

IN THE PRIVY COUNCIL

No. 24 of 1968

O N A P P E A L**FROM THE COURT OF APPEAL OF THE SUPREME
COURT OF JUDICATURE OF GUYANA,****B E T W E E N :****THE ARGOSY COMPANY LIMITED
(In voluntary liquidation)****Appellant****- and -****THE COMMISSIONER OF INLAND
REVENUE****Respondent**

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
- 7 JAN 1972
25 RUSSELL SQUARE
LONDON, W.C.1.

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CASE FOR THE RESPONDENT**RECORD**

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1. This is an appeal brought by leave from the Order dated 26th October 1966 and judgment dated 17th December 1968 of the Guyana Court of Appeal dismissing the Appellant's appeal against the judgment of the Supreme Court of British Guyana dated 16th October 1965 allowing the Respondent's appeal against a decision of the Income Tax Board of Review dated 26th July 1965 annulling an assessment made on the Appellant for the year of assessment 1962.

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2. The question in issue is the validity of the assessment made by the Respondent on the Appellant for the year of assessment 1962.

3. The facts of the case are set out in the Statement of Material Facts by Commissioner and in the judgments and so far as material may be summarised as follows :-

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(i) The Appellant carried on the business or businesses of printers publishers bookbinders and stationers or bookshop.

(ii) For the years of income 1958, 1959, and 1960 the Appellant's income tax returns show an overall substantial loss in the business or businesses carried on by it up to the 31st December, 1960; but they also show that the bookshop was returning a gross profit of \$888.08 in 1958, \$10,168.46 in 1959 and \$15,275.95 in 1960.

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(iii) In March 1961, the Appellant sold its entire enterprise, with the exception of the bookshop which it continued to operate until March 1962 when it went into liquidation.

(iv) The Appellant did not submit a return of its income for the year of assessment 1962, that is in respect of income earned for the calendar year 1961, within the time prescribed by law that is on or before the 30th April 1962.

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(v) The Respondent sent a demand notice dated 29th June 1963 requiring the Appellant to submit a return of its income for the year of assessment 1962 on or before the 29th July 1963

(vi) The Respondent assessed the Appellant on an estimated chargeable income of \$25,000 and a notice of assessment dated the 31st October 1963 was sent to the liquidator of the Appellant claiming income tax of \$11,250.

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Cap. 299

4. The relevant statutory provisions are to be found in the Income Tax Ordinance, (hereinafter referred to as "the Ordinance") and in particular the following Sections :-

RETURNS AND PARTICULARS
OF INCOME

40. (1) Every person chargeable with tax shall on or before the prescribed day in

every year deliver to the Commissioners a true and correct return of the whole of his income from every source whatsoever for the year immediately preceding the year of assessment, and shall if absent from the Colony give the name and address of an agent residing therein.

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26 of 1949
s.7A and
3rd sch.

10 (2) The Commissioner may by notice in writing require any person to furnish to him within a specified time any particulars in writing he requires for the purposes of this Ordinance with respect to the income, assets and liabilities of such person or of his wife.

6 of 1947
s.5
26 of 1949
s.7A and
3rd sch.

20 (3) The Commissioner may, by not less than fourteen days' notice in writing, require any person to attend before him and answer questions with respect to the income, assets and liabilities of the person or of his wife and produce all books or other documents in his custody or under his control relating to such income, assets and liabilities.

6 of 1947
s.5
26 of 1949
s.7A and
3rd sch.

30 (4) The Commissioner may by notice in writing require any person or the attorney of any person, or the secretary, attorney, manager, agent or other principal officer of a company, residing in the Colony to make returns under this Ordinance within the time specified by the notice.

26 of 1949
s.7A and
3rd sch.

(5) Any person who refuses, fails, or neglects to perform any act required by this section shall be guilty of an offence against this Ordinance.

26 of 1949
s.7A and
3rd sch.

ASSESSMENTS

40 48.(1) The Commissioner shall proceed to assess every person chargeable with the tax as soon as may be after the day prescribed for delivering the returns.

26 of 1949
s.7A and
3rd sch.

RECORD

(2) Where a person has delivered a return the Commissioner may -

(a) accept the return and make an assessment accordingly;

or

(b) refuse to accept the return and, to the best of his judgment, determine the amount of the chargeable income of the person and assess him accordingly.

(3) Where a person has not delivered a return and the Commissioner is of the opinion that the person is liable to pay tax, he may, according to the best of his judgment, determine the amount of the chargeable income of that person and assess him accordingly, but the assessment shall not affect any liability otherwise incurred by the person by reason of his refusal, failure, or neglect, to deliver a return.

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18 of 1951
s.18

(4)* Where a person has not made a return of chargeable income for the year immediately preceding any year of assessment within the time specified in a notice issued by the Commissioner to such person under subsection (4) of section 40 of this Ordinance, the Commissioner shall add to the assessment a sum equal to five per centum of the amount of the tax assessed and such sum shall be deemed to be part of the tax and shall be recoverable accordingly.

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* This subsection does not apply before the year of assessment, 1951.

26 of 1949
s.7A and
3rd sch.

56.(1) The Commissioner shall cause to be served on every person whose name appears on the assessment lists a notice stating the amount of his chargeable income and the amount of tax payable by him, and

informing him of his rights under the next subsection.

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(2) If any person disputes the assessment he may apply to the Commissioner, by notice of objection in writing, to review and to revise the assessment made upon him.

26 of 1949
s.7A and
3rd sch

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(3) The application shall state precisely the grounds of his objections to the assessment and shall be made within fifteen days from the date of the service of the notice of assessment, but the Commissioner, upon being satisfied that owing to absence from the Colony, sickness, or other reasonable cause, the person disputing the assessment was prevented from making the application within that period, shall extend the period as may be reasonable in the circumstances.

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(4) On receipt of the notice of objection referred to in sub-sections (2) and (3) of this section, the Commissioner may require the person giving the notice of objection to furnish any particulars the Commissioner deems necessary with respect to the income, assets and liabilities of the person assessed or of his wife and to produce all books or other documents in his custody or under his control relating to such income, assets and liabilities, and may summon any person whom the Commissioner considers to be able to give evidence respecting the assessment to attend before him and may examine the person (except the clerk, agent, servant, or other person confidentially employed in the affairs of the person to be charged) on oath or otherwise.

6 of 1947
s.7
26 of 1949,
s.7A and
3rd sch.

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(5) In the event of any person assessed, who has objected to an assessment made upon him, agreeing with the Commissioner as to the amount at which he is liable to be assessed, the amount so agreed shall be the amount at which

26 of 1949
s.7A and
3rd sch.

RECORD

that person shall stand assessed, and the assessment shall be confirmed or amended accordingly:

Provided that in the event of any person who, under sub-sections (2) and (3) of this section, has applied to the Commissioner for a revision of the assessment made upon him failing to agree with the Commissioner as to the amount at which he is liable to be assessed, his right of appeal to a judge under the provisions of this Ordinance against the assessment made upon him, shall remain unimpaired.

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Appeals
against
assessments
26 of 1949
s.7A and
3rd sch.

57.(1) Any person who, being aggrieved by an assessment made upon him, has failed to agree with the Commissioner in the manner provided in subsection (5) of the last preceding section may appeal against the assessment to a judge in chambers upon giving notice in writing to the Commissioner within fifteen days from the date of the refusal of the Commissioner to amend the assessment as desired:

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Provided that, notwithstanding the lapse of the period of fifteen days, any person may appeal against the assessment if he shows to the satisfaction of a judge in chambers that, owing to absence from the Colony, sickness, or other reasonable cause, he was prevented from giving notice of appeal within the period and that there has been no unreasonable delay on his part.

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(2) The appeal shall be brought by summons, and evidence shall be received at the hearing if tendered.

26 of 1949
s.7A and
3rd sch.

(3) Every person appealing shall attend person before the judge on the day and at the time fixed for the hearing of his appeal:

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Provided that, if it be proved to the satisfaction of the judge that owing to absence from the Colony, sickness, or other reasonable cause, any person is prevented from attending in person at the hearing of his appeal on the day and at the time fixed for that purpose, the judge may postpone the hearing of the appeal for any reasonable time he thinks necessary for the attendance of the appellant, or he may admit the appeal to be made by any agent, clerk or servant, of the appellant, on the appellant's behalf.

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(4) Seven clear days' notice, unless rules made hereunder otherwise provide, shall be given to the Commissioner of the date fixed for the hearing of the appeal.

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(5) The onus of proving that the assessment complained of is excessive shall be on the appellant.

(6) If the judge is satisfied that the appellant is overcharged he may reduce the amount of the assessment by the amount of the overcharge, and if he is satisfied that the appellant is undercharged he may increase the amount of the assessment by the amount of the undercharge.

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(7) Notice of the amount of tax payable under the assessment as determined by the judge shall be served by the Commissioner upon the appellant.

(8) All appeal shall be heard in camera, unless the judge, on the application of the appellant, otherwise directs.

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(9) The costs of the appeal shall be in the discretion of the judge hearing the appeal and shall be a sum fixed by the judge.

RECORD

(10) The decision of the judge hearing the appeal shall be final; but the judge may, if he so desires, and shall on the application of the appellant or the Commissioner, state a case on a question of law for the consideration of the Full Court of the Supreme Court.

(11) The Chief Justice may make rules governing the appeals providing for the method of tendering evidence, appointing places for the hearing of the appeals, and prescribing the procedure to be followed on a case being stated.

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pp.9 - 16

5. In various letters from June 1963 until February 1964 the Appellant disputed the assessment made on it by the Respondent for the year of assessment 1962. The dispute was continued on the 24th and 29th of September 1964 before the Income Tax Board of Review. The Board found that the Respondent had no evidence before him on which he could form the opinion that the Appellant was liable to pay tax. Further, even if the Respondent was in order in making the assessment of \$25,000, the Board was of the opinion that the amount was arrived at by guess work as no fact or facts had been submitted to the Board in support of the Respondent's finding. The Board agreed that under Section 57 (5) of the Ordinance the onus was on the Appellant to prove that an assessment was excessive. However, the Board held that the onus only applied in cases where the assessment had been properly arrived at. The Board found that the Respondent had failed to justify his assessment. On these findings the Board annulled the assessment.

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6. The Respondent appealed against the decision of the Board of Review to the Supreme Court of British Guyana and the case was argued before Persaud J. on the 25th September and the 2nd of October 1965. On the 16th October 1965 judgment was given in

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favour of the Respondent.

RECORD

10 7. Mr. Justice Persaud was of the opinion that the Respondent stood or fell by the provisions in Section 48(4) of the Ordinance. To the mind of the judge, the words "to the best of his judgment" appearing in Section 48(4) of the Ordinance connoted that there must be in existence some material on which the Commissioner exercised his judgment. If the taxpayer could show from the circumstances that the assessment was an arbitrary one in the sense that there were no facts on which the Commissioner could have exercised his best judgment, he ought to succeed. But the Respondent had before him three previous income tax returns of the Appellant which showed gross profits in relation to the running of the bookshop. In the view of the judge the Appellant had failed to discharge the onus which lay squarely upon him of showing that the Respondent in raising the assessment had acted dishonestly or vindictively or capriciously.

20 8. By Notice of Appeal dated the 16th November 1965, the Appellant appealed against the decision of Mr. Justice Persaud. The grounds of appeal are set out in the notice and in the judgment of the Chancellor, Sir Kenneth Stoby. p. 41 p. 45

30 9. The case was argued before the Court of Appeal on the 26th of October 1966, and the Appellant's appeal was dismissed. In December 1967 the Court of Appeal was asked to give a written judgment and this they did on the 17th December 1968.

40 10. Before the Court of Appeal it was not disputed that the onus was on the Appellant to show that the assessment in question was excessive. The Chancellor considered that while the fire in which the books of the Appellant had been burnt made it difficult for the Appellant to discharge its onus, an attempt at reconstruction could have been made.

RECORD

No argument was addressed to the Court regarding the tax losses. The Chancellor was of the opinion not only that the Appellant did not discharge the onus on it, but had it wished there was material available which could have shown that the Respondent was wrong.

Mr. Justice of Appeal Luckhoo and Mr. Justice of Appeal Cummings concurred with the judgment of the Chancellor.

11. On the 18th October 1967 the Privy Council 10 (Lord Pearce Lord Upjohn and Lord Pearson) granted the Appellant special leave to Appeal on terms that the Appellant deposited £400 as security for costs. Costs of the Petition were reserved.

12. The Respondent humbly submits that the decisions of the Supreme Court of the Court of Appeal are right and should be affirmed and that this appeal should be dismissed with costs both here and below for the following among other

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R E A S O N S

(1) BECAUSE the onus of showing that the assessment for the year of assessment 1962 was excessive was on the Appellant and the Appellant did not discharge that onus.

(2) BECAUSE there was no evidence to show that the Respondent acted arbitrarily and or capriciously in making the assessment in question.

(3) BECAUSE there was evidence upon which the Respondent could properly make the assessment in accordance with the provisions of the Ordinance.

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(4) BECAUSE the judgments in the Court of Appeal and in The Supreme Court were correct and ought to be confirmed.

STEWART BATES

No.24 of 1968

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B E T W E E N :

THE ARGOSY COMPANY LIMITED
(In voluntary liquidation)

Appellant

- and -

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REVENUE

Respondent

CASE FOR THE RESPONDENT

Charles Russell & Co.
Hale Court,
21 Old Buildings,
Lincoln's Inn,
LONDON, W.C.2.