Toronto 1968 Nov. 14 Dec. 5

BETWEEN:

HARRY O. WAFFLE ..... APPELLANT;

AND

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

Income tax—Office or employment—Remuneration of—Sales incentive award—Pleasure trip for company officer and his wife—Whether benefit from office—Valuation of—Income Tax Act, s. 5(1)(a).

Appellant and *L* were officers and equal shareholders of a company which held a Ford dealership in Toronto. In 1964 the company met the objective of a sales incentive program conducted by Ford for its 135 dealers, and either appellant or *L* thereupon became entitled as their company's nominee to receive the award, a Caribbean cruise for two. In 1964 *L* and his wife, who had taken the trip awarded on earlier occasions, could not go, and appellant therefore took the cruise with his wife with a view to using the opportunity to discuss an enlargement of his company's dealership with Ford officials who were on the cruise. The trip was however purely a pleasure cruise.

Held, the cost of the trip to Ford for both appellant and his wife (agreed at $1,384) was a benefit received by appellant as remuneration from his office in his company and was therefore chargeable to tax by s. 5(1)(*a*) of the *Income Tax Act*. It was immaterial that the cost of the trip was paid by Ford and not by appellant's employer. *Goldman v. M.N.R.* [1953] 1 S.C.R. 211, applied. As the award was remuneration from appellant's office it was a benefit therefrom. *Ransom v. M.N.R.* [1968] 1 Ex. C.R. 293, referred to. Having regard to the broad language of s. 5 the award was taxable notwithstanding that it was not convertible into money by appellant. *Tennant v. Smith* [1892] A.C. 150, distinguished. The only standard for measuring the value of the award was its cost to Ford.

INCOME TAX APPEAL.

J. W. Brown for appellant.

F. J. Dubrule for respondent.

CATTANACH J.:—This is an appeal from an assessment to income tax by the Minister whereby an amount of $1,384 was added to the income of the appellant for his 1964 taxation year.

The amount of $1,384 represents the cost of a vacation trip for the appellant and his wife from Toronto, Ontario to Fort Lauderdale, Florida from where they embarked on a Caribbean cruise, and return to Toronto. It was agreed between the parties that the foregoing sum represents the cost of such trip to Ford Motor Company of Canada Limited (hereinafter referred to as "Ford").

The appellant is a shareholder and the secretary-treasurer of Thorncrest Motors Limited (hereinafter referred to as "Thorncrest"), a company incorporated pursuant to the laws of the Province of Ontario which carries on the business of a dealer in Ford Motor products in the western area of the city of Toronto. Thorncrest holds a franchise to deal in certain of the automobiles manufactured by Ford, but not all of them.

The appellant and George Ledingham own an equal number of the issued common shares in Thorncrest and they have owned those shares from the inception of Thorncrest. Later preferred shares were issued to the appellant and his wife and Mr. Ledingham and his wife in equal numbers. Neither Mrs. Waffle nor Mrs. Ledingham take any active part in the business of Thorncrest other than holding preferred shares.

As part of its general efforts to promote the sale of its products it has been the custom of Ford to organize sales incentive programs.

The program, the result of which gives rise to the present appeal, was described as "The Winning Combination" emphasizing the co-operation of Ford, as manufacturers, its dealers, and the sales managers and salesmen of its dealers to their respective mutual benefit.

Each dealer who wished to participate in the program was required to complete, prior to April 10, 1964, a document described as a "Dealer Participation Agreement and Registration Form" appended to which were the rules and instructions pertaining to this particular program, and to name therein the "dealer principal" who would accept the award provided by Ford if the dealer qualified therefor.

All Ford dealers in Canada were eligible for the awards if they registered in the program.

Dealerships were divided into categories within each region as outlined by Ford for the purpose of competing for the award of a Caribbean cruise for two to 135 winning dealers.

Dealership objectives were set by Ford and those dealers who met those objectives during the period of the program qualified for the award.

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Similar conditions were set for the sales managers and salesmen nominated by the dealers who were awarded lesser awards, but I am only concerned with the "dealer principal" in this instance.

Thorncrest completed the participation agreement and nominated George Ledingham as its "dealer principal" to accept the award of a Caribbean cruise for two if Thorncrest met its set objectives.

It was never explained in the evidence to my satisfaction what constituted a "dealer principal". I gathered that since many dealers were corporations, as Thorncrest was, and which, therefore, could not take the trip in the event of its winning, that corporate dealers were obliged to name a natural person in the participation agreement to take the cruise in the event of the corporate dealer qualifying and that the natural person so named should be a predominant shareholder and officer of the corporate dealer.

In any event it was established in evidence that Mr. Ledingham and the appellant who were equal shareholders in Thorncrest and its president and secretary-treasurer respectively were the only two persons who qualified as "dealer principals" of Thorncrest.

Mr. Ledingham had been named as "dealer principal" by Thorncrest in three previous programs initiated by Ford and which were conducted on a basis similar to the present one. In each instance Thorncrest met its sales objective and in each instance Mr. Ledingham, with his wife, took the trip offered as the award.

As previously intimated, Mr. Ledingham was again named as "dealer principal" by Thorncrest in the present program. However the participation agreement provided that a substitute "dealer principal" could be named to accept the award if circumstances required a change.

Thorncrest met its sales objective set for the period of the program by Ford and the "dealer principal" was awarded a vacation cruise for two, the expenses of which were to be paid by Ford.

Mr. Ledingham, because of his wife's illness, was unable to accept the trip. The appellant suffers from a physical handicap for which reason he had always been reluctant to embark upon a trip or cruise which was conducted for a large group of persons.

However it was considered by Mr. Ledingham and the appellant that one or other of them should accept the trip because Thorncrest was negotiating with Ford to extend its franchise to include the Lincoln automobile produced by Ford. It felt that an opportunity might arise during the cruise to discuss the extension of the Thorncrest franchise with officers of Ford who were also going on the cruise.

Accordingly the appellant and his wife went on the cruise which lasted eight days aboard an Italian luxury liner, the M/S *Franca C.*, which had been chartered by Ford for this express purpose with a full program of entertainment and sight-seeing arranged. No formal business discussions or meetings were arranged. It was purely a pleasure cruise.

The officers of Ford who went on the cruise did so to ensure that Ford received all the facilities and amenities for which it had contracted with the charterer.

An officer of Ford testified that the "dealer principal" named by the dealer could accept or reject the cruise, but if the cruise were rejected neither he nor the dealer would receive the cash equivalent of the cost thereof.

In assessing the appellant as he did, the Minister relied on the following assumptions set out in the reply to the notice of appeal as follows:

(*a*) In the taxation year 1964 the appellant received an expense paid vacation trip to the Caribbean for himself and his wife sponsored by the Ford Motor Company of Canada Limited;

(*b*) The said vacation trip was received and enjoyed by the appellant and his wife in respect of, in the course of, or by virtue of his office or employment in Thorncrest Motors Limited;

(*c*) In the alternative, the said vacation trip was received and enjoyed by the appellant and his wife by virtue of a benefit or advantage conferred on the appellant qua shareholder by Thorncrest Motors Limited, a corporation of which he was a shareholder;

(*d*) The appellant thereby received or enjoyed a benefit in an amount not less than $1,384 00 pursuant to paragraph (*a*) of s s. (1) of section 5, or in the alternative, para. (*c*) of s s. (1) of section 8 of the Income Tax Act, R S C. 1952 Cap. 148;

(*e*) The sum of $1,384 00 is to be included in the appellant's income for the 1964 taxation year pursuant to section 3 of the Income Tax Act

By section 3 of the *Income Tax Act* the income of a taxpayer for a taxation year is his income for the year from all sources inside or outside Canada, including his income from all offices and employment.

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By virtue of section 5(1)(*a*) income for a taxation year from an office or employment is the salary, wages and other remuneration including gratuities received by the taxpayer in the year, plus the value of board, lodging and "other benefits of any kind whatsoever ... received or enjoyed by him in the year in respect of, in the course of, or by virtue of the office or employment."

Therefore the first issue to be determined is whether the appellant received or enjoyed a benefit of $1,384 in respect of, in the course of, or by virtue of his office or employment in Thorncrest.

As I understood the argument of counsel for the appellant it was to the effect no benefit was received by the appellant in respect of, in the course of, or by virtue of his office or employment in Thorncrest within the meaning of section 5(1)(*a*) because, if there was a benefit to the appellant, it was not received by him from Thorncrest but rather it was received by him directly from Ford which is not his employer.

However he was prepared to concede that if there was a benefit and that benefit came to the appellant through Thorncrest and it constituted remuneration, then the amount received by the appellant is properly taxable.

I do not accede to the proposition that it follows from the fact that the person paying the cost is not the employer of the recipient that such payment does not accrue to the recipient in respect of, in the course of, or by virtue of his office or employment.

Here there was a "Dealer Participation Agreement" entered into between Thorncrest and Ford so that Thorncrest took part in the sales incentive program. The normal business of Thorncrest was selling the products of Ford. As an extra incentive and reward for the more vigorous conduct of that business by Thorncrest, Ford was willing to provide a "dealer principal" of Thorncrest, its sales manager and certain of its salesmen, certain awards over and above the remuneration normally received by them from Thorncrest subject to a prescribed quota being met. This arrangement between Thorncrest and Ford had been entered into on many occasions and it was a legitimate and normal business arrangement which Thorncrest was capable of making. Because the awards made by Ford were such that could

only be enjoyed by natural persons Thorncrest was afforded the privilege of nominating natural persons who, to be eligible to receive the awards provided by Ford, must be officers or employees of Thorncrest.

Accordingly it follows that the cost of the awards was borne by Ford as a consequence of circumstances arising in a business context and to conclude that the recipients of the awards did not receive them in respect of, in the course of, or by virtue of their office or employment in Thorncrest, would be an unwarranted restriction of the language of section 5(1)(*a*).

If authority need be cited for the proposition that the payment to the employee need not be made by the employer, it can be found in *Goldman v. M.N.R.*[1].

Since I have concluded that this particular award by Ford accrued to the appellant by reason of his office in Thorncrest, it follows that the award was a payment by way of remuneration and it cannot be construed as being a mere gift or present (such as a testimonial) made to the appellant on personal grounds.

The circumstances of the present appeal make such conclusion clear. This award was not received by the appellant as a testimonial in his personal capacity, but came to him by reason of his office in Thorncrest and by reason of him being the substituted "dealer principal" of Thorncrest in which capacity he must be assumed to have contributed to the success of Thorncrest in meeting the quota of sales and other conditions of the incentive program to qualify for the award.

There remains the question whether the award to the appellant constituted a benefit to him and if so whether the cost of the cruise to Ford, admitted to have been in the amount of $1,384, is the true measure of the benefit to the appellant.

The word "benefit" is nowhere defined in the *Income Tax Act*. In commenting upon section 5(1)(*a*) and (*b*) Noël J. said in *Ransom v. M.N.R.*[2] at page 307, "The Canadian taxation section uses such embracing words that at first glance it appears extremely difficult to see how anything can slip through this wide and closely interlaced legis-

[1] [1953] 1 S.C.R. 211.

[2] [1968] 1 Ex. C.R. 293.

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lative net." He went on to say that section 5 is concerned solely with the taxation of income identified by its relationship to an office and it must have been received as income from that office or employment.

Because I have found that the award the appellant received was remuneration from his office or employment, it follows logically therefrom that what he received was also a benefit. The obvious intention of section 5 is to include in the taxable income of a taxpayer those economic advantages arising from his employment which render the taxpayer's office of greater value to him.

Counsel for the appellant next submitted that since the award was not convertible into money, it is not taxable and, while admitting that the sum of $1,384 was the cost of the cruise for two to Ford, he further contended that such amount was not necessarily the value of the award to the appellant and that in any event the cost of the trip attributable to the attendance of Mrs. Waffle was not a benefit to the appellant.

There is no question that if the appellant had not accepted the award and went on the cruise, accompanied by his wife, he would have received nothing. I do not consider the fact that the appellant may have been motivated to accept the trip for possible business reasons to have any bearing on the matter. The fact remains that he did go on the trip with his wife.

The doctrine that no form of remuneration is taxable unless it is something which is money or money's worth and convertible into money stems from *Tennant v. Smith*[3] decided in the House of Lords as long ago as 1892.

I think that the language employed in section 5 to the effect that the "value of board, lodging and other benefits of any kind whatsoever", is to be included in taxable income, overcomes the principle laid down in *Tennant v. Smith (supra)*. Obviously board which has been consumed and lodging which has been enjoyed cannot be converted into money by the taxpayer either subsequently or prior thereto and, in my view, the identical considerations apply to "other benefits of any kind whatsoever".

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[3] [1892] A.C. 150.

The next question is to consider whether the value of the award is the cost thereof to Ford. I fail to follow how the true measure of the value of the award can be other than the cost of the award to Ford. There is no other standard which is applicable. I can see no grounds for holding that the amount should be limited to an estimate of an amount which the appellant might have spent on the trip himself if Ford had not borne that cost. The appellant knew what was being offered to himself and his wife and he accepted the award, although he would not know the precise cost of the award to Ford.

As I understand the intention of section 5 it is simply to bring the benefits of any kind whatsoever from an office or employment into tax, that is to say, what has been spent to provide those benefits.

Because the award was a cruise for the appellant and his wife and was so accepted by the appellant, it follows that his wife's presence was a benefit to him and the value of that benefit to him, for the reasons expressed above, is the cost to Ford of his wife's expenses.

Because of the conclusion I have reached on the first issue in this appeal, that is, that the amount of $1,384 is properly included in the appellant's income by virtue of section 5(1)(*a*) of the *Income Tax Act*, it is not necessary for me to consider the alternative submission on behalf of the Minister that the sum of $1,384 should be included in the appellant's income as a benefit or advantage conferred upon him as a shareholder of Thorncrest within the meaning of section 8(1)(*c*).

The appeal is, therefore, dismissed with costs.