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 25 March 2020

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Telkom SA SOC Limited v The Commissioner for the South African Revenue Service (239/2019) [2020] ZASCA 19 (25 March 2020)

MEDIA STATEMENT

The SCA today dismissed an appeal by Telkom SA Soc Ltd against a finding by the Tax Court that the appellant had impermissibly invoked the provisions of s 24 I of the Income Tax Act 58 of 1962 (the Act), which involved exchange rate gains and losses, in order to deduct a commercial loss, which was completely unconnected to foreign exchange currency differences. The SCA held that the section was not a self-standing deduction provision. In addition, the proviso to the definition of a 'ruling exchange rate', meant a currency exchange rate that reflected the value of a particular currency in question and not a discount rate. The central argument of the appellant that the USD 100 received by it as consideration for the disposal of a loan, was determined by applying a 'rate', being 'the price paid or charged for a thing or class of things', and that this 'rate' fell within the definition of the 'disposal rate', was rejected as it failed to satisfy the requirement in the proviso that the consideration had to be 'determined' by 'applying' the rate. The consideration received had to be the result of a process of calculation which utilised the 'rate' as a factor to produce that result. The only type of rate that was able to perform this function, was one which compared to items against one another, such as a currency exchange rate. It was clear that the consideration for the loan of USD 100 was agreed by reference only to the perceived value of the loan. The argument of the appellant that parties could generate a revenue tax deduction, based solely on the deterioration of the quality of foreign currency-denominated debt by applying the section, that dealt

exclusively with gains and losses as a result of exchange rate differences, was rejected. Accordingly, the submission by the appellant that its interpretation of the section, that resulted in a foreign exchange loss of R3 961 295 256, was rejected and the appeal by the appellant against the additional assessment issued by the respondent, the Commissioner for the South African Revenue Service, was correctly dismissed by the Tax Court. As regards the cross-appeal by the respondent: the finding of the Tax Court was that the respondent was not entitled in terms of s 23H(1)*(b)*(ii) of the Act, to add back and disallow R136 531 542 of the amount of R178 788 421 paid by the appellant to Velociti (Pty) Ltd as cash incentive bonuses, for the connection of initial subscriber contracts for a specific tariff plan, made by it on behalf of the appellant. The SCA, however, held that the Tax Court had erred in disregarding the true benefit obtained by the appellant, in the form of the monthly subscriber payments, over the anticipated 24 month period. Although the conclusion of the initial subscriber contract benefited the appellant, the enjoyment of that benefit was spread out over the period of the contract, so that the period to which the expenditure related could not be limited to the first year. The Tax Court had also erred in treating as relevant to the application of the section, the fact that Velociti had rendered all the services which it was obligated to do in terms of the agreement with the appellant, because this had no bearing upon the central question, being when and how the appellant would enjoy the benefit of the contract. The cross-appeal by the respondent was accordingly upheld, on the basis that the Tax Court had erred in concluding that there was no basis to add back and disallow R136 531 542 of the cash incentive bonus expenditure by the application of the section, in the 2012 year of assessment.