
BETWEEN:

HARRY GRAVES CURLETT .....APPELLANT;

AND

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

Edmonton
1966
Apr. 26, 27
Apr. 27

Income tax—Second mortgage loans—Receipt of bonuses and discounts—Whether income—Sale of portfolio of second mortgages—Whether price includes bonuses or discounts—Whether taxable.

Appellant was the controlling shareholder of a financial company which during the years 1958 to 1962 made loans on first mortgages of real property. As the amount of loans was limited by a provincial statute, the appellant, in order to provide the borrowers with additional funds, advanced them his own money on second mortgages, each of which provided for a bonus or discount. In the years 1958 to 1962 appellant received payments on account of such bonuses and discounts.

In 1961 appellant sold all of his second mortgages (having a face value of approximately $300,000) for $111,036, which coincidentally was the amount he had originally advanced on them although payments of $28,896 had been made thereon by the borrowers. The Minister assessed appellant to income tax on $28,896 as being bonus or discount received by him at the time of the sale.

Held, appellant was in the money-lending business until the sale of his second mortgages and the payments received by him on account of bonus or discount were taxable income and not accretions of capital. On the other hand, the $28,896 was part of the price received in a *bona fide* realization sale as a going concern of all the assets of his money-lending business and in consequence was not taxable income.

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Cf. *Ted Davy Finance Co. v. M.N.R.* [1965][1] Ex. C.R. 20: *Dominion Dairies Ltd. v. M.N.R.* [1966] Ex. C.R. 397.

Income tax—Charitable donation—Income Tax Act, s. 27(1)(a)—Payments made to charitable organization for specific purposes—Whether deductible.

In the years 1957 to 1961 appellant paid $3,900 to the Salvation Army to assist certain persons whom he pointed out and the money was used by the Salvation Army for the welfare of those persons although it was under no compulsion or direction from appellant to do so.

Held, appellant was entitled to a deduction of the $3,900 under s. 27(1)(*a*) of the *Income Tax Act* in computing his income for the relevant years.

APPEAL under the *Income Tax Act.*

A. F. Moir, Q.C. for appellant.

T. E. Jackson for respondent.

GIBSON J.:—The appellant appeals from assessments made against him respecting the years 1958 to 1962 inclusive, by which he was made liable for income tax (*a*) on certain bonuses or discounts received in second mortgage transactions during those years; (*b*) on the receipt by him of $28,896.71 in a transaction with Associated Investors of Canada Limited; and (*c*) on certain monies paid out in 1958, 1959 and 1960, which were claimed by him as deductions from income under s. 27(1) of the *Income Tax Act* as charitable donations, but denied as such by the respondent.

During the years 1958 to 1962 the appellant owned the equity shares and controlled Associated Investors of Canada Limited. That company engaged publicly in the business of selling annuities, investments, contracts and pensions, among other things. It received part of its capital to carry on its business from the public. It invested its capital in government bonds and in real estate mortgages to earn its income. In carrying on its business it was subject to certain Province of Alberta legislation. One provision of such legislation prescribed that the maximum loan on the security of a first mortgage on real estate that such a company as Associated Investors of Canada Limited was permitted to make to a borrower could not exceed 60 per cent, (later changed to 66⅔ per cent during the relevant years), of the appraised value of the same.

During those years that company made a very substantial number of first mortgage loans on real estate and, in order to enable the borrowers to borrow substantially greater sums than 60 per cent of appraised value, in each of these transactions the appellant advanced monies on the security of a second mortgage on the same real estate, in each of which mortgages there was provided a substantial bonus or discount in respect to the principal sum payable.

The evidence is that in the respective years the monies representing such bonuses or discounts received by the appellant were as follows: in the year 1958, $2,560,82; in the year 1959, $6,732.31; in the year 1960, $8,084.19; in the year 1961, $4,156.16; and in the year 1962, $1,026.87.

In my view, during these years on this evidence the appellant patently was in the money-lending business and these discounts or bonuses received by him were taxable income and not accretions to capital. (See *Scott v. The Minister of National Revenue*[1].)

In 1961, however, the appellant went completely out of the money-lending business. He sold his whole portfolio of second mortgages to Associated Investors of Canada Limited. The total balance of principal owing on these mortgages in his portfolio at that time was $300,327.60. The sale price for them was $111,036.73. The appellant had actually originally advanced this latter sum on these mortgages, but this sum has no other significance because if all the payments on these mortgages made by the borrowers and received by the appellant up to the date of this sale were deducted from this sum and if nothing was deducted from the bonus or discount account, so to speak, of these mortgages, then there would have still been owing to the appellant at the date of this sale the principal sum of $82,140.02.

The difference between this latter sum and $111,036.73, namely $28,896.71, the respondent submits is a partial realization of the bonus or discount sums incorporated in the said face values of the balance of principal owing on total of these second mortgages at the date of the sale, namely $300,327.60, and is indistinguishable from the discounts or bonuses referred to earlier in these reasons and is therefore taxable income.

[1] [1963] S.C.R. 223.

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Gibson J.

On the facts of this case, I am of the opinion that the said sum of $28,896.71 was not a receipt by the appellant of any part of the discounts or bonuses incorporated in the principal sums payable under these said second mortgages. Instead, it was part of the purchase monies received by him in a *bona fide* realization sale to Associated Investors of Canada Limited of all the assets of his substantial money-lending business as a going concern. As a consequence, no part of the sum of $111,036.73 was taxable income of the appellant. (Compare *Ted Davy Finance Company Limited v. The Minister of National Revenue*[1] and *Dominion Dairies Limited v. The Minister of National Revenue*[2].)

The third issue on this appeal concerns payments of $300 in each of the years 1958, 1959 and 1960, and of $3,000 in 1961 made by the appellant to The Salvation Army at Edmonton, Alberta, and claimed by him as deductions from income as charitable donations. On this issue, Major William A. J. Hostey of The Salvation Army, Edmonton, gave evidence. He stated that the appellant had pointed out two cases of persons who were in need of help, and after investigation he was of opinion that their needs were within the concept of the general welfare work of The Salvation Army, that the appellant paid these monies to The Salvation Army to help these persons and that though under no compulsion or no direction from the appellant to do so, The Salvation Army did in fact use these monies for the welfare needs of these persons who were suggested by the appellant. I accept the evidence of Major Hostey and I am of opinion that the appellant in law paid these monies to The Salvation Army and therefore was entitled to deduct these monies in computing his taxable income for the said relevant years, pursuant to s. 27(1) of the *Income Tax Act*.

The appeals therefore are allowed in part. The appellant is entitled to his costs of these appeals.

[1] [1965] 1 Ex. C.R. 20.

[2] [1966] Ex. C.R. 397.