ERIC MOODY ..... APPELLANT;

AND

THE MINISTER OF NATIONAL REVENUE ..... RESPONDENT.

1956
Sept. 20
1957
Jan. 24

Revenue—Income tax—Arbitrary assessment—Personal and living expenses —Cheques on hand at beginning of period deemed income in year received—Depreciation in value of machinery not explanation of increased wealth—Bonds purchased before period considered as assets on hand when period commenced—Appeal allowed in part—The Income Tax Act, R.S.C. 1952, s. 46(6).

Appellant, a bachelor farmer, was assessed for income tax on the basis of the increase in his wealth attributable to income over the period from 1948 to 1951 inclusive.

Appellant contended that the amount fixed by the Minister for his living expenses for the four year period was too high and that certain cheques received in payment for services rendered and which he had on hand but had not cashed at the beginning of the period should be considered as assets on hand at the beginning of the period. Appellant also contended that the increase of wealth over the period was accounted for by depreciation on machinery and also that $1,000 of the increase resulted from the sale of bonds of that amount acquired before 1948 and sold during the period.

Held: That the appellant's contention in respect of the cost of living failed as the appellant had not discharged the onus of proving that the Minister's figures were wrong.

2. That the depreciation in the value of machinery allowed to the appellant as a charge against his income did not account for any of the increase in his wealth during the period.

3. That the cheques on hand at the beginning of the period were income in the year they were received by the appellant, not in the year in which he cashed them.

4. That on the evidence the appellant had discharged the onus of satisfying the Court that he had the bonds in question at the beginning of the period and that the proceeds of sale of them during the period should not be considered as income in fixing the increase of appellant's wealth attributable to income over the period.

APPEAL under The Income Tax Act.

The appeal was heard before the Honourable Mr. Justice Thurlow at Calgary.

S. H. Nelson for appellant.

M. E. Moscovich, Q.C. and *A. L. DeWolf* for respondent.

THURLOW J.:—This is an appeal from the judgment of the Income Tax Appeal Board dated October 15, 1955, dismissing the appellant's appeals from his income tax assessments for the years 1948, 1949, 1950 and 1951. The issue

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in the appeal is the amount of the appellant's income for the years in question, the appellant asserting on his part that tax has been assessed on a net income far in excess of his actual income for each of the years in question, and the respondent, on the other hand, denying this assertion and invoking the provisions of s. 47 of the Income War Tax Act, R.S.C. 1927, c. 97, and s. 42, s-s. 5 of The Income Tax Act, c. 52 of the Statutes of Canada 1948, now cited as The 1948 Income Tax Act, in support of the assessments made by him.

The appellant is a bachelor and resides at Cardston, Alberta, where he operates a farm owned by another party. He filed income tax returns for the years in question. His income, as disclosed in the returns, is reported on the basis of cash received less cash expended and is derived almost entirely from the sale of wheat and livestock produced on the farm and from interest on bank deposits. In these returns he reported as follows:

For 1948, a net income of $1,098.42;
For 1949, a loss of $51.79;
For 1950, a net income of $1,150.71;
For 1951, a loss of $1,572.74.

Thus calculated, his income for the whole four-year period would total $624.60.

The Minister was not satisfied with the information in these returns.

On August 14, 1952, in response to what the appellant refers to as "a demand from Calgary to send in a net worth", the appellant sent to the Director of Income Tax at Calgary a statement purporting to show the appellant's assets at December 31, 1947 and at December 31, 1951.

This statement shows that on December 31, 1947 the appellant had bank deposits totalling $29,966.73, an outstanding loan due him of $2,000, certain cheques referred to as "cheques held *re* Thompson settlement" amounting to $1,644.91, an account receivable *re* Thompson settlement of $300, and machinery at a depreciated value of $1,448.35. The total of these items is $35,359.99.

The same statement also shows that on December 31, 1951 the appellant had bank deposits totalling $38,246.40

and machinery at a depreciated value of $6,920.21. The total of these items is $45,166.61, thus indicating an increase in the appellant's assets over the period amounting to $9,806.62. The loan, cheques and account receivable had, in the meantime, been paid and the appellant had acquired and paid for additional machinery at a cost to him of $8,713.25, less $175 received for a 1930 Ford car which he traded in on the purchase of a truck. The statement also shows that in the meantime he had received $330 in connection with a road allowance. The nature of this receipt is not in evidence, but it and the $175 allowed for the Ford car have been treated as capital receipts and not as income. After deducting the total of these capital items, that is to say $505, from the increase of $9,806.62 above mentioned, the statement showed a figure of $9,301.72 attributable to income. To this was added $1,600 for cost of the appellant's living for the four years to make a total of $10,901.72. While neither the statement nor the letter which accompanied it expressly states what the resulting figure represents, I think it is clearly intended to indicate the appellant's total income for the four-year period.

The evidence does not disclose just what occurred next, but it is in evidence that on or about March 18, 1953 a re-assessment of the appellant's income for the years in question was made. The appellant then employed another accountant, who prepared another statement also purporting to show the appellant's assets at December 31, 1947 and at December 31, 1951. This the appellant forwarded to the Director of Income Tax at Calgary on April 11, 1953, with a letter prepared by the accountant but signed by the appellant himself, in which he expresses disagreement with the figures in what is referred to as "the net worth statement set out on VZA 70977." The latter document is not in evidence. The letter goes on to say that the appellant has checked his records and has had the enclosed net worth statement prepared from them. With the letter and statement the appellant also enclosed a payment of $1,000, stated in the letter to be "on account of the additional tax which may be determined by the adjusted re-assessments from your office." The statement indicated an increase in the appellant's net worth over the four-year period, amounting to $605 for capital gains and $6,930.38 on

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account of income. To this figure, as well, was added $1,600 for personal living expenses and $518.14 for income tax paid, to reach a total figure of $9,048.52. Again there is no express statement as to what the figure represents, but obviously it is intended to represent the appellant's total income for the four-year period. The difference in result between the income shown in this statement and that submitted on August 14, 1952 is largely accounted for by the fact that, in the later statement, the appellant deducted $1,699.44 for debts allegedly owed by him at the end of the period. No debts were shown as owing at the beginning of the period on either statement.

Subsequently, on September 10, 1954, the Minister made the re-assessments which are in dispute in this appeal. In making them, the Minister started with the amount of $9,048.52 shown in the appellant's statement of April 11, 1953 as attributable to income, but to this figure he made a number of adjustments, the effect of which was to increase the amount to $14,733.65. Two of these adjustments are disputed, and the appellant's contentions in respect of them are dealt with later in this judgment. The remainder were not questioned, and on the evidence before me I do not think any of them can be successfully challenged. The disputed items are, first, an increase from $1,600 to $2,826.34 made by the Minister in the estimate of the cost of appellant's living for the four years which increased the appellant's income, as assessed, by $1,226.34, and, second, the disallowance of the amount of the Thompson cheques, above mentioned, as assets at the beginning of the period, which disallowance had the effect of further increasing the appellant's income, as assessed, by $1,644.91. In making the re-assessment, the Minister apportioned the $14,733.65 over the four years as follows:

1948	$4,125.42
1949	$2,210.05
1950	$5,156.78
1951	$3,241.40

and assessed the appellant accordingly.

Notices of objection from the appellant followed, and on December 20, 1954 the Minister confirmed the assessment for the year 1948 as having been made in accordance with

the provisions of the Income War Tax Act and, "in particular, on the ground that section 47 of the Act provides that the Minister shall not be bound by any return or information supplied by or on behalf of a taxpayer and, notwithstanding such return or information, the Minister may determine the amount of tax to be paid by any person; that in the absence of proper proof and accounting records and upon investigation and in view of all the facts the Minister has under the said section 47 determined the amount of tax to be paid by the taxpayer for the year 1948".

On the same day the Minister also confirmed the assessments for the years 1949, 1950, and 1951 as having been made in accordance with the provisions of The 1948 Income Tax Act and, in so doing, invoked and exercised on similar grounds the provisions of s-s. 5 of s. 42 of that Act in respect of the appellant's income for the years 1949, 1950, and 1951.

The appellant appealed to the Income Tax Appeal Board but did not appear when his case was called, and his appeal was dismissed for want of prosecution. He thereupon appealed to this Court.

S. 47 of the Income War Tax Act, under which the Minister proceeded in respect of the appellant's income for the year 1948, is as follows:

> 47. The Minister shall not be bound by any return or information supplied by or on behalf of a taxpayer, and notwithstanding such return or information, or if no return has been made, the Minister may determine the amount of the tax to be paid by any person.

The effect of this section is set out as follows in *Dezura v. Minister of National Revenue* (1) at p. 15:

> The result is that when the Minister, acting under section 47, has determined the amount of the tax to be paid by any person, the amount so determined is subject to review by the Court under its appellate jurisdiction. If on the hearing of the appeal the Court finds that the amount determined by the Minister is incorrect in fact the appeal must be allowed to the extent of the error. But if the Court is not satisfied on the evidence that there has been error in the amount then the appeal must be dismissed, in which case the assessment stands as the fixation of the amount of the taxpayer's liability. The onus of proof of error in the amount of the determination rests on the appellant.
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> This view of the nature of the Minister's power under section 47 is, I think, a reasonable one. It is consistent with the other provisions of the Act and complete and equitable administration of it. The object of an assessment is the ascertainment of the amount of the taxpayer's taxable income and the fixation of his liability in accordance with the provisions

(1) [1948] Ex. C.R. 10.

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of the Act. If the taxpayer makes no return or gives incorrect information either in his return or otherwise he can have no just cause for complaint on the ground that the Minister has determined the amount of tax he ought to pay provided he has a right of appeal therefrom and is given an opportunity of showing that the amount determined by the Minister is incorrect in fact. Nor need the taxpayer who has made a true return have any fear of the Minister's power if he has a right of appeal. The interests of the revenue are thus protected with the rights of the taxpayers being fully maintained. Ordinarily, the taxpayer knows better than any one else the amount of his taxable income and should be able to prove it to the satisfaction of the Court. If he does so and it is less than the amount determined by the Minister, then such amount must be reduced in accordance with the finding of the Court. If, on the other hand, he fails to show that the amount determined by the Minister is erroneous, he cannot justly complain if the amount stands. If his failure to satisfy the Court is due to his own fault or neglect such as his failure to keep proper accounts or records with which to support his own statements, he has no one to blame but himself. A different view of the nature of the Minister's power under section 47, namely, that it is not subject to the specific provisions of the Act and that the amount of his determination is not subject to review by the Court would lead to such extraordinary results, without any need or justification for them, that they ought not to be considered as having been within the intention of Parliament.

S-s. 5 of s. 42 of The 1948 Income Tax Act, applicable to the years 1949, 1950, and 1951, is as follows:

(5) The Minister is not bound by a return or information supplied by or on behalf of a taxpayer and, in making an assessment, may, notwithstanding a return or information so supplied or if no return has been filed, assess the tax payable under this Part.

While the wording of this section differs somewhat from that in s. 47 of the Income War Tax Act, its result is, I think, the same in its application to the determination by the Minister of the appellant's income and his assessment of tax payable by the appellant for 1949, 1950, and 1951.

The only witness called at the trial of the appeal was the appellant. In his evidence, he stated that his income, as reported in his income tax returns, was correct, and he produced a large number of vouchers relating to receipts of income and disbursements in connection with the operation of the farm for each of the years in question. The latter are incomplete as to both income and expenditures and, in my view, they add nothing to the credibility of the appellant's evidence. In cross-examination, the appellant admitted that he had charged depreciation in two years on a tractor which he had never, in fact, purchased, and he also admitted that he had charged depreciation on a combine at list price, when in fact he had purchased the combine at a considerable discount from the list price. He is able to

read and write, and I formed the impression at the trial that he is an able and intelligent man and that, despite his evidence to the contrary, he understood the statements which he submitted well enough to appreciate what was in them and their purpose and effect. A perusal of his evidence since the trial has served to confirm this impression. Several times, when questioned as to particular items, he displayed a ready appreciation of the effect of the answer to the question by offering additional information favourable to his cause. Yet, he had no comprehensive or adequate explanation for the very substantial increase in his net worth despite the modest income reported in his returns.

In the light of his failure to explain this increase satisfactorily, even to the extent reported in his letter of April 11, 1953, and of his forwarding a payment of $1,000 on account with the same letter, as above mentioned, and of his admissions in respect of depreciation charged, I am not prepared to accept as credible his evidence that the income reported in his returns is correct. Indeed, I am satisfied that his returns are quite unreliable. The appellant's case for disturbing the assessments by this approach accordingly fails.

The appellant, however, also attacks the assessments by endeavoring to show that his income has been incorrectly calculated by the Minister, and in support of this attack he raises the following contentions:

1. That the increase in the estimate of the cost of appellant's living as altered by the Minister is not warranted;
2. That the Minister was wrong in disallowing the Thompson cheques as assets on hand at the beginning of the four-year period, and in treating the amount of them as income during the period;
3. That the depreciation allowed on farm machinery accounts for part of the increase in appellant's assets;
4. That he had Victory bonds at the beginning of the period which were not included in the list of his assets at the beginning of the period and that he sold them during the period and their proceeds are included in his bank deposits at the end of the period and account for part of the increase which was assessed as income.

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1. In calculating the appellant's income by reference to the increase in his assets, the Minister, as well as the appellant's accountants, added to the increase an amount which they estimated to be the amount or value of income used by the appellant for his own living. Both the appellant's accountants estimated this at $400 a year, and the appellant gave evidence that he considered that amount was correct. He is a man of frugal habits, but he produced no evidence to confirm his estimate. I think it is safe to assume that he has not exaggerated this figure. Moreover, he admitted that his is an estimate only of money expended by him and does not include any allowance for the value of produce produced on the farm and consumed by him. While estimating his own living expenses at $400 a year, he charged at the rate of $600 a year for board for his employees. The Minister estimated the appellant's cost of living at $656.67 for 1948, $698.62 for 1949, $728.87 for 1950, and $742.18 for 1951, a total of $2,826.34. The increases were explained to the appellant by reference to increases in the cost of living in general over the years. The appellant should be in the better position to estimate the cost of his own living, but I have no confidence in his estimate and on the evidence as a whole I am not satisfied that the Minister's estimate is incorrect.

2. The next item challenged is the amount of $1,644.91, referred to as Thompson cheques, which the appellant says he held at the beginning of the period and which were cashed in June, 1951. These cheques were in payment for services rendered by appellant and were income. In both financial statements the cheques are shown as having been on hand at the beginning of the period. The Minister, however, disallowed and deducted them as assets on hand at the beginning of the period, apparently on the ground that the amount was not to be treated as received or as assets on hand until the cheques were cashed and that, when they were cashed, they became income. The letter of October 8, 1954, written to the appellant by the Director of Taxation at Calgary (Ex. C), suggests that the cheques were not treated as income in the years when they were received, and this may serve to explain, if not to justify, the disallowance of the item. In the absence of some special circumstance indicating a contrary conclusion such as, for example, post-

dating or an arrangement that the cheque is not to be used for a specified time, a payment made by cheque, although conditional in some respects, is nevertheless presumably made when the cheque is delivered and, in the absence of such special circumstance, there is, in my opinion, no ground for treating such a payment other than as a payment of cash made at the time the cheque was received by the payee. The evidence discloses no reason why the cheques in question should not have been treated as income in the year or years when they were received by the appellant, and I do not think it was optional either for the appellant or the Minister to treat them as income when cashed, as opposed to when they were received, or to include them as income in any year other than the year in which they were received. Accordingly, I think the appellant's objection in respect of this item is entitled to prevail.

3. The appellant's counsel further contends that the depreciation on machinery allowed over the four-year period would result in additional money in the appellant's hands at the end of the period and thus account for a corresponding increase in the appellant's assets. This argument is untenable. If the value of a piece of machinery shown in the statement were the same at the beginning and at the end of the period, and if depreciation in the meantime had, in fact, been allowed, the argument might be correct. But here examination of the statement shows that the values of the several pieces of machinery shown at the end of the period are less by the amount of depreciation allowed than they were at the beginning of the period (or at the time of purchase in the case of items purchased during the period). Thus the depreciation allowed cannot account for any of the increase in the appellant's assets.

4. The remaining objection raised by the appellant relates to the proceeds of sale of some Victory bonds which the appellant says he purchased through a bank before the beginning of the period and which he sold in 1948, the proceeds of sale having been deposited in one of his bank accounts and thus accounting for part of the increase shown in them at the end of the period. His statement that he had these bonds and sold them is not corroborated, though I fancy there must be some record of them in existence, as he

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says he left them at the bank. Moreover, they were not reported in either financial statement as assets held at the beginning of the four-year period. The appellant explains this by saying:

> That statement is correct but there was Victory Bonds I bought between 1940 and 1945 and I cashed those in 1948 and they were in the bank. In fact, they were bought by the bank and I left them there and they kept them for me, and I clipped the coupons and interest and I added this interest to my yearly returns, but those bonds were sold in April 1948 and then the money was left right in there. There was about a little over $1,000. I don't think they should be in the net worth statement at all but I didn't know at that time.

While the appellant might have raised this point at an earlier stage and obtained an adjustment without the necessity of an appeal, in the absence of contradiction or of any serious challenge in cross-examination to this part of the appellant's evidence, I accept his statement that he had the bonds at the beginning of the period and sold them during the period, and I find that they account for $1,000 of the increase in his assets.

For the foregoing reasons, the assessments should be revised so as to reflect the deduction from the appellant's income for the four-year period of the sum of $1,644.91 in respect of the Thompson cheques and the sum of $1,000 in respect of the proceeds of sale of Victory bonds. The appeal will be allowed to this extent and the assessments referred back to the Minister for revision accordingly.

As the appellant has succeeded in respect of the Thompson cheque item which, in itself, is a substantial one and which, by itself, would have made it necessary for him to appeal, he is entitled to his costs.

Judgment accordingly.