



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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Baseline Civil Contractors (Pty) Ltd v The Commissioner for the South African Revenue Service (893/2024) [2026] ZASCA 20 (24 February 2026)

Today the Supreme Court of Appeal (SCA) dismissed an appeal against a decision of the Western Cape Division of the High Court (full court) on the proper interpretation of Rule 32(3) of the Tax Court Rules.

The appeal concerned the dismissal of an interlocutory application brought by Baseline Civil Contractors (Pty) Ltd (Baseline) in an appeal before the Tax Court in which Baseline sought to introduce a new ground of appeal in its statement of grounds of appeal under rule 32 (rule 32 statement). The Commissioner for the South African Revenue Service (SARS) had objected thereto, on the ground that the new ground of appeal constituted a ground of objection against a part or amount of the disputed assessment not objected to under rule 7. The Tax Court upheld the objection and dismissed the application. Baseline's appeal to the full court was similarly dismissed. The appeal is with special leave granted by this Court.

Baseline conducts business in the civil construction industry. It claimed to be in an *en commandite* partnership with an entity known as Baseline Group Limited Liability Partnership (BECP) or BG LLP in terms of a partnership agreement. Baseline submitted its income tax return for the 2018 tax year to SARS and Baseline listed a gross income of R320 846 361. In terms of s 11(a) read with s 23(g) of the Income Tax Act 58 of 1962, Baseline claimed a total of R73 215 161 in expense deductions for the 2018 tax year. The deductions included an amount of R11 072 237 (disputed amount) which it claimed related to the distribution of profits which Baseline alleged it paid to BECP in terms of the partnership agreement. In terms of s 102(1)(b) of the Tax Administration Act 28 of 2011 (the TAA), Baseline bore the onus of proving that the amount of R11 072 237 paid as a profit distribution to BECP, is an allowable deduction.

The issue before the SCA was whether rule 32(3), properly interpreted, permits the new ground of appeal that Baseline seeks to introduce in its rule 32 statement.

This Court held that in interpreting the provisions of rule 32(3) and in particular the phrase 'a part or amount of the disputed assessment' it must be guided by the principles that the inevitable point of departure is the language used in the provision of rule 32(3) considering its text, context and purpose in the light of the overarching scheme of the Income Tax Act and the TAA. The context is not limited to reading a provision together with other provisions in the statute, but it includes the social and historical background of the legislation.

This means that if a taxpayer raises a new ground of appeal that has a new factual or legal basis that targets a different part or amount of the disputed assessment that was never objected to in the rule 7 notice, that would be prohibited by rule 32(3). On the other hand, if a taxpayer advances a new argument or different legal approach to attack the same part or amount that was already objected to, that would be permitted as long as the new argument does not change the substance of the original objection.

The SCA was thus in disagreement with Baseline's submission that the words 'part' and 'amount' appearing in rule 32(3) have a very wide meaning free from any internal qualification. Rule 32(3) allows the introduction of a new ground of appeal in the rule 32 statement, but that capacity is not without any constraint. It is subject to the parameters established by the subrule. The full court was therefore correct in concluding that 'an interpretation of rule 32(3) without having regard to the provisions of rule 7 would not be proper, as it lays the foundation for the appeal process that follows in the event of the disallowance of an objection.'

The SCA held that rule 32(3) should be interpreted with due regard to its historical background and that background is material to understanding both its purpose and its proper scope. In general, rule 32 was introduced to crystallise the real issues in dispute, define the scope of the appeal and to ensure that the Tax Court adjudicates only those matters properly raised and ventilated in the pleadings thereby preventing litigation by ambush. In other words, it was intended to prevent parties from shifting their case midstream to protect the integrity of the objection and appeal process which is foundational to tax administration.

The SCA further held that the construction of rule 32(3) contended for by Baseline must be rejected as it does not advance the finality of the tax proceedings. If it were to be accepted SARS might be prejudiced by Baseline shifting the grounds of its objection to the assessment. The inclusion of the new ground of appeal in the rule 32 statement would require reconsideration of Baseline's objection in the light of the new ground and if it was disallowed then the appeal process would follow. This is clearly an untenable situation. It is not possible to argue that the disputed amount is an expense that was incurred in the production of income, for the purposes of trade, and not of a capital nature while simultaneously arguing that the same amount should be removed from the gross income as it was not received by, or accrued to, Baseline. Consequently, Baseline's new receipt/accrual ground and old deduction ground cannot exist side by side. Thus, any effort by Baseline to argue the new ground would have to be accompanied by a concession that SARS' disallowance of the payment of the profit distribution as a deduction was correct.

It is therefore clear that Baseline is not pleading an alternative new ground that is complementary to its grounds of objections, but rather a new ground that contradicts those put forward in its objection. This is not permissible. The full court can therefore not be faulted for concluding that the Tax Court was correct in holding that the new ground raised by Baseline in its rule 32 statement was impermissible, as it fell outside the bounds of rule 32(3).

As a result the appeal was dismissed with costs, including those of two counsel.

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