

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
MR JUSTICE LIGHTMAN

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/11/2004

Before :

LORD JUSTICE BUXTON
LORD JUSTICE SEDLEY
and
LORD JUSTICE JACOB

Between :

ANDRE AGASSI
- and -
ROBINSON (INSPECTOR OF TAXES)

Appellant

Respondent

Mr Patrick Way (instructed by **Christopher Mills, Tenon Media**) for the **Appellant**
Mr Bruce Carr (instructed by **The Solicitor of the Inland Revenue**) for the **Respondent**

Hearing dates : 4 November 2004

Judgment

Lord Justice Buxton :

The circumstances of the appeal

1. Mr Andre Agassi appeals against a decision of Mr Justice Lightman upholding, on somewhat different grounds, a decision of the Special Commissioners that Mr Agassi can be assessed to income tax under section 556 of the Income and Corporation Taxes Act 1988 [the 1988 Act] in respect of payments connected with his activities in the United Kingdom as a sportsman.
2. Mr Agassi is an international tennis player ordinarily resident and domiciled outside the United Kingdom. During the relevant tax years he was a resident of the USA. Like many sportsmen in his position: (1) he set up a company, Agassi Enterprises Inc (“Enterprises”) controlled by himself, and through the Company he entered into endorsement contracts with two manufacturers of sports clothing and equipment, Nike Inc [Nike] and Head Sports AG [Head], neither of which is resident or has a tax presence in the UK; (2) he comes to the UK for a limited number of days a year in order to play in tournaments such as Wimbledon; and (3) Enterprises receives from those manufacturers payments which derive (at least in part) from Mr Agassis’s activities in playing in those tournaments.
3. There are two provisions of the 1988 Act that might at first sight apply to Mr Agassi’s case. First, Section 18(1)(a)(iii) of the 1988 Act provides that tax is to be charged under Schedule D in relation to “the annual profits or gains arising or accruing-

(iii) to any person, whether a Commonwealth citizen or not, although not resident in the United Kingdom ...from any trade profession or vocation exercised within the United Kingdom.”

It is agreed that section 18 imposes a charge irrespective of (1) the residence or nationality of the recipient; (2) where the payment is made; and (3) whether the payment is made by a person with any connection with the UK. It is however further agreed that that provision taken alone is inapplicable in this case because the payments are made, and thus the gains or profits accrue, to Enterprises and not, or at least not directly, to Mr Agassi. It may be noted, in connection with a point that will have to be addressed later, that the protection from charge, if that is the right expression, arises simply from the existence of Enterprises as a legal entity separate from Mr Agassi. It is not dependent on the fact that Enterprises has no tax presence in the United Kingdom.

4. Second, the 1988 Act makes special provision in Chapter III of Part XIII for the case of “Entertainers and Sportsmen” such as Mr Agassi. Within that Part, sections 555 and 556, and certain parts of the Regulations made under them, are crucial for our purposes, and in order to understand the issues it is necessary to set out the relevant legislation in full.

The statutory scheme

5. “ENTERTAINERS AND SPORTSMEN

555 Payment of tax

- (1) Where a person who is an entertainer or sportsman of a prescribed description performs an activity of a prescribed description in the United Kingdom (“a relevant activity”), this Chapter shall apply if he is not resident in the United Kingdom in the year of assessment in which the relevant activity is performed.
- (2) Where a payment is made (to whatever person) and it has a connection of a prescribed kind with the relevant activity, the person by whom it is made shall on making it deduct out of it a sum representing income tax and shall account to the Board for the sum.
- (3) Where a transfer is made (to whatever person) and it has a connection of a prescribed kind with the relevant activity, the person by whom it is made shall account to the Board for a sum representing income tax....
- (6) This section shall not apply to payments or transfers of such a kind as may be prescribed....
- (8) Where in accordance with subsections (2) to (7) above a person pays a sum to the Board, they shall treat it as having been paid on account of a liability of another person to income tax or corporation tax; and the liability and the other person shall be such as are found in accordance with prescribed rules....

556 Activity treated as a trade etc and attribution of income

- (1) Where a payment is made (to whatever person) and it has a connection of the prescribed kind with the relevant activity, the activity shall be treated for the purpose of the Tax Acts as performed in the course of a trade, profession or vocation exercised by the entertainer or sportsman within the United Kingdom, to the extent that (apart from this subsection) it would not be so treated.
- (2) Where a payment is made to a person who fulfils a prescribed description but is not the entertainer or sportsman and the payment has a connection of the prescribed kind with the relevant activity-
 - (a) the entertainer or sportsman shall be treated for the purposes of the Tax Acts as the person to whom the payment is made; and
 - (b) the payment shall be treated for those purposes as made to him in the course of a trade, profession or vocation exercised by him within the United Kingdom (whether or not he would be treated as exercising such a trade, profession or vocation apart from this paragraph)....
- (5) This section shall not apply unless the payment or transfer is one to which section 555(2) or (3) applies, and subsections (2) and (3) above shall not apply in such circumstances as may be prescribed.”

6. Under a power recognised in the 1988 Act, the Income Tax (Entertainers and Sportsmen) Regulations 1987 (“the Regulations”) in Regulation 3(2) prescribes the connection between the payment and the activity for the purposes of sections 555 and 556:

“a payment or transfer made for, [or] in respect of, or which in any way derives either directly or indirectly from the performance of the relevant activity has a connection of the prescribed kind with the relevant activity;”

and in regulation 6 prescribes the relevant activity:

“(1) Subject to this regulation, any activity performed in the United Kingdom by an entertainer (whether alone or involving others) of any of the descriptions in paragraph (2) is an activity of a prescribed description (‘relevant activity’) for the purposes of paragraph 1 of Schedule 11, that Schedule and these Regulations;

(2) a relevant activity to which paragraph (1) refers is an activity performed in the United Kingdom by an entertainer in his character as an entertainer on or in connection with a commercial occasion or event...”

7. I will have to return to what is a matter of strong controversy in this appeal, the overall objective or “purpose” of these provisions. It can however be agreed that the scheme contains the following elements. First, section 555 provides a collection mechanism, whereby persons making payments to which the section relates are obliged to deduct from those payments, and account to the Revenue, for the standard rate tax relevant to those payments. Second, section 556 makes two provisions as to liability to tax. Those provisions are, first, in s 556(1), read together with the Regulations, it is confirmed that, in effect any, activity of an entertainer within the United Kingdom, however transient, counts as the exercise of a trade in the United Kingdom under section 18(1)(a)(iii). That provision may not have been necessary: it would seem to fall within the category of avoidance of doubt. Second, and certainly of crucial importance in this case, section 556(2) extends, in the case of entertainers and sportsmen, the rule noted under section 18 that the payment has to be made to the person to be charged to tax. Section 556(2), read with the reference to “prescribed description” in Regulation 7(2)(a), provides that in cases to which this scheme extends “person” in section 18 includes any person under the control of the entertainer: in the present case, Enterprises.
8. The 1988 Act is a consolidating statute, a consideration to which I shall have to return. At this stage it is relevant to note that sections 555 and 556 are transcribed from Schedule 11 to the Finance Act 1986, where these provisions as to entertainers and sportsmen were introduced for the first time. The Regulations were made in 1987, under the vires of the 1986 Act, but by virtue of section 17(2)(b) of the Interpretation Act 1978 now have validity as if they had been made under the 1988 Act. That is the reason for the reference in Regulation 6(1), otherwise inept in the context of the 1988 Act, to paragraph 1 of Schedule 11. That also demonstrates that Chapter III of Part XIII of the 1988 Act, of which

sections 555 and 556 form part, has to be read as a discrete code, just as its predecessor provision, Schedule 11 to the 1986 Act, was a discrete code.

The issues

9. Mr Agassi's case is that he is not liable to tax on the payments made to Enterprises by Nike and Head. That is because payments made to Enterprises only count as payments made to him if section 556(2) applies to them. By section 556(5), section 556(2) is disapplied in cases where the collection obligation on the payer imposed by section 555(2) does not arise. But section 555(2) cannot apply to impose a collection obligation on Nike and Head because they have no "tax presence" in the United Kingdom, and it is a general presumption of construction that a statute, and more particularly a taxing statute, does not have extra-territorial effect.
10. For that last proposition, the "territoriality principle", Mr Agassi relies on the decision of the House of Lords in *Clark v Oceanic Contractors Inc* [1983] 2 AC 130 [*Oceanic*]. It will be necessary to analyse that decision in more detail below. In summary, it concerned the obligation to collect PAYE imposed on employers by (as it was then) section 204(1) of the Income and Corporation Taxes Act 1970. The House was unanimous that there applied to that provision the statement of James LJ in *Ex parte Blain* (1879) 12 Ch D 522 at p526 that there is a:

"broad, general, universal principle that English legislation, unless the contrary is expressly enacted or so plainly implied as to make it the duty of an English court to give effect to an English statute, is applicable only to English subjects or to foreigners who by coming into this country, whether for a long or a short time have made themselves during that time subject to English legislation...But if a foreigner remains abroad, if he has never come into this country at all, it seems to me impossible to imagine that the English legislature could ever have intended to make such a man subject to particular English legislation."

On the facts of *Oceanic* the House decided, by a majority, that the appellant had sufficient presence in the United Kingdom as not to fall under the territoriality exception. But Nike and Head have no presence at all in the United Kingdom. If it they are to be caught by section 555(2), and thus the payments made by them be caught by section 556(2), the territoriality principle must be disapplied in the case of section 555(2).

11. This issue, of the applicability of section 555(2) to companies with no tax presence in the United Kingdom, is at the heart of this appeal. We must first look at the terms in which it was addressed by Lightman J.

The judgment of Lightman J

12. Lightman J held that the territoriality principle did not apply to section 555(2), so that sub-section extended to the activities of Nike and Head despite those companies' lack of presence in the United Kingdom. It necessarily followed from that that section 556(2) applied to the payments by Nike and Head, and thus, although those payments were made to Enterprises, Mr Agassi was chargeable to tax on them.
13. The judge noted that Lord Scarman had said in *Oceanic* that the territoriality principle is simply a rule of construction to be applied unless the contrary is expressly enacted or plainly to be implied, and then continued in paragraphs 15 and 16 of his judgment:
 - [15.] The context in this case, as it appear to me, is critical. The context is: (a) legislation imposing a charge for income tax on non residents carrying on entertainment and sporting activities here and which by section 18(1)(a)(iii) imposes a charge on the entertainer or sportsman irrespective of the connection of the person making the payment with the UK; and (b) legislation which intends by sections 555 and 556 to extend the ambit of the charge created by section 18(1)(a)(iii) and prevent avoidance and evasion. Read in the context, it is clear that, even as the absence of any connection of the person making the payment with the UK is irrelevant for the purposes of section 18(1)(a)(iii), so it must be irrelevant for the purposes of the extension of its ambit by section 555(2). This conclusion is reinforced by a further consideration. Section 18(1)(a)(iii) (as I have already said and as is common ground) operates to create a charge on the person receiving the payment irrespective of the identity of the person making the payment. It is common ground that section 556 subjects non-residents to tax, if the payment is made by an English company or a foreign company with a tax presence here. The question raised is whether they are intended to be excused from liability if instead they are paid by a foreign company with no tax presence here. In my judgment it would be absurd to attribute to the legislature the intention that liability could in any and all cases be avoided by the simple expedient of channelling the payment through a foreign company with no tax presence here. If this were the case, the tax would effectively become voluntary.
 - [16.] As it seems to me, in the case of sections 555 and 556, the plain and obvious intention of the legislature was to impose an obligation on the person making the payment irrespective of his tax presence here. Reading section 555(2) in the context of the legislation as a whole and of its evident purpose, the 1988 Act manifests the intention that section 555(2) shall impose liabilities and obligations on parties with no tax presence in the UK who make the connected payments and therefore in this case on Nike and Head, and accordingly section 556(5) affords Mr Agassi no escape route from liability. The liabilities imposed on Nike and Head may prove unenforceable, but that does not mean that section 555(2) does not apply to the payments in question. Section 555(2) applies to the payments and the duty is imposed on Nike and Head to pay. That is sufficient to trigger section 556.

An issue of construction

14. The issue is therefore whether section 556(5) excluded the characterisation of Enterprises as a relevant person under section 556(2) because section 555(2) did not require Nike and Head to make deductions from payments made to Enterprises. That is a question, or rather a series of questions, of statutory construction, which I approach bearing in mind general principles of statutory construction, of which the most relevant in the present case, within the general framework of determining the meaning of the words actually used, would appear to be:
- The meaning adopted should be that which advances the overall purpose of the legislation
 - Results that would lead to absurdity or to frustration of the objective of the legislation should be avoided
 - Although the same general principles of construction apply to taxing Acts as to any other legislation, a subject is only to be taxed on clear words: per Lord Wilberforce in *Ramsay v IRC* [1982] AC 557 at p577.

However, before coming directly to these issues it is necessary to dispose of two other matters that formed part of the argument in the appeal.

The purpose of section 556(5)

15. On the appellant's case, this point was straightforward. Section 556(5) simply excluded from the reach of section 556 any case where the payer did not have a section 555(2) obligation. Therefore, if the territoriality principle applied to section 555(2), payments by companies without a UK presence made to persons falling under the description in section 556(2) did not attract tax. The Revenue advanced a different view. Section 556(5) was addressed, and it would seem on this argument was only addressed, not to the collection mechanism in respect of particular payments, but to whether particular payments were subject to tax at all. That last issue was made manifest by section 555(6), which provided that the section, including thus section 555(2), should not apply to such payments as may be prescribed; and by example by Regulation 3(3)(c), which took out of tax royalty payments on the sale of sound recordings.
16. This was an important argument, because if it were correct it would seem to conclude the case in favour of the Revenue. If section 556(5) does not relate to the collection obligation imposed by section 555(2), then for present purposes it is irrelevant whether the territoriality principle applies to that obligation or not. However, I am satisfied that the argument (which does not appear to have been put to the judge, and which only appeared in a somewhat enigmatic form in the skeleton argument in this court) is misconceived. If the purpose of the sub-section were to refer to excluded payments, rather than to collection obligations, one would expect it either to say that section 556 does not apply unless the payment was one to which section 555 (as a whole) applies; or to refer back not to section 555(2) but to section 555(6), where exclusion is directly addressed. By contrast, one would not expect section 556(5) to refer to, and to limit itself to, the one part of section 555 that does expressly address collection.

The reach of section 555(2)

17. The Revenue argued that section 555(2) applied not merely to payments to which section 555 related, but more widely to all payments to which section 18 related. This was, if not a crucial, then certainly a very important, limb of the Revenue's case. If section 555(2) indeed applied to all payments envisaged by section 18(1)(a)(iii), that enabled Mr Carr to argue that since it was common ground that section 18 extended to payments made by persons with no UK connection, so there was no difficulty in assuming, indeed logically it must be the case, that the same collection obligation was imposed on persons with no UK connection who made the payments envisaged by section 556(2).
18. This argument, at first sight powerful, did not feature in the Revenue's skeleton. Had it done so, it would have been more likely that there would have been identified in the course of the hearing the fundamental point on which it falls. The 1988 Act is a consolidating statute, which therefore does not alter the law as stated in its predecessor legislation. The section 555(2) obligation was necessarily not present in or applicable to section 18's predecessor, section 108(1) of the Income and Corporation Taxes Act 1970, and therefore it cannot apply to section 18 either. Indeed, the point goes further. The 1970 Act was itself a consolidating Act. The provision now in section 18 of the 1988 Act seems to go back as far as section 2 of 16&17 Vict. Cap 34 (1853), and was consolidated in substantially the same words as are used in section 18 in paragraph 1(a)(iii) of Schedule D to the Income Tax Act 1918. It is necessarily impossible that that provision has been amended by, or has had applied to it simply by the presence of the two provisions in the same consolidating statute, another provision that only saw the light of day in separate legislation that was passed in 1986
19. Against that background, I now address the issue in the appeal. That has to be approached by considering a series of questions.

The purpose of the scheme introduced by schedule 11 to the Finance Act 1986 (sections 555 and 556 of the 1988 Act)

20. It is agreed that schedule 11 was introduced in an attempt to counter difficulties experienced in collecting tax on their United Kingdom activities from entertainers and sportsmen who might have only a fleeting physical presence, and no tax presence at all, within this country. In that context it is easy to understand the collection obligation imposed on payers by section 555(2). However, the Revenue argued that in addition it was an important purpose, perhaps the main purpose, of the scheme to extend the charge to tax. As it was put in paragraph 29 of the Revenue's skeleton in this court:

“It is clear that the intention of Parliament was to extend the range of payments to sportsmen and entertainers which were to be treated as deriving from a trade, profession or vocation and as a consequence taxable by reference to section 18 [of the 1988 Act]”

21. The judge accepted that argument. As a result, he held that a reading of section 555(2) that limited its reach to payments by companies with a UK tax presence

infringed the principle of construing words to conform to the purpose of the legislation. That conclusion requires further consideration.

22. First, although it is quite true that section 556(2) in practice extends the charge to tax in some circumstances, the assumption that it does so uniformly and in every respect beyond the charge in section 18(1)(a)(iii) assumes what has to be proved, that section 555(2) applies to every payer. Second, if it were an overall objective to extend the charge in section 18(1)(a)(iii), there is no good reason why that objective is only sought to be achieved in the particular case of entertainers and sportsmen. All other traders, be they merchant bankers or bricklayers, remain free to channel payments to them through a wholly-owned company such as Enterprises: and thus, like Mr Agassi, not be seen as the person to whom the gain arises or accrues for the purposes of section 18. It is very difficult to understand that distinction if extension of liability to the charge was really the central reason for the introduction of the Schedule 11 scheme.
23. Parliament has had ample opportunity, over the last 150 years, to amend section 18 or its predecessors to introduce into it provisions tracking what is now in section 556(2). It has not done so. That is an unpromising background to an argument that the whole or main object of the Schedule 11 scheme introduced for entertainers and sportsmen was to extend their liability to the charge.
24. This consideration of the purpose of the Schedule 11 scheme compels me to differ from the judge when he held that the territoriality principle must necessarily be disapplied in section 555(2), because to do otherwise would be to disrupt the purpose of the legislation. It is therefore necessary to give closer consideration to that principle and to its relevance to section 555(2).

Oceanic and the territoriality principle

25. First, as Lord Scarman said, and as the judge set out, the territoriality principle is merely a rule of construction. However, there are many statements in *Oceanic*, not least those falling from Lord Scarman himself, that demonstrate that it is a principle of some considerable strength. Thus, for instance, at p145D Lord Scarman referred to the language of the old cases, most notably *Ex p Blain* (see paragraph 10 above), and continued:

“unless the contrary is expressly enacted or so plainly implied that the courts must give effect to it, United Kingdom legislation is applicable only to British subjects or to foreigners who by coming to the United Kingdom, whether for a short or a long time, have made themselves subject to British jurisdiction.”

That, I respectfully suggest, is an unchallenged exposition, in modern terms, of the reach of the principle.

26. Second, it is not correct to argue, as did the Revenue before us, that to apply the territorial principle involves writing in words, or departing from the plain wording of the statute. Rather, the principle is inherent in any Act of Parliament, and it is for those who seek to say that it does not apply to demonstrate good reason for its

exclusion. Authority for that approach could be multiplied, but it will be enough, within *Oceanic*, to refer to the guidance given by Lord Edmund-Davies at pp155G-156A, and by Lord Lowry at p158E-G, the latter of whom said:

“I remind myself that the framers and promoters of the tax legislation must be taken to know very well the high authority and long standing of cases, including tax cases, on the territorial principle. That is the background against which to judge whether the legislature has made it clear that section 204(1) reaches the company in the present case. And, once the territorial principle is admitted to be relevant, it is not a question of how or to what extent one can qualify or cut down the operation of section 204(1), but of how and to what extent one can widen the operation of section 204(1) beyond the limited sphere of influence to which the principle has prima facie confined it”

27. Third, the principle is of particular strength in relation not only to legislation imposing a charge to tax but also in relation to legislation imposing a duty to collect or account for tax. Such was the legislation actually in issue in *Oceanic*. Such legislation, in the shape of section 555(2), is in issue in our case also. In that connexion Lord Scarman, at p146E-F, pointed to the difficulty of enforcing the liability against an employer, as it was in that case, outside the United Kingdom. His Lordship regarded those considerations as very strong reasons why the legislation should not be construed as excluding the territorial principle.
28. I am unable to agree with the way in which the judge addressed this point. He recognised the difficulty of enforcement in our own case also, but held that the fact of unenforceability did not mean that the obligation in section 555(2) did not apply to Head and Nike. That, with respect, was to fail to give weight to the guidance given by Lord Scarman. As we have seen, Lord Scarman regarded enforceability as importantly relevant to the prior question, of whether the statutory obligation was intended to apply at all. The reasons for taking that factor into account when considering whether the territoriality principle applies to the legislation are as pressing in our case as they were seen to be in *Oceanic*.
29. I also venture to suggest that the judge in his comparison of section 18 with section 555(2) did not give proper weight to the collection obligation imposed by section 555(2). It will be recalled that he said, in paragraph 15 of his judgment, that

“even as the absence of any connection of the person making the payment with the UK is irrelevant for the purposes of section 18(1)(a)(iii), so in must be irrelevant for the purposes of the extension of its ambit by section 555(2).”

But section 18(1)(a)(iii) imposes no obligation on the payer; it is solely concerned with the obligation of the receiver, who will be chargeable to tax on the payment if it is indeed made to him and he is otherwise liable to United Kingdom income tax. By contrast, section 555(2) does impose an obligation on the payer. The

territoriality principle necessarily has no relevance to the payer envisaged by section 18, because section 18 imposes no obligation upon him. It does have relevance to the payer envisaged by section 555(2) because that section does impose an obligation on him.

30. Fourth, that obligation imposed on the payer by section 555(2) is not only burdensome but also penal: because paragraph 9(5) of the Regulations imposes the penalties provided by section 98 of the Taxes Management Act 1970 to the obligation to provide returns. The same was true of the obligation imposed by section 204 that was in issue in *Oceanic*. That, together with the general principle of extraterritoriality, was regarded by Lord Edmund Davies in *Oceanic*, at p155B-F, as preventing the extension of the section to persons outside the jurisdiction. He cited the statement of principle of Lord Esher MR in *Tuck v Priest* (1887) 19 QBD at p 638:

“If there is a reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction. If there are two reasonable constructions we must give the more lenient one. That is the settled rule for penal sections.”

There is no good reason why that refusal in *Oceanic* to impose penalties of a revenue nature on employers with no connexion with this jurisdiction should not obtain also in respect of such of the payers envisaged by section 555(2) as equally have no connexion with this jurisdiction.

Conclusion

31. All of the foregoing principles recognised by the House of Lords in *Oceanic* provide very strong reasons why section 555(2) should not be given extraterritorial effect. The judge considered that such an outcome would be inconsistent with the purpose of the legislation, indeed absurd, because of the contingent result that persons whose payments from foreign sources were channelled not directly but through wholly-owned companies would not be chargeable to tax on those payments. As he put it, then the tax would effectively become voluntary.
32. The judge appears to have been led to that conclusion by his acceptance of the Revenue’s argument that the principal purpose of the Schedule 11 scheme was to extend the charge for tax; and that inconsistencies would arise between the charge to tax created by the Schedule 11 scheme and charges to tax already made by section 18(1)(a)(iii). As to these concerns, however, first, as I have demonstrated in paragraphs 20-23 above, it is difficult to say that extension of the charge was the clear objective of the Schedule 11 scheme; or, at least, that it was sufficiently clearly so to drive to exclusion of the territoriality principle.
33. The second concern appears to be that application of the territoriality principle will unduly favour entertainers and sportsmen in relation to the charge to tax. It may have been suggested to the judge that a direct comparison was called for between section 18 cases and cases falling under Schedule 11 because it was thought, as the Revenue argued at least before us, that the machinery of Schedule

11 applies also to section 18. As I have demonstrated in paragraphs 17-18 above, that is not the case. But if such a comparison is made it reveals that foreign traders with UK activities who are not entertainers or sportsmen are charged to tax on payments in respect of those activities made by a person with no connection with the UK provided that the payment is made directly to them, but not otherwise. Foreign entertainers and sportsmen with UK activities are charged to tax (i) in respect of payments made directly to them by a person with no connection with the UK; and (ii) payments made to associated companies provided the payment is made by a person with a UK tax presence.

34. The scheme does, therefore, extend the liability of entertainers and sportsmen to tax, as well as imposing collection obligations on their payers. It cannot be argued that it is so unreasonable for the charge on entertainers and sportsmen not to have been extended still further that it must be assumed that the territoriality principle that otherwise stands in the way of that further extension must be disapplied.
35. It may well be that, if the matter were reviewed, Parliament would take that latter step, either in respect of entertainers and sportsmen or in respect of all traders. But that is not what Parliament has in fact done. The Schedule 11 scheme may draw the lines in a place different from that which others would choose, but to restrict the charge on payments to associated companies to payments made by parties with a UK tax base cannot, with respect to the judge, be said to be plainly inconsistent with the overall objects of the scheme nor, when compared with section 18, absurd or an invitation to evasion. Nor, I have to say with due diffidence, does it come anywhere near to being a case in which the territoriality principle does not prevail.
36. I would allow the appeal, and declare that in respect of payments made by Nike and Head to Enterprises Mr Agassi is not to be treated for the purposes of the Tax Acts as the person to whom those payments are made.

Lord Justice Sedley:

37. I agree.

Lord Justice Jacob:

38. I also agree.
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