HY v Comptroller of Income Tax
[2005] SGHC 137

Case Number : DA 27/2004

Decision Date : 02 August 2005

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Leon Kwong Wing, Chua Yee Hoong and Sharma Sundareswara (Khattar Wong) for the appellant; Liu Hern Kuan and Joyce Chee (Inland Revenue Authority of Singapore) for the respondent

Parties : HY — Comptroller of Income Tax

Revenue Law – Income taxation – Appeals – Appellant receiving stock options from employer company in London – Appellant signing notices of exercise of options in Singapore – Appellant delivering notices to company in London – Whether constituting exercise of stock options – Whether material connection between appellant's exercise of stock options and Singapore existing – Whether gains from exercise of stock options taxable in Singapore – Sections 10(1)(g), 10(5) Income Tax Act (Cap 134, 1996 Rev Ed)

2 August 2005 *Judgment reserved.*

Choo Han Teck J:

1 This was an appeal against the decision of the Income Tax Board of Review ("the Board") affirming the additional assessment of tax by the Comptroller of Income Tax ("Comptroller") on the appellant for the year of assessment 1998. The appellant was employed by Standard Chartered PLC in London from 26 April 1990. By March 1994, he received a total of seven options to acquire shares in his employer company. Some months later, in October 1994, the appellant was sent to work in the Singapore branch of the Standard Chartered PLC. The appellant's wife is from Mauritius. They purchased a house in Mauritius in March 1997, and while holidaying in Phuket, Thailand in April 1997, the appellant made the decision to exercise his share options and used the proceeds for the house in Mauritius.

2 On 28 April 1997 the appellant signed the notices of exercise of options. This was done in Singapore and the notices were delivered to Standard Chartered PLC's private banking branch in Park Lane, London. The bank then gave the appellant an overdraft to pay for the shares. On 30 April 1997 the appellant exercised the options by delivering the notices of exercise to the Standard Chartered PLC's registered office at 1 Aldermanbury Square, London. The appellant sold the shares and invested the gains from the sale. No money from the sale was remitted into Singapore. The total gains from the sale of the shares was £2,054,370 (or S$5,044,710). The Comptroller levied an additional assessment of tax on the sum of $5,044,710, against which the appellant appealed to the Board, and against the Board's dismissal of his appeal, to me.

3 Mr Leon Kwong Wing, counsel for the appellant, submitted that the gains from the share options were not taxable in Singapore. The relevant provisions of the Income Tax Act (Cap 134, 1996 Rev Ed) at the material time, were ss 10(1) and 10(5), which provide as follows:

> **10.**—(1) Income tax shall, subject to the provisions of this Act, be payable at the rate or rates

specified hereinafter for each year of assessment upon the income of any person accruing in or derived from Singapore or received in Singapore from outside Singapore in respect of —

(*a*) gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;

(*b*) gains or profits from any employment;

(*c*) (*Deleted by Act 29/65*).

(*d*) dividends, interest or discounts;

(*e*) any pension, charge or annuity;

(*f*) rents, royalties, premiums and any other profits arising from property; and

(*g*) any gains or profits of an income nature not falling within any of the preceding paragraphs.

…

(5) Any gains or profits directly or indirectly derived by any person by the exercise, assignment or release of a right or benefit whether granted in his name or in the name of his nominee or agent to acquire shares in a company shall, where the right or benefit is obtained by that person by reason of any office or employment held by him, be deemed to be income …

4 The Comptroller's case, argued by Mr Liu Hern Kuan, was based on ss 10(1)(*g*) and 10(5). It is relevant and convenient, at this point, to refer to s 10(5) after the amendment by the Legislature in 2003. The amended s 10(5) reads as follows:

Any gains or profits, directly or indirectly, derived by any person from a right or benefit granted on or after 1st January 2003, whether granted in his name or in the name of his nominee or agent, to acquire shares in any company shall, where the right or benefit is obtained by that person by reason of any office or employment held by him, be deemed to be income chargeable to tax under subsection (1)(*b*), accruing at such time and of such amount as determined under the following provisions …

Hence, on the amended provision of the Income Tax Act (Cap 134, 2001 Rev Ed), gains from stock options would be taxable under s 10(1)(*b*) and not under s 10(1)(*g*) as was the case before me. As it was not disputed by the Comptroller and the Board that the basis of the Comptroller's assessment was based on the pre-2003 ss 10(1)(*g*) and 10(5), these provisions would be the starting point for consideration of this appeal. It would be more convenient to proceed with s 10(5). That subsection was a compendium provision that applied to various circumstances. For convenience and ease in understanding its true import, I propose to set out only the salient parts of that provision that concerned the Comptroller's case here:

Any gains directly or indirectly derived by any person by the exercise of a right to acquire shares in a company shall, where the right is obtained by reason of employment held by him, be deemed to be income.

5 In the present case, there was no dispute that there was a gain of $5,044,710 from the sale

of shares derived from the share options. That was paid outside Singapore and none of the money was remitted here. The House of Lords in *Abbott v Philbin (H M Inspector of Taxes)* [1961] AC 352 ("*Abbott*") held that income of that nature would be considered earned at the time of the grant and not at the time the option was exercised. *Abbott* was a case that concerned gains from share options (for our purposes, there is no distinction between a share option and a "stock option", a term used by counsel before me). Two points are significant to us about the *Abbott* decision. First, a share option was a perquisite, and second, it fell to be taxed as income on the year it was granted. As Lord Simonds held in that case at 369:

> [The share option] was, in my opinion, a perquisite at the date of the grant and, if it had no value, there was nothing to tax and that is the end of the matter.

It was not disputed that the share options were given to the appellant, that is to say, in the old language of s 10(5), *obtained by him*, when he was employed in London. The source of his income from the point of the time of the granting of the options was thus not Singapore.

6 Consequent to the *Abbott* case, the English parliament amended their tax laws, and our Legislature did likewise in 1973, when it introduced the s 10(5) provision relied upon by the Comptroller in this case. Hence, as at 30 April 1997, a share option would be taxed at the time it was exercised. Thus, for income to be taxable under s 10(1)(*g*), it would be necessary to establish a connection between the appellant's exercise of his stock options and Singapore. The material facts would certainly include the time and place of the exercise of the options. It was not disputed that the appellant signed the notices of exercise of options and dated them 28 April 1997. The appellant conceded that the notices were signed in Singapore and sent to London where they were given to his bankers on 30 April 1997, and after obtaining an overdraft from them to pay the option fees, his London agent handed the notices together with payment (as required under the notice) to the company in London on that same day. It was this last act that constituted an exercise of the options, and not the act of signing the notices. The Board was of the view that by signing the notices the appellant had done all he could to exercise his rights under the options. That, in my view, is erroneous. The mere signing of the notices is an incomplete act. A person could have signed the notices and not deliver them at all; in which event, the option rights cannot be said to have been exercised. The jurisdiction in which he signed the notices could also have been fortuitously chosen. He could have signed a notice on a plane while in Singapore before falling asleep, waking to sign the next notice in Kuala Lumpur. Hence, on the facts, there is no material connection between the appellant's gains and Singapore.

7 The plain words of s 10(5) as applicable in this case imposed a tax liability in respect of gains derived from the exercise of a right obtained by reason of an employment held by him. No country or place was specified or excluded, and thus, the only country of relevance is Singapore because tax laws are territorial. Hence, it did not matter where the gains were made or where the stock options were exercised. But it is crucial that when the right to exercise that option was obtained by the appellant he was at that time employed in Singapore. He was not. In the premises, there was no tax liability in respect of the gains he made from the stock options in question.

8 The appeal is therefore allowed. I will hear the question of costs at a later date.