



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case no: 893/2024

In the matter between:

BASELINE CIVIL CONTRACTORS (PTY) LTD

APPELLANT

and

THE COMMISSIONER FOR THE SOUTH AFRICAN

REVENUE SERVICE

RESPONDENT

Neutral citation: *Baseline Civil Contractors (Pty) Ltd v The Commissioner for the South African Revenue Service* (893/2024) [2026] ZASCA 20(24 February 2026)

Coram: ZONDI DP and GOOSEN and KATHREE-SETILOANE JJA and OPPERMAN and NORMAN AJJA

Heard: 20 November 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website, and released to SAFLII. The date for hand down is deemed to be 24 February 2026 at 11h00.

Summary: Tax Law – appeal against disallowance of objection to additional income tax assessment in terms of the Income Tax Act 58 of 1962 and Tax Administration Act 28 of 2011 – Taxpayer pleading a new ground of appeal in the statement filed in terms of rule 32 of the Tax Court Rules (rule 32 statement) – whether on the correct interpretation of Tax Court Rule 32(3) the new ground of appeal in the rule 32 statement is permissible – appeal dismissed.

ORDER

On appeal from: Western Cape Division of the High Court, Cape Town (Henney et Sher JJ and Nuku J sitting as a full court):

The appeal is dismissed with costs, including those of two counsel.

JUDGMENT

Zondi DP (Goosen and Kathree-Setiloane JJA and Opperman and Norman AJJA):

Introduction

[1] This is an appeal against a decision of the Western Cape Division of the High Court (full court) on the proper interpretation of rule 32(3) of the Tax Court Rules. It concerns the dismissal of an interlocutory application brought by the appellant, Baseline Civil Contractors (Pty) Ltd (Baseline) in an appeal before the Tax Court in which Baseline was the applicant and the Commissioner for the South African Revenue Service (SARS) the respondent. In the interlocutory application Baseline sought to introduce a new ground of appeal in its statement of grounds of appeal under rule 32 (rule 32 statement). SARS objected thereto on the ground that the new ground of appeal constituted a ground of objection against a part or amount of the disputed assessment not objected to under rule 7.

[2] The Tax Court upheld the objection and dismissed the application. Baseline's appeal to the full court was similarly dismissed. The appeal is with special leave granted by this Court.

[3] The appeal turns on the proper interpretation of rule 32(3). The issue is whether rule 32(3), properly interpreted, permits the new ground of appeal that Baseline seeks to introduce in its rule 32 statement. A brief analysis of rule 32(3) and the related rules that form part of the objection and appeal procedure under the Tax Administration Act 28 of 2011 (TAA), is necessary.

[4] In terms of s 104(1) of the TAA a taxpayer who is aggrieved by an assessment made in their respect may object to the assessment. Before doing so, the taxpayer may in terms of rule 6 of the Tax Court Rules request reasons for the assessment. In terms of rule 7 which deals with 'Objection against assessment', a taxpayer who chooses to object to an assessment under s 104 of the TAA must deliver a notice of objection in which it sets out the grounds of the objection in detail. A taxpayer must specify the part or specific amount of the disputed assessment objected to as well the grounds of assessment which are disputed. The taxpayer must, in addition, submit the documents required to substantiate the grounds of objection that it had not previously delivered to SARS for purposes of the disputed assessment.

[5] Under rule 8, SARS may, within 30 days after delivery of the objection, require the taxpayer to produce additional substantiating documents necessary to decide the objection. If the objection is disallowed in terms of s 107 read with rule 10, the taxpayer may appeal the assessment to the Tax Board or Tax Court. The notice of appeal must be in a prescribed form and must-

'specify in detail-

- (i) in respect of which grounds of the objection referred to in rule 7 the taxpayer is appealing;
 - (ii) the grounds for disputing the basis of the decision to disallow the objection referred to in section 106(5); and
 - (iii) any new ground on which the taxpayer is appealing;
- ...

[6] This analysis will be incomplete without referring to rules 10(3); (4) and (5) which provide as follows:

'(3) The taxpayer may appeal on a new ground not raised in the notice of objection under rule 7 unless it constitutes a new objection against a part or amount of the disputed assessment not objected to under rule 7.

(4) If the taxpayer in the notice of appeal relies on a ground not raised in the objection under rule 7, SARS may require a taxpayer within 15 days after delivery of the notice of appeal to produce the substantiating documents necessary to decide on the further progress of the appeal.

(5) The taxpayer must deliver the documents within 15 days after delivery of the notice by SARS unless SARS extends the period for delivery for a further period not exceeding 20 days if reasonable grounds for an extension are submitted by the taxpayer.'

[7] Rule 31, which is located in a section dealing with 'Procedures of tax court', provides as follows:

'31 Statement of grounds of assessment and opposing appeal

(1) SARS must deliver to the appellant a statement of the grounds of assessment and opposing the appeal within 45 days after delivery of-

- (a) the documents required by SARS under rule 10(5);
- (b) if alternative dispute resolution proceedings were followed under Part C, the notice by the appellant of proceeding with the appeal under rule 24(4) or 25(3);
- (c) if the matter was decided by the tax board, the notice of a *de novo* referral of the appeal to the tax court under rule 29(2); or
- (d) in any other case, the notice of appeal under rule 10.

(2) The statement of the grounds of opposing the appeal must set out a clear and concise statement of-

- (a) the consolidated grounds of the disputed assessment;
- (b) which of the facts or the legal grounds in the notice of appeal under rule 10 are admitted and which of those facts or legal grounds are opposed; and
- (c) the material facts and legal grounds upon which SARS relies in opposing the appeal.

(3) SARS may include in the statement a new ground of assessment or basis for the partial allowance or disallowance of the objection unless it constitutes a novation of the whole of the factual or legal basis of the disputed assessment or which requires the issue of a revised assessment.'

[8] At the time of the hearing of the interlocutory application and prior to its amendment on 10 March 2023, rule 32 read as follows:

'32 Statement of grounds of appeal

(1) The appellant must deliver to SARS a statement of grounds of appeal within 45 days after delivery of-

- (a) the required documents by SARS, where the appellant was requested to make discovery under rule 36 (1); or
- (b) the statement by SARS under rule 31.

(2) The statement must set out clearly and concisely-

- (a) the grounds upon which the appellant appeals,

(b) which of the facts or the legal grounds in the statement under rule 31 are admitted and which of those facts or legal grounds are opposed; and

(c) the material facts and the legal grounds upon which the appellant relies for the appeal and opposing the facts or legal grounds in the statement under rule 31.

(3) The appellant may not include in the statement a ground of appeal that constitutes a new ground of objection against a part or amount of the disputed assessment not objected to under rule 7.'

[9] Post amendment, rule 32(3) reads as follows:

'(3) The appellant may include in the statement a new ground of appeal unless it constitutes a ground of objection against a part or amount of the disputed assessment not objected to under rule 7.'

[10] In terms of rule 33(1), SARS may deliver a reply to the taxpayer's rule 32 statement. In terms of rule 33(2) the reply must set out a clear and concise reply to any new grounds, material facts or applicable law set out in the statement. It is clear from this analysis that the statements in terms of rules 31, 32 and 33 constitute the pleadings in the Tax Court and the issues for the decision are those that are traversed in such statements.

Facts

[11] Baseline is registered for income tax. It conducts business in the civil construction industry. It claimed to be in an *en commandite* partnership with an entity known as Baseline Group Limited Liability Partnership (BECPL) or BG LLP in terms of a partnership agreement. As a taxpayer, in terms of s 5(1)(d) of the Income Tax Act 58 of 1962 (the Income Tax Act), it was required to pay tax on its income earned or accrued during each year of its financial years. As required, Baseline submitted its income tax return for the 2018 tax year to SARS. In its annual financial statements Baseline listed a gross income of R320 846 361 and in its income tax return declared that this gross income had been received and/or had accrued to it for the 2018 tax year. Baseline consistently reflected this amount in subsequent assessments after the partial allowance of its objection.

[12] In terms of s 11(a)¹ read with s 23(g)² of the Income Tax Act, Baseline claimed a total of R73 215 161 in expense deductions for the 2018 tax year. The deductions included an amount of R11 072 237 (disputed amount) which it claimed related to the distribution of profits which Baseline alleged it paid to BECP in terms of the partnership agreement. Baseline contended that the payment to BECP was actually incurred in the production of the income for the purposes of its trade and was therefore a valid component of the deduction of R73 215 161 claimed. In terms of s 102(1)(b) of the TAA Baseline bore the onus of proving that the amount of R11 072 237 paid as a profit distribution to BECP, is an allowable deduction.

[13] On 31 January 2019 SARS issued an original assessment to Baseline for the 2018 tax year in accordance with the income tax returns it submitted. The amounts for income and expenses which form part of the assessment corresponded with its declarations. At the same time SARS also notified Baseline that its 2018 tax return would be subjected to a verification exercise. During the verification exercise SARS noted issues which warranted the undertaking of an audit into Baselines' income tax affairs for the 2016 to 2018 tax year.

[14] Following the audit and the exchange of correspondence between the parties, on 25 March 2020, SARS issued an additional assessment. The disputed amount was disallowed as a deduction by SARS because the Commissioner considered the expense to have been incurred after the income was earned, and not during the production thereof. According to SARS the amount was paid over on a voluntary basis and if it had not been paid it would not have affected the production of past or future income.

¹ Section 11(a) provides as follows:

'General deductions allowed in determination of taxable income

For the purpose of determining the taxable income derived by any person from carrying on any trade, there shall be allowed as deductions from the income of such person so derived-

(a) expenditure and losses actually incurred in the production of the income, provided such expenditure and losses are not of a capital nature... .'

² Section 23(g) provides as follows:

'Deductions not allowed in determination of taxable income

...

(g) any moneys claimed as a deduction from income derived from trade, to the extent to which such moneys were not laid out or expended for the purposes of trade... .'

[15] On 23 June 2020 Baseline objected to the additional assessment. The objection was founded on the ground that SARS erred in adding back the disputed amount since Baseline had met the requirements of ss 11(a) and 23(g) of the Income Tax Act (deduction ground). Baseline objected to the following adjustment in the additional assessment:

- (a) Employment tax incentive included in the gross income : R4 197 000
- (b) Property rental : R300 000
- (c) Profit share distribution : R11 072 237
- (d) Understatement penalty
- (e) Under estimation of provisional tax
- (f) Section 89quat(2) interest

[16] The grounds of objection as regards the disputed amount were the following:

‘3.1 The taxpayer is a partner of the BG LLP. In order to comply with its obligations in terms of the partnership agreement, the taxpayer had to contribute the amount of R11,072,237 to the partnership. The amounts to be contributed to the partnership by the partners are determined with reference to their level of activity, financial performance and exposure to commercial risk on an annual basis, as the purpose of the partnership is to share and spread risk amongst the partners. The amount was therefore calculated by taking into account, inter alia, the taxpayer's financial performance, but it was not an expense incurred after profits had been earned, as the taxpayer was all along contractually obliged in terms of the partnership agreement. It follows that the payment to the partnership was not a charge upon the taxpayer's profits. Rather, the payments which the partners are, in terms of the partnership agreement, required to make are pooled in partnership for division to the partners in accordance with the terms of the partnership. Amounts received by partners in terms of the partnership arrangements are included in the gross income of the partners who are entitled to receive them from the partnership.

3.2 Consequently, should the amount of R11,072,237 be taxed in the hands of the taxpayer (as a result of its being disallowed as a deduction), the same amount will effectively be taxed in the hands of the taxpayer and it will be included in the gross income of the partners who are entitled to receive this amount in terms the partnership arrangement. This amounts to a form of double taxation.

3.3 On the basis of the taxpayer being legally obliged to pay the amount of R11,072,237 in terms of the partnership agreement, it is submitted that the payment of this amount was

done in terms of a contractual arrangement which arrangement did not result in a charge on the taxpayer's profits, but an obligation on the taxpayer to pay an amount, determined with reference its risk profile, activities and financial performance during the particular year [and compared to those of the other partners of the partnership], as a business expense.

3.4 It is submitted that such payment does not constitute "an appropriation of profits after they have been earned". Rather, it is an expense which is closely connected to the taxpayer's business operations, as discussed in more detail below.'

[17] SARS disallowed the objection to the disputed amount. On 9 November 2020 Baseline filed a notice of appeal against the disallowance of its objection repeating the same grounds of objection. Baseline stated that the appeal was against the assessment to which it lodged an objection.

[18] On 31 August 2021 SARS filed its Statement of Grounds of Assessment and Opposing the Appeal (rule 31 statement) in terms of rule 31(2) of the Tax Court Rules. The issues in dispute as set out in the rule 31 statement are: (1) whether Baseline was entitled to a deduction claimed in terms of s 11(a) of the Income Tax Act for the distribution of profits to a related party; (2) whether Baseline was entitled to a remission of interest imposed in terms of s 89quat(2) of the Income Tax Act; and (3) whether SARS was correct in imposing an understatement penalty of 10% on Baseline. SARS submitted that the payment of the disputed amount by Baseline to the BECP was not incurred in the production of income and failed to meet the requirement of s 11(a) of the Income Tax Act.

[19] On 30 November 2021, Baseline filed its Statement of Grounds of Appeal (the rule 32 statement) in terms of rule 32. Baseline stated that during its 2018 year of assessment it was a limited partner of the BG LLP/BECP. In accordance with the partnership agreement, it was obliged to contribute an amount of R11 072 237 to the BG LLP partnership in respect of its 2018 year of assessment which it duly did.

[20] The new ground of appeal, which introduced the receipt/accrual ground, is pleaded as follows in the rule 32 statement at paragraphs 6 to 8 and 16 to 18:

'The appellant's obligation to contribute the amount of R11 072 237 to the BG LLP partnership was either an expenditure actually incurred by it in favour of the BG LLP partnership, or it was

an obligation the effect of which was that, to the extent of R11 072 237, the appellant's income accrued to, and was received by it, not on its own behalf or for its own benefit, but on behalf of or for the benefit of BG LLP partnership.

The appellant acted at all material times in the *bona fide* understanding and belief, and on the basis that, its obligation to contribute the amount of R11 072 237 to the BG LLP partnership was either a deductible expense for income tax purposes or that the amount of R11 072 237 accrued not to it, but to the BG LLP partnership, and was likewise received by it for the benefit of the BG LLP partnership.

In the 2021 year of assessment, income was 'received by and accrued to the appellant *qua* limited partner of the BG LLP partnership, this amount being determined in accordance with the agreement, whether written or oral, between the partners of the BG LLP partnership as to the ratio in which the profits of the partnership for the 2021 year of assessment were to be shared.

The disputed amount of R11 072 237 was expenditure actually incurred by the appellant in the production of income, not of a capital nature and laid out or expended for the purposes of trade, as contemplated in section 11(a) and section 23(g) of the Act.

Accordingly, the amount of R11 072 237 was deductible from the appellant's "income" (as defined in section 1 of the Act) and therefore excluded from its "taxable income" (also as defined in section 1 of the Act).

In the alternative..., the disputed amount of R11 072 237 was neither a receipt by nor an accrual to the appellant on its own behalf, and also neither a receipt by nor an accrual to the appellant for its own benefit. Rather, the amount of R11 072 237 was impressed with an obligation to pay it to BG LLP partnership, and in law accrued to and was received by the BG LLP partnership in the 2018 year of assessment.'

[21] In its grounds of appeal, Baseline drew attention to the fact that it relied on a new ground of appeal not previously relied upon, namely that the amount of R11 072 237 was not received by nor did it accrue to it, but that such amount accrued to and was received by the BG LLP partnership by virtue of the agreement between it and the partners of the BG LLP partnership. The new ground alleges that the amount of R11 072 237 paid as a profit distribution to the BG LLP partnership is not to be deducted from its gross income for the purpose of determining its taxable income by virtue of this amount meeting the requirements of s 11(a) read with s 23(g) of the Income Tax Act as part of the assessment. The new ground instead alleges that the

amount of R11 072 237 was not part of Baseline's gross income as defined in the Income Tax Act in that it was neither a receipt nor an accrual to Baseline for its own benefit.

[22] Baseline contended that it was entitled to rely on this new ground of appeal in terms of rule 32(3). It argued that the new ground is not a new ground of objection against a part or amount of the disputed assessment not objected to under rule 7.

[23] In its rule 33 statement of reply to Baseline's rule 32 statement, SARS took issue with Baseline's reliance on the new ground of appeal, maintaining that it was prohibited from doing so in terms of rule 32(3). This was because Baseline had included the amount of R11 072 237 as part of its gross income in its financial statements for the 2018 financial year and had declared the amount as part of its gross income for the tax year in its income tax return submitted to SARS. Baseline, continued the argument, had neither objected nor appealed against the inclusion of the amount of R11 072 237 in its gross income for the 2018 tax year, and had instead sought to have the amount excluded from taxable income by means of it being a deduction in terms of s11(a) of the Income Tax Act.

[24] As already stated, the Tax Court dismissed the application. It held that: '[T]he new ground of appeal essentially relates to a different amount (gross income amount) of the assessment as compared to that of the objection. The new ground seeks alteration on appeal of that different amount of the assessment, even though it uses the disputed amount of R11 million as the tool to achieve such alteration. Having regard to the substance of Baseline's objection and the facts of the case it cannot be correct that an objection to the disallowance of an expense amount for failing to meet the requirements of ss 11(a) and 23(g) of the [Income Tax Act] is equivalent to an objection against the gross income amount of the assessment on the basis that this amount is to be reduced because a portion thereof actually accrued to a non-taxpayer third party'.

The Tax Court found that the new ground does not fall within the ambit allowed by rule 32(3) for introduction at the appeal stage. In its view the new ground, properly considered, 'constitutes an entirely new case on appeal, aimed at the reduction of an amount [not] previously objected against, namely [Baseline's] gross income. It was not

merely a 're-packaging' of the legal basis upon which [Baseline] wished to have the disputed amount disregarded for the purposes of the determination of its income tax liability.'

[25] On appeal the full court endorsed the Tax Court's finding that the new ground raised by Baseline in its rule 32 statement was impermissible as it fell outside the bounds of rule 32(3). According to the full court 'any new ground of appeal that may be raised is therefore subject to the bounds and limitations set out in rule 10(3) and must be a new ground raised in relation to the *selfsame* part of, and/or amount in, the disputed assessment that was initially objected to under and in terms of rule 7'. In its view 'what subrule 32(3) therefore effectively permits is the raising of a *new reason or argument on appeal* for why the Commissioner was wrong in disallowing an objection to an assessment, but does not permit the raising of a new factual or legal basis for objecting to the assessment, which amounts to a *new objection* to it, which was never raised at the time'. The full court accordingly dismissed the appeal.

[26] Baseline submitted before the full court and in this Court that, based on the language, context and purpose of the new rule 32(3), the new ground of appeal it is advancing in the rule 32 statement does not constitute a new ground of objection and is therefore not ousted by rule 32(3). Baseline argued further that the new ground of appeal relates to the same part and the same amount of the disputed assessment objected to. Hence, its new ground of appeal is nothing more than an additional ground in support of the same part and the same amount of the disputed assessment objected to under rule 7. It contended that its objection was directed at its taxable income being increased by the value of the disputed amount of R11 072 237, albeit on the basis that the disputed amount constituted an income-deductible expense. For this contention Baseline relied on ITC 1912 80 SATC 417 (*ITC 1912*) in which it was held that 'An appellant may raise a new ground of objection in the [Tax Court Rule] 32 statement, provided that it relates to a part or an amount in the assessment that was placed in dispute by the objection stated under [Tax Court Rule] 7'.³

³ Income Tax Case No 1912 80 SATC 417 para 30.

[27] As regards the language, Baseline correctly observed that it is apparent from the wording of the rule that it comprises two parts. The first part is worded in permissive language and the latter part after the word 'unless' which is worded as a *proviso*, is couched in prohibitory language. The purpose of the *proviso* is to qualify what is contained in the preceding part of the rule.⁴ What this means is that a new ground of appeal is permitted under rule 32(3) unless it constitutes an objection levelled against 'a part or amount' of the disputed assessment to which the taxpayer did not object in its notice of objection lodged under rule 7. In other words, a new ground of appeal is permitted if it constitutes an objection against a 'part or amount' of the disputed assessment to which the taxpayer objected in its notice of objection.

[28] Baseline submitted that in substance there is no difference between its reduction ground and the new receipt/ accrual ground. It argued that in terms of the new receipt/ accrual ground of appeal Baseline still objects to the disputed amount being included in its taxable income, but on the alternative basis that it should not have formed part of its gross income. It pointed out that the facts underlying the original ground of objection and the new ground of appeal are identical as appear from its objection. The new ground, Baseline argued, was foreshadowed in its notice of appeal. It submitted that if the new ground was not allowed the Tax Court would be prevented from ventilating the true issues between the parties. And this would result in SARS being allowed to exact tax which was not due and payable to it. Baseline urged this Court to prefer the construction of rule 32(3) it contended for, as it advances a taxpayer's right of access to courts which in turn guarantees a fair hearing as contained in the Bill of Right, and that SARS's construction should be rejected.

[29] SARS argued that any interpretation of rule 32(3) must take into account the purpose of the subrule, which is to confirm the limitation upon new grounds of appeal being introduced into a rule 32 statement. It submitted that the sensible meaning to attribute to rule 32(3) is that if a new ground is raised against a part or an amount of the disputed assessment that was not objected to under rule 7, then the taxpayer is not allowed to introduce such ground in its rule 32 statement. Thus, under rule 32(3)

⁴ *South African Textile and Allied Workers' Union and Others v Skipper International (Pty) Ltd* 1990 (4) SA 842 (A) at 847A.

if a new ground is against any *part* or any amount of the disputed assessment not objected to under rule 7, then the new ground is impermissible.⁵ According to SARS a reference to ‘part’ of a disputed assessment in rule 32 must therefore be a reference to identifiable separate portions of assessments that are present.

[30] SARS further submitted that on Baseline’s interpretative approach, the internal procedures leading up to the tax appeal will effectively be subverted. There would be no point in considering objections on grounds (a), (b) and (c) and ruling on them only for the taxpayer to introduce a ground (d) at some later stage.

Interpretation

[31] In interpreting the provisions of rule 32(3) and in particular the phrase ‘a part or amount of the disputed assessment’ this Court must be guided by the following principles: the inevitable point of departure is the language used in the provision of rule 32(3) considering its text, context and purpose in the light of the overarching scheme of the Income Tax Act and the TAA.⁶ The context is not limited to reading a provision together with other provisions in the statute, but it includes the social and historical background of the legislation.⁷

[32] The words ‘part’ and ‘amount’ are not defined in the Tax Court rules. There is a difference of opinion between the parties concerning the meaning of the words in question. Baseline, relying on the Oxford English Dictionary, contended that the word ‘part’ means ‘an amount or section which, when combined with others, makes up the whole of something’ or ‘some but not all of something’. According to Baseline the word ‘amount’ means ‘a quantity of something, especially the total of a thing or things in number, size, value, or extent’. Based on the dictionary meanings of these words, Baseline submitted that their ordinary meaning is very wide and free from any internal qualification.

⁵ Own emphasis.

⁶ See *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) para 18 and *Capitec Bank Holdings Limited and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* [2021] ZASCA 99; [2021] 3 All SA 647 (SCA); 2022 (1) SA 100 (SCA) para 51.

⁷ *Department of Land Affairs and Others v Goedgelegen Tropical Fruits (Pty) Ltd* [2007] ZACC 12; 2007 (10) BCLR 1027 (CC); 2007 (6) SA 199 (CC).

[33] On the other hand, SARS, relying on the shorter Oxford English Dictionary, which defines an article 'a' as meaning 'one, some, any,' argued that the prohibition is against any part or any amount of the disputed assessment not objected to under rule 7.

[34] The phrase 'a part or amount of the disputed assessment' appearing in the old rule 32(3) was considered by court in *ITC 1912*. Keightley J, as she then was, had this to say regarding the meaning of the words:

'This must mean that the excised phrase, "a part or amount of the disputed assessment", is the working part, or focus, of the prohibition. In other words what is prohibited is for a taxpayer to appeal against a portion of the assessment in respect of which no objection was ever raised. For example, if an objection was raised to the penalties imposed but not to the VAT portion of the assessment, an appellant is not permitted, through the guise of an appeal, effectively to raise a subsequent objection to the VAT portion....

An appellant may raise a new ground of objection in the [Tax Court Rule] 32 statement, provided that it relates to the part or an amount in the assessment that was placed in dispute by the objection stated under [Tax Court Rule] 7.'

[35] This means that if a taxpayer raises a new ground of appeal that has a new factual or legal basis that targets a different part or amount of the disputed assessment that was never objected to in the rule 7 notice, that would be prohibited by rule 32(3). On the other hand, if a taxpayer advances a new argument or different legal approach to attack the same part or amount that was already objected to, that would be permitted as long as the new argument does not change the substance of the original objection.

[36] I, therefore, disagree with Baseline's submission that the words 'part' and 'amount' appearing in rule 32(3) have a very wide meaning free from any internal qualification. Rule 32(3) allows the introduction of a new ground of appeal in the rule 32 statement, but that capacity is not without any constraint. It is subject to the parameters established by the subrule. The full court was therefore correct in concluding that 'an interpretation of rule 32(3) without having regard to the provisions of rule 7 would not be proper, as it lays the foundation for the appeal process that follows in the event of the disallowance of an objection.'

[37] The purpose of rule 32(3) is to prevent surprise and trial by ambush by ensuring that a taxpayer who intends to rely on the ground of appeal not raised in its objection and notice of appeal gives notice and obtains leave before doing so. In this it thus promotes finality and efficiency in Tax Court proceedings. I therefore do not agree with the following statement in *ITC 1912* at paragraph 28:

‘It seems to me to be clear from the scheme of the TCR that an appellant taxpayer is no longer restricted, on appeal, to the grounds of objection originally filed under TCR 7. Provision is made for new grounds to be advanced in TCR 10(4) and in TCR 33. The latter rule introduces the innovation that SARS may now file a reply to appellant’s TCR 32 statement. That reply must deal with ‘any new grounds’. This innovation was included in the present TCR that were promulgated in 2014. The other relevant innovations included in the present rules were TCR 31(3) and 32(3). It is also significant that under the present rules statements made under TCR 31, 32 and 33 may be amended, either by agreement or on application to court. This is further evidence of an intention to broaden rather than to restrict the ambit of the issues that can be dealt with in the tax appeal process.’

[38] If it is correct that rule 32(3) intended to broaden rather than restrict the ambit of the issues that can be dealt with on appeal, this would have been achieved by simply stating: *The appellant may include the new ground of appeal in the statement*.⁸ A *proviso* that limits or qualifies what is stated in the first part of the provision would have been unnecessary.

[39] Rule 32(3) should be interpreted with due regard to its historical background and that background is material to understanding both its purpose and its proper scope. In general, rule 32 was introduced to crystallise the real issues in dispute, define the scope of the appeal and to ensure that the Tax Court adjudicates only those matters properly raised and ventilated in the pleadings thereby preventing litigation by ambush. In other words, it was intended to prevent parties from shifting their case midstream to protect the integrity of the objection and appeal process which is foundational to tax administration.

[40] A new ground of appeal sought to be relied upon in a rule 32 statement is not permissible if it is directed at an issue not covered in the grounds of objection and

⁸ Own emphasis.

notice of appeal. This is because it introduces a different case altogether. The new ground in this case (receipt/ accrual) fundamentally differs from the deduction ground. The deduction ground pleads that the disputed amount fell to be excluded from the taxable income because it is a deductible expense, while the receipt/accrual ground pleads that the disputed amount should be excluded from the gross income as it never accrued to or was received by Baseline. The new ground is not, in substance, the same as that stated or foreshadowed in the initial objection under rule 7.⁹

[41] In its rule 10 notice of appeal, Baseline confirmed that its grounds of appeal were precisely the same as its ground of objection. Up to that point what is evident is that SARS and Baseline worked from the same figure of the gross income which was accepted as correct. There was never, until the filing of the rule 32 statement, any suggestion that Baseline disputed the gross income it disclosed in the relevant financial statements.

[42] What Baseline seeks to achieve through the mechanism of its rule 32 statement, is a reduction of the assessment which is something it could have done in terms of s 93 of the TAA or by way of an objection and appeal procedure in terms of s 104 of the TAA. Baseline is seeking to build a new case altogether.

[43] It was held in *GB Mining and Exploration SA (Pty) Ltd v Commissioner for the South African Revenue Service (GB Mining)*¹⁰ that:

‘A taxpayer may seek a reduction in the Commissioner’s assessment in terms of s 79A without objecting to the assessment in terms of s 81. The Commissioner’s power to reduce the assessment exists ‘notwithstanding the fact that no objection has been lodged or appeal noted’. In addition, the power of the Commissioner is not restricted to its mero motu exercise, because the error in the assessment has to be ‘proved to the satisfaction of the Commissioner’. To discharge this burden of proof the taxpayer must place information before

⁹ *Matla Coal Ltd v Commissioner for Inland Revenue* 1987 (1) SA 108 (A) (*Matla*). See also *Dr WAA Gouws (Johannesburg) (Pty) Ltd v HR Computek (Pty) Ltd and Others* [2025] ZASCA 103; 2025 (6) SA 89 (SCA) (*HR Computek*); *Commissioner for the South African Revenue Service v Free State Development Corporation* [2023] ZASCA 84; 2024 (2) SA 282 (SCA); 86 SATC 289 (*Free State Development*). *Taxpayer B v Commissioner for the South African Revenue Service* [2022] ZATC 10; 85 SATC 388; and *TALT v Commissioner for South African Revenue Services* (A2023/077887) [2024] ZAGPJHC 827; 87 SATC 222 (27 August 2024) (*TALT*).

¹⁰ *GB Mining and Exploration SA (Pty) Ltd v Commissioner for the South African Revenue Service* [2014] ZASCA 29; 2015 (4) SA 605 (SCA); 76 SATC 347 (*GB Mining*) paras 22 to 25 and 28.

the Commissioner to substantiate the error relied upon. In doing so it may rely upon an error that it made in its return.

The Commissioner may therefore act in terms of s 79A to reduce an assessment in the absence of an objection in terms of s 81 of the Act and may do so even where it flows from incorrect information provided in the taxpayer's return. Can the taxpayer who has been the cause of the incorrect assessment by the Commissioner instead claim to be 'aggrieved' thereby and object to an assessment in terms of s 81?

The statement that the powers of the Commissioner under s 79A can be exercised 'notwithstanding the fact that no objection has been made', suggests that an alternative route for the taxpayer to follow is by way of objection and, if necessary, appeal. That was the conclusion of Hurt J in ITC 1785 67 SATC 98, where he said;

' . . . the fundamental object of tax legislation is to exact from each citizen his due. What is "due" is, in each case (questions of penalty aside), strictly prescribed by statute and the amount of the taxpayer's taxable income must, in the process of assessment, be accurately determined preparatory to the calculation of the amount which he (or she) is required to hand over to the fiscus. In that light, it is clear that a taxpayer whose taxable income has been determined on an erroneous basis, is always "aggrieved" even if the source of error is entirely attributable to him.'

I agree with Hurt J, notwithstanding the oddity of a taxpayer being aggrieved by an assessment based on the erroneous information it provided in its return. Accordingly, it was permissible for GB Mining to follow the course that it did.

...

The taxpayer accordingly bears the onus of satisfying the Commissioner that the information furnished is incorrect and that a reduction in the assessment is justified. In order to do this, additional evidence would have to be placed before the Commissioner. The nature of this evidence will depend upon the facts of each case and particularly the nature of the erroneous information supplied to the Commissioner. So for example, the fiscus might rightly ask how it can be expected to alter or reduce an assessment when information supplied by a taxpayer is not withdrawn or substituted so as to enable the reduction or alteration contended for. This problem arises in the present case as shown below.'

[44] The construction of rule 32(3) contended for by Baseline must be rejected as it does not advance the finality of the tax proceedings. If it were to be accepted SARS

might be prejudiced by Baseline shifting the grounds of its objection to the assessment. The inclusion of the new ground of appeal in the rule 32 statement would require reconsideration of Baseline's objection in the light of the new ground and if it was disallowed then the appeal process would follow. This is clearly an untenable situation. *Matla, Free State Development, ITC 1912 and TALT* cases do not assist Baseline. The new grounds of appeal in those cases were permissible as in substance they still amounted to the grounds of objection which were initially advanced in terms of rule 7 or were foreshadowed in the initial grounds.

[45] In *HR Computek* the only amounts of assessment that the taxpayer had objected to and appealed against were the levying of additional tax at 200%, interest and penalty. In a rule 11 statement which the taxpayer subsequently filed, it asserted for the first time that in calculating its VAT liability SARS had included the turnover figures of a related entity. This Court confirmed the Tax Court's determination that the taxpayer was not entitled to raise the capital amount as an issue at the trial on the basis that it had not raised an objection to the capital assessment in its objection.

[46] There is a further reason why Baseline's construction of the subrule should be rejected. It is not possible to argue that the disputed amount is an expense that was incurred in the production of income, for the purposes of trade, and not of a capital nature while simultaneously arguing that the same amount should be removed from the gross income as it was not received by, or accrued to, Baseline.

[47] Consequently, Baseline's new receipt/accrual ground and old deduction ground cannot exist side by side. Thus, any effort by Baseline to argue the new ground would have to be accompanied by a concession that SARS' disallowance of the payment of the profit distribution as a deduction was correct.

[48] From the outset, Baseline had declared the amount of R11 072 237 as part of its gross income for the 2018 tax year and sought to exclude it from its *taxable income* for that year by claiming it as a deduction in terms of s 11(a) of the Income Tax Act. In its objection it did not seek to exclude the amount of R11 072 237 from its *gross income* for the 2018 tax year and accordingly, the gross income of R320 846 361

which it reflected in its return and annual financial statements, was not objected to under rule 7.

[49] Baseline was subjected to an audit. At no stage did it allege that the payment to BECP involved the amounts that do not form part of its gross income. Had Baseline done so, that would have afforded SARS the opportunity to scrutinise the transaction further on the basis that it involved amounts declared as revenue now being alleged to be income of a third party instead.

[50] It is therefore clear that Baseline is not pleading an alternative new ground that is complementary to its grounds of objections, but rather a new ground that contradicts those put forward in its objection. This is not permissible.¹¹ The full court can therefore not be faulted for concluding that the tax court was correct in holding that the new ground raised by Baseline in its rule 32 statement was impermissible, as it fell outside the bounds of rule 32(3).

Order

[51] In the result the appeal is dismissed with costs, including those of two counsel.

D H ZONDI
DEPUTY PRESIDENT

¹¹ *African National Congress v Ezulwini Investments (Pty) Ltd* (979/2022) [2023] ZASCA 154 (24 November 2023) para 38.

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