

THE REPUBLIC OF SOUTH AFRICA



IN THE TAX COURT OF SOUTH AFRICA
(HELD AT MEGAWATT PARK, JOHANNESBURG)

Case No: IT 76811

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

4 September 2026

DATE

SIGNATURE

In the matter between:

TAXPAYER OLIE

APPELLANT

and

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

RESPONDENT

J U D G M E N T

This judgment is handed down electronically by circulation to the parties or their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 4 September 2026.

SENYATSI, J**INTRODUCTION**

[1] This is an appeal against the disallowance by the Commissioner for the South African Revenue Service (“SARS”) of certain deductions claimed by the appellant, Taxpayer Olie Trading (Pty) Ltd (“Taxpayer Olie” or “the taxpayer”), for the 2018, 2019 and 2020 years of assessment. The dispute concerns two categories of expenditure that Taxpayer incurred on behalf of its associated company, Clarisse Mining Limited (“Clarisse”), during a period when Clarisse’s mine was under “care and maintenance.”

[2] The appellant contends that it is entitled to deduct these expenses in terms of section 11(a) read with section 23(g) of the Income Tax Act 58 of 1962 (“the Act”). SARS contends that the expenses do not satisfy the requirements of the general deduction formula and were not incurred by the appellant in the production of its income or for the purposes of its trade.

[3] The matter was heard over three days from 11 to 13 August 2026. The appellant called one witness, Mr Summers, the Group Financial Controller of the South African companies in the Technologies Group. The Respondent did not call any witnesses.

BACKGROUND FACTS

[4] The material facts are largely common cause between the parties. Taxpayer is a wholly owned subsidiary of Technologies Incorporated, a company listed on the New York Stock Exchange. Taxpayer is in the business of processing, marketing and selling foundry-grade chromite sand.

[5] Clarisse is a company that holds a mining right to mine chrome ore in the North West Province. Company-one holds a 74% shareholding in Clarisse, making Clarisse a “connected person” in relation to Taxpayer as defined in section 1 of the Act. The remaining 26% shareholding is held by a Black Economic Empowerment company.

[6] On 22 July 2009, Taxpayer and Clarisse entered into an offtake agreement (“the agreement”). In terms of the agreement, Clarisse undertook to supply and sell to Taxpayer whatever quantity of chrome ore it had available for sale. The purchase price was determined as the cost price per tonne of production plus 6.5%, plus VAT.

[7] Clause 12 of the agreement provided as follows:

“In the event that the seller goes into or is on care and maintenance, the purchaser shall be liable for all the operational costs of the seller. Such liability shall cease as and when the seller becomes operational again.”

[8] On 31 August 2017, Clarisse went into care and maintenance. It remained in care and maintenance throughout the 2018, 2019 and 2020 years of assessment. During this period, Clarisse ceased all mining operations.

[9] The expenses in dispute fall into two categories:

Category 1: Production costs that Taxpayer paid on behalf of Clarisse prior to 31 August 2017, in anticipation of recovering these costs from future purchases of chrome ore. When Clarisse went into care and maintenance, Taxpayer was unable to recover these costs. The amount of R25 140 766 was written off as a bad debt in the 2018 year of assessment.

Category 2: Operational costs that Taxpayer incurred on behalf of Clarisse during the care and maintenance period, in terms of clause 12 of the agreement. These amounts were:

- (a) 2018: R11 775 057
- (b) 2019: R14 683 877
- (c) 2020: R14 019 378

[10] On 31 August 2022, SARS issued additional assessments disallowing these deductions. SARS contended that the expenses did not relate to Taxpayer but to Clarisse and were not incurred in the production of Taxpayer's income or for the purposes of its trade.

[11] Taxpayer lodged an objection on 12 October 2022. On 14 March 2023, SARS partially disallowed the objection. Taxpayer then filed a notice of appeal on 2 May 2023.

THE EVIDENCE OF MR SUMMERS

[12] Mr Summers testified that he is the Group Financial Controller of the South African companies in the Technologies Group. He has been employed by the group since 2009 and was involved in the negotiation and conclusion of the offtake agreement.

[13] Mr Summers explained that Taxpayer entered into the agreement to secure a reliable supply of chrome ore for its processing operations. Taxpayer invested approximately R40 million in erecting a chrome processing plant at Clarisse's mine. He testified that had Clarisse erected the processing plant itself, the BEE shareholder Company-Three Proprietary Limited (Company-Three) would have had to contribute 26% of the costs, which it could not afford.

[14] Regarding the payment arrangements, Mr. Summers testified that Taxpayer would pay for Clarisse's production costs and recoup these costs when Taxpayer purchased chrome ore. Clarisse would pay Taxpayer by setting off what it owed against what Taxpayer owed it. He explained that the time between extraction of chrome ore and receipt of payment for chromite sand was between 120 to 365 days, and this risk was carried by Taxpayer.

[15] When Clarisse went into care and maintenance, Mr Summers testified that Taxpayer paid Clarisse's operational costs as required under clause 12 of the agreement. He stated that Clarisse had to remain liquid and solvent to retain its mining right. The majority of the operational costs related to security and electricity, with most costs relating to securing Taxpayer's chrome processing plant on the mine.

[16] Mr Summers explained that Taxpayer continued to trade during the care and maintenance period, having concluded a distribution agreement with Company-Two Operations South Africa (Pty) Ltd to promote and sell chromite sand.

[17] Under cross-examination, Mr Summers conceded that all invoices for the operational costs were in the name of Clarisse, as Clarisse had the contractual relationship with the service providers. He also conceded that the Category 1 expenditure (R25 140 766) was incurred over a period of time prior to 2018 and was not incurred in a single year of assessment.

[18] Mr Summers further conceded that the costs incurred during the care and maintenance period were not costs of acquiring trading stock but were holding costs to maintain the mine in a state where it could resume operations. He acknowledged that the monies advanced to Clarisse were without the prospect of repayment.

THE LEGAL FRAMEWORK

[19] The dispute concerns the application of the general deduction formula in section 11(a) of the Act, read with the prohibition in section 23(g).

These provisions provide as follows:

Section 11(a):

"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."

Section 23(g):

“No deductions shall in any case be made in respect of the following matters, namely
- (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.”

[20] A taxpayer claiming a deduction bears the onus of proving that the expenditure satisfies all the requirements of these provisions. In terms of section 102(2) of the Tax Administration Act 28 of 2011, the taxpayer bears the burden of proof.

ANALYSIS

I. The requirements of section 11(a) and section 23(g)

[21] For expenditure to be deductible under section 11(a) read with section 23(g), it must satisfy the following requirements:

1. The expenditure must be “actually incurred” by the taxpayer;
2. The expenditure must be incurred “in the production of income”;
3. The expenditure must be “laid out or expended for the purposes of trade”;
4. The expenditure must not be of a “capital nature.”

[22] It is the first three requirements that are decisive in this matter. I will address each in turn.

II. Was the expenditure “actually incurred” by the taxpayer?

[23] In *Port Elizabeth Electric Tramway Co Ltd v CIR*,¹ the court held that expenditure is “actually incurred” when the taxpayer has become liable to pay it. The liability must be that of the taxpayer, not a third party. Although that case dealt with whether the company could deduct payment made to a widow and legal fees as expenses incurred by the company in the production of income, the principles established in that case have been applied consistently by our courts.

[24] In this case, the invoices for the Category 1 and Category 2 expenses were issued in the name of Clarisse, not Taxpayer. Mr Summers conceded this under cross-examination. Clarisse had the contractual relationship with the service providers. If Clarisse had defaulted on payment, the service providers would have had a legal claim against Clarisse, not Taxpayer.

¹ 1936 CPD 241,8 SATC 13.

[25] The appellant argues that it “incurred” the expenses because it was contractually obliged to pay them under clause 12 of the agreement. However, the question is not whether Taxpayer was obliged to *pay* the expenses, but whether it was the party that *incurred* them in the sense contemplated by section 11(a).

[26] The distinction is significant. A taxpayer may pay another person’s expenses, but that does not mean the taxpayer “incurred” them in the production of its own income. The expenses remain those of the other person. The fact that the taxpayer had a contractual obligation to pay them does not transform them into the taxpayer’s own expenses for tax purposes.

[27] In *CIR v Standard Bank of SA Ltd*,² the court held that a taxpayer cannot claim a deduction for expenditure that was not its own, even if it had a legal obligation to pay it. The expenditure must be incurred by the taxpayer in its own capacity. In this regard, the Court will assess the closeness of the connection between the expenditure and the income-earning operations.³

[28] The appellant’s argument that the contractual agreement “*allowed for this arrangement*” is misplaced. As stated in *Napier v Barkhuizen*⁴, freedom of contract is not absolute. A contractual clause may regulate obligations *inter partes*, but it cannot prevail where its effect conflicts with mandatory statutory provisions. The Act requires expenditure to be incurred by the taxpayer claiming the deduction. A contract cannot override this requirement.

[29] The invoices being in Clarisse’s name is a clear indication that the expenses were Clarisse’s, not Taxpayer’s. Taxpayer was merely paying Clarisse’s debts. This is not expenditure “actually incurred” by Taxpayer for purposes of section 11(a).

III. Was the expenditure “in the production of income”?

[30] The leading authority on the meaning of “in the production of income” is *Port Elizabeth Electric Tramway Co Ltd v CIR*⁵ (supra), where the court held that the purpose of the expenditure must be looked to. If it is performed for the purpose of earning income, then the expenditure attendant upon it is deductible.

² 1985 (2) SA 192 (A) at para 19.

³ See *CIR v Nemojim* 1983 (4) SA 935 (A), at 947 G-H.

⁴ 2006 (4) SA 1 (SCA) at para 59.

⁵ Foot note 1 above.

[31] In *CIR v Nemojim (Pty) Ltd*⁶, the court held that there must be a direct and sufficient link between the expenditure and the income-earning operations of the taxpayer. This case dealt with the purchase of shares of non-operating companies with the purpose of selling the shares in future whilst earning dividend once the companies resumed trading at profit. The court held that the cost of sale when the shares are sold at profit was deductible.

[32] In this case, the Category 2 expenses (care and maintenance costs) were incurred during a period when Clarisse's mine was not operating. No mining operations were being conducted. No chrome ore was being produced. No income was being generated from Clarisse's mining operations.

[33] The appellant argues that the expenses were incurred to secure its future supply of chrome ore, which was necessary for its income-earning operations. However, the authorities make clear that expenditure incurred to secure future income is often capital in nature, not revenue. More importantly, as already stated, the expenditure was incurred for the obligations of a third party.

[34] In *Sub-Nigel Ltd v CIR*,⁷ the court held that expenditure incurred to maintain the income-earning structure is capital in nature. The court held that where the loan is obtained for the purpose of declaring dividend, no deduction will be allowed as the loan was not for the purpose of production of income. The care and maintenance expenditure was incurred to preserve the mine for future operations. It was not incurred in the production of current income.

[35] The appellant's argument conflates its activities with those of Clarisse. It is Clarisse that was under care and maintenance, not Taxpayer. While Taxpayer continued to trade (having secured a distribution agreement with Company-Two), that does not mean the care and maintenance expenses it paid on Clarisse's behalf were incurred in the production of its own income. The expenses were incurred to preserve Clarisse's mining right and operations, not to generate Taxpayer's income.

[36] Mr Summers conceded under cross-examination that the Category 2 expenses were "holding costs" to maintain the mine in a state where it could resume operations. This reinforces the conclusion that the expenses were directed at preserving the income-earning structure for future operations, not producing income in the current years of assessment.

⁶ 1983 (4) SA 935 (A).

⁷ 1948 (4) SA 580 (A), 15 SATC 381.

IV. Was the expenditure “laid out or expended for the purposes of trade”?

[37] Section 23(g) prohibits deductions for expenditure that was not “*laid out or expended for the purposes of trade*”. This requirement is closely linked to the “*in the production of income*” requirement.

[38] In *CIR v Genn & Co (Pty) Ltd*,⁸ the court held that expenditure is for the purposes of trade if it is incurred in the carrying on of the taxpayer’s business. The expenditure must be connected to the taxpayer’s business operations.

[39] In this case, the expenses paid on behalf of Clarisse were not incurred in Taxpayer’s trade of processing, marketing and selling chromite sand. They were incurred to preserve Clarisse’s mining operations. Taxpayer’s trade did not include paying the operational costs of other companies, even if it had a contractual obligation to do so.

[40] The appellant argues that the expenses were for the purposes of its trade because they were incurred to secure its future supply of chrome ore. However, this again conflates the preservation of future supply with the current carrying on of trade. The expenses were not incurred in the course of Taxpayer’s current trading operations. They were incurred to preserve a potential future source of supply.

[41] As the court held in *CIR v Pick ‘n Pay Employee Share Purchase Trust*,⁹ expenditure that is incurred to protect or preserve a source of income is not necessarily expenditure for the purposes of trade. There must be a direct nexus between the expenditure and the taxpayer’s trading operations. In that case, the accruals arising out of the disposal of shares in the employees’ share scheme held by the Trust were held to be of capital nature and not earned in the ordinary course of the taxpayer’s business. The appeal was dismissed.

V. The timing of the deduction (Category 1 Expenditure)

[42] Even if the Category 1 expenditure (the R25 140 766 written off as a bad debt) could otherwise be deductible, the appellant faces an additional obstacle. The evidence of Mr Summers, confirmed under cross-examination, established that this expenditure was incurred over a period of time prior to the 2018 year of assessment.

[43] Section 11(a) requires expenditure to be “actually incurred” in the year of assessment in which it is claimed. A taxpayer cannot carry forward expenditure from previous years and claim it in a later year.

⁸ 1955 (3) SA 293 (A) at 299B-G.

⁹ 1992 (4) SA 39 (A) at 46C-E.

[44] In *Concentra (Pty) Ltd v CIR*,¹⁰ the court held that expenditure must be claimed in the year in which it is incurred. If a taxpayer fails to claim a deduction in the correct year, it forfeits the right to claim it in a subsequent year.

[45] In *Subnige Ltd v CIR*,¹¹ the court reaffirmed this principle, stating: “*For the whole scheme of the Act shows that, as the taxpayer is assessed for income tax for a period of one year, no expenditure incurred in a year previous to the particular tax year can be deducted.*”

[46] The appellant’s witness conceded that the Category 1 expenditure included amounts that related to previous years. The appellant cannot now claim these amounts in the 2018 year of assessment. This is a further basis for disallowing the Category 1 deduction.

VI. The bad debt argument (section 11(j))

[47] The appellant originally claimed the Category 1 expenditure as a bad debt in terms of section 11(j) of the Act. Section 11(j) provides:

“(j) the amount of any debts due to the taxpayer which have during the year of assessment become bad, provided such amount is included in the current year of assessment or was included in the previous years of assessment in the taxpayer’s income.”

[48] For a debt to qualify as a bad debt deduction under section 11(j), it must be a debt due to the taxpayer. The debt must have been included in the taxpayer’s income in the current or the previous year of assessment.

[49] In this case, the expenses paid on behalf of Clarisse were not debts due to Taxpayer. They were expenses that Taxpayer had voluntarily paid (or was obliged to pay under the agreement). Clarisse did not owe Taxpayer these amounts; Taxpayer had simply paid Clarisse’s expenses. There was no debt in the sense contemplated by section 11(j).

[50] The amounts were not included in Taxpayer’s income in any previous year. They were payments made to third parties on behalf of Clarisse. They did not constitute income to Taxpayer. Therefore, the requirements of section 11(j) are not satisfied.

[51] The appellant’s attempt to recharacterise the expenses as costs of sales in its notice of objection does not assist it. The true nature of the expenses cannot be altered by reclassification in the financial statements. As the court held in *Sishen Iron Ore Company v*

¹⁰ 1990 (2) SA 371 (A).

¹¹ 15 SATC 381.

CIR (supra), the classification of expenditure is determined by a commonsense appreciation of the relevant facts, not by the label placed on the expenditure.

VII. The tax treatment of care and maintenance expenditure

[52] The taxation treatment of expenditure incurred during a care and maintenance period is well established. Such expenditure is not deductible as ordinary operational expenditure under section 11(a). Instead, it must be capitalised and treated as capital expenditure to be set off against future income when trade resumes.

[53] Section 15 of the Act provides for deductions from income derived from mining operations. It is common cause that a party that is under care and maintenance is not conducting mining operations. Hence, any expenditure incurred during this period is not deductible against current income.

[54] The practice of SARS is to capitalise such expenditure into the category of “unredeemed capital expenditure.” The right to deductibility is preserved until mining operations are resumed. This is the proper tax treatment of care and maintenance expenditure.

[55] In this case, Taxpayer (a non-mining company) sought to recharacterise expenditure that would ordinarily be added to Clarisse’s unredeemed capital expenditure as operational expenditure of Taxpayer, entitled to immediate deductibility. This is an impermissible tax avoidance arrangement.

[56] The fact that Clarisse and Taxpayer are separate legal entities does not entitle Taxpayer to claim deductions for Clarisse’s expenditure. As SARS correctly submitted, “no dualism in the form of one taxpayer claiming the expenditure of another” is permitted. The Act is structured around the concept of a “singular person” being the pivot point for both income and deductions.

CONCLUSION

[57] For the reasons set out above, I find that the appellant has failed to discharge the onus of proving that the disallowed expenses are deductible in terms of section 11(a) read with section 23(g) of the Income Tax Act.

[58] The expenses were not “actually incurred” by the appellant. They were Clarisse’s expenses, paid by Taxpayer. The invoices were in Clarisse’s name. Clarisse had the contractual relationship with the service providers. Taxpayer was merely paying Clarisse’s debts.

[59] The expenses were not incurred “in the production of income” of Taxpayer. They were incurred to preserve Clarisse’s mining operations for future potential income. They were holding costs, not production costs. They were not directed at generating Taxpayer’s current income.

[60] The expenses were not “laid out or expended for the purposes of trade” of Taxpayer. They were not incurred in Taxpayer’s trade of processing, marketing and selling chromite sand. They were incurred to preserve a potential future source of supply.

[61] The Category 1 expenditure was incurred in previous years and cannot be claimed in the 2018 year of assessment. The requirements of section 11(j) for a bad debt deduction are not satisfied.

[62] The contractual arrangement between Taxpayer and Clarisse cannot override the provisions of the Income Tax Act. Freedom of contract is not absolute. Where a contract conflicts with mandatory statutory provisions, the statute prevails.

[63] The appellant’s appeal is without merit. The assessments issued by SARS must be confirmed.

ORDER

In the result, I make the following order:

1. The appeal is dismissed.
2. The additional assessments for the 2018, 2019 and 2020 years of assessment are confirmed with interest.
3. The Appellant is ordered to pay the costs of the Respondent.
4. The costs shall include the costs of counsel.

SENYATSI J
PRESIDENT OF THE TAX COURT
GAUTENG DIVISION, JOHANNESBURG

Member of The Tax Court:
 Mr. Isaac Nkama
 Commercial Member

Member of The Tax Court:
 Ms Phindile Mkhize
 Accountant Member