REPUBLIC OF SOUTH AFRICA

IN THE TAX COURT OF SOUTH AFRICA

GAUTENG

CASE NO: IT 4412

[1] REPORTABLE: NO
[2] OF INTEREST TO OTHER JUDGES: NO
[3] REVISED

_____ _____
Date: L T MODIBA

In the matter between:

MR Z Appellant

and

THE COMMISSIONER FOR THE
SOUTH AFRICAN REVENUE SERVICE Respondent

J U D G M E N T

Modiba, J:

[1] The appellant appeals against the respondent's decision to disallow additional medical tax credits claimed in the amount of R89 977, in respect of the 2015 year of assessment, relating to the alleged treatment for his disability.

[2] The appeal arises from the Income Tax Return for Individuals (ITR12) the appellant submitted for the 2015 year of assessment on 4 August 2015. In it he claimed additional medical tax credits for expenditure allegedly related to his disability. As a result, he was due for a tax refund in the amount of R103 358,62. The respondent subjected the appellant's assessment to an audit process, and issued a revised assessment disallowing the additional medical tax credits the appellant claimed in the amount of R95 571.

[3] The appellant lodged his Notice of Objection (NOO), in which he disputed the disallowance on the same basis that he disputed the assessment. The respondent considered the objection and partially allowed it on 29 February 2016 by allowing R5 594 and disallowing R89 977. Dissatisfied with this outcome, the appellant lodged his Notice of Appeal (NOA) on 1 March 2016 wherein he reiterated his original claim for the medical tax credits referred to above.

[4] The Tax Board heard the appeal on 12 July 2016 and 30 November 2016, upholding the assessment. Dissatisfied with this outcome, the appellant referred the appeal to the Tax Court on 16 March 2017. The respondent filed its Statement of Grounds of Assessment and Opposing Appeal in terms of Rule 31(2) on 16 August 2017. The appellant served the respondent with his Statement of Grounds of Appeal in terms of Rule 32(2) on 20 November 2017.

[5] The background facts are largely common cause. During October 2014, the appellant was diagnosed with multiple sclerosis and peripheral polyneuropathy. He claimed medical tax credits in terms of section 6B(1) of the Income Tax Act ("ITA")[1] for expenses he contends he incurred when treating his disability. He is dissatisfied with the revised assessment, the disallowance of his objection and the upholding of the assessment by the Tax Board. He remains adamant that he is entitled to the medical tax credits claimed, as he incurred the relevant expenses to treat mercury poisoning which caused his disability.

[6] To administer section 6B(1), the respondent requires taxpayers who wish to claim an additional medical expenses tax credit related to the treatment of a disability to submit a Confirmation of Diagnosis of Disability (ITR-DD) form, completed and signed by a registered medical practitioner. The appellant's diagnosis is confirmed in the ITR-DD form he submitted to the respondent, completed and signed by his medical doctor, certifying him to be physically disabled and wheelchair bound as a result of multiple sclerosis.

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[1] Act 58 of 1962.

[7] Investigations the respondent conducted revealed that none of the persons the appellant consulted in respect the services and treatment for which he is claiming medical tax credits are registered with the Allied Professional Health Professions Council of South Africa ("AHPCSA").

[8] The respondent disallowed the appellant's objection on the basis that:

8.1 the appellant does not meet the requirements of section 6B(1)(*a*)(i) and (iii), in respect of qualifying medical expenses in that the relevant medical expenses were not paid to a duly registered medical practitioner, homeopath or herbalist. Further, they do not relate to medical treatment prescribed by a duly registered medical practitioner, homeopath or herbalist. In this regard, the respondent contents that the homeopath and herbalist consulted by the appellant is not duly registered with the Allied Health Professions Council of South Africa (AHPCSA) or any other governing body;

8.2 the appellant does not meet the requirements of section 6B(1)(*b*) in respect of his disability, in that the blood test report referred to by the appellant is related to mercury poisoning, which is not the certified cause of his disability.

8.3 the appellant does not meet the requirements of section 6B(1)(*c*) in respect of qualifying medical expenses in that the expense the appellant claims towards the X Machine was not incurred in consequence of his disability, and was not prescribed by a duly registered medical practitioner, homeopath or herbalist.

[9] On these grounds, the respondent contends that the appellant is not entitled to additional medical expenses tax credit for the 2015 year of assessment.

[10] The appellant, who appeared in person is the only person who gave oral evidence during the proceedings before the Tax Court. He testified concerning the investigations he personally conducted, which led him to conclude that his disability is caused by mercury poisoning. Blood tests conducted by a UK-based laboratory confirmed that his blood contains mercury. This prompted him to acquire the X Machine. It consists of a laptop computer, loaded with X software, linked to a signal transmitter/ receiver with cords and wires he straps on his body.

[11] The appellant contends that the X Machine conducts homeopathic diagnosis and prescribes treatment in the same way a homeopath would, thus saving him considerable money he would spend consulting a homeopath. Therefore, he further contends, it allows him to self-treat the mercury poisoning and therefore his disability. It is for that reason that he insists that the expenses incurred towards acquiring the X Machine ought to be allowed, firstly because it is a qualifying expenses and that he incurred it to treat his disability.

He hitherto consulted Mr Y, a homeopath and Ms D, a herbalist who expressed the same opinion. However, he called none of them to testify on his behalf. He relies on invoices purportedly issued by these persons, which he submitted to the respondent in support of the relevant tax return as proof that he consulted these persons in respect of the services specified therein.

[12] Section 6B(1) of the ITA defines "disability" provides that:

> " **'disability'** means a moderate to severe limitation of any person's ability to function or perform daily activities as a result of a physical, sensory, communication, intellectual or mental impairment, if the limitation—
>
> (*a*) has lasted or has a prognosis of lasting more than a year; and
>
> (*b*) is diagnosed by a duly registered medical practitioner in accordance with criteria prescribed by the Commissioner;"

[13] Section 6B(1) of the TAA defines "qualifying medical expenses" as follows:

> "(*a*) any amounts (other than amounts recoverable by a person or his or her spouse) which were paid by the person during the year of assessment to any **duly registered**:
>
> (i) medical practitioner, dentist, optometrist, homeopath, naturopath, osteopath, herbalist, physiotherapist, chiropractor or orthopaedist for professional services rendered or medicines supplied to the person or any dependant of the person;
>
> (ii) nursing home or hospital or any duly registered or enrolled nurse, midwife or nursing assistant (or to any nursing agency in respect of the services of such a nurse, midwife or nursing assistant) in respect of the illness or confinement of the person or any dependant of the person; or
>
> (iii) pharmacist for medicines supplied on the prescription of any person mentioned in subparagraph (i) for the person or any dependant of the person;
>
> (*b*) any expenditure that is prescribed by the Commissioner (other than expenditure recoverable by a person or his or her spouse) necessarily incurred and paid by the person during the year of assessment in consequence of any physical impairment or disability suffered by the person or any dependant of the person."

[14] Therefore, to meet the requirement of "disability" in section 6B(1), the appellant's disability must be diagnosed by a duly registered medical professional. Further, the diagnosis must have lasted or have a prognosis of more than a year.

[15] Based on the definition of "qualifying medical expenses" under section 6B(1), the following factors below ought to be considered when assessing a claim for additional medical expenses tax credit:

15.1 the relevant amounts must be paid to any duly registered medical practitioner, a homeopath and/or a herbalist for professional services rendered or for medicines supplied by a duly registered pharmacist for medication prescribed by any of the abovementioned persons;

15.2 relevant professionals must be registered with the Professional Health Professions Council of South Africa ("HPCSA") and/or the AHPCSA;

15.3 the expenditure must be prescribed by the Commissioner as necessarily incurred and paid by a taxpayer in consequence of any physical impairment or disability suffered by the person or any dependant of the person is allowed.

[16] The appellant bears the onus to prove that the amounts he is contesting are deductible.[2] He failed to present medical reports by a duly registered medical practitioner, homeopath or herbalist that concludes that his disability was caused by mercury poisoning. Neither did he call the relevant persons to testify during the appeal.

[17] This is of concern, given that it appears that not only did the appellant dispute the scope of his onus before the Tax Board, he also failed to submit affidavits by these persons on invitation by the respondent, contending, on the basis of *CIR v Goodrick* (1942 OPD) 12 SATC 279, that the invoices he submitted are sufficient to shift the onus to the respondent to show that the invoices were rendered by professionals who fall outside the purview of section 6B.

[18] In the absence of corroborating evidence, I find that such invoices do not constitute affirmative evidence.[3] Invoices can never serve as evidence of the renderer's registration as a medical professional. At the most, invoices evidence the amount charged by a specified service provider for a specified service. For that reason, they do not prove compliance with section 6B(1). Therefore they are insufficient to discharge the onus that the appellant bears.

[19] I therefore find that the appellant has failed to establish that the purchase of the X Machine, is an expense that is claimable under section 6B(1)(*a*)(i) and (iii).

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[2] Section 102(1)(*b*).
[3] ITC Case No 11329.

[20] The respondent contends that the X Machine is a device that the appellant acquired, and therefore falls to be assessed in terms of section 6B(1)(c). The appellant contends that it is not his claim that expense incurred when acquiring the X Machine falls under the Commissioner's list.

[21] Even if the appellant had relied on section 6B(1)(*c*), the appeal would still not succeed. He did not purchase the X Machine from a duly registered medical practitioner or homeopath. It is not his case that he uses the X Machine to function or perform his daily activities. In this regard too, there is no evidence before this court to prove that the X Machine was prescribed to enable the appellant to function effectively when performing his daily activities.

[22] In terms of section 130(1)(*b*) and (*c*) of the Tax Administration Act, the Tax Court may grant an order for costs in favour of a party in the event that the appellant's grounds of appeal are held to be unreasonable and also in the event that the Tax Court substantially confirms the decision of the Tax Board. The facts in this case justify such an order against the appellant. Before this court, he faced the same evidentiary burden that he faced before the Tax Board. Given that lack of evidence is the primary reason why he did not succeed before the Tax Board, he ought to have anticipated this hurdle and addressed it accordingly. He failed to do so and provided no explanation for such failure. This renders the appellant's grounds of appeal unreasonable. As a result, the Tax Board's outcome is sustainably confirmed in these proceedings. Under these circumstances a cost order against the appellant is justified.

[23] In the premises, the following order is made:

1. The appellant's appeal is dismissed.
2. The respondent's assessment is confirmed.
3. The appellant shall pay the costs of the appeal.

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L T Modiba
President of the Tax Court