IN THE HIGH COURT OF NEW ZEALAND HAMILTON REGISTRY

M 325/84

1209

BETWEEN

WAYNE BARDEN

Appellant

AND

COMMISSIONER OF INLAND REVENUE

Respondent

Hearing:

3 October 1984

Counsel:

Mr Roose for appellant

Mr Morgan for respondent

Judgment:

3 October 1984

ORAL JUDGMENT OF HILLYER J

This is an appeal against a penalty imposed in the District Court at Hamilton on 8 August 1984 by District Court Judge Latham. Appellant was charged with three charges of knowingly applying tax deductions from the wages of employees for a purpose other than the payment thereof to the Commissioner of Inland Revenue. He was fined \$150 plus court costs \$20 and solicitor's fee \$30 on each of three charges, a total of \$600.

Appellant is in partnership with his wife as a builder, and charges were also laid against the wife for failure to make the PAYE deductions. The deductions were for the months of August, September and October. They totalled \$3,669.89. This amount was not paid until 2 December 1983 following a visit from an inspector about the beginning of November 1983.

On behalf of the appellant, Mr Roose has submitted that the penalties are manifestly excessive, and he has referred me to three cases decided in the High Court in which similar charges were brought and fines of \$25 in two cases and \$10 in another case were imposed on a number of charges.

On behalf of the respondent, Mr Morgan points out that in those cases the total penalty was of the order of \$600-\$750 and the total was made up by the number of charges that were brought, in one case there being charges against each of two partners in a business for failure to pay the PAYE tax.

I note that in this particular case charges were also brought against Mrs Barden. The District Court Judge convicted Mrs Barden, but ordered her only to pay court costs and solicitor's fees. It would be proper in my view, to take into consideration the fact that in imposing the penalty of \$150 on each charge against Mr Barden, the learned District Court Judge did not impose a penalty on Mrs Barden, other than the court costs and solicitor's fees.

The failure to pay the PAYE appears to have been quite deliberate. It was not a case of the amount being overlooked or of any mistake. The appellant writes quite frankly to the department saying that the reason why the amounts were not paid was because he was having difficulty in collecting his accounts from people who owed him money.

In all the circumstances I am not convinced that the total amount of \$750 which was imposed on both Mr and Mrs Barden was manifestly excessive. It is higher than some other cases, but not so high that I would be prepared to interfere with the discretion reposed in the District Court Judge. that the maximum penalty for the offence for each charge is 12 months imprisonment, or \$2000 penalty, and where the appellant was getting a financial benefit from his failure to pay the tax, the penalty that was imposed on him was, in my view, not such as requires me to reduce it. The appeal is dismissed. In view of the fact that the appellants have been put to unnecessary expense in the informations being laid in the Hamilton District Court rather than the Thames District Court, as I am advised they should have been, I do not allow costs on this appeal.

P.G. Hillyer J

Solicitors:

Boot Roose for appellant Crown Law Office for respondent