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Taxation, NZLR Reports

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

M.556/85

LOW PRIORITY

275

IN THE MATTER of the Inland Revenue Department Act 1974

BETWEEN WALTER ERNEST EGGERS of Levin, Farmer

Appellant

AND THE COMMISSIONER OF INLAND REVENUE constituted as such by section 4 of the Inland Revenue Department Act 1974

Respondent

Hearing 19 March 1986

Counsel G J Harley for Appellant
G D Pearson for Respondent

Judgment 24 March 1986

JUDGMENT OF DAVISON C.J.

This is a motion for removal of a case on appeal into the Court of Appeal.

A case on appeal has been stated by the Taxation Review Authority for the opinion of the High Court under s 43 of the Inland Revenue Department Act 1974. The appellant has moved that the case be removed into the Court of Appeal for argument pursuant to s 44 of that Act.

When the matter was first dealt with by me in Chambers I refused the application. However, on re-consideration of the matter after counsel had submitted a memorandum on that decision I came to the view that there were reasons of convenience which would justify this case being removed direct into the Court of Appeal. Accordingly, acting under R.540 I recalled the order earlier made and today granted the application for removal.

The order sought by the appellant was not opposed by the respondent. The main reason advanced by the appellant for seeking the order was that the case involves the interpretation and application of four Court of Appeal decisions, namely: Harley and Williams v C.I.R. [1971] NZLR 482; C.I.R. v Banks [1978] 2 NZLR 472; Buckley & Young Ltd v C.I.R. [1978] 2 NZLR 485; Grieve v C.I.R. [1984] 1 NZLR 101.

The appellant contends that the Taxation Review Authority has misapplied each of these cases. The appellant further contended that the submissions advanced for the Commissioner before the Authority involve not only a misapplication of those cases but also contemplate a direct attack on the Banks and Grieve decisions.

On behalf of the Commissioner the submission is apparently to be advanced on appeal that s 106(1)(h)(i) is an independent deduction test for interest expense and that two of the four Court of Appeal cases support that contention. Before the Authority, however, it was argued for the Commissioner that s 104(1) controls the application of s 106(1)(h)(i) and the Authority accepted the Commissioner's argument.

It will be contended on appeal on behalf of the appellant that the form of the question in the case stated dealing with losses is fatal to the Commissioner's case. Exactly the same issue, the appellant claims, arose in the Grieve case where the Court of Appeal upheld the taxpayer's submission. The appellant says that the Authority in the present case overlooked that issue and proceeded to the second stage which is the question of apportionment. The appellant will contend on appeal that the Authority and the Commissioner have both ignored the decision of the Court of Appeal in Grieve.

Whilst the appellant accepted that it was competent for the High Court to give judgment on those issues, it was submitted that the more appropriate forum

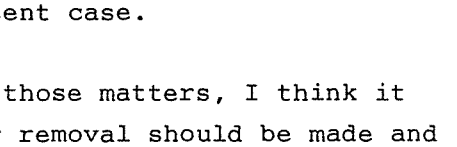
to have them resolved is the Court of Appeal for the following reasons:

1. The decisions under consideration are judgments of the Court of Appeal and if there is to be a consideration of the four cases referred to then the Court of Appeal itself ought to determine the meaning and application of its own decisions.

2. The issues in this case generally give rise to a number of decisions before the Review Authority and there are further cases pending which are commonly known as the "Rental Loss" cases. An authoritative decision of the Court of Appeal on this class of case will assist in bringing to a speedy conclusion the other cases of a similar type in the pipeline.

3. The Banks case where the High Court made an order for removal such as that sought here, involved similar considerations to those in the present case.

Having regard to those matters, I think it appropriate that an order for removal should be made and it is made accordingly. Costs reserved.



Solicitors for the Appellant — Rudd Watts & Stone (Wellington)

Solicitors for the Respondent — Crown Law Office (Wellington)