

BETWEEN :

VERNON C. HALE ..... APPELLANT;

AND

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

Toronto  
1968  
}  
Sep. 10-11  
Ottawa  
Oct. 28  
—

*Income tax—Employment—Benefit from—Travel expenses of insurance manager's wife attending sales conference—Income Tax, s. 5(1)(a).*

The branch manager of a life insurance company was required by his employer to attend company sales conferences at various locations and the company also expected his wife to accompany him and to assist her husband by looking after the wives of salesmen from her husband's office and in supervising and guiding the branch delegation. The expenses of the wife in attending such conferences for travel, meals and hotel accommodation were paid by the husband who was reimbursed by the company.

*Held*, payment of the wife's expenses by the company was not a benefit to the husband from his employment and therefore taxable under s. 5(1)(a) of the *Income Tax Act*. It was the wife who received the benefit.

INCOME TAX APPEAL.

*William R. Latimer, Q.C.* for appellant.

*J. R. London* for respondent.

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CATTANACH J.:—The Minister, in assessing the appellant to income tax in his 1963 taxation year, included, as part of the appellant's income, an amount of \$388 paid to him by his employer, The Canada Life Assurance Company (hereinafter referred to as Canada Life, or the company), to cover the expenses of the appellant's wife for travel, meals and hotel accommodation incurred by her in accompanying the appellant, her husband, to the Canada Life sales conference held in Phoenix, Arizona on April 1 to 4, 1963.

It is from the inclusion of that amount as part of his income that the appellant now appeals.

During his 1963 taxation year the appellant was manager of the Central Ontario Branch of Canada Life at Hamilton Ontario where he was responsible for the administration of that office and the supervision of the life insurance salesmen there employed. His remuneration was by way of salary, bonuses and commissions on life insurance policies which he sold personally. It was agreed between the parties that the relationship between the appellant and Canada Life was that of employee and employer. The present appeal was argued upon that basis.

The appellant and John S. Harris, a vice-president of the company and director of agencies, as well as the officer in charge of conferences, who were the only witnesses called, testified convincingly respecting the business purpose of the biannual conferences organized by Canada Life exclusively for their personnel. Great care is exercised in selecting the site of such conferences. Among the prime considerations is the ready accessibility and minimum expense required for the personnel selected to attend. Normally a resort area is selected because the facilities are usually removed from centres of population and consequent distracting elements. I might mention that the reason for holding a number of conferences in resort areas of the United States was explained by the fact that the company does a large volume of business in that country through numerous branches there maintained which engage many salesmen.

These conferences are Canada Life meetings called for the specific purpose of increasing the potential of the company's sales organization by instructing the members

thereof on better selling methods and techniques in formal sessions and through mutual association in informal sessions.

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While at the conference the activities of the salesmen are under the control and direction of the Canada Life with a full schedule of business programmes during normal working hours. A branch manager, such as the appellant was, is required to assist in the control and direction of the formal business sessions and to organize and participate in informal sessions thereafter, as well as to improve his own knowledge and capabilities. Particularly, a branch manager is required to supervise the delegation from his own branch.

The salesmen who are selected to attend are so selected on a production basis, that is, those who have sold a certain amount of life insurance, in the expectation that their exposure to teaching and associations with other salesmen and managers will make them still better salesmen.

No such production qualification is required for branch managers. Their attendance is mandatory as is that of the selected salesmen.

The conference held in Phoenix Arizona was from April 1 to April 4, 1963; and in my opinion the evidence conclusively establishes that these conferences are business conferences for the purpose of increasing the earning capacity of Canada Life and incidentally its salesmen and managers, despite the fact that there might be some social activity.

The policy of Canada Life in engaging salesmen was also outlined by the appellant and more particularly by Mr. Harris. The company has a strong preference for married men over those who are unmarried. It does not hire a married applicant as a salesman, who may be otherwise qualified, if his wife does not meet the company standards. The wife is interviewed separately and in person prior to hiring the husband, and the appellant testified that when he engaged a salesman this interview of the applicant's wife was done by his wife who reported her assessment of the wife to him. The company maintains a direct liaison with the wife through all stages of her husband's career. She is sent correspondence and pamphlets

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giving instructions and guidance on how to help her husband. While the wife is expected to passively accept irregular hours and fluctuating income she is also expected to be of positive help to her husband in a variety of ways peculiar to the life insurance business. While this role of a wife is present in every line of endeavour I do accept the testimony that it is even more so in the life insurance business. The Canada Life regards the combination of husband and wife as the selling unit in its business and takes active steps to foster the wife's participation, but they do not pay her. She is not an employee of the company. Conceivably she gets her reward indirectly from her husband's increased income resulting from her efforts.

A branch manager's wife serves in a like capacity. She would have assisted her husband in his progress through the ranks and, upon his achievement of reaching the apex of a branch manager, the company expects and urges her to continue her unpaid participation in the management of the sales operation.

I have indicated that the branch manager's attendance at the sales conferences is mandatory in the view of the company. It is my assessment of the evidence given before me that while the attendance of the wife of a branch manager may not be absolutely obligatory, nevertheless, in the absence of some very cogent and acceptable reason for not doing so, the necessity of her attendance is urged upon her husband by the company, so much so that it is tantamount to being obligatory in that repeated refusals, without cause, might be detrimental to her husband's status or advancement in the company.

In a questionnaire (Exhibit 2) circulated with the "invitation" to branch managers and selected salesmen to attend the Arizona conference, the question is asked if the recipient's wife will attend with "yes" or "no" answer spaces which would seem to indicate a choice. It is my understanding that if a negative answer is made, inquiry is made by the company to ascertain the reason.

It is also noted from the legend printed in red thereon that "no other member of family may attend" indicating that it is the wife who is singled out and no other member of the family may attend in her stead.

Obviously the company policy is that the wife's attendance at these conferences is an essential part thereof and pressure is brought upon the husband to prevail upon the wife to attend.

The evidence was that wives were expected to attend all planned business sessions at these conferences, some of which are devoted to matters of special interest to wives of insurance salesmen.

I am, therefore, satisfied that the company fully expected that the appellant's wife, Mrs. Hale, would attend this conference.

The appellant testified that Mrs. Hale had attended all previous conferences without fail. The delegation from the appellant's branch office at the Phoenix conference numbered eleven salesmen each of whom was accompanied by his wife making a total of twenty-two. Mrs. Hale assumed the responsibility for looking after wives of the salesmen, arranging the assignment of rooms in congenial company, finding their baggage lost in transit, urging their attendance at the business sessions and observing and reporting any absentees to her husband, the appellant, and performing a multitude of like tasks. She attempted to broaden her own knowledge of her husband's business by attending their instructional meetings. She counselled the salesmen's wives to do likewise and served as an example to them. She acted as the appellant's hostess at informal gatherings arranged by her husband for his colleagues and their wives and generally worked with him in the supervision and guidance of this branch delegation. The appellant and his wife occupied a three room cottage in the company of two salesmen and their wives. One such couple was specifically selected to share this accommodation because they were experiencing matrimonial difficulties, in the hope that Mrs. Hale might help to resolve those difficulties. In short she acted as a kind of mother superior to the branch salesmen's wives.

As I have intimated before, this conference was held for predominantly business purposes and on the evidence adduced I have no hesitation in finding that the appellant's wife actively participated therein. I cannot disabuse my mind from the conclusion that the detailed evidence

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of the appellant's wife's assistance to him as above recited was directed primarily to establishing that this was not a holiday for her at the company's expense.

The expenses of the appellant and Mrs. Hale were paid by the company. The appellant was given a cash advance of \$618 to cover the travelling expenses of both for which he was not held accountable. The amount of the advance was arrived at by computing the most economic mode of travel, i.e. by rail by the most direct route, the meals to be consumed en route and an amount of \$12 for taxi fares, also computed on a moderate basis and refundable if not used. The cost of the hotel accommodation of the appellant and his wife and the meals there consumed by them was paid directly to the hotel by the company. The amount attributed to Mrs. Hale's travelling expenses was \$260 and that portion of the hotel account attributable to her accommodation was \$128, making the total of \$388 here in controversy.

The appellant and his wife left their home in Hamilton by air prior to the date set for the beginning of the conference in Arizona on April 1, 1963. They enjoyed a brief holiday in Mexico before arriving in Phoenix on that date. They also remained in Arizona for a brief period after the conclusion of the meeting to rest and so the appellant could continue to discuss business matters with two other branch managers whose wives were also present. The cost of this prior and subsequent holiday was borne by the appellant personally and has no material bearing on the issue here involved. I would add that the appellant's actual expense for his own and his wife's attendance at this conference, even without considering their additional excursions, was in excess of the non-accountable advance made and the hotel accommodation paid by the company which together totalled \$873.

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.

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”.

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Therefore the issue is to be determined on whether the appellant received or enjoyed a benefit of \$388 in the respect of, in the course of, or by virtue of his office or employment in The Canada Life Assurance Company by reason of the expense paid attendance of his wife at the Phoenix conference within the meaning of section 5(1)(a) as is contended by the Minister to be the case.

The appellant contended that the sum of \$388 was not income to the appellant because it was not a benefit to him under section 5(1)(a) and further that if a benefit was received, which he vigorously denied, such benefit had no monetary value to the appellant.

Counsel for the Minister submitted that the benefit the appellant received was the company of his wife, and, as emphasized in the evidence tendered by the appellant, the assistance she gave him during the conference. He further submitted that the true monetary measure of that benefit to the appellant was \$388, the cost of the appellant’s wife’s attendance at the conference which was borne by the company.

The obvious intention of section 5 is to include in the taxable income of a taxpayer those economic benefits arising from his employment which render the taxpayer’s salary of greater value to him.

The facts that it was pleasant for the appellant to have his wife along and that he enjoyed her company and assistance do not seem to me to be an economic advantage to him when her presence was due to his employer requiring it. Neither does it seem to me that the appellant received any advantage from his wife’s presence at the conference additional to that he would receive from her in his home surroundings except that her assistance was exercised in a different milieu and as dictated by different circumstances.

It seems clear to me that the recipient of any alleged benefit which may have arisen from the circumstances above outlined, was the taxpayer’s wife for it was she who received what flowed from the expenditure in question. It was she who was transported, fed and accommodated.

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The position from the taxpayer's point of view seems to me to be that the expenditure for his wife's expenses was an expense incurred by him at the insistence and request of his employer for which his employer had undertaken to pay. The money received by the appellant from his employer was simply reimbursement for that expense as was promised by his employer and, as I view the matter, results in no benefit to him within the meaning of section 5(1)(a). I might add that, in my opinion, the fact that the employer made such payment in part in advance of the event, rather than subsequent thereto, does not change the nature of the payment, nor does the fact that the hotel expenses were paid directly to the hotel by the employer, materially vary the nature of the payment.

Accordingly the appeal is allowed with costs.