

INCOME TAX APPEAL

Jamaica

SUPREME COURT

KINGSTON

37/1979

Appeal No. 3/78

In the Revenue Court - on the 1st, 2nd, 3rd November, 1978  
& 20th December, 1979

BETWEEN

West Indies Manufacturing  
Company of Jamaica

APPELLANT

A N D

Commissioner of Income Tax

RESPONDENT

For the Appellant : Mrs. A.C. Hudson-Phillips.

For the Respondent: Mr. H. Hamilton.

This is an Appeal against Decisions of the Respondent made on the 16th day of February, 1978 in which assessments raised on the Appellant for the Years of Assessment 1967 and 1968 were confirmed in the following terms:

- (1) Year of Assessment 1967 in the sum of \$31,670.
- (2) Year of Assessment 1968 \$61,910.

The principal facts are as follows:

- (a) The Appellant is a limited liability company incorporated and registered in Jamaica, and has its registered office at Lucea P.O. in the parish of Hanover.
- (b) The Appellant commenced trading on the 23rd June, 1959, and carried on business as manufacturers, importers, exporters, wholesale and retail dealers in baseballs and softballs.
- (c) By Order dated 29th April, 1959 the Appellant's products (Baseballs and Softballs) were declared to be "approved products", and by Order dated the 6th November, 1959 the Appellant was declared an "Export Manufacturer" in respect of the "approved products" under the Export Industry Encouragement Law 1956. The date of production of its approved products was deemed to be the 1st January, 1960.

(d) By letter...../

(d) By letter dated 7th December, 1959 the Appellant chose the concession granted by Section 11 of the Industrial Incentives Law 1956, and, accordingly, was entitled to relief from income tax for seven years from the date of production.

(e) The Respondent, in compliance with the terms of the concession granted to the Appellant at (d) above, imposed no income tax on the Appellant's profits or gains for the periods set out below:

<u>Y/A</u>	<u>Accounting Period</u>	<u>Sum Relieved</u>
1960:	1/1/60 - 2/6/60	\$ 17,824
1961:	1/1/60 - 30/6/60	21,388
1962:	1/7/60 - 30/6/61	40,412
1963:	1/7/61 - 30/6/62	103,754
1964:	1/7/62 - 30/6/63	104,636
1965:	1/7/63 - 30/6/64	110,402
1966:	1/7/64 - 30/6/65	30,828

(f) By Revocation Order dated the 28th December, 1967 and made pursuant to Section 17 of the Export Industry Encouragement Law, the Order dated 6th November, 1959 declaring the Appellant an "Approved Export Manufacturer" was revoked with effect from the 18th January, 1968.

(g) The Respondent by Notices of Assessment dated 16th January, 1968 and 16th October, 1968 assessed the Appellant's chargeable income for the Years of Assessment 1967 and 1968 at the sums mentioned in paragraph (1) supra.

(h) To these assessments the Appellant gave Notices of Objection by letters dated the 30th January, 1968 and 6th November, 1968, on the grounds that :

(1) the ...../

- (1) The assessments were excessive and not in accordance with the Returns submitted on the 26th October, 1967 and 21st March, 1968;
  - (2) relief had not been given under the Industrial Incentives Law in respect of the Appellant's profits for the Year 1967.
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- (i) By letters dated 7th February, 1969 and in subsequent correspondence, the Appellant further contended that by virtue of Act 11 of 1968 which amended the Export Industry Encouragement Law, the period of relief from income tax had been extended to ten years, and consequently, that the assessments raised on it for the years 1967 and 1968 should be discharged.
  - (j) By letter dated 7th November, 1969 the Respondent advised the Appellant that it was not entitled to the extended relief sought because its products had not been declared new products in accordance with the Law.
  - (k) By letter dated the 2nd February, 1977 the Appellant continued to express its disagreement with the view taken by the Respondent at subparagraph (j) above.
  - (l) The Respondent in due course issued Notices of Decision dated the 16th February, 1978 in respect of the Appellant's Notices of Objection and in accordance with the provisions of Section 75(6) of the said Income Tax Act thereby confirming the Appellant's chargeable income for the years 1967 and 1968 in the sums previously mentioned.
  - (m) The Appellant now appeals to this Court against those Decisions by Notice of Appeal dated the 2nd day of March, 1978 and by a Supplementary Notice dated the 2nd day of June, 1978.  
(So much for the facts.)

In the Supplementary Notice of Appeal dated the 2nd day of June, 1978, the Appellant contends, inter alia, that -

- (a) It ceased permanently to carry on the X business of manufacturers of baseballs and softballs on the 31st December, 1967, and sold all of its assets to an organization known as WIBACO in January of 1968 which has carried on the said business of manufacturers of baseballs and softballs from the 1st January, 1968;
- (b) The Appellant did not carry on any trade or business during the year 1968 and its sole income chargeable to tax during that year consisted of interest of \$1,862.
- (c) The Respondent, in purported compliance with Section 11 of the Industrial Incentives Act aforesaid, relieved the Appellant from income tax for only five and one half years from the date of production in respect of its profits or gains earned from the manufacture of its approved products as follows:

6 months ended 30th June 1960	£ 10,300
12 months ended 30th June 1961	19,323
12 months ended 30th June 1962	50,534
12 months ended 30th June 1963	50,779
12 months ended 30th June 1964	53,842
12 months ended 30th June 1965	38,932

The actual grounds of appeal relied on by the Appellant are as follows:

- (1) That it ought to be relieved from income tax on the profits made from the manufacture of its approved products during the periods:
  - (a) 1st July, 1965 to 30th June, 1966, and
  - (b) 1st July, 1966 to 31st December, 1966;and since...../

and since the assessment for 1967 is based on the profits earned during the period 1st July, 1965 to 30th June, 1966, the Appeal in respect of that Year of Assessment ought to be allowed.

- (2) That since the Appellant ceased permanently to carry on its business on the 31st December, 1967 it ought to be assessed for the Year of Assessment 1967 on the actual income earned during the year 1967 under Section 6 of the Income Tax Act prior to its amendment by the Income Tax (Amendment) Act 1969.
- (3) That since the Appellant did not carry on any trade or business during the year 1968 it ought only to be charged to tax on the interest earned during that year; and finally
- (4) That the Appellant ought to be relieved from tax on the profits earned during the period 1st July, 1966 to 31st December, 1966, and since the assessment for 1968 purports to tax the profits of that period it is wrong and ought to be discharged or, alternatively, varied by reducing the same to the sum of \$1,862 as interest income, less relevant expenses.

The Respondent rejects all of the foregoing and contends, inter alia, as follows:

- (1) Section 11 of the Industrial Incentives Act relieves the Appellant from income tax [That is, tax payable by the company under the Law, for the time being, relating to income tax - (vide section 9 of the Act)] for a period of seven years from its deemed date of production, namely 1st January, 1960; and that the Table at paragraph 2 (e) above shows clearly that the relief from tax was granted in accordance with the statute, namely for 7 years from the date of production.

(2) The Appellant...../

- (2) The Appellant's contention in respect of the profits over the period 1st July, 1965 to 31st December, 1966 reflects a failure to recognize the principle that the relief granted by the statute is not of profits but of the tax thereon.
- (3) The Respondent rejects the contention that there was a permanent cessation of business at the end of 1967 and contends further that the allegations of fact in paragraphs 3(a) and (b) of the Supplementary Notice of Appeal merely served to underscore the fact that the company was engaged in activities during the year 1968 from which it derived profits; and, consequently, that there is no factual basis for the Appellant's assertion that it ceased to carry on any trade or business as alleged.
- (4) Finally, the Respondent contends that the Appellant not having raised the issue of its cessation of business when the matter was before him, it could not have been in contemplation when he issued his decision which now gives rise to this Appeal; and it is, therefore, not competent for the Appellant to argue that ground in this Court in such circumstances.

As will be seen from the foregoing there are three points at issue in the Appeal -

- (i) Whether the Appellant has properly been granted relief from income tax on its profits as a manufacturer of an approved product in accordance with the provisions of the Industrial Incentives Act as set out in section 11 thereof.
- (ii) Whether the Appellant permanently ceased to carry on its business on the 31st December, 1967, and finally
- (iii) Whether...../

- (iii) Whether its alleged failure to rely upon and argue this ground before the Respondent is fatal to its being raised in this Court.

Section 11 of the Industrial Incentives Law reads as follows:

"11— The first option referred to in section 10 of this Law shall, subject to the conditions specified in section 10 of this Law and in this section and to the terms of any order made under subsection (4) of section 3 of this Law, comprise the relief from income tax following, that is to say -

- (a) relief from income tax for seven years from the date of production in respect of profits or gains earned from the manufacture of the approved product;
- (b) during the period for which relief from income tax continues, annual allowances shall not be made but a notional depreciation of assets shall be made at the approved rates within the meaning of the law relating to income tax;
- (c) after the expiration of the said period of seven years, annual allowances may be made upon the original cost of the assets less the notional depreciation for which provision is made in paragraph (b) of this section;
- (d) after the expiration of the said period of seven years, an approved enterprise may, for the purpose of the assessment of income tax, carry forward in respect of the next succeeding six years of assessment losses which have not been written off incurred in the period during which the company was an approved enterprise without taking into account any depreciation of assets."

Section 9 of the Law provides as follows:

"In this part of this Law, unless the context otherwise requires, "income tax" means the tax payable by companies under the Law for the time being relating to income tax."

Section 11(1)...../

Section 11(1) speaks of "relief from income tax for seven years from the date of production . . . .;" - it seems to me, therefore, that, in the light of section 9 supra, those words can only mean relief from the tax payable under the law for the time being relating to income tax, since there is nothing in the context of the subsection to suggest otherwise. It follows, therefore, that in order to determine the extent of the tax relief granted to the Appellant, the Respondent must, in each year, determine the amount of tax which would be payable under the law relating to Income Tax. In other words, the Respondent is required to examine the returns and accounts of the Appellant against the background of the Income Tax Law and arrive at the tax which would otherwise have been payable by it, but for the exemption granted by Section 11 of the Industrial Incentives Law. To put it more bluntly, the Respondent must, in effect, make a notional assessment in order to arrive at the quantum of the exemption or relief to which the Appellant is entitled for each year of assessment.

Where the tax is payable on a current year basis, there is less confusion. The trouble in the instant case, however, derives from the fact that tax had to be computed on the old previous year basis which applied to the years of assessment now in issue, but which has been abolished by the Tax Reforms of 1969-70. Under that now defunct system of assessment, the tax had to be computed not on the actual earnings of the year being taxed but on a notional figure based upon certain legal fictions set out in Section 6 of the Income Tax Law, prior to its amendment; and which led to some peculiarly irrational and bewildering results. See for example the judgment of the late Rowlatt, J. in Fry v. Burma Corporation Limited 15 T.C. 113 where, in dealing with the previous year basis of taxation, he explained, in his inimitable style, the principle underlying the system, thus:

"You do not tax the years by which you measure;  
you tax the year in which you tax and measure  
by the years to which you refer."

One of the peculiarities of the old system is aptly illustrated by the instant case, in which although the Appellant has been relieved from the payment of tax for seven full years of assessment from its production date, there still remains a residual amount of its profits which has not been the subject

of any...../



of any such exemption or relief. It is, of course, that residual amount of profits which has led to the present dispute, the Appellant contending that those profits should also have been relieved from tax and that the failure of the Respondent to do so has deprived it of a clear benefit conferred upon it by Section 11 of the Industrial Incentives Law.

There is no merit in this contention. The words of the statute are, in my judgment, clear and unambiguous. The relief conferred by Section 11 of the Industrial Incentives Law is a relief from the tax payable under the law relating to income tax in Jamaica. That law is the Income Tax Law 1954 (as it then was) as interpreted by the various decisions of the Courts over the years. The Respondent, in seeking to grant the relief for which the Appellant qualifies, acted pursuant to that law and in accordance with its clear provisions; and the Appellant has failed to satisfy me that in so doing the Respondent misdirected himself in any material particular. It was suggested during the arguments that the reference to "seven years" in Section 11 meant seven calendar years and not seven years of assessment. That is, however, a specious argument since the expression "year of assessment" is defined in Section 2 of the Income Tax Law, as meaning - "the period of twelve months commencing on the first day of January in each year." The inescapable fact therefore is that the Appellant has been relieved of the payment of income tax for seven full years from its production date. See the table at paragraph 2(e) supra. As I have already indicated, it is inherent in the system of assessment which was applicable to the case that some of the relevant profits earned over those seven years would not qualify for the relief. That system was based on the Income Tax Law that applied at the relevant time; and, since Parliament is presumed to know the law, it must equally be presumed to have intended that the relief granted would produce such a result. There really is nothing more to be said and I reject the Appellant's contention on this point and hold that the Respondent acted properly and in accordance with the provisions of the relevant statutes in making the assessment now under appeal.

The next point in the case is, whether the Appellant had permanently ceased to carry on its business on the 31st December, 1967, and, parenthetically, whether its alleged

failure ...../

failure to rely upon and argue this ground before the Respondent is fatal to its being raised in this Court. The right to lead evidence before me which was not led before the Respondent in the proceedings below was fully examined and set out in my judgment in Pan Jamaican Investment Trust Company Limited v. The Stamp Commissioner for Jamaica. I need not, however, refer to or repeat them here because I have come to the conclusion that there was some reference in the accounts submitted to the Respondent to the question of cessation when the matter was before the Respondent. Admittedly, the reference is somewhat recondite, but it is sufficient for the purpose now under review.

I turn therefore to the primary question - had the Appellant permanently ceased to carry on its business on the 31st December, 1967?

In its Supplementary Notice of Appeal, to which reference has already been made, the following is stated:

"The Appellant did not carry on any trade or business during the year 1968 and its sole income chargeable to tax during that year consisted of interest of \$1,862."

It seems to me that that statement is fatal to any chance of the Appeal on this point succeeding. The Appellant is a limited liability company and there has been no suggestion by Counsel for the Appellant, nor has there been any evidence led before me to suggest that the receipt of interest income by the company was ultra vires its Memorandum of Objects.

"If a company has business objects and carries them out - it carries on business."

See C.I.T. v. Havover Agencies Ltd. W.I.R. per Lord Guest at p. It follows therefore that in the absence of any evidence to the contrary I am bound to conclude that the receipt of interest income by the company was intra vires its Memorandum of Objects and constitutes a part of its business. I therefore find as a fact that the Appellant did not permanently cease to carry on any trade or business at the 31st December, 1967.

The result..../

The result, therefore, is that the Appeal fails in its entirety.

ORDER

Appeal dismissed with costs to the Respondent to be agreed or taxed.



Dermot Marsh  
Puisne Judge & Judge  
of the Revenue Court.