

BETWEEN:

ANDREW F. JASPERSON APPELLANT;

AND

THE MINISTER OF NATIONAL }
REVENUE } RESPONDENT.

1953
Oct. 7
Nov. 28

Revenue—Income tax—Tax based on net worth—Taxable income as claimed by taxpayer not established by proof.

Held: That when a taxpayer has failed to establish that his taxable income was as shown by a statement prepared by his auditor and it is proven to the Court that the statement is incomplete that statement will be rejected in its entirety.

APPEAL from a decision of the Income Tax Appeal Board.

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

A. M. Harradence for appellant.

H. W. Riley, Q.C. and *T. E. Jackson* for respondent.

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

CAMERON J. now (November 28, 1953) delivered the following judgment:

This is an appeal by the taxpayer from a decision of the Income Tax Appeal Board dated October 27, 1952 (7 Tax A.B.C. 177) dismissing his appeal from assessments made upon him in respect of the years 1946 to 1950 inclusive.

The Minister of National Revenue, being dissatisfied with the returns made by the taxpayer, exercised the powers conferred on him by s. 47 of the Income War Tax Act, determined the amount of the tax to be paid for the years 1946, 1947 and 1948, and assessed him accordingly; similarly, for the years 1949 and 1950 he exercised the powers conferred by s. 42(5) of the Income Tax Act and assessed the tax payable by the appellant for those years.

The onus is on the appellant to show the existence of facts or law showing an error in relation to the taxation imposed upon him (*Johnston v. M.N.R.* (1)).

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At the hearing, no attempt was made to uphold the returns made by the appellant for any of the years in question. It is obvious that they were incomplete and inaccurate and counsel for the appellant frankly admitted that such was the case. On the basis of those returns, no income tax whatever was payable in any year. However, when the appellant was originally assessed for the year 1948, he paid an amount which in one part of the record is stated to be \$537.31 and at another part is said to be \$740.54. It was suggested that the inaccuracies were due to the fact that they were prepared for the appellant by his elder son who had little experience in such matters. I am far from being satisfied with the reasonableness of that explanation.

The reassessments made upon the appellant and which are now under appeal are all dated January 28, 1952. They are based upon a Statement of Net Worth (Ex. A) prepared by an assessor from material supplied by the appellant. It shows the net worth of all the appellant's assets as at January 1, 1946 (the commencement of the five-year period in question), and as at December 31, 1950 (the end of that period), after making due allowance for depreciation on all his depreciable assets. The summary contained on p. 4 of that exhibit indicates that his net worth at January 1, 1946, was \$22,161.68, and at December 31, 1950, was \$64,971.28—an increase of \$42,809.60. From that amount is deducted capital gains of \$15,993.80, leaving a taxable income in net worth of \$26,815.80. To that amount is added \$10,000 representing living costs of \$2,000 per year (which estimate is not challenged in any way) and also income taxes of \$740.54, paid by the appellant. Based on that computation, the appellant had taxable income over the five-year period of \$37,556.34. In assessing the appellant, that amount was distributed over the five years in proportion to the gross income reported by the appellant in each year. In the result, the reassessments showed taxable income as follows:

1946	\$	2,554.08
1947		6,612.02
1948		10,061.99
1949		9,144.86
1950		9,183.39
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	\$	37,556.34

Counsel for the appellant did not attempt to challenge directly the computation made in the Net Worth Statement. Instead, he endeavoured to establish from the evidence of the appellant, his son Roy Jasperson, and an accountant, Mr. E. D. Battrum, the precise amount of the actual income and disbursements in each year. Exhibits 1, 2, 3, 4 and 5 are folders containing a very large number of cheques, sales slips, statements and receipts for the years 1946 to 1950 respectively. These were supplied to Mr. Battrum and he was asked to prepare an audited statement for each year. He also secured statements from various organizations and corporations to whom the appellant had sold grain and livestock (Exhibits 7-16). Supplementing this data with certain information received from the appellant (such as the value of products produced on his farm and consumed by his family), Mr. Battrum prepared the statement Ex. 18. It contains what is called a "Cash Statement" for each year, but in addition to a statement of income receipts and disbursements it contains a computation of taxable income after allowing for depreciation and personal exemptions. The summary on p. 1 shows gross income for the five years of \$63,739.30, a net income of \$16,803.47, and taxable income as follows:

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1946	nil	
1947	\$ 2,244.12	
1948	2,779.19	
1949	2,215.51	
1950	nil	
		\$ 7,231.82

It will be seen, therefore, that the taxable income computed by the respondent is over \$30,200 in excess of that computed by Mr. Battrum.

Now I have no doubt that Mr. Battrum's Statement of Income and Disbursements, insofar as it is based on the vouchers and statements supplied to him, may be considered as accurate. Admittedly, however, the vouchers and receipts were incomplete, the appellant having informed Mr. Battrum that a substantial number had been lost. In view of what I consider to be the indisputable facts of the case and to which reference will later be made, it is apparent that very substantial amounts of income were received which are not shown in Mr. Battrum's computation.

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There are other matters, also, which lead me to the same conclusion. I have not attempted to compare in detail the returns made by the appellant with the statement prepared by Mr. Battrum; but a "spot" check of some of the returns shows items of income then reported which are not contained in the auditor's statement. The returns were made at a time when the information was fresh in the minds of the appellant and his son and presumably would be more accurate than statements made from memory after a lapse of many years.

For example, I find in the 1946 return two items for "Livestock Sold" amounting to \$370. Then, in the 1947 return, there is an item of "Sundry Sales" such as logs, firewood, sand, gravel, shrubs etc., amounting to \$1,290.57. For the same year there is an item of \$2,717 for "Grain Turned Over on Rent or Agreement of Sale (2,600 bushels)". Mr. Jasperson gave evidence that prior to January 1, 1946, he had turned over grain to one Smith to whom he was indebted, but that *so far as he could recall* he had always paid him cash after that date until the purchase price of the property was paid in full. This entry strongly suggests that the practice continued at least until the year 1947. In any event, neither that item nor any of the others I have mentioned, appears in Mr. Battrum's computation. The appellant also admitted that he had sold two truckloads of barley privately, and I was unable to trace that item in Mr. Battrum's statement.

As I have intimated above, there is evidence which in my opinion is conclusive that the appellant's income for the years in question was very much greater than that shown in Mr. Battrum's statement. The appellant is a farmer and is concerned mainly with the growing of grain and the buying and selling of livestock. It is not suggested that on January 1, 1946, his assets were other than as shown on the Net Worth Statement or that during the next five years he received any money from any source other than from the operation of his farm and the sale of one of his farms in 1948 for \$27,700.

In the five-year period, it is shown that he paid out the following amounts, exclusive of ordinary operating costs.

(a) To Smith for balance of purchase price on farm bought in 1945 for \$14,400.00 with a downpayment of \$3,000.00	\$ 11,400.00
(b) New machinery and equipment as stated by Mr. Battrum	18,807.82
(c) New farm purchased in 1948 for cash	10,500.00
(d) New farm purchased in 1948 and paid for by January, 1949	22,400.00
(e) Paid on account of income taxes	740.54
(f) For living expenses as estimated by the assessor and not disputed	10,000.00
(g) Loan made to unidentified person and owing December 31, 1950	1,000.00
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	\$ 74,848.36

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To meet these outlays it is shown that during the five years, he had on hand, exclusive of income, not more than the following amounts:

(a) Bonds on hand at January 1, 1946	\$ 3,225.00
(b) Proceeds of sale of one farm in 1948 (approximately)	27,700.00
(c) Depreciation on buildings and equipment for the period January 1, 1946, to December 31, 1950, which for this purpose I shall assume to be as claimed by Mr. Battrum, that amount or more having been allowed in the Statement of Net Worth	11,441.87
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	\$ 42,366.87

It is apparent that as no new capital was brought into the business and as no capital asset of any importance other than that mentioned was sold, the difference of \$32,481.49 must have been derived from income received within the five-year period. It is true that that amount is somewhat less than the figure of \$37,556.34 reached by the assessor in the Net Worth Statement; but the difference may be accounted for in whole or in part by the fact that the assessor has included in his computation the sum of \$1,650 paid in 1947 for a winter home in Cardston (which I shall refer to later) and to other minor matters which for the purpose of my conclusion I have not found it necessary to consider. It may be noted here that the appellant stated that he laid out certain amounts in changing and adding to the buildings on the farms he purchased in 1948.

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In the light of this evidence, which I have taken from the appellant's own witnesses, there is no doubt that Mr. Bat-trum's statement is most incomplete. That evidence is sufficient in my opinion to indicate that, subject to a few minor matters which I will now refer to, the Net Worth Statement must be accepted as accurately representing the taxable income of the appellant over the five-year period. Counsel for the appellant made no objection to the manner in which it was apportioned.

There are two items in the Net Worth Statement which should be corrected. The cost price of that part of Sec. 1-4-25-W4 appears as \$12,800. The evidence showed that the south one-half thereof was purchased at that price, but that the portion of the north half purchased by the appel-lant about the year 1939 was acquired for \$2,400. The total cost thereof should be increased to \$15,200. Some evidence was given that many years after the south half of that section was acquired, the Debt Adjustment Board "put a price of \$4,600 on that property", but I was not informed as to whether that was the amount fixed as the total purchase price or the balance to be paid, and as a result I do not propose to consider that matter further.

The Net Worth Statement included as an asset of the appellant a house in Cardston purchased in 1947 for \$1,650. The appellant gave evidence that it was purchased with monies belonging to his wife and the latter corroborated that statement. The evidence on that point was perhaps not quite conclusive, but inasmuch as there was no evidence to contradict the statements that the purchase price was wholly contributed by Mrs. Jasperson—although there was some difference of opinion as to just how or when she had acquired it—I have reached the conclusion that the sum of \$1,650 should not be included as an asset of the appellant.

The appellant has failed to establish that his taxable income was as shown by the statement prepared by his aud-itor and I reject that statement in its entirety as being incomplete, and not in accordance with the facts proven before me. Subject to the two matters which I have men-tioned and the new computation which will have to be made as a result of such corrections, I accept the Net Worth Statement as shown in Ex. A as having been properly made.

In order that the proper changes may be made, it is necessary to formally allow the appeal and refer the matter back to the Minister.

In the result and for the reasons I have stated, the appeal will be allowed, the decision of the Income Tax Appeal Board set aside, and the matter referred back to the Minister for the purpose of amending the Net Worth Statement by:

- (a) increasing the book value of Sec. 1-4-25-W4 to the sum of \$15,200 and by adjusting the amount of capital gains accordingly;
- (b) deleting from the assets of the appellant as of December 31, 1950, the sum of \$1,650 representing the cost of the Cardston home;

and to reassess the appellant accordingly for the five years in question.

I would also draw the attention of the respondent to a matter not raised at the hearing. It would appear that in the reassessment for the year 1946, the appellant was assessed for the full amount of taxable income without consideration being given to any claim for personal deductions.

While the appeal is allowed for the limited purposes which I have outlined, the assessments made by the respondent will be varied only to a very small extent. In view of the fact and in the light of all the circumstances, I see no reason why the respondent should not be entitled to his full costs after taxation, and I so direct.

Judgment accordingly.

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