

1958  
Jun. 7  
Dec. 22

BETWEEN:

FALAISE STEAMSHIP COMPANY  
LIMITED .....

APPELLANT;

AND

THE MINISTER OF NATIONAL  
REVENUE .....

RESPONDENT.

*Revenue—Income tax—Income Tax Act 1948, S. of C. 1948, c. 52, s. 12(1)*

*(a)—“An outlay or expense . . . made . . . for the purpose of gaining or producing income from property or a business of the taxpayer”—  
Money paid to obtain cancellation of a charter-party in order to enter into a more lucrative one and money paid as commission to an agent for procuring business held deductible from income—  
Appeal allowed and cross-appeal dismissed.*

Appellant, engaged in the business of chartering ships for hire, entered into a charter-party for a term charter of one of its ships and after some months of the term had elapsed paid to the charterer a sum of money to obtain cancellation of the agreement in order that it might enter into better paying charter-parties. Appellant deducted

this sum from its income for 1952 and also deducted a further sum paid as commission on all freights to a service agency for ferreting out prospective charterers. Both of these deductions were disallowed by the Minister of National Revenue and on appeal to the Income Tax Appeal Board the appeal from refusal to allow as a deduction the amount paid to the charterer was dismissed while that from the refusal to allow the amount paid for commission was allowed. The appellant and the Minister appealed to this Court.

*Held:* That both amounts paid by appellant were expenses made "for the purpose of gaining or producing income from the property or a business of the taxpayer" within s. 12(1)(a) of the *Income Tax Act*.

1958  
 FALAISE  
 STEAMSHIP  
 Co. LTD.  
 v.  
 MINISTER OF  
 NATIONAL  
 REVENUE

APPEAL from a decision of the Income Tax Appeal Board.

The appeal was heard before the Honourable Mr. Justice Dumoulin at Halifax.

*H. B. Rhude* for appellant.

*A. G. Cooper, Q.C.* and *W. R. Latimer* for respondent.

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

DUMOULIN J. now (December 22, 1958) delivered the following judgment:

This is an appeal from that part of a decision of the Income Tax Appeal Board<sup>1</sup>, dated August 16, 1957, in respect of the income tax assessment for 1952 of Falaise Steamship Company Limited, relating to the payment by appellant of \$40,037.50 to Seawell Steamship Corporation.

Respondent, on the other hand, files a cross-demand against the Board's approval of appellant's claim to deduct from receipts \$11,095.19, being commissions on gross freights paid by Falaise Steamship Co. to Intramar S.A. of Berne, Switzerland, in 1952.

The company above was incorporated in 1948, under the provincial regulations of Nova Scotia, with its Head Office at Halifax.

It is a navigation enterprise owning several sea-going vessels, one of which is the S.S. *Woldingham Hill*. The main and possibly sole source of revenue consists in charter hire derived from leasing its ships. Pursuant to what appears a customary practice, the company, for expedi-

1958  
 FALAISE  
 STEAMSHIP  
 Co. LTD.  
 v.  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 ———  
 Dumoulin J.  
 ———

ency's sake, entrusted the management of its fleet to a firm of London marine agents, known as Counties Ship Management Co. Ltd. (ex. 4).

Since all material facts herein are along lines similar to those in the twin case of *Halifax Overseas Freighters Limited* (ante page 80), anything but a summary would prove tediously repetitious.

The Notice of Appeal relates that on April 10, 1951, the Counties Company, as agent for its principal, chartered the *Woldingham Hill* to Seawall Steamship Corporation for a period of eighteen months from the date of delivery, the 2nd day of August, at a hire rate of \$4.25, United States funds, per dead weight ton per month; an amount equivalent to thirty shillings (30/-d) sterling (ex. 5).

Shortly after subscribing to this undertaking, appellant's British representatives, in consequence of a marked rise in charter hire prices, foresaw a possibility of ventures far more profitable.

With this end in mind, the Counties Company, on appellant's behalf, persuaded Seawall Corporation to renounce their contract as from January, 1952, in consideration of a \$40,000 indemnity, equal to \$40,037.50, Canadian currency. When given up, this erstwhile lease had already run during five of the eighteen allotted months. Exhibits 6 and 7 establish payment of the agreed compensation on January 29, 1952.

In calculating its income for the taxation year 1952, Falaise Steamship Company alleges it deducted from gross revenues this amount of \$40,037.50 (cf. Notice of Appeal, para. 14), and also a further sum of \$11,095.19, a one per centum (1%) commission paid on all freights to the Swiss agency, Intramar S.A. (Société Anonyme), for ferreting out prospective charterers (exhibits 11, 12, 13).

Of these two claims, the former (\$40,037.50) was waved aside by the Minister and the Appeal Board who, nonetheless, reversed the ministerial disallowance of the latter deduction (\$11,095.19) for no other given motive than it ". . . was on all fours" with appeal *No. 319 v. M. N. R.*<sup>1</sup>

<sup>1</sup>14 Tax A.B.C. 342.

*Quaere* whether the correct approach to the problem should be restricted to superficial traits and not be extended to underlying principles?

1958  
 FALAISE  
 STEAMSHIP  
 CO. LTD.  
 v.  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 Dumoulin J.

Appellant alone called witnesses, the same as in both other joint cases: *Bedford Overseas Freighters Ltd.* (ante page 79) and *Halifax Overseas Freighters Ltd.* (supra).

Mr. Harry Isaac Mathers, of Halifax, the Company's presiding officer, outlines his firm's business enterprises and files, with appropriate comments, several documentary exhibits in support of facts set out in the Notice of Appeal. He next produced exhibit 8, a time charter, dated January 3, 1952, evidencing the lease of S.S. *Woldingham Hill* to Cement Importers of New Zealand, for a ten to thirteen months' period, the charter hire fixed at forty-five shillings (45/-d) a month per dead weight ton. This contract ran out its entire span ensuring monthly gross returns of \$65,000 in lieu of \$45,000 as previously.

A comparative calculation of both these charter terms establishes a monetary benefit of \$25,000 (exclusive of 1% commission to Intramar) and, possibly an advantage of greater significance, a duration shortened by no less than three months.

Mr. Mathers also describes the agreement concluded with Intramar, tendering to that effect exhibits 11, 12, 13, 14. He vouches for the due performance of all payments stipulated.

*In re Bedford Overseas Freighters Ltd.* (supra) the parties agreed that evidence then adduced by Mr. James R. McGrath, a shipbroker associated with Meridian Marine Company of Richwood, N. J., would serve in all three cases. I therefore refer to the recital and analysis of his testimony appearing on pp. 75 to 76 of my notes in *Bedford Freighters* and p. 84 of *Halifax Freighters*.

A similar reference applies to the third and final witness heard, Mr. George M. Murray, chartered accountant, partner in a well known Halifax office. Anything pertaining to Mr. Murray's evidence may be read at pp. 6 to 7 in the *Halifax Freighters* notes or 6 of *Bedford Freighters*. The only addition relates to the Intramar

1958  
 FALAISE  
 STEAMSHIP  
 Co., LTD.  
 v.  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 —  
 Dumoulin J.  
 —

commission inscribed, albeit then unpaid, at p. 5 of the financial statement, exhibit 13, under the heading of General Administration and Overhead Expenses.

Here again the litigation hinges upon the applicability of the exception permissively afforded in s. 12(1)(a) of *The Income Tax Act*, 1948.

In respondent's view, extending also to the cross-appeal, the moneys paid out, i.e. indemnity and commissions were not expended ". . . for the purpose of gaining or producing income . . ." (para. 11) or, in the alternative constituted "an outlay of capital or a payment on account of capital", (para. 12).

The pertinent legal solution entirely depends upon an admissible connexity between the compensation for annulment, the commission to Intramar; and this company's regular operating expenses.

Verbal and literal evidence reveal a decided revenue improvement and an economy of time resulting from this initiative. It seems hard to contend that such profitable returns became possible through means other than a normal use of appellant's working assets. The requisite, though not correlative, characteristics of a revenue income, accruing from an outlay made for the purpose allowed by law, are coupled in the instant case conformably to statutory requirements.

Section 4 of the Act clearly assimilates "income for a taxation year from a business or property . . ." to the profit therefrom, which of necessity implies a previous subtraction of all producing costs. Profits in this instance are both undisputed and assessed, why then should they be divorced from expenses normally and unavoidably attendant upon their realization?

A possibility of buying its way to greater profits suddenly loomed up. By availing itself of this chance, Falaise Steamship Company did not go beyond the limits of regular business ventures.

The points of law examined and the jurisprudence quoted in the matter of *Bedford Overseas Freighters Limited v. Minister of National Revenue* (*supra*) also apply as integral parts of these notes.

For the reasons above, the sum of \$40,037.50 (Canadian) is properly deductible from appellant's income for taxation year 1952. This amount was incorrectly added to the assessment above which should be amended accordingly. Therefore, the appeal is allowed with costs.

Respondent's cross-appeal, for parity of motives should be dismissed, with costs in favour of appellant.

1958  
 FALAISE  
 STEAMSHIP  
 Co. LTD.  
 v:  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 Dumoulin J.

*Judgment accordingly.*