

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

(REVENUE)

DEIRDRE JAGGERS
(Trading as Shide Trees)

- v -

VICTOR JOHN ELLIS
(HM Inspector of Taxes)

THE HON MR JUSTICE LIGHTMAN:

I. INTRODUCTION

I have before me an appeal by the taxpayer Mrs Deirdre Jagers (trading as Shide Trees) from the decision ("the Decision") of the Commissioner for the Special Purposes of the Income Tax Act (Mr THK Everett) given on 9 September 1996 that certain land ("the Site") of the taxpayer, which is a Christmas tree plantation, is not woodlands for the purposes of Section 53(4) of the Income and Corporation Taxes Act 1988 ("the Act"). Income tax assessments have been laid on the taxpayer as a "deemed farmer" within Section 53(3) of the Act under Case I of Schedule D for the years 1990/1 to 1995/6 inclusive in respect of the enterprise carried on by her at the Site. If the Site comprises woodlands, it is excepted from the scope of Section 53(3) and the assessments fall to be discharged.

II. FACTS

The Site comprises an area of approximately nine acres on the south western fringe of the town of Newport, Isle of Wight. Save for a parking area, hedges and perimeter and access tracks, it is currently all planted to young coniferous trees. The plantings took place when the trees were four years' old in 1985, 1986, 1990 and 1991. The predominant species is Norway Spruce (which is well known as the traditional Christmas tree), but there is a fairly substantial area of Noble Fir and a small area of Caucasian Fir, both of which are not generally considered as plants for silvicultural purposes. All are planted at three foot spacing, except the Caucasian Fir which are at three foot six inch spacing. Three foot intervals is the traditional spacing for the planting of Christmas trees: the norm for commercial forestry is a spacing of five to six feet. The system adopted of pruning the lead shoot and side branches of the trees on the Site produces a bushy pattern of growth with the trees presenting a bushy pyramidal appearance and is unlike that which would be adopted were the trees to be grown for timber production. No timber has been produced nor is timber production likely in the future. There are many gaps where trees have been removed with their roots, cut to ground level or have died because of disease or attacks by rabbits. Power

cables traverse the Site from north to south in two places, preventing the growth of tall trees for an area estimated between thirty and fifty feet wide below the cables for reasons of safety.

The taxpayer has since 1990 carried on at the Site the trade of growing and selling Christmas trees. Most are sold at heights ranging from four to seven feet, but larger trees are occasionally sold e.g. to schools or for open air displays. Purchasers have the option of digging their own tree complete with its roots or taking a pre-cut tree.

At the conclusion of the hearing the Commissioner viewed the whole of the Site and inspected the different species of trees planted there. He was therefore able and entitled to take into account the impressions he gained on this view. The Commissioner did so and accepted the evidence of the Inspector's expert that "the visual impression of the Site is not one of an area of woodland", but of a Christmas tree plantation.

III. LAW

Section 53 of the Act (so far as material) provides as follows:

"53.-(1) All farming and market gardening in the United Kingdom shall be treated as the carrying on of a trade or, as the case may be, of a part of a trade, and the profits and gains thereof shall be charged to tax under Case I of Schedule D accordingly.

(2) All the farming carried on by any particular person or partnership or body of persons shall be treated as one trade.

(3) Subject to sub-section (4) below, the occupation of land in the United Kingdom for any purpose other than farming or market gardening shall, if the land is managed on a commercial basis and with a view to the realisation of profits, be treated as the carrying on of a trade or, as the case may be, of a part of trade, and the profits or gains thereof shall be charged to tax under Case I of Schedule D accordingly.

(4) Subsection (3) above shall not apply in relation to the occupation of land which comprises woodlands or is being prepared for use for forestry purposes."

The terms "woodlands" and "forestry" are not statutorily defined in the Act. The terms are to be found in other legislation both fiscal and non-fiscal, but it is common ground that this other legislation affords no guide to their meaning. No authority or legal textbook has been cited which throws any light on the meaning of either word. They are not words of art, but words in common usage. In the absence of any statutory or judicial guidance, the Commissioner said that (with the help of the opinions of the experts called by each of the parties) he had come to a decision based to a large extent upon impression. The Site was used for Christmas trees and not timber production: no

tree was grown for timber production and indeed by reason of the spacing, pruning and sales of trees when four to seven feet tall the trees were not sufficiently large or substantial to provide timber. His impression (visual and otherwise) was that the Site was not an area of woodlands. The taxpayer appeals against this decision.

The approach which I must adopt on this appeal is to be found in the speech of Lord Reid in *Cozens v. Brutus* [1973] AC 854 at 861:

"The meaning of an ordinary word of the English language is not a question of law. The proper construction of a statute is a question of law. If the context shows that a word is used in an unusual sense, the court will determine in other words what that unusual sense is. But here there is in my opinion no question of the word "insulting" being used in any unusual sense. It appears to me ... to be intended to have its ordinary meaning. It is for the tribunal which decides the case to consider, not as law but as fact, whether in the whole circumstances the words do or do not as a matter of ordinary usage of the English language cover or apply to the facts which have been proved. If it is alleged that the tribunal reached a wrong decision then there can be a question of law, but only of a limited character. The question would normally be whether their decision was unreasonable in the sense that no tribunal acquainted with the ordinary use of language could reasonably reach that decision."

The word "woodlands" is an ordinary word of the English language. Accordingly, the taxpayer can only challenge the Decision if she can establish that on any reasonable use of the English language the taxpayer's Christmas tree plantation must fall within the description "woodlands".

Far from the taxpayer being able to surmount this hurdle, it seems to me that the Decision was clearly correct. For the purposes of subsection (4) "woodlands" and "land used for forestry purposes" are to be treated as synonymous. The subsection provides protection for land being prepared for forestry purposes and (either after those preparations are completed or if those preparations are unnecessary) land used for forestry i.e. as woodlands. The period of preparation must be the period until any saplings planted on the land grow into trees of the required maturity, height and size to constitute and qualify as "woodlands". The subsection evidently contemplates that it is a matter of judgment if and when this stage is reached.

I turn now to look at the language used in the subsection.

It is I think helpful to begin by considering the dictionary definition of the words "woodland", "forest" and "forestry". The Shorter Oxford English Dictionary defines "woodland" as "land covered with wood i.e. trees; a wooded region or piece of ground"; "forest" as "an extensive area of land covered with trees and undergrowth"; and "forestry" as "the science and art of forming and cultivating forests and the management of timber". I may add that woodlands and forests may be either natural or cultivated (a wood of planted trees may be called a plantation) and may be used or

intended for use for the production of timber or for the provision of an amenity.

The taxpayer's argument is that the Site is land covered with trees and accordingly answers the description of woodlands. But this assumes that land covered with any trees constitutes woodland, irrespective of the age, size, type or appearance of the trees, the way they are spaced or pruned, the age at which they are cut or removed from the land and the general appearance of the land and trees themselves. As it seems to me, the term "woodland" connotes a wood, a sizeable area of land to a significant extent covered by growing trees of some maturity, height and size. There is no mathematical or scientific formula for deciding the area of land, the density of the trees or maturity, height or size required for this purpose. As to the maturity, height and size of the trees there is something to be said for the rule of thumb that their wood should be capable of being used as timber, for woodlands are frequently used and cultivated for timber production and this is the size of trees ordinarily associated in the mind's eye with a wood. Whether the trees on a particular area of land are such as to entitle it to be regarded as woodlands is very much a matter of impression and personal judgment for the viewer. He may find it difficult (if not impossible) to give his definition of woodlands as he would of an elephant, but he will know when he has had the pleasurable experience of seeing either.

The Site with its Christmas trees did not strike the Commissioner as woodlands and would not strike me for a moment or (I think) anyone acquainted with the English language as a wood or woodlands. The trees have neither the maturity, height or size, and resemble bushes rather than timber trees. The general impression of the Site reached by the Commissioner from his view (entirely supported by the photographs shown to me) is of a nursery rather than a wood. This was a judgment he was entitled to reach. Indeed it was plainly correct. Most certainly it was not irrational of the Commissioners to reach this conclusion.

IV. CONCLUSION

Accordingly notwithstanding the persuasive and helpful submissions of Miss Nathan, I must dismiss this appeal..