COMMISSIONER FOR INLAND REVENUE v MANGANESE METAL COMPANY (PTY) LTD [1996] 1 All SA 2004 (T)

Importance	This case, a unanimous decision from a full bench of the Transvaal Provincial Division, is interesting for outlining the tax implications of certain types of expenditure relating to mining (at 212). For civil society it mainly demonstrates that expenditure incurred by mining companies on their waste disposal facilities is tax deductible. The case turned on the stage at which the expenditure could be deducted in the process of determining tax liability. The court held that expenditure incurred by a mining company in utilizing a waste disposal facility was 'capital' and not 'revenue' income and could thus not be deducted prior to the determination of the company's taxable income. However, it *could* be deducted after taxable income had been determined in accordance with s 11(g) of the Income Tax Act, 1962.
Parties	**Appellant:** Commissioner for Inland Revenue **Respondent:** Manganese Metal Company (Pty) Ltd
Facts	The respondent converted manganese in its raw form into manganese metal at a plant in Nelspruit. The process produced a toxic residue of no commercial value. With each ton of metal, 1.4 tons of waste were produced. The estimated annual output of the waste was 60 000m^3. The plant operated night and day and disposal of the waste was undertaken daily by 16 journeys undertaken by tankers (concrete mixers). The site on which the respondent conducted its operations was purchased from the Town Council of Nelspruit in 1973. In terms of clause 10 of this agreement, the Council undertook to provide a number of dongas on a particular farm, free of charge, for the disposal of the waste. When these were full, the Council undertook, subject to the consent of the Department of Water Affairs (DWAF), to provide a stone quarry, on Council property, for the same purpose. In order to meet the regulatory requirements of the consent granted by DWAF the respondent had to construct a dam wall on the quarry site. The wall, which cost the respondent R882 381, 15 was constructed in 1986. The issue which then emerged revolved around the tax deductibility of this sum. When the matter was first heard by the Transvaal Income Tax Special Court found that the expenditure on the wall was of a revenue and not of a capital nature, and was thus deductible. The court *a quo* did not deal with the further issue raised on appeal, i.e. whether the amount was deductible in terms of s 11(g) of the Income Tax Act 58 of 1962. The Commissioner of Inland Revenue subsequently appealed against this decision.

Relief Sought	The Commissioner for Inland Revenue sought to overturn the ruling of the Transvaal Income Tax Special Court that the amount spent on the construction of the dam wall was of a revenue nature and thus deductible from the respondent's taxable income.
Legal Issues & Judgment	***Issue 1:*** Was the respondent's expenditure on the dam wall of a capital or revenue nature? ***Judgment:*** The court found that the 'one time' expenditure of a substantial sum on the construction of a large and permanent dam was a capital outlay (at 210). The reasons for this decision included the following: (a) It is trite law that money spent by a lessee on improving, as distinct from maintaining or repairing leased premises was expenditure of a capital nature. It was common cause that the dam constituted an improvement to the property, which was a fixed asset. This rule applies even where the lessee will forfeit the benefit at a later stage (at 210). (b) The fact that the respondent would be called upon to incur like expenditure at intervals in the future (arising from its continuing need to dispose of the toxic waste) was also insufficient to convert the expenditure to a revenue nature (at 210). (c) Alternately the respondent's relationship to the Council land could be regarded as a servitude, not a lease, which entitled the respondent to use the quarry for as long as it required and to leave the waste there in perpetuity. In this case the expenditure could be regarded as having added value to a capital asset and was thus expenditure of a capital nature (as 210 – 11). The court rejected two alternative 'tests' for determining whether the expenditure was of a revenue or capital nature, namely the 'enduring benefit test' (at 213) and the 'test of intention of the taxpayer' (at 222).
	Issue 2: Was the expenditure deductible in terms of s 11(g) of the Income Tax Act? Section 11(g) allows for an allowance from 'taxable income' in respect of any expenditure actually incurred by a taxpayer in pursuance of an obligation to effect improvements on land or buildings that are leased for purposes of producing an income. There are discretionary limitations to the amount that may be deducted (making this the less preferred option for tax deductibility). The court therefore had to determine whether the respondent had an obligation to the council to effect the improvements to the quarry, and the source of such obligation. ***Judgment:*** The court held that the decision on the part of the respondent to use the quarry for waste purposes inevitably entailed the corresponding obligation to incur expenditure necessary to meet the Department of Water Affair's standards regarding the safe disposal of waste (at 226). The respondent was accordingly entitled to the deduction of the expenditure in terms of s 11(g) of the Income Tax Act (at 227).

Outcome	The appeal succeeded to the extent that the expenditure was determined to be of a capital nature, and not a revenue nature as the court *a quo* had ruled. However, the respondent succeeded in establishing its claim based on s 11(g) of the Income Tax Act.