Privy Council Appeal No. 45 *of* 1964

Patrick Alfred Reynolds - - - - - - - - *Appellant*

v.

The Commissioner of Income Tax - - - - - - *Respondent*

FROM

THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 23RD NOVEMBER 1965.

Present at the Hearing:
LORD HODSON
LORD UPJOHN
LORD WILBERFORCE
(*Delivered by* LORD HODSON)

This is an appeal from a judgment of the Court of Appeal of Trinidad and Tobago dated the 25th March 1964 dismissing an appeal by way of case stated against a decision of Blagden J. who had dismissed an appeal against an assessment made on the appellant by the respondent for the year ending December 31st 1957 in respect of the income of the appellant and his wife, Mrs. Reynolds.

Both the appellant and his wife have at all material times been living together and have been in receipt of income from earnings and investments. Section 18 of the Income Tax Ordinance provides:—

> " The income of a married woman living with her husband shall, for the purpose of this Ordinance, be deemed to be the income of the husband, and shall be charged in the name of the husband and not in her name nor in that of her trustee:
>
> Provided that that part of the total amount of tax charged upon the husband which bears the same proportion to that total amount as the amount of the income of the wife bore to the amount of the total income of the husband and wife may, if necessary, be collected from the wife, notwithstanding that no assessment has been made upon her."

On December 28th 1956 Mrs. Reynolds entered into a deed of covenant under which she undertook to make annual payments to a trustee for the benefit of the four children of the marriage whose ages ranged from twelve years to one month. The annual payments amounted to $3,500 in respect of each child.

The appellant's return of income for the year of assessment ended December 31st 1957 showed a total income received in the preceding year of $40,164·86 of which $18,202 represented Mrs. Reynolds' income. In his return the appellant claimed that the aggregate sum of $14,000 paid by Mrs. Reynolds under the deed of covenant should be deducted from her income in computing the appellant's chargeable income for the year of assessment. Other claims made by the appellant in respect of dispositions made by himself were allowed but the claim to deduct Mrs. Reynolds' covenanted payments was disallowed. Hence these proceedings.

The determination of the issue between the parties depends upon the answers to the following questions:

> (1) Is an annual payment made by a taxpayer under a deed of covenant deductible in computing his chargeable income by virtue of section

10(1)(f) of the Ordinance read with section 12 thereof, even though it does not constitute an expense incurred in the production of income?

(2) If so, then in view of section 18 is a similar payment made by the wife of a taxpayer similarly deductible?

(3) If so, then is the respondent unable to invoke the provisions of section 34(2), which deal with transfers to minors to avoid tax, against the payment made by the wife?

In order to succeed the appellant must obtain an affirmative answer to all of these questions.

The Income Tax Ordinance provides *inter alia:*—

Section 2. " ' Chargeable income ' means the aggregate amount of the income of any person from the sources specified in section 5 remaining after allowing the appropriate deductions and exemptions under this Ordinance; "

. . . .

Section 5. " Income tax shall, subject to the provisions of this Ordinance, be payable at the rate or rates specified hereafter for each year of assessment upon income of any person accruing in or derived from the Colony or elsewhere, and whether received in the Colony or not in respect of—

(a) gains or profits from any trade . . . business, profession, or vocation.

(b) gains or profits from any employment . . .

(c) the annual value of land and improvements thereon used by or on behalf of the owner or used rent free by the occupier, for the purpose of residence or enjoyment, and not for the purpose of gain or profit, . . .

(g) any annual gains or profits not falling under any of the foregoing heads: "

Section 6. " Subject to the provisions of this Ordinance 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."

Section 10(1). " For the purpose of ascertaining the chargeable income of any person, there shall be deducted all outgoings and expenses wholly and exclusively incurred during the year preceding the year of assessment by such person in the production of the income, including—"

Then there follow sub-paragraphs (a) to (k) which give examples of permissible deductions. It is unnecessary to set all these out in detail. Many of them are indeed unnecessary for it is clear that without considering the permissible deductions set out in the catalogue (a) to (k) the taxpayer can make all legitimate deductions from his gross receipts before arriving at the figure of his chargeable income. If he carries on a business for profit, for example, the wages of his employees etc. are deductible quite apart from the headings in the catalogue before the profit can be ascertained. This catalogue is not in any sense exhaustive and appears to be directed in the main to deductions of a business nature which would naturally be covered by the phrase " outgoings and expenses . . . incurred . . . in the production of the income." There are, however, certain sub-paragraphs which the last observation does not fit, for example, sub-paragraph (j) is one which reads— " such other deductions as may be prescribed by resolution of the Legislative Council."

There remains sub-paragraph (f), around which the controversy has centred. This reads:—

" annuities or other annual payments whether payable within or out of the Colony, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereout, or as a personal debt or obligation by virtue of any contract;

Provided that no voluntary allowances or payment of any description shall be deducted: "

Section 12. (1) " For the purpose of ascertaining the chargeable income of any person, no deduction shall be allowed in respect of—

(a) domestic or private expenses;

(b) any disbursements or expenses not being money wholly or exclusively laid out or expended for the purpose of acquiring the income;

. . . .

(f) rent of or cost of repairs to any premises or part of premises not paid or incurred for the purpose of acquiring the income;

. . . . "

Sections 14 and 15 deal with personal deductions permissible to individuals single and married.

Section 18 has already been set out in the earlier part of this judgment.

Section 34(2) (added by the Income Tax (Amendment) Ordinance 1951–1953 section 5.):

" Where, under or by virtue of a disposition made directly or indirectly by any disponer, the whole or any part of what would otherwise have been the income of that disponer is payable to or for the benefit . . . of a minor . . . such disponer shall nevertheless, during the period of the minority of such minor be liable to be taxed in respect of the sums so payable as if the disposition had not been made."

Their Lordships will now answer the questions upon which the judgment in this case depends.

First what is the effect, upon its true construction, of section 10(1)(f), bearing in mind the introductory words " outgoings and expenses wholly and exclusively incurred . . . in the production of the income?" If these words as the respondent argues govern all of the following sub-paragraphs (a) to (k), the appellant must fail for it is not and cannot be contended that the covenants in question, including incidentally those entered into by the appellant personally, were entered into in any way that could be covered by the words " in the production of the income ". Moreover these words are underlined in section 12(1)(b), supra, where the words " for the purpose of acquiring the income " repeated in section 12(1)(f) reinforces the argument of the respondent.

On the other hand the use of the word " including " in introducing the catalogue enables the appellant to submit, in the language of Lord Watson giving the judgment of the Board in *Dilworth v. Commissioner of Stamps* [1899] A.C. 99 at page 105, that " the word ' include ' is very generally used in interpretation clauses to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include."

In looking at this section as a whole including all its sub-paragraphs, their Lordships have already noticed that not all of the sub-paragraphs appear to be directly aimed at what may be broadly be called trade, business or profession and they are of opinion that the language of sub-paragraph (f) in particular the reference to a " will " points to the conclusion that (f) is looking at something which is not necessarily a business and that the conception of " the production of the income " is inappropriate and certainly not necessary to be regarded as a provision which governs this sub-paragraph. Their Lordships therefore reading the word " including " broadly have reached the same conclusion as Blagden J. at first instance following the decision of Gilchrist J. in an earlier case of an appeal in Trinidad by one Joseph Galvan Kelshall (No. 443 of 1939). This construction as Gilchrist J. pointed out is supported by the fact that in sub-paragraph (f) there are no limiting words referring specifically to the acquiring of income such as appear in sub-paragraphs (a), (b) and (h) of the same section. Further this construction is not inconsistent with section 12 which, read together with section 10, is of limited application and does not take away that which has

been expressly provided by section 10 (1) (f). No argument was addressed to their Lordships as to the effect of the proviso to section 10 (1) (f) on voluntary allowances, it being conceded that the covenant in question was not voluntary within the meaning of the proviso.

Before leaving Kelshall's case it should be added that the decision was based on two grounds. The first ground was wrong in principle and cannot be sustained. The second ground has been noticed above and since their Lordships are in agreement with the learned judge upon that matter it is unnecessary to consider the doctrine of stare decisis as applied to those cases where a subsequent act has used language which proceeds upon the hypothesis that a particular interpretation is to be placed upon the earlier act. *Attorney General v. Clarkson* [1900] 1 Q.B. 156.

As to the second question relating to section 18 the argument for the respondent was to the effect that under section 10 what had to be done was to list the income of the appellant and Mrs. Reynolds and since he does not incur the expenses himself there is no reason for a deduction incurred by his wife.

On this point their Lordships are again in agreement with Blagden J. that the wife has a chargeable income even though she is living with her husband which has to be assessed in the same way as her husband's income allowing all proper deductions. The effect of the deeming provision in section 18 is simply to provide machinery for the collection of tax from the husband in such a case and nothing in this section prevents the deduction claimed from being made.

There remains only the third question, what is the effect of section 34 (2)? Their Lordships do not accept the contention of the respondent that the " disponer " in such cases as the present is the husband. The person who in fact made his " disposition "—as defined in section 34 (7)—is his wife and there is nothing in the Ordinance which requires, or even suggests, that for the purposes of income tax the husband is to be deemed to have made it. The appellant however contends that the section does not apply because it provides that the disponer (i.e. the wife) shall " be liable to be taxed ": the wife, it is said, is not a taxable person and so this provision does not operate; there is a casus omissus.

Their Lordships cannot accept this argument. It may be that the words " shall be liable to be taxed " are not wholly apt in relation to married women living with their husbands. But this section must be read together with section 18, which provides for taxation of the income of the married woman in the name of the husband and so read there is no undue difficulty in understanding the section to mean that the income of the disponer (i.e. the wife) is to be brought into the machinery of taxation laid down by the Ordinance, as if the disposition of the income in question had not been made. Blagden J. in effect read the section in this way and their Lordships agree with him.

For these reasons their Lordships will humbly advise Her Majesty that the appeal be dismissed. The appellant must pay the costs of the respondent.

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In the Privy Council

PATRICK ALFRED REYNOLDS

v.

THE COMMISSIONER OF INCOME TAX

DELIVERED BY
LORD HODSON

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