**REPUBLIC OF SOUTH AFRICA**

**IN THE TAX COURT OF SOUTH AFRICA**
**(HELD AT GQEBERHA, EASTERN CAPE)**

Case number: **IT 77272**

(1) REPORTABLE: ~~YES~~ / **NO**

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / **NO**

(3) REVISED.

**11 August 2026**
DATE

SIGNATURE

In the matter between:

| | |
|---|---|
| **TAXPAYER MLC** | **Appellant** |
| and | |
| **THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE** | **Respondent** |

# J U D G M E N T

**EKSTEEN J:**

[1] The appeal comes before us by agreement between the parties in terms of section 109(1) of the Tax Administration Act, 28 of 2011 (the Act). The appellant had objected to the South African Revenue Service's (SARS's) final audit findings and notice of assessment in respect of her tax liability for the years 2020 and 2021. Her objection was duly considered and disallowed. Thereafter she lodged an appeal[1] against the decision, and the parties agreed to attempt to resolve the dispute through an alternative dispute resolution (ADR) process. This endeavour, too, failed, which led in turn to the agreement that the appeal be referred directly to the Tax Court.

[2] The factual background to the dispute is not materially in dispute. At all material times the appellant was employed by the Department. She derived her income from her salary and had no other source of income. On 3 December 2020 and 20 September 2021, respectively, she lodged her tax returns on the SARS e-filing platform. However, in August 2023, revised income tax returns were submitted in respect of the tax years 2020 and 2021 respectively. The revised tax returns reflected that she had purchased farming assets to the value of R1.5 million in 2020 and R500 000,00 in 2021. These alleged purchases created a farming loss of R750 000,00 in 2020 and R700 000,00 in 2021.

[3] In addition, the income tax return included an IRP5 certificate from the Department which disclosed a salary of R876 001,00 and a PAYE credit in the amount of R700 000,00 for 2020. In respect of 2021, the revised return reflected an income of R887 000,00 and a PAYE credit in the amount of R800 000,00. These revisions resulted in the appellant receiving a refund for the additional PAYE credits in excess of her tax liability. As a result of these revised returns SARS caused a refund in the amount of R1 380 700,99 to be paid into the appellant's bank account. However, during 2023, based on a risk assessment conducted, SARS elected to audit the appellant's income tax for the years 2020 and 2021. She was informed accordingly.

[4] Upon completion of the audit, SARS issued its finding and informed the appellant of the proposed adjustments based on their finding. As I have said, the revised tax return submitted in respect of the 2020 tax year reflected that the appellant had purchased farming assets to the value of R1.5 million, and that this had created a farming loss of R750 000,00 which was set off against the employment income received from the Department. The appellant was accordingly requested to submit documentary evidence or invoices in support of the farming tools allegedly purchased. She failed to do so. Instead, confronted with this request, she advised SARS that she did not conduct a farming operation and that no farming equipment had been purchased. A similar

1 In terms of section 107 of the Act.

request was made in respect of the farming loss reflected for the year 2021. It, too, elicited a similar response.

[5] The audit findings further reflected that the revised tax return submitted for 2020 and 2021 included an IRP5 certificate, purportedly from the Department, which did not match the original IRP5 certificate submitted to SARS.

[6] Accordingly, SARS adjusted the appellant's tax liability for the period in dispute. They calculated that the appellant was liable to SARS in the amount of R3 618 686,47 made up as follows:

(i) capital: R1 391 006,04;

(ii) interest: R141 171,22; and

(iii) an understatement penalty of 150%, amounting to R2 086 509,21.

[7] The calculation of the capital and the interest is not in dispute. The appellant has admitted, as recorded in the minute of the pre-trial conference, that the understatement penalties imposed were the outcome of an additional assessment intended to correct the prejudice suffered by SARS arising from fraudulent claims in the appellant's income tax returns for the 2020 and 2021 financial years. She has admitted that she received the refund payment and that it was an undue refund. It is further common cause, and recorded in the pre-trial minute, that the appellant's login details were used to access the e-filing system and to file the revised tax returns for 2020 and 2021. However, the appellant denied, and continues to deny, that she submitted the fraudulent tax returns, and she avers that an official at SARS submitted these on her behalf. Accordingly, she disputes the imposition of the understatement penalty and SARS's refusal to waive it.

[8] SARS bears the onus of proving the facts on which it has based the imposition of an understatement penalty.[2] Thus, the first issue which arises in this appeal relates to whether or not SARS has proved that it was entitled to impose an understatement penalty in terms of section 222 of the Act. An understatement is defined in section 221 as:

> "Any prejudice to SARS or the fiscus in respect of the tax period as a result of—
>
> (*a*) A default in rendering a return;
>
> (*b*) an omission from a return;
>
> (*c*) an incorrect statement in a return; or

2 See section 102(2) and section 129(1) of the Act.

(*d*) if no return is required, the failure to pay the correct amount of 'tax'."

[9] Section 222(1) provides that:

> "In the event of an 'understatement' by a taxpayer, the taxpayer must pay, in addition to the 'tax' payable for the relevant tax period, an understatement penalty determined under subsection (2) unless the 'understatement' results from a bona fide inadvertent error".

[10] Section 222(2) provides for the computation of the understatement penalty. It states:

> "The understatement penalty is the amount resulting from applying the highest applicable understatement penalty percentage in accordance with the table in section 223 to each shortfall determined under subsections (3) and (4) in relation to each 'understatement' in a return."

[11] The understatement penalty percentages are set out in a table embodied in section 223(1) of the Act. They vary, depending on the behaviour associated with the understatement. In the instance where a taxpayer is considered to fall under the category referred to as "a standard case", the following rates are applicable in the table. 10% in respect of conduct constituting "substantial understatement"; 25% where it is considered that reasonable care was not taken in completing the tax return; 50% where there are no reasonable grounds for the "tax position" taken by the taxpayer; 75% for an "impermissible avoidance arrangement"; 100% where the taxpayer's conduct constitutes gross negligence; and 150% in the event of intentional tax evasion.

[12] The definition of an "understatement" in section 221 makes clear that an understatement can only arise where any of the omissions referred to in item (a) – (e) of the definition gives rise to prejudice to the fiscus. In this matter, SARS contended that the revised returns were fraudulent with the intention to secure the payment of the refund which was not due. The fraudulent returns in fact had that effect. Accordingly, it is indisputable that the incorrect statement contained in the revised returns, flowing both from the altered IRP5 certificate and the false statement of agricultural expenses, resulted in prejudice to SARS. It was therefore an "understatement", as defined in the Act.

[13] The next issue that arises is whether SARS correctly categorised the understatement as "intentional tax evasion". As I have said, the appellant admits that her login details were used to access the e-filing system and to file the revised tax returns. It is not in dispute that the appellant received the undue refund as a consequence of the fraudulent revised returns submitted under

her e-filing details. Tax evasion and the obtaining of undue refunds by fraud or theft is described in section 235 of the Act. The material portion of the section provides:

> "(1) A person who with intent … to obtain an undue refund under a tax Act—
>
> (*a*) makes … or allows to be made any false statement or entry in a return … submitted without reasonable grounds for believing the same to be true; …
>
> (*d*) makes use of, or authorises the use of, fraud or contrivance; or
>
> (*e*) makes any false statement for the purposes of obtaining any refund of or exemption from tax, is guilty of an offence …"
>
> "Where a taxpayer has made a statement in the manner referred to in section 235(1), she is deemed to have known of the falsity of the statement unless she is able to show that there is a reasonable possibility that she was ignorant of the falsity and that the ignorance was not due to her negligence."[3]

[14] The dispute herein has its origin in the manner of the submission of the appellant's returns. She had at all material times been registered on the SARS e-filing platform and, as part of the verification process at the time of registration, she had expressly accepted the terms and conditions for e-filing. The terms and conditions are embodied in the rules that were duly published in the Government Gazette on 25 August 2014.[4] They require every taxpayer utilising the SARS e-filing service to create and secure their own user identity and access code in compliance with the security requirements of the SARS e-filing service.[5] A registered user may not, under any circumstances, share an access code in any manner with anyone, including a SARS official.[6] Thus, a registered user of the e-filing system is liable for all activities and e-filing transactions performed using their user identity and access code.[7] Accordingly, the appellant is liable for the representations made, unless it is shown that there is a reasonable possibility that she was ignorant of the false revised tax returns.[8] Once SARS has established, as they have in this instance, that, prima facie, the appellant had submitted the false revised returns there is an evidential burden on her to adduce evidence to show that such a reasonable possibility exists.

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3 Section 235(2) of the Act.
4 Government Notice No. 644.
5 Rule 5(1)(*b*).
6 Rule 6(2)(*d*).
7 Rule 5(5).
8 Section 235(2) of the Act.

[15] As adumbrated earlier, in the appeal, the appellant contended that she did not submit the fraudulent documents and was unaware of the false revised tax returns. In her notice of appeal, she alleged that the documents had been fraudulently submitted by a SARS official who had taken advantage of her with the purpose of committing a fraud at SARS.

[16] The appellant testified that she interacted with officials of SARS during 2023 in respect of her tax liability for 2004. In the course of this interaction, she was required to provide SARS with certain documentation in respect of the 2004 assessment. She said that she had difficulty uploading documents on her computer and she phoned a SARS call centre for assistance. In these discussions she provided her login details and password to the SARS official. She did not provide the name, or any other details, of the official, nor did she provide the number that she had called.

[17] She explained that in August 2023 she received an amount of R123 000,00 from SARS into her bank account, which was not expected and was not due. Shortly thereafter, she received a phone call from a man who said that he was a SARS official. The gentleman advised her that she had been overpaid and that she should transfer R52 000,00 of the money that she had received into a bank account that he had nominated. She did not provide any particulars of the man’s identity, phone number or station. She said that she did pay over the R52 000,00 as he had said. However, she did not provide any evidence of the bank account into which it was paid nor of her own bank records reflecting the payment.

[18] A few days later, she received a further amount in excess of R1 million into her bank account[9]. Again, she received a call from a person who said that she should pay this sum into an account nominated by the caller. The appellant knew that the money was from SARS and that it was not due. She did not advise the police of these events as it never occurred to her to do so. She said that she was afraid because the person had told her that something was going to happen if she did not pay over the money. Notwithstanding her fear, she did not initially pay it over. However, subsequently she did pay over an amount of R600 000,00 in six instalments of R100 000,00 each to the bank account nominated by the caller. The remainder of the money she retained, and she said that she used it for herself.

[9] In her evidence she said that it was an amount of R1 300 000,00. However, as recorded earlier, it is common cause that the total amount received was R1 391 006,04. Accordingly, it is accepted that she errs in respect of the figures.

[19] Again, she said that she did not know the identity of the caller, but she accepted that he was from SARS. As was the case with the first payment, the appellant did not provide any information relating to the bank accounts in issue, nor evidence of the payments from her bank account.

[20] The appellant did not make a favourable impression in the witness box. The suggestion that she had been an innocent victim of fraud by SARS officials was unconvincing, and it is contradicted by her own admission that she had retained approximately half of the spoils for herself. Although she recognised, on her own account, that it was a fraud on the fiscus, she did not report the matter. As adumbrated earlier, her version of the events is unsupported by any documentary evidence or other form of corroboration. She did not attempt to provide her own bank statements in support of the version. I pause to record that she did say during her evidence that she had provided details of the bank accounts into which she had deposited the money to SARS investigators during the ADR process. Again, she did not know who they were, nor did she provide the information to the court.

[21] Moreover, her version does not accord with the previous explanations advanced. Ms Witness, employed as a tax auditor at SARS, testified that she had issued the letter of audit findings on 9 October 2023 and provided it to the appellant. She engaged with the appellant telephonically on 27 October 2023 and discussed the matter with her before setting up a meeting with her which was scheduled for 22 November 2023.

[22] During the telephonic discussion, Ms Witness explained the audit findings to the appellant and confronted her with these findings. Ms Witness said that the appellant acknowledged these findings and confirmed that she had received the refund. She said that she had submitted her returns herself and did not suggest that any third party had been involved. Thus, she accepted that she was liable to repay the money. She asked merely that no penalties should be imposed.

[23] Ms Witness reduced the essentials of this discussion to writing and presented it to the appellant at the meeting on 22 November 2023. Again, the appellant confirmed the correctness of her earlier discussions, save that she now said that she had only submitted the 2020 return, but that she had sought the assistance of an official at SARS in submitting the 2021 return. Again, there has been no suggestion of the fraudulent scheme by SARS officials to which the appellant testified at the hearing. Again, the communications during the meeting were reduced to writing, and the appellant signed it.

[24] As I have said, when SARS resolved to impose the 150% penalty, the appellant addressed a letter of objection to SARS dated 4 February 2024. The letter was headed: "Request for the withdrawal of penalties". Again, there was no suggestion of any third-party involvement, and it was confined to a request to waive the penalties imposed. The first allegations of fraud by others arose in the appeal after her request to waive the penalties had been dismissed.

[25] As I have explained, it is common cause that the revised tax returns were fraudulent and constituted an understatement as defined in the Act. By virtue of the rules that apply to the e-filing platform, the appellant, as a registered user, is liable for all e-filing transactions registered. The false statement, or representations made in the revised tax returns were clearly made without any reasonable grounds for believing them to be true. They constituted, on the appellant's own version, an intentional fraud intended to obtain an undue payment from SARS, and it succeeded in doing so. Accordingly, SARS correctly concluded that it was an intentional tax evasion. For the reasons set out earlier, I do not think that the appellant has established that there is a reasonable possibility that she had been ignorant of the false statement. The suggestion is belied, on her own account, by her gleeful acceptance of her share of the spoils and her initial willingness to repay the portion that she had allegedly paid over to the alleged fraudsters, to SARS. Accordingly, I consider that the appellant's evidence is a recent fabrication and must be rejected.

[26] In the result, I consider that SARS has established, on a balance of probability, the facts upon which it has based its imposition of the understatement penalty and that the conduct in issue, namely, the submission of fraudulent revised returns with the intention of securing a refund, was correctly categorised as intentional tax evasion.

[27] At the conclusion of the matter, the appellant reiterated her initial request that the penalties imposed be either reduced or set aside. I have dealt earlier with the provisions of section 222 of the Act. The penalties are mandatory and are prescribed by the Act. Once it is determined that the revised tax returns constituted an intentional tax evasion, as it has, SARS is obligated by section 223(1) to impose a penalty. The penalty may vary, as I have explained, depending on the conduct associated with the understatement. For an intentional tax evasion, it may vary from 10%, in the case of a voluntary disclosure before notification of audit, to 200% in the case of a repeat offence or an obstructive taxpayer. In this case SARS treated the matter as a "standard case" of intentional tax evasion. Section 129(3) does empower the tax court to reduce the understatement penalty, but that is not an unfettered discretion. Unless it finds that SARS has mischaracterised the errant behaviour of the taxpayer, it seems to me that the discretion of the tax court to reduce the penalty is very limited, if it exists at all. In this case, no cogent reason has been advanced for the reduction of the penalty.

[28] That leaves the question of costs. Ms *Counsel*, on behalf of SARS, sought an order dismissing the appeal with costs. Section 130 of the Act provides for an order of costs to be granted where the appellant's grounds of appeal are held to be unreasonable. I have recorded the history of the matter earlier. At no stage during the audit, or in the appellant's objection, or the ADR process did she raise any suggestion of fraud on the part of the officials at SARS. For the reasons I have set out, I consider it a recent fabrication that must be dismissed. The bald, uncorroborated allegation of fraud on the part of SARS is, in these circumstances, a serious matter that renders the grounds of appeal unreasonable and justifies an order for costs.

[29] In the result, the appeal is dismissed, with costs. The costs of counsel are to be taxed in accordance with Scale B set out in Rule 69(7) of the Uniform Rules of the High Court.

**J W EKSTEEN**
**JUDGE OF THE HIGH COURT**

**B F MAHLAKAHLAKA**

**ACCOUNTANT MEMBER**

**L-A GROENER**

**COMMERICAL MEMBER**

Dates of Hearing: 27 & 28 July 2026

Date of Judgment: 11 August 2026