**IN THE INCOME TAX SPECIAL COURT**
**(SOUTH EASTERN CAPE LOCAL DIVISION )**

**Date delivered:**

**The Honourable Mr. Justice A.R. Erasmus** **President**

**Mr. Saayman** **Account Member**

**Mr. Ferreira** **Commercial Member**

**In the appeal of:**

**(case no: 11011)**

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*Income Tax – gross income – reimbursement by employer of employees' medical costs in an in-house medical scheme – Employer obliged to make tax deductions as per para 2(1) of Fourth Schedule to Income Tax Act 58 of 1962*

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**JUDGMENT**

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**ERASMUS J:**

[1] The factual basis of the appeal is common cause. Over a number of years the appellant conducted an in-house medical aid scheme for the benefit of its employees. On 1 January 2000, the scheme was outsourced to a registered medical aid scheme in compliance with an amendment to the medical Schemes Act No 131 of 1998. This development however does not affect the issue arising in the matter.

[2] The scheme operated in the following manner. The employees used medical services and suppliers of their choice. They settled the accounts themselves in full. The appellant thereafter reimbursed the employees 75% of the medical costs, subject to annual limits whereafter the employer's participation was 100%. In the case of prescribed medicines, the employee was reimbursed 60% of the costs.

[3] Para 2(1) of the Fourth Schedule to the Income Tax Act 58 of 1962 dictates that every employer who pays any amount by way of remuneration to an employee shall deduct from that amount by way of employees' tax an amount which shall be determined as provided in paragraphs 9, 10, 11 or 12, whichever is applicable, in respect of the liability for normal tax of that employee, and shall pay the amount so deducted to the Commissioner within seven days after the end of the month in which the amount was deducted. The appellant did not deduct any amount from the employees' remuneration in respect of the reimbursements made on medical costs and medication. The Commissioner for the South African Revenue Service ruled in respect of the years ending February 1998, 1999 and 2000 that the reimbursements constituted taxable benefits subject to employees' tax as contemplated in para 2(1) of the Fourth Schedule. The Commissioner dismissed the appellant's objection to the assessments, hence the appeal to this Court.

[4] The dispute involves the question whether the reimbursements were taxable in the hands of the employees. A number of questions on that issue were canvassed in the dossier. However, at the appeal, Mr. Lewis, who appeared on behalf of the appellant, intimated that he relied exclusively on a single issue. That issue involved the question whether the reimbursements amounted to 'gross income' as defined in s1 of the Act, *viz* the total amount in cash received by the employee during the year in issue; such amount including any award received in respect of services rendered or by virtue of any employment. See too para 2(h) of the Seventh Schedule.

[5] Mr. Lewis submitted that the various amounts paid by the appellant to its employees under the medical aid scheme would constitute gross income only if they were designedly worked for (*CIR vs Pick 'n Pay Employees Share Purchase Trust 1992 (4) SA 39* at 57, *54*

*SATC* at 17). He further submitted that the definition of gross income requires a causal link between the receipt of the amount and employment (*Stander vs CIR 1997 (3) SA 617 (C) 59 SATC 212)*. He submitted that the employees worked in order to claim salaries, not to claim benefits under the scheme; that therefore their *quid pro quo* for the medical benefits was becoming ill.

[6] Counsel's contention cannot hold. It is so that the employee received the benefit only when he or she incurred and paid the medical expenses; however, the fact of requiring medical treatment was not the *quid pro quo* for the reimbursement. The employee received that benefit by virtue of his or her employment. This is clear from the employment contract, which states: 'Upon commencement of employment you will automatically become a member of the Company Medical Scheme.' The employees were obliged to render services to the appellant; the benefits were in respect of those services. The medical scheme was part of their employment benefits. The reimbursements paid thereunder were not gifts and as such unrelated to the employment of the beneficiaries; they were paid to the employee in his or her capacity of employee, by the appellant in its capacity of employer. The employee's services, in other words, was a *sine qua non* for the payment of their salaries, as well for the receipt of the medical benefits (see *Tuck vs CIR 1988 (3) SA 819 (A) 833C).* Those benefits clearly constituted 'gross income' taxable in the hands of the employees. The appellant should therefore have effected the deductions required in terms of para 2(1) of the Fourth Schedule.

[7] The members of the court are in agreement that the appellant has failed to discharge the onus of showing that the Commissioner's assessments were wrong (s 82 of the Act.)

[8] In the result, the appeal is dismissed.

In terms of s 83(19)(a) of Act NO. 58 of 1962, I hereby indicate that I consider that this judgment ought to be published for general information.

**A R ERASMUS**
**JUDGE OF THE HIGH COURT**
**IN THE INCOME TAX SPECIAL COURT**

**DATE: 8.6.2004**