IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 14711/2023

In the application of:

COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICES Applicant

In re the matter between:

VENDCORP 54 CC Applicant

and

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED

COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICES First Respondent

MINISTER OF FINANCE N.O. Second Respondent

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

NGALWANA AJ

GENERAL PRINCIPLES

[1] It is axiomatic that the applicable standard in applications for leave to appeal has in the past been whether there is a reasonable possibility that another Court may or could come to a different conclusion than that reached by the Court of first instance.

[2] Equally axiomatic, by now, is that the position is now governed by the Superior Courts Act 10 of 2013 which says leave to appeal may be granted where:

2.1. the appeal would have a reasonable prospect of success[1] or there is some compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;[2]

2.2. the decision sought will have a practical effect or result;[3] and

2.3. the appeal would lead to a just and prompt resolution of the real issues between the parties even where the decision sought to be appealed does not dispose of all the issues in the case[4].

[3] For Acting Judges – such as I – who run relatively busy practices and so can scarcely find time away from their demanding briefs to focus properly on an application for leave to appeal against their judgments, the temptation often lurks to simply grant leave, thereby shifting their problem to the appeal court, and wander off back into the warm embrace of – by comparison – handsomely rewarding briefs. Not only is this approach hardly helpful; it is also a dereliction of duty not only as an officer of the court but also as a judicial functionary. It also detracts from the court's dignity and effectiveness of the court system.

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1 Section 17(1)(a)(i)
2 Section 17(1)(a)(ii)
3 The effect of section 17(1)(b) read together with section 16(2)(a)(i) is that where the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.
4 Section 17(1)(c)

[4] On the other side of this spectrum – and this in my experience applies in equal measure both to Acting Judges and Permanent Judges – lies the temptation to defend one's judgment come Hell or High Water, often driven less by objective application of law to the facts but more by a sometimes-unacknowledged sense of one's own teleological rectitude. It is an insidious judicial temptation that probably causes more harm to the rule of law than does a lazy passing-of-the buck to the appeal court that I describe in paragraph 3 above.

[5] Between the two spectra lies a more sensible approach adumbrated by Retired Deputy Chief Justice Moseneke. In his judicial memoir, *All Rise: A Judicial Memoir*, Justice Moseneke provides sound advice on how to approach an application that seeks to set aside a judgment of a lower court. He says

> "[T]he best route to the kernel of an appeal [is] to read the judgment appealed against first, followed by the grounds of appeal or grievances against the order. Only thereafter [should one] venture into the evidence. An astute judge learns quickly which evidence is core to the decision to be made and which is merely ancillary... ."[5]

[6] This is the guidance I have followed in dealing with this application. Having done so, I have concluded that leave should be granted to the Full Court of this division, not because the appeal would have reasonable prospects of success on the appeal grounds advanced but because there is some compelling reason why the appeal should be heard. In my view, that compelling reason springs from specific questions that I shall articulate, which are in turn informed by the dearth of judicial pronouncements on these questions. In the result, I am not inclined to grant leave *holus bolus* on all the grounds of appeal as I am not persuaded that there are reasonable prospects of success on them all, or that all the grounds advanced evince compelling reasons why the appeal should be heard.

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[5] *All Rise: A Judicial Memoir* (Picador Africa), © 2020, Ch 15: "Tenure and intellectual bonding", p 127. As an Acting judge, one is not confronted with *"eleven to fifteen cases on the roll per term"*. Still, the learning of this reading skill and technique is vital if one is to navigate without much anxiety the not-so-placid waters that come with voluminous special motions and experienced Counsel on both sides determined that their respective causes are right.

SPECIFIC QUESTIONS ON APPEAL

[7] In my view, the specific questions that the appeal court should decide are the following:

(a) The First Question: Whether the decision of the Commissioner for the South African Revenue Service (*"CSARS"*) to refer suspected serious tax offences for criminal investigation pursuant to section 43[6] of the Tax Administration Act 28 of 2011 (*"the TAA"*) constitutes administrative action for purposes of review under the Promotion of Administrative Justice Act, 3 of 2000 (*"PAJA"*).

(b) The Second Question: Whether section 41 of the TAA[7] imposes a peremptory requirement that each CSARS official or investigator to whom a suspected serious tax offence is referred internally for criminal investigation must be specifically authorised, and whether the absence of such specific authorisation vitiates the CSARS internal criminal investigation against the taxpayer or merely denudes CSARS of its coercive investigative powers.

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6 "**43 Referral for criminal investigation**
(1) If at any time before or during the course of an audit it appears that a taxpayer may have committed a serious tax offence, the investigation of the offence must be referred to a senior SARS official responsible for criminal investigations for a decision as to whether a criminal investigation should be pursued.
(2) Relevant material obtained under this Chapter from the taxpayer after the referral, must be kept separate from the criminal investigation.
(3) If an investigation is referred under subsection (1) the relevant material and files relating to the case must be returned to the SARS official responsible for the audit if-
(a) it is decided not to pursue a criminal investigation;
(b) it is decided to terminate the investigation; or
(c) after referral of the case for prosecution, a decision is made not to prosecute."

7 "**41 Authorisation for SARS official to conduct audit or criminal investigation**
(1) A senior SARS official may grant a SARS official written authorisation to conduct a field audit or criminal investigation, as referred to in Part B.
(2) When a SARS official exercises a power or duty under a tax Act in person, the official must produce the authorisation.
(3) If the official does not produce the authorisation, a member of the public is entitled to assume that the official is not a SARS official so authorised."

(c) The Third Question: Whether section 44 of the TAA,[8] read purposively together with sections 48,[9] 226[10] and 227[11] of the TAA, countenances the use by CSARS of information obtained during a tax audit of one period of assessment to determine an application for voluntary disclosure relief or programme (*"VDP"*) in respect of tax defaults that relate to periods of assessment that fall outside that audit period, and in circumstances where no notice of the commencement of an audit or internal criminal investigation has been given prior to the VDP application in question.

(d) The Fourth Question: Whether section 48 of the TAA requires the giving of notice to a taxpayer 10 days prior to a CSARS audit or criminal investigation commencing, or whether such notice relates only to the obtaining of material for purposes of such audit or criminal investigation.

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[8] "**44 Conduct of criminal investigation**
(1) During a criminal investigation, SARS must apply the information gathering powers in terms of this Chapter with due recognition of the taxpayer's constitutional rights as a suspect in a criminal investigation."

[9] "**48 Field audit or criminal investigation**
(1) A SARS official named in an authorisation referred to in section 41 may require a person, with prior notice of at least 10 business days, to make available at the person's premises specified in the notice relevant material that the official may require to audit or criminally investigate in connection with the administration of a tax Act in relation to the person or another person.
(2) The notice referred to in subsection (1) must-
(a) state the place where and the date and time that the audit or investigation is due to start (which must be during normal business hours); and
(b) indicate the initial basis and scope of the audit or investigation.
(3) SARS is not required to give the notice if the person waives the right to receive the notice.
(4) If a person at least five business days before the date listed in the notice advances reasonable grounds for varying the notice, SARS may vary the notice accordingly, subject to conditions SARS may impose with regard to preparatory measures for the audit or investigation.
(5) A SARS official may not enter a dwelling-house or domestic premises, except any part thereof used for the purposes of trade, under this section without the consent of the occupant."

[10] Section 226(2) reads (in relevant part) as follows:
"**226 Qualification of person subject to audit or investigation for voluntary disclosure**
(1) …
(2) If the person seeking relief has been given notice of the commencement of an audit or criminal investigation into the affairs of the person, which has not been concluded and is related to the disclosed 'default', the disclosure of the 'default' is regarded as not being voluntary for purposes of section 227 …"

[11] "**227 Requirements for valid voluntary disclosure**
The requirements for a valid voluntary disclosure are that the disclosure must-
(a) be voluntary;
(b) involve a 'default' which has not occurred within five years of the disclosure of a similar 'default' by the applicant or a person referred to in section 226 (3);
(c) be full and complete in all material respects;
(d) involve a behaviour referred to in column 2 of the understatement penalty percentage table in section 223;
(e) not result in a refund due by SARS; and
(f) be made in the prescribed form and manner."

(e) The Fifth Question: Whether on the facts pleaded in this court, there exists exceptional circumstances as envisaged in ***Commissioner, South African Revenue Service v Medtronic International Trading SARL*** **2023 (3) SA 423 (SCA)** justifying this court in substituting its own decision for that of CSARS.

[8] These questions go beyond the interests or rights of the litigants in this case and have impact on the tax authority's administration of tax legislation in general. As I have considered and addressed them all in the main judgment, it is not necessary to repeat that discussion and findings, save to provide a few clarificatory remarks necessitated by what appears to be a misunderstanding (or oversimplification) of my meaning by CSARS as appears from its notice of application for leave to appeal and from the heads of argument filed on its behalf in this application for leave to appeal. I provide clarification in respect of each question separately.

ON CLARIFICATION OF THE MAIN JUDGMENT

[9] To the extent that there may be a challenge to the permissibility of such clarification, I rely on the authority of the Supreme Court of Appeal in its previous incarnation as the Appellate Division of the Supreme Court in ***Firestone SA (Pty) Ltd v Genticuro AG*** **1977 (4) SA 298 (A), at 307A,** where it said:

> "The Court may clarify its judgment or order, if, on a proper interpretation, the meaning thereof remains obscure, ambiguous or otherwise uncertain, so as to give effect to its true intention, provided it does not thereby alter "the sense and substance" of the judgment or order…"

[10] The clarification I provide does not seek to alter the sense and substance of the main judgment or order. It is necessitated by what appears to me as being a misunderstanding of my meaning in some respects by CSARS. For the rest of the issues raised by CSARS in its grounds of appeal which I do not address in this judgment, I am satisfied that they do not merit re-engagement in this judgment, and I stand by the reasoning of the main judgment.

FIRST QUESTION ON APPEAL: Administrative Action

[11] As regards the First Question, CSARS complains that *"it is not correct that a finding of guilt follows a referral under section 43, or that it precedes a revised assessment"*.

[12] The word *"guilt"* in the main judgment is used not in the sense of a criminal conviction following a criminal prosecution in a criminal court. It is used to denote *"culpability"* or *"fault"* as found by the CSARS official responsible for criminal investigations before deciding whether a criminal investigation by the South African Police Service should be pursued. This should be clear from the wording of section 43(1) itself which reads:

> "If at any time before or during the course of an audit it appears that a taxpayer may have committed a serious tax offence, the investigation of the offence must be referred to a senior SARS official responsible for criminal investigations for a decision as to whether a criminal investigation should be pursued."

[13] It is in this context that this court says in paragraph 112 of the main judgment:

> "In the scheme of the TAA, the criminal investigation includes a determination of culpability for a serious tax offence. It is that determination that triggers the raising of a revised assessment. Absent that determination, there would be no legal basis for raising a revised assessment."

[14] The *"determination"* envisaged here is that of culpability for a serious tax offence as determined by a CSARS official following an audit or internal criminal investigation which forms part thereof. The meaning here is not that a revised assessment follows a criminal conviction after prosecution.

[15] Clearly, the audit or internal criminal investigation by a senior CSARS official under section 43 has external legal effect on the taxpayer to the extent that there is a reasonable probability that either the audit or the internal criminal investigation (or both) may result in a revised assessment (as has happened here).

[16] Consequently, both the referral to a senior CSARS official responsible for criminal investigations in terms of section 43, and that official's investigation of a serious tax offence under the section, are public powers conferred on a natural person and performed in terms of an empowering provision. That renders both the referral and the internal investigation itself administrative action.

[17] The question that the appeal court now has to determine is whether the CSARS characterisation as *"clerical or mechanical nature only"* of the referral for internal criminal investigation of suspected serious tax offences against the taxpayer under section 43 is correct. Having regard to the definition of *"administrative action"* in PAJA, and the treatment of the subject in paragraphs 104 to 113 of the main judgment, I hold the view that there is a compelling reason for the appeal court to decide this question for posterity.

SECOND QUESTION ON APPEAL: Authorisation requirement under section 41

[18] Regarding the Second Question, CSARS takes the view that there was no obligation on the part of any senior CSARS official to authorise anyone to conduct a criminal investigation because CSARS has not attempted to use any of its *"coercive powers"* in relation to its criminal investigation.

[19] But section 41, which requires written authorisation for the conduct of an audit and internal criminal investigation, does not apply only in instances where CSARS uses its *"coercive powers"*. On its plain reading, the section requires written authorisation for the conduct of a field audit or criminal investigation whether or not that involves the use of coercive powers. There is no warrant in the plain wording of the section for confining the requirement of written authorisation to the use of *"coercive powers"*.

[20] CSARS also contends that the section 41 authorisation is *"not relevant"* because CSARS *"has not yet exercised any of its criminal investigative powers in relation to*

Vendcorp". This is a new factual submission which is at odds with the undisputed facts as pleaded. In a letter dated 4 November 2021, CSARS informed the taxpayer's attorneys that the taxpayer was under investigation for suspected serious tax offences, and that *"sufficient evidence"* had been gathered to substantiate the allegations although the investigation had not yet been finalised. Also, in a letter dated 8 November 2021, CSARS informed a Mr Peter Koularmanis[12] that it was conducting a criminal investigation on alleged serious tax offences of the kind described in section 235 of the TAA in relation to the taxpayer. CSARS has not taken issue with these facts in its notice of application for leave to appeal.

[21] All along, CSARS's case appeared to be that both the referral for internal criminal investigation and the investigation itself were authorised. To support this proposition CSARS provided the handover file in its rule 53 record – which is not evidence of written authorisation at all – and a separate authorisation which it attached to its answering affidavit – but which is inadequate since it does not cover the period of investigation as detailed in the main judgment. It was never its case that CSARS had not at all initiated a criminal investigation in relation to the taxpayer. In fact, Mr Schoeman of CSARS expressly told a Vendcorp employee in an email of 23 February 2022 that he is *"a SARS employee and I am authorised to conduct criminal investigations and I am conducting a criminal investigation into Vendcorp 54 CC…"* In an email dated 8 November 2021, he reminded a tax consultant to Vendcorp of an earlier telephone conversation (of 5 November 2021) in which he had informed the tax consultant that he (Schoeman) was *"conducting a criminal investigation in respect of alleged contraventions in terms of Sec 235 of the Tax Administration Act, 28 of 2011 in relation to Vendcorp"*. Thus, the submission that CSARS has not invoked its criminal investigation powers in relation to Vendcorp is not supported by the undisputed facts.

[22] Then CSARS contends that the written authorisation under section 41 is required only when a CSARS official performs an audit or criminal investigation in person. Quite apart from the fact, as appears in correspondence from CSARS's Mr Schoeman, that he

[12] Who appears to be an auditor and tax practitioner consulting to the Taxpayer at the time.

was engaged in a criminal investigation in person (as he insists in his email to a Vendcorp employee dated 23 February 2022),[13] this is in any event a strained reading of section 41 as a whole. In line with accepted principles of statutory interpretation, section 41(2) cannot be read in isolation if effect is to be given to the true purpose of the TAA as a whole. The section must be read within the broad context of the TAA and specifically part A of chapter 5 which deals with criminal investigations. Section 44 is particularly instructive as regards the compass within which section 41 must be understood. It says:

> "During a criminal investigation, SARS must apply the information gathering powers in terms of this Chapter with due recognition of the taxpayer's constitutional rights as a suspect in a criminal investigation"

[23] Although, as his email of 23 February 2022 demonstrates, Mr Schoeman did perform his criminal investigation in person, it cannot reasonably be said that a taxpayer enjoys the rights intimated by Schoeman in relation to CSARS internal criminal investigations only when a CSARS official performs a criminal investigation in person. Even when a criminal investigation is not performed in person, it seems to me, surely, that in a constitutional democracy one should expect that the person who is the subject of that criminal investigation is entitled to know that the criminal investigation is properly and lawfully authorised so that the person can legitimately take appropriate legal steps to protect their legal interests, including challenging the basis for and/or extent of the authorisation of such criminal investigation.

[24] Therefore, it seems to me there is a compelling reason – given the dearth of judicial pronouncement on this question – for the appeal court to consider whether a written authorisation under section 41 of the TAA is required only when a CSARS official exercises *"coercive powers"* and *"in person"* in all circumstances.

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[13] In that email correspondence, Mr Schoeman of CSARS says the following to a Vendcorp employee to whom he said he was authorised to conduct a criminal investigation into her employer, the taxpayer (the investigation appears to have been ongoing since July 2018):

> *"You also requested that I phone you at 10:00 today, 23 February 2022, when you are at the office so that a conversation may take place in the presence of Anthis. This will not be possible since our interaction should be in person with the exception of a legal practitioner."*

THIRD QUESTION ON APPEAL: Deciding a VDP application using information relating to a different tax period

[25] On the Third Question, CSARS complains that this court made a finding based on a provision of the TAA that was not invoked. It says its case for declining the VDP application is based on section 227(a) and not section 227(b) or section 226. In short, CSARS would have this court confine itself to a provision of the TAA on which it relies and ignore the rest. That is not my understanding of how purposive statutory interpretation works, which is why in the main judgment I stated that *"[I]n order to do justice to the [VDP] question, a little more suitably nuanced answer that takes account of the pleaded facts and the context of the TAA as a whole, is required"* and that *"Section 227 should not be read in isolation but in the context of the TAA as a whole, particularly Part B of Chapter 16 which deals specifically with VDP applications"*. It is in this vein that this court invoked the principles of statutory interpretation usefully summarised by the Constitutional Court in ***Minister of Police and Others v Fidelity Security Services (Pty) Ltd***.[14]

[26] In short, I do not believe that the narrow interpretative approach contended for by CSARS is either appropriate or accords with principles of statutory interpretation as confirmed in numerous judgments including the Constitutional Court. Specifically, the voluntary nature of disclosure as envisaged in section 227(a) cannot reasonably be decided or determined without engaging with whether or not the taxpayer in question has been given notice of the commencement of an audit or criminal investigation into their tax affairs, as contemplated in section 226(2) of the TAA. In essence, section 226(2) is relevant to the determination of the voluntary nature of a disclosure for purposes of section 227(a) because it explains that the disclosure of a taxpayer who has applied for a VDP after being given notice of the commencement of an audit or criminal investigation into their tax affairs is regarded as not being voluntary. Conversely, therefore, the disclosure of a taxpayer who has not been given such notice must *pari passu* be regarded as being voluntary. Consequently, the compelling question that the

[14] 2022 (2) SACR 519 (CC); [(2022] ZACC 16), para 34

appeal court ought in my view to consider is whether the TAA countenances the use by CSARS of information obtained during a tax audit of one period of assessment to determine an application for VDP in respect of tax defaults that relate to periods of assessment that fall outside that audit period, and in circumstances where no notice of the commencement of an audit or internal criminal investigation has been given prior to the VDP application in question, taking into account the provisions of sections 44, 48, 226 and 227 of the TAA.

FOURTH QUESTION ON APPEAL: Section 48 notice

[27] As regards the Fourth Question, CSARS contends that section 48 does not require prior notice of an audit or criminal investigation but is concerned only with the giving of notice of CSARS's intention to exercise its power to require the production of material.

[28] This in my view is a strained and self-serving reading of section 48. On its plain reading, the section requires at least 10 days' notice of the production of material for purposes of an audit or criminal investigation. The production of material is not required in a vacuum; it is required for purposes of conducting an audit or internal criminal investigation into the taxpayer's tax affairs. The decoupling of the production of material, on the one hand, from the audit or criminal investigation, on the other, seems to me an exercise in cutting the sails of the provision to fit the trim of CSARS's case.

[29] *A fortiori*, and as pointed out in the main judgment – an aspect with which CSARS does not engage – paragraph 2.2.5.10 of the *Memorandum on the Objects of the Tax Administration Bill, 2011*, attached as annexure *"SARS10"* to CSARS's answering affidavit, makes the following instructive comment or observation about section (or clause) 48:

> "*2.2.5.10 Field audit or criminal investigation notice (clause 48)*: Prior notice of an audit or criminal investigation at the premises of a taxpayer must be given at least 10 business days before the audit or investigation, and the taxpayer must revert at least 5 business days before the audit

> or investigation if the date is not suitable. Although the notice must *inter alia* indicate the initial basis and scope of the audit or investigation, this may obviously change or extend as the audit or investigation progresses. A taxpayer may waive the right to notice, for example, if it is convenient for the taxpayer to resolve an audit issue without delay."

[30] There can therefore be no mileage to be gained by CSARS in seeking to decouple the notice for production of material for purposes of audit and criminal investigation from the audit or criminal investigation itself. The question that then arises for the appeal court in my view is whether the 10-day notice prescribed by section 48 relates – on a proper construction of the section – only to the production of material for purposes of an audit or criminal investigation, or whether such notice relates also to the audit and criminal investigation itself. If it relates also to the latter, the further enquiry is whether failure to give such notice vitiates the CSARS internal criminal investigation.

FIFTH QUESTION ON APPEAL: The substitution order

[31] On the Fifth Question, CSARS contends – in the heads of argument submitted on its behalf – that it is not clear precisely what this court substituted CSARS's decision with. It also contends that this court has no power to make a substitution order which has not been sought by Vendcorp.

[32] CSARS is correct in its characterisation of the substitution relief in this case as an *"extraordinary remedy"*. That, in my judgment, is the consequence of an extraordinary abuse of power by an organ of state. I have already pointed to the principles to which I have had regard in granting this remedy in the main judgment. I shall not repeat them.

[33] As regards the proposition that the remedy is inappropriate because Vendcorp did not seek it, I say this. A Court should never be constrained from granting what it considers appropriate relief by dint only of the applicant not having sought the specific relief in question. In my view, CSARS's failure to conduct not only its referral of Vendcorp's suspected serious tax offence to an internal criminal investigation but also

its conduct of the criminal investigation itself with due regard to the requirements of section 44(1) of the TAA, constitutes an egregious abuse of its investigative powers. Specifically, in failing to give prior notice of the nature and scope of its criminal investigation to the taxpayer, CSARS denied the taxpayer the very rights that it assured the taxpayer in its letter of 4 November 2021. In that letter, CSARS invited the taxpayer – more than 3 years after the internal criminal investigation into the taxpayer's tax affairs had, unbeknown to the taxpayer, already commenced since 2 July 2018 – to offer any information it wished to offer, with due consideration of its rights as a suspect in a criminal investigation, *"and the rights afforded to [it] in terms of Section 35 of the Constitution of the Republic of South Africa"*.

[34] But the section 35 rights appear to have been dangled in bad faith because CSARS later argued that section 35 rights are not available to the taxpayer, and this court so found for reasons detailed in the main judgment. This underhanded approach clearly demonstrates that CSARS has irreversibly made up its mind on the taxpayer's VDP applications. The failure to give prior notice of the referral to internal criminal investigation cannot be remedied after the investigation has already commenced and appear to have been conducted already over some years. Remitting these issues for reconsideration by CSARS would thus serve no practical purpose because – given the fact that the notice requirement horse has long bolted and cannot now be saddled – it is now impossible, in relation to an investigation that has been under way for several years, to comply with a notice requirement that should have been met before commencement of the investigation. CSARS is unlikely to bring an open mind to bear on these questions.

[35] Therefore, I take the view that this court was justified – considering the applicable principles as detailed in the main judgment – to substitute its own decision for that of CSARS. The substituted decision is the decision to refer and conduct a criminal investigation in relation to Vendcorp and the decision to refuse Vendcorp's VDP application. Both decisions are in my judgment vitiated by CSARS's egregious failure to comply with the TAA in the respects articulated in the main judgment and

further explained in this judgment. The toothpaste is out of the tube in relation to the prior notice referral decision; it cannot be squeezed back in.

[36] In closing, I should mention that I invited both parties to submit written submissions from which I could learn whether there is a need for oral argument of the application for leave to appeal. Both parties agreed that I could determine the application based on their written submissions. That is what I have done. I am grateful to both sets of Counsel for their thorough and helpful written submissions.

ORDER

In the result, I make the following order:

1. Leave to appeal is granted to the Full Court of the North Gauteng High Court only on the following questions:

    (a) The First Question: Whether the decision of the Commissioner for the South African Revenue Service (*"CSARS"*) to refer suspected serious tax offences for criminal investigation pursuant to section 43 of the Tax Administration Act 28 of 2011 (*"the TAA"*) constitutes administrative action for purposes of review under the PAJA.

    (b) The Second Question: Whether section 41 of the TAA imposes a peremptory requirement that each CSARS official or investigator to whom a suspected serious tax offence is referred internally for criminal investigation must be specifically authorised, and whether the absence of such specific authorisation vitiates the criminal investigation against the taxpayer or merely denudes CSARS of its coercive investigative powers.

    (c) The Third Question: Whether section 44 of the TAA, read purposively together with sections 48, 226 and 227 of the TAA, countenances the use by

CSARS of information obtained during a tax audit of one period of assessment to determine an application for VDP in respect of tax defaults that relate to periods of assessment that fall outside that audit period, and in circumstances where no notice of the commencement of an audit or internal criminal investigation has been given prior to the VDP application in question.

(d) The Fourth Question: Whether section 48 of the TAA is relevant and, if so, whether it requires the giving of notice to a taxpayer 10 days prior to a CSARS criminal investigation commencing.

(e) The Fifth Question: Whether on the facts pleaded in this court, there exists exceptional circumstances as envisaged in *Commissioner, South African Revenue Service v Medtronic International Trading SARL* 2023 (3) SA 423 (SCA) justifying this court in substituting its own decision for that of CSARS.

2. The costs of the application for leave to appeal shall be costs in the appeal.

V NGALWANA

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 25 March 2025.

Date of heads: 10 February 2025 (CSARS)

12 February 2025 (Vendcorp)

Date of judgment: 25 March 2025

Appearances:

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