



1946  
\*May 6, 7.  
\*June 3

JAMES C. MAHAFFY ..... APPELLANT;

AND

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

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

*Revenue—Income—Expenses incurred by a member of a legislative assembly.—While attending sessions of the legislature or travelling from seat of legislature to residence—Whether member entitled to deduct such expenses when making his annual income tax return—Income War Tax Act, R.S.C. 1927, c. 97, s. 5(1) (f) and s. 6(1) (a).*

The appellant, a resident of Calgary, was in 1941 a member of the Legislature of the province of Alberta which meets at the capital city of Edmonton and received as such the sum of \$2,000 as an allowance. In his income tax return for the year 1941, he deducted

\*PRESENT:—Rinfret C.J. and Kerwin, Hudson, Rand and Estey JJ.

certain expenses and disbursements incurred for living expenses in the provincial capital while in attendance at legislative sessions and for travelling expenses from Calgary to Edmonton and return for week-ends during the time of such session. All of these deductions were disallowed by the Minister of National Revenue; and an appeal to the Exchequer Court of Canada was dismissed. Upon appeal to this Court,

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*Held* that the expenses above mentioned are not such as the appellant is entitled to deduct under the provisions of the *Income War Tax Act*.

2. Such expenses are "not wholly, exclusively and necessarily laid out or expended for the purpose of earning the income" within the terms of section 6 (1) (a) of the Act.
3. Travelling expenses incurred by the appellant are not "travelling expenses \* \* \* in the pursuit of a trade or business" within the meaning of the words used in section 5 (1) (f) of the Act.

Judgment of the Exchequer Court of Canada ([1946] Ex. C.R. 18) affirmed.

APPEAL from the judgment of the Honourable Mr. Justice Cameron, Deputy Judge of the Exchequer Court of Canada (1), dismissing an appeal from the decision of the Minister of National Revenue confirming the appellant's assessment under the *Income War Tax Act* for the year 1941.

Leave to appeal to the Supreme Court of Canada was granted by the Chief Justice in Chambers.

*Redmond Quain K.C.* for the appellant.

*F. P. Varcoe K.C., W. R. Jackett and J. G. McEntyre* for the respondent.

The judgment of The Chief Justice and of Kerwin, Hudson and Estey JJ. was delivered by

THE CHIEF JUSTICE:—The appellant was, in 1941, a Member of the Legislature of the province of Alberta representing the constituency of Calgary.

He included his allowance of \$2,000.00 (as a Member of the Legislature) as part of his income; but he deducted certain expenses, which deduction was disallowed by the Minister of National Revenue.

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These expenses as set out in the agreed facts consisted of:

(a) The bill of the McDonald Hotel in Edmonton being the place at which the Provincial Legislature sits and in respect to which the appellant paid for a room at a monthly rate of \$80.00 per month, making a total of ..... \$144.35

(b) Expenses for berths and other conveyances to and from Calgary to Edmonton for 14 single trips which the appellant took over each week end so as to be in Calgary on Saturdays and Sundays in order to be available to confer with his constituents who might wish to see him about various matters, making a total of ..... 43.40

As to the above it is to be noted that the actual railroad fare, apart from berths, was provided by a pass issued to the appellant and in respect to which he has made no claim.

(c) Additional expenses for meals and other incidentals while away from Calgary and in Edmonton over and above the cost of the same to the appellant while he is at home, which the appellant has calculated at \$2.00 per day for 38 days, making a total of .. 76.00

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 \$263.75

Less an item which had been reimbursed from the Provincial Government as against these expenses ..... 27.40

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 \$236.35

His appeal to the Exchequer Court of Canada was dismissed and the question is whether there was error in the judgment of that Court in not holding that:

- (1) The said expenses were wholly, exclusively and necessarily expended for earning the income as stipulated in section 6 (1) (a) of the *Income War Tax Act*; or,
- (2) The said expenses consisted of travelling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a business; and therefore should be deducted from income as provided by section 5 (1) (f) of the Act.

Taxable income is defined in section 3 (d) (ii) of the Act and is said to include the

salaries, indemnities or other remuneration of \* \* \* members of Provincial Legislative Councils and Assemblies.

The sole problem therefore is whether the expenses above mentioned are such as the appellant is entitled to deduct under the provisions of the *Income War Tax Act*.

We do not think the words used in subsection 5 (1) (f) are apt to include the expenses now in question.

The provisions of that subsection are as follows:

(1) (f) Travelling expenses, including the entire amount expended for meals and lodging while away from home in the pursuit of a trade or business.

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The occupation of Members of Provincial Legislative Councils and Assemblies is neither a trade nor a business. The travelling expenses there mentioned are in the nature, for example, of expenses of commercial travellers. *Bahamas General Trust Company et al. v. Provincial Treasurer of Alberta* (1); *Ricketts v. Colquhoun* (2) approved in the judgment of Lord Blanesburgh in the House of Lords in the same case (3).

In our view, this is sufficient to eliminate subsection (f) of paragraph (1) of section (5) of the Act as supporting the appellant's contention.

Alternatively the appellant claims the benefit of the provisions of section 6 (1) (a) of the Act which is as follows:

In computing the amount of the profits or gains to be assessed, a deduction shall not be allowed in respect of

(a) disbursements or expenses not wholly, exclusively and necessarily laid out or expended for the purpose of earning the income.

This clause was considered in the case of *Minister of National Revenue v. Dominion Natural Gas Co. Ltd.* (4) where the then Chief Justice of this Court, at page 22, said:

In order to fall within the category "disbursements or expenses wholly, exclusively and necessarily laid out or expended for the purpose of earning the income", expenses must be working expenses; that is to say, expenses incurred in the process of earning the income.

In that judgment, the Court followed the decision in *Lothian Chemical Co. Ltd. v. Rogers* (5); *Robert Addie & Sons Ltd. v. Inland Revenue Commissioners* (6). In the *Addie* case (6) it was held that in order to be allowed, such expenditure must be laid out as part of the process of profit earning. Reference may be also made to the case of

(1) [1942] 1 W.W.R. 46, at 53.

(2) [1925] 1 K.B. 725, at 731.

(3) [1926] A.C. 8.

(4) [1941] S.C.R. 19.

(5) (1926) 11 Tax Cases 508.

(6) (1942) S.C. 231, at 235.

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*Montreal Coke and Manufacturing Company v. Minister of National Revenue* (1) where it was held that expenditure to be deductible must be directly related to the earning of income from the trade or business conducted.

It cannot be said here that the expenses of the appellant had been incurred in the process of earning the income and more particularly such expenses cannot be considered as having been incurred "wholly, exclusively and necessarily" for that purpose. Moreover, section 6 of the Act, subsection (f) excludes "personal and living expenses" from the deduction which may be allowed "in computing the amount of the profits or gains to be assessed".

For these reasons, the appeal is dismissed with costs.

RAND J.:—The appellant is a member of the Provincial Legislature of Alberta, representing the constituency of Calgary. The Assembly sits in Edmonton, some 200 miles from that city. He receives from the province an allowance of \$2,000.00 under *The Legislative Assembly Act*, R. S. A. (1942) c. 4, sections 54 and 57 of which are as follows:

54. (1) In respect of each session of the Legislature which is first held in any year, there shall be allowed and payable to each member of the Legislative Assembly attending such session an allowance of \$2,000.00 and no more;

\* \* \*

57. There shall be allowed to each member five cents for each mile of the distance between the nearest railway station to the place of residence of the member and the place at which the session is held, reckoning the distance going and coming, according to the shortest railway route together with his actual travelling expenses between his place of residence and the railway station when the distance is greater than five miles.

In making his return of income to the respondent, he deducted from the sessional allowance the expenses of (a) lodging in a hotel at Edmonton in the sum of \$144.35; (b) expenses for berths and incidental transportation between Calgary and Edmonton exclusive of regular fares incurred in seven round trips taken at weekends to enable the appellant to be in his constituency to confer with constituents on various matters in the sum of \$43.40; (c) additional expenses for meals and other incidentals while in Edmonton over and above their cost to the appellant at home figured

at \$2.00 a day for 38 days, making a total of \$76.00 less the sum of \$27.40 representing the mileage allowance for one trip to Edmonton and return under section 57.

The deductions were disallowed by the respondent; an appeal to the Exchequer Court of Canada was dismissed, and the case is now brought to this Court.

The *Income War Tax Act* defines "income" as follows:

3. (1) For the purposes of this Act, "income" means the annual net profit or gain or gratuity \* \* \* and shall include the interest, dividends or profits \* \* \* and also the annual profit or gain from any other source including

\* \* \*

(d) The salaries, indemnities or other remunerations of

(1) members of the Senate and House of Commons of Canada and officers thereof;

(2) members of Provincial Legislative Councils and Assemblies.

Exemptions and deductions are covered by sections 5 and 6 as follows:

5. (1) "Income" as hereinbefore defined shall for the purposes of this Act be subject to the following exemptions and deductions:

\* \* \*

(f) Travelling expenses, including the entire amount expended for meals and lodging, while away from home in the pursuit of a trade or business;

\* \* \*

6. (1) In computing the amount of the profits or gains to be assessed, a deduction shall not be allowed in respect of

(a) Disbursements or expenses not wholly, exclusively and necessarily laid out or expended for the purpose of earning the income;

\* \* \*

(f) Personal and living expenses;

The question is whether the items deducted are travelling expenses "in the pursuit of a trade or business"; or disbursements or expenses wholly, exclusively and necessarily laid out or expended for the purpose of earning the income.

and in my opinion they are neither. Whether or not attending a session of a Legislative Assembly can be deemed "business" which I think extremely doubtful, certainly making the extra trips and lodging in a hotel in Edmonton cannot be looked upon as "in the pursuit" of it. That expression had been judicially interpreted to mean "in the process of earning" the income: *Minister of National Revenue v. Dominion Natural Gas Co.* (1). The sessional allowance is specifically for attendance by members at the

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legislative proceedings: it has no relation to any time or place or activity outside of that. The "pursuit" of a business contemplates only the time and place which embrace the range of those activities for which the allowance is made: the "process of earning" consists of engaging in those activities. To treat the travelling expenses here as within that range would enable employees generally who must, in a practical sense, take a street car or bus or train to reach their work to claim these daily expenses as deductions. Employees are paid for what they do while "at work"; and the legislators receive the allowance for their participation in the sessional deliberations: up to those boundaries, each class is on its own. For the same reason it cannot seriously be urged that the expenses are "wholly, exclusively and necessarily" laid out for the purpose of earning the allowance: they are for acts or requirements of the member as an individual and not as a participant in the remunerated field.

The appeal should, therefore, be dismissed with costs.

*Appeal dismissed with costs.*

Solicitors for the appellant: *S. J. Helman.*

Solicitor for the respondent: *S. H. Adams.*

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