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IN THE SUPREME COURT OF BELIZE, A.D. 2017

CIVIL APPEAL NO. 3 OF 2010

**IN THE MATTER OF THE INCOME TAX AND BUSINESS TAX ACT,
CHAPTER 55 OF THE LAWS OF BELIZE ("the Act")**

BETWEEN:

INTERNATIONAL ENVIRONMENTS LIMITED Appellant

AND

**COMMISSIONER OF INCOME TAX
INCOME TAX APPEAL BOARD
THE ATTORNEY GENERAL Respondents**

In Chambers.

BEFORE: Hon. Chief Justice Benjamin.

Appearances: Mr. Eamon Courtenay, SC for the Appellant.
 Mr. Nigel Hawke, Deputy Solicitor General for the Respondents.

JUDGMENT

[1] On the 15th day of May, 2012, Awich, J dismissed the appeal by the Appellant, a taxpayer, and upheld the decision of the Income Tax Appeal Board. The Appellant being dissatisfied with His Lordship's decision has filed an application seeking the permission of the Court, pursuant to section 43(12) of the Income and Business Tax Act, Chapter 55, to state a case on a question of law, to the Caribbean Court of Justice, for the interpretation of sections 43, 105, 106, 107 and 112 of the Income and Business Tax Act ("IBTA").

[2] The Respondents have raised a preliminary issue as to whether a question of law can be stated to the CCJ on a proper construction of section 43(12) of the IBTA asserting that the question of law has first to be stated to the Court of Appeal of Belize and not to the CCJ.

[3] Section 43(12) of the Income and Business Tax Act, Chapter 55 provides as follows:

“The decision of the judge shall be final, but a judge if he so desires may, and on an application of the Appellant or of the Commissioner, shall, state a case on a question of law for a decision of Her Majesty in Council under the provisions of the Privy Council Appeals Act.”

By virtue of section 104(10) of the Belize Constitution references in any law to ‘Her Majesty in Council’ or the Privy Council are to be construed as references to the Caribbean Court of Justice. Section 104(10) reads:

“104(10) Subject to the foregoing provisions of this section, the jurisdiction of Her Majesty in Council to hear appeals, applications and petitions from Belize is hereby abolished and all references to “Her Majesty in Council” or the “Privy Council” wherever occurring in this Constitution or in any other law, rule, regulation, order or instrument having effect on part of the law of Belize, shall be read and construed as references to the Caribbean Court of Justice.”

[4] That the Appellant as a taxpayer, aggrieved by the decision of a judge of the Supreme Court can require that a case of a question of law be stated is not in dispute. The Respondents say that the case ought properly to be stated to the Court of Appeal whereas the Appellant holds the position that the question of law has to be stated to the Caribbean Court of Justice. At the invitation of the Court, the Appellant submitted the following draft of the text of the question to be posed for the consideration of the Caribbean Court of Justice:

“Under a contract for civil works between International Environments Limited (“I.E. Ltd.”) and a client, does that part of the contract payment by the client to I.E. Ltd., and which is paid over to I.E. Ltd. to suppliers of goods and services and/or sub-contractors under a contract constitute a “receipt of I.E. Ltd.” within the meaning of section 105(1) of the Income and Business Tax Act, such that it is taxable as a receipt under section 106(1)?”

The Respondents did not object to but were content to acquiesce in the wording of the question. However, the content of the question is of no moment to the resolution of this matter.

The Appellant’s Submissions

[5] The Appellant at once discounted the applicability of Part 61 of the Supreme Court (Civil Procedure) Rules 2005 which deals with Appeals to the Supreme Court by way of case stated. The Respondents did not demur. Hence, the stark position of the Appellant is that by virtue of section 43(12) of the IBTA read along with section 104(10) of the Belize Constitution, a judge in chambers is obliged to state a case on a question of law on the application of a dissatisfied taxpayer to the “Caribbean Court of Justice” which is substituted for the “Privy Council” in all statutes including the IBTA.

[6] It was first pointed out that section 104(2) of the Constitution prescribed that an appeal lies to the CCJ with the leave of the Court of Appeal from decisions of the Court of Appeal. Section 104(2) reads:

“(2) An appeal shall lie to the Caribbean Court of Justice with the leave of the Court of Appeal from decisions of the Court of Appeal in the following cases:

(a) final decisions in any civil proceedings where, in the opinion of the Court of Appeal, the question involved in the appeal is one that by reason of its general or public importance or otherwise, ought to be submitted to the Caribbean Court of Justice, and

- (b) such other cases as may be prescribed by the National Assembly by law.”

It was pointed out that this provision cannot be applied as paragraph (a) restricts its application to decision of the Court of Appeal which is not the case in this matter. Rather, the Court was directed to section 104(6) as conferring jurisdiction on the CCJ to hear appeals by way of case stated. Section 104(6) provides:

“In the exercise of its appellate jurisdiction, the Caribbean Court of Justice in a superior court of record for Belize, with such jurisdiction and powers as are conferred on it by the Agreement or by this Constitution or any other law.”

It is highlighted that the IBTA falls under “any other law”.

[7] The Privy Council Act, before its repeal by section 27 of the Caribbean Court of Justice Act, made provision for its jurisdiction to hear appeals in section 3 which states:

- “3. Subject to this Act, an appeal shall be
 - (a) as of right from any final judgment of the Court, where the matter in dispute on the appeal amounts to or is of the value of one thousand five hundred dollars or upwards, or where the appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the value of one thousand five hundred dollars or upwards;
 - (b) at the discretion of the Court, from any other judgment of the Court, whether final or interlocutory, if in the opinion of the Court the question involved in the appeal is one which by reason of its importance or otherwise ought to be submitted to Her Majesty in Council for decision; and
 - (c) from a judgment of the Court on a question of law under the provision of the Income and Business Tax Act.”

It is to be noted that in section 3 and in particular, in section 3(c), the word 'Court' is capitalized thus falling with the definition under section 2 of the said Privy Council Act as meaning "the Court of Appeal".

[8] Learned Senior Counsel for the Appellant contended that the word 'Court' ought not to have been capitalized as it was intended by the drafter to confer jurisdiction on the Privy Council. The rationale proffered was that the IBTA by virtue of section 43(12) specifically provided for appeals, to the Privy Council.

[9] The Appellant's submissions went on to meticulously demonstrate that the CCJ Act by its sections 3, 4, 6, 7 and 8 makes no provision for appeals being entertained pursuant to section 43(12) of the IBTA but noticeably in sections 6, 7 and 8 of the CCJ Act, reference is made to decisions of the Court of Appeal. While accepting that these provisions do not provide for an appeal by way of case stated under the IBTA without the matter being reviewed by the Court of Appeal, it was argued that the lack of such provision was addressed by 'any other law' embraced by section 104(6) of the Constitution. Support was obliquely drawn from the dicta of the CCJ in **Barbados Rediffusion Service Limited v Asha Mirchandani et al** – CCJ Application No. AL0001 of 2005.

[10] The submissions then drew attention to section 13(2) of the Court of Appeal Act which makes provision for the Court of Appeal to have jurisdiction "to hear and determine any matter arising in any civil proceedings upon a case stated or upon a question of law reserved by the Supreme Court or a judge thereof pursuant to any power conferred in that behalf by any law". It was said that, notwithstanding successive revisions of the Laws of Belize, section 43(12) was never been repealed or amended to remove the Privy Council.

Respondent's Submissions

[11] The arguments proffered by the Learned Deputy Solicitor General on behalf of the Respondents were attractive to this Court by virtue of their simplicity. They highlighted that the flaw in the Appellant's submission lies in the position taken with

respect to the definition to be ascribed to the word "Court" in section 3 of the repealed Privy Council Appeals Act. The main contention put forward was that, although the Privy Council Appeal Act has been repealed, its legislative history shows that by virtue of the Privy Council Appeals Act being amended by Ordinance No. 19 of 1967, by which the definition of "Court" was amended to mean "the Court of Appeal established by the Court of Appeal Act" (which had earlier come into force on May 28, 1968), section 43(12) of the IBTA was impliedly amended.

[12] I do accept that with the creation of the Court of Appeal by statute in 1968, the legislature must have seen the wisdom of streamlining the appellate process to interject the Court of Appeal between the first instance Court and the apex Court. However, with no amendment to the IBTA, on its face, the position in section 43(12) appeared to have remained unchanged. However, with the adopting of the Constitution at Independence, section 134 of the Constitution mandated that all laws be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution. The Respondents say that such a modification and adaptation ought to be that the jurisdiction to hear a question of law ought to be migrated to the Court of Appeal ahead of being entertained by the Caribbean Court of Justice.

[13] The Learned Deputy Solicitor General went on to contend that with the amendment of section 3 of the Privy Council Appeals Act to embrace the definition of Court to mean the Court of Appeal there was an implied amendment to section 43(12) of the IBTA replacing "Her Majesty in Council" and "the Privy Council Appeals Act" with "the Court of Appeal" and "the Court of Appeal Act" respectively. Thus, by the time the Privy Council Appeals Act was repealed, section 13(2) of the Court of Appeal and section 43(12) of the IBTA would have been in harmony with each other by virtue of the implied appeal.

[14] The authority cited for the effect of an implied amendment was **Bennion** on Statutory Interpretation where the learned authors wrote (at p. 293).

"Where a later enactment does not expressly amend (whether textually or indirectly) an earlier amendment which it has power to override, but the

provisions of the later enactment are inconsistent with those of the earlier, the later by implication amends the earlier so as necessary to remove the inconsistency between them.”

They further wrote by way of commentary:

“If a later Act cannot stand with an earlier, Parliament (though it has not said so expressly) is taken to intend an amendment of the earlier. This is a logical necessity, since two inconsistent texts cannot both be valid without contravening the principle of contradiction. If the entirety of the earlier Act is inconsistent, the effect amounts to a repeal of it.”

The Respondents’ submissions were rounded out by the statement that the CCJ Act prescribes which matters are heard as of right or by leave. This was no doubt in response to the Appellant’s submission with regard to the question of whether leave was required. This matter I consider to be of no moment.

Conclusion

[15] The approach of courts to repeal statutes by implication, has been traditionally conservative (see: **Charlton v Tonge Overseers (1871) LR 7 CP. 178** per Keating J). The inclination has always been to construe earlier and later statutes so as to give effect to both as far as possible. However, in the present case, this is not possible.

[16] The Court must give effect to the definition of ‘Court’ ascribed by the legislature in section 3 of the Privy Council Appeals, Ordinance on March 19, 1975. Accordingly, at the time the said legislation was repealed by the Caribbean Court of Justice Act, the IBTA would have been already impliedly amended to alter the jurisdiction for the entertaining of a case to be stated on a question of law from the Privy Council to the Court of Appeal. As such, there would be no need to invoke section 104(10) of the Belize Constitution.

[17] It can be concluded that the flaw in the Appellant’s brilliant but convoluted argument lies in the attempt to impugn the capitalization of the word “Court” in section 3 of the repealed Privy Council Appeals Act. For that reason, I am disinclined to accept


the Appellant's position that the proper forum for an appeal from a judge in chambers by way of case stated by a tax payer is to the Caribbean Court of Justice.

[18] For completeness, it needs to be said that I have considered the case of **Thoburn v Sunderland City Council [2003] QB 151** which was laid over subsequent to the hearing of submissions. I wholly accept the principle therein stated that a constitutional statute ought not to be impliedly repealed. However, in the present case, there is no need to trouble section 104(10) of the Constitution, having regard to the conclusion reached by the Court.

[19] Accordingly, the objection by the Respondent is upheld. I hereby rule that the matter ought properly to be determined by the Court of Appeal.

[20] Ordinarily, the Respondent ought to be entitled to costs. However, I consider the issue to have been eminently worthy of reference for interpretation. In the circumstances, I am ordering that each party bear its own costs.

Dated: September 22, 2017.



KENNETH A. BENJAMIN
Chief Justice