

REPUBLIC OF SOUTH AFRICA



SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO: A5033/10

TAX COURT CASE NO: 12401

DATE:02/12/2011

REPORTABLE

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

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DATE

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SIGNATURE

In the matter between:

**MOBILE TELEPHONE NETWORKS
HOLDINGS (PTY) LIMITED**

Appellant
(Appellant in the Court *a quo*)

and

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

Respondent
(Respondent in the Court *a quo*)

J U D G M E N T

VICTOR, J:

Hyperion Management System

[1]

- 1.1 The system was introduced in the 2004 tax year in order to capture record and index certain aspects related to its financial affairs.
- 1.2 The system assists in the conduct of its business.
- 1.3 Its assists in the consolidation of financial results.
- 1.4 The reporting of its results to others.
- 1.5 The professional fee was incurred with its auditors in relation to them rendering services about the implementation, adjustment, fine tuning and user operation of the system.

[2] The majority of transactions in the appellant's financial records relate to interest income and therefore they must necessarily use the Hyperion system or the largest part in relation to that income. It is not used in relation to the dividend income.

[3] The appellant installed the Hyperion system and the concomitant professional fees in order to achieve the results mentioned above.

[4] The professional fees are closely connected to the earning of the interest income and should properly be regarded as a cost incurred in order to create the income.

[5] The other companies in the group derived a benefit from the Hyperion system because of its interconnected structure in which the companies within the group trade.

[6] The appellant incurred the professional fee in order to have the effective conduct of its activities in respect of producing income.

[7] The respondent disallowed the professional fee because the Hyperion system aids in the presentation and reporting of results of the appellant and the consolidated results in the group.

[8] In so doing it has disregarded the factors referred to above.

[9] The fact that the Hyperion system aids in assisting the appellant to report its trading results is not a justifiable reason to disallow the expenditure.

[10] The appellant is obliged in terms of its business arrangements to report its results to other companies with the MTN group and such function is in the ordinary course of business and related to its trading activities.

[11] The function necessarily relates to the ongoing production of its income in a manner complied with its obligations to other companies in the group.

[12] The criticism by the respondent that the appellant is not provided sufficient information so to cause it to deal with the deductions is to be assessed. It is not correct that all the information was not provided. The respondent failed to address itself to relevant information which was supplied and failed to contact the appellant's auditors before disallowing the auditors' fees.

[13] The legal grounds upon which the appellant relies. See section 23(g) of the Income Tax Act.

[14] The Hyperion system constitutes a trade business. The reason for trade is based on the fact that the appellant's activities is that of a money-lender. The scale of the investment by the appellant in the shares of its subsidiary companies is such as to amount to the carrying on of trade. It is their contention that if one of the activities amount to trade then it is entitled to a deduction in respect of that expense.

[15] The word “*trade*” is very wide and there is no numerous of activities. The disallowed expenditure was incurred in the production of income. Not expenditure which is of a capital nature. See section 11(a) and section 23(f) of the Act.

[16] The expenditure was incurred to directly facilitate the carrying on of its trade in a legally compliant manner. It does not have to show a direct causal link or connection but a closeness of connection between the two. Eg. cost price expenditure incurred for a product which is later sold by a taxpayer’s profit. Such direct causal link is not the only link required in terms of section 11(a) of the Act.

[17] There are instances where expenditure does not causally produce the income but is still deductible – section 11(1) of the Act.

[18] Mr C H Gericke testified on behalf of the appellant. He testified that the Hyperion system assists the taxpayer in the consolidation of its financial results. It assists the underlying companies and the superior ones. Auditors assisted in facilitating the consolidation of its results based on a new system.