



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: 06 February 2026

Status: Immediate

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Lutzkie v Commissioner for the South African Revenue Service (1135/2023) [2026] ZASCA 11 (06 February 2026)

Today the Supreme Court of Appeal (SCA) dismissed an application for reconsideration in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013) against a decision of the Full Court of the Gauteng Division of the High Court, Pretoria upholding, by majority, the judgment of the Tax Court.

The dispute between the parties arose from an alleged understatement of gross income by the applicant, Mr Frederick Wilhelm August Lutzkie (Mr Lutzkie), and the penalty imposed therefor by the Commissioner for the South African Revenue Service (SARS). The disputed amount of R1 670 099.85 had been deposited into the applicant's bank account on 15 June 2006 from a corporate entity registered in the British Virgin Islands. During the 2007 year of assessment, SARS was not satisfied with the income declared by the applicant. SARS, through its internal audit specialist, Ms Cecilia Moitse (Ms Moitse), conducted a 'lifestyle audit' of the applicant's financial affairs. The applicant's contention to SARS was initially that the disputed amount represented moneys lent and advanced to him by a corporate entity called Volaw Trust and was intended for payment of legal fees. Later, the applicant asserted that the amount in question represented repayment of a shareholder's loan account.

On the 28 May 2010, SARS proceeded to issue an assessment that included the disputed amount as part of the applicant's gross income. SARS also levied additional tax of 90 percent of the understated amount, ie R1 670 099.85. On 11 March 2011 the applicant lodged an objection against the Commissioner's assessment. The applicant sought to persuade SARS that the disputed amount ought not to have been included in his gross income because it was not, but, instead, represented a loan extended to him by Volaw Trust.

This Court had to deal with three issues. First, to decide whether the Tax Court was correct in its conclusion that the disputed amount formed part of the applicant's gross income. Second, whether the Tax Court properly exercised its own, original discretion in determining the extent

or magnitude of the penalty imposed by SARS. Third, whether the applicant has met the threshold of establishing that substantial factors exist warranting a reconsideration.

The majority in the Full Court endorsed the conclusion of the Tax Court that the applicant failed to discharge the onus resting on him that the deposit represented repayment of a shareholder's loan. The Full Court found that the Tax Court was correct in its finding that the amount of R 1 670 099.85 received by the appellant from Volaw Trust was taxable income. The SCA noted that that the fate of application before it hinged on the evidence tendered by Mr van Dyk in the Tax Court. Mr van Dyk was the applicant's auditor who was appointed to investigate the nature of the deposit by Volaw Trust.

At the hearing before the Tax Court, the President of the Tax Court made plain more than once that the court would not allow hearsay evidence to be adduced and that Mr van Dyk should give evidence in relation to what he personally knew. No application was made on the applicant's behalf at any stage of the hearing to admit the hearsay evidence under s 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988.

The SCA accepted that the evidence of Mr van Dyk was hearsay and therefore inadmissible. The SCA also found that the submission that the Tax Court effectively brushed aside the hearsay evidence tendered on behalf of the applicant and, as a result, such evidence was not accorded sufficient weight in breach of the applicant's fair hearing rights entrenched in s 34 of the Constitution of the Republic of South Africa, cannot prevail.

In relation to the extent of the penalty imposed by the Commissioner, the SCA held that according to the evidence of Ms Moitse, the extent of additional tax chargeable in respect of the applicant ranged from 30 to 90 percent on the grounds that there was a combination of both extenuating and aggravating factors. The Tax Court, in the exercise of its own original discretion, endorsed the extent of the penalty imposed by the Commissioner.

Accordingly, the SCA held that its powers to interfere with the Tax Court's exercise of its discretion are circumscribed. Generally, an appellate Court will interfere only if the Tax Court did not bring an unbiased judgment to bear on the question, or did not act for substantial reasons, or exercised its discretion capriciously or upon a wrong principle. Thus, the SCA held that the decision of the Tax Court is not such that no reasonable court, properly directing itself to all the relevant facts, could have reached.

The SCA found that there were no circumstances discernible in relation to the question whether there are any compelling and substantial factors in this case indicative of the existence of exceptional circumstances or a probability of the administration of justice being brought into disrepute or a grave failure of justice ensuing if the decision of the two judges of this Court refusing leave to appeal is not varied and the substantive merits of the appeal considered. That being so, it followed that there was no basis to interfere with the decision refusing leave to appeal reached by two judges of this Court on 5 October 2023. And that, even on the current benevolent formulation of s 17(2)(f), the refusal of the reconsideration application would not result in a grave failure of justice nor would the administration of justice be brought into disrepute. Thus, the application was dismissed with costs.