

**STANDER v COMMISSIONER FOR INLAND REVENUE  
59 SATC 212**

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**Division:** Cape Provincial  
**Judges:** FRIEDMAN JP, FOXCROFT J and TRAVERSO J  
**Date:** 29 January and 7 February 1997

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*Income tax - Receipts and Accruals - Taxpayer adjudged one of top five bookkeeper/accountants of certain franchise dealers and in recognition of achieving excellent standards of performance in financial management was awarded a prize consisting of overseas holiday for himself and his wife - Cost to franchise dealer of trip amounting to R14 000 - Commissioner for Inland Revenue assessing to tax value of said prize in amount of R14 000 - Whether such award fell within definition of 'gross income' in [s 1](#) of the Income Tax Act [58 of 1962](#) - Common cause that award to taxpayer was of a fortuitous nature like an ordinary donation it was an award of a capital nature and therefore did not fall within general opening paragraph of definition of 'gross income' - Held that if taxpayer assessable to tax on the prize it could only be on the basis that prize in question fell within the ambit of para(c) of the definition of 'gross income' in [s 1](#) of Act [58 of 1962](#) - In order to fall within provisions of para(c) of definition of 'gross income' taxpayer must have received 'an amount' which would include a 'voluntary award' and 'amount' would have had to be 'in respect of services rendered' or 'by virtue of any employment or the holding of any office' - Held that, having gone on the trip, the taxpayer had not received any 'property' on which a monetary value could be placed in his hands and it did not constitute a right that could be 'turned into money' - Held that, having regard to the conditions applicable to the enjoyment of the award, the said trip had no 'value' in the taxpayer's hands which brought it within the terms of para(c) of the definition of 'gross income' - Held further that trip could not be said to have been given 'in respect of services rendered' as taxpayer had rendered no services to franchise dealer but had rendered services to his employer and fact that his services were beneficial to franchise dealer did not mean that award had been received 'in respect of services rendered' - Held further that taxpayer also did not receive award by virtue of 'the holding of*

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*any office' - Held accordingly that prize in question was on no basis subject to tax and should not have been included by Commissioner as part of taxpayer's income.*

Appellant, from about 1980, had been employed by Frank Vos Motors(Pty) Ltd as a secretary/bookkeeper.

Frank Vos Motors had entered into a franchise agreement with Delta Motor Corporation(Pty) Ltd, a manufacturer and distributor of motor vehicle which is marketed through franchise dealers whereby it held a franchise for the Worcester district.

In terms of the franchise agreement Frank Vos Motors was required to furnish monthly financial reports to Delta and these reports were drawn up by appellant and forwarded by Frank Vos Motors to Delta.

Towards the end of 1988 appellant received an invitation from Delta to attend a convention in Johannesburg where it was announced that he had been adjudged one of the top five bookkeeper/accountants of the franchise dealers in South Africa.

The awards, as far as Delta was concerned, were a marketing management strategy which were designed to motivate the people involved in Delta's field distribution of retail vehicles and recognised excellence in the various fields of Delta's activities.

Appellant, in recognition of achieving excellent standards of performance in financial management, was awarded a prize consisting of a seven-day overseas holiday for himself and his wife.

All the prize winners, about sixty in all, met in Johannesburg from where, under the leadership of a senior Delta official, they proceeded to travel to England, France and Switzerland where they were accommodated at Delta's expense and the cost to Delta of the airfares and accommodation for appellant and his wife amounted to R14 000.

Appellant had to present himself in Johannesburg and he received no tickets or vouchers in connection with the trip as these were presumably kept by Delta's representative who accompanied the prize winners. He was not permitted to take the cash instead of going on the trip, nor was the trip transferable to anyone else.

Appellant rendered a return of his income for the year of assessment ended 28 February 1990 which did not include any amount in respect of the prize that he had received.

The Commissioner for Inland Revenue issued a revised assessment in which the value of the prize, which was said to be R14 000, was assessed to income tax.

Appellant's objection to the aforementioned assessment was disallowed and he appealed to the Cape Special Court for Hearing Income Tax Appeals (*per* Conradie J) against the Commissioner's decision to disallow his objection. That appeal was dismissed and he then appealed to a full bench of the Cape Provincial Division.

'Gross income' is defined in [s 1](#) of the Income Tax Act [58 of 1962](#) in this way -

**'gross income'**, in relation to any year or period of assessment, means, in the case of any person, the total amount, in cash or otherwise, received by or accrued to or in favour of such person during such year or period of assessment from a source within or deemed to be within the Republic, excluding receipts or accruals of a capital nature, but including, without in any way limiting the scope of this definition, such amounts (whether of a capital nature or not) so received or accrued as are described hereunder . . .'

Para (c) of the definition of 'gross income' provided as follows-

(c) any amount, including any voluntary award, received or accrued in respect of services rendered or to be rendered or any amount (other than an amount referred to in [section 8\(1\)](#)) received or accrued in respect of or by virtue of any employment or the holding of any office.'

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*Held*

- (i) That the correctness or otherwise of the Commissioner for Inland Revenue's decision to include the amount of R14 000 or indeed any other amount in respect of the overseas trip awarded to appellant, in the revised assessment, depended upon whether such award fell within the definition of 'gross income' in [s 1](#) of the Income Tax Act [58 of 1962](#).
- (ii) That as the award to appellant was of a fortuitous nature, like an ordinary donation, it was an award of a capital nature and therefore did not fall within the general opening paragraph of the definition of 'gross income'; also, as appellant was not employed by Delta, the trip did not fall within the provisions of para(i) of the definition of 'gross income' in [s 1](#) of Act [58 of 1962](#) as the trip was not a 'taxable benefit' granted to appellant by his employer, Frank Vos Motors.
- (iii) That if appellant was assessable to tax on the trip in issue it could therefore only be on the basis that the trip fell within the ambit of para(c) of the definition of 'gross income' in [s 1](#) of Act [58 of 1962](#) and, to fall within the provisions of para(c) of the definition, what appellant received must be an 'amount' which would include a 'voluntary award' and the 'amount' would have to be 'in respect of services rendered' or 'by virtue of any employment or the holding of any office.'
- (iv) That the general definition of 'gross income' refers to the 'total amount, in cash or otherwise', received by the taxpayer, and includes 'such amounts' as are described in the paragraphs which follow the introductory definition; consequently, in order to qualify for inclusion in para(c) the 'amount' need not consist of money.
- (v) That the question which arises in the present case is whether the trip which appellant was given constituted 'property' which has a money value or whether it constituted a right that could be 'turned into money'; *ie* whether the prize of an overseas trip constituted 'property', *ie* did appellant, by being given this trip, acquire a right which had a monetary value in his hands?
- (vi) That the promise by Delta to give appellant an overseas trip amounted to an executory donation but the terms of the donation were not embodied in a written document signed by Delta and, consequently, Delta's offer of an overseas trip did not give rise to a valid contract of donation which was enforceable by appellant and appellant cannot be said to have acquired a 'right' even if a monetary value could be placed on the trip he received.
- (vii) That, having gone on the trip, appellant had not received any 'property' on which a monetary value could be placed in his hands - he was no more able to turn it into money or money's worth after accepting the award than he was at the time when the donation was still at the executory stage.
- (viii) That, as regards the further requirement of para(c) of the definition of 'gross income' that the trip must be 'in respect of services rendered', the fact that appellant's employment with Frank Vos Motors was a *sine qua non* of the receipt by him of the award sought to be taxed, was not sufficient to provide the necessary causal link between the services which he rendered to his employer and his obtaining of the award; those services did not constitute the *causa causans* of the award.
- (ix) That appellant did not seek the prize by entering a competition - nor did he expect to receive anything from Delta for the work he performed for Frank Vos Motors; he merely performed his normal duties for which he was remunerated by his employer and the fact that these duties were performed in a manner which Delta considered to be excellent was what qualified him to receive the prize; the fact that these services were beneficial to Delta did not mean that the award he received was 'in respect of' services rendered.

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- (x) That the approach of the court *a quo* (*ie* that one simply looks at what the consumer of the service would

have had to pay for it if he had not been given it for nothing) fails to take account of the impact of Watermeyer J's judgment in *WH Lategan v Commissioner for Inland Revenue* [2 SATC 16](#) as approved by the Appellate Division in *Commissioner for Inland Revenue v People's Stores (Walvis Bay) (Pty) Ltd* [52 SATC 9](#) and, having regard to the conditions applicable to the enjoyment of the award, the overseas trip had no 'value' in appellant's hands which brought it within the terms of para(c) of the definition of 'gross income' in [s 1](#) of the Income Tax Act [58 of 1962](#).

- (xi) That if the award to appellant cannot be said to consist of 'money's worth', then it does not qualify for inclusion in terms of para(c) of the definition of 'gross income' in [s 1](#); nor is there any basis upon which, on the facts of this case, 'money's worth' can be attributed to appellant's prize by seeking to place an 'objective' or 'market value' on it; whatever it cost Delta, or whatever a person who wished to go on such a trip would have had to pay for it, does not constitute an amount which can be said to have money's worth in appellant's hands.
- (xii) That appellant did not receive the award in question by virtue of 'the holding of any office' and therefore could not become liable in terms of para(c) of the definition of 'gross income' on the basis of the amount received being 'in respect of or by virtue of any employment or the holding of any office.'
- (xiii) That, accordingly, the overseas trip in question was on no basis subject to tax and should not have been included by the Commissioner for Inland Revenue as part of appellant's income.

Appeal dismissed with costs and revised assessment set aside.

**FRIEDMAN JP:** Delta Motor Corporation(Pty) Ltd ('Delta') is a manufacturer and distributor of motor vehicles which it markets through franchise dealers. One such dealer was Frank Vos Motors(Pty) Ltd ('Frank Vos Motors') which held a franchise for the Worcester district. From about 1980 Appellant ('Stander') was employed by Frank Vos Motors as a secretary/bookkeeper. In terms of the franchise agreement, Frank Vos Motors was required to furnish monthly financial reports to Delta. These reports were drawn up by Stander and forwarded by Frank Vos Motors to Delta.

Towards the end of 1988 Stander received an invitation from Delta to attend a convention in Johannesburg. There it was announced that he had been adjudged one of the top five bookkeeper/accountants of the franchise dealers in South Africa. In recognition of achieving excellent standards of performance in financial management Stander was awarded a prize consisting of a seven-day overseas holiday for himself and his wife. All the prize winners, about sixty in all, met in Johannesburg from where, under the leadership of a senior Delta official, they proceeded to travel to England, France and Switzerland. On the trip they were accommodated at Delta's expense. The cost to Delta of the airfares and accommodation for Stander and his wife amounted to R14 000.

For the year of assessment ended 28 February 1990 Stander rendered a return of his income which did not include any amount in respect of the prize he had received. Respondent ('the Commissioner') issued a revised assessment in which the value of the prize which was said to be R14 000 was assessed to income tax. Stander's objection to this assessment was disallowed. He appealed to the Income Tax Special Court against the Commissioner's decision to disallow his objection. That appeal was dismissed. He now appeals to this court against the decision of the Special Court.

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The correctness or otherwise of the Commissioner's decision to include the amount of R14 000 or indeed any other amount in respect of the overseas trip awarded to Stander, in the revised assessment, depends upon whether such award falls within the definition of 'gross income'. 'Gross income' is defined in [s 1](#) of the Income Tax Act No [58 of 1962](#) ('the Act') as follows:

"**gross income**", in relation to any year or period of assessment, means, in the case of any person, the total amount, in cash or otherwise, received by or accrued to or in favour of such person during such year or period of assessment from a source within or deemed to be within the Republic, excluding receipts or accruals of a capital nature, but including, without in any way limiting the scope of this definition, such amounts (whether of a capital nature or not) so received or accrued as are described hereunder . . .'

As the award to Stander was of a fortuitous nature like an ordinary donation it was an award of a capital nature (see *Commissioner for Inland Revenue v Lunnon* 1924 AD 94 at [981](#)) and therefore does not fall within the general opening paragraph of the definition of gross income. This is in fact common cause. It is also common cause that as Stander was not employed by Delta, the trip does not fall within the provisions of para(i) of the definition of gross income which refers to

'the cash equivalent, as determined under the provisions of the Seventh Schedule, of the value during the year of assessment of any benefit or advantage granted in respect of employment or to the holder of any office, being a taxable benefit as defined in the said Schedule . . .'

Paragraph (i) of the definition of gross income cannot apply to Stander as the trip was not a 'taxable benefit' granted to Stander by his employer, Frank Vos Motors.

If Stander is assessable to tax on this trip it can therefore only be on the basis that the trip falls within the ambit of para(c) of the definition of 'gross income'. By virtue of the provisions of para(c), 'gross income', includes

'any amount, including any voluntary award, received or accrued in respect of services rendered . . . or any

amount (other than an amount referred to in [section 8\(1\)](#)) received or accrued in respect of or by virtue of any employment or the holding of any office . . .'

[\(Section 8\(1\)\)](#) has no application to the present case.)

In order to fall within the provisions of para(c) of the definition of gross income, what Stander received must be an 'amount' which would include a 'voluntary award'. Moreover the 'amount' would have to be 'in respect of services rendered' or 'by virtue of any employment or the holding of any office.'

The first question therefore is: what is meant by an 'amount' in the context of [s 1](#) of the Act? The general definition of gross income, refers to the 'total amount, in cash or otherwise' received by the taxpayer, and includes 'such amounts' as are described in the paragraphs which follow the introductory definition. Consequently, in order to qualify for inclusion in para(c) the 'amount' need not consist of money.

The meaning of the word 'amount' was considered in *WH Lategan v Commissioner for Inland Revenue* 1926 CPD 2032. That case dealt with [s 6](#) of the Income Tax Act No [41 of 1917](#) which contained a definition of 'gross income' reading as follows:

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'The total amount received by or accrued to or in favour of any person other than receipts or accruals of a capital nature . . . and includes rent, interest, salaries, stipends, wages, allowances, the estimated annual value of any quarters or any board or residence, or any other benefit or advantage of any kind granted in respect of employment, whether in money or otherwise . . .'

Watermeyer J, in delivering the judgment of the Full Bench, pointed out that income was what a person earned by his work or his wits or by the employment of his capital and that the rewards which such person gets may be in the form of cash or some other kind of corporeal property or in the form of rights (p 208). Watermeyer J went on to state:

'Ordinarily speaking, the value of these rewards is the man's income. Unless the word 'amount' means something more than [an] amount of money, the definition given in the Act would not seem to be wide enough to include the 'value' of property or rights earned by the taxpayers, unless they were benefits granted in respect of employment.'

Watermeyer J added that the legislature could not have intended such a result and expressed the view that-

'. . . the word 'amount' must be given a wider meaning, and must include not only money, but the value of every form of property earned by the taxpayer, whether corporeal or incorporeal, which has a money value.' (p 208 - 209).

Finally Watermeyer J stated that:

'If this view be correct, then the taxpayer's income for taxation purposes includes not only the cash which he has received, or which has accrued to him, but the value of every other form of property which he has received or which has accrued to him, including debts and rights of action.'

In *Commissioner for Inland Revenue v People's Stores (Walvis Bay) (Pty) Ltd* 1990(2) SA 353(A)[3](#) the Appellate Division had occasion to consider *Lategan's* case. The Appellate Division confirmed the correctness of the proposition as stated by Watermeyer J that income, although expressed as an amount, need not be an actual amount of money, but may be

'every form of property earned by the taxpayer, whether corporeal or incorporeal which has a money value . . . including debts and rights of action.'

This proposition, according to Hefer JA who delivered the judgment of the court in the *People's Stores* case, was 'obviously correct'. At 364H - [I4](#) Hefer JA stated:

'It must be emphasised that income in a form other than money must, in order to qualify for inclusion in the 'gross income', be of such a nature that a value can be attached to it in money. As Wessels CJ said in the *Delfos* case (*Commissioner for Inland Revenue v Delfos* 1933 AD 242[5](#)) *supra* at 251:

'The tax is to be assessed in money on all receipts or accruals having a money value. If it is something which is not money's worth or cannot be turned into money, it is not to be regarded as income.'

See also in this regard *Tennant v Smith (Surveyor of Taxes)* [1892] AC 150 (No 148 3 TC 158). In that case the taxpayer who was employed by a bank was obliged, as part of his duties, to occupy a house which he was not entitled to sublet or to use for any purposes other than the bank's business. The question arose as to whether the value of his occupation of the house was subject to income tax. It was held by the House of Lords that the occupation of the house

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rent free did not constitute income in the taxpayer's hands. Lord Halsbury LS stated at 156 (TC 164) that-

'. . . the Act refers to money payments made to the person who receives them, though, of course, I do not deny

that if substantial things of money value were capable of being turned into money they might for that purpose represent money's worth and be therefore taxable.'

As the occupation of the house could not be 'turned into money' it could not, according to Lord Halsbury, constitute income. All the Law Lords who concurred in this judgment but who gave separate reasons, came to the same conclusion. The question which arises in the present case is whether the trip which Stander was given constitutes 'property' which has a money value or whether it constitutes a right that could be 'turned into money'.

The facts in the present case were that Stander had to present himself in Johannesburg. He received no tickets or vouchers in connection with the trip. These were presumably kept by Delta's representative who accompanied the prize winners. He was not permitted to take the cash instead of going on the trip, nor was the trip transferable to anyone else. Had he not been given this trip, he would not have gone overseas as he could not have afforded to do so. The period that he was away was taken off his leave. Had he not gone on the trip he would either have stayed at home or have taken a holiday locally. He saved no money by going on the trip.

'Property' in the context of fiscal legislation has been described as meaning 'rights which have a monetary value in the hands of the holder.' Cf *Commissioner for Inland Revenue v Estate CP Crewe & Another* 1943 AD 656 at 667<sup>6</sup> where, in relation to the determination of estate duties, Watermeyer CJ said at 667:

'One would expect that when the estate of a person is described as consisting of property, what is meant by property is all rights vested in him which have a pecuniary or economic value. Such rights can conveniently be referred to as proprietary rights and they include *jura in rem*, real rights, such as rights of ownership in both immovable and movable property, and also *jura in personam* such as debts and rights of action.'

The question, then, is whether the prize of an overseas trip constitutes 'property', *ie* did Stander, by being given this trip, acquire a right which had a monetary value in his hands.

The promise by Delta to give Stander an overseas trip amounted to an executory donation. At common law the promise by Delta gave Stander, on acceptance by him of the promise, a personal right to compel performance by Delta. However, by virtue of [s 5](#) of the General Law Amendment Act No [50 of 1956](#) -

'no executory contract of donation . . . shall be valid unless the terms thereof are embodied in a written document signed by the donor.'

The terms of the donation were not embodied in a written document signed by Delta. Consequently Delta's offer of an overseas trip did not give rise to a valid contract of donation which was enforceable by Stander and Stander cannot be said to have acquired a 'right' even if a monetary value could be placed on the trip he received. However, once he had embarked upon the trip, the donation was no longer executory and the question then is whether a value could be

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placed on what Stander received by going on the trip. The answer to this question is, in my view, in the negative. Having gone on the trip he had not received any 'property' on which a monetary value could be placed in his hands. He was no more able to turn it into money or money's worth after accepting the award, than he was at the time when the donation was still at the executory stage.

A further requirement in order to bring the trip within the terms of para(c) of the definition of 'gross income', is that it must be-

'in respect of services rendered.'

In *De Villiers v Commissioner for Inland Revenue* 1929 AD 227<sup>7</sup> Stratford JA stated at 229:<sup>8</sup>

'The words 'in respect of' had received judicial interpretation in the case of *Commissioner for Inland Revenue v Crown Mines Ltd* (1923 AD 21) in which Innes CJ said that a tax could not be imposed 'in respect of a particular subject-matter, unless it 'had direct relationship to that matter,' by which was meant, I think, 'causal relationship'.

The fact that Stander's employment with Frank Vos Motors was a *sine qua non* of the receipt by him of the award sought to be taxed, is not sufficient. See *ITC 701* [17 SATC 108](#). In that case the appellant taxpayer was a trainer of race horses. Following the winning of an important race by a horse which he had trained, the owner of the horse made a large payment to him pursuant to a promise made to him prior to the race. In addition the appellant received a further sum after the race from another race horse owner whose horses he had trained and who had won a considerable sum of money as the result of betting upon the horse in question. It was held that the amount received by the appellant pursuant to the promise made to him by the owner of the horse prior to the race was subject to income tax, but that the amount which he received from the grateful punter pursuant to no antecedent arrangement with him, was not subject to tax. The court held that the payment in question was purely fortuitous; it was a gift 'having no relation to any services rendered by the appellant to the payer.'

Conradie J, in delivering the judgment of the Special Court, accepted the principle that in order to fall within the tax net receipts or accruals other than money had to have a money's worth. However Conradie J rejected the argument that only benefits which a taxpayer can turn into money can be said to have a money's worth. He stated that there was no warrant for such a restricted form of valuation and held that a service which is available in the market place has a value attached to it by the market. That, he stated, was the value of the benefit which anyone who availed himself of the service, enjoys. In other words, one simply looks at what the consumer of the service would have had to pay for it if he had not been given it for nothing.

With respect to the learned judge, this approach fails to take account of the impact of Watermeyer J's judgment in *Lategan's case supra*, as approved by the Appellate Division in the *People's Store case, supra*. Having regard to the conditions applicable to the enjoyment of the award, the overseas trip had no 'value' in Stander's hands which brought it within the terms of para(c) of the definition of 'gross income'.

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I did not understand Mr *de Haan*, who appeared for the Commissioner, to contend that in order to qualify as an 'amount' for the purposes of para(c), it was not necessary for the award to consist of 'money's worth'. He submitted that in order to determine 'money's worth' an objective value had to be placed on the award. By 'objective value', he argued, was meant 'market value.'

I do not agree. If the award cannot be said to consist of 'money's worth' it does not qualify for inclusion in terms of para(c). Nor, in my judgment, is there any basis upon which, on the facts of this case, 'money's worth' can be attributed to Stander's prize by seeking to place an 'objective' or 'market value' on it. Whatever it cost Delta, or whatever a person who wished to go on such a trip would have had to pay for it, does not constitute an amount which can be said to have money's worth in Stander's hands.

In regard to the question whether the trip could be said to have been given 'in respect of services rendered' the court *a quo* found that the award clearly 'stands in a direct causal relationship to the services rendered by him'.

The awards are, as far as Delta is concerned, a marketing management strategy. They are designed, according to the Honours Brochure issued by Delta, to motivate the people involved in Delta's field distribution of retail vehicles.

Mr Bramwell, who is the vehicle sales manager employed by Delta and who testified at the hearing before the Special Court, stated that the awards recognise excellence in the various fields of Delta's activities.

In Stander's case the award was made in recognition of his meticulous manner in which he recorded data and prepared the reports for his employer which were submitted to Delta on a regular basis.

The manner in which the franchise holders' employees performed their work, was obviously of benefit to Delta. The fact that Stander was an employee of Frank Vos Motors, was a *sine qua non* to his receiving the award. Had he not been an employee of a Delta franchise holder he would not have been eligible to receive the award. That fact does not, however, provide the necessary causal link between the services which he rendered to his employer and his obtaining of the award. Those services did not constitute the *causa causans* of the award. He did not seek the prize by entering a competition (*Cf ITC 976 24 SATC 812.*) Nor did he expect to receive anything from Delta for the work he performed for Frank Vos Motors. He merely performed his normal duties for which he was remunerated by his employer. The fact that these duties were performed in a manner which Delta considered to be excellent was what qualified him to receive the prize.

Stander's position was in my view similar to that of the captain of the English soccer team which won the World Cup and who received, as a bonus from the Football Association, a sum of money which was held not to be taxable. See *Moore v Griffiths (Inspector of Taxes)* [1972] 3 All ER 399 (48 TC 338). In that case Brightman J stated at 411b - c:

'The true purpose of the payment was to mark his participation in an exceptional event, namely, the winning of the World Cup Championship - it is exceptional because the Cup is open for competition only every four years and has never before been won by this country. In other words the payment had the quality of a testimonial or accolade rather than the quality of remuneration for services rendered.'

Mr *de Haan* submitted that the trip was granted to Stander in respect of services rendered to Delta. I do not agree. Stander rendered no services to Delta. The

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services which he rendered were to his employer, Frank Vos Motors. The fact that these services were beneficial to Delta does not mean that the award he received was 'in respect of' services rendered. The *sine qua non* referred to above does not provide the necessary causal link between what Stander did and the award he received.

An alternative basis upon which a taxpayer may become liable in terms of para(c) of the definition of gross income, is that the amount received is 'in respect of or by virtue of any employment or the holding of any office'. Stander did not receive this award by virtue of 'the holding of any office.' The significance of the phrase 'in respect of' has been dealt with above. The words 'by virtue of' do not, in my view, bear a meaning materially different from the words 'in respect of'. See *ST v Commissioner of Taxes* 35 SATC 99 at 100 where, in regard to the phrase 'by virtue of' Whitaker P stated at 100:

'Ordinarily the phrase (and this was common cause between counsel) means 'by force of', 'by authority of', 'by reason of', 'because of', 'through' or 'in pursuance of'. (See *Black's Law Dictionary* 4 ed 252.) Each of these definitions suggests there must be a direct link between the cause and the result.' (Emphasis supplied.)

The presence of the words 'by virtue of' in para(c) consequently do not require any separate consideration.

For these reasons the trip in question was on no basis subject to tax and should not have been included by the Commissioner as part of Stander's income.

The appeal is upheld with costs and the revised assessment is set aside.

Foxcroft J and Traverso J concurred.

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**Footnotes**

- 1 [1 SATC 7](#) at 9.
- 2 [2 SATC 16](#).
- 3 [52 SATC 9](#).
- 4 Ibid, at 21-2.
- 5 [6 SATC 92](#) at 99.
- 6 [12 SATC 344](#) at 352-3.
- 7 [4 SATC 86](#).
- 8 Ibid, at 87.