

COURT OF APPEAL.

DECISIONS IN INCOME TAX CASES

CASE NO: 1

**FRESH ARGUMENTS (OR REASONS) BROUGHT FORWARD ON APPEAL,
AS AGAINST FRESH GROUNDS OF OBJECTION.**

The Income Tax Acts provide that a taxpayer who has received an assessment may file an objection thereagainst. This is the first stage of an appeal process granted to taxpayers. If disagreement still exists, the Commissioner of Inland Revenue serves a notice of refusal of the objection (in full or in part) on the taxpayer, who may then file an appeal thereagainst to the Board of Special Commissioners. A further appeal on points of law only thereafter lies to the Court of Appeal.

In filing a notice of objection, the taxpayer must state the precise grounds of his objection against the assessment. If the Commissioner disagrees with the grounds of objection filed by the taxpayer, he issues a notice of refusal rejecting the said grounds, in full or in part. Subsequent appeals to the Board and to the Court can, under normal legal processes, only be made in respect of these grounds.

In the present case, the taxpayer, while not changing the fundamental grounds of objection, changed his arguments against the assessment before the Board. The Revenue was of the opinion that, in this way, fresh new grounds of objection were being filed against the assessment. The Board of Special Commissioners rejected this approach, saying that fresh arguments or reasons brought forward at any stage of the appeal proceedings did not change the grounds on which the assessment was being contested.

The Court of Appeal agreed with the Board. Once the real merit of the appeal remains the same, there was no impediment to the use of fresh arguments. These should not be confused with grounds of objection. The legislation in no way limited the argumentation which could be used on appeal. Modern legal procedures abhorred restrictive formalities and were all in favour of allowing judges to be freely convinced.

DECISION DATED : 30 April 1951

BSC CASE NO: 8/50

COURT OF APPEAL.

DECISIONS IN INCOME TAX CASES

CASE NO: 2

CAPITAL AS AGAINST INCOME: TAXABILITY OF A PAYMENT RECEIVED IN VIRTUE OF AN OBLIGATION IMPOSED ON A LEGATEE BY A TESTAMENTARY DISPOSITION.

A businessman, who was already a widower, made use of certain provisions of the Civil Code to bequeath by way of legacy to one of his children the whole of a business which actually belonged to the community of acquests with his pre-deceased wife. Excluded from the legacy were debtors and creditors of the business, as well as the value of the stock existing at the time of his death, at cost price.

The other children of the deceased were to transfer to the legatee their respective quotas of the business, on pains of being excluded from the inheritance (except for the legitim i.e their reserved portion). They were however to receive from the legatee:-

- (a) an annual payment for four years;
- (b) a lump sum payment each at the end of the four years.

The Court of Appeal held that both payments to be made by the legatee under these arrangements represented the consideration which the other children were to receive from the legatee for being deprived of their share of their mother's inheritance. Hence the annual payment received was not taxable. The final lump sum payment was not in dispute, presumably because it had not yet been received. The Court did not specifically state that no taxability arose because the payments were capital in character, but this is the inevitable conclusion. The annual payment received during the year had been brought to tax as an annuity, and the Court limited itself to stating that no such charge arose.

N.B.: The law was later amended to include an "annual payment" in the charging section together with "annuity". The effect of this addition does not appear to have been judicially clarified to date.

DECISION DATED : 7 May 1951

BSC CASE NO : 17/50

COURT OF APPEAL.

DECISIONS IN INCOME TAX CASES

CASE NO: 3

TAXABILITY OF BASIS YEAR 1948 INCOME. RELEVANCE OF MARGINAL NOTES.

The Income Tax Act came into force on the 1st January 1949. The tax is payable for each year of assessment, the first of which was the year of assessment 1949. The definition of a year of assessment is “.....the period of twelve months commencing on the 1st day of January, 1949 and each subsequent period of twelve months”. The taxpayer contended that once the ITA came into force on 1st January 1949, the income for 1948 was only to be used as a measure to tax the actual income of 1949.

This argument was largely based on the section of the law whose marginal note was “Basis of assessment” and which stated that: “Tax shall be charged, levied and collected for each year of assessment upon the chargeable income of any person for the year immediately preceding the year of assessment”. The Court held that this wording was very clear and quoted various other provisions of the law (some since repealed) mentioning events happening during 1948 that were to be taken into account for 1949. Although tax is charged for a year of assessment, it is levied on the income of the immediately preceding year.

The Court pointed out that both the person concerned and the relative income existed as on 1st January, 1949. The income ceased in June 1949. Presumably this was why the appeal was filed as no liability would arise if for year of assessment 1949 the actual income of 1949 was taxed. (It is known that the Revenue consequent to this decision raised no assessments for year of assessment 1949 where a person had died during 1948).

The Court held that the appellant could find no solace from the provisions above quoted setting out the basis of assessment. Furthermore, if there was any conflict between the marginal note and the actual text of the section (which there was not), the marginal note could never over-ride the law itself.

DECISION DATED : 20 November 1951

BSC CASE NO: 21/50

COURT OF APPEAL.

DECISIONS IN INCOME TAX CASES

CASE NO: 4

PROCEDURE FOR APPEALS TO THE BOARD OF SPECIAL COMMISSIONERS. FORMS TO BE USED AND OTHER ESSENTIAL REQUISITES.

The appeal to the Board had not been made on the Forms printed for this purpose and which were obtainable from the department. Instead, the appellant had prepared his own forms that copied those which were available from the department.

The Board of Special Commissioners held that the appeal had been invalidly entered, but the Court reversed the decision saying that the law nowhere said that the printed Forms available from the Department had to be used. These were merely to be used as a guide: "in the form" did not mean the printed forms, but only the method in which the appeal was to be set out.

On the other hand, the taxpayer in his appeal to the Board had failed to mention the reasons why the Commissioner of Inland Revenue had refused his objection, and had failed to attach a copy of the CIR's decision. These two matters were required for a valid appeal, and their omission constituted a substantive defect which still rendered the appeal to the Board null and void.

DECISION DATED : 21 June 1951

BSC CASE NO: 4/51

COURT OF APPEAL.

DECISIONS IN INCOME TAX CASES

CASE NO: 5

AN APPELLANT TO THE BOARD OF SPECIAL COMMISSIONERS CANNOT REFUSE TO GIVE EVIDENCE UNDER OATH.

The Appellant filed a complex appeal asking for contract profits to be apportioned retrospectively over the years covered by the contract. During the course of the appeal the Board required appellant to give evidence under oath. The appellant refused and asked the Court of Appeal to set aside the Board's order.

The Court rejected the request saying that no analogy could be drawn with criminal procedures, since income tax cases are not criminal cases where no defendant can be forced to give evidence. The Court also pointed out that under the Code of Organisation and Civil Procedure witnesses could only refuse to give evidence if their answers could leave them open to criminal proceedings, and it was left to the Court to decide in each particular case when witnesses could be exempted from giving evidence. Moreover, the legal notice regulating appeals to the Board gave the same power to the Board regarding the hearing of witnesses as were vested in the Civil Court, First Hall.

The Court observed that the C.O.C.P. required the courts to order that the best evidence was to be brought before them and that the ITA laid the onus of proving that the assessment complained of was excessive fairly and squarely on the appellant. The C.O.C.P. also gave power to both parties, and to the tribunals acting "ex officio", to require the other party to give evidence.

The only exceptions to this rule were found in the I.T.A. itself which exempted certain relatives and other persons confidentially employed with the appellant from giving evidence. In no way could this exemption be extended to the appellant himself.

DECISION DATED : 16 February 1952

BSC CASE NO: 8/51

COURT OF APPEAL.

DECISIONS IN INCOME TAX CASES

CASE NO: 6

DEPENDENTS ALLOWANCE: THE ESTABLISHMENT OF HOW AN ALLOWANCE IS TO BE WORKED OUT WAS A POINT OF LAW.

This case concerned the calculation of a deduction formerly allowed by the ITA in respect of family dependents. These allowances have since been abolished, but the case is relevant for two issues:-

- (a) the Court decided that how the particular provision of the law was to be given effect to in practice involved its interpretation, and therefore constituted a point of law which could be taken before the Court;
- (b) the appeal was filed by the Commissioner of Inland Revenue, none was filed by the taxpayer who accepted the allowance given by the Board: the Court came to the conclusion that the taxpayer was actually entitled to a higher deduction, but as no appeal had been filed by the taxpayer the Court did not find it appropriate to alter the amount of the allowance granted by the Board.

(This case established the working of the now defunct "family pool" arrangements).

DECISION DATED : 30 June 1953

BSC CASE NO : 17/51

COURT OF APPEAL.

DECISIONS IN INCOME TAX CASES

CASE NO: 7

REAFFIRMATION THAT THE INCOME FOR 1948 WAS TAXABLE FOR YEAR OF ASSESSMENT 1949. RE-INVESTED PROFITS REMAIN TAXABLE. NO ALLOWANCE FOR LOSSES MADE BY A COMPANY.

In re-confirming the taxability profits earned in 1948 for year of assessment 1949, an indication was given that the departmental practice referred to in the summary of CASE NO: 3 to the effect that no assessment was raised on the income for 1948 when the person had died before 1st January 1949, was a result of a ministerial promise made in Parliament which was apparently never translated into law.

The Court ruled that re-invested profits could not be exempt, and established clearly the principle that profits are to be computed according to normal accountancy rules. Moreover, re-investment of profits was capital in character and no deduction could be allowed.

As regards losses made by the company, the Court did not enter into the theory whether shareholders could obtain the benefit of deductions for such losses in their own personal assessments. The Board had found as a fact that the company had made profits and the Court refused to consider the matter further, that being a point of fact.

DECISION DATED : 16 February 1952

BSC CASE NO: 20/50

COURT OF APPEAL.

DECISIONS IN INCOME TAX CASES

CASE NO: 8

DEDUCTIBILITY OF EXPENSES THAT HAD BEEN SUBJECT OF AN UNSUCCESSFUL CLAIM TO THE WAR DAMAGE COMMISSION.

In terms of now long obsolete provisions, no deduction for repairs could be allowed for “.....the cost of repair of any property which has been subject of a claim under the War Damage Ordinance, 1943”.

Appellant had made such a claim, but this was not considered by the War Damage Commission because of a procedural defect. The Court was of the opinion that, in the circumstances, appellant could hardly be said to have filed a claim with the W.D.C. In any case, to make sense, the prohibition could only apply where a successful claim had been made, so that the appellant would not actually have disbursed expenses that he could then claim as a deduction for tax purposes. This seemed to be the line taken by text books on very similar U.K. legislation, while a general rule of interpretation of tax law in U.K. regarding imprecise drafting of legislation was: “...to find out what the legislature must be taken to have really meant by the expression which it has used, without necessarily attributing to it a precise appreciation of the technical appropriateness of its language”.

DECISION DATED : 9 February 1954.

BSC CASE NO: 2/53

COURT OF APPEAL.

DECISIONS IN INCOME TAX CASES

CASE NO: 9

FICTIOUS (NON-EXISTENT) PARTNERSHIP. POINT OF FACT AS DISTINCT FROM POINT OF LAW. INAPPELABILITY.

Appellant, his son and his son-in-law had gone through the correct motions for the setting up of a partnership, saving that publication of the existence of the partnership had not been effected as then required by the existing procedures. The relative business had belonged to the appellant. The Board of Special Commissioners found that, in actual fact, the partnership had not been given effect to, and that, consequently the business still all belonged to the appellant.

The existence or otherwise of a partnership in practice was a point of fact which could not be reviewed by the Court of Appeal as no point of law was involved. The appeal was therefore rejected. Both the Board and the Court saw no purpose, in the circumstances, in examining the section of the law regarding transfers by parents to children.

DECISION DATED : 16 March 1964

BSC CASE NO: 11/52

COURT OF APPEAL.

DECISIONS IN INCOME TAX CASES

CASE NO: 10

GRATUITOUS TRANSFERS TO CHILDREN. TRANSFERS MADE PRIOR TO COMMENCEMENT OF THE ITA. CONTINUED APPLICATION OF PROVISIONS FOR SUBSEQUENT YEARS.

A father made a donation to his children on the 30th December 1948, transferring property and giving up his usufruct over certain other property. Appellant contended that the provisions whereby the relative income was still to be charged in the hands of the father should only apply where the transfer was fictitious, that the transaction having been carried out before the coming into force of the I.T.A. could not be affected by its provisions and that, in any case, the provision should only apply for the year in which the transaction was carried out. The appellant also argued that the provision applied only where income was donated, but not where property was donated.

The Court rejected all the appellant's arguments:

- (a) The law did not distinguish between capital and income in this case: once income became payable to the children "by virtue of or in consequence of any disposition" made by the parent, it did not matter that capital had been donated. The word "disposition" was of very wide meaning, and the only thing that mattered was that there consequently arose income to the children.
- (b) The Act did not distinguish between fictitious and actual dispositions: it applied only to the fact that a disposition had been made.
- (c) The Court had already held that transactions carried out during 1948 fell within the ambit of the Income Tax Act, notwithstanding that the I.T.A. had come into force on 1st January 1949.
- (d) The aggregation of the relative income with the father's own income could not be limited to the year in which the transaction was carried out. Aggregation was a continuous effect and was not limited to the year of assessment in whose basis year the disposition had been made.

DECISION DATED : 17 May 1954

BSC CASE NO: 22/53
