

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

M. No 927/86



BETWEEN BRIAN JOHN RICHARD  
FOX

Applicant

A N D THE COMMISSIONER OF  
INLAND REVENUE

Respondent

Date: 10 March 1987

Counsel: Mr B.M. Grierson for the Applicant  
Mr Ruffin and Miss Harland for the Respondent

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ORAL JUDGMENT OF SMELLIE J

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This is an application for review under S 4(1) of the Judicature Amendment Act. After some amendments the order sought by the Applicant is as follows.

"An order that the Respondent exercise the Respondent's statutory duty to consider the Applicant's objections and to exercise the Respondent's power to allow or disallow in whole or in part the Applicant's objections to the 1974 assessment."

The factual background to the application is best covered by a consideration of the documentation that passed back and forth between the Applicant or his agent and the Respondent. On the 17th March 1980 the Respondent delivered to the Applicant an income tax assessment notice in which the Applicant was assessed (inter alia) for some \$10,000 of additional tax for the 1974 financial year. The Statement of Income attached to the assessment indicated that the Commissioner, through his Inspector, had made adjustments to the income returned to tax profits on the sale of two properties, one in Bridge Road and one in

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Verbena Road. The assessment also covered allegedly understated fees earned by the Applicant in his professional practice.

The Applicant's Accountant put in a proforma objection on the 24th March 1980 and, within the period allowed for objection the applicant himself, on the 16th April 1980, wrote in more detail to the Commissioner. In that letter he stated that Bridge Road had been purchased as an investment for a family trust and Verbena Road had been intended for a building project which, however, had to be abandoned.

Following that there was a letter on the 6th May 1980 from the Inspector seeking further information. When that was not replied to there was a further letter on the 29th July 1980 indicating that in the circumstances the letter of objection dated 16th April 1980 would be considered as submitted.

The Applicant's Accountant wrote again to the Commissioner on the 5th March 1982 requesting further details and that was replied to on the 7th April 1982. Then on the 4th October 1982 the Applicant's Accountant wrote referring to various amended assessments. The first two paragraphs of the letter read as follows:-

"Further to Mr Fox's amended tax assessments for the 1974, 1975 and 1976 years and the Statement of Account dated 23.2.82 Mr Fox wishes to advise the following points:-

1. 1974 Amendments

Mr Fox is prepared to accept the adjustments relating to the year ended 31st March 1974."

Thereafter the Commissioner formally advised that the objections for the 1975 and 1976 years had been disallowed. At a later stage on the 27th May 1983 the Applicant's Accountant again wrote referring to the letter disallowing the 1975 and 1976 objections and asking that the appeal provisions in relation to the Taxation Review Authority apply in respect of the years under

consideration, namely 1974, 1975, 1976, 1979 and 1980. To that letter the Commissioner replied on the 24th June 1983 (a Conference having occurred between the Accountant and the Inspector on the 23rd June), inter alia, as follows:-

"In your letter of 4th October 1982 the objection to the assessment for the year ended 31st March 1974 was withdrawn. This assessment was not considered in the letter of disallowance dated 5th April 1983 and I understand you are to take instructions on the matter."

Mr Grierson's submission on behalf of the Applicant was that the letter of the 4th October did not amount to a withdrawal or an abandonment of the objection that had been lodged for the 1974 year. Mr Ruffin, on the other hand, submitted that when all the correspondence is carefully considered, and when it is realised that in the Statement of Income attached to the 1974 tax assessment the items that resulted in the levying of the extra tax are all described as "adjustments", the Commissioner was entitled to regard the October '82 letter as a withdrawal. Mr Ruffin further complained that as from the 24th June 1983 the Applicant was on notice that the Commissioner regarded the 1974 objection as having been withdrawn and that this application should have been made shortly thereafter. Taking the opposite view Mr Grierson, of course, contends that as the Commissioner was not justified in treating the letter as a withdrawal, the obligation remained upon him to consider the objection and either allow or disallow in whole or in part.

The view I take of the letter and the surrounding circumstances is that it is equivocal and ambiguous. There is substance in Mr Ruffin's submission but, on the other hand, the letter written by the Accountant in October of 1982 has to be put alongside the Applicant's own letter of the 16th April 1980 in which he advanced matters which, if proved, would have taken the profits for both Bridge Road and Verbena Road out of the category of taxable income. In addition there is the sworn evidence before me that in that letter of the 4th October 1982 the Applicant's Accountant

did not intend to withdraw the objection. Furthermore that the Applicant has also deposed that he did not so intend and had not given his Accountant authority to so withdraw.

The provisions of s 30 and 31 in Part III of the Income Tax Act 1976 dealing with "Objections to Assessments" were described by Casey J in Richardson v C.I.R., (judgment delivered 6.3.86, M.1159/84, Auckland registry) as an exclusive code. That code requires that once a person has been assessed and has made objection (as was the case here) then the Commissioner, pursuant to s 31, must consider the objection and either allow or disallow in whole or in part. If the Commissioner disallows in whole or in part then the taxpayer has the right within two months either to have the objection determined by the Taxation Review Authority or to have the case stated to the High Court. I interpolate to say that, apart from this unreported decision of Casey J, Counsel were not able to refer me to any other authority touching on the interpretation of the two sections in question.

In view of the fact that the consequence of the Commissioner treating an objection as having been withdrawn is that the taxpayer's right to challenge the the assessment before a judicial body is lost, I take the view that only withdrawals which are express, unequivocal and unambiguous would be sufficient to relieve the Commissioner from the duty of considering and allowing or disallowing. Indeed Mr Grierson argued that, even when a taxpayer expressly abandons his objection, the Commissioner, nonetheless, is still obliged to follow through the duties laid upon him in s 31. It is not necessary for me to decide that precise point in this judgment. The conclusion I have reached is related to the facts of this case in respect of which, as I have already indicated, I find that the letter of the 4th of October 1982 was not an unequivocal and unambiguous withdrawal or abandonment of the objection that had been lodged.

In my judgment, therefore, the Commissioner should have proceeded to consider the objection and allow or

disallow in whole or in part. Mr Ruffin properly concedes that the Commissioner has not done that because of the view he took of the letter. As one would expect, however, Counsel indicates that if the Court takes a different view the Commissioner is ready to consider the objection and rule without further ado.

In taking the view I do of ss 30 and 31 I have had in mind that in these sections and in Part III of the Act the citizen taxpayer is given certain valuable rights. They obviously are of considerable importance to him and in such circumstances I consider that the legislation should receive a "fair, large and liberal construction and interpretation." The attainment of the object of the provisions in ss 30 and 31 is best ensured by taking that approach which I see as necessary to accord to the provisions their "true intent, meaning and spirit." (S 5(j) Acts Interpretation Act 1924).

Having reached that conclusion the Applicant succeeds on the application for review in respect of the relief sought as recorded at the commencement of this judgment.

So far as the relief sought in paragraph (b) of the Prayer is concerned that relief is declined. This is because it is not until the Commissioner has considered and allowed or disallowed in whole or in part that he can be called upon to take the necessary steps to have the matter referred on to the Taxation Review Authority. As one would expect Mr Ruffin has assured me from the Bar that upon my ruling as I have done the Commissioner will consider and allow or disallow and thereafter, if appropriate, take steps to bring the question of the assessment for the 1974 year promptly before the Taxation Review Authority. In that event it is anticipated by both the Applicant and the Respondent that the 1974 objection will be heard by the Authority along with the 1975 and 1976 objections which at present stand adjourned part heard. The Minute of the Authority dealing with the adjournment which is attached to the Applicant's affidavit makes it clear that an early resolution of this matter is desirable. I am confident

that the Commissioner will now move expeditiously to bring the further assessment before the Authority.

Mr Grierson does not seek an order for costs, nor does Mr Ruffin. Accordingly I need not deal with that subject.

*Robert Smellie J*  

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