

## *Taxation Decisions and Rulings*

### *Excess Profits Tax Case*

The Supreme Court of Canada has rejected the appeal of the company from the Exchequer Court decision in the case of *J. R. Moodie Company Limited v. Minister of National Revenue*, [1950] C.T.C. 61. The decision of the Exchequer Court was reported as *M. Company Limited v. Minister of National Revenue*, [1948] C.T.C. 213. In December 1940 the company applied for determination of its standard profits, under section 5 of the Excess Profits Tax Act as it then stood, as being depressed during the standard period. After the application was made section 5 was amended. In 1941 the Commissioner of Income Tax referred the application to the Board of Referees in the following terms:

For advice as to whether or not departure from capital standard is justified and if such departure is justified for determination of standard profits under section 5(3). If not, the Board is requested to ascertain standard profits under section 5(1).

In due course there was a hearing before the Board and under date of September 26th, 1942, the Board gave its written decision to the effect that under section 5(1), as amended, the company's business was depressed during the standard period, computed capital employed and ascertained the standard profits at 6% of the capital employed or \$21,434.42. The standard applied for was \$45,000. The principal argument of the company was that the Board had in fact never considered the company's application under section 5(3) and had never given a negative answer to the Minister's request for advice thereunder on whether or not departure from capital standard was justified.

### *Succession Duty Cases*

The Province of Quebec levied duty under section 24 of the Quebec Succession Duties Act with respect to five donations inter vivos made by the deceased to his five children more than five years before July 26th, 1947, the date of death. As to four of the gifts, made in trust to a trust company, the revenues were to be

collected by the trustee, the net annual revenues to be paid to the children of the donor during their life-times and upon their death to the grandchildren, the capital to be paid to the grandchildren as each grandchild reached the age of thirty, with no power of direction or control to the donor. The court found that the only contingency in which the donor might have derived any benefit from the property would have been the case of the pre-decease of one or more of the children without issue and without leaving any relevant testamentary direction, in which event he would have received a share as one of the legal heirs. The fifth gift was in trust under a marriage contract to a trustee paying the annual net income to the donor's daughter during her lifetime, the capital to vest in her children. In default of children and testamentary disposition of the daughter to the extent that legacies did not cover the trust property, the property was to revert to the donor, and in the event of his being deceased to be governed by the provisions of his will. This gift was also held exempt from duty. A claim for interest on the duty paid to the Crown was not entertained by the court. Accordingly, the petition of right was maintained save as to interest. *The Montreal Trust Company v. The King*, [1950] C.T.C. 78.

In an intestate succession, shares were left in family corporations. The articles of association of the corporations provided that the directors could refuse a transferee in the event of transmission on death and required that the shares be offered for sale to existing members at their par value. The assets and reserves of the corporations amounted to considerably more than their capital. For succession duty purposes it was claimed that the value of the shares in the estate was much higher than par. The court found, as to shares which had to be sold to other shareholders at par, that their dutiable value was par. As to other shares in trust, of which the deceased and his estate were beneficiaries, it was proper to assign to them values greater than par. *Re Harvey; Assessor of Taxes v. Walsh*, [1949] 24 M.P.R. 350 (Newfoundland Court of Appeal).

#### *Income Tax Appeal Board Cases*

The appellant claimed certain amounts as expenses for travelling and selling, office expenditures and for telephone and telegraph charges in 1946 and 1947. Fifty per cent of the expenses claimed were disallowed in the assessments. No receipts were filed in support of the expenses claimed. The president of the appellant gave evidence that he never kept account of all his daily expenses

incurred on behalf of the company and stated that, to determine what he believed to be the total for the company for any one year, he deducted what he believed to be the amount of his personal expenses. The appeal was dismissed. *Perfection Milking Machine Corporation (Canada) Limited v. Minister of National Revenue*, 2 Tax A.B.C. 49.

In 1936 the appellant purchased from the Annuities Branch of the Canadian Government a deferred annuity of \$1,200 commencing in 1954, to be paid for by monthly payments during the intervening period. Before June 25th, 1940, the date mentioned in section 5(1)(k) of the Income War Tax Act, only one monthly payment was made. As permitted by the contract, appellant paid substantial amounts in 1944 and 1946 which enabled him to obtain a fully paid up annuity for \$1,200, commencing in March 1947, thus bringing forward the date of commencement seven years. For 1947, the appellant was assessed as though exempt only as to the portion of the annuity which the payment of the one premium before June 25th, 1940, would purchase, plus the capital portion of the remainder of the annuity purchased by payments made after June 25th, 1940. The Board allowed the appeal, holding that the entire annuity was exempt under section 5(1)(k). *Mr. E. v. Minister of National Revenue*, 2 Tax A.B.C. 55.

The appellant owned a property in Nova Scotia, occupied by his married daughter and her family, fully furnished by the latter and visited by the appellant two weeks in each year. Appellant maintained a residence in New York City where he and his wife resided continuously since leaving Canada in 1941. Appellant was assessed as a resident of Canada for 1947. The Board allowed the appeal, W. S. Fisher dissenting. *Meldrum v. Minister of National Revenue*, 2 Tax A.B.C. 60.

Appellant was chairman of a committee representing the 7% preferred shareholders of Abitibi Power and Paper Company, negotiating the reorganization of that company. Upon the completion of the committee's work, no provision was made for remuneration of the members. Nevertheless, pursuant to an agreement between them, counsel for the committee assigned to the appellant a certain sum, of which \$7,000 was paid in 1947. The appellant claimed that this amount was a gift. He was assessed as though the amount were income. The Board dismissed the appeal, W. S. Fisher dissenting. *Goldman v. Minister of National Revenue*, 2 Tax A.B.C. 73.

On December 31st, 1946, a cheque payable to the appellant was delivered to her solicitors. The cheque was in due payment of

a share of income tax arising on account of alimony payments. The amount was assessed as income in 1946. The Board held that although the amount in question was income subject to tax, it was not received by the appellant and taxable until on or after January 6th, 1947, when her solicitors sent the cheque to her, inasmuch as the authority ascribed to solicitors does not include authority to accept a cheque in payment of the debt owing. *Head v. Minister of National Revenue*, 2 Tax A.B.C. 89.

A wife contributed all the funds required to purchase a building which was the sole property owned by a personal corporation of which her husband held all but qualifying shares. The sole income of the personal corporation was derived from the rent of the building. In view of section 32(2) of the Income War Tax Act (transfers between husband and wife) the Board upheld the 1947 assessment of the income of the personal corporation deemed to be distributed, as income of the wife. *Blumenthal v. Minister of National Revenue*, 2 Tax A.B.C. 93.

By his will, the appellant's father bequeathed his half share in a business to his executors upon trust to pay an annuity out of the income of the business to his daughter and to give one half of his share of the business to one son, the appellant, and the other half equally to his other two sons. In his 1946 return, the appellant claimed a deduction of half the annuity paid to the sister. This deduction was disallowed in his assessment for that year. The Board found the legal position to be that no transfer of the business by the executors to the three sons had taken place and that in effect the executors were partners in the business; therefore the executors would receive half the income of the business, pay the annuity and then pay the balance to the brothers as beneficiaries. Accordingly the appeal was allowed. *Mr. F. v. Minister of National Revenue*, 2 Tax A.B.C. 99.

A partner in a firm of chartered accountants claimed in his return for 1946 a deduction for motor car and other expenses, as having been paid out by him in the process of earning his income. The deduction was disallowed. The Board found from the evidence that although the appellant considered the disbursements legitimate and proper partnership expenses, the partnership was not at the time prepared to recognize them as such. The Board dismissed the appeal on the ground that it was only from partnership income that the expenses could be deducted. *Mr. I. v. Minister of National Revenue*, 2 Tax A.B.C. 107.

The Minister arbitrarily assessed income from a taxi business when no proper records were produced. The appeal was allowed

and the assessment referred back to the Minister for reconsideration and reassessment on the ground that he should have allowed a reasonable rate of depreciation on the taxis. *McNeill v. Minister of National Revenue*, 2 Tax A.B.C. 110.

In computing losses referred to in section 5(l)(p) for the years 1944 and 1945 to be deductible in 1946 and 1947, non-taxable dividends from other Canadian corporations must be included in income. This was the holding of the Board, with the chairman dissenting, in the case of *C. R. Corneil Limited v. Minister of National Revenue*, 2 Tax A.B.C. 116.

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### Arc Judges Human ?

That judges are human and share the virtues and weaknesses of mortals generally — that fact you may think so obvious as scarcely to deserve discussion. Why then do I discuss it? Because, among American lawyers, until fairly recently, that fact was largely tabu. To mention it, except in an aside and as a joke, even in gatherings of lawyers, was considered bad taste, to say the least. That tabu dominated most legal education during the 19th century and the early part of the 20th. Above all, it controlled what lawyers said to non-lawyers in publications and in public addresses. The Bar spoke to the laity as if the human characteristics of judges had little or no practical consequences. And when, not very long ago, some few of us ventured to violate that tabu, a considerable part of the legal profession called us subversive, enemies of good government, disturbers of 'law and order'.

No doubt, some of the lawyers who today support that tabu do so because, somehow, either they believe, more or less, that judges are super-human or that the human-ness of judges has virtually no effect on how courts decide cases. Such self-deceivers are not hypocrites but unquestionably sincere men. They come within my category of the second class of wizards. The same cannot be said, however, of some of those lawyers who deplore the public revelation that judges are not demi-gods or, at any rate, do not serve as almost flawless conduits of the divine. The deplorers, fully cognizant of the realities of court-house government, want to conceal it from the public. Their attitude is basically anti-democratic. (Judge Jerome Frank: *Courts on Trial*. 1949)