THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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The Commissioner for the South African Revenue Service v Airports Company for South Africa (Case no 785/2021) [2022] ZASCA 132 (7 October 2022)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding the appeal, with costs, against the Tax Court, Johannesburg (the tax court).

The issues in this appeal were whether it was permissible to amend the grounds of objection against an additional assessment issued by the appellant, the Commissioner for the South African Revenue Service (SARS), after the expiry of the periods prescribed in the tax court rules and whether such an order is appealable.

During December 2015 to February 2016, SARS conducted an income tax audit in respect of the taxpayer's 2011 year of assessment. SARS issued a Letter of Audit findings on 8 February 2016. The taxpayer was advised that SARS intended to, *inter alia*: (a) disallow a deduction claimed by the taxpayer in respect of corporate social investment (CSI) expenditure in terms of s 11*(a)*, read with s 23*(g)*, of the Income Tax Act 58 of 1962 (the Act); (b) disallow an allowance claimed by the taxpayer in terms of s 13*quin* of the Act; (c) disallow an allowance claimed by the taxpayer in terms of s 12F of the Act; and (d) impose understatement penalties (USPs) in terms of the Tax Administration Act 28 of 2011 (TAA).

In a letter dated 8 March 2016, the taxpayer, through its erstwhile attorneys, addressed the adjustments in relation to (a) and (b) above and sought an extension to deal with (c). A week later, on 15 March 2016, the taxpayer addressed a further letter to SARS in which it indicated that it 'deemed it appropriate to concede to the findings made by SARS in the Letter of Findings in respect of the application of section 12F'. On 30 March 2016, SARS issued a Finalisation of Audit letter in respect of the taxpayer's 2011 year of assessment and issued an additional assessment. It disallowed the CSI expenditure, as well as the s 13*quin* and s 12F allowance, and imposed USPs and interest in terms of the TAA.

On 12 May 2016, the taxpayer lodged an objection to the additional assessment. It only objected to the disallowance of the CSI expenditure. No objection was lodged to the s 13*quin* and s 12F allowances and the imposition of USPs and interest. The objection to the disallowance of the CSI expenditure did not find favour with SARS. On 28 October 2016, the taxpayer lodged a notice of appeal in respect of the disallowance of the CSI expenditure.

On 22 January 2019, SARS issued a Letter of Audit Findings in respect of the taxpayer's 2012 to 2016 years of assessment. Consistent with its earlier stance adopted in respect of the 2011 tax year, it indicated that it intended to disallow the deductions claimed by the taxpayer in respect of the CSI expenditure, the 13*quin* and 12F allowances, and to impose USPs and interest, in terms of the TAA. In a reply to the Letter of Audit Findings, the taxpayer queried the disallowances and imposition of USPs

and interest. On 29 March 2019, SARS issued a Finalisation of Audit Letter and disallowed the deductions and allowances claimed, and imposed USPs and interest, in terms of the TAA

On 6 September 2019, the taxpayer addressed a letter through its newly appointed attorneys, Edward Nathan Sonnenberg (ENS), to SARS seeking an indulgence to amend the objection that it had lodged in May 2016 in respect of the 2011 year of assessment. The taxpayer sought to object to the adjustments effected by SARS in respect of the allowances claimed in terms of ss 13*quin* and 12F, as well as the imposition of USPs and interest. SARS refused to allow the objection as it was of the opinion that s 104 of the TAA, read with rule 7 of the tax court rules (rule 7), precluded such an amendment and that the taxpayer was seeking to introduce new grounds of objection, which was impermissible in terms of rule 32(3) of the tax court rules.

As neither the Act, nor the tax court rules, make provision for the amendment of an objection to an additional assessment, the taxpayer applied to the tax court, Johannesburg for leave to amend in terms of Uniform rule 28(1), read with rule 42(1).

The SCA held that an objection is part of the pre-litigation administrative process and is not a pleading. It is also not a document filed in connection with judicial proceedings envisaged in terms of Uniform rule 28(1). Furthermore, rule 42(1) only comes into play when the tax court rules do not make provision for a procedure *in the tax court*. Rule 42(1) does not apply to those procedures governed under Part B of the tax court rules, which constitute pre-litigation administrative procedures such as an objection to an assessment. Therefore, held the SCA, the tax court erred in granting leave to the taxpayer to amend its notice of objection in terms of Uniform rule 28.

The SCA held further that the effect of the amendment sought by the taxpayer would be to extend the period for the filing of an objection (or the filing of new grounds of objection) long after the peremptory periods prescribed in s 104 of the TAA, read with rule 7, have expired. The prescribed time periods provided for in the TAA, read with rule 7, taken together with the ability of a taxpayer to secure an extension of time within the permitted parameters, achieves a fair balance between SARS and the taxpayer. To permit amendments to an objection would unjustifiably undermine the principles of certainty and finality, which underpin a revenue authority's duty to collect taxes.

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