

The Commissioner of Income Tax - - - - *Appellant*

v.

K. P. Chatani - - - - - - - - *Respondent*

FROM

THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 14TH APRIL 1983

Present at the Hearing :

LORD KEITH OF KINKEL

LORD ELWYN-JONES

LORD ROSKILL

LORD BRIGHTMAN

[*Delivered by* LORD KEITH OF KINKEL]

This appeal, from a judgment of the Court of Appeal of Jamaica dated 27th July 1979, raises questions as to the proper construction of certain provisions of the Income Tax Act.

Paragraph 2 of Schedule 2, Part II to that Act provides :—

“2.—(1) If the Commissioner thinks fit he may 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 he—

(a) does not owe any income tax, or

(b) has made satisfactory arrangements for the payment of income tax payable by him.

(2) 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.

(3) Where a notice has been served on a person under paragraph (1), and it has not been withdrawn by a further notice served on him by the Commissioner, that person shall, if he leaves the Island in contravention of the notice, be guilty of an offence and liable on summary conviction to a fine not exceeding fifty dollars or to a term of imprisonment not exceeding three months, or to both.

(4) A person who leaves or attempts to leave the Island in contravention of these Rules may be taken into custody without warrant by an Immigration Officer for a period not exceeding twelve hours.”

In June 1976 the appellant served on the respondent a notice dated 21st May 1976 issued under this paragraph. At that time the respondent owed certain sums in personal income tax. In September 1978 his liability in that respect for a number of years of assessment up to and including 1977 was agreed at \$2,970·88. The respondent paid this sum and obtained from the appellant a receipt for it dated 3rd October 1978. He then asked for the restriction notice served on him to be withdrawn. The appellant refused to do so on the ground that a company called P. Kalidas Limited, of which the respondent had been managing director until March 1978, had an undischarged liability for income tax in respect of the years of assessment 1973–1976 amounting to \$89,891·37. The appellant relied as warranting his refusal on section 52 of the Income Tax Act, which provides:—

“(1) Every body of persons shall be chargeable to tax in like manner as any person is chargeable under the provision of this Act.

(2) 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 the assessment of such body and the payment of the tax.”

It was the appellant’s contention that the effect of this section was that the respondent, having been managing director of the company during the material period, was personally liable for payment of the income tax to which the company had been assessed, and that he accordingly “owed” that tax within the meaning of paragraph 2(1)(a) of Schedule 2, Part II.

The respondent sought leave to apply to the Supreme Court for an order of mandamus directed to the appellant requiring him to withdraw the restriction notice dated 21st May 1976 and to issue a certificate stating that the respondent does not owe any income tax. Leave was duly granted but on 9th January 1979 the Full Court dismissed the application. By the judgment now appealed from the Court of Appeal (Zacca, Henry and Rowe JJ.A.) reversed the decision of the Full Court and granted the relief sought by the respondent.

The only issue in the appeal is whether, as contended by the appellant, section 52(2) of the Income Tax Act upon its true construction renders the respondent personally liable for the income tax charged upon the company of which he was managing director. In their Lordships’ opinion it clearly does not. In the first place, as the Court of Appeal held, there can be no doubt that the words “the payment of tax” are to be linked, not with the words “answerable for” but with the words “doing all such acts, matters and things as shall be required to be done by virtue of this Act for . . .”. In that situation the plain intention is that the manager or other principal officer of a company or other body is to be responsible (which is what “answerable” must mean in this context) for taking all administrative or ministerial action which the Act requires to be taken for the assessment of the body and the payment of tax to which it is chargeable. It is the body itself which is made chargeable to and liable for tax. Their Lordships can find no indication of an intention that the manager or other principal officer of the body is to be liable jointly and severally with the body for payment of the latter’s tax, which is the result which would follow if the appellant’s contention were correct. It is to be observed that section 41 of the Act, which deals with payment over to the revenue of tax deducted at source, provides, by subsection (4), that, where a body corporate has deducted tax and failed to pay it over

by the due date, the directors of the body at that date are to be jointly and severally liable with it to pay or account for the tax. This provision is subject to a proviso relieving from liability a director who proves *inter alia* that there was no negligence on his part. It thus appears that where in the Act the legislature intended to make officers of a body corporate jointly and severally liable with it to pay tax for which the body was accountable, it expressed that intention explicitly and in clear language. If a similar intention had existed as regards the content of section 52(2), one would have expected it to be clearly expressed there also.

Their Lordships have not found it necessary to refer to certain other provisions of the Act upon which the Court of Appeal relied as supporting their construction of section 52(2). If any such support be required, section 41(4) provides all that is needed.

It follows that the respondent does not owe any income tax by reason that P. Kalidas Limited is subject to an undischarged tax liability, and that the Court of Appeal rightly granted the relief sought by the respondent. Their Lordships will humbly advise Her Majesty that the appeal should be dismissed with costs.

In the Privy Council

THE COMMISSIONER OF
INCOME TAX

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DELIVERED BY
LORD KEITH OF KINKEL

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