

1954
Nov. 12

BETWEEN:

ROBERT SHORROCKS WILLIAMS APPELLANT;

AND

THE MINISTER OF NATIONAL }
REVENUE } RESPONDENT.

Revenue—Income—Income Tax—The Income Tax Act, 1948, S. of C. 1948, c. 52, as amended, ss. 5(a), 5(b), 11(7) and 127(1)(a)—Income from office or employment—Marine engineer—Board and living accommodation on vessel supplied free of charge—Meaning of “income from an office or employment”—Expenses of transport officers—Meaning of “amount” in s. 127(1)(a) of The Income Tax Act—Conditions of agreement with crew of vessel—The Canada Shipping Act, 1934, S. of C. 1934, c. 44, ss. 165, 226—Appeal from Income Tax Appeal Board dismissed.

In 1952 appellant was employed as a marine engineer on a vessel. With his wife and family, he resided on shore. In addition to his wages his employer supplied him with board and living accommodation on the vessel free of charge while she was making her daily trips. In his amended tax return for the taxation year 1952 appellant did not include the value of this board and living accommodation. The Minister, however, added it to appellant’s income and he was taxed accordingly. An appeal from the assessment to the Income Tax Appeal Board was dismissed and from the Board’s decision appellant appealed to this Court. On the evidence the Court found that appellant in 1952 received or enjoyed the board and lodging in respect of, in the course of or by virtue of his employment.

Held: That section 5(a) of the Income Tax Act, 1948, S. of C. 1948, c. 52, as amended, does not distinguish between the value of board and lodging which is received or enjoyed by an employee—and which by the terms of another statute must be supplied to him by his employer or be set forth in a written agreement—and other cases where there is no such statutory requirement. The purpose of s. 5(a) is to extend the meaning of “income from an office or employment” beyond the normal concept of “salary, wages and other remuneration, including gratuities” by including in that term the *value* of board, lodging and other benefits which an employee may receive or enjoy in the course of, or by virtue of, his office or employment.

2. That section 11(7) of the Income Tax Act, 1948, S. of C. 1948, c. 52, as amended, relating to the expenses of transport officers has no application since the amounts here were not *disbursed* by appellant.
3. That neither the living accommodation which appellant was entitled to enjoy by reason of the terms of the Canada Shipping Act, 1934, S. of C. 1934, c. 44, ss. 165, 226, nor the board and provisions which he received by reason of his contract with his employer, was an “amount” within the meaning of the Income Tax Act, 1948, S. of C. 1948, c. 52, s. 5(b).

APPEAL from a decision of the Income Tax Appeal Board.

The appeal was heard before the Honourable Mr. Justice Cameron at Vancouver.

Glen McDonald for appellant.

E. S. MacLatchy for respondent.

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

CAMERON J. at the conclusion of the hearing delivered the following judgment:

This is an appeal from a decision of the Income Tax Appeal Board dated May 18, 1954, whereby the appellant's appeal from an assessment for the taxation year 1952 was dismissed.

The appellant is a marine engineer and in 1952 was employed as such on the S.S. *Princess of Nanaimo*, plying between Vancouver and Nanaimo in the Province of British Columbia, making six single trips daily. With his wife and family, he resided at Horseshoe Bay. His wages for the year totalled \$3,977.32. His employer, the British Columbia Coast Steamship Service, also supplied him with board and living accommodation on the vessel free of charge. Such board and living accommodation was valued at \$228.00 and there is no dispute as to the accuracy of that figure.

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In his original tax return the appellant included as part of his income the said sum of \$228.00 as "value of free board and living accommodation." In an amended return filed by him, this item did not appear. In the assessment made upon him and dated April 8, 1953, the item of \$228.00 was made part of his income and he was taxed accordingly. The sole question for determination in this appeal is whether that sum should be included in his income for purposes of taxation.

The assessment in respect of the value of board and lodging was made under the provisions of s. 5(a) of the Income Tax Act, Statutes of Canada, 1948, as amended, and it is upon that section that the respondent now relies. It is as follows:

5. 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

- (a) the value of board, lodging and other benefits (except the benefit he derives from his employer's contributions to or under an approved superannuation fund or plan, group insurance plan or medical services plan) received or enjoyed by him in the year in respect of, in the course of or by virtue of the office or the employment.

Prima facie at least, it would seem that the value of the board and lodging received by the appellant falls within the provisions of subsection (a). The evidence establishes beyond the shadow of a doubt that the board and lodging which the appellant received or enjoyed was so received or enjoyed by him "in respect of, in the course of or by virtue of" his employment. Had he not been employed by the company, he would not have been entitled to and would not have received or enjoyed the benefits of the board and lodging. Moreover, the standard printed form of agreement signed by all members of the crew, including the appellant, contained the following provisions:

. . . in consideration of which services to be duly performed, the said master hereby agrees to pay to the said crew as wages the sums against their names respectively expressed, and to supply them with provisions according to the scale herein.

Counsel for the appellant submits, however, that as the appellant's employer was required by law to provide board and lodging the appellant had no option in the matter and that, therefore, the value thereof should not be considered as part of his income. He refers to sections 165 and 228 of

the Canada Shipping Act, 1934, Statutes of Canada, 1934, c. 44, by the terms of which, under certain circumstances, masters of vessels are required to provide lodging for members of the crew and to enter into a written agreement such as was here signed with all members of the crew, setting out the terms of employment and the scale of the provisions to be furnished to each seaman as agreed upon.

The purpose of these provisions in the Canada Shipping Act is quite obvious and need not here be discussed. They cannot, however, in my opinion, affect in any way the problem now before me. Section 5(a), which I have quoted above, makes no attempt to distinguish between the value of board and lodging which is received or enjoyed by an employee—and which by the terms of a statute must be supplied to him by his employer or be set forth in the agreement—and other cases where there is no such statutory requirement. The purpose of the subsection is to extend the meaning of “income from an office or employment” beyond the normal concept of “salary, wages and other remuneration, including gratuities” by including in that term the *value* of board, lodging and other benefits which an employee may receive or enjoy in the course of, or by virtue of, his office or employment. The provisions of the subsection are fully satisfied if the board and lodging are received or enjoyed by him in respect of, in the course of or by virtue of the office or employment. To exclude from its ambit the value of board and lodging—admittedly received or enjoyed and proven to have been in respect of, in the course of or by virtue of the office or employment—merely because the law required the employer to provide them, would be to read into the subsection an exception which Parliament has not seen fit to provide and which cannot be inferred from the words of the subsection itself. The question is not whether the employer supplied the benefits because of the requirements of the Canada Shipping Act or whether it did so by voluntary contract or otherwise—but whether the appellant did receive or enjoy them in 1952 in respect of, or in the course of, or by virtue of his employment, and my finding must be that he did.

Counsel for the appellant also relied on section 11(7) of the Income Tax Act, having to do with the expenses of transport employees. It relates to the deduction of certain

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amounts *disbursed* by such employees for board and lodging under certain conditions. Inasmuch as the amounts in question in this appeal were not disbursed by the appellant, section 11(7) has no bearing on the issue.

I am of the opinion also that section 5(b)(i) of the Income Tax Act is of no assistance to the appellant. It reads as follows:

5. 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

(b) all amounts received by him in the year as an allowance for personal or living expenses or as an allowance for any other purpose except

(i) travelling or personal or living expense allowances expressly fixed in an Act of the Parliament of Canada.

Subsection (b) thereof relates to *amounts* received by a taxpayer as an allowance for personal or living expenses or for any other purpose. The word "amount" is defined in the Act by section 127(1)(a) as meaning money, rights, or things expressed in terms of the amount of money, or the value in terms of money of the right or thing. Neither the living accommodation which the appellant was entitled to enjoy by reason of the terms of the Canada Shipping Act, nor the board or provisions which he received by reason of his contract with his employers, was money, or expressed in terms of the amount of money or the value in terms of money, and was consequently not an "amount" within the meaning of subsection (b). The statutory provision regarding crew accommodation is defined in terms of cubic feet, and the agreement signed by the appellant provides that the scale of provisions shall be "full and plenty". It becomes unnecessary, therefore, to consider the further submission that the appellant falls within the exception provided by subsection (i), namely "travelling or personal or living expense allowances expressly fixed in an Act of the Parliament of Canada", although I would be of the opinion that he does not.

For the reasons which I have stated, the appeal will be dismissed and the assessment made upon the appellant will be affirmed, with costs to the respondent.

Judgment accordingly.