Privy Council Appeal No. 49 *of* 1935

Arthur Ernest Tyndall Payne - - - - - - - *Appellant*

v.

The Deputy Federal Commissioner of Taxation - - *Respondent*

FROM

THE HIGH COURT OF AUSTRALIA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 23RD JUNE, 1936.

Present at the hearing:

THE LORD CHANCELLOR
(VISCOUNT HAILSHAM).
LORD RUSSELL OF KILLOWEN.
THE MASTER OF THE ROLLS (LORD WRIGHT).
SIR ISAAC ISAACS.
SIR GEORGE RANKIN.

[*Delivered by* LORD RUSSELL OF KILLOWEN.]

The facts relevant to this appeal are not in dispute. The appellant, a resident in Melbourne, Victoria, returned his gross income for the purpose of federal income tax at £20,173 and included therein the sum of £5,671 as interest on British Funded Stock, such sum having been received by him by credits to his account with the Union Bank of Australia, Ltd., in London, and retained in England. From his gross income he claimed certain deductions, returning his net income at £14,831. The assessing officer added to the total amount so returned a sum of £1,097, representing the difference between the said £5,671 and the sum which would be produced in Melbourne by the telegraphic transfer upon the respective dates of credit of the sums constituting the said £5,671.

The appellant made objections claiming that the sum of £5,671 should not be included at any other figure. His objections were disallowed, and thereupon under the provisions of the Commonwealth Income Tax Assessment Act, 1922-1932, were treated as an appeal, and the matter was transmitted to the High Court of Australia for hearing.

The appeal came before Dixon J. who stated a case for the opinion of the Full Court of the High Court, setting out

the facts and asking for the opinion of the Full Court upon the following questions:—

1.—(A) Was the Commissioner right in including in the said assessment or assessments the said amount of £1,097;

or (B) ought the Commissioner to have included no more, in respect of the interest aforesaid, than the sum of £5,671;

2. If both the preceding questions are answered NO, upon what basis ought the amount to be included in the appellant's assessment in respect of such interest to be ascertained?

The Judges of the High Court were divided in opinion as to the answers which should be given. Gavan Duffy C.J. and Evatt and McTiernan JJ. were of opinion that the assessment was correctly made and answered the questions accordingly. Rich, Starke, and Dixon JJ. were of the contrary opinion relying largely as it appears to their Lordships, upon a decision of the House of Lords in the case of *Adelaide Electric Supply Co. Ld.* v. *Prudential Assurance Co. Ld.* ([1934] A.C. 122). By virtue of section 23 of the Commonwealth Judiciary Act the opinion of the Chief Justice prevailed, and by an order made by Dixon J. dated the 9th May, 1934, the appeal was dismissed.

Their Lordships are of opinion that the appeal was rightly dismissed. The question appears to them to depend upon the true meaning and construction of the Income Tax and Income Tax Assessment Acts of the Commonwealth of Australia.

Liability to income tax in Australia is imposed by Acts of a permanent nature, called Income Tax Assessment Acts, supplemented by annual Acts, called Income Tax Acts, which fix, among other things the rate and amount of the tax. In this case the return, the correctness of which was challenged, is dated the 18th September, 1931. The relevant Acts to be considered are the Income Tax Assessment Act, 1922-1931 (hereinafter called the Assessment Act) and the Income Tax Act, 1931 (No. 24 of 1931) which will be referred to as the Taxing Act and which by section 2 provides that the Assessment Act " shall be incorporated with and read as one with this Act."

By the Assessment Act (section 4) " assessable income " means in the case of a resident the gross income derived from all sources whether in Australia or elsewhere, and " taxable income " means the amount of income remaining after all deductions allowed by the Act have been made. By section 13 the tax is to be levied and paid for each financial year upon the taxable income derived, directly or indirectly, by every resident from all sources, whether in Australia or elsewhere, during the period of twelve months ending on the thirtieth day of June preceding the financial year for which the tax is payable. By section 32 there is imposed upon every resident (not being a company) whose total assessable income is not below specified sums, an obligation (which was binding on the appellant), when called

upon by notice in the Gazette, to " furnish to the Commissioner in the prescribed manner a return setting forth a full and complete statement of the total assessable income derived by him during the financial year ending on the preceding 30th day of June ". Section 35 is in the following terms:

> " From the returns and from any other information in his possession, or from any one or more of these sources, the Commissioner shall cause assessments to be made for the purpose of ascertaining the taxable income upon which income tax shall be levied."

It will be observed that the Assessment Act imposes upon the taxpayer the obligation of supplying the materials from which the Commissioner is to be able (with or without any other information in his possession) to discharge his duty of assessing the taxpayer in an amount of taxable income " upon which income tax shall be levied ".

Turning now to the Taxing Act. The tax is imposed by sections 3 and 6. Section 3 provides that income tax is imposed at the declared rates. Section 6 provides that it shall be levied and paid for the financial year beginning on the 1st July, 1931. The rates are declared by the 4th section, to be the different rates in respect of the different kinds of income respectively set out in the nine schedules to the Act. In every case the amount payable is ascertained by reference to a rate based on a calculation of pence per pound. It will be sufficient to refer to the second schedule which is the schedule relevant to the said £5,671. It runs thus:—

SECOND SCHEDULE.

RATE OF TAX UPON INCOME DERIVED FROM PROPERTY.

For the purposes of this Schedule— T= taxable income in pounds.

If the taxable income does not exceed £500, the rate of tax for every pound of taxable income shall be	$\left\{3 + \frac{T}{100}\right\}$ pence.
If the taxable income exceeds £500 but does not exceed £1,500, the rate of tax for every pound of taxable income shall be	$\left\{1 + \frac{T \times 14}{1,000}\right\}$ pence.
If the taxable income exceeds £1,500 but does not exceed £3,700, the rate of tax for every pound of taxable income shall be	$\left\{4\frac{3}{4} + \frac{T \times 23}{2,000}\right\}$ pence.
If the taxable income exceeds £3,700, the rate of tax for every pound of taxable income up to and including £3,700 shall be and	$\left\{4\frac{3}{4} + \frac{3,700 \times 23}{2,000}\right\}$ pence.
the rate of tax for every pound of taxable income in excess of £3,700 shall be ...	90 pence

There can be no manner of doubt that these Australian Acts, in referring to pounds and pence, are referring to those units of Australian currency known as pounds and pence

respectively and to nothing else. The income tax payable by a taxpayer to the Australian revenue is to be fixed by means of a calculation which involves the multiplication of an ascertained number of one kind of units of Australian currency by the scheduled number of another kind of units of Australian currency, the product being the resultant number of Australian pence. It seems necessarily to follow that to enable this calculation to be made, the assessable income of the taxpayer must, whatever be the currency in which he derives it, all be expressed in terms of Australian currency; in other words if any portion of his assessable income is derived by him in French or Belgian currency, it must before he can be properly assessed to Australian income tax be converted into its equivalent, at the time it was derived, in Australian currency. In exactly the same way, any income derived by him in British currency must be converted into its equivalent in Australian currency. In short when an Australian statute tells the taxpayer to state his derived income in order that a fraction thereof (i.e., so many pence in the pound of derived income) may be taken as tax, this can only mean that his derived income is to be stated and dealt with in terms of Australian currency. From this it would accordingly follow that the Commissioner was right in including the amount of £1,097 in the appellant's assessment.

It was, however, contended that a recent decision in the House of Lords was inconsistent with this view and was conclusive in the appellant's favour on the present appeal. Their Lordships are unable to agree with this contention. The case referred to is *Adelaide Electric Supply Co. Ld.* v. *Prudential Assurance Co. Ld.* ([1934] A.C. 122). The actual decision related to a matter very far removed from the question now under consideration. The actual decision was this:—That an obligation to pay a preference dividend of (say) £5 which was originally payable in England but which by an alteration of the company's articles, binding on the preference stockholder, had been made payable only in Australia, was effectively discharged by a payment in Australian currency although the stockholder in England received, owing to the rate of exchange, less than £5 in English currency.

Their Lordships can see nothing in that decision inconsistent with the view that for the purpose of assessing an Australian taxpayer to income tax under the Australian revenue legislation, it is necessary that his assessable income should be expressed in terms of Australian currency. It was said, however, that some of the Lords who took part in the debate on the *Adelaide* case, expressed a view which entitled the appellant to say that the £5,671 which he derived in England in British currency should figure in his income tax return, though made in terms of Australian currency, at the same figure and no more. The view in question is a view expressed in terms by three of the noble

Lords, viz., that the unit of account symbolised by the £ and originally carried by the early settlers from England to Australia had never been changed, but had remained the same as a measure of obligation, though the discharge of the obligation so measured might be affected by fluctuations in the currency which was legal tender *in loco solutionis*.

Their Lordships are unable to see anything in the views so expressed which would justify, still less necessitate a construction of the Assessment Act and the Taxing Act other than that which they have indicated above : viz., that in order to calculate Australian income tax at a rate of so many pence per pound of " taxable income ", it is essential that the " assessable income " should be expressed in terms of Australian currency.

For the reasons which they have indicated their Lordships are of opinion that this appeal should be dismissed and they will humbly advise His Majesty accordingly. The appellant must pay the costs of the appeal.

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In the Privy Council

ARTHUR ERNEST TYNDALL PAYNE

v.

THE DEPUTY FEDERAL COMMISSIONER OF TAXATION

DELIVERED BY LORD RUSSELL OF KILLOWEN

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