

IN THE SUPREME COURT OF FIJI

COURT OF REVIEW

ACTION NO. 18 OF 1985

BETWEEN :

ROBERT JOSEPH DE GROOT

APPELLANT

- and -

THE COMMISSIONER OF INLAND  
REVENUE

RESPONDENT

No appearance of the Appellant

Mr J Scott and Mr S M Shah for the Respondent

JUDGMENT

In this case the appellant came to Fiji in February 1984 to work as an engineer in the Public Works Department. He made a return of income for that year, comprising the ten months or so which he had worked, and claimed as a deduction \$100 which he had paid for subscription for his membership of the Institute of Engineering. That deduction was disallowed and the appellant appeals under section 62 of the Income Tax Act Cap. 201. Under that section a taxpayer who is dissatisfied with the Commissioner's assessment may within 60 days lodge an objection, which the Commissioner has to consider and allow or disallow in whole or in part. In this case the Commissioner wholly disallowed the objection. The appellant then lodged an appeal to the Court of Review, but before the appeal was heard, he departed out of Fiji, and eventually, when he had been traced, asked the Commissioner to proceed with the appeal in his absence. This the Commissioner now does.

Although section 71(2) of the Act provides that on the hearing and determination of objections to assessments under the Act the onus of proof is to be on the taxpayer, it is in my view necessary, before the onus can begin to apply, for the Commissioner to satisfy the Court that the disallowance of an objection is made within the confines of the Act. The

appellant in his notice of appeal claimed his right to a deduction under section 24(2) and under section 26(3). It is perhaps desirable to set out the material parts of those sections:

"24(2) Notwithstanding the provisions of section 31 and of subsection (1) where a person resident in Fiji solely or mainly for the purpose of employment has not resided in Fiji for the whole year, he shall, if he has resided in Fiji only for part or parts of that year be allowed :-

- (i) in calculating his chargeable income only, such proportion of the deductions specified in section 25, paragraphs (a), (b), (c), and (f) of subsection (i) of section 26 and sections 27, 29 and 30 together with any contributions allowable under paragraphs (d) and (e) of subsection (1) of section 26 ..... and
- (ii) such proportions of the normal tax rebate as the total period of his residence in Fiji during that year bears to the full income year.

26(3) Notwithstanding the other provisions of this section, the amounts paid by a taxpayer, during the income out of any emolument income received by him from any office or employment in respect of the annual professional membership dues the payment of which was necessary to maintain a professional status in connexion with his office or employment, or in respect of professional journals which are regarded by the Commissioner as necessary for the efficient performance of the duties of his office or employment, but not exceeding one hundred dollars shall be deducted on calculating chargeable income"

Mr Scott pointed out that only such allowances as the statute provided for could be made a taxpayer. If he had stayed his

full year in Fiji appellant could have had his deduction under section 26(3). Since he had been in Fiji for only part of the tax year, section 24 was applicable to him, but that section allows no proportioning under section 26(3). It is well established that there is no equity in a tax, and hence if appellant is to succeed, he is put to the proof under section 71(2). He has done nothing and hence he must fail and the appeal must be dismissed. There will be no order as to costs.

K A Stuart  
COURT OF REVIEW

11th June 1987