



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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Status: Immediate

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Sishen Iron Ore Company (Pty) Ltd v CSARS (550/2023) [2025] ZASCA 16 (5 March 2025)

Today the Supreme Court of Appeal (the SCA) handed down a judgment in which it upheld, in part, the appellant's appeal against an order of the Tax Court of South Africa, Gauteng (the tax court).

Sishen Iron Ore Company (Pty) Ltd (Sishen) sought to deduct various expenses from its taxable income for the 2012 to 2014 tax years. These expenses included the costs of relocating a residential area known as the Dingleton township (Dingleton) and relocating certain infrastructure referred to as the Sishen Western Expansion Project (SWEP) infrastructure, legal costs associated with the relocation of Dingleton, and the costs of relocating a 66kV power line supplying electricity to mine equipment. The Commissioner for the South African Revenue Service (the CSARS) disallowed these deductions and imposed understatement penalties, as well as interest in terms of s 89quat(2) of the Income Tax Act 58 of 1962 (the ITA).

The tax court, on appeal, disallowed the deduction of the relocation expenditure and the legal expenditure, allowed the deduction of the 66kV line expenditure, and set aside the understatement penalties and the interest raised, with no order as to costs. Sishen appealed against the disallowance of the relocation and legal expenditure. The CSARS cross-appealed against the order of the tax court allowing the deduction of the 66kV line expenditure and disallowing the interest. Both the appeal and cross-appeal were with leave of the tax court.

The tax court found that the relocation of Dingleton and the SWEP infrastructure did not qualify as deductible expenditure in terms of s 36(11)(e) of the ITA. It held that the relocation expenditure was not incurred in terms of a mining right and did not constitute capital expenditure in respect of mining operations. The tax court, however, allowed the deduction of the 66kV power line expenditure, finding that it was integral to mine equipment and qualified in terms of s 36(11)(a) and s 11(a). The legal expenses incurred in assisting Dingleton residents were disallowed on the basis that they were not sufficiently closely related to Sishen's trade. The tax court also set aside the understatement penalties imposed by the CSARS. It held that the penalties were not justified, and it set aside the interest imposed under s 89quat(2), erroneously categorising it as 'Interest on Understatement Penalties'.

The core issues to be decided by the SCA were whether the relocation expenses were deductible in terms of s 36(11)(e); whether the 66kV power line expenditure was deductible in terms of s 36(11)(a) or alternatively in terms of s 11(a); whether the legal expenses qualified for deduction in terms of s 11(c), and whether the interest imposed in terms of s 89quat(2) should have been waived in accordance with s 89quat(3).

The SCA found that the relocation expenditure was deductible in terms of s 36(11)(e), concluding that the expenditure was incurred in terms of a mining right and was essential for the continuation of mining operations. The SCA reasoned that unless the SWEP infrastructure was relocated and the Dingleton residents translocated, the progression of the mine pit to the west, as contemplated by and in terms of the mining right, could not continue. The SCA upheld the tax court's finding that the 66kV power line expenditure was deductible, confirming that it was integral to the operation of mine equipment and essential for income production. In respect of legal expenses, the SCA found that these were not deductible, stating that Sishen's trade was to mine for iron ore, not to provide legal assistance to the Dingleton residents. The SCA found that the assessment of the s 89^{quat}(2) interest should be set aside and referred back to the CSARS for reconsideration and assessment.

As a result, the SCA made an order that the appeal should succeed in part. The deductions for the relocation of Dingleton, the SWEP infrastructure, and the 66kV power line were allowed, while the deduction for legal expenses was denied. The cross-appeal by the CSARS was dismissed. The understatement penalties were set aside, and the interest issue was referred back to the CSARS for reconsideration. The SCA further ordered the CSARS to pay two-thirds of Sishen's costs of the appeal, to include the costs of two counsel where so employed and that the CSARS is to pay one-half of Sishen's costs of the cross-appeal, to include the costs of two counsel where so employed.

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