

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M. 975/82

Special
 Consideration

213

BETWEEN

VALERIE IDA DAVIS farmer
 of Waitakaruru

OBJECTOR

A N D

THE COMMISSIONER OF
INLAND REVENUE

COMMISSIONER

Written Submissions : filed 17th November 1983 and
 7th and 23rd February 1984

Counsel : R.P. Smellie Q.C. and L. Renneberg for
 Objector
 G.J. McGuire for Commissioner

Judgment : 12 March 1984

JUDGMENT OF CHILWELL J. ON COSTS

1. The amount of income tax involved was in the vicinity of \$40,000.
2. The hearing involved the taking of evidence including that of one witness called purely as an expert in accountancy.
3. The hearing occupied two days. It would have taken another day, at least, if counsel on both sides had not substantially tendered legal argument in written form. That assisted me in the efficient disposal of

the case. In such circumstances the hearing time is not as useful a guide as it was when the present scale was introduced. Written argument was then less employed than it is today.

4. The issues justified the appearance of Senior Counsel.
5. The Commissioner was entirely right to seek the determination of the Court. "There is no equity about a tax" Cape Brandy Syndicate v I.R.C. [1921] 1 K.B. 64, 71 per Rowlatt J. The Commissioner has^a statutory duty to perform. He performed it properly in this case.
6. When, in the performance of that statutory duty, the Commissioner becomes involved in litigation the existence of his duty carries the implication of a further duty to incur costs. He owes that duty to his office.
7. The costs of losing litigation are, for the average litigant, a consequence of losing. The Commissioner is in no better position than any other litigant who loses. On the contrary his statutory duty carries the implication of a further duty to bear the objector's costs, if he loses.
8. Section 33(10) of the Income Tax Act 1976 equates the case stated procedure with an action "as if the case were an action in which the objector is the plaintiff and

the Commissioner is the defendant".

9. The primary rule is that "The successful party on the trial of any action or issue shall be entitled to the costs of the trial". Rule 556 of The Code of Civil Procedure.
10. If there is no equity about a tax, the more the reason to apply Rule 556 than in ordinary litigation.
11. If the Objector be regarded as a plaintiff, she succeeded in a sum of \$40,000 approximately against the Commissioner.
12. I certify for the extra day, for second counsel for two days and for the whole costs of the action. But this does not extend to include costs on a solicitor and client basis. Those costs were, including counsel's fees and the disbursements of counsel and solicitor, \$10,722.74. In addition there were fees, disbursements and travelling allowances of witnesses and of the objector as set out in the Schedule annexed to the memorandum filed on 7th February 1984. They amounted to \$2,013.40.
13. I fix the objector's costs at \$3,500 plus the disbursements of counsel and solicitor as fixed by the Registrar plus the fees disbursements and travelling allowances

4.

in the schedule as fixed by the Registrar.

A handwritten signature in cursive script, appearing to read "M. J. ...".

9th March 1984.