INSP. of TAXES v BRIAN CRONIN (113) Ltd 113

1984 No. 114R

INSPECTOR OF TAXES

.v.

BRIAN CRONIN & ASSOCIATES LIMITED

Judgment of Mr. Justice McWilliam delivered on the 24th day of July 1984

Brian Cronin & Associates, Ltd., (the Taxpayer), carries on business as an advertising agency which provides ideas on advertising materials and methods for its customers and supervises the production of materials and the employment of a variety of specialist agencies which produce such material. The Inspector of Taxes (the Inspector) is interested to argue that this business is a profession or provides professional services within the meaning of section 162 of the Corporation Tax Act 1976, while the Taxpayer is interested to argue to the contrary.

Section 162 provides, at subsection (1), "Subject to subsection (2), in this section "service company" means -

(a) a close company whose business consists of or includes the carrying on of a profession or the provision of professional services,". Subsection (4) of the same section provides for the liability of a service company to corporation tax in certain cases.

Section 155 of the 1976 Act provides at subsection (11) that, save as otherwise provided, and except in so far as the context otherwise requires, words and expressions used in the Income Tax Acts have the same meaning in the Corporation Tax Acts as in those Acts.

Section 1(1) of the Income Tax Act, 1967, provides that the expression "profession" includes vocation. Apart from this, there is no definition of "profession" in the Acts.

The President of the Circuit Court held that the Taxpayer was not a company whose business consists of or includes the carrying on of a profession or the provision of professional services. The Inspector required this case to be stated and the question of law on which the opinion of the High Court is sought is whether the President of the Circuit Court was correct in law on the facts recited in holding that:-

(a) the business of the Taxpayer as an advertising agency did not consist of or include the carrying on of a profession and

(b) the business of the Taxpayer as an advertising agency did not

consist of or include the provision of professional services.

On behalf of the Inspector it was argued that the concept of a "profession" changes from time to time and that the old restriction to "the church, medicine and the law" has long since been extended to include many other occupations. In particular, it was urged that the provision in section 1 of the 1967 Act considerably enlarged the categories to which the expression "profession" might be applied for the purposes of the Act. Reliance was also placed on the fact that the Memorandum of Association of the Institute of Advertising Practitioners in Ireland, to which the Taxpayer belongs, referred in several of its objects to the profession of practitioners in advertising or used the adjective "professional" in relation to the status and standards of the organisation.

On behalf of the Taxpayer it was submitted that the question in issue is one of fact and that the decision of the Circuit Court on a question of fact cannot be upset if there was evidence to support it. It is accepted that the Taxpayer is a close company within the meaning of the section but it is argued that it is not a service company within the meaning of the section because it does not carry on a profession. It was submitted that the proper approach to the question is to consider what the ordinary reasonable man at the

present time would consider to be a profession. Emphasis was laid on the following facts found by the President of the Circuit Court:-

a. No educational or other qualification is required;

b. There is no code of practice governing or controlling advertising agencies;

c. Membership of the Institute is not compulsory and over one third of advertising agents are not members;

d. The Institute has no disciplinary function;

e. Advertising agencies advertise their own businesses;

f. In the course of their advertisements they freely disclose who are their customers.

It was also argued on behalf of the Taxpayer that the provision in the 1976 Act was introduced for the purpose of taxing solicitors and others who could not form companies. There is nothing in the Act to disclose this or to indicate that the provision does not apply in a more general way; nor have I been referred to any evidence of such an intention on the part of the Legislature, and I am certainly not entitled to speculate on what may or may not have been in the minds of the legislators and interpret the statute accordingly, although I express no opinion as to whether I would be entitled to consider such evidence or not had it been tendered.

I was referred to a number of cases which were discussed on behalf of both parties. They were:-

Commissioners of Inland Revenue .v. Maxse 12 T.C. 41.

Currie .v. Commissioners of Inland Revenue
Durant .v. Commissioners of Inland Revenue (12 T.C. 245).

Christopher Baker & Sons .v. Commissioners of Inland Revenue (1919) 2 K.B. 222

Carr .v. Inland Revenue Commissioners (1944) 2 All E.R. 163.

Mara .v. Hummingbird Ltd. (1982) I.L.R.M. 421.

It is well established that findings of fact by a tribunal which heard the evidence should not be set aside or disturbed unless there was no evidence to support such findings. On the other hand, Kenny, J., in the case of Mara .v. Hummingbird Ltd., adopting the view of the House of Lords in Edwards .v. Bairstow (1956) A.C. 14, made a distinction between primary facts and the inferences to be drawn from them. The effect of this distinction is that, where findings of primary facts have been made, such findings may not be disturbed, whereas the inferences drawn from such facts are mixed questions of law and fact and may be set aside if the Court is of opinion that, on the correct interpretation of the relevant statute, the tribunal which drew the inferences did not correctly determine the meaning of the statute.

In the present case, it was a question of fact for the President of the Circuit Court to decide whether the Taxpayer was carrying on a profession or providing professional services or not, but, in order to reach his decision, it was necessary for him, as it is necessary for this Court, to try, if it is possible, to decide what is the meaning of the phrases "carrying on a profession" and "the provision of professional services" as used in section 155 when taken in conjunction with the provision in the 1967 Act that the expression "profession" includes "vocation".

This is the sole issue in the case. On this question, the statutes themselves give no assistance. Nor are the cases to which I have been referred very helpful on the issue and none of them deal with the word "vocation". Indeed, most of them are concerned with the specific distinction between professions and trades or businesses rather than a consideration of a profession in any general content.

I do not accept an argument made on behalf of the Taxpayer that the inclusion of the expression "vocation" must mean something narrower than the expression "profession" and, therefore, cannot add anything to it. In construing any document, consideration should be given to each provision on the basis that it was inserted with the intention of effecting some purpose. It seems obvious to me that its

inclusion was not intended to restrict the meaning of the expression "profession" but rather to enlarge it. What it does do or what it was intended to do by way of enlargement is another matter.

Nor do I agree with the argument made on behalf of the Inspector that the use of the terms "profession" and "professional" in the Memorandum of Association of the Institute is very significant. It is not in any way conclusive and I take the view that its significance on this issue is minimal. It may be relevant to consider what the Institute thought of the status of its members but no person can become something that he is not merely by saying so. It is purely a question of fact for the Court to decide what is the status or standing of any person however he may choose to describe himself.

In Carr .v. I.R.C., Du Parc, L.J., at page 166, adopting a view expressed by Scrutton, L.J., in C.I.R. .v. Maxse, stated "it seems to me to be very dangerous to try to define the word 'profession'" and, on the same page, he said "Ultimately one has to answer this question; would the ordinary man, the ordinary reasonable man - the man, if you like to refer to an old friend on the Clapham omnibus - say now, in the time in which we live, of any particular occupation, that it is properly described as a profession?" It seems to me that this approach should also be adopted to the word "vocation". Not having

any evidence from the occupants of the Clapham omnibus, I have turned, as I think I am entitled to turn, to some modern dictionaries.

The Shorter Oxford Dictionary Ed. 3 Revised 1980, describes profession as:- The occupation which one professes to be skilled in and to follow; a. A vocation in which a professed knowledge of some department of learing is used in its application to the affairs of others, or in the practice of an art founded upon it. Applied specially to the three learned professions of divinity, law and medicine; also to the military profession. b. In a wider sense; any calling or occupation by which a person habitually earns his living. Vocation is described as one's ordinary occupation, business or profession.

In Chambers Twentieth Century Dictionary (1979), profession is described as an employment not mechanical and requiring some degree of learning; calling, habitual employment. Vocation is described as one's occupation, business or profession.

In Collins New English Dictionary (1956), profession is described as occupation or calling, especially one requiring learning. Vocation is described as calling, profession or occupation.

Having read these meanings, I am left in the position that the statute has provided a conundrum which I cannot solve. If the addition

of the word "vocation" does include all occupations, callings, businesses, habitual employments and professions, it seems unnecessary to have used the word "profession" at all. The word "profession" even as extended by the word "vocation" must have some limitation. Similarly, it must have been intended to effect some extension but, as I cannot guess what this extension was intended to be, I am not in a position to say that the inference drawn by the President of the Circuit Court was not correct.

Accordingly, this appeal will be dismissed.

Herbert R. McElwain

31.10.24.