZATCA's decision regarding item Differences added to Zakat bases for 2016 and 2017, whose nature has not been determined, and dismiss all other objections.

Instruments:

- Articles (4.First.4, 5, 8, and Second.1, 4), (5.3, 4), (6.1, 2, 6), (20.3), (21.8) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Sunday, 01/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held its teleconference session to consider the Case filed by .... Company, against ZATCA. Since the Case met the prescribed legal requirements, it was filed with General Secretariat of Tax Committees on 09/05/2021.

The facts of this Case are summed up that ..., National ID No. (.....) In his capacity as Owner of ..... Enterprise, C.R. No. (...), filed an objection to tax and zakat assessments for the period from 2015 to 2017, issued by ZATCA. The objection is limited to nine items. With regard to the first item: Raising a revised assessment according to financial statements despite the existence of estimated declarations for the period from 1435 AH to 1437 AH. Second item: Unsettled payment from ZATCA for 2015 and 2016. Item Third: Deferred Dividends for 2015 and 2016. Item Fourth: Advance payments that have

completed a Zakatable year for 2015, 2016, and 2017. Item Fifth: Creditors for 2015, 2016, and 2017. Item Sixth: Travel ticket provision for 2016. Seventh item: Undeducted Real Estate Investments for 2015 and 2016, Undeducted Lands within Property and Equipment for the period from 2015 to 2017. Eighth item: Differences, the nature of which was unknown, added to Zakat base for 2016 and 2017. Ninth Item: Expenses added to net income for the period from 2015 to 2017.

Having presented the statement of claim to the Defendant, it responded with a reply stating that with regard to the first item: The Plaintiff's objection to Raising a revised assessment according to financial statements despite the existence of estimated declarations for the period from 1435 to 1437 AH, the Defendant argues that it has conducted an assessment for the period from 2015 to 2017 based on the approved financial statements. With regard to the second item: the Plaintiff's objection to the payment of unsettled amounts from ZATCA for the period from 2015 and 2016, the Defendant clarifies that it settled those amounts for the period from 1434 to 1437 AH and calculated them in 2015 based on its assessment for 2015. With regard to the third item, Dividends for 2015 and 2016, the Defendant states that it has added this item to Zakat base in accordance with the Plaintiff's declaration, as it is consistent with the statement of changes in partners' equity as presented in the financial statements. With regard to the fourth item, Advance payments that have completed a Zakatable year for 2015, 2016, and 2017, the Defendant affirms that it added this item to Zakat base based on the data provided by the Plaintiff. With regard to the fifth item, creditors for 2015, 2016, and 2017, the Defendant states that it included this item in Zakat base based on the data provided by the Plaintiff. With regard to the sixth item, Travel ticket provision for 2016, the Defendant clarifies that it added this item to Zakat base because it is an amount withheld for the employees' entitlement to tickets when they take their annual leave, and thus it is considered a provision. With regard to the seventh item: the Plaintiff's objection to undeducted real estate investments for 2015 and 2016, and item undeducted lands within property and equipment for the period from 2015 to 2017, the Defendant states that it deducted acceptable real estate investments for 2015 and 2016 amounting to SAR (9,815,392) and SAR (9,999,142), respectively, from Zakat base, based on the land deeds provided and based on the discussion letter during the examination phase. With regard to the eighth item: Differences added to Zakat base for 2016 and 2017, the nature of which is unknown, the Defendant clarifies that these amounts are the result of summing up certain items of Zakat base elements. It also asserts that it has not reached the conclusion that there are differences as the Plaintiff claims. With regard to the ninth item: the Plaintiff's objection to expense items added to net income for the period from 2015 to 2017, the Defendant clarifies that it added these expenses to the net income for the period from 2015 to 2017 based on the data provided by the Plaintiff and based on the discussion letter during the examination phase. As such, the Defendant requests the Department to dismiss the Case, while reserving its right to submit further responses and clarifications before the committees.

On Sunday, 01/02/1444 AH, the Department held its session remotely to consider the Case. The Plaintiff personally appeared, while for the Defendant, Ms. .... appeared in her capacity as the Defendant's Representative by virtue of an Authorization, a copy of which is included in the Case file. When asked about the claim filed, the Plaintiff responded by stating that they maintain the statement of claim that was filed with General Secretariat of the Tax Committees. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: The Plaintiff filed this case moving to cancel ZATCA's decision regarding tax zakat assessment for the period from 2015 to 2017. Since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH, and since the Case was filed by a person with capacity and within the period prescribed by Law, it is then accepted in form.

On merits: The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that the dispute is related to tax zakat assessment made by ZATCA for the period from 2015 to 2017, which covers five items, namely:

First: Raising a revised assessment according to financial statements despite the existence of estimated declarations for the period from 1435 AH to 1437 AH:

The dispute lies in the Plaintiff's objection to the Defendant's action of assessing the Plaintiff twice; once using an estimated method and the other based on financial statements. The Defendant argued that it had accounted the Plaintiff for the period from 2015 to 2017 based on approved financial statements, and the Plaintiff requested to raise a revised assessment based on these financial statements, while the Plaintiff had previously submitted estimated declarations for the period from 1435 to 1437 AH and had paid the assessed amount. Furthermore, it was found that the period of 1436 AH had a closed status, and the Defendant had not adjusted the declaration based on it. The Defendant added that this confirms the absence of a decision by ZATCA to raise a revised assessment for that period, and that the law indicates that the declarations for the period from 1435 to 1437 AH had a zero value. Additionally, Article (21.8) of the Implementing Regulations for Zakat Collection stipulates: "The Authority shall conduct or amend the assessment at any time without being restricted to any periods if: A. The zakat payer agrees in writing to conduct or amend the assessment; B. The zakat payer did not provide his declaration; or C. If it is found that the declaration contains invalid information. Based on the foregoing, after reviewing the submissions of both parties to the dispute, the Department found that the dispute raised by the Plaintiff lies in the claim that ZATCA's assessment was made twice, once as an estimate and another based on the financial statements. Based on the Defendant's Reply regarding this assessment, it affirms that it made the assessment relying on the declarations submitted by the Plaintiff. Thus, it made the assessment based on the financial statements, and given that ZATCA made the assessment twice, once as an estimate and again upon discovering the financial statements; the Defendant is entitled to do so, as the financial statements are the basis for submitting the declarations. Building on that, ZATCA has denied making the assessment twice. As such, the Department decides to dismiss the Plaintiff's objection.

Second: With regard to the Plaintiff's objection to item Unsettled payment from ZATCA for 2015 and 2016:

The dispute lies in the Plaintiff's objection to the Defendant's failure to adjust the amounts paid for the disputed years. The Plaintiff claims that the Defendant did not reconcile the declarations with the amounts paid, resulting in an adjusted assessment higher than what

was actually paid by the Enterprise. The Defendant countered by stating that it had reconciled those amounts for the period from 1434 to 1437 AH and calculated them in 2015, based on the assessment for 2015. After reviewing the Case file and attachments, it is clear that the Defendant did reconcile those amounts for the period from 1434 to 1437 AZH and calculated them in 2015, totaling SAR (907,760.94), based on ZATCA's assessment for 2015. The Plaintiff was assessed SAR (1,692,912.20), and after deducting the settlement amount of SAR (907,760.94), the remaining Zakat due is SAR (784,851.36), which is the subject of the dispute for 2015. As such, the Department decides to dismiss the Plaintiff's objection.

Third: As for item Deferred Dividends for 2015 and 2016:

The dispute lies in the Plaintiff's objection to the Defendant's action of adding the item to Zakat base for the disputed years. The Plaintiff argues that zakat due date had not passed on these dividends, and therefore, they are not subject to zakat. However, the Defendant argued that it added the item to Zakat base based on the Plaintiff's declaration, which corresponds to the statement of changes in partners' equity and the financial statements. Article (4. First.8) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH provides that: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 8. Balance of profits carried forward from previous years at the year-end." Additionally, Article (20.3) of the same Regulations, provides that: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it" Based on the above, the dispute over this item is a documentary dispute. Referring to the Case file, and included defenses and documents, it is evident that the Plaintiff has not attached any evidence to prove the disputed dividends. The Plaintiff has not presented a decision by the partners to distribute the profits nor bank statements to prove that the funds had left their account before the lunar year passed. As such, the Department decides to dismiss the Plaintiff's objection.

Fourth: As for item Advance payments that have completed a Zakatable year for 2015, 2016, and 2017:

The dispute lies in the Plaintiff's objection to the Defendant's action of adding the item to Zakat base for the disputed years. The Plaintiff argues that zakat due date had not passed on these amounts. However, the Defendant countered that it included the item based on data provided by the Plaintiff which indicated that a period of full year had indeed passed on the balances. Since Paragraph (4. First.4) of Implementing Regulation for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 4. Submitted revenues on which a year has passed". Additionally, Article (20.3) of the same Regulations, provides that: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it" Based on the foregoing, Advance payments are considered a source of financing, and any portion of them that has completed a lunar year is added to Zakat base. Upon reviewing the Case file, it becomes evident that the nature of the dispute is documentary. Referring to the documents submitted by the Plaintiff, it appears that the Plaintiff has not provided the necessary documents to verify its claim regarding non-completion of the lunar year for these payments. As such, the Department decides to dismiss the Plaintiff's objection.

Fifth As for item Creditors for 2015, 2016, and 2017:

The dispute lies in the Plaintiff's objection to the Defendant's action of adding an amount of SAR (1,277,500) to Zakat base for the disputed years. The Plaintiff argues that zakat due date had not passed on these amounts as they are short-term current liabilities not related to the financing of fixed assets, and they are also part of project costs on which zakat has already been paid. However, the Defendant countered that it included the item based on data provided by the Plaintiff which indicated that a period of full year had indeed passed on the balances. Article (4. First.5) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH provides that: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Additionally, Article (20.3) of the same Regulations states that: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it.". Based on the foregoing, the Item Creditors is a Zakat base component, provided that a lunar year has passed on the item. Upon reviewing the documents attached to the Case file, it appears that the Plaintiff has not provided a detailed activity to prove that a lunar year has not passed on the disputed amounts. As such, the Department decides to dismiss the Plaintiff's objection.

Sixth: As for item Travel ticket provision for 2016.

The dispute lies in the Plaintiff's objection to the Defendant's action of including an amount of SAR (635,155) as a provision for accrued travel tickets in the Zakatable assets for the disputed year. The Plaintiff argues that these amounts have not completed a full lunar year, while the Defendant countered that it added this item to Zakat base as it is a provision set aside for employees' entitlements to travel tickets when they take their annual leave, and thus it is considered a provision. Article (6.2) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH on Non-Deductible Expenses stipulates: "2. Expenses that the Zakat Payer fails to prove by supporting documents or other evidential matter". Paragraph (6) of the same Article also stipulates: "6. The entire provisions except for the following:

أ- Provisions for the doubtful debts for banks, provided that the Bank issues a certificate identifying the sum of the doubtful debts and that the Saudi Arabian Monetary Authority approves thereof.

ب- Provisions for unearned premiums reserve and current risk in insurance and/or reinsurance companies (technical reserves). The same shall be returned to the Zakat Base in the following Zakat Year and determined in accordance with the standards adopted for this particular business activity". Moreover, Article (20.3) of the same Regulations states: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". Based on the foregoing, the dispute lies in ZATCA's treatment of the accrued travel ticket expenses as a non-deductible provision. Upon reviewing the documents attached to the Case file, it appears that the Plaintiff's pleas were limited to arguing that the accrued travel tickets represent an actual expense supported by documents and do not constitute a provision, without providing supporting

documents to substantiate its claim. As such, the Department decides to dismiss the Plaintiff's objection.

Seventh: As for item Undeducted Real Estate Investments for 2015 and 2016, and Undeducted Lands within Property and Equipment for the period from 2015 from 2017:

The dispute lies in the Plaintiff's objection to the Defendant's action of adding the amounts of SAR (8,972,125) for 2015, SAR (9,224,375) for 2016, and SAR (2,200,000) for 2017 to Zakat base for the disputed years. The Plaintiff argues that these amounts represent the difference in the value of lands without title deeds, which are subject to an ongoing case in the Public Court, and that they have been recorded as additional financing from the Owner and added to Zakat base in exchange for land deductions. However, the Defendant countered that it deducted acceptable real estate investments of SAR (9,815,392) for 2015 and SAR (9,999,142) for 2016 from Zakat base, based on the land title deeds submitted and the discussion letter during the examination phase. Additionally, it claims to have accepted the lands owned in the name of the Owner according to their share. Article(4.Second.1) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The following items shall be deducted from the Zakat Base: 1- Fixed assets including the following: Net fixed assets (property assets), any payments for the purchase of fixed assets, and spare parts and materials not prepared for sale, provided that such assets be owned by the Zakat payer, unless an obstacle to the transfer of ownership exists, and be used in the activity." Additionally, Article (4. Second.1) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The following items shall be deducted from the Zakat Base: 2. Zakat Payer's capital buildings under construction and being constructed for use in the activity not for sale. Article (20.3) of the same Regulations provides that: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it" Based on the above, it is evident that assets in the names of the partners can be deducted from Zakat base, provided that these assets are used in the business and that there is evidence to justify why the ownership has not been transferred to the Company. Since the dispute over this item is a documentary one, and after reviewing the Case file and its contents, it is clear that the Plaintiff has not provided the supporting documents for its viewpoint, such as deeds and financial statements, to prove the inclusion of additional financing from the owner. Furthermore, the Plaintiff has not attached any evidence to prove that these properties are used in the business. As such, the Department decides to dismiss the Plaintiff's objection.

Eighth: As for item Differences, nature of which was unknown, added to Zakat base for 2016 and 2017:

The dispute lies in the Plaintiff's objection to the Defendant's action of adding an amount of SAR (899,029) to Zakat base for the disputed years. The Plaintiff claims that it was unable to determine the nature of the items that resulted in the amount of SAR (899,029). Meanwhile, the Defendant stated that this amount is the result of summing up certain elements of Zakat base. Furthermore, the Defendant has not reached the conclusion that there are any differences as claimed by the Plaintiff. As such, the Department decides to dismiss the Defendant's objection.

Ninth: As for item Expenses added to net income for the period from 2015 to 2017:

The dispute lies in the Plaintiff's objection to the Defendant's action of including the following items: a) Traffic tickets, b) Donations, c) Compensations and fines, d) Provision for employee travel ticket allowances, e) Bad debts, and f) Gratuities, in Zakat base for the disputed years. The Plaintiff argues that these are actual expenses incurred in the course of

the Enterprise's activities and are deductible according to Article (6) of the Implementing Regulations for Zakat Collection No. (2082) dated 01/06/1438 AH. However, the Defendant argued that it added these expenses to the net income for the period from 2015 to 2017 based on the data provided by the Plaintiff and the discussion letter during the examination phase. Additionally, the Defendant claimed to have calculated traffic tickets, compensations, fines, and gratuities expenses according to Article (6.1) of the Implementing Regulations for Zakat Collection issued in 1438 AH. As for donation expenses, it did not accept the deduction due to lack of documentary evidence of the acceptance of the expense as per Article (5.4) of the Implementing Regulations for Zakat Collection issued in 1438 AH. As for bad debt expenses, the Plaintiff did not fulfill the conditions specified in Article (5.3) of the Implementing Regulations for Zakat Collection.
Based on the foregoing, after reviewing the Case file, it is evident that the calculations of traffic tickets, compensation, fines, and gratuity expenses is in accordance with the provisions of Article (6.1) of the Implementing Regulations for Zakat Collection issued in 1438 AH. As such, the Department decides to dismiss the Plaintiff's objection.
As for donation expenses, the Plaintiff has not provided documentary evidence to support the acceptance of this expense as per Article (5.4) of the Implementing Regulations for Zakat Collection issued in 1438 AH. As such, the Department decides to dismiss the Plaintiff's objection.
As for the bad debt expenses, the Plaintiff did not fulfill the conditions specified in Article (5.3) of the Implementing Regulations for Zakat Collection issued in 1438 AH, and the Plaintiff did not attach any supporting documents to its objection. As such, the Department decides to dismiss the Plaintiff's objection.
As for the employee travel ticket allowances provision, the Plaintiff did not fulfill the conditions specified in Article (5.3) of the Implementing Regulations for Zakat Collection No. (2082) dated 01/06/1438 AH on Non-Deductible Expenses. Additionally, the Plaintiff did not provide an analysis of the provision or financial statements for consideration of the provision. As such, the Department decides to dismiss the Plaintiff's objection.
For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

First: Cancel ZATCA's/Defendant's decision made against the Plaintiff (...), TIN No. (...) regarding item (Differences, the nature of which was unknown, added to Zakat base for 2016 and 2017, subject matter of the Case).
Second: Dismiss otherwise objections submitted by the Plaintiff (...), TIN No. (...) to the decision issued by the Defendant/ZATCA in relation to the assessment in question.
This decision was delivered in presence of the parties. The Department set Thursday, 17/03/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1888)
Issued in Appeal No. (Z-50445-2021)

Key words:
Zakat Assessment - Accounts - Capital gains from the sale of fixed assets - Creditor banks and loans - Accounts payable and advance payments from customers - Employee receivables - Investments.

Abstract

The Plaintiff filed this Case moving to cancel ZATCA's decision regarding Zakat Assessments for the period from 2000 to 2011, except for 2001 AD, which consists of five items. First item: Capital gains from the sale of fixed assets for 2008-2011. Second item: Creditor banks and loans for 2008. Item Third: Accounts payable and advance payments from customers. Item Fourth: Employee receivables for 2008-2011. Item Fifth: Investments for 2008-2011. In response, ZATCA stated that the Defendant argued to reject the Case in form. With regard to the disputed items: 1. Capital gains from the sale of fixed assets for 2008-2011, The Defendant argues that in order to accept the Plaintiff's objection, the prescribed depreciation schedules must be applied. 2. Creditor banks and loans for 2008, The Defendant clarifies that it has partially accepted the Plaintiff's objection, as these are considered bank interest. 3. Accounts payable and advance payments from customers, The Defendant states that it has included this item in Zakat base for the disputed year, as it represents revolving balances that have completed a full lunar year. 4. Employee receivables for 2008-2011, The Defendant asserts that it has rejected the deduction of employee receivables due to the Plaintiff's failure to provide detailed transactions from the general ledger, and no supporting documents were attached to the objection. 5. Investments for 2008-2011: The Defendant states that these investments were made in the Republic of Sudan, and the Plaintiff has not provided any proof that these investments have been subject to Zakat. Therefore, ZATCA requests dismissal of the Case in form, while reserving its right to submit further responses and clarifications before the committees. The Department established that the dispute centers on the Defendant's issuance of Zakat assessment for the period from 2000 to 2011, excluding 2001, specifically concerning the following five items: First: Capital gains from the sale of fixed assets for 2008-2011: It is evident that the fixed assets are being depreciated using the fixed installment method. The Zakat declarations in question are subject to the Zakat Collection Regulations, which has superseded all previous decisions and circulars related to Zakat collection, and the Plaintiff has not clarified the subject of its objection nor attached the necessary supporting documents. Second: Creditor banks and loans for 2008: Loans, regardless of their type, source, or classification, are considered a component of Zakat base, provided that a lunar year has passed since they were acquired or if they were used to finance assets that have been deducted from Zakat base without the requirement of a lunar year. Upon reviewing the documents attached to the Case file,

it is evident that the Plaintiff has not provided the detailed activity (the attached trial balance is incomplete) to support its viewpoint. Moreover, it appears that a lunar year has not passed for these loans. Due to the lack of a detailed transaction list for these loans that would demonstrate that the opening balances were settled during the year, the appropriate action is to include the balance of this item as a source of funding, as it is a component of Zakat base. This should be done by taking either the beginning-of-the-year or end-of-the-year balance, whichever is lower, for the purpose of adding the balances that have completed a lunar year. Third: Accounts payable and advance payments from customers: Trade payable and advance payments are Zakat base components, provided that a lunar year has passed on the item. Upon reviewing the documents attached to the Case file, it appears that the Plaintiff has not provided a detailed activity (the attached trial balance is incomplete) to prove that a lunar year has not passed on the disputed amounts. Fourth: Employee receivables for 2008-2011: Having reviewed the documents attached to the Case file, specifically the (incomplete trial balance), and considering that the trial balance is a crucial element for verifying the claims made by the Plaintiff, it is evident that the evidence provided by the Plaintiff is insufficient to rely upon. Fifth Investments for 2008-2011: The Plaintiff has the right to deduct foreign investments from its Zakat base, provided they comply with the requirement of submitting audited financial statements from a certified public accountant in the country of investment to ZATCA. This is necessary for calculating Zakat due on these investments and remitting it to ZATCA, or for providing proof of Zakat payment in the country of investment. By doing so, the investee company can deduct these investments from its Zakat base to avoid double taxation. Given that the dispute over this item is a documentary one, and upon reviewing the attached documents (the financial statements of the company invested in abroad), it has been found that they are certified by a certified public accountant. Additionally, the Plaintiff has attached proof of ownership of shares in the Company. - Appeals Chamber ruled to: Amend the Defendant's action regarding the disputed investment item, and dismiss all other objections.

Instruments:

- Article (17) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH.
- Articles (4.First.4, 5), (5.1), (7.2), (20.3) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Saturday, 29/01/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held an e-session to consider the Case filed by ... Company against ZATCA. Since the Case met the prescribed legal requirements, it was filed with General Secretariat of Tax Committees on 09/05/2021.

The facts of this case are summed up so as... National ID No. (.....) Being owner of ... Trading Company, C.R. No. (...), filed an objection to zakat assessments for the period from 2000 to 2011, excluding 2001, issued by ZATCA, specifically concerning five items. First item: Capital gains from the sale of fixed assets for 2008-2011. Second item: Creditor banks and loans for 2008. Item Third: Accounts payable and advance payments from customers. Item Fourth: Employee receivables for 2008-2011. Item Fifth: Investments for 2008-2011.

Having presented the statement of claim to Defendant, it responded with an answer summarized as follows: First: In form, the Defendant argues that the Case should be rejected on formal grounds, citing Article (22.1) of the Zakat Collection Regulations of 1438 AH. Second: On merits: 1. Capital gains from the sale of fixed assets for 2008-2011, The Defendant argues that in order to accept the Plaintiff's objection, the prescribed depreciation schedules must be applied pursuant to Article (17) of the Tax Law. 2. Creditor banks and loans for 2008, The Defendant clarifies that it has partially accepted the Plaintiff's objection, as these are considered bank interest. 3. Accounts payable and advance payments from customers, The Defendant states that it has included this item in Zakat base for the disputed year, as it represents revolving balances that have completed a full lunar year. 4. Employee receivables for 2008-2011, The Defendant asserts that it has rejected the deduction of employee receivables due to the Plaintiff's failure to provide detailed transactions from the general ledger, and no supporting documents were attached to the objection. 5. Investments for 2008-2011: The Defendant states that these investments were made in the Republic of Sudan, and the Plaintiff has not provided any proof that these investments have been subject to Zakat. Therefore, ZATCA requests dismissal of the Case in form, while reserving its right to submit further responses and clarifications before the committees.

On Saturday, 29/01/1444 AH, the Department held e-hearing session to consider the Case. At that session, the Department found that ... appeared in his capacity as attorney of Plaintiff under POA attached to Case file. In addition, ... appeared in his capacity as the representative of Defendant (ZATCA) under POA attached to Case file. Having asked the Plaintiff's Attorney about the claim, he gave an answer that does not differ from the statements included in the statement of claim lodged with the General Secretariat of Zakat, Tax and Customs Committees. He then requested a postponement to allow him time to study the case. When the Plaintiff's Attorney was asked about the legitimacy of requesting a postponement, given that his client filed this Case on 09/05/2021, a period that is not short and is sufficient to study the case, the Attorney stated that they had not sought the opinion of a certified chartered accountant until two weeks prior. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: The Plaintiff filed this case moving to cancel ZATCA's decision regarding Zakat assessment for the period from 2000 to 2011 excluding 2001. Since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Resolution of Excise Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH, and since the case was filed by a person with capacity, and within the period prescribed by law, it is therefore accepted in form.

On merits: Having examined the case papers and documents included in the case file, as well as the requests, defenses and pleas made by the parties, the Department found that

the dispute is related to Zakat assessment made by ZATCA for the period from 2000 to 2011 excluding 2001, which covers five items, namely:

First: Capital gains from the sale of fixed assets for 2008-2011:

The dispute lies in the Plaintiff's objection to the Defendant's action of including capital gains from the sale of fixed assets in Zakat base for the disputed year. The Plaintiff claims to have sent a letter to the Defendant on 07/01/1443 AH requesting the necessary schedules, while the Defendant argues that capital gains from the sale of fixed assets should be subject to the depreciation schedules stipulated in Article (17) of the Tax Law. Article (7.2) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "Fixed assets shall be depreciated in accordance with the fixed installment method". Based on the foregoing, the It is evident from Article (7.2) of the Implementing Regulations for Zakat Collection that the fixed assets are being depreciated using the fixed installment method. The Zakat declarations in question are subject to the Zakat Collection Regulations, which has superseded all previous decisions and circulars related to Zakat collection, and the Plaintiff has not clarified the subject of its objection nor attached the necessary supporting documents. As such, the Department decides to dismiss the Plaintiff's objection.

Second: Creditor banks and loans for 2008:

The dispute lies in the Plaintiff's objection to the Defendant's action of including an additional item in Zakat base for the disputed years. The Plaintiff asserts that the Banking Dispute Resolution Committee has canceled bank commissions amounting to SAR (6,793,568) for the fiscal year 2009, on which Zakat of SAR (169,846) was calculated. However, the Defendant argues that it has partially accepted the objection, contending that these were bank interests. Article (4. First.5) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates that: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" In accordance with Paragraph (3) of Article (20) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH that states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it.". Based on the foregoing, Loans, regardless of their type, source, or classification, are considered a component of Zakat base, provided that a lunar year has passed since they were acquired or if they were used to finance assets that have been deducted from Zakat base without the requirement of a lunar year. Upon reviewing the documents attached to the Case file, it is evident that the Plaintiff has not provided the detailed activity (the attached trial balance is incomplete) to support its viewpoint. Moreover, it appears that a lunar year has not passed for these loans. Due to the lack of a detailed transaction list for these loans that would demonstrate that the opening balances were settled during the year, the appropriate action is to include the balance of this item as a source of funding, as it is a component of Zakat base. This should be done by taking either the beginning-of-the-year or end-of-the-year balance, whichever is lower, for the purpose of adding the balances that have completed a lunar year. As such, the Department decides to dismiss the Plaintiff's objection.

Third: Accounts payable and advance payments from customers:

The dispute lies in the Plaintiff's objection to the Defendant's action of including an additional item in Zakat base for the disputed years. The Plaintiff argues that the total amount of accounts payable was SAR (7,000,000) in 2005, which decreased to SAR (3,000,000) by 2011. The Plaintiff attributes this decrease to the cancellation of an air defense project and a dispute over who would bear the responsibility for these debts. In 2006, these accounts were closed. However, the Defendant argues that it included this item in Zakat base for the disputed year because it was a carried-forward balance that had completed a lunar year. Article (4. First.5) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH, stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans or equivalent items of other sources of funds, such as creditors, bills payable, overdrafts due by the Zakat payer in accordance with the following: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Article (4. First.4) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH, stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 4. Submitted revenues on which a year has passed." Additionally, Article (20.3) of the same Regulations states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it" Additionally, Article (20.3) of the same Regulations states that: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it.". Based on the foregoing, Trade payable and advance payments are Zakat base components, provided that a lunar year has passed on the item. Upon reviewing the documents attached to the Case file, it appears that the Plaintiff has not provided a detailed activity (the attached trial balance is incomplete) to prove that a lunar year has not passed on the disputed amounts. As such, the Department decides to dismiss the Plaintiff's objection.

Fourth: Employee receivables for 2008-2011:

The dispute lies in the Plaintiff's objection to the Defendant's action of including an additional item in Zakat base for the disputed years. The Plaintiff contends that these amounts represent a total of SAR (18,862,877) in salary refunds, and the Defendant has imposed a Zakat obligation of SAR (471,572) on this item, considering it to have completed a lunar year. However, the Plaintiff argues that since these amounts are related to employees who have left the Kingdom, they should be considered bad debts. The Defendant, on the other hand, has rejected the Plaintiff's objection due to lack of a detailed breakdown of the item from the general ledger and the absence of supporting documents. Article (5.1) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "Ordinary and necessary expenses of business activity, whether paid or due, to the net result of activity shall be deducted, if meet the following criteria: a. Expenses shall be actual expenses as supported by relevant documents and other evidential matter to enable the Authority to verify the accuracy of expenses, even if related to prior years. b. Expenses shall be related to Zakat Payer's business activity rather than personal expenses or other than Zakat Payer's own activities. c. Expenses may not be of capital nature. Where a capital expenditure is included in the expenses such expenditure shall be adjusted against the result of activity added to fixed assets and accordingly depreciated as applicable". Additionally, Article (20.3) of the same

Regulations states that: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the foregoing, having reviewed the documents attached to the Case file, specifically the (incomplete trial balance), and considering that the trial balance is a crucial element for verifying the claims made by the Plaintiff, it is evident that the evidence provided by the Plaintiff is insufficient to rely upon. As such, the Department decides to dismiss the Plaintiff's objection.

Fifth Investments for 2008-2011:

The dispute lies in the Plaintiff's objection to the Defendant's action of including an additional item in the Zakat base for the disputed years. The Plaintiff asserts that these investments were purchased with the accumulated profits of the establishment and should have been deducted from the negative Zakat base for the years 2008 to 2011, as the value of these investments was carried forward annually without generating any profits. However, the Defendant argues that these investments were made in the Republic of Sudan and the Plaintiff has failed to provide evidence that Zakat was paid on them. Ministerial Resolution No. (1005) of 28/04/1435 AH stipulates: "Second: Investments in entities outside the Kingdom, in partnership with others, shall be deducted from Zakat Payer's declaration, provided that Zakat Payer submits audited accounts from a certified public accountant in the country of investment in order to calculate zakat due on these investments and to remit them to ZATCA. Alternatively, Zakat Payer may provide proof that zakat has been paid in the country of investment, and accordingly deducting such investment from zakat base of the Saudi investing company to avoid double payment of zakat on these companies. If Zakat Payer does not provide the required documents above-mentioned, the investments shall not be deducted from zakat base". Based on the foregoing, the Plaintiff has the right to deduct foreign investments from its Zakat base, provided they comply with the requirement of submitting audited financial statements from a certified public accountant in the country of investment to ZATCA. This is necessary for calculating Zakat due on these investments and remitting it to ZATCA, or for providing proof of Zakat payment in the country of investment. By doing so, the investee company can deduct these investments from its Zakat base to avoid double taxation. Given that the dispute over this item is a documentary one, and upon reviewing the attached documents (the financial statements of the company invested in abroad), it has been found that they are certified by a certified chartered accountant. Additionally, the Plaintiff has attached proof of ownership of shares in the Company. As such, the Department decides to cancel the Defendant's action.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

First: Amend the action issued by the Defendant/ ZATCA against the Plaintiff/ (...) TIN No. (...) regarding the investment item subject matter of the Case in accordance with the reasons set forth herein.

Second: Dismiss otherwise objections submitted by the Plaintiff (...), TIN No. (...) to the decision issued by the Defendant/ZATCA in relation to the assessment in question.

This decision was delivered in presence of the parties. The Department set the date (.... Corresponding to .../.../1444 AH) for receiving a copy of the decision. Either party to the Case may appeal against the decision within thirty days from the day following the date set for the decision, whereafter, the decision will be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1916)
Issued in Appeal No. (Z-48720-2021)

Key words:
Tax Assessment - Differences in depreciation of fixed assets - Fixed assets - Dividends previously subject to Zakat - Partners' current accounts - Investments.

Abstract

The Plaintiff instituted this Case moving to cancel ZATCA's decision regarding tax assessments for the period from 2015 to 2015, consisting of seven items. First item: Differences in depreciation of fixed assets and fixed assets. Second item: Dividends previously subject to Zakat (Discrepancy). Item Third: Partners' current accounts. Item Fourth: Investments. Item (4. a): .... Company .... Company and .... Company, Item (4.b): .... Project Company and Company ..., Item (4.c): ... Project, Item (4.d): In ... Company– In response, ZATCA stated that with regard to Differences in depreciation of fixed assets and fixed assets, it rejected the deduction of depreciation differences from the year's result and the deduction of fixed assets. This was based on the financial statements which excluded cars that were not in the Company's name. Third: Dividends previously subject to Zakat (Discrepancy). the Defendant stated that it requested additional information from the Plaintiff on 24/02/1442 AH but the Plaintiff failed to provide any documents, and consequently, its objection was dismissed. Fourth: Partners' current accounts, the Defendant stated that it requested additional information from but the Plaintiff failed to provide any documents, and consequently, its objection was dismissed. Fifth Investments. The Defendant clarified that it rejected the deduction of the item from Zakat base because the deduction criteria were not met for those investments. Therefore, ZATCA requests dismissal of the Case in form, while reserving its right to submit further responses and clarifications before the committees. The Department established that the dispute lies in the Defendant issuing tax assessments for the period from 2015 to 2017, consisting of seven items. First: Differences in depreciation of fixed assets and fixed assets: Upon reviewing the Case file and included documents and defenses, the Department found that the cars do not belong to the Plaintiff; this is because they are registered in the name of an employee. Consequently, they are not considered Company assets and the Plaintiff is not entitled to claim depreciation expenses for them. Moreover, the Plaintiff has not provided any evidence to demonstrate its inability to transfer ownership of these cars to itself. Second: Dividends previously subject to Zakat (Discrepancy): Upon reviewing the Case file and included documents and defenses, it is evident that the Plaintiff is claiming a deduction for the dividends received. Referring to the financial statements of the investee companies, it becomes clear that these dividends were made from the retained earnings at the beginning of the year and not from the profits generated during the year; thus, ZATCA's action in transferring the case to the following year is justified. Furthermore, the Plaintiff has not provided any evidence to prove that the dividends received were from the

profits of the current year. Third: Partners' current accounts: The dispute lies in the Plaintiff's disagreement with the addition of the partner's current account balance as the lunar year has passed. The Plaintiff requested that the addition be made based on the balance at the beginning or end of the period, whichever is lower. However, ZATCA added the balance based on the passing of the lunar year. Consequently, the calculation of the partner's current account involves adding the beginning-of-period balance, less any withdrawals made during the period, which is precisely what ZATCA has done. As for the lower balance, it would be considered only if the Plaintiff fails to provide the necessary transactions. As for the addition of the partner's current account after the completion of the lunar year but before the end of Taxpayer's fiscal year, i.e., before 31/12, the fundamental principle in matters of worship is that Islamic rulings depend on lunar years, and there is no disagreement among scholars on this point, it follows that the lunar year is the basis for all acts of worship, including Zakat. Scholars stipulate that, in addition to reaching Nisab, the completion of a lunar year is a condition for the obligation of Zakat on wealth. ZATCA's practice of using the lunar year for taxpayers who prepare their financial statements and submit their Zakat declarations based on the Gregorian calendar does not conflict with the principle of Zakat stability; accepting such accounts and declarations in this manner is an exception made for the convenience of taxpayers. Moreover, all elements of Zakat base prepared according to the Gregorian year (solar year) have completed a lunar year, given that the solar year is eleven days longer than the lunar year, except for net profit and related items, as these are secondary to the principal and do not require the completion of a lunar year. Fourth: Investments Regarding .... International Company, ... Technical Contracting Company, and ... Company, upon reviewing the Case file, it is evident that the Defendant refused to allow a deduction for the investment; this is due to failure of the investee companies to submit financial statements and Zakat declarations to ZATCA. Given that ZATCA has failed to compel these companies to pay Zakat, and failure of the investee companies to pay Zakat does not justify the Plaintiff having to pay Zakat on their behalf, the Department decides to cancel the Defendant's decision. Regarding ... Holding Company, and ..., Tourism Establishments Company, upon reviewing the Case file, it is evident that ZATCA did not allow a deduction for the item from Zakat base due to the non-registration of these companies with ZATCA. The Plaintiff has not provided any evidence to prove the registration of these companies with ZATCA. In light of lack of supporting documents for the Plaintiff's position, and considering that the amounts have already been subjected to Zakat within Zakat base of the investee companies, the Company's share must be subjected to Zakat according to its percentage as stated in the contract. As such, the Department decides to dismiss the Plaintiff's objection. Regarding ... Project, the ... joint venture project with a partnership not registered with ZATCA, lacking financial statements and unpaid Zakat, the deduction cannot be allowed, as its purpose is for sale (development project): Based on the foregoing, and upon reviewing the Case file, it is evident that the project is not registered with ZATCA. Therefore, the Company's share of the profit must be subject to Zakat according to its percentage as stated in the contract. As such, the Department decides to dismiss the Plaintiff's objection. .... Company. Based on the foregoing, and given that two essential conditions must be met for an investment to be considered a long-term investment eligible for deduction from Zakat base: a documented intent from the authorized party clearly stating the purpose of the investment, and the absence of any sales transactions involving these investments during the year. Upon reviewing the Case file, it is evident that ZATCA rejected the deduction for the investment because it involved the purchase of land for development purposes. However, the Plaintiff argued that there has been no activity on these lands and that they were financed from the partners' current accounts. Upon reviewing the attached documents, it is evident that the nature of the investment is the

purchase of vacant land for development purposes, which violates the condition of acquisition. Article (4, Second.1) stipulates that deductions are permitted for assets used in the business, but not for those intended for sale. The Plaintiff has failed to provide any evidence to support this claim. - Appeals Chamber ruled to: Cancel ZATCA's decision regarding .... International Company, ... Technical Contracting Company, and ... Company, Subject matter of the Case, and dismiss all other objections.

Instruments:

- Articles (4.First.2, 8.Second.1, 4.a), (5.1.b), (7.1.a), (20.3) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Saturday, 22/01/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held an e-session to consider the Case filed by ... Company, against ZATCA. Since the Case met the prescribed legal requirements, it was filed with General Secretariat of Tax Committees on 26/04/2021.

The facts of this case are summed up so as... National ID No. (.....) in his capacity as the Plaintiff Company's Legal Representative, pursuant to the commercial register attached to Case file, filed on behalf of ... Company, (C.R. No. ...), an objection to ZATCA's tax assessments for the period from 2015 to 2017, consisting of seven items. First item: Differences in depreciation of fixed assets and fixed assets. Second item: Dividends previously subject to Zakat (Discrepancy). Item Third: Partners' current accounts. Item Fourth: Investments. Item (4. a): .... Company .... Company and .... Company, Item (4.b): .... Project Company and Company ..., Item (4.c): ... Project, Item (4.d): in ... Company

Having presented the statement of claim to Defendant, it responded with an answer summarized as follows: First: Differences in depreciation of fixed assets. Second: Fixed assets, the Defendant explains that it rejected the deduction of depreciation differences from the year's result and the deduction of Defendant explained that it This was based on the financial statements which excluded cars that were not in the Company's name. Third: Dividends previously subject to Zakat (Discrepancy). the Defendant stated that it requested additional information from the Plaintiff on 24/02/1442 AH but the Plaintiff failed to provide any documents, and consequently, its objection was dismissed. Fourth: Partners' current accounts, the Defendant stated that it requested additional information from but the Plaintiff failed to provide any documents, and consequently, its objection was dismissed. Fifth Investments. The Defendant clarified that it rejected the deduction of the item from Zakat base because the deduction criteria were not met for those investments. Therefore, ZATCA requests dismissal of the Case in form, while reserving its right to submit further responses and clarifications before the committees.

On Saturday, 22/01/1444 AH, the Department held e-hearing session to consider the Case. At that session, the Department found that ... appeared in his capacity as attorney of Plaintiff under POA attached to Case file. In addition, ... appeared in his capacity as the representative of Defendant (ZATCA) under POA attached to Case file. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents

that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: The Plaintiff filed this case moving to cancel ZATCA's decision regarding tax assessments for the period from 2015 to 2017. Since this dispute is a tax dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH, and since the Case was filed by a person with capacity and within the period prescribed by Law, it is then accepted in form.

On Merits: The Department, having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, found that the dispute is related to tax assessments made by ZATCA for the period from 2015 to 2017, covering seven items, namely:

First: Differences in depreciation of fixed assets and fixed assets:

The dispute lies in the Plaintiff's objection to the Defendant's action of adding depreciation differences to the net profit and not deducting the related asset for the period from 2015 and 2016. The Plaintiff argues that these assets were used in the business and, therefore, it is entitled to deduct them as acquisition assets, relying on the provisions of paragraph (a.1) of Article (7) and paragraph (1.b) of Article (5) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH. The Plaintiff further adds that the money left its account with the purchase of cars and entered the account of ..., Car Company, and noted that the Defendant had requested the payment of Zakat differences on fixed assets after deducting the fixed assets at book value and excluding the additions of cars, as the Plaintiff considers them to be acquisition assets and not subject to Zakat. However, the Defendant countered that it refused to deduct depreciation differences for 2015 from the year's result and deduct fixed assets based on the financial statements, after excluding cars that are not in the Company's name, and it also refused the depreciation expense for 2016 for cars that are not in the Company's name. After studying the case, the Defendant partially accepted the Plaintiff's request for 2015 and insists on the validity of its action regarding rejecting to deduct depreciation expenses for 2016. Article (5.1) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH on Deductible Expenses stipulates: "Ordinary and necessary expenses of business activity, whether paid or due, to the net result of activity shall be deducted, if meet the following criteria: a. Expenses shall be actual expenses as supported by relevant documents and other evidential matter to enable the Authority to verify the accuracy of expenses, even if related to prior years". Additionally, Article (4.Second.1) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The following items shall be deducted from the Zakat Base: 1- Fixed assets including the following: Net fixed assets (property assets), any payments for the purchase of fixed assets, and spare parts and materials not prepared for sale, provided that such assets be owned by the Zakat payer, unless an obstacle to the transfer of ownership exists, and be used in the

activity". Based on the foregoing, the Upon reviewing the Case file and included documents and defenses, the Department found that the cars do not belong to the Plaintiff; this is because they are registered in the name of an employee. Consequently, they are not considered Company assets and the Plaintiff is not entitled to claim depreciation expenses for them. Moreover, the Plaintiff has not provided any evidence to demonstrate its inability to transfer ownership of these cars to itself. Based on Article (5) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH, the Department decides to reject the Plaintiff's objection.

Second: Dividends previously subject to Zakat (Discrepancy):

The dispute lies in the Plaintiff's objection to the Defendant's action of adding the amounts of SAR (37,504,211), SAR (19,500,809), and SAR (8,931,445), respectively, to Zakat base for the disputed years. The Plaintiff claims that it records the profits and losses of the investee companies in the income statement and that the investee companies pay Zakat independently. Therefore, it excluded these profits from the annual profit to avoid double taxation. It also pointed out that these profits were distributed during the year and were not distributed from retained earnings but from the year's profits. However, the Defendant countered that it requested additional documents from the Plaintiff, which the Plaintiff failed to provide. The Defendant also added that it became clear to it that the distributed profits received from the investee companies were from retained earnings and that Zakat due period had passed, and therefore must be added to Zakat base as they do not belong to the profits of the year. This is because they are distributions that are usually subject to Zakat by the invested company, as they are considered income added to its income in a year following the year in which it was subject to Zakat, and therefore double taxation does not apply. Article (4. First.8) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 8. End of year balance for profits deferred from previous years". Additionally, Article (20.3) of the same Regulations, provides that: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it.". Based on the foregoing, upon reviewing the Case file and included documents and defenses, it is evident that the Plaintiff is claiming a deduction for the dividends received. Referring to the financial statements of the investee companies, it becomes clear that these dividends were made from the retained earnings at the beginning of the year and not from the profits generated during the year; thus, ZATCA's action in transferring the case to the following year is justified. Furthermore, the Plaintiff has not provided any evidence to prove that the dividends received were from the profits of the current year. As such the Department decides to dismiss the Plaintiff's objection.

Third: Partners' current accounts:

The dispute lies in the Plaintiff's objection to the Defendant's action of adding an item to Zakat base for the period from 2015 to 2017, amounting to SAR (66,487,122), SAR (29,581,726), and SAR (99,081,767), respectively. The Plaintiff argues that it has already paid Zakat on the year-end balance of the partners' current account for all the disputed years, considering it the lower balance. The Plaintiff added that it paid Zakat on the annual increase in the current account as financing for some investments, considering them acquisition assets not subject to Zakat. However, the Defendant countered that it requested additional documents from the Plaintiff, which the Plaintiff failed to provide, and added that it included the item in Zakat base due to the completion of the lunar year. Article (4. First.2) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The Zakat base shall

comprise all Zakat Payer's funds subject to Zakat, including: 2. The current credit account of the owner or partner at the beginning or end of the year, whichever is less, as well as the increase in the current account if its source is from equity, or if it was finance for an acquisition asset.". Based on the foregoing, the dispute lies in the Plaintiff's disagreement with the addition of the partner's current account balance as the lunar year has passed. The Plaintiff requested that the addition be made based on the balance at the beginning or end of the period, whichever is lower. However, ZATCA added the balance based on the passing of the lunar year. Consequently, the calculation of the partner's current account involves adding the beginning-of-period balance, less any withdrawals made during the period, which is precisely what ZATCA has done. As for the lower balance, it would be considered only if the Plaintiff fails to provide the necessary transactions. As for the addition of the partner's current account after the completion of the lunar year but before the end of Taxpayer's fiscal year, i.e., before 31/12. The fundamental principle in matters of worship is that Islamic rulings depend on lunar years, and there is no disagreement among scholars on this point, it follows that the lunar year is the basis for all acts of worship, including Zakat. Scholars stipulate that, in addition to reaching Nisab, the completion of a lunar year is a condition for the obligation of Zakat on wealth. ZATCA's practice of using the lunar year for taxpayers who prepare their financial statements and submit their Zakat declarations based on the Gregorian calendar does not conflict with the principle of Zakat stability; accepting such accounts and declarations in this manner is an exception made for the convenience of taxpayers. Moreover, all elements of Zakat base prepared according to the Gregorian year (solar year) have completed a lunar year, given that the solar year is eleven days longer than the lunar year, except for net profit and related items, as these are secondary to the principal and do not require the completion of a lunar year. As such the Department decides to dismiss the Plaintiff's objection.

Fourth: Investments

The dispute lies in the Plaintiff's objection to the Defendant's action of not deducting an amount of SAR (410,887,087), SAR (410,887,087), and SAR (410,759,655) from Zakat base. The Plaintiff argues that it has invested in Saudi companies at varying investment percentages, and it accounts for these investments using either the cost method or the equity method. The Plaintiff also states that it has included the Company that has paid Zakat on its income in its Zakat declaration for the disputed years. Furthermore, there has been no sale of these investments during the disputed years, indicating its intention to hold onto these investments. Moreover, the Plaintiff clarifies that its investments are as follows:

- .... Company For Technical Contracting: The investment balance of SAR (809,941) is a carried-forward balance from previous years since 2000 and has not been adjusted during the disputed years.
- .... Company International Company: The investment balance of SAR (62,719,012) is a carried-forward balance from previous years since 2000 and has not been adjusted during the disputed years.
- .... Projects International Company: The investment balance of SAR (127,960) is a carried-forward balance from previous years since 2009 and has not been adjusted during the disputed years.
- .... Company Saudi Company: The investment balance of SAR (31,521,079) is a carried-forward balance from previous years since 2009 and has not been adjusted during the disputed years.
- .... Company Tourism Establishments Company: The investment balance of SAR (500,000) is a carried-forward balance from previous years since 2014 and has not been adjusted during the disputed years.

- .... Company: The investment balance of SAR (270,209,623) is a carried-forward balance from previous years since 2009 and has not been adjusted during the disputed years.

The Plaintiff asserts that the investment represents a partial contribution to the financing of the purchase and development of vacant land for the '...' project. The Company financed this investment from the Partners' current account in 2009. However, the Defendant countered that it had reviewed the data submitted by the Plaintiff and found that these investments did not meet the criteria for deducting investments from Zakat base. Article (4. Second.4. a) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The following items shall be deducted from the Zakat Base: -4 (A): "Investments in establishments inside the Kingdom - in partnership with others - if such investments are subject to collection of Zakat under these Regulations, if investment in such establishments is not subject to collection, then it shall not be deducted from base". Additionally, Article (4.Second.1) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The following items shall be deducted from the Zakat Base: 2. Zakat Payer's capital buildings under construction and being constructed for use in the activity not for sale" Article (20.3) of the same Regulations provides that: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto".

Regarding .... International Company, ... Technical Contracting Company, and ... Company,

Based on the foregoing, upon reviewing the Case file, it is evident that the Defendant refused to allow a deduction for the investment; this is due to failure of the investee companies to submit financial statements and Zakat declarations to ZATCA. Given that ZATCA has failed to compel these companies to pay Zakat, and failure of the investee companies to pay Zakat does not justify the Plaintiff having to pay Zakat on their behalf, the Department decides to cancel the Defendant's decision.

Regarding ... Holding Company, and ..., Tourism Establishments Company.

Based on the foregoing, upon reviewing the Case file, it is evident that ZATCA did not allow a deduction for the item from Zakat base due to the non-registration of these companies with ZATCA. The Plaintiff has not provided any evidence to prove the registration of these companies with ZATCA. In light of lack of supporting documents for the Plaintiff's position, and considering that the amounts have already been subjected to Zakat within Zakat base of the investee companies, the Company's share must be subjected to Zakat according to its percentage as stated in the contract. As such, the Department decides to dismiss the Plaintiff's objection.

Regarding ... Project, the ... joint venture project with a partnership not registered with ZATCA, lacking financial statements and unpaid Zakat, the deduction cannot be allowed, as its purpose is for sale (development project): Based on the foregoing, and upon reviewing the Case file, it is evident that the project is not registered with ZATCA. Therefore, the Company's share of the profit must be subject to Zakat according to its percentage as stated in the contract. As such, the Department decides to dismiss the Plaintiff's objection.

.... Company: Based on the foregoing, and given that two essential conditions must be met for an investment to be considered a long-term investment eligible for deduction from Zakat base: a documented intent from the authorized party clearly stating the purpose of the investment, and the absence of any sales transactions involving these investments

during the year. Upon reviewing the Case file, it is evident that ZATCA rejected the deduction for the investment because it involved the purchase of land for development purposes. However, the Plaintiff argued that there has been no activity on these lands and that they were financed from the partners' current accounts. Upon reviewing the attached documents, it is evident that the nature of the investment is the purchase of vacant land for development purposes, which violates the condition of acquisition. Article (4, Second.1) stipulates that deductions are permitted for assets used in the business, but not for those intended for sale. The Plaintiff has failed to provide any evidence to support this claim. As such, the Department decides to dismiss the Plaintiff's objection.
For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

First: Cancel Defendant (ZATCA)'s decision against Plaintiff (...) Company TIN No. (...) In connection with .... International Company, ... Technical Contracting Company, and ... Company, Subject of the case.
Second: Dismiss otherwise objections filed by Plaintiff/ ... Company), TIN No. (...) to Defendant/ (ZATCA) decisions regarding zakat assessment subject matter of the Case.
This decision was delivered in presence of the parties. The Department set the date (.... Corresponding to .../.../1444 AH) for receiving a copy of the decision. Either party to the Case may appeal against the decision within thirty days from the day following the date set for the decision, whereafter, the decision will be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1917)
Issued in Appeal No. (Z-40314-2021)

Key words:
Zakat Assessment - Accounts - Real estate investments under construction - Difference in net loss - Profits from tax differences on sales - Zakat Base.

Abstract

The Plaintiff instituted this Case moving to cancel ZATCA's decision regarding Zakat assessment for 2018 AD. The Plaintiff based its objection on three items. First item: Real estate investments under construction for 2018. Second item: Difference in net loss at SAR 4,969, provision for severance pay of SAR 4,969, and other comprehensive loss of SAR 4,000 for 2018. Item Third: Profits from tax differences on sales at %15 for 2018. In response, ZATCA stated that for the first item: Real estate investments under construction, The Defendant clarifies that after conducting an examination, it became evident to it that these investments were not subject to Zakat; this is due to the Plaintiff's failure to provide the financial statements for this project to determine the Company's share. The Defendant further adds that the amount that should be excluded from Zakat base is SAR (150,242,293), not as stated in the assessment at SAR (150,107,863), with a difference of SAR (134,430). With regard to the second item: Adjustments based on unapproved financial statements, the Defendant clarifies that regarding the difference in losses of SAR (4,969), it adjusted the loss from SAR (726,013) to SAR (766,982) based on the financial statements. As for provision for severance pay, the Defendant explains that what is applied to the difference in losses also applies to the difference in the provision. As for other comprehensive losses, the Defendant clarifies that it relied on losses before Zakat, discontinued operations, and comprehensive loss. With regard to the third item: Profits from tax differences on sales at %15 for 2018, the Defendant explains that it adjusted the profits from value-added tax sales by 15% after comparing the amounts recorded in the tax returns with the revenues shown in the financial statements. The Department established that the dispute centers on ZATCA's issuance of Zakat assessment for 2018, covering two items as follows: Real estate investments under construction for 2018: The Department has found that the project is still ongoing and no decision has been made regarding it. The project involves the construction of residential and commercial units, and the Company's share in the project is 60%. The project currently consists only of land. The Plaintiff requests that the project be settled and claims the settlement amount. The Plaintiff argues that ZATCA's actions do not provide a sufficient justification for not settling the project, and furthermore, ZATCA's response did not provide adequate reasoning. With regard to Difference in net loss at SAR 4,969, provision for severance pay of SAR 4,969, and other comprehensive loss of SAR 4,000 for 2018, It appears that the Plaintiff is requesting that the approved financial statements be used as a basis for the calculation, not the draft. Upon reviewing the Defendant's response, it becomes clear that ZATCA has

analyzed the adjusted net loss and stated that it is the same loss as per the financial statements. However, upon examining the income statement, it is evident that ZATCA has based its calculation on the draft, not the approved version. Additionally, ZATCA has reduced the total expenses, and the same applies to the severance pay provision. Regarding other comprehensive income, it has no relevance to the assessment and has not been adjusted. The Department ruled to: Amend the Defendant's action regarding items (Difference in net loss, Provision for severance pay, and Other comprehensive loss), and cancel all other decisions issued by the Defendant regarding the assessment in question.

Instruments:

- Articles (55) and (56) of the Law of Civil Procedures promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH.
- Articles (4.Second.1) and (20.3) of the Implementing Regulations for Zakat Collection issued by Minister of Finance's Resolution No. (2082) dated 01/06/1438 AH.
- Article (20.1) of Tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) dated 21/04/1441 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Sunday, 01/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held its teleconference session to consider the above-mentioned Case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 04/03/2021.

The facts of this case are summed up so as... National ID No. (.....) In his capacity as Plaintiff Company's Attorney under POA attached to Case file, appeared on behalf of ... Development Company Limited, (CR. No. ...), to file an objection to ZATCA's zakat assessment for 2018 AD, covering three items. First item: Real estate investments under construction for 2018. Second item: Difference in net loss at SAR 4,969, provision for severance pay of SAR 4,969, and other comprehensive loss of SAR 4,000 for 2018. Item Third: Profits from tax differences on sales at %15 for 2018.

Upon presenting the case memorandum to the Defendant, the Defendant responded with a reply memo stating that the claims in the case are limited to three items. First item: Real estate investments under construction, The Defendant clarifies that after conducting an examination, it became evident to it that these investments were not subject to Zakat; this is due to the Plaintiff's failure to provide the financial statements for this project to determine the Company's share. The Defendant further adds that the amount that should be excluded from Zakat base is SAR (150,242,293), not as stated in the assessment at SAR (150,107,863), with a difference of SAR (134,430). With regard to the second item: Adjustments based on unapproved financial statements, the Defendant clarifies that regarding the difference in losses of SAR (4,969), it adjusted the loss from SAR (726,013) to SAR (766,982) based on the financial statements. As for provision for severance pay, the Defendant explains that what is applied to the difference in losses also applies to the difference in the provision. As for other comprehensive losses, the Defendant clarifies that it relied on losses before Zakat, discontinued operations, and comprehensive loss. With regard to the third item: Profits from tax differences on sales at %15 for 2018, the Defendant explains that it adjusted the profits from value-added tax sales by 15% after

comparing the amounts recorded in the tax returns with the revenues shown in the financial statements. Therefore, ZATCA requests dismissal of the Case, while reserving its right to submit further responses and clarifications before the committees.
On Sunday, 01/02/1444 AH, the Department held an e-session to consider the Case. Plaintiff's Attorney did not appear despite of being duly notified of session date. On the other hand, ..., appeared in her capacity as Defendant's Representative under authorization, a copy of which is attached to the Case file. Having asked Defendant's Representative about Plaintiff's claim, she maintained the statements included in Defendant's answer and requested the Department to dismiss any new documents that were not provided to Defendant during examination and objection stage. Having asked Defendant's attorney if she had any other statements, they replied negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.
In Form: The Plaintiff intended by filing its case to cancel ZATCA's decision regarding Zakat assessment for 2018. This dispute is Zakat dispute that falls within the jurisdiction of the Committee for the Resolution of Income Tax Violations and Disputes, pursuant to Royal Order No. (26040) dated 21/04/1441 AH. It is established from the Case documents that the Plaintiff filed the Case within the period stipulated by the law and by a person with legal capacity, which necessitates admitting the Case in form.
On Merits: Having taken cognizance of documents included in the Case file, requests, defenses, and pleas raised by parties thereto, the Department found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of Zakat Assessment of 2018, which included the following two items, namely:
First: Real estate investments under construction for 2018:
The dispute lies in the Plaintiff's objection to the Defendant's action of adding the item to Zakat base for the disputed year. The Plaintiff argues that the item is a joint venture for long-term investment, not for trading purposes. The Plaintiff further states that the project is in the stage of obtaining the necessary licenses and therefore is considered a fixed asset under construction. However, the Defendant argued that these investments have not been subject to Zakat, as the financial statements of the project have not been submitted to determine the Company's share. The Defendant also added that the amount that should be excluded from Zakat base is SAR (150,242,293), not the SAR (150,107,863) mentioned in the assessment, with a difference of SAR (134,430). Articles (4. Second.1) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates: "The following items shall be deducted from the Zakat Base: 2. Zakat Payer's capital buildings under construction and being constructed for use in the activity not for sale" Based on the foregoing, and after reviewing Note No. 6, the Department finds that the project is still ongoing and no decision has been made regarding it. The project involves the construction of residential and commercial units, and the Company's share in the project is 60%. The project currently consists only of land. The Plaintiff requests that the project be settled and claims the settlement amount. The Plaintiff argues that ZATCA's actions do not provide a sufficient justification for not settling the

project, and furthermore, ZATCA's response did not provide adequate reasoning. As such, the Department has decided to cancel the Defendant's decision.

Second: Difference in net loss at SAR 4,969, provision for severance pay of SAR 4,969, and other comprehensive loss of SAR 4,000 for 2018:

The dispute lies in the Plaintiff's claim regarding the Defendant's adjustment to the items of net loss, severance pay provision, and other comprehensive loss for the disputed year. The Plaintiff argues that due to their eagerness to submit Zakat declaration on time, it submitted draft financial statements. When the final approved financial statements were issued, it was unable to amend the declaration. However, the Defendant argues that it adjusted the loss to SAR (762,013), while the loss according to the financial statements was SAR (766,982).

Based on the foregoing, and after reviewing the Case file, and considering that the Plaintiff is requesting that the approved financial statements be used as a basis for the calculation, not the draft. Upon reviewing the Defendant's response, it becomes clear that ZATCA has analyzed the adjusted net loss and stated that it is the same loss as per the financial statements. However, upon examining the income statement, it is evident that ZATCA has based its calculation on the draft, not the approved version. Additionally, ZATCA has reduced the total expenses, and the same applies to the severance pay provision. Regarding other comprehensive income, it has no relevance to the assessment and has not been adjusted. As such, the Department decided to amend the Defendant's actions.

Third: Profits from tax differences on sales at %15 for 2018:

The dispute lies in the Plaintiff's claim regarding the Defendant's adjustment of the year-end results by adding the difference in value-added tax sales for the disputed year. The Plaintiff asserts that it is unaware of the basis on which the Defendant calculated the difference in tax sales. The Plaintiff adds that the approved financial statements do not include any revenue from the main activity. However, the Defendant argues that it adjusted the value-added tax sales profits after comparing the sales recorded in the tax return with the revenues shown in the financial statements for 2018. Article (20.3) of the Regulations for Zakat Collection stipulates: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it".

As for failure of Plaintiff's attorney to appear at the hearing session and Department's decision in the Case subject matter of consideration in absentia without an excuse acceptable to the Department, the Department relied on Article (20.1) of Tax Dispute and Violation Committee Procedures that stipulates: "If a plaintiff fails to attend any hearing after being notified of the date set for consideration of the suit without an excuse acceptable to the circuit, the circuit must decide the suit if it is ripe for judgment". In addition, the decision rendered in this case shall be deemed as if rendered in presence of Plaintiff in accordance with Article (56)of the Law of Civil Procedure that states: "In the cases provided for in Article 55 of this Law, if the defendant attends the hearing from which the plaintiff is absent, he may petition the court not to dismiss the case and to render a decision on its merits; in which case, the court shall rule on such case and the judgment shall be considered in absentia with respect to the plaintiff". Since Plaintiff did not submit an acceptable excuse for failure to attend the session, and that the Department has deemed that the Case is ripe for adjudication according to Case documents. Therefore, the Department renders its decision in the Case as if in presence of Plaintiff.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

First: Amend the action issued by the Defendant/ZATCA, against the Plaintiff/ .... Development Company Limited, TIN No. (....), regarding items (difference in net loss, severance pay provision, and other comprehensive loss) for the grounds stated herein.
Second: Cancel other decisions issued by the Defendant/ZATCA, against the Plaintiff/ .... Development Company Limited, TIN No. (....), regarding the assessment in question.
This decision was delivered in presence of the parties. The Department set the date (.... Corresponding to .../.../1442 AH) for receiving a copy of the decision. Either party to the Case may appeal against the decision within thirty days from the day following the date set for the decision, whereafter, the decision will be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1926)
Issued in Appeal No. (ZI-39247-2021)

Key words:
Zakat Tax Assessment - Maintenance and Repair Expenses - Depreciation of Fixed Assets - Severance Pay Provision - Zakat Base - Import Difference - Provision for Potential Losses from Projects - Creditors' Current Accounts - Accounts Payable - Statute of Limitations.

Abstract

Plaintiff instituted this case moving to cancel ZATCA's Decision regarding zakat-tax assessment for 2014 AD. In response, ZATCA stated that with regard to the first item: Depreciation difference of fixed assets: The Defendant adjusted the results for 2014 by a negative difference in depreciation of fixed assets amounting to SAR (3,793,026), as per Schedule (4). Item Second: Maintenance and repair expenses: The Defendant adjusted the results for 2014 by an amount of SAR (3,122,358) in the maintenance and repair expenses item, which exceeded 4% of the remaining value of the groups at the end of the year, as per Schedule (4). Item Third: Import Difference: The Defendant adjusted the results for 2014 by an amount of SAR (3,156,632) in the import difference item, after comparing the declaration with the import statement in the system, considering it an overstated cost. Since the Plaintiff did not provide the necessary documents, its objection was rejected. Item Fourth: Severance Pay Provision: The Defendant adjusted the results for 2014 by an amount of SAR (20,362,298) in the severance pay provision, representing a difference of SAR (630,858) from the severance pay provision that had been accrued and charged to the Company's accounts for the said year, amounting to SAR (19,731,440) as per the financial statements. The Plaintiff's objection was accepted, as it was found that there was an error in the calculation of the provision, as part of the provision that had been accrued and charged to a related party amounting to SAR (630,858) had not affected the income statement or the year-end result, and therefore, the adjustment was made. Item Fifth: Provision for potential losses from projects: The Defendant adjusted the results for 2014 by a provision for potential losses from projects amounting to SAR (5,802,366) based on the financial statements. Item Sixth: Creditors' current accounts: The Defendant added a creditors' current accounts item in 2014 amounting to SAR (21,192,910) due to the passing of a full lunar year. Accounts payable: The Defendant added the item for 2014 based on the data provided by the Plaintiff. The Department established that the dispute centers on the Defendant's issuance of zakat-tax assessment for 2014, which consists of two items, as follows: Statute of limitations: It was found that the Defendant's right to conduct zakat assessment expires after 5 years from the final deadline for submitting the declaration. The Department established that the Defendant conducted zakat-tax assessment for 2014 on 27/09/2020, whereas the prescribed deadline was 30/04/2020. Consequently, the Defendant's right to conduct the assessment has lapsed. This includes the items of

depreciation difference on fixed assets, maintenance and repair expenses, import difference, provision for severance pay, provision for potential losses from projects, creditors' current accounts, and accounts payable. As such, the Department's decision for the first item, which pertains to the statute of limitations, resulted in the cancellation of the Defendant's decision. Consequently, the Department ruled to cancel the Defendant's decision regarding the aforementioned items, as the prescribed period has expired. The Department ruled to: Cancel the Defendant's decision regarding the assessment in question.

Instruments:

- Article (21) of the Implementing Regulations for Zakat Collection issued by Minister of Finance's Decision No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Sunday, 08/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (65474) dated 23/12/1439 AH, held e-hearing session to consider the above-mentioned Case. Since the Case fulfilled the established regulatory requirements, it was lodged with General Secretariat of Tax Committees on 27/02/2021 AD.

The facts of this case are summed up so as... National ID No. (.....) in his capacity as attorney of Plaintiff (... Company), Limited, C.R. No. (...), by virtue of Power of Attorney No. (...) dated 22/10/1441 AH issued by notary public/..., filed an objection to ZATCA's zakat-tax assessment for 2014.

Having presented the statement of claim to Defendant, it answered as follows: Depreciation difference of fixed assets: The Defendant adjusted the results for 2014 by a negative difference in depreciation of fixed assets amounting to SAR (3,793,026), as per Schedule (4) prepared in accordance with Article (17) of the Income Tax Law. Item Second: Maintenance and repair expenses: The Defendant adjusted the results for 2014 by an amount of SAR (3,122,358) in the maintenance and repair expenses item, which exceeded 4% of the remaining value of the groups at the end of the year, as per Schedule (4) prepared in accordance with Article (17) of the Income Tax Law. Item Third: Import Difference: The Defendant adjusted the results for 2014 by an amount of SAR (3,156,632) in the import difference item, after comparing the declaration with the import statement in the system, considering it an overstated cost. Since the Plaintiff did not provide the necessary documents, its objection was rejected. Item Fourth: Severance Pay Provision: The Defendant adjusted the results for 2014 by an amount of SAR (20,362,298) in the severance pay provision, representing a difference of SAR (630,858) from the severance pay provision that had been accrued and charged to the Company's accounts for the said year, amounting to SAR (19,731,440) as per the financial statements. The Plaintiff's objection was accepted, as it was found that there was an error in the calculation of the provision, as part of the provision that had been accrued and charged to a related party amounting to SAR (630,858) had not affected the income statement or the year-end result, and therefore, the adjustment was made. Item Fifth: Provision for potential losses from projects: The Defendant adjusted the results for 2014 by a provision for potential losses from projects amounting to SAR (5,802,366) based on the financial statements, based on Article (15) of the Income Tax Law. Item Sixth: Creditors' current accounts: The Defendant added a creditors' current accounts item in 2014 amounting to SAR

(21,192,910) due to the passing of a full lunar year, based on Article (4) of the Implementing Regulations for Zakat Collection. Accounts payable: Defendant added the item for 2014 based on the statements submitted by the Plaintiff, in accordance with Article (4) of the Implementing Regulations for Zakat Collection. Accordingly, the Defendant requests a ruling to dismiss the case and reserves the right to present further responses and clarifications before the closure of the pleadings.

On Sunday, 08/02/1444 AH, the Department held its session remotely to consider the Case. During this session, Mr. (...) was present in his capacity as the Plaintiff's Attorney, as well as Ms. (...) National ID No. (.....) In her capacity as Defendant/ZATCA representative by virtue of Authorization issued by the Deputy Governor for Legal Affairs under No. (...), dated .../10/1443 AH. Having asked Plaintiff's attorney about the claim, he gave an answer that does not differ from the statements included in the statement of claim lodged with the General Secretariat of Zakat, Tax and Customs Committees. When the Defendant's Representative was confronted with this, she responded by stating that the Defendant had conducted the disputed assessment in accordance with Article (21) of the Zakat Collection Regulations of 1438 AH. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: The Plaintiff intended by filing its case to cancel ZATCA's decision regarding zakat-tax assessment for 2014. This dispute is zakat-tax dispute that falls within the jurisdiction of the Committee for the Resolution of Income Tax Violations and Disputes, pursuant to Royal Order No. (26040) dated 21/04/1441 AH. It is established from the Case documents that the Plaintiff filed the Case within the period stipulated by the law and by a person with legal capacity, which necessitates admitting the Case in form.

On Merits: Having taken cognizance of documents included in the Case file, requests, defenses, and pleas raised by parties thereto, the Department found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of zakat-tax assessment for 2014, which included the following two items, namely:

First: Statute of limitations:

The dispute lies in the Plaintiff's objection to the Defendant's conduct of zakat and tax assessment for 2014, more than 5 years after the due date for filing the declaration. The Plaintiff pointed out that the declaration was filed on 26/04/2015, while the Defendant issued the Adjustment letter on 27/09/2020. Article (21) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH states: "....8. The Authority may make or modify the assessment at any time without being bound by the time limit specified in the following cases: A. The zakat payer agrees in writing to conduct or amend the assessment; B. If the Zakat Payer does not submit his declaration. C. The declaration contained any incorrect information. 10. GAZT may correct the error in applying the Law and instruction during five years as of the end of the term defined for the provision of zakat declaration for the zakat year upon his request, or if such errors were detected by GAZT or supervisory entity. 11. If GAZT detected any error relating to the zakat payer's zakat following the termination of the previous periods,

the zakat payer shall be notified to release himself from any legal liability". Based on the foregoing, the Defendant has the right to conduct zakat assessments expires after 5 years from the final deadline for submitting the declaration. The Department established that the Defendant conducted zakat-tax assessment for 2014 on 27/09/2020, while the prescribed deadline was 30/04/2020. Consequently, pursuant to Article (21) of the aforementioned Zakat Collection Regulation, the Defendant's right to conduct the assessment has lapsed. Therefore, the Department decided to cancel the Defendant's decision.

Second: As for items Depreciation difference of fixed assets, Maintenance and repair expenses, Import Difference, Severance pay provision, Provision for potential losses from projects, Creditors' current accounts, and Accounts payable:

As such, the Department's decision for the first item, which pertains to the statute of limitations, resulted in the cancellation of the Defendant's decision. Consequently, the Department ruled to cancel the Defendant's decision regarding the aforementioned items, as the prescribed period has expired.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- Cancel Defendant/ (ZATCA)'s decision, against the Plaintiff/ .... Company, (TIN ...), related to the assessments subject matter of this case.

This decision was delivered in presence of the parties. The Department set Thursday, 02/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1927)
Issued in Appeal No. (Z-34217-2021)

Key words:
Zakat Assessment- Accounts - Related Parties - Additional Capital - Long-term Loan - Zakat Base - Fixed Assets - Financing fixed assets for sister companies - Financing fixed assets under construction for sister companies.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's Decision regarding Zakat assessment for 2018 AD. In response, ZATCA stated with regard to the first item: Related parties: The Defendant added a related party item to Zakat base, upon completion of the lunar year, based on the financial statements provided by the Plaintiff. As for the second item: Additional capital: The Defendant added the opening balance of the additional capital item to Zakat base at the end of the lunar year, based on the partners' proprietorship statement included in the financial statements. As for the third item: Long-term loan: The Defendant added a long-term loan item to Zakat base because it was obtained to finance fixed assets (fittings and decorations of acquisition assets). As for the fourth item: Financing fixed assets for sister companies: The Defendant added an item for financing fixed assets for sister companies to Zakat base, as it was in exchange for financing additions to fixed assets (acquisition assets), based on the Plaintiff's statement. As for the fifth item: Financing fixed assets under construction for sister companies: The Defendant added the item to Zakat base upon assessment, as it was in exchange for financing additions to fixed assets (acquisition assets), based on the Plaintiff's statement. The Department found that the dispute lies in the Defendant's issuance of Zakat statement for 2018, covering five items, detailed as follows: First: Related parties: The Department found that the Plaintiff failed to provide supporting documents to verify that the lunar year had not passed, nor did it provide a detailed activity of the partner's current account to verify the payment of the opening balance during the year. Second: Additional capital: The Department found that the Plaintiff failed to provide supporting documents to verify that the lunar year had not passed, nor did it provide a detailed activity of the partner's current account to verify the payment of the opening balance during the year. Third: Long-term loans: It was found that the Defendant failed to provide proof that the Plaintiff used the loans to finance fixed assets. Given that loans are considered a component of Zakat base, regardless of their type, source, or classification, provided that the lunar year has passed over them or they were used to finance deducted assets without the requirement of the lunar year passing. fourth: Financing fixed assets for sister companies: It was found that the Plaintiff failed to provide supporting documents or the financial statements to verify that the lunar year had not passed on the item. Fifth: Financing fixed assets under construction for sister companies: It was found that the Plaintiff failed to provide supporting documents or the financial statements to verify that the lunar year had not passed on the item. The Department ruled

to: Cancel the Defendant's decision regarding long-term loan, subject matter of the Case, and dismiss all other objections raised by the Plaintiff regarding the assessment in question.

Instruments:

- Article (4.First.2, 5), (20.3) of the Implementing Regulations for Zakat Collection issued by Minister of Finance's Resolution No. (2082) dated 01/06/1438 AH

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Saturday, 08/02/1444, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/12/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted under Royal Order No. (26760) dated 23/12/1439 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 12/01/2021.

Facts of the case are summed up as follows: Mr. … (ID No....), in his capacity as Attorney of Plaintiff/ ... Ltd Company, (CR No. …), under POA No. (...), dated 17/08/1442 AH, issued from (...), Notary Public, filed an objection to ZATCA's Zakat assessment for 2018. Having presented the statement of claim to Defendant, it answered as follows: Related parties: The Defendant added a related party item to Zakat base, upon completion of the lunar year, based on the financial statements provided by the Plaintiff, in accordance with Article (4) of the Implementing Regulations for Zakat Collection. Item Second: Additional capital: The Defendant added the opening balance of the additional capital item to Zakat base at the end of the lunar year, based on the partners' equity statement included in the financial statements, in accordance with Article (4) of the Implementing Regulations for Zakat Collection. Item Third: Long-term loan: The Defendant added a long-term loan item to Zakat base because it was obtained to finance fixed assets (fittings and decorations of acquisition assets, in accordance with Article (4) of the Implementing Regulations for Zakat Collection. Item Fourth: Financing fixed assets for sister companies: The Defendant added an item for financing fixed assets for sister companies to Zakat base, as it was in exchange for financing additions to fixed assets (acquisition assets), based on the Plaintiff's statement, in accordance with Article (4) of the Implementing Regulations for Zakat Collection. Item Fifth: Financing fixed assets under construction for sister companies: The Defendant, upon assessment, added the item to Zakat base, as it was in exchange for financing additions to fixed assets (acquisition assets), based on the Plaintiff's statement, in accordance with Article (4) of the Implementing Regulations for Zakat Collection. Accordingly, the Defendant requests a ruling to dismiss the case and reserves the right to present further responses and clarifications before the closure of the pleadings.

On Sunday, 08/02/1444 AD, the Department held its session remotely to consider the Case. At that session, Mr. ..., (ID No. ...), appeared in his capacity as Attorney of the Plaintiff under POA No. (...), Dated .../08/1442, issued from (...), Notary Public, and Ms. ..., (ID No...), appeared in her capacity as Representative of the Defendant /ZATCA, by virtue of Authorization No. ... dated .../10/1443 AH issued by Deputy Governor for Legal Affairs. Dated .../10/1443 AH. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the

Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the case to abolish Defendant's decision regarding Zakat Assessment of 2018 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On Merits: Having examined the papers and documents contained in case file, as well as the requests, defenses and pleas made by its parties, the Department found that the Plaintiff objects to the zakat assessment made by the Defendant for the year 2018 AD, specifically in respect of four items, namely:

First: Related parties:

The dispute lies in the Plaintiff's objection to the Defendant's action of adding a related party item to Zakat base for 2018. The Plaintiff argued that the balances are not subject to Zakat, as they are ordinary business transactions and the lunar year has not passed on them. However, the Defendant argued that its action was in accordance with the provisions of the Implementing Regulations for Zakat Collection. Additionally, Article (4. First.5) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) of 01/06/1438 AH stipulates that: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: ... 5. Government and commercial loans or equivalent items of other sources of funds, such as creditors, bills payable, overdrafts due by the Zakat payer in accordance with the following: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. Parts thereof used in trade bids on which a year has passed". Moreover, Article (20.3) stipulates that: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". Based on the foregoing, and upon reviewing the Case file, the Department found that the Plaintiff failed to provide supporting documents to verify that the lunar year had not passed on the related party item. Therefore, the opening or closing balance, whichever is lower, should be added to Zakat base. The amount due to related parties is considered a source of financing and is treated like proprietorship in terms of zakat calculation. Consequently, the amount on which the lunar year has passed must be added to Zakat base. Since the Department has verified the validity of the Defendant's action, the Department decided to reject the Plaintiff's objection.

Second: Additional capital:

The dispute lies in the Plaintiff's objection to the Defendant's action of adding an additional capital item to Zakat base for 2018. The Plaintiff argued that the balances are partner's current account and the lunar year has not passed on them. However, the

Defendant argued that its action was in accordance with the provisions of the Implementing Regulations for Zakat Collection. Additionally, Article (4.First.2) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) of 01/06/1438 AH stipulates that: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 2. The credit current account of owners/ partners at the beginning or end of the year, whichever is less, including any increase in the current account if the source of such increase is a proprietorship item or a funding to an asset of the property". Moreover, Article (20.3) of the same Regulations stipulates that: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the foregoing, and upon reviewing the Case file, the Department found that the Plaintiff failed to provide supporting documents to verify that the lunar year had not passed. Additionally, the Plaintiff did not provide a detailed activity of the partner's current account to verify the settlement of the opening balance during the year. Since the Department has verified the validity of the Defendant's actions, the Department decided to reject the Plaintiff's objection.

Third: Long-term loans:

The dispute lies in the Plaintiff's objection to the Defendant's action of adding a long-term loans item to Zakat base for 2018. The Plaintiff argued that the loans were for financing working capital and the lunar year has not passed on them, citing Fatwa number 6607. However, the Defendant argued that its action was in accordance with the provisions of the Implementing Regulations for Zakat Collection. Additionally, Article (4. First.5) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) of 01/06/1438 AH stipulates that: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: ... 5. Government and commercial loans or equivalent items of other sources of funds, such as creditors, bills payable, overdrafts due by the Zakat payer in accordance with the following: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Based on the above, and upon reviewing the Case file by the Department, it was found that the Defendant failed to provide proof that the Plaintiff used the loans to finance fixed assets. Given that loans are considered a component of Zakat base, regardless of their type, source, or classification, provided that the lunar year has passed over them or they were used to finance deducted assets without the requirement of the lunar year passing, as such the Department decided to cancel the Defendant's decision.

Fourth: Financing fixed assets for sister companies:

The dispute lies in the Plaintiff's objection to the Defendant's action of adding an item for financing fixed assets for sister companies for 2018. The Plaintiff argued that the balances are not subject to Zakat, as they are ordinary business transactions and the lunar year has not passed on them. However, the Defendant argued that its action was in accordance with the provisions of the Implementing Regulations for Zakat Collection. Additionally, Article (4. First.5) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) of 01/06/1438 AH stipulates that: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: ... 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. Parts thereof used in trade bids on which a year has passed". Moreover, Article (20.3) stipulates that: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's

declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the foregoing, and upon reviewing the Case file, the Department found that the Plaintiff failed to provide supporting documents or financial statements to verify that the lunar year had not passed on the item. Therefore, the Department decided to reject the Plaintiff's objection.

Fifth Financing fixed assets under construction for sister companies:

The dispute lies in the Plaintiff's objection to the Defendant's action of adding an item for financing fixed assets under construction for sister companies for 2018. The Plaintiff argued that the balances are not subject to Zakat, as they are ordinary business transactions and the lunar year has not passed on them. However, the Defendant argued that its action was in accordance with the provisions of the Implementing Regulations for Zakat Collection. Additionally, Article (4. First.5) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) of 01/06/1438 AH stipulates that: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans or equivalent items of other sources of funds, such as creditors, bills payable, overdrafts due by the Zakat payer in accordance with the following: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. Parts thereof used in trade bids on which a year has passed". Moreover, Article (20.3) stipulates that: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the foregoing, and upon reviewing the Case file, the Department found that the Plaintiff failed to provide supporting documents or financial statements to verify that the lunar year had not passed on the item. Therefore, the Department decided to reject the Plaintiff's objection.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

First: Cancel the decision of the Defendant/ ZATCA) against the Plaintiff/ ... Ltd Company, (TIN No. ...) regarding item (Long-term Loan), subject matter of the Case.

Second: Dismiss all other objections of the Plaintiff/ .....Ltd Company, (TIN No. ....), to the decision of the Defendant/ ZATCA in relation to Zakat assessment, subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Thursday, 02/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1968)
Issued in Appeal No. (ZI-35320-2021)

Key words:
Zakat-Tax Assessment End of Service Gratuity Expense - Depreciation and Net Book Value - Foreign Partner's Share of Used Provisions - Long-Term Receivables - Non-Current Receivables.

Abstract

The Plaintiff instituted this Case moving to cancel ZATCA's Decision regarding Zakat-tax assessment for 2018 AD. In response, ZATCA stated with regard to the first item: End-of-service gratuity expense, ZATCA responded by stating that it added a component balance of SAR (550,000). As for Item Second (Suppliers): Depreciation and net book value, ZATCA stated that it calculated the differences in depreciation of fixed assets for 2018 based on Zakat Payer's declaration. The difference in the value of the depreciation item, amounting to SAR (839,293) according to Zakat Payer's declaration, was taken into account. Regarding the third item: Foreign partner's share of used provisions, ZATCA stated that it deducted a total of SAR (5,763,752) from the used provisions. Regarding the fourth item: Long-term receivables, ZATCA stated that it did not deduct the long-term receivables amount of SAR (13,894,000) from Zakat base. Regarding the fifth item: Non-current receivables, ZATCA did not deduct the non-current receivables item (relevant party liability) amounting to SAR (22,501,000) from the Zakat base components. The Department found that the Defendant issued a zakat-tax assessment for 2018, covering five items, as detailed below: End of Service Gratuity Expense: It was evident that the Defendant's action did not have any impact on zakat base or tax base. This is because the Plaintiff added the adjustments to net income as two separate amounts, while the Defendant added them as a single amount to the adjusted net profit. Since the change affected the adjusted net income, it in turn affected both the tax base and the zakat base. Besides, the Plaintiff did not prove that the Defendant's action resulted in additional tax liabilities. Depreciation and Net Book Value: It was evident that the Defendant relied on the Plaintiff's declaration. It was also clear that the depreciation differences mentioned in the declaration matched the amount disputed by the Plaintiff. Besides, the Plaintiff did not provide a response to the Defendant's statement. Foreign Partner's Share of Used Provisions: It was evident that the Plaintiff presented supporting documents for the provisions, which showed that the usage during the year amounted to SAR (6,807,752), after taking into account the usage and the reversed balance in the account. Meanwhile, the Defendant did not provide reasons for calculating the usage at SAR (5,763,752). Long-Term Receivables: It was evident that the debit balances were not offset by any credit balances added to Zakat base. Furthermore, the disputed item was not specified as an allowable deduction in the Zakat Collection Regulations. Non-Current Receivables: The Department established that the dispute between the parties to the Case has been resolved;

as the Defendant accepted the Plaintiff's claims as stated in the Defendant's reply memorandum. The Department ruled to: Confirm resolution of the Plaintiff's dispute regarding the non-current receivables subject matter of the Case, due to the Defendant's acceptance of the Plaintiff's request in this matter, cancel the Defendant's decision regarding the foreign partner's share of used provisions, subject matter of the Case, and dismiss all other objections raised by the Plaintiff.

Instruments:

- Article (7) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH.
- Articles (55), (56) and (70) of the Law of Civil Procedure promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH.
- Articles (4.First.9), (7.13) and (20.3) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH
- Articles (9.6) and (57.3) of the Implementing Regulations of the Income Tax Law, issued by Minister of Finance's Decision No. (1535) dated 11/06/1425 AH.
- Article (70/ 1) of The Implementing Regulations of Procedure before Sharia Departments issued by the Minister of Justice Resolution No. (39933) dated 05/19/1435 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Sunday, 13/11/1443 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and Royal Order No. (65474) of 23/12/1439 AH, held its session to consider the above-mentioned Case. Since the Case met the prescribed statutory requirements, it was filed with the General Secretariat of Tax Committees on 25/01/2021 AD under the above number.

The facts of this case are summed up so as... National ID No. (.....) in her capacity as Attorney of the Plaintiff/ Factory, ... Company Limited, C.R. No. (...), Pursuant to POA No. (.....); submits its objection to Zakat-tax assessment for 2018 AD issued by ZATCA. Having presented the statement of claim to Defendant, it answered as follows: End-of-service gratuity expense, ZATCA responded by stating that it added a component balance of SAR (550,000). As for Item Second (Suppliers): Depreciation and net book value, ZATCA stated that it calculated the differences in depreciation of fixed assets for 2018 based on Zakat Payer's declaration. The difference in the value of the depreciation item, amounting to SAR (839,293) according to Zakat Payer's declaration, was taken into account. Regarding the third item: Foreign partner's share of used provisions, ZATCA stated that it deducted a total of SAR (5,763,752) from the used provisions. Regarding the fourth item: Long-term receivables, ZATCA stated that it did not deduct the long-term receivables amount of SAR (13,894,000) from Zakat base. Regarding the fifth item: Non-current receivables, ZATCA did not deduct the non-current receivables item (relevant party liability) amounting to SAR (22,501,000) from the Zakat base components.

On Sunday, 13/11/1443 AH, the Department held a remote session to hear the case, in which no one representing the Plaintiff was present, despite being duly notified of the session. However, the session was attended by Ms. .... holder of National ID No. (...), appeared in his capacity as Defendant (ZATCA) representative under ZATCA Vice Governor for Legal Affairs No. (...) dated .../10/1443 AH. Having asked Defendant's

Representative about Plaintiff's claim, she maintained the statements included in Defendant's answer and requested the Department to dismiss any new documents that were not provided to Defendant during examination and objection stage. Having asked Defendant's attorney if she had any other statements, they replied negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: The Plaintiff intended by filing its case to cancel ZATCA's decision regarding zakat-tax assessment for 2018. This dispute is zakat dispute that falls within the jurisdiction of the Committee for the Resolution of Income Tax Violations and Disputes, pursuant to Royal Order No. (26040) dated 21/04/1441 AH. It is established from the Case documents that the Plaintiff filed the Case within the period stipulated by the law and by a person with legal capacity, which necessitates admitting the Case in form.

On Merits: Having taken cognizance of documents included in the Case file, requests, defenses, and pleas raised by parties thereto, the Department found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of zakat-tax assessment for 2018, which included the following Five items, namely:

First: End of Service Gratuity Expense:

The dispute lies in the Plaintiff's objection to the Defendant's action of adding a provision for end-of-service gratuity that differs from what was stated in the financial statements. However, the Defendant argued that it added a balance of SAR (550,000), which represents the expenses incurred and transferred to related parties. Additionally, Article (4. First.9) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates that: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 9. Provisions of year beginning (except provisions of doubtful debts for banks) after deducting the used provisions throughout the year". In addition, Paragraph (3) of Article (20) of the same Regulations states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it.". Based on the aforementioned, upon reviewing the Case file by the Department, it was evident that the Defendant's action did not have any impact on Zakat base or tax base. This is because the Plaintiff added the adjustments to net income as two separate amounts, while the Defendant added them as a single amount to the adjusted net profit. Since the change affected the adjusted net income, it in turn affected both the tax base and the Zakat base. Besides, the Plaintiff did not prove that the Defendant's action resulted in additional tax liabilities. As such, the Department concludes by rejecting the Plaintiff's objection.

Second: Depreciation and Net Book Value:

The dispute lies in the Plaintiff's objection to the Defendant's method of calculating depreciation for the Saudi partner using the declining balance method, whereas the Plaintiff calculated depreciation using the fixed installment method. However, the Defendant argued that it calculated the item in accordance with Article (7) of the Zakat Regulations, Article (17) of the Tax Law, and based on Article (7.13) of the Implementing Regulations

for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH which states: "Mixed Companies shall observe the depreciation method contained in Article 17 of the Income Tax Law, for the purpose of identifying the company's tax base. The company may, if desires, apply the same method to identify the Zakat Base for Saudi nationals and others accorded similar treatment as Saudi nationals; or use the method contained in the clauses above". Additionally, Article (20.3) of the same Regulations states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it.". Based on the above, upon reviewing the Case file by the Department, it was evident that the Defendant relied on the Plaintiff's declaration. It was also clear that the depreciation differences mentioned in the declaration matched the amount disputed by the Plaintiff. Besides, the Plaintiff did not provide a response to what the Defendant stated, as such, the Department concludes by rejecting the Plaintiff's objection.

Third: Foreign Partner's Share of Used Provisions:

The dispute lies in the Plaintiff's objection to the Defendant's action of refusing to deduct a portion of the foreign partner's share of the used provisions. Given that the used provisions amount to SAR (6,807,563), the foreign partner's 40% share should be SAR (2,723,025). However, the Defendant argued that its action was in accordance with the provisions of the Implementing Regulations of the Income Tax Law and specifically based on Article (9.6) of the Implementing Regulations of the Income Tax Law issued by Minister of Finance Resolution No. (1535) dated 11/06/1425 AH stipulating: "6. Taxpayer may reduce its book profits by the amount of a reserve used during the year or by the amount that had been readjusted to increase income or decrease expenses in the year of formation, including but not limited to funds allocated for end-of-service award, doubtful debts, and decreases in prices, subject to the following conditions: A. Amounts used from the allocated funds were paid or accrued during the taxable year and supported by documents; B. Allocated fund had been readjusted in the year of formation". Article (57.3) of the same states as follows: "The burden of proof of correctness of information in the taxpayer's return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information.". Based on the above, upon reviewing the Case file by the Department, it was evident that the Plaintiff presented supporting documents for the provisions, which showed that the usage during the year amounted to SAR (6,807,752), after taking into account the usage and the reversed balance in the account. Meanwhile, the Defendant did not provide reasons for calculating the usage at SAR (5,763,752). As such, the Department concludes by rejecting the Plaintiff's objection.

Fourth: Long-Term Receivables:

The dispute lies in the Plaintiff's objection to the Defendant's action of refusing to deduct the long-term trade receivables from zakat base. The Plaintiff pointed out that the receivables in the financial statements amount to SAR (13,894,000), and stated that the funds in dispute are not in its possession and they do not have the ability to dispose of them, and therefore zakat is not due on them, as they are considered reserved funds not used in the Plaintiff's business and that they do not generate profits or returns on these withheld funds. To avoid paying Zakat on these funds, the Plaintiff is requesting that the receivables be deducted from zakat base. However, the Defendant argued that it did not accept deducting the item because they are amounts due and there is no corresponding

credit balance. Article (20.3) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH states: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the foregoing, and upon reviewing the Case file by the Department, it was evident that the debit balances were not offset by any credit balances added to Zakat base. Furthermore, the disputed item was not specified as an allowable deduction in the Zakat Collection Regulations. As such, the Department concluded by rejecting the Plaintiff's objection.

Fifth Non-Current Receivables:

In accordance with Article (70) of the Law of Civil Procedure promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgement, settlement, or the like in the case record, and the court shall issue a deed to that effect". In addition, Paragraph (1) of Article (70) of the Implementing Regulations of the Law of Civil Procedures issued by Minister of Justice Decision No. (39933) dated 19/05/1435 states: "If an agreement is reached prior to entering the case, the text of the case and the answer shall be entered prior to entering such agreement, provided that the original case falls within the jurisdiction of the circuit, even if the text of the agreement falls within the jurisdiction of another court or circuit and the object of the case or portion thereof is agreed upon". Based on the foregoing, the Department established that the dispute between the parties to the Case has been resolved as the Defendant accepted the Plaintiff's claims as stated in the Defendant's reply memorandum which included: "There is no objection to accepting Zakat Payer's appeal to deduct the aforementioned amount from Zakat base".

As for the absence of the Plaintiff and his attorney from the hearing despite being duly notified, and based on Paragraph (1), Article (20) of Tax Dispute and Violation Committee Procedures, which stipulates that: "If a Plaintiff fails to attend any hearing after being notified of the date set for consideration of the suit without an excuse acceptable to the Department, the Department must decide the suit if it is ripe for judgment". Furthermore, Article 56 of the Law of Civil Procedures provides that: "In the cases provided for in Article 55 of this Law, if the Defendant attends the hearing from which the Plaintiff is absent, he may petition the court not to dismiss the case and to render a decision on its merits; in which case, the court shall rule on such case and the judgment shall be considered in absentia with respect to the Plaintiff"; and since the Plaintiff's attorney did not submit an acceptable excuse for absence from the session; and since the Department determined that the case is ripe for adjudication, it therefore delivers its decision in this case in presence of the Plaintiff.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

First: Confirm resolution of the dispute involving the Plaintiff/ Factory ... (TIN ...), And the Defendant/ ZATCA regarding the non-current receivables item, subject matter of the Case, as the Defendant accepted the Plaintiff's request in this regard.

Second: Cancel the decision issued by the Defendant/ ZATC against the Plaintiff/ Factory, ... Company (TIN ...), Regarding the foreign partner's share of used provisions, subject matter of the Case.

Third: Dismiss all other objections filed by the Plaintiff/ Factory, ... Company (TIN ...), to the decision issued by the Defendant/ZATCA in relation to the assessment in question.

This decision was delivered in presence of the parties. The Department set Sunday, 12/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1973)
Issued in Appeal No. (Z-38388-2021)

Key words:
Zakat Assessment - Accounts - Loans and the Like - Accrued Expenses - Unsubstantiated Miscellaneous Expenses - Zakat Base - Related Parties - Bad Debts - Unsubstantiated External Purchases - Loans Funding Fixed Assets.

Abstract

The Plaintiff instituted this Case moving to cancel ZATCA's decision regarding Zakat assessment for the period from 2016 to 2018 AD. The Plaintiff's objection centers on the following items: Item First Loans and the Like for 2016, 2017, and 2018 AD: The Plaintiff objects to the Defendant's action of adding either the beginning or the end of the period, whichever is less, to Zakat base, arguing that the year for calculating Zakat is supposed to have passed. It has attached a statement of short-term loans, indicating that the balance for which the full lunar year passed in 2016 was SAR (15,694,975). However, for the years 2017 and 2018, a full lunar year has not yet passed. Item Second: Accrued Expenses for 2016 and 2017: The Plaintiff objects to the Defendant's action of adding either the beginning or the end of the period balance, whichever is less, to Zakat base. It argues that the details of the balances subject to Zakat this year include due expenses. The Company uses the accrual basis of accounting, not the cash basis, for recording its financial transactions. It maintains that these expenses meet the requirements for accrual accounting and there is no likelihood of them not being paid in the future. Item Third: Unsubstantiated Miscellaneous Expenses for 2016, 2017, and 2018: The Plaintiff objects to the Defendant's action of including miscellaneous expenses totaling SAR (710,377) in Zakat base for the disputed years. It argues that these expenses are not supported by any documentation and it has been unable to understand how ZATCA calculated these amounts. Therefore, it requests that the assessment be adjusted due to lack of supporting documents for the aforementioned amount. Item Fourth: Related Parties for 2016. Item Fifth: Bad Debts for 2016: The Plaintiff objects to the Defendant's action of including a bad debts item, arguing that the amounts paid, as detailed in the statement of account it submitted in its objection, are the amounts that were actually settled. Item Sixth: Unsubstantiated External Purchases for 2018: The Plaintiff objects to the Defendant's action of including the import price difference profit in Zakat base. It argues that ZATCA has incorrectly included an item for external purchases worth SAR (786,304), which is not supported by any documentation. The Plaintiff has been unable to understand how this amount was calculated and is unaware of the required supporting documents. Item Seventh: Loans Funding Fixed Assets for 2018: The Plaintiff objects to the Defendant's action of including loans in Zakat base. ZATCA added an amount of SAR (6,157,256) to Zakat base, classifying it as asset additions converted from loans. The Plaintiff disagrees with this, arguing that there was sufficient cash available, as evident in the cash flow statement. It claims that these assets were

financed by the cash balance carried over from the previous year, which amounted to SAR (22,566,108). The Plaintiff has attached a copy of the audited financial statements for the fiscal year ended 31 December 2018, to support its claim. In response, ZATCA stated that regarding item (loans and the like), it added this to Zakat base, as a full lunar year has passed on it according to the statement submitted by the Plaintiff. As for the short-term revolving loans for 2017 and 2018, ZATCA added the lower of the beginning or end of the period balance for these loans. As for item (accrued expenses), ZATCA added it to Zakat base. With respect to item (unsubstantiated miscellaneous expenses), the Plaintiff failed to provide the necessary supporting documents. Consequently, its objection was dismissed. With respect to item (bad debts for the period from 2016 to 2018), the Plaintiff failed to provide the required documentation; therefore, its objection was rejected. Similarly, concerning item (unsubstantiated external purchases for 2018), the Plaintiff did not submit the necessary documents; consequently, its objection was dismissed. With respect to item (loans funding assets in 2018), since the Plaintiff failed to conduct and provide a cash flow analysis, ZATCA performed the analysis to determine the source of funding for the assets. The Department found that the dispute centers on the Defendant's issuance of Zakat assessment for 2018, specifically regarding the following items: Loans and the Like for the period from 2016 to 2018: It appears that the Plaintiff has scheduled the movement of the disputed loans in its objection statement, which indicated that only SAR (15,694,975) for 2016 have completed the lunar year. Additionally, it appears from the Defendant's reply memorandum that it accepted the Plaintiff's objection for 2016 by adding the balance that has completed the lunar year amounting to SAR (15,694,975). As a result, the Department concludes that the dispute for 2016 has been resolved. As for the period 2017-2018, upon reviewing the financial statements related to the loans for 2017-2018, it appears that the loans are named short-term revolving loans. If there is an error in the financial statements, the Plaintiff should submit a detailed movement for each loan and for each bank to verify the payment in this regard. For unsubstantiated miscellaneous expenses for 2016 to 2018: It appears from Zakat calculation of accrued expenses that they are subject to Zakat assessment when the lunar year is completed. And upon reviewing the documents of both parties, it appears that the Plaintiff has not provided a detailed movement of the accrued expenses. As such for unsubstantiated miscellaneous expenses for 2016 to 2018: It appears that the dispute regarding this item is a documentary dispute, and the Plaintiff has not attached the required documents. Regarding item Related parties for 2016: It has been proven that the dispute has ended, due to the Defendant's acceptance of the item in the document notifying the rejection of the objection request. Regarding item Bad debts for 2018: It appears that the dispute regarding this item is a documentary dispute. After reviewing the Case file and its contents of defenses and documents, it appears that the Plaintiff has not attached the documents proving that it has fulfilled the conditions for deducting bad debts as stated above. Regarding item unsubstantiated external purchases for 2018: It is evident that the Plaintiff failed to provide sufficient evidence to substantiate its claims regarding the discrepancies in the imports. Furthermore, it has not submitted any documentation to support the arguments outlined in its statement of claim. Consequently, the Defendant's decision to adjust the Plaintiff's business results based on these discrepancies is justified. Regarding item loans funding fixed assets for 2018: The cash flow statement within the financial statements, along with the Company's net cash position, reveals that the Company's available cash exceeds the value of additions made to long-term assets. Consequently, the burden of proof lies with the Defendant to demonstrate that the loans were utilized to finance these assets. The Department ruled to: Establish resolution of the dispute regarding item loans and the like for 2016 and item related parties for 2016, due to the Defendant's acceptance of the Plaintiff's requests in this matter, cancel the Defendant's decision regarding item loan funding fixed assets in

2018, and dismiss otherwise objections submitted by the Plaintiff in relation to the disputed assessment.

Instruments:

- Article (70) of the Law of Civil Procedure promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH.
- Article (4.First.5), (5.3), (6.2), and (20.3) of the Implementing Regulations for Zakat Collection issued by Minister of Finance's Resolution No. (2082) dated 01/06/1438 AH.
- Article (70/ 1) of The Implementing Regulations of Procedure before Sharia Departments issued by the Minister of Justice Resolution No. (39933) dated 05/19/1435 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Saturday, 07/02/1444, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, and reconstituted under Royal Order No. (26760) dated 23/12/1439 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 22/02/2021.

The facts of this case are summed up so as... National ID No. (.....) in his capacity as Attorney of the Plaintiff Company …., Trading Company limited, (C.R. No. ...), under POA No. (...), filed an objection to ZATCA's Zakat assessment for the period from 2016 to 2018. The objection pertains to the following items: Item First Loans and the Like for 2016, 2017, and 2018 AD: The Plaintiff objects to the Defendant's action of adding either the beginning or the end of the period, whichever is less, to Zakat base, arguing that the year for calculating Zakat is supposed to have passed. It has attached a statement of short-term loans, indicating that the balance for which the full lunar year passed in 2016 was SAR (15,694,975). However, for the years 2017 and 2018, a full lunar year has not yet passed. Item Second: Accrued Expenses for 2016 and 2017: The Plaintiff objects to the Defendant's action of adding either the beginning or the end of the period balance, whichever is less, to Zakat base. It argues that the details of the balances subject to Zakat this year include due expenses. The Company uses the accrual basis of accounting, not the cash basis, for recording its financial transactions. It maintains that these expenses meet the requirements for accrual accounting and there is no likelihood of them not being paid in the future. Item Third: Unsubstantiated Miscellaneous Expenses for 2016, 2017, and 2018: The Plaintiff objects to the Defendant's action of including miscellaneous expenses totaling SAR (710,377) in Zakat base for the disputed years. It argues that these expenses are not supported by any documentation and it has been unable to understand how ZATCA calculated these amounts. Therefore, it requests that the assessment be adjusted due to lack of supporting documents for the aforementioned amount. Item Fourth: Related Parties for 2016. Item Fifth: Bad Debts for 2016: The Plaintiff objects to the Defendant's action of including a bad debts item, arguing that the amounts paid, as detailed in the statement of account it submitted in its objection, are the amounts that were actually settled. Item Sixth: Unsubstantiated External Purchases for 2018: The Plaintiff objects to the Defendant's action of including the import price difference profit in Zakat base. It

argues that ZATCA has incorrectly included an item for external purchases worth SAR (786,304), which is not supported by any documentation. The Plaintiff has been unable to understand how this amount was calculated and is unaware of the required supporting documents. Item Seventh: Loans Funding Fixed Assets for 2018: The Plaintiff objects to the Defendant's action of including loans in Zakat base. ZATCA added an amount of SAR (6,157,256) to Zakat base, classifying it as asset additions converted from loans. The Plaintiff disagrees with this, arguing that there was sufficient cash available, as evident in the cash flow statement. It claims that these assets were financed by the cash balance carried over from the previous year, which amounted to SAR (22,566,108). The Plaintiff has attached a copy of the audited financial statements for the fiscal year ended 31 December 2018, to support its claim.

Having presented the statement of claim to the Defendant, it responded with a Reply dated 01/06/2021 as follows: With regard to item (Loans and the like), for the long-term loan for 2016, ZATCA added it to Zakat base, as it completed a full lunar year according to the activity submitted by the Plaintiff, based on Article (4.5) of the Implementing Regulations for Zakat Collection. For the short-term revolving loans of 2017 and 2018, ZATCA added the opening or closing balance, whichever was lower, of the short-term revolving loans, based on Article (4.5) of the Implementing Regulations for Zakat Collection. With regard to item (Accrued expenses), ZATCA added this item to Zakat base relying on Article (4.5) of the Implementing Regulations for Zakat Collection. With regard to item (Unsubstantiated miscellaneous expenses), the Plaintiff did not provide the required documents, therefore its objection was rejected based on Article (6.2) and Article (20.3) of the Implementing Regulations for Zakat Collection. Regarding item (Bad debts for the period from 2016 to 2018), the Plaintiff did not provide the required documents, therefore its objection was rejected based on Article (5.3) of the Implementing Regulations for Zakat Collection. With regard to item (Unsubstantiated external purchases for 2018), the Plaintiff did not provide the required documents, therefore its objection was rejected based on Article (20.3) of the Implementing Regulations for Zakat Collection. With regard to item (Loans funding assets in 2018), given that the Plaintiff failed to conduct a "cash flow analysis" and provide it to ZATCA, ZATCA conducted the analysis to determine the source of the assets' financing. ZATCA based its procedure on Article (4.5. First) of the Implementing Regulations for Zakat Collection. As such, ZATCA maintains the validity and soundness of its action and requests the Department to dismiss the Case.

On Saturday, 07/02/1444 AH, the Department held a remote session to consider the Case. Having called the litigants, the Department found that Mr. .... appeared in his capacity as Attorney of the Plaintiff under the POA attached to Case file. In addition, Ms. .... appeared in her capacity as Representative of the Defendant/ ZATCA under the Authorization attached to Case file. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations

issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: The Plaintiff filed this case moving to cancel ZATCA's decision regarding Zakat assessment for the period from 2016 to 2018. Since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Resolution of Excise Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH, and since the case was filed by a person with capacity, and within the period prescribed by law, it is therefore accepted in form.

On merits, upon Department's review of the documents and evidence contained in the case file, as well as the requests, defenses, and arguments presented by the parties, it became evident to the Department that the dispute centers on Defendant's issuance of the tax assessment for 2018, specifically concerning the objection related to the following items:

First: Loans and the Like for the period from 2016 to 2018:

The Plaintiff objects to the Defendant's inclusion of either the beginning or the end of the period, whichever is less, to Zakat base. However, the Defendant argued that it added the item to zakat base in accordance with Article (4.5) of the Zakat Collection Regulations. Article (4. First.5) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH states: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: ... 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Based on the foregoing, and upon reviewing the documents submitted by both parties, it is evident that the Plaintiff has scheduled the movement of the disputed loans in its objection statement, which indicated that only SAR (15,694,975) for 2016 have completed the lunar year. Additionally, it appears from the Defendant's reply memorandum that it accepted the Plaintiff's objection for 2016 by adding the balance that has completed the lunar year amounting to SAR (15,694,975). As a result, the Department concludes that the dispute for 2016 has been resolved. As for the period 2017-2018, upon reviewing the financial statements related to the loans for 2017-2018, it appears that the loans are named short-term revolving loans. If there is an error in the financial statements, the Plaintiff should submit a detailed movement for each loan and for each bank to verify the payment in this regard. Therefore, the Department concludes by rejecting the Plaintiff's objection and upholding the Defendant's decision regarding the years 2017 and 2018.

Second: Accrued Expenses for 2017 and 2018:

The Plaintiff objects to the Defendant's inclusion of either balance of the beginning or the end of the period, whichever is less, to Zakat base. However, the Defendant argued that it added the item to zakat base in accordance with Article (4.5) of the Zakat Collection Regulations. Article (4. First.5) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH states: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: ... 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Additionally, Article (20.3) of the same Regulations states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as

well as the data available to it" Based on the foregoing, it is evident that zakat calculation of accrued expenses indicates that they are subject to zakat base when the lunar year is completed. Upon reviewing the documents of both parties, it is clear that the Plaintiff has not provided a detailed movement of the accrued expenses. Therefore, the Department concluded by rejecting the Plaintiff's claim and upholding the Defendant's decision.

Third: Unsubstantiated Miscellaneous Expenses for the period from 2016 to 2018:

The Plaintiff objects to the Defendant's action of subjecting various expenses to zakat for the disputed years, on the grounds that it is not supported by any documentary evidence, even though the Plaintiff was unable to ascertain how the amounts were calculated. However, the Defendant argued that the Plaintiff did not provide the required documents, and therefore its objection was rejected based Article (6.2) and Article (20.3) of the Zakat Collection Regulations. Article (6.2) of the Implementing Regulations for Zakat Collection issued by Minister of Finance's Decision No. (2082) dated 01/06/1438 AH states: "Expenses that the Zakat Payer fails to prove by supporting documents or other evidential matter". Additionally, Article (20.3) of the same Regulations states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it" Based on the foregoing, and given that the dispute over this item is a documentary one, and since the Plaintiff has not attached the required documents, the Department therefore concluded by rejecting the Plaintiff's objection and upholding the Defendant's decision.

Fourth: Relevant Parties for 2016:

Article (70) of the Law of Civil Procedure promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH states: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgement, settlement, or the like in the case record, and the court shall issue a deed to that effect" and based on paragraph (1) of Article (70) of the Implementing Regulations of the Law of Civil Procedures issued by Minister of Justice Decision No. (39933) dated 19/05/1435 AH stipulating that: "If an agreement is reached prior to entering the case, the text of the case and the answer shall be entered prior to entering such agreement, provided that the original case falls within the jurisdiction of the circuit, even if the text of the agreement falls within the jurisdiction of another court or circuit and the object of the case or portion thereof is agreed upon". Based on the foregoing, and given that it has been established that the dispute has ended with the Defendant's acceptance of the item in the notice of rejection of the objection, the Department has therefore concluded by ruling that the dispute over this item has been resolved.

Fifth Bad Debts Item for 2018:

The Plaintiff objects to the Defendant's action of including the bad debts provision, arguing that the amounts paid, as reflected in the detailed movement statement provided by the Plaintiff in its objection statement, are the amounts actually used. However, the Defendant argued that the Plaintiff failed to provide the required documents and therefore its objection was rejected in accordance with Article (5.3) of the Zakat Collection Regulations. Article (5.3) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH states: "Bad debts shall be deemed as expenses eligible for deduction, if meet the following criteria: a. Debts shall have been previously declared within revenues in the year when the revenue was due. b. Debts shall be derived from exercising the activity. c. The Zakat Payer shall provide a certificate from a certified public accountant licensed to operate in the Kingdom, confirming that the debts are written-off by resolution of the authorized person. d. The debts may not be payable by bodies associated with the Zakat Payer. (f) Zakat Payer

undertakes to reinstate as income any written off debt whenever collected". Additionally, Article (6.2) of the same Implementing Regulations stipulates: "Expenses that the Zakat Payer fails to prove by supporting documents or other evidential matter". Moreover, Article (20.3) of the same Resolutions states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it" Based on the foregoing, it appears that the dispute regarding this item is a documentary dispute. After reviewing the Case file and its contents of defenses and documents, it appears that the Plaintiff has not attached the documents proving that it has fulfilled the conditions for deducting bad debts as stated above. Therefore, the Department concluded by rejecting the Plaintiff's claim and upholding the Defendant's decision.

Sixth: Unsubstantiated External purchases for 2018:

The Plaintiff objects to the Defendant's action of including the profit margin on imports in zakat base, arguing that it was unable to ascertain the calculation of these amounts and could not locate the required documents. However, the Defendant contended that the Plaintiff failed to provide the necessary documents, and therefore its objection was rejected based Article (20.3) of the Zakat Collection Regulations. Article (21.3) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it" Based on the above, and since the imports statement issued by ZATCA is a basic presumption from an independent third party, and upon reviewing the case file, it becomes clear that the Defendant amendment of Plaintiff business results is due to differences in the value of imports included in Plaintiff return compared to the imports according to the customs statement. Upon reviewing the documents attached to the case file, it becomes clear that Plaintiff did not provide the necessary conformity to clarify the reasons and justifications for the imports differences, nor did it provide the documents supporting its point of view stated in its statement of claim, which shows the correctness of Defendant amendment of Plaintiff business results with those differences, which results in the Department rejecting Plaintiff objection and affirming Defendant decision with regard to this item.

Seventh: Loans Funding Fixed Assets for 2018:

The Plaintiff objects to the Defendant's action of including loans in zakat base, arguing that these assets were financed by cash carried over from the previous year. However, the Defendant argued that due to the Plaintiff's failure to conduct a "cash analysis" and provide it to ZATCA, ZATCA conducted the analysis to determine the source of funding for the assets. ZATCA based its action on Article (4. First .5) of the Zakat Collection Regulations. Article (4. First .5) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH. stipulates: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans, as well as other similar sources of financing such as creditors, promissory notes, and overdraft accounts owed by Taxpayer, are handled as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. The portion used for trading assets and for which a full year has passed. Additionally, Article (20.3) of the same Regulations states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove

its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it" Based on the foregoing, and upon reviewing the documents submitted by both parties, it is evident from the cash flow statement within the financial statements, and the net cash available to the Company that it exceeds the value of the additions made to the non-current assets; therefore, the burden of proof lies with the Defendant to prove that the loans have financed assets. Therefore, the Department concludes by accepting the Plaintiff's objection and cancelling the Defendant's decision.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

First: Establish resolution of the dispute of Plaintiff (... Company Limited Trading Company, (TIN No. ...), And the Defendant (ZATCA) regarding the item loans and the like for 2016, subject matter of the Case, as the Defendant accepted the Plaintiff's requests in this regard.

Second: Establish resolution of the dispute of Plaintiff (... Company Limited Trading Company, (TIN No. ...), And the Defendant/ZATCA, regarding the related party item for 2016, subject matter of the Case, as the Defendant accepted the Plaintiff's requests in this regard.

Third: Cancel Defendant (ZATCA)'s decision against Plaintiff (...) Company Limited Trading Company, (TIN No. ...), Regarding item loans funding fixed assets for 2018.

Fourth: Dismiss otherwise objections filed by Plaintiff/ ... Company), Limited Trading Company, (TIN No. ...), to the decision issued by the Defendant/ZATCA in relation to the assessment in question.

This decision was delivered in presence of the parties. The Department set Thursday, 02/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1974)
Issued in Appeal No. (Z-37182-2021)

Key words:
Zakat Assessment - Accounts - Adding an item for external purchases (imports) to net profit - Zakat Base - Local Purchases - Financial statements - Difference in the amount of purchases between the declaration, financial statements and customs clearance - The Plaintiff failed to submit a reconciliation statement detailing foreign and local purchases - Dismissing the objection and upholding the Defendant's decision.

Abstract

The Plaintiff instituted this Case moving to cancel ZATCA's decision regarding Zakat assessment for 2018 AD. The Plaintiff limited its objection to the addition of an item for external purchases (imports) to net profit for 2018: The Plaintiff objects to the Defendant's action of adding this item to Zakat base, claiming that the error committed by the legal accountant was the failure to separate external purchases from local purchases. However, the net loss remains the same as in the financial statements previously submitted to the Defendant. The Plaintiff pointed out that the Defendant dismissed the objection due to insufficient documents, although no document was requested. In response, ZATCA stated that it added the item to the net profit because the Plaintiff did not provide a reconciliation statement detailing external and local purchases, nor did it explain the reasons for the difference in the value of imports between the customs statement and what was declared in the declaration. The Department established that the dispute between the parties is a documentary one. Upon reviewing the documents submitted by the Plaintiff, including the customs clearance and Zakat declaration, a discrepancy of SAR (425,600) worth of imports was found for which the Plaintiff did not provide supporting documents. Furthermore, upon reviewing the financial statements and note no. (15), it is evident that there is a difference in the amount of purchases between the declaration, financial statements, and customs clearance. It is apparent that the Plaintiff has not provided the necessary reconciliation to explain the reasons for the differences in imports, nor has it provided documents supporting the argument presented in its statement of claim. Therefore, it is evident that the Defendant's action of adjusting the Plaintiff's business results based on these differences is valid. As such, the Department ruled to: Dismiss the Plaintiff's objection and uphold the Defendant's decision.

Instruments:

- Article (20.3) of the Implementing Regulations for Zakat Collection issued by Minister of Finance's Resolution No. (2082) dated 01/06/1438 AH

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Saturday, 07/02/1444, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 14/02/2021.

Facts of this Case are summed up as follows: Mr. ..., (ID No. ...), in his capacity as Attorney of the Plaintiff/ .... Ltd Co. (C.R. No. …), by virtue of the Company's AOA, filed an objection to ZATCA's Zakat assessment issued for 2018. The objection centers on the following items: Item First Addition of an item for external purchases (imports) to net profit for 2018: The Plaintiff objects to the Defendant's action of adding this item to Zakat base, claiming that the error committed by the chartered accountant was the failure to separate external purchases from local purchases. However, the net loss remains the same as in the financial statements previously submitted to the Defendant. Additionally, the Defendant dismissed the objection due to insufficient documents, although no document was requested.

Having presented the statement of claim to the Defendant, it responded with a Reply dated .../.../2021, in which it stated that with regard to item "External purchases", ZATCA added this item to the net profit because the Plaintiff did not provide a reconciliation statement detailing external and local purchases, nor did it explain the reasons for the difference in the value of imports between the customs statement and what was declared in the declaration. As such, based on Article (20.3) of Zakat Collection Regulations, the Plaintiff's objection was dismissed.

On Saturday, 07/02/ 1444 AH, the Department held a remote session to consider the Case Having called the parties, the Department found that Plaintiff's Attorney did not appear despite of being duly notified of session date. On the other hand, Ms. ..., appeared in her capacity as Representative of the Defendant/ ZATCA under an Authorization, a copy of which is attached to the Case file. Having asked Defendant's Representative about Plaintiff's claim, she maintained the statements included in Defendant's answer and requested the Department to dismiss any new documents that were not provided to Defendant during examination and objection stage. Having asked Defendant's attorney if she had any other statements, they replied negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: The Plaintiff intended by filing its case to cancel ZATCA's decision regarding Zakat assessment for 2018. This dispute is Zakat dispute that falls within the jurisdiction of the Committee for the Resolution of Income Tax Violations and Disputes, pursuant to Royal Order No. (26040) of 21/04/1441 AH. It is established from the Case documents

that the Plaintiff filed the Case within the period stipulated by the law and by a person with legal capacity, which necessitates admitting the Case in form.

On Merits: Having examined the documents included in the Case file, as well as the requests, defenses and pleas made by its parties, the Department found that the Plaintiff objects to Zakat assessment made by the Defendant for 2018, specifically in respect of adding an item for external purchases (imports) to net profit for 2018: The Plaintiff objects to the Defendant's action of adding this item to Zakat base, claiming that the chartered accountant's error lies in failing to separate external purchases from local purchases. However, the Plaintiff argues that the net loss remains the same as in the financial statements previously submitted to the Defendant. Additionally, the objection was dismissed due to insufficient documents, even though no document was specifically requested. However, the Defendant argued that the item was added to the net profit because the Plaintiff did not provide a reconciliation statement detailing external and local purchases, nor did it explain the reasons for the difference in the value of imports between the customs statement and Zakat declaration. As such, based on Article (20.3) of Zakat Collection Regulations, the Plaintiff's objection was dismissed.

Based on the foregoing, the Department established that the dispute between the parties is a documentary one. Upon reviewing the documents submitted by the Plaintiff, including the customs clearance and Zakat declaration, a discrepancy of SAR (425,600) worth of imports was found for which the Plaintiff did not provide supporting documents. Furthermore, upon reviewing the financial statements and note no. (15), it is evident that there is a difference in the amount of purchases between the declaration, financial statements, and customs clearance. It is apparent that the Plaintiff has not provided the necessary reconciliation to explain the reasons for the differences in imports, nor has it provided documents supporting the argument presented in its statement of claim. Therefore, the Department concluded by dismissing the Plaintiff's claim and upholding the Defendant's decision.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- Reject the objection of Plaintiff/ ... Company (TIN ...), to Defendant/ (ZATCA)'s decision regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Thursday, 02/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1975)
Issued in Appeal No. (Z-35273-2021)

Key words:
Zakat Assessment - Accounts - Investment Deduction - Foreign Investment - Zakat Base - Due Zakat - Dismiss the Plaintiff's objection and uphold the Defendant's decision.

Abstract

The Plaintiff instituted this Case moving to cancel ZATCA's decision regarding Zakat assessment for the period from 2015 to 2017 AD. The Plaintiff's objection is based on the following items: Item First Deduction of investment available for sale: The Plaintiff objects to the Defendant's action of not deducting investments marked for sale from Zakat base. The Plaintiff argues that this deduction is acceptable when the investment is still active and its effects are reflected in the financial statements. However, in this case, the investment was actually disposed of but was not deleted from the books at the time. The Plaintiff has provided evidence that the investment was indeed disposed of in 2016 and that this disposal was reflected in the financial statements when the certified chartered accountant reviewed them and approved the deletion in the 2019 statements. The Plaintiff was unable to retroactively modify the previous statements. The second item: Foreign Investment: The Plaintiff objects to the Defendant's action of not deducting the investment balance from Zakat base. The Plaintiff hopes to consider this account as cash withdrawals for a partner rather than an investment as it was initially understood. The Company financed a project from the retained earnings and considered it as a current account receivable within the limits of the partner's share in the retained earnings so as to avoid double taxation. Therefore, the Plaintiff is requesting cancellation of the Defendant's action and exclusion of this amount from Zakat calculation to avoid double taxation. In response, ZATCA stated in a memorandum that with regard to item (Non-Deduction of investment available for sale), ZATCA did not deduct this item from the base. This is because ZATCA does not accept the deduction of investments available for sale. With respect to item (Foreign investments), ZATCA did not deduct this item from the base, because the Plaintiff requested that these investments be considered as a current account receivable. Consequently, ZATCA did not allow the deduction of this investment. The Department established that regarding item non-deduction of investment available for sale, the Plaintiff has not provided sufficient evidence to support its claims and has not submitted the financial statements to allow the Department to verify the balances. Therefore, the Department cannot rely on what the Plaintiff has stated as it has not proven its accuracy. Furthermore, two essential conditions must be met for an investment to be considered a long-term investment eligible for deduction from Zakat base: A documented intent from the authorized party clearly stating the purpose of the investment, as well as absence of any sales transactions during the year for these investments. Upon reviewing the documents attached to the Case file, there was no mention of the purpose of the

investment or the management's decision to invest. Additionally, the investment is a foreign investment. Therefore, the Plaintiff is entitled to deduct the foreign investment from its Zakat base, provided that it complies with the requirement of submitting audited accounts from a certified chartered accountant in the country of investment to the Defendant. This is to calculate due Zakat on these investments and remit it to the Defendant, and then deduct those investments from Zakat base of the investee company to avoid double taxation. If it fails to provide what has been mentioned, then these investments shall not be deducted from its Zakat base. Since the dispute over this item is a documentary dispute, and upon reviewing the attached documents of the Case, it became clear that the Plaintiff did not attach the financial statements of the investee company outside the Kingdom from a certified chartered accountant. It also did not attach any proof of paying Zakat to ZATCA for that investment. The Plaintiff's claim that the investment was written off in reality and then written off in the financial statements for the year 2019 does not affect this, as the Plaintiff did not submit the financial statements for 2019. With regard to item foreign investment, the Plaintiff has not provided sufficient evidence to support its claims and has not submitted the financial statements to allow the Department to verify the balances. Therefore, the Department cannot rely on what the Plaintiff has stated as it has not proven its accuracy. Based on the foregoing, the Plaintiff is entitled to deduct the foreign investment from its Zakat base provided that it complies with the provision mentioned above, which is to submit to ZATCA audited accounts from a certified chartered accountant in the country of investment. This is to calculate due Zakat on these investments and remit it to ZATCA, and then deduct those investments from Zakat base of the investee company to avoid double taxation. If it fails to provide what has been mentioned, then these investments shall not be deducted from its Zakat base. Since the dispute over this item is a documentary dispute, and upon reviewing the attached documents of the Case, it became clear that the Plaintiff did not attach the financial statements of the investee company outside the Kingdom from a certified chartered accountant. It also did not attach any proof of paying Zakat to ZATCA for that investment. Department ruled to Dismiss the Plaintiff's objection and uphold the Defendant's decision.

Instruments:

- Articles (4.Second.1, 4.b), (20.3) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Saturday, 07/02/1444, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 25/01/2021.

The facts of this case are summed up so as... National ID No. (.....) in his capacity as Attorney of the Plaintiff Company ..., C.R. No. (...), under POA No. (...), filed an objection to ZATCA's Zakat assessment for the period from 2015 to 2017. The objection pertains to the following items: Item First Deduction of investment available for sale: The Plaintiff objects to the Defendant's action of not deducting investments marked for sale from Zakat

base. The Plaintiff argues that this deduction is acceptable when the investment is still active and its effects are reflected in the financial statements. However, in this case, the investment was actually disposed of but was not deleted from the books at the time. The Plaintiff has provided evidence that the investment was indeed disposed of in 2016 and that this disposal was reflected in the financial statements when the certified chartered accountant reviewed them and approved the deletion in the 2019 statements. The Plaintiff was unable to retroactively modify the previous statements. Item Second: Foreign Investment: The Plaintiff objects to the Defendant's action of not deducting the investment balance from Zakat base. The Plaintiff hopes to consider this account as cash withdrawals for a partner rather than an investment as it was initially understood. The Company financed a project from the retained earnings and considered it as a current account receivable within the limits of the partner's share in the retained earnings so as to avoid double taxation. Therefore, the Plaintiff is requesting cancellation of the Defendant's action and exclusion of this amount from Zakat calculation to avoid double taxation.

Upon presenting the statement of claim to the Defendant, it responded with a memorandum dated 11/04/2021 as follows: Regarding item (Non-Deduction of investment available for sale), ZATCA did not deduct this item from the base, because ZATCA does not accept deducting investments available for sale, as per subparagraph (4.b) of Article 4 of the Zakat Collection Regulations. Regarding item (Foreign investments), ZATCA did not deduct this item from the base because the Plaintiff requested that it be considered as a current account receivable. Therefore, ZATCA did not accept the deduction of this investment, relying on subparagraph (4.b) of Article 4 of the Zakat Collection Regulations. As such, ZATCA maintains the validity and correctness of its action and requests that the Department dismiss the Case.

On Saturday, 07/02/ 1444 AH, the Department held a remote session to consider the Case. Having called the parties, the Department found that Plaintiff's Attorney did not appear despite of being duly notified of session date. On the other hand, Ms. ..., appeared in her capacity as Representative of the Defendant/ZATCA under an Authorization, a copy of which is attached to the Case file. Having asked Defendant's Representative about Plaintiff's claim, she maintained the statements included in Defendant's answer and requested the Department to dismiss any new documents that were not provided to Defendant during examination and objection stage. Having asked Defendant's attorney if she had any other statements, they replied negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations. In Form: The Plaintiff filed the Case to cancel the Defendant's decision regarding Zakat Assessment for the period from 2015 to 2017. Since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form. On Merits: Having taken cognizance of the documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Department found that the dispute lies in Plaintiff's objection to Defendant's decision

regarding issuance of Zakat Assessment for the period from 2015 to 2017, which included the following items:

First: Deduction of investment available for sale:

The Plaintiff objects to the Defendant's action of not deducting investments marked for sale from Zakat base. The Plaintiff argues that these investments were actually written off but were not reflected in the books at the time. However, the Defendant countered by stating that it did not deduct this item because it does not allow deductions for investments available for sale, as per subparagraph (4.b) of Article (4) of the Zakat Collection Regulations, and in accordance with Article (4.Second.1) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH which states: "The following items shall be deducted from the Zakat Base: 1- Fixed assets including the following: Net fixed assets (property assets), any payments for the purchase of fixed assets, and spare parts and materials not prepared for sale, provided that such assets be owned by the Zakat payer, unless an obstacle to the transfer of ownership exists, and be used in the activity". Subparagraph (4.b) of Article (4) of the same Regulations states: "The following items shall be deducted from the Zakat Base: Investments in an entity outside the Kingdom, in participation with others, provided that the Zakat Payer remits and pays Zakat on such investments in his Zakat Declaration, according to the provisions of this Regulations. In addition, the Zakat Payer shall attach accounts audited by a chartered accountant licensed in the country of investment and approved by the official authorities. If the Zakat Payer fails to do so accordingly, such investments may not be deductible from the Zakat Base". Moreover, Article (20.3) of the same Regulations, stipulates: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the foregoing: the Plaintiff has not provided sufficient evidence to support its claims and has not submitted the financial statements to allow the Department to verify the balances. Therefore, the Department cannot rely on what the Plaintiff has stated as it has not proven its accuracy. Furthermore, two essential conditions must be met for an investment to be considered a long-term investment eligible for deduction from Zakat base: A documented intent from the authorized party clearly stating the purpose of the investment, as well as absence of any sales transactions during the year for these investments. Upon reviewing the documents attached to the Case file, there was no mention of the purpose of the investment or the management's decision to invest. Additionally, the investment is a foreign investment. Therefore, the Plaintiff is entitled to deduct the foreign investment from its Zakat base, provided that it complies with the requirement of submitting audited accounts from a certified chartered accountant in the country of investment to the Defendant. This is to calculate due Zakat on these investments and remit it to the Defendant, and then deduct those investments from Zakat base of the investee company to avoid double taxation. If it fails to provide what has been mentioned, then these investments shall not be deducted from its Zakat base. Since the dispute over this item is a documentary dispute, and upon reviewing the attached documents of the Case, it became clear that the Plaintiff did not attach the financial statements of the investee company outside the Kingdom from a certified chartered accountant. It also did not attach any proof of paying Zakat to ZATCA for that investment. The Plaintiff's claim that the investment was written off in reality and then written off in the financial statements for the year 2019 does not affect this, as the Plaintiff did not submit the financial statements for 2019 so that the Department can verify

such claim. As such, the Department concluded by dismissing the Plaintiff's objection and upholding the Defendant's decision.

Second: Foreign Investment:

The Plaintiff objects to the Defendant's action of not deducting the investment balance from Zakat base. The Plaintiff requests to consider this account as cash withdrawals for a partner rather than an investment, as the Company financed a project from the retained earnings and considered it as a current account receivable within the limits of the partner's share in the retained earnings so as to avoid double taxation. However, the Defendant countered that it did not deduct this item from the base, because the Plaintiff requested that these investments be considered as a current account receivable. Consequently, ZATCA did not allow the deduction of this investment, in accordance with Subparagraph (4.b) of Article (4) of the Zakat Regulations. Article (4.Second.4. b) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH. states: "The following items shall be deducted from the Zakat Base: Investments in establishments outside the Kingdom, in partnership with others, provided that Zakat Payer, within its Zakat Declaration, calculates the Zakat due for these investments in accordance with the rules set forth in these Regulations and pays thereof to the Authority, and attaches audited accounts from a chartered certified accountant in the country of investment, certified by official authorities. If Zakat Payer fails to do so, the investments will not be deducted from the Zakat Base". Additionally, Article (20.3) of the same Regulations stipulates: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it.". Based on the foregoing, and given that the Plaintiff has not provided sufficient evidence to support its claims or submitted the financial statements necessary for the Department to verify the balances, the Department cannot rely on the Plaintiff's statements. Therefore, the Plaintiff is entitled to deduct foreign investments from Zakat base, provided that it complies with the requirements outlined in the above regulations, which stipulate that it must submit audited financial statements from a certified chartered accountant in the country of investment, which is necessary to calculate Zakat due on these investments and remit thereof to ZATCA, thereby allowing the deduction of those investments from Zakat base of the investee company in order to avoid double payment of Zakat. In the event of failure to do so, these investments cannot be deducted from Zakat base. As the dispute regarding this item is a documentary, upon reviewing the documents attached to the Case, it became evident that Plaintiff failed to attach the financial statements of the investee company outside the Kingdom, prepared by a certified chartered accountant nor did it provide evidence of the payment of Zakat to ZATCA for that investment. Therefore, the Department concluded by dismissing the Plaintiff's objection and upholding the Defendant's decision. For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

- Dismiss the objection filed by the Plaintiff/ ... (No.....) to Defendant/ (ZATCA)'s decision regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Thursday, 02/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1976)
Issued in Appeal No. (Z-34989-2021)

Key words:
Zakat Assessment – Accounts – Amounts Due to Related Parties – Investments and Financial Assets Available for Sale – Investments and Non-Current Assets – Investments in Subsidiaries – The Plaintiff failed to submit financial statements and Zakat declarations for investee companies.

Abstract

The Plaintiff instituted this Case moving to cancel ZATCA's decision regarding Zakat assessment for 2018 AD. The Plaintiff based its objection with regard to the first item: Amounts due to related parties for 2018, on the Defendant's action of adding the entire beginning-of-the-year balance to Zakat base. The Plaintiff argues that the beginning-of-the-year balance had not completed the required lunar year for Zakat to be due, and that only the amount of SAR (29,169,605) had completed the full lunar year. Additionally, the Plaintiff claims that the entire beginning-of-the-year balance was added to Zakat base for both partners, even though a portion of this balance was transferred to capital during the year. The Plaintiff also notes that the Company added an additional capital amount of SAR (5,950,000) to Zakat base, which was transferred from the Owners' loans at the beginning of the year. Therefore, adding the beginning-of-the-year balance of Owners' loans amounts to paying Zakat twice on this amount: once as part of the additional capital and again as part of the beginning-of-the-year balance of Owners' loans. Item Second: Investments and financial assets available for sale for 2018: The Plaintiff objects to the Defendant's action of valuing certain investments at their par value, despite the purchase price being higher than the par value of the shares. Furthermore, the Plaintiff argues that the portfolios are managed by the Company for the purpose of generating annual returns, not for the purpose of sale. Item Third: Investments and non-current assets - Investments in subsidiaries for 2018: The Plaintiff objects to the Defendant's action of not deducting the investment in subsidiary companies from Zakat base. The Plaintiff argues that the Defendant calculated the value of shares for some investments at cost or at purchase price, even though the purchase price is less than the original value of the share. In response, ZATCA stated that regarding item "Amounts due to related parties", it had requested additional information from the Plaintiff. The Plaintiff provided an extract of related parties, but due to the mismatch in balances at the beginning and end of the period, the amount due from related parties at the beginning or end of the period was added. Regarding item "Investments and non-current assets", ZATCA requested additional information and approved investments amounting to SAR (44,708,250), which the Plaintiff disputes and requests to deduct the amount recorded in the declaration, which is SAR (49,493,524). Upon objection and after examining the documents, it was found that they were the same documents submitted during the examination phase. Upon review,

ZATCA's argument in excluding these investments was found to be valid. With regard to item "Investments and non-current financial assets - investments in subsidiaries", ZATCA has tracked the activity of investments in the investee company (.... Travel and Tourism Agency) from its inception until 2018. The Department established that the dispute lies in the following items: Amounts due to related partied for 2018: The Department found that the Plaintiff submitted a document related to the partners' accounts ... was rejected but did not provide an extract from the accounting system verifying the activity with related parties as per the financial statements. Moreover, the Plaintiff failed to submit the financial statements for 2018. With regard to Investments and financial assets available for sale for 2018: The Department found that the Plaintiff submitted all the documents proving the purchase cost and supporting its argument in its statement of objection, including letters, cheques, transfers, and assignments for investments in the following companies: (.... Medical Center, ... Educational Company, and .... Lime Industries). As a result, the Department decided to accept the Plaintiff's objection and cancel the Defendant's decision. Upon reviewing the investment portfolio document of .... Bank, it was found that there were no sales transactions. Consequently, the Committee decided to accept the Plaintiff's objection and cancel the Defendant's decision. However, upon reviewing the investment portfolio document of ..., it was found that there were sales. With regard to Investments and non-current assets – investments in subsidiaries for 2018, the Plaintiff failed to submit the financial statements or Zakat declarations of the investee companies. Therefore, the Department ruled to Cancel the Defendant's decision regarding item "investments and non-current assets", and dismiss all other objections raised by the Plaintiff.

Instruments:

- Articles (4.First.5, and A.4), (20.3) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Saturday, 07/02/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed by Royal Order No. (65474) dated 23/12/1439 AH, held its session via teleconference to consider the above-mentioned Case. Since the Case met the statutory requirements, it was lodged with the General Secretariat of Zakat, Tax and Customs Committees under the above number on 21/01/2021.

Facts of the Case are summarized as follows: Mr. ...., ID No. ...., in his capacity as Legal Representative of the Plaintiff's Company/ .... Ltd Co, (C.R. No. ....), by virtue of its AOA, filed an objection to ZATCA's Zakat assessment for 2018, issued with regard to the following items: Item First Amounts due to related partied for 2018: The Plaintiff objects to the Defendant's action of adding the entire beginning-of-the-year balance to Zakat base. The Plaintiff argues that the beginning-of-the-year balance had not completed the required lunar year for Zakat to be due, and that only the amount of SAR (29,169,605) had completed the full lunar year. Additionally, the Plaintiff claims that the entire beginning-of-the-year balance was added to Zakat base for both partners, even though a portion of this balance was transferred to capital during the year. The Plaintiff also notes that the Company added an additional capital amount of SAR (5,950,000) to Zakat base, which was transferred from the Owners' loans at the beginning of the year. Therefore, adding the beginning-of-the-year balance of Owners' loans amounts to paying Zakat twice on this amount: once as part of the additional capital and again as part of the beginning-of-the-

year balance of Owners' loans. The second item: Investments and financial assets available for sale for 2018: The Plaintiff objects to the Defendant's action of valuing certain investments at their par value, despite the purchase price being higher than the par value of the shares. Furthermore, the Plaintiff argues that the portfolios are managed by the Company for the purpose of generating annual returns, not for the purpose of sale. Item Third: Investments and non-current assets - Investments in subsidiaries for 2018: The Plaintiff objects to the Defendant's action of not deducting the investment in subsidiary companies from Zakat base. The Plaintiff argues that the Defendant calculated the value of shares for some investments at cost or at purchase price, even though the purchase price is less than the original value of the share.

Having presented the statement of claim to the Defendant, the Defendant responded with a memorandum dated 28/03/2021, stating that regarding item "amounts due to related parties", ZATCA had requested additional information from the Plaintiff. The Plaintiff provided an extract of related parties, but due to the mismatch in balances at the beginning and end of the period, the amount due to related parties at the beginning or end of the period was added, in accordance with Article (20.3) of the Zakat Collection Regulations issued in 1438 AH. Regarding item "investments and non-current financial assets", ZATCA requested additional information and approved investments amounting to SAR (44,708,250), which the Plaintiff disputes and requests to deduct the amount recorded in the declaration, which is SAR (49,493,524). Upon objection and after examining the documents, it was found that they were the same documents submitted during the examination phase. Upon review, ZATCA's argument in excluding these investments was found to be valid, based on Article (4.4.c) of the Zakat Collection Regulations issued in 1438 AH. With regard to item "investments and non-current financial assets - investments in subsidiaries", ZATCA has tracked the activity of investments in the investee company (.... Travel and Tourism Agency) from its inception until 2018. It has been found that ZATCA's action is correct based on Article (4.4.a) of the Zakat Collection Regulations issued in 1438 AH. Therefore, ZATCA maintains the correctness and validity of its action and requests the Department to dismiss the Case.

On Saturday, 07/02/ 1444 AH, the Department held a remote session to consider the Case Having called the parties, the Department found that Plaintiff's Attorney did not appear despite of being duly notified of session date. On the other hand, Ms. ..., appeared in her capacity as Representative of the Defendant/ZATCA under an Authorization, a copy of which is attached to the Case file. Having asked Defendant's Representative about Plaintiff's claim, she maintained the statements included in Defendant's answer and requested the Department to dismiss any new documents that were not provided to Defendant during examination and objection stage. Having asked Defendant's attorney if she had any other statements, they replied negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: Since Plaintiff filed the case to abolish Defendant's decision regarding Zakat Assessment of 2018 AD, and since this dispute is a Zakat dispute, it then falls within the

jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form. On merits, upon Department's review of the documents and evidence contained in the case file, as well as the requests, defenses, and arguments presented by the parties, it became evident to the Department that the dispute centers on Defendant's issuance of the tax assessment for 2018, specifically concerning the objection related to the following items:

First: Amounts due to related partied for 2018:

The Plaintiff objects to the Defendant's action of adding the entire beginning-of-year balance to Zakat base, arguing that the beginning-of-year balance has not completed a full lunar year. However, the Defendant countered by stating that it had requested additional information from the Plaintiff, and the Plaintiff provided an extract related to related parties. Due to the mismatch in balances at the beginning and end of the period, the amount due to related parties at either the beginning or end of the period was added. Article (4. First.5) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH provides that: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans or equivalent items of other sources of funds, such as creditors, bills payable, overdrafts due by the Zakat payer in accordance with the following: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. Parts thereof used in trade bids on which a year has passed. Additionally, Article (20.3) of the same Regulations stipulates: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". Based on the foregoing, upon reviewing the documents of the Plaintiff and the Defendant, it was found that the Plaintiff submitted a document related to the partners' accounts... was rejected However, the Plaintiff did not submit an extract from the accounting system verifying the transactions with related parties according to the financial statements, nor did it submit the financial statements for 2018. As a result, the Department decided to dismiss the Plaintiff's objection and uphold the Defendant's decision.

Second: Investments and financial assets available for sale for 2018:

The Plaintiff objects to the Defendant's action of valuing certain investments at their par value, despite the fact that the purchase price was higher than the par value of the shares. However, the Defendant argued that it had requested additional information and, upon objection and after examining the documents, it was found that they were the same documents submitted during the examination phase. Upon review, the correctness of ZATCA's argument in excluding those investments was evident. Article (4.4.a) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH states: "Investments in an entity in the Kingdom, in participation with others, if such investments are subject to Zakat according to this Regulations. If the investment in such entities is not subject to Zakat, no deductions will be made from the Zakat Base". Based on the foregoing, upon reviewing the documents of the Plaintiff and the Defendant, the Department found that the Plaintiff submitted all the documents proving the purchase cost and supporting its argument in its statement of objection, including letters, cheques, transfers, and assignments for investments in the following companies: (.... Medical Center, ... Educational Company, and .... Lime Industries). As a result, the Department decided to accept the Plaintiff's objection and cancel the Defendant's decision. Upon reviewing the investment portfolio document of .... Bank, it was found that there were no sales transactions. Consequently, the Committee

decided to accept the Plaintiff's objection and cancel the Defendant's decision. However, upon reviewing the investment portfolio document of ..., it was found that there were sales. Therefore, the Department concluded by dismissing the Plaintiff's objection and upholding the Defendant's decision.

Third: Investments and non-current assets - Investments in subsidiaries for 2018:

The Plaintiff objects to the Defendant's action of not deducting the investment in subsidiary companies from Zakat base. The Plaintiff argues that the Defendant calculated the value of shares for some investments at cost or at purchase price, even though the purchase price is less than the original value of the share. However, the Defendant countered that it tracked the activity of investments in the investee company (.... Travel and Tourism Agency) from its inception until 2018 and it is evident that ZATCA's action is valid. Article (4.4.a) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH states: "Investments in an entity in the Kingdom, in participation with others, if such investments are subject to Zakat according to this Regulations. If the investment in such entities is not subject to Zakat, no deductions will be made from the Zakat Base". Based on the foregoing, and upon reviewing the documents of the Plaintiff and the Defendant, it was found that the Plaintiff did not submit the financial statements, nor did it submit Zakat declarations for the investee companies. Therefore, the Department concluded by dismissing the Plaintiff's objection and upholding the Defendant's decision.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

First: Cancel the decision of the Defendant/ZATCA against the Plaintiff/ .... Limited Company, (TIN No. ....) regarding item investments and non-current assets of .... Company Medical Center, ... Educational Company, ... Company for Lime Industries, and the investment portfolio of .... Bank … which are the subject matter of the Case.

Second: Dismiss all other objections of the Plaintiff/ .....Ltd Company, (TIN No. ....), to the decision of the Defendant/ ZATCA in relation to Zakat assessment, subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Thursday, 02/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1992)
Issued in Appeal No. (Z-35368-2021)

Key words:
Zakat Assessment - Accounts - Amounts due from related parties - Current Account - Zakat Declaration - Amendment of the Defendant's action.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding Zakat assessment for 2016 and 2017 AD. In response, ZATCA stated that it did not deduct the amount due from related parties from Zakat base. This was because it was found that the debit balance in the current account, as shown in Zakat Payer's financial statements for 2016 and 2017, actually represented investments in subsidiaries owned 100% directly and indirectly. The transactions involved services provided, collections, and expenses on behalf of the Company, which were carried out in the normal course of business. These transactions represented credit balances for the subsidiaries and would have been deductible if the subsidiaries had paid Zakat on them to the parent company. However, upon reviewing the statements submitted by the subsidiaries, it was evident that they had not included or paid Zakat on these amounts. It was established to the Department that the Defendant and the Plaintiff had agreed in principle to deduct amounts due from related parties. However, this was conditional upon these amounts being subject to Zakat as declared in Zakat declarations submitted by the subsidiary companies. Upon reviewing the Zakat declarations of the subsidiary companies, the Department found that the total amounts added to Zakat base were SAR (30,060,746) for 2016 and SAR (1,736,807) for 2017, which matched the amounts claimed in the statement of claim filed by the Plaintiff. Regarding the amounts mentioned by the Defendant in its Reply, the Department determined that the difference between what the Plaintiff included in the companies' declarations and the amounts the Defendant claimed should be added must be included. Consequently, the Department concluded by amending the Defendant's decision by adding an additional SAR (85,549,380) for 2016 and SAR (152,518,143) for 2017. Department ruled to Amend the Defendant's action regarding item amounts due from related parties, subject matter of the Case.

Instruments:

- Article (4.First.5) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Thursday, 19/02/1444, the First Department for Determination of Income Tax Violations and Disputes in Dammam, as stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and amendments thereof, and established pursuant to Royal Order No. (65474) dated 23/12/1439 AH, convened its session remotely via audio and video conferencing to consider the aforementioned case. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 26/01/2021.

Facts of the Case are summarized as follows: Mr. ...., (ID No. ...), in his capacity as Legal Representative of the Plaintiff/ ..... Holding Company, (C.R. No. ....), by virtue of its AOA, has filed a statement of claim objecting to ZATCA's decision issued regarding Zakat assessment for 2016 and 2017.

Having presented the statement of claim to the Defendant, it responded by stating that it had not deducted the amount due from related parties from Zakat base. It explained that the debit balance in the current account, as shown in Zakat Payer's financial statements for 2016 and 2017, actually represented investments in subsidiaries owned 100% directly and indirectly. The transactions involved services provided, collections, and expenses on behalf of the Company, which were carried out in the normal course of business. These transactions represented credit balances for the subsidiaries and would have been deductible if the subsidiaries had paid Zakat on them to the parent company. However, upon reviewing the statements submitted by the subsidiaries, it was evident that they had not included or paid Zakat on these amounts. As such, the Defendant requested dismissal of the Case, while reserving its right to submit further responses and clarifications before closing of the pleadings.

On Thursday, 19/02/1444 AD, the Department held its session remotely to consider the Case. At that session, Mr. ..., (ID No. ...), appeared in his capacity as Attorney of the Plaintiff under POA No. (...), Dated .../12/1443 AH issued by Notary/.... The session was also attended by Ms. ..., (ID No...), in her capacity as Representative of the Defendant/ ZATCA, by virtue of Authorization No. (...), dated .../10/1443 AH, issued by ZATCA's Deputy Governor for Legal Affairs. Dated .../10/1443 AH. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: The Plaintiff intended by filing its case to cancel ZATCA's decision regarding Zakat assessment for 2016 and 2017. This dispute is Zakat dispute that falls within the jurisdiction of the Committee for the Resolution of Income Tax Violations and Disputes, pursuant to Royal Order No. (26040) dated 21/04/1441 AH. It is established from the

Case documents that the Plaintiff filed the Case within the period stipulated by the law and by a person with legal capacity, which necessitates admitting the Case in form.
On Merits: Upon reviewing the documents included in the Case file, as well as the requests, defenses, and pleas raised by the parties, the Department found that the dispute centered on the Plaintiff's objection to the Defendant's decision not to deduct amounts due from related parties for 2016 and 2017 from Zakat base. The Plaintiff argued that the Defendant had agreed to deduct this amount, provided that it was subject to Zakat in Zakat declarations submitted by the subsidiary companies. The Plaintiff further pointed out that failing to include these amounts in the subsidiaries' declarations and not allowing the deduction at the parent company level would result in double taxation. However, the Defendant countered that these were investments in subsidiaries owned 100% directly and indirectly and represented transactions for services rendered, collections, and expenses incurred in the ordinary course of business. These transactions represented credit balances for the subsidiaries and would have been deductible if the subsidiaries had paid Zakat on them to the parent company. However, after reviewing the declarations submitted by the subsidiaries, it was evident that they had not included or paid Zakat on these amounts. Article (4. First.5) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH states: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: ... 5. Government and commercial loans or equivalent items of other sources of funds, such as creditors, bills payable, overdrafts due by the Zakat payer in accordance with the following: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. Parts thereof used in trade bids on which a year has passed. Based on the foregoing, and upon reviewing the Case file, it is evident to the Department that the Defendant and the Plaintiff had agreed in principle to deduct amounts due from related parties, subject to the condition that these amounts would be included in Zakat declarations submitted by the subsidiary companies. Upon reviewing Zakat declarations of the subsidiary companies, the Department found that the total amounts added to Zakat base were SAR (30,060,746) for 2016 and SAR (1,736,807) for 2017, which matched the amounts claimed in the statement of claim filed by the Plaintiff. Regarding the amounts mentioned by the Defendant in its Reply, the Department determined that the difference between what the Plaintiff included in the companies' declarations and the amounts the Defendant claimed should be added must be included. Consequently, the Department concluded by amending the Defendant's decision by adding an additional SAR (85,549,380) for 2016 and SAR (152,518,143) for 2017.
For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

- Amend the action taken by the Defendant/ ZATCA against the Plaintiff/ ....., Holding Company, (TIN No. ...), regarding item Amounts due from related parties, subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Sunday, 05/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if both parties do not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-2017)
Issued in Appeal No. (ZI-42469-2021)

Key words:
Zakat Tax Assessment - Economic conditions - Neutral nature of transactions - Related parties - Zakat base - Transfer pricing - Goodwill impairment - Withholding tax - Operating profit margin - Modifying Defendant's action.

Abstract

Plaintiff's claim for the cancellation of the Zakat, Tax and Customs Authority's (ZATCA) decision regarding the zakat tax assessment for the years 2015 to 2018 - Plaintiff based its objection on a number of basic requests, as follows: a. Plaintiff requests the use of a transaction-by-transaction comparison approach, rather than a transaction aggregation approach, to test the neutral nature of transactions with related parties. b. Taking into account the economic and other circumstances that have affected Taxpayer's profitability when assessing transfer pricing for related parties. c. Adoption of an adjustment to the goodwill impairment. d. Cancellation of ZATCA's claim related to transfer pricing in relation to zakat. e. Not excluding loss-making companies from the comparable companies. f. Identifying the controlled transactions covered by ZATCA amendment. g. Approving the settlement of bad and doubtful debts allocations for 2018 estimated at (SAR 13,365,875). h. Cancellation of all adjustments to the value of controlled transactions for Zakat. Plaintiff made a number of additional requests, including the following: a. Adjusting the calculation of the withholding tax paid on amounts paid to related parties. b. Using the lower quartile average as a basis for auditing Company's accounts - ZATCA responded that with regard to the objection to transfer pricing item: After referring to the financial statements and conducting a transaction pricing audit for ..... Engineering Consultants Co., ZATCA agrees with Taxpayer that ..... is the party under test as they are the least complex transactional parties among the related companies. ZATCA also agrees with Taxpayer that the use of Transactional Net Margin Method (TNMM) and the selection of Operating Margin (OM) and Nutrition Care Process Model (NCPM) as indicators of the level of profitability is the appropriate way to verify that the Company's results fall within the Arm's Length range. However, ZATCA does not agree that the comparative analysis conducted by Taxpayer determines the Arm's Length and shall not be used to determine Taxpayer's profitability. The comparative analysis provided by Taxpayer for the years 2015 to 2017 included three loss-making companies, which is not acceptable to ZATCA. Therefore, ZATCA has updated Taxpayer's comparative analysis by excluding the loss-making companies. Furthermore, ZATCA conducted another updated comparative analysis to include the years 2016 to 2018 to be relevant when reviewing 2018, which was used when adjusting the 2018 results. After reviewing the objection letter and with reference to the Income Tax Law, the Implementing Regulations and the Transfer Pricing Bylaws issued by the Board of Directors Decision No. (6-1-19) dated 25/05/1440 AH

corresponding to 31/01/2019 AD, an opinion was formed for each of Taxpayer's queries and requests separately, which were as follows: a) Taxpayer requested ZATCA to use a transaction-by-transaction comparison approach instead of a transaction aggregation approach to test the Arm's Length of controlled transactions and identify related parties. Based on the local file received from Taxpayer, the Taxpayer did not provide ZATCA with full details of all transactions with related parties, so the transaction-by-transaction comparison approach cannot be used. ZATCA has relied on Taxpayer's submission for the transfer pricing adjustment, which is the use of TNMM on the results of the company as a whole in which the net profit margin method for the transaction compares the profitability of the 'tested party' along with the profitability of similar independent companies. However, ZATCA does not agree with Taxpayer to exclude the allowance for doubtful debts. In addition to the above, the Organization for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines on Screening Practices states that: 'Tax auditors should begin their analyses of transfer pricing from the perspective of the method chosen by the taxpayer in determining its prices.' Therefore, as stated above, the Company's Operating Margin was adjusted to conform to the Arm's Length Principle, and since the Plaintiff Company is the audited entity that we compared with the third-party companies, we must include the full result. Accordingly, Plaintiff's objection was dismissed. b) Taxpayer requests to take into account the economic and other circumstances that affected Taxpayer's profitability when assessing the transaction pricing of related parties, and therefore the cancellation issued by ZATCA for the reasons mentioned. When the company started its activities in the Kingdom in 2012, Taxpayer's net profit/loss during the period fluctuated and Taxpayer's revenue decreased from 2015 to 2018, thus not indicating that there is a growth strategy for the company's revenue. Accordingly, Plaintiff's objection was dismissed. c) Taxpayer requests ZATCA to approve the reconciliation of the bad and doubtful debts provision for the financial year 2018 estimated at (SAR13,365,875) according to the local file provided by Taxpayer, the Taxpayer formed the provision in 2018 as a result of transactions with one independent client, and did not form provisions for the years. Therefore, Taxpayer requests a goodwill impairment adjustment. With regard to the exclusion of the allowance for doubtful debts and the adoption of the amortization adjustment for goodwill, ZATCA does not accept adjustments to the financial information, as the comparison must be made on the basis of the financial statements as they are the only publicly available accounts that enable the public to find comparable financial information in the databases. The allowance for doubtful debts account is relevant to the operating profit, as the company relies mainly on receivables and therefore cannot be excluded and considered a non-operating item. Since it is impossible to make the same adjustment to the companies included in the comparability analysis and the fact that insufficient financial information is available for the comparable companies limits any adjustment as it will only reduce the level of accuracy of the analysis and increase the differences between the comparable information contrary to paragraph (4.3.4): Selection of Comparable Persons of the Transfer Pricing Guidelines, adjustments for similarity/comparability may not be made to the financial statements of comparable persons, and such adjustments should aim to increase the level of accuracy of the analysis and eliminate the effects of minor differences. d) Taxpayer requests ZATCA not to apply the Rules and Regulations, thereby canceling all price adjustments to the cost of revenue. Regarding the resident company's request to deduct the amount withheld as withholding tax from the amount of income tax imposed on it, ZATCA first clarifies that there is a difference between income tax and withholding tax in terms of who bears the burden of the tax, where a resident Company (a) bears the burden of income tax and a non-resident Company (b) bears the burden of withholding tax. Hence, Company (a) is not entitled to deduct the withholding tax it withheld from non-resident Company (b) from

the income tax payable by it, under Article 2(b) of the Income Tax Law, as a non-Saudi resident natural person carrying out the activity in the Kingdom is considered a taxable person under the Income Tax Law and its Implementing Regulations. Therefore, what is for income tax and withholding tax are ..... Also, the income tax base is different from the withholding tax base, so it is not double taxation. Regarding the imposition of withholding tax on an unapproved expense, ZATCA is entitled to impose withholding tax on the expense regardless of whether all or part of the expense is recognized as a deductible expense, resulting in the right to withhold even if the expense is not recognized by the resident. In accordance with sub-paragraph (e) of Article 68 of the Income Tax Law, if an amount is paid to a non-resident and tax is withheld, the tax is final, except in two cases. The first is that the amount paid to a non-resident conducting business in the Kingdom through a permanent establishment, and this amount is directly related to the business carried out by the permanent establishment, in which case, this amount is counted in determining the tax base of the non-resident. Therefore, Taxpayer's objection is incorrect and dismissed. a) Taxpayer requests ZATCA to exclude the years 2015 to 2017 from the transfer pricing claim on which ZATCA has based its procedure for making an adjustment to the company's profit margin for the years 2015 to 2017, which is applicable for the years in dispute. ZATCA also confirms that transfer pricing is not new legislation, and therefore the procedure applies to the results of 2016 and 2017 as they fall within ZATCA's authority to adjust the assessment, and therefore we confirm that Taxpayer's request is not accepted. d) Taxpayer requests ZATCA to cancel the pricing claim in respect of Zakat: The Zakat part is not considered separate from the tax part if the Company's operating profit as a whole is adjusted to be in line with the Arm's Length, as in the case of controlled transactions, where the transactions are repriced, which would affect the net operating profit or loss related to the Company. It is incorrect that Taxpayer stated that the Zakat part has nothing to do with transfer pricing, and this is clearly shown in the Zakat regulation. Accordingly, it is clear that the amendments made to the transaction pricing that created tax and zakat differences affected the Company's profit, and therefore affected the tax and zakat parts as the item is one of the components of Zakat base, and Taxpayer's objection was dismissed. b) Taxpayer requests ZATCA not to exclude loss-making companies from the comparable companies, as they have taken retrospective Transfer Pricing Bylaws for the years 2015 to 2017: Based on the paragraph relied upon by the Plaintiff, it has not demonstrated that the losses realized by the excluded companies are comparable to the party under test, ... According to the databases used to identify comparable companies, it is not possible to know the reasons for the realization of losses in order to determine whether the classification of losses does not reflect normal business conditions according to Transfer Pricing Guidelines- para (4.3.4). Accordingly, Taxpayer's objection was dismissed. t) Company's claim for cancellation of the delay penalty: ZATCA has imposed a late payment penalty on the tax due and unpaid, as the tax was levied in accordance with the clear provisions of the Tax Law and Implementing Regulations. Regarding additional requests: Company requests that ZATCA adjust the calculation of withholding tax paid on amounts paid to related parties, ZATCA explains that this request was answered in the original requests, paragraph (w). Request to use the lower quartile average as a basis for auditing Company's accounts - The Department found that the dispute lies in Defendant's issuance of the Zakat tax assessment for the years 2015 to 2018, which consists of two items: Transfer Pricing Item: The dispute turned out to lie in Defendant's conduct of a transfer pricing audit for Plaintiff, where Defendant concluded that Taxpayer's quarterly range was unacceptable due to its failure to accept certain companies in the comparison analysis prepared by Plaintiff. The Arm's Length was adjusted to produce a quarterly range representing the neutral price from (6.18%) to (25.01%) with an average of (7.07%) when using OM and NCPM results in an average of

(7.61%). Since the dispute between the parties to the lawsuit relates to transfer pricing, which in turn relates to the pricing of commercial controlled transactions for the purposes of calculating the tax base and paying what is due to the countries in which each of the parties to the transactions resides on a fair basis. The parties agree that ..... is the party under test because it is the least complex, and Defendant has accepted to use TNMM, and that OM and NCPM are indicators of the level of profit, as it's an appropriate method to verify that Company's results fall within the Arm's Length range. As the dispute is limited to Defendant's failure to accept the comparative analysis provided by Plaintiff as it includes loss-making companies, and Defendant's exclusion of the allowance for doubtful debts when calculating Plaintiff's operating profit margin. Plaintiff argues that Defendant is not entitled to apply the instructions and guidelines for the disputed years, as the instructions were issued later than the disputed years. With reference to the above-mentioned statutory provisions, it is clear that the Tax Law and the Implementing Regulations provide that ZATCA has the right to recharacterize transactions whose form does not reflect their substance, and to reallocate income and expenses in transactions between related parties 'Controlled Transactions' or parties belonging to the same Entity to reflect the income that would have been realized if the parties were independent or related, prior to the years in question. Whereas the purpose of issuing Transfer Pricing Bylaws and related Transfer Pricing Guidelines is to clarify the procedures and documents that Taxpayer must comply with, in order to avoid incurring tax liabilities as a result of a failure to prove that transactions with related parties are conducted on a similar basis to similar independent transactions, as well as to ensure that the value and prices of materials or services between related parties are within the range of prices used between independent parties. As the issuance of instructions and guidelines after years in dispute did not result in a new ZATCA right, ZATCA has the right not to accept transactions between related parties whose form does not reflect their substance and status. Since the burden of proving the validity of Taxpayer's declaration of revenues, expenses and any other data is the responsibility of Taxpayer, in case Taxpayer fails to prove the validity of its declaration, ZATCA may apply any other statutory sanctions, not authorizing the expense that is not validated by Taxpayer or making a discretionary assessment in light of the circumstances and facts related to the case and available information that Taxpayer should have provided to validate its expenses even if there are not Transfer Pricing Bylaws. Therefore, the Department finds in favor of Defendant's action in applying Transfer Pricing Bylaws and the Guidance Manual to the disputed years. As for Plaintiff's claim to use a transaction-by-transaction comparison approach, rather than an aggregation approach, in order to test the neutral nature of the controlled transactions. The Defendant argued that Plaintiff did not provide full details of all controlled transactions and relied on what was provided by Plaintiff. After reviewing the documents submitted by Plaintiff, the Department found that a transaction-by-transaction comparison approach was used, which shows that Defendant's claim is not true. Therefore, each transaction with related parties should have been examined separately to ensure that all transactions between Plaintiff and related parties are within the Arm's Length. Therefore, the Department concludes to modify the Defendant's action using a transaction-by-transaction approach to ascertain whether the nature of the transactions is based on the Arm's Length principle. As for Plaintiff's claim to exclude provisions for bad and doubtful debts and goodwill amortization expense when calculating operating profit margin, as comparative adjustments cannot be made to the companies included in the comparative analysis due to the lack of sufficient financial information for the comparative companies. Therefore, the Department concludes in favor of the Defendant's action to exclude them. With regard to Plaintiff's claim for the cancellation of ZATCA claim related to the pricing of Zakat transactions, Plaintiff claims that the Article referred to relates to tax avoidance, and Defendant did not provide the basis for its action in considering the

branch to be a tax avoider. The Article is not limited to tax evaders, but to all taxpayers to prevent the occurrence of any tax avoidance or evasion. As it gave Defendant the right to recharacterize transactions whose form does not reflect their substance and place them in their true form, making it a special anti-avoidance Article to reflect the revenue that would be due if the parties were independent and unrelated. As for Plaintiff's claim that loss-making companies should not be excluded from the comparable companies, the Transfer Pricing Guidelines (4,3,3) stipulate the following: 'the Comparables must not have made losses during the years within the scope of the analysis'; thus, the Department concludes that Plaintiff's claim should be dismissed. With respect to Plaintiff's claim to use the lower quartile of the quarterly range, rather than the midpoint, as the basis for calculating ZATCA's adjustment, paragraph (4.3.6) of the Transfer Pricing Guidelines indicates that the use of the average in determining the transfer pricing policy is the most appropriate use. With regard to the additional requests mentioned by Plaintiff, and with regard to Plaintiff's argument of double taxation of the branch, the withholding tax is imposed on amounts paid to non-residents in accordance with the tax law, resulting from the provision of services in the Kingdom by the relevant entities. As for Plaintiff, these are the costs recorded in the branch's books paid to related parties, and therefore, even if not all these costs are accepted within the branch's accounts, this does not mean double taxation as these costs belong only to Taxpayer's (Plaintiff's) base. The withholding tax referred to by Plaintiff belongs to another tax base, namely the withholding tax base of another non-resident, namely the related party. Late Payment Penalty Item: The late payment penalty is calculated from the date the tax is due until the date of payment of the outstanding tax arising from the application of the provisions of the Law and the amendments made by Defendant. The unpaid tax due resulted from amendments to items that are not governed by clear statutory provisions, as the penalty has resulted from a dispute in transfer pricing. Department ruled to Modification of Defendant's action relating to the assessment at issue.

Instruments:

- Articles (2/B), (12), (13), (62), (63/C), (68/E), (77/A and B) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH.
- Articles (10/11), (63/8), (67/3), (68/1), (71/2) of the Implementing Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH..
- Article (4(b), (c), (7, 8, 10, 12(b), 23) of the Transfer Pricing Bylaws issued by Decision No. (6-1-19) of the Board of Directors of the General Authority of Zakat & Tax dated 25/05/1440 AH corresponding to 31/01/2019 AD.
- Article (4,3,3), (4,4,2 and (6,3,4) of the Transaction Pricing Guidance Manual, Second Edition, November 2021.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Sunday, 06/03/1444 AH, The first department for the determination of income tax violations and disputes in Riyadh, formed pursuant to Article 67 of Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, established by Royal Decree No. (13957) dated 26/02/1444 AH, convened a session via video conference, in accordance with remote video litigation procedures, to hear the above-mentioned case filed with General Secretariat of Zakat, Tax and Customs Committees

under aforementioned number on 19/03/2021, as it fulfilled established regulatory procedures.

The facts of this case are summarized in that ..... (National ID No. ...), in its capacity as director of Plaintiff, ... Engineering Consultancy Co. (Commercial Registration No. ...), submitted its objection to the Zakat Tax Assessment for the years 2015 to 2018 issued by Zakat, Tax and Customs Authority (ZATCA). Plaintiff's objection included a number of basic requests as follows: a. Plaintiff requests the use of a transaction-by-transaction comparison approach, rather than a transaction aggregation approach, to test the neutral nature of transactions with related parties. b. Taking into account the economic and other circumstances affecting Taxpayer's profitability when assessing transfer pricing for related parties. c. Adoption of an adjustment to the goodwill impairment. c. Cancellation of ZATCA's claim for transfer pricing in relation to Zakat based on Article 63 (c) of Tax Law. e. Not excluding loss-making companies from the comparable companies. f. Identifying the controlled transactions covered by ZATCA amendment. g. Approving the settlement of bad and doubtful debts allocations for 2018 estimated at (SAR 13,365,875). h. Cancellation of all adjustments to the value of controlled transactions for Zakat. Plaintiff made a number of additional requests, including the following: a. Adjusting the calculation of the withholding tax paid on amounts paid to related parties. b. Using the lower quarterly average as the basis for auditing Company's accounts.

Having presented the statement of claim to Defendant, it responded with respect to the objection to the transfer pricing item as follows: After referring to the financial statements and conducting a transaction pricing audit for ..... Engineering Consultancy Co., ZATCA agrees with Taxpayer that ..... is the party under test as they are the least complex parties in transactions between related companies. ZATCA also agrees with Taxpayer that using TNMM and selecting OM and NCPM as profit level indicators is the appropriate way to verify that Company's results fall within the Arm's Length range. However, ZATCA does not agree that the comparative analysis conducted by Taxpayer determines the Arm's Length and should not be used to determine Taxpayer's profitability, as the comparative analysis provided by Taxpayer for the years 2015 to 2017 included three loss-making companies, which is not acceptable to ZATCA in accordance with Article 4.3.3 of the Transfer Pricing Guidelines. Accordingly, ZATCA updated Taxpayer's comparative analysis by excluding the loss-making companies. Furthermore, ZATCA conducted another updated comparative analysis to include the years 2016 to 2018 to be relevant to the 2018 audit and was used when adjusting the 2018 results in accordance with Article (4.3.3) of the Transfer Pricing Guidelines. After reviewing the objection letter and referring to the Income Tax Law, the Implementing Regulations and the Transfer Pricing Bylaws issued by the Board of Directors Resolution No. (6-1-19) dated 25/05/1440 AH corresponding to 31/01/2019 AD. The opinion was reached for each inquiry related to Taxpayer's inquiries and requests separately, as follows: a) Taxpayer requests ZATCA to use the transaction-by-transaction comparison approach instead of the transaction aggregation approach to test the Arm's Length of controlled transactions and identify related parties. Based on the local file received by Taxpayer, the Taxpayer did not provide ZATCA with full details of all controlled transactions; therefore, the transaction-by-transaction comparison approach cannot be used. ZATCA has relied on what was submitted by Taxpayer for the transfer pricing adjustment, which is the application of TNMM to the results of the company as a whole, in which the TNMM compares the profitability of the 'tested party' with the profitability of similar independent companies. However, ZATCA does not agree with Taxpayer to exclude the provision for doubtful debts, as per Article (8) of the Transfer Pricing Bylaws. In addition to the above, the Organization for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines on Screening Practices states that: 'Tax inspectors must begin their analyses of

transfer pricing from the perspective of the method chosen by the taxpayer in setting its prices.' Therefore, as stated above, the Company's Operating Profit Margin was adjusted to comply with the Arm's Length principle, since Plaintiff company is the inspected entity that we compared with third-party companies. For that, we must include the full result and accordingly, Plaintiff's objection was dismissed. b) Taxpayer requests to take into account the economic and other circumstances that affected Taxpayer's profitability when assessing transfer pricing for related parties. Thus, the cancellation issued by ZATCA was for several reasons mentioned. When the company started its activities in the Kingdom in 2012, Taxpayer's net profit/loss during the period fluctuated and Taxpayer's revenue decreased from 2015 to 2018, thus not indicating that there is a growth strategy for the company's revenue. Accordingly, Plaintiff's objection was dismissed. c) Taxpayer requests ZATCA to approve the reconciliation of the bad and doubtful debts provision for the financial year 2018 estimated at (SAR13,365,875) according to the local file provided by Taxpayer, the Taxpayer formed the provision in 2018 as a result of transactions with one independent client, and did not form provisions for the years. Therefore, Taxpayer requests a goodwill impairment adjustment. With regard to the exclusion of the allowance for doubtful debts and the adoption of the amortization adjustment for goodwill, ZATCA does not accept adjustments to the financial information, as the comparison has to be made on the basis of the financial statements as they are the only publicly available accounts that enable them to find comparable financial information in the databases. The allowance for doubtful debts is an account that is relevant to operating profit, as the Company is highly dependent on receivables and therefore cannot be excluded as a non-operating item. Since it is impossible to make the same adjustment for the companies included in the comparison analysis and the fact that there is insufficient financial information available for the comparable companies to make any adjustment as it will only reduce the level of accuracy of the analysis and increase the differences between the comparable information contrary to paragraph (4.3.4) Selecting Comparables of the Transfer Pricing Guidelines. Similarly, symmetry/comparability adjustments may not be made to the financial statements of comparable persons, and such adjustments must be aimed at increasing the accuracy of the analysis and eliminating the effects of minor differences. d) Taxpayer requests ZATCA not to apply Article (10) paragraph (11) based on Article (12) of the Tax Law. Consequently, all price adjustments to the cost of revenue shall be canceled in accordance with Article (12) of the Income Tax Law. With regard to a resident company's request to deduct the amount withheld as withholding tax from its income tax liability, ZATCA first explains that there is a difference between income tax and withholding tax in terms of who bears the burden of the tax, whereby a resident company (A) bears the burden of income tax and a non-resident company (B) bears the burden of withholding tax. Hence, Company (A) is not entitled to deduct the withholding tax it withheld from Company (B), a non-resident, from the income tax payable by it. According to Article 2 (b) of the Income Tax Law, a non-Saudi resident natural person carrying out an activity in the Kingdom is considered a taxable person under the Income Tax Law and its Implementing Regulations, so the person subject to income tax and the person subject to withholding tax are ....., and the income tax base is different from the withholding tax base so it is not considered double taxation. Regarding the imposition of withholding tax on an unapproved expense, ZATCA is entitled to impose withholding tax on the expense regardless of whether all or part of it is approved as a deductible expense, in accordance with the provisions of paragraph (8) of Article (63) of the Implementing Regulations of the Income Tax Law, resulting in the right to make the deduction even if the expense is not approved for the resident. In accordance with sub-paragraph (e) of Article 68 of the Income Tax Law, if an amount is paid to a non-resident and tax is withheld, the tax is final, except in two cases, one of which is that the amount paid to a non-resident carrying on business in the

Kingdom through a permanent establishment, and this amount paid to them is directly related to the business carried out by the permanent establishment, then this amount is calculated in determining the tax base of the non-resident. Therefore, Taxpayer's objection is incorrect and dismissed. a) Taxpayer requests ZATCA to exclude the years 2015 to 2017 from the transfer pricing claim on the basis of Article 63 (c), as ZATCA based its procedure for making an adjustment to the Company's profit margin for the years 2015 to 2017 on Article (63) of the Income Tax Law. According to Article (13) of the Income Tax Law and Article (10) of its Implementing Regulations, it is applicable for the years in dispute. Article (63) of the Income Tax Law provides that ZATCA may reallocate income and expenses in transactions between related parties or entities of the same party to reflect the income that would have been realized if the parties were independent and unrelated or that ZATCA considers applicable in this case. ZATCA also emphasizes that transfer pricing is not new legislation as stipulated in Article 10 of the Tax Regulations. Consequently, the procedure applies to the 2016 and 2017 results, which are within ZATCA's authority to adjust the assessment, and therefore we confirm that Taxpayer's request is not accepted. d) Taxpayer requests ZATCA to cancel the pricing claim in respect of the Zakat part: Zakat part is not considered separate from the tax part if the operating profit of the company as a whole is adjusted. Controlled Transactions have been adjusted to be in line with the Arm's Length as if they were transactions with independent parties. In addition, the transactions have been repriced, which would affect the Company's net operating profit or loss. It is incorrect that Taxpayer stated that the Zakat part has nothing to do with the transfer pricing, and this is clearly shown in Zakat Regulations. It is clear that the adjustments made to the transfer pricing that created Zakat tax differences affected the Company's profit. Accordingly, it affected the tax and zakat parts as the item is a component of the zakat base, and therefore Taxpayer's objection was dismissed. b) Taxpayer requests ZATCA not to exclude loss-making companies from the comparable companies, as they have taken retrospective Transfer Pricing Bylaws for the years 2015 to 2017. According to the paragraph relied upon by Plaintiff, it did not demonstrate that the losses realized by the excluded companies were comparable to the party under test, ... Company. According to the databases used to identify comparable companies, the reasons for the realization of losses cannot be determined in order to determine whether the classification of losses does not reflect normal business conditions in accordance with the Transfer Pricing Guidelines as stipulated in para (4.3.4). Accordingly, Taxpayer's objection was dismissed. t) Company's claim for cancellation of the delay penalty: ZATCA has imposed a late payment penalty on the outstanding and unpaid tax, as the tax was imposed in accordance with the clear provisions of the Tax Law and Implementing Regulations, and based on Article (77) of the Income Tax Law. Regarding additional requests: Company requests ZATCA to make an adjustment to calculate the withholding tax paid on amounts paid to related parties that relate to costs. ZATCA explains that this request was responded to in the underlying requests in item (d). Require the use of the lowest quarterly average as the basis for auditing Company's accounts: ZATCA relies on Article (12) of the Transfer Pricing Bylaws, paragraph (b), and Article (4,3,6) of GAZT's Transfer Pricing Guidelines. Accordingly, ZATCA requests that the case be dismissed, while reserving its right to submit further responses and clarifications until the close of the case.

On Sunday, 06/03/1444 AH, the Department held its e-session to hear the case. M/s ..... attended as Plaintiff's representative under a PoA, a copy of which is attached to the case file, and M/s ..... attended, stating that it attended as a zakat and tax advisor for its client's. M/s. ..... (National ID No. M/s. .....) and M/s. ..... (National ID No. M/s. .....), as representatives of Defendant/ Zakat, Tax and Customs Authority (ZATCA), attended the hearing under an authorization issued by ZATCA's Deputy Governor for Legal Affairs No. (.....) dated .../10/1443 AH. At the beginning of the session, Defendant's

representatives stated that ....., who is present in this session, was previously employed by Defendant and participated in the audit and inspection works conducted by Defendant on the Plaintiff, and that its presence in this case and its participation in work that is not in accordance with the relevant laws and regulations. Accordingly, Defendant demands that it shall not attend this session, while reserving its right to take whatever measures it deems appropriate in this regard. The Department asked M/s. ..... about the validity of the statement made by Defendant's representatives that it was working for Defendant and participated in the audit and inspection works conducted by Defendant on the Plaintiff, it replied that what Plaintiff's representatives stated in this regard: Correct, as I was working for Defendant until December 2022. Accordingly, the Department asked ..... to leave the hearing. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. When confronted with this, Defendant's representatives replied that they confirm what was stated in Defendant's Reply Memorandum, and that they do not accept any new documents that were not submitted to Defendant during inspection and objection phase. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: The Plaintiff filed this case moving to cancel ZATCA's decision regarding the Zakat tax assessment for the years from 2015 to 2018. Since this dispute is a Zakat tax dispute, it then falls within the jurisdiction of Tax Dispute and Violation Committee as per Royal Decree No. (26040) dated 21/04/1441 AH, and since it is evident from the case documents that Plaintiff filed the case by a person with capacity, and within the period prescribed by law, it is therefore accepted in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Department found that the dispute lies in the Defendant's issuance of Zakat tax assessment for the years 2015 to 2018, consisting of two items, as follows:

First: Transfer Pricing Item:

The dispute lies in Plaintiff's assertion that Defendant updated the comparable companies to exclude loss-making companies in order to comply with the Transfer Pricing Guidelines. Accordingly, Plaintiff makes some basic requests as follows: a. Plaintiff requests the use of a transaction-by-transaction comparison approach, rather than a transaction aggregation approach, to test the neutral nature of transactions with related parties. b. Taking into account the economic and other circumstances affecting Taxpayer's profitability when assessing transfer pricing for related parties. c. Adoption of an adjustment to the goodwill impairment. c. Cancellation of ZATCA's claim for transfer pricing in relation to Zakat based on Article 63 (c) of Tax Law. e. Not excluding loss-making companies from the comparable companies. f. Identifying the controlled transactions covered by ZATCA amendment. g. Approving the settlement of bad and doubtful debts allocations for 2018 estimated at (SAR 13,365,875). h. Cancellation of all adjustments to the value of controlled transactions for Zakat. The Plaintiff made a number of additional requests, including the following: a. Adjusting the calculation of the withholding tax paid on amounts paid to

related parties. b. Using the lower quarterly average as the basis for auditing Company's accounts, and based on paragraph (11) of Article (10) of the Implementing Regulations of the Income Tax Law issued by the Minister of Finance Decision No. (1535) dated 11/06/1425 AH, which stipulates that "The following expenses may not be deducted: 11. The value of materials supplied or the value of services provided by parties related to the taxpayer in excess of the prices used between independent parties. The Department shall issue the rules for determining the fair prices of transactions between related parties in accordance with internationally recognized standards.' Article (63) of the Income Tax Law issued by Royal Decree No. M/1 dated 15/01/1425 AH, relating to tax evasion procedures, stipulates that: "A. For the purpose of tax determination, the Department may: 2. reclassify transactions whose form does not reflect their substance and put them in their real form. C. The Department may reallocate revenues and expenses in transactions among related parties or parties under the same body, so as to reflect the returns that would have resulted if the parties were independent and unrelated." Based on Article (62), which stipulates that: "A. The Department may correct and adjust the tax shown on the declaration to make it conform to the provisions of this Law, and it may perform tax assessment if the taxpayer does not file its declaration." Paragraphs (b) and (c) of Article (4) of the Transfer Pricing Bylaws issued by Decision No. (6-1-19) of the Board of Directors of the General Authority of Zakat and Tax (GAZT) dated 25/05/1440 AH corresponding to 31/01/2019, regarding the difference between the terms of controlled transactions and the terms of similar transactions between independent persons, stipulates that: B. Where terms, conditions or remuneration of controlled transactions are not similar to conditions of a Comparable Transaction between Independent Persons, the Authority may: Direct that the tax base of one or more of the Persons involved in the Controlled Transaction be adjusted to include the returns that such Persons would have received but for the dissimilar conditions; or Reallocate or disregard the result arising out of a Controlled Transaction as to reflect the result that would have arisen from a Comparable Transaction. C. The Authority shall make a determination as to whether Controlled Transactions are conducted on the Arm's Length principle in accordance with the relevant provisions of these Bylaws." Article (7), which relates to the approved transfer pricing methods, stipulates that: "A. Transfer Pricing Methods adopted for the purposes of Article (6) of these Bylaws are as follows: 4. Transactional Net Margin Method whereby a comparison is made between the net profit margin relative to an appropriate base (e.g., costs, sales, assets) that a Person achieves in a Controlled Transaction with the net profit margin relative to the same base achieved in comparable Uncontrolled Transactions." Article (10) on Combined Controlled Transactions between related persons, which states: "If a Taxable Person carries out, under the same or similar circumstances, two or more Controlled Transactions that are economically closely linked to one another or that form a continuum such that they cannot reliably be analyzed separately, those Controlled Transactions may be combined to perform the comparability analysis to apply the transfer pricing methods." In addition, Article (23) of Audit Procedures stipulates that: "In conducting audits of Controlled Transactions, the Authority shall follow the audit rules and procedures established under Article 62 of the Income Tax Law and the rules set forth in the Guidelines." Based on the above, and upon reviewing the case file, the Department found that the dispute lies in Defendant's inspection of Plaintiff's transfer pricing case, where Defendant concluded that Taxpayer's quarterly range was unacceptable as it did not agree to include some companies in the comparison analysis prepared by Plaintiff. The Arm's Length was adjusted to produce an IQR representing Arm's Length from (6.18%) to (25.01%) with an average of (7.07%) when using OM and NCPM, resulting in an average of (7.61%). The dispute between the parties to the lawsuit relates to transfer pricing, which concerns the pricing of Commercial Controlled Transactions for the purposes of

calculating the tax base and paying what is fairly due to the countries in which each of the parties to the transactions resides. Controlled Transactions include, but are not limited to: Transactions involving services, goods, loans, and intangible assets (intellectual property) in Transfer Pricing Bylaws to ensure that related taxable persons determine the terms and conditions of their transactions that have an economic impact in the same manner as independent parties in transactions under similar circumstances. The parties to the dispute agree that ... is the party under test because it is the least complex, and Defendant has accepted to use TNMM, and that OM and NCPM are indicators of the level of profit, as it's an appropriate method to verify that Company's results fall within the Arm's Length range. As the dispute is limited to Defendant's failure to accept the comparative analysis provided by Plaintiff as it includes loss-making companies, and Defendant's exclusion of the allowance for doubtful debts when calculating Plaintiff's operating profit margin. Plaintiff argues that Defendant is not entitled to apply the instructions and guidelines for the disputed years, as the instructions were issued later than the disputed years. With reference to the above-mentioned statutory provisions, it is clear that the Tax Law and the Implementing Regulations provide that ZATCA has the right to recharacterize transactions whose form does not reflect their substance, and to reallocate income and expenses in transactions between related parties 'Controlled Transactions' or parties belonging to the same Entity to reflect the income that would have been realized if the parties were independent or related, prior to the years in question. Whereas the purpose of issuing Transfer Pricing Bylaws and related Transfer Pricing Guidelines is to clarify the procedures and documents that Taxpayer must comply with, in order to avoid incurring tax liabilities as a result of a failure to prove that transactions with related parties are conducted on a similar basis to similar independent transactions, as well as to ensure that the value and prices of materials or services between related parties are within the range of prices used between independent parties. As the issuance of instructions and guidelines after years in dispute did not result in a new ZATCA right, ZATCA has the right not to accept transactions between related parties whose form does not reflect their substance and status. Since the burden of proving the validity of Taxpayer's declaration of revenues, expenses and any other data is the responsibility of Taxpayer, in case Taxpayer fails to prove the validity of its declaration, ZATCA may apply any other statutory sanctions, not authorizing the expense that is not validated by Taxpayer or making a discretionary assessment in light of the circumstances and facts related to the case and available information that Taxpayer should have provided to validate its expenses even if there are not Transfer Pricing Bylaws. Therefore, the Department finds in favor of Defendant's action in applying Transfer Pricing Bylaws and the Guidance Manual to the disputed years. As for Plaintiff's claim to use a transaction-by-transaction comparison approach, rather than an aggregation approach, in order to test the neutral nature of the controlled transactions. The Defendant argued that Plaintiff did not provide full details of all controlled transactions and relied on what was provided by Plaintiff. After reviewing the documents submitted by Plaintiff, the Department found that a transaction-by-transaction comparison approach was used, which shows that Defendant's claim is not true. Therefore, each transaction with related parties should have been examined separately to ensure that all controlled transactions between Plaintiff and related parties are within the Arm's Length. In accordance with para (2.4.4) of the Transfer Pricing Guidelines, which states: "In principle, each transaction should be assessed individually. In specific cases, the application of the portfolio method (aggregation of multiple transactions for the purpose of generating a favorable return on the portfolio rather than obtaining returns from each product or service individually) may be permitted. This method can only be used if the same person is involved in all transactions bundled in the wallet, and therefore the same person declares all transactions." Article (10) of the above-mentioned Transfer Pricing

Bylaws also stipulates that in order to adopt this approach, transactions must be related and cannot be separated or inspected separately. The Department therefore concludes that Dependent's action shall be modified using a transaction-by-transaction approach to ascertain whether the nature of the transactions is based on the Arm's Length principle. As for Plaintiff's claim to exclude provisions for bad and doubtful debts and goodwill amortization expense when calculating operating profit margin, as comparative adjustments cannot be made to the companies included in the comparative analysis due to the lack of sufficient financial information for the comparative companies. Therefore, the Department concludes in favor of the Defendant's action to exclude them. With regard to Plaintiff's claim for the cancellation of ZATCA's Zakat-related transfer pricing claim on the basis of Article 63(c) of the Tax Law, Plaintiff claims that the Article referred to relates to tax avoidance, and Defendant did not provide the basis for its action in considering the branch to be a tax avoider. The Article is not limited to tax evaders, but to all taxpayers to prevent the occurrence of any tax avoidance or evasion. As it gave Defendant the right to recharacterize transactions whose form does not reflect their substance and place them in their true form, making it a special anti-avoidance Article to reflect the revenue that would be due if the parties were independent and unrelated. With regard to Plaintiff's claim that loss-making companies should not be excluded from the comparable companies, para (4,3,3) of the Transfer Pricing Guidelines stipulates that: 'the Comparables must not have made losses during the years within the scope of the analysis'; thus, the Department concludes that Plaintiff's claim should be dismissed. With respect to Plaintiff's claim to use the lower quartile of the quarterly range, rather than the midpoint, as the basis for calculating ZATCA's adjustment, paragraph (4.3.6) of the Transfer Pricing Guidelines indicates that the use of the average in determining the transfer pricing policy is the most appropriate use. With regard to the additional requests referred to by Plaintiff, and with regard to Plaintiff's claim of double taxation of the branch, withholding tax is levied on payments made to non-residents in accordance with the tax law, resulting from the provision of services in the Kingdom by the related parties. As for Plaintiff, it is the costs recorded in the branch's books paid to related parties. Article 63(8) of the Regulations stipulates that withholding tax is levied on the entire amount paid to a non-resident regardless of the regularity of the expense and its acceptance in the branch's books. Thus, even if not all of these costs are accepted in the branch's accounts, this does not mean double taxation as these costs belong only to Taxpayer's (Plaintiff's) tax base. The withholding tax referred to by Plaintiff relates to another tax base "withholding tax base" of another non-resident "the related party". Therefore, the Department concludes to modify Defendant's action using a transaction-by-transaction approach.

Second: Late Payment Penalty Item:

The dispute lies in Defendant's imposition of a late payment penalty, while Defendant argued that the late payment penalty was imposed on the unpaid tax differences within the statutory deadline. Whereas paragraph (1) of Article (68) of the Implementing Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH stipulates that: "In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases: B. Delay in payment of due tax as per the Department's assessment". E. Delay in payment of tax required to be withheld within ten days of the following month during which payment was made to the beneficiary, as stipulated in Article (68) of the Law. The payment of the same shall be the responsibility of the withholding entity". Article 67(3) of the same regulation stipulates that: "Unpaid tax shall mean the difference between the amount paid by Zakat Payer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for

return filing and payment". Paragraph (A) of Article (68) of the same Implementing Regulations states: "A. In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment." Based on the above, and after referring to the case file and the defenses and documents it contains, and where the delay penalty is calculated from the date the tax is due until the date of payment of the due tax arising from the application of the provisions of the Law and the amendments made by Defendant, and where the unpaid due tax resulted from amendments to items not governed by clear statutory provisions, where the penalty resulted from a dispute in the transfer pricing, which requires the Department to amend Defendant's action, provided that the penalty shall be calculated from the date Plaintiff is notified of the decision issued by the Department.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- Amending the action of Defendant/Zakat, Tax and Customs Authority (ZATCA), against Plaintiff/..... Engineering Consultancy Co. (TIN Number .....) in relation to the assessment at issue.

This decision was made in presence of both parties. The date the decision is filed in the e-system of the General Secretariat of Zakat, Tax, and Customs Committees shall be considered the date of delivery. The parties involved have the right to appeal the decision within thirty (30) days from the day after its receipt. If no appeal is submitted within this period, the decision shall become final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-2020)
Issued in Appeal No. (Z-50031-2021)

Key words:
Zakat Assessment - Accounts - Short-Term Liabilities - Receivables - Dividends - Financial Statements - Cash Flows - Acceptance of the case in form.

Abstract

Plaintiff's request for cancellation of the Zakat, Tax and Customs Authority's decision regarding 2019 Zakat assessment. – ZATCA responded in relation to the Receivables Item: ZATCA has adjusted the calculation of Zakat by adding the lower of the first or last balance of the financial period. Based on the financial statements, Plaintiff's objection was accepted, as it was verified that the creditors did not finance the fixed assets by referring to the statement of cash flows, and it is classified under short-term liabilities in the statement of financial position. Item Second: Dividends: Defendant amended Zakat calculation by adding the first term's balance to the retained earnings, as it failed to provide proper documents for the dividends. Accordingly, ZATCA requests the dismissal of the case, reserving its right to submit further responses and clarifications until before the closing of the pleadings. - The Department found that the dispute lies in the Defendant's issuance of Zakat assessment for 2019, which consists of two items, firstly: Receivables Item: The Department found that the dispute between the parties to the case ended with Defendant's acceptance of Plaintiff's demands. Second: Dividends: Upon reviewing the financial statements, the Department confirmed the transfer of shares from one partner to another in exchange for the transfer of debts. Department ruled to Confirming the conclusion of the dispute in relation to Receivables Item, and dismissing the objection in relation to Dividends Item.

Instruments:

- Article 70 of the Law of Civil Procedure promulgated by Royal Decree No. (M/1) of 22/01/1435 AH.
- Article (70/ 1) of The Implementing Regulations of Procedure before Sharia Departments issued by the Minister of Justice Resolution No. (39933) dated 05/19/1435 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Sunday, 06/03/1444 AH, the First Department for Determination of Income Tax Violations and Disputes in Riyadh, stipulated by Article (67) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended and formed by Royal Order No. (13957) dated 26/02/1444 AH, held its teleconference session to

consider the Case filed by .... Company, Against ZATCA. As the case fulfilled the prescribed legal requirements, it was registered with the General Secretariat of Tax Committees under the above number on 05/05/2021.
The facts of this Case are summed up that ..., National ID No. (.....) in his capacity as attorney of Plaintiff (... Company Limited), C.R. No. ..., filed an objection to the zakat assessment for the year 2019 issued by ZATCA.
Having presented the statement of claim to Defendant, it answered as follows: Receivables Item: Based on the financial statements, Defendant amended the calculation of Zakat by adding the balance of the first or last financial period, whichever is less. In addition, Plaintiff's objection was accepted, based on Article (4) of the Zakat Collection Law, as it was verified that the creditors did not finance the fixed assets by referring to the statement of cash flow, and as it is classified under short-term liabilities in the statement of financial position. Item Second: Dividends: Defendant amended Zakat calculation by adding the balance of the first financial period to the retained earnings, as it did not provide proper documents for the dividends, in accordance with Article (4) of the Zakat Collection Law. Based on the foregoing, Defendant requests the Department to dismiss Plaintiff's case, while preserving its right to present further responses and clarifications until before pleadings closure.
On Tuesday, 25/01/1444 AH, the Department held a remote session to hear the case, which was not attended by anyone representing Plaintiff, despite the fact that it was legally notified. M/s ..... (National ID No. ...), as the representative of Defendant/Zakat, Tax and Customs Authority (ZATCA), attended by virtue of a PoA issued by the Deputy Governor of ZATCA for Legal Affairs with the number (.....). dated ... As no one appeared to represent Plaintiff despite the fact that it was legally notified, and based on Article (20) of the Tax Dispute and Violation Committee Procedures, the Department unanimously decided to dismiss the case.
On 01/02/1444 AH, Plaintiff filed a request to initiate the case.
On Sunday, 06/03/1444 AH, the Department held e-hearing session to consider the Case. At that session, (...), (National ID No. .....), in its capacity as a statutory representative of the Plaintiff Company under the MoA, and /..... holder of National ID No. (...), appeared in his capacity as Defendant (ZATCA) representative under ZATCA Vice Governor for Legal Affairs No. (...) dated ... Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: Since Plaintiff filed the case to abolish Defendant's decision regarding Zakat Assessment of 2019 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.
On Merits: Having taken cognizance of documents included in the Case file, requests, defenses, and pleas raised by parties thereto, the Department found that the dispute lies in Plaintiff's objection to Defendant's decision regarding issuance of Zakat Assessment of 2019, which included the following two items, namely:

First: Receivables Item:

In accordance with Article (70) of the Law of Civil Procedure promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH that states: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgment, settlement, or the like in the case record, and the court shall issue a deed to that effect" and based on paragraph (1) of Article (70) of the Implementing Regulations of the Law of Civil Procedures issued by Minister of Justice Decision No. (39933) dated 19/05/1435 AH stipulating that: "If an agreement is reached prior to entering the case, the text of the case and the answer shall be entered prior to entering such agreement, provided that the original case falls within the jurisdiction of the circuit, even if the text of the agreement falls within the jurisdiction of another court or circuit and the object of the case or portion thereof is agreed upon". Based on the foregoing, the Department found that the dispute between the parties to the case ended with Defendant's acceptance of Plaintiff's demands, in accordance with its Reply Memorandum, which included: ".... ZATCA accepted Plaintiff's objection."

Second: Dividends:

The dispute lies in Plaintiff's objection to Defendant's action in adding dividends to the Zakat base in the amount of (SAR 2,000,000). Plaintiff indicated that the disputed profits were distributed according to the partners' decision on 30/12/2019 by closing the partners' accounts receivable amounting to (SAR 1,507,507). It added that (SAR 492,493) was distributed through the waiver of one of the partners of part of its share in the Company (15.44%) to the other partners, so that its share after the waiver became (1,456%), which shows that the waiver was made in exchange for dividends. Defendant argued that its action was in accordance with the provisions of the Implementing Regulation for Zakat Collection. Based on the above, and as the financial statements proved to the Department the transfer of shares from one partner to another in exchange for the transfer of debts, the Department must dismiss Plaintiff's objection.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

First: Establish resolution of the dispute of Plaintiff (... Company TIN No. (...) With Defendant/Zakat, Tax and Customs Authority (ZATCA) regarding the Receivables Item at issue in this case, by Defendant's acceptance of Plaintiff's requests in this regard.

Second: Reject the objection of Plaintiff/ ... Company TIN No. (...) on decision of Defendant/Zakat, Tax and Customs Authority (ZATCA), regarding the Dividend Item at issue in this case

This decision was made in presence of both parties. The date the decision is filed in the e-system of the General Secretariat of Zakat, Tax, and Customs Committees shall be considered the date of delivery. The parties involved have the right to appeal the decision within thirty (30) days from the day after its receipt. If no appeal is submitted within this period, the decision shall become final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-2036)
Issued in Appeal No. (ZI-50092-2021)

Key words:
Zakat Tax Assessment - Land Investments - Zakat base - Financial Statements - Investments at Fair Value - Accumulated Losses - Other Personnel Expenses - Acceptance of the case in form.

Abstract

Plaintiff demands the cancellation of the Zakat, Tax and Customs Authority's decision regarding the 2018 zakat tax assessment. – As for First Item, ZATCA replied as follows: Land Investments Item: Defendant did not accept the deduction of the item from Zakat base, due to the fact there was an exclusion activity on lands during the year, in addition to the fact that some of these lands are owned by related parties. It was found that Company did not specify in the financial statements that the lands could be for sale or rent, and it was found during 2018, lands worth (SAR 217,460,566) were sold. Therefore, Plaintiff's objection was dismissed. Second Item: Investments at Fair Value Item: Defendant did not accept the deduction of the item as it is in funds that are not deductible from Zakat base. After examination, it was found that the investment was made in a real estate fund in Germany, and the investment did not fulfill the conditions for deduction. Third Item: Accumulated Loss Item: Defendant did not accept the deduction of losses as it showed a profit for the year 2018. In addition, the last ZATCA assessment was in 2013 and does not show the existence of loss carryforwards, while the years 2014 to 2017 were not assessed, based on the fact that loss carryforwards are deducted by ZATCA assessments. Fourth Item: Other Personnel Expenses Item: Defendant adjusted the net profit for the above item as it was reflected in the trial balance under personal costs. After reviewing personnel settlement documents, the amount in dispute was not included in the settlement. Hence, Plaintiff's objection was dismissed. Accordingly, ZATCA requests that the case be dismissed, reserving its right to submit further responses and clarifications until the closing of the case. - The Department established that the dispute lies in Defendant's issuance of Zakat tax assessment for 2018, which consists of four items, as follows: First: Land Investments Item: Since there are two prerequisites that must be met for land under development (projects under implementation) to be considered Zakat-deductible acquisition offers: First: A notarized letter of intent from the authorized person stating the intention of the investment, and secondly: No sales were made during the year. Upon reviewing the case file, the Department found that the lands are registered in the name of the Company and they are used for the activity and not for trading. Department also found there were no sales made on the disputed lands during the years 2014 to 2020, except that part of lands were transferred in the name of Partner/..... as part of the Group's restructuring arrangements. The ownership of the land was transferred to the Exiting Partner at a value of (SAR 217,460,565) and is now registered in the name of (.....)

Company, without changing the right to use those lands for the Company according to the Exiting Partner's declaration. Based on the submission of documents supporting the Company's purpose of investing in the lands, in addition to the fact that there were no sales made on those lands for the purpose of trading, but rather their ownership was transferred to one of the partners as a result of the restructuring. Since Defendant did not provide proof that the lands were used for trading, the Department must cancel Defendant's decision. Second: Investments at Fair Value Item: Since Plaintiff has the right to deduct the foreign investment from its Zakat base, provided that it provides Defendant with audited accounts from a certified public accountant in the country of investment in order to calculate Zakat due on these investments and deliver them to Defendant. Then, it will be deducted from the Investor Company's Zakat base to avoid paying Zakat twice. Since the dispute over this item lies in Plaintiff's objection to the non-deductibility of the investment in a real estate fund in Germany, the Department reviewed the case file and found that the financial statements of the real estate fund were not certified by a certified public accountant in the country of investment and were not authorized by the official authorities. Therefore, the investment did not fulfill the conditions for deduction. Third: Accumulated Loss Item: Since the losses carried forward that may be deducted from the Zakat base are the losses adjusted according to the assessment issued by Defendant after the addition of provisions, which were previously reduced in the year of formation, in order to prevent double taxation. Therefore, what is considered in loss carryforwards for Zakat purposes is what has been adjusted as required by Zakat Law and not the loss carryforwards included in the financial statements. Department found Defendant's action of deducting the adjusted loss carryforwards as per Defendant's assessment, after adjusting them with the provisions that were reversed in the year of formation, to be correct. Therefore, the Department must dismiss Plaintiff's objection. Fourth: Other Personnel Expenses Item: Upon reviewing the case file, the Department found that Plaintiff submitted documents supporting the expenses amounting to (SAR 155,845(, which means that Defendant's decision should be amended by deducting the amount of (SAR 155,845) and adding the unsupported difference of (SAR 600). Department ruled to Cancellation of the ZATCA decision relating to the subject Land Investments Item. In addition to amending ZATCA action related to Other Expenses Item, and dismissing other objections.

Instruments:

- Articles (4/II/1, 4/B, 9), (5/1), (20/3) of the Implementing Regulation for Zakat collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Monday, 07/03/1444 AH, first department for the determination of income tax violations and disputes in Riyadh, formed pursuant to Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) of 15/01/1425 AH as amended, and constituted by Royal Order No. (13957) of 26/02/1444 AH, held its session via audio and video conferencing to consider the case filed by Plaintiff/ ..... Company, against ZATCA. Since the Case met the prescribed legal requirements, it was filed with General Secretariat of Tax Committees on 05/05/2021.

The facts of this case are summed up so as... National ID No. (.....) in his capacity as attorney of Plaintiff (...), C.R. No. (...), by virtue of Power of Attorney No. (...) dated .... issued by Public Notary/....., submitted its objection to the tax assessment for the year 2018 issued by the Zakat, Tax and Customs Authority (ZATCA).

Having presented the statement of claim to Defendant, it answered as follows: Land Investments Item: Defendant did not accept the deduction of the item from Zakat base, due to the fact there was an exclusion activity on lands during the year, in addition to the fact that some of these lands are owned by related parties. It was found that Company did not specify in the financial statements that the lands could be for sale or rent, and it was found during 2018, lands worth (SAR 217,460,566) were sold. Therefore, Plaintiff's objection was dismissed, based on Article (4) of the Zakat Collection Regulations. Item Second: Investments at Fair Value Item: Defendant did not accept the deduction of the item as it is in funds that are not deductible from Zakat base. After examination, it was found that the investment was made in a real estate fund in Germany, and the investment did not fulfill the conditions for deduction, based on Article (4) of the Zakat Collection Regulations. Item Third: Accumulated Loss Item: Defendant did not accept the deduction of losses as it showed a profit for the year 2018. In addition, the last ZATCA assessment was in 2013 and does not show the existence of loss carryforwards, while the years 2014 to 2017 were not assessed, based on the fact that loss carryforwards are deducted by ZATCA assessments, based on Article (4) of the Zakat Collection Regulations. Item Fourth: Other Personnel Expenses Item: Defendant adjusted the net profit for the above item as it was reflected in the trial balance under personal costs. After reviewing personnel settlement documents, the amount in dispute was not included in the settlement. Hence, Plaintiff's objection was dismissed, based on Article (20) of the Zakat Collection Regulations. Based on the foregoing, Defendant requests the Department to dismiss Plaintiff's case, while preserving its right to present further responses and clarifications until before pleadings closure.

On Monday 07/03/1444 AH, the Department held its session remotely to hear the case. attended by/... (National ID No. .....), as Plaintiff attorney, subject to POA No. (.....) dated ... dated ..... issued by Public Notary/ ..., as attended by/ ..... holder of National ID No. (...), appeared in his capacity as Defendant (ZATCA) representative under ZATCA Vice Governor for Legal Affairs No. (...) dated ... Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having referred to Defendant's attorney for its reply, she invoked the statements provided by the Defendant in its plea requesting that the Department does not accept further documents that were not submitted to the Defendant during the inspection and objection stage. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the case to abolish Defendant's decision regarding Zakat Tax Assessment of 2018, and since this dispute is a Zakat Tax dispute, it then falls within the jurisdiction of the Tax Dispute and Violation Committee as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On Merits: Having examined the papers and documents contained in the case file, as well as requests, defenses and pleas made by its parties, the Department found that Plaintiff

objects to Zakat Tax assessment made by Defendant for the year 2018, specifically in respect of four items, namely:

First: Land Investments Item:

The dispute lies in Plaintiff's objection to Defendant's action in disallowing the deduction of land investments in amount of (SAR 65,526,828) from the Zakat base for 2018. Plaintiff indicated that it is engaged in the business of owning and purchasing land for investment on a long-term basis, i.e., for the purpose of developing it and using it for rentals and other commercial purposes and not for sale. Plaintiff added that it has transferred the ownership of the land as part of the group's restructuring arrangements, as it was clarified that (.....) had exited the group, and accordingly, it transferred the land to the exiting partner for the value of (SAR 217,460,565) and is now registered in the name of (...) Company. Defendant argued that its action was in accordance with the provisions of the Zakat Collection Regulations, as paragraph (1/II) of Article (4) of the Implementing Regulation for Zakat collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, stipulates that: "The following items shall be deducted from the Zakat Base: 1- Fixed assets including the following: Net value of fixed assets (acquisition assets) and any payments for purchase of fixed assets, and value of spare parts not intended for sale, provided that such assets are owned by Zakat payer, unless there is an impediment to transfer of ownership, and are used in the activity". Paragraph (2) also stipulates that: "The following items shall be deducted from the Zakat Base: 2 - Costly capital construction in progress that is being constructed for the purpose of use in the activity and not for the purpose of sale." Based on the above, since there are two prerequisites that must be met for land under development (projects under implementation) to be considered Zakat-deductible acquisition offers: First: A notarized letter of intent from the authorized person stating the intention of the investment, and secondly: No sales were made during the year. Upon reviewing the case file, the Department found that the lands are registered in the name of the Company and they are used for the activity and not for trading. Department also found there were no sales made on the disputed lands during the years 2014 to 2020, except that part of lands were transferred in the name of Partner/..... as part of the Group's restructuring arrangements. The ownership of the land was transferred to the Exiting Partner at a value of (SAR 217,460,565) and is now registered in the name of (.....) Company, without changing the right to use those lands for the Company according to the Exiting Partner's declaration. Based on the submission of documents supporting the Company's purpose of investing in the lands, in addition to the fact that there were no sales made on those lands for the purpose of trading, but rather their ownership was transferred to one of the partners as a result of the restructuring. Since Defendant did not provide proof that the lands were used for trading, the Department must cancel Defendant's decision.

Second: Investments at Fair Value Item:

The dispute lies in Plaintiff's objection to Defendant's action in not deducting the investments in German fund at amount (SAR 5,247,766) from the Zakat base for 2018, and Plaintiff stated that it is a private property fund managed by (..... Company). Plaintiff added that the investments represent the flow of funds in Company and the income received by Company from the investments fund is recognized as income and is subject to Zakat. Since the investments are long-term and the sources of funding to purchase the investments have been added to the Zakat base, Plaintiff claims that they should be deducted from the Zakat base, as they came out of the business in investments form. Consequently, it did not remain at work for a full twelve (12) months. Defendant argued that its action was in accordance with the provisions of the Zakat Collection Regulations, as stipulated in paragraph (4b) of section (II) of Article (4) of the Implementing Regulation for Zakat collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH,

which states that: "The following items shall be deducted from the Zakat Base: Investments in establishments outside the Kingdom, in partnership with others, provided that Zakat Payer, within its Zakat Declaration, calculates the Zakat due for these investments in accordance with the rules set forth in these Regulations and pays thereof to ZATCA, and attaches audited accounts from a chartered certified accountant in the country of investment, certified by official authorities. If Zakat Payer fails to do so, the investments will not be deducted from the Zakat Base." Paragraph (3) of Article (20) also states: 'Whereas the burden of proving the validity of the items and any other data contained in Zakat payer's declaration is on Zakat payer. In the event that the Zakat payer is unable to substantiate its declaration, ZATCA may disallow the item that is not substantiated by Zakat payer or make a discretionary assessment according to ZATCA's view in light of the circumstances and facts of the case and the information available to it.' Based on the above, since Plaintiff has the right to deduct the foreign investment from its Zakat base, provided that it provides Defendant with audited accounts from a certified public accountant in the country of investment in order to calculate Zakat due on these investments and deliver them to Defendant. Then, it will be deducted from the Investor Company's Zakat base to avoid paying Zakat twice. The dispute over this item lies in Plaintiff's objection to the non-deductibility of the investment in a real estate fund in Germany. Upon reviewing the case file, the Department found that the financial statements of the real estate fund were not certified by a certified public accountant in the country of investment and were not approved by the official authorities. Therefore, the investment did not fulfill the conditions for deduction stipulated in Article 4(b)(4) of the aforementioned Zakat Collection Regulations, which makes it necessary for the Department to dismiss Plaintiff's objection.

Third: Accumulated Loss Item:

The dispute lies in Plaintiff's objection to Defendant's action in not allowing the accumulated losses amounting to (SAR 88,039) to be deducted from Zakat base for 2018. The financial statements for the year ended 31/12/2018 have been prepared in accordance with International Financial Reporting Standards (IFRS) adopted in the Kingdom for the first time, and the opening balances of the financial position have been updated as the date of transition to IFRS. Plaintiff submitted its Zakat declaration based on the financial statements for the year ended 31/12/2018, which shows the opening balance of accumulated losses (SAR 88,309), while Defendant argued that its action was in accordance with the provisions of the Zakat Collection Regulations, where paragraph (9/II) of Article (4) of the Implementing Regulation for Zakat collection issued by the Minister of Finance Decision No. (2082) dated 01/06/1438 AH, stipulates that: "The following items shall be deducted from the Zakat Base: 9. The net adjusted deferred losses according to the Authority's Assessments after adding the provisions or reserves only thereto, under which the loss was previously reduced in the year of its composition." Since the deferred losses were among the elements that may be deducted from Zakat Base, which are the adjusted losses as per Assessments issued by Defendant after adding the provisions, under which the loss was previously reduced in the year of its composition for the purpose of avoiding the double charge of Zakat; hence, the deferred losses that are considered subject to Zakat are those adjusted under the requirements stated in Zakat Law, not the deferred losses included in the financial statements. As the Department has established the validity of Defendant's action of deducting the adjusted loss carryforwards according to the Defendant's assessment, after adjusting them with the provisions that were refunded in the year of formation; Therefore, the Department satisfies to dismiss Plaintiff's objection.

Fourth: Other Personnel Expenses Item:

The dispute lies in Plaintiff's objection to Defendant's action in not deducting employee expenses from the adjusted profit. Plaintiff stated that the other allowances were paid to

an employee who resigned after working at the Company for 24 years, and provided documents supporting the termination agreement between it and the employee showing the additional payments in an amount of (SAR 155,845). Plaintiff relies on Article (5) of the Implementing Regulation for Zakat collection, considering the allowances as ordinary and necessary business expenses incurred by the Company, while Defendant argued that its action was in accordance with the provisions of the Zakat Collection Regulations. Paragraph (1) of Article (5) of the Implementing Regulation for Zakat collection issued by Ministerial Decision (2082) dated 01/06/1438 AH, stipulates that: "All regular and necessary expenses required for the activity, whether paid or due, shall be deducted up to the net result of the activity, provided that the following controls are met: a. Expenses should be actual expenses as supported by relevant documents and other evidential matter to enable the Authority to verify the accuracy of expenses, even if related to prior years. b. Expenses should be related to Zakat Payer's business activity rather than personal expenses or other than Zakat Payer's own activities. c. The expenses must not be of a capital nature. In the event that an expense of a capital nature is included in the expenses, the result of the activity shall be adjusted and the fixed assets shall be included and depreciated according to the statutory rates." Based on the above, and having reviewed the case file, the Department found that Plaintiff submitted documents supporting the expenses of (SAR 155,845), which means that Defendant's decision should be modified by deducting the amount of (SAR 155,845) and adding the unsupported difference of (SAR 600).
For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

First: Cancel Defendant (ZATCA)'s decision against Plaintiff (...) Company TIN No. (...) regarding the Land Investments Item in question.
Second: Amend decision of Defendant/ ZATCA against Plaintiff/..... Company. TIN No. (...) regarding the Other Expenses Item in question.
Third: Dismiss otherwise objections filed by Plaintiff/ ... Company), TIN No. (...) to the decision issued by the Defendant/ZATCA in relation to the assessment in question.
This decision was made in presence of both parties. The date the decision is filed in the e-system of the General Secretariat of Zakat, Tax, and Customs Committees shall be considered the date of delivery. The parties involved have the right to appeal the decision within thirty (30) days from the day after its receipt. If no appeal is submitted within this period, the decision shall become final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1744)
Issued in Appeal No. (Z-8892-2021)

Key words:
Zakat Assessment - Accounts - Zakat Base - Other Credits - Payables - Debit balance in Partners' Current Account- Statutory period - Audited financial statements - Retained Earnings.

Abstract

Plaintiff demanded cancellation of the Zakat, Tax and Customs Authority's (ZATCA) decision regarding the objection to the Zakat assessment for 1438 AH. It limited its objection to the following three items. First: Other credits, second and third: Adding payables and debit balance in partners' current account items to Zakat base – Defendant replied that it confirms what was stated in its reply memorandum and requests that no new documents that were not submitted to it during the inspection and objection phase be accepted. The statutory regulations indicate that "If an agreement is reached prior to entering the case, the text of the case and the answer shall be entered prior to entering such agreement, provided that the original case falls within the jurisdiction of the Department, even if the text of the agreement falls within the jurisdiction of another court or Department and the object of the case or portion thereof is agreed upon". The Zakat base must consist of all Zakat payer's assets subject to Zakat, and Zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, the Authority may reject the item that the Zakat payer cannot prove its validity or make an estimate assessment, provided that a full lunar year (Hawl) must pass for the full amount to be added to Zakat base. In addition, the debit balance in owner's current account may be deducted from Zakat base up to its share of retained earnings – Department found that the dispute ended with Defendant's acceptance of Plaintiff's requests as stated in the letter issued by it. It also confirmed that it did not submit audited financial statements in order to verify and track the balance of retained earnings and debit balance in partners' current account. Department ruled to Establishing the end of the dispute related to the other credits item at issue, and dismissing Plaintiff's other objections related to the assessment at issue – Deeming the decision final and enforceable.

Instruments:

- Article (70) of the Law of Civil Procedure promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH.
- Article (70/ 1) of The Implementing Regulations of Procedure before Sharia Departments issued by the Minister of Justice Resolution No. (39933) dated 05/19/1435 AH.
- Article 4 (Item 1/5, Item 2/5 and 20/3) of the Implementing Regulation for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH..

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Saturday, 07/02/1444 AH, the first department for the determination of income tax violations and disputes in Riyadh, stipulated in Article (67) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed by Royal Order No. (65474) dated 23/12/1439 AH, held its e-session via teleconference to consider the aforementioned case. As the case fulfilled the prescribed statutory conditions, it was filed with the General Secretariat of Zakat, Tax and Customs Committees with the above number on 13/11/2019.

The facts of this case are summed up so as ... holder of National ID No. (...), attended in its capacity as attorney of Plaintiff/ (.....), C.R. No. (...), Under PoA No. (.....), submitted its objection to the tax assessment for the year 1438 AH issued by Zakat, Tax and Customs Authority (ZATCA). The objection is focused on the following items: Item First Other credits. Item Second: Accounts Payable: Plaintiff objects to Defendant's action of adding this item to Zakat base. It stated that the amount had not passed a full lunar year (Hawl) in order to be added to the Zakat base, for which it provided a chart of the balance of the payables. It also added that this balance did not finance fixed assets, and therefore, Plaintiff requests canceling of ZATCA procedure and only adding the amount for which a full lunar year (Hawl) has passed. Item Third: Debit balance in Partners' Current Account: Plaintiff objects to Defendant's action of adding this item to Zakat base. It stated that there are amounts owed to the partners (i.e., owed to related parties) and that the balance owed to partner must be deducted in accordance with the regulations. Accordingly, Plaintiff requests that the balance owed to partner be deducted from Zakat base in the amount of (SAR 8,233,603), and that ZATCA procedure should be canceled.

On Saturday, 07/02/1444 AH, the Department held its session remotely to hear the case, and by calling on the parties, Mr./ ....., as the Plaintiff's attorney, attended by virtue of a PoA, a copy of which is attached to the case file, and M/s ....., as a representative of Defendant, the Zakat, Tax and Customs Authority (ZATCA), attended by virtue of an authorization, a copy of which is attached to the case file. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having confronted Defendant's representative of the same, it answered by insisting on the statements included in Defendant's reply memorandum and requested the Department not to accept any new documents that were not provided to Defendant throughout examination and objection phase, stating that it submitted a memorandum that was filed with the General Secretariat of Zakat, Tax and Customs Committees. Having asked both parties if they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form: Since Plaintiff filed the case to abolish Defendant's decision regarding Zakat Assessment of 1438 AH, and since this dispute is a Zakat dispute, it then falls within the

jurisdiction of the Tax Dispute and Violation Committee as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On merits, upon Department's review of the documents and evidence contained in the case file, as well as the requests, defenses, and arguments presented by the parties, it became evident that the dispute centers on Defendant's issuance of the tax assessment for 1438 AH, specifically concerning the following items:

First: Other credits:

Article (70) of the Law of Civil Procedures, issued by Royal Decree No. (M/1) dated 22/01/1435 AH, states that: "Litigants may, at any stage of the case, ask the court to enter agreed-upon acknowledgment, settlement, or the like in the case record, and the court shall issue a deed to that effect". In addition, Paragraph (1) of Article (70) of the Implementing Regulations of the Law of Civil Procedure issued by Minister of Justice Resolution No. (39933) dated 19/05/1435 AH states: "If an agreement is reached prior to entering the case, the text of the case and the answer shall be entered prior to entering such agreement, provided that the original case falls within the jurisdiction of the Department, even if the text of the agreement falls within the jurisdiction of another court or Department and the object of the case or portion thereof is agreed upon". Based on the foregoing, it is established that the dispute ended with Defendant's acceptance of Plaintiff's requests as stated in the letter issued by Defendant in the Notice of Result of Objection, which includes: 'Regarding the item of other credits, Zakat payer's objection is accepted and the assessment is amended.'

Second: Payables:

Plaintiff objects to Defendant's action of adding this item to the Zakat base, as the amount has not passed a full lunar year (Hawl) in order to be added to Zakat base. Whereas paragraph (5) of Clause (I) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates that Zakat base consists of all Zakat payer's assets subject to Zakat, including: 5. Government and commercial loans and other similar sources of funding, such as: Creditors, Payment Notes, Overdraft Accounts held by Zakat payer, according to the following: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Additionally, Article (20.3) of the same Regulations states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, the Authority may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it". Based on the above, trade payables are considered a component of the Zakat base provided that a full lunar year (Hawl) has passed on them or they are used to finance the assets deducted from Zakat base. A review of the documents attached to the case file shows that Plaintiff did not provide the detailed movement of the receivables to prove that a full lunar year (Hawl) has not passed on the disputed amounts, but rather provided an unreliable table to prove this. Therefore, the Department dismisses Plaintiff's objection and upholds Defendant's action.

Third: Debit balance in Partners' Current Account:

Plaintiff objects to Defendant's action of adding this item to Zakat base, due to the existence of amounts owed to the Partners. Para (5) of Item (II) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates that 'The following shall be deducted from Zakat base: 5. Owners'/partners' current account debit balance subject to Zakat, up to a maximum of their share in the carried forward profits. Additionally, Article (20.3) of the same Regulations states: "The zakat payer bears the burden of proving the validity of the items

stated in the declaration and any additional data, and if he is unable to do so, the Authority may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it". Based on the above, it is clear that the current account owed to the owner may be deducted from the Zakat base not exceeding its share of the retained earnings. Upon reviewing the case file and the defenses and documents it contains, as Plaintiff did not provide proper documents to substantiate its claim, as it did not provide audited financial statements to verify and track the balance of retained earnings and debit balance in partners' current account- As the dispute between the parties is a well-founded dispute, the Department concludes that Plaintiff's objection should be dismissed and Defendant's action should be upheld.

Decision:

First: Confirming that Plaintiff's/ ..... dispute TIN No. (...) with Defendant, Zakat, Tax and Customs Authority (ZATCA), regarding the item of other credit balances that are the subject of the case, has ended with Defendant's acceptance of Plaintiff's requests in this regard.

Second: Dismissing the other objections submitted by Plaintiff/ ..... TIN No. (...) to Defendant (ZATCA) decisions regarding zakat assessment subject matter of the Case.

This decision was delivered in presence of the parties. The Department set Sunday, 06/03/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, where the decision shall be final and enforceable after expiry of such period if either party does not challenge the decision.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

Appeal Committee:

Appeal Committee ruled to uphold Department decision.

Determination Committee

against the decision of the First Department for Determination of Income Tax Violations and Disputes in Riyadh No. (...)

Decision No. (IFR-2022-1681)
Issued in Appeal No. (Z-53208-2021)

Key words:
Zakat assessment - Accounts - Zakat dispute - Limitation item - Adjustments to adjusted profit item - Difference in provisions charged to Zakat base - Credit balances - Deduction for other non-current assets item.

Abstract

The Plaintiff instituted this Case moving to cancel ZATCA's decision regarding Zakat assessment for 2014 AD. The Plaintiff based its objection on the following five items: First: Limitation item for 2014. Second: Adjustments to Adjusted Profit/Difference in Employee Savings Allowance for 2014. Third: Difference in provisions charged to Zakat base item for 2014. Fourth: Credit balances item for 2014. Fifth: Deduction for other non-current assets - Home ownership program for 2014. The Plaintiff based its objection on the first item as follows: Once the limitation period of 5 years has passed from the date of expiry of the deadline for filing the declaration, ZATCA has no right to make the assessment. Since the assessment was issued after 5 years, the assessment is considered invalid for exceeding the limitation period. - Regarding first item, ZATCA responded: There are Zakat processing in Plaintiff's declaration that do not match what is stipulated in Zakat Collection Regulations. Therefore, the declaration contains incorrect information. Once it is found that Plaintiff's declaration contains incorrect information, ZATCA is entitled to make an assessment or amend it without being bound by a certain period of time - Regarding first item, the Department found the following: The adjustments made by Plaintiff resulted either from an error in following Zakat instructions or from a difference of opinion in calculating Zakat. Whereas, the right to conduct a Zakat assessment without being limited to a specific period of time is restricted by some of conditions and situations, including if the declaration contains incorrect information, upon fulfillment of which Zakat assessment can be conducted without being limited to a specific period of time. If Plaintiff's declaration is incorrect due to an error in following Zakat instructions or a difference of opinion in calculating Zakat, as in the case of Plaintiff's declaration, its right to a Zakat assessment will lapse after 5 years from the expiry of the prescribed time limit. Moreover, Defendant did not provide any significant evidence to support its view that Plaintiff's declaration contains false information, giving it the right to issue a Zakat assessment without being restricted to a period of time. Therefore, the Department must accept Plaintiff's objection and cancel Defendant's action regarding limitation item for the year 2014. As for the second, third, and fourth items, the Department found that the rest of the disputed items are subject to the same year of limitation. Accordingly, the Department held that after accepting Plaintiff's objection to the first item, Plaintiff's objection had to be accepted with regard to the remaining items.

- This means that: Cancel Defendant's decision regarding the assessment in question, and the decision is considered final and enforceable.

Instruments:

- Articles (4/1), (6/6), (20/3) and (21/10, 11) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. 2082 dated 01/06/1438 AH.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Thursday, 05/02/1444 AH, the first department for the determination of income tax violations and disputes in Riyadh, formed pursuant to Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended and Royal Order No. (65474) dated 23/12/1439 AH, held its session via video conferences to consider above-mentioned case. Since the case fulfilled the established regulatory requirements, it was filed with the General Secretariat of the Zakat, Tax and Customs Committees under the above number on 03/06/2021.

Facts of the case are summarized as follows: Mr. ....., holder of National ID No. ....., in his capacity as Plaintiff's (..... Company, C.R. No. .....) Attorney, under POA No. .....; has filed a statement of claim objecting to 2014 Zakat assessment issued by Zakat, Tax, and Customs Authority (ZATCA), detailed in six items. First item: Statute of Limitations for 2014. The second item: Adjustments to adjusted profit - Difference in Employee Savings Provision for 2014. The third item: Difference in provisions charged to Zakat base for 2014. Item Fourth: Difference in provisions charged to Zakat base for 2014. Item Fifth: Credit Balances for 2014. Item Sixth: Deduction for other non-current assets - Home ownership program for 2014.

After presenting the list of claims to Defendant, ZATCA responded with a reply memorandum dated 01/09/2021, stating that with regard to the limitation item, ZATCA bases its action on Article 21(8)(c) of Zakat Collection Regulations. With regard to the item (Adjustment to Adjusted Profit and Zakat base by adding employee contributions to the Employee Savings Plan allocation), ZATCA bases its action on Article 6(6) of Zakat Collection Regulations. With regard to the item (Adding Credit Balances), ZATCA bases its action on Article 20(3) of Zakat Collection Regulations. With regard to the item (Not allowing the deduction of other non-current assets), ZATCA bases its action on Article 4(1) of Zakat Collection Regulations. With regard to the item (Difference in net assets allowed to be deducted from Zakat base), ZATCA deducted the fixed assets according to the financial statements, an action that was taken and to which Plaintiff did not object in the first place. In order to apply the same processing, ZATCA dismissed Plaintiff's objection, and ZATCA maintains the validity of its action and requests to dismiss this case.

On Thursday, 05/02/1444 AH, the Department held its session remotely to hear the case, and by calling on the parties, Mr./..... attended as Plaintiff's attorney by virtue of a PoA, a copy of which is attached to the case file, and M/s..... attended as the representative of Defendant/ Zakat, Tax and Customs Authority, (ZATCA) by virtue of an authorization, a copy of which is attached to the case file. Having asked Plaintiff's Attorney regarding his case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. When confronted with this, Defendant's representative replied that it confirmed what was stated in Defendant's reply memorandum and did not accept any new documents that were not submitted to Defendant during the inspection and objection phase. It stated that Defendant deposited some of the decisions issued by the First Appeals Chamber for Income Tax Interventions and Disputes with the General Secretariat of Zakat, Tax and Customs Committees. Having asked both parties if

they had other statements, they responded negatively. Therefore, the Department decided to close pleadings for deliberation.

Grounds

Having reviewed Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In Form, since the Plaintiff filed the case to abolish ZATCA's decision regarding Zakat Assessment of 2014 AD, and since this dispute is a Zakat dispute, it then falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes as per Royal Decree No. (26040) of 21/04/1441 AH, and since the Case was filed by a person with capacity, and within the period prescribed by Law, it is then accepted in form.

On the merits: The Department examined the papers and documents included in the case file, and the requests, defenses and arguments of the parties, and found that the dispute lies in Defendant's issuance of Zakat assessment for 2014, which is detailed in six items, as follows:

Item First Statute of Limitations for 2014: The dispute lies in the Plaintiff's objection to the Defendant's action of conducting Zakat assessment for 2014, as the Plaintiff stated that upon the passage of the statute of limitations period, which is five years from the end of the deadline for submitting the declaration, it is not permissible for ZATCA to conduct an assessment, in accordance with Article (21) of the Regulations for Zakat collection. Meanwhile, the Defendant argued that its action is based on paragraph (8.c) of Article (21) of the Regulations for Zakat collection. Article (21.8) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH states that: "The Authority may make or modify the assessment at any time without being bound by the time limit specified in the following cases: A. The zakat payer agrees in writing to conduct or amend the assessment; B. The zakat payer did not provide his declaration; or C. If it is found that the declaration contains invalid information". Article 21 (10) of Regulations stipulates that "The Authority may rectify the incorrect implementation of Zakat Law or regulations within five (5) years from the final date set for submission of Zakat Declaration for the Zakat Year at Zakat Payer's request, or if the error was discovered by the Authority or by the regulatory authorities." Article 21 (11) also stipulates: "If the Authority discovers any error related to Zakat payer after the expiry of the previous periods, Zakat payer shall be notified to discharge his liability for what he is legally obligated to do." Based on the above, Defendant's defense that it has the right to conduct a Zakat assessment without being bound by a specific period of time based on the fact that the Implementing Regulations for Zakat Collection have allowed it to do so cannot be taken at face value. This right is restricted by a set of conditions and cases that, when fulfilled, a Zakat assessment can be carried out without being bound by a specific period of time, including what is stated in Article 21 (8/c) of the Zakat Collection Regulations, which gives ZATCA the right to carry out or amend the Zakat assessment without a specific period of time in case the declaration contains incorrect information. If Plaintiff's declaration is incorrect due to an error in following Zakat instructions or a difference of opinion in Zakat processing, Defendant's right to a Zakat assessment shall lapse after five (5) years from the expiry of the deadline for submitting the Zakat declaration. This is not affected by the Defendant's argument that the Plaintiff's declaration is incorrect simply because it made substantial amendments affecting the assessment, as the Defendant has

not presented any credible material evidence of the existence of incorrect information in the Plaintiff's declaration that would entitle it to issue Zakat assessment without being bound by a time limit. The adjustments it made resulted either from an error in applying Zakat regulations or from a difference in viewpoints regarding the calculation of Zakat between the parties. In both cases, it has the right to conduct Zakat assessment within 5 years of the end of the deadline for submitting Zakat declaration pursuant to Article (2110) of the Zakat Collection Regulations. Therefore, paragraph Article (21.8) does not apply to the Plaintiff's case. And since the Defendant has not presented any credible evidence to support its viewpoint that the Plaintiff's declaration contains incorrect information, the Department concludes by accepting the Plaintiff's objection and canceling the Defendant's decision regarding this item.

With regard to (Adjustments to Adjusted Profit - Difference in Employee Savings Provision for 2014), (Difference in Provisions Charged to Zakat base for 2014), (Credit Balances for 2014) and (Deduction of Other Non-Current Assets - Home Ownership Programme for 2014) Items. Whereas the Department concluded on the 2014 statute of limitation, accepting Plaintiff's objection and canceling Defendant's decision, in accordance with the reasons given in the first item above. Based on the fact that the rest of the items relate to the same year of limitation, which necessitates accepting the objection to the rest of the items. Therefore, the Department concludes that Plaintiff's objection is accepted and Defendant's decision regarding the remaining items at issue in the case is canceled.

Decision:

Canceling the decision of Defendant/Zakat, Tax and Customs Authority (ZATCA) against Plaintiff ....., (TIN No. .....) regarding the Zakat Assessment in question.

This decision was delivered in presence of the parties. The Department set Sunday, 05/04/1444 AH for receiving a copy of the decision. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not challenge the decision.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

Appeal Committee:

Appeal Committee ruled to uphold Department decision.

Determination Committee

The Second Department for The Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2022-1510)
Issued in Appeal No. (Z-67749-2021)

Key words:
Zakat Assessment - Short-term loans - Failure to provide detailed loans activities - The burden of proof is on Zakat payer to prove the correctness of Zakat payer's declaration - Plaintiff's objection is dismissed.

Abstract

Plaintiff's requests the cancellation of the Zakat, Tax and Customs Authority's (ZATCA) decision regarding 2015 Zakat assessment, as the dispute is limited to the item of: (Short-term loans for the year 2015), to add the ..... Bank loan to the Zakat base for the disputed year, as the loan did not finance fixed assets, while Defendant argues that it added the item to the Zakat base because it is a retained loan - the statutory provisions indicate that if the case is filed by a person with a capacity, and within the statutorily prescribed period, the case must be accepted in form. The Department found that Plaintiff did not provide the detailed loans activities and the dates of loan receipt and repayment, which makes it impossible to verify the validity of Plaintiff's view that they are not retained loans. In the absence of the submission of documents in support of its viewpoint, the Department concludes to dismiss Plaintiff's objection. - Meaning: Accept case in form, and dismiss the case as on merits and the decision is final and enforceable.

Instruments:

- Articles (4,item 1) and (20/3) of the Zakat Collection Implementing Regulations issued by Minister of Finance Decision No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 05/09/2022, the second department for the determination of income tax violations and disputes in Riyadh, stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed by Royal Order No. (65474) dated 23/12/1439 AH, held its session remotely via teleconference to consider the above-mentioned case. As the case met the prescribed statutory requirements, it was filed with the General Secretariat of Zakat, Tax and Customs Committees with the above number on 30/08/2021.

The facts of this case are summarized in that Plaintiff/..... Company, Commercial Registration Number (.....), filed its objection to the Zakat assessment for the year 2015. It limited its objection to the item of: (Short-term loans for the year 2015), based on the fact that Defendant added the ..... Bank's loan of (SAR 22,500,000) to the Zakat base

for the year 2015. According to Plaintiff, the ..... Bank loan was made on the basis that the agreement would be used to finance a fixed asset in ..... City (the city of .....). Although the agreement with the ..... Bank provides for the possibility of obtaining financing against the purchase of land in ..... Economic City (.....), in reality, the said loan was not used to finance the said land or any other long-term assets, but rather the loan was used to finance working capital. Plaintiff adds that when the Company filed its objection and discussed it with the defendant, it proved that the loan was not used to finance an asset. It also provided evidence of the source of funding for the deducted asset. Accordingly, Defendant treated the loan as a retained loan and included it in the Zakat base, regardless of the fact that the loan was never financed in the first place. Plaintiff also explained that it attached in the analytical statement No. (1) (Annex 2) showing the details of the said loan activity and the date of repayment and receipt of the bank facilities, and explained that based on the attachments, the attached statement clarifies and confirms that the loan was not repaid and delivered on the same day, and therefore it cannot be considered a retained loan, in addition to not being used to finance an asset. Accordingly, Plaintiff requests the annulment of Defendant's action in question.

Having presented the statement of claim to Defendant, it responded with a memorandum summarized as follows: At the time of assessment, it added the ..... Bank Retained Loans (repayment and addition of the same amount on the same day). In addition, according to the ..... Bank loan agreement, which financed a fixed asset of ..... (..... Economic City) according to the agreement, as well as after studying the objection, during which a meeting was held with Plaintiff on 02/08/ 2021, in which Plaintiff clarified its point of view as stated in its letter. Defendant also states that it reviewed the bank statements showing the date of receipt and repayment of the loan, which show that the loan is received and repaid on the same day, and is therefore considered a revolving loan. Accordingly, the loan with an opening balance of (SAR 22,500,000) remains in Plaintiff's hands throughout the year, regardless of the fact that it was intended to finance a fixed asset as stated in the agreement. Defendant also adds that the revolving loan does not conflict with Company's addition to the receivables that financed the land, with respect to the ..... Bank loan. As for the remainder of the disputed amount, it belongs to the Investment Bank loan in the amount of (SAR 50,000,000), which is the loan opening balance, and it also applies to it as a revolving loan by reviewing its activity in bank statements provided by Plaintiff during the inspection phase. Accordingly, Plaintiff's objection was dismissed, and it maintains the validity of its action, and requests dismissing the case.

On Monday, 05/09/2022, the Department held a remote session to consider the Case, where ...., holder of National ID No. (...), attended in his capacity as the legal attorney of Plaintiff according to the attached PoA, as well as .... in his capacity as Defendant representative by virtue of Authorization No. (...). At the session, the pleadings were opened. Having asked Plaintiff's attorney about the claim, he responded: I object to the Zakat assessment for 2015 and relied solely on the statement of claim uploaded on the General Secretariat of Tax and Customs Committees portal, maintaining the defenses raised therein. Having presented the same to Defendant's representative, he answered: I am satisfied with the memorandum submitted on the website of the General Secretariat of Zakat, Tax and Customs Committees and I stand by the defenses and requests contained therein. When both parties were asked what they wished to add, they replied that they were satisfied with what had already been submitted. Accordingly, the pleadings were closed and the case was adjourned for consideration and deliberation.

Grounds

Having perused Zakat Law, issued under Royal Decree No. (17/28/577) dated 14/03/1376 AH, as amended and its Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, Income Tax Law issued under Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued under Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended, and Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

In Form: Since Plaintiff aims with its claim to cancel ZATCA decision regarding Zakat assessment for 2015, and given that this dispute falls within the category of Zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Given that the Case was filed by a party having capacity and within the statutory period. Therefore, the Department accepts the Case in form.

On Merits: Upon examining the case papers and the requests and defenses raised by the parties, the Department finds that the dispute is limited to the item of: (Short-term loans for the year 2015). Plaintiff objects to Defendant's action of adding the ..... Bank loan in the amount of (SAR 22,500,000) to the Zakat base for the year in question. Plaintiff argues that the loan did not finance fixed assets despite the fact that the agreement signed with the ..... Bank indicates the possibility of obtaining financing against the purchase of land in ..... Economic City. In addition, Plaintiff points out that the loan was not repaid, but delivered on the same day, so the loan cannot be considered a retained loan. Defendant argues that it added the item to the Zakat base because it is a revolving loan, where Plaintiff receives the loan and repays it on the same day, and therefore it remains in Plaintiff's liability throughout Hawl.

Whereas Article (Four) of the Implementing Regulations for Zakat Collection stipulates in Item (First) that: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including:

5. Government and commercial loans, along with other similar financing sources, such as creditors, notes payable and overdrafts owed by Zakat Payer as follows:

a. The remaining cash that a full lunar year (Hawl) has passed on it.
b. were used to finance acquisition assets.
c. were used in trade offers and a full lunar year (Hawl) has passed on it."

Article 20 (3) of the Zakat Collection Implementing Regulations, regarding submission of declarations and inspection and assessment procedures, stipulates that: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it"

Based on the above, and where loans are considered a component of the Zakat base, regardless of their type, source or classification, provided that a full lunar year has passed (Hawl), or used to finance assets deducted from the Zakat base without requiring a full lunar year to pass (Hawl). After reviewing the case file, it is clear that the dispute is only over whether Defendant considers short-term loans to be retained loans, and therefore, in essence, long-term loans. Regarding the fact that it financed assets, Plaintiff proved to Defendant in its letter dated 09/06/2021 that it did not finance assets, as the assets were financed through other credit balances. After reviewing the attached documents, it is clear that Plaintiff did not provide the detailed activity t of the loans and the dates of loan receipt and repayment, so it is not possible to verify Plaintiff's view that they are not retained loans. In the absence of the submission of documents in support of its viewpoint, the Department concludes to dismiss Plaintiff's objection and uphold Defendant's action in relation to this item.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

- Accepting the case filed by Plaintiff, ... Company, Commercial Registration No. (...), against Defendant/ Zakat, Tax and Customs Authority (ZATCA), in form, and dismissing it in substance, as stated in the reasons.

This decision was delivered in presence of both parties. The Department set Wednesday, 05/10/2022 for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not appeal it.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

The Second Department for The Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2022-1633)
Issued in Appeal No. (Z-80941-2021)

Key words:
Zakat Assessment - Payables - Documentary Credits - Adding the amount that has passed a full lunar year (Hawl) to Zakat base - Failure to submit detailed financial activity - Documentary Credits - The burden of proof is on Zakat payer to prove the correctness of Zakat payer's declaration - Dismissal of the case.

Abstract

Plaintiff's objection to the Zakat, Tax and Customs Authority's (ZATCA) decision regarding the 2016 Zakat assessment. Plaintiff limited its objection to the following items: First Item (Payables). Second Item: (Documentary Credits), and objects to Defendant's addition of the two items to the Zakat base for the disputed year. Plaintiff states that the two items did not have a full lunar year (Hawl). - Defendant replied that at the time of assessment, it added the amount that had passed a full lunar year (Hawl) to Zakat base. The statutory texts indicate that if the case is filed by a person with capacity and within the statutorily prescribed period, the case shall be accepted in form. - With regard to the first item, the Department found that Plaintiff did not submit the detailed activity of the payables item to prove that a full lunar year (Hawl) had not passed on the amounts disputed, but rather submitted a statement in the objection list showing that a full lunar year (Hawl) had passed on the amount of (SAR 525,500) for 2016, which leads the Department to dismiss Plaintiff's objection. Second: It was found that Plaintiff submitted an agreement with ..... Bank in the documentary credits but did not submit the detailed activity of the documentary credits to prove that a full lunar year (Hawl) had not passed on the disputed amounts, which leads the Department to dismiss Plaintiff's objection. – Meaning: Accepting the claim in form and dismissing the claim on merits – and deeming the decision final and enforceable.

Instruments:

- Articles (4/I/5) and (20/3) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2216) dated 07/07/1440 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 07/09/2022, the second department for the determination of income tax violations and disputes in Riyadh, stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed by Royal Order No. (65474) dated 23/12/1439 AH, held its session remotely via video conference to consider the above-mentioned case. As the case fulfilled the prescribed statutory

requirements, it was filed with the General Secretariat of Zakat, Tax and Customs Committees with the above number on 06/11/2021.
Facts of this case are summarized as follows: Plaintiff/ ....., holder of National ID No. (.....), in its capacity as owner of (..... Trade Organization), Commercial Registration No. (.....), filed its objection to the 2016 Zakat assessment, and limited its objection to the following items: First Item (Payables), objecting to Defendant's addition of Payables Item to Zakat base for the disputed year. Plaintiff states that the item has not been in existence for a full lunar year (Hawl), and that what was stated in the trial balance was a typographical error on Debtor, as stated that it has corrected. Item Second: (Documentary Credits). It objects to Defendant's addition of the documentary credits item to the Zakat base for the disputed year, as Plaintiff considers that a full lunar year (Hawl) has not passed for the balance, and requests the cancellation of Defendant's action.
Having presented the statement of claim to Defendant, it responded as follows: 1. As for item (Payables): Defendant explains that at the time of assessment, it added the amount that has passed a full lunar year (Hawl) from the item to Zakat base, based on the movement of the trial balance provided by Zakat payer and extracted from the accounting system with the opening balance, financial activity, and closing balance, according to the trial balance. 2. As for item (Documentary Credits): Defendant explains that at the time of assessment, it added the amount that has passed a full lunar year (Hawl) from the item, based on the movement of the trial balance provided by Zakat payer and extracted from the accounting system with the opening balance, financial activity, and closing balance, according to the trial balance. Accordingly, Defendant requests dismissing the case.
On Wednesday, 07/09/2022, the Department held its session remotely to hear the case, attended by/....., as a representative of Defendant under PoA No. (.....), while Plaintiff or its representative failed to attend and did not send an excuse for its failure, despite the fact that it was informed of the date session through the website of General Secretariat of Zakat, Tax and Customs Committees, which is considered to have wasted its right to attend and plead. Accordingly, the Department decided to open the pleadings. Having asked Defendant's representative about its reply to Plaintiff's claims, it replied: I am satisfied with the memorandum uploaded on the website of General Secretariat of Zakat, Tax and Customs Committees and adhere to the defenses and requests contained therein regarding 2016 Zakat assessment. Accordingly, the pleadings were closed and the case was adjourned for consideration and deliberation.

Grounds

Having perused Zakat Law, issued under Royal Decree No. (17/28/577) dated 14/03/1376 AH, as amended and its Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, Rules for Calculating Zakat Taxpayers Estimated issued by Ministerial Decision No. (852) dated 28/02/1441 AH, and Income Tax Law issued under Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued under Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended, and Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.
In Form: Since Plaintiff aims with its claim to cancel ZATCA decision regarding 2016 zakat assessment, and given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of Tax Committee for Resolution of Tax Violations and Disputes. Given that the Case was filed by a party having capacity and within the statutory period. Therefore, the Department accepts the Case in form.
On Merits: Upon careful consideration of case file documents and the requests and arguments of the parties, the Department finds as follows:

Regarding Item: (Payables for the year 2016). The dispute lies in Plaintiff's objection to Defendant's action of adding the item (Payables) to Zakat base for the year in dispute, as Plaintiff believes that a full lunar year (Hawl) has not passed on the balance, and that what is stated in the trial balance is a typographical error in the statement from Debtor's. Defendant argues that it added the item to Zakat base as a result of passing of a full lunar year (Hawl) on the balance based on the trial balance.

Whereas Paragraph (First) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates that: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including:

5. Government and commercial loans, along with other similar financing sources, such as (creditors, notes payable and overdrafts owed by Zakat Payer) as follows:

أ- The remaining cash that a full lunar year (Hawl) has passed on it.

ب- were used to finance acquisition assets.

ج- C. were used in trade offers and a full lunar year (Hawl) has passed on it." In addition, Article 20(3) of the same Regulations states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it".

Since Payables item is considered one of the components of Zakat base provided that a full lunar year shall pass on it (Hawl) or it is used to finance the assets deducted from the Zakat base, in accordance with the provisions of Article 4(5), Item 1 of the Implementing Regulations for Zakat Collection. After reviewing the documents attached to the case file, it appears that Plaintiff did not submit the detailed activity of the payables item to prove that a full lunar year (Hawl) had not passed on the amounts disputed, but rather submitted a statement in the objection list showing that a full lunar year (Hawl) had passed on the amount of (SAR 525,500) for 2016, which leads the Department to dismiss Plaintiff's objection and uphold Defendant's action with regard to this item.

With regard to the item (Documentary Credits for 2016), the dispute lies in Plaintiff's objection to Defendant's action in adding (Documentary Credits for 2016) item to Zakat base for the disputed year, as Plaintiff argues that a full lunar year (Hawl) has not passed on the balance, while Defendant argues that it added the item to Zakat base as a result of a full lunar year (Hawl) passing on the balance based on the trial balance.

Following the Department's review of Article 4(5), Item (First), and Article 20(3), referred to above.

Whereas Documentary Credits item is considered one of the components of Zakat base, provided that a full lunar year (Hawl) shall pass on it or it is used to finance the assets deducted from the Zakat base, in accordance with the provisions of Article 4(5), Item (First) of the Implementing Regulations for Zakat Collection. After reviewing Defendant's reply memorandum, it is clear that the amounts do not match the statement provided in Plaintiff's objection list, and a review of the documents attached to the case file shows that Plaintiff submitted an agreement with ..... Bank in documentary credits but did not submit the detailed activity of the documentary credits to prove that a full lunar year (Hawl) has not passed for the amounts objected to. Therefore, the Department concludes to dismiss Plaintiff's objection and uphold Defendant's action with respect to this item.

For these grounds and after deliberation, the Department unanimously decided to:

Decision:

- Accepting the lawsuit filed by Plaintiff (.....), National ID No. (.....), owner of (..... Trade Organization), Commercial Registration No. (.....), against

Defendant/Zakat, Tax and Customs Authority (ZATCA), in form, and dismissing it on merits.

This decision was delivered in the presence of Defendant and as if in presence of Plaintiff, and was read out publicly in the session. The Department set Wednesday, 19/10/2022 for receiving a copy of the decision, and any of the parties to the case may appeal against the decision within thirty days from the day following the date set for receipt of the decision, whereafter, the decision will be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

The Second Department for The Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2022-1642)
Issued in Appeal No. (Z-67441-2021)

Key words:
Zakat assessment - Deduction of investments - Deducting the organization's share of investment returns in subsidiaries - Failure to submit financial statements - The burden of proving the validity of Zakat payer's declaration falls on Zakat payer - Accepting the case in form and dismissing it on merits.

Abstract

Plaintiff objected to Zakat, Tax and Customs Authority's (ZATCA) decision regarding the Zakat assessment for the year 2016, based on Defendant's failure to allow the deduction of investments in the amount of (SAR 5,741,946) from the Zakat base for the disputed year. Defendant explains that it deducted the Organization's share of the investment returns in the subsidiaries according to the Equity Method Accounting. The Department found that according to the accounting standards adopted at the time, Plaintiff should have applied the equity method, and that Plaintiff did not provide documents to support its view. Since it did not submit its own financial statements and the financial statements of the investee company in order to verify the balances and the method of calculation, the Department concluded that Plaintiff 's objection should be dismissed. Department ruled to accept case in form, and dismiss the case as on merits -and the decision is final and enforceable.

Instruments:

- Articles (4/4/a) and (20/3) of the Implementing Regulations for the Zakat Collection issued by Ministerial Decision No. (2216) dated 07/07/1440 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 19/09/2022, the second department for the determination of income tax violations and disputes in Riyadh, stipulated in Article (67) of the Income Tax Law, issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed by Royal Decree No. (65474) dated 23/12/1439 AH, held its session remotely via video conference to consider the above-mentioned case. Since the case met the prescribed statutory requirements, it was filed with the General Secretariat of Zakat, Tax and Customs Committees with the above number on 28/08/2021.

Facts of this case are summarized as follows: Plaintiff (.....), holder National ID No. (.....), in its capacity as owner of (..... Office for Trading Services), Commercial Registration No. (.....), filed its objection to the Zakat assessment for the year 2016, based on Defendant's failure to allow the deduction of investments amounting to (SAR

5,741,946) from the Zakat base for the disputed year. Plaintiff believes that Defendant calculated the equity balance in the investee company (..... Company) within the recalculation of the investment with the entire equity balance including the capital and additional capital, and adds that Defendant added the Saudi partner in the allocations recorded in the investee company. Plaintiff believes that these balances do not belong to its organization, and argues that it has paid Zakat Company for them from the Saudi partner's share. Accordingly, Plaintiff requests canceling Defendant's action.

Having presented the statement of claim to Defendant, it responded as follows: Defendant explains that it deducted the organization's share of investment returns in the subsidiaries according to equity method accounting. As stated in Plaintiff's declaration for the year 2016, it states that it deducted Plaintiff's share of (60%) of the subsidiary's profits from the net returns. It found that Plaintiff had incorrectly prepared the financial statements for previous years, as its share of the distributions in the investee company had not been properly deducted, which affected the calculation of the investment balance more than it actually was, and therefore the investment was calculated after reviewing the previous years to arrive at the correct deduction of the investment by the equity method. Therefore, the profits for the year were adjusted by adding the investment losses and then deducting the investment after adding the losses in order to avoid double Zakat. Accordingly, Defendant requests the case be dismissed.

On Monday, 19/09/2022, the Department held a remote session to consider the Case, where Plaintiff ...., holder of National ID No. (...), attended, as well as/ ..... in its capacity as Defendant representative by a virtue of Authorization No. (...). At the session, the pleadings were opened. Having asked Plaintiff about the claim, it answered: I object to the tax assessment for 2016 and relied solely on the statement of claim uploaded on the General Secretariat of Zakat, Tax and Customs Committees website, maintaining the defenses raised therein. Having presented the same to Defendant's representative, he answered: I would rely on the memorandum uploaded on the General Secretariat of Zakat, Tax and Customs Committees website, maintaining the defenses raised therein. Having asked both parties if they would like to add any statements, they were satisfied with such statements previously submitted. Accordingly, the pleadings were closed and the case was adjourned for consideration and deliberation.

Grounds

Having perused Zakat Law, issued under Royal Decree No. (17/28/577) dated 14/03/1376 AH, as amended and its Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, Rules for Calculating Zakat Taxpayers Estimated issued by Ministerial Decision No. (852) dated 28/02/1441 AH, and Income Tax Law issued under Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued under Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended, and Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

In Form: Since Plaintiff aims with its claim to cancel ZATCA decision regarding 2016 zakat assessment, and given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of Tax Committee for Resolution of Tax Violations and Disputes. Given that the Case was filed by a party having capacity and within the statutory period. Therefore, the Department accepts the Case in form.

On Merits: According to the Department's consideration of the papers and documents included in the case file, and the requests and defenses raised by the parties, the dispute lies in Plaintiff's objection to Defendant's action of not allowing the deduction of investments in the amount of (SAR 5,741,946) from the Zakat base for the year in dispute.

According to Plaintiff, Defendant calculated the equity balance in the investee company as part of the full capital investment and the additional capital, and included the Saudi partner in the recorded allocations, which would result in double Zakat. Defendant argues that it deducted the results of the investment in the subsidiary in accordance with the equity method accounting, based on Plaintiff's declaration of the year at issue. It stated that it deducted Plaintiff's share (60%) from the profits of the subsidiary company, and found that Plaintiff had prepared the financial statements in an incorrect manner for the past years, so it processed the investment by the equity method, and thus adjusted the profits for the year by adding the investment losses and then deducting them after adding the losses in order to avoid double Zakat.

Article (4/A) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH states: "Investments in facilities within the Kingdom, in partnership with others, if those investments are subject to Zakat collection under these regulations. If investment in these facilities is not subject to Zakat collection, it shall not be deducted from the base." Article 20(3) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, which stipulates that "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it".

According to the case file and the defenses and documents it contains, it is clear from the responses of the parties to the case that the dispute lies in the basis and method of accounting for investments. Defendant performed the assessment and accounting on an equity basis, as Plaintiff owned (60%) of the investee company. According to the accounting standards adopted at the time, Plaintiff should have applied the equity method accounting. Since Plaintiff did not provide documents to support its point of view, and since it did not submit its own financial statements and the financial statements of the investee company in order to verify the balances and the method of calculation, the Department concludes to dismiss Plaintiff 's objection and uphold Defendant's action with regard to this item.

For these grounds and after deliberation, the Department unanimously decided to:

Decision:

- Accepting the case filed by Plaintiff (...), National ID No. (...), owner (..... Office for Commercial Services), Commercial Registration No. (...), against Defendant/Zakat, Tax and Customs Authority (ZATCA), in form, and dismissing it on merits.

This decision was delivered in presence of both parties and was read publicly at the hearing. The Department set Thursday, 03/11/2022, as the date for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not appeal it.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

The Second Department for The Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2022-1644)
Issued in Appeal No. (Z-86673-2021)

Key words:
Zakat assessment - Employee payables - Guarantees with third parties - Loan Installments - Related parties - Creditor Banks - Advance Payments - The burden of proving the validity of Zakat payer's declaration is on Zakat payer.

Abstract

Plaintiff demanded the annulment of the Zakat, Tax and Customs Authority's (ZATCA) decision regarding the 2018 Zakat assessment. It limited its objection to the following items: First: (2018 Suppliers). Second Item: (2018 Employee payables). Third Item: (2018 Guarantees with third parties). Fourth Item: (2018 Loan Installments). Fifth Item: (2018 Related Parties). Sixth Item: (Creditor Banks, 2018 ..... Bank). Seventh Item: (Advance payments). Plaintiff objects to the addition of the items to Zakat base for the year in dispute on the grounds that a full lunar year has passed (Hawl). Defendant responded that it added the items to Zakat base for the year in dispute after reviewing the statement submitted by Plaintiff, in which it was clear that a full lunar year had passed (Hawl). The statutory texts indicate that if a case is filed by a person with capacity and within the statutorily prescribed period, the case must be accepted in form. In addition, the Department found with regard to the items (2018 Suppliers), (2018 Employee payables), (2018 Guarantees with third parties), (2018 Loan Installments), (2018 Related Parties), (Creditor Banks, 2018 ..... Bank), that Plaintiff did not provide detailed activity of the payables to prove that a full lunar year (Hawl) has not passed on the amounts disputed, which leads the Department to dismiss Plaintiff's objection and uphold Defendant's action with regard to these items. Regarding Item: (2018 Advance payments), it is clear that the nature of the dispute is a documentary dispute. With reference to the documents submitted by Plaintiff, it is clear that Plaintiff did not provide documents through which its claim that a full lunar year (Hawl) has not passed for these payments can be verified. Therefore, the Department concludes to dismiss Plaintiff's objection. Consequently: Not hearing the case regarding the items (bonuses and miscellaneous expenses) due to the failure to file an objection before Defendant within the statutory period, while accepting the case in form and dismissing it on merits regarding the rest of the items, thus making the decision final and enforceable.

Instruments:

- Articles (20/3) and (1/22 and 4) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) dated 07/07/1440 AH.
- Articles (2&3) of Tax Dispute and Violation Committee Procedures issued under Royal Decree No. (26040) dated 21/04/1441 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 14/09/2022, the second department for the determination of income tax violations and disputes in Riyadh, stipulated in Article (67) of the Income Tax Law, issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed by Royal Decree No. (65474) dated 23/12/1439 AH, held its session remotely via video conference to consider the above-mentioned case. Since the case met the prescribed statutory requirements, it was filed with the General Secretariat of Zakat, Tax and Customs Committees with the above number on 16/12/2021.

Facts of this case are summarized as follows: Plaintiff, ... Contracting Company Ltd, Commercial Registration No. (.....), filed its objection to the 2018 Zakat assessment, and limited its objection to the following items: First: (2018 Suppliers), based on the fact that Defendant added the item to Zakat base for the disputed year. Plaintiff argues that the amounts due to suppliers are the remaining value of the materials supplied by them for the projects implemented by Company, and Company submits the extracts to owners and records them as part of Company's revenues. Plaintiff also states that it obtains its extracts from government agencies to pay suppliers. Second: (2018 Employee payables), based on the fact that Defendant added the item to Zakat base for the disputed year. This comes after considering the passage of a full lunar year (Hawl), as Plaintiff states that the balance is a governmental obligation for employees. Third: (2018 Guarantees with third parties), based on the fact that Defendant added the item to Zakat base for the disputed year. This comes after considering the passage of a full lunar year (Hawl), as Plaintiff states that these balances are amounts that were withheld by Company's subcontractors as a guarantee for the proper implementation of the works. Fourth: (2018 Loan Installments), based on the fact that Defendant added the item to Zakat base for the disputed year. This comes after considering the passage of a full lunar year (Hawl), as Plaintiff argues that its dues with the government agencies were delayed and not paid when due. Fifth: (2018 Related Parties), based on the fact that Defendant added the item to Zakat base for the disputed year. This comes after considering the passage of a full lunar year (Hawl), as Plaintiff argues that this is a return for the delay of its dues with the government agencies and the failure to pay them when due. Sixth: (Creditor Banks, 2018 ..... 2018 ..... Bank), based on the fact that Defendant added the item to Zakat base for the disputed year. This comes after considering the passage of a full lunar year (Hawl), as Plaintiff argues that the bank credits are not loans or for the purpose of financing, but rather a check written to ..... Construction and Development Company in exchange for carrying out works as agreed upon. Accordingly, the check was written with the understanding that it would not be disbursed until after the completion of the works. Seventh: (Advance payments): Plaintiff objects to Defendant's addition of the item to Zakat base for the disputed year on the basis of the passage of a full lunar year (Hawl). Plaintiff believes that these amounts are not payments made by customers or suppliers, but are receivables that were recorded against works performed for the Company or materials supplied to the projects, with the Company paying these receivables after the payment of its dues by the government agencies. Eighth: (2018 Rewards and miscellaneous expenses). Accordingly, Plaintiff requests the annulment of Defendant's action in question.

Having presented the statement of claim to Defendant, it responded with a memorandum summarized as follows: 1. (Supplier Creditors) Item: Defendant explains that it added this item to Zakat base for the disputed year after reviewing the statement submitted by Plaintiff, which showed that a full lunar year (Hawl) had passed on the amount (SAR 6,604,430). 2. (Employee Payables) Item: Defendant explains that it added this item to

Zakat base for the disputed year after reviewing the statement submitted by Plaintiff, which showed that a full lunar year (Hawl) had passed on the amount (SAR 166,374). 3. (Guarantees with third parties) Item: Defendant explains that it added this item to Zakat base for the disputed year after reviewing the statement submitted by Plaintiff, which showed that a full lunar year (Hawl) had passed on the amount (SAR 8,184,693). 4. (Advance Payment) Item: Defendant explains that it added this item to Zakat base for the disputed year after reviewing the statement submitted by Plaintiff, through which it became clear that it did not match the financial statements, so the statement was accepted and an amount of (SAR 13,946,427) was added. 5. (Loan Installments) Item: According to Defendant, when Plaintiff filed its return, it added the non-current portion of long-term loans, and after reviewing the financial statements, it realized that a full lunar year (Hawl) had passed on the loans. 6. (Related Parties) Item: Defendant confirms that it has studied the detailed statement of the item amount activity and found it does not match the financial statements submitted by Plaintiff, which shows that a full lunar year (Hawl) has passed on the amount (SAR 552,027). 7. (Creditor Banks) Item: Defendant states that it added a full lunar year (Hawl) based on the trial balance provided by Plaintiff. Accordingly, Defendant requests the case be dismissed.

On Wednesday, 14/09/2022, the Department held its session remotely to hear the case, attended by/....., National ID No. (.....), as Plaintiff's attorney under PoA No. (.....), and Defendant's representative/....., as Defendant representative under authorization No. (.....). Therefore, the Department decided to open the pleadings by asking Plaintiff's attorney about the case, who responded as follows: I object to the tax assessment for 2018 and relied solely on the statement of claim uploaded on the General Secretariat of Zakat, Tax and Customs Committees website, maintaining the defenses raised therein. Having presented the same to Defendant's representative, he answered: I would rely on the memorandum uploaded on the General Secretariat of Zakat, Tax and Customs Committees website, maintaining the defenses raised therein. Having asked both parties if they would like to add any statements, they were satisfied with such statements previously submitted. Accordingly, the pleadings were closed and the case was adjourned for consideration and deliberation.

Grounds

Having perused Zakat Law, issued under Royal Decree No. (17/28/577) dated 14/03/1376 AH, as amended and its Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, Income Tax Law issued under Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued under Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended, and Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

In Form: Since Plaintiff instituted this case to cancel Defendant's decision regarding Zakat assessment for 2018; and since this dispute is considered one of the Zakat disputes that fall within the jurisdiction of the Tax Committee for Resolution of Tax Violations and Disputes, pursuant to Royal Order No. (26040) dated 21/04/1441 AH; and since the hearing of such cases is conditional upon an objection being initially filed with the authority issuing the decision within 60 days from the date of notification according to Article 22 (1) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, stipulates that: "Zakat Payer shall be entitled to file an objection to ZATCA assessment within sixty (60) days from the date of receiving assessment letter. In addition, the objection shall be filed under a reasoned memorandum in writing to be submitted to the entity that notified Zakat Payer of assessment. If the objection period expires during an official holiday, the objection shall be deemed

admissible if it is delivered on the first working day immediately following the holiday." Paragraph (4) of the same Article also stipulates that "an objection shall not be considered formally admissible in the following cases: a. If the objection is submitted after the expiration of the prescribed period, or if it is unreasoned." Article (2) of Tax Dispute and Violation Committee Procedures also stipulates that: "Any person against whom a decision has been issued by GAZT may file an objection before it within 60 days from the date of notification thereof.....". In addition, Article (3) of the same Procedures states: "GAZT's decisions shall be final and unappealable before any other agency in the following cases:

1. If a taxpayer does not object to the decision within 60 days from the date of notification thereof."

Since it is clear from the case file that Plaintiff submitted its objection to Defendant within the statutory period, in accordance with the provisions of Article (22) of the Implementing Regulations for Zakat Collection, and Article (2) of the Tax Dispute and Violation Committee Procedures, but its objection did not include the item (bonuses) and the item (miscellaneous expenses). As a result, the Department decided not to hear the case with regard to the bonuses and miscellaneous expenses items, while accepting the case in form with regard to the remaining items.

On Merits: Upon careful consideration of the case file and the requests and arguments of the parties, the Department finds as follows:

For (2018 Suppliers), (2018 Employee Payables), (2018 Guarantees with third parties), (2018 Loan Installments), (2018 Related Parties) and (Creditor Banks, 2018 ..... Bank) Items: Whereas Article (4/First) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates that: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including:

5. Government and commercial loans, along with other similar financing sources, such as creditors, notes payable and overdrafts owed by Zakat Payer as follows:

a. The remaining cash that a full lunar year (Hawl) has passed on it.
b. were used to finance acquisition assets.
c. The portion used for trading assets and for which a full year has passed". In addition, Paragraph (3) of Article (20) of the same Regulations states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it".

Since trade payables (2018 Suppliers, Employee Payables, Guarantees with third parties, Loan Installments, Related Parties, Creditor Banks - ..... Bank) are considered a component of Zakat base provided that a full lunar year (Hawl) passes on them or they are used to finance assets deducted from the Zakat base. After reviewing the documents attached to the case file, it is clear that Plaintiff did not provide detailed activity of the payables to prove that a full lunar year (Hawl) has not passed for the amounts objected to. Therefore, the Department concludes to dismiss Plaintiff's objection and uphold Defendant's action with regard to these items.

With regard to Clause: (2018 Advance Payments), and where Item (First) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates that: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including:

4.Revenue received in advance for which a full lunar year (Hawl) has passed. After reviewing paragraph (3) of the aforementioned Article (20), whereby payments received in advance are considered a source of funding, the amounts for which a full lunar year (Hawl) has passed shall be added to the Zakat base. In addition, after reviewing the case file, it is clear that the nature of the dispute is a documentary dispute. With reference to the

documents submitted by Plaintiff, it is clear that Plaintiff did not submit documents through which its claim that a full lunar year (hawl) has not passed for these payments can be verified, which leads the Department to dismiss Plaintiff's objection and uphold Defendant's action with regard to this item.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

The Case filed by Plaintiff/....., Ltd, registered under C.R. No. (.....), against Defendant, Zakat, Tax and Customs Authority (ZATCA), was decided as follows:

1. The case will not be heard with regard to the items of (bonuses) and (miscellaneous expenses), due to the failure to file an objection before Defendant within the statutory period.
2. Accepting the case in form and dismissing it on merits with regard to the remaining items.

This decision was delivered in presence of both parties and was read publicly at the hearing. The Department set Thursday, 03/11/2022, as the date for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not appeal it.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

The Second Department for The Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2022-1693)
Issued in Appeal No. (Z-67978-2021)

Key words:
Zakat assessment - Professional fees - Expenses charged from the head office - Real estate investments - Failure to provide documents extracted from the accounting system - The burden of proving the correctness of Zakat payer's declaration is on Zakat payer.

Abstract

Plaintiff demands the cancellation of Zakat, Tax and Customs Authority's (ZATCA) decision regarding the 2015 Zakat assessment. It objects to the following items: First: Professional fees in the amount of (SAR 1,193,686) Item: To add the item to Net Profit, second: (Expenses charged from the head office in the amount of SAR 2,921,921). Plaintiff objects to Defendant's action of adding the item to the net profit, three: (Real estate investments), as the item is not deducted from Zakat base - while ZATCA answered the first item as follows: ZATCA did not accept the professional fees after a sample of them was examined and found that they represented consultancy for the parent company and did not belong to Plaintiff. Regarding the second item: Documents supporting these expenses were not provided for verification. With regard to the third item, the disputed land was not deducted as it is in the name of the partner and is not used in the activity. With regard to the first item, the Department established the following: Plaintiff did not provide invoices issued by Plaintiff's parent company (subsidiary) to verify that these expenses belonged to it, in addition to Plaintiff's failure to provide any documents extracted from the accounting system. In terms of logic, what the audit procedures require extends to Zakat inspection, and this characteristic can only be achieved in the presence of books, statutory records and primary documents, which leads the Department to accept Plaintiff's objection and amend Defendant's action in relation to this item from (SAR 1,193,686) to (SAR 1,150,226). Second: The parent company had transactions with the partner in the amount of (SAR13,583,074), the nature of these amounts and the services provided to the partner are unclear. Moreover, the amount of the dispute claimed by Plaintiff is (SAR 2,921,921) and the amount certified by the Audit Bureau is (SAR 1,983,399), which leads the Department to dismiss Plaintiff 's objection. Third: Since Plaintiff has acknowledged that the land was not used in its activity, and that it is not in the name of the Company, it is not entitled to deduct it from Zakat base. Consequently: Modification of Defendant's action in respect of (Professional Fees) and dismissal of the claim in respect of (Expenses Charged from Head Office) and (Real Estate Investments) items - the decision is final and enforceable.

Instruments:

- Articles (5/1/a), (6/2) and (20/3) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2216) dated 07/07/1440 AH..

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 04/10/2022, the second department for the determination of income tax violations and disputes in Riyadh, stipulated in Article (67) of the Income Tax Law, issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed by Royal Decree No. (13957) dated 26/02/1444 AH, held its session remotely via video conference to consider the above-mentioned case. Since the case met the prescribed statutory requirements, it was filed with the General Secretariat of Zakat, Tax and Customs Committees with the above number on 31/08/2021.

The facts of this case are that Plaintiff, ... Real Estate Investment Company Ltd, Commercial Registration No. (...), filed its objection to the 2015 Zakat assessment. Plaintiff limited its objection to the following: Item First (Professional fees in the amount of SAR 1,193,686). Plaintiff objects to Defendant's action of adding the item to the net profit for the year in dispute, as Plaintiff stated that these expenses are specific to ..... Real Estate Investment Company and were charged to its financial statements, but not to the expenses of the parent company. Accordingly, the Company claims the deduction of all professional fees. Item Second: (Expenses charged from the head office in the amount of SAR 2,921,921). Plaintiff objects to Defendant's action of adding the item to the net profit for the disputed year. Plaintiff explained that the expenses charged from the head office are the parent company charging its subsidiaries a percentage of its common costs, and the parent company deducts these expenses from its total expenses, and therefore claims that the item should be deducted from the net profit. Item Third: (real estate investments). Plaintiff objects to Defendant's action of not deducting the item from the Zakat base for the disputed year. Plaintiff explained that the land was registered in the name of the partner/ ..... in its current account as a receivable. It adds that the company has a dispute with the General Authority for Awqaf (GAA), due to which the land cannot be transferred under the company's name, and therefore cannot be used for investment purposes. Plaintiff also explained that the company started construction work and provided guarantees to the Jeddah Municipality, so Plaintiff requests the cancellation of Defendant's action.

Having presented the statement of claim to Defendant, it responded with a memorandum summarized as follows: First: (Professional fees in the amount of SAR 1,193,686). Defendant explains that it did not accept the professional fees after a sample was examined and found to represent consultancy for the parent company and not for Plaintiff. Second: (Fixed Assets). Defendant argues that it disallowed the expense due to the lack of clarity of the basis for charging. Upon examining the objection and meeting with Plaintiff, it was asked to provide a statement explaining the professional fees, provide documentary proof of these expenses, provide a statement of the expenses charged by the parent company and explain their nature, the basis for charging and how they were recorded and reflected in the parent company's financial statements, in addition to providing the statements to the parent company. Plaintiff also provided analytical statements in Excel format, and did not provide proper documents for these expenses for verification. Accordingly, Plaintiff's objection was dismissed. Third: (real estate investments). Defendant states that it did not deduct the disputed land because it is in the name of the partner and is not used in the activity. Upon examining the objection and meeting with Plaintiff, it was asked to provide the journal entries to prove the land and the general ledger for the affected accounts, as well as a statement showing the names of the partners and each partner's share of the capital and additional contributions. Plaintiff provided only the general ledger and did not provide the journal entries for the land, nor did it provide a statement of the partners'

shares of the capital and additional contributions, and it was noted that the data provided was not in Arabic. Accordingly, Plaintiff's objection was dismissed, and Defendant requests dismissing the case.
On Tuesday, 04/10/2022, the Department held a remote session to hear the case, attended by (.....), National ID No. (.....), as an attorney for Plaintiff under PoA No. (.....), and (.....), as a representative of Defendant under authorization No. (.....). Therefore, the Department decided to open the hearing. When Plaintiff's attorney was asked about the case, it replied: I object to the Zakat assessment for 2015 and relied solely on the statement of claim uploaded on the General Secretariat of Zakat, Tax and Customs Committees website, maintaining the defenses raised therein. Having presented the same to Defendant's representative, he answered: I would rely on the memorandum uploaded on the General Secretariat of Zakat, Tax and Customs Committees website, maintaining the defenses raised therein. Having asked both parties if they would like to add any statements, they were satisfied with such statements previously submitted. Accordingly, the pleadings were closed and the case was adjourned for consideration and deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and Clause (Third) of Royal Order No. (26040) of 21/04/1441 AH issuing the Tax Disputes and Violations Committee Procedures.
In Form: Since Plaintiff aims with its claim to cancel ZATCA decision regarding estimate zakat assessment for 2015, and given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of Tax Committee for Resolution of Tax Violations and Disputes. Given that the Case was filed by a party having capacity and within the statutory period. Therefore, the Department accepts the Case in form.
On Merits: Upon review of the case file, including all documents, pleadings, and arguments submitted by the parties, the Department found that the dispute lies in the following items:
First: Professional fees in the amount of (SAR 1,193,686) Item:
Article 5 (1) of the Implementing Regulations for Zakat Collection, related to deductible expenses, states: "The following expenses can be deducted to determine the net result of activity: 1. Expenses ordinary and necessary for an entity to engage in business activity, subject to meeting the following criteria: a. Expenses should be actual expenses as supported by relevant documents and other evidential matter to enable the Authority to verify the accuracy of expenses, even if related to prior year". Article 6 (2) of the same Implementing Regulations related to deductible expenses states: "Expenses that the Zakat Payer fails to prove by supporting documents or other evidential matter acceptable to the Authority". Article 20 (3) thereof states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it".
Since these expenses are considered deductible if they are proven to be an actual expense and supported by proper documents, and since the dispute over this item is a substantiated dispute, and after reviewing the documents attached to the case file, it appears that Plaintiff submitted Excel spreadsheets and a sample invoice for (SAR 861,185), and a contract along

with an English language agreement with the parent company signed on 1 January 2015, which relates to common expenses and how the expenses are allocated according to each service. It was also clear from the documents submitted by Plaintiff that part of them related to its expenses and another part related to the parent company, so after tracing the invoices and balances of Plaintiff, it became clear that only (SAR 43,460) belonged to it. As for the rest of the invoices, they belonged to the parent company and the basis for charging was not clear, and Plaintiff did not provide invoices issued by the parent company to Plaintiff (subsidiary) to verify that these expenses belonged to it, in addition to Plaintiff's failure to provide any documents extracted from the accounting system, such as: (journal entries) to verify that these expenses are recorded in its accounting system, as the audit cannot be conducted without the availability of what is known as the 'traceability' feature, which means that the accounting entries in the books can be traced back to their primary documents and vice versa. Logically, what is required by the audit procedures extends to the Zakat inspection, and this feature can only be achieved by the existence of the books, statutory records and primary documents. Therefore, the Department concludes to accept Plaintiff's objection, and to amend Defendant's action in relation to this item from (SAR 1,193,686) to (SAR 1,150,226).

Second: Expenses charged to the head office amounting to (SAR 2,921,921) Item:

The Department has reviewed Article 5(1)(a) of the Zakat Collection Implementing Regulations, referred to above, and given that such expenses are considered deductible if they are proven to be actual expenses and supported by proper documents, and given that the dispute over this provision is a well-founded dispute, and having reviewed the documents attached to the case file, it appears that Plaintiff has submitted the following: (Charging agreement between the parent company and subsidiaries (approved by one person for both parties) - Financial statements of the parent company - Procedures report from an audit firm (SAR 1,983,399) - Debit Note - Daily entries), and after referring to the financial statements attached by Plaintiff and Note (9A-), it turns out that the parent company has transactions with the partner for (SAR 13,583,074), and the nature of these amounts and the services provided to the partner is not clear. Moreover, the amount of the dispute claimed by Plaintiff is (SAR 2,921,921) and the amount certified by the Audit Bureau is (SAR 1,983,399), which leads the Department to dismiss Plaintiff 's objection and uphold Defendant's action in relation to this item.

Third: Real Estate Investments Item:

Item (Second) of Article (4) of the Implementing Regulations for Zakat Collection stipulates that: "The following items shall be deducted from the Zakat Base: 1- Fixed assets including the following: The net value of fixed assets (acquisition assets), any payments for the purchase of fixed assets, and the value of spare parts not intended for sale. These assets must be owned by zakat payer, unless there is a barrier preventing the transfer of ownership, and must be used in the activity.' The Department has reviewed Article 20 (3) of the Zakat Collection Implementing Regulations referred to above, and as the basis for the permissibility of deducting fixed assets from the Zakat base is the fulfillment of two basic conditions: First: It must be owned by Zakat payer. Second: It must be used in the activity. Upon reviewing the case file, it is clear that Plaintiff claims to deduct the land registered in the name of the partner as it has a dispute with the General Authority for Awqaf (GAA), which resulted in the land not being used in the activity and therefore the ownership was not transferred. Since Plaintiff has admitted that the land was not used in her activity and that it is not in the name of the company, it is not entitled to deduct it from Zakat base, which leads the Department to dismiss Plaintiff 's objection and uphold Defendant's action with regard to this item.

For these grounds and after deliberation, the Department unanimously decided to:

Decision:

First: Accepting the Case filed by Plaintiff/ ..... Real Estate Company Limited, Commercial Registration No. (.....), against Defendant/Zakat, Tax and Customs Authority (ZATCA), in form.

Second: On Merits:

1. Amending Defendant's action with respect to (Professional Fees) Item from (SAR 1,193,686) to (SAR 1,150,226) as stated in the reasons.
2. Dismissing the claim with respect to (Expenses Charged from Head Office) Item in the amount of (SAR 2,921,921).
3. Dismissing the claim with respect to (Real Estate Investments).

This decision was delivered in presence of both parties. The Department set Wednesday, 09/11/2022 for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not appeal it.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

The Second Department for The Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2022-1694)
Issued in Appeal No. (Z-68034-2021)

Key words:
Zakat Assessment - Salaries Difference - Ticket Provision Composed - Trade Payables - Analytical Statement of Salaries and Wages - Wages and Contributions Certificate.

Abstract

Plaintiff seeks the cancellation of ZATCA's decision regarding zakat assessment for 2015. The dispute is limited to the following items: First: (Salary Variance) item: for the addition of salary and wage differences. Item Second: (Ticket Provision Composed): for the addition of accrued travel tickets. Regarding the third item: (Trade Payables): Inclusion of (Trade Creditors) in the 2015 zakat base, where Defendant added the mentioned amount to the zakat base on the grounds that the amount had completed a full year. Defendant responded that it had requested the submission of an analytical statement of salaries and wages, specifying basic salaries, bonuses, and benefits, in addition to a wages and contributions certificate issued by GOSI. However, Plaintiff failed to provide the requested data and maintained the validity and soundness of its procedure. Defendant maintained the validity and soundness of its action. The statutory provisions state that if the case is filed by a person with legal capacity and within the statutory period, it must be accepted in form. The Department established that the disputed difference pertains to actual expenses and upon reviewing Plaintiff's 2015 declaration, the Department determined that Plaintiff disclosed direct salaries and wages amounting to SAR (51,845,725.27) and indirect salaries and wages amounting to SAR (6,189,671) with a total of SAR (58,035,396). Meanwhile, the chartered accountant's report indicated that total wages amounted to SAR (58,466,411) revealing a difference that appears to fall under other expenses. Given that the net profit before zakat, according to the approved financial statements, matches the net profit as per the zakat declaration, the Department satisfies to accept plaintiff's objection. Second: It was established that (Accrued Travel Expenses) constitute an expense that is due and payable, and not merely a provision, regardless of the timing of its disbursement and is thus a deductible expense. Considering that the balance of outstanding relevant tickets, which had matured, was included in the zakat base, the Department concludes to accept Plaintiff's objection and annul Defendant's action. Third: Since the effective date of the referenced regulation is 01/01/2019 onwards, and the year in question is subject to the Implementing Regulations for Zakat Collection issued in 1438 AH, the Department satisfies to dismiss Plaintiff's objection. Therefore, the Department ruled to accept the Case in form, annul Defendant's action regarding (Salaries Difference) and (Ticket Provision Composed), and dismiss the Case in relation to (Trade Creditors). This decision shall be deemed final and enforceable.

Instruments:

- Article (125) of the Labor Law issued by Royal Decree No. (M/51) dated 23/08/1426 AH
- Articles (4/c/4), (5/1/a), (6/2), and (20/3) of the Implementing Regulations for Zakat Collection, issued by the Ministerial Decision No. (2216) dated 07/07/1440 AH

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 28/09/2022, the second department for the determination of income tax violations and disputes in Riyadh, stipulated in Article (67) of the Income Tax Law, issued by Royal Decree No. (M/1) dated 15/08/1425 AH, as amended, and formed by Royal Decree No. (13957) dated 26/02/1444 AH, held its session remotely via video conference to consider the above-mentioned case. Since the case met the prescribed statutory requirements, it was filed with the General Secretariat of Zakat, Tax and Customs Committees with the above number on 31/08/2021.

The facts of this case are summarized that Plaintiff/ ..... Company for Trade and Industry Ltd., C.R No. (.....), submitted an objection to the zakat assessment for 2015. Plaintiff's objection is limited to the following: Item First (Salaries Difference): Plaintiff challenges Defendant's inclusion of SAR (2,461,544) as salary and wage differences in the net profit for 2015. Plaintiff argues that these salaries, which are not subject to social security, represent transportation allowances, commuting, overtime wages, and incentives). Plaintiff asserts that these expenses are deductible based on Article (5) of the Implementing Regulations for Zakat Collection. Item Second: (Ticket Provision Composed): Plaintiff objects to Defendant's inclusion of the accrued travel tickets item amounting to SAR (925,970.05) in the net profit for 2015, considering it as provisions subject to zakat. Plaintiff relies on Article (125) of the Labor Law, arguing that such expenses are deductible. Item Third: (Trade Payables): Plaintiff challenges Defendant's inclusion of (Trade Creditors) amounting to SAR (9,276,967.57) in the 2015 zakat base, asserting that Defendant added the mentioned amount to the zakat base, assuming that it had completed a full year, while in fact it represents regular business transactions and, therefore, had not completed a full year, and is not subject to Zakat. Plaintiff relies on Article (4) of the Implementing Regulations for Zakat Collection issued under Ministerial Decision No. (2082) dated 01/06/1438 AH. Consequently, Plaintiff requests annulment of Defendant's action in question.

Having presented the statement of claim to Defendant, it responded with a memorandum summarized as follows: First: (Salaries Difference): Defendant clarifies that it adjusted the net profit by the amount of SAR (2,461,544.94) for salary and wage differences and further explains that it had requested the submission of an analytical statement of salaries and wages, specifying basic salaries, bonuses, and benefits, in addition to a wages and contributions certificate issued by GOSI. However, Plaintiff failed to provide the requested data. Defendant further notes that Plaintiff provided an analytical statement that does not match the records registered with GOSI, prompting Defendant to refund the difference by the aforementioned amount. During the review of the objection, a meeting was held with Plaintiff on Sunday, 29/08/2021, during which Plaintiff indicated that it would submit documents related to this item by no later than Monday, 30/08/2021. However, Plaintiff failed to fulfill its commitment. Therefore, Plaintiff's objection raised was dismissed in this regard in accordance with Paragraph (3) of Article (20) of the Implementing Regulations for Zakat Collection. Second: (Fixed Assets): Defendant argues that it conducted Plaintiff's assessment by adding the said item to the net profit and clarified that it discussed the matter with Plaintiff during the examination phase on 02/07/1442 AH and requested a unified trial balance detailing the opening balances, (debit and credit) transactions, and closing

balances based on the accounting system, along with a converted file in Excel format. It was determined, upon reviewing Plaintiff's documents, that a provision for tickets amounting to SAR (925,970.05), which was added to the net profit. A meeting was then held with Plaintiff, which stated that they would provide some documents related to salaries and the ticket provision by no later than Monday, 30/08/2021. However, Plaintiff failed to fulfill its commitment. Upon reviewing the trial balance submitted by Plaintiff, it was evident that there was a provision for tickets, and thus, Defendant maintains the validity and correctness of its action. Third: (Trade Payables): Defendant argues that it conducted Plaintiff's assessment by adding the said item to the zakat base for the year in dispute and further explains that during the examination phase, it discussed the matter with Plaintiff and requested the ledger for the "Trade Creditors" account, detailing the opening balances, (debit and credit) transactions, and closing balances. However, Plaintiff failed to provide any documents. As a result, Defendant applied the lower of the opening or closing balance. Plaintiff, upon sending the draft assessment, submitted a statement demonstrating "Creditors" transaction, and the amount added to the zakat base was adjusted to SAR (57,967,276.9). Upon reviewing the objection, a meeting was held with Plaintiff on Sunday, 29/08/2021, but no additional information was provided regarding this item. Upon reviewing the documents submitted by Plaintiff during the examination phase, specifically the transactions statement for this item, it was confirmed that the amount that had completed a full year was SAR (57,967,276.9). Consequently, Plaintiff's objection was dismissed and Defendant therefore requests the Department to rule in favor of dismissing the Case.

on Wednesday, 28/09/2022 AD, the Department held its session remotely to hear the case. This session was attended by ...., holder of National ID No. (....), in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. ..... dated 18/10/1443 AH issued by Deputy Governor for Legal Affairs. Also present was/..., holder of National ID No. (...), and presented a PoA No. (....), upon reviewing which the Department established that the representative was acting as an agent for one of the company's partners rather than as the company's legal representative Given that the case is ready for adjudication, the Department decided to open the pleadings. Having asked Defendant's representative about his reply to the Plaintiff's claims, he replied: I would rely on the memorandum uploaded on the General Secretariat of Tax and Customs Committees e-portal, maintaining the defenses and requests contained therein. Accordingly, the pleadings were closed and the case was adjourned for consideration and deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and Clause (Third) of Royal Order No. (26040) of 21/04/1441 AH issuing the Tax Disputes and Violations Committee Procedures.

In Form: Since Plaintiff aims with its claim to cancel ZATCA decision regarding estimate zakat assessment for 2015, and given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of Tax Committee for Resolution of Tax Violations and Disputes. Given that the Case was filed by a party having capacity and within the statutory period. Therefore, the Department accepts the Case in form.

On Merits: Upon review of the case file, including all documents, pleadings, and arguments submitted by the parties, the Department found that the dispute lies in the following items:

First: (Salary Variance) item:

Paragraph (a) of Article (5) of the Implementing Regulations for Zakat Collection states: "The following expenses can be deducted to determine the net result of activity: 1. Expenses ordinary and necessary for an entity to engage in business activity, subject to meeting the following criteria: a. Expenses shall be actual expenses as supported by relevant documents and other evidential matter to enable the Authority to verify the accuracy of expenses, even if related to prior years. b. Expenses should be related to Zakat Payer's business activity rather than personal expenses or other than Zakat Payer's own activities. c. Expenses may not be of capital nature. Where a capital expenditure is included in the expenses such expenditure shall be adjusted against the result of activity added to fixed assets and accordingly depreciated as applicable."

Given that the social insurance certificate is a crucial third-party document used to verify the accuracy of recorded salaries, wages, and equivalents recorded in the accounts. It is evident, upon reviewing the documents attached to the Case file, that Plaintiff submitted a certificate from the chartered accountant detailing the value of salaries and wages subject to social insurance, as well as allowances and other employee benefits not subject to social insurance, which reveals that the disputed difference represents actual expenses. Referring to Plaintiff's declaration, it is apparent that Plaintiff disclosed in its 2015 declaration direct salaries and wages amounting to SAR (51,845,725.27) and indirect salaries and wages amounting to SAR (6,189,671), totaling SAR (58,035,396). However, the chartered accountant's report indicated that the total wages amounted to SAR (58,466,411) revealing a difference that appears to fall under other expenses. Given that the net profit before zakat, according to the approved financial statements, matches the net profit as per the zakat declaration, the Department satisfies to accept plaintiff's objection and annul Defendant's action in this regard.

Second: Ticket Provision Composed:

Upon reviewing Paragraph (1) of Article (5) of the Implementing Regulations for Zakat Collection, it is established that the item of "Accrued Travel Tickets" constitutes a fixed right for the employee, whether classified under provisions or outstanding expenses and represents compensation for the employee's entitlement to annual travel tickets. The item in question meets the conditions for an allowable expense, as it fulfills the criteria of entitlement and accurate estimation and there is no future possibility of the employee not being entitled to this compensation, and the amount is fixed and known, implying that it cannot be disbursed for less than the estimated value. Upon reviewing the attachments in the Case file, it is evident that Plaintiff submitted a certificate from the chartered accountant detailing the value of salaries and wages subject to social insurance, as well as allowances and other employee benefits not subject to social insurance, including vacation tickets totaling SAR (901,227.35). Additionally, Plaintiff provided a detailed statement of accrued ticket expenses totaling SAR (901,227.35), which matches the chartered accountant's report. Therefore, accrued ticket expenses constitute an expense that is due and payable, and not merely a provision, regardless of the timing of its disbursement and is thus a deductible expense. Considering that the balance of relevant tickets, which had matured, was included in the zakat base, the Department concludes to accept Plaintiff's objection and annul Defendant's action in this regard.

Third: Trade Payables:

Section (First) of Article (4) of the Implementing Regulations for Zakat Collection states: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans, along with other similar financing sources, such as

creditors, notes payable and overdrafts owed by Zakat Payer as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. c. Parts thereof used in trade bids on which a year has passed". In addition, Paragraph (3) of Article (20) of the same Regulations states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it"

Trade payables constitute one of the components of the zakat base, subject to completion of a full year o are used to finance assets deducted from the zakat base. Upon reviewing the documents attached to the Case file, it appears that Plaintiff failed to submit the detailed transaction of payables to prove that the amounts in question had not completed a full year. Regarding Plaintiff's request to include additional items in the zakat base, pursuant to Paragraph (c/4) of Article (4) of the Implementing Regulations for Zakat Collection issued in 1440 AH. Since the effective date of the referenced regulation is 01/01/2019 onwards, and the year in question is subject to the Implementing Regulations for Zakat Collection issued in 1438 AH, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's action in this regard.

For these grounds and after deliberation, the Department unanimously decided to:

Decision:

First: Accepting the Case filed by Plaintiff/ ..... for Trade and Industry Ltd., C.R. No. (...), against Defendant/ZATCA in form.

Second: On Merits:

1. Abolish Defendant's action regarding (Salaries Difference) item.
2. Abolish Defendant's action regarding (Ticket Provision Composed) item.
3. Dismiss the Case in relation to (Trade Creditors) item.

This decision was delivered in the presence of Defendant and as if in presence of Plaintiff, and was read out publicly in the session. The Department set Wednesday, 09/11/2022 for receiving a copy of the decision, and any of the parties to the case may appeal against the decision within thirty days from the day following the date set for receipt of the decision, whereafter, the decision will be final and enforceable if either party does not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

The Second Department for The Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2022-1738)
Issued in Appeal No. (ZI-72645-2021)

Key words:
Zakat Assessment - Wages, Salaries, and Bonuses - Failure to Provide a Detailed Social Insurance Statement for Salaries – Dismissal of the Case on Merits.

Abstract

Plaintiff seeks the cancellation of ZATCA's decision regarding zakat assessment for 2017. Plaintiff's objection is limited to the following items: Item First (Wages, Salaries, and Bonuses for 2017): Plaintiff challenges Defendant's addition of an amount of SAR (254,096) to the net profit for the year in dispute. ZATCA responded by challenging the admissibility of the Case in form and explained that it added the item of salaries, wages, and bonuses amounting to SAR (254,096) to the net profit due to lack of supporting documentation. Defendant further stated that it requested Plaintiff to provide a detailed social insurance statement listing the names of employees to verify that the salaries did not pertain to the foreign partner or their relatives. However, Plaintiff failed to fulfill its commitment. Statutory provisions state that if a case is filed by a person with legal capacity and within the statutory period, it must be accepted in form. Upon review, the Department determined that Plaintiff failed to a detailed statement of salaries and wages to support its position regarding the reasons for such differences. Thus, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's action regarding this item. Therefore, the Department ruled to accept case in form, and dismiss the case as on merits and the decision is final and enforceable.

Instruments:

- Article (5/1) of the Implementing Regulations for Zakat Collection, issued by the Ministerial Decision No. (2216) dated 07/07/1440 AH
- Article (3/2) of Tax Dispute and Violation Committee Procedures issued under Royal Decree No. (26040) dated 21/04/1441 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 03/10/2022, the second department for the determination of income tax violations and disputes in Riyadh, stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed by Royal Order No. (13957) dated 26/02/1444 AH, held its session remotely via teleconference to consider the above-mentioned case. As the case met the prescribed statutory requirements, it was filed with the General Secretariat of Zakat, Tax and Customs Committees with the above number on 28/09/2021.

Facts of this case are summarized as follows: Plaintiff, ... for Contracting Ltd., CR No. (...), filed an objection to zakat assessment for 2017. Plaintiff's objection is limited to the following items: Item First (Wages, Salaries, and Bonuses for 2017): Plaintiff challenges Defendant's addition of an amount of SAR (254,096) to the net profit for the year in dispute, clarifying that it requested a detailed certificate of salaries and wages from GOSI, which informed Plaintiff of impossibility to issue such certificate. Therefore, Plaintiff seeks amendment of Defendant's action in this case.

By presenting the statement of claim to Defendant, it responded with the following: First: In form: Defendant challenging the admissibility of the Case in form in accordance with Paragraph (2) of Article (3) of Tax Dispute and Violation Committee Procedures. Second: On merits: Defendant explained that it added the item of salaries, wages, and bonuses amounting to SAR (254,096) to the net profit due to lack of supporting documentation. Defendant, upon examining the objection, stated that Plaintiff provided a social insurance statement detailing wages and contributions. However, Defendant requested Plaintiff to provide a detailed social insurance statement listing the names of employees to verify that the salaries did not pertain to the foreign partner or their relatives. Since Plaintiff failed to provide the requested data, a partial acceptance was made by deducting the salaries of Saudi employees as listed in the social insurance certificate, while rejecting the salaries of foreign employees. Therefore, Defendant requests dismissal of the case.

On Monday, 03/10/2022, the Department held a remote session to consider the Case, where Plaintiff's representative ...., holder of National ID No. (...), attended, as well as/ ..... in his capacity as Defendant's representative by virtue of Authorization No. (...). Therefore, the Department decided to open the hearing. Having asked Plaintiff's representative regarding the Case, he responded: I object to the zakat assessment for 2017 limiting my objection to (Wages, Salaries, and Bonuses) item. I solely rely on the statement of claim filed via the General Secretariat of Tax Committees portal and maintain the defenses presented therein. Having presented the same to Defendant's representative, he answered: I would rely on the memorandum uploaded on the General Secretariat of Zakat, Tax and Customs Committees website, maintaining the defenses raised therein. Having asked both parties if they would like to add any statements, they were satisfied with their earlier submissions. Accordingly, the pleadings were closed and the case was adjourned for consideration and deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and Clause (Third) of Royal Order No. (26040) of 21/04/1441 AH issuing the Tax Disputes and Violations Committee Procedures.

In Form: Since Plaintiff aims with its claim to cancel ZATCA's decision regarding zakat assessment for 2017, and given that this dispute falls within the category of tax disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of Committee for Determination of Income Tax Violations and Disputes. Given the case is filed with valid grounds and by a person with legal capacity, Defendant's objection regarding the admissibility of the case in form due to Plaintiff's failure to submit the grievance within the statutory period is not valid, as Plaintiff was notified of the objection decision on 24/09/2021 and due to a technical glitch, was unable to file the appeal within the

prescribed period. Plaintiff provided evidence therefor on 24/09/2021. Consequently, the Department satisfies to accept the Case in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defense and arguments raised by parties to the Case, the Department found that the dispute involves (Wages, Salaries, and Bonuses for 2017) item. Paragraph (1) of Article (5) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH states: "The following expenses can be deducted to determine the net result of activity: 1. Expenses ordinary and necessary for an entity to engage in business activity, subject to meeting the following criteria: a. Expenses shall be actual expenses as supported by relevant documents and other evidential matter to enable the Authority to verify the accuracy of expenses, even if related to prior years. b. Expenses should be related to Zakat Payer's business activity rather than personal expenses or other than Zakat Payer's own activities. c. Expenses may not be of capital nature. Where a capital expenditure is included in the expenses such expenditure shall be adjusted against the result of activity added to fixed assets and accordingly depreciated as applicable"

Given that the social insurance certificate is a crucial third-party document used to verify the accuracy of recorded salaries, wages, and equivalents recorded in the accounts. It is evident, upon reviewing the documents attached to the Case file, that Plaintiff failed to provide a detailed statement of salaries and wages to support its position regarding the reasons for such differences. Thus, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's action regarding this item.

For these grounds and after deliberation, the Department unanimously decided to:

Decision:

- Accepting the Case filed by Plaintiff/ ..... for Contracting Ltd., CR. No. (.....), against Defendant/ZATCA, in form and dismiss it on merits.

This decision was delivered in presence of both parties and was publicly announced in the hearing. The Department set the day of ...., .../.../2022 for receiving a copy of the decision.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

The Second Department for The Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2022-1782)
Issued in Appeal No. (Z-64562-2021)

Key words:
Zakat Assessment - Documentary L/C and Letters of Guarantee - Accrued Expenses and Other Liabilities - Expenses Charged by Related Parties - Import Variance - Shipping and Clearance Costs - Receivables by Related Parties - Receivables by a Partner - Rejection of Deduction of Receivables by a Partner -Provisions Variance.

Abstract

Plaintiff seeks the cancellation of ZATCA's decision regarding zakat assessment for 2015. Plaintiff's objection is limited to the following items: First: (Documentary L/C and Letters of Guarantee), whereas Plaintiff challenges the inclusion of the amounts of documentary L/C and letters of guarantee issued with local banks for the year under dispute. Item Second: (Accrued Expenses and Other Liabilities), whereas Plaintiff objects to the inclusion of accrued expenses and other liabilities (opening balance - closing balance, whichever is less) in the zakat base. Item Third: (Expenses Charged by Related Parties), where Plaintiff challenges the inclusion of expenses charged by related parties. Item Fourth: (Import Variance), where Plaintiff challenges Defendant's inclusion of the import variance in the zakat base, stating that these variances arise from the exclusion of shipping and insurance costs from the customs extract, as they were classified under shipping and customs clearance expenses in the declaration. Additionally, the purchases, although received in recorded in 2015, were reflected in 2014 customs extract. Item Fifth: (Intangible Assets and Amortization), Plaintiff objects to the rejection of the deduction of intangible assets from the zakat base for the year in dispute. Item Sixth: (Receivables by Related Parties), Plaintiff challenges the inclusion of receivables by related parties, which had been outstanding for a full year, in the zakat base for the year under dispute. Plaintiff argues that loans are not subject to zakat, as they are a liability owed by the creditor, not the debtor. Item Seventh: (Receivables by a Partner - ... Company), where Plaintiff objects to rejection of deduction of receivables by the partner (... Company) amounting to SAR (1,720,047) from the zakat base for the year under dispute. Regarding the eighth item (Provisions Variance), whereas Plaintiff challenges the inclusion of the provisions' variance in the net profit for the dispute year, arguing that Defendant had not provided a sufficient justification for this adjustment. In response, Defendant asserted that it included documentary L/C, letters of guarantee, and a part of accrued expenses and other liabilities in the zakat base due to the completion of a full year or because these items were not eligible for deductions. Defendant further contended that Plaintiff failed to provide adequate supporting documentation. Statutory provisions stipulate that if a case is filed by a person with legal capacity and within the statutory period, the case must be accepted in form. The Department established, regarding the first item, that Plaintiff failed to provide the detailed transaction for documentary L/C and letters of guarantee for 2015 to

substantiate their claim that the amounts added to the zakat base had not completed the full year. Given that Plaintiff operates in the wholesale and retail trade of electrical and electronic equipment and after-sales services that often necessitate letters of guarantee when submitting or being awarded projects and considering that the funds tied up in these letters of guarantee are generally for the benefit of the business and do not diminish Plaintiff's full ownership and the obligation of zakat as long as the funds remain in their ownership, the Department satisfies to dismiss Plaintiff's objection. Second: It has been established that Plaintiff provided a detailed statement of accounts, including employee entitlements, advertising and promotion expenses, payments made by clients, accrued supplies, and others, along with an extract from the company's accounting system for some of the mentioned accounts, which demonstrates the full balances had not completed the required full year. Therefore, the Department satisfies to accept Plaintiff's objection. Third: The Department established that Plaintiff's submitted documents were insufficient as they failed to provide a clear explanation of how these transactions were valued. Consequently, the Department satisfies to dismiss Plaintiff's objection. Fourth: Since Plaintiff failed to provide the necessary detailed reconciliation to clarify the reasons and justifications for the import variances, nor did they submit supporting documents as outlined in their statement of claim, Defendant's adjustment of Plaintiff's financial results to account for these variances is deemed correct. Accordingly, the Department satisfies to dismiss Plaintiff's objection. Fifth It has been established that Plaintiff failed to provide the agreement signed between the company and the related party (...) that confirms the transfer of ownership of distribution rights for the products of ... Ltd. in KSA from the related party to ... Electronics Limited, as well as the entitlement of ... to transfer the agency and the approval of the company owning the agency. Therefore, the Department satisfies to dismiss Plaintiff's objection. Sixth: It is evident that Plaintiff failed to provide the detailed movement of those receivables, nor detailed statements of the partners' accounts under dispute to determine the debit and credit balances for each partner separately. Therefore, the Department satisfies to dismiss Plaintiff's objection. Seventh: Plaintiff failed to provide a detailed account statement for the partner ... Company to verify the existence of a debit balance at the end of the year. Therefore, the Department satisfies to dismiss Plaintiff's objection. Eighth: Since Defendant added the provisions that had completed the required full year based on the balances reflected in 2015 financial statements, the Department satisfies to dismiss Plaintiff's objection. Accordingly, the Department ruled to: Accept the Case in form - Amend Defendant's action regarding (Accrued Expenses and Other Liabilities) by adding the amount of SAR (2,560,101), which had completed a full year, to 2015 zakat base, and dismiss the Case regarding the remaining items. This decision shall be deemed final and enforceable.

Instruments:

- Articles (4/First/5), (5/1), (5/6), and (20/3) of the Implementing Regulations for Zakat Collection, issued by the Ministerial Decision No. (2216) dated 07/07/1440 AH
- Ministerial Decision No. (1103/3) dated 11/02/1407 AH.
- ZATCA's Circular No. (2030/9) dated 15/04/1430 AH.
- ZATCA's Circular No. (6/147) dated 18/12/1408 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 27/09/2022, the second department for the determination of income tax violations and disputes in Riyadh, stipulated in Article (67) of the Income Tax Law, issued

by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed by Royal Decree No. (13957) dated 26/02/1444 AH, held its session remotely via video conference to consider the above-mentioned case. Since the case met the prescribed statutory requirements, it was filed with the General Secretariat of Zakat, Tax and Customs Committees with the above number on 11/08/2021.

The facts of this case are that Plaintiff, ... Real Estate Electronics Ltd., CR No. (...), filed an objection to zakat assessment for 2015. Plaintiff's objection is limited to the following items: Item First (Documentary L/C and Letters of Guarantee): Plaintiff challenges Defendant's addition of amounts related to documentary L/C and letters of guarantee issued with local banks for the disputed year. Plaintiff, engaged in the wholesale and retail trade of electrical and electronic equipment, appliances, audio-visual equipment, cameras, computers, and after-sales services, holds distribution rights for ... products in the Kingdom and the company issues substantial documentary L/C and letters of guarantee to purchase these goods. The auditor disclosed these amounts in Note (10) attached to the financial statements, related to short-term loans (bank facilities) solely for the purpose of accounting disclosure regarding the credit facilities available to the company. Plaintiff further adds that these L/C and letters of guarantee were outstanding (available for use) at the time of the financial statement issuance, and no balances were recorded in the company's accounts for these amounts, as they represent the values of documentary L/C and letters of guarantee issued with local banks, which were not utilized or withdrawn to finance payments to suppliers. Therefore, they do not represent amounts owed by the company. Additionally, Plaintiff also states that Defendant requested details of short-term loans during the discussion of the company's accounts for 2015, and as shown in the attached assessment, no part of these balances was included in the assessment. Item Second: (Accrued Expenses and Other Liabilities): Plaintiff objects to Defendant's inclusion of accrued expenses and other liabilities (opening balance - closing balance, whichever is less) in the zakat base for the disputed year. Plaintiff argues that the majority of the mentioned balances were not subject to the completion of a full year, nor were they used to finance long-term assets. Item Third: (Expenses Charged by Related Parties), Plaintiff challenges Defendant's inclusion of expenses charged by related parties totaling SAR (20,761,532), stating that it is part of ... Group. Plaintiff further states, according to the agreements concluded between ... Companies, that ... Company provides administrative and logistical services to the commercial companies. These services are recorded as revenue at the level of ... Company and as supporting expenses at the commercial companies, such as ... Company. Therefore, these are legitimate and necessary services for the business's operations to carry out its activity. Item Fourth: (Import Variance): Plaintiff challenges Defendant's inclusion of the import variance in the zakat base, amounting to SAR (4,668,002), stating that these variances arise from the exclusion of shipping and insurance costs from the customs extract, as they were classified under shipping and customs clearance expenses in the declaration. Additionally, the purchases, although received in recorded in 2015, were reflected in 2014 customs extract. Moreover, Plaintiff cites ZATCA's Circular No. (2030/9) dated 15/04/1430 AH. Item Fifth: (Intangible Assets and Amortization): Plaintiff objects Defendant's rejection of the deduction of intangible assets, totaling SAR (12,0000,000), from the zakat base for the year in dispute, as well as adjusting the net profit by adding the amortization expense of the intangible assets amounting to SAR (4,000,000). Plaintiff argues that they clarified in the attached notes to the audited financial statements that, in 1998, they purchased the product distribution rights of ... Ltd. in KSA from Mr. ... for SAR (80,000,000), which was capitalized as goodwill and in return was added to the partners' credit current account. The company amortized this goodwill over a 20-year period based on the management's assessment of the useful life of the distribution rights during this period. The company,

when preparing declarations for previous years, deducted the goodwill and added the financing sources (current account of Mr. [...]). However, Defendant accepted the deduction of intangible assets and their amortization when issuing final assessments up to 2007. Furthermore, the Settlement Committee also accepted this calculation for the period 2008 to 2014. Additionally, Plaintiff emphasizes that the amortization expense is considered a regular and necessary expense incurred in generating zakatable income related to the distribution rights and is therefore a deductible expense according to the law. Item Sixth: (Receivables by Related Parties): Plaintiff challenges Defendant's inclusion of receivables by related parties, which had been outstanding for a full year, amounting to SAR (210,096), in the zakat base for the year under dispute. Plaintiff argues that loans are not subject to zakat, as they are a liability owed by the creditor, not the debtor. Furthermore, Plaintiff cites the Ministerial Decision No. (1103/3) dated 11/02/1407 AH and ZATCA's Circular No. (6/147) dated 18/12/1408 AH. Item Seventh: (Receivables by a Partner - ... Company): Plaintiff objects to Defendant's rejection of deduction of receivables by the partner (... Company) amounting to SAR (1,720,047) from the zakat base for the year under dispute, stating that they deducted this amount from the partner's share of retained earnings in accordance with Paragraph (5) of Section (Second) of Article (4) of the Implementing Regulations for Zakat Collection. Plaintiff further argues that the balance represents a paid-up debt to the partner and should therefore be deducted against the retained earnings in accordance with the Zakat Regulations as the balance represents distributions. Item Eighth: (Provisions Variance): Plaintiff challenges Defendant's inclusion of the provisions' variance, amounting to SAR (176,233), in the net profit for the dispute year, arguing that Defendant had not provided a sufficient justification for this adjustment. Therefore, Plaintiff requests the annulment of Defendant's action in question. Having presented the statement of claim to Defendant, it responded with a memorandum summarized as follows: First: (Documentary L/C and Letters of Guarantee): Defendant argues that it included the amounts of documentary L/C and letters of guarantee in the zakat base due to the completion of a full year, as Plaintiff failed to provide supporting documents for their position. Defendant further states, upon reviewing the data provided by Plaintiff during the examination stage, that these amounts had been held for a full year. Therefore, the Department satisfies to dismiss Plaintiff's objection. Second: (Accrued Expenses and Other Liabilities): Defendant clarifies that it added part of the amounts for accrued expenses and other liabilities to the zakat base, where the opening and closing balances were added based on the financial statement data due to the failure to provide a movement statement for the items during the examination phase. Upon reviewing the objection and examining the data provided by Plaintiff regarding the accounts payable, it becomes clear that the amounts subject to the completion of a full year are as follows:

Item	Amount
Employee Entitlements	SAR (1,211,991).
Advertising and Promotion Expenses	SAR (217,744).
Other	SAR (539,274).
Total	SAR (1,969,009)

Therefore, the assessment was partially adjusted in accordance with Paragraph (5) of Section (First) of Article (4) of the Implementing Regulations for Zakat Collection. Third: (Expenses Charged by Related Parties): Defendant states, during the assessment, that the amounts were not deducted from the zakat base on the grounds that they were not classified as deductible expenses during the examination phase. The Department, upon examining the objection and reviewing the financial statements and the submitted documents (the agreement along with the statements extracted from the computer system), established that these transactions, involving internal related parties, were conducted under terms and prices that cannot be verified and lacked clear pricing as stated in Note (9) of

the financial statements. Therefore, the Department ruled to dismiss Plaintiff's objection. Fourth: (Import Variance): Defendant clarifies that during the assessment, an amount of SAR (4,668,00) was added to the net profit, considering thereof as import variances based on an overcharged variance between Plaintiff's decision (imports and customs duties) amounting to of SAR (523,606,189) and ZATCA's customs data amounting to SAR (518,938,187), as determined during the examination. However, upon reviewing the objection and the customs statement provided by Plaintiff, it is evident that:

Description	Amount
Imports based on customs data	SAR (526,696,195).
Imports based on the declaration	SAR (523,606,189).
Undeclared Variance	SAR (3,090,189).
Estimated Profit at 10%	SAR (309,001)
Overcharged Variance	----------

Therefore, the assessment was partially adjusted in accordance with Paragraph (3) of Article (20) of the Implementing Regulations for Zakat Collection. Fifth (Intangible Assets and Amortization): Defendant confirms that these amounts were not deducted from the zakat base, as the amortization expenses for goodwill are not approved. Additionally, Defendant argues that this item represents the purchase of distribution rights for ... products, which was not recognized in Defendant's assessments for 2014. Upon reviewing the objection and financial statements, particularly Note (8), it was determined that the purchase process involved related parties, as well as a third party, rather than the agency-owning company and the company. Moreover, these amounts do not represent goodwill but rather a commercial agency. This process is subject to estimation factors whose accuracy cannot be verified. Therefore, Defendant maintains the validity of its procedure. Sixth: (Receivables by Related Parties): Defendant argues that it added an amount of SAR (210,096) to the zakat base, as these are non-deductible expenses. Upon reviewing the objection and due to the lack of supporting documentation provided by Plaintiff, and since these transactions are subject to terms and pricing between internal related parties whose accuracy cannot be verified, and the company also did not clarify the pricing method for these transactions, as shown in Note (9) of the financial statements. Therefore, the Department satisfies to dismiss Plaintiff's objection. Seventh: (Receivables by a Partner - ... Company): Defendant argues that it added an amount of SAR (1,720,047) to the zakat base, as these are non-deductible expenses. Upon reviewing the objection and due to the lack of supporting documentation provided by Plaintiff, and since these transactions are subject to terms and pricing between internal related parties whose accuracy cannot be verified, and the company also did not clarify the pricing method for these transactions, as shown in Note (9) of the financial statements. Therefore, the Department satisfies to dismiss Plaintiff's objection Eighth: (Provisions Variance): Defendant states that it added an amount of SAR (176,233), to the net profit, as these are non-deductible expenses. Upon examining the objection and reviewing the financial statements and Plaintiff's declaration, it is evident that the amounts outstanding for a full year under this item are as follows:

Description	Zakat Payer's Declaration	ZATCA's Assessment
Slow-Moving Inventory Provision	SAR (6,224,675).	SAR (6,224,675).
End of Service Award	SAR (5,767,016).	SAR (5,767,016).
Doubtful Debts Provision	SAR (6,536,697).	SAR (6,536,697).
Doubtful Debts Provision	SAR (149.852).	----------
Zakat Provision	----------	SAR (326.085).
Total	SAR (8,678,240).	SAR (18,854,473).
Variance	SAR (176,233)	

Accordingly, Plaintiff's objection is dismissed in accordance with Paragraph (6) of Article (6) of the Implementing Regulations for Zakat Collection. Additionally, Defendant requests that the Case be dismissed.

On Tuesday, 27/09/2022, the Department convened a remote session for this case, where ..., acting as Defendant's representative, attended pursuant to Authorization No. (...), while Plaintiff's representative failed to attend nor did they provide an excuse for their absence, despite being properly notified of the session date via the General Secretariat of Tax Committees e-portal. Consequently, this is considered a waiver of their right to attend and present their case. Accordingly, the Department decided to open the pleadings. Having asked Defendant's representative about his reply to the Plaintiff's claims, he replied that they are satisfied with the memorandum submitted via the General Secretariat of Tax Committees e-portal and uphold the defenses and requests outlined therein regarding the zakat assessment for 2015. Following this, the pleadings were closed, and the case was referred for consideration and deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and Clause (Third) of Royal Order No. (26040) of 21/04/1441 AH issuing the Tax Disputes and Violations Committee Procedures.

In Form: Since Plaintiff aims with its claim to cancel ZATCA decision regarding estimate zakat assessment for 2015, and given that this dispute falls within the category of tax disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of Committee for Determination of Income Tax Violations and Disputes. Given that the Case was filed with proper justification by a party having capacity, the Department accepts the Case in form.

On Merits: Upon review of the case file, including all documents, pleadings, and arguments submitted by the parties, the Department found that the dispute lies in the following items:

First: Documentary L/C and Letters of Guarantee:

Section (First) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including:

5. Government and commercial loans or equivalent items of other sources of funds, such as such as creditors, bills payable, overdrafts due by the Zakat payer in accordance with the following:

أ- The remaining cash that a full lunar year (Hawl) has passed on it.

ب- were used to finance acquisition assets.

ج- The portion used for trading assets and for which a full year has passed". In addition, Paragraph (3) of Article (20) of the same Regulations states: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it".

Since trade payables, regardless of their type, are considered one of the components of the zakat base, subject to completion of a full year or are used to finance fixed assets, and upon reviewing the documents attached to the Case file, it is evident that Plaintiff failed to provide the detailed movement of accounts for documentary L/C and letters of guarantee

for 2015 to substantiate that the amounts added to the zakat base had not been outstanding for a full year. As for documentary L/C and letters of guarantee, they were outstanding (available for use) at the time of the financial statement issuance, while no balances were recorded in the company's accounts for these amounts, and since they were issued with local banks but were not utilized or withdrawn to finance payments to suppliers, and since letters of guarantee and documentary L/C are essentially guarantee contracts provided by the company to another party, which means they appear as debit balances, their purpose is to ensure the seriousness of the work and guarantee the fulfillment of obligations by the provider. They are presented to the beneficiary, so the bank guarantees the fulfillment of a specific obligation by the guarantee applicant. In the event of non-compliance, the value of the guarantee is paid to the entities for which the guarantee was issued. Given that the letter of guarantee has specific characteristics that do not alter this fact, the guarantee, in relation to the beneficiary, does not result in ownership of the funds before payment. Rather, it is a document that is fulfilled upon maturity. Since guarantees are for future obligations and not for existing debts, and since the funds tied up in letters of guarantee and documentary L/C are considered zakat-able assets, and given that Plaintiff operates in the wholesale and retail trade of electrical and electronic equipment and after-sales services that often necessitate letters of guarantee when submitting or being awarded projects and considering that the funds tied up in these letters of guarantee are generally for the benefit of the business and do not diminish Plaintiff's full ownership and the obligation of zakat as long as the funds remain in their ownership, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's action taken in this regard.

Second: Accrued Expenses and Other Liabilities:

Section (First) of Article (4) of the Implementing Regulations for Zakat Collection states: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 4. Submitted revenues on which a year has passed". The Department, upon reviewing Paragraph (5) of Section (First) of Article (4) and Paragraph (3) of Article (20), as referenced, since the balances of accrued expenses and other liabilities are considered components of the zakat base, subject to completion of a full year, and upon examining the documents attached to the case file (Attachment No. 3), established that Plaintiff submitted (a detailed statement of employee entitlements, advertising and promotion expenses, payments made by clients, accrued supplies, and others, along with an extract from the company's accounting system for some of the mentioned accounts), which demonstrates the full balances had not completed the required full year. Accordingly, the Department satisfies to accept Plaintiff's objection, amend Defendant's action by adding the amount outstanding for a full year, totaling SAR (2,560,101), to the zakat base for 2015 regarding this item.

Third: Expenses Charged by Related Parties:

Paragraph (1) of Article (5) of the Implementing Regulations for Zakat Collection, related to deductible expenses, states: "The following expenses can be deducted to determine the net result of activity: 1. Expenses ordinary and necessary for an entity to engage in business activity, subject to meeting the following criteria:

a. a. Expenses shall be actual expenses as supported by relevant documents and other evidential matter to enable the Authority to verify the accuracy of expenses, even if related to prior years". Paragraph (5) of Article (6) of the same Regulations related to deductible expenses states: "The value of materials/ services provided by parties directly related to the Zakat Payer exceeding the prices used by independent parties".

Since these expenses are considered deductible if proven to be actual expenses supported by documentary evidence, and since the dispute regarding this item is documentary and upon reviewing the documents attached to the Case file (Attachment No. 4), it is evident that Plaintiff attached (Services Agreement signed between ... for Electronics (Subsidiary)

and ... (Holding) Company, computer-generated extracts supporting the recording of expenses and revenues in the company's accounts, computer-generated extracts supporting the revenue recorded in the accounts of ... Company). Plaintiff provided supporting documents for the disputed expenses and submitted the agreement concluded with the parent (...) Holding company, along with evidence of recording these expenses as part of the parent company's revenues. Since Defendant argued that these transactions were subject to terms and pricing between internal related parties whose accuracy cannot be verified, and the company also did not clarify the pricing method for these transactions, as shown in Note (9) of the financial statements, and given that the documents provided by Plaintiff cannot be relied upon due to the lack of clarification regarding the pricing method for these transactions, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's action regarding this item.

Fourth: Import Variance:

Upon reviewing Paragraph (3) of Article (20), as referenced, and since the customs import statement serves as primary evidence to establish import variances, and upon examining the Case file, it is evident that Defendant's adjustment of Plaintiff's financial results is due to variances in the value of imports declared by Plaintiff compared to the imports according to the customs statement. The Department, upon reviewing the attachments to the Case file (Attachments No. 5 and 6), established that Plaintiff submitted the customs import statement for 2015, amounting to SAR (526,696,195), including collected fees. In contrast, the zakat declaration for 2015 stated that the value of foreign purchases, including customs duties, amounted to SAR (523,606,189). The customs import statement for 2014 also indicates that amounts totaling SAR (2,320,238) were received and recorded in 2015. Plaintiff attributed the variances due to the existence of purchases, although received in recorded in 2015, were reflected in 2014 customs extract, as well as shipping and insurance costs that do not appear in the customs extract and were classified under shipping and customs clearance expenses, in addition to other variances whose nature was not clarified. Since Plaintiff failed to provide the necessary detailed reconciliation to clarify the reasons and justifications for the import variances, nor did they submit supporting documents as outlined in their statement of claim, Defendant's adjustment of Plaintiff's financial results to account for these variances is deemed correct. Accordingly, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's action regarding this item.

Fifth Intangible Assets and Amortization:

Section (Second) of Article (4) of the Implementing Regulations for Zakat Collection states: "The following items shall be deducted from the Zakat Base:

3. Purchased intangible assets such as goodwill and patents". Having reviewed Paragraph (1/a) of Article (5), Paragraph (5) of Article (6), and Paragraph (3) of Article (20) of the Implementing Regulations for Zakat Collection,

and given that the dispute centers on Plaintiff's claim for a deduction of SAR (12,000,000) for intangible assets (goodwill) and additional SAR (4,000,000) for intangible assets amortization expenses from the zakat base, which Defendant rejected on the grounds that the amount does not represent goodwill but rather a commercial agency purchased from a related party and not from the company, subject to estimation factors whose accuracy cannot be verified. Referring to Note No. (8) of the financial statements regarding intangible assets, it is stated that: "The Company, in 1998, purchased the product distribution rights of ... Ltd. in KSA from ... (Related party) for SAR (80,000,000), which was recorded as intangible assets, and in return was added to the partners' credit current account". Whereas Plaintiff asserts that SAR 80 million was recorded and credited to the partners' current account, a review of the Case documents, including the financial statements and zakat declaration for 2015, reveals that no credit balances are recorded for related parties corresponding to the debit balances being claimed for deduction. Therefore,

the veracity of Plaintiff's assertion that the credit balance was recorded in the partners' current account and added to the zakat base cannot be confirmed, especially considering that the credit balance of related parties as stated in the financial statements amounts to SAR (1,299,497), while the disputed amount is SAR (12,000,000). Furthermore, Plaintiff did not provide the agreement concluded between the company and the related party (...) that would confirm the transfer of product distribution rights of ... Ltd. in KSA from ... (Related party) to ... Company Ltd., as well as the right of ... to transfer the agency and the approval of the company holding the agency. Consequently, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's action regarding this item.

Sixth: Receivables by Related Parties:

Paragraph (a) of Article (4) of the Implementing Regulations for Zakat Collection states: "In the event that the Zakat payer declares credit and debit current accounts, the difference shall be calculated. If a partner reveals a credit current account and another reveals a debit current account, no reconciliation shall be made between them. The credit current account of the partner/ owner of the sole proprietorship shall be added to the Zakat Base at the end of the Zakat Base". Having reviewed Paragraph (3) of Article (20) as referenced,

and given that the dispute centers on Plaintiff's claim to deduct the receivables due from related parties (amounts owed by related parties), an examination of the Case attachments reveals that Plaintiff did not provide detailed transaction movements for these receivables or detailed account statements of the partners' accounts under dispute to determine the debit and credit balances for each partner individually. Accordingly, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's action regarding this item.

Seventh: Receivables by a Partner - ... Company:

Section (Second) of Article (4) of the Implementing Regulations for Zakat Collection states: "The following items shall be deducted from the Zakat Base: 5. Owners/ Partners debit current accounts subject to Zakat not exceeding their share in the deferred profits". Having reviewed Paragraph (3) of Article (20) of the Implementing Regulations for Zakat Collection, as referenced,

and given that the dispute centers on Plaintiff's claim to deduct a balance of SAR (1,720,047) owed by a partner (... Company) from the Zakat base, an examination of the Case attachments (the Articles of Association and the 2015 financial statements) reveals that the partner (... Company) owns 99% of the company in dispute. Furthermore, the debit balance of SAR (1,720,047) was previously reported under (Note 9) related to related parties. Additionally, the partner's share of deferred profits exceeds the amount claimed for deduction. However, Plaintiff did not provide a detailed account statement for the partner (... Company) to verify the existence of a debit balance at the end of the year. Accordingly, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's action regarding this item.

Eighth: Provisions Variance:

Section (First) of Article (4) of the Implementing Regulations for Zakat Collection states: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including:

9. Beginning of year provisions (except for the questionable provisions collected by banks) after deducting the provisions used during the Zakat year.". In addition, Paragraph (6) of Article (6), related to deductible expenses, of the same Regulations states: "The entire provisions except for the following:

a. Provisions for the doubtful debts for banks, provided that the Bank issues a certificate identifying the sum of the doubtful debts and that the Saudi Arabian Monetary Authority approves thereof.
b. Provisions for unearned premiums reserve and current risk in insurance and/or reinsurance companies (technical reserves). The same shall be returned to the Zakat Base in the following Zakat Year and determined in accordance with the standards

adopted for this particular business activity". Having reviewed Paragraph (3) of Article (20) of the Implementing Regulations for Zakat Collection, as referenced,

and given that the dispute over this item is document-based, an examination of the Case file and the arguments and documents contained therein reveals that Plaintiff failed to provide the provision transactions, which would allow verification of the provisions' balance that had been held for a full year and must be added to the Zakat base. Since Defendant added the matured provisions based on the balances in the 2015 financial statements, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's action regarding this item.

For these grounds and after deliberation, the Department unanimously decided to:

Decision:

First: Accepting the Case filed by Plaintiff/ ..... for Electronics Ltd., C.R. No. (...), against Defendant/ ZATCA in form.

Second: On Merits:

1. Amend Defendant's action regarding (Accrued Expenses and Other Liabilities) by adding the amount of SAR (2,560,101), which had completed a full year, to the 2015 zakat base in accordance with the reasoning provided, and
2. dismiss the Case regarding the remaining items.

This decision was delivered in the presence of Defendant and as if in presence of Plaintiff, and was read out publicly in the session. The Department set Wednesday, 16/11/2022 for receiving a copy of the decision, and any of the parties to the case may appeal against the decision within thirty days from the day following the date set for receipt of the decision, whereafter, the decision will be final and enforceable if either party does not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

The Second Department for The Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2022-1784)
Issued in Appeal No. (Z-75266-2021)

Key words:
Zakat Assessment - Assessment based on Draft Financial Statements - Delay in Submitting Audited Financial Statements - Slow-Moving Inventory Provision - Burden of Proving Accuracy of the Declaration Lies with Zakat Payer - End-of-Service Provision - Acceptance of Case in Form for Being Filed by a Person with Legal Capacity Within the Statutory Period.

Abstract

Plaintiff seeks the cancellation of ZATCA's decision regarding zakat assessment for 2019. Plaintiff's objection is limited to the following items: First: Assessment based on Draft Financial Statements: Second: Provisions: Defendant responded by stating that it reminded Plaintiff to submit the audited financial statements on 10/02/2021, while Plaintiff failed to provide the additional data. Statutory provisions state that if a case is filed by a person with legal capacity and within the statutory period, it must be accepted in form. The Department established that, due to Plaintiff's failure to provide the reasons and justifications for the delay in submitting the audited financial statements, and upon reviewing the statements, they were issued in May 4, 2021, following the assessment conducted on March 31, 2021. Accordingly, the Department satisfies to dismiss Plaintiff's objection. Second: Regarding (End-of-Service Provision): Since reclassification does not negate the completion of a full year on the amount, as it remains Plaintiff's liability until the Zakat year is completed, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's action regarding this item. As for (Slow-Moving Inventory Provision): Having reviewed the audited financial statements, it is evident that no provision was established. Furthermore, the relevant note clearly states that in 2019, a zero balance was recorded as an expense for reducing inventory costs. Therefore, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's action regarding this item. Accordingly, the Department ruled to accept case in form, and dismiss the case as on merits and the decision is final and enforceable.

Instruments:

- Articles (4/6), (8), (9/5), (18), and (19) of the Implementing Regulations for Zakat Collection, issued by the Ministerial Decision No. (2216) dated 07/07/1440 AH

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 27/09/2022, the second department for the determination of income tax violations and disputes in Riyadh, stipulated in Article (67) of the Income Tax Law, issued

by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed by Royal Decree No. (13957) dated 26/02/1444 AH, held its session remotely via video conference to consider the above-mentioned case. Since the case met the prescribed statutory requirements, it was filed with the General Secretariat of Zakat, Tax and Customs Committees with the above number on 12/10/2021.

The facts of this case are that Plaintiff, ... Real Estate for Fabrics Ltd., CR No. (...), filed an objection to zakat assessment for 2019. Plaintiff's objection is limited to the following items: Item First (Assessment based on Draft Financial Statements), where Plaintiff objects to Defendant's assessment based on the draft financial statements for the year in dispute. Plaintiff explains that the delay in issuing their financial statements was due to the delay in the audit process to apply international auditing standards. as a result, Defendant issued the assessment based on internal accounts prior to the issuance of the audited financial statements. When the audited statements were finally issued on 04/05/2021, Plaintiff was unable to amend the zakat declaration due to Defendant's issuance of its assessment. Item Second: (Provisions): Plaintiff challenges Defendant's action of disallowing the deduction of slow-moving inventory provision due to the lack of disclosure in the financial statements by the auditor. Plaintiff states that it prepared its zakat declaration based on management accounts, which did not reflect any activity in the balance of slow-moving inventory provision. Moreover, auditors, during the preparation of the financial statements, classified the inventory at net realizable value Therefore, Plaintiff requests the annulment of Defendant's action in question.

Having presented the statement of claim to Defendant, it responded with a memorandum summarized as follows: First: (Assessment based on Draft Financial Statements): Defendant clarifies that it assessed Plaintiff following requesting additional data on 18/01/2021, specifically the 2019 company's financial statements audited and approved by a chartered accountant. Defendant also states that it reminded Plaintiff to submit the audited financial statements on 10/02/2021, while Plaintiff failed to provide the additional data. Therefore, the assessment was based on the draft financial statements sent by Plaintiff during the audit stage. Furthermore, no significant differences were found after reviewing the objection and examining the draft financial statements and comparing thereof with the audited financial statements. Therefore, reassessment based on the audited financial statements would not impact the assessment. As a result, the Department satisfies to dismiss Plaintiff's objection. Second: (Provisions): Defendant states that it added the item to the zakat base according to Plaintiff's declaration without any modifications or discussions regarding this item. Having examined the objection and reviewed Plaintiff's objection, it was found that the disputed amount is as follows:

Description	Value
Amount determined based on Zakat Payer's Declaration (Assessment)	SAR (273,001)
Amount due (Completed a full year) based on Zakat Payer's Declaration (Assessment)	SAR (14,837,711).
Less the amount claimed by Zakat Payer to determine the disputed amount	
Amount generated based on Zakat Payer's Declaration (during objection)	SAR (566,164).
Amount due (Completed a full year) based on Zakat Payer's Declaration (during objection)	SAR (11,243,39)
Difference, subject of dispute.	SAR (3,301,150)

Plaintiff's objection to the assessment based on the audited financial statements, as previously discussed in the first item above, "Assessment based on Draft Financial Statements", has been dismissed. Upon reviewing the detailed transaction of the provisions

based on the unaudited financial statements submitted by Plaintiff when filing the declaration for 2019, the following was observed:

Description (Amounts in SAR)	Provision: End of Service Award (Note 14)	Doubtful Debts Provision	Credit Losses for Accounts Receivable (Note 9)	Slow-Moving Inventory Provision (Note 7)	Total
Balance as of 31/2018	2,461,000	5,316,756	-	7,120,984	14,898,740
Used Amount	(153,064)	(571,732)	-	-	(724,796)
Classified as (Trade Creditors)	103,686	-	-	-	103,686
Total Matured Amount (Completed a full year)	2,411,622	4,745,024	-	7,120,984	14,277,630
Amount (added to the adjusted net profit)	443,064	-	123,100	-	566,164
Balance as of 31/12/2019	2,751,000	4,745,024	123,100	7,120,984	14,740,108

As for (Slow-Moving Inventory Provision):

The Department, upon reviewing the 2019 audited financial statements, established that the company failed to disclose the transaction of provision carried forward from the previous year, amounting to SAR (7,120,984). However, Plaintiff disclosed in their declaration that the amount subject to completion of a full year was the opening balance of the provision, which is SAR (7,120,984). As a result, Plaintiff's objection was partially accepted by adding the provision amounts formed during the year, totaling SAR (566,164), to the adjusted net profit and including the amount subject to completion of a full year, amounting to SAR (14,277,630), in the zakat base. Therefore, the disputed amount after reviewing the objection is as follows:

Description	Value
Amount generated based on ZATCA's position (during objection)	SAR (566,164).
Amount due (Completed a full year) based on Zakat Payer's Declaration (Assessment)	SAR (14,277,630).
Less the amount claimed by Zakat Payer to determine the disputed amount	
Amount generated based on Zakat Payer's Declaration (during objection)	SAR (566,164).
Amount due (Completed a full year) based on Zakat Payer's Declaration (during objection)	SAR (11,243,39)
Difference, subject of dispute (upon objection examination)	SAR (3,034,232).

Defendant relies on Paragraph (5) of Article (9) and Article (!0) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) dated 07/07/1440 AH, and therefore requests dismissal of the Case.

On Tuesday, 27/09/2022, the Department convened a remote session for this case, where ..., acting as Defendant's representative, attended pursuant to Authorization No. (...), while Plaintiff's representative failed to attend nor did they provide an excuse for their absence,

despite being properly notified of the session date via the General Secretariat of Tax Committees e-portal. Consequently, this is considered a waiver of their right to attend and present their case. Accordingly, the Department decided to open the pleadings. Having asked Defendant's representative about his reply regarding the Case, he replied: they are satisfied with the memorandum submitted via the General Secretariat of Tax Committees e-portal and uphold the defenses and requests outlined therein regarding the zakat assessment for 2019. Following this, the pleadings were closed, and the case was referred for consideration and deliberation.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and Clause (Third) of Royal Order No. (26040) of 21/04/1441 AH issuing the Tax Disputes and Violations Committee Procedures.

In Form: Since Plaintiff aims with its claim to cancel ZATCA decision regarding estimate zakat assessment for 2019, and given that this dispute falls within the category of tax disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of Committee for Determination of Income Tax Violations and Disputes. Given that the Case was filed with proper justification by a party having capacity, the Department accepts the Case in form.

On Merits: Upon review of the case file, including all documents, pleadings, and arguments submitted by the parties, the Department found that the dispute lies in the following items:

First: Assessment based on Draft Financial Statements:

Article (18) of the Implementing Regulations for of Zakat Collection issued by Ministerial Decision No. (2216) dated 07/07/1440 AH states: "Without prejudice to the provisions of Article (10) hereof, every zakat payer shall maintain, within the Kingdom and in Arabic, the necessary commercial records to accurately determine the zakat base while retaining documents supporting the accuracy of these records, as well as any data and notes. The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto".

Article (19) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2216) dated 07/07/1440 AH states: "GAZT may examine and review the zakat payer's declaration and request any necessary clarifications or documents. It may delegate any of its employees or third parties to conduct on-site field inspection of the zakat payer's commercial books and documents. Therefore, the zakat payer must provide the requested information within twenty (20) days of receiving the request. If the zakat payer fails to do so, GAZT may extend the period or proceed with an assessment based on the available information and evidence. The field inspection shall be documented in a report signed by the GAZT's representative and the zakat payer's legally authorized representative, who, if not present and signing the report, shall be noted in the report. In all cases, the report shall be considered as conclusive evidence for the zakat payer regarding the facts established therein".

Since the calculation of the zakat base is based on Zakat Payer's declaration, it is required that Zakat Payer' provide evidence to support the accuracy of that declaration. Given that

financial statements serve as the primary basis for calculating the zakat base, and upon reviewing the documents submitted by the parties to the Case, it is evident that Defendant assessed Plaintiff based on draft financial statements, which was based on Plaintiff's failure to provide the additional data and audited statements. Furthermore, Defendant did not observe any significant discrepancies between the draft financial statements and the audited financial statements. Referring to Plaintiff's statement of claim and their response to ZATCA's memorandum of reply, Plaintiff clarified that the assessment based on the draft financial statements affected the following items: other comprehensive losses, lease liabilities, payments made by clients, executive management bonuses, and accrued provisions that were not supported by any documents. Since Defendant has the right to assess Plaintiff if the required documents are not provided within the specified period, given that Plaintiff failed to provide any reasons or justifications for the delay in submitting the audited financial statements, and upon reviewing the statements, it is evident that they were issued on May 4, 2021, following the assessment conducted on March 31, 2021. Accordingly, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's action regarding this item.

Second: Provisions:

Paragraph (6) of Article (4) the Implementing Regulations for Collection Zakat issued by Ministerial Decision No. (2216) dated 07/07/1440 AH provides: "The Zakat base for a taxpayer who keeps commercial records consists of all their assets subject to Zakat collection, including the following: 6. Provisions at the beginning of the zakat year, after deducting the portion used during the zakat year".

Whereas Paragraph (5) of Article (9) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) dated 07/07/1440 AH stipulates that: "Notwithstanding the provisions of Article (8) of the Regulations, the following expenses shall not be deductible: 5. All provisions and reserves created during the zakat year as per the declaration, except as provided in Paragraph (6) of Article (8) of the Regulations".

Article (18) of the Implementing Regulations for Zakat Collection issued by Minister of Finance's Decision No. (2216) dated 07/07/1440 AH states: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto".

2-A. Regarding (End-of-Service Provision):

The dispute centers on Defendant's inclusion of the amount of SAR (103,686), reclassified from the end-of-service award to (Trade Creditors), which is confirmed upon a review of the 2019 financial statements, specifically Note (14). Since the reclassification does not negate the completion of a full year on the amount, as it remains in Plaintiff's liability until maturity, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's action regarding this item.

2.B. As for (Slow-Moving Inventory Provision):

The dispute arises from Defendant's inclusion of the opening balance of the slow-moving inventory provision, totaling SAR (7,120,984), considering it to have completed the full year. Upon reviewing the Case file, it is clear that the difference arose from the failure to deduct the used portion of the provision amounting to SAR (2,930,546), which Defendant Clarified that it did not allow the deduction based on the financial statements and Note No. (7). A review of the Case file, including the arguments and documents, reveals that Plaintiff provided the transaction of the slow-moving inventory provision extracted from the trial balance, which shows that the used amount is SAR (2,930,546), and the amount that completed a full year is SAR (4,190,438). However, the audited financial statements

do not show any provision and the relevant note clearly states that in 2019, a zero balance was recorded as an expense for reducing inventory costs. Therefore, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's action regarding this item. For these grounds and after deliberation, the Department unanimously decided to:

Decision:

- Accepting the Case filed by Plaintiff/ ..... for Fabrics Ltd., CR. No. (.....), against Defendant/ZATCA, in form and dismiss it on merits.

This decision was delivered in presence of both parties. The Department set 0000, 00/00/2022 AD for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable if either party does not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

The Second Department for The Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2022-1500)
Issued in Appeal No. (ZIW-32368-2021)

Key words:
Zakat and Tax Assessment - Non-Deduction of Wages, Salaries, and Housing Expenses - Material Error in Retained Earnings Calculation - Non-Deduction of Sales Cost - Disallowance of Travel Expenses Deduction - Addition of Various Payables to the Saudi Partner's Share - Withholding Tax Assessment by ZATCA - Return Non-Filing Fine.

Abstract

Plaintiff instituted this case moving to cancel ZATCA's Decision regarding the zakat and tax assessment for 2016/2017AD, which includes the following eleven items: Item First (Material Error in Calculating the Retained Earnings Added to the Zakat Base for 2016): The dispute lies in Plaintiff's objection to Defendant's inclusion of the non-Saudi partner's retained earnings, amounting to SAR (366,157), in the zakat base for 2016 without taking into account the Saudi partner's share, which represents 81.9327% of the capital shares, amounting to SAR (1,660,471). Plaintiff argues that the Saudi partner's share should have been added without including the non-Saudi partner's share. On the other hand, Defendant contends that it relied on the retained earnings as stated in Plaintiff's return without any adjustments. The Department, upon reviewing Plaintiff's manually completed return for 2016, established that the retained earnings balance was stated as SAR (1,660,471), while the retained earnings balance declared by Plaintiff amounted to SAR (2,026,628) and determined that the opening balance of retained earnings was recorded as $540,434 (SAR 2,026,628) upon referring to the audited financial statements submitted by Plaintiff. Consequently, given that the Saudi partner's share, based on their 81.9327% ownership, the amount of SAR (1,660,471) should be included in the zakat base. Since Defendant provided an extract from the "Irad" system and that material and accounting errors do not constitute a substantive dispute, Plaintiff may refer to Defendant to correct such errors, if any. Accordingly, the Department satisfies to dismiss Plaintiff's objection raised in this regard. Item Second: (Non-Deduction of Wages, Salaries, Housing and Living Expenses, and Employee Benefits for 2016/2017): The dispute arises from Plaintiff's objection to Defendant's non-deduction of employee wages and salaries from net profits for 2016/2017, amounting to SAR (6,182,974) and SAR (8,016,731), respectively, and non-deduction of housing and living expenses and employee benefits from the net profit for 2016, amounting to SAR (2,954,066). Plaintiff contends that Defendant's approach is incorrect, as it is based on the argument that salaries and wages are not subject to social insurance. On the other hand, Defendant contends that it rejected the deduction of this item due to Plaintiff's failure to provide supporting documents and the absence of the financial statements certified by a Saudi accounting firm. The Department, upon review, demonstrated that Plaintiff's claim to allow the deduction of wages and salaries as deductible expenses for 2016 is valid. As for 2017, Plaintiff declared wages and salaries in

line (10801) of its 2017 return, attached to the Case, amounting to SAR (8,016,731), upon comparing which with the amount shown in the chartered accountant's report, totaling SAR (8,205,645), a difference was recorded of SAR (188,914), representing provisions made during the year in the amount of SAR (188,911) (a negligible difference of 3 riyals), declared in the return in line (10809) and Schedule No. (20). Thus, the Department demonstrates that Plaintiff's claim to allow the deduction of wages and salaries as deductible expenses is valid. Consequently, the Department satisfies to accept Plaintiff's objection raised in this regard. Item Third: (Disallowance the Deduction of (Reversed) Withholding Tax Revenues from the Net Book Profit for 2017, Amounting to SAR (767,393)): The dispute centers on Plaintiff's objection to Defendant's disallowance the deduction of withholding tax revenue from the tax base for 2017, amounting to SAR (767,393), arguing that they had included withholding tax under other indirect costs in the zakat and tax return for 2016 and previous years. However, Defendant contends that it rejected the deduction of this item due to Plaintiff's failure to provide supporting documents and the absence of the financial statements certified by a Saudi accounting firm. It is evident that the withholding tax is not borne by the withholding agent (Plaintiff) according to the Income Tax Law, but rather is deducted from payments made to non-residents. Upon reviewing the Case file, Plaintiff failed to provide sufficient justification for reversing the withholding tax expense or its calculation method and that the deducted withholding tax amount classified as a non-deductible expense in the 2016 return was SAR (668,730), while Plaintiff claimed SAR (767,393). Consequently, the Department satisfies to dismiss Plaintiff's objection raised in this regard along with eight other items. Therefore, the Department ruled to accept the Case in form, annul Defendant's action regarding (Non-Deduction of Wages, Salaries, Housing and Living Expenses, and Employee Benefits for 2016/2017), dismiss the Case in relation to the remaining items, dismiss the Case in relation to the late payment fine, for the items where the Department concluded dismissal, and annul the Case for the item in which the Department concluded to annul Defendant's action.

Instruments:

- Article (58/B) of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH.
- Articles (5/1), (6/2), (20/3), and (57/3) of the Implementing Regulations for Zakat Collection, issued by the Ministerial Decision No. (2082) dated 01/06/1438 AH
- Articles (9/1) and (57/3) of the Implementing Regulations of Income Tax Law, issued by the Ministerial Decision No. (1535) dated 11/06/1425 AH

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 05/09/2022, the second department for the determination of income tax violations and disputes in Riyadh, stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed by Royal Order No. (65474) dated 23/12/1439 AH, held its session remotely via teleconference to consider the above-mentioned case. As the case met the prescribed statutory requirements, it was filed with the General Secretariat of Zakat, Tax and Customs Committees with the above number on 21/12/2020.

The facts of this case are summarized that Plaintiff/ ..., C.R. No. (...), filed an objection to the zakat and tax assessments for 2016/2017, limiting their objection to the following items: Item First (Material Error in Calculating the Retained Earnings Added to the Zakat

Base for 2016): Plaintiff challenges Defendant's inclusion of the non-Saudi partner's retained earnings, amounting to SAR (366,157), in the zakat base for 2016, stating that Defendant included the total retained earnings of SAR (2,026,628) without taking into account the Saudi partner's share, which represents 81.9327% of the capital shares, amounting to SAR (1,660,471). Plaintiff argues that the Saudi partner's share should have been added without including the non-Saudi partner's share. Item Second: (Non-Deduction of Wages, Salaries, Housing and Living Expenses, and Employee Benefits for 2016/2017): Plaintiff argues that Defendant rejected the deduction of employee wages and salaries from net profits for 2016/2017, amounting to SAR (6,182,974) and SAR (8,016,731), respectively. Moreover, Plaintiff contends that Defendant refused to deduct housing and living expenses and employee benefits from the net profit for 2016, amounting to SAR (2,954,066) on the grounds that they were not supported by documentation and that the wages and salaries were not subject to social insurance. Plaintiff further argues that these expenses were incurred by the company to generate taxable income and that they meet the criteria for deduction from the zakat base. Item Third: (Non-Deduction of Sales Cost for 2016/2017): Plaintiff contends that Defendant rejected the inclusion of the "Sales Cost" item as part of other direct expenses in the company's returns for 2016/2017. Instead, Defendant added these amounts, totaling SAR (739,151) and (1,903,159), to the net book profit respectively. Plaintiff argues that these costs represent expenses incurred for outsourcing IT consulting services, which serves as support of the company's core business, and further contends that these expenses are actual and necessary costs incurred by the company to generate income subject to zakat and tax. Item Fourth: (Disallowance of Travel Expenses Deduction for 2016): Plaintiff asserts that Defendant refused to deduct travel expenses amounting to SAR (692,468) for 2016 and instead added this amount to the net book profit. Plaintiff argues that these expenses were incurred for employee travel as part of the company's regular business, given that the company's activities require its representatives to be present at client locations, necessitating travel to perform their duties. Item Fifth: (Disallowance the Deduction of (Reversed) Withholding Tax Revenues from the Net Book Profit for 2017, Amounting to SAR (767,393)): Plaintiff states that Defendant had included withholding tax under other indirect costs in the zakat and tax return for 2016 and previous years. In the same return, Defendant added the amounts back to the tax base, considering the withholding tax expense as non-deductible. Plaintiff further clarifies that, due to the cancellation of the withholding tax expense for 2016 and prior years, the withholding tax was re-included under other income in the 2017 income statement to reverse the previously recorded expense in the accounts. Thereafter, Defendant deducted these amounts from the 2017 tax base to avoid double taxation, as the withholding tax expense had previously been subject to tax (as a non-deductible expense) within the 2016 tax base. Item Sixth: (Inclusion of the Saudi Partner's Share in Receivables from Related Parties for 2016 and 2017, Amounting to SAR (728,918) and (1,022,689) Respectively, Instead of Deduction from the Zakat Base): Plaintiff argues that these amounts represent receivables owed to ... Company (Parent Company) for consulting services and asserts that the account receivables from related parties constitute one of the items that must be deducted from the zakat base rather than the opposite. Item Seventh: (Addition of Various Payables to the Saudi Partner's Share "Trade Payables - Other Payables -Submitted Revenues" to the Zakat base for 2016/2017): Plaintiff asserts that Defendant added trade payables, other payables, and submitted revenues to the Saudi partner's share in the zakat base for 2016/2017, amounting to SAR (4,211,038) and (2,423,643) respectively, stating that these amounts do not constitute loans and are therefore not subject to zakat, even if a full year has passed, particularly since they were not used to finance acquisition assets but rather to fund working capital. These amounts represent liabilities owed by the company to third parties

and, therefore, should be deducted from the zakat base. Item Eighth: (Withholding Tax Assessment by ZATCA for 2016/2017, Amounting to SAR (8,467) and (16,372), Respectively): Plaintiff argues that Defendant conducted an arbitrary withholding tax assessment for 2016/2017 based on the accrual principle rather than the actual payment. Plaintiff asserts that some payments were not made within the same year and points out that payments made outside the Kingdom were subjected to withholding tax. Plaintiff confirms that these payments were entirely made outside the Kingdom, with no income source within the Kingdom, and therefore do not meet the conditions for withholding tax. Regarding Item (9): (Non-Approval of Withholding Tax Paid in Advance for 2016 to Settle Tax and Zakat Liabilities for 2016/2017 and Allowing the Remaining Balance for Future Zakat or Tax Liabilities): Plaintiff asserts that Defendant did not approve the withholding tax paid in advance for 2016, amounting to SAR (967,598), which was used to settle tax and zakat liabilities for 2016 and 2017. Plaintiff explains that, in 2016, the company became a tax and zakat resident in the Kingdom of Saudi Arabia following the acquisition of the company's entire shares by ... Company, thereby establishing its effective management within the Kingdom. Since the company was not a resident in 2015, ... Company had been deducting amounts paid to the company and persisted to do so until 2017. With regard to Item (10): (Return Non-Filing Fine for 2016/2017): Plaintiff argues that defendant imposed a fine for failure to submit the return within the statutory period for 2016/2017, amounting to SAR (23,131) and (20,000) respectively. Plaintiff explains that they were unable to file their 2016 return via "Irad" system. Plaintiff, upon registration approval on 23/11/2017, proceeded to submit their return for the aforementioned year. However, Plaintiff submitted their 2016 tax return manually on 30/04/2017, prior to the deadline. Item (11): (Late Payment Fine on Income Tax and Withholding Tax Differences): Plaintiff asserts that the late payment fine was incurred due to genuine and substantial differences of opinion between Plaintiff and Defendant. Accordingly, Plaintiff requests the annulment of Defendant's action in question.

Having presented the statement of claim to Defendant, it responded with two memorandums of reply summarized as follows:

Memorandum of Reply No. (1): Defendant states that Plaintiff is ... Company located in ..., and in support of its objection, Plaintiff submitted a letter requesting recognition of residency status, as the majority of its revenue is derived in KSA and most of its administrative decisions are made within the Kingdom. Consequently, approval was granted by the Director-General of ZATCA (previously GAZT). Following this approval, Plaintiff requested a refund of previously paid withholding taxes to Defendant. It is noted that Plaintiff was a subsidiary of ... in KSA with a (50%) ownership stake in 2015, and in 2016, acquired full ownership (100%) of Plaintiff Company. Plaintiff submitted its financial statements in English, certified by an accounting firm in ..., and Defendant requested the submission of financial statements certified by a Saudi accounting firm. Additionally, Defendant requested data and documents from Plaintiff based on the financial statements certified by the accounting firm in ... in English, which Plaintiff failed to provide. Given that Plaintiff did not submit the requested documents to Defendant as part of its objection, and in light of its failure to provide financial statements certified by a Saudi accounting firm or supporting documents to substantiate its claims, in accordance with the provisions of Paragraph (3) of Article (20) of the Implementing Regulations issued in 1438 AH and Paragraph (3) of Article (57) of the Implementing Regulations of the Income Tax Law, Defendant rejected its objection and maintains the validity of its procedures. Therefore, Defendant requests dismissal of the Case.

Memorandum of Reply No. (2): Defendant clarifies its position regarding the Department's request as follows:

First: Plaintiff has been uncooperative and failed to provide the requested information during the examination and assessment phase. Despite being contacted on the dates specified below, Plaintiff failed to respond by providing Defendant with the requested data.
MOFLEHAI 1440/03/10 11:06:14
BALSULTAN 1440/09/16 11:51:03
BALSULTAN 1440/10/07 13:56:35
Second: Plaintiff's objection was dismissed on the following grounds: -

1. Plaintiff failed to present financial statements issued by a Saudi accounting firm.
2. The financial statements were submitted in English.
3. The objection is not supported by documents and data that substantiate the validity of Plaintiff's claim.

Third: Regarding the Department's request for a response to Plaintiff's claims concerning

1. (Material Error in Including Matured Retained Earnings for 2016): Defendant asserts that it relied solely on the information provided by Plaintiff in its return and made no adjustments. Defendant maintains that there was no material error as claimed by Plaintiff. To support this assertion, Plaintiff's return is presented as follows: -
2. (Non-Approval of Withholding Tax Paid in Advance to Settle Tax and Zakat Liabilities for 2016 and 2017): Defendant clarifies that it imposed withholding tax on non-resident entities. It is evident, upon reviewing the account statement, that Plaintiff failed to pay the withholding tax. If there is any evidence proving the payment of the withholding tax, Plaintiff must submit payment receipts to Defendant, which shall include thereof in the account statement. Additionally, Defendant requests that the Department review the following documents to verify the accuracy of its actions:

- For 2016: -

ثالثاً: ضريبة الاستقطاع :-

خدمات مقدمة من خارج المملكة ولم يصرح عنها في نموذج الاستقطاع السنوي٢٠١٦م:-

مقدم الخدمة	نوع الخدمة	المبلغ	النسبة	الضريبة المستحقة
[redacted]	خدمات فنية واستشارية	2,856.00	5%	142.80
[redacted]	خدمات فنية واستشارية	41,429.00	5%	2,071.45
[redacted]	خدمات فنية واستشارية	69,075.00	5%	3,453.75
[redacted]	خدمات فنية واستشارية	30,262.00	5%	1,513.10
[redacted]	خدمات فنية واستشارية	23,030.00	5%	1,151.50
[redacted]	خدمات فنية واستشارية	2,688.00	5%	134.40
المجموع				**8,467.00**

- SAP account statement for 2016: -

حالة	الرقم المرجعي	رقم السداد	الفترة	وصف الفاتورة	مبلغ الفاتورة	العملة
[redacted]	[redacted]		١١٥٦	ضريبة إستقطاع (إعادة ربط	٨,٤٦٧,٠٠	SAR
استحقاقات		SAR			٨,٤٦٧,٠٠	SAR

- For 2017: -

خدمات مقدمة من خارج المملكة ولم يصرح عنها في نموذج الاستقطاع السنوي٢٠١٧م:-				
مقدم الخدمة	نوع الخدمة	المبلغ	النسبة	الضريبة المستحقة
[redacted]	خدمات فنية واستشارية	1,635.00	5%	81.75
[redacted]	خدمات فنية واستشارية	150,218.00	5%	7,510.90
[redacted]	خدمات فنية واستشارية	4,009.00	5%	200.45
[redacted]	خدمات فنية واستشارية	8,903.00	5%	445.15
[redacted]	خدمات فنية واستشارية	1,482.00	5%	74.10
[redacted]	خدمات فنية واستشارية	161,199.00	5%	8,059.95
المجموع				16,372.30

Accordingly, Defendant confirms to the Department that Plaintiff's claims are unfounded and maintains the validity and correctness of its action. Defendant requests the Department to rule in favor of dismissing the Case in form and reserves the right to provide further responses and clarifications up until the closing of the pleadings.

On Monday, 21/02/2022, the Department held a remote session to consider the Case, where Plaintiff's legal representative/...., holder of National ID No. (...), attended, as well as/ ..... in his capacity as Defendant's representative by virtue of Authorization No. (...). The Department allowed to open the floor for pleadings. Plaintiff's legal representative, when asked regarding the Case, responded: I object to the Zakat and tax assessments for 2016/2017, limiting my objection to (11) items as outlined in the Case. I solely rely on the statement of claim filed via the General Secretariat of Tax Committees portal and maintain the defenses presented therein. During the session, Plaintiff's legal representative submitted a supplementary memorandum, which has been included in the Case file. Having presented the same to Defendant's representative, he answered: I would rely on the memorandum uploaded on the General Secretariat of Tax and Customs Committees portal, maintaining the defenses raised therein. Accordingly, the Department adjourned the session to Monday, 21/03/2022, at 5:00 PM and also requested Defendant's representative to respond to Plaintiff's arguments regarding (Material Error in Including Matured Retained Earnings for 2016) and (Non-Approval of Withholding Tax Paid in Advance to Settle Tax and Zakat Liabilities for 2016 and 2017).

On Monday, 21/03/2022 AD, the Department held its session remotely to consider the Case, where Plaintiff's legal representative/ ..., as well as/ ..... in his capacity as Defendant's representative, whose attendance and introduction were also previously noted. During the session, Defendant's representative was questioned regarding the request made in the previous session and submitted a memorandum of reply, upon presenting which, Plaintiff's attorney requested additional time to respond. Accordingly, the Department decided to adjourn Case consideration to the session dated Monday, 16/ 05/2022 AD, 05:00 PM.

On Monday, 16/05/2022, the Department reviewed Paragraph (2) of Article (15) of Tax Dispute and Violation Committee Procedures, which permits the Department's sessions to be held via modern technological means. During the session, hearing of the Case was hindered due to technical issues, and accordingly, it was decided to adjourn the session to Wednesday, 29/06/2022, at 5:00 PM.

On Wednesday, 29/06/2022 AD, the Department held its session remotely to hear the case. For Plaintiff, appeared Mr....., whose attendance and introduction were also previously noted, as well as/ .... in his capacity as Defendant's representative. Having asked parties to the Case about what they would like to add, they were satisfied with their earlier submissions. Accordingly, the Department decided to adjourn the session to Monday, 29/08/2022, at 5:00 PM.

On Monday, 29/08/2022 AD, the Department held its session remotely to hear the Case, where Plaintiff's legal representative/ ..., as well as/ ..... in his capacity as Defendant's representative, whose attendance and introduction were also previously noted. During the session, the Department decided to adjourn the session to Monday, 05/09/2022, at 5:00 PM for further deliberation.
On Monday, 05/09/2022 AD, the Department held its session remotely to hear the Case, where Plaintiff's legal representative/ ..., as well as/ ..... in his capacity as Defendant's representative, whose attendance and introduction were also previously noted. Having asked both parties if they would like to add any statements, they satisfied with the previous submissions. Therefore, the Department decided closing pleadings and adjourn the Case for consideration and deliberation.

Grounds

Having perused Zakat Law, issued under Royal Decree No. (17/28/577) dated 14/03/1376 AH, as amended and its Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, Income Tax Law issued under Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued under Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended, and Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.
In Form: Since Plaintiff aims with its claim to cancel ZATCA's decision regarding zakat and tax assessments for 2016/2017, and given that this dispute falls within the category of zakat and tax disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Given that the Case was filed by a party having capacity and within the statutory period. Therefore, the Department accepts the Case in form.
On Merits: Upon careful consideration of the case file and the requests and arguments of the parties, the Department finds as follows:
Defendant states, based on its Memorandum of Reply No. (1), that Defendant is ... Company located in ..., and in support of its objection, Plaintiff submitted a letter requesting recognition of residency status, as the majority of its revenue is derived in KSA. Consequently, approval was granted by the Director-General of ZATCA (previously GAZT). Plaintiff submitted its financial statements in English, certified by an accounting firm in ..., and Defendant requested the submission of financial statements certified by a Saudi accounting firm. Additionally, Defendant requested data and documents from Plaintiff based on the financial statements certified by the accounting firm in ... in English, which Plaintiff failed to provide. Given that Plaintiff did not submit the requested documents to Defendant as part of its objection, and in light of its failure to provide financial statements certified by a Saudi accounting firm or supporting documents to substantiate its claims, Plaintiff's objection is completely dismissed.
Paragraph (E) of Article (60) of the Income Tax Law states:
"E. A taxpayer whose taxable income exceeds 1,000,000 riyals, shall have a certified accountant licensed to practice in the Kingdom certify the accuracy of the declaration".
In addition, Paragraph (6) of Article (57) of the Implementing Regulations of the Income Tax Law states:
"6. A taxpayer whose taxable income, before deduction of expenses, exceeds one million Saudi riyals shall have its return certified as correct by a certified accountant, particularly the following:

a. (a) The return information is derived from and in conformity with the taxpayer's books and records.

b. (b) The return has been completed in accordance with the provisions of the Saudi Income Tax Law".

Paragraph (a) of Article (58) of the Income Tax Law states:

"A. A taxpayer, other than a nonresident with no permanent establishment in the Kingdom, shall maintain the necessary commercial books and accounting records in Arabic for precise determination of the tax payable by it".

Consequently, it is evident that the Income Tax Law only stipulates the necessity of having the tax return certified by a certified accountant authorized to practice in the Kingdom of Saudi Arabia, and that the necessary accounting records must be maintained in Arabic to accurately determine the tax liability of the taxpayer. However, the Law does not specify the requirement to submit financial statements audited by an auditor licensed to practice in KSA. Given that Plaintiff is a resident in the Kingdom for tax purposes only, this status does not extend to the Companies Law applicable in KSA. Therefore, Plaintiff is not obligated to issue financial statements audited by an auditor licensed to practice in the Kingdom. It is evident, upon reviewing the returns submitted by Plaintiff attached to the Case file, that the returns for 2016/2017 were certified by licensed accountants authorized to practice in the Kingdom.

As it has been established from the facts of the Case that Defendant relied on the returns submitted by Plaintiff and the financial statements certified by an accounting firm in ... in English, and did not exercise its right to apply estimated assessment due to the absence of financial statements from a licensed accountant authorized to practice in the Kingdom, it is clear that Defendant intended to accept the returns submitted by Plaintiff and the financial statements certified by an accounting firm in ... in English, which constitutes an explicit expression of approval by Defendant, as demonstrated through adjustments made to certain items.

With regard to Clause: (Material Error in Calculating the Retained Earnings Added to the Zakat Base for 2016): Plaintiff challenges Defendant's inclusion of the non-Saudi partner's retained earnings, amounting to SAR (366,157), in the zakat base for 2016, stating that Defendant included the total retained earnings of SAR (2,026,628) without taking into account the Saudi partner's share, which represents 81.9327% of the capital shares, amounting to SAR (1,660,471). Plaintiff argues that the Saudi partner's share should have been added without including the non-Saudi partner's share. However, Defendant argues that it adopted the retained earnings as declared in Plaintiff's return without any adjustments.

Paragraph (9) of Article (21) of the Implementing Regulations for Zakat Collection states:

"9. GAZT may correct the mathematical and material errors during ten years as of the end of the term defined for the provision of zakat declaration for the zakat year upon zakat payer's request, or if such errors were detected by GAZT or supervisory entity. The mathematical and material errors mean the errors resulting from any of the mathematical operations i.e. (addition, subtraction, multiplication, and division), or resulting from the replacement of a wrong number with the right one or similar".

In light of the foregoing, and upon reviewing the Case file, including defenses and documents, the Department, upon reviewing Plaintiff's manually completed return for 2016, established that the retained earnings balance was stated as SAR (1,660,471) in line number (11902), while the retained earnings balance declared by Plaintiff, as shown in the screenshot extracted from Plaintiff's return on "Irad" system, attached by Defendant in its Memorandum of Reply No. (2) in line (11902), amounted to SAR (2,026,628). Referring to the audited financial statements issued by ... in ...), attached by Plaintiff, it is clear that the opening balance of retained earnings was recorded as $540,434 (SAR 2,026,628). Consequently, given that the Saudi partner's share, based on their 81.9327% ownership, the amount of SAR (1,660,471) should be included in the zakat base. Since Defendant

provided an extract from the "Irad" system and that material and accounting errors do not constitute a substantive dispute, Plaintiff may refer to Defendant to rectify such errors, if any. Accordingly, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's action in this regard.

Regarding (Non-Deduction of Wages, Salaries, Housing and Living Expenses, and Employee Benefits for 2016/2017): The dispute arises from Plaintiff's objection to Defendant's non-deduction of employee wages and salaries from net profits for 2016/2017, amounting to SAR (6,182,974) and SAR (8,016,731), respectively, and non-deduction of housing and living expenses and employee benefits from the net profit for 2016, amounting to SAR (2,954,066). Plaintiff contends that Defendant's approach is incorrect, as it is based on the argument that salaries and wages are not subject to social insurance and further asserts that that these salaries and wages are supported by documentation and represent actual, genuine expenses incurred to generate income subject to zakat and tax. On the other hand, Defendant contends that it rejected the deduction of this item due to Plaintiff's failure to provide supporting documents and the absence of the financial statements certified by a Saudi accounting firm.

Paragraph (1) of Article (5) of the Implementing Regulations for Zakat Collection, related to deductible expenses, states:

"Ordinary and necessary expenses of business activity, whether paid or due, to the net result of activity shall be deducted, if meet the following criteria:

a. a. Expenses shall be actual expenses as supported by relevant documents and other evidential matter to enable the Authority to verify the accuracy of expenses, even if related to prior years.
b. b. Expenses shall be related to Zakat Payer's business activity rather than personal expenses or other than Zakat Payer's own activities.
c. c. Expenses may not be of capital nature. Where a capital expenditure is included in the expenses such expenditure shall be adjusted against the result of activity added to fixed assets and accordingly depreciated as applicable."

Paragraph (2) of Article (6) of the Implementing Regulations for Zakat Collection, related to deductible expenses, states: "2. Expenses that the Zakat Payer fails to prove by supporting documents or other evidential matter."

Moreover, Paragraph (1) of Article (9) of the Implementing Regulations of the Income Tax Law, concerning expenses that may be deducted to determine taxable income, states:

"1. All normal expenses necessary for earning taxable income, whether paid or accrued, provided they meet the following conditions:

a. (a) If it is an actual expense, supported by documents or other evidence which enable the Department to verify it;
b. (b) If it is related to earning taxable income;
c. (c) If it is related to the taxable year;
d. (d) If it is of non-capital nature."

Paragraph (B) of Article (58) of the Income Tax Law, related to books and records, states:

"B. The Department retains the right not to allow a deduction if the taxpayer is unable without reasonable excuse to produce a document of the expense or evidence supporting the legitimacy of its claim for the deduction".

Moreover, Article (20.3) of the Implementing Regulations for Zakat Collection states:

"The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto".

In addition, Paragraph (3) of Article (57) of the Implementing Regulations of the Income Tax Law states:

"The burden of proof of correctness of information in the taxpayer's return regarding its revenues, expenses and any other data, rests on the taxpayer. If a taxpayer fails to prove the correctness of information in its returns, the Department may, in addition to the application of any other statutory penalties, disapprove the expense whose correctness has not been proven by the taxpayer or make an estimated assessment according to the Department's opinion based on relevant circumstances and facts and available information".

Based on the foregoing, and after reviewing the Case file, including defenses and documents, Plaintiff seeks to deduct wages, salaries, allowances, and other benefits not registered with GOSI, as the employees are located in ... and subject to the labor laws of the UAE. Plaintiff attached a certificate from a certified accountant specifying the value of salaries and wages not subject to social insurance for the years 2016 and 2017, amounting to SAR (9,736,160) and (8,205,645) respectively. In its 2016 return, attached to the case, Plaintiff declared wages and salaries in line (10801) amounting to SAR (6,182,972), as well as housing and other employee benefits in line (10813) amounting to SAR (2,954,066), totaling SAR (9,137,042), upon comparing which with the amount shown in the certified accountant's report, totaling SAR (8,205,645), a difference was recorded of SAR(188,914), representing provisions made during the year in the amount of SAR (188,911) (a negligible difference of 3 riyals), declared in the return in line (10809) and Schedule No. (20). Thus, the Department demonstrates that Plaintiff's claim to allow the deduction of wages and salaries as deductible expenses is valid. Consequently, the Department satisfies to accept Plaintiff's objection and annul Defendant's action in this regard.

(Non-Deduction of Sales Cost for 2016/2017): Plaintiff contends that Defendant rejected the inclusion of the "Sales Cost item as part of other direct expenses in the company's returns for 2016/2017. Instead, Defendant added these amounts, totaling SAR (739,151) and (1,903,159), to the net book profit respectively. Plaintiff argues that these costs represent expenses incurred for outsourcing IT consulting services, which serves as support of the company's core business, and further contends that these expenses are actual and necessary costs incurred by the company to generate income subject to zakat and tax. However, Defendant argues that it rejected the approval of this item due to Plaintiff's failure to provide supporting documents and the absence of the financial statements certified by a Saudi accounting firm.

Upon reviewing Paragraph (1) of Article (5) of the Implementing Regulations for Zakat Collection, regarding deductible expenses, Paragraph (2) of Article (6) of the same regulations, concerning non-deductible expenses, Paragraph (1) of Article (9) of the Implementing Regulations of the Income Tax Law, concerning expenses that may be deducted to determine taxable income, Paragraph (B) of Article (58) of the Income Tax Law, concerning books and records, in addition to Paragraph (3) of Article (20) of the Implementing Regulations for Zakat Collection, and Paragraph (3) of Article (57) of the Implementing Regulations of the Income Tax Law.

Based on the foregoing, and since the sales cost is considered deductible if proven to be an actual expense supported by documentary evidence, and given that the dispute regarding this item is documentary, upon reviewing the documents attached to the Case file, it is evident that Plaintiff failed to provide supporting documents for the sales cost, such as (an extract from the accounting system demonstrating the sales cost). Accordingly, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's action in this regard.

Regarding (Disallowance of Travel Expenses Deduction for 2016), the dispute centers on Plaintiff's objection to Defendant's refusal to deduct travel expenses amounting to SAR

(692,468) for 2016 and instead added this amount to the net book profit. Plaintiff argues that these expenses were incurred by the company for business purposes and adds that they are genuine expenses incurred to generate income subject to zakat and tax. On the other hand, Defendant argues that it disapproved this item due to Plaintiff's failure to provide supporting documents and the absence of the financial statements certified by a Saudi accounting firm.

Upon reviewing Paragraph (1) of Article (5) of the Implementing Regulations for Zakat Collection, regarding deductible expenses, Paragraph (2) of Article (6) of the same regulations, concerning non-deductible expenses, Paragraph (1) of Article (9) of the Implementing Regulations of the Income Tax Law, concerning expenses that may be deducted to determine taxable income, Paragraph (B) of Article (58) of the Income Tax Law, concerning books and records, in addition to Paragraph (3) of Article (20) of the Implementing Regulations for Zakat Collection, and Paragraph (3) of Article (57) of the Implementing Regulations of the Income Tax Law.

Based on the foregoing, since such expenses are considered deductible if proven to be actual expenses supported by supporting documents. Since the dispute regarding this item is document-based. Having taken cognizance of documents included in Case file, the Department found that Plaintiff failed to provide supporting documents for travel expenses. Therefore, the Department dismisses Plaintiff's objection and upholds Defendant's action in this regard.

Regarding (Disallowance the Deduction of (Reversed) Withholding Tax Revenues from the Net Book Profit for 2017, Amounting to SAR (767,393)), the dispute lies in Plaintiff's objection to Defendant's disallowance of deduction of withholding tax revenues from the 2017 tax base amounting to SAR (767,393), stating that Defendant had included withholding tax under other indirect costs in the zakat and tax return for 2016 and previous years. In the same return, Defendant added the amounts back to the tax base, considering the withholding tax expense as non-deductible. Plaintiff further clarifies that, due to the cancellation of the withholding tax expense for 2016 and prior years, the withholding tax was re-included under other income in the 2017 income statement to reverse the previously recorded expense in the accounts. Thereafter, Defendant deducted these amounts from the 2017 tax base to avoid double taxation, as the withholding tax expense had previously been subject to tax (as a non-deductible expense) within the 2016 tax base. However, Defendant argues that it disapproved this item due to Plaintiff's failure to provide supporting documents and the absence of the financial statements certified by a Saudi accounting firm.

Paragraph (a) of Article (68) of the Income Tax Law states:

"Every resident, whether or not a taxpayer according to this Law, and every permanent establishment of a nonresident in the Kingdom which pays an amount to a nonresident from a source in the Kingdom shall withhold tax from the paid amount according to the following rates: ..."

Paragraph (5) of Article (10) of the Implementing Regulations of the Income Tax Law, related to non-deductible expenses, states:

"5. Income tax and related fines and penalties paid or payable in the Kingdom or in any other country".

Moreover, the Department also reviewed Paragraph (3) of Article (57) of the Implementing Regulations of the Income Tax Law.

Based on the foregoing, and since the burden of withholding tax originally falls on the non-resident who earned amounts as a result of activities carried out within the Kingdom, such payments are made after deducting the withholding tax owed by the non-resident, which then offsets this tax against their tax obligations in their home country, as is the practice in most tax systems worldwide. Consequently, it becomes evident that the entity

responsible for withholding (Plaintiff) does not bear the withholding tax under the Income Tax Law; rather, the tax is deducted from the amounts paid to the non-resident. Upon reviewing the case file, Plaintiff failed to provide justifications for reversing the withholding tax expense or its calculation method and that the deducted withholding tax amount classified as a non-deductible expense in the 2016 return was SAR (668,730), while Plaintiff claimed SAR (767,393). Consequently, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's action in this regard.

As for (Inclusion of the Saudi Partner's Share in Receivables from Related Parties for 2016 and 2017, Amounting to SAR (728,918) and (1,022,689) Respectively, Instead of Deduction from the Zakat Base), the dispute centers on Plaintiff's objection to Defendant's non-deduction of receivables from related parties for 2016/2017 tax base amounting to SAR (728,918) and (1,022,689) respectively. Plaintiff argues that these amounts represent receivables owed to ... Company (Parent Company) for consulting services and asserts that the account receivables from related parties constitute one of the items that must be deducted from the zakat base. On the other hand, Defendant argues that it disapproved this item due to Plaintiff's failure to provide supporting documents and the absence of the financial statements certified by a Saudi accounting firm.

Paragraph (5) of Section (Second) of Article (4) of the Implementing Regulations for Zakat Collection provides:

"Second: The following shall be deducted from Zakat base:

5. Owners/ Partners debit current accounts subject to Zakat not exceeding their share in the deferred profits".

In light of the foregoing, it is evident that Plaintiff seeks to deduct the opening debit balance of the partner's current account for 2016/2017. Upon reviewing Plaintiff's returns, it was found that Plaintiff failed to deduct this item from the zakat base as a negative element, while Defendant added the same to the positive elements (according to Plaintiff's analysis). Furthermore, a review of the related party statements and the amounts due reveals that some of these parties are not capital partners in Plaintiff's company. Due to the insufficiency of the provided documentation, the Department concludes to dismiss Plaintiff's objection and uphold Defendant's action in this regard.

Regarding (Addition of Various Payables to the Saudi Partner's Share "Trade Payables - Other Payables -Submitted Revenues" to the Zakat base for 2016/2017), the dispute lies in Plaintiff's challenge of Defendant's addition of trade payables, other payables, and submitted revenues to the Saudi partner's share in the zakat base for 2016/2017, amounting to SAR (4,211,038) and (2,423,643) respectively, stating that these amounts do not constitute loans and are therefore not subject to zakat, even if a full year has passed, particularly since they were not used to finance acquisition assets but rather to fund working capital. These amounts represent liabilities owed by the company to third parties and, therefore, should be deducted from the zakat base. On the other hand, Defendant argues that it disapproved this item due to Plaintiff's failure to provide supporting documents and the absence of the financial statements certified by a Saudi accounting firm.

Paragraphs (4) and (5) of Section (First) of Article (4) of the Implementing Regulations for Zakat Collection provides:

"First: Zakat Base comprises the entire Zakat Payer's funds that are subject to Zakat collection, including:

4. Submitted revenues on which a year has passed.

5. Government and commercial loans or equivalent items of other sources of funds, such as such as creditors, bills payable, overdrafts due by the Zakat payer in accordance with the following:

a. The remaining cash that a full lunar year (Hawl) has passed on it.

b. were used to finance acquisition assets.

c. c. Parts thereof used in trade bids on which a year has passed".
Moreover, the Department also reviewed Paragraph (3) of Article (20) of the Implementing Regulations for Zakat Collection.
Based on the foregoing, and upon reviewing the Case file, including defenses and documents, the Department has established the following:
First: (Trade Payables): Plaintiff challenges the inclusion of trade payables in the zakat base for 2016/2017, as disclosed in the financial statements under the item "Other Payables", as well as Note (8) of 2016 the financial statement notes and Note (14) of the 2017 financial statement notes. However, Defendant added the closing balance amounting to SAR (3,500,018) for 2016 (Closing balance of $1,139,152 multiplied by 3.75 = SAR 4,271,820, multiplied by the Saudi partner's ownership percentage of 81.9327% = SAR 3,500,018) and SAR 1,022,689 for 2017 (Closing balance of $499,733 multiplied by 3.75 = SAR 1,873,999, multiplied by the Saudi partner's ownership percentage of 81.9327% = SAR 1,535,418).
Second: (Other Payables): Plaintiff challenges the inclusion of other payables in the zakat base for 2016/2017, as disclosed in the financial statements under the item "Other Payables", as well as Note (8) of 2016 the financial statement notes and Note (14) of the 2017 financial statement notes. However, Defendant added the opening balance amounting to SAR (711,020) for 2016 (Opening balance of $231,416 multiplied by 3.75 = SAR 867,810, multiplied by the Saudi partner's ownership percentage of 81.9327% = SAR 711,020) and SAR 295,308 for 2017 (Closing balance of $96,114 multiplied by 3.75 = SAR 360,428, multiplied by the Saudi partner's ownership percentage of 81.9327% = SAR 295,308).
Third: (Submitted Revenues): Plaintiff challenges the inclusion of submitted revenues (Payments made by clients) in the 2017 zakat base, as disclosed in the financial statements under the item "Trade Payables & Other Dues", as well as Note (14) of the 2017 financial statement notes. However, Defendant added the opening balance for payments made by clients amounting to SAR (592,917) for 2017 (Opening balance of $192,977 multiplied by 3.75 = SAR 734,914, multiplied by the Saudi partner's ownership percentage of 81.9327% = SAR 592,917).
Since Plaintiff failed to submit supporting documents to substantiate its position, nor did it provide a detailed transaction of such payables, which demonstrates that these amounts were accrued during 2016 and 2017, and therefore not subject to the completion of a full year, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's action regarding this item.
(Withholding Tax Assessment by ZATCA for 2016/2017, Amounting to SAR (8,467) and (16,372), Respectively), the dispute lies in Plaintiff's objection to Defendant's arbitrary withholding tax assessment for 2016/2017 based on the accrual principle rather than the actual payment. Plaintiff asserts that some payments were not made within the same year and points out that payments made outside the Kingdom were subjected to withholding tax. Plaintiff confirms that these payments were entirely made outside the Kingdom, with no income source within the Kingdom, and therefore do not meet the conditions for withholding tax. On the other hand, Defendant argues that it disapproved this item due to Plaintiff's failure to provide supporting documents and the absence of the financial statements certified by a Saudi accounting firm.
Paragraph (a) of Article (68) of the Income Tax Law states:
"Every resident, whether or not a taxpayer according to this Law, and every permanent establishment of a nonresident in the Kingdom which pays an amount to a nonresident from a source in the Kingdom shall withhold tax from the paid amount according to the following rates: ..."

In addition, Paragraph (1) of Article (63) of the Implementing Regulations of the Income Tax Law states:

"1. A non-resident is subject to tax for any amount realized from a source within the Kingdom, and the tax is withheld from the total amount at the following rates: ..."

Moreover, the Department also reviewed Paragraph (3) of Article (57) of the Implementing Regulations of the Income Tax Law.

Based on the foregoing, and upon reviewing the Case file, including the defenses and documents, it is evident that Plaintiff failed to provide supporting documents proving that these amounts were not paid during the same year. These documents include (monthly withholding statements for the disputed years, as per the form prepared by Defendant, account statements for these expenses, and payment receipts to Defendant if paid in other years, as well as whether these amounts were paid to related parties). It is also evident that Plaintiff failed to provide supporting documents proving that the amounts paid outside the Kingdom, which were subject to withholding tax, did not derive from an income source within the Kingdom, as they were entirely conducted outside the Kingdom, such as agreements signed with external suppliers or purchase orders. Accordingly, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's action regarding this item.

As for (Non-Approval of Withholding Tax Paid in Advance for 2016 to Settle Tax and Zakat Liabilities for 2016/2017 and Allowing the Remaining Balance for Future Zakat or Tax Liabilities), the dispute centers on Plaintiff's disapproval of the withholding tax paid in advance for 2016, amounting to SAR (967,598), which was used to settle tax and zakat liabilities for 2016 and 2017. Plaintiff explains that, in 2016, the company became a tax and zakat resident in the Kingdom of Saudi Arabia. Since the company was not a resident in 2015, ... Company had been deducting amounts paid to the company and persisted to do so until 2017. On the other hand, Defendant argues that, upon reviewing the account statement, it is evident that Plaintiff failed to pay the withholding tax. If there is any evidence proving the payment of the withholding tax, Plaintiff must submit payment receipts to Defendant, which shall include thereof in the account statement. Additionally, Defendant provided documents demonstrating the validity of its action.

Moreover, the Department also reviewed Paragraph (3) of Article (57) of the Implementing Regulations of the Income Tax Law.

Based on the foregoing, and since the dispute between both parties revolves around Plaintiff's request to deduct withholding taxes paid for 2016 through ... Company and transfer the same to Plaintiff's account with Defendant to offset the Zakat and tax liabilities for 2016/2017 on the grounds that it is a resident entity in the Kingdom for zakat and tax purposes. Upon reviewing the Case file and the defenses and documents contained therein, it is evident that Plaintiff attached a letter from ... Company addressed to His Excellency the Governor of ZATCA on 4 Shawwal 1440 AH, corresponding to April 9, 2019, stating that it had withheld and remitted SAR (967,598) as tax amounts to Defendant in the withholding forms for ... for 2016, related to payments made to "Qarar" Company. The letter also stated that it had no objection to allowing these deducted amounts to be included as amounts under the account of "Qarar" Company to offset its liabilities. Moreover, Plaintiff also attached the annual tax withholding form for ... Company for 2016. However, Plaintiff failed to attach the monthly withholding statements for the parent company (...) for 2016, as per the form prepared by Defendant, nor did it provide payment receipts to verify the validity of its claim. Accordingly, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's action regarding this item.

As for (Return Non-Filing Fine for 2016/2017), the dispute centers on Plaintiff's objection to Defendant's imposition of a fine for failure to submit the return within the statutory period for 2016/2017, amounting to SAR (23,131) and (20,000) respectively. Plaintiff

explains that they were unable to file their return via "Irad" system due to circumstances beyond their control. However, Plaintiff submitted their 2016 tax return manually on 30/04/2017. On the other hand, Defendant argues that it imposed the relevant fine due to Plaintiff's failure to provide supporting documents and the absence of the financial statements certified by a Saudi accounting firm.

Article (76) of the Income Tax Law, concerning fines for failure to file the declaration, states:

a. "A taxpayer not complying with the provisions of Article 60(a, b, d, and f) of this Law, shall be subject to a fine of 1% of its gross income, provided that the fine does not exceed 20,000 riyals.
b. In case of failure to file the declaration within the prescribed time, the following fine shall be imposed in lieu of the fine stipulated under paragraph (a) of this Article, if the fine under paragraph (a) is less than the amount specified under this paragraph:
    1. 5% of the unpaid tax if the delay does not exceed 30 days of the date specified by law.
    2. 10% of the unpaid tax if the delay is more than 30 days and less than 90 days of the date specified by law.
    3. 20% of the unpaid tax if the delay is more than 90 days and less than 365 days of the date specified by law.
    4. 25% of the unpaid tax if the delay exceeds 365 days of the date specified by law.
c. "Unpaid tax shall mean the difference between the amount of tax due under this Law and the amount paid on the date specified by law under Article 60 (b) of this Law".

In addition, Article (67) of the Implementing Regulations of the Income Tax Law states:

1. "A fine for failure to file the return shall apply in the following cases:
    a. Failure to file the return within one hundred and twenty days from the end of the fiscal year.
    b. Failure to file the return in accordance with the approved form, even if filed within the due date.
    c. Failure to pay due tax per return even if the return is filed within the due date and in accordance with the approved form.
2. In case of failure to file the return within the due date, the higher of the following two penalties shall apply:
    a. (1%) of the taxpayer's gross revenues, not exceeding (20.000) twenty thousand riyals.
    b. According to the following rates:
    5% of the unpaid tax if the delay does not exceed thirty days from the due date;
    (10%) of the unpaid tax if the delay exceeds thirty days and does not exceed ninety days from the due date;
    (20%) of the unpaid tax if the delay exceeds ninety days and does not exceed three hundred and sixty five days from the due date;
    (25%) of the unpaid tax if the delay exceeds three hundred and sixty five days from the due date.
3. "Unpaid tax shall mean the difference between the amount paid by the taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment".

Moreover, the Department also reviewed Paragraph (3) of Article (57) of the Implementing Regulations of the Income Tax Law.

In light of the above, and upon the Department's review of the Case file, including the defenses and documents, it has been established with regard to 2016 that Plaintiff merely

submitted a letter issued by their chartered accountant addressed to Defendant, with Ref No. (T/2017/139) and dated April 25, 2017, regarding the follow-up on Plaintiff's registration request. This letter is unrelated to the submission of the return and the payment of the amounts due as per the submitted return. As for 2017, Plaintiff failed to provide any documents proving the date of submission of the return to Defendant or the payment of the amounts due as per the submitted return, as claimed. Consequently, the Department satisfies to dismiss Plaintiff's objection and uphold Defendant's action regarding this item.

Regarding (Late Payment Fine on Income Tax and Withholding Tax Differences), the dispute lies in Plaintiff's objection to Defendant's imposition of a late payment fine on the unpaid tax differences, asserting that the late payment fine was incurred due to genuine and substantial differences of opinion between Plaintiff and Defendant. Conversely, Defendant argues that it imposed such fine on the unpaid tax differences for failure to meet the statutory deadline, citing Plaintiff's failure to provide supporting documents as well as the financial statements certified by a Saudi accounting firm.

Paragraph (B) of Article (60) of the Income Tax Law, regarding declarations, states: "The tax declaration shall be filed within 120 days following the end of the taxable year for which the declaration was made". Paragraph (C) of Article (76) of the same Law, related to fines for failure to file the declaration, states: "Unpaid tax shall mean the difference between the amount of tax due under this Law and the amount paid on the date specified by law under Article 60(b) of this Law". Moreover, Paragraph (A) of Article (77) of the same Law, related to delay and fraud fines, states: "In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this Article, a taxpayer shall pay a delay fine of 1% for every 30 days of delay on unpaid tax, including delays in the payment of tax required to be withheld and advance payments. It shall be calculated from the tax due date until the date of payment".

In addition, Paragraph (3) of Article (67) of the Implementing Regulations of the Income Tax Law states: "Unpaid tax shall mean the difference between the amount paid by the taxpayer on the due date and the tax due under the provisions of the Law, which include final amendments made by the Department as stated in Paragraph (2) of Article (71) of these Regulations, including contested cases, where the fine shall be due from the due date for return filing and payment". Moreover, Paragraph (1) of Article (68) of the Same Regulations states "In addition to the penalties provided for in the preceding Article, (1%) of unpaid tax for every thirty days of delay shall be added in the following cases:

B. Delay in payment of due tax as per the Department's assessment".

E. Delay in payment of tax required to be withheld within ten days of the following month during which payment was made to the beneficiary, as stipulated in Article (68) of the Law. The payment of the same shall be the responsibility of the withholding entity".

Based on the foregoing, it is evident that the tax is calculated from the due date, and the tax is deemed due within 120 days from the end of the taxpayer's fiscal year, which is the due date for submitting the return and paying the tax due in accordance with the provisions of the law and the amendments made by Defendant. The existence of a difference in the due tax and the Plaintiff's disagreement therewith does not negate the legality of imposing a late payment fine from the due date. Since the imposition of fines is a consequence of the contested items, the Department concludes to uphold Defendant's action in imposing the late payment fine on the tax differences resulting from the items for which the Department dismissed Plaintiff's objection, due to Plaintiff's delay in paying the tax due within the due date, which represents the difference between the amount paid as per Plaintiff's return within the due date and the tax due as determined by Defendant.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

First: In form:

Accept the case filed by Plaintiff/...., C.R No. (.....) against Defendant/ ZATCA in form.

Second: On Merits:

1. Annul Defendant's action regarding (Non-Deduction of Wages, Salaries, Housing and Living Expenses, and Employee Benefits for 2016/2017) item.
2. dismiss the Case regarding the remaining items.
3. Dismiss the Case in relation to the late payment fine for the items where the Department concluded dismissal and nullify the same with regard to the item for which the Department ruled to annul Defendant's action.

This decision was delivered in presence of both parties. The Department set Wednesday, 05/10/2022 for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not appeal it.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

The Second Department for The Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2022-1503)
Issued in Appeal No. (Z-37434-2021)

Key words:
Zakat Assessment - Accounts - Non-Deduction of Salary and Wage Difference - Bad Debts Provision - Outstanding and Credit Balances - Medium-Term Loans - Profit and Loss from Sale of Equipment, Machinery and Property - Fixed Assets Exclusions - Acceptance of Case in Form and Dismissal on Merits.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding zakat assessments from 2016 to 2018. On merits, the Department found that the Plaintiff objection is limited to six items: Item First: The Item of Non-Deduction of Salary and Wage Difference of 2018. The Plaintiff considers that the difference between social insurance certificate and the establishment's registers is due to its declaration to GOSI of basic salaries and housing allowance only. In contrast, the Defendant argues that the Plaintiff submitted samples of the objected expenses and therefore partially accepted the Plaintiff's objection and rejected the rest according to data provided. In addition, the Department found that the Plaintiff had attached an analytical statement of differences between salaries and wages recorded in the Company's records and books and the salaries and wages shown in the social insurance, amounting to SAR (6,263,429), and since the Defendant accepted the amount of SAR (4,497,811), in its amended assessment of hiring temporary workers. As for the remaining expenses represented by commissions paid to sales employees, paid leaves and other payments, the Plaintiff did not attach documents supporting these expenses. Therefore, the Department concludes to dismiss the Plaintiff's objection regarding this item. Item Second: The Item of Bad Debts Provision. The dispute lies in that the Plaintiff objects to the Defendant's action of adding the item to the zakat base in the amount of SAR (131,784) for the years subject of dispute, stating that it added the amount within component of the provision in table (20) provision movement, adding that the Defendant's action will lead to a zakat duplication. In contrast, the Defendant argues that it added the provision to the net profit based on provision movement included in the financial statements. After examining the objection and auditing the trial balance, the Defendant found that the action taken by it was correct. In addition, the Department found that the Plaintiff provided the transaction to the bad debt provision for 2018, and therefore it is not possible to verify the balance of provisions that completed a full year. Therefore, the Department concludes to dismiss the Plaintiff's objection regarding this item. Item Third: The Item of Outstanding and Credit Balances. The dispute lies in that the Plaintiff objects to the Defendant's action of adding outstanding and credit balances to the zakat base, considering that a year has passed thereon for the years in dispute, as the Plaintiff considers that zakat is not due on the loans due to a lack of ownership of these funds. In contrast, the Plaintiff argues that it added the balance to zakat base as a result of

the passage of a year thereon, after comparing the opening and closing balance and adding whichever is less. The Department found that the Plaintiff provided an analytical statement of the outstanding and credit balances of 2017, but the attached statement was prepared manually (Excel). Accordingly, supporting documents for the attached transaction extracted from an accounting system must be attached together with proof of payment during the year, in order to prove that a year has passed on the amounts added to the zakat base. Therefore, the Department concludes to dismiss the Plaintiff's objection regarding this item and three other items. Department ruled to accept the case in form and dismiss it on merits.

Instruments:

- https://ncar.gov.sa/document-details/eyJpdiI6IkhjR1RIYjkwMGlDYm40OFpJUUpac1E9PSIsInZhbHVlIjoiM3Z3WEJKRFp4ZFhTTVNzM2hsbXMvZz09IiwibWFjIjoiOGY0Zjk3YjIwMmQwYmQzMTZhNDQ0NWVkYjQzOGE5YWU2M2UxNWQxMWJlNTc5YTIyZDdjNGE2Njk5MGMwYjhmYSIsInRhZyI6IiJ9
- Articles (4//First/5), (5/1), (7/2), and (20/3) of the Implementing Regulations for Zakat Collection issued under Ministerial Decision No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 29/08/2022, the second department for the determination of income tax violations and disputes in Riyadh, stipulated in Article (67) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed by Royal Order No. (65474) dated 23/12/1439 AH, held its session remotely via teleconference to consider the above-mentioned case. As the case met the prescribed statutory requirements, it was filed with the General Secretariat of Zakat, Tax and Customs Committees with the above number on 15/02/2021.

The facts of this case are summed up that Plaintiff/...., Commercial Register No. (.....), filed its objection to zakat assessments for the years from 2016 to 2018, and its objection was determined in the following items: Item First (Non-Deduction of Salary and Wage Difference of 2018). The Plaintiff based on that the Defendant refused to deduct the salaries and wages subject to social insurance from zakat base of 2018, stating that the difference between the approval of salaries and wages and GOS records is due to the Company's declaration to GOSI of basic wages and housing allowance only. Item Second: (Bad Debts Provision). The Plaintiff based on the fact that the Defendant added an amount of SAR (131,784) to the zakat base for the years of dispute, stating that it added the amount mentioned in the component of provision in table (20) provision movement, and adding that this will lead to a zakat duplication for the years subject of dispute. Item Third: (Outstanding and Credit Balances). The Plaintiff based on the fact that the Defendant added the outstanding balances to zakat base for the years of dispute, stating that zakat is only due on owned funds, regardless of whether or not the money is in its possession, based on Royal Decree No. (1103/3) dated 11/02/1407 AH. Item Fourth: (Medium-Term Loans). The Plaintiff based on the fact that the Defendant added the loans to zakat base for years of dispute, stating that it did not use the entire loan to finance assets but used part thereof to finance assets. Item Fifth: (Profit and Loss from Sale of Equipment, Machinery and Property of 2016). The Plaintiff based on the fact that the Defendant refused to amend the result of the year with profit from sale of property of 2016, stating that the Defendant has previously allowed the loss to be added to 2018 result. Item Sixth:

(Fixed Assets Exclusions of 2016). The Plaintiff based on the fact that the Defendant adjusted the value of fixed assets of 2016 by an amount of SAR 397,601, stating that the Defendant did not explain the grounds for its action. Accordingly, Plaintiff requests the annulment of Defendant's action in question.

Having presented the statement of claim to Defendant, it responded with a memorandum summarized as follows: First: With regard to the Plaintiff's objection to (Non-Deduction of Salary and Wage Difference of 2018): The Defendant states that during the examination and re-assessment phase, it added the item to the net profit because the Plaintiff did not provide the supporting documents. Having perused and taken cognizance of the documents submitted by the Plaintiff during the objection phase, it provided justifications for the differences and a settlement consisting of hiring labor, paid commissions for sales employees, paid leaves and other payments to employees, and provided samples of temporary labor hiring expenses. Accordingly, the Defendant partially accepted the Plaintiff's objection in accordance with data provided and rejected the rest, pursuant to Article 20.3 of the Implementing Regulations for the Collection of Zakat of 1438 AH. Second: With regard to the Plaintiff's objection to the item (Bad Debt Provision from 2016 to 2018): The Defendant explains that it has added the provision to the net profit according to provision movement included in the financial statements, and after examining the objection and auditing the trial balance, it found that the action taken by it based on provision movement is correct, in accordance with Article 6.6 of the Implementing Regulations for the Collection of Zakat of 1438 AH. Third: With regard to the Plaintiff's objection to the item (Receivables and Other Outstanding Balances from 2016 to 2018), the Defendant asserts that during the examination and re-assessment phase, it added the item to zakat base due to the passage of a year thereon, after comparing the opening and closing balance and adding whichever is less, as the Plaintiff did not submit any of the required documents. Having examined the objection and reviewed the submitted transaction, it was found that it was general, and the Plaintiff did not specify the date of transaction and did not provide the detailed transaction supporting its point, in accordance with Article 4.5 and 20.3 of the Implementing Regulations for the Collection of Zakat of 1438 AH. Fourth: With regard to the Plaintiff's objection to the item (Medium-Term Loans from 2016 to 2018): The Defendant states that during the examination and re-assessment phase, it added loans to the zakat base because a year has passed thereon, in addition to being in exchange for financing the establishment of new offices. Having examined the objection, it turned out that they were in exchange for fixed assets in accordance with Note No. 9 of the financial statements. Accordingly, since the item was used to finance acquisition assets, the Defendant rejected the Plaintiff's objection, in accordance with Article 4.5 of the Implementing Regulations for the Collection of Zakat of 1438 AH and maintains the validity of its procedure. Fifth With regard to the Plaintiff's objection to the item (Profit and Loss from Sale of Equipment, Machinery and Property): Upon assessment, the Defendant explains that it did not deduct the results of disposing of assets, as it made an assessment on the Plaintiff using the f straight-line method, and therefore rejected the Plaintiff's objection, because it was processed within the depreciation schedule where the net balance was approved after the deduction and the results of disposing of assets were added. Sixth: With regard to the Plaintiff's objection to the item (Fixed Assets Exclusions of 2016): Upon assessment, the Defendant explains that it deducted the fixed assets from the zakat base in accordance with the balance included in the financial statements, as the Defendant excluded depreciation differences from the net profit and deducted the net fixed assets using the straight-line method, and accordingly rejected the Plaintiff's objection, as the Plaintiff is subject to the provisions of zakat and the straight-line method stipulated in Article 7.2 of the Implementing Regulations for the

Collection of Zakat of 1438 AH, and maintains the validity of its procedure. Therefore, the Defendant hereby seeks for issuing the judgment to dismiss the case.

On Monday, 29/08/2022, the Department held its session remotely to hear the case, attended by ....., as the Defendant's representative under authorization No. (. .....), while the Plaintiff or their representative failed to attend and did not send an excuse for their absence, despite the fact that they were informed of the date of the session through GSTC portal. This means that they were deemed to have forfeited their right to attend and plead. Therefore, the Department decided to open the hearing. Having asked the Defendant's representative about his statements on the case, he replied: I am satisfied with the memorandum uploaded to the electronic portal of General Secretariat of Tax Committees, and I adhere to the pleas and requests contained therein, related to zakat assessments for the years from 2016 to 2018. Accordingly, the Department decided to close the pleadings and adjourn the case for study and deliberation.

Grounds

Having perused Zakat Law, issued under Royal Decree No. (17/28/577) dated 14/03/1376 AH, as amended and its Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, Income Tax Law issued under Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued under Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended, and Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

In Form: Since Plaintiff intended by filing its case to cancel Defendant decisions regarding the zakat assessments for the years from 2016 to 2018, and this dispute is considered one of the zakat disputes that fall within the jurisdiction of the committee for the resolution of income tax violations and disputes, pursuant to Royal Order No. (26040) dated 21/04/1441 AH, the case was filed by a person with legal capacity and within the legally prescribed period, which requires that the case be admitted in form.

On Merits: after the Department has examined the papers and the requests and pleas initiated by the case's parties, the Department found that the dispute lies as follows:

With regard to the item (Non-Deduction of Salary and Wage Difference of 2018): The dispute lies in the fact that the Plaintiff objects to the Defendant's action of not deducting the salary and wage difference. The Plaintiff considers that the difference between social insurance certificate and the establishment's registers is due to its declaration to GOSI of basic salaries and housing allowance only. In contrast, the Defendant argues that the Plaintiff submitted samples of the objected expenses and therefore partially accepted the Plaintiff's objection and rejected the rest according to data provided.

Paragraph (1) of Article (5) of the Implementing Regulations for Zakat Collection, related to deductible expenses, states:

"Ordinary and necessary expenses of business activity, whether paid or due, to the net result of activity shall be deducted, if meet the following criteria:

a. a. Expenses shall be actual expenses as supported by relevant documents and other evidential matter to enable the Authority to verify the accuracy of expenses, even if related to prior years.
b. b. Expenses shall be related to Zakat Payer's business activity rather than personal expenses or other than Zakat Payer's own activities.
c. C. Expenses shall not be of capital nature and, if an expense of a capital nature is included in expenses, result of activity shall be adjusted and includes fixed assets and consumed in accordance with the legal ratios".

Article 6.2 of the same Regulations, concerning expenses that may not be deducted, also provides that: "2. Expenses that the Zakat Payer fails to prove by supporting documents or other evidential matter".

Moreover, Article 20.3 of the Implementing Regulations for Zakat Collection states:

"The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto".

Based on the foregoing, and since GOSI certificate is one of the important third party evidence and is used to verify the fairness of salaries and wages and the like added to the accounts, and since the dispute between the parties is a documentary dispute, and having perused the documents attached to the Case file, it was found that the Plaintiff has attached an analytical statement of differences between the salaries and wages recorded in the Company's records and books and the salaries and wages shown in the social insurance, amounting to SAR 6,263,429, and since the Defendant accepted the amount of SAR (4,497,811) in its amended assessment, which is represented by hiring temporary workers. As for the remaining expenses represented by commissions paid to sales employees, paid leaves and other payments, the Plaintiff did not attach documents supporting these expenses. Therefore, the Department concludes to dismiss the Plaintiff's objection and uphold the Defendant's action regarding this item.

With regard to the item (Bad Debts Provision): The dispute lies in that the Plaintiff objects to the Defendant's action of adding the item to the zakat base in the amount of SAR (131,784) for the years subject of dispute, stating that it added the amount within component of the provision in table (20) provision movement, adding that the Defendant's action will lead to a zakat duplication. In contrast, the Defendant argues that it added the provision to the net profit based on provision movement included in the financial statements. After examining the objection and auditing the trial balance, the Defendant found that the action taken by it was correct.

Article 4. First.9 of the Implementing Regulations for Zakat Collection stipulates that:

"First: Zakat Base comprises the entire Zakat Payer's funds that are subject to Zakat collection, including:

9. Provisions at the beginning of the year (excluding doubtful debt provisions for banks) after deducting the utilized portion during the year".

Moreover, the Department also reviewed Paragraph (3) of Article (20) of the Implementing Regulations for Zakat Collection.

Based on the foregoing, and since the dispute on this item is a documentary dispute, and by reference to the Case file and defenses and documents contained therein, it turns out that the Plaintiff submitted the movement of bad debt provision of 2018, which was as follows:

Doubtful Debts Provision: ---------- Value.
Opening balance: ---------- 158,664
Reversed provision: ---------- (65,821)
Component during the year: ---------- 131,784
Closing balance: ---------- 224,627

The Plaintiff indicated that the component was declared during the year in the aforementioned declaration of 2018. With reference to the aforementioned declaration, it was found that the Plaintiff had stated provisions added to the account amounting to SAR 882,503 within non-deductible expenses, but it did not attach table 20 to verify that the amount of SAR (882,503) included the component amount during the year amounting to SAR (131,784), and therefore it is not possible to verify the provision balance that have

passed a year. Therefore, the Department concluded to dismiss the Plaintiff's objection and uphold the Defendant's action regarding this item.

With regard to the item (Outstanding and Credit Balances): The dispute lies in that the Plaintiff objects to the Defendant's action of adding outstanding and credit balances to the zakat base, considering that a year has passed thereon for the years in dispute, as the Plaintiff considers that zakat is not due on the loans due to a lack of ownership of these funds. In contrast, the Plaintiff argues that it added the balance to zakat base as a result of the passage of a year thereon, after comparing the opening and closing balance and adding whichever is less.

Article 4. First.5 of the Implementing Regulations for Zakat Collection stipulates that:

"First: Zakat Base comprises the entire Zakat Payer's funds that are subject to Zakat collection, including:

5. Government and commercial loans or equivalent items of other sources of funds, such as such as creditors, bills payable, overdrafts due by the Zakat payer in accordance with the following:

a. The remaining cash that a full lunar year (Hawl) has passed on it.
b. were used to finance acquisition assets.
c. c. Parts thereof used in trade bids on which a year has passed".

Having perused Article 20.3 of the Implementing Regulations for the Collection of zakat, and based on the foregoing, since the outstanding expense balances are a component of zakat base, provided that a year has passed on these balances. Since the dispute over this item is a documentary dispute, and having taken cognizance of the documents attached to the Case file, it is found that the Plaintiff submitted an analytical statement of the outstanding and credit balances of 2017, but the attached statement was prepared manually (Excel). Accordingly, supporting documents for the attached transaction extracted from an accounting system must be attached together with proof of payment during the year, in order to prove that a year has passed on the amounts added to the zakat base. Therefore, the Department concludes to dismiss the Plaintiff's objection and uphold the Defendant's action regarding this item.

With regard to the item (Medium-Term Loans): The dispute lies in the fact that the Plaintiff objects to the Defendant's action of adding the item to zakat base for the years in dispute, as the Plaintiff considers that it did not use the entire loan to finance assets but used part thereof to finance assets. In contrast, the Defendant argues that it added the item to zakat base because a year has passed thereon, and it turned out that they were in exchange for fixed assets in accordance with Note No. 9 of the financial statements.

Having perused Article 4. First.5 of the Implementing Regulations for the Collection of Zakat and Article 20.3 thereof, and based on the above, since loans are a component of zakat base, regardless of their type, source or classification, provided that a year has passed thereon, or that they are used to finance assets deducted from the zakat base without requiring the passage of a year thereon. Having taken cognizance of documents attached to the Case file, namely Note (9) of the financial statements, which stated that the Plaintiff obtained a loan during 2016, the purpose of which was to establish offices and finance the packaging activity. Moreover, it became clear that the loans subject of dispute were taken for different purposes and included financing fixed assets, but the Plaintiff did not specify the portion used to finance fixed assets, and since the Plaintiff did not attach the detailed transaction of the disputed loan. Therefore, the Department concludes to dismiss the Plaintiff's objection and uphold the Defendant's action regarding this item.

With regard to the item (Profit and Loss from Sale of Equipment, Machinery and Property of 2016): The dispute lies in the fact that the Plaintiff objects to the Defendant's action of adding an adjustment to the year's result with the profit resulting from the sale of property and equipment of 2016, since the Plaintiff considers that the Defendant has previously

allowed the loss to be added to 2018 result, while the Defendant argues that it did not deduct the results of the disposal of assets because the Plaintiff used the straight-line method.

Moreover, Article 7.2&14 of the Implementing Regulations for the Collection of Zakat states:

"2. Fixed assets are amortized in accordance with the straight-line method and are consumed as follows: ...

14. If a mixed Company uses the depreciation method specified in the Income Tax Law when determining its Zakat base, it shall be entitled to calculate the net book value of fixed to be deducted from Zakat base as follows: (The group's remaining value at the end of the year, as determined under Article 17.A-E of the Income Tax Law, after being adjusted by any unapproved depreciation differences, is added to the deferred (50% of the value of assets added during the year, less the deferred (50% of the compensation for assets excluded during the year)"

Having examined Article 5.1 of the Implementing Regulations for the Collection of Zakat, and Article 20.3 thereof, and based on the foregoing, since the dispute lies in amending the result of activity by not adding the capital gains resulting from the sale of fixed assets. Having perused the Case file, defenses and documents contained therein, it turned out that losses and profits of a capital nature are treated when calculating fixed assets when calculating depreciation according to the straight-line method, and since the Plaintiff did not attach the fixed assets calculation table to verify its processing of the value of profits resulting from the sale of fixed assets. Therefore, the Department concluded to dismiss the Plaintiff's objection and uphold the Defendant's action regarding this item.

With regard to the item (Fixed Assets Exclusions of 2016): The dispute lies in the fact that the Plaintiff objects to the Defendant's action of adjusting the value of fixed assets by an amount of SAR 397,601 for the disputed year, stating that it does not know the basis on which the Defendant based its action, while the Defendant argues that it deducted the fixed assets from zakat base according to the balance included in the financial statements. Based on the foregoing, and since the dispute lies in the fact that the Plaintiff argues that it does not know the basis on which the Defendant relied in its action, and having taken cognizance of the Case file and the defenses and documents contained therein, it turned out that the Defendant has responded to the same, as it stated that it excluded depreciation differences from the net profit and deducted the net fixed assets using the straight-line method, since the plaintiff is subject to the provisions of zakat and to the straight-line method provided for in Article 7.2 of the Implementing Regulations for the Collection of Zakat of 1438 AH. Therefore, the Department concluded to dismiss the Plaintiff's objection and uphold the Defendant's action regarding this item.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

- Accept the case filed by the Plaintiff/ ..... Company, C.R. No. ..... against the Defendant/ ZATCA in form, and dismiss it on merits.

This decision was issued in presence of both parties, and was read out publicly in the session, the Department set Wednesday, 05/10/2022 AD, as the date for receiving a copy of the decision, and any party to the case may request an appeal within (thirty) days from the day following the date set for receiving it, so that it becomes final and enforceable after the end of this period in the event that it is not appealed.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

The Second Department for The Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2022-1627)
Issued in Appeal No. (Z-46535-2021)

Key words:
Zakat Assessment - Accounts - Profit Difference in Sales of VAT Declarations - Owner's Current Balance.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision on zakat assessment of 2018. The Plaintiff based its objection on two items, First: (Profit Difference in Sales of VAT Declarations of 2018): The Plaintiff objects to the Defendant's action in adding the profit differences in sales of VAT declarations to the zakat base for the disputed year. The Plaintiff considers that his financial statements included the net results of some commercial register activities, which do not maintain the legal accounts, since the financial statements must include zakat accounting for all business and activities. In addition, the Plaintiff adds that his entire income cannot be disclosed in the VAT declarations in the same manner, but rather must be disclosed separately. The Plaintiff adds that the Defendant's treatment of calculating the profit margin at (15%) on the difference in revenues based on value-added tax and the net revenues that were disclosed will result in zakat duplication. In contrast, the Defendant argues that it adds the item to zakat base because there is a difference between the sales included in VAT returns and revenues from the income statement. It also states that it asked the Plaintiff to provide further clarification regarding these differences, but he did not do so. Furthermore, the Department found that the Plaintiff did not submit the approved financial statements and entered the income and expenses of subsidiary records that do not maintain legal accounts into the income and expenses of the activities that maintain legal accounts, and this procedure is unacceptable. Therefore, the Department concluded to dismiss the Plaintiff's objection regarding this item. Item Second: (Owner's Current Balance). The Plaintiff considers that according to the current account movement in the financial statements, the opening balance was SAR 6,181,348, and the amount used during the year was SAR 3,191,680, and therefore the balance that has passed the year is an amount of SAR 2,989,668. In contrast, the Defendant argues that it compared the statement submitted by the Plaintiff with balances of the financial statements, which were found to be inconsistent. The Department found that the Plaintiff did not submit the financial statements to be matched with the detailed transaction, but attached the detailed transaction to the partner's current account, which showed that the opening balance was an amount of SAR 7,653,477.77, which was paid during the year in the amount of SAR 2,473,330.48, and that the amount that passed a year was SAR 5,180,148, which was added by the Defendant to the base, which means that the Defendant's procedure is correct. Therefore, the Department concluded to dismiss the Plaintiff's objection regarding this item. Department ruled to accept the case in form and dismiss it on merits.

Instruments:

- Article (20/3) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 12/09/2022, the second department for the determination of income tax violations and disputes in Riyadh, stipulated in Article (67) of the Income Tax Law, issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed by Royal Decree No. (65474) dated 23/12/1439 AH, held its session remotely via video conference to consider the above-mentioned case. Since the case met the prescribed statutory requirements, it was filed with the General Secretariat of Zakat, Tax and Customs Committees with the above number on 08/04/2021.

The facts of this case are summed up that Plaintiff/ ....., holding National ID No. (....), owner of (....), Commercial Register No. (.....), filed its objection to zakat assessments of 2018, and its objection was determined in the following: Item First (Profit Difference in Sales of VAT Declarations of 2018). The Plaintiff objects to the Defendant's addition of the item of Profit Difference in Sales of VAT Declarations for the year in dispute to the zakat base. The Plaintiff believes that the revenues included in the financial statements included (net business results (revenues - expenses) and some activities of the subsidiary commercial registers that have no legal accounts), and therefore the auditor was unable to review and audit the accounts, so they were disclosed in "Clearing between revenues and their cost of revenue". The Plaintiff adds that due to the lack of relative importance between the amounts of revenues and expenses SAR (8,558,587 - 8,469,775), since the financial statements must include zakat accounting for all business results and activities for consolidation of financial liability, and therefore revenues cannot be disclosed in VAT declarations in the same manner, nor can they be disclosed in net terms. Therefore, the total revenue disclosed based on VAT declarations for the year must be greater than the net revenues disclosed under the audited financial statements. Moreover, the Plaintiff believes that the Defendant calculated the net profit at (15%) on the difference between them, which would result in a double calculation of zakat. Item Second: (Owner's Current Balance Added to 2018 Zakat Base): The Plaintiff objects to the Defendant's addition of owner's current account balance item to the zakat base for the disputed year. The Plaintiff argues that according to the current account transaction described in the financial statements in Note No. 13, the opening balance was SAR (6,181,348), and the amount used during the year was SAR (3,191,680). Accordingly, the balance that has passed a year is SAR (2,989,668). Furthermore, the Plaintiff clarifies that Article 4.I.2 of the Implementing Regulations provides that payment of most of the opening balance negates the passage of a year on that balance, and that what remains of the opening balance for the owner's current account on which a year has passed is added to the zakat base. The Plaintiff requests that the Defendant's action subject of the case be cancelled.

Having presented the statement of claim to the Defendant, it responded in a memorandum as follows: 1. With regard to the item: (Profit Difference in Sales of VAT Declarations of 2018): The Defendant explains that it added the item because there is a difference between sales included in the VAT declarations and revenues from the income statement, and also explains that it asked Zakat Payer to clarify these differences but Zakat Payer did not provide adequate explanation, so the Defendant excluded the impact of other activities from revenues under the financial statements, and added the revenues of other commercial

registers to the Zakat Payer, through which it is clear that there is a small difference in the amount of SAR (14,264) between what was recognized in the financial statements in the amount of SAR (93,066,335) and what was recognized in the VAT declarations in the amount of SAR (93,052,071.49), because the profitability ratio of other activities that do not maintain regular accounting books is (1%), which is an unacceptable ratio when calculating the estimated net profit for any activity. Therefore, it is unacceptable to add the net results of these activities to the income of activities that maintain regular accounting books. Therefore, Zakat Payer's objection was dismissed and the Defendant maintains the validity of its procedure. 2. With regard to the item: (Owner's Current Balance): The Defendant explains that it added the item in the amount of SAR (5,180,148) to the zakat base, where it compared the statement of current account movement and the balance of financial statements, which were found to be non-identical, so Zakat Payer's objection was dismissed. Therefore, the Defendant hereby seeks for issuing the judgment to dismiss the case.

On Monday, 12/09/2022 AD, the Department held its session remotely to consider the case, Mr. (.....), holder of national ID No. (.....), appeared in his capacity as Attorney of Plaintiff/....., under power of attorney No. (.....). In addition, ..., appeared in his capacity as Defendant's representative under Authorization No. (...). Therefore, the Department decided to open the hearing. Having asked the Plaintiff about the case, he replied: I object to the tax assessment for 2018 and relied solely on the statement of claim uploaded on the General Secretariat of Zakat, Tax and Customs Committees website, maintaining the defenses raised therein. Having presented the same to Defendant's representative, he answered: I would rely on the memorandum uploaded on the General Secretariat of Zakat, Tax and Customs Committees website, maintaining the defenses raised therein. Having asked both parties if they would like to add any statements, they were satisfied with such statements previously submitted. Accordingly, the pleadings were closed and the case was adjourned for consideration and deliberation.

Grounds

Having perused Zakat Law, issued under Royal Decree No. (17/28/577) dated 14/03/1376 AH, as amended and its Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, Rules for Calculating Zakat Taxpayers Estimated issued by Ministerial Decision No. (852) dated 28/02/1441 AH, and Income Tax Law issued under Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued under Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended, and Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

In Form: Since Plaintiff aims with its claim to cancel ZATCA decision regarding 2018 zakat assessment, and given that this dispute falls within the category of zakat disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of Tax Committee for Resolution of Tax Violations and Disputes. Given that the Case was filed by a party having capacity and within the statutory period. Therefore, the Department accepts the Case in form.

On Merits: Having taken cognizance of documents included in the Case file, requests and pleas raised by parties thereto:

Regarding Item: (Profit Difference in Sales of VAT Declarations of 2018). The dispute lies in the Plaintiff's objection to the Defendant's action in adding the profit differences in sales of VAT declarations to the zakat base for the disputed year. The Plaintiff considers that his financial statements included the net results of some commercial register activities, which do not maintain the legal accounts, since the financial statements must include zakat accounting for all business and activities. In addition, the Plaintiff adds that his entire

income cannot be disclosed in the VAT declarations in the same manner, but rather must be disclosed separately. Therefore, the total revenues disclosed based on the VAT declarations for the year are greater than Zakat Payer's net revenues disclosed based on the financial statements. The Plaintiff adds that the Defendant's treatment of calculating the profit margin at (15%) on the difference in revenues based on value-added tax and the net revenues that were disclosed will result in zakat duplication. In contrast, the Defendant argues that it adds the item to zakat base because there is a difference between the sales included in VAT returns and revenues from the income statement. It also states that it asked the Plaintiff to provide further clarification regarding these differences, but he did not do so, and since the profit margin from other activities that do not keep regular accounting books is (1%), it is an unacceptable percentage for calculating the estimated net profit.

Article 20.3 of the Implementing Regulations for the Collection of Zakat Issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates that: "The burden of proving validity of the items mentioned in Zakat Payer's zakat declaration and any other data shall fall on the Zakat Payer. In the event that the Zakat Payer is unable to prove validity of what is stated in his declaration, the Authority may not approve the item whose validity is not proven by the taxpayer or make an estimated assessment according to its discretion in light of the circumstances and facts related to the case and the information available thereto".

Having taken cognizance of the documents attached to the case file, it is found that the Plaintiff provided the statement of income, expenses, other records, closing entries for expenses and revenues related thereto, and an analytical monthly statement of Zakat Payer income and expenses for other sub-commercial records that are calculated on an estimated basis. With reference to the Case file, it is clear that the Plaintiff did not submit the approved financial statements, and entered the income and expenses of sub-records that do not have regular accounts into the income and expenses of activities that maintain regular accounts. This procedure is unacceptable, as the percentage of profitability of the Plaintiff's other activities that do not maintain regular accounting books is lower than the legal ratios established by the Zakat Regulation issued in accounting for estimated activities. Therefore, the Department concludes to dismiss the Plaintiff's objection and uphold the Defendant's action regarding this item.

With regard to the item (Owner's Current Balance), the dispute lies in the Plaintiff's objection to the Defendant's action of adding the item (Owner's Current Balance) to the zakat base of the year in dispute. The Plaintiff considers that, according to the current account transaction in the financial statements in Note No. 13, the opening balance was SAR (6,181,348), and the amount used during the year was SAR (3,191,680), thus the balance that has passed a year is SAR (2,989,668). In contrast, the Defendant argues that it compared the statement submitted by the Plaintiff with the balances of financial statements, and it became clear that they are not identical.

Article 4.I of the Implementing Regulations for the Collection of Zakat provides that: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including:

2. The current credit account of the owner or partner at the beginning or end of the year, whichever is less, as well as the increase in the current account if its source is from equity, or if it was finance for an acquisition asset".

5. Government and commercial loans, along with other similar financing sources, such as creditors, notes payable and overdrafts owed by Zakat Payer as follows:

a. The remaining cash that a full lunar year (Hawl) has passed on it.
b. were used to finance acquisition assets.
c. Were used in trade assets and had a year passed on it". Moreover, having taken cognizance of Article 20.3 the above Regulations,

Since the partner's current account is a component of zakat base and is added to it in if a year has passed thereon, or if it originated from property rights or was used to finance the assets deducted from the zakat base, and having perused the documents attached to the Case file, it is clear that the Plaintiff did not submit the financial statements to be matched with the detailed transaction, but rather attached the detailed transaction of the partner's current account, which indicates that the opening balance is SAR (7,653,477.77), which was paid during the year in the amount of SAR (2,473,330.48), and that the amount that have completed a full year was SAR (5,180,80), which the Defendant added to the base, which means that the Defendant's action is valid. Therefore, the Department concludes to dismiss the Plaintiff's objection and uphold the Defendant's action regarding this item.
For these grounds and after deliberation, the Department unanimously decided to:

Decision:

- Accept the Case filed by the Plaintiff/ ...., ID No. (...), Owner of (...), C.R No. (...), against the Defendant/ ZATCA in form, and dismiss it on merits.

This decision was delivered in presence of both parties. The Department set Wednesday, 19/10/2022 for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not appeal it.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

The Second Department for The Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2022-1634)
Issued in Appeal No. (I-35090-2021)

Key words:
Zakat Assessment - Accounts - Trade Receivables - Import Difference - Non-Deduction of Real Estate Contributions - Retained Earnings.

Abstract

The Plaintiff instituted this Case moving to cancel ZATCA's decision regarding zakat assessments for the years from 2014 to 2016. On merits, the Department found that the Plaintiff's objection centers on four items: the first Item: (Trade Receivables from 2014 to 2016). The dispute lies in the Defendant's addition of trade receivables to zakat base in 2014 in the amount of SAR 3,246,120. The Plaintiff believes that the Defendant considered the passage of a year on the balance without taking into account the receivables that have been paid within less than a year, adding that its nature is short-term, as it is collected from suppliers and contractors. In contrast, the Defendant argues that it added the item to zakat base of the year in dispute because the Plaintiff did not provide supporting documents. Since it was established to the Department that the dispute was settled with the Defendant accepting the Plaintiff's objection according to what was stated in the letter issued thereby, the dispute regarding this item is considered to have settled due to the expiration of the dispute between the two parties. The second item: (Import profit of 2014 and 2015). The dispute lies in that the Defendant added the import difference to the zakat base for the years 2014 and 2015 in the amount of SAR (127,968) and SAR (340,476) respectively, as the Plaintiff believes that the purchases were previously subject to zakat calculation for the years in dispute and that adding them is considered a re-calculation of their value. In contrast, the Defendant argues that it added the item to the zakat base for the year in dispute because the Plaintiff did not provide the supporting documents. Having perused the attachments and the Plaintiff's evidence of its point of view regarding the absence of differences, while the Defendant was satisfied with its argument that the Plaintiff did not submit supporting documents. Therefore, the Department concluded to accept the Plaintiff's objection with respect to this item, and two other items - The Department ruled to: Accept the case in form, amend the Defendant's action regarding 2014 by subjecting an amount of SAR (410,208.03) to zakat because a year has passed thereon, prove the settlement of the dispute regarding the years 2015 and 2016, cancel the Defendant's action regarding the item (Import Profit of 2014 and 2015), and dismiss the case regarding the item (Real Estate Contributions from 2014 to 2016) and the item (Retained Earnings of 2015 and 2016).

Instruments:

- Article (20/3) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH.

- Article (42) of Tax Dispute and Violation Committee Procedures issued by Royal Decree No. (26040) dated 21/04/1441 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 07/09/2022, the second department for the determination of income tax violations and disputes in Riyadh, stipulated in Article (67) of the Income Tax Law, issued by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and formed by Royal Decree No. (65474) dated 26/02/1444 AH, held its session remotely via video conference to consider the above-mentioned case. Since the case met the prescribed statutory requirements, it was filed with the General Secretariat of Zakat, Tax and Customs Committees with the above number on 23/08/2021.

The facts of this case are summed up that Plaintiff/ .... Company, Commercial Register No. ....., filed its objection to zakat assessments for the years from 2014 to 2016, and its objection was determined in the following items: Item First (The Item of Trade Receivables from 2014 to 2016), (1.A)- (2014): The Plaintiff objects to the Defendant's addition of trade receivables to 2014 zakat base in the amount of SAR (3,246,120), as the Plaintiff considers that the Defendant added the item to the zakat base on the grounds that a year has passed thereon, without consideration of payment within less than a year, and adds that its nature is short-term loans obtained from suppliers and contractors, and that its inclusion in the zakat base will lead to a zakat duplication. (1.B) - (2015 and 2016). Item Second: (Import Difference for 2014 and 2015). The Plaintiff based on the Defendant's addition of import difference to the zakat base for 2014 and 2015 in the amount of SAR (127,968) and SAR (340,476), respectively. Since the Plaintiff argues that these purchases have already been subjected to zakat in previous years and that their addition will result in recalculating their value and adding them to the net profit. Item Third: (Non-Deduction of Real Estate Contributions for the years 2014, 2015 and 2016). The Plaintiff objects to the Defendant's non-deduction of real estate contributions represented by a plot of land from the zakat base from 2014 to 2016 in the amount of SAR 5,000,000. The Plaintiff states that the real estate contribution is a plot of land in the city of Mecca, in which the Plaintiff owns part of the land area, and argues that it is not available for sale or purchase at the present time, and this is based on the fact that it is considered a fixed asset that cannot be dealt with. Item Fourth: (Retained Earnings of 2015 and 2016). The Plaintiff based on the Defendant's non-deduction of the retained earnings from zakat base of 2015 and 2016 in the amount of SAR 17,213,370 and SAR 13,283,091 respectively. The Plaintiff explains that the retained earnings at the beginning of the period were distributed to the partners during the year. Accordingly, Plaintiff requests the annulment of Defendant's action in question.

Having presented the statement of claim to Defendant, it responded with a memorandum summarized as follows: First: In form: The Defendant pleads that the case is inadmissible in form based on Article 3.2 of the Tax Dispute and Violation Committee Procedures. Second: On merits: 1. (Trade Receivables from 2014 to 2016): (A - 2014): The Defendant explains that it rejected the Plaintiff's objection for not providing documentary proof of the account transaction, based on Article 20.3 of the Implementing Regulations for the Collection of Zakat, and maintains the validity and soundness of its procedure. (B.2015/ 2016): The Defendant accepted the Plaintiff's request in this item. 2. (The Item of Import Profit of 2014 and 2015): The Defendant explains that it rejected the Plaintiff's objection for failing to provide documentary proof represented by the customs declaration and a statement of internal and external purchases from the Company's accounting system, in conformity with the declaration and the statement of customs, while stating justification

of the difference, based on Article20.3 of the Implementing Regulations for the Collection of Zakat, and maintains the validity and soundness of its procedure. 3. (Real estate Contributions from 2014 to 2016): The Defendant asserts that it refused the objection to this item because real estate investments are available for sale and mudaraba and are non-deductible based on Fatwa No. (19382) of 02/01/1418 AH. In addition, the Defendant adds that the Plaintiff did not provide documentary evidence in support of its point of view, and therefore the Defendant maintains the validity and soundness of its procedure. 4. (Retained Earnings Item of 2015 and 2016): The Defendant explains that it rejected the Plaintiff's objection for not providing documentary proof, based on Article 20.3 of the Implementing Regulations for the Collection of Zakat, and maintains the validity and soundness of its procedure. Accordingly, Defendant requests dismissing the case.

On Monday, 25/07/2022 AD, the Department held a remote session to consider the Case. Whereas ....., National ID No. (....), appeared in his capacity as an attorney of the Plaintiff under POA No. (...), and ..... also appeared in his capacity as a representative of the Defendant under an authorization No. (....). Therefore, the Department decided to open the hearing. Having asked the Plaintiff's Attorney about the case, he replied: I object to the zakat assessments for the years from 2014 to 2016, and I determine the objection on the following items: Item First Accounts Payable of 2014. The second item: Import differences of 2014 and 2015. The third item: Non-Deduction of Real Estate Contributions of 2014, 2015 and 2016. The fourth item: Retained Earnings of 2015 and 2016. I am satisfied with the statement of claim uploaded on the General Secretariat of Tax and Customs Committees portal, maintaining the defenses raised therein, and request a grace period to provide further documentation supporting my agent's point of view related to real estate contribution losses. Having presented the same to Defendant's representative, he answered: I would rely on the memorandum uploaded on the General Secretariat of Tax and Customs Committees portal, maintaining the defenses raised therein. Having asked parties hereto whether they had further statements, they were satisfied with earlier submissions. Accordingly, the Department decided to postpone the hearing of the case until Wednesday 17/08/2022 at 5:00 PM.

On Wednesday, 17/08/2022 AD, the Department held its session remotely to consider the case, in which the Plaintiff's attorney/ Mr. ..... appeared, as well as/ ..... in his capacity as Defendant's representative, whose attendance and introduction were also previously noted. At the hearing, the Department perused submission of the Plaintiff. Having asked both parties if they would like to add any statements, they were satisfied with such statements previously submitted. Accordingly, the Department decided to adjourn Case consideration to the session on Wednesday 07/ 09/2022, at 05:00 PM.

On Wednesday, 07/09/2022 AD, the Department held its session remotely to consider the case, in which the Plaintiff's attorney/ Mr. ..... appeared, as well as/ ..... in his capacity as Defendant's representative, whose attendance and introduction were also previously noted. At the hearing, the Department asked the Plaintiff's attorney whether the Plaintiff accepted the Defendant's action in its reply (1) regarding the trade receivables item of 2015 and 2016, he replied "Yes". Having asked both parties if they would like to add any statements, they satisfied with the earlier submissions. Therefore, the Department decided to close pleadings and adjourn the Case for deliberation.

Grounds

Having perused Zakat Law, issued under Royal Decree No. (17/28/577) dated 14/03/1376 AH, as amended and its Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, Income Tax Law issued under Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued under Ministerial Decision No. (1535) dated 11/06/1425 AH, as

amended, and Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

In Form: Since the Plaintiff aims to dismiss the Defendant's decisions regarding the zakat assessments for the year from 2014 to 2016, and since this dispute is one of the tax disputes within the jurisdiction of the Tax Committees for Resolution of Income Tax Violations and Disputes, pursuant to Royal Decree No. (26040) dated 21/04/1441 H, and since the case was filed in a reasoned manner, by a competent person, and within the legally prescribed period, the case should be accepted in form.

On Merits: after the Department has examined the papers and the requests and pleas initiated by the case's parties, the Department found that the dispute lies as follows:

With regard to the item (Trade Receivables from 2014 to 2016). The dispute lies in the Defendant's addition of trade receivables to zakat base of 2014 in the amount of SAR 3,246,120, as the Plaintiff believes that the Defendant considered the passage of a year on the balance without taking into account the receivables paid in less than one year, and adds that their nature is short-term as they are collected from suppliers and contractors, and that its inclusion in the cost of revenue and imposing zakat on the profit would result in a zakat duplication, while the Defendant argued that it added the item to the zakat base for the disputed year because the Plaintiff did not provide supporting documents.

Article 4.I of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates that: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including:

5. Government and commercial loans and other similar sources of financing, such as: creditors, payment papers, and overdraft accounts owed by the Zakat payer which:

a. The remaining cash that a full lunar year (Hawl) has passed on it.
b. were used to finance acquisition assets.
c. were used in trade assets and had a year passed on it".

Since trade receivables are a component of zakat base, provided that a year has passed thereon or they are used to finance assets deducted from zakat base. Since the dispute on this item has been established to be a documentary dispute, and having perused the documents attached to the Case file, it is found that the Plaintiff has attached the trial balance for the accounts of trade receivables item (suppliers-subcontractors), and it is clear that the opening balance, the movement during the year and the closing balance with a total amount of SAR (3,246,124.33). Having examined the submitted transaction, it became clear that account no. (...) in the name of ".... Saudi Company" is the only account that a year has passed thereon from among the accounts included in the trial balance for the trade receivables item of 2014. Accordingly, it is clear that a year has not passed on all the amounts subject to the objection, which requires that the amount of SAR (410,208.03) that has passed a year be subject to zakat, without any other accounts in that trial balance referred to for the fiscal year 2014 AD. Therefore, the Department concluded to accept the Plaintiff's objection, and amend the Defendant's procedure in relation to this item, in accordance with what was indicated.

Regarding (1.B: 2015 and 2016). Article (42) of the Tax Dispute and Violation Committee Procedures stipulates that: "Decisions of the dispute committee shall become final in the following cases:

3. If the parties agree to settle before the circuit". The Department established that the dispute has settled with the Defendant accepting the Plaintiff's objection, as stated in its letter issued by it in the reply submitted on 05/04/2021, containing: "Zakat Payer's objection to the accounts payable item was accepted on the basis of the transaction submitted, as the amounts of SAR (431,643) and SAR (5,064,296) that have passed a year were added". The Plaintiff's attorney accepted this procedure according to his statement in the minutes of the dispute hearing held on Wednesday 07/09/2022, the dispute on this

item is considered to have settled due to the expiration of the dispute between the two parties.

With regard to Clause: (Import Difference of 2014 and 2015). The dispute lies in the Defendant's addition of the import difference to zakat base for the years 2014 and 2015 in the amount of SAR (127,968) and SAR (340,476), respectively. The Plaintiff believes that the purchases were previously subject to zakat calculation for the years in dispute and that adding them constitutes a recalculation of their value. The Plaintiff believes that the Defendant added them to the net profit, and confirms that there is no difference in foreign imports, which is in conformity with the customs declaration and was disclosed in the declaration submitted in the expenses item. In contrast, the Defendant argues that it added the item to the zakat base for the year in dispute because the Plaintiff did not submit supporting documents.

Article 5.1 of the Implementing Regulations for the Collection of Zakat provides that: "The following expenses can be deducted to determine the net result of activity: 1. Expenses ordinary and necessary for an entity to engage in business activity, subject to meeting the following criteria:

A. If it is an actual expense, supported by documents or other evidence which enable the Department to verify it, even if it is related to previous years. In addition, Article 6.2 concerning expenses that may not be deducted also stipulates that "Expenses that the Zakat Payer fails to prove by supporting documents or other evidential matter acceptable to the Authority". Article 20.3 of the Implementing Regulations for the Collection of Zakat stipulates that: "The zakat payer bears the burden of proving the validity of the items stated in the declaration and any additional data, and if he is unable to do so, ZATCA may reject the item that the zakat payer cannot prove its validity or make an estimate assessment as per its discretion in light of the relevant circumstances and facts as well as the data available to it".

Since the import statement issued by Saudi Customs is a basic presumption from a neutral third party, and having perused the Case file, it is found that the Defendant's action to amend the results of the Plaintiff's work of 2014 and 2015 is due to differences in the value of imports included in the Plaintiff's declaration as compared to the imports according to the customs declaration. Having taken cognizance of documents attached to the Case file, it is found that the Plaintiff provided the reasons for these differences, stating that there is no difference in foreign imports since foreign purchases are in conformity with the customs declaration but were wrongly disclosed under direct expenses item (miscellaneous item) rather than showing them within the foreign purchases. The Plaintiff has also submitted the following: (General Journal Entries for Purchases during 2014, No. (515531), No. (515712), No. (516139), with a total amount of SAR (1,279,688), and submitted customs statements supporting them - General Journal Entries for Purchases during 2015, No. (517019), No. (517897), No. (517983), No. (518521), No. (519096) with a total amount of SAR (1,450,234), and submitted customs statements supporting them, in addition to submitting the trial balance). Accordingly, having taken cognizance of the attachments and having the Plaintiff prove its view that there were no differences, while the Defendant was satisfied with its argument that the Plaintiff did not submit supporting documents. Therefore, the Department concluded to accept the Plaintiff's objection and dismiss the Defendant's action regarding this item.

With regard to the item (Real Estate Contributions from 2014 to 2016), the dispute lies in Defendant's failure to deduct real estate contributions represented by a plot of land from the zakat base from 2014 to 2016 in the amount of SAR 5,000,000. The Plaintiff states that the real estate contribution is a plot of land in the city of Mecca, in which the Plaintiff owns part of the land area, and that its purpose is not to be sold, and this confirms that it is considered as an asset of the Company that is not subject to negotiation. In contrast, the

Defendant argued that it added the item to zakat base for the year in dispute because real estate investments were available for sale and mudaraba and were non-deductible, in addition to the Plaintiff's failure to provide supporting documents.

Article 4.2 of the Implementing Regulations for the Collection of Zakat provides stipulates that: "The following items shall be deducted from the Zakat Base:

1. Fixed assets including the following: Fixed assets obtained for use, payments for the purchase of fixed assets, spare parts and materials not for sale, provided that these assets are owned by Zakat Payer, unless there is a legal impediment to transferring ownership, and that they are used in the activity". Having perused Article 20.3 of the Implementing Regulations for the Collection of Zakat,

Having examined the data provided by the parties, it became clear that these real estate contributions do not meet the deduction conditions, since they are prepared for sale, and the Plaintiff did not submit documents supporting its point of view and that they are not prepared for sale, therefore they may not be deducted from the zakat base. Therefore, the Department concludes to dismiss the Plaintiff's objection and uphold the Defendant's action regarding this item.

With regard to Clause: (Retained Earnings for 2015 and 2016 - Dividends), the dispute lies in the Defendant's failure to deduct the retained earnings from the zakat base for the years 2015 and 2016 in the amount of SAR (17,213,370) and SAR (13,283,091) respectively, and the Plaintiff believes that the retained earnings at the beginning of the period were distributed to the partners during the years. In contrast, the Defendant argues that it added the item to the zakat base for the disputed year due to the Plaintiff's failure to submit supporting documents.

Article 4.I of the Implementing Regulations for the Collection of Zakat provides that: "11. Dividends under distribution excluding the dividends announced for distribution but their owners have not received them, provided that they are deposited in a special account that the company is not allowed also stipulated and the item dispose of". Additionally, Article 4.I of the Implementing Regulations for the Collection of Zakat issued by Finance Minister Decision No. (2082) dated 01/06/1438 AH, provides that: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 8. The balance of profits carried forward from previous years at the end of the year". Having taken note of Article 20.3 of the aforementioned Implementing Regulations for the Collection of Zakat,

Since the base is to add the retained profits at the end of the year after deducting the dividends to the zakat base, and since the dispute on this item is documentary, and with reference to the Case file and the defenses and documents contained therein, it turned out that the Plaintiff attached (the minutes of partners' meeting dated 09/04/2015, which includes the partners' decision to distribute the profits for 2014 to the partners in the amount of SAR (17,213,370) - the minutes of partners' meeting dated 20/01/2016 containing the decision of the partners to distribute the profits for 2015 to the partners in the amount of SAR (13,283,091) - Journal entry No. (518589) for the distribution of profits to partners for 2014 - Journal entry No. (521410) for the distribution of profits to partners for 2015 - in addition to the general ledger account, which shows that the remaining balance not distributed to partners for 2014 is SAR (1,204,684.05) - in addition to the general ledger account, which shows that the remaining balance not distributed to partners for the year 2015 is SAR (6,353,998.41). Since these documents are insufficient and cannot be relied upon, and since the Plaintiff did not submit payment receipts and a bank statement supporting that these amounts are no longer in its liability in order to verify what it claims. Therefore, the Department concludes to dismiss the Plaintiff's objection and uphold the Defendant's action with regard to this item.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

First: Accept the case filed by the Plaintiff/ ..... Company, C.R No. (.....), against the Defendant/ ZATCA, in form.

Second: On Merits:

1. With regard to Trade Receivables Item:
   a. Amend the Defendant's action regarding 2014, by subjecting an amount of SAR (410,208.03) to zakat because a year has passed thereon, according to what was stated in the reasons.
   b. Settle the dispute regarding 2015 and 2016.
2. Overturn the Defendant's action regarding the item (Import Profit of 2014 and 2015), as stated in the reasons.
3. Dismiss the case regarding the item (Real Estate Contributions from 2014 to 2016).
4. Dismiss the case regarding the item (Retained Earnings of 2015 and 2016).

This decision was delivered in presence of both parties and was read publicly at the hearing. The Department set Thursday, 03/11/2022, as the date for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not appeal it.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

The Second Department for The Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (ISR-2022-1637)
Issued in Appeal No. (Z-54324-2021)

Key words:
Zakat Assessment - Accounts - Hired Labor - Incentives and Rewards for Employees - Accrued Expenses that Have Completed a Full Year - Long-Term Loans - Loss of a Subsidiary - Unsupported Dividends - Contributions.

Abstract

The Plaintiff instituted this Case moving to cancel ZATCA's decision regarding zakat assessments for the years from 2008 to 2012. On merits, the Department found that the Plaintiff's objection centers on following items: With regard to the items (Hired Labor from 2009 to 2012), (Unsupported Dividends of 2009 and 2010), (Contributions of 2012) and (Loss of a Subsidiary from 2008 to 2012), since the legal texts provide that decisions of the Primary Department shall be final in the event that the parties to the case agree to a settlement before the Department. Since it is established that the Defendant accepted the Plaintiff's requests regarding these items, in accordance with its reply to the statement of claim, the dispute over these items is considered to be settled due to the expiration of dispute between the parties by the Defendant's acceptance of the Plaintiff's requests related to these items. With regard to the item (Incentives and Rewards for Employees from 2009 to 2012), the dispute lies in the Plaintiff's objection to the Defendant's action of amending results of the year's work with the item (Remuneration for 2009 - 2012). The Plaintiff considers that they represent actual, incurred and necessary expenses for the Company's activity and therefore they are deductible expense. In contrast, the Defendant argues that it did not approve the remuneration item because the plaintiff did not submit the regulations for rewards, incentives and penalties approved by the Ministry of Labor. The Department found that the Plaintiff did not attach a sample of the employees' contracts, nor did the plaintiff submit a certificate from GOSI proving the registration of employees' salaries and bonuses. Therefore, the Department concluded that the Defendant's procedure regarding this item is valid and sound. With regard to the item (Accrued Expenses that Have Completed a Full Year from 2009 to 2012), the dispute lies in the Plaintiff's objection to the Defendant's procedure of adding accrued expense balances to the zakat base on the grounds that a year has passed thereon. Furthermore, the Plaintiff considers that the balance represents business dealings with suppliers where the Company purchases goods or services and does not receive cash from them, and does not include the balance of accounts payable resulting from business dealings in the zakat base. The Plaintiff also argues that zakat is due on the money owner, while the Defendant argues that it added the balance to zakat base as a result of the passage of a year thereon based on the Plaintiff's financial statements. The Department found that the Plaintiff did not provide the detailed transaction of the account to verify the passage of a year on balances. Therefore, the Department concluded to dismiss the Plaintiff's objection regarding this

item, and two other items - The Department ruled to: Accept the case in form, dismiss the case regarding the items (Incentives and Rewards for Employees from 2009 to 2012), (Accrued Expenses that Have Completed a Full Year from 2009 to 2012), (Long-Term Loans of 2010 and 2011) and (Others from 2008 to 2012), and settle the dispute regarding the item (Hired Labor from 2009 to 2012), (Loss of a Subsidiary from 2008 to 2012), (Unsupported Dividends of 2009 and 2010) and (Contributions of 2012).

Instruments:

- Articles (5.4.First), (5) and (20.3) of the Implementing Regulations for Zakat Collection issued by Finance Minister's Resolution No. (2082) dated 01/06/1438 AH.
- Article (42) of Tax Dispute and Violation Committee Procedures issued under Royal Decree No. (26040) dated 21/04/1441 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 21/09/2022 AD, the Second Department for the Determination of Income Tax Violations and Disputes in Riyadh, stipulated in Article 67 of Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH as amended, and formed by Royal Decree No. (65474) dated 23/12/1444 AH, held a session remotely via video conference to consider the above-mentioned case. Since the case has met the prescribed legal requirements, it was filed with the General Secretariat of the Tax Committees under the above number on 13/06/2021 AD.

The facts of this case are summed up that Plaintiff/...., Commercial Register No. (.....), filed its objection to zakat assessments for the years from 2008 to 2012, and its objection was determined in the following items: Item First (Hired Labor from 2009 to 2012). Item Second: (Incentives and Rewards for Employees from 2009 to 2012). The Plaintiff based on the Defendant's amendment of results of the year's work with the item (Remuneration of 2009 - 2012), stating that they represent real expenses incurred and necessary for the Company's activity, and therefore they are deductible zakat expenses. Item Third: (Accrued Expenses that Have Completed a Full Year from 2009 to 2012). The Plaintiff based on the Defendant's action of adding the item to the zakat base for the disputed years on the ground that a year has passed thereon. The Plaintiff explains that the balance is the result of commercial transactions, as the Company purchases goods and services from suppliers and does not receive cash from them. Therefore, the Company does not include the balance of accounts payable within the zakat base. Item Fourth: (Long-Term Loans of 2010 and 2011). The Plaintiff based on the Defendant's action of adding the item to the zakat base for the disputed year on the ground that a year has passed thereon. The Plaintiff argues that the Defendant did not take into account the balance movement, and also states that zakat is not due on the balance, since zakat is obligatory and due on the money owner. Item Fifth: (Loss of a Subsidiary from 2008 to 2012). Item Sixth: (Unsupported Dividends of 2009 and 2010). Item Seventh: (Contributions of 2012). Item Eighth: (Others from 2008 to 2012). The Plaintiff based on the Defendant's amendment of results of the year's work with other expenses from 2008 to 2012, stating that they represent real expenses incurred and necessary for the Company's activity, and therefore they are deductible zakat expenses. Accordingly, Plaintiff requests the annulment of Defendant's action in question.

Having presented the statement of claim to Defendant, it responded with a memorandum summarized as follows: 1. (Long-Term Loans of 2010 and 2011), the Defendant explains that it added the long-term loan balance, based on Fatwa No. (22665) of 15/04/1424 AH, and the answer to the second question, which includes adding all the money owned and

benefitted by third parties to the zakat base, where they are treated based on zakat considering what they have become. This is confirmed by Article 4.First of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) of 01/06/1438 AH. 2. (Incentives and Rewards for Employees from 2009 to 2012), the Defendant asserts that it did not approve the bonus item, as the Plaintiff did not provide the regulations for bonuses, incentives and penalties approved by the Ministry of Labor, in addition to contracts for employees. 3. (Accrued Expenses that Have Completed a Full Year from 2009 to 2012), the Defendant argues that it added the item to the zakat base for the disputed years on the ground that a year has passed on the balance of expenses based on the financial statements. 4. (Other Expenses from 2008 to 2012): The Defendant explains that it added the item to the zakat base for the disputed years because the Plaintiff failed to provide supporting documents thereof. Regarding the items 5. (Hired Labor). 6. (Dividends). 7. (Losses of a Subsidiary). 8. (Contributions), the Defendant states that the Plaintiff's request regarding these items has been accepted. The Defendant requests that the case be dismissed.

On Wednesday, 21/09/2022 AD, the Department held e-hearing session to consider the Case. At that session, …., holder of National ID No. (...), appeared, in his capacity as the Plaintiff's Attorney by POA No (....), and ..... appeared in his capacity as the Defendant's Attorney, by Authorization No. (....). Therefore, the Department decided to open the hearing. Having asked the Plaintiff's Attorney about the case, he replied: I object the zakat assessments for the years from 2008 to 2012 AD, I am satisfied with the statement of claim filed on the portal of General Secretariat of Tax Committees, and I adhere to the pleas and requests contained therein. Having presented the same to Defendant's representative, he answered: I would rely on the memorandum uploaded on the General Secretariat of Zakat, Tax and Customs Committees website, maintaining the defenses raised therein. Having asked both parties if they would like to add any statements, they were satisfied with their earlier submissions. Accordingly, the pleadings were closed and the case was adjourned for consideration and deliberation.

Grounds

Having perused Zakat Law, issued under Royal Decree No. (17/28/577) dated 14/03/1376 AH, as amended and its Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, Income Tax Law issued under Royal Decree No. (M/1) dated 15/01/1425 AH, as amended, and its Implementing Regulations issued under Ministerial Decision No. (1535) dated 11/06/1425 AH, as amended, and Tax Dispute and Violation Committee Procedures, issued under Royal Order No. (26040) dated 21/04/1441 AH.

In Form: Since the Plaintiff aims to dismiss the Defendant's decisions regarding the zakat assessments for the year from 2008 to 2012, and since this dispute is one of the zakat disputes within the jurisdiction of the Tax Committees for Resolution of Income Tax Violations and Disputes, pursuant to Royal Decree No. (26040) dated 21/04/1441 H, and since the case was filed in a reasoned manner, by a competent person, and within the legally prescribed period, the case should be accepted in form.

On Merits: Upon careful consideration of the case file and the requests and arguments of the parties, the Department finds as follows:

With regard to the items (Hired Labor from 2009 to 2012), (Unsupported Dividends of 2009 and 2010), (Contributions of 2012) and (Loss of a Subsidiary from 2008 to 2012), and since Article (42) of the Rules of Action of the Tax Dispute and Violation Committee Procedures provides that: "Decisions of the dispute committee shall become final in the following cases:

3. If the parties agree to settle before the Department". Since it is established that the Defendant accepted the Plaintiff's requests regarding these items according to its replication to the statement of claim, the dispute regarding these items is considered to have settled due to the expiration of the dispute between the two parties by the Defendant's acceptance of the Plaintiff's requests regarding these items.

With regard to the item (Incentives and Rewards for Employees from 2009 to 2012), the dispute lies in the Plaintiff's objection to the Defendant's procedure of amending the results of year's work with the item (Remuneration of 2009 - 2012), the Plaintiff considers that they represent real, incurred and necessary actual expenses for the Company's activity and are therefore deductible expenses. In contrast, the Defendant argues that it did not approve the remuneration item because the Plaintiff did not provide the regulations for bonuses, incentives and penalties approved by the Ministry of Labor.

Since Article 5.2 of the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision (2082) of 01/06/1438 AH concerning the expenses that may be deducted provides that: "Salaries and allowances of owner of the enterprise, whether it is a sole proprietorship, a corporation or a partnership, as well as bonuses paid to board Chairman, Deputy Chairman and members who are shareholders in the company, shall be considered deductible expenses, provided that owner's salaries and allowances are registered with GOSI". Article 20.3 of the same Implementing Regulations also stipulates that "The burden of proving validity of the items mentioned in taxpayer's Zakat declaration and any other data shall fall on the taxpayer. In the event that the taxpayer is unable to prove validity of the items mentioned in his declaration, ZATCA may not approve the item whose validity is not proven by the taxpayer or make an estimated assessment according to its discretion in light of the circumstances and facts related to the case and the information available thereto".

Since it is established that incentives and bonuses paid to workers are among the expenses that may be deducted from the zakat base if two conditions are met. First: Such expenses (salaries and bonuses) are registered in social insurance. Second: Such expenses are supported by supporting documents. Since the Plaintiff did not attach a sample of employee contracts, nor did it provide a certificate from GOSI evidencing the registration of employee salaries and bonuses. Therefore, the Department concludes that the Defendant's procedure regarding this item is valid and sound.

With regard to the item (Accrued Expenses that Have Completed a Full Year from 2009 to 2012), the dispute lies in the Plaintiff's objection to the Defendant's procedure of adding accrued expense balances to the zakat base on the ground that a year has passed thereon. In addition, the Plaintiff considers the balance to be business dealings with suppliers, as the Company purchases goods or services and does not receive cash from them and does not include the balance of accounts payable resulting from business dealings in the zakat base. Moreover, the Plaintiff argues that zakat is due on to the capital owner, while the Defendant argues that it added the balance to the zakat base as a result of the passage of a year thereon based on the Plaintiff's financial statements.

Whereas Article (4/First) of the Implementing Regulations for Zakat Collection issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH stipulates that: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including:

5. Government and commercial loans, along with other similar financing sources, such as creditors, notes payable and overdrafts owed by Zakat Payer as follows:

a. The remaining cash that a full lunar year (Hawl) has passed on it.
b. Were used to finance acquisition assets.
c. Were used in trade assets and had a year passed on it".

Accrued expense balances are a component of the zakat base provided that a year has passed on those balances, and having perused the attached documents, it is found that the

Plaintiff did not provide the detailed transaction of the account to verify that a year has passed on the balances. Regarding the Plaintiff's arguments that the funds are not owned by the Company and zakat is not due thereon, the lesson is the result of the essence of obligation and what it entails in terms of the debtor's liability being occupied with the debt due to his benefit from funds that were provided to him or remained in his possession, so he must pay zakat on it in the balance it had at the end of the year, and the creditor's debt is a right in the debtor's liability and is money owned by him in its liability, and therefore balances that have completed a full year must be added to the zakat base. Therefore, the Department concluded to dismiss the Plaintiff's objection to this item and uphold the Defendant's procedure regarding this item.

With regard to the item (Long-Term Loans of 2010 and 2011), the dispute lies in the Plaintiff's objection to the Defendant's procedure of adding the closing balance of long-term loans for 2010 and 2011, since the Plaintiff considers that the zakat is due on the capital owner. In contrast, the Defendant argues that it added the balance to the zakat base based on Fatwa No. (22665) of 15/04/1424 AH.

Having taken cognizance of Article 4.5 of the Implementing Regulations for the Collection of Zakat referred to therein, and since loans are a component of the zakat base, regardless of their type, source or classification, provided that a year has passed thereon or are used to finance assets deducted from the zakat base without requiring a year to pass thereon. Since the Plaintiff did not provide the necessary documents and detailed data through which the movement of these loans can be traced, nor did it clarify the fate of these loans and where they were spent. Therefore, the Department concludes that the Defendant's procedure regarding this item is valid and sound.

With regard to the item (Others from 2008 to 2012), the dispute lies in the Plaintiff's objection to the Defendant's procedure of adjusting the results of the year's work with other expenses from 2008 to 2012. The Plaintiff considers that the expense represents real, incurred and necessary expenses for the Company's activity, while the Defendant argues that it added the balance to the zakat base because the Plaintiff did not provide supporting documents thereof.

Article 5 of the Implementing Regulations for the Collection of Zakat, issued by Ministry of Finance Decision No. (2082) dated 01/06/1438 AH, concerning deductible expenses, stipulates: "The following expenses can be deducted to determine the net result of activity:

1. Expenses ordinary and necessary for an entity to engage in business activity, subject to meeting the following criteria:

a. Expenses should be actual expenses as supported by relevant documents and other evidential matter to enable the Authority to verify the accuracy of expenses, even if related to prior years". Article 6.2 of the same Regulations related to deductible expenses states: "Expenses that the Zakat Payer fails to prove by supporting documents or other evidential matter acceptable to the Authority", and having perused Article 20.3 of the same Regulations referred to herein,

Based on the foregoing, since these expenses are considered a deductible expenses if they are proven that they are actual expenses supported by supporting documents, and since the dispute over this item is a documentary dispute, and having taken cognizance of the documents attached to the Case file, it became clear that Plaintiff did not submit the documents supporting the expenses subject of dispute. Therefore, the Department decides to dismiss the Plaintiff's objection and uphold the Defendant's procedure regarding this item.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

First: Accept the Case filed by the Plaintiff ...., C.R No. (...), against the Defendant/ ZATCA in form.

Second: On Merits:

1. Dismiss the Case regarding the item (Incentives and Rewards for Employees from 2009 to 2012).
2. Dismiss the Case regarding the item (Accrued Expenses that Have Completed a Full Year from 2009 to 2012).
3. Dismiss the Case regarding the item (Long-Term Loans of 2010 and 2011).
4. Dismiss the Case regarding the item (Others from 2008 to 2012).
5. Settle the dispute regarding the item (Hired Labor from 2009 to 2012).
6. Settle the dispute regarding the item (Loss of a Subsidiary from 2008 to 2012).
7. Settle the dispute regarding the item (Unsupported Dividends of 2009 and 2010).
8. Settle the dispute regarding the item (Contributions of 2012).

This decision was delivered in presence of both parties and was read publicly at the hearing. The Department set Thursday, 03/11/2022, as the date for receiving a copy of the decision. Either party to the Case may appeal against the decision within (30) thirty days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable after expiry of such period if either party does not appeal it.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

The Third Department for Determination of Income Tax Violations and Disputes in Riyadh

Decision No. (ITR-2022-6470)
Issued in Appeal No. (ZI-63921-2021)

Key words:
Zakat Assessment - Advance Payments to Third Parties - Partners' Current Account - Set-Off Between Debit and Credit Accounts - Zakat Payer Shall Bear the Burden of Proving Validity of its Zakat Declaration - Overturn the Defendant's Action.

Abstract

The Plaintiff instituted this Case moving to cancel ZATCA's decision regarding zakat assessments of 2017 with regard to the item of Advance Payments to Third Parties of 2018, based on that advance payments pertain to the same customer account that has balances due to us, as they are separated by the accounting classification into debit and credit for each account separately, and requests set-off between the debit and credit accounts. ZATCA responded that, upon assessment, it added the advance payments to third parties that have completed a full year. It was established to the Department that the Plaintiff requests a set-off between the debit and credit accounts. With reference to the documents submitted in the Case, it turned out that there are no amounts that have completed a full year. Department ruled to Overturn the Defendant's decision and the decision shall be considered final and enforceable.

Instruments:

- Articles (4.4/5/) and (20.3) of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 18/09/2022 AD, the Third Department for the Determination of Income Tax Violations and Disputes in Riyadh, provided for in Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended and formed pursuant to Royal Order No. (22800) dated 25/04/1442 AH, convened its session remotely via video and audio communication to consider above-mentioned case. Since the case fulfilled the established regulatory requirements, it was filed with General Secretariat of Zakat, Tax and Customs Committees under the above number on 09/08/2021 AD.

The facts of this case are summed up in that Mr..... National ID No. (.....) in his capacity as the attorney of Plaintiff/ .... Company Ltd, (C.R. No. ...), under POA No. (...), filed its objection to zakat assessments of 2017 issued by ZATCA, and the dispute between the Plaintiff and the Defendant is about the item of advance payments to third parties of 2018. The Plaintiff stated that the advance payments pertain to the same customer account that has balances due to us, as they are separated by the accounting classification into debit

and credit for each account separately, and requests set-off between the debit and credit accounts, and requests that the Defendant's action be overturned.

Having presented the Plaintiff's statement of claim to the Defendant, it responded that, upon assessment, it added the advance payments to third parties that have completed a full year in the amount of SAR (6,300,179), according to the statements submitted. When examining the objection, the Plaintiff was notified to convene a meeting. At the first meeting, only the years 2015 and 2016 were discussed, but it apologized and ZATCA was not contacted to set another meeting. Having taken cognizance of the statement of objection and its attachments, financial statements and the assessment, it was found that Zakat Payer agreed with the Defendant on the passage of a year on these balances according to its objection, but stated that there were corresponding debit balances, and requested a set-off between the debit and credit accounts, but the Implementing Regulations for the Collection of Zakat did not allow for setoff between the debit and credit accounts, and only allowed it in the partner's current account. Having perused the Plaintiff's objection of 2018, it is not clear that this item was part of the objection, and since there is no addition or deduction except by a provision. According to Article 4.I.5 of the Implementing Regulations for the Collection of Zakat, which stipulated that: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: A. remained in cash and had a year passed on it, B. Were used to finance acquisition assets C. Were used in trade assets and had a year passed on it". Therefore, the objection of Zakat Payer was rejected because a year has passed on these amounts. ZATCA insists on the validity and soundness of its procedure.

On Sunday, 18/09/2022, the Department held its session remotely to consider the Case. Having called the parties to the case ....., holder of National ID No. (...), appeared in its capacity as the Plaintiff's legal representative under legal entity's pleading certificate attached to the Case file, and ....., Mr. ....., holder of National ID No. ....., appeared in his capacity as Defendant's (ZATCA) Representative, by virtue of Authorization No. ..... dated …/…/…, issued by Deputy Governor for Legal Affairs. Dated .../10/1443 AH. Having asked Plaintiff's Attorney about the case, he maintained his statements contained in the statement of claim submitted to General Secretariat of Tax Committees. Having asked Defendant Representative regarding its reply, it replied that it maintained Defendant statements presented earlier to General Secretariat of Zakat, Tax and Customs Committees. Having asked both parties to the Case if they would like to add any statements, they answered "no". Therefore, the Department decided to close the proceeding and deliberation.

Grounds

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: Since Plaintiff aims with its claim to cancel ZATCA's decision regarding zakat assessment of 2017, and given that this dispute falls within the category of zakat and tax disputes. Therefore, it is considered one of the disputes that fall within the jurisdiction of Committee for Determination of Income Tax Violations and Disputes as per Royal Order No. (26040) dated 21/04/1441 AH. Since the Case was filed by a party having capacity and within the prescribed period. Therefore, the Department accepts the Case in form.

On merits: Having taken cognizance of documents included in Case file, requests, defenses and pleas raised by Party thereto, the Department found that the dispute lies in the Defendant's issuance of 2017 zakat assessment, since the Plaintiff stated that the advance payments pertain to the same customer account that has balances due to us, as they are separated by the accounting classification into debit and credit for each account separately, and requests set-off between the debit and credit accounts. In contrast, the Defendant argued that, upon assessment, it added the advance payments to third parties that have completed a full year in the amount of SAR (6,300,179), according to the statements submitted. Zakat Payer's objection was rejected because a year has passed on these amounts. In addition, ZATCA maintains the validity and soundness of its procedure. In accordance with Article 4.I.4 of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH that states: The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 4. Submitted revenues on which a year has passed." Additionally, Article (20.3) of the same Regulations states: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA".

According to the aforementioned, advance payments are a source of funding, and any amounts that have completed a full year are added to the zakat base. Having perused the Case file, it turned out that the dispute lies in the Defendant refusal to deduct the difference between the advance payments item and the customers' item. Referring to the responses of the parties to the Case, it is clear that the Plaintiff requests a set-off between the debit and credit accounts. The Plaintiff stated that it was agreed to cancel this item with the same customers in a previous year. The Defendant indicated that the Implementing Regulations for the Collection of Zakat did not allow setoff between the debit and credit accounts, and allowed it only in the partners' current account item. By reference to the documents submitted in the Case, it was found that through setoff there are no amounts that have passed the year. Therefore, the Department should overturn the Defendant's action.

For the aforementioned grounds, Department unanimously decided as follows:

Decision:

- Accept the objection submitted by the Plaintiff/ ..... Company Ltd (C.R No. .....), on the decision of Defendant (ZATCA) in form, and overturn the Defendant's decision on merits.

This decision was issued in the presence of both parties, and the date of depositing the decision in the e-system of the General Secretariat of Zakat, Tax and Customs Committees is considered the date of delivery of the decision. The parties to the case may request to appeal against the decision as per the law within thirty (30) days from the day following the date specified for its receipt, whereafter, the decision will be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Adjudication Committee

First Department to Adjudicate Value Added Tax Violations and In Jeddah

Decision No. (IZJ-2022-2279)
Delivered in Case No. (Z-2021-73252)

Key words:
Zakat Assessment - Operating Leases of 2018 - Professional Fees of 2018 - Due to Related Parties of 2018 - Documentary Dispute - Proof of the Passage of a Year - Zakat Payer Shall Bear the Burden of Proving Validity of its Zakat Declaration - Legal Period - Dismissal of the Objection.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision on zakat assessment of 2018. Plaintiff based its objection on three items. First: Operating Leases of 2018. Second: Professional Fees of 2018. Third: Due to Related Parties of 2018. The Plaintiff objects to the Defendant's action, since the Company's contract for the management, operation and maintenance of parking lots at King Khalid Airport in Riyadh was canceled by the General Authority of Civil Aviation (GACA). Accordingly, the Company filed a lawsuit against GACA, and the lawsuits are still pending before the court. In contrast, the Defendant argued that its decision was valid because a year has passed thereon. Legal texts indicated that if the case was filed by a person with capacity, and within the legally prescribed period, the case must be accepted in form. The Department established that with regard to the first, second and third items, and since the dispute is documentary, and having accessed the documents attached to the Case file, it is clear that the Plaintiff did not submit the detailed movement of the expenses due to demonstrate that a year has not passed on the amounts added to the zakat base. The Department ruled to: Accept the case in form, dismiss the Plaintiff's objection to the items "Operating Leases of 2018", "Professional Fees of 2018" and "Due to Related Parties of 2018" - The decision is deemed final and enforceable.

Instruments:

- Articles (4.I.2&5) and (20.3) of the Implementing Regulations for the Collection of Zakat issued by Finance Minister's Resolution No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 18/09/2022 AD, the Third Department for the Determination of Income Tax Violations and Disputes in Jeddah pursuant to Article 67 of the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended and constituted by Royal Order No. (65474) of 23/12/1439 AH, held its session remotely via audio and video conferencing to consider the case mentioned above. Since the Case fulfilled the established regulatory requirements, it was lodged with General Secretariat of Tax Committees on 30/09/2021 AD.

The facts of this Case are summed up in that Mr..... holder of National ID No. (...), in its capacity as the legal representative of Plaintiff/.... Company Ltd, C.R No. (....), pursuant to its AOA, filed an objection to ZATCA's zakat assessment of 2018. The Plaintiff's objection is limited to three items. Regarding the first item: Operating Leases of 2018. The Plaintiff objects to the Defendant's action, since the Company's contract for the management, operation and maintenance of parking lots at King Khalid Airport in Riyadh was canceled by the General Authority of Civil Aviation (GACA). Accordingly, the Company filed a lawsuit against GACA, and the lawsuits are still pending before the court. As for Item Second (Suppliers): Professional Fees of 2018. The Plaintiff objects to the Defendant's action, since the Company's contract for the management, operation and maintenance of parking lots at King Khalid Airport in Riyadh was canceled by the General Authority of Civil Aviation (GACA). Accordingly, the Company filed a lawsuit against GACA, and the lawsuits are still pending before the court. Regarding the third item: Due to Related Parties of 2018. The Plaintiff objects to the Defendant's action, since the Company's contract for the management, operation and maintenance of parking lots at King Khalid Airport in Riyadh was canceled by the General Authority of Civil Aviation (GACA). Accordingly, the Company filed a lawsuit against GACA, and the lawsuits are still pending before the court. Having presented the statement of claim to Defendant, it answered with regard to the first item: Operating leases of 2018 that ZATCA requested additional information on 01/09/1442 AH, and an extract from the accounting system for the account of ..... for Maintenance Company Ltd, which shows the opening balance, debit and credit movements and closing balance. Zakat Payer was contacted through the data registered with ZATCA on 03/09/1442 AH and 08/09/1442 AH, and the Zakat Payer responded. Accordingly, rents for operating lease contracts were amended in the amount of SAR 7,739,876, as it was proven that a year has passed thereon based on Article 4.I5 of the Implementing Regulations for the Collection of Zakat issued under No. (2082) dated 01/06/1438 AH. Upon examining the objection, it became clear that ZATCA's treatment of adding the item of rents for operating lease contracts in the amount of 7,739,876 was correct. Accordingly, the objection was rejected due to the validity and soundness of ZATCA's procedure based on Article 4.I of the Implementing Regulations for the Collection of Zakat. As for Item Second (Suppliers): Professional Fees of 2018. It responded that ZATCA requested additional information on 01/09/1442 AH and an extract from the accounting system for the account of ..... for Maintenance Company Ltd (a detailed statement of the professional fees item, which shows the names and addresses of beneficiaries, the amounts due and paid during the year and the dates of their payment). Zakat Payer was contacted through the data registered with ZATCA on 03/09/1442 AH and 08/09/1442 AH, and the Zakat Payer responded. Accordingly, professional fees were amended in the amount of SAR 4,015,000, as it was proven that a year has passed thereon based on Article 4.I5 of the Implementing Regulations for the Collection of Zakat issued under No. (2082) dated 01/06/1438 AH. Upon examining the objection, it became clear that ZATCA's treatment of adding the item of professional fees in the amount of SAR 4,015,000 was correct. Accordingly, his objection was dismissed due to the validity and soundness of ZATCA's procedures in accordance with Article 4.I of the Implementing Regulations for the Collection of Zakat. Regarding the third item: Due to Related Parties of 2018. It responded that ZATCA requested additional information on 01/09/1442 AH and an extract from the accounting system for the account of ..... for Maintenance Company Ltd, which shows the opening balance, debit and credit movements and closing balance. Zakat Payer was contacted through the data registered with ZATCA on 03/09/1442 AH and 08/09/1442 AH, and the Zakat Payer responded. Accordingly, the item of Due to Related Parties was amended in the amount of SAR 1,381,098, as it was proven that a year has passed thereon based on Article 4.I.5 of the Implementing

Regulations for the Collection of Zakat issued under No. (2082) dated 01/06/1438 AH. Upon examining the objection, it became clear that ZATCA's treatment of adding the item of rents for due to related parties in the amount of 1,381,098 was correct. Accordingly, the objection was rejected due to the validity and soundness of ZATCA's procedure based on Article 4.I of the Implementing Regulations for the Collection of Zakat.

On Sunday, 18/09/1443 AH, the Department held its session remotely to consider the Case. The Plaintiff's representative did not appear despite being legally notified of the hearing date, and the Defendant's representative ...., holding National ID no. appeared under POA No. (.), issued by ZATCA Vice Governor for Legal Affairs, (...) dated .../ .../ .... Having reviewed Case file and since the Case was ripe for adjudication as per provisions of Article (20) Tax Dispute and Violation Committee Procedures, the Department decided to adjourn the session for deliberation in preparation for delivering a decision.

Grounds

Having reviewed the Zakat Law promulgated by Royal Order No. (17/28/577) dated 14/03/1376 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (2082) of 01/06/1438 AH, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Ministerial Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Disputes and Violations Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, and the relevant Laws and regulations.

In form, since the Plaintiff's purpose of this Case is to cancel ZATCA's decision regarding the Zakat assessment of 2018. Since this dispute is considered one of the tax disputes that fall within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes, pursuant to Royal Order No. (26040) dated 21/04/1441 AH and given that the Case was filed by an eligible party, and within the legally prescribed period, the Case is to be accepted in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defenses and pleas raised by the Parties, the Department found that the dispute lies in the Defendant's issuance of zakat assessment of 2018. The Plaintiff's objections are confined to three specific items detailed below:

Regarding First Item: Operating Leases of 2018. The Plaintiff objects to the Defendant's action, as the Company contract for managing, operating and maintaining parking lots at the King .... Airport was cancelled by .... Civil. Therefore, the Company filed a lawsuit against the .... Civil Authority, and the lawsuits are still pending before the court. In contrast, the Defendant argued the validity of its decision due to the proof that a year had passed thereon based on Article 4.I.5 of the Implementing Regulations for the Collection of Zakat issued under No. (2082) dated 01/06/1438 AH. Article (4/First/5) of Implementing Regulation for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: ... 5. Government and commercial loans or equivalent items of other sources of funds, such as creditors, payment papers, and overdraft accounts owed by the Zakat payer which: A. The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Additionally, Article (20.3) of the same Regulations states that: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the foregoing, and since the dispute on this item is a documentary dispute, and having

accessed the documents attached to the Case file, it is found that the Plaintiff did not submit the detailed transaction of the expenses due to prove that a year has passed on the amounts added to the zakat base. Therefore, the Department decided to dismiss the Plaintiff's objection to the item of operating leases item.

As for Item Second (Suppliers): Professional Fees of 2018. The Plaintiff objects to the Defendant's action, as the Company contract for managing, operating and maintaining parking lots at .... Airport in Riyadh was cancelled by ..... Civil. Therefore, the Company filed a lawsuit against .... and the lawsuits are still pending before the court. In contrast, the Defendant argued the validity of its decision due to the proof that a year had passed thereon based on Article 4.I.5 of the Implementing Regulations for the Collection of Zakat issued under No. (2082) dated 01/06/1438 AH. In accordance with Article 4.I.5 of the Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated 01/06/1438 AH that states: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: ... 5. Government and commercial loans or equivalent items of other sources of funds, such as creditors, payment papers, and overdraft accounts owed by the Zakat payer which: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it" Additionally, Article (20.3) of the same Regulations states that: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the foregoing, the accrued expense balances are a component part of the zakat base, provided that a year has passed on these balances, and since the dispute on this item is a documentary dispute, and having accessed the documents attached to the Case file, it is found that the Plaintiff did not submit the detailed transaction of the expenses due to prove that a year has passed on the amounts added to the zakat base. Therefore, the Department decided to dismiss the Plaintiff's objection to the item of professional fees of 2018.

Regarding the third item: Due to Related Parties of 2018. The Plaintiff objects to the Defendant's action, as the Company contract for managing, operating and maintaining parking lots at .... Airport in Riyadh was cancelled by ..... Civil. Therefore, the Company filed a lawsuit against .... and the lawsuits are still pending before the court. In contrast, the Defendant argued the validity of its decision due to the proof that a year had passed thereon based on Article 4.I.5 of the Implementing Regulations for the Collection of Zakat issued under No. (2082) dated 01/06/1438 AH. Based on 4.I5 of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH, which provides that: "The Zakat base shall consist of the Zakat Payer's assessable funds, including: 5. Government and commercial loans, along with other equivalent financing sources, such as creditors, notes payable and overdraft owed by Zakat Payer as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. C. were used in trade assets and had a year passed on it". Additionally, Article (20.3) of the same Regulations states: "The burden of proof regarding the accuracy of the items listed in the Zakat payer's declaration, as well as any other data, lies with the Tax Payer. In case of the Zakat Payer's failure to prove the accuracy of the information reported, ZATCA may disallow such item not proven to be correct by Zakat Payer, or otherwise raise assessment on deemed basis at ZATCA's discretion in view of the surrounding circumstances, facts and information available with ZATCA". Based on the above, the payables to related parties are considered a source of financing and are treated as property rights in terms of zakat treatment, and therefore the portion that has a

year passed on it should be added to the zakat base. Having perused the documents attached to the Case file, it is found that the Plaintiff did not provide the detailed transaction for the account of related parties to substantiate his claim that a year has not passed on these amounts. Due to the lack of detailed transaction for the account of related parties, the opening or closing balance, whichever is less, shall be added to zakat base, which is what ZATCA did in the zakat assessment. Therefore, the Department concluded to dismiss the Plaintiff's objection to the item of due to related parties of 2018.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

First: Dismiss the Plaintiff's objection to the item (Operating Leases of 2018).

Second: Dismiss the Plaintiff's objection to the item (Professional Fees of 2018).

Third: Dismiss the Plaintiff's objection to the item (Due to Related Parties of 2018).

This decision was delivered in presence of the parties in accordance with Article 56 of the Law of Civil Procedure. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within (30) from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

(Judgment has become final by expiration of objection period under article 33.2 of Rules of Tax Dispute and Violation Committee Procedures).

Determination Committee

First Department for Determination Income Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-1923)
Issued in Appeal No. (Z-86295-2021)

Key words:
Zakat Assessment - Accounts - Deduction of Additional Investment - Non-Acceptance of Deducting Available-For-Sale Investments - Non-Acceptance of Deducting Other Investments - Prepaid Bank Charges - Prepaid Expenses - Other Debit Balances - Employee Benefits Assets - Not Allowing Deduction of Assets Under Construction (Employees' Long-Term Home Ownership Program) - Non-Acceptance of Deducting Assets Available for Sale - Addition of Closing Balance to Other Reserves - Addition of Closing Balance from Minority Rights - Non-Acceptance of Deducting the Decrease in the Value of Employees' Housing - Addition of Dues to Related Parties - Addition of Employee Benefits Provision.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding zakat assessment of 2017 and 2017. The Plaintiff's objection is limited to ten items. Regarding the first item: The Plaintiff objects to the addition of employee benefits provision that has been classified as current provisions according to the audited financial statements, while the Defendant argued that, upon assessment, it recalculated the provisions and its component balances that have passes a year. As for Item Second (Suppliers): Addition of Dues to Related Parties for 2018. The Plaintiff objects to the addition of dues to related parties to zakat base for 2018, as the Plaintiff does not agree to subject amounts due to related parties that have been classified as non-current obligations, while the Defendant argued that it has added a balance in the amount of SAR (112,653,499) as amounts due to related parties. Regarding the third item: Non-Acceptance of Deducting the Decrease in the Value of Employees' Housing for 2017. The Plaintiff objects to the non-deduction of the decrease in value of employee housing for 2017 from the adjusted net profit, while the Defendant argued that it had added the expense resulting from the revaluation from the financial statements to the adjusted net profit as a non-deductible expense. Regarding the fourth item: Addition of Closing Balance from Minority Rights for 2017. The Plaintiff objects to the addition of minority rights amounts to the zakat base, while the Defendant argued that it added the item to the zakat base in the amount of SAR 131,810,000, as the closing balance from the audited financial statements of 2017. Regarding the fifth item: Addition of Closing Balance to Other Reserves for 2017. The Plaintiff objects to the addition of closing balance of other reserves balances for 2017, stating that there were no amounts that have passed a year, which indicates that no amounts should be subject to zakat. In contrast, the Defendant argued that it made the assessment and added the item to the zakat base with a value of SAR (249,795,000) as the closing balance from the audited financial statements of 2017. Regarding the sixth item: Non-Acceptance of Deducting Assets Available for Sale for 2017/ 2018. The Plaintiff objects that the assets available for

sale are not allowed to be deducted from the zakat base, while the Defendant argued that it considered these assets for 2017 and 2018 should not be deducted. Regarding the seventh item, Not Allowing Deduction of Assets Under Construction (Employees' Long-Term Home Ownership Program) for 2017 and 2018. The Plaintiff objects to the non-deduction of employees' long-term home ownership program for 2017 and 2018. In contrast, the Defendant argued that, during the examination phase, it requested the Plaintiff to submit the audited trial balance explaining the opening balance, debit and credit movement and closing balance. Zakat Payer submitted the data, as ZATCA did not accept deducting this item from the zakat base in the amount of SAR 89,292,437 for 2017 and SAR 72,882,000 for 2018. Regarding the eighth item (A): Non-Acceptance of Deducting Other Assets (Employee Benefit Assets) for 2017 and 2018. The Plaintiff objects to non-deduction of employee benefit assets for 2017 and 2018, while the Defendant argued that this item represents housing units that have been completed, handed over to the employees and registered as receivables owed to the employees. Regarding the eighth item (B): Non-Acceptance of Deducting Other Assets (Prepaid Bank Charges, Prepaid Expenses and Other Debit Balances) for 2017 and 2018. The Plaintiff objects to the non-deduction of prepaid bank charges and prepaid expenses, while the Defendant argued that what Zakat Payer is demanding to deduct from the zakat base is not among the deductions of zakat base mentioned in Article (4) of the Implementing Regulations for the Collection of Zakat. Regarding the Ninth item: Non-Acceptance of Deducting Available-For-Sale Investments for 2017 and 2018. The Plaintiff objects to the non-acceptance of a full deduction of the available-for-sale investments balance for 2017 and 2018, while the Defendant argued that it excluded the deduction of a portion of the item value from zakat base, as it is clear that the excluded part is investments prepared for sale. Regarding the tenth item: Non-Acceptance of Deducting Additional Investment (backstopping support) for a Subsidiary for 2017 and 2018. The Plaintiff objects that the non-deduction of the entire closing balance from related parties on the ground that it is interest loans, and is not considered an investment that may be deducted from the zakat base. In contrast, the Defendant argued that ZATCA, upon assessment, did not deduct the closing balance for a balance due from related parties that is not current the zakat base - The legal provisions indicated that if the case is filed by a person with capacity within the legal period, the case must be accepted in form - The Department established that with regard to the first item: Addition of Employee Benefits (Current) Provision for 2017, since there are current and other non-current provision, and since the Plaintiff did not address the current provisions by adding the component to the net profit and adding the balance that has passed a year after deducting the used part to the base, and only addressed the non-current provisions. Therefore, the Department concluded to dismiss the Plaintiff's objection. As for Item Second (Suppliers): With reference to the documents provided, the detailed transaction was not submitted for the account of related parties, which shows the opening and closing balance together with the debit and credit transaction to substantiate its claim that a full year has not passed on these amounts, and due to the lack of detailed transaction for the account of related parties to verify the validity of added balance. Regarding the third item: It turned out that these assets (Employee Housing Program) per se are not deductible; therefore, the adjusted net profit is adjusted by adding the decrease resulting from the revaluation of those assets. Therefore, the Department concluded to dismiss the Plaintiff's objection. Regarding the fourth item: It turned out that minority rights represent non-controlling interests, a component of property rights, and are treated as a source of funding in terms of zakat treatment. Besides, since the Plaintiff provided consolidated financial statements, this means that there is 100% full ownership, but it is clear from the financial statements provided for the disputed period that there are minority rights, which indicates that financial statements should have been provided for the purposes of zakat. Thus, it is

found that amount that has passed a year must be added to the zakat base for non-controlling interests if the plaintiff does not prove that it is not held accountable for the deducted assets corresponding to the non-controlling interests. Since the Defendant amended its assessment by not adding the non-controlling partner's share of profit during the year, as it represents part of the profit of the year previously added to the zakat base. Therefore, the Department concluded to dismiss the Plaintiff's objection. Regarding the fifth item: It was found that the Plaintiff did not explain the direct impact on exchange rate translations, cash hedging and revaluation of the defined benefit plan associated with the increase and decrease in liabilities, or the increase and decrease in assets with the balance made during the year in reserves and the details of items affected by the zakat base. Accordingly, and in the absence of clarity as to the items affected by the zakat base, whether the impact is on obligations or assets. Therefore, the Department concluded to dismiss the Plaintiff's objection. Regarding the sixth item, The Plaintiff alleges that these assets were sold due to the final closure of the finishing department, due to the official closure of the foundation dye manufacturing department, which indicates the intention to sell and not use them in the activity. Therefore, the Department concluded to dismiss the Plaintiff's objection. Regarding the seventh item, it is established that the Plaintiff is building residential units for its employees as part of the Housing Ownership Program described in the category of assets under construction. With reference to Article 4 of the Implementing Regulations for the Collection of Zakat of 1438 AH, which clarifies the legal deductions, it stipulates that they should be used for the activity and not for the purposes of sale. Therefore, the Department concluded to dismiss the Plaintiff's objection. Regarding the eighth item (A): The items that the Plaintiff claims to be deducted do not represent assets intended for the Company's use, but rather are a long-term receivable that are not deducted from the zakat base, as the value of the employee's residence will be paid in installments over a number of years (rent-to-own). Therefore, the Department concluded to dismiss the Plaintiff's objection. Regarding the eighth item (B): Since the Plaintiff did not clarify the nature of these expenses and whether they were revenue expenses, nor did it clarify the nature of other debits. Therefore, the Department concluded to dismiss the Plaintiff's objection. Regarding the Ninth item: Transaction on these investments has not been submitted to establish that there were no sales transactions during the year, to prove the Plaintiff's claims that they were for acquisition and not for trading, nor did it provide evidence of the management's intention to retain them in the long term, nor did it submit the approved foreign investment financial statements "shares from a legal settlement in Brazil" and the non-payment of zakat due thereunder. Therefore, the Department concluded to dismiss the Plaintiff's objection. Regarding the tenth item: Clarification No. 8 "Transactions with Related Parties" indicates the existence of a relationship between related parties - a non-trading part - and it is evident that these amounts represent a loan with interest provided to the affiliated company, and that the subsidiary subjected these amounts to zakat based on its zakat declarations submitted to ZATCA. Accordingly, loans and advances provided to the subsidiary that submitted its declarations to ZATCA require special zakat treatment to avoid zakat duplication. Thus, the Plaintiff's view of deduction of the loan provided to the subsidiary is correct, but in the same proportion equivalent to its ownership percentage in it from the zakat base. Therefore, the Department concluded to amend the Defendant's procedure. Department ruled to Accept the case in form - Amend the Defendant's action on the item of Deduction of Additional Investment for 2017 and 2018 based on the ownership ratio, and dismiss other objection items - The decision is deemed final and enforceable.

Instruments:

- Articles (4.I.2) and (3/20) of the Implementing Regulations for Zakat Collection issued by Finance Minister's Resolution No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 16/08/2022 AD, the First Department for the Determination of Income Tax Violations and Disputes in Jeddah, provided for in Article (67) of Income Tax law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, as amended and formed pursuant to Royal Order No. (65474) dated 23/12/1439 AH, convened its session remotely via video and audio communication to consider above-mentioned case. Since the case fulfilled the established regulatory requirements, it was filed with General Secretariat of Zakat, Tax and Customs Committees under the above number on 14/12/2021 AD.

The facts of this case are summed up so as... holder of National ID No. (...), in his capacity as the attorney for the Plaintiff/ ..... Company, Limited, C.R. No. (...), under POA No. (...), filed an objection against ZATCA's zakat assessment for 2017 and 2018 AD. The Plaintiff's objection is limited to the following ten items: Regarding First Item: Addition of Employee Benefits (Current) Provision for 2017. The Plaintiff objects to Defendant's action of adding employee benefits provision that has been classified as current provisions according to the audited financial statements, and since the reason for the Company's disagreement is that it has already adjusted the net profit subject to zakat and adjusted the additions to the Zakat pot by subjecting all provisions that were classified as non-current provisions to zakat in the other additions table. According to the movement of provision included in the Plaintiff's statement of claim, it is clear that the Company adjusted the profit subject to zakat by the component during the year by an amount of SAR (157,363,000) and added to the zakat base an amount of SAR (200,265,000). Therefore, SAR 357,628,000 of non-current provisions were subject to the zakat base and the zakat due on it was paid. As for Item Second (Suppliers): Addition of Dues to Related Parties for 2018. The Plaintiff objects to the Defendant's action of adding dues to related parties to the zakat base for 2018, and since the Plaintiff does not agree to subject the amounts due to related parties that have been classified as non-current obligations. The Company added and disclosed the amounts that have completed a full year under the Company's responsibility in the zakat declaration for 2018. Accordingly, the Company believes that it has fulfilled its obligation to ZATCA with regard to the amounts due to related parties. Regarding the third item: Non-Acceptance of Deducting the Decrease in the Value of Employees' Housing for 2017. The Plaintiff objects to the Defendant's action of not deducting the decrease in the value of employees' housing for 2017 from the adjusted net profit, stating that according to the Employees' Home Ownership Program, the Company built 118 housing units. During 2017, no housing units were delivered by the Company, and for the purpose of determining the value of assets under construction, the Company compared the book value of housing units, taking into account the average rating of three institutions. These evaluations resulted in a decline in value of assets under construction classified as fixed assets by an amount of SAR (86,037,000), adding that these evaluations were based on IAS 36, and the Company therefore deducted the closing balance from the assets under construction which includes a decrease in the zakat base. Regarding the fourth item: Addition of Closing Balance from Minority Rights for 2017. The Plaintiff objects to the Defendant's action of adding minority rights amounts to the zakat base, as the Plaintiff does not agree to ZATCA's treatment by adding minority rights to the zakat base. The Company considers that the investing parties in .... Company (non-controlling partners) are as follows: - Doctor .... - ..... Company, (a company established in Kuwait and owned equally by the governments of the GCC member states). Thus, it becomes clear that the

non-controlling partners are independent entities with independent financial liabilities and pay zakat on these amounts in their zakat declarations, which indicates that that there is zakat duplication and a Sharia violation. Regarding the fifth item: Addition of Closing Balance to Other Reserves for 2017. The Plaintiff objects to the Defendant's action of adding the closing balance of other reserves balances for 2017, stating that there are no amounts transferred indicating that no amounts that have completed a full year, which indicates that no amounts should be subject to zakat. By reference to the Company's consolidated financial statements, it is evident that the equity was reduced at the beginning of the period by the value of the currency translation difference reserve, the asset balance was reduced in accordance with the audited financial statements. The Plaintiff indicates that this loss is accumulated losses that are similar in accounting nature to the carried forward losses, and that the appearance of such losses under the name of reserves is a matter required by IAS approved by SOCPA in accordance with IAS No. 21. Moreover, it is clear that the monitoring of the company's equity, assets and liabilities was affected by the translation differences reserve of financial statements. In addition, the Plaintiff would like to note that the tax committees have previously issued a number of decisions supporting the Plaintiff's point of view to deduct the reserves shown in negative value, which represents a reduction in equity from the zakat base. Based on the foregoing, the Company requests the Committee to amend the Defendant's action by adding the opening balance in negative value as shown in the financial statements. Regarding the sixth item, Non-Acceptance of Deducting Assets Available for Sale for 2017/ 2018. The Plaintiff objects to the Defendant's action of not allowing the deduction of assets available for sale from the zakat base. Since the reason for the Defendant's refusal is that those assets are for trading purposes rather than acquisition purposes, and it is found that the Plaintiff does not agree with ZATCA according to the following: a. The assets contained (real estate, machinery, equipment) were initially purchased and owned by the Company and were intended for use in the Company's activity and thus classified as long-term assets. b. Subsequently, taking into account market data and the conduct of business, it permanently closed the finishing department of HPB, as the Company issued its decision that continuing to operate the factory was no longer cost-effective. c. From Sharia perspective, the basis for purchasing assets is for acquisition. Therefore, the established basis is as follows: There is no zakat on the acquired asset, and on the basis that there is no intention of selling upon purchase and an emergency due to changing circumstances and the closure of HBB, which is no longer feasible. The Plaintiff would like to draw attention to the fact that no portion thereof was sold during 2017/ 2018. Therefore, the Plaintiff requests to deduct the assets available for sale and oblige ZATCA to amend the assessment. Regarding the seventh item, Not Allowing Deduction of Assets Under Construction (Employees' Long-Term Home Ownership Program) for 2017/2018. The Plaintiff objects to the Defendant's action of not deducting the Employees' Home Ownership Program for 2017/2018, stating that the program was funded by the Company and remained in the Company's books as assets under construction until its completion as classified in the Company's financial statements for the years in dispute. In addition, the Plaintiff would like to clarify that the program consists of the following: a. The cost of residential units recoverable from employees. The cost of residential units is transferred from projects and is shown in the Company's books as long-term receivables due from employees, which is deducted from the payroll in accordance with the Company's rent-to-own agreement. b. Maintenance costs for housing units recoverable from employees. The Company carries out maintenance in accordance with the maintenance agreement concluded between the Company and the beneficiary, which consists of free maintenance for the first and second years. The third year is in accordance with the systems and procedures of the Company's Housing Department. Employees housing program represents receivables owed by the

employees against the homes provided by the Company. The Plaintiff relies on a decision issued by the Primary Committee No. 10 of 1420 AH. Therefore, the Plaintiff claims that the Defendant's action to allow the deduction of Employees' Long-Term Home Ownership Program is revoked. Regarding the eighth item (A): Non-Acceptance of Deducting Other Assets (Employee Benefit Assets) for 2017/ 2018. The Plaintiff objects to the Defendant's action of not deducting the employee benefit assets for 2017/ 2018. Since the Plaintiff does not agree with ZATCA's action of not deducting those assets classified as non-current assets according to financial statements, as they are company-owned homes that used by employees according to specific programs launched by the Company as employee benefits, the Company creates the asset and the employee who fulfills all the program conditions is entitled thereto. Regarding the eighth item (B): Non-Acceptance of Deducting Other Assets (Prepaid Bank Charges, Prepaid Expenses and Other Debit Balances) for 2017/ 2018. The Plaintiff objects to the Defendant's action of not deducting prepaid bank charges and prepaid expenses, and since such assets are among the non-current assets. The Plaintiff wishes to state that the Regulations did not provide that any other assets that were paid in advance and were classified as non-current assets may not be deducted. Regarding the Ninth item: Non-Acceptance of Deducting Available-For-Sale Investments for 2017/ 2018. The Plaintiff objects to the Defendant's action of not accepting a full deduction of the balance of investments available for sale for 2017/2018. Since the Plaintiff does not agree to the Defendant's action as the Company owns investments that were declared as investments available for sale among the non-current assets in the financial statements for the years in dispute. The Company stated that these investments were intended for long-term retention, not for trading purposes, and that these investments are included in non-traded assets. Therefore, the Plaintiff seeks amendment of the Defendant's procedure and full acceptance of the deduction of investments intended for sale. Regarding the tenth item: Non-Acceptance of Deducting Additional Investment (backstopping support) for a Subsidiary for 2017/2018. The Plaintiff objects to the Defendant's action of not deducting the closing balance in full from related parties because they are interest-bearing loans that are not considered an investment that may be deducted from the zakat base, as the Plaintiff does not agree to not deducting the backstopping support in .... Advanced Company. As for ZATCA argument that these balances are subject to interest, this does not preclude their deduction for several reasons: A. Application of interest-based support is a global practice to reflect the management performance of subsidiaries and is not intended to be for profit, as the investing company and the investee company are owned by .... National Company, this invested funds came in the form of loans from banks. b. The subsidiary (...) is directly owned by (50%) of ..... Company and by (50%) of .... National Company, and the latter owns (79%) of .... Company (Plaintiff), meaning that .... Company owned by .... National Company by (89.5%). c. Subsidized finance in ..... Company was subject to zakat, and therefore the failure to accept its deduction by the Plaintiff is considered zakat duplication. Accordingly, the Plaintiff requests to cancel the issued assessment and to make a modified assessment by accepting the deduction of additional investment (backstopping support).

Having presented the statement of claim to Defendant, it responded as follows: with regard to the first item: Addition of Employee Benefits (current) Provision for 2017. The Defendant stated that, upon assessment, it recalculated the provisions and balances therein that passed a full year, as it is evident that Zakat Payer has not added the current part of provisions and the balances thereof. Therefore, ZATCA added the balance formed during the year and the opening balance from the provisions minus the amount used during the year to zakat base in accordance with the note of provisions in the financial statements for 2017. Having examined the detailed movement of provisions from the audited financial statements for 2017, Note No. 19, and based on contents of the Note, it turns out that the

Plaintiff's action is not to add the current provisions that have passed a year and balances thereof to the zakat base, which is not proper. Accordingly, ZATCA adheres to the validity and soundness of its procedure regarding adding the balances that make up the provisions during the year in the amount of SAR 234,223,000 to the adjusted net profit and adding the part that has passed a year in the amount of SAR 339,764,000 to the zakat base, in accordance with Article 6.6 of the Implementing Regulations for the Collection of Zakat. As for Item Second (Suppliers): Addition of Dues to Related Parties for 2018. The Defendant stated that it had added a balance of SAR (112,653,499) as amounts due to related parties. During the objection phase, ZATCA reviewed the note of related parties from the audited financial statements for 2018, which shows that the Company had separated the item into a current part and a non-current part as shown in the image included in the reply. In addition, ZATCA referred to Zakat Payer's declaration, which shows that what were added by Zakat Payer were the opening balances of the non-current portion of the related party balances in the amount of SAR (1,244,820), due to the absence of a debit movement during the year. The amount of the current portion of the related parties' balances that passed a year was not added. Having perused documents submitted by Zakat Payer during the examination stage and upon studying the statement and matching the balances with the financial statements, and by recalculating the part that has passed a full year of the current portion from related parties, it was found that the part that has passed a full year is in the amount of SAR (112,653,499). Accordingly, the Defendant's action is found to be valid in accordance with Article 4.4 of the Implementing Regulations for the Collection of Zakat. Regarding the third item: Non-Acceptance of Deducting the Decrease in the Value of Employees' Housing for 2017. The Defendant responded that it added expense resulting from the revaluation based on the financial statements to the adjusted net profit as non-deductible expense. During the objection phase, ZATCA accessed the note of property, machinery and equipment from the audited financial statements for 2017, which showed that there was an expense resulting from the revaluation of assets, and IAS 36 "Depreciation in the Value of Assets" requires re-evaluating assets at fair value. The resulting change is recognized in profit or loss, and the result of the re-evaluation, whether it is revenue or expense, is not actual until it is realized, and the Company's application of the same is mandatory to apply IAS 36. Accordingly, ZATCA adheres to the validity and soundness of its procedure. Regarding the fourth item: Addition of Closing Balance from Minority Rights for 2017. The Defendant responded that it added the item to the zakat base at a value of SAR 131,810,000, as the closing balance from the audited financial statements for 2017, as the Company was assessed based on consolidated financial statements (the financial statements of the parent company were consolidated with subsidiaries that are fully owned by the parent company (100%) as shown in the table attached in the reply memorandum. Having examined Note 27 of the financial statements' notes, it turned out that ZATCA added the share of non-controlling partners of profit in the amount of SAR 27,630,000, as the share of non-controlling partners of profit is part of the net profits of the year, which had previously been added to the zakat base. Therefore, it is clear that the amount to be added from the item is SAR 104,180,000. Accordingly, the Plaintiff's objection was partially accepted by adding the amount of SAR 104,180,000 to the zakat base in accordance with Article 4.13 of the Implementing Regulations for the Collection of Zakat. Regarding the fifth item: Addition of Closing Balance to Other Reserves for 2017. The Defendant responded that it made the assessment and added the item to the zakat base in the amount of SAR 249,795,000 as a closing balance from the audited financial statements for 2017. During the objection phase, ZATCA reviewed the list of changes in equity, which showed that opening balances were shown in negative (debit), and that the balances formed during the year were the result of other gross income (as a result of the application of international standards), as shown in

the table attached to the reply memorandum. Since the direct effect of translating exchange rate changes is a reduction in the value of an obligation or an increase in the value of assets that were previously deducted for Zakat Payer in full. Based on the foregoing, it is clear that the effect of the balance formed during the year was deducted for Zakat Payer, and Zakat Payer did not provide details of the items affected in translating exchange rate changes. Accordingly, the Plaintiff's objection was dismissed in accordance with Article 4.7 of the Implementing Regulations for the Collection of Zakat. Regarding the sixth item, Non-Acceptance of Deducting Assets Available for Sale for 2017/2018. The Defendant responded that it believes that these assets should not be deducted for 2017/2018, based on the note of the item from the financial statements as assets available for sale and not acquisition assets. During the objection stage, and having reviewed the financial statements for the years subject of dispute, it became clear that the Company explicitly indicated the existence of assets that it intends to sell. Having reviewed Note No. (18) from the audited financial statements, it becomes clear that the Company disclosed that after the closure of HPP, the Company issued a ruling that continuing to operate the factory was no longer cost-effective, and accordingly the Company intends to sell the same. IAS No. (5) requires that assets that meet the criteria for classifying them as held for sale be presented separately in the statement of financial position. Accordingly, it becomes clear that the intention in acquiring those assets for the years in dispute is to hold them for sale and not acquisition. Based on Article 4. Second.1&2 of the Implementing Regulations for the Collection of Zakat, ZATCA adheres to the validity and soundness of its procedure. Regarding the seventh item, Not Allowing Deduction of Assets Under Construction (Employees' Long-Term Home Ownership Program) for 2017/2018. The Defendant responded that, during the examination phase, it requested the Plaintiff to submit the audited trial balance explaining the opening balance, debit and credit movements and the closing balance. Zakat Payer provided the data, as ZATCA did not accept the deduction of this item from the zakat base in the amount of SAR (89,292,437) for 2017, and SAR (72,882,000) for 2018. Since Zakat Payer submitted a sample of ownership contracts concluded between the Company and one of its employees as a rent-to-own residential units, and the Implementing Regulations of Employees' Home Ownership Program. Having perused data submitted during the examination and objection stages, the following becomes clear: 1. Technically, the item is classified in terms of: Financial Statements - Non-Current Assets - With reference to Article 4 of the Implementing Regulations for the Collection of Zakat issued in 1438 AH, which clarifies the legal deductions, as the provisions of the Article did not refer to the deduction of any other assets or accounts belonging to employees. 2. Housing is not intended for the Company's use, but rather for sale to employees. 3. Contracts concluded with employees confirm the existence of an option and the possibility of transferring ownership to the employee if the conditions are met, such as completing the payment of installments, and the existence of this option confirms that the asset is not the property of the Company (temporary ownership). 4. Companies provide housing as a benefit to the employee in return for a deduction from the monthly salary; therefore, the process is nothing but cash management. Accordingly, these houses represent a benefit to the employees and are not used in the activity. It is clear that ZATCA adheres to the validity and soundness of its procedure, as it is a requirement for asset deduction to be used for the activity, in accordance with Article 4. Second.1&2 of the Implementing Regulations for the Collection of Zakat. Regarding the eighth item (A): Non-Acceptance of Deducting Other Assets (Employee Benefits Assets) for 2017/2018. The Defendant responded that this item represents residential units that have been completed and handed over to employees and registered as receivables owed by employees. Therefore, the plaintiff's objection was dismissed for the reasons stated and explained in item 7. Regarding the eighth item (B): Non-Acceptance of Deducting Other Assets (Prepaid Bank Charges,

Prepaid Expenses and Other Debit Balances) for 2017/2018. The Defendant responded that what Zakat Payer requests to be deducted from the zakat base is not among the deductions of the zakat base mentioned in Article (4) of the Implementing Regulations for the Collection of Zakat. Therefore, the plaintiff's objection was dismissed. ZATCA insists on the validity and soundness of its procedure. Regarding the Ninth item: Non-Acceptance of Deducting Available-For-Sale Investments for 2017/2018. The Defendant responded that it excluded the deduction of a portion of the item value from the zakat base, as the excluded portion was clearly investments intended for sale. Having taken cognizance of Note No. (11) of the financial statements, it became clear that there were investments through other comprehensive income, and ZATCA included a copy of the Note, which shows that there were investments in Saudi companies and shares from legal settlements in Brazil (investment in these establishments is not subject to zakat, so it is not deducted from the zakat base). In addition, the Plaintiff did not provide details on the investments available for sale. Accordingly, it is clear that what Zakat Payer is allowed to deduct from the zakat base at a maximum is the value of investments prepared for the purpose of acquisition and registered with ZATCA. As for 2017, the maximum balance that is allowed to be deducted for Zakat Payer is the amount of SAR (609,608,000). As for 2018, the balance that is allowed to be deducted is the amount of SAR (665,302,000). Accordingly, the objection was partially accepted for 2017. Therefore, the amount in dispute after studying the objection will become SAR (6,294,000). Based on Article 4. Second.2 of the Implementing Regulations for the Collection of Zakat, ZATCA insists on the validity and soundness of its procedure. Regarding the tenth item: Non-Acceptance of Deducting Additional Investment (backstopping support) for a Subsidiary for 2017/2018. ZATCA replied that, upon assessment, it did not deduct the closing balance of balance due from related parties, together with the non-current debt from the zakat base, as the item represented interest loans provided to related parties. Furthermore, ZATCA explains that the amount in dispute for each year, as shown in the table included in the response memorandum, is SAR (775,091,000) for 2017 and SAR (427,602,000) for 2018. Having taken cognizance of Note (8) of the audited financial statements, it became clear that there were interest loans granted to the investee, therefore, they are not considered an investment that may be deducted from the zakat base. Therefore, the Plaintiff's objection was dismissed.

On Tuesday, 16/08/2022 AD, the Department held its session remotely to hear the Case. The Plaintiff's Attorney, Mr. (.....), holder of National ID No. (...), appeared under POA No. (...). In addition, the Defendant's representative .... appeared holder of National ID No. (...), appeared under POA No. (.), issued by ZATCA Vice Governor for Legal Affairs, (...) Dated .../06/1442 AH. Having asked parties to the Case about what they would like to add, they were satisfied with their earlier submissions. Accordingly, the Department decided to adjourn the session for deliberation before delivering its decision.

Grounds

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: Since the Plaintiff intended by filing its case to cancel the decision of ZATCA regarding the assessments for 2017 and 2018, and this dispute is considered one of the tax

disputes that fall within the jurisdiction of the committee for the resolution of income tax violations and disputes, pursuant to the royal decree No. (26040) dated 21/04/1441 AH. Whereas the case was filed by a person with legal capacity, within the period stipulated by the law, which requires the Department to admit the case in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defenses and pleas raised by the parties, the Department found that the dispute lies in the Defendant's issuance of zakat assessment for 2017 and 2018. The Plaintiff's objection is limited to ten specific items, as follows:

Regarding First Item: Addition of Employee Benefits (current) Provision for 2017. The Plaintiff objects to Defendant's action of adding employee benefits provision that has been classified as current provisions according to the audited financial statements, while the Defendant argued that, upon assessment, it recalculated the provisions and balances thereof that have completed a full year. Since Article 20.3 of the Implementing Regulations for the Collection of Zakat issued by the Minister of Finance Decision No. (2082) of 01/06/1438 AH stated that: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto." Based on the foregoing, it is clear that the dispute on this item is in the processing and addition of current provisions to the zakat base for 2017, as the Plaintiff added only non-current provisions. Having perused the Case file and defenses and documents contained therein, it is evident through the financial statements for 2017 attached under the name (Appendix 1 - Cristal 2017 Arabic FS) Note No. (19) that there are current provisions and other non-current provisions. Since the Plaintiff did not address the current provisions by adding the component to the net profit, adding the balance that has completed a full year after deducting the used part to the base, and only addressed the non-current provisions. Therefore, the Department concluded to dismiss the Plaintiff's objection to the item of Addition of Employee Benefits (current) Provision for 2017.

As for Item Second (Suppliers): Addition of Dues to Related Parties for 2018. The Plaintiff objects to the Defendant's action of adding dues to related parties to the zakat base for 2018. Since the Plaintiff does not agree to subject amounts due to related parties that were classified as non-current obligations, while the Defendant argued that it added a balance of SAR (112,653,499) as amounts due to related parties. Article 20.3 provides that: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto." On the basis of the above, dues to related parties are a source of financing and are treated as property rights in terms of zakat treatment, therefore, the amount that has completed a full year must be added to the zakat base, as it is evident that the Plaintiff alleges that it added the amount that has completed a full year to the zakat base in fulfillment of its obligation before ZATCA. In addition, the Defendant stated that it added the balance of related parties - the current portion - which has completed a full year. With reference to the documents submitted, the detailed transaction was not submitted for the account of related parties, which indicates the opening and closing balance together with the debit and credit movement to substantiate the claim that they a full year has not passed on these amounts. Due to the lack of detailed transaction for the account of related parties to verify the validity of added balance, the Department therefore dismissed the Plaintiff's objection to the item of Addition of Dues to Related Parties for 2018.

Regarding the third item: Non-Acceptance of Deducting the Decrease in the Value of Employees' Housing for 2017. The Plaintiff objects to the Defendant's action of not deducting the decrease in the value of employees' housing for 2017 from the adjusted net profit. In contrast, the Defendant argued that it added the revaluation expense from the financial statements to the adjusted net profit as a non-deductible. Article 20.3 provided that: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". According to the foregoing, and having taken cognizance of pleas and documents provided by the parties, it turns out that the dispute arises over the non-deduction of the decrease in the value of employees' housing for 2017 from adjusted net profit, on the basis that those losses are not actual. Since the Plaintiff deducted the decrease in those assets from the net profit as a result of the revaluation of those assets, and since this item is associated with item (7) below, which was studied, those assets (Employee Housing Program) per se were found to be non-deductible, therefore the adjusted net profit is adjusted by adding the decrease resulting from the revaluation of those assets. Therefore, the Department concluded to dismiss the Plaintiff's objection to the item of Non-Acceptance of Deducting the Decrease in the Value of Employees' Housing for 2017.

Regarding the fourth item: Addition of Closing Balance from Minority Rights for 2017. The Plaintiff objects to the Defendant's action of adding minority rights amounts to the zakat base, while the Defendant argued that it added the item to the zakat base with a value of SAR (131,810,000) as the closing balance from the audited financial statements for 2017. Article 20.3 stipulated that: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". According to the foregoing, and having taken cognizance of pleas and documents provided by the parties, it turns out that the dispute is limited to the Plaintiff's claim not to add the closing balance to the item of minority rights for 2017. It was found that minority rights represent non-controlling ownership rights, a component of property rights and are treated as a source of funding in terms of zakat treatment. Since the Plaintiff submitted consolidated financial statements, which means that there is full ownership of (100%), but it is clear from the financial statements submitted for the disputed period that there are minority rights, which shows that financial statements should have been submitted for zakat purposes. Thus, it is clear that the amount that has passed a year must be added to the zakat base for non-controlling interests if the Plaintiff did not prove to be held accountable for the deducted assets corresponding to the non-controlling interests. Besides, the Defendant amended its assessment by not adding the non-controlling partner's profit share during the year as it was part of the profit of the year that were previously added to the zakat base. Therefore, the Department concluded to dismiss the Plaintiff's objection to the item of Addition of Closing Balance from Minority Rights for 2017.

Regarding the fifth item: Addition of Closing Balance to Other Reserves for 2017. The Plaintiff objects to the Defendant's action of adding the closing balance of the other reserves for 2017, stating that there are no amounts that have passed a full year, indicating that no amounts should be subject to zakat, while the Defendant argued that it made the assessment and added the item to the zakat base in the amount of SAR (249,795,000) as the closing balance from the audited financial statements for 2017. Article 20.3 of the

Implementing Regulations for the Collection of Zakat issued by the Minister of Finance Resolution No. (2082) of 01/06/1438 AH stated that: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". Accordingly, as it appears that the dispute between the parties lies in the Plaintiff's request to add the closing balance to this item, and having taken cognizance of pleas and documents submitted by the parties, it turned out that the Plaintiff fails to explain the direct impact on exchange rate translations, cash hedging and revaluation of the defined benefit plan associated with the increase and decrease in obligations, or with the increase and decrease in assets with the balance made during the year in reserves and the details of items affected by the zakat base. Thus, and due to the failure to clarify the items affected by the zakat base, whether the effect is on obligations or assets. Therefore, the Department concluded to dismiss the Plaintiff's objection to the item of Addition of Closing Balance to Other Reserves for 2017.

Regarding the sixth item, Non-Acceptance of Deducting Assets Available for Sale for 2017/2018. The Plaintiff objects to the Defendant's action of not allowing the deduction of assets available for sale from the zakat base, while the Defendant argued that it believes that those assets should not be deducted for 2017/2018, based on the note of the item from the financial statements as assets available for sale and not as acquisition assets. Article 20.3 provides that: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". In accordance with the foregoing, and since it is clear that the dispute between the parties lies in the deduction of assets available for sale from the zakat base. Having perused the Case file, pleas and documents made by the parties, it is clear that the Plaintiff did not submit the detailed transaction explaining that that there was no sale of those assets during the years of the dispute, and since the Plaintiff submitted the financial statements for 2017/2018 attached under the name (Appendix 3-Cristal FS Arabic 2018) and (Appendix 1-Cristal 2017 Arabic FS), it is clear from Note No. 11 of 2017 and Note No. 9 that the plaintiff claims to sell those assets due to the final closure of the finishing department due to the official closure of the basic dyes manufacturing department, which shows the intention to sell and not use in the activity. Therefore, the Department concluded to dismiss the Plaintiff's objection to the item of Non-Acceptance of Deducting Assets Available for Sale for 2017/2018.

Regarding the seventh item, Not Allowing Deduction of Assets Under Construction (Employees' Long-Term Home Ownership Program) for 2017/2018. The Plaintiff objects to the Defendant's action of not deducting employees' home ownership program for 2017/2018, while the Defendant argued that, during the examination phase, it requested the Plaintiff to submit the audited trial balance explaining the opening balance, the debit and credit movement and the closing balance, and Zakat Payer submitted the data, as ZATCA did not accept to deduct this item from the zakat base at the value of SAR 89,292,437 for 2017, and SAR 72,882,000 for 2018. Article 4. Second.1 of the Implementing Regulations for the Collection of Zakat issued by the Minister of Finance Resolution No. (2082) of 01/06/1438 AH stated that: "The following items shall be deducted from the Zakat Base: ... 2. Zakat Payer's capital buildings under construction and being constructed for use in the activity not for sale". According to the foregoing, since it is evident that the Plaintiff requests to deduct the employees' home ownership program

for the disputed years, while the Defendant considers that the program is not used for the activity and is intended for sale. Having taken cognizance of pleas and documents submitted by the parties, represented in the financial statements for 2017 and 2018, attached under the name (Appendix 3-Cristal FS Arabic 2018) and (Appendix 1 - Cristal 2017 Arabic FS), it is clear from Note No. 11 of 2017 and Note No. 9 of 2018 that the Plaintiff is building housing units for the benefit of its employees, as part of the housing ownership program, which is shown in the category of assets under construction. With reference to Article (4) of the Implementing Regulations for the Collection of Zakat issued in 1438 AH, which clarifies the legal deductions, stipulating that they must be used for the activity and not for the purposes of sale. Therefore, the Department concluded to dismiss the Plaintiff's objection to the item of Not Allowing Deduction of Assets Under Construction (Employees' Long-Term Home Ownership Program) for 2017 and 2018.

Regarding the eighth item (A): Non-Acceptance of Deducting Other Assets (Employee Benefit Assets) for 2017 and 2018. The Plaintiff objects to the Defendant's action of not deducting employee benefit assets for 2017 and 2018, while the Defendant argued that this item consisted of residential units that were completed and handed over to the employees and registered as receivables owed by the employees. Article 4.Second.1 of the Implementing Regulations for the Collection of Zakat issued by the Minister of Finance Resolution No. (2082) of 01/06/1438 AH stated that: "The following items shall be deducted from the Zakat Base: 1- Fixed assets including the following: Net fixed assets (property assets), any payments for the purchase of fixed assets, and spare parts and materials not prepared for sale, provided that such assets be owned by the Zakat payer, unless an obstacle to the transfer of ownership exists, and be used in the activity". On the basis of the foregoing, and since the dispute over this item lies in the Plaintiff's claim to deduct the employee benefit assets, which are housing units handed over to employees as long-term receivables, while ZATCA considers them to be assets intended for employees and are part of the trading assets and do not represent assets used in the Company's activity. Having perused the implementing regulation of for the housing unit ownership program (Appendix 6), it is found that the Plaintiff is providing a program for employees that consists of building housing units for easy installment and interest-free, provided that they remain in the name and ownership of the Plaintiff until the employee completes the installment, at which time the housing unit is transferred to the employee's name later. In order to deduct assets from the zakat base, these assets must be used in the activity, as it is clear that these assets are classified as employee benefit assets. In accordance with Article 4 of the Implementing Regulations for the Collection of Zakat issued in 1438 AH, which clarify the legal deductions, as the provisions of the Article did not refer to the deduction of any other assets or accounts belonging to employees. Furthermore, the item takes the form of outstanding receivables. Consequently, the items that the Plaintiff is demanding to be deducted do not represent assets prepared for the company's use, but rather are considered long-term outstanding receivables and are not deducted from the zakat base. The value of the employee's residence will be paid in installments over a number of years (rent-to-own). Therefore, the Department concluded to dismiss the Plaintiff's objection to the item of Non-Acceptance of Deducting Other Assets (Employee Benefit Assets) for 2017 and 2018.

Regarding the eighth item (B): Non-Acceptance of Deducting Other Assets (Prepaid Bank Charges, Prepaid Expenses and Other Debit Balances) for 2017/2018. The Plaintiff objects to the Defendant's action of not deducting prepaid bank charges and prepaid expenses. In contrast, the Defendant argued that what Zakat Payer is demanding to be deducted from the zakat base is not among the deductions from the zakat base mentioned in Article 4 of the Implementing Regulation for the Collection of Zakat. Since Article 20.3 of the Implementing Regulation for the Collection of Zakat, issued by Minister of Finance

Resolution No. (2082) of 01/06/1438 AH, provided that: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". Having perused the Case file, pleas and documents contained therein, it is clear that the dispute lies in the extent to which these prepaid expenses are properly treated as assets deducted from the zakat base. With reference to Note No. 17 of the financial statements, which makes it clear that the item is other assets (non-current assets) represented by prepaid bank charges, prepaid expenses and other debit balances, and since the Plaintiff did not explain the nature of these expenses and whether they are revenue expenses? Nor did it clarify the nature of the other debit balances. Therefore, the Department concluded to dismiss the Plaintiff's objection to the item of Non-Acceptance of Deducting Other Assets (Prepaid Bank Charges, Prepaid Expenses and Other Debit Balances) for 2017/2018.

Regarding the Ninth item: Non-Acceptance of Deducting Available-For-Sale Investments for 2017/2018. The Plaintiff objects to the Defendant's action of not accepting a full deduction of the balance of investments available for sale for the years 2017/2018, while the Defendant argued that it excluded the deduction of part of the item value from the zakat base, as it is clear that the excluded part is investments intended for sale. Article 20.3 stated that: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". Accordingly, it is clear that there are two prerequisites for considering investments as acquisition assets that may be deducted from the zakat base, namely, the documented intention of authorized person that clarifies the intention to invest, and the absence of sales made during the year on those investments. Having taken cognizance of documents presented in the Case file, namely the financial statements for 2017/2018 attached under the name (Appendix 3-Cristal FS Arabic 2018) and (Appendix 1 - Cristal 2017 Arabic FS), it is evident from the Note (Investments in fair value through comprehensive income No. 12 for 2017) and the Note no. 11 for 2018, that there are investments available for sale within the non-current assets, which are represented by a share in a local company and shares from a legal settlement in Brazil. The Plaintiff stated that these investments were intended for long-term retention rather than for trading purposes. Having perused the Case file, the movement on such investments was not submitted to prove that there were no sales transactions during the year and to prove the Plaintiff's claims that they were for acquisition and not for trading, nor did it provide evidence of the management's intention to retain them in the long term, nor did it provide the approved financial statements for foreign investments "shares from a legal settlement in Brazil" and the failure to pay zakat due thereunder. Therefore, the Department concluded to dismiss the Plaintiff's objection to the item of Non-Acceptance of Deducting Available-For-Sale Investments for 2017 and 2018.

Regarding the tenth item: Non-Acceptance of Deducting Additional Investment (backstopping support) for a Subsidiary for 2017 and 2018. The Plaintiff objects that the non-deduction of the entire closing balance from related parties on the ground that it is interest loans, and is not considered an investment that may be deducted from the zakat base. In contrast, the Defendant argued that ZATCA, upon assessment, did not deduct the closing balance for a balance due from related parties that is not current from the zakat base, as the item represents interest loans provided to related parties. Article 4. Second.4/A

of the Implementing Regulations for the Collection of Zakat issued by Ministerial Decision No. (2082) of 01/06/1438 AH stated that: "The following items shall be deducted from the Zakat Base: -4 (A): Investments in an entity in the Kingdom, in participation with others, if such investments are subject to Zakat according to this Regulations. If the investment in such entities is not subject to Zakat, no deductions will be made from the Zakat Base". Based on the foregoing, and having taken cognizance of the documents submitted in the Case file, which are the financial statements for 2017/2018, it is clear from Note No. 8 "Transactions with Related Parties", about the existence of a relationship with related parties - a non-current part - that these amounts represent an interest-bearing loan provided to the affiliated company (..... Company Ltd), and that the subsidiary subjected these amounts to zakat in accordance with its zakat declarations submitted to ZATCA. Accordingly, the loans and advances provided to the subsidiary that submits its declarations to ZATCA require special zakat treatment to avoid zakat duplication, as part of the loan and advances (according to the investment percentage) do not represent lending to another party. Thus, the Plaintiff (lender) is entitled to deduct a portion of the loans and advances provided to the subsidiary from its zakat base equal to the proportion of its investment in the subsidiary to which it provided the loan. Therefore, the Plaintiff's point of view regarding deducting the loan provided to the subsidiary company is correct, but at an amount equivalent to its ownership percentage in the zakat base. Therefore, the Department concluded to amend the Defendant's action on the item of Deduction of Additional Investment for 2017 and 2018 based on the ownership ratio.
For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

First: Dismiss the Plaintiff's objection to the item of Addition of Employee Benefits (current) Provision for 2017.
Second: Dismiss the Plaintiff's objection to the item of Addition of Dues to Related Parties for 2018.
Third: Dismiss the Plaintiff's objection to the item of Non-Acceptance of Deducting the Decrease in the Value of Employees' Housing for 2017.
Fourth: Dismiss the Plaintiff's objection to the item of Addition of Closing Balance from Minority Rights for 2017.
Fifth Dismiss the Plaintiff's objection to the item of Addition of Closing Balance to Other Reserves for 2017.
Sixth: Dismiss the Plaintiff's objection to the item of Non-Acceptance of Deducting Assets Available for Sale for 2017 and 2018.
Seventh: Dismiss the Plaintiff's objection to the item of Not Allowing Deduction of Assets Under Construction (Employees' Long-Term Home Ownership Program) for 2017 and 2018.
Eighth (A): Dismiss the Plaintiff's objection to the item of Non-Acceptance of Deducting Other Assets (Employee Benefits Assets) for 2017 and 2018.
Eighth (B): Dismiss the Plaintiff's objection to the item of Non-Acceptance of Deducting Other Assets (Prepaid Bank Charges, Prepaid Expenses and Other Debit Balances) for 2017 and 2018.
Ninth: Dismiss the Plaintiff's objection to the item of Non-Acceptance of Deducting Available-For-Sale Investments for 2017 and 2018.
Tenth: Amend the Defendant's action on the item of Deduction of Additional Investment for 2017 and 2018 based on the ownership ratio.
This decision was delivered in presence of the parties. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within

(thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

Appeal Committee:

Appeal Committee ruled to uphold the decision, except for the first and fifth item, which were amended.

Determination Committee

First Department for Determination Income Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-2115)
Issued in Appeal No. (Z-89084-2021)

Key words:
Zakat Assessment - Accounts - Deduction of Bad Debts - Adding Accounts Payable to the Zakat Base - Adding the Opening or Closing Balance, whichever is less, to the Zakat Base - Not Allowing the Deduction of Accounts Receivable as Deductible Expenses - The Burden of Proving the Authenticity of the Zakat Payer's Declaration Shall Be the Zakat Payer's Responsibility.

Abstract

The Plaintiff instituted this case moving to cancel ZATCA's decision regarding zakat assessment of 2014 AD. The Plaintiff based its objection on two items. First: Deduction of Bad Debts of 2014. The Plaintiff objected to the non-deduction of receivables as deductible expenses, while the Defendant argued that, upon assessment, it added the item to the adjusted net profit. As for Item Second (Suppliers): Adding Accounts Payable to the Zakat Base of 2014. The Plaintiff objects to the Defendant's procedure of adding accounts payable balances, while the Defendant argued that it added the opening or closing balance, whichever is less, to the zakat base - the legal texts indicated that if the case is filed by a person with capacity, and during the prescribed legal period, the case must be accepted in form, and since it is established that "Onus of proof lies with the plaintiff", and that the burden of proving the authenticity of the zakat payer's declaration shall be the zakat payer's responsibility - therefore, the Department found that, with regard to the first item, the dispute over this item is a documentary dispute, and the Plaintiff did not provide evidence that it has met the requirements for the deduction of bad debts due to its failure to provide a certificate from the chartered accountant stating that these debts were written off by the authorized person. Accordingly, the Department decided to dismiss the Plaintiff's objection. As for Item Second (Suppliers): Since the Plaintiff did not provide the supporting documents indicating that a year has passed on this item. Based on the jurisprudence rule that states that "Onus of proof lies with the plaintiff", and the Plaintiff did not provide evidence of the validity of its objection. Department ruled to Accept Case in form, and dismiss the Plaintiff's objection. The decision shall be deemed final and enforceable.

Instruments:

- Articles (4.First.5), (5.3), (6.2) and (20.3) of Implementing Regulations for the Collection of Zakat issued by Ministerial Resolution No. (2082) dated:01/06/1438 AH.
- Jurisprudence Rule: "Onus of proof lies with the plaintiff".
- Ministerial Decision No. (3/1103).
- Appeal Committee Decision No. 942.

- ZATCA Circular No. (35/1).
- ZATCA Explanatory Letter No. (1/3394).

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 13/09/2022 AD, the First Department for Determination of Tax Violations and Disputes in Jeddah, stipulated in Article No. 67 of the Income Tax Law issued by Royal Decree No.: (M/1) dated: 15/01/1425 AH as amended, and formed by Royal Order No. (65474), dated 23/12/1439 AH, held its session via video conference to consider the above-mentioned case. Since the case met the prescribed legal conditions, it was deposited with the General Secretariat of the Tax Committees under the above number dated: 27/12/2021.

The facts of this case are summed up so as... National ID Number: (...) in his capacity as attorney of Plaintiff (... Company), CR No. (....), pursuant to POA No. (....), filed an objection to ZATCA's zakat assessment for 2014. The Plaintiff's objection is limited to two items. Regarding the first item: Deduction of Bad Debts of 2014. The Plaintiff objects to the Defendant's action of not allowing the write-off of receivables as deductible expenses. In addition, the Plaintiff stated that the write-off of receivables met the conditions for permissible expenses based on Article 5.3 of the Implementing Regulations for the Collection of Zakat, and states that it completed all the procedures for the collection of those debts and they had not been collected by clients. The Plaintiff also attached Annex (4) a summary of the details of bad debts that were written off, as well as the Board of Directors' decision to approve the writing off of the debts (annex 5). The Plaintiff explained that it was in the process of preparing and submitting the chartered accountant's certificate confirming the same to the Secretariat. As for Item Second (Suppliers): Adding Accounts Payable to the Zakat Base of 2014. The Plaintiff objects to the Defendant's procedure of adding accounts payable balances, and stated that one of the key conditions for the purpose of calculating zakat in accordance with Sharia is the obligation to impose zakat on the actual funds remaining with the Company for a period of twelve months. Furthermore, the Plaintiff added that, as indicated by the accounts payable movement, the opening balance added to the zakat base was fully utilized during that period, and therefore the amount should not be added to the zakat base. The Plaintiff attached in (annex 6) the accounts payable movement and the nature of outstanding amounts. Moreover, the Plaintiff explained that the transactions relating to those balances were in exchange for normal business operations necessary to meet the company's working capital requirements, and attached an addendum memorandum in which she explained that the Company's usual practices are to record these goods and services in advance in its books when issuing a purchase order to suppliers and they are paid later (forward purchase), and in some cases these transactions are recorded for creditors by settling them with the debit balances of these suppliers, and it does not affect the mechanism for calculation of credits because all of those accounts are included in the list of suppliers. Besides, the Plaintiff explained that it was confirmed by the company's auditors for the financial statements approved by the chartered accountant who issued the audited financial statements, in accordance with SOCPA criteria. In its addendum memorandum, the Plaintiff relies on Ministerial Decision No. 3/1103, ZATCA's Explanatory Letter No. 3394/1, ZATCA's Circulation No. 35/1 and the Appeals Committee's decision No. 294. Accordingly, the Plaintiff requests that the balances of the creditors' obligations mentioned above not be added.

Having presented the statement of claim to Defendant, it responded as follows: with regard to the first item: Deduction of Bad Debts of 2014. Upon assessment, ZATCA added the item to the adjusted net profit in the amount of SAR (57,072) of 2013, SAR (677,047) of

2014, and SAR (522,024) of 2015, in accordance with Article 5.3 of the Implementing Regulations for the Collection of Zakat. The Defendant explained that the Plaintiff had submitted the administration's decision to write off the debt, but had not submitted the chartered accountant's certificate stating that the debts had been written off by virtue of a decision from the authorized person. Therefore, the Defendant dismissed the Plaintiff's objection. As for Item Second (Suppliers): Adding Accounts Payable to the Zakat Base of 2014. ZATCA added the opening or closing balance, whichever is less, to the zakat base in the amount of SAR (10,301,445) of 2013, SAR (10,301,445) of 2014, SAR (13,953,773) of 2015, SAR (10,724,989) of 2016, due to the failure to submit supporting documents, and based on Article 4.5 of the Implementing Regulation for the Collection of Zakat. The Defendant added that the chartered accountant stated in his report "drawing attention" of 2013 that the opening balances were submitted by the management. In addition, the Defendant stated that, with regard to 2013, the Plaintiff submitted a detailed account movement, which was matched with the financial statements, and it was found to be identical, but it did not provide anything that clarifies the opening balances transferred from the institution's liability to the company's liability, which makes it impossible to verify the value of assets that have completed a full year, and its financial liability was transferred to the Company. In accordance with the Regulations, the Defendant explained that if an institution is transferred to a company, the institution owner's share of the new company's capital is subject to zakat and its year is not interrupted. This applies to the shares of partners in the merged companies. As for the new partners, their year begins according to what is specified in Article (14) of the aforementioned regulations. With regard to the years 2014, 2015 and 2016, the Defendant stated that Zakat Payer had provided a detailed movement of balances, which were matched with the financial statements and found to be in conformity, but after examining the submitted statement of account, found that it contained debit balances for a number of suppliers, which Zakat Payer should have reclassified and classified under receivables and not added to the credit balances. Accordingly, the Defendant rejected the Plaintiff's objection based on article 4.5 of the Implementing Regulations for the Collection of Zakat.

On Tuesday, 30/08/2022 AD, the Department held its session remotely to consider the Case. The Plaintiff's attorney (....) appeared, holder of National ID No. (...) by virtue of Power of Attorney No. (...) Attached in the case file on the Plaintiff Company. In addition, the representative of Defendant (...), holder of National ID No. (...) appeared by virtue of Authorization issued by ZATCA's Deputy Governor for Legal Affairs No.: (...) Dated .../ .../06/1442 AH. The Department perused the case file and accepted the case in form. For further study, the Department decided to postpone the hearing of the case until a later session, which was set for Tuesday, dated: 13/09/2022.

On Tuesday, 13/09/2022 AD, the Department held its session remotely to consider the Case. The Plaintiff's attorney (....) appeared, holder of National ID No. (...) under POA No. (...). In addition, the Defendant's representative .... holder of National ID No. (...) appeared by virtue of Authorization issued by ZATCA's Deputy Governor for Legal Affairs No.: (...) Dated .../ .../06/1442 AH. Having asked parties to the Case about what they would like to add, they were satisfied with their earlier submissions. Therefore, the Department decided to adjourn the session for deliberation before adjudication.

Grounds

Having taken cognizance of Zakat Law promulgated by Royal Decree No.: (17/28/577) of 14/03/1376 AH, and its Implementing Regulations issued by the Minister of Finance's Decision No.: (2082) dated: 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No.: (M/1) dated: dated 15/01/1425 AH, as amended, and the Implementing Regulations issued by Minister of Finance Resolution No.: (1535), dated

11/06/1425 AH, as amended. Having examined the Tax Dispute and Violation Committee Procedures issued by Royal Decree No.: (26040), dated 21/04/1441 AH. and the relevant Laws and regulations.

In form, the Plaintiff seeks by this Case to cancel ZATCA's decision regarding the zakat assessment of 2014, and given that this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040), dated 21/04/1441 AH. Since the Case was filed by a party with legal capacity and within the prescribed statutory period, it is incumbent upon this Department to accept the Case in form.

On Merits: Upon reviewing the documents included in the Case file, as well as the requests, defenses, and pleas raised by the parties, the Department found that the dispute lies in the Defendant's issuance of zakat assessment for 2014. The Plaintiff's objection is limited to two specific items, as follows:

Regarding First Item: Deduction of Bad Debts of 2014. The Plaintiff objected to the Defendant's action of not allowing the deduction of receivables as deductible expenses, while the Defendant argued that, upon assessment, it added the item to the adjusted net profit, in accordance with Article 5.3 of the Implementing Regulations for the Collection of Zakat. Additionally, Article 5.3 of the Implementing Regulations for the Collection of Zakat, issued by Ministerial Decision No. (2082) dated: 01/06/1438 AH states: "Bad debts are expenses that may be deducted in accordance with the following controls: a. Debts should have been previously declared within revenues in the year the revenue was generated. b. Debts shall be the result of carrying out activities. c. The Zakat Payer shall provide a certificate from a certified public accountant licensed to operate in the Kingdom, confirming that the debts are written-off by resolution of the authorized person. d. The debts shall not be payable by bodies associated with the Zakat Payer. e. The Zakat Payer shall report the debts written off as revenue where such debts are recovered." Additionally, Article (6), Paragraph (2) of the same Regulations, regarding non-deductible expenses, which states: "Expenses that the Zakat Payer fails to prove by supporting documents or other evidential matter." Additionally, Article (20.3) of the same Regulations states: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". In light of the foregoing and upon reviewing the Case file, it is evident that the dispute over this item is documentary and, upon examination of the documents attached thereto, it also becomes clear that Plaintiff failed to provide evidence to demonstrate their commitment to the conditions for writing off bad debts, as they failed to submit a certificate from the chartered accountant confirming that these debts were written off by the authorized party. Accordingly, the Department satisfies to dismiss Plaintiff's objection regarding the bad debt write-off for 2014.

As for Item Second (Suppliers): Plaintiff, regarding the inclusion of payables in the zakat base for 2014, challenges Defendant's relevant action, stating that one of the key conditions for calculating zakat in accordance with Islamic Sharia is that zakat must be levied on the actual remaining funds of the company for a period of twelve (12) months. Meanwhile, Defendant argues for the inclusion of the opening balance or the closing balance, whichever is less, in the zakat base. Paragraph (First/5) of Article (4) of the Implementing Regulations for Zakat Collection, issued by Ministerial Decision No. (2082) dated 01/06/1438 AH states: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans, along with other similar financing sources, such as creditors, notes payable and overdrafts owed by Zakat Payer as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance

acquisition assets. c. Parts thereof used in trade bids on which a year has passed." Having taken cognizance of the Case file, including defense and documents, given that Plaintiff failed to provide evidential documents substantiating the claim that the twelve-month period had not elapsed for this item, and pursuant to the Rule of Jurisprudence that states: "Onus of proof lies with the plaintiff", and since Plaintiff failed to provide evidence to substantiate their objection, the Department decided to dismiss Plaintiff's objection regarding the inclusion of payables in the zakat base for 2014.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

First: Dismiss Plaintiff's objection regarding the bad debt write-off for 2013.

Second: Dismiss Plaintiff's objection regarding the inclusion of payables in the zakat base for 2014.

This decision was delivered in presence of the parties. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable if either party does not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

Appeal Committee:

Appeal Committee ruled to uphold Department decision.

Determination Committee

First Department for Determination Income Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-2305)
Issued in Appeal No. (Z-91141-2021)

Key words:
Zakat Assessment - Accounts - Statutory Period - Purchase Profits - Payments made by Clients - Dismissal of Plaintiff's Objection.

Abstract

Plaintiff is requesting the cancellation of ZATCA's decision regarding zakat assessment for 2020. Plaintiff's objection is limited to two items. Regarding the first item: Plaintiff (Zakat Payer), regarding Purchase Profits, objects to Defendant's action on the grounds that the purchase amount does not appear in the cost of goods sold but rather is reflected in inventory. Meanwhile, Defendant (ZATCA) maintains the validity of its decision due to Zakat Payer's failure to provide any supporting documents for these differences. As for Item Second (Suppliers): Plaintiff, concerning Payments made by Clients, objects to the inclusion of the relevant amount in the zakat base, stating that their records only show a payment of SAR (679,875) from ... Company, noting that this amount is disputed and subject to a judicial ruling. The goods were purchased but not invoiced due to the client's failure to pay the remaining balance. On the other hand, Defendant argues for the inclusion of the opening balance or the closing balance, whichever is less, in the zakat base. Plaintiff, however, failed to provide supporting documents to substantiate their objection. Department ruled to Dismiss Plaintiff's case, and consider the decision as final and enforceable.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 20/09/2022 AD, the First Department for Determination of Tax Violations and Disputes in Jeddah, stipulated in Article No. 67 of the Income Tax Law issued by Royal Decree No.: (M/1) dated: 15/01/1425 AH as amended, and formed by Royal Order No. (65474), dated 23/12/1439 AH, held its session via video conference to consider the above-mentioned case. Since the case met the prescribed legal conditions, it was deposited with the General Secretariat of the Tax Committees under the above number dated: 16/01/2021.

Facts of the case are summarized that ....., holder of National ID No. (....), in his capacity as the legal representative of Plaintiff ....., C.R. No. (...), and pursuant to its AOA, Plaintiff filed an objection to ZATCA's zakat assessment for 2020. Plaintiff's objection is limited to two items. Regarding the first item: Plaintiff, regarding Purchase Profits, challenges Defendant's action, arguing that the purchase amount did not appear in the cost of goods sold but rather in the inventory. As for Item Second (Suppliers): Plaintiff, concerning Payments made by Clients, objects to the inclusion of the relevant amount in the zakat

base, stating that their records only show a payment of SAR (679,875) from ... Company, noting that this amount is disputed and subject to a judicial ruling. The goods were purchased but not invoiced due to the client's failure to pay the remaining balance.
Having presented the statement of claim to Defendant, it responded as follows: with regard to the first item: ZATCA, concerning Foreign Purchases, upholds the validity of its decision, citing Zakat Payer's failure to provide any supporting documents for the resulting discrepancies. As for Item Second (Suppliers): ZATCA, concerning Payments made by Clients, included the item based on either the opening or closing balance, whichever is less, while Plaintiff failed to provide supporting documents to substantiate their objection.
On Sunday, 06/09/2022 AD, the Department convened its session remotely to consider the Case. The session was attended by the representative of Plaintiff..., holder of National ID No. (...), according to the partners' decision attached to the Case file (...), as well as Mr. ..., holder of National ID No. (...), authorized by the delegation issued by the Deputy Governor of ZATCA under No. (...) dated .../.../.... to address the objection regarding the zakat assessment letter. During the session, the Department viewed the Case. The Department, upon deliberation, decided to accept the Case in form on the grounds that Plaintiff's objection was submitted within the statutory period to ZATCA. During the session, Defendant's representatives requested an extension to submit a response to the substantive aspects of the Case. Therefore, the Department instructed that the response be uploaded to the website of the General Secretariat of Tax Committees within 15 days from the session date. Therefore, the Department decided to adjourn the hearing to a later session, which was set for Sunday, 18/09/2022, at 6:00 pm. The session was concluded at 7:00 pm.
On Sunday, 18/09/2022 AD, the Department convened its session remotely to consider the Case. The session was attended by the representative of Plaintiff..., holder of National ID No. (...), according to the partners' decision attached to the Case file (...), as well as Mr. ..., holder of National ID No. (...), authorized by the delegation issued by the Deputy Governor of ZATCA under No. (...) dated .../.../.... to address the objection regarding the zakat assessment letter. During the session, the Department viewed the request presented by Defendant's representative for an extension to submit the approved memorandum. Accordingly, the Department decided to adjourn the consideration of the Case to a later session until the response is submitted. The session was scheduled for Tuesday, 20/09/2022, at 7:00 PM and was concluded at 7:30 PM.
On Sunday, 18/09/2022 AD, the Department convened its session remotely to consider the Case. The session was attended by the representative of Plaintiff..., holder of National ID No. (...), as well as Defendant's representative. ..., holder of National ID No. (...), authorized by the delegation issued by the Deputy Governor of ZATCA under No. (...) dated .../.../..... When both parties were asked if they had anything further to add, Plaintiff's representative stated that the land located in Dammam is subject to endowment and that there is an ongoing dispute between the Ministry of ... and the Ministry of .... Plaintiff's representative objects to Defendant's zakat assessment for 2014, arguing that the statutory period for amending the assessment for that year has expired, exceeding five years. Therefore, Zakat Payer objects to the procedure, relying on Paragraph (10) of Article (21) of the Implementing Regulations for Zakat Collection. Defendant's representative, upon presenting the defense, requested an extension to provide a response to the statute of limitations defense. Accordingly, the Department decided to adjourn the hearing to a later session, which was set for Sunday, 18/09/2022, at 7:00 pm. The session was concluded at 7:30 pm.
On Tuesday, 20/09/2022 AD, the Department convened its session remotely to consider the Case. The session was attended by the representative of Plaintiff..., holder of National ID No. (...), as well as Defendant's representative. ..., holder of National ID No. (...),

according to the partners' decision attached to the Case file, and ..., holder of National ID No. (...), authorized by the delegation issued by the Deputy Governor of ZATCA under No. (...) dated .../.../.... Having asked Defendant's representative regarding the reason behind their extension request, he replied that it was to submit a memorandum of reply. The Department, upon reviewing the memoranda and attachments, both parties were asked if they had anything further to add, but both were satisfied with their earlier submissions. Therefore, the Department decided to adjourn the session for deliberation before adjudication.

Grounds

Having taken cognizance of Zakat Law promulgated by Royal Decree No.: (17/28/577) of 14/03/1376 AH, and its Implementing Regulations issued by the Minister of Finance's Decision No.: (2082) dated: 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No.: (M/1) dated: dated 15/01/1425 AH, as amended, and the Implementing Regulations issued by Minister of Finance Resolution No.: (1535), dated 11/06/1425 AH, as amended. Having examined the Tax Dispute and Violation Committee Procedures issued by Royal Decree No.: (26040), dated 21/04/1441 AH. and the relevant Laws and regulations.

In Form, Plaintiff seeks by this Case to cancel ZATCA's decision regarding Zakat assessment for 2020, and given that this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040), dated 21/04/1441 AH. Since the Case was filed by a party with legal capacity and within the prescribed statutory period, it is incumbent upon this Department to accept the Case in form.

On Merits, upon reviewing the documents included in the Case file, as well as the requests, defenses, and pleas raised by the parties, the Department found that the dispute lies in the Defendant's issuance of Zakat assessment for 2020. Plaintiff's objection is limited to the following two items:

Regarding First Item: Plaintiff (Zakat Payer), regarding Purchase Profits, objects to Defendant's action on the grounds that the purchase amount does not appear in the cost of goods sold but rather is reflected in inventory. Meanwhile, Defendant (ZATCA) maintains the validity of its decision due to Zakat Payer's failure to provide any supporting documents for these differences. Accordingly, the Department satisfies to dismiss Plaintiff's objection.

As for Item Second (Suppliers): Plaintiff, concerning Payments made by Clients, objects to the inclusion of the relevant amount in the zakat base, stating that their records only show a payment of SAR (679,875) from ... Company, noting that this amount is disputed and subject to a judicial ruling. The goods were purchased but not invoiced due to the client's failure to pay the remaining balance. On the other hand, Defendant argues for the inclusion of the opening balance or the closing balance, whichever is less, in the zakat base. Plaintiff, however, failed to provide supporting documents to substantiate their objection. Therefore, the Department satisfies to dismiss Plaintiff's objection.

For the aforementioned grounds, the Department unanimously decided as follows:

Decision:

First: Dismiss Plaintiff's objection to (Purchase Profits) item.

Second: Dismiss Plaintiff's objection to (Payments made by Clients) item.

This decision was delivered in presence of the parties. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within

thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable if either party does not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

Appeal Committee:

Appeal Committee ruled to uphold Department decision.

Determination Committee

First Department for Determination Income Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-2267)
Issued in Appeal No. (Z-96236-2021)

Key words:
Zakat Assessment - Accounts - Validity of ZATCA's Notifications for Amending Declarations to Claim Zakat Liabilities - Eligibility for Subjecting Short-Term Loans to Zakat - Working Capital and Operating Cycle Financing - Trade in Supply Commodities - Time Lag between Supply and Sale Transactions - Maintaining Steady Inventory Levels to Meet Market Demands - Short-Term Loans as Revolving Loans.

Abstract

Plaintiff is requesting the cancellation of ZATCA's decision regarding zakat assessment for 2019. Plaintiff's objection is limited to two items. Regarding the first item: Validity of ZATCA's Notifications for Amending Declarations to Claim Zakat Liabilities for 2019: Plaintiff objects to Defendant's action regarding this item and requests the annulment of Defendant's decision. Defendant, however, argues that no objection was raised by Plaintiff, nor was it addressed with ZATCA during the examination and objection phase. As for Item Second (Suppliers): Plaintiff, regarding Eligibility for Subjecting Short-Term Loans to Zakat for 2019, argues that the short-term loans obtained were used to finance working capital and the operating cycle, in order to bridge the financing gap resulting from the time lag between supply and sale transactions, especially since Zakat Payer's activity involves trading in supply commodities, necessitating the maintenance of stable inventory levels to meet market demand. However, Defendant argues that these short-term loans are revolving loans granted to support capital expansions, leading ZATCA to include such loans in the zakat base. In response to Plaintiff's first point, ZATCA stated that no objection was raised by Plaintiff, nor was it addressed with ZATCA during the examination and objection phase. Regarding the second point, ZATCA maintained that the short-term loans are revolving loans provided to support capital expansions, and as such, they were included in the zakat base. The Department, regarding the first item, established that Plaintiff's objection to ZATCA's failure to clarify statutory provisions cited in the assessment applied and the failure to specify the paragraphs included in those provisions of the regulation. However, the Department determined that ZATCA's action of not specifying the paragraph of the article and merely stating the statutory provision upon which the assessment was based did not render the issued assessment defective, as the article itself encompasses the paragraphs referred to in the assessment. As for Item Second (Suppliers): Based on the review of the documents attached in the Case file, specifically the detailed transaction of short-term loans, and by tracking the flow of these loans, terms of the banking agreements, loan amounts and their respective dates, it is evident that these loans exhibit revolving and continuous pattern. The loan is obtained from the bank, and after a short period, it is repaid. Around the same date the loan is repaid, a new loan of the same value is obtained, emphasizing that the loan essentially functions as a long-term loan.

Thereupon, this emphasizes the validity of ZATCA's procedure in including the loans and falsity of Zakat Payer's claim of a defect in the administrative declaration issued by ZATCA in this regard. Therefore, the Department ruled to accept case in form, and dismiss the objection. This decision shall be deemed final and enforceable.

Instruments:

- Article (4/3) and (20) of the Implementing Regulations for Zakat Collection, issued by Minister of Finance's Decision No. (2082) dated 01/06/1438 AH

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 13/09/2022 AD, the First Department for Determination of Income Tax Violations and Disputes in Jeddah, established pursuant to Article (67) the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and its amendments, and constituted pursuant to Royal Decree No. (65474) dated 23/12/1444 AH, held a remote hearing via video and audio conference to consider the aforementioned case. As the case has met the prescribed legal requirements, it was filed with the General Secretariat of the Tax Committees under the mentioned number on 20/02/2022.

Facts of this case are summarized that ..., holder of National ID No. (...), acting as the attorney of Plaintiff/ ... Company, CR No. (...), pursuant to its AOA No. (...), submitted an objection to zakat assessment for 2019 AD issued by ZATCA. Plaintiff's objection is limited to two points items. Regarding the first item: Plaintiff, regarding Validity of ZATCA's Notifications for Amending Declarations to Claim Zakat Liabilities for 2019, challenges Defendant's action in this regard, stating that ZATCA's automated system-generated amendment notifications did not include any reference to Article (4), which Plaintiff contends is applicable to the loan balances that were amended in the declaration. Furthermore, the notifications did not include the nature of the fines amounting to SAR (308,123.99), which ZATCA deemed ineligible for deduction, merely noting the item's inclusion in the declaration as per the assessment attachments. Moreover, ZATCA's notifications failed to disclose the document upon which ZATCA relied to conclude that these expenses pertained to the owner (a Saudi joint-stock company rather than a partnership) in 2020. Plaintiff also objects to ZATCA's unexplained deduction of SAR (150,666) from other allowable deductions, without specifying the legal basis or methodology used to arrive at this value. As for Item Second (Suppliers): Eligibility for Subjecting Short-Term Loans to Zakat for 2019: Plaintiff challenges Defendant's action regarding the item in question, which pertains to the short-term loans obtained by Plaintiff to finance working capital and the operating cycle, in order to bridge the financing gap resulting from the time lag between supply and sale transactions, especially since Zakat Payer's activity involves trading in supply commodities, necessitating the maintenance of stable inventory levels to meet market demand. Accordingly, Plaintiff secured these short-term loans, as evidenced by the loan agreements signed with lenders, which stipulate that these loans are short-term and designated for operational purposes.

Having presented the statement of claim to Defendant, it responded as follows: with regard to the first item: Validity of ZATCA's Notifications for Amending Declarations to Claim Zakat Liabilities for 2019, it was found that, upon reviewing Zakat Payer's objection, no objection was raised by Zakat Payer (Plaintiff) to this item for the aforementioned year, nor was it addressed with ZATCA during the examination and objection phase. It was further established that Zakat Payer did not object to this item within 60 days of being notified. As for the second aspect, the Committee concluded that ZATCA's actions were based on applicable laws and regulations, which necessitate their application to Zakat

Payer's case. The nature of this type of case is governed by Article (5) of the Tax Dispute and Violation Committee Procedures. In the absence of a legal provision in the rules, both committees apply the procedures outlined in the Law of Civil Procedures and Law of Criminal Procedure. Additionally, Zakat Payer, during the objection phase, acknowledged and accepted certain amendments made by ZATCA in their objection letter. As for Item Second (Suppliers): Eligibility for Subjecting Short-Term Loans to Zakat for 2019, it was determined, upon reviewing the submitted loan agreements with banks and bank statements, that these short-term loans were in fact revolving loans. The bank agreements explicitly state that these loans and banking facilities were granted to support capital expansions. Consequently, ZATCA included these loans in the zakat base in accordance with Paragraph (3/b) of Article (4) of the Implementing Regulations for Zakat Collection. Furthermore, an examination of the loan activity based on the bank statements revealed a revolving nature of loans, implying that they remain Zakat Payer's liability throughout the year.

On Tuesday, 13/09/2022 AD, the Department convened its session remotely to consider the Case. The session was attended by the representative of Plaintiff..., holder of National ID No. (...), under PoA No. (...), as well as Defendant's representative. ..., holder of National ID No. (...), authorized by the delegation issued by the Deputy Governor of ZATCA under No. (...) dated .../.../.... Having asked parties to the Case about what they would like to add, they were satisfied with their earlier submissions.

Therefore, the Department decided to adjourn the session for deliberation before adjudication.

Grounds

Having taken cognizance of Zakat Law promulgated by Royal Decree No.: (17/28/577) of 14/03/1376 AH, and its Implementing Regulations issued by the Minister of Finance's Decision No.: (2082) dated: 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No.: (M/1) dated: dated 15/01/1425 AH, as amended, and the Implementing Regulations issued by Minister of Finance Resolution No.: (1535), dated 11/06/1425 AH, as amended. Having examined the Tax Dispute and Violation Committee Procedures issued by Royal Decree No.: (26040), dated and the relevant Laws and regulations.

In Form, Plaintiff seeks by this Case to cancel ZATCA's decision regarding zakat assessment for 2019, and given that this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040), dated 21/04/1441 AH. Since the Case was filed by a party with legal capacity and within the prescribed statutory period, it is incumbent upon this Department to accept the Case in form.

On Merits, upon reviewing the documents included in the Case file, as well as the requests, defenses, and pleas raised by the parties, the Department found that the dispute lies in the Defendant's issuance of zakat assessment for 2019. Plaintiff's objection is limited to the following two items:

Regarding First Item: Validity of ZATCA's Notifications for Amending Declarations to Claim Zakat Liabilities for 2019: Plaintiff objects to Defendant's action regarding this item and requests the annulment of Defendant's decision. Defendant, however, argues that no objection was raised by Plaintiff for the aforementioned year in this regard, nor was it addressed with ZATCA during the examination and objection phase. Article (20) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) dated 07/07/1440 AH states: "GAZT shall issues the assessment, including its approval of the declaration or its amendment, along with the reasons for the amendment. Zakat Payer has the right to object to the assessment in accordance with the provisions of

Chapter (7) hereof." Based on the foregoing, and upon reviewing the declaration amendment letters and the documents and defenses contained in the Case file, the Department concluded that the assessment issued to Zakat Payer was not defective, as the statutory provisions relied upon by ZATCA in its actions were duly cited and the existence of correspondence and meetings between both parties to the dispute refutes Plaintiff's claim of being unaware of the reasons for the amendments to the contested items. Furthermore, Plaintiff did not explicitly object to this matter before ZATCA in their objection letter dated 18/11/2021, where Plaintiff's objection centered on ZATCA's failure to clarify regarding the applicability of the statutory provisions referenced in the assessment and to specify the paragraphs of the regulations that those provisions pertain to. The Department also noted that ZATCA's failure to specify the paragraph of the article and reliance solely on mentioning the statutory provision does not render the assessment flawed, as the article encompasses the relevant paragraphs referenced in the assessment. Accordingly, the Department decided to dismiss Plaintiff's objection raised in this regard.
As for Item Second (Suppliers): Plaintiff, regarding Eligibility for Subjecting Short-Term Loans to Zakat for 2019, challenges Defendant's action in this regard, which pertains to the short-term loans obtained by Plaintiff to finance working capital and the operating cycle, in order to bridge the financing gap resulting from the time lag between supply and sale transactions, especially since Zakat Payer's activity involves trading in supply commodities, necessitating the maintenance of stable inventory levels to meet market demand. Accordingly, Plaintiff secured these short-term loans, as evidenced by the loan agreements signed with lenders, which stipulate that these loans are short-term and designated for operational purposes. However, Defendant contends that these short-term loans were in fact revolving loans and the bank agreements explicitly state that these loans and banking facilities were granted to support capital expansions. Consequently, ZATCA included these loans in the zakat base. Since Article 4.3 of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) of 07/07/1440 stipulates: "Debts owed by Zakat Payer, classified as long-term and equivalent components of the Zakat base, such as: Government financing, Commercial financing, Creditors, Notes payable, Overdraft accounts and Loans from owners or partners (including their current accounts),
shall be subject to the following considerations: A. If the debts owed by Zakat Payer or other sources of financing have a duration of 354 days or more overlapping between the zakat year and the following year, they shall be added to the zakat base for each year in proportion to the number of days in each zakat year. B. The Zakat year for debts is not interrupted by their renewal, rescheduling with the same creditor, or replacement with other debts or financing sources that serve the same purpose. C. The total additions mentioned in this paragraph shall not exceed the total deductions allowed under Article 5 hereof." Since Article 4.3 of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) of 07/07/1440 stipulates: "Debts owed by Zakat Payer, classified as long-term and equivalent components of the Zakat base, such as: Government financing, Commercial financing, Creditors, Notes payable, Overdraft accounts and Loans from owners or partners (including their current accounts), shall be subject to the following considerations: A. If the debts owed by Zakat Payer or other sources of financing have a duration of 354 days or more overlapping between the zakat year and the following year, they shall be added to the zakat base for each year in proportion to the number of days in each zakat year. B. The Zakat year for debts is not interrupted by their renewal, rescheduling with the same creditor, or replacement with other debts or financing sources that serve the same purpose. C. The total additions mentioned in this paragraph shall not exceed the total deductions allowed under Article 5 hereof." Based on the foregoing, loans, regardless of their type, source, or classification, are considered financing sources and thus

a component of the zakat base, provided their duration is 354 days or more or if they are used to finance assets excluded from the zakat base. Additionally, the zakat year for debts is not interrupted by their renewal, rescheduling with the same creditor, or replacement with other debts or financing sources that serve the same purpose. Based on the review of the documents attached in the Case file, specifically the detailed transaction of short-term loans, and by tracking the flow of these loans, terms of the banking agreements, loan amounts and their respective dates, it is evident that these loans exhibit revolving and continuous pattern. The loan is obtained from the bank, and after a short period, it is repaid. Around the same date the loan is repaid, a new loan of the same value is obtained, emphasizing that the loan essentially functions as a long-term loan. Thereupon, this emphasizes the validity of ZATCA's procedure in including the loans, as well as its reliance on the statutory provisions stated in regulations and falsity of Zakat Payer's claim of a defect in the administrative declaration issued by ZATCA in this regard. Therefore, the Department ruled to dismiss Plaintiff's objection raised regarding (Eligibility for Subjecting Short-Term Loans to Zakat for 2019) item.

For those grounds and after deliberation, the Department unanimously decided to:

Decision:

First: Dismiss Plaintiff's objection regarding the validity of ZATCA'S notifications for amending declarations to claim zakat liabilities for 2019.

Second: Dismiss Plaintiff's objection regarding the eligibility for subjecting short-term loans to zakat for 2019.

This decision was delivered in presence of the parties. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable if either party does not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

Appeal Committee:

Appeal Committee ruled to uphold the Department's decision, except for the second item, which was amended.

Determination Committee

First Department for Determination Income Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-2088)
Issued in Appeal No. (Z-44363-2021)

Key words:
Zakat Assessment - Accounts - Non-Deductible Vehicle Depreciation - Insurance - Matured Loans - Property and Equipment.

Abstract

Plaintiff requests annulment of ZATCA's decision regarding their objection to zakat assessment for 2018, which is specifically centered on four items. Plaintiff based its objection concerning non-deductible vehicle depreciation on the premise that the vehicle's depreciation is fixed and it is no longer intended for sale. Plaintiff, regarding the insurance item amounting to SAR (34,050), stated that this amount is considered a third-party trust deposited with the company and does not constitute financing for the company's operations. As for matured loans, Plaintiff argues for the incorrectness of ZATCA's action. Plaintiff, concerning property and equipment, stated that it was evident to ZATCA that real estate and fixed assets located outside the Kingdom are being depreciated on a fixed basis and are no longer intended for sale. As for First Item, ZATCA replied as follows: The objection was rejected due to the invalidity of Plaintiff's position regarding ZATCA's amendments. With respect to the remaining items, ZATCA insists on accuracy and correctness of its procedures. - With regard to the First Clause, the Department concluded that: Plaintiff lodged an objection to the draft assessment and their request was approved. As for Item Second (Suppliers): The account is a component of the zakat base and constitutes a liability for the company, and it has been established that a full year has elapsed. Regarding the third item: Defendant failed to provide a detailed statement of accounts for the loans or financial statements. Therefore, it is evident that Defendant applied the principle of using the opening or closing balance, whichever is less. Regarding the fourth item: ZATCA's action is correct unless Plaintiff proves otherwise. The Department ruled to: Accept Plaintiff's objection to the non-deductible vehicle depreciation and dismiss their objection to the remaining items. - This decision shall be deemed final and enforceable.

Instruments:

- Articles (4/First/5, Paragraph Second/1), (7/2/c), and (20/3) of the Implementing Regulations for Zakat Collection No. (2082) dated 01/06/1438 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Thursday, 18/08/2022 AD, the First Department for Determination of Income Tax Violations and Disputes in Jeddah, established pursuant to Article (67) the Income Tax

Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and its amendments, and constituted pursuant to Royal Decree No. (65474) dated 23/12/1439 AH, held a remote hearing via video and audio conference to consider the aforementioned case. As the case has met the prescribed legal requirements, it was filed with the General Secretariat of the Tax Committees under the mentioned number on 24/03/2021.

Facts of this case are summarized that ..., holder of National ID No. (...), acting as the legal representative of Plaintiff/ ... Company for Urban Development, CR No. (...), pursuant to its AOA No. (...), submitted an objection to zakat assessment for 2018 AD issued by ZATCA. Plaintiff's objection is limited to four items: Regarding First Item: Plaintiff, regarding non-deductible vehicle depreciation, amounting to SAR (237,060), challenges Defendant's adjustment of the net adjusted profit by adding back the vehicle depreciation to the zakat base. Plaintiff also stated that ZATCA determined that the depreciation of the vehicle, which is owned by the company, is fixed and it is no longer intended for sale. Moreover, Plaintiff attached the company's form, which shows no usage restrictions.

As for Item Second (Suppliers): Plaintiff, concerning insurance item amounting to SAR (34,050), argues for Defendant's reliance on Article (4) of the Implementing Regulations for Zakat Collection issued under No. (2082) dated 01/06/1438 AH, which applies in cases where the amounts are for financing. However, Plaintiff argues that rather than being funding for the company's operational or capital activities, this amount is considered a third-party trust deposited with the company until the insured party is entitled to its return. The company did not trade in other people's funds, and the amount was not considered a debt owed by the company. Furthermore, there is no zakat liability on trusts.

Regarding the third item: Plaintiff, regarding matured loans amounting to SAR (25,357,500), challenges Defendant's action, stating that ZATCA added matured loans to the zakat base and arguing that ZATCA's action is unclear and that the amounts result from business transactions between the company and foreign banks. Moreover, Plaintiff stated that ZATCA applied the principle of using the opening or closing balance, whichever is less.

Regarding the fourth item: Plaintiff, concerning property and equipment amounting to SAR (56,153,250), challenges Defendant's action, stating that ZATCA deducted SAR (56,153,250) from the property and equipment with a book value of SAR (404,981,929). Plaintiff asserts that ZATCA deducted the fixed property and real estate located outside the Kingdom and ZATCA determined that the real estate and fixed assets outside the Kingdom are depreciated on a fixed basis and are no longer intended for sale. This property outside the Kingdom is depreciated at a constant rate, and its value decreases over its useful life. Furthermore, Plaintiff attached the property ownership deed.

Having presented the statement of claim to Defendant, it responded as follows: with regard to the first item: Defendant, concerning non-deductible vehicle depreciation, amounting to SAR (237,060), states that a review of the final assessment shows that the net book profit was not adjusted by SAR (237,060) as a difference in vehicle depreciation and Plaintiff was sent a draft assessment, which is included within adjustments. However, upon Plaintiff's objection, their viewpoint was considered, and the adjustment was excluded from the final assessment. Therefore, Plaintiff's objection was dismissed due to the invalidity of their position regarding ZATCA's adjustment of SAR (237,060) in the final assessment adjustments. Moreover, ZATCA insists on accuracy and correctness of its procedure.

As for Item Second (Suppliers): As for insurance item, amounting to SAR (34,050), ZATCA requested additional information on 20/02/1442 AH (trial balance) detailing the opening balance, movement during the year, and closing balance. Defendant stated that Plaintiff was contacted on 25/02/1442 AH using the data registered with ZATCA and responded on 03/03/1442 AH. Consequently, the insurance amount of SAR (34,050) was

adjusted due to the completion of a full year as per the trial balance provided by Plaintiff. Upon reviewing the objection, reference was made to the data submitted to (Operations Department - Audit), specifically the trial balance, Account No. (...), revealed the following: The opening balance was SAR (42,000) with movements amounting to SAR (7,950) during the year, and additions totaling SAR (153,000), while the closing balance was SAR (187,000). Based on the foregoing, it is clear that ZATCA's addition of SAR (34,050) (42,000-7,950) to the zakat base is correct, as the completion of a full year was established. Therefore, the objection was dismissed based on the validity and soundness of ZATCA's action in accordance with Article (4) (First) of the Implementing Regulations for Zakat Collection issued under No. (2082) dated 01/06/1438 AH. Thereupon, ZATCA insists on accuracy and correctness of its procedure.

Regarding the third item: As for insurance item, amounting to SAR (25,357,500), ZATCA requested additional information on 20/02/1442 AH (trial balance) detailing the opening balance, movement during the year, and closing balance. Defendant stated that Plaintiff was contacted on 25/02/1442 AH using the data registered with ZATCA and responded on 03/03/1442 AH. Consequently, the loans amount of SAR (25,357,500) was adjusted due to the completion of a full year as per the trial balance provided by Plaintiff. Upon reviewing the objection, reference was made to the data submitted to ZATCA during the examination stage, specifically the trial balance, Account No. (...), revealed the following: The opening balance was SAR (25,357,500) with movements during the year, which were additions totaling SAR (46,045,818), while the closing balance was SAR (71,403,318). Based on the foregoing, it is clear that ZATCA's addition of SAR (25,357,500) (London Cambridge loan) to the zakat base is correct, as the completion of a full year was established. Therefore, the objection was dismissed based on the validity and soundness of ZATCA's action in accordance with Article (4) (First) of the Implementing Regulations for Zakat Collection issued under No. (2082) dated 01/06/1438 AH. Thereupon, ZATCA insists on accuracy and correctness of its procedure.

Regarding the fourth item: ZATCA, as for property and equipment amounting to SAR (56,153,250), requested additional information on 20/02/1442 AH (a detailed list of all plots of lands, their title deeds, and the purpose of acquisition along with ownership documentation). Defendant stated that Plaintiff was contacted on 25/02/1442 AH using the data registered with ZATCA and responded on 03/03/1442 AH. As a result, an amount of SAR (55,807,625) (property and equipment according to the declaration: SAR (404,981,929) - property and equipment according to the assessment: SAR (349,174,304), as this property is located outside the Kingdom, and no proceeds were recorded in the relevant accounts. Upon reviewing the objection, reference was made to the data submitted to (Operations Department - Audit) revealed ZATCA's correct action in excluding the foreign lands and buildings, as they were not used in the company's operations and did not generate any proceeds. Therefore, the objection was dismissed based on the validity and soundness of ZATCA's action and due to invalidity of Plaintiff's claim that the unapproved difference is SAR (56,153,250). Moreover, ZATCA maintains the accuracy and legality of its actions.

On Thursday, 18/08/2022 AD, the Department convened its session remotely to consider the Case. The session was attended by the representative of Plaintiff..., holder of National ID No. (...), under PoA No. (...), as well as Defendant's representative. ..., holder of National ID No. (...), authorized by the delegation issued by the Deputy Governor of ZATCA under No. (...) dated .../06/1442 AH. Having asked parties to the Case about what they would like to add, they were satisfied with their earlier submissions. Therefore, the Department decided to adjourn the session for deliberation before adjudication.

Grounds

Having taken cognizance of Zakat Law promulgated by Royal Decree No.: (17/28/577) of 14/03/1376 AH, and its Implementing Regulations issued by the Minister of Finance's Decision No.: (2082) dated: 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No.: (M/1) dated: dated 15/01/1425 AH, as amended, and the Implementing Regulations issued by Minister of Finance Resolution No.: (1535), dated 11/06/1425 AH, as amended. Having examined the Tax Dispute and Violation Committee Procedures issued by Royal Decree No.: (26040), dated and the relevant Laws and regulations.

In form, the Plaintiff seeks by this Case to cancel ZATCA's decision regarding the zakat assessment of 2018, and given that this dispute is a tax dispute, it falls within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes pursuant to Royal Order No. (26040), dated 21/04/1441 AH. Since the Case was filed by a party with legal capacity and within the prescribed statutory period, it is incumbent upon this Department to accept the Case in form.

On Merits, having taken cognizance of documents included in Case file, including requests, defenses and pleas raised by the parties, the Department found that the dispute lies in Defendant's issuance of zakat assessment for 2018. Plaintiff's objection is limited to the following four items:

Regarding First Item: Plaintiff, regarding non-deductible vehicle depreciation, amounting to SAR (237,060), challenges Defendant's adjustment of the net adjusted profit by adding back the vehicle depreciation to the zakat base. While Defendant, on the other hand, states that a review of the final assessment shows that the net book profit was not adjusted by SAR (237,060) as a difference in vehicle depreciation and Plaintiff was sent a draft assessment, which is included within adjustments. Furthermore, Paragraph (2/c) of Article (7) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH stipulates: "Fixed assets shall be depreciated according to the straight-line method and their depreciation ratio shall be as follows: ... c. Factories, machines, devices, software (computer programs), equipment including passenger and cargo vehicles". In light of the above and upon reviewing the Case documents and facts, it is evident that Plaintiff contests the addition of the difference in depreciation of property, machines, and equipment amounting to SAR (237,060). It is established, upon reviewing Defendant's memorandum of reply, that Defendant failed to adjust the net book profit for the depreciation difference stated above. Moreover, Defendant mentioned that Plaintiff was sent a draft assessment, which is included within adjustments. Whereupon, Plaintiff raised an objection to the assessment draft, which was accepted. A review of the case documents reveals that Defendant failed to provide the adjusted assessment to verify the accuracy of the adjustment to this item following acceptance of Plaintiff's request. Therefore, the Department satisfies to accept Plaintiff's objection to the non-deductible vehicle depreciation.

As for Item Second (Suppliers): Plaintiff argues for Defendant's (ZATCA) reliance on Article (4) (First)of the Implementing Regulations for Zakat Collection issued under No. (2082) dated 01/06/1438 AH, which applies in cases where the amounts are for financing. However, Plaintiff argues that rather than being funding for the company's operational or capital activities, this amount is considered a third-party trust deposited with the company until the insured party is entitled to its return. However, Defendant argues that it requested additional information on 20/02/1442 AH (trial balance) detailing the opening balance, movement during the year, and closing balance. Defendant stated that Plaintiff was contacted on 25/02/1442 AH using the data registered with ZATCA and responded on 03/03/1442 AH. Consequently, the insurance amount of SAR (34,050) was adjusted due to the completion of a full year as per the trial balance provided by Plaintiff. Paragraph (First/5) of Article (4) of the Implementing Regulations for Zakat Collection issued by

Ministerial Decision No. (2082) dated 01/06/1438 AH states: "The Zakat base shall comprise all Zakat Payer's funds subject to Zakat, including: 5. Government and commercial loans, along with other similar financing sources, such as creditors, notes payable and overdrafts owed by Zakat Payer as follows: (a) The remaining cash that has been saved or preserved. B. were used to finance acquisition assets. c. Parts thereof used in trade bids on which a year has passed." As illustrated above, Plaintiff requests the exclusion of the insurance amounts, arguing that these funds belong to a third party and are not in use. However, Plaintiff failed to provide any evidence to the contrary, nor did they submit the financial statements. Defendant, in its memorandum of reply, presented a detailed account statement confirming the completion of a full year for the amount of SAR (34,050). It is evident that this account constitutes a component of the zakat base, representing a liability of the company that has been proven to have completed a full year, thus it is added to the zakat base and subject to zakat. Accordingly, the Department satisfies to dismiss Plaintiff's objection to the insurance item.

Regarding the third item: As for insurance item, amounting to SAR (25,357,500), Plaintiff challenges Defendant's action, stating that ZATCA added matured loans, while Defendant argues that it requested additional information on 20/02/1442 AH (trial balance) detailing the opening balance, movement during the year, and closing balance. Defendant stated that Plaintiff was contacted on 25/02/1442 AH using the data registered with ZATCA and responded on 03/03/1442 AH. Consequently, the loans amount of SAR (25,357,500) was adjusted due to the completion of a full year as per the trial balance provided by Plaintiff. Paragraph (3) of Article (20) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH states: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". Based on the foregoing, loans, regardless of their type, source, or classification, are considered a component of the zakat base, subject to completion of a full year or are used to finance assets excluded from the zakat base without the requirement for the completion of a full year. It is evident that, according to the documents submitted by Plaintiff, Defendant failed to provide a detailed statement of accounts for the loans or financial statements. Therefore, it is evident that Defendant applied the principle of using the opening or closing balance, whichever is less. Accordingly, the Department satisfies to dismiss Plaintiff's objection to the matured loans.

Regarding the fourth item: Plaintiff, concerning property and equipment amounting to SAR (56,153,250), challenges Defendant's action, stating that ZATCA deducted SAR (56,153,250) from the property and equipment with a book value of SAR (404,981,929). On the other hand, Defendant argues that it requested additional information on 20/02/1442 AH (a detailed list of all plots of lands, their title deeds, and the purpose of acquisition along with ownership documentation). Defendant stated that Plaintiff was contacted on 25/02/1442 AH using the data registered with ZATCA and responded on 03/03/1442 AH. As a result, an amount of SAR (55,807,625) (property and equipment according to the declaration: SAR (404,981,929) - property and equipment according to the assessment: SAR (349,174,304), as this property is located outside the Kingdom, and no proceeds were recorded in the relevant accounts. Paragraph (Second/1) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH provides: "The following items shall be deducted from the Zakat Base: 1- Fixed assets including the following: Net fixed assets (property assets), any payments for the purchase of fixed assets, and spare parts and materials not prepared for sale, provided that such assets be owned by the Zakat payer, unless an obstacle to the

transfer of ownership exists, and be used in the activity". In view of the foregoing, and given that Plaintiff failed to provide any documents to verify the amounts, nor presented title deeds for the assets, nor submitted financial statements, and has not proven whether or not the assets are used in the business, it is evident that ZATCA's procedure is correct unless Plaintiff proves otherwise. Therefore, the Department satisfies to dismiss Plaintiff's objection to property and equipment item.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

First: Accept Plaintiff's objection to the non-deductible vehicle depreciation.

Second: Dismiss Plaintiff's objection to the insurance item.

Third: Dismiss Plaintiff's objection to the matured loans item.

Fourth: Dismiss Plaintiff's objection to property and equipment item.

This decision was delivered in presence of the parties. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable if either party does not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

Appeal Committee:

Appeal Committee ruled to uphold the Department's decision, except for the first item, which was annulled.

Determination Committee

First Department for Determination Income Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-2266)
Issued in Appeal No. (Z-96234-2021)

Key words:
Zakat Assessment - Accounts - Validity of ZATCA's Notifications for Amending Declarations to Claim Zakat Liabilities - Eligibility for Subjecting Short-Term Loans to Zakat - Short-Term Classified Loans - Working Capital and Operating Cycle Financing - Short-Term Loans as Revolving Loans - Deductible Expenses - Acceptance of Case in Form for Being Filed by a Person with Legal Capacity Within the Statutory Period.

Abstract

Plaintiff is requesting the cancellation of ZATCA's decision regarding zakat assessment for 2020. Plaintiff's objection is limited to three items. Regarding the first item: Plaintiff, regarding (Validity of ZATCA's Notifications for Amending Declarations to Claim Zakat Liabilities for 2020), objects to Defendant's action regarding this item and requests the annulment of Defendant's decision. Defendant, however, argues that no objection was raised by Plaintiff for the aforementioned year in this regard, nor was it addressed with ZATCA during the examination and objection phase. As for Item Second (Suppliers): Plaintiff, regarding (Eligibility for Subjecting Short-Term Loans to Zakat for 2020), challenges Defendant's action regarding this item, arguing that the item pertains to short-term loans obtained by Plaintiff for the purpose of financing working capital and the operating cycle. In response, Defendant contends that the short-term loans are revolving. Regarding the third item: Plaintiff, concerning (Partner's Personal Expenses for 2020), challenges ZATCA's decision to disallow SAR (186,725) as a deductible expense, classifying thereof as the partner's personal expenses. Defendant, on the other hand, argues that the personal expenses were reimbursed based on the statement submitted by Zakat Payer. The statutory provisions indicate that if a claim is filed by a person with legal capacity and within the statutory period, it must be admitted in form. The Department established, regarding the first item, Validity of ZATCA's Notifications for Amending Declarations to Claim Zakat Liabilities for 2020, that the assessment issued to Zakat Payer was not defective, as the statutory provisions relied upon by ZATCA in its actions were duly cited and the existence of correspondence and meetings between both parties to the dispute refutes Plaintiff's claim of being unaware of the reasons for the amendments to the contested items. Furthermore, Plaintiff did not explicitly object to this matter. The Department also noted that ZATCA's failure to specify the paragraph of the article and reliance solely on mentioning the statutory provision does not render the assessment flawed, as the article encompasses the relevant paragraphs referenced in the assessment. Accordingly, the Department decided to dismiss Plaintiff's objection. As for Item Second (Suppliers): It was determined that, in essence, this loan is classified as a long-term loan. Accordingly, ZATCA's action in including the loans was deemed valid, as was its reliance on the statutory provisions in the regulations. Moreover, Zakat Payer's claim of a defect in

the administrative decision issued by ZATCA regarding this item was found to be unfounded. Regarding the third item: Since ZATCA's action is based on the expense statement submitted during the examination phase, which revealed the existence of the partner's personal expenses, and upon reviewing the Case file and its contents of defenses and documents, and considering that Plaintiff failed to provide evidence to the contrary, nor provided the document containing the disputed expenses and the supporting documentation thereof, it follows that ZATCA's action in disallowing these amounts is correct. Department ruled to accept Case in form; dismiss Plaintiff's objection; and consider its decision as final and enforceable.

Instruments:

- Articles (4/3/b), (8/1), and (9/1,2) of Implementing Regulations for Zakat Collection, issued by Minister of Finance's Decision No. (2082) dated 01/06/1438 AH

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 13/09/2022 AD, the First Department for Determination of Income Tax Violations and Disputes in Jeddah, established pursuant to Article (67) the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and its amendments, and constituted pursuant to Royal Decree No. (65474) dated 23/12/1439 AH, held a remote hearing via video and audio conference to consider the aforementioned case. As the case has met the prescribed legal requirements, it was filed with the General Secretariat of the Tax Committees under the mentioned number on 20/02/2022.

Facts of this case are summarized that ..., holder of National ID No. (...), acting as the attorney of Plaintiff/ ... Company, CR No. (...), pursuant to its AOA No. (...), submitted an objection to zakat assessment for 2020 AD issued by ZATCA. Plaintiff's objection is limited to three item items. Regarding the first item: Plaintiff, concerning (Validity of ZATCA's Notifications for Amending Declarations to Claim Zakat Liabilities for 2020), objects to Defendant's action regarding this item, arguing that the amendment notifications issued through ZATCA's automated system did not specify which paragraphs of Article (4) applied to the loan balances for which the declaration was amended. Additionally, the notifications did not clarify the nature of the fines totaling SAR (308,123.99), which ZATCA deemed non-deductible expenses solely based on its observation of the item within the declaration, as stated in the attachment to the assessment. Furthermore, ZATCA's notifications failed to disclose the document that led to its conclusion that these expenses pertained to the owner (a Saudi joint-stock company rather than a partnership) for 2020. ZATCA also failed to specify the concept upon which it based its decision to reduce other deductions by SAR (150,666) and the corresponding regulatory provisions in the regulations, nor did it explain how this value was determined. As for Item Second (Suppliers): Plaintiff, concerning (Eligibility for Subjecting Short-Term Loans to Zakat for 2020), challenges Defendant's action regarding the item in question, which pertains to the short-term loans obtained by Plaintiff to finance working capital and the operating cycle, in order to bridge the financing gap resulting from the time lag between supply and sale transactions, especially since Zakat Payer's activity involves trading in supply commodities, necessitating the maintenance of stable inventory levels to meet market demand. Accordingly, Plaintiff secured these short-term loans, as evidenced by the loan agreements signed with lenders, which stipulate that these loans are short-term and designated for operational purposes. Regarding the third item: Plaintiff, concerning (Partner's Personal Expenses for 2020), objects to ZATCA's decision to disallow SAR

(186,725) as a deductible expense, claiming that ZATCA classified thereof as the partner's personal expenses.

Having presented the statement of claim to Defendant, it responded as follows: with regard to the first item: Validity of ZATCA's Notifications for Amending Declarations to Claim Zakat Liabilities for 2020, it was found that, upon reviewing Zakat Payer's objection, no objection was raised by Zakat Payer (Plaintiff) to this item for the aforementioned year, nor was it addressed with ZATCA during the examination and objection phase. It was further established that Zakat Payer did not object to this item within 60 days of being notified. As for the second aspect, the Committee concluded that ZATCA's actions were based on applicable laws and regulations, which necessitate their application to Zakat Payer's case. The nature of this type of case is governed by Article (5) of the Tax Dispute and Violation Committee Procedures. In the absence of a legal provision in the rules, both committees apply the procedures outlined in the Law of Civil Procedures and Law of Criminal Procedure. Additionally, Zakat Payer, during the objection phase, acknowledged and accepted certain amendments made by ZATCA in their objection letter. As for Item Second (Suppliers): Eligibility for Subjecting Short-Term Loans to Zakat for 2020, it was determined, upon reviewing the submitted loan agreements with banks and bank statements, that these short-term loans were in fact revolving loans. The bank agreements explicitly state that these loans and banking facilities were granted to support capital expansions. Consequently, ZATCA included these loans in the zakat base in accordance with Paragraph (3/b) of Article (4) of the Implementing Regulations for Zakat Collection. Furthermore, an examination of the loan activity based on the bank statements revealed a revolving nature of loans, implying that they remain Zakat Payer's liability throughout the year. Regarding the third item: Partner's Personal Expenses for 2020, they were reimbursed based on the statement submitted by Zakat Payer, as they were determined that they related to personal electricity bills and various fines unrelated to the business activity based on Paragraph (1) of Article (9) of the Implementing Regulations for Zakat Collection. As for Zakat Payer's claim that ZATCA did not justify its rejection, ZATCA clarified that this claim was incorrect, as it previously issued a notification regarding the rejection of the item, as detailed in the objection decision notification, which contradicts Zakat Payer's claim, especially since Zakat Payer referenced the rejection reason in their own records while simultaneously claiming ZATCA's failure.

On Tuesday, 13/09/2022 AD, the Department convened its session remotely to consider the Case. The session was attended by the representative of Plaintiff..., holder of National ID No. (...), under PoA No. (...), as well as Defendant's representative. ..., holder of National ID No. (...), authorized by the delegation issued by the Deputy Governor of ZATCA under No. (...) dated .../.../..... Dated .../06/1442 AH. Having asked parties to the Case about what they would like to add, they were satisfied with their earlier submissions. Accordingly, the Department decided to adjourn the session for deliberation before delivering its decision.

Grounds

Having perused the Zakat Law promulgated by Royal Order No. (577/28/17) of 14/03/1376 AH and its Implementing Regulations issued by Minister of Finance's Decision No. (2082) of 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No. (M/1) of 15/01/1425 AH, as amended, and its Implementing Regulations issued by Minister of Finance's Decision No. (1535) of 11/06/1425 AH, as amended, and the Tax Dispute and Violation Committee Procedures promulgated by Royal Order No. (26040) of 21/04/1441 AH, as well as other relevant laws and regulations.

In Form: Plaintiff seeks this case to cancel ZATCA's decision regarding the zakat assessment for 2020, and since this dispute is considered one of the tax disputes that fall within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes, pursuant to Royal Order No. (26040) dated 21/04/1441 AH and given that the Case was filed with a person of legal capacity and within the prescribed statutory period, the case is to be accepted in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defenses and pleas raised by both parties, the Department found that the dispute lies in Defendant's issuance of zakat assessment for 2020. Plaintiff's objection is limited to the three following items:

Regarding First Item: Plaintiff, regarding (Validity of ZATCA's Notifications for Amending Declarations to Claim Zakat Liabilities for 2020), objects to Defendant's action regarding this item and requests the annulment of Defendant's decision. Defendant, however, argues that no objection was raised by Plaintiff for the aforementioned year in this regard, nor was it addressed with ZATCA during the examination and objection phase. Article (20) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) dated 07/07/1440 AH states: "GAZT shall issues the assessment, including its approval of the declaration or its amendment, along with the reasons for the amendment. Zakat Payer has the right to object to the assessment in accordance with the provisions of Chapter (7) hereof." Based on the foregoing, and upon reviewing the declaration amendment letters and the documents and defenses contained in the Case file, the Department concluded that the assessment issued to Zakat Payer was not defective, as the statutory provisions relied upon by ZATCA in its actions were duly cited and the existence of correspondence and meetings between both parties to the dispute refutes Plaintiff's claim of being unaware of the reasons for the amendments to the contested items. Furthermore, Plaintiff did not explicitly object to this matter before ZATCA in their objection letter dated 18/11/2021, where Plaintiff's objection centered on ZATCA's failure to clarify regarding the applicability of the statutory provisions referenced in the assessment and to specify the paragraphs of the regulations that those provisions pertain to. The Department also noted that ZATCA's failure to specify the paragraph of the article and reliance solely on mentioning the statutory provision does not render the assessment flawed, as the article encompasses the relevant paragraphs referenced in the assessment. Accordingly, the Department decided to dismiss Plaintiff's objection raised in this regard.

As for Item Second (Suppliers): Plaintiff, regarding Eligibility for Subjecting Short-Term Loans to Zakat for 2020, challenges Defendant's action in this regard, which pertains to the short-term loans obtained by Plaintiff to finance working capital and the operating cycle, in order to bridge the financing gap resulting from the time lag between supply and sale transactions, especially since Zakat Payer's activity involves trading in supply commodities, necessitating the maintenance of stable inventory levels to meet market demand. Accordingly, Plaintiff secured these short-term loans, as evidenced by the loan agreements signed with lenders, which stipulate that these loans are short-term and designated for operational purposes. However, Defendant contends that these short-term loans were in fact revolving loans and the bank agreements explicitly state that these loans and banking facilities were granted to support capital expansions. Consequently, ZATCA included these loans in the zakat base. Paragraph (3) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) dated 07/07/1440 AH states: "Debts owed by Zakat Payer, classified as long-term and equivalent components of the Zakat base, such as: Government financing, Commercial financing, Creditors, Notes payable, Overdraft accounts and Loans from owners or partners (including their current accounts), shall be subject to the following considerations: A. If the debts owed by Zakat Payer or other sources of financing have a duration of 354 days

or more overlapping between the zakat year and the following year, they shall be added to the zakat base for each year in proportion to the number of days in each zakat year. B. The Zakat year for debts is not interrupted by their renewal, rescheduling with the same creditor, or replacement with other debts or financing sources that serve the same purpose. C. The total additions mentioned in this paragraph shall not exceed the total deductions allowed under Article 5 hereof". Based on the foregoing, loans, regardless of their type, source, or classification, are considered financing sources and thus a component of the zakat base, provided their duration is 354 days or more or if they are used to finance assets excluded from the zakat base. Additionally, the zakat year for debts is not interrupted by their renewal, rescheduling with the same creditor, or replacement with other debts or financing sources that serve the same purpose. Based on the review of the documents attached in the Case file, specifically the detailed transaction of short-term loans, and by tracking the flow of these loans, terms of the banking agreements, loan amounts and their respective dates, it is evident that these loans exhibit revolving and continuous pattern. The loan is obtained from the bank, and after a short period, it is repaid. Around the same date the loan is repaid, a new loan of the same value is obtained, emphasizing that the loan essentially functions as a long-term loan. Thereupon, this emphasizes the validity of ZATCA's procedure in including the loans, as well as its reliance on the statutory provisions stated in regulations and falsity of Zakat Payer's claim of a defect in the administrative declaration issued by ZATCA in this regard. Therefore, the Department ruled to dismiss Plaintiff's objection raised regarding (Eligibility for Subjecting Short-Term Loans to Zakat for 2020) item.

Regarding the third item: Plaintiff, concerning (Partner's Personal Expenses for 2020), challenges ZATCA's decision to disallow SAR (186,725) as a deductible expense, classifying thereof as the partner's personal expenses. Defendant, on the other hand, argues that the personal expenses were reimbursed based on the statement submitted by Zakat Payer, as they were determined that they related to personal electricity bills and various fines unrelated to the business activity in accordance with Paragraph (1) of Article (8) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) dated 07/07/1440 AH that states: "The following expenses may be deducted to determine the net result of the activity: 1. Ordinary and necessary expenses of business activity, if meet the following criteria: a. Expenses should be actual expenses as supported by relevant documents and other evidential matter to enable the Authority to verify the accuracy of expenses, even if related to prior years. b. Expenses should be related to Zakat Payer's business activity rather than personal expenses or other than Zakat Payer's own activities. c. Expenses may not be of capital nature. Where a capital expenditure is included in the expenses such expenditure shall be adjusted against the result of activity added to fixed assets and accordingly depreciated as applicable". Paragraphs (1) and (2) of Article (9) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2216) dated 07/07/1440 AH state: "Notwithstanding the provisions of Article (8) of the Regulations, the following expenses shall not be deductible: 1. Expenses and costs unrelated to Zakat Payer's business activities. 2. Expenses that Zakat Payer fails to substantiate with supporting documentation or other evidence acceptable to the Authority". In light of the above and the relevant regulations, it is evident that deductions are permissible only for expenses that are actual, supported by documentation and evidence acceptable and verifiable by ZATCA. Since ZATCA's action is based on the expense statement submitted during the examination phase, which revealed the existence of the partner's personal expenses, and upon reviewing the Case file and its contents of defenses and documents, and considering that Plaintiff failed to provide evidence to the contrary, nor provided the document containing the disputed expenses and the supporting documentation thereof, it follows that ZATCA's action in disallowing these amounts is

correct. Accordingly, the Department ruled to dismiss Plaintiff's objection regarding (Partner's Personal Expenses for 2020) item.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

First: Dismiss Plaintiff's objection regarding the validity of ZATCA'S notifications for amending declarations to claim zakat liabilities for 2020.

Second: Dismiss Plaintiff's objection regarding the eligibility for subjecting short-term loans to zakat for 2020.

Third: Dismiss Plaintiff's objection regarding the partner's personal expenses for 2020.

This decision was delivered in presence of the parties. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable if either party does not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

Appeal Committee:

Appeal Committee ruled to uphold the Department's decision, except for the second item, which was amended.

Determination Committee

First Department for Determination Income Tax Violations and Disputes in Jeddah

Decision No. (IZJ-2022-2089)
Issued in Appeal No. (Z-42878-2021)

Key words:
Zakat Assessment - Accounts - Loans - Import Variances - Depreciation Differences - Fixed Assets, Real Estate Investments, and Ongoing Projects - Partners' Credit Current Account - Trade Payables - Investments in Sister Companies.

Abstract

Plaintiff instituted this Case, moving to cancel ZATCA's decision regarding the zakat assessment for 2015/2016 AD, which includes the following seven (7) items: First: Loans for 2015; Second: Import Variances for 2015/2016; Third: Depreciation Differences for 2015/2016; Forth: Fixed Assets, Real Estate Investments, and Ongoing Projects for 2015/2016; Fifth: Partners' Credit Current Account for 2015/2016; Sixth: Trade Payables for 2015/2016; Seventh: Investments in Sister Companies for 2016. Plaintiff based their objection regarding the loans and equivalents for 2015 on the fact that the closing balance reflected in the company's financial statements is only SAR (98,780,175). Plaintiff, regarding import variances for 2015/2016, argued that they did not inflate foreign purchases and that the discrepancies arose due to the inaccurate distribution of purchases between foreign and domestic sources. Plaintiff, concerning depreciation differences for 2015/2016, argued that these assets are depreciated in accordance with accounting practices within the financial statements. As for fixed assets and real estate investments for 2015/2016, Plaintiff argued that these assets are depreciated in accordance with accounting practices and that the land registered in the partner's name is due to the fact that the company was previously a sole proprietorship before being converted into a company without transferring ownership of the land. Plaintiff, concerning ongoing projects for 2015, asserted that such projects constitute an investment and should be deducted from the zakat base Plaintiff, regarding partners' credit current account for 2015/2016, asserted that the company incorrectly added the closing balance without considering the Zakat Regulations that require the addition of the lower balance between the opening and closing balances. Plaintiff, concerning trade payables for 2015/2016, argued based on the opinion of scholars that debt negates the obligation of zakat. With regard to the investments in sister companies for 2016, Plaintiff argued that the name of the invested company was changed. -ZATCA responded by stating that Zakat Payer's objection was accepted with the addition of the closing balance of loans. As for Item Second (Suppliers): It was determined that repayment of these amounts would result in a higher zakat liability on Zakat Payer, resulting in the dismissal of Plaintiff's objection. Regarding the third item: Thereupon, ZATCA insists on accuracy and correctness of its procedure. With regard to the fourth item, ZATCA clarified that the excluded depreciation expense pertains to the mosque and the trust's rest house building, and that a piece of land was excluded as it was determined to be for personal use. With regard to the fourth item, ZATCA explained that

Zakat Payer was questioned regarding this item, which was excluded from the zakat base because it was intended for personal use. Regarding the fifth item: ZATCA clarified that it added the opening balance (lower balance) for 2015, while it added the higher balance for 2016 to account for the financing of additional fixed assets during the year. Regarding the sixth item, ZATCA illustrated that it added the balance that had completed a full year to the zakat base. Regarding the seventh item, ZATCA stated that the item was not deducted due to the lack of notes in the financial statements regarding the investee company. - The Department confirmed settlement of the dispute regarding loans for 2015. As for Item Second (Suppliers): The Department established that Plaintiff failed to provide the necessary reconciliation to clarify the reasons and justifications for the import variances. Regarding the third item: The Department demonstrated that Plaintiff failed to prove that the relevant item pertains to the business activity. As for the fourth item, it was evident that Plaintiff had reviewed ZATCA's memorandum of reply, did not contest its assertions, and failed to provide any documentation supporting the claim that the projects in question fell within the scope of the company's business. Regarding the fifth item: The Department determined that Plaintiff failed to provide a detailed statement of the partner's current account. Regarding the sixth item, The Department concluded that Plaintiff failed to present the detailed statement of the accounts receivable to demonstrate that the contested amounts had not completed a full year. Regarding the seventh item, The Department demonstrated that the reason for Plaintiff's rejection was due to a failure to mention the company's name and TIN. Department ruled to confirm settlement of the dispute regarding loans for 2015, dismiss Plaintiff's objection regarding import variances, depreciation differences, fixed assets, real estate investments and ongoing projects, partners' current account, and trade payables, and accept Plaintiff's objection regarding investments in sister companies. This decision shall be deemed final and enforceable.

Instruments:

- Article (70) of Implementing Regulations of Law of Civil Procedures issued by Minister of Justice's Decision No. (39933) dated19/05/1435 AH.
- Articles (4/4/a) and (20/3) of Implementing Regulations for Zakat Collection, issued by the Ministerial Decision No. (2082) dated01/06/1438 AH.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 29/08/2022 AD, the First Department for Determination of Income Tax Violations and Disputes in Jeddah, established pursuant to Article (67) the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH and its amendments, and constituted pursuant to Royal Decree No. (65474) dated 23/12/1439 AH, held a remote hearing via video and audio conference to consider the aforementioned case. As the case has met the prescribed legal requirements, it was filed with the General Secretariat of the Tax Committees under the mentioned number on 22/03/2021.

Facts of this case are summarized that ..., holder of National ID No. (...), acting as the director of Plaintiff/ ... Company for Trading and Investment, CR No. (...), submitted an objection to zakat assessment for 2015/2016 issued by ZATCA. Plaintiff's objection is limited to seven items. Regarding the first item: Loans and Equivalents for 2015: Plaintiff challenges Defendant's action of including loans and equivalents amounting to SAR (135,113,508.00) for 2015, while the closing balance reflected in the company's financial statements is only SAR (98,780,175). As for Item Second (Suppliers): Import Variances for 2015/2016: Plaintiff objects to Defendant's action, stating that they did not inflate foreign

purchases. Plaintiff contends that the total of domestic and foreign purchases as stated in the declaration aligns with the financial statements, and that the discrepancies arose due to the inaccurate distribution of purchases between foreign and domestic sources. Regarding the third item: Depreciation Differences for 2015/2016: Plaintiff challenges Defendant's decision to exclude depreciation expense for unused buildings in the activity. Plaintiff argues that these assets are depreciated in accordance with accounting practices within the financial statements and depreciation should be accounted for accordingly. Regarding the fourth item: (A): Fixed Assets and Real Estate Investments for 2015/2016, Plaintiff challenges Defendant's refusal to deduct non-operating assets, contending that such assets are depreciated in accordance with accounting practices and that the land registered in the partner's name is due to the fact that the company was previously a sole proprietorship before being converted into a company without transferring ownership of the land. Regarding the fourth item (B): Ongoing Projects for 2015 (Investments in Lands with Third Parties): Plaintiff challenges Defendant's refusal to deduct investments in lands with third parties, stating that such projects constitute investments that should be deducted from the zakat base. Regarding the fifth item: Partners' Credit Current Account for 2015/2016: Plaintiff objects to Defendant's inclusion of amounts that had not completed a full year from the partners' current accounts, stating that, for 2015, Defendant (ZATCA) failed to account for payments made against the opening balance. On the other hand, Plaintiff asserted that, for 2016, the company incorrectly added the closing balance without considering the Zakat Regulations that require the addition of the lower balance between the opening and closing balances. Regarding the sixth item, Trade Payables for 2015/2016, Plaintiff challenges Defendant's action asserting that trade payables are related to the activity and should not be subject to zakat. Plaintiff emphasized the opinion of scholars that debt negates the obligation of zakat, stating that these liabilities were not intended for financing for assets deducted from the zakat base and requests exclusion thereof. Regarding the seventh item, Investments in Sister Companies for 2016: Plaintiff challenges Defendant's non-deduction of local investments, stating that the investee company, originally named branch of ... Company, has since been renamed ... Under TIN (...). The company is registered with ZATCA and submits its zakat declarations.

Having presented the statement of claim to Defendant, it responded as follows: with regard to the first item: Loans and Equivalents for 2015: Defendant stated that Plaintiff requested exclusion of the amounts exceeding the closing balance of loans. As a result, Zakat Payer's objection was accepted by adding the closing balance of loans amounting to SAR (98,780,175), representing the financing of acquisition assets.

As for Item Second (Suppliers): Import Variances for 2015.2016: Defendant stated that it added the import variances based on ZATCA's data and the imports according to the accounts, and then returned the amount to the net profit. Subsequently, it was determined that the actual variance was greater. Since the repayment of these amounts would result in a higher zakat liability on Zakat Payer, Plaintiff's objection was dismissed regarding this item. Regarding the third item: Depreciation Differences for 2015/2016: Defendant clarified that it did not deduct the operating assets, specifically the rest house building and the mosque. Moreover, ZATCA insists on the accuracy and correctness of its procedure. Regarding the fourth item: (A): Fixed Assets and Real Estate Investments for 2015/2016: Defendant clarified that the excluded depreciation expense pertains to the mosque and the trust's rest house building, and that a piece of land was excluded as it was determined to be for personal use. Regarding the fourth item (B): Ongoing Projects for 2015 (Investments in Lands with Third Parties): Defendant clarified that the contested item constitutes investments in lands with third parties as evidenced in the financial statements for 2015. Defendant explained that Zakat Payer was questioned regarding this item, which was excluded from the zakat base because it was intended for personal use based on the

data provided by Zakat Payer, and was additionally requested to provide an analysis of the investments with third parties, their purpose, and supporting documents. Furthermore, ZATCA insists on the accuracy and correctness of its procedure. Regarding the fifth item: Partners' Credit Current Account for 2015/2016: Defendant clarified that it added the opening balance (lower balance) for 2015, while it added the higher balance for 2016 to account for the financing of additional fixed assets during the year. Regarding the sixth item, Trade Payables for 2015/2016: Defendant illustrated that it added the balance that completed a full year to the zakat base and insisted on the accuracy and correctness of its procedure. Regarding the seventh item, Investments in Sister Companies for 2016: Defendant stated that the item was not deducted due to the lack of notes in the financial statements regarding the investee company.

On Monday, corresponding to 29/08/2022 AD, the Department held its session remotely to consider the Case. The Plaintiff's attorney (....) appeared, holder of National ID No. (...) under POA No. (...). In addition, the Defendant's representative .... holder of National ID No. (...) appeared by virtue of Authorization issued by ZATCA's Deputy Governor for Legal Affairs No.: (...) Dated .../ Having asked parties to the Case about what they would like to add, they were satisfied with their earlier submissions. Therefore, the Department decided to adjourn the session for deliberation before adjudication.

Grounds

Having taken cognizance of Zakat Law promulgated by Royal Decree No.: (17/28/577) of 14/03/1376 AH, and its Implementing Regulations issued by the Minister of Finance's Decision No.: (2082) dated: 01/06/1438 AH, as amended, and the Income Tax Law promulgated by Royal Decree No.: (M/1) dated: dated 15/01/1425 AH, as amended, and the Implementing Regulations issued by Minister of Finance Resolution No.: (1535), dated 11/06/1425 AH, as amended. Having examined the Tax Dispute and Violation Committee Procedures issued by Royal Decree No.: (26040), dated and the relevant Laws and regulations.

In Form: Plaintiff seeks this case to cancel ZATCA's decision regarding the zakat assessment for 2020, and since this dispute is considered one of the tax disputes that fall within the jurisdiction of the Committee for Determination of Income Tax Violations and Disputes, pursuant to Royal Order No. (26040) dated 21/04/1441 AH and given that the Case was filed with a person of legal capacity and within the prescribed statutory period, the case is to be accepted in form.

On Merits: Having taken cognizance of documents included in Case file, requests, defenses and pleas raised by the parties, the Department found that the dispute lies in Defendant's issuance of zakat assessment for 2015/2016. Plaintiff's objection is limited to the following seven items:

Regarding First Item: Loans and Equivalents for 2015: Plaintiff challenges Defendant's action of including loans and equivalents amounting to SAR (135,113,508.00) for 2015. On the other hand, Defendant states that Plaintiff requested exclusion of the amounts exceeding the closing balance of loans. As a result, Zakat Payer's objection was accepted by adding the closing balance of loans amounting to SAR (98,780,175). Article (70) of Implementing Regulations of Law of Civil Procedures issued by Minister of Justice's Decision No. (39933) dated 19/05/1435 AH states: "If an agreement is reached prior to entering the case, the text of the case and the answer shall be entered prior to entering such agreement, provided that the original case falls within the jurisdiction of the Department, even if the text of the agreement falls within the jurisdiction of another court or Department and the object of the case or portion thereof is agreed upon". Based on the foregoing, and since the Department found that Defendant accepted Plaintiff's requests as

stated in the letter issued by Defendant in its memorandum of reply. Therefore, the Department establishes resolution of the dispute regarding this item.

As for Item Second (Suppliers): Import Variances for 2015/2016: Plaintiff objects to Defendant's action, stating that they did not inflate foreign purchases. Plaintiff contends that the total of domestic and foreign purchases as stated in the declaration aligns with the financial statements. However, Defendant contends that it added the import variances based on ZATCA's data and the imports according to the accounts, and then returned the amount to the net profit. Paragraph (3) of Article (20) of Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH provides: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". Based on the foregoing, the import statement issued by ZATCA (previously GAZT) serves as a key piece of evidence from a neutral third party. Upon reviewing the Case file, it is clear that ZATCA's adjustment of Plaintiff's financial results stems from variances between the value of imports declared in Plaintiff's declaration and those recorded in customs declarations. An examination of the documents submitted with the Case file revealed that Plaintiff failed to provide a reconciliation to clarify the reasons and justifications for the import variances. Plaintiff mentioned that the variances were caused by a classification error between domestic and foreign purchases without presenting reconciliation of the same. Additionally, Plaintiff failed to provide financial statements for verification or any other documents supporting their position. Moreover, the adjusted amount is less than the actual variance in imports, confirming the validity of Defendant's adjustment of Plaintiff's financial results based on such variances. Accordingly, the Department satisfies to dismiss Plaintiff's objection regarding import variances for 2015/2016.

Regarding the third item: Depreciation Differences for 2015/2016: Plaintiff challenges Defendant's decision to exclude depreciation expense for unused buildings in the activity, while Defendant argues that it did not deduct the operating assets, specifically the rest house building and the mosque. Moreover, ZATCA insists on the accuracy and correctness of its procedure. Paragraph (3) of Article (20) of Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH provides: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". In light of the above, it appears, upon reviewing the defenses and documents submitted by both parties, that the assets not approved by ZATCA are a mosque and a rest house building, given that they are not related to Zakat Payer's activity. Consequently, ZATCA did not allow depreciation for such assets and Plaintiff failed to prove they pertain to the activity, as the financial statement clarifications indicate that they are for the personal use of the owner. Accordingly, the Department satisfies to dismiss Plaintiff's objection regarding depreciation differences for 2015/2016.

Regarding the fourth item: (A): Fixed Assets and Real Estate Investments for 2015/2016, Plaintiff challenges Defendant's refusal to deduct non-operating assets, contending that such assets are depreciated in accordance with accounting practices, while Defendant argues that the excluded depreciation expense pertains to the mosque and the trust's rest house building, and that a piece of land was excluded as it was determined to be for personal use. Paragraph (3) of Article (20) of Implementing Regulations for Zakat

Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH provides: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". In light of the above, it appears, upon reviewing the defenses and documents submitted by both parties, that this issue is directly related to Item (3), where Plaintiff requests a deduction of assets that have not been proven to be used in the activity. These assets, a mosque and a rest house building, were not supported by any documentation by Plaintiff indicating their use in the business. Regarding the fourth item (B): Ongoing Projects for 2015 (Investments in Lands with Third Parties): Plaintiff challenges Defendant's refusal to deduct investments in lands with third parties, while Defendant contends that Zakat Payer was questioned regarding this item, which was excluded from the zakat base because it was intended for personal use based on the data provided by Zakat Payer, and was additionally requested to provide an analysis of the investments with third parties, their purpose, and supporting documents. Based on Section (Second) of Paragraph (1) of Article (4) of the Implementing Regulations for Zakat Collection, and after reviewing the data submitted by both parties, the burden of proof lies with Plaintiff to clarify the nature of the activity and the extent to which those projects are related to the company's operations. ZATCA, in its memorandum of reply, stated that these projects were intended for personal use based on the information provided by Plaintiff, which reviewed the said memorandum without lodging any challenge or presenting any documents supporting that these projects are part of the company's activity. Thereupon, the Department satisfies to dismiss Plaintiff's objection regarding fixed assets, real estate investments, and ongoing projects for 2015/2016.

Regarding the fifth item: Partners' Credit Current Account for 2015/2016: Plaintiff objects to Defendant's inclusion of amounts that had not completed a full year from the partners' current accounts, while Defendant argues that it added the opening balance (lower balance) for 2015, while it added the higher balance for 2016 to account for the financing of additional fixed assets during the year. Paragraph (3) of Article (20) of Implementing Regulations for Zakat Collection provides: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved, or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". Based on the foregoing, a partner's current account is considered a component of the zakat base and is included upon completion of a full year or if it originates from equity or is used to finance assets excluded from the zakat base. It is established that, since the dispute over this item is a documentary and upon reviewing the documents provided in the Case file, Plaintiff failed to provide the detailed statement of the partner's current account, demonstrating payment of the opening balance during the year. Furthermore, Plaintiff failed to provide evidence to show that the amounts added by ZATCA had not been held for a full year. Accordingly, the Department satisfies to dismiss Plaintiff's objection regarding partners' credit current account for 2015/2016.

Regarding the sixth item, Trade Payables for 2015/2016, Plaintiff challenges Defendant's action asserting that trade payables are related to the activity and should not be subject to zakat, while Defendant argues that it added the balance that completed a full year to the zakat base. Paragraph (3) of Article (20) of Implementing Regulations for Zakat Collection provides: "The burden of proving the authenticity of the zakat payer's declaration in terms of the clauses and other data shall be the zakat payer's responsibility. If the zakat payer fails to prove so, GAZT may not approve the clause failed to be proved,

or may conduct an estimated assessment as it may deem proper in the light of the circumstances and facts related to the situation and information available thereto". Based on the foregoing, trade payables are considered a component of the zakat base, subject to completion of a full year, or they are used to finance assets deducted from the zakat base. It is established that, upon reviewing the documents provided in the Case file, Plaintiff failed to provide the detailed statement of payables to demonstrate that the disputed amounts had not been held for a full year. Furthermore, Plaintiff, for 2016, failed to submit financial statements or any other documentation supporting their position. Accordingly, the Department satisfies to dismiss Plaintiff's objection regarding trade payables for 2015/2016.

Regarding the seventh item, Investments in Sister Companies for 2016: Plaintiff challenges Defendant's non-deduction of local investments, while Defendant contends that the item was not deducted due to the lack of notes in the financial statements regarding the investee company. Paragraph (4.A) of Article (4) of the Implementing Regulations for Zakat Collection issued by Ministerial Decision No. (2082) dated 01/06/1438 AH states: "Investments in an entity in the Kingdom, in participation with others, if such investments are subject to Zakat according to this Regulations. If the investment in such entities is not subject to Zakat, no deductions will be made from the Zakat Base". In light of the foregoing, and after reviewing the defenses and documents submitted by both parties, and upon reviewing ZATCA's memorandum of reply, it appears that the reason for the rejection was the failure to mention the company's name and TIN. Since Zakat Payer had referred to the investments as being in a Saudi company that submits its declarations to ZATCA and Plaintiff clarified the company's name and TIN, the Department satisfies to accept Plaintiff's objection regarding investments in sister companies for 2016.

Based on the abovementioned grounds and after deliberation, the Department unanimously decided as follows:

Decision:

First: Confirm settlement of the dispute regarding loans for 2015.
Second: Dismiss Plaintiff's objection to import variances for 2015/2016.
Third: Dismiss Plaintiff's objection to depreciation differences for 2015/2016.
Fourth: Dismiss Plaintiff's objection to fixed assets, real estate investments, and ongoing projects for 2015/2016.
Fifth Dismiss Plaintiff's objection to partners' credit current account for 2015/2016.
Sixth: Dismiss Plaintiff's objection to trade payables for 2015/2016.
Seventh: Accept Plaintiff's objection to investments in sister companies for 2016.

This decision was delivered in presence of the parties. The Department set (30) days for receiving a copy of the decision via the website of the General Secretariat of Zakat, Tax and Customs Committees. Either party to the Case may appeal against the decision within thirty (30) days from the day following the date set for receipt of the decision, whereafter, the decision shall be final and enforceable if either party does not file an objection.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.

Appeal Committee:

Appeal Committee ruled to uphold the Department's decision, except for the fourth item for 2016 and the fifth item for 2015, which were annulled.

Successfully Completed, Thanks to Allah