

REPUBLIC OF SOUTH AFRICA



IN THE TAX COURT OF SOUTH AFRICA
(HELD AT DURBAN)

Case Numbers: IT 45931 and VAT 22285

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

23 July 2026
DATE

SIGNATURE

In the matter between:

TPS

APPELLANT

and

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

RESPONDENT

J U D G M E N T

BEDDERSON J

Introduction

[1] This appeal concerns additional income tax and value-added tax assessments issued by the Commissioner for the South African Revenue Service (“SARS”) in respect of the appellant’s 2014 to 2019 years of assessment. The assessments were issued pursuant to income tax and VAT audits conducted during 2019 and 2020 and were raised as estimated assessments in terms of section 95 of the Tax Administration Act 28 of 2011 (“the TAA”).

[2] The appellant contends that the assessments should be set aside principally because the audit process was procedurally flawed and because SARS allegedly relied upon information which had not properly been obtained.

The applicable legal principles

[3] The starting point is that a Tax Court appeal is not a judicial review of SARS’s administrative conduct. It is a rehearing directed at determining the taxpayer’s correct tax liability.

[4] The Supreme Court of Appeal (“the SCA”) in *Africa Cash and Carry (Pty) Ltd v Commissioner, South African Revenue Service*¹ held that “a Tax Court is a court of revision and ‘not a court of appeal in the ordinary sense’”. It places itself in the shoes of SARS, rehears the issue afresh, evaluates the evidence before it and determines whether the assessment is reasonable. It is entitled to substitute its own decision where appropriate.

[5] Consequently, procedural criticisms directed at SARS do not, without more (the appellant did not produce any concrete documentary evidence, nor did he contend that he was liable for a lesser amount or produce any evidence to support that he was liable for a lesser amount), invalidate an assessment. The decisive enquiry remains whether the assessment correctly reflects the taxpayer’s liability.

[6] Section 95(1) of the TAA authorises SARS, to issue an estimated assessment where a taxpayer has submitted inadequate information or failed to provide sufficient material. Such an estimate must be based on information readily available to SARS.²

¹ *Africa Cash and Carry (Pty) Ltd v Commissioner, South African Revenue Service* [2019] ZASCA 148; 2020 (2) SA 19 (SCA); 82 SATC 73 (*Africa Cash and Carry*) para 52.

² Section 95(2) of the TAA.

[7] As explained in *Africa Cash and Carry*, an estimated assessment is not expected to achieve mathematical precision.³ It need only be reasonable, rational and based upon an acceptable methodology in light of the information available at the time.

[8] Furthermore, section 102(2) of the TAA places the burden upon SARS to establish that its estimate is reasonable. Once SARS demonstrates a rational methodology based upon available information, the taxpayer cannot succeed merely by criticising the process. The taxpayer must demonstrate why the assessment itself is incorrect.

[9] Finally, the Constitutional Court in *Metcash Trading Ltd v Commissioner for the South African Revenue Service and Another*⁴ recognised that the tax system necessarily commits SARS to assess and collect tax before disputes are finally determined, with taxpayers being afforded full right of objection and appeal thereafter. The statutory appeal process therefore provides the mechanism through which any incorrect assessment is corrected.

Evaluation of the evidence

[10] The evidence establishes that the audit was initiated after SARS identified substantial discrepancies between deposits reflected in the appellant's bank accounts and income declared in his tax returns. Those discrepancies justified SARS commencing both income tax and VAT audits. The evidence further demonstrates that the audit was neither cursory nor superficial.

[11] Ms Y, the appointed auditor for SARS, engaged extensively with the appellant and the appellant's representative over several months through meetings, correspondence and repeated requests for supporting documentation.

[12] The appellant's business affairs involved multiple income streams and substantial deposits into several bank accounts. The documentary evidence demonstrated that the appellant's records were incomplete and that many explanations advanced for deposits were unsupported by objective evidence.

³ *Africa Cash and Carry* para 11.

⁴ *Metcash Trading Ltd v Commissioner for the South African Revenue Service and Another* [2000] ZACC 21; 2001 (1) SA 1109 (CC); 63 SATC 13.

[13] Initially, Ms Y adopted an approach favourable to the appellant by accepting certain loan explanations, excluding interbank transfers, accepting gambling winnings as non-taxable and applied a formula-based approach using the 2017 taxable-income year as a base and extrapolated ratio to the remaining years. Her initial audit findings were presented to the Large Assessment Committee (“LAC”) of SARS on 28 September 2020.

[14] The LAC rejected this approach and adopted a more conservative methodology requiring objective proof before excluding deposits from taxable income. Unsupported loan explanations were rejected, and only objectively verifiable non-taxable receipts were excluded. This necessitated Ms Y revising her approach and methodology as required by LAC. Her revised estimated findings were presented and accepted by the LAC on 29 January 2021 and a finalisation audit letter was issued on 2 March 2021.

[15] In my view, the approach adopted by SARS accords precisely with the standard articulated in *Africa Cash and Carry*. Insofar as the income tax audit is concerned, SARS maintained a rational methodology, utilised information readily available to it and adopted assumptions capable of objective justification. Whether an auditor should have accepted unsupported loan explanations is precisely the type of evaluative judgment contemplated in *Africa Cash and Carry*, where the SCA recognised that different reasonable methodologies may exist.⁵

[16] It is common cause that the income tax audit commenced before the VAT audit and that the VAT audit arose out of and flowed from the income tax audit. Because the estimated income tax calculation was only approved by SARS on 29 January 2021 (based on the revised methodology), it follows that the VAT estimate could only be calculated thereafter. Ms Y conceded in her evidence that the VAT audit had to be redone because it was based on her initial income tax audit findings which were rejected by the LAC.

Appellant’s procedural complaints

[17] The appellant devoted considerable attention to alleged procedural irregularities. The principle complaint was that SARS abandoned its original methodology without adequate notice. That submission cannot succeed because the revised proposed findings were communicated to the appellant in writing. He was invited to respond but elected not to do so. Even thereafter, he had full opportunity during the objection process and again before this Court to furnish factual evidence to demonstrate that specific deposits were not taxable.

⁵ *Africa Cash and Carry* paras 110-113.

[18] As the SCA explained in *Africa Cash and Carry*, a Tax court determines the matter afresh. Any procedural deficiencies occurring during the audit do not automatically invalidate an otherwise reasonable assessment because the Court itself conducts a complete reconsideration of the merits.

[19] The appellant elected instead to persist with procedural complaints rather than placing before Court reliable evidence demonstrating that the assessments overstated his taxable income.

The VAT appeal

[20] The appellant further argued that no proper VAT audit was conducted. The evidence does not support that contention. As stated above, both parties accepted that the VAT audit flowed directly from the income tax audit. The appellant's own pleadings acknowledge that fact. The further complaint concerning the reference in the VAT findings to an income tax finding letter not yet formally issued was satisfactorily explained as a drafting error.

SARS's source of Information

[21] The appellant also questioned when SARS obtained his 2019 banking information. That complaint is misplaced. The decisive issue is not when SARS obtained the information but whether the figures used were accurate. Those figures related to deposits into the appellant's own bank accounts. If they were incorrect, the appellant was uniquely placed to demonstrate the error by producing his own bank records. He failed to do so. Instead he attacked SARS's investigative process without identifying any material inaccuracy in the figures themselves.

[22] As recognised in *Purlish Holdings (Proprietary) Limited v The Commissioner for the South African Revenue Service*,⁶ tax appeals are determined on evidence establishing the correctness of the assessment rather than technical complaints divorced from substantive tax liability.

⁶ *Purlish Holdings (Proprietary) Limited v The Commissioner for the South African Revenue Service* [2019] ZASCA 4; 81 SATC 20 para 24.

Conclusion

[23] Having considered the evidence afresh, I am satisfied that SARS discharged the burden imposed by section 102(2) of the TAA of demonstrating that its estimate of the appellant's income tax assessment was reasonable. The methodology employed in respect of the income tax assessment was rational, objectively justifiable and based upon information readily available to SARS, as contemplated in section 95 and explained by the SCA in *Africa Cash and Carry*.

[24] The appellant, despite repeated opportunities during the audit, objection proceedings and the appeal, failed to furnish factual evidence to demonstrate that the income tax assessment overstated his true tax liability. His case remained directed at procedural criticisms rather than substantive proof.

[25] It is for this reason that his appeal against his income tax assessment must fail.

[26] The appellant's appeal against his VAT audit assessment is however to be decided on a different footing. After the LAC rejected Ms Y's estimated audit methodology based upon the appellant's 2017 tax year, the corresponding VAT assessments were not corrected or aligned with the income tax assessment that was accepted by the LAC on 29 January 2021.

[27] It is for this reason that the appellant's appeal against the VAT assessment falls to be set aside and remitted to SARS for recalculation based upon the finalisation of audit letter in respect of the income tax assessment that was issued on 2 March 2021.

Costs

[28] On the question of costs, both parties were successful in the appeal although for different reasons. The remittal of the VAT assessment to SARS for recalculation based on the income tax assessment is a hollow victory for the appellant. This court finds that it is just and equitable in the circumstances for each party to pay its own costs.

Order

[29] The following order is made:

1. The income tax assessment dated 2 March 2021 is confirmed.
2. The VAT assessment dated 18 September 2020 is set aside.
3. The VAT assessment dated 18 September 2020 is remitted to SARS for recalculation based on the appellant's income tax assessment dated 2 March 2021.
4. Each party is directed to pay its own costs.

BEDDERSON J
PRESIDENT OF THE TAX COURT

MS PATRICIA VAN ROOYEN
MEMBER OF THE TAX COURT
COMMERCIAL MEMBER

MR GAVIN RENNIE BACON
MEMBER OF THE TAX COURT
ACCOUNTING MEMBER

Dates of hearing: 19 January 2026 to 5 February 2026

Date of judgment: 23 July 2026