

J U D G M E N T

IN THE REVENUE COURT

NO 6 OF 1988

BETWEEN                      SIR ALLEN LEWIS                      APPELLANT

A. N. D. COMMISSIONER OF INCOME TAX RESPONDENT

CURAM: MURSH J.

FOR APPELLANT                      MRS. A.C. HUDSON-PHILLIPS G.C.

FOR RESPONDENT                      MR. A. HAMILTON  
   MR. W. ALDER

The 5th and 6th June, 1989

NOTE OF ORAL JUDGMENT DELIVERED  
ON THE 6TH DAY OF JUNE, 1989  
AND TAKEN BY COUNSEL

This Appeal raises an interesting point, but since the law is settled and the matter is fresh in my mind, I do not propose to take time.

The Appellant is a 78 year old non-resident, who is in receipt of a pension from the Jamaican Government in respect of former services in Jamaica as a Judge of the Court of Appeal. He is also in receipt of income from dividends and interest derived from Jamaican sources.

His total income from these three sources during the year of assessment in question was \$24,075.- He has claimed exemption from tax on that income under two separate provisions of Section 12 of the Income Tax Act; namely, Section 12(z) and Section 12(ab). The actual wording of the Section is as follows:-

"12 There shall be exempt from tax.....

(z) As regards the year 1986 and any subsequent year of assessment -

(i) \$15,000 of the income of any individual derived from a superannuation

allowance or pension under either a statutory pension scheme or a scheme for payment from a superannuation fund approved by the Commissioner pursuant to subsection (2) of Section 44 or an approved retirement scheme approved by the Commissioner pursuant to Section 44a; or

- (ii) if the individual referred to in sub-paragraph (i) of this paragraph has attained the age of 55 years or is found to be permanently incapacitated as described in paragraph (y) of this section, \$15,000 of his income derived from any of the sources referred to in sub-paragraph (i) aforesaid and from any other source;

- (ab) as regards the years 1986 and any subsequent year of assessment -

\$15,000 of the income of an individual who has attained the age of 65 years or attains that age at any time during the year of assessment

Provided that nothing in this section shall be construed to exempt, in the hand of the recipients, any payments other than those referred to above made wholly or partly out of the income so exempted."

The taxpayer's claim has been rejected by the Revenue on the basis that these two sub-paragraphs are mutually exclusive and so he is entitled to claim under one or the other, but not both. The taxpayer has appealed that decision on the ground that the Respondent Commissioner of Income Tax is wrong in her construction of the section. He contends that the sub-paragraphs are not mutually exclusive and he is, therefore, entitled to the exemption under both.

Clearly then, the case turns on a straight question of law; namely, what is the proper construction of the relevant provisions of the Act?

Before examining the wording of the section, I think it might be useful at the outset to state my understanding of the approach to be taken by a Court in construing a taxing Act.

The leading case on the point is to be found in the judgment of the late ROWLATT J. in the case of Cape Brandy Syndicate v. C.I.R. 12 T.C. 366; which was cited with approval in the House of Lords by Lord Simonds in Canadian Eagle Oil Co. Ltd. v. The King 27 T.C. 205. In the Cape Brandy case ROWLATT J. said:-

"Now, of course, it is said and urged by Sir William Finlay that in a taxing Act, clear words are necessary to tax the subject. But it is often endeavoured to give that maxim a wide and fanciful construction. It does not mean that words are to be unduly restricted against the Crown or that there is any discrimination against the Crown in such Acts. It means this, I think; it means that in taxation you have to look simply at what is clearly said. There is no equity about a tax: there is no presumption as to a tax; you read nothing in; you imply nothing, but you look fairly at what is said and at what is said clearly and that is the tax."

Even though the Appellant is claiming an exemption and the onus is, therefore, on him to prove that he qualifies, I cite that short and well-known passage because it very succinctly embodies the approach which I think should guide me in the instant case; namely, that if the words of the Act are clear in their meaning, then I am obliged to apply them. It is settled law that in all such circumstances, the words of the Statute themselves best declare the intention of the Legislature. Where, of course, there is ambiguity in the Statutory language, different considerations might apply and the Court may go beyond the actual wording in an effort to

clear up any such situation.

I turn, therefore, to a consideration of the relevant provisions. Section 12 is an omnibus section beginning with the words - "There shall be exempt from tax." Thereafter follows a series of sub-paragraphs in which are delineated the types or sources of income to be exempted. In the instant case, we are involved with the last two paragraphs of the section; namely, paragraphs (z) and (ab).

Looking firstly at paragraph (z) and ~~emitting~~ any reference therein to "incapacitated persons," I understand the following to be the position:-

As regards the year 1986 and any subsequent year of assessment -

1. A taxpayer who is under the age of 55 and who is in receipt of a pension referred to in the paragraph, will be entitled to set off against that pension the sum of \$15,000 in each year of assessment.
2. When, however, he reaches the age of 55, the exemption of \$15,000 will then be available as a set off, not merely against his income from the pension, but also against his income from all other sources.
3. (For example, in a situation where a taxpayer has a pension of \$10,000 per annum and other income of a further \$10,000, making a total of \$20,000; the following situation would arise)
  - a. If he is under the age of 55, then since at that age only the pension of \$10,000 would qualify for exemption the balance of \$5,000 would not be available as a set off against his other income and so would go by default.

- b. However, on attaining the age of 55 then, since the exemption will no longer be restricted to his income from the pension, he will be able to set off against his total income of \$20,000 the exemption of \$15,000 referred to in the Section leaving him with a taxable income of \$5,000.

I now turn to paragraph (ab). It is a short paragraph and I cite it in full:-

"There shall be exempt from tax:-..

- (ab) as regards the years 1986 and any subsequent year of assessment -

\$15,000 of the income of an individual who has attained the age of 65 years or attains that age at any time during the year of assessment."

This provision, on its clear wording, applies to all persons who attain the age of 65. The restriction is as to age and to nothing else.

One qualifies for the exemption under this paragraph not because one is a pensioner, but because one is: a taxpayer who has attained the age of 65. From which it will follow that pensioners under the preceding paragraph who are under the age of 65, will not be entitled to the exemption.

It is for this reason that Counsel, during the hearing of this Appeal referred to it as the "Golden Age" exemption.

When the two paragraphs are read together, this is what happens:-

1. Any person who is in receipt of a pension and who is under 55 years of age, will be

entitled to a set off against that pension of the total sum of \$15,000 in each year.

2 On attaining the age of 55, the exemption is no longer restricted to his pension, but applies across the board to his income from all sources for the year.

3 If, however, he lives for another 10 years and attains the age of 65, he will then, and only then, be entitled to set off the additional sum of \$15,000 referred to in the paragraph; making an accumulated exemption of \$30,000 against his total income from all sources for the year.

In my judgment, that is the clear and unambiguous meaning of the Statutory language involved.

Nevertheless, Counsel for the Revenue has urged on me that the words are misleading and do, in fact, create an effect which is exactly opposite to that which I have just outlined. It was submitted that the \$15,000 granted under paragraph (z) applies exclusively to persons in receipt of income from a pension; and so governs the computations of their liability for all purposes of the Act; whereas the exemption granted under paragraph (ab) applies to persons who are not pensioners. If, therefore, one is a pensioner, the claim can only be made under the provision which, it is alleged, applies exclusively to pensioners. Otherwise, so the arguments run, taxpayers would be claiming an exemption twice over; once under paragraph (z) and again under paragraph (ab).

With respect, I do not agree. Such a conclusion is derived from an oversimplification of the wording of the section. As I have attempted to point out above, not all pensioners are entitled to claim under both paragraphs -

but, in fact, only those who have attained the age of 65, and even then, not because they are pensioners, but because they are among those taxpayers who have reached the "Golden Age" of 65.

If the intention was to make the two paragraphs mutually exclusive, as has been submitted, then the wording of paragraph (ab) would have had to be something along the following lines:-

"There shall be exempt from tax:-

as regards the years 1986 and  
any subsequent year of assess -  
ment -

\$15,000 of the income of  
an individual (other than  
an individual referred to  
in paragraph (z) supra)  
who has attained the age  
of 65 or attains that age  
at any time during the year  
of assessment."

There are no such words of exclusion in the Act, and the absence thereof, is, in my opinion, fatal to the Revenue in this case.

In furtherance of their argument on this point, however, I was invited by Counsel to look at the history of the Legislation and in particular, at an earlier version of paragraph (ab) which had been inserted in the Act in 1986, and then later amended by Section 2(b) of Act 24 of 1987. Since the existing words of the Act are, in my opinion, clear and unambiguous, I am not persuaded that there is any need for me to go beyond that, and embark upon an examination of the legislative history of the provision.

Nevertheless, having been invited to do so, I have examined the earlier provisions, and there is some kind of case that could be made out to the effect that paragraph (ab) in its original form might have been,

in a sense, mutually exclusive with paragraph (z).

This is so, because the benefit conferred upon the taxpayer under paragraph (ab) was limited to those persons alone whose income did not exceed \$15,000.

If, therefore, a taxpayer aged 65 was also a pensioner, then there would have been no need for him to have recourse to paragraph (ab) because a need for exemption beyond \$15,000 p.a. could only have arisen if his income had exceeded \$15,000; and, if it had, then he would have fallen outside of the monetary limit imposed by the paragraph, and be unable to claim the exemption. In that sense, therefore, the two paragraphs are mutually exclusive.

However, as I have already indicated, paragraph (ab) was amended by Act 24 of 1987 and the reference to taxpayers "whose income did not exceed \$15,000 per annum," deleted. In its present form, therefore, the exemption granted is open-ended and applies to every taxpayer aged 65, without qualification. One, therefore, need say no more so far as the historical analysis is concerned.

There was, however, one more point raised by Counsel for the Revenue with which I must deal; and which turns on the fact that the Appellant is not resident in Jamaica.

It was submitted that under the Act, non-residents are not affected by the burdens or benefits of the Act except by express stipulation, and since there was no express reference in Section 12 to "non-residents" then, the Appellant, who is a non-resident, was not entitled to the benefit conferred by the Section.

I have referred to this point in the Respondent's submissions because Counsel, having raised it, are entitled to an answer. No authority was cited in support of the submission, nor am I aware of any such. In such



circumstances, I need do no more than point out that the Respondent already concedes that the Appellant is entitled to the exemption under paragraph (z) of the section, although, on their own analysis, there is no specific mention therein to non-residents as such. As the saying goes, - one cannot approbate and reprobate.

Caedit Quaestio!!

For the record, therefore, I state the following:-

As I understand the matter, Section 12(z) and 12(ab) stand on their own and are not mutually exclusive. Consequently, persons who qualify under paragraph (z) are entitled to the full exemption granted under that paragraph; and upon reaching the age of 65, are also entitled to the further exemption granted by paragraph (ab).

Since, therefore, in this case the taxpayer is entitled to a total exemption of \$30,000 for the year, it must follow that since his income is only \$24,075, then he ought not to be required to pay any tax for the relevant year.

#### O R D E R

The Appeal is allowed with costs to the Appellant and any tax overpaid is to be refunded.

Approved

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