IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 88/2024
[2024] NZSC 144

BETWEEN		VERONICA ANNE HOEBERECHTS Applicant
AND		COMMISSIONER OF INLAND REVENUE Respondent

Court: Glazebrook, Kós and Miller JJ

Counsel: Applicant in person
K I S Naik-Leong for Respondent

Judgment: 1 November 2024

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant must pay the respondent costs of $2,500.

REASONS

[1] Following a successful appeal in the District Court, Ms Hoeberechts received a lump sum payment of several years' unpaid accident compensation entitlements. The payment, in the sum of roughly $150,000, was paid in the tax year ending 31 March 2018.[1] It was then taxed by the Commissioner of Inland Revenue on the basis that it was derived wholly in that tax year. That meant it was taxed at a higher marginal tax rate than it would have been if it had been correctly paid year-by-year in the first place.

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[1] A further sum of $38,386.65 was paid by the Accident Compensation Corporation to the Ministry of Social Development in respect of taxable benefit payments that Ms Hoeberechts had received.

[2] Ms Hoeberechts unsuccessfully challenged the tax assessment before the Taxation Review Authority.[2] She sought to appeal the decision to the High Court but was out of time, and that Court declined her application for an extension of time, concluding the proposed appeal could not possibly succeed.[3] After a procedural misstep, she belatedly applied for extension of time to appeal in the Court of Appeal against the decision of the High Court, but that too failed.[4] The Court of Appeal said:[5]

> As stated in *Almond v Read*, the merits will not usually be decisive, unless the appeal is "clearly hopeless". In this case, it is. The law on the matter is settled, as explained by the High Court in its comprehensive decisions. There is real force in Ms Hoeberechts' argument that the way in which the law operates for someone in her position is unfair, but the legislation is clear and any changes to the scheme are for Parliament, not the courts. We note that legislative change has now occurred to address this issue prospectively, with the enactment of the new s RD 20B of the Income Tax Act. The provision is not retrospective and it would not be open to the Court to interpret the legislation to be so.

Proposed appeal

[3] Ms Hoeberechts wishes to contend that the time at which income is derived "will depend on the facts of not when the income was paid, but why it was paid".[6] She wishes to argue that as she had earned some periodic accident compensation during the prior tax years, just not the whole of her entitlement, when arrears were then paid to her, the arrears were earned either at the date of the injury (April 2014) or at the date of the other incomplete payments (2014–2017). She wishes also to contend that certain provisions of the Income Tax Act 2007, in particular s RD 11, gave the Commissioner a discretion "to provide flexibility to the [Inland Revenue Department's] intractable interpretation of s BD 3", enabling the Commissioner to depart from a conclusion that the lump sum was derived at receipt.

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2 *Case 2/2021* [2021] NZTRA 3, (2021) 30 NZTC 6-001.

3 *Hoeberechts v Commissioner of Inland Revenue* [2022] NZHC 2200, (2022) 30 NZTC 25-021 (Campbell J) [HC judgment].

4 *Hoeberechts v Commissioner of Inland Revenue* [2024] NZCA 299 (Goddard and Collins JJ). The misstep is described at [6] of that judgment.

5 At [18] (footnotes omitted). See *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [39(c)].

6 Emphasis in original.

Our assessment

[4] While we sympathise with the argument advanced by Ms Hoeberechts, especially as the issue she raises has subsequently been ameliorated by a legislative amendment, we have to conclude that the criteria for appeal are not made out here. The application of s BD 3(3) (or equivalent provisions) imposing a cash receipt approach to income derivation in the case of a taxpayer in Ms Hoeberechts' position is long-established in New Zealand and cognate jurisdictions.[7] In *Hollis v Commissioner of Inland Revenue* that approach was expressly applied to backdated compensation.[8] The fact of subsequent legislative amendment in s RD 20B—inapplicable to the payment here—confirms, rather than diminishes, the force of the prior authority. We do not think the contrary proposition is seriously arguable. The same is true of the ground based on discretion, essentially for the reasons given by Campbell J in the High Court.[9] It follows that it would not be in the interests of justice to hear the appeal, there being neither an issue of general or public importance here, nor any realistic likelihood of a miscarriage of justice in the sense that expression applies in a civil context.[10]

Result

[5] The application for leave to appeal is dismissed.

[6] The applicant must pay the respondent costs of $2,500.

Solicitors:
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent

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7 See *Commissioner of Inland Revenue v The National Bank of New Zealand* (1976) 2 NZTC 61,150 (CA) at 61,160; *Hollis v Commissioner of Inland Revenue* (2010) 24 NZTC 23,967 (HC) at [28]; *The Commissioner of Taxes (South Australia) v The Executor Trustee and Agency Co of South Australia Ltd* (1938) 63 CLR 108 (HCA); and *Whitworth Park Coal Co Ltd v Inland Revenue Commissioners* [1961] AC 31 (HL).

8 *Hollis v Commissioner of Inland Revenue*, above n 7.

9 HC judgment, above n 2, at [46].

10 Senior Courts Act 2016, ss 74(1), (2)(a) and (2)(b); and see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].