REPORTABLE (59)

ZIMBABWE REVENUE AUTHORITY
v
TRIANGLE LIMITED
(**referred to as TL in the judgment of the Special Court for Income Tax Appeals**)

SUPREME COURT OF ZIMBABWE
BHUNU JA, MATHONSI JA & KUDYA AJA
HARARE: 11 MAY 2021

S. Bhebhe, for the appellant

T. Mpofu, for the respondent

MATHONSI JA: On 22 June 2020, the Special Court for Income Tax Appeals [the court *a quo*], upheld an appeal by the respondent essentially against the disallowance by the appellant, of objections to additional assessments that the appellant carried out on the respondent's liability to pay income tax. Irked by the decision of the court *a quo*, the appellant noted an appeal to this Court. The mainstay of the appellant's contention was that the court *a quo* lacked the competence to set aside the additional assessments by the appellant in the manner it did, and that, in any event, the additional assessments were valid at law.

On 11 May 2021, having heard submissions from counsel for both parties, this Court issued the following order;

"It is ordered that:
1. That the appeal be and is hereby dismissed with no order as to costs.
2. That reasons for the decision are to follow."

What follows hereunder are the reasons for that decision. The delay in providing the said reasons is most sincerely regretted.

THE FACTS

The appellant is a statutory authority established for the collection of revenue of the State. The respondent, a company duly incorporated under the laws of Zimbabwe, is in the business of milling, refining and selling sugar and sugar products. It is a subsidiary of Triangle Sugar Corporation Limited.

On 25 November 2009, Triangle Sugar Corporation Limited, on behalf of the respondent, entered into a Technical Assistance Agreement with Tongaat Hulett Sugar Limited which is a company incorporated in the Republic of South Africa. In terms of the said Technical Assistance Agreement ("the agreement"), Tongaat Hulett Sugar Limited would furnish the respondent with such technical assistance in relation to experience, knowledge and expertise in technical, commercial, agricultural, management and administrative aspects relevant to the cultivation of sugar cane, the production, refining, processing, manufacture, sale, marketing, transportation and other aspects concerning sugar related products. Specifically, such assistance would include but not limited to:

- Assistance in the formulation, implementation and testing of agricultural methods in the design, engineering and testing of refining, processing and manufacturing techniques and equipment in respect of sugar-related products;
- The provision of technical assistance in the design and implementation of capacity expansion projects for the Triangle sugar manufacturing process;
- Assistance in the technical aspects of commercial transportation techniques.

Tongaat Hulett Sugar Limited would, as a term of its scope of work, also furnish the respondent with such general management and administrative supervision and assistance in relation to the experience, knowledge and expertise referred to in that agreement in areas

such as the cultivation of sugar cane, the production and sale thereof. For these services, Tongaat Hulett Sugar Limited would be paid a fee that was calculated at 2 per cent of the gross annual turnover of the respondent.

The respondent paid all fees that were due to Tongaat Hulett Sugar Limited in terms of the agreement. It also paid withholding tax to the appellant in terms of s 30, as read with the para 2 (1) of the Seventeenth Schedule, of the Income Tax Act [*Chapter 23:06*] ("the Act"). Throughout the duration of the agreement and in this litigation, the respondent maintained that at no time did the appellant decline to accept the withholding tax that was being paid nor tendered the return of the withholding tax to the respondent.

The dispute between the parties was sparked by a letter written by the appellant to the respondent on 31 May 2018 which, to the respondent's anguish, raised amended assessments in respect of income tax for the years 2010, 2011, 2012, 2013, 2014, 2015, and 2016. In the relevant part, the appellant stated as follows:

> "**SUBJECT: DISALLOWED TECHNICAL AND MANAGEMENT FEES 2010 – 2016**
>
> ... Please find attached the amended income tax assessments. The assessments have been issued in terms of section 47(1)(a). The assessments are in respect of disallowed management and technical fees on your final accounts which the expenses (*sic*) were claimed on the basis of 2% of turnover which is not supported by invoices that are supposed to be issued by Tongaat Huletts (*sic*) Sugar Limited. The expenses have been disallowed pending production of actual expenditure incurred as provided for in s 15(2) (a) of the Income Tax Act [*Chapter 23:06*]."

The respondent stated that on 11 June of the same year, the appellant issued further amended assessments for the years 2010 to 2016.

Quite predictably, the respondent objected to the amended income tax assessments. The grounds advanced, among others, were that the assessments were not valid at law, that the appellant had failed to apply the provisions of s 16 (1) (r) of the Act, that the appellant had not reconciled the actual amounts paid by the respondent with the amounts in the amended assessments and that the appellant had failed to distinguish technical fees from managerial and administrative fees by examining the actual work involved.

Although the objection was raised outside of the time frame stipulated under s 62(1) of the Act, the appellant condoned and accepted the objection having been satisfied with the reasons for the delay.

PROCEEDINGS BEFORE THE COURT *A QUO*

Irked by the decision of the appellant to disallow the objection, on 31 January 2019 the respondent noted an appeal to the court *a quo*. The respondent argued that the amended assessments were invalid as they did not specify the determination of taxable income and credits to which the appellant was entitled in terms of the law. The respondent further contended that, in making the amended assessments, the appellant failed to properly apply the provisions of s 16(1) of the Act in that the fees paid by it to Tongaat Hulett Sugar Limited were not incurred as expenditure on general administration and management but on the provision of technical service.

In response, the appellant argued that the initial assessments were incorrect as the respondent did not provide any proof that the expenditure was incurred, as required. Therefore, so the appellant contended, this led to a "correct and reasonable" conclusion – on its part – that

the said expenditure had not been incurred as contemplated by s 15(2)(a) of the Act. The appellant insisted that the amended assessments were valid.

At the commencement of the hearing *a quo*, the respondent applied for leave to introduce the issue regarding the prescription of the amended assessments for the years 2010 and 2011. This issue had not been raised in the letter of objection. The appellant did not oppose the application. Accordingly, leave to include the issue of prescription was granted by consent.

By judgment dated 22 June 2020, the court *a quo* held that the amended assessments for the years 2010 and 2011 were invalid because the appellant is only allowed to reopen assessments after a period of six years has lapsed if it is convinced that the taxpayer was guilty of fraud, misrepresentation and wilful non-disclosure of facts. It found that in *casu*, none of the above factors were established. Further, the court *a quo* found that the amended assessments were not in compliance with s 2 of the Act in that they did not reflect taxable income, the credits to which a person is entitled and an assessed loss ranking for a deduction. In its own words it stated;

> "It is clear from the above definition that an assessment should reflect (1) taxable income; (2) credits to which a person is entitled to (3) an assessed loss ranking for deduction. … Accordingly, in order for an assessment to be valid the above elements must be reflected and properly addressed. It is only when that is done that we can then have a proper income tax assessment in terms of the law.
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> In *Barclays Bank of Zimbabwe* v *Zimbabwe Revenue Authority* HH162/2004**,** where a similar issue arose**,** MAKONI J, as she then was, had this to say:
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> > 'on close scrutiny of Annexure 'A' it is apparent that it does not show any taxable income or credits to which Applicant is entitled nor any assessed loss ranking for deductions. Annexure 'A' only reflects the sums due to the Respondent in the form of taxes, penalties and interest.
> >
> > It is imperative that an assessment contains the requirements of the Act as the administrative functions bestowed by the Act on the Commissioner amount to a determination which is executable through a garnishee.'

I am in agreement with my sister Judge that the lumping up of figures as happened *in casu* does not meet the requirements set out in section 2 of the Income Tax Act. It is incumbent on the part of the respondent to ensure that whatever information it gives to the tax payer can be properly understood and interpreted. The appellant's right to correct information is paramount in these matters and to that end lumped up figures without any explanation become meaningless."

The court *a quo* also held that the appellant erred in law in disallowing deductions in respect of technical fees. It found that the appellant was precluded from issuing additional assessments as the initial assessments [by the respondent] from 2010 to 2016 had been presented in accordance with the practice generally prevailing at the time they were made and were, thus, valid.

Accordingly, the court *a quo* allowed the respondent's appeal and set aside the amended assessments from 2010 to 2016 and confirmed the self-assessments from 2010 to 2016.

PROCEEDINGS BEFORE THIS COURT

Aggrieved by the judgment of the court *a quo*, the appellant noted an appeal to this Court on the following grounds of appeal:-

"1. The court *a quo* erred in law in issuing a declaratur on the invalidity of the additional income tax assessments in circumstances where it does not have any statutory power to do so.

2. The court *a quo* erred in law in finding that the additional income tax assessments for the tax years 2010 and 2011 were unlawful by reason of prescription when there was material non-disclosure of facts which entitled the appellant to issue additional assessments in terms of s 47 of the Income Tax Act [*Chapter 23:11*].

3. The court *a quo* erred in law in finding as it did or must be taken to have done that the additional assessments for the tax periods 2010, 2011, 2012, 2013, 2014, 2015 and 2016 were invalid based on an alleged discrepancy in the 2013 tax year income tax additional assessments instead of considering the additional income tax assessments for each year individually.

4. The court *a quo* erred in law in determining the appeal before it based on the provision of s 16(1)(r) of the Income Tax Act [*Chapter 23:11*] as amended in 2017 by the Finance Act No. 2 of 2017 when the income tax assessments in dispute where for the period from 2010 to 2016, before the said provision had been amended.

5. The court *a quo* erred in law in finding that the respondent had discharged the onus on it to prove that the expenditure on fees had been incurred in the production of income based solely on the appellant having received non-resident withholding tax from the respondent on behalf of Tongaat Hullet Sugar Limited.

6. The court *a quo* erred in law in finding that there existed of a practice generally existing (*sic*) in terms of s 47(1) of the Income Tax Act [*Chapter 23:11*] when there was no evidence led to prove the existence of such practice generally existing."

Clearly, the foregoing grounds of appeal created multiple issues for determination on appeal. This was so because, examined closely, each ground of appeal potentially yielded a standalone issue for determination. It, however, became apparent to the court upon hearing submissions from the parties that only two issues commended themselves for determination. The issues so identified were dispositive of the entire appeal. They are:

1. Whether or not the court *a quo* issued a declaratory order and whether or not the Act reposes power in the court *a quo* to issue declaratory orders; and
2. Whether or not the additional assessments for the tax periods 2010, 2011, 2012, 2013, 2014, 2015 and 2016 were invalid at law.

Mr *Bhebhe* for the appellant, submitted that the court *a quo* erred by granting a declaratur. According to counsel, the court *a quo* does not have the power to grant such an order. He also argued that the court *a quo* erred in holding that the assessments for 2010 and 2011 were invalid by reason of prescription because s 47 of the Act allows the appellant to open an audit after six years if satisfied that there is either fraud or misrepresentation. In his view, the court *a quo* erred when it placed the onus on the appellant to prove that the respondent

committed fraud or misrepresented, yet in terms of the Act, the respondent had the onus to disprove the same.

Per contra, Mr *Mpofu* for the respondent, submitted that the court *a quo* did not issue a declaratur but simply set aside the decision of the appellant. On the issue of the validity of the amended assessments, he contended that the court *a quo* was correct in finding that the appellant's assessments were improper as they were not in compliance with s 2 of the Act. It was Mr *Mpofu's* contention that the court *a quo* did not place the onus of proof on the appellant as the respondent led evidence to establish that it did not commit fraud or make misrepresentations to the appellant. In his view, the court *a quo* made a decision based on the evidence led. He urged the court to dismiss the appeal.

THE LAW

The Special Court for Income Tax Appeals is established by s 64 (1) of the Act. Section 64 provides for the qualifications for appointment to the court, the remuneration of persons appointed to the court, the times during which and the places at which the court shall sit and the Registrar of the court. An analysis of the framework of s 64, however, shows that part of its provisions are outdated. They refer to the repealed Constitution of Zimbabwe, 1980.

Section 65(10) of the Act provides for the powers of the Special Court upon hearing an appeal against a decision of a Commissioner. In its terms:

> "(10)
>
> a. Subject to this Act, the High Court or the Special Court, whichever hears an appeal under this section, may order any assessment or decision under appeal to be amended, reduced, withdrawn or confirmed or may, if it so thinks fit, refer the assessment or decision back to the Commissioner for further investigation and assessment or decision. Any assessment or decision made by the Commissioner on such reference shall be subject to objection and appeal as provided in this Part.

b. The power conferred upon the High Court or the Special Court by paragraph (*a*) shall, in the case of an appeal against any decision of the Commissioner made in the exercise of his discretion under subsection (6) of section *forty-six*, include the power to restore in part or in whole such portion of the additional tax imposed under subsection (1) of that section as may have been remitted by the Commissioner."

Also relevant in this case are the provisions of s 64(8) of the Act, in terms of which the procedure for the institution and hearing of appeals to the Special Court shall be in accordance with Part VII of the Act and the rules set out in the Twelfth Schedule. The Twelfth Schedule to the Act provides for the Rules Regulating Appeals to the Special Court for Income Tax Appeals. Rule 1 of Part I thereof provides:

> "The Special Court shall have all the powers of the High Court as in civil actions, and the general procedure and practice, save as specially provided for by these rules, shall be that prevailing in the High Court, in so far as the same is applicable, and if any matter should arise which is not contemplated by either such procedure and practice or these rules, the Special Court shall give instructions regarding the course to be pursued, which instructions shall be binding on the parties."

The above provisions regulate the powers of the Special Court in hearing matters and in disposing of matters it has heard. Any power exercisable by the Special Court must find expression in the provisions of the enabling statute.

It is necessary to recall the powers that the Special Court of Income Tax Appeals exercises when it has been petitioned by an aggrieved taxpayer. The point is made in *Sommer Ranching (Pvt) Ltd* v *Commissioner of Taxes* 1999 (1) ZLR 438 (S) at 443 A-B that:

> "Presently, it is well settled that in an appeal against a decision where the Commissioner exercised a discretion, the Special Court is called upon to exercise its own original discretion. Nor is it restricted to the evidence which the Commissioner had before him. The appeal to the Special Court is not only a rehearing but can involve the leading of evidence and the submission of facts and arguments of which the Commissioner was unaware. See *Commissioner for Inland Revenue* v *da Costa* 47 SATC 87 (A) at 95; 1985 (3) SA 768 (A) at 775B-G; *K* v *CoT* 1993 (1) ZLR 142 (S) at 147B-F; 55 SATC 276 (ZS) at 281"

It has been said several times, and rightly so, that an appeal against a decision of the Commissioner to the Special Court is in effect a rehearing of the case. The Special Court is not restricted to the material that was placed before the Commissioner but it may take into account any other evidence relevant to the determination of the matter before it, even though such evidence was never placed before the Commissioner.

Therefore, it becomes manifestly clear that the court *a quo,* and indeed this Court, exercise jurisdiction in order to simply uphold the meaning of the fiscal legislation in question. The approach is laid down in *Commissioner of Taxes* v *C W (Pvt) Ltd* 1989 (3) ZLR 361 (SC) at 372 that:

> "Generally speaking, where taxation is concerned, it has to be acknowledged that justice and equity have little significance. If the language of the statute is plain the court must give effect to it, even if the result to the taxpayer is harsh and unfair." [*the underlining is for emphasis*]

The learned authors C Whitehouse and E Stuart-Buttle in *Revenue Law–Principles and Practice*, 6 ed (1988), at p 3 make a pertinent observation about tax legislation. They state:

> "Fiscal legislation is complex and detailed. In part this is inevitable since, above all, tax legislation should be certain: persons should know whether they are or are not subject to tax or duty on a particular transaction or sum of money. ... In a famous passage, ROWLATT J in *Cape Brandy Syndicate v IRC* (1921) expressed this rule as follows:
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> > '...It is urged... that in a taxing Act clear words are necessary in order to tax the subject. Too wide and fanciful a construction is often sought to be given to that maxim, which does not mean that words are to be unduly restricted against the Crown, or that or that there is to be any discrimination against the Crown in those Acts. It simply means that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing to be read in, nothing to be implied. One can only look fairly at the language used...'"

Certainty is the lifeblood of tax law. Taxpayers are entitled to know exactly what taxes they must pay and how those taxes are computed. One of the means by which certainty

is achieved in tax law is by bestowing to words used in fiscal legislation, their clear grammatical meaning.

This case concerns compliance with the law regulating the issuance of assessments and the validity of the additional assessments that were issued by the appellant. In no uncertain terms, the Act provides for what the law considers to be an assessment. In terms of s 2 thereof, "assessment" means "(*a*) the determination of taxable income and of the credits to which a person is entitled in terms of the charging Act; or (*b*) the determination of an assessed loss ranking for deduction; and includes a self-assessment in terms of section *thirty-seven A*".

Section 51 of the Act also provides for assessments and the recording thereof. Assessments must be made by the Commissioner or under his direction. There must be notice to the taxpayer of the assessment and, if applicable, of the amount of tax payable. In the notice of assessment, the Commissioner is required to give notice to the taxpayer that any objection must be sent to him within thirty days of such notice. See in general *Barclays Bank of Zimbabwe* v *Zimbabwe Revenue Authority* 2004 (2) ZLR 151 (H). The need for any assessment to be valid has, of late, been emphasised by this Court consistently. For good measure, the position was given befitting recognition in the fairly recent case of *Nestle Zimbabwe (Pvt) Ltd* v *Zimbabwe Revenue Authority* S–148–21.

Given the principles upon which tax law subsists such as strict adherence to fiscal legislation and the principle of certainty, the consequences of the invalidity of an assessment are fairly obvious. The moment an assessment fails to comply with the law, it is a nullity. The point is made in the case of *Zimbabwe Platinum Mines (Pvt) Ltd* v *Zimbabwe Revenue Authority* S–159–21 at 13 – 14, paras 34 – 35 that:

"[34] ... Paragraph 11(2)(b) [of the 22nd Schedule to the Act] commands the Commissioner of the respondent to determine the taxable income or assessed loss pertaining to the appellant in USD currency. Contrary to this clear provision of the law, the appellant was issued with an assessment sounding in Zimbabwe dollars. Such assessment was clearly not issued in terms of the law. It follows therefore, that no legal validity could attach to it because no legal validity attaches to any act done contrary to the provisions of statute. As correctly observed by counsel for the respondent, 'the law does not allow the respondent to issue tax assessments to a taxpayer in the mould of the appellant in any currency other than that elected by the appellant for purposes of keeping books of account.'

[35] Counsel for the respondent aptly cited *Schierhout* v *Minister of Justice* 1926 AD 99 where INNES CJ stated:
'It is a fundamental principle of our law that a thing done contrary to the direct prohibition of the law is void and of no effect. … So that what is done contrary to the provision of the law is not only of no effect but must be regarded as never having been done and that whether the lawgiver has expressly so decreed or not: the mere prohibition operates to nullify the act… and the disregard of peremptory provisions in a statute is fatal to the validity of the proceeding affected.'

See also *McFoy* v *United Africa Co Ltd* [1961] 3 ALL ER 1169 (PC)."

SYNTHESIS

The appellant's first ground of appeal put the order that was issued by the court *a quo* into question. It was contended that the court *a quo* has no authority to issue a declaratur.

The first observation to be made is that at no point in its judgment did the court *a quo* issue an order declaring that the amended assessments from 2010 to 2016 were invalid. Instead, the court *a quo* simply set them aside. Once a finding is made that the court *a quo* did not issue a declaratur that ought to be the end of the matter.

For completeness, it is pertinent to go further and state that it was competent for the court *a quo* to issue the order that it made which is appealed against. It has been noted that in an appeal, the court *a quo* has the authority to withdraw an assessment. This is so because the term "withdraw" in s 65(10) of the Income Tax Act is wide enough to embrace "setting

aside". In its legal sense, the word "withdraw" means "to take away what has been enjoyed; to take from [or] to remove". See *Black's Law Dictionary*, 4 ed, (1969) at 1776.

It must also be borne in mind that our law recognises the principle of implied powers. In the case of *Monderwa Farm (Pvt) Ltd* v *B J B Kirstein (Pvt) Ltd* 1993 (2) ZLR 82 (S) at p 86 A-B, this Court held that:

> "The concept of an implied power may be traced to Roman law, as expressed in Digest 2:1:2 in the maxim '*Cui jurisdictio data est, ea quoque concessa esse videntur sine quibus jurisdictio explicari non potuit*' (where jurisdiction is conferred the recipient is deemed also to have been granted all such powers necessary for the exercise of the expressly granted jurisdiction). And it has long been recognised by the courts. See *Middleburg Municipality* v *Gertzen* 1914 AD 544 at 552; *City of Cape Town* v *Claremont Union College* 1934 AD 414 at 420-421; *Bloemfontein Town Council* v *Richter* 1938 AD 195 at 226-227; *Makoka* v *Germiston City Council* 1961 (3) SA 573 (A) at 581H-582B; *Attorney-General* v *Plangger* 1976 (2) RLR 215 (AD) at 216 D-E; *Tribal Trust Land Development Corporation* v *Cone Textiles (Pvt) Limited* 1978 RLR 365 (GD) at 372G-373A; *Attorney-General* v *Great Eastern Railway Company* (1880) 5 AC 437 (HL) at 478."

J Taitz, in *The Inherent Jurisdiction of the Supreme Court*, (1985) at 51 – 52 stated that:

> "An implied power or incidental power means such unwritten power conferred upon the recipient of express jurisdiction without which he would be unable to exercise jurisdiction expressly granted. The notion of an implied power may be traced to Roman Law. ...
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> This principle has been acknowledged by the Appellate Division in a number of other cases. It has been applied to various acts by magistrates' courts where the statute conferring specific powers was silent on ancillary aspects pertaining to such powers, eg where a statute conferred powers on the inferior court to decide certain matters, authority to enforce such decision was implied. A further example occurs where the enabling statute confers powers of execution: in the absence statutory authority the power to suspend or to set aside such extension may be implied."

The Act gives the court *a quo* the power to order an assessment to be withdrawn. A reading of s 65 of the Act strikingly demonstrates that the court exists to provide redress,

where appropriate, to a person dissatisfied by a decision or deemed decision of the Commissioner. It follows, that the power to set aside the decision of a Commissioner is inherent and implied in the jurisdiction bestowed upon the court *a quo*.

I add that the power of the court *a quo* to withdraw any assessment must be understood in context. It seeks to remedy a prevailing state of affairs occasioned by an erroneous decision of the Commissioner not to allow an objection against an unlawful assessment. The court *a quo*, therefore, exists to do that which the Commissioner ought to have done had he taken the correct position of the law and the facts proven into consideration. Setting aside an unlawful assessment is necessary for the exercise of the court *a quo*'s jurisdiction and it is implied in the power to withdraw an assessment. This is true notwithstanding a specific reference to a power to order the setting aside of an assessment. As the appellant rightly argued, the nomenclature employed by the court *a quo* is irrelevant. One simply has to be satisfied that the court *a quo* issued an order within the remit of its jurisdiction and powers.

It is for these reasons that the first ground of appeal was rejected as being devoid of merit and dismissed.

The second issue identified for determination relates to whether or not the additional assessments were valid. The issue stemmed from the third ground of appeal. I note in passing that the third ground of appeal mischaracterises the *ratio decidendi* of the court *a quo* as being that the additional assessments for the years 2010 – 2016 were found to be invalid on account of a discrepancy in the income tax additional assessments for the 2013 tax year. Quite to the contrary, the court *a quo* did not hold that the additional assessments were invalid

because of a discrepancy in the additional assessments for the year 2013. Instead, it held that the assessments were invalid because they did not meet the requirements in s 2 of the Act.

Upon consideration of the case, it is the view of this court that all of the additional assessments did not meet the standard for an assessment set out in the Act. They did not set out the taxable income for each tax year for which an additional assessment was issued. The credits, if any, to which the respondent was entitled were not set out. All the assessments were issued "subject to audit". L Hill, in *Income Tax in Zimbabwe*, 4 ed (1997), commented on the endorsement that an assessment is subject to audit thus;

> "**Assessments 'subject to audit'**
> The Commissioner has adopted a procedure of issuing notices of assessment bearing the above endorsement. There is no statutory reference to this. It is understood that the Commissioner accepts that in these circumstances an 'assessment' as defined in s 2(1) of the Act has been made, i.e. that there has been a determination of the taxable income, etc., and that all the normal consequences follow, including the commencement of the prescription period on the issuing of an additional assessment .... The endorsement thus amounts merely to a notification that a fuller examination of the return and any accounts may still be undertaken. It appears, however, in light of the decision in *ITC 1480* (1990) 52 SATC 276, that a taxpayer may not be protected against an issue of an additional assessment, in which event, the position is unsatisfactory." [The underlining is for emphasis]

The Act does not envisage that an assessment, once issued, may be refined again and again by the tax authority. The issuance of assessments "subject to audit" in the absence of statutory authority for the practice is not permissible. It undermines the principles upon which good taxation systems are built. One such principle is that of certainty.

In the circumstances, the court *a quo* could not be faulted for holding that the assessments were legally invalid. They were a nullity. Nothing could be founded upon them.

Remarkably, a finding that the assessments were invalid at law not only obviated but terminated the need to consider the rest of the grounds of appeal. There being no valid additional assessments before the court *a quo*, the substantive content of the additional assessments became irrelevant. That content, being part of the additional assessments themselves, was a nullity at law.

DISPOSITION

The additional assessments were shown to be invalid. The appeal is without merit as the invalidity of the additional assessments wholly afflicted the entire proceedings which proceedings rested on invalidity. Accordingly, the court *a quo* cannot be faulted for setting the assessments aside.

It is for the foregoing reasons, that the court issued the order mentioned above.

BHUNU JA: I agree

KUDYA AJA: I agree

Kantor & Immerman, appellant's legal practitioners

Gill, Godlonton & Gerrans, respondent's legal practitioners