



## WOOD, CJ

The action which triggered this appeal is described as a "friendly action", instituted in the joint interest of the two parties for a judicial pronouncement on a tax regimen that is said to have been in practice in the jurisdiction for a long time without challenge from the business community, the people most affected by it. It is in this light that the appellant company described it, more or less in public interest litigation terms, as having purposely been instituted "for the development of the tax law" as it stood at the date the cause of action accrued. For the material period, the substantive law, which both parties were agreed governed the action and which the parties therefore relied on in support of their respective cases, is the Income Tax Decree 1975, (SMCD 5), as amended by the Income Tax Amendment Law 1983, PNDCL (61).

By the time the trial court came to deliver its judgment however, SMCD 5 had come to be replaced by a new law; The Internal Revenue Act, 2000 (Act 592) and its subsidiary legislation LI 1675. The passage of the new law, Act 592, was intended to plug any legal loopholes that this dispute may have unearthed. Under Act 592, investments incomes, such as the interest income earned by the appellants in this instant case, is amenable to tax independently of a company's other sources of income. Pertinently, the passage of the Act 592 during the pendency the action did not however render the action or the issues arising therefrom moot, as the law governing the action remained the SMCD 5. The litigation thus remains live, not only in relation to this instant appeal, but other actions based on the old law, SMCD 5, and which may, for one reason or the other be pending in the courts.

The facts which led to the fiscal dispute are in themselves simple. The appellants, a pay television company, broadcasts programmes to its customers, as is to be expected, not gratuitously, but for subscription fees. For the period 1994-1999, it deposited its revenue generated by way of subscription fees in an interest income yielding account, and earned profits thereon. The respondents describe the profits so earned as colossal. Nonetheless, the appellant claimed per its financial statement for each fiscal year that, it recorded losses in respect to its business. The legitimate question is how did this come about? The appellant company arrived at this conclusion by grossing up income from the television business proper and the interest earned on the subscription fees and deducting all allowable heads of expenses wholly incurred in its main line television business to declare the net losses.

The respondent commissioner, as the tax administrator, took exception to the methodology adopted by the appellant company to reckon net losses. He was of the opinion that although the appellant was engaged in two separate, but in some way interrelated lines of business, namely, pay television and interest income using revenue from the television business, the company was nevertheless not entitled in law to aggregate the two incomes, reckon it as their assessable income, and then deduct expenses exclusively incurred from its television business from it. He took the position that the law allows the deduction of expenses only if they wholly or directly relate to the production of the particular income under consideration, and further that it was clearly wrong for the two incomes to be grossed up to determine the company's assessable income. He thus rejected the appellants' method of assessment, assessed tax from the two separate sources independently of each other and plainly disallowed the deduction of expenses of the company's core business, that is, the pay television business from the interest income.

The appellants disputed the assessment and commenced proceedings in the High Court to challenge its legality for the period 1994-99 and prayed further that these be set aside on the main ground that the disputed assessments had the effect of wrongfully taxing the interest income separately.

The trial court found for the appellants, basing its decision on the principal ground that the interest income is not severable from profits and loss accounts of the appellant company's core business

operations for the period in question. Their Lordships of the Court of Appeal upheld the trial court's finding that, notwithstanding that the company keeps two sources of income, the sections 4 and 5 of SMCD 5 permit the deduction of the company's main line business expenses from the interest income. In spite of these positive primary findings however, their Lordships nevertheless expressly reversed the final decision on the company's tax liability, setting the stage for this appeal.

Two additional grounds A and B were tagged on to the original ground that their Lordships were "in error in holding that that the income in question was taxable." The additional ground A, which in any event is not in substance different from the original ground, impugns the decision of the Court of Appeal as not being supportable in law. The second additional ground B, namely that "the holding of by the court of Appeal that "the appeal succeeds in part is not comprehensible" does not, in my view, constitute a valid ground of appeal. It appears to have been provoked by the appellate court's reversal of the order of the trial court and the conclusion that the appeal succeeds in part. I do appreciate the appellants concerns and his specific reference to the final conclusion on the outcome of the appeal. More disturbingly, from the records for the day judgment was delivered; the court, per its order, gave the respondent more than they won. Instead of the partial success, the court order read:

"The appeal is allowed. The order made by the trial court in respect of the interest is hereby set aside."

In any event, notwithstanding the apparent inconsistency or contradiction in the judgment, and final orders of the court, I do not think the appeal ground B as formulated, is permissible under the rules or even at all necessary. Under the Supreme Court Rules, 1996, CI 16, rule (4), grounds of appeal are expected to be set out concisely, and without argument or narrative. More importantly, by rule (5), aside from the well known and oft used umbrella ground of appeal- the judgment is against the weight of evidence- a ground of appeal which is vague, or general in terms, or fails to disclose a reasonable ground of appeal is not permitted.

A ground of appeal which questions the comprehensibility of a finding of law or fact, a ruling or decision cannot, in my opinion, constitute a valid ground of appeal in terms of the rule (4) of the CI 16, and ought properly to be struck out under rule (5) of the CI 16. I would have thought that in those cases, where a party's only complaint is that it finds an order or a decision incomprehensible, unless the rules of court expressly prohibits, and I know not of any such rule, that the proper procedure would be to seek clarification or directions from the court which issued the order or decision complained of, by invoking its inherent jurisdiction. On the other hand, as in this instant case, where there are other substantial grounds on which the decision of the court may be questioned, then it is difficult to see the utility of such a ground as a separate and distinct ground of appeal, since the success of the others would necessarily impact the final orders of the court, including the impugned order, that is the alleged incomprehensible order. In other words, the success of those other grounds will lead automatically to a correction of all contradictions and inconsistencies, and thus perfect the grand conclusion of whether the appeal succeeds or fails.

This appeal will therefore be examined in the light of the original ground and additional ground A, both of which in any event, also fail to identify concisely but with specificity, the errors of law complained of.

At the trial, three primary issues that the court thought were of critical importance is whether the appellant company operated two separate business lines, run two separate sources of income and therefore "entitled to deduct expenses wholly, exclusively and necessarily incurred in its Television business, as a source of income from another source of income, namely interest income." The trial court found that while it is true that the company had two separate sources of income, indeed the

interest income formed only a fractional portion of the "full amount of income" of the company. The trial judge thus reasoned that on the peculiar facts of the case, "the interests it earned from its savings at a Commercial Bank are declared not capable of being severable from the profit and loss of accounts of the plaintiffs company from 1994 to 1999." The learned trial judge thus concluded: "The plaintiff's (sic) investments it made by investing sums of its money into savings account with a commercial bank for which it earned some interests were "required for the purposes of the plaintiffs (sic) company and the interest it earned from the investment must be brought into the profit and loss account of the company."

It was on these bases that the trial court declared the corporate tax liability imposed on the appellants a complete nullity.

Their Lordships of the Court of Appeal rightly affirmed the finding that the appellants had two sources of income. In actuality, given the state of the pleadings, that fact was never in dispute. Thus, the real and indeed only matter in controversy between the parties and indeed as was rightly pointed out by the appellate court was, "whether or not upon a true and proper interpretation of section 4, 4A, 5 and 11 (1) of SMCD 5 as amended the plaintiff is entitled to deduct the company's expenses wholly exclusively and necessarily incurred in its television business as a source of income from another source of income namely; interest income."

Their Lordships cast the issue thus:

"Whether it would be legal for it to deduct any losses or expenses incurred from the Television business from the (sic) interest income earned from that source."

The court answered this question in the negative and set aside the tax liability imposed by the respondent commissioner. The learned justices based their final conclusion on three critical findings. First, that the law only allows for the deduction of expenses which a Company has wholly, exclusively and necessarily incurred "in the production of the income". Second, that as urged by the appellant company, all the moneys generating the interest income were derived from the Television business. Third, notwithstanding that it keeps two sources of income, that all expenses incurred in generating that income qualify as money expended in the their mainline business activity, namely, the pay television business .

The court proceeded further to provide details of what is allowable under sections 4 and 5. They are:

"(1) That all outgoings and expenses wholly, exclusively and necessarily incurred by the Company (MULTICHOICE GHANA LTD) during the period, being 1994-1999 can be legally deducted from the interest income if only that company can prove that it wholly exclusively and necessarily incurred them in the production of that income (namely the interest)."

From the state of the pleadings, these questions still remain the core issues. I have been compelled to emphasise this fact for one simple reason, and it is this. Appellant counsel was compelled in his reply, to provide answers to a question which plainly never arose for consideration and was introduced for the first time in the respondent's written statement. Counsel submitted:

"In this case we are concerned in identifying the revenues that would constitute the income not the deductibles...It is not the appellant's contention that interest earned on the deposits into the saving accounts be deducted in computing the assessable income. On the contrary, it is the appellant's case that its interest income be added as revenue or income in computing the assessable income."

This line of argument was undoubtedly provoked by the respondent's contention that: "whatever monies were deposited in the interest yielding account could not be included in determining appellants assessable income since the invested monies did not constitute outgoings or expenses

incurred in the production of the income as provided for in section 4 of SMCD Income Tax Decree 1975 (SMCD 5)..."

Respondent Counsel contended further that the SMCD 5 "draws a distinction between interest earned as an income ...and interest paid on loans which is an allowable expenses or outgoing." The latter, but not the former, they maintain is deductible, provided it meets the requirement of s.4 of SMCD 5. Interest on the investment income, they argue, is not an expense or an expenditure item on the company's operation, and cannot therefore be a deductible expense.

I am in entire agreement with appellant counsel that in this case "we are concerned with identifying the revenues that would constitute the income not the deductibles." In other words, the central issue is what constitutes assessable income for the purposes of taxation. Is it made up of only the subscription fees or additionally the income interest? As already noted, respondent's contention marks a noticeable shift from their original stand. The appellants, as plaintiffs, had pleaded:

"3 Under sections 4,10,and 11 of the Income Tax Decree 1975 (SMCD 5) the defendant was empowered to levy tax on the plaintiffs aggregate income from subscriptions received to its pay television programmes and interests accruing on such subscriptions deposited in the bank."

The appellants unreservedly admitted the correctness of the appellants stated position. They averred as per the paragraphs 3, 10 and 11 of their statement of defence:

"3 Paragraph 3 of the statement of claim is admitted.

10 Defendant says that it is the aggregated income from the two lines of business activities of the plaintiff as shown in paragraph 8 of statement of the statement of Defence which were taxed as required by section 11 (1) of the income Tax Decree of 1975, SMCD5.

11 Plaintiff's averment contained in paragraph 5 of the statement of claim that defendant insists on taxing its sources of income separately is denied. The incomes from the two sources of the plaintiff were in fact aggregated and taxed according to law."

These plain admissions under paragraph 11 actually reflect the correct position of the law. The s1 ss2 of SMCD 5 provides for the taxation of income accruing in, derived from, brought into, or received in respect of gains or profits from any business, interest or discount. I think that under the 11(1) of SMCD 5, it is the aggregate income of a corporate body, the assessable income, and which income could be derivable from two or more sources, as in this instant case, that is subject to tax. The s11 (1) provides:

"Except in the case of any income of an employee derived from his employment and except as otherwise provided by this section, the income of any person for each year of assessment from each source of his income (hereinafter referred to as "assessable income") shall be the full amount of his income from each source for the year immediately preceding the year of assessment, notwithstanding that he may have ceased to possess any such source or that any such source may have ceased to produce income."

My conclusion has been dictated by the strict constructionist approach to the interpretation of statutes reserved for fiscal legislation. The general principle is that tax statutes are to be construed strictly. Viscount Simon LC in the Privy Council case of Canadian Eagle Oil Company Limited and The King [1946 AC 119 at 140] relied on Rowlatt J's formulation of the rule in *Cape Brandy Syndicate v IRC* [1921 1KB 64, 71]. He observed: "In the words of the late Rowlatt J whose outstanding knowledge of this subject was coupled with a happy conciseness of phrase, "in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

I am not disposed to straining the words of SMCD5 to conclude, as argued by the respondent that, on the facts, the two incomes, so inextricably linked cannot be grossed to constitute the company's assessable income. It bears emphasis that as in this instant case, where the interest income of a company not another (separate and distinct entity, but the same company) accrued in the course of their business; it constitutes part of the company's revenue and consequently, at law, forms part of its assessable income. Apply these principles to the s.1 ss (1) and 11 of SMCD5, and the conclusion I arrive at is that upon a true and proper construction, the respondents argument must fail.

The final question is whether the appellant company is entitled to deduct expenses wholly and exclusively and necessarily incurred in its television business from the interest income. Differently stated, could all outgoings and expenses wholly and exclusively and necessarily incurred by the plaintiff during 1994-1999 in respect of its pay television, be legally deducted from the aggregated or assessable income and a fortiori the interest income. The answer to this would settle the legal arguments proffered by the two sides in respect of the two grounds of appeal.

The respondent contends that by the provisions of the s. 1 (2), 4 and 5 of SMCD 5 the expenditure of the pay television cannot be deductible from the interest income. They read:

"4 For the purpose of ascertaining the income of any person other than an employee, for any period from any source chargeable with tax under this Decree there shall be deducted all outgoings and expenses wholly and exclusively incurred during that period by such person in the production of the income..."

Having read particularly the s. 4 of SMCD5, I endorse the findings and conclusions on this issue, arrived at by the trial court and the reasons in support thereof, and which findings were indeed affirmed by the appellate court. The interest income is not severable from the company's profit and loss accounts and must be brought into it. Since this income, which I have demonstrated constitutes part of the appellant company's assessable income, were drawn from the pay television, it stands to reason, that the company's outgoings and expenses incurred in generating the entire pay television business, qualifies as allowable expenses and consequently, by virtue of s.4 of SMCD5, can be subsumed under and is indeed deductible from the interest income.

I wholly affirm the decision of the trial court. I set aside the judgment of the court below and substitute in its place the judgment of the trial court.

**[SGD] G. T. WOOD [MRS.]**

**CHIEF JUSTICE**

**[SGD] J. V. M DOTSE**

**JUSTICE OF THE SUPREME COURT**

**[SGD] ANIN YEBOAH**

**JUSTICE OF THE SUPREME COURT**

**[SGD] N. S. GBADEGBE**

**JUSTICE OF THE SUPREME COURT**

**[SGD] V. AKOTO-BAMFO [MRS.]**

**JUSTICE OF THE SUPREME COURT**

**JUDGMENTS OF THE SUPERIOR COURTS / SUPREME COURT OF JUSTICE /  
MULTICHOICE GHANA LTD. v. THE COMMISSIONER, INTERNAL REVENUE**

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