

CASE SUMMARY

High Court dismisses judicial review of decision to decline application to amend assessments

Decision date: 29 August 2023

CSUM 23/01

CASE

White v Commissioner of Inland Revenue [2023] NZHC 2368

LEGISLATIVE REFERENCES

Income Tax Act 2007, ss CD 4, CD 5, CD 41, CD 42, CW 17, DA 1, DA 2

Judicial Review Procedure Act 2016, s 8

Tax Administration Act 1994, ss 6, 6A, 113, 149A

LEGAL TERMS

Judicial review, application to amend assessment, relevant and irrelevant considerations, unreasonable, predetermined.

FORUM

High Court

REVENUE TYPE(S)

Not applicable

TAX IN DISPUTE

Not applicable

DATE(S) HEARD

7 February 2023 with supplementary submissions received on 24 February 2023.

Summary

The High Court dismissed the applicant's application under s 8 of the Judicial Review Procedure Act 2016 for judicial review of a decision by the Commissioner declining the applicant's application to amend his income tax assessments under s 113 of the Tax Administration Act 1994.

The High Court was not persuaded that material relevant considerations were overlooked or that material irrelevant considerations were taken into account in determining the application for amendment of the assessments. The High Court did not consider that there was a predetermination of the application or that an unreasonable decision (one outside the bounds of reason) had been made.

Impact

There is no impact beyond that to the applicant.

Facts

The Commissioner applied for an order adjudicating the applicant bankrupt. The applicant opposed the application on the basis that the sum claimed was incorrect and made an application for amendment of his income tax assessments under s 113 of the Tax Administration Act 1994. The application sought to reduce the applicant's assessable income by claiming the benefit of deductions for expenses from the applicant's assessable income from salary and Work and Income.

The decision-maker considered the application by reference to SPS 20/03 and declined it on the basis that allowing the deductions would not result in a correct assessment of the applicant's income tax liabilities.

The decision-maker concluded that the applicant was not entitled to the benefit of the deductions because he had not incurred them or the employment limitation denied the deductions.

The decision-maker further concluded that some expenses had already been claimed. The applicant himself admitted the possibility of double counting.

Lastly, the decision-maker concluded that the application had failed to take account of an additional liability for income tax as a result of a sale of property to the applicant at an undervalue.

Issues

The issues for consideration by the High Court were:

- Whether the Commissioner had failed to consider material relevant considerations and took into account material irrelevant considerations;
- Whether the Commissioner's decision was unreasonable; and
- Whether the Commissioner had predetermined the application for amending the assessments.

Decision

The High Court dismissed the applicant's application under s 8 of the Judicial Review Procedure Act 2016 for judicial review of a decision by the Commissioner declining the applicant's application to amend his income tax assessments under s 113 of the Tax Administration Act 1994.

While judicial review is available in relation to a decision under s 113 (*Tannadyce Investments Ltd v Commissioner of Inland Revenue* [2011] NZSC 158, [2012] 2 NZLR 153 and *Charter Holdings v Commissioner of Inland Revenue* [2016] NZCA 499, (2016) 27 NZTC 22-075 at [59]) the High Court stated that it will be slow to interfere in the proper exercise of the Commissioner's statutory duties and discretions, or in decisions which involve the exercise of judgement in the statutory framework (*Raynel v Commissioner of Inland Revenue* (2004) 21 NZTC 18,583 (HC) at [73]-[74]).

The High Court was not persuaded that material relevant considerations were overlooked or that material irrelevant considerations were taken into account in determining the application for amendment of the assessments.

The relevant considerations said to have been overlooked were s CW 17 of the Income Tax Act 2007 and ss 6 and 6A of the Tax Administration Act 1994. However, the High Court considered that there was no evidence that the applicant was reimbursed any expense so incurred and no application for exempt income had been made in accordance with s CW 17 and accordingly the High Court was not persuaded that s CW 17 was a relevant consideration. Sections 6 and 6A were accepted to be relevant considerations however the High Court considered that there was no evidence that the decision-maker had overlooked those provisions rather the evidence was to the contrary.

The irrelevant considerations said to have been taken into account were s 149A of the Tax Administration Act 1994 and the income tax consequences for the applicant of the transfer of a property at an undervalue.

The decision-maker acknowledged his error in referring to s 149A of the Tax Administration Act 1994. The High Court was not persuaded that anything turned on the error.

The more significant issue related to the income tax liability considered to arise as a result of a sale of property to the applicant at an undervalue. While the High Court considered that the decision-maker may have overstated the additional income tax liability resulting from the dividend the liability to which he referred existed and accordingly he did not take into account an irrelevant consideration.

The High Court did not consider that there was a predetermination of the application or that an unreasonable decision (one outside the bounds of reason) (*Webster v Auckland Harbour Board* [1987] 2 NZLR 129 (CA) at 131) had been made.

About this document

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