Regina *v.* Commissioners of Inland Revenue *ex parte* McVeigh[1]

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Income tax—Schedule E—Emoluments—Director's remuneration—Pay As You Earn—Direction to recover tax from employee—Whether entries in employer's accounts and ledger established that tax had been deducted—Whether employer had wilfully failed to deduct tax and employee so knew—Income and Corporation Taxes Act 1988, s 203A(1)*—Income Tax (Employments) Regulations 1993 SI No.* 744, *Regs* 6, 14, 38, 39, 40, 42, 43 *and* 49.

C

M and C were the directors, and each owned half of the issued shares, of MCN. Prior to 1989–90 tax under the PAYE scheme was deducted, and paid over to the Revenue, in respect of the salaries and small bonuses paid to M and C.

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MCN's accounts for the years to 31 December 1988 and 31 December 1989, dated and signed by M and C on 22 March 1990 and 7 January 1991 respectively, showed remuneration for each director of £37,200 and £37,000 respectively, being salary of £12,000 and bonuses of £25,200 in 1988 and £25,000 in 1989, and the composite figures for creditors included, according to the evidence of MCN's accountants, figures for tax and National Insurance contributions referable to the bonuses. A ledger sheet recorded M's drawings on loan account and showed credits against 31 December 1988 and 31 December 1989 respectively of net bonuses of £15,512 and £18,193 respectively. Another ledger sheet contained entries which appeared to be PAYE and employer's National Insurance contributions referable to bonuses in 1988 and 1989.

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In November 1991 the Inspector of Taxes asked the accountants for details of the voted remuneration and as to when the bonuses for 1988 and 1989 were paid. In January 1992 the accountants forwarded M's tax returns for 1990–91 and 1991–92 but, while the returns declared the salaries of £12,000, they did not declare the bonuses. Eight days later the accountants wrote to say that the bonuses had not been processed under PAYE. In February 1992 the Revenue made a determination under Reg 29(1) of the Income Tax (Employments) Regulations 1973 (now Reg 49(2) of the 1993 Regulations) requiring MCN to pay appropriate amounts of tax. That tax was not paid. MCN went into liquidation.

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Correspondence ensued as to whether or not M should be required personally to pay the tax referable to the bonuses paid to him. The Revenue declined to accept that the evidence established that tax had actually been deducted. On 12 September 1994 the Revenue made a direction under Reg 49(5) of the 1993 Regulations that the tax should be recovered from M.

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M applied for judicial review of that direction on the footing firstly, that MCN had not failed to deduct the tax, although it had failed to account to the Revenue and pay in accordance with the Regulations, and secondly, that

[1] Reported [1996] STC 91.

the Revenue's conclusion of fact that the failure to deduct was wilful, and that M knew this, was perverse. A

Held, in the Queen's Bench Division, dismissing M's application, that the direction of 12 September 1994 was a sustainable direction in law and in fact, because:— B

(1) normally an employee has a pre-existing entitlement to gross pay and a deduction from this is effected, in accordance with Reg 14 (of the 1993 Regulations), by the employer paying the net amount due after subtracting the tax, and Regs 49(5) and 42(3) would normally operate where the employer had wilfully paid an employee gross and the employee knew this; C

(2) the circumstances of the case were, however, abnormal. Instead of there being a pre-existing entitlement to a gross sum from which calculated tax was deducted on payment to reach the net sum paid, the money had already been received as drawings on the loan account and a calculation was made of the amount which needed to be added to reach D a gross amount which, if tax and National Insurance contributions were deducted from it, would produce an amount approximately equivalent to the amount already received: the gross amount was then declared as a bonus, and by s 203A(l) Income and Corporation Taxes Act 1988 the payment of the bonus was to be treated as having been paid on the date on which it was determined, that being, in the absence of other evidence, E the date on which the relevant company accounts were signed;

(3) normal considerations could not apply because on the date when payment was to be treated as having been made, no actual payment was in fact made and there was, accordingly, no deduction in the normal sense of a deduction constituted by the payment of a net sum F against a pre-existing entitlement to gross pay;

(4) the entries in the accounts and in the ledger sheets would constitute a deduction of tax if, additionally, the tax was accounted for and paid, but MCN had, to M's knowledge, wilfully neither accounted for nor paid the tax, and it would be a misuse of language to say that the G book-keeping and accounting alone, without actual payment and without any of the procedures which the Regulations required, constituted a deduction of tax from the gross payment. On the contrary there was a wilful failure to do anything relating to tax obligations beyond making some internal paper entries which MCN proceeded to ignore for tax accounting purposes and anything relating to tax obligations beyond H making some internal paper entries which MCN proceeded to ignore for tax accounting purposes and which M also ignored when he submitted his own tax returns.

Regina v. *Commissioners of Inland Revenue* ex parte *Chisholm* [1981] STC 253: 54 TC 722 followed. I

The application for judicial review was heard in the Queen's Bench Division before May J. on 5 December 1995 when judgment was reserved. On 6 December 1995, the application was dismissed, with costs, but cost

A arising on or after 7 November 1995 not to be enforced without leave of the Court or of the Court of Appeal.

The facts are set out in the judgment.

B *C. J. F. Sokol* for the taxpayer.

Timothy Brennan for the Crown.

The only case cited in argument is referred to in the judgment.

C

May J.:—This is an application, on behalf of Mr. Michael McVeigh, for judicial review of a decision of the Inland Revenue in a direction dated 16 September 1994 under the Income Tax (Employments) Regulations 1993. D This direction required Mr. McVeigh to pay tax for the year 1989–90 of £8,766 and for the year 1990–91 of £8,675.65 under para 5 of Regulation 49, the direction stating that it appeared to the Commissioners that this tax should have been, but was not, deducted by McVeigh Construction (Nottingham) Ltd. Leave to move for judicial review was granted by Macpherson of Cluny J. on 17 February 1995.

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Mr. McVeigh was one of two directors of the company McVeigh Construction (Nottingham) Ltd. The other director was Mr. Crossland. Each of them owned half of the issued shares. Mr. McVeigh's evidence is that Mr. Crossland was concerned with the books and financial matters and that he (Mr. McVeigh) was unaware of the matters that are the subject of this appli- F cation.

The application concerns tax that should have been paid on Mr. McVeigh's director's bonuses. He and Mr. Crossland, in the relevant years, were paid salaries of £12,000. They were also voted bonuses. In the years prior to 1989–90, when the amount of their bonuses appears to have been G quite small, the appropriate tax was accounted for and paid to the Revenue by the company in accordance with tax legislation and Regulations and Mr. McVeigh declared the receipt of these bonuses, together with his salary, in his own personal tax returns.

For the years 1989–90 and 1990–91 bonuses were, it seems, declared of H £25,200 and £25,000 respectively, but the company did not account for and pay the appropriate tax, and Mr. McVeigh did not declare the bonuses in his own tax returns.

On 5 February 1992 the Revenue made determinations obliging the company to pay the tax. The company, now in liquidation, did not do so.

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On 16 September 1994 the Revenue, having aired the question extensively in correspondence and given a number of opportunities to those advising Mr. McVeigh to make representations, directed him to pay the tax personally. That direction was given under Regulation 49(5) of the Income Tax (Employments) Regulations 1993. Although in numerous other matters taxpayers are given rights of appeal to Commissioners, it is common ground

that there is no right of appeal against a direction under this Regulation and that in principle an application for judicial review is open to Mr. McVeigh. A

The relevant legislative framework is briefly as follows. The statute is the Income and Corporation Taxes Act 1988. This has been amended since it was enacted. The former Regulations were the Income Tax (Employments) Regulations 1973. These were replaced by the 1993 Regulations, which came into force on 6 April 1993. The facts of this case straddle that date. I shall refer to the amended version of the statute and of the 1993 Regulations, it being agreed that, apart from one amendment to the statute to which I shall refer, there is no material difference introduced by amendments to the statute or by the 1993 Regulations, although the paragraph numbers of the Regulations have changed. B C

Section 203 of the 1988 Act (as amended) provides for income tax by way of Pay As You Earn. Parts of it are as follows:

> "(1) On the making of any payment of, or on account of, any income assessable to income tax under Schedule E, income tax shall, subject to and in accordance with regulations made by the Board under this section, be deducted or repaid by the person making the payment, notwithstanding that when the payment is made no assessment has been made in respect of the income and notwithstanding that the income is in whole or in part income for some year of assessment other than the year during which the payment is made." D E

There is then provision for the Board to make Regulations (among other things):

> "(*a*) for requiring any person making any payment of, or on account of, any such income, when he makes the payment, to make a deduction or repayment of income tax calculated by reference to tax tables prepared by the Board, and for rendering persons who are required to make any such deduction or repayment accountable to, or, as the case may be, entitled to repayment from, the Board." F

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Section 203A was inserted by the Finance Act 1989 and has effect to determine whether anything occurring after 26 July 1989 constitutes a payment for the purpose of the section. The events with which this case is concerned are subsequent to 26 July 1989. The amended section provides:

> "(1) For the purposes of section 203 and regulations under it a payment of, or on account of, any income assessable to income tax under Schedule E shall be treated as made at the time found in accordance with the following rules (taking the earlier or earliest time in a case where more than one rule applies) ... " H

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The rule relevant to this application is subs (e):

> "... in a case where the income is income from an office or employment with a company, the holder of the office or employment is a director of the company and the amount of the income for a period is not known until the amount is determined after the period has ended, the time when the amount is determined."

A There are then the following provisions, in summary, of the 1993 Regulations. Regulation 6, under the heading "Deduction and repayment of tax under the appropriate code" provides:

> "(1) Subject to the conditions specified in paragraph (2), every employer, on making any payment of emoluments to any employee during any year, shall deduct or repay tax in accordance with these Regulations by reference to the appropriate code."

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Part IV of the Regulations concerns deduction and repayment of tax. Regulation 14 provides:

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> "(1) Except where these Regulations otherwise provide, the employer shall ascertain, on the occasion of any payment of emoluments to the employee,—
>
> . . .
>
> (*d*) the cumulative tax.
>
> (2) If the cumulative tax together with any tax not deducted when the last preceding payment of emoluments was made exceeds the previous cumulative tax—
>
> (*a*) the employer shall deduct the excess from the emoluments on making the payment in question [subject to an immaterial qualification]."

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Regulation 38, under the heading "Documents relating to the deduction and repayment of tax, deductions working sheets, etc." reads:

> "(1) Subject to the condition specified in regulation 6(2)(a), every employer, on making any payment of emoluments to any employee during any year, shall, if he has not already done so, prepare a deductions working sheet for that employee."

F

The Regulation proceeds to give extensive details as to what that deductions working sheet is to record. A copy of a deductions working sheet is exhibited in the evidence in this case. The things which the employer has to record include the date of the payment, the amount of the emoluments and the amount of tax (if any) deducted or repaid on making the payments.

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Regulation 39 provides for the employer to give a certificate under the Regulation to every employee on the last day of the year and, comprehensively, that provides for what is commonly known as a "P60" certificate.

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Regulation 40, under the heading "Payment" starts with the words:

> "(1) Subject to regulations 41 and 48(11), the employer shall pay the amount specified in paragraph (2) to the collector within 14 days of the end of every income tax month."

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Paragraph (2) provides how that amount is to be calculated. Regulation 42 of the Regulations contains further provisions which include the following:

> "(2) If the amount specified in regulation 40(2) or 41(2) which the employer is liable to pay to the collector exceeds the amount actually deducted by him from emoluments paid during the relevant income tax period, the collector, on being satisfied by the employer that he took

reasonable care to comply with these Regulations and that the under-deduction was due to an error made in good faith, may direct that the amount of the excess shall be recovered from the employee, and, where the collector so directs, the employer shall not be liable to pay the amount of that excess to the collector. A

(3) If the amount specified in regulation 40(2) or 41(2) which the employer is liable to pay to the collector exceeds the amount actually deducted by him from emoluments paid during the relevant income tax period, the Board, if they are of the opinion that an employee has received his emoluments knowing that the employer has wilfully failed to deduct the amount of tax which he was liable to deduct under these Regulations from those emoluments, may direct that the amount of the excess shall be recovered from the employee, and, where the Board so direct, the employer shall not be liable to pay the amount of that excess to the collector." B C

Regulation 43 provides for returns by the employer at the end of the year where deductions working sheets are required and provides for the sending to the Revenue of forms "P14" and "P35". D

Finally, Regulation 49, under the heading "Formal determination of tax payable by the employer" provides:

"(1) This regulation applies where it appears to the inspector that there may be tax payable under regulation 40 or 41 which— E

(*a*) has not been paid to the collector, and

(*b*) has not been certified by the collector under regulations 43, 47, 48 or 55.

(2) Where this regulation applies, the inspector may determine the amount of that tax to the best of his judgment, and shall serve notice of his determination on the employer." F

Pausing there, such a notice was served in this case.

"(3) A determination under this regulation shall not include tax in respect of which a direction under regulation 42(2) or (3) has been made; and directions under that regulation shall not apply to tax determined under this regulation. G

. . .

(5) Where— H

(*a*) any part of the tax determined under this regulation is not paid within 30 days from the date on which the determination became final and conclusive, and

(*b*) the Board consider that a direction under regulation 42(3) would, but for paragraph (3) of this regulation, have been made, I

the Board may direct that such part of that tax as it appears to them should have been but was not deducted under these Regulations by the employer on payment of the relevant emoluments shall (without prejudice to the right of recovery from the employer) be recovered from the employee."

A It is a direction under that sub-paragraph which this application seeks to review. Accordingly a direction under Regulation 49(5) may be made where: first, there has been a determination under Regulation 49(2) served on the employer; secondly, the employer has not paid; and thirdly, the Board considers that a direction under Regulation 42(3) would, but for para (3) of Regulation 49, have been made. The relevant conditions for a direction B under Regulation 42(3) include that the employer has failed to deduct the amount of tax which he was liable to deduct under the Regulations, that he had failed to do so wilfully, and that the employee received the emoluments knowing of the wilful failure to deduct. "Knowing" means knowing, not "ought to have known", and "wilfully" means "intentionally or deliberately" (see *Regina* v. *Inland Revenue Commissioners* ex parte *Chisholm*(1) [1981] STC C 253).

The grounds upon which this application are advanced are: first, that as a matter of law and/or indisputable fact the employer did not fail to deduct the tax, although it is accepted that they failed to account to the Revenue and pay in accordance with the Regulations; secondly, that the Revenue's D conclusion of fact that the failure to deduct was wilful, and that Mr. McVeigh knew this, was perverse.

Although the second ground was formally maintained by Mr. Sokol on behalf of Mr. McVeigh, it was not strenuously argued. I say straightaway that on the facts I am about to relate I am not persuaded that the conclusion E of fact here was in any way perverse. On the contrary. It will be understood that the Court, upon judicial review, is not itself concerned to make primary findings of fact but to review the legality and propriety of facts found by others. It will be seen that the crucial question therefore is whether there was a failure to deduct.

F The facts available to Mr. Shortland of the Revenue who, according to the evidence, effectively made the decision included, in summary, the following. The company had prepared accounts for the years to 31 December 1988 and 31 December 1989. Those accounts show, first, that there had been directors' remuneration in the 1988 year amounting to £74,400, and that that remuneration broke down into two lots of £12,000 of salary for Mr. G Crossland and Mr. McVeigh respectively, and two lots of bonuses for £25,200. The accounts then include a composite figure for creditors which, by note 8, was broken down to be seen to include, in the 1988 year, a figure of £68,954 for other taxes and social security costs. Evidence from the company's accountants states, without demonstrating, that that figure included tax and National Insurance contributions referable to the £25,200 bonuses. H The accounts to 31 December 1989 contain similar material, except that for that year the bonuses were £25,000 and the amount under note 8, for a composite amount for creditors, included £94,321 for other taxes and social security costs. The evidence then states, again without demonstrating, that that sum included tax and National Insurance contributions relating to the £25,000 bonuses.

I There was also available to the Revenue, and there is in evidence, two company ledger sheets. The first of those sheets is headed "Director's loan, Mr. J. McVeigh". It contains entries which appear to be, on the one hand, drawings from that loan account by him, and, on the other hand, credits to

(1) 54 TC 722.

the loan account. Against the date December 31 1988 there is a credit said to be for "net bonus" of £15,512.85 and against the date December 31 1989 there is again a net bonus entered of £18,193.80.

The second ledger sheet is called "Director's bonus account (PAYE/NIC)". That contains entries which appear to be PAYE and employers' National Insurance contributions referable to bonuses in 1988 and bonuses in 1989.

The affidavit of Mr. Shortland, which explains comprehensively the basis upon which the Revenue decided to give the direction in this case, exhibits documents. They include Mr. McVeigh's own tax returns for previous years showing that in those years he declared income which explicitly included bonuses for the year. Also exhibited are the company's deduction working sheets for earlier years, again indicating what is not in dispute, that in years prior to those which are the subject of these proceedings the company accounted for and paid the tax on the bonuses in accordance with the Regulations.

On 28 November 1991 the Inspector of Taxes wrote to the company's accountants asking for details of remuneration voted to Mr. McVeigh in the company accounts to December 1990 and asking for details of when the bonuses of £25,200 and £25,000 for the two years in question were paid. The company accounts in which those bonuses appear were respectively dated and signed by the directors (including Mr. McVeigh) on 22 March 1990, for the 1988 accounts, and on 7 January 1991 for the 1989 accounts.

In answer to the Inspector's letter the accountants wrote back on 30 December 1991, saying:

> "Please note that we are no longer undertaking any work on behalf of McVeigh Construction (Nottingham) Ltd. However, we will attempt to provide you with the answers to your queries. It may take some time to deal with the queries, so please bear with us and we will try to be of some assistance to you if possible."

I say, in parenthesis, that the assertion in that letter, that the accountants were no longer undertaking any work on behalf of the company, does not appear to square entirely with what is said in an affidavit of Mr. Checkley filed on behalf of the applicant.

On 8 January 1992 those very same accountants, having been alerted slightly earlier to the fact that bonuses were paid for the years in question, and bearing in mind that they had prepared, on their evidence, the company accounts in that respect, wrote to the Revenue, enclosing Mr. McVeigh's duly completed and signed 1990–91 and 1991–92 tax returns. Those tax returns declared the salary income of £12,000, but made no declaration whatever in relation to the bonuses. On 16 January 1992 (eight days after the letter sending Mr. McVeigh's tax return) the same accountants wrote to the Revenue in these terms:

> "Further to your letter of 28 November and ours of 30 December 1991, it would appear from the limited information we have that bonuses for the two years ended 31 December 1989 have not been processed under PAYE."

A Upon that information the Revenue made their determination under Regulation 49(2) on 5 February 1992, requiring the company to pay the sums of tax which are the subject of this application.

There was then an extended correspondence in which the question whether or not Mr. McVeigh should be required personally to pay this tax B was aired. Points made on behalf of the Revenue included, in a letter dated 17 May 1994:

> "I regret that I cannot accept this loan account tax provision as sufficient evidence on its own that the tax was actually deducted."

C A letter dated 8 June 1994 reads:

> "It is abundantly clear that the bonuses reflected in the 1988 and 1989 accounts have not been dealt with as outlined in the above Regulations and this constitutes a failure to operate PAYE."

D In a letter dated 18 July 1994:

> "However, I regret that I cannot accept this information (about the loan accounts) as sufficient evidence that tax was actually deducted. At best it shows that PAYE deductions were given some thought at one time, but such evidence does not automatically mean that PAYE has E been deducted."

It was in those circumstances that, on 12 September 1994, the direction under para 5 of Regulation 49 was made.

The evidence relied on by Mr. McVeigh is to the effect that he received F money which was entered as a debit to his loan account; that the company decided to award bonuses in each of the years in gross amounts of £25,200 and £25,000; that the awarding of these bonuses is evidenced by the accounts and that the amounts for creditors in the accounts includes the tax and National Insurance contributions calculated on those bonuses; that the amounts net of tax and National Insurance contributions were credited to G the loan account and that accordingly, by this process, the company did deduct tax; and, importantly for the submission, what Mr. McVeigh received were amounts from which tax had been deducted.

The approach to the evidence which is adopted on behalf of the Revenue is that there was no movement of money at all at any time relevant H to the deduction of tax. The material before Mr. Shortland, the assistant controller who dealt with the matter, did not constitute positive evidence that deductions in accordance with the Regulations had been made. He was not able to conclude that net credits of amounts whose calculation may or may not have related to tax and National Insurance contributions, without more, evidenced a deduction of tax in accordance with the Regulations, so that I where P14, P35 and P60 forms and Mr. McVeigh's own personal tax returns were all completed and submitted without including amounts referable to the bonus, the proper conclusion was that the company had failed to deduct tax in accordance with the Regulations and that that was wilful.

Mr. Brennan, on behalf of the Revenue, accepts that deduction of tax is not the same as payment of tax. I agree.

It is clear that the usual circumstances where these provisions may apply will be where an employee has received a payment gross and there will have been no deduction of tax because the payment was made gross. If, on the other hand, the employee is paid net, he or she will normally receive a document required by employment legislation, but not by tax legislation, indicating how the net amount is calculated. In the modern world the fact of payment in an amount net of tax will normally constitute deduction, whether or not the employer also effects any money movement of the sum which is deducted, for example by transferring it to a tax reserve. There will be a pre-existing entitlement to gross pay and a deduction from this is effected by paying the net amount due after subtracting the tax. This accords with Regulation 14, where the employer has to ascertain, among other things, the tax and to deduct it "... on making the payment in question".

Regulations 49(5) and 42(3) would normally operate where the employer had wilfully paid an employee gross and the employee knew this. Although the employer has to prepare a deductions working sheet under Regulation 38, the preparation of that sheet does not, in these normal circumstances, constitute or contribute to the making of the deduction. It is, as the Regulation makes clear, the making of a record and one of the things that has to be recorded is "... the amount of tax (if any) deducted or repaid on making the payment"—(see Regulation 38(3)(c), which is one of a number of instances where the point of deduction appears to be on making the payment). Again, although the employer is required to give a P60 certificate to the employee and to provide the Revenue with P14 and P35 forms, the giving and providing of those documents does not constitute the deduction of tax. The documents record among other things the deduction of tax.

Those are normal circumstances. In this case, however, there was no payment made at all in the sense of the handing-over of a sum of money. There was, at most, at the relevant time, book-keeping and accounting. Nor was there a pre-existing entitlement to a gross sum from which calculated tax was deducted upon payment to reach the net sum paid. Rather the reverse happened. There was money already received as drawings on the loan account and no doubt a calculation was made of the amount which needed to be added to this to reach a gross amount which, if tax and National Insurance contributions were deducted from it, would produce an amount approximately equivalent to the amount already received. This gross amount was then, it seems, declared to be a bonus and by s 203A of the 1988 Act (as amended) the payment of the bonus is to be treated as having been made on the date it was determined, i.e. apparently £25,200 is to be treated as having been paid on 23 February 1990 and £25,000 as having been paid on 7 January 1991. I say "apparently" because the evidence does not explicitly say when the bonuses were declared. It is not clear, and was not clear to Mr. Shortland, when the book-keeping entries were actually made. They cannot have been made on the dates actually entered in the ledger.

In my judgment, in this case the crucial question whether the employer deducted the amount of tax which he was liable to deduct under the Regulations cannot be determined by what I have described as "normal considerations", for the simple reason that on the date when payment is to be treated as having been made no actual payment was in fact made. There was, accordingly, no deduction in the normal sense of a deduction constituted by the payment of a net sum against a pre-existing entitlement to gross pay.

A What then would constitute deduction in these abnormal circumstances? Mr. Sokol submits that including the tax liability within the creditors in accounts, and entering the amounts net of deductions in the loan account ledger and the deductions in the other ledger, constitute the crediting of, Mr. McVeigh with amounts net of tax, and the setting-aside (in the sense of accounting for) the tax and that this, taken together, constituted deduction.

B

Those matters would no doubt constitute to a deduction of tax if, additionally, the tax was accounted for and paid. But in this case the employer, to Mr. McVeigh's knowledge, has neither accounted for nor paid the tax and these failures were wilful, or so the Revenue have concluded upon a basis which was, in my judgment, not perverse. In these circumstances I consider C that it would be a misuse of language to say that the book-keeping and accounting alone, without actual payment, and without any of the procedures which the Regulations require, constituted a deduction of tax from the gross payment. There was, on the contrary, a wilful failure to do anything relating to tax obligations, beyond making some internal paper entries which the company proceeded to ignore for tax accounting purposes and which Mr. D McVeigh also ignored when he submitted his own tax returns.

That, in substance, is what, according to Mr. Shortland's affidavit, the Revenue decided in making its direction. In my judgment, there was no deduction of tax by the company, and the direction of 12 September 1994, which is challenged, was a sustainable direction in law and in fact.

E

Mr. Sokol submits that, if the direction which is challenged stands, there will be an unjust species of double taxation in the sense that Mr. McVeigh will have received only the net amounts but will also have to pay the tax. I disagree that this would be unjust on the facts of this case, where there was a wilful failure to deduct tax, where Mr. McVeigh knew this, and where the F company of which he was a director has not paid the tax. For these reasons, the application fails and is dismissed.

Application dismissed, with costs, but costs arising on or after 7 November 1995 not be enforced without leave of the Court or of the Court of Appeal.

G [Solicitors:—Messrs. Rotheras; Solicitor of Inland Revenue.]

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