REPUBLIC OF SOUTH AFRICA

IN THE TAX COURT OF SOUTH AFRICA
(HELD AT GAUTENG DIVISION, JOHANNESBURG)

CASE NO: VAT 1518

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED.

…………………….. ………………………...
DATE SIGNATURE

In the matter between:

TAXPAYER D **APPLICANT**

and

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE **RESPONDENT**

J U D G M E N T

These reasons are deemed to have been delivered electronically by circulation to the parties' representatives via email and the same shall be uploaded onto the caselines system.

DLAMINI J:

[1] This an application for leave to reinstate an appeal in terms of rule 42(1) of the Tax Court Rules read with rule 49(6)(*b*) of the Uniform Rules of the High Court, wherein the applicant seeks permission to reinstate his Income Tax and VAT appeals.

[2] The second application deals with the respondent's application for condonation for the late filing of the respondent's answering affidavit for the above reinstatement application.

[3] The facts which form the basis of this application are largely common cause and can be briefly summarized as follows:

[4] On 26 March 2015 and 31 July 2015, SARS raised Additional Assessments for the relevant periods in the VAT and Income Tax matters of the applicant under case numbers VAT 1581 and IT 4119.

[5] On or about August 2015 the applicant filed its objections against both assessments.

[6] SARS disallowed these objections in October 2015.

[7] Not satisfied, with this decision, the applicant on 14 and 29 October 2015, filed its appeals for both the VAT and Income Tax matters.

[8] The matter proceeded, on 15 May 2017, the respondent proceeded to file its Rule 31 Statements of Grounds of Assessments and on 18 May 2017, the applicant filed its Rule 32 Statements of Grounds of Appeal.

[9] On 18 May 2018, the applicant formally withdrew both the VAT and Income Tax appeals.

[10] On 6 February 2023 the applicant launched this application to reinstate its withdrawn VAT and Income Tax appeals.

[11] This application is opposed by the respondent on the basis that the results of the withdrawals of the appeals by the applicant had the effect that the additional assessments as initially raised SARS in both the Income Tax and VAT appeal matters, became final in terms of section 100 of the Tax Administration ACT (the TAA).

[12] At the hearing of the application, the applicant submitted that it was withdrawing its opposition to the respondent's application for the late filing of the respondent's answering affidavit.

[13] The respondent has raised a point *in limine* and submitted that this Court does not have jurisdiction to hear this application.

[14] It is a well-established principle of our law that whenever the jurisdiction of the Court is an issue, this *point in limine* must be adjudicated and resolved first before the remainder of the application is heard.

[15] The applicant submits that this court has jurisdiction to hear this application if one has regard to rule 42(1) of the Tax Court Rules in that on its proper interpretation and in light of its context it appears that rule 42(1) provides a procedural mechanism that where the Tax Court Rules are silent on a procedure that can be followed to dispose of a matter, then the Uniform Rules of the High Court can be utilised to fill that gap.

[16] It is further contended by the applicant that when applying the Tax Court rule 41(1) to ascertain if a particular High Court rule is appropriate to and consistent with the TAA and the Tax Court Rules a purposive approach must be adopted.

[17] In this regard, the applicant argues that since there are no other Uniform Rule that serves the same or similar purpose in the High Court Rules, therefore rule 49(6)(*b*) of the Uniform Rules of the High Court would be the most appropriate rule for dealing with the application for reinstatement of a tax appeal.

[18] It is submitted by the respondent that this Court does not have jurisdiction to hear this reinstatement application. The respondent insists that upon the formal withdrawals of the appeals by the applicant, SARS, in executing its duties in terms of the TAA, proceeded to finalise the appeals by implementing the said withdrawn appeals and processing the additional assessments that it had raised against the applicant. The effect of this, argues the respondent is that the additional assessments became final in terms of section 100 of the TAA.

[19] Therefore, the respondent argues that there was no judgment or order made of the assessment, but merely an administrative function was performed by the Commissioner to note the withdrawal. The applicant's assessment, contends the respondent, was therefore made final as there was no further objection or appeals filed by the applicant within 30 (thirty) days.

LEGISLATIVE PROVISIONS

[20] Rule 42(1) of the Tax Court Rules provides as follows:

> "42. Procedures not covered by Act and rules—(1) If these rules do not provide for a procedure in the tax court, then the most appropriate rule under the Rules for the High Court made in accordance with the Rules Board for Courts of law Act and to that extent consistent with the Act and these rules, may be utilized by a party or the tax court
>
> (2) A dispute that arises during an appeal or application under Part F concerning the use of a rule of the High Court must be dealt with by the president of the tax court as a matter of law under section 118(3) of the Act."

[21] The Uniform Rule of the High Court 49(6)(*b*) provides as follows:

> "when leave to appeal is required and it has not been requested at the time of the judgment or order, application for such leave shall be made and the grounds thereof shall be furnished within 15 days after the of the order appealed against: provided that when the reasons or the full reasons for the court's order are given on a later date then that date of the order, such application may be made within 15 days after such later date: Provided further that the court may, upon good cause shown, extend the aforementioned periods of 15 days."

[22] The principle of interpretation of a statute in our law has long been settled. In enunciating these principles, the Constitutional Court in *Cool Ideas 1186 v Hubbard* [2014] ZACC 16; 2014 (4) SA 474 CC; 2014 (8) BCLR (CC) at [2] said the following:

> "A fundamental tenet of statutory interpretation is that the words in a statute must be given their ordinary grammatical meaning unless to do so would result in an absurdity. There three important interrelated riders to this general principle, namely;
>
> (a) that statutory provisions should always be interpreted purposely;
>
> (b) the relevant statutory provision must be properly contextualized; and
>
> (c) all statutes must be consistent with the Constitution, that is where reasonably possible, legislative provisions ought to be interpreted to preserve their constitutional validity. This proviso to the general principles is closely related to the purposive approach referred to in (a)."

See also *Firstrand Bank LTD v KJ Foods* (734/2015) [2015] ZASCA 50 (26 April 2017).

[23] Read in its context rule 42(1) does not confer jurisdiction to this Court to hear the reinstatement application of a formally withdrawn Tax Court Appeal. This Court does not have inherent jurisdiction, it is a creature of statute, and the enabling statute does not grant this Court authority to reinstate and hear a formally withdrawn Tax Court Appeal. Therefore, the applicant's contention that this Court has jurisdiction to hear this application has no merit and stands to be dismissed. This is so because this court does not have inherent jurisdiction, it is a creature of statute, and the enabling statute does not grant this Court authority to reinstate and hear a formally withdrawn Tax Court Appeal. Accordingly, the interpretation sought by the applicant in this regard leads to insensible results.

[24] The submission by the applicant that rule 49(6)(*b*) of the Uniform Rules of the High Court grant this Court jurisdiction to hear this application has no merit and stands to be dismissed. On a sound and sensible interpretation, the provisions of rule 49(6)(*b*) become applicable only once there is a judgment or order of a court. The withdrawal of the appeal by the applicant did not amount to a judgment or order. Before, this Court is an application to reinstate the withdrawn Income Tax and VAT appeals of the applicant. No judgment or order is being appealed against in the present application. Consequently, the applicant's reliance on rule 49(6)(*b*) is misplaced and impermissible. It is therefore my view that this Court lacks jurisdiction to hear this reinstatement application and to grant the relief sought by the applicant.

[25] Taking into account all the circumstances mentioned above, it is my considered view that the respondent has made out its case and discharged its onus to prove that this court does not have jurisdiction to hear this application, and therefore respondent's *point in limine* is upheld.

ORDER

1. The order marked “X” that I signed on 6 February 2023 is made an order of this court.

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DLAMINI J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Date of request for reasons:	17 February 2023
Delivered:	23 March 2023
For the Applicant:	Adv L Sigogo SC
Instructed by:	Baneka Dalasile Incorporated baneka@dalasileattorneys.co.za
Respondent:	Ms M Hawkins MHawkins@sars.gov.za
Instructed by:	Commissioner for SARS.