THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 242/2024

In the matter between:

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE **APPELLANT**

and

AFRICAN BANK LIMITED **RESPONDENT**

Neutral citation: *The Commissioner for the South African Revenue Service v African Bank Limited* (242/2024) [2025] ZASCA 101 (8 July 2025)

Coram: ZONDI DP and KEIGHTLEY JA and DLODLO and STEYN and NORMAN AJJA

Heard: 15 May 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email, publication on the Supreme Court of Appeal website, and release to SAFLII. The date and time for hand-down is deemed to be 8 July 2025 at 11h00.

Summary: Jurisdiction: whether the jurisdiction of the tax court engaged in instances where the Commissioner for the South African Revenue Service refuses to make a determination under s 17(1) of the Value Added Tax Act 89 of 1991 (VAT Act) in the terms as sought by a taxpayer – whether such refusal constitutes a decision subject to objection and appeal procedure under the Tax Administration Act 28 of 2011 – interpretation of s 32(1)*(a)*(iv) of the VAT Act.

ORDER

On appeal from: The Tax Court of South Africa, Western Cape (Myburgh AJ):

The appeal is dismissed with costs including the costs of two counsel, where so employed.

JUDGMENT

Zondi DP (Keightley JA and Dlodlo and Steyn and Norman AJJA concurring):

Introduction

[1] This is an appeal against the judgment and order of the Tax Court of South Africa, Western Cape (the tax court) dismissing the appellant's special plea that the tax court lacked jurisdiction to adjudicate upon and determine the appeal lodged to it in terms of s 107 of the Tax Administration Act 28 of 2011 (the TAA). The appeal is with leave granted by that court. The appeal concerns the interpretation of s 32(1)*(a)*(iv) read with s 17(1) of the Value Added Tax Act 89 of 1991 (the VAT Act). The question is whether a ratio determination made by the appellant, the Commissioner for the South African Revenue Service (the Commissioner) under s 17(1) of the VAT Act constituted a refusal as contemplated in s 32(1)*(a)*(iv) of the VAT Act.

Applicable statutory provisions

[2] Section 32(1)*(a)*(iv) of the VAT Act provides for the decisions of the Commissioner that are subject to objection and appeal. Section 32(1) stipulates the following:

'32 **Objections to certain decisions**

(1) The following decisions of the Commissioner are subject to objection and appeal:

(*a*) any decision given in writing by the Commissioner –

(i) in terms of section 23 (7) notifying that person of the Commissioner's refusal to register that person in terms of this Act;

(ii) in terms of section 24 (6) or (7) notifying that person of the Commissioner's decision to cancel any registration of that person in terms of this Act or of the Commissioner's refusal to cancel such registration; or

(iii) …

(iv) refusing to approve a method for determining the ratio contemplated in section 17 (1); or

(b) …

(c) any decision made by the Commissioner and served on that person in terms of section 50A (3) or (4).'

[3] Section 17(1) of the VAT Act, to which reference is made in s 32(1)*(a)*(iv), makes provision for the apportionment of input value-added tax where goods or services are acquired or imported by a vendor partly for the purpose of making taxable supplies and partly for the making of exempt supplies (mixed supplies). Only that portion of the input tax may be deducted as determined by the Commissioner in accordance with a ruling as contemplated in Chapter 7 of the TAA or s 41B of the VAT Act. Section 17(1) of the VAT Act, without its proviso, provides:

'17. **Permissible deductions in respect of input tax**

(1) Where goods or services are acquired or imported by a vendor partly for consumption, use or supply (hereinafter referred to as the intended use) in the course of making taxable supplies and partly for another intended use, the extent to which any tax which has become payable in respect of the supply to the vendor or the importation by the vendor, as the case may be, of such goods or services or in respect of such goods under section 7(3) or any amount determined in accordance with paragraph *(b)* or *(c)* of the definition of "input tax" in section 1, is input tax, shall be an amount which bears to the full amount of such tax or amount, as the case may be, the same ratio (as determined by the Commissioner in accordance with a ruling as contemplated in Chapter 7 of the Tax Administration Act or section 41B) as the intended use of such goods or services in the course of making taxable supplies bears to the total intended use of such goods or services… .'

Background

[4] The appellant is the Commissioner for the South African Revenue Service (SARS) and the respondent is African Bank Limited (African Bank), a registered bank and Value Added Tax vendor. In terms of s 7 of the VAT Act, African Bank as a vendor is, subject to the exemptions, exceptions, deductions, and adjustments, liable to pay VAT on the supply of goods and services supplied by it in the course or furtherance of its enterprise calculated at the rate of 15 per cent on the value of the supply concerned.

It is entitled to deduct, as input tax, the VAT incurred by it on goods and services acquired for the purposes of consumption, use or supply in the course of making taxable supplies.

[5] As a credit provider, African Bank is engaged in the provision of credit which is exempt in terms of s 12*(a)* read with s 2(1)*(f)* of the VAT Act,[1] but also taxable to the extent that the consideration it charges in respect of such supply of credit constitutes a fee, as per the proviso to s 2 of the VAT Act.[2] In other words, it acquires supplies for mixed purposes.

[6] The VAT Act provides in s 17 for the method whereby the deductible 'input tax' is calculated where the goods or services are acquired partly for consumption, use or supply in the course of making taxable supplies and partly for another intended use. It is clear from s 17(1) that it obliges a VAT vendor that acquires supplies for mixed purposes to make permissible deductions of input tax in accordance with an apportionment ruling made by the Commissioner. The ruling that was in place at the relevant time was Binding General Ruling 16 (BGR 16), which the Commissioner issued on 25 March 2013 and reissued on 30 March 2015 with effect from 1 April 2015, and which authorised the vendors to apply the varied standard turnover-based method of apportionment in determining the ratio contemplated in s 17(1).

[7] What gave rise to the present dispute is the following. On 21 September 2020 African Bank's representative addressed a letter to the Commissioner in which it

---

[1] Section12*(a)* of the VAT Act determines:
'**12 Exempt supplies**
The supply of any of the following goods or services shall be exempt from the tax imposed under section 7 (1) (a):
(a) The supply of any financial services, but excluding the supply of financial services which, but for this paragraph, would be charged with tax at the rate of zero per cent under section 11;'
Section 2(1)*(f)* of the VAT Act determines:
'**2 Financial services**
(1) For the purposes of this Act, the following activities shall be deemed to be financial services:
. . .
(f) the provision by any person of credit under an agreement by which money or money's worth is provided by that person to another person who agrees to pay in the future a sum or sums exceeding in the aggregate the amount of such money or money's worth;'

[2] Section 2(1) of the VAT Act determines: '. . . Provided that the activities contemplated in paragraphs *(a), (b), (c), (d), (f)* and *(o)* shall not be deemed to be financial services to the extent that the consideration payable in respect thereof is any fee, commission, merchant's discount or similar charge, excluding any discount cost.'

requested the Commissioner to issue a binding VAT ruling. It sought confirmation from the Commissioner that African Bank 'may continue to apply transaction count apportionment method as set out in its previous ruling dated 12 August 2019 (Reference 2017/323 (28/17/2)), with the modifications set out in section 5 of [its] application'.

[8] In a letter dated 23 September 2021 the Commissioner summarised African Bank's binding ruling request as follows:

'[African Bank] requests in terms of section 41B, read with section 17(1) of the VAT Act that –

2.1 the Commissioner for SARS (the Commissioner) confirm by way of a ruling that it may continue to apply transaction-based method of apportionment as approved in the Amended Ruling, which is set out in paragraphs 1.17 and 1.18, with the following modifications …'.

[9] The letter also included the ruling issued by the Commissioner:

'5. Ruling

5.1 In light of the above, [African Bank] may apply the varied turnover-based method of apportionment as set out in paragraph 5.2 to deduct VAT incurred in respect of mixed expenses, excluding mixed expenses in respect of the IT system.'

[10] On 13 October 2021 African Bank objected to the Commissioner's ruling. Its complaint was that the Commissioner did not approve the alternative method of apportionment for determining the ratio contemplated in s 17(1) of the VAT Act as requested by it. Instead, the Commissioner unilaterally approved another alternative method, not requested by African Bank. One of the grounds for the objection was:

'. . . that the decision of the Commissioner not to approve the alternative method for which [African Bank] applied in a ruling application . . . , and to impose a different alternative method, does not align with his mandate to approve a method that reflects the extent to which [African Bank] applies goods and services acquired by it for the purposes of making taxable supplies, as required by section 17(1) of the VAT Act.'

Dismissal of the objection

[11] The Commissioner disallowed the objection and advised African Bank to appeal if it was dissatisfied with the decision. As advised, African Bank lodged an appeal in the tax court. In the appeal, African Bank requested that the ruling be altered to one approving the alternative method of apportionment requested by it. The Commissioner opposed the appeal.

[12] On 3 November 2023 the Commissioner amended its rule 31 statement, made in terms of the rules issued under s 103 of the TAA (TAA rules), by introducing a special plea in which he challenged the tax court's jurisdiction to hear the appeal. The special plea reads thus:

'The respondent pleads that the Tax Court lacks jurisdiction to adjudicate upon, determine and dispose of the appeal, for the following reasons:

1. Section 117 of the Tax Administration Act 28 of 2011 ("TAA") provides that the Tax Court has jurisdiction over appeals lodged under section 107.

2. Section 107 of the TAA provides that after the delivery by the Commissioner of a notice of a decision to either allow or disallow an objection in terms of section 106(2), a taxpayer to an assessment or "decision" may appeal against the assessment or "decision" to the Tax Court.

3. Section 32(1) of the Value Added Tax Act 89 of 1991 ("VAT Act") sets out the decisions of the Commissioner that are subject to objection and appeal.

4. Section 32(1)*(a)*(iv) of the VAT Act provides that a decision by the Commissioner "refusing to approve a method for determining the ratio contemplated in section 17(1)" of the VAT Act is subject to objection and appeal.

5. Section 17(1) of the VAT Act requires that where goods or services are acquired or imported partly for taxable and partly for exempt (or other) purposes, only that portion of the input tax may be "deducted as determined by the Commissioner in accordance with a ruling as contemplated in Chapter 7 of the TAA or section 41B."

6. The jurisdictional requirement of section 31(1)*(a)*(iv) of the VAT Act is not met in that the respondent has granted a ruling to the appellant as contemplated in section 17(1):

6.1 The appellant requested a "method for determining the ratio contemplated in section 17(1)", on 21 September 2020 ("the ruling request").

6.2 The respondent furnished the appellant with a ruling on 23 September 2021.

7. The Tax Court accordingly lacks jurisdiction to hear and determine the appeal as the "decision" by the respondent (the ruling) is not subject to appeal in terms of section 32(1)(a)(iv) of the VAT Act.'

In short, the Commissioner's plea is that the tax court did not have jurisdiction to determine the appeal against the imposition of the varied standard turnover-based method as opposed to the revised transaction count method, which was requested by African Bank.

[13] African Bank opposed the amendment of the Commissioner's rule 31 statement on the grounds, first, that the Commissioner had no prospect of succeeding should the

amendment be granted. Moreover, and in any event, the amendment should be refused to the extent that the Commissioner had not in terms of rule 35(2) of the TAA rules, first requested African Bank to agree to the proposed amendment before approaching the tax court.

The proceedings in the tax court

[14] The tax court allowed the amendment. It proceeded with the determination of the special plea and dismissed it. Relying on the case of *ITC 1930,*[3] the tax court held that the ruling, by definition, encapsulates the refusal to approve the method requested by African Bank and that '[I]n its stead the Commissioner ruled that a different method should apply. [The Commissioner] thus made a decision as contemplated in section 17(1) of the VAT Act.' It rejected the construction of s 17(1) of the VAT Act as contended for by the Commissioner as such construction of the section strains the language of the provision and leads to an unbusinesslike and unwieldy result.

[15] The tax court also rejected the Commissioner's submission that s 17(1) is not concerned with the method of apportionment requested by the vendor. According to the tax court:

'[the] ruling in terms of section 17(1) of the VAT Act and Chapter 7 of the TAA is made in response to a request to apply a particular method. If SARS agrees with the vendor, it approves the method contained in the request. If SARS disagrees with the method requested by the vendor, it refuses or declines the request and determines which method is to apply. That decision is subject to objection and appeal to this Court, which may in the exercise of its powers of revision discard the method imposed by SARS and approve a different method.'

Submissions of the parties

Commissioner's contentions

[16] The Commissioner submits that the tax court lacks jurisdiction to hear and determine the appeal. He contends that his refusal on 23 September 2021 to grant the apportionment ratio in the terms sought by African Bank was not a decision which is subject to objection and appeal procedures under s 32(1)*(a)*(iv). This is because that decision was not a decision 'refusing to approve a method for determining the ratio contemplated in section 17(1)'. It is argued by the Commissioner that the provisions

---

[3] *ITC 1930* (2020) 82 SATC 271 (C).

of s 32(1)(a)(iv) are clear and unambiguous. To constitute a decision that is subject to objection and appeal procedures, continues the argument, the Commissioner must have refused to approve any method for determining the ratio. This is so, runs the argument, because the word 'refusing' is qualified by the words 'to approve a method for determining the ratio contemplated in section 17(1)'. The Commissioner argues that because he determined an apportionment ratio in this case, albeit not the one requested, there was no refusal decision and that being the case, the jurisdiction of the tax court was not engaged.

[17] On the Commissioner's interpretation of s 32(1)(a)(iv) the jurisdiction of the tax court is not engaged in this matter, because strictly speaking, the Commissioner did not refuse to approve a method for determining the ratio. He made a ruling determining the apportionment method to apply to the mixed supplies.

[18] It was put to counsel for the Commissioner that the danger of interpreting the section so restrictively is that it deprives a taxpayer who is aggrieved by the Commissioner's decision of access to the objection and appeal remedies afforded by s 32(1)*(a)*(iv). Counsel's first response was that these remedies are circumscribed by section in that only certain decisions may be subject to objection and appeal. His second response was that a taxpayer is not without an alternative remedy. It may approach the high court for a review under the Promotion of Administrative Justice Act 3 of 2000, or a declarator, or approach the Commissioner for a reconsideration of his decision.

African Bank's contentions

[19] African Bank's case is that a 'refusal' that is contemplated in s 32(1)*(a)*(iv) is not limited to a refusal to approve a method for determining the apportionment ratio but the section, interpreted purposively, also contemplates a 'refusal' by the Commissioner to approve a method for determining the ratio in the terms as sought by the vendor. It contends that such 'refusal' constitutes 'any decision given in writing by the Commissioner refusing to approve a method for determining the ratio.' It maintains that its interpretation of the section advances the objectives of the section, which are to provide the remedies of objection and appeal to a taxpayer aggrieved by the Commissioner's decision.

Discussion

[20] Recently the Constitutional Court in *United Manganese of Kalahari (Pty) Ltd Limited v Commissioner of the South African Revenue Service and four other cases (United Manganese)*[4] analysed the statutory provisions of the TAA dealing with the structure and the authority of the tax court. It reaffirmed the principles established by this Court in *Africa Cash and Carry (Pty) Ltd v SARS*[5] that the tax court is a creature of statute. It must operate within the four corners of the empowering statutory provision. That statutory provision is s 117 of the TAA which is a source of the tax court's jurisdiction. It provides as follows:

'117 Jurisdiction of the Tax Court-

(1) The Tax Court for purposes of this Chapter has jurisdiction over tax appeals lodged under section 107.

(2) …

(3) The court may hear and decide an interlocutory application or an application in a procedural matter relating to a dispute under this Chapter as provided for in the "rules"'.

[21] Section 104(2) of the TAA reads thus:

'104 Objection against assessment or decision

…

(2) The following decisions may be objected to and appealed against in the same manner as an assessment-

(a) a decision under subsection (4) not to extend the period for lodging an objection;

(b) a decision under section 107 (2) not to extend the period for lodging an appeal; and

(c) any other decision that may be objected to or appealed against under a Tax Act.'

Section 107(1) of the TAA provides:

'**107 Appeal against assessment or decision**-

(1) After delivery of the notice of the decision referred to in section 106 (4), a taxpayer objecting to an assessment or "decision" may appeal against the assessment or

---

[4] *United Manganese of Kalahari (Pty) Ltd Limited v Commissioner of the South African Revenue Service and four other cases* [2025] ZACC 2; 2025 (5) BCLR 530 (CC).

[5] *Africa Cash and Carry (Pty) Ltd v Commissioner, South African Revenue Service* [2019] ZASCA 148, 2020 (2) SA 19 (SCA).

> "decision" to the tax board or tax court in the manner, under the terms and within the period prescribed in this Act and the "rules".'

Section 32(1)*(a)*(iv) of the VAT Act is a provision in a Tax Act referred to in s104(2)(c) of the TAA. 'Tax Act' is defined by the TAA as meaning the TAA or an Act, or portion of an Act, referred to in s 4 of the SARS Act 34 of 1997.

[22] In terms of s 107 of the TAA a taxpayer may appeal against an assessment or a *decision* to the tax court. The question therefore is whether the Commissioner's refusal to approve the method requested by the vendor for determining the apportionment ratio contemplated in s 17(1) is a decision that *'may be … appealed against under a Tax Act'* in terms of s 104(2)*(c)* of the TAA. (Own emphasis.)

[23] The determination of this question involves the interpretation of s 17(1) and s 32(1)*(a)*(iv) of the VAT Act. These sections must be considered in accordance with the interpretative approach established in *Natal Joint Municipal Pension Fund v Endumeni Municipality*[6] and reaffirmed in *Capitec v Coral Lagoon Investments 194 (Pty) Ltd.*[7]

[24] The starting point is the language of s 32(1)*(a)*(iv) of the VAT Act, understood in the context in which it is used, and having regard to its purpose. The text of s 32(1)*(a)*(iv) states that *a refusal* by the Commissioner to approve *a method* for determining a ratio is subject to objection and appeal procedures. On a literal reading, the section may be understood to mean that it is only where the Commissioner has refused outright to approve a method to determine a ratio that the taxpayer will be entitled to object to, and appeal against such refusal. In other words, an approval instead of a different ratio to that sought by the taxpayer, is not a 'refusal' within the meaning of the section. But this literal interpretation may only be correct if one ignores the context and purpose of the provision of s 32(1)*(a)*(iv) as read with s 17(1). If regard is had to the context and purpose of s 32(1)*(a)*(iv), it becomes clear that this literal

---

[6] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA); [2012] 2 All SA 262 (SCA).
[7] *Capitec Bank Holdings Ltd and Another v Cora*l *Lagoon Investments 194 (Pty) Ltd and Others* [2021] ZASCA 99, 2022 (1) SA 100 (SCA); [2021] 3 All SA 647 (SCA).

interpretation of the section is not correct. It also impermissibly undermines the ruling request mechanism provided by s 17(1).

[25] The following context in which the Commissioner gave the ruling in issue is important. African Bank could deduct VAT on goods or services it acquired to the extent that it constituted 'input tax' as defined in s 1(1). This subsection provides that, among others, to be entitled to deduct input tax, the goods or services must have been acquired by the vendor for consumption, use or supply in the course of making its taxable supplies. African Bank, as a credit provider is engaged in the provision of credit, which is exempt in terms of s 12(a) read with s 2(1)*(f)* of the VAT Act, but also taxable to the extent that the consideration it charges in respect of such supply of credit constitutes a fee in terms of the proviso to s 2 of the VAT act. In other words, it acquires supplies for mixed purposes. VAT on mixed expenses incurred must be apportioned in accordance with s 17(1), that is to say, in terms of a method determined in accordance with a binding general ruling in terms of Chapter 7 of the TAA or a VAT ruling in terms of s 41B of the VAT Act.

[26] African Bank was therefore required to directly attribute the VAT on goods or services acquired according to the intended purpose for which the goods or services would be consumed, used or supplied, prior to applying the apportionment method to mixed expenses. Notably, s 17(1) of the VAT Act does not stipulate ratio. That is to be determined by way of a binding ruling from the Commissioner as contemplated in Chapter 7 of the TAA or s 41B of the VAT Act.

[27] Pursuant to s 41B read with s 17(1) of the VAT Act, African Bank requested the Commissioner to confirm by way of a binding ruling that it could continue to apply a transaction-based method of apportionment as approved in the amended ruling with the following modifications:

(a) Service fees - Service fees levied and counted on a monthly basis. Some charges are levied on an annual basis (such as card annual fees) which are counted on an annual basis as and when they are levied;
(b) Binder fees and credit insurance claims administrations – one transaction would be counted for every insurance claim processed by African Bank in respect of which it received binders fees;
(c) Other fees are charged and counted as follows:

(i) Early withdrawal fees – as and when they are charged;
(ii) Withdrawal fees as and when they are charged;
(iii) Airtime and electricity sale commission – counted as one transaction every time airtime and electricity are purchased;
(iv) Other ad hoc taxable supplies counted as one transaction as and when it occurs;
(v) Legal fees on-charged to customers – one taxable and one exempt transaction counted for every amount debited to a customer account.

[28] It is clear from this that African Bank made a request for approval of a very particular ratio calculation method. The Commissioner, instead approved a substantively different method of ratio calculation, ruling that African Bank had to apply the varied turnover-based method of apportionment to deduct VAT incurred in respect of mixed expenses, excluding mixed expenses in respect of the IT system. Although couched in the language of approval, the plain material effect of the Commissioner's ruling was to refuse to approve the ratio calculation method sought. It is difficult to fathom a rational reason why such a decision should not fall within the intended scope of the remedy provided in s 32(1)(*a*)(iv). Why should a taxpayer in African Bank's position not be afforded the streamlined, statute-specific remedy of an objection and appeal? What sense could there possibly be in forcing it into the administrative law remedy of judicial review where the complaint is so obviously aligned with the purpose of the statutory scheme?

[29] The literal interpretation of s 32(1)*(a)*(iv) contended for by the Commissioner fails to have regard to the context and the purpose of the section. That purpose is to provide remedies to the vendors who are aggrieved by the Commissioner's decision and such remedies may be sought by way of an objection and the appeal procedures. The interpretation of the Commissioner, if followed, would result in vendors being deprived of their rights to seek remedies provided for under s 32(1)*(a)*(iv). VAT vendors are aggrieved where the Commissioner refuses to approve a method for determining the ratio which they consider to be appropriate for their businesses and instead issues a determination which is different from the determination requested. The construction of the section contended for by African Bank must be preferred to the one advanced by the Commissioner as it gives effect to the purpose of the remedies of objection and appeal provided by s 32(1)*(a)*(iv) of the VAT Act. Legislation

must be interpreted purposively. Moreover, the construction of the section contended for by the Commissioner encourages piecemeal adjudication of disputes which would prolong litigation and lead to wasteful use of judicial resources.

[30] The Commissioner's approach to the tax court's jurisdiction is inconsistent with the Constitutional Court judgment in the *United Manganese* in which a similar argument was raised but rejected by the Constitutional Court:[8]

'[48] However, it does not follow from this that review and declaratory applications are not hit by section 105. If the taxpayers were right, section 105 would never operate, because (a) only the Tax Court can hear appeals under Chapter 9; and (b) the Tax Court cannot entertain any of the tax-related proceedings in which the High Court would ordinarily have jurisdiction, such as reviews and declaratory applications. The purpose of section 105 is that challenges to assessments that the High Court, but not the Tax Court, could entertain should ordinarily be excluded in favour of Chapter 9 appeals that only the Tax Court may entertain.

[49] The fact that the Tax Court does not have jurisdiction to entertain PAJA and legality reviews or grant declaratory orders may be relevant in assessing whether a section 105 direction should be given, but section 105 is applicable to such High Court proceedings.'

[31] The tax court was correct therefore in finding that because the Commissioner had made an alternative ruling to the one requested by the African Bank, this amounted to a refusal to approve a method for determining the ratio as contemplated by s 32(1)*(a)*(iv). The special plea of lack of jurisdiction was properly dismissed.

Order

[32] In the result the appeal is dismissed with costs including the costs of two counsel, where so employed.

_____
D H ZONDI
DEPUTY PRESIDENT

[8] *United Manganese* fn 4 above paras 48 – 49.

Appearances

For the appellant:	A R Sholto-Douglas SC with H Cassim
Instructed by:	The State Attorney, Cape Town
	The State Attorney, Bloemfontein
For the respondent:	T Emslie SC with T Ntsewa
Instructed by:	Nirenstein Attorneys Inc, Cape Town
	McIntyre Van der Post, Bloemfontein.