1957
Feb. 14
1958
Feb. 25

BETWEEN:

THE MINISTER OF NATIONAL REVENUE ..... APPELLANT;

AND

THE ONTARIO PAPER COMPANY LIMITED ..... RESPONDENT.

Revenue—Income tax—Income Tax Act 1948, S. of C. 1948, c. 52, ss. 11(1)(f) and 127(1)(c)—Interpretation Act, R.S.C. 1927, c. 1, s. 31(j)—Employees' superannuation fund—Amount of contribution deductible from income limited to amount actually paid in respect of a particular participant.

Held: That an employer is entitled to deduct from income as provided in s. 11(1)(f) of the Income Tax Act 1948, S. of C. 1948, c. 52 an amount, provided it does not exceed $900, which he has paid to an approved pension plan in respect of a particular participant and he is limited to making as many such deductions as there are instances in which such a particular payment has been made; the maximum permissible deduction for any year is not to be arrived at by multiplying $900 by the total number of employees participating in each plan.

APPEAL from a decision of the Income Tax Appeal Board.

The appeal was heard before the Honourable Mr. Justice Kearney at Ottawa.

W. R. Jackett, Q.C. and *T. Z. Boles* for appellant.

H. H. Stikeman, Q.C. for respondent.

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

KEARNEY J. now (February 25, 1958) delivered the following judgment:

This is an appeal from a decision of the Income Tax Appeal Board[1] allowing two separate appeals by the respondent, from two assessments made and confirmed by the appellant, one in respect of 1949-50-51, and the other for 1952. The appeals were heard together and treated as one, as the issue was identical in both appeals.

There is but one point involved herein, namely, to what extent the respondent's contributions to its employees' superannuation plan or fund are deductible for each of the four years in question. Both parties rely on the same

[1] (1955) 13 Tax A.B.C. 369.

provision of law, and the case turns on the proper interpretation of s. 11(1)(*f*) of *The Income Tax Act,* S. of C. 1948, c. 52, which, omitting an inconsequential amendment in 1951, reads as follows:

> 11. (1) Notwithstanding any other provision in this Division, the following amounts may, subject to sub-sections (2) and (3) of section 12, be deducted in computing the income of a taxpayer for a taxation year:
>
> (*f*) an amount not exceeding $900 paid by the taxpayer to or under an approved superannuation fund or plan in respect of services rendered by each employee, officer or director of the taxpayer in the year plus such amount as may be deducted as a special contribution under section 69.

The facts, although somewhat out of the ordinary, are not controversial. Two partially integrated employees' retirement pension plans were in effect in the respondent's establishment and in those of its subsidiary companies during the taxation years in question: the Basic Plan and the Supplementary Plan described in booklets attached to Exhibits 1 and 2.

These pension plans were required to be, and admittedly were approved by the appellant. The Basic Plan was implemented by a Master Group Contract (Ex. 1) purchased by the respondent from the Annuities Branch of the Department of Labour, as underwriters, and the Supplementary Plan by a similar contract between the respondent and the Great West Life Assurance Co. Employees earning $4,000 or less per annum were eligible to participate in the Basic Plan only, while those earning in excess of $4,000 could and did participate in both plans. The purchase price, or premium, was paid by the respondent partly with monies supplied by each participating employee and the balance by the respondent's own contributions made on behalf of each such employee who, subject to certain conditions, became entitled to certain retirement annuities.

Under the Basic Plan each employee contributed thereto by agreeing to a deduction and periodic remittance by the employer to the underwriter of four per cent of his compensation (maximum $160), as and when it was paid. The respondent similarly paid, for the account of each participant, an amount equal to five per cent of an employee's earnings up to $4,000 (maximum $200).

1958

MINISTER OF NATIONAL REVENUE v. ONTARIO PAPER CO. LTD.

Kearney J.

Under the Supplementary Plan each employee earning in excess of $4,000 contributed annually in advance four per cent of his compensation, but in no event could his annual contribution be in excess of $740 (apart from $160 contributed to the Basic Plan). The respondent contributed annually in advance, for the account of each participant, the equivalent of twelve per cent of his compensation in excess of $4,000 (apart from the $200 contributed on his behalf to the Basic Plan). I consider that further reference to employees' contributions can be dispensed with, and with respect to employer contributions the parties admit that only future service contributions, as described in the booklets, pages 6 and 7 (Exs. 1 and 2), need be considered.

The appellant interpreted s. 11(1)(*f*) to mean that employers such as the respondent were entitled to deduct not more than $900 in respect of any one of its employees; also that any excess paid over $900 in respect of any one employee was lost for deduction purposes. The appellant caused a booklet (Ex. 4) to be issued concerning pension plans, which contains at page 12, para. (*c*), a statement of principles and rules along the above-mentioned lines.

The respondent thought that it was bound by the principles or practice described in the booklet and followed them. Accordingly it claimed, in its original income tax returns for the four years in question, its total yearly contributions made under both plans less the total amount of such contributions in excess of $900 made on behalf of a relatively few highly paid employees. After a thorough study of the situation, from the legal point of view, had been made, the respondent concluded that it was not bound by the practice described, a fact which the appellant does not dispute, and that there was a possibility of claiming as deductions all the contributions paid by it under the Basic and Supplementary Plans on the ground that its average contribution for each employee did not exceed $900 in any one year. This the appellant denied.

The respondent amended its four income tax returns so as to claim as deductions the full amount of its contributions. The respondent's total contributions to both plans in 1949 amounted to $176,573.94 ($129,134.47 under the Basic Plan and $47,439.47 under the Supplementary Plan), but it had claimed as a deduction $159,158.42, and the

difference of $17,415.52 was later claimed in its amended return. (See Ex. 3.) No itemized statement of the employees' individual earnings or amounts of employer contributions paid for the account of employees individually was filed, but it is admitted that the difference of $17,415.52 is the aggregate of the amounts by which the contributions of the respondent under the plans for certain employees exceeded $900 in 1949.

The amounts of corresponding deductions claimed for 1950, 1951 and 1952 were as follows:

Year	*Deduction now claimed (Total contributions)*	*Deduction previously claimed on T.2 Return*	*Difference*
1950	$179,742.16	$160,689.17	$19,052.99
1951	209,185.04	183,425.39	25,759.65
1952	237,127.39	204,111.75	33,015.64

The appellant assessed the respondent on the basis of its original returns. The respondent gave notice of its objection to the assessments on February 24, 1954, in respect of 1949 to 1951 inclusive, and on September 20, 1954, in respect of 1952. On reconsideration, the appellant confirmed all the assessments on the ground that the respondent had been allowed deductions to the extent provided in s. 11(1)(*f*) of *The Income Tax Act* and duly notified the respondent accordingly. The Board maintained the respondent's objections and allowed the appeals.

In 1949 the total number of employees participating in the Basic Plan was 847, including 85 who were earning more than $4,000 and participating also in the Supplementary Plan. Similar information is contained in Exhibit 3 respecting the other years, but I will only consider the $176,573.94 deduction claimed for 1949, since what can be said for or against it is equally applicable to the deductions claimed for the three succeeding years.

I think the first approach in this case must be to direct one's attention to the wording or language of the statute. In this connection, Lord Herschell, in *Bank of England v. Vagliano*[1], said: "What, however, I am venturing to insist upon is, that the first step taken should be to interpret the language of the statute . . ." The following statement is

[1] [1891] A.C. 107, 145.

1958

MINISTER OF NATIONAL REVENUE v. ONTARIO PAPER CO. LTD.

Kearney J.

found in Halsbury, Vol. 31, Second Edition, at page 477: "It has been said that the meaning of statutes is primarily to be sought in themselves—*Inland Revenue Commissioners v. Herbert*"[1]. The learned President of this Court, in *Mountain Park Coals Ltd. v. Minister of National Revenue*[2], said: "The legislative intent of an Act must be gathered from the words by which it is expressed and it is the meaning of the words as used that is to be ascertained."

I must say that s. 11(1)(*f*) appears plain to me when read in its ordinary and grammatical sense. By applying to it the preceding canons of construction, I think it logically follows that the employer is entitled to deduct an amount, provided it does not exceed $900, which he has paid to an approved pension plan in respect of a particular participant; and that he is limited to making as many such deductions as there are instances in which such a particular payment has been made.

Rand J., in *Commissioner of Patents v. Winthrop Chemical Inc.*[3], speaking of interpretive approach and quoting with approval *Grey v. Pearson*[4], observed: "What has been called the Golden Rule of construction is that the language of a statute should be given its grammatical and ordinary sense unless that would lead to absurdity, repugnancy or inconsistency, in which case that sense may be modified so as to avoid the absurdity or inconsistency, but no farther."

It has been said that "What is plain to one mind may be just the reverse to another." (See Odgers' *The Construction of Deeds and Statutes,* Fourth Edition, page 209.) However, as Halsbury points out in Vol. 31, Second Edition, page 478, even "if the terms employed are ambiguous, then the intention of Parliament must be sought first in the statute itself . . ." See Lord Wrenbury in *Viscountess Rhonddas' Claim*[5].

The respondent interprets the words "an amount not exceeding $900" to mean an average amount for all employees, and it is immaterial whether the employer's contribution based on twelve per cent of the higher salaried employees in some cases exceeded $900 so long as any amount over $900 can be offset, or more than offset, by the

[1] [1913] A.C. 326, 332.
[2] [1952] Ex. C.R. 560, 564.
[3] [1948] S.C.R. 46, 54.
[4] (1857-59) 6 A.C. 61, 106.
[5] [1922] 2 A.C. 339 at 397, 398.

more numerous but lesser contributions based on five per cent of the remuneration paid the lower salaried employees. Thus, in the respondent's view, the maximum permissible deduction for any year is arrived at by first multiplying $900 by the total number of employees participating in each plan. The total of the actual employer contributions to both plans is then ascertained and, provided it is less than or equal to the product of this multiplication, it is deductible *in toto* because in such event the average of the actual contributions may be less but it cannot be more than $900.

The practical application of the respondent's theory to the taxation year 1949 would entail, first, multiplying the number of participating employees during the said year, namely, 847, by $900. The product of $762,300 would, in the respondent's opinion, constitute a maximum global amount which the company is permitted to deduct. According to the respondent, since its total contribution for 1949 was $176,573.94, it could deduct the full amount thereof with $585,726.06 to spare, because the total employer contributions divided by 847 result in an average contribution of $208.47 which allegedly falls within the limit of $900 for each individual by $691.53.

Unless the terms "paid . . . in respect of . . . each employee" which appear in it are ignored, the context does not lend itself, in my opinion, to the interpretation suggested by the respondent which, if accepted, would lead to inconsistencies. In order to justify a deduction under the section, it must be identifiable with the employer's contribution which is actually paid to the underwriters on behalf of each individual participant. The strikingly disproportionate figure of $585,726.06, in my view, has no place in the statute because no part of it was ever paid to the underwriters by the employer.

I do not think that there is any room for doubt as to what is meant by "each employee." Section 127(1)(*c*) of *The Income Tax Act* defines an approved plan as follows:

> (*c*) "Approved superannuation fund or plan" means an employees' superannuation or pension fund or plan approved by the Minister in respect of its constitution and operations for the taxation year under consideration.

1958

MINISTER OF NATIONAL REVENUE v. ONTARIO PAPER CO. LTD.

Kearney J.

The respondent produced as Exhibits 1 and 2 the approved contracts describing the constitution and operations of the Basic and Supplementary Plans. These contracts clearly contemplate payments being made for the exclusive accounts of particular employees. I do not mean that the contracts contemplate that the employer during a taxation year will remit his contributions, as premium payments, to the underwriters on behalf of individuals in individual amounts, but that he will make one or more global payments accompanied by a statement identifying the employees for whose accounts the contribution is being made and indicating the amount attributable to each one of them. The last paragraph on page 1 of the Basic Contract (Ex. 1) states:

> At the time any payment is made on behalf of Registered Employees hereunder, Purchaser shall stipulate the amount of each kind of payment included therein and, except as expressly provided hereinafter, such payments shall be held for the exclusive accounts of the respective Registered Employees for whom they were deposited. No payment shall be accepted on behalf of a Registered Employee subsequent to his Retirement Date.

Under the Supplementary Plan employer contributions are payable yearly in advance as part of the premium. Section 3 of the Supplementary Contract (Ex. 2) states:

> PREMIUMS.—A premium shall be due and payable annually in advance at the Head Office of the Insurance Company in respect of each employee while covered hereunder . . . .

See also booklet attached to Ex. 2, p. 7, s. 12, which reads in part as follows:

> The Companies will contribute on account of each such participant 12% of such compensation.

I am not disposed to accept the respondent's interpretation for the further reason that to do so would be tantamount to recognizing that s. 11(1)(*f*) is ineffective, if the policy and object of Parliament is to place some reasonable limit on the deductibility of employer contributions made in respect of certain of his more highly paid employees. In the present instance, the limitation of $900 applies to those of the eighty-five participants in the Supplementary Plan whose compensation amounted to or exceeded in round figures $10,000 per annum because in respect of such an employee the respondent would contribute under the Basic Plan five per cent on the first $4,000, or $200, and twelve per cent on the remaining $6,000, or $720. Since a $900

deduction is permitted, all but $20 of the employer's contributions would be deductible. If, as alleged by it, the respondent were entitled to a yearly deduction of nearly $600,000, then I think the limitation in the statute would be so inconsequential as to be almost meaningless. In no case does an employer's contribution exceed twelve per cent of an employee's compensation. Consequently, even on the assumption that a dozen employees were in receipt of a yearly compensation of several hundreds of thousands of dollars each, no limitation could have begun to operate in 1949. I do not think that it could be supposed that such a result was contemplated by the legislature, or that the appellant would give his discretionary approval to the contracts in question, if they were so inconsistent with the object of the legislation.

In this connection, Odgers at page 177 (*supra*) states: "Next, if possible, the construction adopted should be in accordance with the policy and object of the statute in question." Lord Goddard, in *Barnes v. Jarvis*[1] said: "A certain amount of common sense must be applied in construing statutes. The object of the Act has to be considered . . ."

Before an interpretation such as suggested by the respondent could be accepted, I think words which are now lacking in the statute would have to be supplied. As a general rule the Court will not introduce into statutes words which are not found there. *Craies on Statute Law*, Fifth Edition, p. 103, treats construction by implication as follows:

> If the meaning of a statute is not plain, it is permissible in certain cases to have recourse to a construction by implication, and to draw inferences or supply obvious omissions. But the general rule is "not to import into statutes words which are not to be found there" (*King v. Burrell* (1840), 12 A. & E. 460, 468), and there are particular purposes for which express language is absolutely indispensable. "Words plainly should not be added by implication into the language of a statute unless it is necessary to do so to give the paragraph sense and meaning in its context" (*Tinkham v. Perry* [1951] 1 T.L. 91, 92.).

In my view, if the paragraph were meant to convey the meaning which the respondent attributes to it, it would have contained an arithmetical reference, such as averaging or multiplying.

[1] [1953] 1 W.L.R. 649, 652.

1958

MINISTER OF NATIONAL REVENUE v. ONTARIO PAPER CO. LTD.

Kearney J.

Counsel for the respondent stressed the point that, if the word "amount" meant amounts referrable to each employee, it would have been in the plural. If it were necessary or desirable to do so, I think it would be permissible to insert in s. 11(1)(*f*) "or amounts" after the word "amount," in virtue of the *Interpretation Act*, R.S.C. 1927, c. 1, s. 31(*j*), which states:

> In every Act, unless the contrary intention appears,
> (*j*) words in the singular include the plural, and words in the plural include the singular.

This is particularly true when one considers that the employer in this case is making payments or contributions to two plans which were underwritten by separate underwriters. In like manner, the word "plan" must be read to include more than one plan. For instances in which s. 31(*j*) was applied, see *Minister of National Revenue v. Stovel Press Limited*[1], *The Credit Protectors (Alberta) Limited v. Minister of National Revenue*[2], and *Minister of National Revenue v. 79 Wellington West Ltd.*[3].

A question arose as to how far the legislative history of the instant statute could be used as an aid to its interpretation. I think it is correct to say that in the present case, only its history prior to 1952 could be considered. See Thorson P. in *Mountain Park Coals Limited v. Minister of National Revenue* (*supra*). I do not propose to consider prior amendments because, in the circumstances, I think the intention of Parliament is sufficiently disclosed in the statute itself.

For the foregoing reasons I find that no error in the re-assessments was made by the appellant in respect to the respondent's tax returns for the years 1949-52 inclusive. Accordingly the appeal will be allowed, the decision of the Income Tax Appeal Board set aside, and the re-assessments made upon the respondent for each of the taxation years in question will be affirmed. The appellant is also entitled to his costs after taxation.

Judgment accordingly.

---

[1] [1953] Ex. C.R. 169, 172. [2] [1947] Ex. C.R. 44, 46.
[3] [1953] Ex. C.R. 209, 214.