



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 27 March 2018
STATUS Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Lion Match Company (Pty) Ltd v Commissioner for the South African Revenue Service (301/2017) [2018] ZASCA 36 (27 March 2018)

Today the Supreme Court of Appeal (SCA) struck an appeal by Lion Match Company (Pty) Ltd (the taxpayer) against a judgment of the Tax Court, Durban from the roll with costs.

During 2008 the taxpayer disposed of its entire shareholding in the Kimberly Clark Group. The market value ascribed to the shares as at 1 October 2001 was adopted by the taxpayer as the base cost in determining its taxable capital gain. However, in assessing the taxpayer by way of an additional assessment the Commissioner for the South African Revenue Service (SARS) adjusted the base cost of the value of the shares, which resulted in an increase in the taxpayer's taxable capital gain. The taxpayer objected to the assessment, which was disallowed by SARS. The taxpayer then noted an appeal against the disallowance of its objection to the Tax Court, Durban. In opposing the taxpayer's appeal to the Tax Court, SARS filed its statement of grounds of appeal in terms of Rule 31 of the Rules of the Tax Court. The taxpayer then applied to the Tax Court to set aside SARS' Rule 31 statement. The Tax Court dismissed the application, but granted leave to the taxpayer to appeal to the SCA.

Before the SCA, SARS contended that the order of the Tax Court is not appealable. In determining whether the decision of the Tax Court is appealable under s 129 of the Tax Administration Act 28 of 2011 (the TAA), the SCA said that the question is whether the decision is one contemplated by s 104(2) of the TAA. It concluded that the decision in this case was plainly not contemplated by that section. The SCA then proceeded to consider the

contention advanced on behalf of the taxpayer that the application which served before the Tax Court had to be approached as an exception. The SCA noted that the dismissal of an exception (save an exception to the jurisdiction of the court) is not appealable. The SCA explained that jurisdictional challenges should be raised either by exception or special plea, depending on the grounds upon which the challenge arises. The SCA found that in the present matter, the want of jurisdiction on the part of the Tax Court had not been raised by way of exception or special plea and that the Tax Court had not been called upon to pronounce on jurisdiction. The SCA accordingly concluded that the order of the Tax Court is not appealable.