THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

CSARS v KWJ Investments(142/2017)[2018] ZASCA 81 (31 May 2018)

From: The Registrar, Supreme Court of Appeal

Date: 31 May 2018

Status: Immediate

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

Today, the Supreme Court of Appeal (SCA) dismissed an appeal (with costs) by the CSARS, against the judgment of the Tax Court held in Cape Town (the Tax Court).

The central issue on appeal concerned whether when the respondent obtained rights to dividends declared but not yet accrued by way of cession, constitutes a receipt or accrual for the purposes of gross income, and if so; does s 79 (1) of the Income Tax Act 58 of 1962 apply? (the Act), namely was the assessment contrary to a generally prevailing practice of appellant.

The respondent conducted a business in redeemable preference shares and invested the funds so raised from the preference shares, thus making a profit. The respondent invested the surplus proceeds from the business with Investec Bank Ltd (Investec). The return on respondent's investment was in the form of an antecedent cession of rights to identified dividends declared but not as yet paid. Investec would acquire the right to receive dividends and in time cede them to respondent.

In its tax return, respondent included in its 'gross income' all the dividends which had, in due course, accrued to it as cessionary of the rights so ceded , thus then treated this ‘gross income’ as being exempt from tax in terms of the Act(prior to a legislative amendment thereof which took place with effect from 25 October 2012).

The appellant issued additional assessments to the respondent on the basis that the respondent acquired unconditional entitlement to each dividend right upon the cession to it by Investec.

The appellant lodged an appeal against these additional assessments. The Tax Court held that the payment of the dividends was conditional and did not fall within the definition of gross income. The Act stipulates that it only an amount unconditionally received or accrued may form part of gross income.

The SCA held that in principle, the dividend rights stood to be taxed as they constituted an unconditional receipt of a right which has monetary value. However, in none of the separate transactions did the cession of a dividend right trigger an assessment or tax. Thus the SCA held that on the basis of s 79(1) (iii) of the Act, the additional assessments must be set aside as they were contrary to a generally prevailing practice. The order of the Tax Court is set aside.

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