NYS (PVT) LTD
versus
ZIMBABWE REVENUE AUTHORITY

SPECIAL COURT FOR INCOME TAX APPEALS
KUDYA J
HARARE, 1 August 2017 and 25 September 2019

Income Tax Appeal

D Tivadar, for the appellant
T Magwaliba, for the respondent

KUDYA J: The question for determination in this appeal is whether the sums deposited in the appellant's bank account from offshore sources were of a capital or revenue nature. If capital, then these amounts would not be susceptible to income tax under the provisions of s 8 (1) of the Income Tax Act [*Chapter 23:06*]. However, if revenue, they would constitute gross income of the appellant and be subjected to such taxation. The deposits encompassed purported donations in the sum of US$ 60 918 that were made in 2009, purported donations of US$ 27 859 and loans of US$ 33 453.16 that were made in 2010 and purported donations of US$37 413 and loans of US$125 163.71 that were made in 2011.

The background

On or about 2 July 2015 the respondent's Masvingo office commenced investigations into the tax affairs of the appellant for the tax years 2009, 2010 and 2011. The appellant was represented at the interview held in Chiredzi on 2 July 2015[1] by its tax advisor and accountant, one GL while the respondent was represented by three investigators. At that meeting, the appellant's accountant produced 4 To Whom It May Concern letters and one e-mail addressed to the accountant for the attention of the respondent. The first and second were written by a certified public accountant firm based in South Carolina, USA, on 20 March 2015. The third was the e-mail of MWS, the sole witness called by the appellant, posted on 14 April 2015 in

[1] p29 and 30 of r 11 documents

which he explained that he continued to inject more capital into the perennial loss making appellant during the three years in question in order to protect his investment. The fourth was dated 24 April 2015 and was written by SCF, a public charity conservationist organisation based in Madison Wisconsin, USA, which purported to make donations to wildlife management enterprises and contiguous communities. SCF listed the three donations provided to the appellant in 2009 of US$12 918, in 2010 of US$27 065 in and 2013 of US$ 14 975.

The last of the To Whom It May Concern letters in this batch was written by MWS on 24 April 2015, again asserting that he and members of his family had advanced loans of US$ 63 366 and donations of US$ 48 000 in 2009, loans of US$ 42 328 in 2010 and donations of US$ 794 in 2010 and loans of US$ 83 417 and donations of US$ 48 000 in 2011.

On 6 November 2015 the respondent issued 3 assessments, numbers CZ/05/11/15/00002, CZ/05/11/15/00003 and CZ/05/11/15/00004 in respect of the tax years to 31 December 2009, 2010 and 2011, to the appellant. The appellant objected on 3 December 2015. Attached to the objection were 5 further To Whom It May Concern letters. The first dated 18 November 2018 was from a local professional hunting outfit CMS to the appellant asserting that the yearly quota allocated to each ranch was hardly ever sold in its entirety. The writer, who was concerned with the slow countrywide sales for 2015, indicated that an excellent year achieved 80-90% sales of key species while the percentage rate for a poor year was 50%. The second was a notarised letter from the Bank of South Carolina, Charleston, South Carolina, USA, and dated 24 November 2015. The Vice-President of that bank sought to confirm the internal electronic bank transfers from the SMA account to the ZSI/Appellant account in 2010 and 2011. There were 12 desegregated transfers totalling US$44 607 in 2010 and 7 transfers of US$11 381 in 2011. The third and fourth were from SMA indicating that two electronic transfers were made from its Bank of America account to the ZSI/Appellant account in the Bank of South Carolina in the total sum of US$ 10 630. The other confirmed that the amounts remitted by SMA to the appellant in Zimbabwe were in the sum of US$127 000 in 2010 and US$118 075 in 2011. The last such letter was written by the Administrator of the SVC on 30 November 2015. It sought to confirm the hunting quotas allocated, approved and authorised by its Executive Committee to the appellant in both 2010 and 2011. The aggregate value of the 2010 hunts depicted in the SVC quota allocation documents was in the sum of US$131 705 and of the 2011 hunts was US$127 365.

The objection was disallowed on 28 April 2016. The appellant filed its notice of appeal on 10 May 2016 and its case on 24 June 2016 but further amended it by consent on 20 June

2017. The appellant filed the Commissioner's case on 18 August 2016 and the response to the amendment on 28 June 2017.

The facts

The appellant is a locally registered private safari company that was founded in 1996 by an American citizen, MWS, who became and remains a permanent resident of Zimbabwe in the 1990s. The appellant provided *inter alia,* hunting and photographic safaris to both local, regional and international tourists from two ranches situated in the Save Valley Conservancy, SVC, in the Lowveld area near Chiredzi in the south east of Zimbabwe. It was promoted on behalf of ZSI, a Delaware Corporation incorporated in the United States of America by MWS who became a founding director in both companies. He was the sole witness called by the appellant to testify in this appeal and was at the time he testified a retired business executive with 20 years management consultancy experience 10 of which had been with two major corporations in the United States of America. He was also the proud "owner" of two private corporations in the USA and the appellant in Zimbabwe.

It was common ground that the appellant company took care of the wild animals, put in and maintained firebreaks and other infrastructure and maintained a fully staffed safari camp with game scouts employed to protect the animals from poachers. The company also operated lodges on these ranches. Its major source of income were the hunting activities that were conducted in partnership with local professional private hunting operators who sold, marketed and conducted the hunts. These operators had their own network of old and new clients sourced through hunting conventions conducted throughout the world designed to exploit the hunting opportunities available in Africa.

In the 2009, 2010 and 2011 calendar years the appellant engaged the services of such an operator, ZH (Pvt) Ltd to sell the appellant's hunting quota[2]. The sole witness testified that ZH operated a branch in the USA, SMA, which sold and marketed the hunts on behalf of ZH in the branch's name. ZH brought clients to hunt on the appellant's ranches. The financial arrangements put in place were that SMA would charge and collect a deposit from the client based on the value of the hunt to confirm a booking. The final cost to the client was computed after the conclusion of the hunt. It was only then that SMA would know the exact number of hunts. A mandatory Department of Parks and Wildlife TR2 form was generated. On it were recorded the money collected from the client. The full value of the hunt was deposited into a

[2] The application and allocation processes are set out p 4 of r 11 documents and the block allocation to SVC for years 2004 to 2010 set out on p 45 and 46 of r 11 documents and for 2011 on p 47.

Zimbabwe bank account of the appellant for the processing of trophy certificates and export documents, which facilitated the repatriation of trophies to the home country of the sport hunter. The hunt generated two distinct income streams. The first were the daily rates which ranged between US$600 and US$1 500 a day. These were paid for a fixed number of days whether or not the client scored a kill. The second stream flowed from the trophy fees for each individual animal harvested by a client. The sole witness stated that the TR2 form applied to foreigner hunters who constituted about 90% of their clientele. He further stated that while local clients did not complete TR2 forms, the aggregate amount in the TR2 forms represented the total hunting revenue received in any given year by the appellant.

The sole witness testified that the money paid offshore by the foreign based clients of ZH were remitted to Zimbabwe by SMA into the ZH bank account when the hunt was completed. The remittals for the period 10 June 2011 to 23 December 2014 were captured in the 47 paged running account of ZH's bank account with a local bank, which was filed by the respondent on 21 July 2017. During that period SMA made 14 deposits in 2011, 21 deposits in 2012, 24 in 2013 and 23 in 2014. The table below captures the transaction dates and the amounts in the aggregate sum of US$497 842.72 remitted by SMA to ZH between 27 June and 8 December 2011.

Transaction date 2011	**Description**	**Deposit US$**
20 June	Inward transfer from safari marketing Inc.	12 473.07
27 June		29 954.50
8 July		39 954.15
20 July		19 954.53
28 July		39 953.85
4 August		24 954.20
17 August		19 954.11
24 August		39 953.82
12 September		24 954.55
22 September		49 955.84
12 October		19 956.01
25 October		49 955.44
3 November		29 955.57

1 December		39 956.57
8 December		55 956.51
Total		**497 842.72**

The appellant received its share of the income from ZH. The witness did not disclose the formula used to apportion the income raised from the hunts amongst the three players, SMA, ZH and the appellant.

The sole witness disclosed that ZSI was wholly owned by him and his family members. Apart from using it as their private investment vehicle for channelling equity funds and loans to the appellant, ZSI was also used as a conduit pipe for donations received from wildlife philanthropists and enthusiasts in the USA for community projects in the communal areas contiguous to the appellant's ranches. The use of ZSI was a strategic accounting decision which *inter alia* attracted lower banking fees, was USA tax efficient and left a clear money trail.

Donations

According to the witness, since 1996, over 10% of his family's investments in the appellant had been channelled towards community projects in the form of scholarships, erection of teachers houses and school blocks, installation of computer classrooms, and the provision of computers to local schools, drilling boreholes and supporting entrepreneurial projects started by members of the beneficiary communities. These donations qualified as deductible charitable activities from his US income under the USA Tax Code. He intimated that friends and clients from outside Zimbabwe also made contributions, which were all channelled through ZSI. In order to tax effect the donations in the USA, the money flowed through a registered public charity such as the conservation organisation, SCF. The family, friends and well-wishers channelled these donations through SCF, which in turn transferred them to ZSI which then remitted them to the appellant's Zimbabwean bank account. The witness categorically stated that the funds went directly to community projects and were "used in any way to support the operation of the appellant." The evidence of the witness in this regard was not supported by the major business commitments table provided to the respondent by GL on 4 March 2016[3]. The purported donations received in 2009 were US$ 60 918 of which US$ 41 166 funded operations and US$19 752 went to community assistance. In 2010 the figures were US$ 27 859, US$2 636 and US$25 223 respectively and in 2011 they were US$ 37 413,

[3] P 5 of r 11 documents

US$ 34 424 and US$ 2 989, respectively. The assertion that the donations were all channelled to community assistance was incorrect. In fact, the bulk of the purported donations were applied to the appellant's operations in 2009 and 2011. In the 3 years in question of the purported total donations of US$126 190 only US47 964 was applied to community assistance. The balance of US$ 78 226 was applied to funding operations.

The shareholder loan account

The witness also intimated that in the audited years appellant incurred operational deficits which were covered by the injection of shareholder loan funds, again channelled through ZSI. In regards to the purported loans, the major business commitments table demonstrated that they appeared to have been properly applied to rebasing the equity in United States dollars, fund operations and working capital in the appellant's business. These were in the sum of US$ 63 367 in 2009, US$ 14 996 in 2010 and US$ 90 790 in 2011. The purported loan amounts in respect of 2010 and 2011 of US 42 328 and US$ 83 417, respectively in the letter of 24 April 2015 were different from those highlighted in the major business commitment table.

Responses under cross examination

Despite spending 5 to 6 months of each of the three years in question in Zimbabwe, the witness was divorced from the day to day operations of the appellant. He did not know whether or not the appellant issued any invoices other than for meat sales to either the professional hunting outfits or their protégés. His company did not compile a register or employ any other mechanisms to monitor the operations of the professional hunters on its ranches. Rather it seemed to rely on the alertness of its game scouts and the integrity of the professional hunters to track the hunting activities on its ranches. He saw the TR2 form as the panacea for his company's administrative and accounting deficiencies. Notwithstanding his firm averment that the TR2 form was completed by the foreign hunter, he intimated under cross examination that the TR2 form captured the hunt, hunters and non-hunting guests. At the commencement of cross examination he gave the impression that the appellant engaged more than one local professional hunting operators who in turn marketed its quota abroad through agents of their choice on the basis of an agreed commission. In the course of cross examination he recanted his earlier version and insisted that during the period in question ZH was the only professional hunting outfit engaged by the appellant. He categorically stated that the appellant dealt with hunters and not marketers who were the sole responsibility of the professional hunters.

In fairness to him, he acknowledged the existence of documentation in the custody of both SCF and ZSI, which would have been used to satisfy the USA's Internal Revenue Service, reflecting the alleged donations made to the appellant for the benefit of wildlife and the support of communities contiguous to the appellant's ranches. He conceded that all the foreign procured To Whom It May Concern letters except the one from the Bank of South Carolina were not notarised. The importance of notarisation being that such a document would tend to speak to its own intrinsic accuracy. It does not appear to me that the appellant was ever at any stage requested by the respondent to procure supporting documentation. Rather it acted on its own initiative. In the premises, the choice and nature of the documents that the appellant presented to the respondent were neither prompted nor dictated by the respondent.

In regards to the value charged to the sport hunter, the witness was again deliberately vague. In one vein he intimated that the value on the quota document was usually below the retail value charged by the hunters. In another vein, he indicated that these values were the maximum that could be charged by the professional hunting outfit. In the absence of concrete documentation recording the charges invoiced to each sport hunter by the professional hunter, the correct position was not establish by the appellant.

Assessment of the witness

The testimony of the witness was strong on the general policy thrust but weak on depth and detail in respect of the trading activities of the appellant. To complicate matters further, in the third party verification exercise of 21 September 2015 by the respondent, two contrary assertions were made by ZH on 4 October 2015. The first was that ZH did not have privity of contract with the appellant. The second was that the appellant had such a contract with SMA, which paid hunting income directly to the appellant. In my view, in some instances, the witness not only prevaricated but even tailored his testimony to suit the documentation at hand, such as its prevailing financial statements for the audited period. He was basically a poor witness whose testimony was not supported by the probabilities. As a seasoned and experienced businessman who constantly boasted of submitting tax returns in various jurisdictions the world over, he ought to have known the nature and scope of the documentary evidence that would have surmounted the tax hurdle that confronted the appellant. The mere say so of witnesses whether by letter or oral testimony without any contemporaneous and corroborative documentation of the transactions would not suffice to establish the correctness of the contents of such letters or oral evidence. The relationship between the professional hunters with the appellant was not disclosed. The formula for sharing the hunting proceeds was not disclosed.

The failure to issue invoices to the professional hunters was not explained. In the absence of any privity of contract between appellant and SMA, the reason for remitting hunting income through ZSI for onward transmission to the appellant was not disclosed. As SMA is reputed to have been an agent of ZH, one would have expected the paper trail to have run from the hunter to SMA through ZH to the appellant. The intervention of ZSI was not explained.

The oral testimony of the witness contradicted the documentary evidence procured by the appellant. While SCF intimated that it had made donations in 2009 and 2010 from its own funds, the sole witness stated that it was a requirement of the USA Tax Code for any beneficent donations to pass through a public charity organisation for the tax benefit of the donor. The notes of the interview of 2 July 2015 highlighted the disquiet that the investigators had over the intermingling of hunting income with the purported loans and donations in the ZSI offshore account. Despite the clarity and veracity deficiencies of the investigators, the intermingling of funds remained the dark cloud of doubt that eclipsed the cogency of the To Whom It May Concern communication. Indeed even the Commissioner in his determination to the objection was dissatisfied with the quality and efficacy of the documentation proffered by the appellant. The witness dismally failed in his testimony to lead cogent testimony sufficient to establish the source of the purported loans and donations.

The issues

At the pre-trial hearing held on 10 March 2017, two substantive issues were referred on appeal. There were:

1. Whether or not the receipt by the appellant of the sums in question ought properly to be treated as:
   1.1 capital donations and loans received by the appellant, or
   1.2 taxable income accruing to the appellant
2. Whether the respondent ignored revenue already shown as taxable by appellant when calculating appellant's taxable income.

The onus of proof

The onus of proof in income tax appeals is governed by the provisions of s 63 of the Income Tax Act, which provides that:

> "**63 Burden of proof as to exemptions, deductions or abatements**
> In any objection or appeal under this Act, the burden of proof that any amount is exempt from or not liable to the tax or is subject to any deduction in terms of this Act or credit, shall be upon the person claiming such exemption, non-liability, deduction or credit and upon the hearing of

> any appeal the court shall not reverse or alter any decision of the Commissioner unless it is shown by the appellant that the decision is wrong."

The opening words of s 8 (1) of the Income Tax Act, pertaining to the definition of gross income further place the burden to establish on a balance of probabilities that the amounts in question were of a capital nature on the appellant. It stipulates that:

> **8 Interpretation of terms relating to income tax**
>
> (1) For the purposes of this Part—
>
> "gross income" means the total amount received by or accrued to or in favour of a person or deemed to have been received by or to have accrued to or in favour of a person in any year of assessment from a source within or deemed to be within Zimbabwe excluding any amount (not being an amount included in "gross income" by virtue of any of the following paragraphs of this definition) so received or accrued which is proved by the taxpayer to be of a capital nature and," (underlining my own for emphasis)

These two provisions find support in the first formulation of POTGIETER AJA in *Mobil Oil Southern Africa (Pty) Ltd* v *Mechin* 1965 (2) SA 706 (A) at 711D-F where he states:

> "The general principle governing the determination of the incidence of the onus is the one stated in the *Corpus Iuris: semper necessitas probandi incumbit illi qui agit (*D. 22.3.21). In other words he who seeks a remedy must prove the grounds therefor. There is, however, also another rule, namely, *ei incumbit probation qui dicit non qui negat.* (D. 22.3.2). That is to say the party who alleges or, as it is sometimes stated, the party who makes the positive allegation, must prove. (cf. *Kriegler* v *Minitzer and Another* 1949 (4) SA 821 (AD) at p. 828). Together with these two rules must be read the following principle, namely: *agree etiam is videtur, qui exceptione utitur nam reus in exceptione actor est* (D. 44.1.1). This principle is stated thus by DAVIS AJA in *Plillay* v *Krishna and Another* 1946 AD 946 at p. 952:
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> > "Where the person against whom the claim is made is not content with a mere denial of that claim, but sets up a special defence, then he is regarded, *quoad* that defence, as being the claimant; for his defence to be upheld he must satisfy the Court that he is entitled to succeed on it."

In my considered view, the last two formulations do not apply in the present appeal, wherein the appellant is statutorily required to establish its grounds of appeal. In any event, the respondent did not raise any special defence to the appeal.

The nature of an income tax appeal

It has been emphasized in numerous decisions that an appeal under the provisions of s 65 (1) of the Income Tax is an appeal in the wide sense. It is not a review of the decision of the Commissioner that is appealed against. In that regard, the rules in the Twelfth Schedule stipulate the procedure that must be followed in initiating the appeal and in setting it down. In terms of r11 the Commissioner is enjoined to file together with the Appellant's case and the Commissioner's case a certified copy or extract of the assessment appealed against, the notice

of objection, a copy of the decision appealed from and the reasons thereof and the notice of appeal together with any relevant material and correspondence related to these documents. In terms of r 12, the Court provided the date of appeal in consultation with the parties. In terms of r 1, in those instances where these rules are deficient or silent, the Court wears the mantle of the High Court in civil actions in respect of the general procedure and practice in dealing with these appeals. This, then is the basis upon which the Court holds a pre-trial hearing with the parties fashioned along the lines of a pre-trial conference mandated by r 182 of the High Court Rules. One of the many advantages of holding such a pre-trial hearing is that the parties are permitted and encouraged to file further relevant and material documents which may have been omitted in the r 11 documents or which may not have been provided to the Commissioner during the investigations, objection and determination. The relevance is of course determined by whether or not such documents resonate with the grounds of objection. Again in terms of r13, either party may lead evidence and produce such documents at the hearing of the appeal as may be deemed material and relevant. Thus, the whole essence of an appeal in the wide sense is that it is a rehearing in which the appellant is statutorily empowered to have the proverbial second bite of the cherry untrammelled by any prior evidence previously placed before the Commissioner.

In these circumstances, raising real or imagined procedural irregularities in the conduct of the Commissioner in person or by proxy during the investigation objection and determination, which can be cured by leading relevant and material evidence on the contested facts would be unhelpful to the appellant's case. It must also be emphasized that the mandate on the Commissioner to produce r 11 material and relevant documents in no way ascribes them as part of the Commissioner's case. They only represent the evidence that the Commissioner considered in making his decision. I reiterate these points because the manner in which the appellant conducted this appeal left me with the distinct impression that it was either ignorant of these principles or it erroneously believed that it could seek a review of the Commissioner and his subordinates' conduct through an appeal.

The resolution of the issues

The legal effect of foistering the onus on the appellant on appeal seems to me to presume the correctness of the factual findings of the Commissioner in the decision appealed from. The inescapable conclusion is therefore that the appellant bears the duty of establishing the incorrectness of those factual findings. In the decision appealed against, the Commissioner found that the sums of money in issue were revenue earned from the supply of game by the

appellant to foreigner hunters against the protestations of the appellant that they were loan capital injected into the business by shareholders and donations from foreign based philanthropists, conservationists and other well-wishers for community projects sponsored by the appellant in the rural environs contiguous to its ranches in the Save Valley Conservancy. The onus to show that the amounts were loans and donations was therefore on the appellant in the objection to the Commissioner and on appeal to this Court. In other words, the Commissioner did not have the primary onus, as misconstrued by the appellant's counsel, of showing on appeal, that the amounts constituted gross income.

The evidence of the appellant

I have already analysed the appellant's evidence when I assessed the sole witness's testimony. I found it wanting in all material respects. Indeed the two electronic transfers made by the Bank of America to the Bank of South Carolina in the aggregate sum of US$10 630 in 2011 and the intra bank transfers of $11 381 in the Bank of South Carolina of the same year were not deposited into the appellant's Barclays Bank account in Zimbabwe. In addition, the 2010 intra bank transaction of 2010 in the sum of US$44 407 were also never transferred to the appellant's Barclays Bank account in Zimbabwe. The appellant did not proffer any explanation on the failure to deposit these amounts of hunting income into the Barclays bank account. Again, no explanatory notes were attached to the analyses on the nature of the six deposits made by ZSI in the sum of US$ 42 449 in 2010. While the cumulative total of donations or loans in the 2010 analysis in the sum of US$ 42 328 matched the loan account amount in the letter by the witness of 24 April 2015, in that letter it was described as a standalone loan. In that letter the purported standalone donation was in the sum of US$794. The conflation of donations and loans in the 2010 analysis was not explained. The same aspect of creative accounting was repeated in the analysis of 2011 deposits where the loans or donations of US$83 417 totally ignored the donations figure of US$37 140 in the letter of 24 April 2017. It is apparent to me that the loans or donations appellation in the analyses was deliberately designed to match the figures M&Y alleged were personal loans advanced by the witness and his wife. This was despite the fact that only US$ 5 000 and US$ 7 663 of these amounts were ascribed by M&Y to the witness and his wife. The rest was drawn from ZSI's account notwithstanding that the analyses have specific deposits of US$ 42 449 and US$10 000, respectively attributed to ZSI. Then there are the "Other" columns in the analyses with US$2 998 in 2010 and USD$ 55 613 in 2011 which were not explained. In my view, the figures proffered by the appellant were simply incomprehensible.

There was a further weakness in all the To Whom It May Concern letters. The opening line in each letter was "this is to confirm". Such a line, in the absence of further corroborating evidence, would obviously affect the probative value of each letter. It tended to show that the request prompting such a response would in all probability have constituted a leading question.

I have highlighted the contradictions between the sole witness' evidence and the letter written by ZH regarding the relationship between the appellant, SMA and ZH. Notwithstanding that contradiction, both SMA and ZH confirmed the hunting income, which accrued to the appellant in 2010. There figures were not supported by any source documents including TR2 forms raised contemporaneously with the hunts as contemplated by s 37B(1) of the Income Tax Act., which provides that:

> "(1) Every person whose gross income does not consist solely of salary, wages or similar compensation for personal service, shall keep or cause to be kept in the English language, proper books and accounts of all his or her transactions and, unless otherwise authorised by a competent court or by the Commissioner, shall retain for a period of six years from the date of the last entry therein all ledgers, cash-books, journals, paid cheques, bank statements and deposit slips, stock sheets, invoices, and all other books of account relating to any trade carried on by him or her and recording the details from which his or her returns for the purposes of this Act were prepared." (Underlining mine for emphasis)

Ledgers, cash-books, journals, paid cheques, bank statements and deposit slips, stock sheets, invoices and all other books of account relating to the trade carried out by the appellant did not form part of the present appeal. It would appear from the determination of the respondent that the absence of these documents formed the basis of the Commissioner's decision to the objection. The mere say so of M&Y, ZH, SMA, SCF and the sole witness together with the material and relevant documents that formed the r 11 documents were inadequate to discharge the onus on the appellant to show that the figures assessed by the respondent were wrong. The contention in para 33 of the heads of argument that the documentation established that hunting revenue, loans and donations were correctly recorded notwithstanding the shortcomings attributed to the respondent of failing to follow through the sparse documentation with the writers thereof was therefore incorrect. After all, on appeal the appellant had the opportunity to present these supporting documents and any further documents it may have submitted to the respondent but were omitted from the r 11 documents. It dismally failed to do so to the detriment of its appeal.

I am satisfied that the appellant failed to discharge the onus on it to establish on a balance of probabilities that the purported loans and donations constituted capital. I am further

satisfied that the respondent correctly treated it as revenue derived from the supply of game and properly added it back to the appellant's gross income.

Whether the respondent ignored revenue already shown as taxable by appellant when calculating appellant's taxable income.

The amounts that were alleged by the appellant to have been subjected to tax twice in the formulation of the respondent were the meat sales of US$29 793 in 2010 and of US$10 371 and the additional VAT refund –prior years of US$1 615 in the total sum to US$ 11 986 in 2011. I would dismiss this second ground of appeal for two reasons. The first is that the appellant did not lead any evidence to establish the error. The second was that the appellant did not even begin to discharge the onus on it to show on a balance of probabilities that the computation of the respondent was wrong. Accordingly, I am satisfied that the appellant was not taxed twice in respect of the meat and additional VAT refunds. The appellant's difficulty in this regard is further compounded by its failure to pinpoint the figures relating to the meat sales in the Barclays Bank analyses of deposits for 2010 and 2011. The appellant did not produce any source documents regarding the meat sales and the deposits of the proceeds of such sales into the Barclays Bank account. In my finding, the calculations of the tax due were therefore correct.

In view, of my findings, the question whether the appellant required Exchange Control Authority before receiving shareholder loans does not arise for consideration. In any event as Mr *Magwaliba* did not take the point, I considered it abandoned. The two issues referred on appeal are determined against the appellant and in favour of the respondent.

Costs:

I do not find the decision to have been unreasonable or the grounds of appeal therefrom to be frivolous. Each party will therefore bear its own costs.

Disposition

Accordingly, the appeal is dismissed in its entirety with each party to bear its own costs.

Gill, Godlonton and Gerrans, the appellant's legal practitioner.