

Media Summary – Commissioner, South African Revenue Service v South African Custodial Services (Pty) Ltd (131/10)

The Supreme Court of Appeal (the SCA) today upheld an appeal in part from the tax court, Pretoria.

The respondent was awarded a concession contract to construct and operate a prison. The issues on appeal were the respondent's objection to its tax assessment in 2002, the deductibility of costs of constructing the prison and the deductibility of various fees and interest.

The respondent had applied to the appellant for certain deductions it had not claimed previously during the 2002 year of assessment. The appellant argued that its assessment became final three years after the assessment in terms of S 79A of the Income Tax Act 58 of 1962. The respondent argued that the respondent had made a revision of its assessment by way of a letter which meant the 2002 assessment was not final. The SCA considered the wording of the letter in question and concluded that the original 2002 assessment had indeed not been final.

The SCA considered the argument by the respondent that the costs of construction was a permissible deduction for the respondent since the materials and equipment used for the construction of the prison was trading stock deemed to have been held and not disposed of by the respondent for purposes of s 22(2A) of the Income Tax Act. The SCA held that the activities of the respondent did not fall under s 22(2A) because the respondent had never held the materials or equipment for purposes of the section since it had sub-contracted the construction of the prison to a separate entity

that had supplied the materials and equipment and so would have been entitled to a deduction in terms of s 22(2A).

The SCA considered the argument by the respondent that it was entitled to a deduction in respect of the various fees and the interest it incurred in terms of s 11(bA) of the Income Tax Act. The SCA held that the fees and interests were deductible because the interest had been incurred in relation to loans obtained for the construction of the prison and the various fees incurred were connected to the loans obtained.

The SCA referred the assessment for the precise amount that is deductible from the appellant's income in terms of s 11(bA) of the Income Tax Act to the Commissioner for determination. The appellant was awarded costs.