

Beresford W. Boyd - - - - - *Appellant*

v.

The Assessments Committee, Excess Profits Tax - *Respondent*

FROM

THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 30TH JULY, 1947

Present at the Hearing :

LORD DU PARCQ

LORD MORTON OF HENRYTON

LORD MACDERMOTT

[*Delivered by* LORD MACDERMOTT]

In these proceedings the appellant who resides in Jamaica and has, at all material times, carried on there the business of an insurance broker, challenges two assessments to excess profits tax made upon him by the respondent for the accounting periods ending the 31st December, 1940, and the 31st December, 1941.

This tax is chargeable under the Excess Profits Tax Law (65 of 1941) of which the following provisions are relevant:—

“ 3.—(1) This Law shall apply to all trades or businesses of any description carried on in the Island, or carried on whether personally or through an agent by persons ordinarily resident in the Island.

(2) All trades or businesses to which this Section applies carried on by the same person shall be treated as one trade or business for the purposes of this Law.

(3) For the purposes of this Section:—

(a) The carrying on of a profession by an individual or by individuals in partnership shall not be deemed to be the carrying on of a trade or business if the profits of the profession are dependent wholly or mainly on his or their personal qualifications:

Provided that for the purpose of this sub-section the expression ‘profession’ does not include any trade or business consisting wholly or mainly in the making of contracts on behalf of other persons or the giving to other persons of advice of a commercial nature in connection with the making of contracts. . . .”

4.—Where the profits arising in any chargeable accounting period from any trade or business exceed the standard profits, there shall, subject to the provisions of this Law, be charged on the excess a tax (to be called ‘the excess profits tax’) equal to one-third of the excess.”

Section 23 deals with appeals against assessments. Sub-section (8) thereof may also be noted. It runs thus:—

“ (8) The decision of the Judge hearing the Appeal shall be final: provided that the Judge hearing such appeal may, if he so desires,

and shall, on the application of the Appellant or of the Assessment Committee, state a case on a question of law, for the Opinion of the Court of Appeal."

The appellant appealed against both assessments to the Judge in Chambers (Carberry, J.) who dismissed the appeal but stated a case for the opinion of the Court of Appeal in Jamaica. The last paragraph of the Case Stated reads:—

"The question for the opinion of Court is whether upon the facts found as set out by me I was justified in coming to the conclusion that the Appellant carried on the trade or business of an Insurance Broker so as to be liable to Excess Profits Tax under the provisions of Sections 3 and 4 of Law 65 of 1941 in respect of all his activities."

The Court of Appeal (Hearne, C.J., Savary and Watts, JJ.) answered this question in the affirmative. It is from this decision that the appellant now appeals.

The appellant's activities throughout the periods under review may be taken as falling into the following categories:—

- (1) Work done by arrangement with a London company, the World Marine and General Insurance Co. Ltd. (hereinafter called "the Company") in respect of its marine insurance business; and
- (2) Work done in placing insurance risks through brokers and other companies.

It was conceded that the second of these categories constituted the carrying on of a trade or business to which Section 3 of the Law applied. But the appellant contended in the Courts below and on this appeal that his activities within the first category did not constitute such a trade or business and that he was not subject to excess profits tax in respect of the profits arising therefrom.

There is no question as to figures and it was agreed that, should the appellant's contention prevail, the total profits could and would be severed accordingly.

In its substance, therefore, the matter for determination is whether, on the facts as proved or admitted, the first category of the appellant's activities constituted a trade or business for the purposes of the Law.

The Case Stated sets out the relevant history of the appellant's relationship with the Company and the nature of his activities within each of the categories mentioned so carefully and clearly that it becomes unnecessary to restate in any detail the material facts and circumstances save in so far as requisite for the due consideration of the arguments advanced.

Stated shortly, the appellant's contention was that his activities in relation to the marine insurance business of the Company were essentially different in character from those falling within the second category and constituted, not the carrying on of business on his own account, but the carrying on of the Company's business in Jamaica. For the respondent, on the other hand, it was urged that there was no material difference between the categories and that in his work under both, the one as much as the other, the appellant was engaging in the business of an insurance agent or broker.

The Company, it is important to observe, did not employ the appellant as a servant. The contention that it did was made before Carberry, J., but was abandoned—very properly in view of the evidence—before the Court of Appeal and the Board. The Company's formally appointed agents in Jamaica were the firm of J. S. Webster and Sons who also held a power of attorney enabling them to act on the Company's behalf. Webster's, with the consent of the Company, allowed the appellant to carry out many of the activities which they as agents might have transacted had they so desired. For this the appellant got a substantial proportion of the commission which Webster's would have been entitled to if they had held the business in their own hands and, in addition, he received from the Company an annual contribution towards his office expenses and a supply of stationery forms on some of which he was described in print as the "Local Underwriter".

Whatever this description may have been intended to convey the appellant, in fact, had no authority to accept risks or issue policies on behalf of the Company though it is equally clear that he was authorised to receive premiums and, subject to direct instruction from the Company, to adjust and settle claims.

In getting business for the Company and in performing the functions regarding it which he was allowed to discharge the appellant obviously employed and was expected to employ his knowledge and experience of this class of business. He used his office and staff which were entirely within his own control for all his activities, including those relating to the Company. He was not bound to spend his whole time or any particular part of it on the Company's work and, apart from the dictates of self-interest, there is nothing in the facts to suggest that he was under an obligation to secure fresh business for the Company or accord it preferential treatment.

The appellant's other insurance activities differed in some respects from those pertaining to the Company's affairs. They produced much less in the way of annual remuneration. They were not limited to marine risks. They did not include the adjustment or settlement of claims. But in certain circumstances they did include the issue of cover notes on behalf of London brokers and local insurance companies.

The fact that the appellant transacted in practice much of the Company's business in Jamaica does not necessarily mean that his efforts in that behalf were not in furtherance of his own business. It is not too much to say that many trades and businesses depend for their existence upon their capacity to further and promote the carrying on of distinct trades and businesses in other hands. Nor can the fact that the appellant was authorised to do certain acts on behalf of the Company be regarded as conclusive in his favour, for it is clear that a trade or business may consist in being agent for others, as, indeed, the words "trade or business consisting wholly or mainly in the making of contracts on behalf of other persons" in the proviso to Section 3 (3) (a) of the Law go to show.

After a careful consideration of all the facts and of the submissions made on behalf of the parties their Lordships find themselves unable to accept the view that the appellant, in his activities on behalf of the Company, was not carrying on his own business as an insurance broker or to discover any distinction of significance between the nature of those activities and the appellant's other activities. While, no doubt, the Company availed itself of the appellant's services to further its own interests the facts as found fully warrant the conclusion that the appellant rendered those services as one who chose to deal in the placing of insurance risks and in the course of his own business as such.

In their Lordships' opinion the decision reached by Carberry, J., and affirmed by the Court of Appeal was amply justified and clearly right.

Their Lordships will therefore humbly advise His Majesty that the appeal be dismissed. The appellant must pay the costs of the appeal.

In the Privy Council

BERESFORD W. BOYD

v.

THE ASSESSMENTS COMMITTEE, EXCESS
PROFITS TAX

DELIVERED BY LORD MACDERMOTT

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