



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

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Enviroserv Waste Management (Pty) Ltd v The Commissioner for the South African Revenue Service (154/2022) [2023] ZASCA 180 (18 December 2023)

Today the Supreme Court of Appeal (SCA) upheld an appeal by Enviroserv Waste Management (Pty) Ltd (Enviroserv) against a judgment of the Tax Court of the Western Cape High Court (the tax court) which had disallowed certain depreciation claims made by Enviroserv for the tax assessment years 2015 and 2016. The claims were made in respect of cells built by Enviroserv into landfills used to process and store waste material.

In its judgment the tax court had upheld a determination made by the Commissioner for the South African Revenue Service (the Commissioner), to the effect that the cells did not constitute plant or machinery as provided in s12C(1)(a) of the Income Tax Act 58 of 1962 (the ITA). That section provides for depreciation to be allowed at the rate of 40% for the first year and 20% for every year thereafter, in respect of plant and machinery used directly in the process of manufacture or a process similar to manufacture. The tax court agreed with Commissioner's determination that the cells are buildings under s13 of the ITA and were used as waste storage assets rather than manufacturing plant. The tax court held that Enviroserv was entitled to claim depreciation at the rate of 5% per annum for the cells as provided in s37B of that act.

In addition, the tax court imposed an understatement penalty at the rate of 15% on claims made by Enviroserv for future expenditure under s24C of the ITA for the 2015 and 2016 tax years. During these years Enviroserv had failed to disclose interest income of almost R26million due to it from its Ugandan subsidiary. The 15% penalty rate imposed by the tax court was a reduction of 25 % rate that had been levied by the Commissioner for the same understatement. The Commissioner's penalty rate was based on what he considered to be failure by Enviroserv to exercise reasonable care in completing its income tax returns. In the tax court, Enviroserv and the Commissioner had agreed that the penalty rate be

reduced because Enviroserv had made voluntarily disclosed the understatement subsequent to being advised that it would be audited.

Regarding the depreciation disallowances, the SCA found that the tax court had improperly approached the issue by considering that the solid waste decontamination process which took place in the cells took a shorter period than the period for which the decontaminated waste was stored in the cells. Hence the decision that the cells were used for waste storage. However, it was not in dispute that the process of biodegradation and separation of contaminated liquid (the leachate) from solid waste, which rendered the solid waste safe for storage, took place in the cells. This process, the SCA found, was similar to a process of manufacture because the end product in the cells was different from the material that had been put in the cells.

The SCA held that a dictionary meaning attributed to the words 'process of manufacture must account for the words used in the relevant statutory provision, its content and its purposes.

Regarding the understatement penalty, the SCA held that the Commissioner had failed to discharge the onus placed on it under s221 to 223 of the Tax Administration Act 28 of 2011 to prove prejudice occasioned to the South African Revenue Services as a result of the understatement.

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