C. P. F CONTRIBUTIONS FOR DOMESTIC SERVANT AND TAX DEDUCTIONS

M.N.O. v. *The Comptroller of Income Tax*[1]

This was a case stated under section 82 of the Income Tax Ordinance. (Chapter 166; hereinafter called the Ordinance) where Buttrose J. held that contributions to the Central Provident Fund Board in respect of a domestic servant are allowable as a deduction in ascertaining a tax-payer's chargeable income.

The appellant claimed contributions totalling $92.50 to the Central Provident Fund Board in 1958 in respect of his domestic servant as a deduction in ascertaining his chargeable income for the year of assessment 1959. Buttrose J. upheld the appellant's contention that this deduction was allowable under either section 14(1) (e) or section 39(2) (e) of the Ordinance.

One of the basic purposes of deductions is to measure a tax-payer's real income, *i.e.* what he has left over after deducting the expenses necessary to produce the income. However, personal expenses are not deductible even though they are necessary because as personal expenses they do not directly produce income, *e.g.* travelling expenses[2] excepting those cases of travelling salesmen, doctors, *etc.* Wages of servants are personal expenses and not deductible even though they are necessary to enable the tax-payer to work.3 Contributions to the Central Provident Fund it is submitted, are really only additions to salary and *prima facie* should receive the same treatment particularly contributions in respect of domestic servants. Hence, the holding in *M.N.O.'s* case is surprising.

10. (1964) 30 M.L.J. 239 at p. 244.

1. (1961) 27 M.L.J. 223.

2. *Nolders v. Walters* (1930) 15 T.C. 380.

3. *Bowers (Surveyor of Taxes)* v. *Harding* [1891] 1 Q.B. 560.

Section 14(1) (e) of the Ordinance provides:—

> For the purpose of ascertaining the income of any person for any period from any source chargeable with tax under this Ordinance, in this Part referred to as "the income", there shall be deducted all outgoings and expenses wholly and exclusively incurred during that period by such person in the production of the income, including —
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> (e) any sum contributed by an employer to an approved pension or provident fund or society in respect of any of his employees, the contribution of which sum by the employer was obligatory by reason of any contract of employment or of any provision in the rules or constitution of the fund or society:

If one reads the words "wholly and exclusively incurred . . .in the production of income," as modifying sub-paragraph (e) then it would seem that under the case of *Bowers (Surveyor of Taxes)* v. *Harding,*[4] where the English Court held that the allowance claimed for the wages and maintenance of a domestic servant, whose employment was necessary in order that the household chores be done while the tax-payer and his wife worked, could not be deducted, contributions to a provident fund in respect of a servant are not deductible as they are not laid out "wholly and exclusively in the production of income." Such a construction of section 14(1) (e) is not novel if the word "including" in the section is given a restrictive meaning. Lord Watson made this observation in the case of *Dilworth* v. *Commissioner of Stamps* [5], a decision which Buttrose J. relied on to support his own construction. Lord Watson observed that,

> . . . the word "include" is susceptible of another construction which may become imperative, if the context of the Act is sufficient to shew that it was merely employed for the purpose of adding to the natural significance of words and expressions defined. It may be equivalent to "mean and include" and in that case it may afford an exhaustive explanation of the meaning which for the purposes of the Act must invariably be attached to these words and expressions.[6]

But Buttrose J. construed the above section as allowing such a deduction by reading the word "including" as "a term of extension and not of restrictive definition," [7] and holding that "sub-paragraph (e) is not governed by the words 'wholly and exclusively incurred … in the production of income.' " [8] He found easy justification for so holding the latter in the incongruous inclusion of sub-paragraph (f) which permits deductions regarding *zakat, fitrah* or other religious dues, payment of which is obligatory under Federation laws. He went further in his examination of the sub-paragraphs and concluded that the entire section cannot be restricted to trade expenses because of the allowances given to bad debts, [s. 14(1) (d)] capital expenditure, [14(l)(g)] and other deductions as provided by sub-paragraph (h).

Barring the presence of sub-paragraph (f) which deals with *zakat* and *fitrah,* it is equally compellable to assert that the words "wholly and exclusively incurred . . . in the production of income" do govern the sub-paragraphs, particularly when sub-paragraphs (a) (b) (c) (d) and (g) all emphasise in one form or another that these sums are deductible only if they were employed in acquiring the income. It is asserted that sub-paragraph (e) provides for deductions regarding provident fund in respect of any employees only if such contributions were obligatory and the employees were kept for a concern which has to be "wholly and exclusively incurred … in the production of income." The employee in *M.N.O.'s* case is a domestic servant and he is, therefore, clearly not covered upon such a restrictive construction of section 14(1) (e) as suggested. It is somewhat inept to say that because section 14(1)(d), (g) and (h) do not deal exclusively with trade expenses, the words "wholly and exclusively incurred … in the production of income" do not therefore govern the sub-paragraphs;

4. [1891] 1 Q.B. 560.

5. [1899] A.C. 99 (P.C.).

6. Ibid., at p. 105.

7. (1961) 27 M.L.J. at p. 224.

8. Ibid.

because, it is respectfully submitted, that it is not argued at all that only trade expenses are permissible deductions under this section, but that only those expenses involved in the production of income are deductible.

Nevertheless, the only strong argument for reading the word "including" as a term of extension is admittedly the rather awkward presence of sub-paragraph (f). However, one wonders whether it is wise that such an important construction should depend only on as obvious an incongruity as that of the inclusion of *zakat* and *fitrah* in section 14. One suggestion one can offer to explain such an inclusion is that perhaps there is simply no other place to insert it except possibly under Part VII dealing with personal reliefs, and since it is a question of policy to include it, it is sloppily shoved into the Ordinance.

Even if the learned judge were correct in his interpretation of section 14 to allow such a deduction, it is again, respectfully, submitted that such a deduction is prohibited by section 15 which provides:—

> Subject to the provisions of this Ordinance, for the purpose of ascertaining the income of any person, no deduction shall be allowed in respect of —
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> (b) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income;
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> (h) any payment to any provident, savings, widows' and or phas' or other society or fund, except such payments as are allowed under paragraph (e) of sub-section (1) of section 14 and paragraph (e) of sub-section 2 of section 39 of this Ordinance.

The learned judge maintained that section 14 is the overriding section in this case and section 15 must always be read subject to the other provisions of the Ordinance. Undoubtedly that is so, but it is submitted that if such a construction as the decision in our case suggests were constantly adopted, the purpose of section 15 would not only be seriously in doubt but would eventually be rendered almost nugatory. If what is meant is that section 15 gives way every time there is a conflict with section 14, what, then, are the deductions that section 15 really disallows? With regard to section 15(h) Buttrose J. simply said that it merely prohibited third parties from paying into a provident fund and demanding a deduction. This could be one of the reasons of section 15 (h) and simultaneously it could be construed as disallowing such a deduction as sought by M.N.O. depending upon whether section 14(1) (e) or section 39(2) (e) allows it or not. Section 15 (a) and (b) without any labouring presumably jointly prohibit deductions made in respect of domestic servants' salaries; nevertheless, so says the Court, provident fund contributions in their respects are permissible deductions. It is submitted that it is well advised for the Court, before arriving at such a decision, to warn itself that in order "to carry out effectually the object of the statute [when interpreting one] it must be so construed as to defeat all attempts to do, or avoid doing in an indirect or circuitous manner that which it has prohibited or enjoined."[9]

With regard to the Court's holding that such deductions are covered by section 39(2) (e) as well, the learned judge's reasoning was that because specific mention was made of the tax-payer and his wife when referring to life insurance with no corresponding specifications when referring to provident fund, therefore, "the Legislature must on the principle embodied in the maxim *expressio unius est exclusio alterius* be presumed to have intended the latter to be general and unqualified in any way and the former special and restricted."[10] Section 39(2) (e) (iii) provides:—

> (2) In the case of an individual resident in the State of Singapore in the year of assessment who, in the year immediately preceding such year of assessment—

9. Maxwell, *The Interpretation of Statutet*, (11th ed., 1962), at p. 109.

10. (1961) 27 M.L.J. at p. 225.

> (e) has made insurance on his life or on the life of his wife with any insurance company or Government of any State or Country or has contributed to an approved pension or provident fund . . . there shall be allowed a deduction of the aggregate of all premiums . . . and all such contributions … as aforesaid, made or suffered by him in that year:
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> Provided that —
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> (iii) no such deduction shall include any sum contributed to an approved pension or provident fund . . . unless the contribution of such sum thereto was obligatory by reason of any contract of employment . . .

Again, it is submitted that such pre-emptive use of the maxim *expressio unius est exclusio alterius* is not warranted in this particular case especially when the construction is arrived at without taking into account such pemissive aids as marginal notes, headings, titles, etc. If such a construction can be attacked resulting in an altogether different construction, then the presumption of the legislative intention is not so clear after all. For example, as in this case, if the heading and marginal notes of Part VII [11] of the ordinance were taken into consideration it would be reasonable to assert that the legislative intention was to grant the enumerated reliefs solely for the benefit of the tax-payer and his family. Buttrose J. rejected the use of marginal notes in interpreting a statute on the strength of the English case of *R.* v. *Hare.*[12]

The position in Singapore regarding marginal notes is different from that of England and this was pointed out as early as 1888 in the case of *Cashin* v. *Murray* [13] decided by Ford C.J. of the Singapore High Court. This principle was reasserted by Terrell J. in 1932 in the case of *Re Tan Keng Tin and Re Chop Soon Bee* [14] in the following terms,

> The general rule that the marginal notes may not be referred to appears to be founded upon the principle "that these notes are inserted not by Parliament nor under the authority of Parliament but by irresponsible persons." Where, therefore, as in the Colony [Singapore] the marginal notes are treated as part of an ordinance and are discussed and even amended in Committee there would appear to be no reason why they should not be referred to assist the interpretation of the section.[15]

It is unfortunate that Buttrose J. omitted to make any pronouncement upon these local authorities, since this would have helped clarify the position or reverse it accordingly. Consequently, Terrell J.'s holding is still authoritative.

It is contended that there is ambiguity in the meaning of section 39(2) (e) and, as admitted by Buttrose J., since headings can be looked at to help resolve any ambiguities,[16] therefore in construing the said section both heading and marginal notes should have been taken into consideration. The device of *expressio unius est exclusio alterius* should have been employed only after relevant and due consideration was given to the headings and marginal notes, as they too, were part of the statute. Thus contributions to a provident fund referred to under this Part, taking into account the fact that the heading specifies personal reliefs and all marginal notes refer to the tax-payer and his family, could mean to be restricted to the tax-payer and his family.

Buttrose J. in his concluding comments said that if there existed some doubt with regard to two possible construction, (and he denied there being any such doubt in *M.N.O.'s* case [17]) the benefit should be resolved in the tax-payer's favour. This, it is

11. Ascertainment of chargeable income and personal reliefs.
12. [1934] 1 K.B. 354 at p. 355.
13. (1888) 4 Ky. 435.
14. (1932) 1 M.L.J. 134.
15. *Ibid.*, at p. 135.
16. (1961) 27 M.L.J. at p. 225.
17. *Ibid.*

submitted, is contrary to established general principles governing the interpretation of fiscal legislation. In terms of *Halsbury's Laws of England,*

> It is a general principle of fiscal legislation that to be liable to tax the subject must come clearly within the words of the charge to tax. On the other hand, once within the scope and terms of the charge to tax, he cannot escape unless within the terms of an exemption.[18]

In other words, while it is true that the charging section of the statute is construed against the government because the courts have felt that if the money of the citizen is to be taken away by fiscal legislation it must be done in clear and unambiguous terms,[19] yet the deduction section is construed in favour of the government to prevent the tax-payer from abusing the section to avoid paying his share of taxes.[20]

Finally, it is probable that the Court in *M.N.O.'s* case felt it would be an unnecessary hardship not to allow such a deduction from contributions to a provident fund which was made obligatory by law. But it needs only be added, in the words of Finlay J., in the case of *Kiliman* v. *Winckworth*[21] that,

> It is, of course, elementary that in these cases [referring to deductions] what one has got to do is to look at the exact words of the section which gives an exemption and ascertain whether the person brings himself with in it. There is no room, of course, in a taxing Act for equitable consideration.

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18. *Halsbury's Laws of England,* Vol. 20. (3rd ed., 1957), at pp. 27-28.

19. *Partington* v. *A-G* (1869) L.R. 4 H.L. 100 at p. 122; *Tennant* v. *Smith* [1892] A.C, 150 at p. 154 (H.L.); *Russell (Inspector of Taxes)* v. *Scott* [1948] A.C. 422 at p. 433 (H.L.).

20. *Kiliman* v. *Winckworth* (1933) 17 T.C. 569; *Littman* v. *Barron* [1951] Ch. 993 at p. 1003.

21. *Ibid*., at p. 572.