

14/83

No. 2 of 1981

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF JAMAICA

B E T W E E N :

THE COMMISSIONER OF INCOME TAX Appellant

- and -

KALIDAS P. CHATANI Respondent

CASE FOR THE APPELLANT

RECORD

10 1. This is an appeal from a decision of the Court of Appeal (Zacca Henry and Rowe J.J.A.) in Jamaica given on 27th July, 1979 for the reasons delivered in a written judgment by Mr. Justice Zacca on 16th April, 1980 whereby the Court allowed the Respondent's appeal from a decision of the Full Court (Ross, White and Raymond J.J.) given on 9th January, 1979 by which the Respondent was granted an Order of Mandamus directing the Appellant to issue a Certificate to the effect that the Respondent does not owe any income tax.

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20 2. On 23rd June, 1980 the Court of Appeal granted conditional leave to appeal to Her Majesty in Council and final leave was given on 24th October, 1980.

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30 3. The substantial question in this appeal is whether the Respondent as managing director and principal shareholder (being in the relevant statutory sense "the principal officer") at all material times of a company known as P. Kalidas Limited (hereinafter called "the Company") was and is personally liable and responsible for the payment of tax owed by the Company for the years 1973 to 1976 (amounting to \$89,891.37) under Section 52(2) of the (Jamaican) Income Tax Act.

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4. In July 1976 the Appellant served a notice (hereinafter called "the Restriction Notice") upon the Respondent. The Restriction Notice was dated 21st May, 1976 and made pursuant to Rule 4, Part II of the First Schedule to the Income Tax Law, Law 59 of 1954 (subsequently re-enacted as Rule 2 Part II of the First Schedule to the Income Tax Act). By the Restriction Notice the Respondent was required not to leave the Island (of Jamaica) unless he had in his possession a Certificate (hereinafter called "a Certificate") stating either that he did not owe any income tax or that he had made satisfactory arrangements for the payment of any income tax payable. The above-mentioned Order of Mandamus was directed to the issuance of a Certificate.

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5. When the Restriction Notice was served the Respondent owed \$2,970.88 as an individual in income tax. This tax was paid in September 1978. In March 1978, however, the Company was assessed to income tax in the total sum of \$89,891.37. Appeals by the Company against the relevant assessments were withdrawn on 17th November 1978. This tax liability of the Company is therefore undisputed, but the tax remains unpaid and no arrangements have been made to pay it. In these circumstances the Appellant has refused to issue a Certificate to the Respondent.

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6. Section 52 of the Income Tax Act provides as follows :

"(i) Every body of persons shall be chargeable to income tax in like manner as any person is chargeable under the provisions of this Act.

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(ii) The manager or other principal officer of every body of persons shall be answerable for doing all such acts matters and things as shall be required to be done by virtue of this Act for assessment of such body and payment of the tax"

Rule 4 provides as follows :-

"4(1) Subject to the provisions of paragraph (2) of this Rule no person shall leave or attempt to leave the Island nor shall any ticket, voucher or other document entitling any person to leave the Island be issued to such person unless such person has in his possession a certificate duly signed by or on behalf of the Commissioner of Income Tax certifying that such person -

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- (a) does not owe any income tax; or
- (b) has made satisfactory arrangements for the payment of any income tax payable by him.

(2) Paragraph (1) of this Rule shall not apply to -

- (a) any member of the Military, Naval or Air Forces of Her Majesty or of any foreign State;
- (b) any person in the diplomatic or consular services of a foreign State unless any such person is also engaged in any business or other employment in the Island; and
- (c) any person temporarily resident in the Island who is not during such temporary residence engaged in any business or employment in the Island. For the purposes of this paragraph a person shall be deemed to be temporarily resident in the Island whose total period of residence in any one year does not exceed six months".

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7. Delivering the judgment of the Court of Appeal, Mr. Justice Zacca J.A. began by setting out the facts and the contentions of the parties. He then quoted from the well known passage in the majority judgment of Lord Donovan in Mangin v. Commissioners of Inland Revenue, [1971] A.C. 738 at page 746, where his Lordship set out some of the rules of interpretation which fall to be applied in the construction of a taxing statute. The quotation included Lord Donovan's third rule, namely that "the object of the construction of a statute being to ascertain the will of the legislature it may be presumed that neither injustice nor absurdity was intended". (Lord Donovan added "If therefore a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted").

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Mr. Justice Zacca J.A. then quoted a large number of provisions of the Jamaican Income Tax Act and also some provisions of the United Kingdom Taxes Management Act and expressed the reasons for the decision of the Court in these words :-

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"Having compared Section 52 with other Sections

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of the Income Tax Act and looking at the Act as a whole it cannot be said that Section 52(2) makes it clear, nor can it be implied that the Manager or other principal officer of a Company is personally liable for the payment of income tax owed by his Company. In my view the Section creates no such personal liability for the payment of income tax and the Commissioner of Income Tax must look to the assets of the Company for the collection of such tax. If this were not so the whole concept of Company Law would be shattered and would create new liabilities for which Directors and other officers of a Company have never been liable. There could be a situation where the Manager or other principal officer of a Company is not a principal shareholder or even a shareholder at all. Could it be intended that such an officer of the Company should be held personally liable for the payment of Income Tax owed by the Company? If the Legislature wishes to create a personal liability in officers of a Company for the payment of tax owed by a Company, then it must do so in precise and clear language. This it has not done in Section 52(2) of the Income Tax Act. 10 20

A Notice under Rule 2 of the Income Tax Rules in Part II of the Second Schedule to the Income Tax Act is only applicable to a person who owes income tax".

8. It is respectfully submitted that the reasoning of the Court of Appeal is erroneous in two respects. 30

In the first place, the language of Section 52(2) is quite clear and unambiguous. In construing the subsection, it is neither necessary nor helpful to refer to other provisions of the Act, since they contain nothing which can affect or alter the plain meaning of the words used.

Secondly, in the Respondent's submission it is not surprising, let alone absurd or unjust, that the legislature should make the manager or other principal officer of a company personally answerable (that is to say, responsible) for the payment of its tax as well as for the performance of the administrative requirements (such as the making of tax returns) which are imposed upon it. Similar provisions have been included in the United Kingdom legislation since the enactment of Section 40 40

10 Income Tax Act 1803 and are at present contained
in Section 71(2) of the United Kingdom Taxes
Management Act 1970. (The Appellant
respectfully adopts the Court of Appeal's view that
a manager or other principal officer who has
discharged the tax liability of his company is
entitled under Section 56 of the Income Tax Act to
be indemnified out of Company's funds, and thus
has the same degree of protection as that
conferred by Section 71(3) of the United Kingdom
Taxes Management Act 1970). It is clearly
necessary for the protection of the Revenue
authorities that natural persons should be made
responsible by statutory provisions such as these
for the discharge of the tax liabilities of limited
companies, and it is equally clear that the
manager or other principal officer of the company
concerned, who will be in control of its funds, is
the appropriate natural person to bear that
responsibility. Acceptance of this view of the
matter would not, in the Appellant's submission,
result in the whole concept of company law being
shattered.

20 9. The Appellant accordingly submits that the
decision of the Court of Appeal should be reversed and
that this appeal should be allowed with costs here and
below for the following among other

R E A S O N S

- 30 (1) BECAUSE the Appellant was right in refusing
to issue a Certificate stating that the Respondent
does not owe any income tax.
- (2) BECAUSE the Court of Appeal have misconstrued
Section 52(2) of the Income Tax Act.
- (3) BECAUSE the decision of the Full Court was right
and should be restored.

~~MICHAEL NOLAN~~

ROBIN MATTHEWS

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THE COMMISSIONER
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Appellant

- and -

KALIDAS P. CHATANI

Respondent

CASE FOR THE APPELLANT

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