IN THE SUPREME COURT OF SOUTH AFRICA
(APPELLATE DIVISION)

In the matter between:

THE SECRETARY FOR INLAND REVENUE Appellant

and

CHARLES AQUILLA INESON Respondent

CORAM: Wessels, Kotzé, Joubert, JJ.A. et Van Winsen, Hoexter, A.JJ.A.

HEARD: 13 May 1980

DELIVERED: 29 May 1980

J U D G M E N T

WESSELS, J.A.:

Pursuant to leave granted by the Chief Justice, appellant appeals to this Court against the judgment and order of the Transvaal Provincial Division (Boshoff, A.J.P., Myburgh, J., and Margo, J.) dismissing, with costs, appellant's appeal against that part of the order of the Transvaal Special Income Tax Court which upheld an appeal by respondent against the disallowance

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as deductions from his gross income in the 1974 and 1975 tax years of a portion of the rental for his flat and of certain travelling expenses. The appeal to this Court is directed to that part only of the order of the Court a quo which upheld the Special Court's conclusion that the travelling expenses in question should have been allowed as a deduction from respondent's gross income for the years 1974 and 1975.

Both in this Court and in the Court a quo, the appeal was directed to the conclusion of law arrived at by the President of the Special Court (Franklin, J.,) regarding the deductibility of the travelling expenses in question. In both Courts, the facts determined by the Special Court were accepted as correct.

In the appellant's notice of appeal it is stated that the Court a quo erred in the following respects:

"1. In terms of Section 23(g) of the Income Tax Act, (Act 58 of 1962)

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the travelling expenses incurred were not monies wholly or exclusively laid out or expended for the purposes of the tax payer's trade.

2. It was impossible for the Respondent to leave from and return to the base of his profession, (the room in his flat) without leaving from and returning to his residence (his flat). Accordingly the said travelling expenses were incurred for a dual purpose, the one being private, the other being business, and on the authorities referred to in the Court a quo, the said travelling expenses do not constitute a permissible deduction from income under Section 23(g) of the Act."

The relevant facts, as determined by the Special Court, may be briefly summarised as follows:

1. The respondent was a draftsman who, in the years 1974 and 1975, rendered his services on an independent basis to clients through the agency of Contract Design Centre (later known as Draftpower (Pty) Ltd). The contracts of service varied from one month to one-and-a-half years.

2. In 1974 and 1975 he returned his gross fees to be R7 169 and R12 287 respectively, against which he claimed as a deduction certain travelling expenses.

3. One room in respondent's flat was specially equipped as a workroom and was exclusively used for the purpose of respondent's trade, in the sense that it was not used or occupied at all for domestic purposes in either 1974 or 1975. During February/March 1973 respondent worked overtime in that workroom for which he was paid.

4. In this specially equipped workroom respondent kept the tools of his trade. In it he also had a desk, a telephone, a typewriter and a library of technical books and reference drawings which were essential to the type of specialised work which he undertook. Administrative work was done in the workroom and it was there that respondent could be contacted by the agency or by clients. He also had to, and did, do research work in the workroom for the purpose of enabling him to carry out particular projects. He was not paid for that work, but it was an essential part of the specialised work which he was called upon to carry out for clients.

5. Respondent../5

5. Respondent had established a base at his flat for carrying on his business in a properly equipped workroom.

6. It was inherent in the nature of respondent's trade that he was compelled to travel from that home base to the premises of clients who engaged his services as a draftsman through the agency.

7. Respondent never had any certainty or continuity of employment. He was always employed on an ad hoc basis and his clients were not legally obliged to give him any specified period of notice.

8. Respondent did not, for his own private and personal convenience, choose to live at a particular place (his flat, where he also carried on certain activities associated with the carrying on of his trade in a specially equipped workroom) and to travel from there to the premises of clients who employed him through the agency to render services as a draftsman.

Section 11(a) of the Income Tax Act

(No. 58 of 1962)) provides that for the purpose

> "of determining the taxable income derived by any person from carrying on any trade within the Republic, there shall be allowed as deductions from the income of such person so derived - expenditure .... actually incurred in the Republic in the production of the income, provided such expenditure .... (is) not of a capital nature."

It was at no stage disputed that the travelling expenses which respondent claimed as a deduction were actually incurred in the production of his income and that they were not of a capital nature. What is in issue, however, is whether or not the deduction of the travelling expenses in question is prohibited by Section 23(g) of the Act, which provides as follows:

> "23. No deductions shall in any case be made in respect of the following matters, namely :-
> (g). Any monies claimed as a deduction from income derived from trade, which are not wholly or exclusively laid out or expended for the purposes of trade."

It follows that the travelling expenses claimed

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as a deduction by respondent could only be allowed if he established that they were wholly and exclusively "laid out or expended for the purpose" of his trade as a draftsman. It is not necessary for the purposes of this judgment to determine whether the words "Wholly or exclusively" import two separate enquiries in determining whether a deduction is, or is not, allowable.

It was submitted by appellant's counsel that the question whether respondent's travelling expenses were an allowable deduction in terms of Section 23(g) of the Act, or not, is a question of law. This is no doubt correct, because the ultimate question appears to be whether respondent established that the expenses claimed as a deduction, were moneys wholly or exclusively laid out or expended for the purposes of trade within the meaning of Section 23(g) of the Act. The meaning of

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Section 23(g) is perfectly clear. A taxpayer who incurs travelling expenses for the sole purpose of his trade is entitled to a deduction. In this case the amount claimed is not disputed. The only question is, for what purpose was the expenditure incurred? This raises a question of fact, and the finding made in regard thereto would virtually be decisive. In S.I.R. v. Cadac Engineering Works (Pty) Ltd., 1965(2) S.A. 511 (A.D.), OGILVIE THOMPSON, J.A., stated the following at p.520A:

> "In certain types of case - e.g. where the dominant issue is one of the taxpayer's intention; which is itself a question of fact and of which the Yates Investment case, supra, affords an illustration - a Special Court's finding of fact may no doubt in practice prove wholly decisive. For in that type of case, once the facts are found, the conclusion of law may automatically follow that tax is attracted or avoided, as the case may be."

In S.I.R. v. John Cullum Construction Co. (Pty) Ltd., 1965(4) S.A. 697, STEYN, C.J., stated the following at p.706A:

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> "The purpose of expenditure or the intention with which it is incurred is quite clearly a matter of fact."

In C.I.R. v. De Villiers, 1962(1) S.A. 581 (A.D.) it was held (I quote from the headnote):

> "The expenses incurred by a taxpayer in travelling from his home to his base of work and back again are expenses of a private or domestic nature within the meaning of section 12(b) of Act 31 of 1941, except in cases in which the exigencies of the business which produces the income compel the taxpayer to travel, e.g. in the case of a commercial traveller."

Appellant's counsel sought to challenge the Special Court's finding that the exigencies of respondent's trade required him to incur travelling expenses in order to earn income. It was submitted that there is nothing inherent in the nature of a draftsman's trade which obliges him to travel in order to earn his income. The respondent travels, so it was submitted, in order to earn his income, because he chose to carry on his trade in the manner appearing from the evidence. This line of argument overlooks the fact that the Special

Court's finding regarding the exigencies of respondent's trade is one of fact and must be accepted as correct for the purposes of the appeal. In any event, the Special Court was not concerned with the exigencies of the trade of a draftsman who chooses to carry on his trade at one base only; what it was concerned with was the exigencies of respondent's trade as carried on by him.

A further submission on appellant's behalf was that travelling expenses were incurred by respondent for a dual purpose, and were, therefore, not moneys "wholly or exclusively" expended for the purposes of trade. The Special Court, so it was submitted, found by implication that on leaving his workroom (base) and travelling to his client's premises, respondent was at the same time leaving his place of residence. So, too, on the return journey respondent was travelling home as much as he was returning to his base in his flat. It followed, so it was submitted, that the daily outward and return journeys were conducted for a dual purpose.

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The outward journey, for instance, was of a private nature being undertaken for the purpose of undoing the fact that respondent left his client's premises the previous evening to return to his home.

I have already above quoted authority for the self-evident proposition that a finding regarding the purpose of expenditure is one of fact. In this case, the Special Court held that respondent had established that the travelling expenses were incurred for the sole purpose of carrying on his trade. This is not a case where the taxpayer was obliged to incur travelling expenses because he chose, for private and domestic reasons, to have his home at one place and to carry on his trade at another place. Respondent, for the reasons given in his evidence, chose to carry on his trade in a particular manner in order to earn his income, i.e., he chose in effect to carry on trade as an itinerant draftsman. On the facts, this case is readily distinguishable from De Villiers's case (supra).

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In my opinion, on the facts found by the Special Court, it was correctly concluded that the deduction claimed by respondent was allowable in terms of the provisions of Section 11(a) of the Act.

In the result, the appeal is dismissed with costs.

P. J. WESSELS

Kotzé, J.A.
Joubert, J.A.
Van Winsen, A.J.A.
Hoexter, A.J.A.

Concur.