**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:** 24 March 2023

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

*The Commissioner for the South African Revenue Service and Rappa Resources (Pty) Ltd* [2023] ZASCA 28 (24 March 2022)

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Today, the Supreme Court of Appeal (SCA) upheld an appeal from the Gauteng Division of the High Court, Johannesburg (high court) in the above matter. It set aside the order of the high court directing the appellant, the Commissioner for the South African Revenue Service (SARS), to despatch to the respondent, Rappa Resources (Pty) Ltd (Rappa), a complete record relating to the decision, the subject of a review application launched by Rappa, and substituted it with one dismissing the application.

On 29 March 2021, SARS issued assessments to Rappa for the payment of Value Added Tax, penalties and interest. Rappa was informed that if it wished to lodge an objection against the assessments, the objection had to comply with the requirements of s 104 of the Tax Administration Act 28 of 2011 (TAA). Instead, Rappa opted to institute proceedings in the high court to review and set aside SARS' decision and assessments (the review application). Rappa also demanded that SARS disclose the record of its decision under review in terms of Uniform rule 53(1)*(b)*. When SARS refused, Rappa launched an application in terms of that rule for an order compelling SARS to do so (the compelling application). In answer to both applications, SARS denied that Rappa's application for review was competent because it had not been sanctioned by the high court in terms of s 105 of the TAA, which provides that: 'A taxpayer may only dispute an assessment or "decision" as described in section 104 in proceedings under this Chapter, unless a High Court otherwise directs.' Rappa did not in either application seek an order in terms of s 105. It initially took the view that 's 105 of the TAA does not stand in the way of the review application'. Thereafter, it sought, by way of an amendment, an order in terms of s 105 'insofar as it might be necessary'.

The high court postponed sine die the relief sought pertaining to the applicability of s105 of the TAA. It directed that that issue should be enrolled for hearing together with the main review application. The high court nonethless directed SARS to despatch the record to Rappa within 15 days. On appeal, SARS contended that the high court did not have the power to order the production of the record of a decision under review unless it had jurisdiction in the review. It accordingly had to first determine its jurisdiction in the review before making a compelling order. Further, in terms of s 105, a taxpayer may only dispute an assessment by objection and appeal in terms of ss 104 to 107

of the TAA, unless the high court directs otherwise. Before it makes such a direction, the high court has no jurisdiction in the review and can accordingly not make an order compelling SARS to deliver the record of its decision.

The SCA held that s 105 is an innovation introduced by the TAA from 1 October 2011. It has moreover been narrowed down by an amendment made in 2015. Its purpose is to make clear that the default rule is that a taxpayer may only dispute an assessment by the objection and appeal procedure under the TAA and may not resort to the high court unless permitted to do so by order of that court. The high court will only permit such a deviation in exceptional circumstances. This was clear from the language, context, history and purpose of the section. Thus, a taxpayer may only dispute an assessment by the objection and appeal procedure under the TAA, unless a high court directs otherwise. Pre-amendment, the taxpayer could elect to take an assessment on review to the high court instead of following the prescribed procedure. That is no longer the case. The amendment was meant to make clear that the default rule is that a taxpayer had to follow the prescribed procedure, unless a high court directs otherwise.

In the result, the SCA upheld the appeal, set aside the order of the high court and replaced it with one dismissing the application.

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