



HIGH COURT OF AUSTRALIA

Manager, Public Information

30 March 2010

COMMISSIONER OF TAXATION v PHILLIP BAMFORD & ORS
PHILLIP BAMFORD & ANOR v COMMISSIONER OF TAXATION
[2010] HCA 10

The High Court today dismissed an appeal by the Commissioner of Taxation and an appeal by two taxpayers from a decision of the Full Court of the Federal Court which concerned construction of the phrases “the income of the trust estate” and “that share of the net income of the trust estate”, both found in s 97(1) of the *Income Tax Assessment Act 1936* (Cth) (the 1936 Act).

In the 2000 and 2002 tax years, Mr Phillip Bamford and Mrs Davina Bamford were directors of P&D Bamford Enterprises Pty Ltd. At the time P&D Bamford Enterprises (the Trustee) acted as trustee of the Bamford Trust. Under the terms of the trust deed it was within the Trustee’s absolute discretion to determine whether receipts were to be treated as income or capital of the trust, and to determine the distribution of the trust income to beneficiaries.

In the 2000 tax year, the net income of the Bamford Trust was recorded in its accounts as \$187,530. The Trustee determined to distribute the income thus: \$643 to each of Mr and Mrs Bamford’s two children; \$12,500 to Narconon Anzo Inc; \$106,000 to Church of Scientology Inc; \$68,000 to Mr and Mrs Bamford to be shared between them equally; and the balance to Church of Scientology Inc. In the event, there was insufficient income to distribute \$68,000 to Mr and Mrs Bamford. They each received \$33,872 and there was no remaining balance to distribute to the Church of Scientology.

In accounting for the net income of the Bamford Trust, the Trustee had claimed certain deductions totalling \$191,701 which the Commissioner of Taxation disallowed. Although Mr and Mrs Bamford did not dispute the disallowance of the deductions in the Federal Court or before the High Court, they did dispute the Commissioner’s decision to assess, pursuant to s 97(1) of the 1936 Act, an extra \$34,624 against each of them, on the basis that this amount represented a proportion of the \$191,701 of disallowed deductions equivalent to the proportion (18.062%) they had each received of the trust’s distributable income of \$187,530. Mr and Mrs Bamford argued that they were required to pay tax only on the actual amount of \$33,872 which the Trustee had distributed to them.

In the 2002 tax year, the Trustee treated a net capital gain of \$29,227 arising from the sale of certain trust property as income available for distribution. The capital gain was divided equally and distributed to Mr and Mrs Bamford. They each lodged tax returns for the 2002 tax year which reflected that distribution. The Commissioner, however, considered the capital gain should not be included in the “income of the trust estate”, with the result that there was no “income of the trust estate” to which s 97(1) of the 1936 Act could apply for that income year. Therefore, the Trustee itself was assessed under s 99A of the 1936 Act.

Mr and Mrs Bamford lodged objections to the Commissioner’s decisions concerning their 2000 tax year income, and the Trustee lodged an objection against the Commissioner’s decision concerning the 2002 tax year net capital gain. The Commissioner disallowed all objections and the Administrative Appeals Tribunal affirmed the Commissioner’s decisions in all appeals. The Full

Federal Court dismissed Mr and Mrs Bamford's appeals, and allowed the Trustee's appeal, against the decision of the Administrative Appeals Tribunal, having held that the Trustee was entitled, according to the trust deed, to treat the capital receipts as income and to distribute it to Mr and Mrs Bamford, with the result that it was assessable under s 97(1) of the 1936 Act against them. The High Court granted special leave to Mr and Mrs Bamford and to the Commissioner to appeal the Full Court's decision.

The High Court unanimously dismissed both the Bamfords' and the Commissioner's appeals.

In relation to the 2000 year of income, the High Court held that reference to "a share of the income of the trust estate" in the opening sentence of s 97(1) refers to a beneficiary's share of *distributable income*. The *assessable income* of a beneficiary who is entitled to a share of distributable income includes "*that share of the net income of the trust estate*" which is attributable to a period when a beneficiary was a resident. "[N]et income" is defined in s 95(1) of the 1936 Act to mean, essentially, taxable income, that is, income after all allowable deductions have been subtracted. "[T]hat share" refers back to the first reference to "share" and indicates that the same share, meaning proportion, is to be applied to the net income of the trust estate (that is, the notional taxable income of the trust estate) as was applied to the income of the trust estate (that is, the actual distributable income) to determine a beneficiary's assessable income. In the 2000 year of income, the net income of the Bamford Trust included the amount of \$191,701 which had been wrongly claimed as a deduction. Thus, the assessable income of Mr and Mrs Bamford included a share of \$191,701 equivalent to the share they each received of the distributable income, an amount of \$34,624.

In relation to the 2002 year of income, the High Court noted that "net income" (as part of the phrase occurring in s 97(1) – "net income of the trust estate") is defined in s 95(1) of the 1936 Act, whereas "income of the trust estate" was undefined. This suggested that the content of the latter phrase was to be found in the general law of trusts. The language of s 97(1) of the 1936 Act also invoked concepts intimately related to the general law of trusts. Thus the word "income" was to be understood as income of the trust estate as understood in trust law. The Trustee had an absolute discretion to treat the net capital gain as income of the Trust, in accordance with the terms of the trust deed. There was no basis upon which the Commissioner should treat it any differently.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*