



**THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA**

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

CSARS v Atlas Copco South Africa (Pty) Ltd (834/2018) [2019] ZASCA 124 (27 September 2019)

From: The Registrar, Supreme Court of Appeal

Date: 27 September 2019

Status: Immediate

The following explanatory note is intended to assist media in the reporting of this case and is not binding on either the Supreme Court of Appeal or any member of the Court.

Today the Supreme Court of Appeal (SCA) handed down judgment in an appeal against an order of the Tax Court, Johannesburg (Opperman J sitting with assessors) in which it upheld the appeal of the Commissioner for the South African Revenue Service (SARS).

The appeal turns on the interpretation and application of s 22(1) of the Income Tax Act 58 of 1962 (the Act), relating to the value of a taxpayer's trading stock at the end of a year of assessment. Section 22(1)(a) provides that, in respect of a taxpayer's trading stock that is held and not disposed of by him at the end of a year of assessment, the value thereof is the cost price to the taxpayer less the 'just and reasonable' amount by which such trading stock has been diminished through 'damage, deterioration, change of fashion, decrease in the market value' or any other reason satisfactory to SARS.

Atlas Copco South Africa (Pty) Ltd (the taxpayer), a member of the Atlas Copco Group, carried on the business of selling and leasing mining and related industry equipment and machinery, including spare parts and consumables. In terms of the internal policy of the taxpayer's parent company – the Finance Controlling and Accounting Manual (FAM), or The Way We Do Things (WAY) – all companies within the group were to write down their closing stock by 50% if such stock had not been sold within the preceding 12 months, and by 100% if not sold after 24 months. The taxpayer applied these fixed percentages in calculating the amounts by which the value of its trading stock had diminished by in the 2008 and 2009 years of assessment. However, according to SARS, this methodology did not accord with s 22(1) of the Act. The taxpayer was thereafter assessed to tax also on the two amounts it initially claimed its trading stock to have diminished by.

The taxpayer contended that the reference to 'market value' in s 22(1)(a) of the Act is equivalent to 'nett realisable value' (NRV) for purposes of the Statement of Generally Accepted Accounting Practice (AC 108) or International Accounting Standard 2 (IAS 2), which meant that its valuation of trading stock at year end were acceptable. The Tax Court agreed, holding that the NRV determination through IAS 2 is appropriate and

provides 'a sensible and businesslike result which accords with the purpose of section 22(1)'. This line of reasoning was taken from the Port Elizabeth Tax Court's decision in *Volkswagen South Africa (Pty) Ltd v Commissioner for South African Revenue Service*. However, the decision was later overturned by the Supreme Court of Appeal, where it was confirmed that the determination of tax liability under the Act is not necessarily equivalent to such a determination in terms of a company group's internal accounting policy.

The Supreme Court of Appeal found that the Tax Court had erred. It was held that the taxpayer's approach to the valuation of its trading stock was flawed and it could not be said that SARS had failed to exercise the discretion conferred by s 22(1)(a) of the Act. The appeal was thus upheld with costs.
