Michaelmas Term
[2024] UKPC 37
Privy Council Appeal No 0042 of 2023

JUDGMENT

Louis Andre Monteil (Appellant) *v* Board of Inland Revenue (Respondent) (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Hodge
Lord Briggs
Lord Sales
Lady Rose
Lord Richards

JUDGMENT GIVEN ON
21 November 2024

Heard on 23 April 2024

Appellant
Barrie Attzs
James Gale
(Instructed by Invictus Chelsea John (Trinidad))

Respondent
Peter Knox KC
(Instructed by Charles Russell Speechlys LLP (London))

LORD HODGE:

1. This appeal raises the question whether the pay as you earn ("PAYE") provisions of the Income Tax Act (Ch 75:01) ("ITA") were at the relevant time the mandatory and exclusive means by which the Board of Inland Revenue ("the Revenue") could recover unpaid income tax on an employee's income from emoluments and interest thereon.

2. The appeal involves a question of the interpretation of certain provisions of the ITA in the context of the statute as a whole. No secondary materials have been adduced to assist in the interpretation of the relevant provisions. In carrying out the task of statutory interpretation the court is "seeking the meaning of the words which Parliament used": *Williams v Central Bank of Nigeria* [2014] UKSC 10; [2014] AC 1189, para 72 per Lord Neuberger of Abbotsbury. The House of Lords in *R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] 2 AC 349, 396-398 per Lord Nicholls of Birkenhead, and the United Kingdom Supreme Court in *R (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department* [2022] UKSC 3; [2023] AC 255, paras 29-31 per Lord Hodge, have placed emphasis on the importance of interpreting statutory words in their context. In the latter case the Court stated:

> "Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained." (para 29)

3. It is necessary to read the PAYE provisions of the ITA, on which the appellant founds, in this wider statutory context. The scheme of the ITA, which the legislature must have envisaged to be a workable scheme, assists in the interpretation of those provisions.

1. The factual background

4. The appellant, Mr Louis Andre Monteil, was an employee of Colonial Life Insurance Co (Trinidad) Ltd ("CLICO Trinidad") from 1991. In 2005 his employment agreement was transferred to CL Financial Ltd, the parent company of CLICO Trinidad. In 2009 the Government of Trinidad and Tobago had to bail out CL Financial Ltd and thereby became its largest creditor. CL Financial Ltd has since been placed into liquidation.

5. In July 2009 the appellant submitted his tax return for the income tax year 2007/2008 together with certificates from his employers within the CLICO group of companies under regulation 12 of the Income Tax (Employment) Regulations ("the Regulations") that stated that the total amount of all emoluments paid to him was TT$1,380,985.

6. The Revenue initially accepted the appellant's income tax return. Thereafter, having conducted an audit of the tax return, the Revenue proposed to adjust the return, stating that there were both unreported income of TT$20,305,285.50 and benefits in kind of TT$28,002,495.73 and disallowing tertiary expenses of TT$60,000. The Revenue therefore proposed to adjust the appellant's income tax liability upwards by TT$12,091,945.56.

7. By a notice of assessment dated 1 October 2012 ("the disputed assessment") the Revenue assessed the appellant's income tax liability in the sum of TT$20,351,875.61, comprising a slightly reduced additional tax liability of TT$12,085,496.10 and additional interest on that sum of TT$8,266,379.51. The Revenue later adjusted the additional tax liability to TT$12,383,117.40 by letter of 1 December 2014.

8. The appellant appealed this assessment to the Tax Appeal Board on 13 January 2015.

2. The tax appeal proceedings

9. In his grounds of appeal to the Tax Appeal Board the appellant challenged the categorisation of substantial sums as taxable emolument income. The Board is not concerned with those challenges which the Tax Appeal Board has not yet determined. The only matter before the Board is the preliminary issue addressed by the Tax Appeal Board, which is whether the statutory PAYE regime prescribed a mandatory and exclusive procedure for the Revenue to collect and recover taxes on emolument income, with the effect that the Revenue can recover outstanding sums of such tax only from the appellant's insolvent former employers.

10. By a ruling on the preliminary issue dated 2 February 2017 the Tax Appeal Board (HH Anthony DJ Gafoor (Chairman), HH Roland N Hosein and HH Ishri H Rampersad) held that the Revenue had the power to raise an assessment or an additional assessment on an individual emolument earner under sections 83 or 89 of the ITA and that, if his employers failed to deduct and remit PAYE to the Revenue, the employee remained under an obligation to pay the tax under section 79(7) of the ITA.

11. The appellant appealed by case stated to the Court of Appeal. In a judgment dated 18 November 2022 the Court of Appeal (Bereaux, Kokaram and Boodoosingh JJA) dismissed the appeal. In the judgment delivered by Kokaram JA the Court of Appeal held that section 99 of the ITA, which established the PAYE regime, did not prevent the Revenue for raising an additional assessment against a taxpayer, who had received emolument income, for income tax which his employer had not deducted from the income which it paid to him. Sections 79(7), 83 and 89 of the ITA empowered the Revenue to assess the employee to income tax and to recover the assessed liability to tax from him.

12. The appellant now appeals to the Board with the leave of the Court of Appeal.

3. The issues on this appeal

13. As the Board has stated at the outset of this judgment, the issue is whether the PAYE provisions of the ITA for the collection from an employer of income tax on the emolument income of an employee were the mandatory and exclusive means by which the Revenue could recover unpaid tax on an employee's income and interest thereon. The parties have divided this issue into two questions, each of which contains an alternative. The Board, for ease of exposition, presents those questions as the following four questions:

> (i) Was the Revenue entitled to raise an assessment or additional assessment under sections 83 and/or 89 of the ITA (as it purported to do by way of the disputed assessment)?
>
> (ii) Or was the Revenue required to undertake any assessment or additional assessment following the procedure in section 99 of the ITA?
>
> (iii) Was the appellant obliged by section 79(7) of the ITA to pay the additional amount and additional interest demanded by the Revenue in the assessment notice (as adjusted) in the letter of 1 December 2014?
>
> (iv) Or was it instead the exclusive obligation of the appellant's employers to deduct, withhold and pay those sums in accordance with section 99(1) of the ITA?

The Board observes that the third and fourth questions, which speak of the sums stated in the adjusted assessment, are to be understood as being subject to the substantive challenges which the appellant has made to the categorisation of the sums which the

Revenue has treated as the appellant's income from emoluments in the tax year 2007/2008 which the Tax Appeal Board has yet to determine. See para 9 above.

4. The Appellant's submissions: section 99 of the ITA

14. The appellant's submission, that the PAYE provisions are the mandatory and exclusive means by which the Revenue can recover income tax on income from emoluments, rests on the wording of section 99 of the ITA, which is located in a group of sections under the heading "Collection and recovery of tax". This section provides so far as relevant:

> "(1) *Notwithstanding any provision of this Act to the contrary*, where emoluments arise or accrue in or are derived from or received in Trinidad and Tobago in a year of income for the benefit of an employee or the holder of an office, tax shall, subject to and in accordance with any Regulations made under section 125, be deducted or withheld by the person providing the emolument. (Emphasis added)
>
> (1A) If any question arises as to whether-
>
> > (a) an amount is an emolument in respect of which tax shall be deducted or withheld pursuant to this section …
>
> such question *shall* be determined by the Board in writing subject to the provisions of this section relating to objections and appeals against the determination of the Board. (Emphasis added)
>
> (1B) Where the Board is of the opinion that an amount is an emolument and that the correct taxes have not been deducted or withheld, it *shall* –
>
> > (a) cause to be served on the person providing the emolument, notice of its determination under subsection (1A), demanding the amount of tax to be deducted or withheld by that person; and

(b) inform the person of his right to object." (Emphasis added)

15. Subsection (1C) provides that that person served with the notice of determination may give a notice of objection to the Revenue requesting the Revenue to review its decision; and subsection (1D) applies mutatis mutandis other sections of the Act relating to objections and appeals for the purposes of section 99.

16. Section 99 continues:

> "(2) The tax deducted or withheld as required by subsection (1) shall … be paid to the Board by the person deducting or withholding the same … and on the payment thereof the Board shall send to such person a receipt which shall … be a good and sufficient discharge of the liability of such person for any amount deducted or withheld as required by this section.
>
> (3) Subject to subsection (10), where an amount has been deducted or withheld under subsection (1) from the emoluments of any person, it shall for the purposes of this Act be deemed to have been received by such person at the time of the deduction or withholding thereof."

17. Subsection (4) makes the failure by the employer to deduct and remit or pay the deducted tax to the Revenue a criminal offence and imposes a surcharge and a liability to pay interest at the rate of 20%. Subsection (5) deems the sums deducted or withheld to be held by the person who has made the deduction or withheld the tax in trust for the State and excludes those sums from that person's insolvency. Subsection (6) imposes an obligation on the person making the deductions or withholding tax to give to the person from whose emoluments the tax has been deducted or withheld a certificate of account relating to the amount of tax that has been deducted.

18. Subsection (10) provides:

> "*Every person from whose emoluments any amount is deducted or withheld* pursuant to subsection (1) *shall* upon the amount being so deducted or withheld *be deemed to have paid the same and shall thereupon cease to be liable for tax to the extent of the amount so deducted*." (Emphasis added)

19. Mr Barrie Attzs for the appellant founds on the opening words of subsection (1) ("Notwithstanding any provision of this Act to the contrary"), which the Board has emphasised in the text of the subsection in para 14 above, in support of the contention that section 99 provides a mandatory and exclusive regime for the recovery of income tax on emoluments. He refers to the well-known case of *Whitney v Inland Revenue Comrs* [1926] AC 37 ("*Whitney*") in which Lord Dunedin, at p 52, identified three stages in the imposition of tax: first, the declaration of liability which determines what persons are liable to tax in respect of what property, secondly, the assessment which particularises the exact sum which a person is liable to pay, and, thirdly, the methods of recovery if the person taxed does not pay voluntarily. He submits, and it is not contested, that section 5 of the ITA, which provides that income tax shall be payable at the rates specified in the Act on "the income of any person accruing in or derived from Trinidad and Tobago or elsewhere …in respect of … gains or profits from any employment or office including … emoluments …" is the declaration of liability, which is the first of Lord Dunedin's three stages. He submits, nonetheless, that for the taxation of income from emoluments of employees and office holders, whom the Board for simplicity refers to hereinafter as "the employee", the exclusive assessment regime is contained in the group of sections starting with section 98 and, particularly, in section 99.

20. Mr Attzs argues that there is a self-contained regime for the assessment and recovery of income tax from the emoluments of an employee. That regime is, he submits, set out in the obligations on the employer (i) to estimate and deduct the employee's emoluments in section 99(1), (ii) to pay the deducted sums to the Revenue in section 99(2), and (iii) to accompany the payment "by a return made out on the appropriate form by or on behalf of the employer" in regulation 10 of the Regulations, together with the provisions in section 99(1A) and (1B), which require the Revenue to seek to recover unpaid tax on emoluments from the employer if the Revenue does not accept the employer's return. Further, a failure by the employer to deduct and remit the deducted tax to the Revenue is a criminal offence on the part of the employer: section 99(4). He submits that this analysis is supported by the opening words of section 99(1) which are emphasised in para 14 above. Thus, the employee's liability to pay income tax on emoluments, which is recognised in section 99(10), is, in his submission, only a "notional and legal liability" which does not impose on him an obligation to pay the tax. He submits that the ITA has no mechanism for the recovery of income tax from the employee when the employer has failed to deduct tax from his or her income.

21. Mr Attzs also submits that the Revenue, having accepted his tax return under section 83 of the ITA, was not entitled to reject it under that section or issue an additional assessment under section 89. This point is not open to him as it formed no part of the case stated by the Tax Appeal Board or considered by the Court of Appeal. The submission is, in any event, unsound having regard to the terms of section 88 and section 89(1), which the Board discusses below.

22. In a supplementary written case Mr Attzs seeks to raise a pleading point that in its statement of case before the Tax Appeal Board the Revenue had asserted that it had assessed Mr Monteil to income tax in accordance with section 83(2)(a) and not section 83(2)(b) or section 89. It is far too late to assert such a point when the Revenue had based its case on the assertion that it had raised the assessment under either section 83 or 89 before both the Tax Appeal Board and the Court of Appeal.

5. The Board's analysis

23. There are several difficulties with Mr Attzs' analysis of the sections setting out the PAYE system.

24. First, within section 99 are subsections (3) and (10), which are set out above. The former deems the tax deducted or withheld from emoluments to have been received by the employee, subject to subsection (10). The latter provides that the person from whose emoluments tax has been deducted or withheld shall be deemed to have paid the same and shall cease to be liable for tax to the extent of the amount so deducted. These provisions strongly suggest that the liability to pay tax on emoluments remains with the employee. If, as Mr Attzs submits, the PAYE regime had the effect of releasing the employee from liability to tax on his or her emoluments and transferring that liability to the employer, there would have been no need for subsections (3) and (10).

25. Secondly, section 91, which is located in a series of sections concerned with the repayment of tax, provides that, if the sums deducted and paid by the employer under section 99 exceed the tax shown to be payable, the Revenue is to refund the person from whose emoluments the tax which was deducted. This indicates that the question whether the correct amount of tax on emoluments has been paid remains one between the Revenue and the employee, notwithstanding the employer's operation of the PAYE system in section 99.

26. Thirdly, while there is no provision which expressly states that, if the employer fails to deduct or withhold sufficient funds to meet the liability to tax on the emoluments, the employee must meet the shortfall, the statutory regime contains provisions which demonstrate that the employee has such a liability. The provisions provide the mechanisms for the assessment and recovery of tax, interest and penalties that may be due. Those provisions are not displaced by section 99.

27. The starting point is that section 5 imposes a charge to income tax on among other things the employee's emoluments. It is, as Mr Attzs accepted, the declaration of the employee's liability to tax using the analysis in *Whitney*.

28. The ITA's scheme for self-assessment of income imposes an obligation on every person liable to pay income tax to provide an annual return containing a calculation of the tax payable on chargeable income: section 76(1) and (3). Where an individual's sole source of income is from an office or employment, he or she is not required to furnish an annual return under section 76(4) unless the Revenue by notice requires him or her to make a return: section 77(1). Instead, under the PAYE system, the individual must file with his or her employer a declaration of the allowances and tax credits to which he or she is entitled: section 98 and regulation 20 of the Regulations. The employer then provides the employee with a certificate for him or her to sign which sets out among other things the total amount of the emoluments paid to him or her and the total amount of deductions in the relevant tax year: regulation 12(1) of the Regulations. This certification procedure was adopted in this case: see para 5 above.

29. Section 81(1) provides that every person shall pay to the Revenue the tax stated in a notice of assessment within 30 days of service of that notice. The process of assessment, including appeals against an assessment, is set out in sections 83 to 88 and provision is made for additional assessments under section 89 as discussed below. Section 83 empowers the Revenue to make assessments and, where the taxpayer has made a return, the Revenue can either accept the return and make the assessment accordingly or refuse to accept the return and make an assessment to the best of its judgment. Section 88(1) provides that liability to tax under the ITA is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

30. What is of central importance on this appeal is that where the Revenue considers that a person has not been assessed or has been assessed at an amount which is less than he or she should have been charged, there is a provision for the Board to make an additional assessment. Section 89(1) provides that, subject to stated time limits:

> ".. where it appears to the Board that *any person liable to tax* has … been assessed at a less amount than that which ought to have been charged, the Board may ... assess such person at such … additional amount as according to its judgment ought to have been charged, and the provisions of this Act as to notice of assessment, appeal and other proceedings under this Act shall apply to such … additional assessment and to the tax charged thereunder." (Emphasis added)

31. The section, like section 5, expressly applies to "any person". It brings into operation the other provisions of the ITA relating to notice of assessment, appeal and other proceedings.

32. Those provisions include so far as relevant, the following. Under section 85 the Revenue, after completing its assessment, is to prepare an assessment list of persons liable to tax. The Board must then serve on every person whose name appears on the assessment list a notice of assessment stating the amount of his or her chargeable income and the amount of tax payable: section 86. A person receiving that notice may serve a notice of objection in writing on the Revenue and, if unable to agree with the Revenue on the amount assessed, may appeal to the Tax Appeal Board: section 86(7). Absent such an appeal, the taxpayer must, within 30 days of the expiry of the period for giving notice of appeal to the Tax Appeal Board, pay the Revenue any unpaid tax together with interest and penalties: section 86(11).

33. Where the additional assessment under section 89 is not in dispute, section 81(1) provides that "every person" shall pay within 30 days of the service of the notice of assessment any part of the tax stated in the notice to be payable and any interest and any penalties then remaining unpaid.

34. The ITA contains several provisions for the recovery of tax where a person neglects or refuses to pay tax that is due. Under section 104 the Board may issue a warrant authorising an authorised person to seize the goods and chattels of the taxpayer and sell them by public auction. Section 110 provides that the Revenue may enforce as a civil debt by proceedings in its name tax which is subject to that section and subsection (5) provides that the tax may be recovered as if it were a simple contract debt in any court of competent jurisdiction. The following subsection declares that "any tax charged under the provisions of this Act" is a debt due to the State and, without prejudice to other lawful means of recovery, may be sued for and recovered in the manner provided in the State Liability and Proceedings Act, which provides among other things for the State to institute proceedings in the High Court (section 15) and for the recovery of interest and costs (section 26). Section 112 of the ITA confers a general power on the Revenue to obtain payment by garnishment by registered letter or personally from a person indebted to "a person liable to make a payment of tax under this Act".

35. There is therefore, in the Board's view, a range of statutory provisions which provide for both the making of an additional assessment on an employee or office holder whose employer has failed to deduct sufficient tax from emoluments and the recovery of the tax due together with interest and penalties.

36. Finally in relation to the wider statutory context of the contested provisions of section 99, section 110(3) supports the conclusion that the Revenue can pursue an employee for tax due on emoluments. It provides:

> "A written statemen as to the wages, salaries, fees and other emoluments paid for any period to the *person against whom proceedings under this section are brought* purporting to be signed by his employer for that period … shall in any such proceedings be prima facie evidence that the wages, salaries, fees and other emoluments therein stated to have been paid to the person charged have in fact been so paid." (emphasis added)

37. There are therefore provisions within section 99, namely subsections (3) and (10), and provisions in the wider statutory context in which that section is set, which demonstrate that the PAYE provisions, including the Revenue's power under section 99(1B) to demand payment from the employer, are not a mandatory and exclusive regime for assessment and recovery when the whole tax due on emoluments has not been deducted or withheld. The opening words of section 99(1) ("Notwithstanding any provision of this Act to the contrary") enable the operation of the PAYE regime, but do not exclude other means of assessment and recovery when the PAYE system does not achieve full recovery of tax due. The mandatory words in section 99(1A) and (1B), which the Board has emphasised above, are in the context of the Revenue using the PAYE system as the means to recover income tax on emoluments. Section 99 does not release the employee from his or her liability for income tax on emoluments which he or she has received, not least where, as here, the employer has fallen into insolvency.

38. This view is supported by the judgment of the Court of Appeal in *Unilever Caribbean Ltd v Board of Inland Revenue* (Civil Appeal No P0 41/2015) (unreported) 14 December 2016 . The question, which was the subject of the appeal by case stated, was whether under the ITA there was a statutory pre-condition which must be satisfied before the Revenue could make a determination against *an employer* for PAYE on additional emolument income. The case concerned the provision of benefits in kind in the form of motor vehicles made available for private use and the Revenue sought to treat as emoluments not only the rental costs but also the maintenance costs of the vehicles. It sought to recover from the employer the tax due on the maintenance costs which had not been deducted from the employees' salaries. The employer argued that it could not be liable for unpaid tax unless the employee had first been assessed on the emolument income. The Court of Appeal (Mendonca, Rajkumar and Pemberton JJA) rejected the employer's argument, holding that the obligations on an employer under section 99 of the ITA were separate from and independent of the Revenue's powers to raise an assessment or additional assessment on an individual under sections 83 and 89 of that Act: para 89(c). Rajkumar JA, giving the leading judgment, stated at para 29:

> "[T]he statutory provisions … clearly recognize, and in fact impose, a statutory obligation upon the employer to deduct and remit the correct amount of PAYE tax. *That obligation is separately enforceable against it, and therefore separate from*

that of the employee/emolument earner's liability to pay that tax." (Emphasis added)

39. The later statement by Rajkumar JA in para 46 that section 99 created its own special and exclusive code for taxation needs to be read in the context of his earlier statement in para 29. Rajkumar JA returned to the point at para 94 in which he stated that the PAYE regime "imposes statutory obligations on an employer/emolument provider independent of those imposed on an employee/emolument earner." In other words, the analysis - that the PAYE mechanism by which tax due on emoluments is recovered from the employer is separate from and exclusive of other provisions of the ITA - is nonetheless consistent with a separate and co-existing liability of the employee. By referring to "exclusive" Rajkumar JA in the Board's view was saying no more than that the PAYE regime is self-contained.

40. In summary, the liability to income tax on emoluments is imposed on the employee by section 5 of the ITA. Section 99 provides a PAYE mechanism by which tax due on emoluments can and usually will be recovered from the employer. But the underlying liability remains that of the employee. That is clear from section 99(3) and (10). The latter provision gives protection to the employee by providing that the employee ceases to be liable for amounts which the employer has deducted or withheld, whether or not the employer remits such sums to the Revenue. The underlying liability of the employee is also clear from section 89 and the statutory provisions which the Board has discussed in paras 27 to 36 above.

41. The Board does not derive assistance from the United Kingdom case law, to which the Court of Appeal referred in this case and in *Unilever*. Those cases were *Bernard & Shaw Ltd v Shaw* [1951] 2 All ER 267 and *Demibourne Ltd v Revenue and Customs Commissioners* [2005] STC (SCD) 667. In those cases, the discussion of the circumstances in which the employee retains a liability to pay income tax on emoluments, notwithstanding the PAYE regime if the employer does not make the correct deductions, was based on express provisions of United Kingdom income tax regulations, which have no application in Trinidad and Tobago. Nonetheless, the ITA on a proper construction achieves a similar result.

42. The Board is satisfied that section 79(7) of the ITA does not apply to the facts of this appeal, nor did Peter Knox KC argue to the contrary for the Revenue. That provision applies where an individual's income in a tax year consists solely of income from emoluments and imposes on the individual the obligation of paying to the Revenue "the remainder of his tax, if any, *as estimated by him.*" (Emphasis added) As emphasised, the provision applies where the individual makes a tax return disclosing that he or she has received income from emoluments which has not fully been subjected to deductions by his or her employer. Those are not the circumstances of this case. The

provision is simply another example of a circumstance in which the employee's liability to pay tax on emolument income subsists, notwithstanding the PAYE regime.

43. Thus, for the reasons set out above, which differ from those of the Tax Appeal Board and differ in minor ways from those of the Court of Appeal, the Board answers the first question set out in para 13 above ("Was the Revenue entitled to raise an assessment or additional assessment under sections 83 and/or 89 of the ITA (as it purported to do by way of the disputed assessment)?") in the affirmative. The Revenue was entitled to raise an additional assessment under section 89. It answers the other three questions set out in that paragraph in the negative.

6. Conclusion

44. The Board dismisses the appeal.