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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN EQUITY
SUIT NO. E 202/96

IN THE MATTER OF Notices of Assessment:
903173/A 37/78, 903173/A 36/79, 903173/A 36/80,
903173/A 23/81, 903173/A 13/82 and 903173/A
13/83 all dated 23rd day of August, 1986, in respect
of Years of Assessment 1978 to 1983 inclusive.

AND IN THE MATTER OF A SUMMONS NO. 24/96
dated the 18th day of March, 1996.

AND IN THE MATTER OF THE INCOME TAX ACT.

AND IN THE MATTER OF THE TAX COLLECTION
ACT

BETWEEN	KARL BROWN	PLAINTIFF
AND	THE ATTORNEY GENERAL OF JAMAICA	DEFENDANT

Mr. Enos Grant for Plaintiff.

Mr. Lackston Robinson instructed by the Director of State Proceedings for Defendant.

IN CHAMBERS

Heard: July 25, 1996; July 14, September 24, 1997.

KARL HARRISON J

This summons came up for hearing before me on the 25th July 1996, just a few days before the term ended and was part heard. The parties should have arranged a date with the Registrar of the Supreme Court for continuation in the Michaelmas Term but this did not materialise. It was

not set down until the 14th day of July, 1997, almost one year after the adjournment . I heard submissions from both Counsel and thereafter reserved judgment. I now seek to deliver judgment.

Nature of Application

The matter before me touches and concerns assessments of income tax which were made by the Commissioner of Income Tax acting under powers of the Income Tax Act. By this summons the plaintiff seeks the determination of the Court on the following questions and the granting of certain reliefs, namely:

1. (a) whether the abovementioned assessments are null and void and of no effect?
(b) whether the abovementioned summons is ultra vires the Income Tax Act and/or the Tax Collection Act?
2. Consequential Orders that:
 - (a) the said assessment be discharged;
 - (b) the said summons be withdrawn.

The Plaintiff's case

The affidavit evidence reveal that the plaintiff is a businessman who seemed to have been engaged in several business ventures in the Parish of St. Ann. He deposed that the Commissioner of Income Tax, without any prior notification to him and/or without affording him an opportunity to make representations to her, assessed him for income tax for the years 1978 to 1983 inclusive. He further deposed that the said Notices of Assessments were in global amounts without any particulars as to how they were made up or what were the sources of income on which they were based.

Mr. Grant submitted that this Court was bound by the decision in Collector of Taxes (Montego Bay) v Winston Lincoln RMMA 2/86 delivered on the 5th February, 1988. Lincoln's case held that certain conditions precedent to assessment were required viz, the Commissioner should request a return from the tax-payer and additionally the substance and effect on which the assessments were made must be particularised. He further submitted that this assessment would be null and void as the plaintiff was not a person duly rated and assessed. The plaintiff in his view would owe no income tax and the summons before the learned Resident Magistrate where the

Commissioner was seeking to collect the outstanding taxes would have to be dismissed. As a consequence he asked the Court to find the following facts :

1. That no Notice was served under section 70 of the Income Tax Act;
2. That the assessments do not give the particulars as required by section 75(3) of the Income Tax Act.

The Income Tax Act

Section 70 reads inter alia:

"70 (1) Every person, whether he is or is not liable to pay income tax, upon whom the Commissioner may cause a notice to be served requiring him to make and deliver a return of his income or the income of any person shall, within fifteen days after the date of the service of such notice, make and deliver to the Commissioner a return as aforesaid..."

Section 75(3) reads:

" 75 (3) As assessment or the duty charged thereon shall not be impeached or affected -

(a) by reason of a mistake therein as to -

- i) the name or surname of a person liable; or
- li) the description of any income; or
- lii) the amount of the tax charged; or

(b) by reason of any variance between the notice and the assessment;

Provided that in cases of assessment the notice thereof shall be duly served on the person intended to be charged and such notice shall contain, in substance and effect, the particulars on which the assessment is made."

The Defendant's case

Mr. Robinson's arguments centred around sections 72, 75 (1) (4) (6) respectively of the Income Tax Act. He submitted that the application by the plaintiff was quite misconceived as the

plaintiff had pursued his rights under the regime laid down in the Income Tax Act by making objections, meeting with the Commissioner of Income Tax, receiving the Commissioner's decision and appealing the matter in the Revenue Court. He submitted therefore, that this Court had no jurisdiction really to hear the application.

Evaluation of the evidence and findings

A major issue for consideration is whether or not this Court has the jurisdiction to entertain the application. Mr. Grant had submitted that the assessment of income tax by the Commissioner of Income Tax was null and void having regard to Lincoln's decision. He further submitted that this would mean that the applicant owed no tax. I must say however, that the matter before me is not one that is concerned with whether or not the applicant owes tax or he does not owe tax. I am also of the view that having regard to the affidavit evidence presented, it would be quite impossible for this Court to say that he does not owe tax. (See Cecil Roy July v The Commissioner of Income Tax SCCA 93/87 delivered on the 19th day of September, 1988.)

In July v The Commissioner of Income Tax Rowe P., had said that the decision in Lincoln's case had far - reaching repercussions in the administration of the Income Tax Act. I am quite aware that I am bound by the decisions of our Court of Appeal but it seems to me that the application before me is indeed, a novel one. The affidavit evidence reveal that the plaintiff had appealed the assessments in the Revenue Court. The learned Judge of the Revenue Court had dismissed a request by the plaintiff for Further and Better Particulars. He appealed to the Court of Appeal and The Judicial Committee of the Privy Council respectively, but these appeals were dismissed.

Time seemed to have slipped away after the Privy Council delivered its decision in 1989. There was delay on the part of the plaintiff in prosecuting the appeal so it was finally dismissed for want of prosecution in the Revenue Court. He has set out the reasons for this delay and the interest he had in the appeal at paragraphs 9 - 12 inclusive of his affidavit. He states as follows:

"9 That as over the years I heard nothing from the Commissioner and/or the Collector of Taxes about the said assessment, I assumed that the collection of the taxes was not being pursued by either of them.

10. That I have been informed by the said Mr. Enos A. Grant, and do verily believe that he was trying to contact me by phone since or about June, 1995, when he was served with a summons to dismiss my appeal for want of prosecution and again in or about November, 1995, after an order was made on the summons to have my appeal dismissed unless I apply to have it set down for hearing within 30 days of the order but that he was unable to do so, that I do verily believe that his secretary must have rang the incorrect number.

11. That on or about the 18th day of March, 1996 I received through the post at Browns Town his letter informing me that on the 13th day of November, 1995, the Honourable Mr. Justice Courtney Orr had made an order dismissing my appeal unless I took steps to have it re-listed within 30 days of the date of the order. That had Mr. Grant been able to get in touch with me before the expiry of the period I would have instructed him to set down my appeal for hearing before the expiry of the period; that the reasons for the delay in this matter were in fact that Mr. Grant appears to have had an incorrect telephone number for me and the slowness of the post.

12. That as I had seriously wished to prosecute my appeal, I instructed Mr. Grant to file a summons for an extension of time to set down my appeal for hearing. That the said summons was heard on Monday, the 29th day of April, 1996 but was dismissed."

The chronology of events indicate that the appeal in the Revenue Court was well on its way until it was dismissed for want of prosecution. Lincoln's case, was decided by the Court of Appeal in February 1988, but the "lack of notice" issue had not been raised in the Revenue Court. It is my considered view therefore, that the history of events show that the plaintiff has pursued his rights up to the stage of appeal under the law. I have listened to the submissions and evaluated the evidence presented, but I am not persuaded by the arguments of Mr. Grant. I hold that this Court has no jurisdiction to determine the questions asked. Perhaps, the plaintiff ought to make an application to restore the appeal which has been dismissed for want of prosecution and pursue the questions he has asked this Court to determine, in that forum. In the circumstances, I hereby order that the summons be dismissed with costs to the defendant to be taxed if not agreed.