

Summary of the Constitutional Court Ruling No. 48/2545

Dated 12th September B.E. 2545 (2002)*

Re : The Central Tax Court referred the objection of the plaintiff (Mr. Rachen Reungtaweeep) in Case No. 229/2542 to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) (the case of whether or not section 57 ter and section 57 quinque of the Tax Code were contrary to or inconsistent with section 29, section 30 and section 80 of the Constitution).

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1. Background and summarized facts

The applicant was the plaintiff in a lawsuit against the Revenue Department, the defendant, at the Central Tax Court. It was stated in the statement of claims that an official of the Revenue Department sent a letter of notification of personal income tax to the applicant making an additional assessment of the applicant's personal income tax for the years B.E. 2540 (1997) and B.E. 2539 (1996) to the amounts of Baht 112,663 and Baht 37,319. It was argued that the applicant should have included his wife's income, which was other income not being under section 40(1) of the Tax Code, in the calculation of his own income. The applicant submitted an appeal to the Revenue Department Appeal Commission against such assessment by the Revenue Department. The Appeal Commission dismissed the applicant's appeal by reason that the applicant was a husband under the duty to submit a personal income tax assessment form (phor ngor dor 90) which should also included the wife's assessable income that was not assessable income under section 40(1) for which a separate submission was intended. The Appeal Commission ruled that the applicant should pay taxes and additional assessments for both submissions in the amount of Baht 129,019.90. Regarding the rulings by the Revenue Department official and the Appeal Commission that the applicant should include his wife's income into his own income for the purposes of personal income tax assessment under the Tax Code, section 57 ter and section 57 quinque stated that only the wife had the right to make a separate submission of tax assessment form and payment of taxes only for assessable income under section 40(1) without regarding such income as the husband's income under section 57 ter. The omission of the husband's right to make a separate submission of tax assessment form and payment of taxes for taxable income under section 40(1) was argued as being an unjust discrimination against a person on the

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grounds of differences in sex. The applicant deemed that the provisions in section 57 ter and section 57 quinqué of the Tax Code were provisions of the law which created an inequality between persons under the law and did not accord equal protections under the law. Hence, there was an inequality in the rights of men and women contrary to or inconsistent with section 30 of the Constitution. The State's collection of taxes from husband and wife as one unit under section 57 ter and section 57 quinqué, which increased the tax burdens on marriage couples, also impeded and created an obstacle for the reinforcement and development of family integrity and the strength of communities inconsistent with the directive principles of fundamental State policies. In other words, when the applicant and his wife had to pay more taxes, the applicant and his wife had to terminate their marriage in order to pay taxes like other people. This would cause legal, social, family and juvenile problems and therefore acted as a hindrance to the reinforcement and development of family integrity. The provisions in section 57 ter and 57 quinqué of the Tax Code were therefore contrary to or inconsistent with section 80 of the Constitution. The applicant also considered both sections as being laws which restricted the rights and liberties of persons as recognized by section 29 of the Constitution. The provisions in both sections altered the essential substance of rights and liberties by unjustly discriminating against a person on the grounds differences in personal status and sex. The provisions also created an obstacle to the integrity of families. Such provisions were therefore inconsistent with section 29 of the Constitution.

The Central Tax Court considered the application and held that the case was one of an objection that section 57 ter and section 57 quinqué of the Tax Code were contrary to or inconsistent with the Constitution. A request was therefore made to the Ministry of Justice to refer the objection of the applicant to the Constitutional Court for a ruling. The Ministry of Justice sent a letter with a copy of the application to the Constitutional Court for consideration.

2. Preliminary issue

A preliminary issue to be considered was whether or not the Constitutional Court had the power to accept the application for consideration under section 264 of the Constitution.

The Constitutional Court held that this was a case where the Central Tax Court submitted an opinion through official means to the Constitutional Court for consideration pursuant to section 264 of the Constitution. The application was therefore accepted for consideration.

3. The issues considered by the Constitutional Court

The Constitutional Court held that, according to the application, the following issues had to be considered:

First issue: whether or not section 57 ter and section 57 quinque of the Tax Code were contrary to or inconsistent with section 30 of the Constitution.

Second issue: whether or not section 57 ter and section 57 quinque of the Tax Code were contrary to or inconsistent with section 29 of the Constitution.

Third issue: whether or not section 57 ter and section 57 quinque of the Tax Code were contrary to or inconsistent with section 80 of the Constitution.

On the first and second issues, after a consideration of the Constitution in relation to the part on rights and liberties as provided for in section 29 and section 30, the Constitution accorded equal protection for the rights and liberties of a person as recognized by the Constitution. However, this did not mean that the rights and liberties which this Constitution recognized could not be restricted or used to unjustly discriminate against a person in any way, because section 29 and section 30 contained provisions on the restriction of rights and liberties and unjust discrimination. The restriction of rights and liberties had to meet the criteria in section 29, i.e. the restriction could only be imposed by virtue of provisions of the law specifically enacted for the purpose determined by the Constitution and only to the extent of necessity and provided that it should not affect the essential substances of such rights and liberties. The restriction should also be of general application and should not be intended to apply to any particular case or person. As for discriminations, only those discriminations which were unjust were prohibited by section 30 of the Constitution.

In relation to section 57 ter of the Tax Code, it was noted that even though such provision of law affected the rights of a person in property as provided by section 48 paragraph one of the Constitution, the enactment of laws which restricted the rights of a person in property was allowed subject to the conditions in section 29, section 30 and section 48 paragraph one of the Constitution. The Tax Code was a law enacted by the National Assembly in order to generate the revenue needed for the administration of the State. A variety of taxes were collected, including personal income tax, in accordance with the provision of the Constitution in section 69 which imposed a duty on every person to pay taxes and duties in conjunction with section 48 which allowed the restriction of property rights of a person by provisions of law. Section 57 ter of the Tax Code was a law specifically enacted for the purpose of tax collection as provided for by the Constitution. A procedure was prescribed for the collection of taxes from a husband and wife whereby the assessable income of the wife was deemed as the husband's income. The husband and wife thus became one tax unit. In addition, the husband was under a duty and liable for the submission of tax assessment forms and payment of taxes to the State for such tax unit. However, if there was an outstanding balance of tax payable and the wife had been notified in advance for not less than 7 days, section 57 ter paragraph one of the Tax code provided that the wife would also be jointly liable for the payment of the remaining taxes for such tax unit. The amount of tax liability would depend on the ability to pay taxes of the husband and wife in accordance with the schedule of rates of income tax provided by the Tax Code. Section 57 ter of the Tax Code accorded different tax treatments for a husband and wife and a single person because a single

person and a married couple had different conditions and essentially different considerations in life, including different economic behaviours. Moreover, the income of husbands and wives acquired during marriage were normally considered as matrimonial property. Members of the family jointly benefit from such income. Furthermore, in the assessment of taxes for husbands and wives, the Tax Code allowed the deduction of allowances and expenses from the assessable income before reaching the net income which would ultimately be taxed at the rate prescribed in the schedule of income tax rates. The rates of income tax are varied according to the economic and social condition, the fiscal policies and the tax policies of the country. This was the responsibility of the Council of Ministers under the supervision of the National Assembly. There had been an amendment of the Tax Code to raise the amount of deductible expenses and allowances for the taxpayer in line with the conditions of the economy and society. As section 57 ter of the Tax Code was enacted for the purpose of collection of taxes by the State, which had a general and equal application to every husband and wife with assessable income, such a provision could not be viewed as an unjust discrimination against a person on the grounds of differences in origin, sex, age, physical or health conditions, personal status or economic or social standing as provided by section 30 paragraph three of the Constitution. Even though the prescription under section 57 ter of the Tax Code that the wife's taxable income should be deemed as the husband's income and that the husband was under the duty to submit a tax assessment form for personal income tax on behalf of the wife had some impact on the rights and liberties of the husband, such a prescription was only made to the extent necessary for the purposes of tax collection by the State. The provision did not affect the essential substance of the rights and liberties of a person or of a family or in a property as provided by section 29 of the Constitution. Therefore, section 57 ter of the Tax Code was neither contrary to nor inconsistent with section 29 and section 30 of the Constitution.

In relation to section 57 quinque, such provision was an exception to section 57 ter and was not a mandatory provision. A right was given to the wife to separately pay taxes from the husband only on those incomes which had been earned by the wife. Such a right benefited both the husband and wife and did not confer benefits on either one of the parties. Moreover, the law was generally applicable to every husband and wife with assessable income. Therefore, the law did not unjustly discriminate against a person on the grounds of differences in sex or personal status. Furthermore, such provision was a specific provision of law for the purpose of tax collection by the State under section 69 of the Constitution, enacted only to the extent of necessity and did not affect the essential substances of the rights and liberties of the husband or wife for the reasons already mentioned. Hence, section 57 quinque of the Tax Code was neither contrary to nor inconsistent with section 29 and section 30 of the Constitution.

On the third issue, after a consideration of section 80 of the Constitution, it was noted that such provision was contained in the chapter on directive principles of fundamental State policies. The provision was included to provide guidance for the enactment of laws and determination of policies for the administration of the State under the supervision of the

National Assembly. As for section 57 ter and section 57 quinque of the Tax Code, such provisions were enacted because of the necessity in collecting taxes as revenues of the State for use in the administration of the country. Section 57 ter of the Tax Code provided for the inclusion of the wife's assessable income into the husband's income if the husband and wife lived together for the entire duration of the preceding tax year because the husband and wife formed one family which was deemed as a social and economic unit. Moreover, the incomes of husband and wife acquired during marriage were normally deemed as matrimonial property. Members of the family jointly benefited from such income. When the incomes of the husband and wife bore a tax liability, and in the interest of tax collection by the State, section 57 ter of the Tax Code prescribed a procedure for tax collection from such tax unit by imposing a duty on the husband to submit an assessment and pay taxes. An option was offered to the wife who could separately submit and pay taxes from the husband for incomes under section 40(1), being incomes from hire of labour. This included salaries, wages, stipends, bonuses, allowances, emoluments, pensions, house rents, etc. As for the schedule of income tax rates which provided for progressive tax rates, the Tax Code imposed taxes according to the abilities of a person to pay tax and was applicable to both singles and married couples alike. It could not therefore be considered an unjust discrimination for the reasons stated earlier. For the reasons already mentioned, section 57 ter and section 57 quinque of the Tax Code did not obstruct the promotion of equality in men and women or obstruct the reinforcement and development of family integrity and the strength of communities. Therefore, section 57 ter and 57 quinque of the Tax Code were neither contrary to nor inconsistent with section 80 of the Constitution.

4. Ruling of the Constitutional Court

By virtue of the reasons above, the Constitutional Court held that section 57 ter and section 57 quinque of the Tax Code were neither contrary to nor inconsistent with section 29, section 30 and section 80 of the Constitution.
