IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1988] SGHC 61

Suit 2183/1987

Between

Comptroller of Income Tax

… *Plaintiff*

And

Goodearth Realty Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Revenue Law — Income taxation — Avoidance

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Comptroller of Income Tax v Goodearth Realty Pte Ltd

[1988] SGHC 61

Suit 2183/1987
Chao Hick Tin JC
06 August 1988

1 This was an appeal by the defendant against the decision of the assistant registrar striking out the defence filed herein and granting liberty to the plaintiff to enter judgment.

2 In this action, the plaintiff, the Comptroller of Income Tax, sued the defendant, Goodearth Realty Pte Ltd, for a sum of $212,173.92 being taxes assessed for the year 1982 and penalty due and payable by the defendant under ss 86 and 88 of the Income Tax Act (Cap 134) (the Act).

3 In the defence filed herein on 2 October 1987, the defendant denied that the tax and penalty claim were due and owing. In the alternative, the defendant alleged that the amount claimed was incorrect. In the further alternative, the defendant averred that the plaintiff`s computation of the defendant`s liability for income tax for the year of assessment 1982 was erroneous because it was based on alleged profits that arose out of a transaction concerning a property pursuant to a company reconstruction scheme. The defendant stated that no cash was involved in the transaction.

4 Subsequently, the plaintiff applied to have the defence struck out under the Rules of the Supreme Court 1970, O 18 r 19 and under the inherent jurisdiction of the court on the grounds that:

> (a) it disclosed no reasonable defence; or
>
> (b) it was frivolous and vexatious; or
>
> (c) it was otherwise an abuse of the process of the court.

5 The plaintiff also applied for liberty to enter judgment against the defendant for the sum claimed.

6 The plaintiff filed in court a certificate dated 28 October 1987 issued by the Deputy Comptroller of Income Tax which reads as follows:

> (1) that the sum of $202,070.40 (dollars two hundred and two thousand and seventy and cents forty only) is the balance amount of income tax due and payable by Goodearth Realty Pte Ltd of 24 Mount Elizabeth, Singapore 0922 for the year of assessments 1982; and
>
> (2) that the sum of $10,103.52 (dollars ten thousand one hundred and three and cents fifty two only) is the amount of penalty due and payable by Goodearth Realty Pte Ltd for the year of assessment 1982.
>
> *The amount due and payable by Goodearth Realty Pte Ltd under ss 86 and 88 of the Income Tax Act (Cap 134) is $212,173.92 (dollars two hundred and twelve thousand one hundred and seventy three and cents ninety two only).*

7 Following two adjournments, the application for striking out came before the assistant registrar on 1 February 1988. Counsel for the defendant did not appear. The legal officer, for the plaintiff informed the assistant registrar that counsel for the defendant (Mr Joseph Yoong) `had other things and no

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instructions`. Accordingly, the assistant registrar struck out the defence and granted liberty to the plaintiff to enter judgment.

8 The defendant appealed against the order of the assistant registrar. When the appeal came up before me, Mr Gunaseelan for the defendant explained that Mr Yoong did not appear before the assistant registrar because of a mix-up in the dates. He suggested that I send the case to the assistant registrar for a re-hearing. But the matter was before me on appeal. I thought it expedient to hear the appeal on its merits, as after all the instant appeal was a re-hearing. Having heard the parties, I dismissed the appeal. The defendant has now appealed to the Court of Appeal.

9 The main points advanced by Mr Gunaseelan against the striking out of the defence were these:

> (i) The basis upon which the assessment was raised was clearly erroneous. The alleged profits were not liable to tax.
>
> (ii) The defendant had lodged an objection against the assessment raised by the plaintiff and the plaintiff had yet to give his notice of refusal under s 76(4) of the Act.
>
> (iii) The certificate of the Comptroller of Income Tax issued under s 90(3) was not properly before the court and thus the court ought not to take any cognizance of the same; in any event such a certificate was not final or conclusive when an objection had been lodged against the assessment in question.

10 Before dealing with these points, I would first set out the relevant provisions of the Income Tax Act which governed the present case:

> 86 Subject to section 91, tax for any year of assessment levied in accordance with the provisions of this Act shall, ***notwithstanding any objection or appeal against the assessment on which the tax is levied*** , be payable at the

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> place stated in the notice given under section 76 within one month after the service of the notice;
>
> *Provided that the Comptroller may in his discretion extend the time limit within which payment is to be made. (Emphasis added.)*
>
> 88(1) Subject to subsection (2), if any tax is not paid within the periods prescribed in section 86 -
>
> (a) a sum equal to 5% of the amount of tax payable shall be added thereto, and the provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of such sum;
>
> (b) the Comptroller shall serve a demand note upon the person assessed; and if payment is not made within one month from the date of the service of such demand note, the Comptroller may proceed to enforce payment as hereinafter provided;
>
> 90(1) Notwithstanding the provisions of any other written law, tax and any penalty imposed under this Act and any sum due to the government under sections 44 and 45, may be sued for by way of a specially indorsed writ of summons. The Comptroller may, in his own name, sue for any such tax, penalty or other sum due and shall be entitled to all costs allowed by law against the person liable thereto.
>
> (90)(3) In any suit under subsection (1) the production of a certificate signed by the Comptroller giving the name and address of the defendant and the amount of tax due by him shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for that amount.

11 There were authorities on the interpretation of these provisions. In ***Comptroller of Income Tax v A Co Ltd*** [1966] 2 MLJ 282 , Choor Singh J said at p 284:

> *In my opinion, once the Comptroller of Income Tax has made an assessment and issued a notice of assessment to a taxpayer calling upon him to pay the tax mentioned in the notice, the taxpayer is bound by law to pay such tax within one month even though he may be dissatisfied with the assessment. Whether the assessment is right or wrong, the tax must be paid notwithstanding any objection or appeal. The scheme of the Income Tax Ordinance is that if any person disputes the assessment, he may apply to the Comptroller to review and revise the assessment made upon him. If the Comptroller refuses to amend the assessment, the aggrieved taxpayer may appeal to*

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> *the Board of Review appointed under s 78 of the Ordinance and the board may, after hearing the appeal, confirm, reduce, increase or annul the assessment or make such order thereon as to it may deem fit. The taxpayer or the Comptroller may then appeal to the High Court from the decision of the Board upon any question of law or mixed law and fact. A taxpayer has no right to bypass the Board of Review and take his complaint direct to court. And when the Comptroller of Income Tax sues a taxpayer to recover tax due under a notice of assessment, the taxpayer cannot be heard to say that the assessment on which tax has been levied was not made in accordance with the provisions of the Ordinance.*

12 Subsequently, in the case ***Comptroller of Income Tax v Beaver Singapore Pte Ltd*** [1983] 1 MLJ 308 , a similar point arose before the learned Chief justice. The facts may be briefly stated. There the Comptroller assessed the defendant company`s (which was then under shareholders` voluntary liquidation) income tax for 1973 at over $11m. The company challenged the assessment and applied to the Comptroller to review and revise the assessment. The Comptroller refused any revision. The company appealed to the Board of Review. Before the appeal could be heard, the Comptroller issued a writ of summons against the company claiming the sum assessed and a penalty for nonpayment. The Comptroller applied for summary judgment. The company`s application by motion to the High Court for a stay of further proceedings was turned down. The registrar granted summary judgment to the Comptroller. The company appealed. In dismissing the appeal, Wee Chong Jin CJ said at p 309:

> *It was never in dispute that by virtue of s 86 of the Income Tax Act (hereinafter referred to as `the Act`) the tax raised became payable within one month after service of the notice of assessment, notwithstanding any objection or appeal against the assessment on which the tax is levied. By virtue of s 90 of the Act, tax and any penalty under the Act may be sued for by the Comptroller by way of a specially endorsed writ of summons and in such a suit the production of a certificate signed by the Comptroller giving the amount of the tax due by the defendant shall be sufficient evidence of the amount due and sufficient authority for the court to give judgement for the said amount.*

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13 ***It is by now settled law*** that the mere fact that a person assessed to tax, who has failed to pay the amount of the tax due on the notice of assessment, disputes the liability to tax or the amount due is not sufficient ground entitling him to have leave to defend an action brought by the Comptroller to recover payment of the amount due on the notice of assessment. (Emphasis added.)

14 Counsel for the defendant cited to me these cases to show that the defendant had a defence to the claim: ***Lee Beng Kong v Comptroller of Income Tax*** [1962] 1 MLJ 346 , ***X v Comptroller of Income Tax*** [1957] 1 MLJ 110 , ***Lim Foo Yong Sdn Bhd v Comptroller-General of Inland Revenue*** [1986] 2 MLJ 161 and ***Re Norper Investments Pty Ltd*** 15 ALR 603. Apart from the fact that none of these cases were concerned with the Singapore Income Tax Act, the issues raised in those cases were clearly different from the present case. ***Lee Beng Kong*** was concerned with the interpretation of s 80 of the Malayan Income Tax Ordinance. The case of ***X*** was concerned with an application to set aside a judgment obtained by the Comptroller on account of outstanding tax. ***Lim Foo Yong*** was a decision of the Privy Council. There the objection against the assessments made by the Malaysian tax department was taken by the taxpayer on appeal to the Special Commissioners of Income Tax and finally to the Privy Council. It was not a case concerning the question whether a taxpayer should or should not pay the amount assessed even though he had filed an appeal against the assessment. Lastly, ***Re Norper Investments*** was a company winding-up matter and the petition filed was based on the amount due under the disputed assessment. It seemed to me clear that different principles applied in determining whether a company should be wound up. I did not think these cases in any way supported the defendant`s contention that it was not liable to pay the tax assessed and the penalty due.

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15 Both ***Beaver Singapore Pte Ltd*** and ***A Co Ltd*** were cases dealt with under O 14. The present case was an application under O 18 r 19 and the inherent jurisdiction of the court to strike out the defence filed. However, I did not think this difference in procedure was material. The fact that the plaintiff could have proceeded under O 14 did not mean that he could not proceed by way of striking out a defence filed. As regards the test applicable in striking out a defence, para 18/19/3 of the ***Supreme Court Practice 1988*** stated the following:

> *The summary procedure under this rule can only be adopted when it can be clearly seen that a claim or answer is on the face of it `obviously unsustainable` ... The court must be satisfied that ... the defence raised (is) not arguable ...*

16 In my view, the position taken by the defendant in the present case was clearly unsustainable. The defence filed was clearly without merit in so far as it sought to avoid having to pay the tax assessed and penalty. It was an attempt to delay payment. The scheme of things under the Act was clear. A taxpayer must pay the assessed tax first even though he had objected to the assessment and had invoked the procedures of the Act to have the assessment revised.

17 As regards the point that the plaintiff had yet to give to the defendant a notice of refusal under s 76(4)(b) of the Act, I did not think that that in any way affected the defendant`s liability to pay as assessed. In my view, s 86 was clear on this. The amount assessed was payable within one month after the notice of assessment was served on the defendant. The amount claimed was long overdue. If indeed the Comptroller refused to give the notice required under s 76(4)(b) there were other remedies available to the defendant. A taxpayer`s right to appeal against an assessment to the Board of Review and eventually to the courts could not be taken away from him. But that was not the issue in this

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action. In passing, I would observe that this point on s 76(4)(b) was not raised in the defence.

18 The final point related to the certificate of the Comptroller of Income Tax. Here the defendant contended that the certificate should have been tendered by way of an exhibit to an affidavit. In my view, s 90(3) provided a complete answer to this point. The certificate was filed in the court, after having been duly stamped. There was production before me of the certificate upon which judgment could be entered against the defendant.

19 For all the above reasons, I held that the defence filed was obviously unsustainable and should be struck out as disclosing no reasonable defence. I was also of the view that the defence filed was frivolous and vexatious and was otherwise an abuse of the process of the court.

20 ***Order accordingly.***

Chao Hick Tin JC

M Capel (Inland Revenue Authority) for the plaintiff
S Gunaseelan (S Gunaseelan) for the defendant

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