

BETWEEN:

Toronto
1965

CHARLES EDMUND BROWN APPELLANT;

June 14

AND

July 5

THE MINISTER OF NATIONAL
REVENUE

} RESPONDENT.

Income tax—Federal—Income Tax Act, R.S.C. 1952, c. 148, s. 11(1)(la)—Alimony and maintenance payments—Whether paid for maintenance of “recipient”—Whether payable on “periodic basis”.

As a result of an action brought before the Supreme Court of Ontario by his wife appellant was ordered to pay to his wife the sum of \$65 00 per week as interim alimony and to his wife’s father certain arrears of alimony.

The Minister disallowed the deductibility under s. 11(1)(la) of the sum of \$1,170 paid by appellant as arrears of alimony to his wife’s father in respect of rent owing by appellant’s wife to her father.

Later in the same year by a judgment nisi dissolving the marriage appellant was ordered to make weekly payments to his former wife of \$150 and upon the judgment being made absolute the sum of \$10,000.

The Minister disallowed the sum of \$10,000 as a deduction because: firstly, it was not made for the maintenance of the recipient and secondly, because it was not an allowance payable on a periodic basis.

Held, that the facts adduced in evidence before the Court were in substance the same as those which were submitted before the Tax Appeal Board and also the same arguments were advanced. No further issue or question of law was raised.

That the Court, being in agreement with the reasoning of and conclusions reached by the Tax Appeal Board which held that the arrears of \$1,170 were not paid for the maintenance of the recipient and therefore did not qualify as a deduction under section 11(1)(la) of the *Income Tax Act* and further that the sum of \$10,000 was not payable on a periodic basis for the maintenance of the recipient and therefore did not qualify under section 11(1) (l) of the Act as a deductible payment.

That the Court dismissed the appeal with costs.

APPEAL from a decision of the Tax Appeal Board.

H. G. Chappell, Q.C. for appellant.

D. G. H. Bowman and M. Barkin for respondent.

CATTANACH J.:—This is an appeal from a judgment of the Tax Appeal Board dated November 20, 1964¹ whereby an appeal from an assessment to income tax for the appellant’s 1962 taxation year was dismissed.

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As a result of an action brought before the Supreme Court of Ontario by his wife, the appellant by order of the Senior Master in Chambers, dated February 27, 1962, was ordered to pay to his wife the sum of \$65 per week as interim alimony commencing at the date of the issue of the Writ of Summons (i.e. October 26, 1961) and it was further ordered that the arrears of alimony owing from that date were to be paid to the appellant's wife's father, Wilfred Baker, in respect of rent owing by the appellant's wife to her father. These arrears, being a total of \$1,170, were paid forthwith by the appellant by a cheque for that amount payable to his wife's father in accordance with the order of the Master.

Later in the same year by a judgment *nisi* of the Supreme Court of Ontario dated June 29, 1962, dissolving the marriage, the appellant was ordered to make weekly payments to his former wife of \$150 for her support and maintenance beginning June 29, 1962 and also, upon the judgment being made absolute, the sum of \$10,000. The judgment was made absolute on October 11, 1962 and the appellant immediately paid his former wife the sum of \$10,000 in accordance with that order.

In completing his income tax return for the year 1962 the appellant claimed as a deduction from income an amount of \$16,175 being the total of the payments made by him during the 1962 taxation year pursuant to the order of the Senior Master and the judgment of the Supreme Court of Ontario.

Of the amount so claimed by the appellant, the Minister refused to allow as a deduction the sum of \$1,170 paid by him to his wife's father and the sum of \$10,000 paid by him to his former wife on the grounds that:

the amount of \$10,000 paid to Wilhelmina E. Brown pursuant to the Judgment *Nisi* of the Supreme Court of Ontario dated 29th June, 1962 claimed as a deduction from income was not an allowance payable on a periodic basis for the maintenance of the recipient thereof within the meaning of paragraph (l) of subsection (1) of section 11 of the Act; that the amount of \$1,170 paid to the father of Wilhelmina E. Brown pursuant to the Order of the Senior Master at Toronto dated 27th February, 1962 claimed as a deduction from income was not an allowance payable on a periodic basis for the maintenance of the recipient thereof or the maintenance of the said Wilhelmina E. Brown and further that at the time the payment was made the taxpayer was under no obligation to make the payment to the said Wilhelmina E. Brown within the meaning of paragraph (la) of subsection (1) of section 11 of the Act.

In dismissing the appeal, the learned member of the Tax Appeal Board held that the arrears of \$1,170 were not paid for the maintenance of the recipient and therefore did not qualify as a deduction under section 11(1)(a) of the *Income Tax Act* and further that the sum of \$10,000 was not payable on a periodic basis for the maintenance of the recipient and therefore did not qualify under section 11(1)(l) of the Act as a deductible payment.

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It was from that decision that an appeal was taken to this Court.

The facts adduced in evidence before me were in substance the same as those which were before the Tax Appeal Board. Further it is apparent that the same arguments as were advanced by counsel to the Tax Appeal Board were presented to me and that no further issue or question of law was raised before me.

Since I am in agreement with the conclusions reached by the learned member of the Tax Appeal Board and the reasoning by which he reached those conclusions, the appeal is dismissed with costs.