

Ward and Company, Limited - - - - - *Appellants*

The Commissioner of Taxes - - - - - *Respondent*

FROM

THE COURT OF APPEAL OF NEW ZEALAND.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 16TH NOVEMBER, 1922.

Present at the Hearing :

VISCOUNT CAVE.
LORD ATKINSON.
LORD SUMNER.
LORD PARMOOR.
LORD CARSON.

[*Delivered by* VISCOUNT CAVE, LORD CHANCELLOR.]

This is an appeal from a judgment of the Court of Appeal of New Zealand upon a case stated under Section 35 of the Land and Income Tax Act, 1916. The question to be determined is whether under that Act a sum of £2,123 3s. 11*d.* expended by the appellants in the tax year ending on the 31st March, 1919, in connection with a special licensing poll taken on the 30th April, 1919, was a permissible deduction in computing the assessable income derived by the appellants from their trade or business of brewers and maltsters.

The following provisions of the Land and Income Tax Act, 1916, are material :—

“8. (1) For the purposes of the assessment and levy of income-tax every taxpayer shall in each year furnish to the Commissioner a return in the prescribed form setting forth a complete statement of all the assessable income derived by him during the preceding year, together with such other particulars as may be prescribed.

“ 79. (1) Subject to the provisions of this Act, there shall be levied and paid for the use of His Majesty in and for the year commencing on the first day of April, nineteen hundred and sixteen, and in and for each year thereafter, a tax herein referred to as income-tax.

“ (2) Subject to the provisions of this Act, such tax shall be payable by every person on all income derived by him during the year preceding the year in and for which the tax is payable.

“ 85. Without in any way limiting the meaning of the term, the assessable income of any person shall for the purposes of this Act be deemed to include, save so far as express provision is made in this Act to the contrary :—

“ (a) All profits or gains derived from any business :

* * * *

“ 86. (1) In calculating the assessable income derived by any person from any source no deduction shall be made in respect of any of the following sums or matters :—

“ (a) Expenditure or loss of any kind not exclusively incurred in the production of the assessable income derived from that source.”

* * * *

The poll in question was taken under the Licensing Amendment Act, 1918, which provided for the taking of a special poll of the parliamentary electors of New Zealand upon the question whether the sale of intoxicating liquors should be prohibited throughout New Zealand. The Act also provided that in the event of a poll resulting in the defeat of the proposal for prohibition, further polls upon the same question might be taken once in every three years. The poll in question in this case was fixed for the 30th April, 1919 ; and, with a view to defeating the proposal for prohibition, the appellants in the tax year 1918–19 incurred an expenditure amounting to the above sum in canvassing, advertising, printing, and other matters. The poll resulted in a narrow majority against prohibition.

For the purpose of assessing the appellants for income tax for the year 1919–20, the Commissioner of Taxes required them to make a return of their income for the year ending on the 31st March, 1919, and the appellants in this return claimed to deduct from their assessable income the above sum of £2,123 3s. 11*d.* The Commissioner disallowed the deduction, and on a case being stated under Section 35 of the Act, the matter was referred to the Court of Appeal, which affirmed the decision of the Commissioner. Hence the present appeal to His Majesty in Council.

It will appear from the above statement that the question of law to be determined is whether the expenditure in question was or was not “ exclusively incurred in the production of the assessable income ” derived by the appellants from their business in the tax year 1918–19. In considering that question, their Lordships put aside the circumstance that the expenditure was not of such a nature as to produce income in the actual tax year in which it was incurred. In every trade, much of the expenditure in each year—such as expenditure in the purchase of raw material, in the repair of plant or the advertisement of goods for sale—is designed to produce results wholly or partly in subsequent

years ; but, nevertheless, such expenditure is constantly allowed as a deduction for the year in which it is incurred. The real question is whether the expenditure in question was, within the true meaning of Section 86 (1) of the Act of 1916, exclusively incurred in the production of assessable income ; and after fully considering the arguments adduced, their Lordships are of opinion that this is not made out. The conclusion of the Court of Appeal upon this point is contained in the following passage in the judgment of that Court :—

“ The question, therefore, is : Was the expenditure under consideration exclusively incurred in the production of the assessable income, for unless it was so, the Act expressly prohibits its deduction from such income. This question must, we think, be answered in the negative. We find it quite impossible to hold that the expenditure was incurred exclusively, or at all, in the production of the assessable income. It was incurred not for the production of income, but for the purpose of preventing the extinction of the business from which the income was derived, which is quite a different thing. It was contended by the Company that it was illogical that while legitimate expenses incurred in the production of the income are deductible, similar expenses incurred for the much more important purpose of keeping the profit-making business alive are not deductible, and, further, that it was inequitable that the Legislature should, on the one hand, force a certain class of traders into a struggle for their very existence, and, on the other hand, treat the reasonable expenses incurred in connection with such struggle, as part of the profits assessable to income tax. These aspects of the matter are clearly and forcibly set out in the contentions of the Company as embodied in the correspondence with the Commissioner contained in the case, but they raise questions which can only be dealt with appropriately by the Legislature. This Court, however, cannot be influenced by such considerations, being concerned only with the interpretation and application of the law as it stands.”

Their Lordships agree with this reasoning. The expenditure in question was not necessary for the production of profit, nor was it in fact incurred for that purpose. It was a voluntary expense incurred with a view to influencing public opinion against taking a step which would have depreciated and partly destroyed the profit-bearing thing. The expense may have been wisely undertaken, and may properly find a place, either in the balance-sheet or in the profit and loss account of the appellants ; but this is not enough to take it out of the prohibition in Section 86 (1) (a) of the Act. For that purpose it must have been incurred for the direct purpose of producing profits. The conclusion may appear to bear hardly upon the appellants ; but, if so, a remedy must be found in an amendment of the law, the terms of which are reasonably clear.

It is only necessary to add that the decisions on the English Income Tax Acts, the language of which is different from that of the New Zealand Act, have no real bearing upon the question now under decision.

For these reasons, their Lordships will humbly advise His Majesty that this appeal fails, and should be dismissed with costs.

In the Privy Council.

WARD AND COMPANY, LIMITED,

v.

THE COMMISSIONER OF TAXES.

DELIVERED BY VISCOUNT CAVE,
LORD CHANCELLOR.

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