BETWEEN:

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

Toronto 1966 May 12, 13

AND

FRASER H. WATTS ..... RESPONDENT.

Income Tax—Income Tax Act, R.S.C. 1952, c. 148, ss. 3, 4, 139(1)(e)—Award received by architect in architectural competition—Whether income or capital receipt—Prize—Travelling expenses.

The respondent submitted competition drawings to Central Mortgage and Housing Corporation pursuant to an offer made by it to the architectural profession in general, under which the competitors were to be paid for their work in conformity with stated terms.

Watts received a cheque of $4,000 in due course, as one of five entrants who agreed to submit further drawings and to compete for the top award of $15,000. This sum of $15,000 was won by him. The Minister sought to assess both amounts as income for services rendered.

The travelling expense deduction allowed by the Tax Appeal Board, relating to travelling undertaken in pursuit of studies of European projects similar to that involved in the competition, was also contested by the Minister.

Held, That the entering of the competition by the respondent and the filing of drawings created a contractual relationship between him and Central Mortgage and Housing Corporation under which the respondent became entitled to such remuneration as was specified in the published conditions of the competition.

2. That the $4,000 payment was income received under the contract and the $15,000 payment, although called a prize, was paid in discharge of a contractual obligation for services rendered and was not a gift within the meaning of the Act.

3. That the amount allowed by the Tax Appeal Board for travelling expenses was properly allowable.

4. That the appeal be allowed in part.

APPEAL from a decision of the Tax Appeal Board.

G. W. Ainslie and *J. E. Sheppard* for appellant.

D. G. Kilgour for respondent.

GIBSON J.:—This is an appeal by the Minister of National Revenue from a decision of the Tax Appeal Board dated March 12, 1965 regarding the assessment for the taxation year 1961 of the respondent. The issues for decision on this appeal are whether the respondent in computing his income for the year 1961 was entitled to deduct the

1966

M.N.R. v. WATTS

Gibson J.

sum of $497.20 paid to B.O.A.C. for a return air ticket to the United Kingdom and Holland as an expense in earning his income and whether there should be included in the respondent's taxable income for the year 1961 the sums of $4,000 and $15,000 received from Central Mortgage and Housing Corporation.

The facts are relatively undisputed and are set out adequately in the Tax Appeal Board's judgment and are not repeated in these reasons but are referred to in part. The dispute is as to the conclusion in law to be drawn from these facts.

As to the deductibility of the said sum of $497.20, I agree with the Tax Appeal Board and dismiss the appeal insofar as this issue is concerned.

As to the other issue, the appellant in its Notice of Appeal relies for its case on the assessment made by the Minister which it is pleaded was based on certain assumptions, among which is the assumption contained in paragraph 5(*f*) of the Notice of Appeal which reads as follows:

> The sums of $4,000 and $15,000 were paid to the Respondent by Central Mortgage and Housing Corporation for services rendered by the Respondent in submitting a design for a housing development for land owned by Central Mortgage and Housing Corporation, and hence were income from a business within the meaning of sec. 3, 4, and para. (*e*) of ss. (1) of sec. 139 of the *Income Tax Act* R.S.C. 1952 c. 148.

The respondent says that these sums were received by him as gifts and not as income within the meaning of the *Income Tax Act*.

As is well known, apart from describing certain types of income which attract tax, in the *Income Tax Act* there is no comprehensive definition of "income". As a result of judicial decisions however, it is possible to name some criteria which assist in determining the quality of a given receipt or profit in reference to taxation under the *Income Tax Act*, but there is no all-inclusive list of such criteria.

There is also no comprehensive definition of "gift" in the *Income Tax Act*, but a gift *inter vivos* (as the receipt of these said sums of $4,000 and $15,000 are alleged to be by the respondent) is one method of transferring personal property.

1966

M.N.R.
v.
WATTS

Gibson J.

Halsbury's Laws of England[1] defines a gift *inter vivos* as follows:

> A gift *inter vivos* may be defined shortly as the transfer of any property from one person to another gratuitously while the donor is alive and not in expectation of death. It is an act whereby something is voluntarily transferred from the true possessor to another person, with the full intention that the thing shall not return to the donor, and with the full intention on the part of the receiver to retain the thing entirely as his own without restoring it to the giver.

There are many qualifications to this general statement in the decided cases. For example, the gratuitous aspect for the purposes of taxation may include contract cases where the consideration given is substantially out of proportion to the benefit received, in which event the differential is often considered a gift by the taxing authorities.

Because it is not possible to lay down any comprehensive definition of "gift" or "income" under the *Income Tax Act*, each case must fall to be considered on its facts in matters such as are in issue in this particular case.

In this case it is possible however to categorize the matter from which certain legal consequences flow.

The respondent during the relevant period registered and submitted competition drawings to the Central Mortgage and Housing Corporation pursuant to an offer made by it to the architectural profession in general in respect to the so-called Smyth Road project in Ottawa. The terms and conditions of this competition are set out in Exhibit R-1 filed at this trial at pages 1 to 19 inclusive. In addition, as part of these terms and conditions there were certain questions and answers which constituted an extension of the conditions of the competition which are set out at pages 20 to 23 of said Exhibit R-1. The respondent or any of the other competitors were to be paid for their work according to the precise stipulations therein contained, and were not to be paid otherwise.

However, by telegram dated April 13, 1961 from Central Mortgage and Housing Corporation to him, the respondent was advised that he was one of five persons who had been chosen to compete in final run-off competition, so to speak, to determine the winner of the moneys offered in the original competition to the winner chosen by the judges of the

[1] Third Edition, Vol. 18, p. 364, para. 692.

1966

M.N.R. v. WATTS

Gibson J.

competition. This was not in accordance with the terms of the original competition and was in effect an amendment to it.

This telegram was followed by a letter dated the same date to the respondent advising him of this and informing him that a cheque for $4,000 was approved for payment to him and to the other four persons as expenses and asking about his willingness to participate further in this competition. The respondent agreed to participate, doing so by telegram dated April 14, 1961; and subsequently he received from Central Mortgage and Housing Corporation the said $4,000. The respondent then re-submitted drawings along with the other four competitors chosen for this run-off competition, pursuant to the directions given, and finally on July 19 he was chosen the winner of the competition and with a letter dated July 26, 1961 was sent a cheque in the sum of $15,000 which was the sum offered in the competition (before the above mentioned amendment to it) and which is referred to by Central Mortgage and Housing Corporation in Exhibit R-1 as a prize. (Subsequently, as provided for in the terms and conditions of the competition, the respondent entered into a further contract with Central Mortgage and Housing Corporation and did certain other further work, but the project was never proceeded with. But these subsequent matters are irrelevant to the issue in this action).

It is on the facts above recited that the issue arises as to whether the sums of $4,000 and $15,000 are gifts or income within the meaning of the *Income Tax Act* and the jurisprudence under that Act.

I am of the opinion that as a matter of law on these facts the entering into this competition by the respondent and the filing of drawings pursuant to it created a contractual relationship between the respondent and Central Mortgage and Housing Corporation. Pursuant to the terms of that competition contract the respondent had no claim against Central Mortgage and Housing Corporation for remuneration except according to the terms of the published conditions of that competition. These terms were unilaterally changed by Central Mortgage and Housing Corporation on April 13, 1961, which change was agreed to by the respondent by his acceptance by telegram dated April 14, 1961

followed by the receipt of the sum of $4,000 pursuant thereto. This amount was not agreed to between the parties after negotiation. It was offered by Central Mortgage and Housing Corporation, and tacitly accepted by the respondent.

It is not necessary to decide whether or not the respondent might have had a cause of action against Central Mortgage and Housing Corporation on a *quantum meruit* basis for the work which he had done pursuant to this competition contract if he had refused to accept this change in the conditions and terms of the competition.

It is sufficient to find, as I do, that this $4,000 was income received by the respondent arising out of this amended contract which he entered into with Central Mortgage and Housing Corporation.

Then subsequently, as successful winner of this competition, the respondent received the payment of $15,000 which was the payment called for under this competition contract. As stated, it was called a prize by Central Mortgage and Housing Corporation in the terms and conditions of the competition but that fact is of no legal significance in determining whether the receipt of it was income for tax purposes or a gift. What is of legal significance is that the payment of this sum constituted a discharge of the contractual obligation between Central Mortgage and Housing Corporation and the respondent to pay this sum for services rendered by him pursuant to the terms and conditions of this competition contract. The fact that Central Mortgage and Housing Corporation received no economic benefit from the services rendered by the respondent is inapposite.

It was not a gift *inter vivos* in any legal sense of a method of transferring personal property, and in any event, it was not a gift within the meaning of the *Income Tax Act*.

Instead, this $15,000 was income received by the respondent in his "business" as architect within the meaning of s. 139(1)(*e*) and ss. 3 and 4 of the Act.

In the result, therefore, the appeal is allowed in part and the matter is referred back to the Minister for reassessment not inconsistent with these reasons.

The appellant shall be entitled to 50 per cent of its taxed costs.