

CA

INCOME TAX ACT - Power of Commissioner of Income Tax to serve a Notice of Restriction - must have grounds -

Sec. 2 Part 2 of Act. Appeal allowed in part - Order of mandamus granted directed to respondent to withdraw Restriction Notice. Case referred to

JAMAICA

Collector of Taxes, Montego Bay v Winston Lincoln - R M Miscellaneous Appeal No 2 of 1986

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 93/87

On appeal to Privy Council? Check results? comp

BEFORE: THE HON. MR. JUSTICE ROWE, P.  
THE HON. MR. JUSTICE WRIGHT, J.A.  
THE HON. MR. JUSTICE FORTE, J.A.

INCOME TAX

BETWEEN CECIL ROY JULY APPLICANT/APPELLANT  
AND THE COMMISSIONER OF INCOME TAX RESPONDENT

Mrs. A. Hudson-Phillips for the appellant

N. Fraser for the respondent

July 19, 1988

ROWE, P.:

On February 5, 1988, this Court in Resident Magistrate's Miscellaneous Appeal No. 2 of 1986, Collector of Taxes, Montego Bay against Winston Lincoln, gave a decision under the provisions of the Income Tax Act which have had far-reaching repercussions in the administration of that Act. The decision in that case has been appealed by the Crown and is presently before Her Majesty in Council.

On the 23rd of November, 1987, the action out of which this appeal is brought came up in the Full Court and the Full Court did not then have the benefit of the decision in Winston Lincoln and the Collector of Taxes. Grounds of Appeal were filed following the decision of the Full Court and were later amended to include the points decided by the Court of Appeal in the Winston Lincoln case. This Court is bound by its previous decisions, if the matter is in pari materia, and for all intents and purposes some of the points raised in the instant appeal are exactly those which were decided by this Court in the Winston Lincoln case. This Court decided that before



the Commissioner of Income Tax can proceed to an assessment on best judgment he must give an opportunity to the tax-payer to file his own assessment and secondly, that the Notices of Assessment by the Commissioner of Income Tax must contain the "particulars" under which that assessment is computed.

Mr. Fraser for the Attorney General, quite rightly, conceded that the points raised in this appeal are exactly similar in the two respects I mentioned to the ones decided in Winston Lincoln.

In the present case, the Commissioner of Income Tax issued a Restriction Notice under Part II of the Income Tax Act, which permits her, whenever she thinks fit, to serve on any person a notice requiring that he shall not leave the Island unless at the time of leaving he has in his possession a certificate issued by or on behalf of the Commissioner within the preceding ninety days stating that:

(a) he does not owe any income tax,

or

(b) has made satisfactory arrangements for the payment of Income Tax payable by him.

Mrs. Hudson-Phillips has argued, and on this point Mr. Fraser is in complete agreement, that the Commissioner of Income Tax cannot arbitrarily serve a Notice of Restriction upon any person, she must have grounds for so doing, and this is borne out by the provision in Section 2 of Part II of the Act where it provides that:

"On the application of any person on whom a notice under paragraph (1) has been served, the Commissioner shall issue to him within thirty days after the date of the application, a notice of assessment in respect of all income tax that will be due by him at the date of his intended departure from the Island."

In this particular case the evidence, coming from the affidavits, and supported by the submission of counsel, is that the Notices of Assessment for the years 1980-1985, were served simultaneously with the Notice of Restriction and in our view the unequivocal inference to be drawn from the service of the Notices of Assessment at the time of the Notice of Restriction was that the Commissioner intended thereby to comply with paragraph 2 of Part II of the Rules, to which I have just made reference.

The decision in Winston Lincoln when applied to the Notices of Assessment which were served on the 9th of September, 1986 would make those Notices null and void and of no effect.

In our view the consequence follows that if the Notices of Assessment are null and void then the Notice of Restriction which was intended to give efficacy to the Assessment Notices must also fail. In our judgment the Commissioner had no reason by virtue of those invalid Notices of Assessment to persist with the Restriction Notice of the 9th of September and must be ordered to withdraw that Notice.

The appeal will, therefore, be allowed in that respect. There was a request that the Commissioner be ordered to issue a Notice to the effect that the appellant owes no income tax, but in the course of argument Mrs. Hudson-Phillips, in our view, quite rightly did not press that second part of her application on the basis that it would be quite impossible for this Court, given the information which is contained in the Affidavits, to say that this appellant, in fact, owes no tax.

This case is not concerned with whether Mr. July owes tax or does not owe tax. It is concerned with the procedure by which he was assessed and if he was assessed in a manner not permitted by the Income Tax Act, then the Restriction Notice which was so intimately connected to the invalid Notices of Assessment is also of no validity.

We, therefore, allow the appeal in part and grant an Order of Mandamus directed to the respondent requiring her to withdraw the Restriction Notice dated the 9th of September, 1986, issued by her and served upon the appellant. The appellant will be entitled to the costs of the appeal to be agreed or taxed.