

## Case Title and Citation

**Case name:** Multichoice Ghana Ltd v The Commissioner, Internal Revenue Service

**Court:** Supreme Court (Ghana), Accra

**Coram:** Wood CJ (presiding), Dotse JSC, Yeboah JSC, Gbadegbe JSC, Akoto-Bamfo JSC

**Date:** 16 March 2011

**Case no.:** Civil Appeal No. J4/16/2010

## Flynote

*Tax—Assessable income—Aggregation of income streams—Deductibility—Interest on subscription deposits—Whether investment interest forms part of assessable income and whether business expenses of the television operation are deductible against that interest— Strict construction of taxing statutes—Income Tax Decree 1975 (SMCD 5), ss 1, 4, 5, 11— Held: (i) interest earned on deposits of subscription receipts forms part of the company’s assessable income; (ii) expenses wholly, exclusively and necessarily incurred in the television business are deductible from the aggregated assessable income (including the interest); (iii) assessments rejecting aggregation and denying deductions were unlawful.*

## Procedural Posture

“Friendly action” commenced in the High Court to obtain a definitive pronouncement on the tax treatment of interest earned on subscription deposits under the then-governing Income Tax Decree 1975 (SMCD 5). The High Court found for the taxpayer and nullified the assessments. The Court of Appeal affirmed key findings (two income sources; relevance of ss 4 and 5 SMCD 5) but reversed the ultimate outcome regarding liability. The taxpayer appealed to the Supreme Court.

## Facts

- Multichoice Ghana Ltd operated a pay television business. Subscription receipts (1994–1999) were deposited in an interest-bearing bank account, generating significant interest.
- In its financial statements, Multichoice aggregated (i) television business revenue and (ii) bank interest on subscription deposits, and then deducted expenses said to be **wholly, exclusively, and necessarily** incurred in its television business, leading to reported losses.
- The Commissioner maintained that interest and television operations were separate sources, assessed them independently, and disallowed deducting television business expenses from the interest income.

During the litigation, the Internal Revenue Act 2000 (Act 592) came into force, prospectively clarifying the treatment of investment income, but the dispute remained governed by SMCD 5.

## Issues

1. **Assessable income:** Whether interest earned on deposits of subscription fees constituted part of the company's assessable income under SMCD 5, ss 1 and 11.
2. **Deductibility:** Whether expenses wholly, exclusively and necessarily incurred in the television business were deductible from the company's aggregated assessable income, including the interest component, under SMCD 5, ss 4 and 5.
3. **Methodology:** Whether the Commissioner was entitled to assess the two income streams independently and deny deductions from the interest income.

## Holding

- **Assessable income:** The interest formed part of Multichoice's assessable income; assessable income is the aggregate income from each source of a person's income as contemplated by s 11 SMCD 5.
- **Deductibility:** Expenses **wholly, exclusively and necessarily** incurred in conducting the television business were deductible from the aggregated assessable income, including the interest, by virtue of s 4 SMCD 5.
- **Outcome:** The Supreme Court restored the trial court's judgment and set aside the Court of Appeal's reversal, nullifying the Commissioner's approach and the resulting liability.

## Legal Framework

- **SMCD 5 (Income Tax Decree 1975)**
  - **s 1:** Charge to tax on gains or profits from business, interest or discount.
  - **s 4:** Deduction of all outgoings and expenses wholly and exclusively incurred in the production of the income.
  - **s 5:** Further delineation of allowable deductions.
  - **s 11:** Assessable income as the full amount from each source; taxation of aggregate income of a corporate body.
- **Act 592 (Internal Revenue Act 2000):** Introduced during proceedings; clarified independent taxation of investment income prospectively, but did not govern the years in dispute.

## Reasoning

### 1) Aggregation and character of interest income

Applying the strict construction principle for fiscal statutes, the Court reasoned that s 11 requires taxation of the aggregate income of the company, and that the interest arose to the same legal person in the course of its business. On a fair reading of ss 1 and 11, the interest was company revenue and

part of assessable income, not a severable stream to be taxed in isolation.

## 2) Deductibility standard under s 4

The governing test is whether the expenditure was incurred **wholly, exclusively and necessarily** in the production of the income. Given the origin of the interest (subscription receipts from the television business) and the integrated nature of the company's operations, the expenses incurred in running the television business qualified as allowable deductions in computing assessable income, which includes the interest. The Court endorsed the trial court's analysis that the interest "is not severable" from the company's profit and loss account for the years at issue.

## 3) Rejection of the Commissioner's methodology

The Commissioner's attempt to assess the interest independently and deny deductions tied to the television business misconstrued ss 4 and 11. While the company had more than one income source, the statute taxed the company's aggregate assessable income and permitted deduction of qualifying expenses incurred in producing that income. The appellate court's partial allowance but ultimate reversal of result was internally inconsistent and insupportable on a proper construction of SMCD 5.

## 4) Interpretation approach

The Court reaffirmed the strict approach to taxing statutes: nothing is to be implied; the language controls. On that basis, the clear statutory scheme compelled aggregation and permitted the deductions claimed where the statutory test was satisfied.

## Disposition

- **Appeal allowed.**
- **High Court judgment restored.**
- **Court of Appeal judgment set aside.**
- The tax assessments denying aggregation and deductions were nullified.

## Key Principles for Practice

- **Assessable income (corporates):** Under SMCD 5, assessable income is the aggregate income from all sources of the same taxpayer; investment interest derived from business receipts is part of that aggregate.
- **Deductibility nexus:** Expenses may be deducted where they are wholly, exclusively and necessarily incurred in producing the income; where interest is effectively an incident of the business receipts, business expenses can be deductible against the aggregated assessable income.
- **Methodology:** Disaggregating income streams to preclude deductions is inconsistent with ss 4 and 11 where both streams accrue to the same person and arise within the business's operational context.
- **Prospective legislative change:** Later statutory reforms (Act 592) that tax investment

income distinctly do not retroactively govern prior periods; disputes must be resolved under the law in force for the years of assessment.

## Significance and Practical Takeaways

- For tax controversy, the decision underscores the importance of identifying the **legal person** earning multiple income streams and applying the statute's aggregation rule before considering deductions.
- The “**wholly, exclusively and necessarily**” test remains central: practitioners should evidence the operational nexus between expenses and the production of income, even where part of that income is investment interest traceable to business receipts.
- Where revenue authorities seek to **silo investment income** to deny deductions, this case supports challenging that approach when the governing statute mirrors the aggregation/deductibility scheme of SMCD 5.
- Transitional contexts matter: subsequent legislative clarifications do not retrospectively alter the analysis for prior periods.

## Notes

- The Court described the matter as a “friendly action” aimed at clarifying an entrenched administrative practice; nevertheless, the decision provides binding guidance on the construction of SMCD 5 for the relevant years.
- The Court also addressed appellate procedure, cautioning against vague or non-justiciable grounds; the substance, however, turned on the correct interpretation of ss 1, 4, 5, and 11.