1947

June 18
August 23

BETWEEN:

RODERICK W. S. JOHNSTON ..... APPELLANT;

AND

MINISTER OF NATIONAL REVENUE ..... RESPONDENT.

Revenue—Income Tax—Income War Tax Act, R.S.C. 1927, c. 97, Rules 1 and 2 of s. 1, of par. A of First Schedule—Onus on taxpayer to show assessment incorrect—Appeal dismissed.

Held: That an assessment for income tax is valid and binding unless an appeal is taken from such assessment and the Court determines that such was made on an incorrect basis and where an appellant has failed to show that the assessment was incorrect, either in fact or law, the appeal must be dismissed.

APPEAL under the provisions of the Income War Tax Act.

The appeal was heard before the Honourable Mr. Justice O'Connor at Toronto.

C. H. A. Armstrong, K.C. for appellant.

E. C. Bogart, K.C. and *E. S. MacLatchy* for respondent.

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

O'CONNOR J. now (August 23, 1947) delivered the following judgment:

This is an appeal under the Income War Tax Act, R.S.C., 1927, chap. 97, from an assessment for the year 1944.

The wife of the appellant was a resident of Canada, and had a separate income, other than an earned income, in excess of $660 in the taxation year. The appellant had three children under 18 years of age who were wholly dependent on him for support during the taxation year.

The relevant parts of the Income War Tax Act are parts of Rules 1 and 2 of Section 1 of Paragraph (A) of the First Schedule:

Section 1. Normal Tax

Rule 1.—A normal tax equal to seven per centum of the income shall be paid by every person whose income during the taxation year exceeded $1,200 and who was during that year:

(*a*) a married person who supported his spouse and whose spouse was resident in any part of His Majesty's dominions or in a country contiguous

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to Canada, or, residing elsewhere, was a subject or citizen of a country associated or allied with Canada in the conduct of the war which commenced in September, nineteen hundred and thirty-nine, and was prevented by reason of such war, or prohibited by law, from entering or landing in Canada;

(*b*) a person with a son or daughter wholly dependent upon him for support, if the son or daughter was, during the taxation year,

(i) under eighteen years of age; or

(ii) eighteen years of age or over and dependent by reason of mental or physical infirmity; or

(iii) under twenty-one years of age and a student at a secondary school, university or other educational institution;

and resident in any part of His Majesty's dominions or in a country contiguous to Canada, or, residing elsewhere, was a subject or citizen of a country associated or allied with Canada in the conduct of the war, which commenced in September nineteen hundred and thirty-nine, and was prevented by reason of such war, or prohibited by law, from entering or landing in Canada;

(*c*) an unmarried person or a married person separated from his spouse who maintained a self-contained domestic establishment and actually supported therein a person wholly dependent upon him and connected with him by blood relationship, marriage or adoption, or;

(*d*) an unmarried minister or clergyman in charge of a diocese, parish or congregation who maintained a self-contained domestic establishment and employed therein on full-time a housekeeper or servant.

Rule 2.—If, during a taxation year, a married person described by sub-paragraph (*a*) of Rule 1 of this section and his spouse each had a separate income in excess of $660, each shall be taxed under Rule 3 of this section: Provided that a husband does not lose his right to be taxed under Rule 1 of this section by reason of his wife being employed and receiving any earned income.

Rule 3 of Section 2—Graduated Tax, provides that a taxpayer may deduct $150 from the graduated tax otherwise payable by him if he is a married person or has equivalent status, as provided by subparagraphs (*a*) to (*d*) which are similar to subparagraphs (*a*) to (*d*) of Rule 1 of Section 1. Rule 6 of Section 2 provides that if a married person described by subparagraph (*a*) of Rule 3 of that section and his spouse each had a separate income in excess of $660, neither of them shall be entitled to the deduction from the graduated tax permitted by Rule 3 of that section, provided further that the husband does not lose his right to the deduction if the income of the wife is an earned income. In any case the wife is treated as an unmarried person.

The determination of the question under Rules 1 and 2 of Section 1 also determines the application of subpara-

graphs (i) and (ii) of paragraph (*d*) of Section 7A(1) which deal with deductions from taxes allowed.

If the taxpayer is a person described in (*a*) of Rule 1 of Section 1 and described in (*a*) of Rule 3 of Section 2, that is a married person who supported his spouse, a resident of Canada, then Rule 2 of Section 1 and Rule 6 of Section 2 are applicable, and no further question arises.

The first question is whether the taxpayer is a person described in (*a*) of Rule 1, Section 1, and in (*a*) of Rule 3, Section 2, i.e., one who supports his wife.

If he is not a person described in (*a*) Rule 1, Section 1, and (*a*) Rule 3, Section 2, then the second question arises as to whether or not he is within (*b*) of Rule 1, Section 1, and within (*b*) of Rule 3, Section 2.

Instead of calling evidence, counsel agreed that no evidence would be given but agreed to the facts set out in the following admission of facts:

> For the purpose of this Matter, and without prejudice to the admission of the facts contained in paragraphs numbered 1, 2, 3, 4 and 6 of the Statement of Claim, it is further admitted that in the year 1944:
>
> (1) The Appellant and his spouse occupied the same dwelling.
>
> (2) The Appellant's income exceeds the income of his spouse.
>
> (3) The Appellant and his spouse both contributed to the maintenance of a common household in such dwelling, the operation of which was managed by the Appellant's spouse.
>
> (4) The whole income of the Appellant's spouse was expended for her personal expenses and as a contribution to the expenses of such common household.

These facts do not show the wife's income or the respective contributions made by each or the total amount contributed to the maintenance of the household.

These facts agreed upon do not, in my opinion, establish that the appellant supported his wife or that he did not do so. No finding of fact can be made so that the case cannot be dealt with on the merits.

It is merely a question of whether the onus is on the appellant or on the respondent.

Whether the taxpayer has been assessed on a correct basis or on an incorrect basis, the assessment is valid and binding unless an appeal is taken and the Court determines that the assessment has been made on an incorrect basis.

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On the appeal then the onus is on the appellant to establish from the "facts, statutory provisions and reasons which he intends to submit to the Court in support of the appeal" in the language of Section 60(2) of the Act, that the assessment is incorrect.

If such facts or statutory provisions and reasons are not submitted to the Court, the assessment cannot be found to be incorrect.

The appellant has failed to show that the assessment was incorrect, either in fact or in law, and the appeal must be dismissed with costs.

Judgment accordingly.