

**IN THE SUPREME COURT OF SEYCHELLES**

**ralph ernesta trading as**

r& e building contractor

**Appellant**

vs

The Commissioner of Taxes of

Liberty House, Victoria, Mahé

**Respondent**

**Civil Appeal No: 4**

**of 2008**

Appellant in person

Ms. F. Laporte for the respondent

**D. Karunakaran. J.**

**JUDGMENT**

This is an appeal preferred under Section 106 of the Business Tax Act - hereinafter referred to as the "Act" - against the decision of the Commissioner of Taxes - hereinafter referred to as the "respondent" - dated 22<sup>nd</sup> October 2007, whereby the respondent rejected the objection of the appellant, Ralph Ernesta trading as E & R Building Contractor, to the amended assessment of business tax levied against the appellant for

the tax year 2003, hereinafter referred to as the “relevant year”

At all material times, the appellant was and is the sole owner of a construction business known as *E & R Building Contractor*, whose principal activity had been construction of buildings for profit. The appellant has been operating this business in Seychelles for a number of years. It is the case of the respondent that the appellant in the tax year 2003 received an income in the total sum of Rs 241,510/- from a company by name “*Angel Fish Ltd*” for services the appellant rendered in respect of certain construction work carried out for that company. The commissioner of Taxes, in 2007, reopened the previous assessment made for the tax year 2003 and made a reassessment whereby treated the said income as an assessable income and accordingly, issued the Notice of Amended Assessment dated 19<sup>th</sup> November 2007 to the appellant whereby increased the appellant’s tax liability.

Being dissatisfied with the said Amended Assessment the appellant objected to it on the ground that he received the said income Rs 241,510/- from *Angel Fish Limited* on behalf of one Mr. Tang Lee, a Chinese national, who was then working in Seychelles. Therefore, the appellant contended that he was not personally liable to pay any tax on that income. According to the appellant, Mr. Lee approached and requested him to submit a quotation to *Angel Fish Ltd* for the construction work because Mr. Lee did not possess a contractor’s licence. The appellant acceded to his request and did so as a middleman on condition that Mr. Lee would be responsible for carrying out all the construction work and pay the appellant a 5% commission on the total value of the contract sum. However, before the contract was completed Mr. Lee was deported from Seychelles and the appellant did not receive even that commission from Mr. Lee. In the circumstances, the appellant objected to the amended assessment contending that the said payment

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he received from Angel Fish Ltd was not *an assessable income* to the appellant as he was simply a nominal recipient of the said sum, which in fact, was not his income.

However, the Commissioner after investigating the matter - pursuant to Section 105 of the Act - in his considered decision disallowed the appellant's objection, proceeded with reassessment and taxed the appellant taking into account the said income as assessable one. The appellant therefore, in terms of Section 106 of the Act, requested the Commissioner to treat his objection as an appeal against the Commissioner's decision and refer the matter to the Supreme Court for determination. The Commissioner accordingly, referred the matter to the Supreme Court with the relevant records in terms of Section 106 (1) of the Act and hence is the instant appeal before this Court.

Pursuant to Section 108 (1) of the Act, the Commissioner filed his submission in relation to the appeal, setting out his reasons both on facts and on law in support of his decision made under Section 105 of the Act. On the other side, the appellant also filed a written defence of objection dated 6<sup>th</sup> June 2008 under Section 108 (2) of the Act, in response to the submission filed by the Commissioner.

With these background facts, I carefully perused the appellant's objection to the assessment in dispute, as well as the submission of the respondent setting out his reasons for the amended assessments. I also perused the written defence of the appellant filed in the appeal proper. I gave diligent thought to the arguments advanced by both sides on points of law as well as on the facts in issue. To my mind, there are only three fundamental questions before the Court for determination that would effectively and substantially dispose of this matter. They are:

1. *What was the total amount the appellant received from "Angel Fish Ltd" for services rendered by his business R & E Building Contractor*

*in the tax years 2003?*

2. *Was that amount an income to the appellant or to Mr. Lee on whose behalf the appellant allegedly contracted with "Angel Fish Ltd" for such services? and*

*Is that amount an assessable income to the appellant or to Mr. Lee under Section 21 of the Business Tax Act?*

As regards the first question, it is evident from the statement of account - vide document 12 – maintained by the company "Angel Fish Ltd" that the appellant has received from them a total sum of Rs 251,510/- during the year 2003 for the construction work rendered under a contract between the parties. Indeed, this statement clearly shows the breakdown of all payments made to the appellant in 2003 specifying the amounts and the respective date of payments. Obviously, the statement of account supplied by the company to the Commissioner, presumably, has been taken from the record of accounts maintained by the company in the normal course of its business activities. In the absence of any evidence to the contrary, I accept the authenticity and credibility of the said of statement of account and I find no reason to doubt the truth and accuracy of its contents. In the circumstances, I conclude that *the total amount the appellant received from "Angel Fish Ltd" for services rendered by his business R& E Building Contractor in the tax years 2003 was Rs 251,510/-* This answers the first question.

As regards the second question, admittedly the appellant was the one, who has given the quotation to *Angel Fish Ltd* for the construction work in question. Also it was the appellant who has personally signed the contract in May 2003 - vide document 68 in file - with *Angel Fish Ltd* and has accepted the final payment in the sum of Rs 50,000/- in full and final settlement of all his claims regarding the work carried out for the company. All legal documents bear the name of the appellant as the contractor, not Mr. Lee as alleged by the appellant. Legally speaking, Mr. Lee was not a privy to the contract between the appellant and *Angel Fish Ltd*. Moreover, the

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company has made all payments only to the appellant, not to Mr. Lee. In any event, the appellant was the one, who has admittedly received the sum from *Angel Fish Ltd* for service rendered. He was the one who gave the quotation to the company. He was not only a party to the contract but also he was the one who actually executed the contract. He was the one who actually carried out the work. He was the one who received the money piecemeal from the company for the work done. At no stage of the transaction the appellant has ever legally acted on behalf of Mr. Lee. In any event, there is no legal authority or document given by Mr. Lee in favour of the appellant to perform any act on his behalf in any dealing with *Angel Fish Ltd*. In the circumstances, the appellant is now estopped by his conduct and representation from denying the fact that the total amount Rs 251,510/- which he received from "*Angel Fish Ltd*" in the tax year 2003 for the contract work he carried out, was his own income. Undoubtedly, it was not an income to Mr. Lee or to anyone for that matter and so I find. This answers the second question.

I will now turn to the third question as to the assessable nature of that income for business tax purposes under Section 21 (1) of the Act, which reads thus:

*"Subject to this Act, the assessable income of a business includes the gross income derived, or deemed to be derived, from a source in Seychelles by the business, whether directly or indirectly, which is not exempt income"*

Section 2 thereof defines "Assessable income" thus:

*"Assessable income" means all the amounts which under the provisions of this Act are included in the assessable income"*

As rightly submitted by the Commissioner, in determining whether section 21(1) would apply to the funds received by the appellant from *Angel Fish Ltd*, first, the funds must be an “*income*.”

The word “income” is not defined in the Business Tax Act, 1987 or in the Interpretation and General Provisions Act 1976 so it takes its natural and ordinary meaning. In considering, what constitutes income, reference is frequently made to the remarks of Jordan C.J. in *Leott V.C. of T (NSW) 1935*. 3 ATD 142 at 144, 145.

“The word ‘income’ is not a term of art, and what forms of receipts ought to be treated as income, must be determined in accordance with the ordinary concepts and usages of mankind, except the statute states or indicates an intention that receipts which are not income in ordinary parlance are to be treated as income or that special rules are to be applied for arriving at the taxable amount of receipts - *A.G of British Columbia v Ostrum (1904) AC 144* at p147; *Lambe v I.R. Commrs (1934) 1 K\* 178 atppl82, 183.*”

Funds received that will be regarded as *income* in accordance with ordinary concepts and usages of mankind. To determine the meaning of income in accordance with ordinary concepts and usages of mankind reference can be made to the ***Concise Oxford Dictionary*** which defines income to mean “*periodical receipts from one’s business, lands, work, investments etc*”

In a nutshell, where it is determined that a business has received periodical receipts and these receipts are for the performance of ones business activities, then such receipts will be regarded as ***income*** and will be *assessable income* unless they are exempted by another provision of the Business Tax Act. Obviously, there is no provision of the Business Tax Act, 1987 that exempts the receipts that are subject to this appeal from being excluded from assessable income nor is there any claim by the appellant that these funds are to be exempted in either the appellant’s

objection or subsequent appeal.

In examining the first element whether the appellant received periodical receipts (income) the facts of the case provide clear indication that payments have been made in the year 2003 by *Angel Fish Ltd* to the appellant. First, Angel Fish Ltd has advised the respondent that they made payments to the appellant for the completion of construction works, which the appellant undertook and claimed such expenses in their submission of accounts. Besides, the appellant, in an interview held in January 2008 by the Commissioner, acknowledged on a number of occasions that he had received funds from *Angel Fish Ltd* and that those funds were in relation to construction works carried out for Angel Fish Ltd. It is therefore, evident that the appellant has on a number of occasions received funds (income) from *Angel Fish Ltd*.

The second element to be ascertained is whether the funds received by the appellant were for business activities of the appellant. Undisputedly, the appellant's business activities are in the building construction field. The appellant has been admittedly, licensed by the Seychelles Licensing Authority as a building contractor and therefore, it is reasonable to conclude that his activities would include amongst other things the construction of buildings. Given the nature and size of the income received by the appellant, it is also clear that part of his business activities would be the retention of labour to complete some, if not all of the actual construction works and that primarily his role would be to ensure the construction work was completed as contracted. As rightly submitted by the Commissioner, included in these activities would be an expectation that the appellant would negotiate construction agreements, collect part payments as the construction was in progress, provide labour to complete the construction works, negotiate with the contracting client

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further payments where required and be a party to any agreement to complete the construction works. All these transactions are clearly evidenced as being completed by the appellant before and during the construction of the administration blocks, in the supporting documentation attached to the submission filed by the Commissioner. And finally, it is evident on the face of the records on file that a clear business relationship has existed between the appellant and *Angel Fish Ltd* and shows clearly that it was only the appellant and not Mr. Lee who was contracted to complete the constructions works and it was the appellant who received the income from his construction business. Hence, I conclude *that the total amount Rs 251,510/- which the appellant received from "Angel Fish Ltd" in the tax year 2003 for the construction work he carried out, was not only his own income but also it is an assessable income under Section 21 of the Business Tax Act.*

For the reasons stated above, I find that the income of Rs 251,510/, the appellant received in the tax years 2003 is an assessable income. I decline to accept the contention of the appellant to the contrary, in this respect. Therefore, I reject the objection of the appellant contained in his letter dated 3<sup>rd</sup> August 2006 against the Business Tax Amended Assessment issued by the Commissioner of Taxes in respect of income the appellant received in the tax years 2003. Consequently, the reassessment for the tax year 2003 and the decision of the Commissioner dated 22<sup>nd</sup> October 2007, disallowing the objections of the appellant is hereby upheld.

Wherefore, I dismiss the appeal and make no order as to costs.

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**D. Karunakaran**

**Judge**

**Dated this 9<sup>th</sup> day of November 2009**