THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable
Case No: 1123/2016

In the matter between:

VOLKSWAGEN SOUTH AFRICA (PTY) LTD **APPELLANT**

and

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

Neutral citation: *Volkswagen South Africa (Pty) Ltd v Commissioner for SARS* (1123/2016) [2017] ZASCA 190 (20 December 2017)

Coram: Leach, Petse and Saldulker JJA and Plasket and Meyer AJJA

Heard: 9 November 2017

Delivered: 20 December 2017

Summary: Income tax – rebate paid to motor manufacturers to encourage rationalisation of models – rebate dependent upon capital investment made by manufacturers in order to rationalise – rebate of a capital nature and not taxable.

ORDER

On appeal from: The Tax Court, sitting at the Eastern Cape Local Division, Port Elizabeth (Schoeman J and two assessors, sitting as court of first instance):

1 The appeal is allowed, with costs.

2 The order of the court a quo is set aside and replaced with the following: 'The appellant's income tax for the 2008, 2009 and 2010 tax years is to be assessed on the basis that its PAA certificates valued at R83 651 677 for the 2008 tax year, R76 895 388 for the 2009 tax year and R48 338 557 for the 2010 tax year are receipts of a capital nature.'

JUDGMENT

Leach JA (Petse, Saldulker JJA and Plasket, Meyer AJJA concurring)

[1] The issue which arises in this appeal is whether the accrual of rebates calculated with reference to capital expenditure, and to which the appellant became entitled under a government scheme to support the local motor industry, should be regarded as accruals of a revenue or capital nature. The Tax Court concluded that they were revenue in nature and therefore fell to be included in the appellant's gross income. The appeal directly to this Court is with leave of

the court a quo granted under s 135(1) as read with s 133(2)*(b)* of the Tax Administration Act 28 of 2011.

[2] Section 1 of the Income Tax Act 58 of 1962 defines the 'gross income' of a person as being '. . . the total amount, in cash or otherwise, received by or accrued to or in favour of such [person] . . . *excluding receipts or accruals of a capital nature* . . .' (my emphasis). As appears from this, receipts or accruals are either of a capital or of non-capital nature, the latter being commonly referred to as income or revenue. Indeed this Court stated some 73 years ago that there is no 'half-way house' between capital and revenue – see *Pyott Ltd v Commissioner for Inland Revenue* 1945 AD 128 (13 SATC 121) at 135 – and although this has been the source of trenchant criticism,[1] it remains the position to this day. As a result, if an amount which accrues to a taxpayer is not of a capital nature, it must be taken as being income or revenue and liable to tax, as opposed to those of a capital nature which are not so liable.

[3] There is no dispute between the parties as to the facts to which regard should be had in determining their dispute. The appellant is one of the largest motor vehicle manufacturers in this country. It derives its income from the sale of motor vehicles, not only those which it manufactures, many for export, but also from motor vehicles imported from abroad for sale in this country. Commencing as long ago as 1995, the government initiated a motor industry development program (MIDP) aimed at an internationally competitive and growing automotive industry. By June 2000 much had been achieved since the MIDP had been introduced. Additional jobs had been created in the process and it was felt that the potential for greater growth and an increase in yet further employment opportunities was a reality.

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[1] See eg A de Koker & R C Williams *Silke on South African Income Tax* Vol 1 Chapter 3 para 3.1 at 3-2 [2015 Service 56].

[4] In order to achieve this and to remain internationally competitive, South Africa had to lower costs in its production of motor vehicles whilst maintaining quality capable of competing with the products of manufacturers in other parts of the world. One of the ways of achieving this was thought to be to reduce the number of models being produced, as global trends had shown that common platform engineering and the resultant benefits in improved economies of scale, led to cost savings.

[5] Consequently, as a result of the undoubted advantages it had shown to the economy of the country, the government was prepared to extend the MIDP with one of its objectives being the rationalisation of models being produced in the automotive industry. However, it is one thing to merely agree to rationalise the number of models being produced; it is quite another to implement such a process. Rationalisation of models would require plant upgrades and technology enhancements to put this country's manufacturers on a par with the world's best. This would involve substantial capital expenditure, inter alia, to provide dedicated buildings, to expand production lines, to install robots used in the production and assembly processes, and to update machinery and tooling.

[6] As an incentive for the automotive manufacturers to embark on such an expensive capital programme, the Board on Tariffs and Trade, in its report no 4045 of 19 May 2000, made the following recommendation:

'To further encourage the global trend towards streamlining production of light motor vehicle assembly plants into a limited number of models, the Board recommends the introduction of a Productive Asset Allowance (PAA) to those manufacturers that have invested a certain minimum value in dedicated productive assets for the assembly of light vehicles and manufacture of automotive components to streamline their manufacturing base to manufacture a limited product range for the domestic and export markets, thereby improving their international competitiveness. The PAA recommended is in the form of a duty rebate certificate to a maximum of 20 per cent of the total investment in qualifying productive assets, spread equally over five years and may only be used to rebate duties on imported motor vehicles.'

[7] Pursuant to this, the Department of Trade and Industry announced the introduction of a PAA with effect from July 2000. The form in which the benefit was provided to participating manufacturers was by way of the issue of PAA certificates as envisaged in a rebate item contained in a schedule to the Customs and Excise Act 91 of 1964, providing for a rebate on customs duty on certain categories of completely built-up imported light motor vehicles. The amount of the certificate was to be calculated as a percentage of the value of the 'productive assets' approved by the Director-General: Trade and Industry for purposes of this rebate provision. The 'productive assets' referred to were described in the rebate item as including: '[b]uildings erected for the sole purpose of manufacturing specified motor vehicles or automotive components, and new or unused plant, machinery, tooling, jigs, dies and moulds, in-plant logistics, testing, design and production IT equipment and supporting software.'

[8] Although the PAA scheme was initially administered by the Board of Tariffs and Trade on behalf of the National Department of Trade and Industry, its administration was later taken over by the International Trade Administration Commission of South Africa (ITAC). Guidelines as envisaged by the tariff were issued first by the Department of Trade and Industry and, later, by ITAC. The 2008 Guidelines in place at the time of the assessments for the tax years in issue in the present case, were issued by the latter. Inter alia they provide for the processes to be adopted in order to make applications of claims for such benefits, and the verification of claims. Of particular relevance is para 9.1 thereof which reads:

'Only an applicant that demonstrates an investment in qualifying assets on an approved project may claim for the PAA. The documented capital expenditure, as certified by the appointed accredited consulting engineer, will form the basis of the PAA certificate. ITAC will consider the report of the engineer who will verify the first claim of the applicant and who shall further conduct an inspection on site.'

[9] The 'qualifying assets' referred to in the last paragraph (whose qualified value was stated to be their value as capitalised according to generally accepted accounting practice), included new buildings erected or used buildings purchased for the sole purpose of housing approved productive assets, as well as new and unused plant, machinery and tooling used for the sole purpose of manufacturing the rationalised range of light motor vehicles. Such assets are thus, essentially, those reflected as 'productive assets' in the relevant rebate item already mentioned above.

[10] In order for a PAA certificate to be issued, any claim for such benefits had to be audited by external financial auditors using prescribed audit standards in order to verify the investment in productive assets. Once that was done, an engineer appointed by ITAC was delegated to conduct a physical on-sight asset verification exercise which could lead to adjustments in their amount claimed. Only once all of this had been done and the amount of the claim claimed confirmed and agreed, would a PAA certificate be issued to a manufacturer. The amounts received in this way would be 20% of the capital investment so audited and verified.

[11] These PAA certificates could then be used by the manufacturer to offset the duty which it became liable to pay on importing fully made up vehicles for sale in this country. In this way, manufacturers were encouraged to invest in procuring qualifying productive assets to rationalise their model production. Put somewhat differently, as a result of their participation in the PAA scheme and the rationalisation of the motor vehicles they were producing, they were reimbursed to an amount of 20% of their capital expenditure incurred in the

rationalisation process by, effectively, paying less import duty than would have been the case had they not participated in the scheme. This was an investment incentive, not a trading incentive.

[12] To sum up, the PAA was introduced as an incentive for the automotive manufacturing industry to make new capital investments in manufacturing capacity in order to produce a rationalised range of light motor vehicles. Only those manufacturers who committed to the process of rationalisation and made the necessary investments in fixed capital to achieve rationalisation would be entitled to benefits under the scheme. Without doing so, they would not receive PAA certificates, each of which reflected as their benefit an amount calculated in regard to the capital investment they had made in pursuance of the scheme. The PAA certificates, in turn, could be used to reduce the amount of import duty a manufacturer became obliged to pay on importing certain fully built-up vehicles from abroad for resale.

[13] It is often said that there is nothing new under the sun. Certainly rebates of this nature are nothing new. More than 200 years ago, Sir John Cradock, the Governor of the Cape Colony, acting on the advice of the Cape Agricultural Commission which in January 1808 had recommended that the indigenous fat-tailed Cape sheep be replaced by the Spanish merino, sought to encourage the merino breed by admitting, duty free, all merino wool brought from the interior to the Cape and discontinuing the taxes levied on wool sheep in the country districts. This rebate, it was hoped, would encourage farmers in the Cape's interior to switch to the merino breed which it was felt had great economic benefits for the country, inter alia from exporting wool.[2] The similarities between that scheme, designed to encourage farmers to 'rationalise' their

[2] Ben MacLennan *A Proper Degree of Terror* (1986 Ravan Press) at 141.

production by breeding merino sheep, with the PAA scheme in the instant case, are striking.

[14] Be that as it may, the appellant duly applied in the prescribed manner supported by the necessary business plan to participate in the PAA scheme. In order to do so, it invested heavily in qualifying assets in three different capital projects, namely, the Golf A4 project, the Polo (PQ24) project and the Golf A5 project. These investments ultimately led to it receiving PAA certificates which were audited as required and approved by ITAC. The appellant also received PAA certificates relating to investments made by two of its suppliers, Shatterprufe (Pty) Ltd and PFG Springs (Pty) Ltd. These receipts were pursuant to applications and claims they had made on their investment in qualifying assets supported by documents furnished by the appellant identifying the platform and project for which it had engaged them to manufacture components. It is not suggested that these certificates should be excluded or that the appellant was not entitled to their benefits.

[15] In its income tax returns for the years of assessment 2008-2010, the appellant reflected the PAA certificates it had received as being accruals of a capital nature. The amounts involved were substantial: R83 651 677 for 2008, R76 895 388 for 2009 and R48 338 557 for 2010. The Commissioner refused to accept that these amounts were of a capital nature, and assessed the appellant to tax on the basis that they were income. The appellant's objection to such assessment was overruled, which led to an appeal in the Tax Court whose judgment is the subject of the appeal to this Court.

[16] As mentioned at the outset of this judgment, the fundamental question is whether the PAA certificates are receipts or accruals of a capital nature. There is no simple litmus test which can be applied to determine what is capital or

revenue – see eg *Commissioner for Inland Revenue v Guardian Assurance Co South Africa Ltd* 1991 (3) SA 1 (A) at 19E-F – although over the years, various guidelines have been laid down to assist in determining the nature of a particular receipt or accrual. These include whether the accrual was forthcoming from the realisation of a capital asset or whether it was received in the course of carrying on business or in pursuance of a scheme of profit making – see eg the seminal judgment of Corbett JA in *Elandsheuwel Farming (Edms) Bpk v Sekretaris van Binnelandse Inkomste* 1978 (1) SA 101 (A) at 118A-F. Thus in *Commissioner for Inland Revenue v Pick 'n Pay Employees Share Purchase Trust* 1992 (4) SA 39 (A) at 56H-57C Smalberger JA said:

'There are a variety of tests for determining whether or not a particular receipt is one of a revenue or capital nature. They are laid down as guidelines only - there being no single infallible test of invariable application. In this respect I agree with the following remarks of Friedman J in *ITC 1450* (1989) 51 SATC 70 (N):

"But when all is said and done, whatever guideline one chooses to follow, one should not be led to a result in one's classification of a receipt as income or capital which is, as I have had occasion previously to remark, contrary to sound commercial and good sense."

The appropriate test in a matter such as the present is a well-established one. The receipts accruing to the Trust will be revenue if they constitute "a gain made by an operation of business in carrying out a scheme for profit-making", in the words of the eminent Scottish Judge . . . The corollary is that they will be non-revenue if they do not derive from "an operation of business in carrying out a scheme for profit-making".'

[17] The necessity of using good sense to decide whether an accrual is capital or revenue in nature, was echoed by this Court in *W J Fourie Beleggings BK v Commissioner, South African Revenue Services* 2009 (5) SA 238 (SCA) para 7 where it was remarked that although common sense has been described as a blunt intellectual instrument 'it remains the most useful tool to use in deciding the issue'. In the light of this and the other principles already mentioned, I turn to decide whether in the present case the rebates received by the appellant should be regarded as capital or revenue.

[18] Para 3.2.3 of the South African Revenue Services Interpretation Note 59 of 10 December 2010, reads:

'A government grant will be of a revenue nature in the hands of a person carrying on trading operations if it is a trading receipt. A grant is a trading receipt if its receipt is a normal incident of a person's trading operations. The nature of the grant received and the relationship which exists between the grant received and the recipient's activities needs to be examined.

A government grant will be a trading receipt when it is paid in order to assist in meeting a person's trading obligations or in order to assist in carrying on trading operations. A grant of this nature results in trading receipts being supplemented and accordingly is itself a trading receipt.

By contrast, any amount received or accrued for the purpose of –

- establishing an income-earning structure, or
- as compensation for the surrender of such a structure,

is of a capital nature.'

[19] As appears from this, the revenue authority regards the purpose of a government grant of cardinal importance. That indeed is supported by the case law. Thus in ITC 402 (1937) 10 SATC 111 the taxpayer, who carried on business as a produce merchant and exporter, received a subsidy under the Export Subsidies Act 49 of 1931. The Commissioner sought to levy tax against the subsidy. The taxpayer contended that the amount of the subsidy was to be viewed as a gift or an ex gratia payment. The Special Income Court held that the subsidy arose out of the appellant's trade as a produce merchant, that it was only payable to the appellant because he was an exporter, and therefore any receipts he received on account of the subsidy should be regarded as a trade receipt.

[20] A similar approach was adopted by this Court in *Moolman v Commissioner for Inland Revenue* 1954 (2) SA 560 (A). The dispute in that matter flowed from a wartime arrangement between the governments of this

country and the United Kingdom, under which the latter agreed to purchase surplus wool from South Africa with the two governments sharing any profits from its resale. After the end of the war, the wool was sold at a substantial profit and, under a domestic statute, contributing wool producers became entitled to a share in such profit. Pursuant to this, the taxpayer, a wool producer, had received a lump sum which he claimed as capital and therefore not taxable. This Court stated that while the taxpayer's entitlement to the sum was derived from the Act in question 'the question still remains why Parliament decided that he should receive that sum'. [3] It then went on to hold that as the sum was awarded to the appellant under the statute simply because he had sold wool in the Union to the government of the United Kingdom during the relevant period, the sum he received was an addition to the purchase price which he had obtained when he first sold his wool and, on that basis, was not of a capital nature. Again this decision turned on why the grant had been paid to the taxpayer.

[21] In ITC 1435 (1987) 50 SATC 117, the taxpayer, a co-operative society of dairy farmers, had purchased a machine for analysing milk at a sum of R26 222. The following tax year, it received a grant-in-aid of R18 000 in respect of the purchase price of this machine from the Milk Recording Central Co-operatives Ltd. The Commissioner agreed that this was a receipt of a capital nature not subject to tax. The Eastern Cape Special Court agreed. In doing so, its President, Mullins J, said:[4]

> 'It is clear that in the present case, the amount of the grant-in-aid bears no relation to the amounts claimed by way of wear and tear, nor is it suggested that it was intended in any way to compensate appellant for the past or future reduction in the value of such machinery by reason of wear and tear. It was specifically a grant to assist appellant with the capital expenditure involved in the purchase of the machine and was therefore the grant of a capital nature.'

[3] At 568A.
[4] At 119-120.

[22] Relying on these cases, the learned authors of *Silke* express the view:[5]

'Subsidies or similar payments made by the government in terms of an Act of Parliament to local merchants or producers for the production or export of certain commodities are, it is submitted, on income account if they are paid to supplement the trading receipts derived from the sale of such commodities.

. . . .

If a subsidy takes the form of a contribution towards the producer's cost of production of a certain commodity, it is submitted that it is of an income nature. On the other hand, *if the subsidy is paid as a contribution towards the cost of fixed capital assets – for example, the government may contribute towards the cost of a new factory or plant and machinery – it is submitted that it partakes of the nature of capital and is not taxable*.' (My emphasis).

[23] In the light of these authorities, counsel for the appellants, adopting a phrase derived from *Commissioner for Inland Revenue v Black* 1957 (3) SA 536 (A) at 543B-C, contended that the court in each case had looked to the 'real and basic cause of the accrual' to determine whether it was capital or revenue in nature. That being so, he submitted that the inquiry should resolve itself into answering two questions: first, what was the real and basic cause of the accrual (or put somewhat differently, why or in respect of what conduct or activity was the grant made) and, secondly, whether that cause is, as a matter of fact, more closely associated with the equipment of the taxpayer's income producing machinery (in which event it should be regarded as capital) or with its income-earning operations (in which event it should be regarded as revenue).

[24] This indeed seems to me to be an appropriate approach in a case of this nature. It also appears to be in line with certain English authorities. The decisions of the Court of Appeal and the House of Lords in the matter of *Seaham Harbour Dock Company v Crook (HM Inspector of Taxes)* are both instructive. The taxpayer in that matter owned certain sea docks which it wished

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[5] A de Koker & R C Williams *Silke on South African Income Tax* Vol 1 Chapter 3 para 3.43 at 3-104 [2009 Service 40].

to extend. It did so by using a government grant which was motivated on the ground that the extension would provide work at a time when employment was scarce. The grant concerned was calculated by reference being had to the notional interest on the approved expenditure over a period of two years. In the Court of Appeal,[6] Lord Hanworth said the following:[7]

'What was the trade at that time which was being carried on by the Seaham Harbour Dock Company in respect of this dock extension? How does the sum then being expended, how does the contribution made to that expenditure, fall within the trade of the dock company? It is very difficult to find any ground or any basis for holding that it was part of their trade. It is quite true that the instalments of the grant have been credited to revenue in the accounts of the company, but as has been said many times in this Court and in the House of Lords, one has to look at the substance of the matter, and the accounts kept by the company neither inure in their favour nor against them if the true effect and substance of the matter grants them relief or imposes a liability.

We are therefore compelled to look at the substance of the matter; and it seems to me Mr Cooper, who appeared for the company, was right when he made his claim: "(I) That the grant was made by a Government body and was capital. It was not specifically made for the purpose of meeting interest but was expressly made in respect of expenditure and for the purpose of helping the company through with its cost of construction. (II) That the term 'equivalent to half the interest' was only a method of calculation for arriving at the amount of grant to be paid.

. . . .

[I]t appears that this sum was a sum paid out and out by the Unemployment Grants Committee for the purpose of adding to and completing the capital sum of which there was an insufficient subscription before it was received. And the mere mode of payment or method of accounting does not alter the character of the sums received; they were paid in order to advance a capital expenditure to be made by the Seaham Harbour Dock Company, . . .'

Similarly, Lord Justice Slesser said:[8]

'[B]ecause it becomes no more than this: a grant for an extension of a dock which is in itself in respect of a capital expenditure. This company does not trade in dock construction; it

[6] *Seaham Harbour Dock Company v Crook (HM Inspector of Taxes)* (1930) 38 Ll.L Rep 65 (CA).
[7] At 67-68.
[8] At 69.

trades in docking. They are not dock engineers engaged in building docks; they are engaged in the utilisation of docks and they need this extension to cope with their trade.'

[25] In the judgment of the House of Lords[9], an appeal from the decision of the Court of Appeal was dismissed on the basis that the grant was not a trade receipt. Rather it had been made by a government department with 'the idea that by its use men might be kept in employment and it was paid to and received by the dock company . . . simply to enable them to [construct docks] with the idea that by so doing so people might be employed'.[10] In the parlance of this country, the House of Lords held that the grant had been paid to enable the taxpayer to invest in fixed capital, and was therefore a receipt of a capital nature.

[26] The decisions in *Seaham Harbour Dock Company* illustrate the importance of the purpose for which a government grant is paid. This, too, is stressed in para 3.2.5 of Interpretation Note 59, which provides as follows:

'A government grant which is designated as being made towards the cost of specified capital expenditure is capital in nature because it is made in order to assist or compensate a person in meeting costs of a capital nature.'

[27] Essentially one can have no quarrel with this statement. The difficulty I have, however, is why it appears not to have been applied to the appellant in the present case. In disallowing the appellant's objection to the PAA certificates not having been regarded as capital accruals, the respondent stated that 'there is no indication from the PAA Guidelines that the amount was received for the purpose of establishing an income-earning structure . . .' It went on to state that in calculating the PAA's certificates, the Department of Trade and Industry 'took into account the amount invested in qualifying plant and machinery, however this was done for the purpose of calculating the allowance' which did

[9] *Seaham Harbour Dock Company v Crook (HM Inspector of Taxes)* (1931) 41 Ll. L Rep 95 (HL).
[10] Per Lord Buckmaster at 96.

not imply that the appellant had been compensated 'for the capital outlay in respect of the plant and machinery'.

[28] My reaction to this is similar to that of Davis AJA in *Pyott Ltd v Commissioner for Inland Revenue* and I, too, see 'insuperable difficulties in holding anything of the kind'.[11] As appears from what I have said earlier in this judgment, it is clear that PAA certificates were in fact issued in order to compensate manufacturers for at least a portion of their capital outlay incurred in respect of the plant and machinery required for rationalisation. It was in this way that they were encouraged to go along with the rationalisation scheme. To suggest the converse is simply astounding. Indeed, the court a quo found that 'the grant was made due to capital expenditure.' That being so, why should it not have been viewed as an accrual of a capital nature as envisaged in para 3.2.3 of the Interpretation Note?

[29] The court a quo answered that question as follows:

'[I]f the PAA certificate was not utilised, within a stipulated period, as payment for custom duties on imported motor vehicles, the PAA certificate would lapse. The certificate was not tradeable. The certificate was conditional and did not accrue until there were imports. If there were no imports within the necessary time frame, the condition had not been fulfilled and the certificate could not be used. The certificates only had value upon import of motor vehicles and not when the capital expenditure was incurred. The grant was to assist the appellant with the revenue expenditure, customs duty payable on imports.'

In the light of this, the court a quo held that as PAA certificates could only be redeemed by payment of customs duties, the diminished payment of customs duty was clearly related to the gross income of the appellant so that the PAA certificates were not of a capital nature.

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[11] At 129.

[30] With due respect, I find myself unable to agree with this conclusion. Firstly, the PAA certificates did not only accrue once imports were made. Once a certificate had been issued, it had immediate value which accrued to the benefit of the taxpayer. The fact that it would lapse if not used within a stipulated period does not mean that the benefit had not accrued, nor can it change the nature of the accrual. As they were issued to compensate a manufacturer for a percentage of its capital expenditure, they were clearly capital in nature and the fact that they might lapse cannot change that position.

[31] Moreover that the PAA certificates were not 'tradeable' speaks to me of them being capital in nature rather than revenue. And as I have stressed, they had accrued by reason of the taxpayer having invested in income producing assets. The respondent's pleaded contention that the investment which had been made was merely part of a formula to calculate the benefits under the PAA scheme, ignores that fact. The making of a capital investment was at the centre of the scheme and, without a manufacturer making such an investment, a PAA certificate could not be paid. Had the government paid in cash rather than by way of the PAA certificates, it clearly would have been a grant paid in respect of that capital investment. As it instead allowed a rebate in respect of import duties, this does not alter the fact that the benefit derived therefrom amounted to a benefit received by the appellant in respect of capital expenditure. Consequently, the diminished payment of customs duty was not 'clearly related to the gross income of the appellant' as found by the court a quo but, rather, should be construed as a method of payment of a grant in respect of capital expenditure.

[32] Accordingly, in my view, the respondent's contention that the PAA scheme was not directly intended to support capital expenditure but merely to allow the appellant to reduce the cost to it of imported vehicles and thereby

increases revenue, is groundless. PAA certificates were in no way received as part of a scheme of profit making. They reimbursed the appellant in respect of a percentage of its capital expenditure. The conclusion of the court a quo that the PAA certificates should be construed as income rather than accruals of a capital is clearly wrong. The appeal must succeed.

[33] The following order will issue:

1 The appeal is allowed, with costs.

2 The order of the court a quo is set aside and replaced with the following:

'The appellant's income tax for the 2008, 2009 and 2010 tax years is to be assessed on the basis that its PAA certificates valued at R83 651 677 for the 2008 tax year, R76 895 388 for the 2009 tax year and R48 338 557 for the 2010 tax year are receipts of a capital nature.'

L E Leach

Judge of Appeal

Appearances:

For the Appellant:	M W Janisch SC
Instructed by:	Chris Baker & Associates, Port Elizabeth
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For the Respondent:	R G Buchanan SC (with him R Tsele)
Instructed by:	The State Attorney, Port Elizabeth
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