BETWEEN:

FEDERAL FARMS LIMITED .....APPELLANTS;

AND

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

1958
Nov. 28
1959
Jan. 14

Revenue—Income—Income Tax Act R.S.C. 1952, c. 148, ss. 3 and 4—"Income . . . includes income from all (a) businesses . . ."—Money received in nature of a voluntary gift and not a business operation—Money received from a public relief fund to alleviate loss sustained through a hurricane is not income—Appeal allowed.

Appellant carries on business as a grower, packer and shipper of vegetables. In 1954 at the harvesting season a storm and hurricane destroyed and rendered valueless large quantities of vegetables in the ground and also damaged extensively its farm and field and main ditches. A company was incorporated by certain persons for the purpose of receiving voluntary contributions and distributing the same to sufferers from the hurricane in order to alleviate the losses sustained by them. The funds available were not adequate to meet the full costs of all vegetables lost and "Unit Prices" were established for each vegetable, such being somewhat lower than the total cost of production of the vegetables. The appellant received from the corporation the sum of $40,144.08 for crop losses at the fixed unit prices and also a certain percentage of the value of containers and supplies lost. This money was spent by appellant in rehabilitating the farm, clearing up the debris, repairing equipment, in payment of accounts and for new supplies and seed purchased, and in getting the farm back into production for the following year. This sum was added to appellant's taxable income for the year 1955 and appellant appeals from such assessment for income tax.

Held: That the money received by appellant was in the nature of a voluntary gift and not in any sense a business operation and did not arise out of the taxpayer's business, and the fact that the amount

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of payment was related to and to some extent measured by the amount of loss cannot affect the nature or the quality of the payment.

2. That the amount in question is not income or a revenue receipt which must be brought into account in computing income.

APPEAL under the *Income Tax Act.*

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

W. D. Goodman for appellant.

J. D. C. Boland and *W. R. Latimer* for respondent.

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

CAMERON J. now (January 14, 1959) delivered the following judgment:

This is an appeal from a re-assessment made upon the appellant for the taxation year 1955 and dated June 27, 1957. In its return for that year the appellant showed a net loss of $20,061.04, but in the re-assessment the respondent added to the declared income *inter alia* the sum of $40,144.08 received by it on or about January 28, 1955, from the Ontario Hurricane Relief Fund (hereinafter to be referred to as The Relief Fund) under the following circumstances.

The appellant carries on business on a large farm in the Holland Marsh near Bradford, Ontario, as a grower, packer and shipper of vegetables. On or about the 15th and 16th of October, 1954, during the flood resulting from the storm known as Hurricane Hazel, the appellant's farm was flooded to a very considerable depth. The appellant was then engaged in harvesting its vegetable crops, but due to the flood very substantial quantities of the vegetables in the ground were utterly destroyed and were of no value. In addition, the farm and the field and main ditches thereon were heavily damaged by erosion.

As is well known, Hurricane Hazel and the flooding which followed caused widespread damage, not only in Holland Marsh, but elsewhere. In order to alleviate the distress and to render assistance, four well-known and

public spirited gentlemen, including the Mayor of Metropolitan Toronto, secured Letters Patent from the province of Ontario by which the Ontario Hurricane Relief Fund was incorporated for the following objects:

(*a*) To provide assistance and relief for persons in Ontario who suffered as a result of the storms and accompanying floods which occurred in Ontario on or about the fifteenth day of October, A.D. 1954, and the sixteenth day of October, A.D. 1954;

(*b*) To accept donations from any person or persons in the Province of Ontario or elsewhere and to raise money by any other means; and

(*c*) To invest and deal with the moneys of the Corporation not immediately required for the objects of the Corporation in such manner as may be determined by the board of directors;

The Letters Patent expressly stated that "The Corporation shall be carried on without the purpose of gain for its members and any profits or other accretions to the Corporation shall be used in promoting its objects".

As shown by the final report (Exhibit 2), the Relief Fund received in excess of $5,000,000 from donations, the estimated number of such donors being 250,000. Substantial amounts came from corporations, charitable foundations, churches, clubs, unions, employee groups and individuals. Its relief responsibilities to the community were defined as (1) To provide emergency assistance to hurricane flood victims; (2) To care for the dependents of some seventy-seven people who lost their lives; (3) To provide compensation for losses of household contents, clothing and other property not otherwise recoverable.

A special division was set up for the Holland Marsh area known as the Holland Marsh Division of the Ontario Hurricane Relief Fund. The flood affected some 7,000 acres in Holland Marsh and all farmers who applied for assistance from the Relief Fund received payments.

Mr. Hilliard, director of the Extension Branch of the Department of Agriculture, was the co-ordinator of all relief services and assisted in the work relating to the Holland Marsh area. He stated that in settling the claims for crop loss in that area, the Division took into account: (1) The portion of the general fund allotted to the Holland Marsh area; (2) The total production of crops; and (3) In order to arrive at the basis of payment, the cost of production for each unit produced—namely, the type of

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vegetable grown. In the result, it was found that the amount on hand for such crop losses was inadequate to meet the full costs of all vegetables lost and consequently "Unit Prices" were established for each vegetable, such being in all cases somewhat lower than the total cost of production of the vegetables.

Farmers who had suffered crop losses were required to furnish the division with declarations proving their crop losses. Exhibit 4 is that completed on behalf of the appellant. Its total claim for crop losses aggregated $76,510, but as stated in the claim this item included harvesting costs and storage which, of course, would be excluded. In the result, as shown by the Settlement Statement which accompanied the cheque, the appellant received $38,870 for crop losses at the fixed unit prices, and $1,274.08, being 70 per cent. of the value of the containers and supplies lost—a total of $40,144.08.

The evidence of Mr. Henderson, general superintendent of the appellant, shows that the money so received was spent in rehabilitating the farm, clearing up the debris, repairing equipment, in payment of accounts and for new supplies and seed purchased—and in general for getting the farm back into production for the following year. It is also established that for income tax purposes all of the expenses incurred in the seeding and cultivation of the crops destroyed were allowed as deductible operating expenses, as well as all the expenses occasioned by the flooding and in connection with which the amount in question was spent. The appellant carried no insurance for flood losses and received nothing from any other source in respect of the loss sustained.

The question to be decided is whether this sum was income within the provisions of ss. 3 and 4 of *The Income Tax Act*, R.S.C. 1952, c. 148, which were as follows:

3. The income of a taxpayer for a taxation year for the purposes of this Part is his income for the year from all sources inside or outside Canada and, without restricting the generality of the foregoing, includes income for the year from all

(*a*) businesses,

(*b*) property, and

(*c*) offices and employments.

4. Subject to the other provisions of this Part, income for a taxation year from a business or property is the profit therefrom for the year.

The appellant's reasons are summarized in Part B of the Notice of Appeal as follows:

> The Appellant claims that the said sum of $40,144.08 does not constitute income within the meaning of *The Income Tax Act*, that it was a receipt in the nature of a gift, casual gain or windfall, not derived from the operation of the Appellant's business, that it constituted compensation for damage to the Appellant's land and that the payments, having been made for a special purpose, in the public interest, that of assistance and relief to persons who suffered from the hurricane, were not of income nature.

Counsel for the Minister, on the other hand, submits that the amount received was income from the appellant's business. He takes the position that the amount received took the place of the growing crops which were the stock-in-trade of the appellant and that consequently it was a revenue receipt and one received in the course of the appellant's business.

A good many cases were cited to me by both parties. I think the position taken by the respondent may be stated by citing a passage of the judgment of the Master of the Rolls in *London Investment Co. v. Inland Revenue Commissioners*[1]. After referring to the well-known cases of *J. Gliksten & Son, Ltd. v. Green*[2] and *Newcastle Breweries Ltd. v. Inland Revenue Commissioners*[3], Lord Evershed said at p. 282:

> It seems to me that these two cases support the view which has been fundamental to the Crown's argument, that, where a trader is dealing in any kind of commodity and where for any reason part of that commodity, his stock-in-trade, disappears or is compulsorily taken or is lost, and is replaced by a sum of cash by way of price or compensation, then prima facie that sum of cash must be taken into the account of profits or gains arising to the trader from his trade.

In that case, the Court of Appeal allowed the appeal of the Crown and their decision was upheld in the House of Lords[4], where the facts are summarized in the headnote as follows:

> The taxpayers, a property dealing company who had paid the compulsory war damage contributions during the war, received value payments under the War Damage Act, 1943, in respect of some of their properties which had been damaged by enemy action. They had disposed of some of the properties but retained others as part of their stock-in-trade, and were either having them rebuilt or would have them rebuilt. Under the War Damage Act, 1943, s. 66(1), contributions made

[1] [1957] 1 All E.R. 277.
[2] [1929] A.C. 381.
[3] 12 T.C. 927.
[4] [1958] 2 All E.R. 230.

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and indemnities given under Part I of the Act were to be treated for all purposes as outgoings of a capital nature, and by s. 113, as superseded by the War Damage (Public Utility Undertakings, etc.) Act, 1949, s. 28, expenditure on making good war damage was not deductible in computing profits for income tax purposes. On the question whether the value payments should be included in the receipts of the taxpayer's trade for the purposes of their assessments to income tax under Case I of Sch. D, and to the profits tax,

Held: the value payments were part of the taxpayers' trading receipts for taxation purposes, since they were money into which their stock-in-trade had been converted.

There the main judgment was delivered by Viscount Simonds (Lord Morton, Lord Tucker and Lord Somervell concurring) and at p. 232 he said:

> My Lords, I have no doubt that the Commissioners were right in saying that the payments were *prima facie* trading receipts. It was the business of the taxpayers to dispose of their stock-in-trade and to receive a cash equivalent or other compensation in return and, for the purpose of income tax law, such cases as *J. Gliksten & Son, Ltd. v. Green* ((1929) 14 Tax Cas. 364) and *Newcastle Breweries, Ltd. v. Inland Revenue Comrs.* ((1927) 12 Tax Cas. 927) show that it is irrelevant whether the disposition is by sale, voluntary or compulsory, or by an involuntary loss attended by subsequent compensation. The taxpayers had one asset, lost it, and acquired another. I think that it is incontrovertible that the asset they acquired was acquired in the course of their business, and not the less so because the war damage scheme was universal and compulsory and applied equally to all property owners, whether or not they carried on the business of dealers in property. I do not deal at greater length with this part of the case because I am in complete agreement with the judgment of the Court of Appeal.

It is well settled that the whole of the amount received in respect of insurance policies on stock destroyed is a trade receipt and that compensation received for stock-in-trade which has been expropriated is also a trade receipt. Such cases now present no difficulty, the reported cases having decided that the compensation received was received in the course of or arising out of the trade, although the disposition of the stock was involuntary.

In the *London Investment Company* case (*supra*), it will be noted particularly that the taxpayer had made contributions under *The War Damage Act* and consequently, as a result of such contributions—which seem to have been something in the nature of insurance premiums—it was entitled to receive the value payments when loss of inventory was sustained by enemy action.

In the present case, I can find no analogy between the monies received from the Relief Fund and the monies received from insurance policies on stock-in-trade which has been destroyed by fire. Here the Relief Fund received nothing whatever from the appellant by way of contribution, insurance premiums, services, salvage or otherwise. The appellant had no legal right at any time to demand payment of any amount from the Relief Fund and clearly, at the time of its loss, had no expectation of getting anything. There was no contract of any sort between the donor and the donee, and the trustees of the Relief Fund, had they so desired, need not have paid the appellant anything. I can find nothing in the circumstances outlined which would indicate that the giving and receiving of the amount was in any sense a business operation or arose out of the taxpayer's business.

In truth, the monies received were in the nature of a voluntary personal gift and nothing more. Counsel for the respondent stressed the fact that the amount of the payment was related to and to some extent measured by the amount of the loss. That fact alone, however, cannot affect the nature or quality of the payment. In *Glenboig Union Fireclay Co. Ltd. v. Commissioners of Inland Revenue*[1]—a decision of the House of Lords—it was stated:

> It is unsound to consider the fact that the measure, adopted for the purpose of seeing what the total amount should be, was based on considering what are the profits that would have been earned. That, no doubt, is a perfectly exact and accurate way of determining the compensation, for it is now well settled that the compensation payable in such circumstances is the full value of the minerals to be left unworked, less the cost of working, and that is, of course, the profit that would be obtained were they in fact worked. But there is no relation between the measure that is used for the purpose of calculating a particular result, and the quality of the figure that is arrived at by means of the application of that test.

There are, of course, many cases in which a voluntary payment has been found to be an income receipt—(*Goldman v. M. N. R.*[2]; *Ryall v. Hoare*[3]; *Cowan v. Seymour*[4]; *Australia (Commonwealth) Commissioner of Inland Revenue v. Squatting Investment Co. Ltd.*[5]. In such cases, it was held that the payments, while voluntary, were for

[1] 12 T.C. 462 at 463.
[2] [1953] C.T.C. 95.
[3] 8 T.C. 521.
[4] [1920] 1 K.B. 500.
[5] [1954] 1 All E.R. 349 (P.C.)

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services rendered or arose out of or because of employment, or in respect of trading transactions. Nothing of that sort is to be found here, the payment having been an entirely gratuitous one.

The gift here in question, it seems to me, is of an entirely personal nature, wholly unrelated to the business activities of the appellant. The fact that the recipient is incorporated and that the gift was a large one does not affect the true nature of the payment, which, in my view, is precisely of the same kind as if the amount had been received by a neighbour of the appellant who had suffered flood damage but who was an individual and received less than did the appellant.

There are very few reported cases in which consideration has been given to the nature of a spontaneous gift received from the members of the public, except those in which the gift may have been thought to be related to services rendered by the respondent. Counsel for the Minister adopted the opinion of Mr. Monet, the late and much respected chairman of the Income Tax Appeal Board, in *Gagnon v. M. N. R.*[1]. There the facts were much the same as in the instant case except that there the taxpayer, a druggist whose stock-in-trade had been destroyed by a fire, received a substantial amount of money which had been raised by public subscription and which was paid to him by a relief committee. There it was held that as the amount received was analogous to monies received from a fire insurance company, such receipt "must be put in the place of the goods". For the reasons which I have stated, I am unable to agree with that view of the matter since I can find no analogy between payments received *ex contractu* and arising in the course of a business, and the voluntary gift here in question.

The nature of spontaneous gifts from the public was referred to in *Seymour v. Reed*[2]. In that case, the appellant was a professional cricketer and the committee of the club which employed him, in the exercise of their discretion, granted him a benefit match. The proceeds of the match, together with certain public subscriptions, were invested by the trustees and the income was paid to the taxpayer

[1] 8 Tax A.B.C. 417. [2] [1927] A.C. 554.

in accordance with the rules of the club. Later, the investments were realized and the proceeds were paid to the taxpayer who, with the consent of the trustees, applied them in purchasing a farm.

At the trial, Rowlatt J. applied the test—"Is it in the nature of a personal gift, or is it remuneration?"—and held that the proceeds were not taxable. The Court of Appeal reversed that judgment which, however, was restored by the House of Lords. In approving the test mentioned, Viscount Cave L. C. said at p. 559:

> A benefit is not usually given early in a cricketer's career, but rather towards its close, and in order to provide an endowment for him on retirement . . . Its purpose is not to encourage the cricketer to further exertions, but to express the gratitude of his employers and of the cricket-loving public for what he has already done and their appreciation of his personal qualities. It is usually associated, as in this case, with a public subscription; and, *just as those subscriptions, which are the spontaneous gift of members of the public, are plainly not income or taxable as such,* so the gate moneys taken at the benefit match, which may be regarded as the contribution of the club to the subscription list, are (I think) in the same category. If the benefit had taken place after Seymour's retirement, no one would have sought to tax the proceeds as income; and the circumstance that it was given before but in contemplation of retirement does not alter its quality. The whole sum—gate money and subscriptions alike—is a testimonial and not a perquisite. In the end—that is to say, when all the facts have been considered—it is not remuneration for services, but a personal gift.

Finally, it is submitted on behalf of the respondent that this gift is similar to government subsidies granted for the purpose of assisting in the conduct of the respondent's operation (See *Higgs v. Wrightson*[1] in which a grant or subsidy was made to cover part of the cost of ploughing up land in wartime). It seems to me, however that there is little if any similarity between governmental subsidies and the gift here made. In the former, subsidies are normally paid because it is considered in the public interest that assistance should be rendered to the qualified recipients who in turn would render some service of benefit to the public, such as ploughing up land, or the operation of a drydock. The grant of the subsidy is closely related to the business operation of the recipient who in turn provides a benefit, either for the government or the public at large. Here, no such considerations apply.

[1] [1944] 1 All E.R. 488.

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In this case, as I have suggested above, the payment was in no proper sense "compensation" or "income"; it was unlikely to ever occur again and did not result directly or indirectly from any business operation. It came about because of the losses suffered by the appellant in common with all others who had sustained flood losses and by reason of the sympathy engendered in the public mind for the difficulties in which such owners found themselves and which brought about a generous outpouring of funds for their relief. It could scarcely be contended that any of the tens of thousands of contributors to the fund had a thought that they, by their subscriptions, were entering into any business transaction with the flood sufferers or that any part of the sums so subscribed would be gathered in as "income" by the respondent. What they undoubtedly wanted to do—and all that they wanted—was to provide immediate relief to the needy and to assist the flood victims in getting back on their feet.

For these reasons, I have come to the conclusion that the amount in question was not "income" or a revenue receipt which must be brought into account.

Accordingly, the appeal will be allowed with costs, the re-assessment of June 27, 1957 set aside, and the matter referred back to the Minister for the purpose of re-assessing the appellant in accordance with my findings.

Judgment accordingly.