IN THE SUPREME COURT OF FIJI

Court of Review

Action No. 17 of 1985

Before the Hon. Mr Justice

Friday the 27th day of March, 1987 at 9.30 a.m.

Between:

H.M. ADAM — Appellant

and

C.I.R. — Respondent

Appellant in person

Mr S M Shah for the Respondent

JUDGMENT

Mr Hazrat Mohammed Adam, the appellant, divorced his wife in 1980, at which time he was paying her maintenance at the rate of $10.00 a week. In 1983 his wife's circumstances had changed for the better, and the appellant sought to have the maintenance order discharged. The Magistrates Court was unwilling to completely discharge the order, and suggested that the parties might compromise on a lump sum payment. In December, 1984, therefore, the parties agreed upon payment of a lump sum of $4,000 to the former wife and the maintenance order was completely discharged. Up to the time of the discharge the appellant had continued to pay maintenance at the rate of $10.00 a week. In his 1984 income tax return he claimed a deduction of $4,470. The respondent allowed him $470 but disallowed $4,000. The appellant therefore lodged this appeal. He relies on Section 19(k) of the Income Tax Act, Cap 201 which reads :

"In determining total income no deductions shall be allowed in respect of :.....

(k) alimony or maintenace, other than sums payable under any enforceable legal agreement or an order of a court of competent jurisdiction which a person can establish is paid from income which has borne or is liable to tax in Fiji".

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It should perhaps be explained that this sub-section was originally (1) and became (k) under amendment No. 21 of 1980.

The appellant gave evidence on his own behalf, but called no witnesses. The respondent did not call evidence. In his evidence the appellant, in answer to the Court, said that he had paid the amount of $4,000 out of his savings. He submitted that his payment was to be taken as pre-payment of maintenance for eight years. Mr Shah on the other hand submitted that the lump sum was a payment to exonenate or discharge appellant from payment of maintenance for the future.

The section is couched in a negative form,and permits the deduction only of sums paid under an enforceable legal agreement or an order of the Court, and then the taxpayer has to show that any such money is paid from income which has borne or is liable to tax in Fiji. It is this la t mentioned requirement which is the appellant's difficulty, for he told the Court that the sum of $4,000 was paid out of his savings, and there is no evidence that his savings have borne tax in Fiji.

A further difficulty arises from the fact that this sum of $4,000 is probably capital in the appellant's wife's hands: see Hawley v.I.R.C. (1925) 9 T.C. 331. Many years ago Lord Dunedin as Lord President of the Court of Session in Scotland expressed the opinion in Vallambrosa Rubber Co v. I.R.C. (1910) S.C. 519 5 T.C. 525 that "in a rough way" it was not a bad criterion of what is capital expenditure - as against what is income expenditure - to say that capital expenditure is a thing that is going to be spent once and for all, and income expenditue is a thing that is going to recur every year." So the payments of $10.00 a week were an income expenditure, and properly to be charged against and deducted from income, whereas the payment of $4,000 is properly to be regarded as capital expenditure and not deducted from income at all. I accept Mr Shah's submissions, and the appeal will be dismissed. There will be no order as to costs.

K A Stuart
COURT OF REVIEW

14th May 1987