

List of cases for TAA lectures

LIST OF CASES

Why there are not specific sections in the TAA promoting Constitutional rights

Zondi vs MEC 2005 (3) SA 589 para [101] (CC) – All administrators (including SARS) must comply with PAJA, unless the statutes which govern them are inconsistent with PAJA. The Constitutional Court, in this regard, has held that all statutes that authorise administrative action must now be read together with PAJA unless, upon a proper construction, the provisions of the statutes in question are inconsistent with PAJA.

Van Rooyen vs The State 2002 (5) SA 246 para [37] (CC) – “Any power vested in a functionary by the law (or indeed by the Constitution itself) is capable of being abused. That possibility has no bearing on the constitutionality of the law concerned. The exercise of the power is subject to constitutional control and should the power be abused the remedy lies there and not in invalidating the empowering statute.”

Pay now argue later constitutional & high court inherent jurisdiction to review – s105 TAA

Metcash v CSARS 63 SATC 13

Distinction between Civil and Criminal investigations

R v Jarvis [2002] 3 S.C.R 757, 2002 SCC 73

Least drastic means, exhaust other available means of obtaining info

Ferrucci v CSARS 65 SATC 47

Presumption that *audi alteram partem* rule applies in absence of contrary statutory provision

Arepee Industries vs CIR 1993 (2) SA 216 (N) 55 SATC 139 at 144 to 145

ITC 1654 61 SATC 131

Adequate reasons

Nkondo & Gumede v Minister of Law and Order 1986(2) SA 756 (A) at 785 – where the court

held that the functionary must comply with the jurisdictional facts of the empowering provisions,

otherwise the notice is invalid; all prescribed procedures must be complied with;

a statement of statutory grounds is not reasons for a notice – arbitrary if not based on the relevant information before him

CSARS v Sprigg Investments 117CC t/a Global Investment 73 SATC 114 (SCA) para [12] and [13]

Minister Environmental Affairs vs Phambili Fisheries 2003 (6) SA 407 (SCA) para [46]

ITC 1811 68 SATC 183

Search & Seizure

Ferrucci v CSARS 65 SATC 47 – least intrusive means/ not sufficient to merely refer to section violated – facts

Haynes vs CIR 64 SATC 321 – t/p entitled to warrant, application to court & order

Shelton vs CIR 64 SATC 199 – no prior notification to a warrant

Deutschmann vs CSARS 62 SATC 191 – docs must have nexus to offence/non-compliance

Ferela P/L 60 SATC 513 – entitled to access court file

Powell vs v.d. Merwe [2005] 1 All SA 149 SCA – warrant too broad violated privacy

Onus of proof

CIR v Butcher Bros 13 SATC 21 at 39 – essential that SARS supports assessment to show income in fact received to benefit of t/p

CIR v Goodrick 12 SATC 279 – bound to accept evidence of t/p

CIR v Middelman 52 SATC 323

ITC 1607 58 SATC 340 – statements corroborated by evidence/explanation sufficient to rebut an inference

ITC 1283 41 SATC 36

Ntd v CoT 24 SATC 657 – mere statements by t/p not sufficient to displace estimated assessments – older case

ITC 980 25 SATC 48

Double Jeopardy

ITC 1576 56 SATC 225 – make provision for the application of the *audi alteram partem* rule before these drastic fines are imposed

Tax Board Decision 198 – s35(3)(m) “Every accused person has a right to a fair trial, which includes the right . . . not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted” – the punishment of the taxpayer, the deterrent effect on the taxpayer himself and the deterrent effect on other taxpayers

CSARS v Hawker Air 67 SATC 107 – In *R v Cloarec* 28 CRR 75 (a Canadian case) the British Columbia Provincial Court held that the principle of double jeopardy applied in a tax case.

ITC 1825 70 SATC 68 – penalty of an administrative nature which could not be equated with a fine imposed by a criminal court and hence the constitutional provision against double jeopardy was not of application.

Advocate reworking a decision of an assessor later in the pleadings – unlawful

Foster v Chairman, Commission for Administration 1991 4 SA 403 (C) this common-law rule was explained as follows:

It is a trite principle of our law that where a power is entrusted to a person to exercise his own individual judgment and discretion, it is not competent for him to delegate such power unless he has been empowered to do so expressly or by necessary implication by the empowering statute. (See eg *Shidiack v Union Government (Minister of the Interior)* 1912 AD 642 at 648±9, *Attorney-General OFS v Cyril Anderson Investments (Pty) Ltd* 1965 (4) SA 628 (A) at 639.)

This rule expresses the idea that the administrator who has authority to take

administrative action must exercise that authority himself or herself.