
OMER H. PATRICK ..... APPELLANT;

AND

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

Revenue—Income—Family Corporation—Jurisdiction—Decision of the Minister final on matters of fact only—Income War Tax Amendment Act, 20-21 Geo. V, c. 24, s. 22, ss. 1.

The Income War Tax Act, as amended by 20-21 Geo. V, c. 24, s. 5, provided that:—

> 22 (1) The shareholders of a family corporation may elect any time within thirty days after the date on which returns of income by corporations are to be made that in lieu of the corporation being assessed as a corporation, the income of the corporation be dealt with under this Act as if such corporation were a partnership, and each shareholder resident in Canada shall then be deemed to be a partner and shall be taxable in respect of the income of the corporation according to his interest as a shareholder: Provided however that the corporation, notwithstanding any such election, shall continue to be liable in respect of the interest of any non-resident shareholder in the income of the corporation.

This enactment was made applicable to the year 1930.

1934
Sep. 24.
1935
Jun. 22.

Appellant, his wife, and four other members of his family held in equal parts the shares of Atlas Coal Company Limited, a family corporation for purposes of income tax. The Minister of National Revenue assessed all of the income of Atlas Coal Company Limited against four of the shareholders, assessing appellant for 31·22 per cent and his wife for 2·12 per cent of said income. Appellant contends that the assessment is erroneous and that he should have been assessed only for one-sixth of the income of Atlas Coal Company Limited.

Held: That s. 22 of the Income War Tax Act is complete in itself and must be interpreted independently of sections 30 and 31 of the Act, dealing with partnerships.

2. That the shareholders of a family corporation having elected that the income of the corporation be dealt with as if the corporation were a partnership, each shareholder shall be deemed to be a partner and shall be taxable in respect of the income of the corporation *according to his interest as a shareholder.* The assessment herein is, therefore, illegal.

3. That ss. 4 of s. 22 renders the decision of the Minister final and conclusive solely in matters involving questions of fact; it does not vest the Minister with the power to adjudicate finally on questions of law, to the exclusion of the courts.

APPEAL under the provisions of the Income War Tax Act from the decision of the Minister of National Revenue.

The appeal was heard before the Honourable Mr. Justice Angers, at Calgary.

H. S. Patterson, K.C., and *A. W. Hobbs* for appellant.

J. W. Crawford for respondent.

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

ANGERS J., now (June 22, 1935) delivered the following judgment:

This is an appeal, under the provisions of sections 58 and following of the Income War Tax Act, 1917, and amendments thereto, from the assessment of the appellant for the year 1930 in respect of his share of profits in Atlas Coal Company Limited for the said year.

The facts are briefly as follows:

National Securities Limited was incorporated in 1914; in the early part of the year 1925 the appellant, Dr. Omer H. Patrick, was the principal shareholder of the company.

In 1925, the shares were divided among the members of the appellant's family and allotted as follows: 625 to the appellant, 625 to his wife (Lulu F. Patrick), 625 to his son (Lorraine Patrick), and 625 to his daughter (Frances L. Eaton).

1935

OMER H. PATRICK v. MINISTER OF NATIONAL REVENUE.

Angers J.

From that time National Securities Limited was assessed, for income tax purposes, as a personal corporation, under Section 21 of the Act.

For some years prior to 1930 the Minister of National Revenue assessed 97·88 per cent of the income of the company to the appellant and 2·12 per cent to his wife, Lulu F. Patrick. National Securities Limited was essentially a holding company; its assets consisted mainly of bonds and real estate.

In and previous to 1925 the appellant was also a shareholder in a company known as Atlas Coal Company Limited, incorporated by virtue of letters patent of the Province of Alberta.

This company, in 1925, held, among other assets, leases of certain mining properties in Alberta, described as the Murray leases, having acquired the same from one Isabella Augusta Murray. In the early part of that year, Atlas Coal Company Limited was in financial difficulties and some time in April it assigned and transferred unto National Securities Limited all its right, title and interest in and to the said leases for certain considerations which have no materiality herein and which accordingly I need not relate.

By an agreement dated the 20th of July, 1929, National Securities Limited sublet the mine, which in the sublease is called the East Coulee Coal Mine, and its equipment to the appellant, his wife (Lulu F. Patrick), his son (Lorraine Patrick), his daughter-in-law (Gertrude U. Patrick), his daughter (Frances L. Eaton), and his son-in-law (George E. Eaton) for a term of five years from the first of July, 1929, for and in consideration of a rental of $10,000 a year and a royalty of ten cents per ton on all coal mined.

A company was incorporated by virtue of federal letters patent under the name of Atlas Coal Company Limited. The evidence discloses that the incorporation was somewhat delayed due to the fact that the provincial corporation bearing the same name had not been definitely wound up.

On August 18, 1930, the original subtenants, namely, the appellant, his wife, his son, his daughter-in-law, his daughter and his son-in-law, transferred their interest in the sublease to Atlas Coal Company Limited in consideration of shares in the company, to be allotted as follows:

to appellant 83 shares; to appellant's wife, 82 shares; to Lorraine Patrick, 83 shares; to Gertrude U. Patrick (Mrs. Lorraine Patrick), 83 shares; to George E. Eaton, 82 shares, and to Frances L. Eaton, 82 shares.

In addition to the shares allotted as above mentioned one share each was acquired by Dr. Patrick, his wife, his son, his daughter and his son-in-law, and so during the taxation period with which we are concerned, i.e. the year ending December 31, 1930, the shares of Atlas Coal Company Limited were distributed as follows:

	Shares
Dr. Patrick (the appellant).....	84
Lulu F. Patrick (the appellant's wife).....	83
Lorraine Patrick (the appellant's son).....	84
Gertrude U. Patrick (the appellant's daughter-in-law)	83
Frances L. Eaton (the appellant's daughter)..	83
George E. Eaton (the appellant's son-in-law)..	83

Atlas Coal Company Limited elected to be assessed as a family corporation under section 22 of the Act.

Before the enactment of the statute 20-21 George V, chapter 24, intituled "An Act to amend the Income War Tax Act," section 22 was thus worded:—

22. The shareholders of a family corporation may elect that, in lieu of the corporation being assessed as a corporation, the income of the corporation be dealt with under this Act as if such corporation were a partnership, and each shareholder shall then be deemed to be a partner and shall be taxable in respect of the income of the corporation according to his interest as a shareholder.

2. In order that the provisions of this section shall be applicable to any corporation and the shareholders thereof, a notice in writing of the election of the shareholders to have the same applied shall be mailed to the Minister by registered post by the secretary or other duly authorized officer of the corporation and such notice shall have attached thereto a duly certified copy of a resolution of the shareholders electing that the provision apply.

3. Dividends of a family corporation shall be subject to taxation only to the extent that the dividends are in excess of the amount of the income of the corporation which, following upon election, has been taxed under the provisions of this section.

4. The decision of the Minister upon any question arising under this section, including any question as to the application of the term "family," shall be final and conclusive.

By section 5 of chapter 24, of the statute 20-21 George V, assented to on the 30th of May, 1930, subsection one of

1935

OMER H. PATRICK v. MINISTER OF NATIONAL REVENUE.

Angers J.

section 22 of the Income War Tax Act was repealed and the following substituted therefor, to wit:—

(1) The shareholders of a family corporation may elect any time within thirty days after the date on which returns of income by corporations are to be made that in lieu of the corporation being assessed as a corporation, the income of the corporation be dealt with under this Act as if such corporation were a partnership, and each shareholder resident in Canada shall then be deemed to be a partner and shall be taxable in respect of the income of the corporation according to his interest as a shareholder: Provided however that the corporation, notwithstanding any such election, shall continue to be liable in respect of the interest of any non-resident shareholder in the income of the corporation.

By section 7 of chapter 24 of 20-21 George V, the Act was given a retroactive effect; section 7 reads as follows:—

This Act shall be deemed to have come into force at the commencement of the 1929 taxation period and to be applicable thereto and to fiscal periods ending therein and to subsequent periods, except section four hereof which shall be deemed to have come into force at the commencement of the 1930 taxation period and to be applicable thereto and to fiscal periods ending therein and to all subsequent periods.

The amendment is not material in the present instance: the validity of the election made by the company is not disputed and, on the other hand, all its shareholders are residents of Canada.

Before going into the merit of the appeal, it seems convenient and logical to dispose at first of an objection raised by the respondent against the right of the taxpayer to appeal from the decision of the Minister in a case of this nature. Counsel for the respondent submitted that, in view of subsection 4 of section 22, no appeal lies, the decision of the Minister being final and conclusive. I must say that, after considering the matter carefully, I cannot agree with this contention. I do not think that subsection 4 has the meaning and import which the respondent wishes to ascribe to it. In my opinion, subsection 4 renders the decision of the Minister final and conclusive solely in matters involving questions of fact; it does not vest the Minister with the power to adjudicate finally on questions of law, to the exclusion of the courts. In support of this proposition, the following decisions, although not in *pari materia*, may be profitably consulted: *The King* v. *Board of Education* (1); *Board of Education* v. *Rice* (2); *In re Weir Hospital* (3); *Wilford* v. *Yorkshire (West Riding)*

(1) (1910) 2 K.B., 165 at 173 (in fine) and 178.
(2) (1911) A.C. 179, at 182.
(3) (1910) L.J. Ch., 723 at 732.

County Council (1); *In re Hardy's Crown Brewery Limited* (2); *In re Campden Charities* (3); *Dyson* v. *Attorney-General* (4).

Having reached the conclusion that, notwithstanding subsection 4 of section 22, the Court has jurisdiction to take cognizance of the case at Bar, it is unnecessary for me to deal with the appellant's argument that the respondent, in submitting himself to the jurisdiction of the Court, waived the right to challenge it.

The taxable income of Atlas Coal Company Limited for the year 1930 amounted to $137,906.95. The Minister of National Revenue assessed all of the said income against four of the shareholders in the proportion respectively set opposite their names, to wit:—

Dr. O. H. Patrick (the appellant).....	31·22%
Lulu F. Patrick (the appellant's wife).....	2·12%
Lorraine Patrick (the appellant's son).....	33·33%
Frances L. Eaton (the appellant's daughter)	33·33%

The appellant contends that the assessment made by the Minister is erroneous and that the shares of Atlas Coal Company Limited being held in sixths he should have been assessed only for one-sixth.

It has been argued on behalf of the appellant that section 22 is complete in itself and that accordingly it must be interpreted independently of sections 30 and 31 of the Act dealing with partnerships. I feel inclined to agree with this view. Subsection 1 of section 22, after stating, as we have seen, that the shareholders of a family corporation—a definition of a family corporation is contained in subsection (*d*) of section 2—may elect that the income of the corporation be dealt with as if the corporation were a partnership, goes on to say that each shareholder shall be deemed to be a partner and that he shall be taxable in respect of the income of the corporation *according to his interest as a shareholder.* Nothing is said about sections 30 and 31. If the legislators had wished to have the first subsection of section 22 read in conjunction with sections

(1) (1908) 77 L.J.K.B., 436 at 445.
(2) (1910) 79 L.J.K.B., 806 at 809.
(3) (1881) 50 L.J. Ch. 646.
(4) (1911) 80 L.J.K.B. 531.

1935

OMER H. PATRICK v. MINISTER OF NATIONAL REVENUE.

Angers J.

30 and 31, it seems to me that they would have said so; it would have been a simple thing indeed to add at the end of subsection 1 the words "subject however to the provisions of sections 30 and 31" or other words to the same effect. The absence of reference to sections 30 and 31 indicates, to my mind, the intention of the legislators to have the status of family corporations with regard to income tax governed exclusively by the stipulations of section 22.

If there were any doubt as to the meaning of subsection 1 of section 22, this doubt would disappear upon reading subsection 1 of section 31, the only one which might be liable to have any bearing on the question at issue and the one under which the Minister is in fact endeavouring to bring the case of the appellant. Section 30, in my opinion, has no relevancy in the case now pending and there is accordingly no need to discuss it.

Subsection 1 of section 31 is in the following words:—

> Where a husband and wife are partners in any business the total income from the business may in the discretion of the Minister be treated as income of the husband or the wife and taxed accordingly.

The words "*total income* from the business" seem to me to apply that subsection 1 of section 31 applies only to cases where the partnership is composed solely of the husband and wife, exclusive of any other member. I may repeat here what I have said in connection with the interpretation of section 22, viz., that it would have been a simple matter for the legislators to draft subsection 1 differently had they intended to have it apply to all partnerships having among their members a husband and his wife. Surely if the legislators had in view partnerships in which there were members other than a husband and his wife, they would not have used the expression "the total income from the business," but would rather have said "the total income (or "the combined income") of the husband and of the wife from the business," or other words having a similar meaning. As it is drafted, I am unable to give to subsection 1 the meaning which the respondent is seeking to attribute to it.

The motive of the legislators in being more drastic toward a partnership consisting solely of a man and his wife than toward a partnership comprising one or more members in addition to a husband and his wife is indifferent, but, as

was suggested by counsel for the appellant, it may be that the legislators thought that in the first case it would be easier to defeat the aim and purpose of the Act than in the second one. Be that as it may, the words "total income from the business" are not apt to describe income received by some of the members of a partnership.

Even if I adopted the respondent's view that section 22 must be read with section 31 and that the first is not complete without the second, I would still think that the assessment made by the Minister is incorrect. The Minister had two alternatives: 1° of assessing the appellant proportionately to his interest in the Atlas Coal Company Limited, namely one sixth, or 2° of assessing him or his wife for one third, representing the appellant's share and that of his wife. The Minister did neither; he assessed the appellant for 31·22 per cent and the appellant's wife for 2·12 per cent. The assessment is, in my opinion, illegal.

"A Taxing Act must be construed strictly," as Lord Cairns said in *Cox* v. *Rabbits* (1); he added that one "must find words to impose the tax, and if words are not found which impose the tax, it is not to be imposed."

The same learned judge expressed a similar opinion in the case of *Partington* v. *The Attorney-General* (2), where he said:

> If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute.

See also: *Tennant* v. *Smith* (3); *Coltness Iron Co.* v. *Black* (4); *Secretary of State in Council of India* v. *Scoble* (5); *Gould* v. *Gould* (6).

In *Tennant* v. *Smith* (loc. cit.) Lord Halsbury expressed himself as follows, at p. 13:

> In various cases the principle of construction of a Taxing Act has been referred to in various forms; but I believe they may be all reduced

(1) (1877-78) 3 A.C. 473 at 478.
(2) (1869-70) L.R., 4 H.L., 100 at 122.
(3) (1892) 61 L.J. Prob. 11 at 13.
(4) (1881-82) 45 L.T., 145 at 148.
(5) (1903) A.C., 299 at 302.
(6) 245 U.S., 151 at 153.

1935

OMER H. PATRICK v. MINISTER OF NATIONAL REVENUE.

Angers J.

to this: that, inasmuch as you have no right to assume that there is any governing object which a Taxing Act is intended to attain other than that which it has expressed by making such and such objects the intended subjects for taxation, you must see whether a tax is expressly imposed.

Cases, therefore, under the Taxing Acts always resolve themselves into a question whether or not the words of the Act have reached the alleged subject of taxation. Lord Wensleydale said, *In re Micklethwaite* (11 Exch. Rep. 456; 25 Law. J. Rep. Exch. 19): "It is a well-established rule that the subject is not to be taxed without clear words for that purpose, and also that every Act of Parliament must be read according to the natural construction of its words."

I do not think that section 31 is applicable to the question at issue; the case comes exclusively within the ambit of section 22; the appellant, in my opinion, can only be assessed according to his interest in the Atlas Coal Company Limited.

The appeal must therefore be maintained, and the assessment and the decision of the Minister confirming it must be set aside.

The respondent, at the opening of the trial, moved to amend his statement of defence by adding a paragraph thereto, viz. paragraph 3(*a*), setting forth that the Court had no jurisdiction to hear the appeal, inasmuch as the decision of the Minister having been made under subsection 4 of section 22 of the Act, was final and conclusive. I reserved judgment on this motion. I think the respondent was entitled to amend his statement of defence so as to plead explicitly the lack of jurisdiction. Although the matter may not be of great importance, seeing the conclusion I have reached concerning the merits of the appeal, I must dispose of the motion; it is granted, with costs against the respondent.

The appellant will be entitled to his costs of the appeal against the respondent.

Judgment accordingly.