

BETWEEN:

THE MINISTER OF NATIONAL } APPELLANT;
REVENUE }

1950
Oct. 24
Nov. 13

AND

MR. E. RESPONDENT.

Revenue—Income Tax—Government Annuity—Income War Tax Act, R S C. 1927, c. 97, s. 5(i) (k)—Date of commencement of payment of annuity advanced—“Amount of the annuity specified in the contract” —“Annuity” means the annual amount to be paid under the annuity contract—Advancing date of payment of annuity does not increase the amount paid—Appeal dismissed.

On March 24, 1936, respondent was issued a Canadian Government annuity providing for annual payments by him for 18 years after which he was to receive an annuity of \$1,200 per year. Pursuant to certain terms and conditions in the original contract, respondent completed the purchase of a fully paid up annuity of \$1,200, the first instalment of which was payable on March 24, 1947.

In 1947 respondent received certain instalments under the annuity contract and was assessed for income tax on these instalments. An appeal to the Income Tax Appeal Board was allowed and from that decision the Minister of National Revenue appeals to this Court.

Held: That “the amount of the annuity actually specified” in the contract entered into prior to June 25, 1940, was not increased, exceeded or enlarged by advancing the date of the first payment of the annual income from 1954 to 1947 and the proviso in s. 5(1) (k) of The Income War Tax Act as enacted by c. 34, s, 13 of the Statutes of Canada for 1940 here has no application and the appeal must be dismissed.

APPEAL by the Minister of National Revenue from a decision of the Income Tax Appeal Board.

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

W. R. Jackett, K.C. and *Miss H. W. Currie* for appellant.

The respondent appeared in person.

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

CAMERON J. now (November 13, 1950) delivered the following judgment:

This is an appeal by the Minister of National Revenue from a decision of the Income Tax Appeal Board, dated March 22, 1950, (1) which Board unanimously allowed

(1) 2 Tax A.B.C. 55 at p. 60.

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the respondent's appeal from an assessment to income tax for the taxation year 1947. The appeal before the Board was heard in camera and the appellant there was given the designation of Mr. E. The appeal to this Court was also heard in camera and for purposes of convenience I shall herein refer to the taxpayer as Mr. E.

The facts are not in dispute. In March, 1936, Mr. E. made application for the purchase of a deferred annuity from the Government of Canada through the Annuities Branch of the Department of Labour. His application (Ex. A-2) was on a form supplied by the Annuities Branch and in part read as follows:

\$1,200, or for such other annuity as the payments which I may make will purchase, the annuity to be paid to me in equal quarterly instalments, the first payment of annuity to be made at Ottawa, or as may be arranged 18 years from the date of first payment of purchase money.

The annuity which I desire to contribute for and to purchase is that sold under Plan "A" Gtd. 10 years, for which I agree to pay the authorized monthly rate of \$39.65 reserving, however, the right to complete the contract by periodical payments and lump sums; or by paying lump sums of varying amounts and at regular intervals; or by a single payment; or by such other plan as may be authorized and approved by the Government; and with the understanding that such an annuity will in any event be granted to me as the total amount paid in by me improved at four per cent compounded yearly will purchase at the rates in effect at the date of this application, the same not to exceed \$1,200; and with the further understanding that in case the payments made by me are not sufficient to purchase an annuity of \$10, the payments I make will be returned to me or to my legal representatives with compound interest at four per cent.

Pursuant to that application, a Canadian Government Annuity under Plan "A", Deferred Annuity Contract, guaranteed for ten years and dated March 24, 1936, was issued by the Dominion of Canada over the signatures of the Acting Deputy Minister of Labour and the Superintendent of Annuities. That annuity contract is Ex. A-3 herein. It provided that upon the payment of \$475.80 yearly, payable at the rate of \$39.65 on the 24th day of each month, commencing on the 24th day of March, 1936, and continuing until payments for eighteen years had been paid, a life annuity of \$1,200, payable in quarterly instalments, was to be received by Mr. E., the first of such annuity payments to become due on the 24th of March, 1954, such annuity to be payable in quarterly instalments of \$300, for ten years certain or for the lifetime of the annuitant, whichever period was the longer.

The contract further provided as follows:

THIS CONTRACT WITNESSETH FURTHER that in consideration of payments made in any other manner than in the manner above indicated, such an annuity shall be paid at the date fixed for the commencement of the annuity as the total payments made (increased at 4 per cent compounded yearly) will purchase at the rate in effect at the date of this contract.

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Attached to the annuity contract were certain "conditions," two of which were as follows:

4. If for any reason the annuity is required at an earlier age than specified in the contract, the contract may be converted, on any anniversary of the date of issue, into an Immediate Annuity, to commence at once, for the amount that had been purchased at the date of the said conversion.

5. Under this plan, the annuitant has the option of changing to any other plan, provided change is made at least five years before the date of maturity of the contract.

When the annuity contract was issued in 1936, Mr. E. paid the first monthly instalment of \$39.65. He made no further payments until the 24th day of February, 1944, when he paid \$5,000. Then, on August 29, 1946, he made a further payment of \$8,600.16. These payments, totalling \$13,639.86, were sufficient to complete the purchase of a fully paid up annuity of \$1,200, *the first instalment of which was payable on March 24, 1947*. The payment of the premiums in lump sums instead of in monthly instalments, and the change in time of payment of the first instalment of the annuity from March 24, 1954, to March 24, 1947, were made in accordance with the terms and conditions of the annuity contract itself. On January 31, 1947, the Superintendent of the Annuities Branch wrote Mr. E. stating:

I am sending you herewith a statement which is of the same force and effect as if an endorsement had been made on the contract itself and which should be attached thereto as soon as convenient.

The statement therein contained was as follows:

In compliance with the expressed wish of the annuitant, the date of maturity of this contract is hereby changed from March 24, 1954, to March 24, 1947. In consideration of the total payment of \$13,639.81 made under this contract, the purchase of an annuity of \$1,200 guaranteed ten years has been completed.

In 1947 Mr. E. received certain instalments under his annuity contract, and the question is whether such amounts constituted taxable income in his hands. The matter falls

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to be determined under the provisions of section 5(1) (*k*) of The Income War Tax Act, which in 1947 was as follows:

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

(*k*) The income arising from any annuity contract entered into prior to the twenty-fifth day of June, 1940, to the extent provided by section three of chapter twenty-four of the Statutes of 1930 and section six of chapter forty-three of the Statutes of 1932; Provided that such exemption shall not extend to that portion of the income which exceeds the amount of the annuity actually specified in the contract before the twenty-fifth day of June 1940, where such excess amount arises by reason of any option or contractual right to enlarge the annuity income by the payment of additional sums or premiums, unless such additional sums or premiums have actually been paid before the said date.

The Tax Appeal Board allowed the appeal on the grounds: (1) that the income in question arose from an annuity contract entered into prior to June 25, 1940, and being one which provided for an annuity of \$1,200, was totally exempt under section 6 of ch. 43 of the Statutes of 1932, thereby coming within the first part of subsection (*k*); (2) that the proviso in subsection (*k*) has here no application; and (3) that the advancing of the date of maturity of the annuity contract from 1954 to 1947, by the payment of additional premiums, did not constitute a new contract.

Mr. E. appeared in person, and in the main his submission was based on the findings of the Income Tax Appeal Board.

Counsel for the Minister admits that the method of payment followed by Mr. E. and the advancing of the date of maturity of the contract from 1954 to 1947 were carried out under the options and conditions in the original contract. He admits further that had the payments been made at the times when they were actually made, but in amounts sufficient only to provide for the maturity of the contract in 1954 as originally planned, under section 5(1) (*k*) the total amount of the annual payments would have been exempt in 1954 and thereafter and that the proviso in that case would have no application.

His submission is one which I think was not made to the Income Tax Appeal Board. As I understand that submission, it is this. He says, that the sum of \$1,200 mentioned in the contract is the annual *rate* at which the

annuity is payable; and that the "amount of the annuity specified in the contract" is "the annuity of \$1,200 a year commencing in 1954 and running until death"; so that "the amount of the annuity actually specified in the contract is the series of payments beginning at a definite time and ending at a determinable time." Then he says that by changing the maturity date from 1954 to 1947 the annuity income was enlarged by a period of seven years, and as the payments required to provide for the additional seven years were not made prior to June 25, 1940, the proviso applies. While not specifically so stated by counsel for the Minister, I think the result of placing such an interpretation on the proviso would be that for the period 1947 to 1953 the annuity income would not be exempt but would fall to be taxed under the other provisions of The Income War Tax Act; and that the annuity income in 1954 and thereafter would be exempt under section 5(1) (*k*).

In order to arrive at the proper interpretation to be placed on the subsection, it will be of some assistance to examine, in part, the history of the exemptions or deductions allowed in respect of the income from Government Annuities. Under the Government Annuities Act, R.S.C. 1927, ch. 7, s. 8, the maximum annual amount payable by way of annuity thereunder was fixed at \$5,000. By ch. 54, s. 3 of the Statutes of Canada, 1930, The Income War Tax Act was amended by adding section 5(1) (*k*) which provided for an exemption from income tax of income derived from Dominion and provincial annuities (and certain other like annuity contracts) up to a maximum of \$5,000. Then, by ch. 33, s. 8, Statutes of Canada, 1931, the Government Annuities Act was amended, limiting the amount of annuities thereafter granted under that Act to a maximum of \$1,200. That was followed by an amendment to The Income War Tax Act by ch. 43, s. 6, Statutes of 1932, limiting the exemption in respect of such contracts issued thereafter to \$1,200 per year, but preserving the exemptions up to a maximum of \$5,000 in respect of such contracts issued prior thereto.

Then, by ch. 34, s. 13, Statutes of 1940, subsection (*k*) was amended, and as so amended it included the provisions

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I have set out above. The general part of the subsection is intended to preserve the exemptions to annuitants who had entered into contracts prior to June 25, 1940. The proviso constituted the only amendment to such exemptions and was doubtless enacted in view of the much higher rates of taxation which were then levied, due to the outbreak of war. Had holders of annuity contracts been permitted thereafter to increase the amount of their annual income beyond the amount which they had specifically agreed to purchase and for which they had not then completed payment, they would have been put in a much more favourable position in regard to exemptions than the great majority of taxpayers. The proviso was therefore enacted to meet this situation.

The amendments made in subsection (*k*) from time to time would indicate a general intention to preserve all the rights of such annuitants in regard to exemptions as they existed at the time the contracts were entered into. The proviso, I think, was enacted to deal with one class only, namely, those who had contracts issued prior to June 25, 1940, which gave them a fixed yearly payment but which, under options contained therein, could be increased in amount by paying additional sums or premiums. If such additional sums or premiums had, in fact, been paid prior to June 25, 1940, the annuity holders were entitled to the full extent of the exemption previously provided; but the additional annual income arising from the exercise of such option, and in respect of which the additional sums or premiums had not been paid prior to June 25, 1940, would not be entitled to exemption under this subsection.

Turning now to the words of the subsection, I find that the first thing to be ascertained under the proviso is "the amount of the annuity actually specified in the contract." It is only the excess beyond that amount which may not be exempt. The word "annuity" as there used does not mean the same as the "annuity contract," which words are used in the first line of the subsection to mean the formal agreement embodying the terms of the contract. In my opinion, the "annuity," as used in the phrase I have just quoted above, means the annuity income—the annual amount to be paid under the annuity contract. That that

is so is made clear in the later words of the subsection where reference is made to the excess amount which arises by reason of any contractual right *to enlarge the annuity income*. Now to enlarge the "annuity income" must mean to enlarge it beyond the amount of the annuity income actually specified in the contract before June 25, 1940. I am quite unable to find that "the amount of the annuity actually specified" means the sum total of the series of payments originally provided for or that the change in the date of maturity of the contract had any bearing on the matter. The proviso has to do with the *amount* of the annual income originally provided for, and the *amount* by which it was increased under the option in the contract. It is not concerned with the *time* when the payments commenced. It was well known that Government Annuity Contracts provided options by which an annuitant could, under certain conditions and upon making certain payments, change the date of maturity of his contract to an earlier date than that originally stipulated. Had it been the intention to make the proviso applicable to such a change, appropriate words could have been used to bring about that result. I find no such words in the subsection.

My finding is that "the amount of the annuity actually specified" in this contract entered into prior to June 25, 1940, was \$1,200. That amount not having been increased, exceeded or enlarged by advancing the date of first payment of the annual income from 1954 to 1947, the proviso here has no application. Mr. E., therefore, was entitled to claim as an exemption from his 1947 income, all the income received by him in that year under his annuity contract.

Counsel for the Minister rested his whole case on the point which I have discussed and conceded that, should I interpret the proviso in the manner in which I have done, the appeal must fail.

The appeal by the Minister of National Revenue will therefore be dismissed. Mr. E. was not represented by counsel and he will therefore be entitled only to such costs as may be properly taxable to him under the Rules of this Court.

Judgment accordingly.

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