

INCOME TAX - Retired medical practitioner - Receipt of occupational pension -
Claim for deduction of subscription to the General Medical Council - Whether
receipt of pension payments is receipt of an emolument - Sections 19, 131, 134,
198 and 201 Income and Corporation Taxes Act 1988

THE SPECIAL COMMISSIONERS

DR RUDOLPH B SINGH Appellant

- and -

D R WILLIAMS

(HM INSPECTOR OF TAXES) Respondent

Special Commissioner: MR T H K EVERETT

Sitting in London on 1 August 2000

The Appellant appeared in person

The Respondent appeared in person

© CROWN COPYRIGHT 2000

DECISION

Dr Rudolph B Singh ("Dr Singh") appeals, pursuant to section 31 Taxes Management Act 1970 against an amendment made by HM Inspector of Taxes to Dr Singh's self-assessment pursuant to section 28A(4) Taxes Management Act 1970.

1. Until 1995 Dr Singh was employed by the Department of Health as a senior medical officer. In that year he took voluntary early retirement at age 55 and has since been in receipt of a pension from the Principal Civil Service Pension Scheme.
2. Medical practitioners who wish to continue to practise must register with the General Medical Council and pay an annual subscription of £80. Although retired and not in employment, Dr Singh wishes to continue to be a registered medical practitioner and has paid the annual subscription to the General Medical Council.
3. The point at issue between the parties in this appeal is whether or not Dr Singh is entitled to tax relief against his civil service pension for the sum of £80 annual subscription which he paid to the General Medical Council for the year 1997/98. It has been agreed between the parties that the result of my decision will be applied by the Inland Revenue to other income tax years, it being agreed between them that the facts in relation to the other years are on all fours with the year 1997/98.
4. The evidence before me consisted of the oral evidence of Dr Singh and a bundle of documents assembled by the Inland Revenue which contained a statement of agreed facts.

From the evidence before me I find the following relevant facts:

1. Dr Singh was employed by the Department of Health and contributed to the Principal Civil Service Pension Scheme. On 25 March 1995 he took voluntary early retirement at the age of 55 years. Since then he has received a civil service pension.
2. Dr Singh paid an annual subscription to the General Medical Council and that was allowed as a deduction for tax purposes against his salary for the years up to and including 1994/95.
3. Dr Singh continued to pay the annual subscription following his retirement and claimed tax relief against his civil service pension.
4. Dr Singh's form P60, his certificate of pension etc paid and tax deducted for the year ended 5 April 1998 shows that his only income during that year consisted of his civil service pension amounting to £21,649.35 before tax.
5. Dr Singh wishes to retain his status as a registered medical practitioner, in order to be available in emergencies and to take up occasional offers of employment, should they appear. Although he wishes to remain on the register of medical practitioners Dr Singh is unable to claim exemption from payment of subscriptions to the General Medical Council. Exemption is available to all retired

doctors on attaining the age of 65 and those who have retired from practice because of lasting ill-health. Dr Singh can satisfy neither of those conditions.

6. As Dr Singh is no longer in employment (and has not been in employment since the date of his retirement) there is no obligation upon him to remain on the register of medical practitioners maintained by the General Medical Council. He could if he wished apply for the voluntary removal of his name from the register. In those circumstances he would no longer be liable to pay the subscription nor would he be able to practise as a medical practitioner. On attaining the age of 65 years he could apply to have his name re-instated on the register without payment of fee.

7. Dr Singh completed a 1997/98 self-assessment tax return on 22 February 1999 in which he claimed a deduction for £80 professional subscriptions paid to the General Medical Council. The self-assessment tax calculation carried out on his behalf by the Inland Revenue shows a liability of £3,633.02.

8. The Inland Revenue opened an enquiry into Dr Singh's 1997/98 return on 7 April 1999 under the provisions of section 9A(1) Taxes Management Act 1970. The enquiry was completed on 30 June 1999 when a notice under section 28A(5) Taxes Management Act 1970 was issued to Dr Singh with the tax calculation showing a liability of £3,651.42.

9. Dr Singh was unable to agree the Inland Revenue's calculation of £3,651.42 or to amend his own return to the figure required by the Inland Revenue.

A Revenue amendment in the sum of £3,651.42 tax was therefore made to Dr Singh's return on 4 August 1999 under the provisions of section 28A(4) Taxes Management Act 1970.

10. Dr Singh appealed against the Inland Revenue's amendment to his self-assessment return on 26 August 1999 under the provisions of section 31 Taxes Management Act 1970.

The contentions of the parties

5. Dr Singh presented his own case and argued that the word "emoluments" is wide enough to include his pension. He contended that his pension was a taxable emolument, albeit a deferred one.

6. He pointed me to the definition of "emoluments" in section 131(1) Income and Corporation Taxes Act 1988 which states "... the expression "emoluments" shall include all salaries, fees, wages, perquisites and profits whatsoever." He recognised that the definition was not an exhaustive one and submitted that the term was apt to include pension payments.

7. He also referred me to the definition contained in Chambers 20th Century Dictionary, namely that an emolument is "a profit arising from salaries or fees". His pension was derived from his salary and therefore arose from it.

8. The Inspector submitted that a pension could not be an emolument and contended that the definition contained in section 131 Income and Corporation Taxes Act 1988 did not include pensions and should be construed using the *eiusdem generis* rule.

9. He further contended that pensions were dealt with by section 133 Income and Corporation Taxes Act 1988 and not by section 131.

10. In relation to section 198 Income and Corporation Taxes Act 1988, dealing with relief for necessary expenses, the Inspector pointed out that Dr Singh's decision to pay his subscription to the General Medical Council was a voluntary decision and outwith the requirement of section 198 "to expend money wholly, exclusively and necessarily in the performance of those duties" (my emphasis).

11. In relation to section 201 Income and Corporation Taxes Act 1988, the Inspector recognised that the conditions contained in that section were less stringent than those contained in section 198 but contended that the section did not assist Dr Singh. Deductions were to be permitted under the requirements of section 201 "from the emoluments of any office or employment". The Inspector submitted that Dr Singh's pension was not an emolument of any office or employment.

12. I was referred by the Inspector to the cases of *Simpson v Tate* 9 TC 314 and *Great Western Railway Company v Bater* 8 TC 231.

Conclusions

13. It is common ground in this appeal that the definition of the word "emoluments" contained in section 131(1) Income and Corporation Taxes Act 1988 is not exhaustive. At first sight it might be thought the word "profits" which appears in that subsection might encompass pension payments. However, it is plain from the scheme of Chapter 1 of Part V of the Act that pension payments are not included as being part of the chargeable emoluments dealt with by section 131. Pensions are dealt with in section 133 of the same Act which includes not only contractual pensions but also pensions paid voluntarily and those capable of being discontinued.

14. Section 198, dealing with relief for necessary expenses, is of no assistance to Dr Singh as he has decided voluntarily to continue his subscriptions to the General Medical Council. During the relevant year he had no employment and no duties and therefore his expenditure cannot be said to have been made necessarily in the performance of any duties.

15. Section 201 of the same Act, enacted originally in 1970, long after the dates of the authorities to which I was referred by the Inspector, deals with fees and subscriptions paid to professional bodies and learned societies. But once again such payments have to be deducted from the emoluments of any office or employment if defrayed out of such emoluments, and on the evidence before me Dr Singh cannot succeed under the provisions of that section.

16. The Shorter Oxford English Dictionary defines emolument as "profit or gain from station, office, or employment; dues; remuneration, salary." Similarly the Oxford English Reference Dictionary defines emolument as "a salary, fee, or profit from employment or office."

17. On the basis that in the absence of an exhaustive definition in the legislation, the ordinary natural meaning of the word must be employed I find it difficult if not impossible to accede to Dr Singh's submissions and to accept that his pension is an emolument on the basis that it is deferred remuneration. I pray in aid part

of the speech of Viscount Simon, LC in *Wales v Tilley* 25 TC 136 where he said, at page 149:

"... and neither can I accept the contention contained in the Case for the Respondent (but not, as I understand, persisted in by the Attorney-General) that the pension under the agreement of 1937 was deferred remuneration and that the acceptance by the Appellant during his service of a sum in commutation of the pension amounted to the acceptance of a present remuneration instead. Neither the pension nor the sum paid to commute it constituted, in my opinion, profit from the office. If pension was paid after ceasing to hold the office, it would have been assessable under the head of "pension" in Schedule E and the first Rule applicable to that Schedule. I agree with the unanimous view of the members of the Court of Appeal that a pension is in itself a taxable subject-matter distinct from the profit of an office ..."

18. The appeal fails and I confirm the Inland Revenue amendment to Dr Singh's self-assessment in the sum of £3,651.42.

T H K EVERETT

SPECIAL COMMISSIONER

Date Released: 3rd August 2000

SC 3055/00