

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL No. 28 of 1972

BEFORE: The Hon. Mr. Justice Graham-Perkins, J.A.(Presiding).
The Hon. Mr. Justice Zacca, J.A.
The Hon. Mr. Justice Watkins, J.A.(Ag.).

ST. ELMO HOTELS LTD. - Appellants

v.

THE COMMISSIONER OF INCOME TAX - Respondent

R. Mahfood, Q.C. for Appellants.

Herbert A. Hamilton for Respondent.

March 29, 30 and April 26, 1976

WATKINS, J.A.(Ag.):

This is an appeal by the Appellants (to whom I will hereafter refer as the taxpayer) from a judgment of Marsh J., sitting in the Revenue Court, in which on July 4, 1972 he reversed a decision of the Income Tax Appeal Board handed down by that Body in favour of the taxpayer on July 19, 1967, against the Respondent (hereinafter referred to as the Revenue).

Before us Counsel for the taxpayer submitted that the Revenue Court had no jurisdiction to hear the appeal and after hearing arguments from both sides, the Court, treating the matter as an objection in limine, took time for consideration. This judgment, therefore, is concerned only with the issue of want of jurisdiction in the Revenue Court and not with the merits of the substantive issue of the income tax liability of the taxpayer.

The essential facts are these: In December 1966 the Revenue increased the estimated Chargeable Income of the taxpayer for the year of assessment 1965 whereby liability to income tax was accordingly increased. The taxpayer subsequently appealed to the Income Tax Appeal Board which, as indicated above, on July 19, 1967 upheld the contention of the taxpayer. On August 2, 1967 the Revenue appealed from the decision of the Appeal Board to a Judge of the Supreme Court in Chambers where the matter remained "pending" until enactment of the Judicature (Revenue Court) Act No. 29 of 1971 which came into operation on February 1,

1972. Consistent with the long title of this Act, namely "An Act to provide for the establishment of a Revenue Court and for purposes incidental thereto or connected therewith", the apparent intention of Parliament was that all existing intervening appellate tribunals between the Commissioner of Income Tax and this Court of Appeal should disappear, their jurisdiction, powers, functions, duties and the like being transferred to and vested in the newly established Revenue Court, a superior court of record like the Supreme Court and presided over by a Puisne Judge of the Supreme Court "nominated by the Governor-General acting on the advice of the Judicial Service Commission, being a person appearing to that Commission to be versed in the law relating to income tax". In the nature of things the pursuit to finality of this parliamentary objective involved two separate but related exercises, namely:-

- (i) the conferment upon the new court of appropriate jurisdiction to hear and determine appeals arising on or after the commencement date of the statute creating the court and brought directly thereto, and
- (ii) the conferment upon the new court of appropriate jurisdiction to hear and determine, as seem fit, such appeals as might, before the commencement of the Judicature (Revenue Court) Act have already been taken to or pending in those appellate bodies which were to disappear with the establishment of the Revenue Court.

The question in the instant appeal is as to whether the transitional provisions referred to at (ii) above and enacted in the Judicature (Revenue Court) Act 1971 and the Judicature (Revenue Court) (Amendment) Act 1974 have achieved that objective, or to put the matter in precise terms: Have the Act and the amendment thereto effectively transferred to the jurisdiction of the Revenue Court the jurisdiction of a Judge of the Supreme Court in Chambers to hear and determine the instant appeal which was pending in the latter court immediately before February 1, 1972 on which date the Revenue Court Act came into operation?

It is convenient to start with the Second Schedule to the Act of 1971 by which, in conjunction with section 12 of the Act, a number of revenue statutes, including the Income Tax Law with which the instant case is alone concerned, are amended, uniformly replacing by the Revenue Court

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all existing intermediate appellate bodies between the respective tax-collectors and the Court of Appeal. Particularly, in the Income Tax Law, the words "Appeal Board", meaning the Income Tax Appeal Board, are expressly replaced by the words "Revenue Court" and sections 51, 52, 53, 54, 55, 56, 57 and 58 the last three of which provided for appeals from the Appeal Board to a Judge of the Supreme Court in Chambers, are expressly deleted and replaced by a new composite section 51 whereby a right of appeal from an assessment of the Income Tax Commissioner is conferred upon the taxpayer/objector directly to the Revenue Court.

The complementary section 4 of the Act confers upon the Revenue Court "jurisdiction to hear and determine any appeal, cause or matter brought to the court under or pursuant to any of the enactments for the time being specified in the First Schedule" and that Schedule contains a list of sections of the self-same revenue statutes including several sections of the Income Tax Law, in particular, the new composite section 51.

As was observed by this Court in Commodity Service (Jamaica) Ltd. v.

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"the sections and parts of sections specified in the First Schedule relating to the Income Tax Law, 1954 are those as they appear after amendment by section 12 and the Second Schedule to the Act. An examination of the 1954 Law thus amended will show that all appeals, causes or matters which may be brought to the Revenue Court are brought under or pursuant to the sections or parts of sections as the case may be specified in the First Schedule of the Act". By section 4 of the Act and the First Schedule thereto the primary and major exercise of replacing the intermediate appellate income tax appeal bodies by the Revenue Court, now invested with jurisdiction to hear and determine appeals, was effected. All appeals arising on or after February 1, 1972 from the Commissioner now properly go to the Revenue Court.

But what of matters pending in the defunct intermediate appellate bodies, and particularly in the Judge in Chambers? Section 11 sought to deal with this matter. It said -

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"(1) Any appeal, cause or matter which, immediately before the prescribed date is pending before any prescribed tribunal shall, subject to subsection (2) be continued thereafter before the Court" that is to say, the Revenue Court.

(2) Where a prescribed Tribunal has, before the prescribed date, begun the hearing of any proceeding (in this section referred to as the "original hearing") that hearing may continue before the prescribed Tribunal and any appeal or further proceedings thereon may be taken as if this Act had not been passed:

Provided that the Court, on the application of any party to the original hearing, may notwithstanding anything to the contrary, order, on such terms as it thinks just, that the proceedings shall be recommenced in the Court.

(3) In this section -

"prescribed date" means

(a) in relation to an enactment specified in the First Schedule at the commencement of this Act, the date of commencement of this Act, and

(b) in relation to any other enactment, the date on which that enactment is included in the First Schedule

"prescribed Tribunal" means in relation to any enactment for the time being specified in the First Schedule, a Tribunal, Board, court or other body which immediately before the prescribed date, was vested under the enactment aforesaid, with any function which, on the prescribed date, is vested in the Court".

Without going into paragraph (b) of subsection 3 of section 11 which is unnecessary for instant purposes it may briefly be stated that the "prescribed date" was February 1, 1972 and the effect of subsection 1 of section 11 is to confer upon the Revenue Court jurisdiction to continue, that is to say, to hear and determine, any appeal, cause or matter which, immediately before February 1, 1972, was pending before any prescribed tribunal. This focuses attention on the definition of "prescribed

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tribunal" and raised the crucial question whether a Judge in Chambers constituted immediately before February 1, 1972 a prescribed tribunal. That question was answered in the negative by the Court in the Commodity Service Case already referred to. The defect in the transitional provisions lay neither in subsections 1 nor 2 of section 11 but in the definition of "prescribed tribunal" and particularly in the word "enactment" contained therein which upon judicial interpretation was construed as referring to the new composite section 51 of the First Schedule by which all the former intermediate appellate bodies, including the Judge in Chambers, were replaced by the Revenue Court. Accordingly, the Judge in Chambers did not constitute, in the words of the definition of "prescribed tribunal", "a court which immediately before February 1, 1972 was vested under the new composite section 51 with any function which on February 1, 1972, is vested in the Revenue Court." In short the definition failed either expressly or by necessary implication to identify the Judge in Chambers as a Body whose appeals pending therein immediately before February 1, 1972 were to be continued in the Revenue Court. The Judicature (Revenue Court) (Amendment) Act No.40 of 1974 which came into effect on August 7, 1974 was a measure calculated to redress the situation. It did not disturb section 11 of the parent Act other than to provide a new definition of "prescribed date" which is of no present materiality and a new definition of "prescribed tribunal" which is of the utmost materiality. The new definition is in these terms:

"Prescribed Tribunal" in relation to any appeal, cause, matter or proceeding, means any Tribunal, Board, court, or other authority, having cognizance thereof under any provision of a Law or Act immediately before that Law or Act is amended by section 12 or pursuant to subsection 2 section 5, in such manner as to terminate the jurisdiction vested in the Tribunal, Board, court or other authority (as the case may be) for purposes of the said provisions".

There can be no sustainable challenge to the statement that the Judge in Chambers constituted a court which had cognizance of appeals under the provisions of section 56 of the Income Tax Law before that law was amended by section 12 of Act 29 of 1971 in such a manner as to terminate the

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jurisdiction vested in that court for purposes of the said provision. Counsel for the taxpayer contended, however, that the words in the definition of prescribed tribunal beginning at "in such manner" to the end have served only to destroy the jurisdiction of the Judge in Chambers rendering it impossible thereafter to have before it a pending appeal, cause or matter. Attractive as the argument is, it fails to take account of the effect of section 11(1) of the principal Act. That subsection transfers for continuance in the Revenue Court any appeal, cause or matter pending immediately before February 1, 1972 and not on February 1, 1972 when by virtue of section 12, the jurisdiction of that court ceased. The critical moment under consideration is not February 1, 1972 but immediately before February 1, 1972. Counsel for the taxpayer argued further that the basis of the application of the transitional provisions in section 11 of Act 29 of 1971 is that the Revenue Court should have been given concurrent jurisdiction with the Judge in Chambers to hear appeals from the Income Tax Appeal Board and this not having been done the transitional provisions have failed and are inapplicable. Admittedly this is a course the draftsman might have pursued, but this was not the only one. The new definition of "prescribed tribunal" has served to identify the court of the Judge in Chambers with a particularity which the old definition did not achieve. By section 11(1) the appeals which the Revenue Court is to continue are those pending inter alia in the Court of a Judge in Chambers immediately before February 1, 1972.

One question then remains outstanding and that is the retrospectivity of the operation of the amending Act. Subsection 1 of section 4 deals with that. It says "Subject to subsection (2) (which deals with certain matters of consequential relief), the Minister and the Revenue Court shall have, and be deemed to have had as from the commencement of the principal Act (February 1, 1972) such respective powers as are provided by sections 6 and 11 of the principal Act as amended by this Act." By subsection 3 of section 4 "powers" includes, in relation to the Revenue Court, jurisdiction.

Immediately before February 1, 1972 the instant matter was an appeal pending in the Court of a Judge in Chambers, a Court which had cognizance thereof under section 56 of the Income Tax Law immediately

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before that Law was amended by section 12 of Act 29 of 1971 in such manner as to terminate the jurisdiction of that Court on February 1, 1972. By retrospectivity of operation of Act 40 of 1974 it is clear then that as of February 1, 1972, the judge of the Revenue Court had jurisdiction to continue, that is to say, to hear and determine this matter which at the material time was pending before the Judge in Chambers. The objection to the jurisdiction of the Revenue Court therefore fails.

GRAHAM-PERKINS, J.A.

I agree and have nothing to add.

ZACCA, J.A.

I agree and have nothing to add.