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 May 22  
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 Nov. 13  
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BETWEEN :

MEYER SHUCHAT . . . . . APPELLANT;

AND

MINISTER OF NATIONAL REVENUE . . RESPONDENT.

*Revenue—Income tax—Income Tax Act, R.S.C. 1952, c. 148, s. 11(1)(c)—  
 Interest payments—Deduction of interest on borrowed money.*

In 1954 the City of Montreal publicized its plans for the opening of Burnside Street, and the necessary expropriation was approved on June 1, 1955. Early in 1955, the appellant, who owned a four-storey building which would front on Burnside Street when it was extended, borrowed \$140,500 on a mortgage of the property to finance its improvement. The actual opening of Burnside Street was delayed for about three years and the appellant in the meantime transferred the borrowed money as a loan to a company wholly controlled by him and which was indebted to its bankers for \$139,054.

The appellant alleged that the loan constituted a capital investment, the proceeds of which would be income from a business or property and sought to deduct the interest payable by him on the borrowed money in computing his taxable income.

*Held:* That the money borrowed by the appellant and subsequently transferred to the company controlled by him was not used for the purpose of earning his own personal income and the interest paid thereon was not properly deductible from his income in the computation of his taxable income.

2. Appeal dismissed.

APPEAL from a decision of the Income Tax Appeal Board.

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

*N. L. Rappaport, Q.C.* for appellant.

*Paul Boivin, Q.C.* and *Louis Trempe* for respondent.

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

DUMOULIN J. now (November 13, 1963) delivered the following judgment:

This is an appeal from a decision of the Income Tax Appeal Board, dated the 8th day of February, 1961, which affirmed a reassessment made by the Minister of National Revenue in respect of the appellant's income tax for the years 1955, 1956 and 1957.

By consent of both parties, the entire record of evidence heard and all exhibits filed before the Income Tax Appeal Board are produced in the instant case.

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Mr. Meyer Shuchat, the appellant, describes his business pursuits as those of a manufacturer and merchant of fur garments “. . . controlling and operating the following corporate firms:

- a) S. & G. Furs Inc., manufacturers of fur coats and fur garments for wholesale distribution;
- b) M. Shuchat Fur Co. Limited, manufacturers of fur coats and fur garments to order for consumers;
- c) A. J. Alexandor Furs (Montreal) Ltd., operators of retail fur shops.”

In 1946, the appellant constructed for investment purposes in Montreal a four-storey building to which he added, in 1950, two floors. Shuchat next proceeds to say that (cf. “A. Statement of Facts”.):

5. On May 28, 1954, the City of Montreal prepared and publicized its final plans for the opening of Burnside Street and on June 1, 1955, the City Council of Montreal approved expropriation in accordance therewith.

In Paragraph 6, the appellant states that he prepared plans for improvements to the “Shuchat Building”, with a view to developing the site as a corner location having a large frontage on the projected new commercial thoroughfare.

To this effect (paragraph 7) additional financing was required and obtained, early in 1955, from the Canada Trust Company to the extent of \$140,500, a sum which raised the mortgage on the property aforesaid to a total of \$300,000.

Paragraph 9 notes that an unusual delay of three years occurred before the City of Montreal realized its decision for the extension of Burnside Street and the actual demolition of the expropriated buildings. It is furthermore alleged that this unwonted proceeding of expropriation without prior possession was adopted after Shuchat had increased the initial mortgage by so much as \$140,500.

Paragraph 12 is the culmination of a somewhat lengthy preamble setting out that:

12. S. & G. Furs Inc, a firm wholly controlled by the appellant, was indebted to its bankers to the extent of \$139,054, and the appellant, having no immediate use for the \$140,500 in capital funds received from the Canada

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Trust Company, and being unable to return same to his mortgage creditor, transferred these funds from his own account to S. & G. Furs Inc. as a personal loan to the firm repayable on demand without interest whenever such funds shall be required for building operations.

Pursuant to the premises thus outlined, the appellant would avail himself of the income tax deduction permitted by Section 11 (1) (c) of the Act. I quote:

1. Section 11(1)(c) of the *Income Tax Act* provides:

(11. (1) Notwithstanding paragraphs (a), (b) and (h) of sub-section (1) of section 12, the following amounts may be deducted in computing the income of a taxpayer for a taxation year:)

...  
 (c) an amount paid in the year or payable in respect of the year (depending upon the method regularly followed by the taxpayer in computing his income), pursuant to a legal obligation to pay interest on

(i) borrowed money used for the purpose of earning income from a business or property

(other than borrowed money used to acquire property the income from which would be exempt).

The appellant's contention that in extending to S. & G. Furs, Inc., an otherwise idle amount of \$140,500 constituted a capital investment, the proceeds of which would be income from a business or property, can hardly be substantiated under the circumstances of the case.

S. & G. Furs, Inc., is a company duly endowed with its own legal entity, completely separate from that of the appellant, and, therefore, had no financial connection whatever in law with Shuchat's personal income. If this assumption is exact, the money appellant borrowed from Canada Trust Company and subsequently passed on to S. & G. Furs, Inc., was not used for the purposes of earning his own personal income.

Other considerations also militate strongly against the admission of the instant plea.

First of all, the incidents alleged by Shuchat concerning the three years' delay before the City of Montreal undertook the broadening of Burnside Street, cannot in the least give rise to any responsibility on the part of the Minister of National Revenue, respondent.

Next, should it be feasible to borrow money in one's own name, invest these loans in firms or companies controlled by the borrower and deduct from one's income tax the interest, as was done in the present case, such a practice

would easily circumvent the meaning of the *Income Tax Act*. It seems obvious that whatever yield accrued from the loan by the appellant to S. & G. Furs, Inc., had no direct relationship and nothing to do with the earning of Mr. Shuchat's personal income, as required by Section 11 (1) (c) of the Act.

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For the reasons above, this Court dismisses the appeal and the respondent will be entitled to recover its legal costs after taxation.

*Judgment accordingly.*