REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA
[CAPE OF GOOD HOPE PROVINCIAL DIVISION]

CASE NO : A447/2001

In the matter between :

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICES — Appellant

and

J F KOTZE — Respondent

JUDGMENT DELIVERED THIS 8TH DAY OF AUGUST, 2002

FOXCROFT, J : This is an appeal against the decision of the Cape Income Tax Special Court embodied in a judgment given by the President of that court on 17 December 1999.

The President of the Special Court (HODES, AJ), and one member of the court, held that a reward received by Respondent in the 1993 year of

assessment in the sum of R200 000 was to be excluded from the definition of "gross income" as defined in section 1 of the Income Tax Act, 58 of 1962 (as amended) ("the Act"), in particular paragraph (c) thereof, since they held it not to be a receipt "in respect of" services rendered. The accountant member dissented. The assessment for the 1993 tax year was accordingly set aside; hence the present appeal by the Commissioner. There is also a cross-appeal against the unanimous finding of the Special Court that a "service" had been rendered when the Respondent gave the South African Police certain information. (The difference in the Special Court concerned the question whether the reward was paid to Respondent "in respect of" such service.

Respondent was in 1993 a businessman running a restaurant and bed and breakfast establishment in Springbok. He had received the sum of R200 000 from the South African Police after giving them information in regard to the possibility of an illegal purchase of uncut diamonds. He had been approached by overseas visitors who showed an interest in

obtaining diamond mining concessions, and after Respondent made enquiries from the person who had given these visitors his name, he suspected that something was amiss. Because Respondent was concerned that he might become connected with potentially criminal activity, and in particular be perceived to be in association with persons planning to engage in illegal diamond transactions, he telephoned a friend who worked for the diamond detective branch in Kimberley for advice. He was advised to disclose everything that had transpired to the police in Springbok, which Respondent then did. The facts which I have set out were agreed at the hearing before the Special Court.

It was further agreed that although Respondent was at all material times aware that "informers" are sometimes paid rewards by the police for information leading to the arrest and conviction of persons involved in illicit diamond buying, the Respondent's reason for going to the police was to protect himself against any appearance of involvement in criminal activity and to safeguard his name, his business and his standing in the community of Springbok.

After Respondent had provided the police with the facts which are set out above, the visitors did commit an offence involving the purchase of uncut diamonds in Cape Town. After being caught in a police trap they were duly tried and convicted of the offence of illicit diamond buying.

Respondent thereafter received the reward of R200 000 from the South African Police, of which R86 000 was assessed to tax in respect of that amount for the 1993 year of assessment.

It was further agreed between the parties in the Special Court that the Respondent had never before, nor since these events, given any information of a similar nature to the police, nor had he ever received any other reward from the police. It was also recorded that Respondent had had a stroke in April 1999 and was for this reason and on medical advice unable to be present to give evidence at the hearing of the appeal in the Special Court. It was further recorded that

"12. The sole issue between the parties is whether, on the facts set out above, the amount of R200 000 received by the appellant constituted gross income in his hands in terms of paragraph (c) of the definition of "gross income" in section (1) of the Income Tax Act, No. 58 of 1962, as amended, ("the Act")."

(See judgment, page 93 of the Record).

It was common cause in the Special Court that the said sum could not be taxed under the generic definition of "gross income" because it was an amount of a capital nature. It was further common cause that since there was no relationship of employer and employee between the police and the Appellant in the Special Court, it followed that the said sum also did not fall into gross income in terms of paragraph (i) of the definition of "gross income" and the Seventh Schedule to the Act.

The relevant portion of paragraph (c) of the definition of "*gross income*" is as follows :

> "*Any amount, including any voluntary award, received or accrued in respect of services rendered or any amount ... received or accrued in respect of or by virtue of any employment or the holding of any office.*"

There was clearly no employment or holding of any office applicable to the present situation, so the issue is simply whether the amount received was "*in respect of services rendered*". I would say in passing that the additional words "*or by virtue of*" in the second part of the paragraph, relating to employment or office, would seem to be included with the intention of providing for a situation where a sum of money was received by an employee not for work actually done as part of his employment,

but connected to the fact of his employment, "or by virtue of" such employment.

In my view, the words "by virtue of" do not widen the extent of the relationship between the respective parties, but merely cater for the situation which I have mentioned.

In a letter dated 31 January 1996 addressed to Appellant by the Respondent's accountants and which served as the Respondent's formal objection to the assessment, the following is recorded :

> "*Die toevalling was van 'n toevallige aard en dit was nie die primêre oogmerk van die persoon om wins te maak uit die transaksie nie. Sy uitgangspunt was om inligting oor te dra in die bekamping van misdaad. Dat vergoeding uiteindelik betaal was.*

was van sekondêre belang."

The emphasis had been supplied by Counsel for Appellant.

In the Special Court, it was unanimously decided that the furnishing of the information referred to did constitute *"services rendered"*, but by a majority of 2 to 1 it was further held that the reward received by Respondent was not *"in respect of"* the rendering of services. As Mr Petersen, who appeared with Ms *Fichardt* for Appellant, submitted,

"This question is the subject of the appeal by the Commissioner."

On behalf of Respondent, a cross-appeal has been noted against the

portion of the judgment in which HODES, AJ recorded the unanimous view of the Special Court that the disclosure of information by the Respondent to the South African Police constituted a "service rendered" by the Respondent.

Mr *Emslie*, who appeared on behalf of Respondent, submitted that the provision of information in a situation such as this could not amount to the rendering of a service. He raised a number of examples of voluntary acts by concerned citizens, never expecting to obtain any reward, who had fortuitously received money for "*services rendered*". In these situations he submitted, it would be unreasonable to tax such persons for performing what they had obviously regarded as a civic duty.

I do not consider it necessary to examine those situations in detail. Many of them would probably be explained by reference to the remarks of BRIGHTMAN, J in **MOORE v GRIFFITHS (INSPECTOR OF TAXES) 1972[3] All ER 399 (CH) at 411b**, where the following was stated :

"The true purpose of the payment was to mark his participation in an exceptional event, namely the winning of the World Cup Championship - exceptional because the cup is open for competition only every four years and has never before been won by this country. In other words the payment had the quality of a testimonial or accolade rather than the quality of remuneration for services rendered" (emphasis supplied)

See also **STANDER v COMMISSIONER FOR INLAND REVENUE, 1997(3) SA 617 at 624,** where this passage was quoted with approval by this Court, sitting as a Full Bench.

Mr *Emslie's* example of someone rescuing a drowning child and subsequently being rewarded by grateful parents would clearly, in my view, fall within this category of a payment having the quality of an accolade.

Whatever the position may be in regard to such examples, the facts of the present case are quite different. While I accept that the motive for the telephone call by Respondent to his friend in the police and his request for advice was prompted by a fear that he might be drawn into suspicious conduct and that his reputation might be damaged, he was certainly not rewarded for having been prompted by such a motive. He was rewarded for having provided information which led to the arrest and conviction of the persons who had approached him. If he had not provided the information, he would obviously not have received the reward.

Mr *Petersen* quoted certain remarks by Lord SIMON in **BRUMBY (INSPECTOR OF TAXES) v MILNER [1976[3] All ER 636 (HL)**, where the learned Judge drew attention to the confusion which may sometimes result from the use of the expressions "***causa causans***" and "***causa sine qua non***".

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The latter expression is of assistance in the present case for the reason which I have just stated. But for the information there would have been no reward. The more important question is the proximate or direct cause of the payment, or as expressed in Latin, "***causa causans***". Despite the judicial disquiet in the House of Lords in 1976 concerning "outmoded and ambiguous concepts of causation couched in Latin", the expression has often found favour with our Courts. In **INCORPORATED GENERAL INSURANCES LIMITED v SHOOTER, 1987(1) SA 842 (AD)**, GALGUT, AJA said the following at 862D :

> *"No difficulty arises when one cause only has to be considered. The difficulty arises when there are two or more possible causes. In such a case the proximate or actual or effective cause (it matters not which term is used) must be ascertained, and that is a factual issue. I cannot put it better than is done by IVAMY at 355, where it is said that an earlier event may be a dominant cause in producing the damage or loss; it may be the **causa sine qua non** but the issue is, is it the **causa causans**? IVAMY, at the above page, ARNOULD at 733 and GORDON AND GETZ at 333 all stress*

that the rule to be applied is ***causa proxima non remota spectatur.***

Counsel for plaintiff does not dispute what is said by the learned authors. He contends that the loss was the result of the continuous process set out above and that one cannot single out any one event as being the proximate cause – the ***causa causans.***"

The economy of the Latin speaks for itself.

Mr Petersen drew attention to the fact that the expression "***causa causans***" was used by FRIEDMAN, JP in **STANDER**'s case ***(supra)***. It is quite clear from the reference to DE VILLIERS v COMMISSIONER OF INLAND REVENUE, 1929 (AD) 227 at 622 of **STANDER**'s case that the Court was contrasting a direct relationship or "causal relationship" on the one hand with a ***causa sine qua non*** on the other hand. Again at 623 of the

STANDER decision, FRIEDMAN, JP referred to the Court ***a quo***'s finding that the award clearly "stands in a direct causal relationship to the services rendered by him".

When FRIEDMAN, JP went on at 624 to say that **STANDER** was an employee of Frank Vos Motors and that this was a ***sine qua non*** to his receiving the award, this was not the end of the matter. True, if he had not been an employee of a Delta franchise holder, he would not have been eligible, but (and I quote FRIEDMAN, JP) :

> *"That fact does not, however, provide the necessary causal link between the services which he rendered to his employer and his obtaining of the award. Those services did not constitute the **causa causans** of the award. He did not seek the prize by entering the competition."*

I accordingly disagree with Mr Petersen's submission that this reference is "somewhat puzzling". It is clear that FRIEDMAN, JP was using the expression to crisply define the direct causal relationship to which he was referring.

I do, however, agree with his submission that the case is distinguishable from the present one. In **STANDER**'s case one was concerned with an employee who received an award not from his employer, but from a third party. It is also clear from the judgment in that case that the mere fact of employment had not provided the necessary causal link between what **STANDER** had done and the award he received. Not only was the reward given to him by someone who was not his employer, but it also had the quality of a testimonial or accolade rather than the quality of remuneration for services rendered.

Those features do not come into play on the present facts. The

Respondent was not doing his civic duty like the person rescuing a drowning child. He was afraid of being implicated in suspicious activities. His motive, therefore, was to protect himself. That is not worthy of any kind of prize. The fact that he thereafter received payment which he did not give back shows, conclusively in my view, that it was received for the information which he had provided.

Mr Emslie sought to persuade us that some remuneratory quality was required in respect of a payment of a sum of money before such money could be said to be given in recognition of a service rendered.

The payment on the present facts is clearly not one of the nature of a testimonial or accolade, but is, as was said in **MOORE v GRIFFITHS**, one which has *"the quality of remuneration for services rendered"*. It is trite that *"services need not be rendered by virtue of any contract, nor need the amount received or accrued be by reason of any contract or*

obligation: it can be a purely voluntary payment." (Meyerowitz on Income Tax para 9.13).

In my view, there is no substance in the cross-appeal. In my view, the judgment of the Court ***a quo*** that the provision of information fell under the definition of "*services rendered*", was correct.

In the Court ***a quo*** reliance was placed on **COMMISSIONER FOR INLAND REVENUE v SHELL SOUTHERN AFRICA PENSION FUND, 1984(1) SA 672 (A)**, where the Appellate Division determined that a lump sum benefit paid to a widow as a result of a discretionary decision by a committee of a pension fund resulted in a situation where the award to the widow was not subject to tax. Mr *Emslie* submitted that the situation was comparable with the present facts where the discretion by the appropriate incumbent in the South African Police had actually resulted in the money being paid, and was "*the dominant cause, in the sense of being decisive, and therefore the* ***causa causans***". (Respondent's Heads

of Argument, para 60.)

I disagree with this submission. In my view, the money was paid, albeit after a discretion had been exercised, to the very person who had provided the police with the opportunity to convict criminals, confiscate a substantial sum of money and reward the Respondent with a portion of the proceeds. The discretion could not have been exercised without the prior act of giving of information, which was directly linked to the receipt of the reward to the provider of that information. Once the discretion was exercised the money was clearly paid in respect of services rendered and not as a reward for good conduct or the exercise of a civic duty.

I am therefore of the view that the Special Court erred in holding that there was no sufficient link between the service rendered and the payment of the reward. I agree with the minority view of the accountant member of the Special Court, who made the point that in the **SHELL SOUTHERN AFRICA PENSION FUND** case

"*the death of the member was an historical fact present, but did*

not affect the exercise by the committee of its discretion to commute the pension under Rule 37(3). In the present case the Police Commissioner exercised his discretion to award R200 000 to the appellant because of the disclosure of information by the appellant."

In the result, I would allow the appeal and confirm the assessment for the 1993 year of assessment, and order further that costs in the appeal, including the costs of two Counsel, be paid by Respondent to the Appellant.

The cross-appeal is dismissed with costs.

J G FOXCROFT

GRIESEL, J: I agree.

B M GRIESEL

DAVIS, J: I agree.

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