



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 7 NOVEMBER 2022

Status: Immediate

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CSARS v The Thistle Trust (516/2021) [2022] ZASCA 153 (07 November 2022)

Today, the Supreme Court of Appeal (SCA) handed down judgment upholding an appeal against a decision of the Gauteng Tax Court (the tax court).

The issues before the SCA were whether the capital gains accrued as a result of the disposal of capital assets by the Tier 1 Trusts were taxable in the hands of the Thistle Trust or in the hands of its beneficiaries and whether the circumstances that gave rise to the tax treatment by the Thistle Trust of the further distribution to its beneficiaries, warranted the imposition of an understatement penalty.

The Thistle Trust is a beneficiary of various trusts that comprised the Zenprop Group. The trusts, referred to as Tier 1 Trusts, comprised a group of ten vesting trusts that conduct the business of the Zenprop Group, a group of property owners and developers. In the 2014, 2015 and 2016 tax periods, the Tier 1 Trusts disposed of certain capital assets. The capital gains so realised were distributed, *inter alia*, to the Thistle Trust in the same tax period. The Thistle Trust, in turn, in the same tax periods, distributed the amounts it received to its beneficiaries. It treated the proceeds received as taxable in the hands of its beneficiaries. The appellant (SARS) raised an additional assessment dated 21 September 2018 for the period 2014, 2015 and 2016, taxing the amounts received by the Thistle Trust as taxable in its hands. SARS also imposed an understatement penalty against the Thistle Trust and required it to pay interest on the assessed liability.

The Thistle Trust filed an objection to the additional assessment. SARS disallowed the objection. In March 2021, the Thistle Trust appealed to the tax court. The tax court held that the capital gains distributed to the Thistle Trust and subsequently passed on to its beneficiaries, constituted 'amounts' that fell within the purview of ss 25B(1), 25B(2), and paragraph 80(2) of the Eighth Schedule of the Income Tax Act 58 of 1962 (the ITA). Accordingly, it held that the distribution to the beneficiaries of the Thistle Trust was a distribution of capital gains taxable in the hands of its beneficiaries. The tax court, therefore, set aside the additional assessments.

As to the first issue, the SCA held that when the provisions are read as a whole and in context, it is apparent that the legislature intended that s 25B of the ITA be applied to the taxation of income that accrues to a trust or its beneficiaries. In contrast, the Eighth Schedule is to be applied to the taxation of capital gains that accrue to trusts or their beneficiaries. The tax court therefore erred in finding that s 25B applied in this instance. The SCA found that the Tier 1 Trusts vested the capital gains in the Thistle Trust, which accordingly held a vested right therein. Therefore paragraph 80(2) of the Schedule, properly interpreted and applied, required that the capital gains accrued upon the disposal of assets by

the Tier 1 Trusts were to be taxed in the hands of the Thistle Trust and not its beneficiaries to whom it distributed those gains. In the circumstances, SARS was correct to raise the additional assessment for the relevant tax periods.

As to the second issue, the SCA held that counsel for SARS conceded, correctly, that the understatement by the Thistle Trust was a *bona fide* and inadvertent error as it had believed that s 25B was applicable to its case. Though the Thistle Trust erred, it did so in good faith and acted unintentionally.

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