

GOLDEN HORSESHOE TURKEY }
FARMS LIMITED }

APPELLANT;

Toronto
1968
May 8

AND

THE MINISTER OF NATIONAL }
REVENUE }

RESPONDENT.

Income tax—Forgiveness of loan by trade supplier—Not income.

Appellant, which was in the turkey farming business in Ontario, became insolvent in 1964 because of a loss of turkeys from disease. Appellant's supplier of feed, by way of accommodation, paid appellant's debt of \$24,222 to a creditor for turkeys purchased in 1964, and then forgave appellant the amount so paid.

Held, the \$24,222 forgiven was a profit arising to appellant in 1964 in dealings between lender and borrower, and was therefore not income and hence not taxable.

APPEAL from income tax assessment for 1964.

Wolfe D. Goodman and *Arnold L. Cader* for appellant.

D. G. H. Bowman for respondent.

GIBSON J.:—The question for decision in this appeal from an assessment for income tax for the taxation year 1964 is whether or not the forgiveness of \$24,222.11 by Maple Leaf Mills Limited to the appellant in the course of the latter's 1964 taxation year should be regarded as a receipt from its trade or business during that year.

Maple Leaf Mills Limited in 1964 forgave a debt owing to it by the appellant of \$206,700.59. All of this debt, except the said \$24,222.11, was incurred by the purchases of feed from it by the appellant. The \$24,222.11 debt was incurred by way of financial accommodation provided by Maple Leaf Mills Limited to the appellant when Maple Leaf Mills Limited paid that sum to a company known as Cuddy Turkey Farms Limited, a creditor of the appellant, in respect of four invoices in 1964 representing purchase of turkey poults.

The appellant, in the taxation year 1964 and prior thereto, was in the turkey farming business at Mount Hope, Ontario. It bought its turkey poults in the main from Cuddy Turkey Farms Limited and its feed to raise them

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from Maple Leaf Mills Limited. It then raised the turkeys to maturity and sold them on the market.

In 1964 the appellant was insolvent, which condition came about mainly because of a catastrophic fatal loss of turkeys from disease. In a settlement Maple Leaf Mills Limited forgave, as stated, the total indebtedness of the appellant to it in 1964.

In filing its income tax for the taxation year 1964, the appellant treated the whole of this gain as capital and added it to its surplus account. The respondent, in assessing the appellant for its 1964 taxation year, took the position that this total sum represented a forgiveness of a debt on revenue account and accordingly included it in computing for taxation purposes the appellant's income for 1964.

This appeal however, as stated, is restricted to the treatment for income tax purposes of the forgiveness of the said debt of \$24,222.11 incurred in the manner before mentioned.

In my view, this case falls to be decided on the law applicable to abatements. The question is whether this was an abatement of a capital liability or an abatement received in the course of the appellant's normal trading operations. If it was the latter then this sum is "income" within the meaning of that term in the *Income Tax Act*, namely a profit from the appellant's business in the taxation year 1964.

To determine the substance of this transaction of abatement for income tax purposes it is necessary to categorize and find the relationships of the parties to it.

From the evidence it is beyond doubt that there are two distinct relationships in law to be considered in this matter: firstly, there is the relationship between the appellant and Cuddy Turkey Farms Limited which was that of debtor and creditor in respect of turkey inventory of the appellant in the sum of \$24,222.11; and secondly, there is the relationship between the appellant and Maple Leaf Mills Limited which was that of lender and borrower in respect of a similar sum of \$24,222.11. It is also beyond doubt that it is the latter relationship and the sum involved in it that is germane to the adjudication of this appeal.

In my view, the sum received by way of an abatement of this debt was a profit to the appellant arising out of its dealings with Maple Leaf Mills Limited, and this abatement arose in dealings when the relationship between the appellant and Maple Leaf Mills Limited was that of lender and borrower. This profit arising out of such relationship therefore, was not income within the meaning of that term in the *Income Tax Act* and is not taxable.

The appeal is allowed with costs and the matter is referred back for re-assessment not inconsistent with these Reasons.

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¹ 41 T.A.B.C. 253.