

BETWEEN :

HELEN E. MITCHELL, Executrix }
of the Estate of the late Angus A. }
Mitchell

APPELLANT;

Vancouver
1967
Nov. 27
Nov. 30

AND

THE MINISTER OF NATIONAL }
REVENUE

RESPONDENT.

Income tax—Deductions—Tuition fees of university student—By whom deductible—Income Tax Act, s. 11(1)(qb), am. 1961, c. 17, s. 2(1).

Section 11(1)(qb) of the *Income Tax Act* provides that “where a taxpayer was ... a student ... at a university ... the amount of any fees for his tuition ...” may be deducted in computing a taxpayer’s income.

Held, only a student who pays his tuition fees may claim the deduction; it may not be claimed by a person who paid the student’s fees.

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MITCHELL
v.
MINISTER OF
NATIONAL
REVENUE

INCOME TAX APPEAL.

P. N. Thorsteinsson and *M. J. O'Keefe* for appellant.

T. E. Jackson for respondent.

SHEPPARD D.J.:—This appeal raises only a point of law, namely, the meaning of section 11(1)(*qb*) of the *Income Tax Act*, R.S.C. 1952, c. 148 as amended.

In 1963, a father paid his daughter's tuition fees and his Executrix, the appellant, claims to deduct that payment from the father's income by virtue of section 11(1)(*qb*). The Minister contends that the section applies only to cases where the taxpayer is a student and the payment and deduction are by a student. The subsection then in force (1960-61, c. 17, sec. 2(1) enacting section 11(1)(*qb*)) reads as follows:

(*qb*) where a taxpayer was during the year a student in full-time attendance at a university in a course leading to a degree, or in full-time attendance at a college or other educational institution in Canada in a course at a post-secondary school level, the amount of any fees for his tuition paid to the university, college or other educational institution in respect of a period not exceeding 12 months commencing in the year and not included in the calculation of a deduction under this paragraph of a previous year (except any such fees paid in respect of a course of less than 13 consecutive weeks' duration);

The appellant contends:

- (1) That "a taxpayer", the second and third words, should be read as "a person" or "any person" because the definition of a taxpayer reads:

"taxpayer" includes any person whether or not liable to pay tax; (section 139(1)(*av*))

and

- (2) That "by him" is implied after the word "paid" as meaning that the sum to be deducted must be paid by the father, the taxpayer.

In support of her contention the appellant also referred to numerous subsections of section 11 where the words "the taxpayer" are used which necessarily refer to "a taxpayer" mentioned in the preliminary words of section 11(1) as the one whose income is being computed for a taxation year: see section 11(1)(*a*), (*cb*), (*cd*), (*e*), and

when “a taxpayer” is used in section 11 there are other words which indicate they relate to “a taxpayer” mentioned in the preliminary words of section 11(1) as the one whose income is being computed. Therefore the appellant contends that as such other words are not to be found in subsection (qb) “a taxpayer” should be read as “any person”, and in the result the section should be construed to mean that where “any person was during the year a student. . . the amount of any fees for his tuition paid by him (the taxpayer, here the father) . . .”.

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That contention fails for various reasons. “A taxpayer” is not defined *simpliciter* as “a person”, and the definition merely means that a “person” to be a taxpayer need not be a payer but that definition does not excuse such “person” from having the other incidents of a taxpayer, which in this instance would include the considering of what “may be deducted in computing the income of a taxpayer”, the preliminary words of section 11(1). Hence the definition does not permit the substitution of “any person” for the words “a taxpayer” in section 11(1)(qb).

Further, where the words “the taxpayer” are used in section 11(1) they refer to “a taxpayer”, which is the precise term in the preliminary words of section 11(1). Therefore, whether he be described as “the taxpayer” or “a taxpayer” the words equally refer to the same person mentioned as “a taxpayer” in the first part of section 11(1), that is, the one whose income is being computed. Here “the taxpayer” and “a taxpayer” are equivalent. In *In re National Savings Bank Association*¹, Turner L.J. at p. 550 said:

... I am quite satisfied that no sufficient reason can be assigned for construing the word “contributory” in one part of the Act in a different sense from that which it bears in another part of the Act.

(36 Halsbury (3rd Ed.) p. 396, para. 595.)

The words “by him” which the contention implied after “paid” in section 11(1)(qb), must refer to the nearest antecedent to which they could reasonably refer and here to “student”, particularly as the preceding words “for his tuition” necessarily refer to “student”. Such construction defeats the contention of the appellant, as it would only permit a deduction to a student for his tuition paid “by

¹ (1866) L.R. 1 Ch. App. 547.

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him". To avoid such construction the contention must add after "paid" some additional words such as those following; "by the taxpayer referred to as 'a taxpayer' in the preliminary part of section 11(1)". However, that is adding words to the section, which is not permissible (36 Halsbury (3rd Ed.) p. 382, para. 570. The additional words qualify "paid" in a way that is not found in the section and is required only by the appellant's contention.

That contention of the appellant would lead to unreasonable meanings as follows:

- (1) "Any person" could pay the whole of his taxable income to universities for students' tuition and thereby claim the right to deduct under section 11(1)(qb) the amount so paid even to escape the paying of any income tax. It is rather difficult to see what interest a "person" could have in paying the tuition fees of complete strangers, or the intention of the statute to protect such non-existing interest of the taxpayer.
- (2) That contention would conflict with the payments for a child that may be deducted under section 26(1) which requires that the child be a dependent of the taxpayer. There seems to be no reason why the intention should be inferred that the taxpayer under section 26(1) should have a restricted right to deduct for his own children only if they be dependent but have as "a person" under section 11(1)(qb) an unrestricted right to pay the tuition for his children and for strangers. It is not permissible to give one section its full meaning and to compress the remainder of the statute into any gaps that may remain, but the whole statute must be read, that is, construed together to avoid such conflicts: 36 Halsbury (3rd Ed.) p. 395, para. 594. In *Ebbs v. Boulnois*², James L.J. at p. 484 said:

Common sense must be applied to reconcile the two enactments It is a cardinal principle in the interpretation of a statute that if there are two inconsistent enactments, it must be seen if one cannot be read as a qualification of the other.

The words of section 11(1)(qb) contain an express and clear meaning. The following sections should be read together as being contiguous and being then current sub-

² (1875) L.R. 10 Ch. App. 479.

sections of the statute. Section 11(1)(q) (enacted 1956, c. 39, section 3(5)) provided, "where a taxpayer is a member of the clergy..."; section 11(1)(qa) (enacted 1956-57, c. 29, section 4(3)) provided, "where a taxpayer is a teacher..."; section 11(1)(qb), the section in question (enacted 1960-61, c. 17, section 2(1)) provided, "where a taxpayer was during the year a student . . .".

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These subsections are evidently intended to authorize specific deductions to specific groups; by section 11(1)(q) to clergymen for their residence, by section 11(1)(qa) to teachers for certain contributions, and by section 11(1)(qb) to students for certain tuition. The maxim *nos-citur a sociis* applies and therefore the subsections should be uniformly construed as providing for the allowance to a special group of taxpayers, and under such maxim, section 11(1)(qb) can be construed as the words explicitly state, in permitting an allowance to a taxpayer who is a student within that subsection, for the tuition fees therein specified.

It follows that the contention of the Minister should be accepted and the appeal dismissed.