IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA

CORAM: WOOD (MRS), CJ (PRESIDING)

DOTSE, JSC

YEBOAH, JSC — 16th MARCH, 2011

GBADEGBE, JSC

AKOTO-BAMFO (MRS.), JSC

CIVIL APPEAL — NO. J4/16/2010

MULTICHOICE GHANA LTD .... PLAINTIFF/RESPONDENT/APPELLANT

VRS

THE COMMISSIONER, INTERNAL

REVENUE SERVICE .... DEFENDANT/APPELLANT/RESPONDENT

Income tax Decree 1975, (SMCD 5) s.4, 4A, 5 and 11(1): Determination of assessable income for taxation purposes— whether plaintiff is entitled to deduct the company's expenses wholly exclusively and necessarily incurred in its television business from an interrelated source of income namely interest income— Aggregate income of a corporate body derivable from two or more sources could be subject to tax income. Interpretation of statutes— Tax statutes to be construed strictly with no implications.

JUDGMENT

WOOD, CJ:

The action which triggered this appeal is described as a "friendly action", instituted in the joint interest of the two parties for a judicial pronouncement on a tax regimen that is said to have been in practice in

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the jurisdiction for a long time without challenge from the business community, the people most affected by it. It is in this light that the appellant company described it, more or less in public interest litigation terms, as having purposely been instituted "for the development of the tax law" as it stood at the date the cause of action accrued. For the material period, the substantive law, which both parties were agreed governed the action and which the parties therefore relied on in support of their respective cases, is the Income Tax Decree 1975, (SMCD 5), as amended by the Income Tax Amendment Law 1983, PNDCL (61).

By the time the trial court came to deliver its judgment however, SMCD 5 had come to be replaced by a new law; The Internal Revenue Act, 2000 (Act 592) and its subsidiary legislation LI 1675. The passage of the new law, Act 592, was intended to plug any legal loopholes that this dispute may have unearthed. Under Act 592, investments incomes, such as the interest income earned by the appellants in this instant case, is amenable to tax independently of a company's other sources of income. Pertinently, the passage of the Act 592 during the pendency the action did not however render the action or the issues arising therefrom moot, as the law governing the action remained the SMCD 5. The litigation thus remains live, not only in relation to this instant appeal, but other actions based on the old law, SMCD 5, and which may, for one reason or the other be pending in the courts.

The facts which led to the fiscal dispute are in themselves simple. The appellants, a pay television company, broadcasts programmes to its customers, as is to be expected, not gratuitously, but for subscription fees. For the period 1994-1999, it deposited its revenue generated by way of subscription fees in an interest income yielding account, and earned profits thereon. The respondents describe the profits so earned

as colossal. Nonetheless, the appellant claimed per its financial statement for each fiscal year that, it recorded losses in respect to its business. The legitimate question is how did this come about? The appellant company arrived at this conclusion by grossing up income from the television business proper and the interest earned on the subscription fees and deducting all allowable heads of expenses wholly incurred in its main line television business to declare the net losses.

The respondent commissioner, as the tax administrator, took exception to the methodology adopted by the appellant company to reckon net losses. He was of the opinion that although the appellant was engaged in two separate, but in some way interrelated lines of business, namely, pay television and interest income using revenue from the television business, the company was nevertheless not entitled in law to aggregate the two incomes, reckon it as their assessable income, and then deduct expenses exclusively incurred from its television business from it. He took the position that the law allows the deduction of expenses only if they wholly or directly relate to the production of the particular income under consideration, and further that it was clearly wrong for the two incomes to be grossed up to determine the company's assessable income. He thus rejected the appellants' method of assessment, assessed tax from the two separate sources independently of each other and plainly disallowed the deduction of expenses of the company's core business, that is, the pay television business from the interest income.

The appellants disputed the assessment and commenced proceedings in the High Court to challenge its legality for the period 1994-99 and prayed further that these be set aside on the main ground that the disputed assessments had the effect of wrongfully taxing the interest income separately.