

BETWEEN :

MINISTER OF NATIONAL REVENUE .. APPELLANT;

AND

JOHN JAMES ARMSTRONG ..... RESPONDENT.

1954  
May 27  
June 17

*Revenue—Income—The Income Tax Act, c. 42, Statutes of 1948, s. 11(1)(j)  
—Payments made “pursuant” to decree nisi—Payments made by  
“reason of a legal obligation so imposed or undertaken”—“Alimony  
or other allowance payable on a periodic basis”—Payment made in  
full satisfaction or discharge of the legal obligation imposed by decree  
is deductible from income.*

By a decree nisi the marriage solemnized between the respondent and his former wife was dissolved and respondent was ordered to pay to the wife the sum of one hundred dollars each month for the maintenance of the infant child of the marriage until she should attain the age of sixteen years or until otherwise ordered. When the child had attained an age of eleven years less four months respondent agreed to pay and his former wife agreed to accept the sum of four thousand dollars in full satisfaction of all her claims under the decree nisi. The money was paid by respondent and his former wife executed a release under seal of any further liability on the part of respondent. Respondent's claim for deduction of the four thousand dollars from income for the taxation year in which it was paid was disallowed and on appeal to the Income Tax Appeal Board that assessment was set aside. The Minister appealed to this Court.

*Held:* That the word “pursuant” as used in s. 11(1) (j) of the Income Tax Act, c. 42, Statutes of 1948, means “by reason of” a legal obligation so imposed or undertaken and the words “alimony or other allowance payable on a periodic basis” can be taken as being descriptive of the decree or separation agreement and not necessarily as requiring strict compliance with the terms of the decree or agreement to be entitled to deduct payments, and a lump sum payment may be made in full satisfaction or discharge of the legal obligation imposed by it and still be pursuant to such decree.

1954  
 }  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 v.  
 ARMSTRONG

2. That the sum of four thousand dollars was properly deducted by the respondent from his income for the taxation year concerned within the provisions of s. 11(1)(j) of the Act.

APPEAL from the Income Tax Appeal Board.

The appeal was heard before the Honourable Mr. Justice Potter at Toronto.

*D. W. Mundell, Q.C.* and *J. D. C. Boland* for appellant.

*J. W. Swackhamer* for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

POTTER J. now (June 17, 1954) delivered the following judgment:

This is an appeal by the Minister of National Revenue, hereinafter called the appellant, from a decision of the Income Tax Appeal Board dated November 20, 1952, allowing an appeal from an assessment by the appellant dated January 10, 1952, whereby the appellant added to the income of the respondent for the taxation year of 1950 the sum of \$4,000.00 which had been deducted by the respondent from his income for that year as a payment made to his former wife, Jean Isobel Armstrong, on June 30, 1950, allegedly pursuant to a decree nisi of a judge of the Supreme Court of Ontario in an action or proceeding for divorce, for the maintenance of Jane Isobel Armstrong, a child of his marriage to the said Jean Isobel Armstrong, which decree was granted the 28th day of September, 1948, and which amount the respondent claimed to be entitled to deduct under the provisions of section 11 (1) (j) of the Income Tax Act, formerly section 11 (1) (l) thereof.

The said decree nisi ordered and adjudged that the marriage solemnized between the respondent and his former wife, Jean Isobel Armstrong, at the City of Toronto in the Province of Ontario on the 25th day of February, 1933, be dissolved unless sufficient cause be shown to the Court within six months from the date thereof why the judgment should not be made absolute, and contained the following provision:—

And this Court doth further order and adjudge that the Defendant John James Armstrong, do pay to the Plaintiff the sum of One Hundred Dollars (\$100.00), each and every month for the maintenance of Jane

Isobel Armstrong the infant child of the Plaintiff and the Defendant John James Armstrong, until the said child attains the age of sixteen years, or until this court doth otherwise order, the first of such payments to become due and payable on the 1st day of October, A.D. 1948.

1954  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 v.  
 ARMSTRONG  
 Potter J.

The decree was made absolute on May 9, 1949.

Payments were made by the respondent under the decree nisi until on or before the 30th day of June, 1950, when, following negotiations between the respondent and the solicitor for his former wife, she agreed to accept a cash payment of \$4,000.00 in full satisfaction of all her claims under the said decree nisi.

The sum of \$4,000.00 was paid by the respondent, and his former wife executed under seal the following document:—

June 30, 1950.

I hereby acknowledge receipt of the sum of Four Thousand Dollars (\$4,000.00) from John James Armstrong in full settlement of all payments now due or which shall hereafter become due under the Judgment of the Honourable Mr. Justice Treleaven, dated the 21st day of September, 1948, whereby the sum of One Hundred Dollars (\$100.00) a month was required to be paid to me for the maintenance of Jane Armstrong and I hereby release the said John James Armstrong from any further liability under the said Judgment.

(Sgd.) Arlene Martin

(Sgd.) Isobel Armstrong L. S.

By his Notice of Assessment dated January 10, 1952, the appellant disallowed the payment of \$4,000.00 as "Alimony Disallowed, \$4,000.00" and endorsed on the back of the said notice were the words "Lump Sum Payments of alimony not an allowable Expense."

The respondent gave Notice of Objection on January 15, 1952, and the appellant by Notification by the Minister dated April 29, 1952, agreed to reduce the interest on the instalment payments from \$102.20 to \$97.51 but confirmed the said assessment in other respects as having been made in accordance with the provisions of the Act and in particular on the ground that the amount of \$4,000.00 paid by the taxpayer was not a payment on a periodic basis within the meaning of paragraph (j) of subsection (1) of section 11 of the Act; that interest of \$97.51 has been levied in accordance with the provisions of the Act.

On May 9, 1952, the respondent appealed to the Income Tax Appeal Board, which appeal was heard November 18, 1952, and the judgment of the Board was delivered on November 20, 1952, allowing the appeal.

1954  
 {  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 v.  
 ARMSTRONG  
 \_\_\_\_\_  
 Potter J.  
 \_\_\_\_\_

The appellant appealed to this Court.

Section 11 (1) (j) of the Income Tax Act is as follows:—

11. (1) Notwithstanding paragraphs (a), (b) and (h) of subsection (1) of section 12, the following amounts may be deducted in computing the income of a taxpayer for a taxation year:

(j) an amount paid by the taxpayer in the year pursuant to a decree, order or judgment of a competent tribunal in an action or proceeding for divorce or judicial separation or pursuant to a written separation agreement as alimony or other allowance payable on a periodic basis for the maintenance of the recipient thereof, children of the marriage, or both the recipient and children of the marriage, if he is living apart from the spouse or former spouse to whom he is required to make the payment.

Reasons for judgment in appeals numbers 84251 and 84252, both between the Minister of National Revenue, appellant, and Alfred Owen Torrance Beardmore, respondent, have recently been filed (1), and in the judgment in the first-mentioned appeal section 11 (1) (j) was set out as follows:—

Section 11 (1) (j) permits a deduction in computing the income of a taxpayer of:—

1. an amount paid by the taxpayer in the year
2. pursuant to
  - (a) a decree, order or judgment of a competent tribunal in an action or proceeding for divorce or judicial separation or
  - (b) a written separation agreement.
3. as alimony or other allowance
4. payable on a periodic basis
5. for the maintenance of
  - (a) the recipient thereof
  - (b) children of the marriage, or
  - (c) both the recipient and children of the marriage
6. if he is living apart from the spouse or former spouse to whom he is required to make the payment.

By the decree nisi of the Supreme Court of Ontario a legal obligation was imposed on the respondent to pay to his former wife the sum of \$100.00 per month for the maintenance of Jane Isobel Armstrong, the infant child of the respondent and his former wife, until the child attains the age of 16 years or until the Court should otherwise order. It was not decreed as alimony but as an allowance payable on a periodic basis.

The infant child was, as stated in the said decree, born October 12, 1939, and at the time of the granting of the said decree was within two weeks of nine years of age, and

by the said decree the respondent's former wife was awarded the sole custody and control of the said child. At the time the sum of \$4,000.00 was paid and the receipt and release executed by the respondent's former wife on June 30, 1950, the child was within about four months of her 11th birthday.

1954  
MINISTER OF  
NATIONAL  
REVENUE  
v.  
ARMSTRONG  
Potter J.

As the child will attain the age of 16 years on the 12th of October, 1955, the respondent was, at the time of payment of the sum of \$4,000.00, bound to make monthly payments of \$100.00 each under the decree nisi for a further period of five years, four and a half months, and while the sum of \$4,000.00 would be the equivalent of forty monthly payments it exceeded at the time it was paid the then-present value of that number of payments, and the uncertainty of the lives of both the respondent and the child were no doubt matters considered.

It is clear that the amount a taxpayer is entitled to deduct from his income under section 11 (1) (j) of the Act must be paid by him either (a) by reason of a legal obligation imposed upon him by a competent tribunal acting in an action or proceeding for divorce or judicial separation, or (b) by reason of a legal obligation undertaken by him upon signing a written separation agreement.

In my opinion, the word "pursuant", as used in section 11 (1) (j), means "by reason of" a legal obligation so imposed or undertaken. The payments must be made either as alimony or other allowance, payable on a periodic basis, but the section does not say that, to be entitled to deduct the payments, they must be made at the exact times and in the exact amounts specified in the decree of the competent tribunal or the written separation agreement.

The words "alimony or other allowance payable on a periodic basis" can be taken as being descriptive of the decree or separation agreement, that is, a decree awarding alimony or other allowance payable on a periodic basis or a separation agreement providing for the payment of an allowance on a periodic basis, and not necessarily as requiring strict compliance with the terms of the decree or agreement to be entitled to deduct payments, and a

1954  
MINISTER OF  
NATIONAL  
REVENUE  
v.  
ARMSTRONG  
Potter J.

lump sum payment may be made in full satisfaction or discharge of the legal obligation imposed by it and still be pursuant to such decree.

The respondent, without doubt, otherwise comes within all the other provisions of the subsection. The decree of a competent tribunal was made in an action or proceeding for divorce, providing for the payment of an allowance for the support of the infant child of the marriage on a periodic basis, and the respondent was living apart from the spouse to whom he was required to make the payments.

While the revenue may suffer to some extent in the year in which the payment of \$4,000.00 was made, yet if the respondent lives for the period during which he would otherwise be bound to make payments, he will for the years subsequent to 1950 be unable to deduct from his income the sum of \$1,200.00 each year for the maintenance of the child.

I therefore hold that the sum of \$4,000.00 was properly deducted by the respondent from his income for the taxation year 1950, within the provisions of section 11 (1) (j) of the Act.

The appeal will, therefore, be dismissed and the assessment varied by deducting from the assessed income of the respondent of \$10,628.10 for the taxation year 1950 the sum of \$4,000.00 and by reducing the tax payable accordingly, and the respondent will have his costs.

*Judgment accordingly.*

---