Revenue Court — Assessment — Jurisdiction of court to entertain Appeal — Collector of Taxes (Montego Bay) v Winston Lincoln — RM Miscellaneous Appeal No 2/86 applied. Held Court has no jurisdiction to entertain appeal.
Cases referred to (p8 end)

Comp Duplicate

Revenue

JUDGMENT

IN THE REVENUE COURT

NO 3 OF 1988

BETWEEN LYNSON CHARLTON APPELLANT

A N D THE COMMISSIONER OF INCOME TAX RESPONDENT

CORAM: MARSH J.

FOR APPELLANT ENOS GRANT ESQ.

FOR RESPONDENT WILLIAM ALDER ESQ.

The 11th and 12th December, 1989

NOTE OF ORAL JUDGMENT DELIVERED
ON THE 12TH DAY OF DECEMBER, 1989
AND TAKEN BY COUNSEL

The assessments in this Appeal were made prior to the decision of the Court of Appeal in COLLECTOR OF TAXES (MONTEGO BAY) v. WINSTON LINCOLN - R.M. MISCELLANEOUS APPEAL NO. 2/86 dated the 5th February, 1988, in which it was held that a Notice of Assessment to Income Tax must state, in substance and effect, the basis upon which the assessment was made; in other words, that the taxpayer is entitled to know the source of income upon which the tax is being levied, and failure to so inform him, vitiates the assessment.

As a consequence of the foregoing, a rather unusual situation arose in the hearing of this Appeal, in that Counsel for the Appellant, having filed the Appeal, and thereby inferentially accepting the jurisdiction of this Court, nevertheless, on the case being called up this morning, elected to challenge the Court's jurisdiction on the basis that the Notice of Assessment herein violated some of the principles enunciated in the LINCOLN case.

The matter was discussed and Counsel agreed that the jurisdictional point would have to be dealt with first

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before considering the merits of the Appeal proper; since obviously, if there was no jurisdiction, that would be an end of the matter. I now turn to the consideration of that question and that question alone.

For the Appellant, Mr. Grant citing the LINCOLN case, submitted:-

(a) that the Notices of Assessment were bad in law because they failed to comply with the Statutory requirements i.e. that they failed to inform the Appellant in substance and effect of the basis upon which the assessments were made.

(b) that in any event, the assessments were equally invalid because they were made without any opportunity being given to the Appellant to render a return.

In response, Mr. Alder submitted as regards

(a) that the assessment notices had complied with the Statute and did contain in substance and effect, the basis upon which the assessments were made. He referred to the assessment notices exhibited, and in particular to a notation in ink thereon under the heading""ADJUSTMENTS" where the following words had been inserted:- "Income recomputed as per Capital Statement."

As regards (b), it was submitted that the reference to a "Capital Statement" obviously related to the

fact that a return had previously been made by the Appellant and to which his Accountants had appended a "Capital Statement"; before the assessments were issued. Therefore, looking at one in conjunction with the other, it was clear that:-

(a) the taxpayer was aware of the basis upon which the assessments had been made, and

(b) he had in fact submitted returns prior to the assessment.

Apart, however, from this, there is in my bundle, an Affidavit filed on behalf of the Respondent by Mr. Aubrey Donaldson Evans, Chief Investigator in the Income Tax Department, the officer who investigated this matter and examined and dealt with the file of the Appellant LYNSON CHARLTON. I have read that Affidavit and it seems to me that (whatever may be the criticisms of the Notice of Assessment) a clear inference can be drawn from the Affidavit that the Appellant had, in fact, been aware of the basis upon which the assessments were made.

For that reason, the question in this case is not merely whether the Respondent had failed to comply with the Statutory requirements relating to the Notice of Assessment, but whether <u>such failure was any longer relevant if the taxpayer did in fact know the basis upon which it had been made.</u> In short, are the requirements of the Statute mandatory and does a failure to state particulars, regardless of any subjective knowledge in the taxpayer, ipso facto, render the notice invalid? I shall return to this question later.

Firstly, however, I must deal with the second leg of Mr. Grant's submission, namely, that the assessments were also invalid because they were made without any opportunity having been afforded the taxpayer to render a return. I think this point must fail, because I accept Mr. Alder's submission that the Appellant had already made returns prior to the issue of the assessment and there could, therefore, be no question of any such assessment having been made without affording him an opportunity to do so.

I return now to the question raised by the first limb of Mr. Grant's submission. In reply thereto, Mr. Alder had submitted that the note on the assessment notice stating - "Income recomputed as per Capital Statement" - was a sufficient compliance with the provisions of the Act.

The phrase "Income recomputed as per Capital Statement" is one with which Accountants, Tax Officers and perhaps even Tax Lawyers may be familiar, but I would be extremely surprised if persons existing outside of that group had any clear understanding of the phrase to such an extent as to inform themselves of the basis of the assessment. As I understand the reasoning of the Court in the LINCOLN case, compliance with this provision must necessarily involve the use of non-technical language capable of being understood by the average citizen, e.g. by simply stating on the face of the notice the particular source or sources of income being taxed, such as income arising from trades, dividends, interest, etc. On the basis of that decision, therefore, the Notices herein have failed to comply with that test, and are, prima facie, invalid.

All of which brings me back to the question posed earlier in this judgment. Would a failure to give a proper description of the sources of income as required by Section 75(3) of the Act render the notice invalid, even though there is evidence to indicate that the taxpayer, in spite of such failure, did in fact know the source of income being taxed? Is this failure fatal regardless of the subjective state of mind of the taxpayer?

On this point, Mr. Alder relied on certain observations in the judgment of CAREY J.A. in the case of KARL EVANS BROWN v. THE COMMISSIONER OF INCOME TAX decided in the Court of Appeal on the 19th June, 1987.

The reference is to a passage which occurs near the end of the judgment of CAREY J.A. in which he was drawing a distinction between an Appellant in this Court and a Plaintiff in an action in the Supreme Court; in relation to a request for further and better particulars. The passage reads as follows:-

> "In the enquiry undertaken by the Commissioner, the taxpayer on whom the responsibility and duty of full disclosure rests, would either have disclosed fully or partially. On the basis of that disclosure, full or partial, the Commissioner would have made an assessment according to his best judgment. In a trial, the situation is wholly dissimilar. That is an adversarial situation where there is no duty on either of the parties to make a full disclosure. On the one side, there are allegations and on the other, a traverse or other answer. The Pleadings of the Plaintiff might be so general as to prevent a proper defence being pleaded. He may, therefore, be required to condescend to particulars so that his opponent is not taken by surprise. No question of surprise can arise, at all events, so far as the taxpayer is concerned.

> It should be clear that since it is the taxpayer who is required to make a full disclosure, particulars of allegations in the Commissioner's Statement of Case cannot be allowed, for that would be to reverse the roles of taxpayer and the Commissioner. That position is not, in my judgment, sanctioned by the Income Tax Act."
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> (my emphasis)

In that passage, CAREY J.A. is apparently adumbrating one of the fundamental elements of Income Tax law, namely, that no one knows better than the taxpayer what is his true income; a view with which I respectfully agree.

Apart from that point, however, it does not appear that a decision of the Court of Appeal in England which was most relevant to the decision in the LINCOLN case, was ever cited to the Court of Appeal here, or indeed, before me, in the instant case.

That is the case of W.H. COCKERLINE & Co. v. THE COMMISSIONERS OF INLAND REVENUE 16 T.C. 1, in which the question before the Court was very similar to that before our Court of Appeal in the LINCOLN case. In that case (the English case), it was held that an assessment was mere machinery and, did not, therefore, affect liability for the tax.

At page 18 et seq LORD HANWORTH M.R. dealt with the matter thus:-

> "Another point is taken by Mr. Wilfred Greene. He says that this right under Section 39 remained open to Sir Walter, that no effect ought to be attached to this payment of £107,106 because it was paid without an assessment actually being made upon Sir Walter, and that there can be no payment without an assessment. In language which was, perhaps, coloured by a warmth of feeling about it, he suggested that it was entirely wrong, and, indeed made an inroad upon the rights of the subject that there should be any sum ever

accepted from the subject in discharge of a liability in respect of which there had not been the assessment, or paper imposing the assessment, served upon him. In my view that argument is unsound. I do not think it is necessary in all cases, in order to enable the Crown to receive money, that there should be an assessment actually served of that sum which is ultimately paid. Lord Dunedin, in the case of WHITNEY v. COMMISSIONERS OF INLAND REVENUE 1926 A.C. page 37, to which reference was made yesterday, points out, at page 52, that there are three stages in the imposition of tax. "There is the declaration of liability .....Next there is the assessment. Liability does not depend on assessment. That, ex hypothesi, had already been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly come the method of recovery." Lord Dunedin, speaking, of course, with accuracy as to these taxes, was not unmindful of the fact that it is the duty of the subject to whom a notice is given to render a return inorder to enable the Crown to make an assessment upon him; but the charge is made in consequence of the Act, upon the subject; the assessment is only for the purpose of quantifying it. In a passage in Lord Justice Sargant's judgment in the case of WILLIAMS, he says this:- "I cannot see that the non-assessment prevents the incidence of the liability, though the amount of the deduction is not ascertained until assessment. The liability is imposed by the charging section, namely Section 38," which is Excess Profits Duty - "the words of which are clear." The subsequent provisions as to assessment and so on are machinery only. They enable the liability to be quantified, and when quantified to be enforced against the subject, but the liability is definitely and finally created by the charging section and all the meterials for ascertaining it are available immediately. With the greatest respect to the learned Judge, I think he has attached quite undue importance to the machinery of assessment and recovery and too little importance to the creation and the charge of the liability. The liability like other liabilities, has to be discharged or provided for out of the profits of the Company." I was a party to the judgment in that case, and I associate myself now, as I did then, with those words of Lord Justice Sargant. They follow exactly the analysis made by

> Lord Dunedin, and they are consistent with the imposition of the Income Tax which follows upon the duty of the taxpayer to make a return showing on what sum he is liable to pay his tax."
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> (my emphasis)

On the basis of that reasoning, with which I also most respectfully agree, I would be disposed to take a less trenchant view of the imperfections in the Notice of Assessment, and hold that the personal knowledge of the taxpayer is relevant.

If, however, I am correct in my understanding of the ratio decidendi of the LINCOLN case, then it seems that such a course is not available to me, and that I am obliged to hold that the assessment is a nullity.

Guiding myself, therefore, by that view of the matter, I find that the assessments herein are a nullity and that all subsequent proceedings based thereon are similarly tainted. The result, therefore, is that this Court has no jurisdiction to consider on their merits, the issues raised.

Order as follows:-

Coram finds that assessments invalid. Court has no jurisdiction to entertain Appeal. No order as to costs.

(1) Collector of Taxes (Montego Bay) v Winston Lincoln – R.M. Misc. Appeal No. 2/86 – 5/2/88

(2) Karl Evans v Commissioner of Income Tax – GN 19/6/87

(3) W.H. Cockerline & Co v The Commissioner of Inland Revenue 16 T.C.I.

Approved

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The Hon. Mr. Justice W.D. Marsh
Judge of the Supreme Court and
of the Revenue Court