1946
Sept. 27.
Oct. 7

BETWEEN:

THE CREDIT PROTECTORS (ALBERTA) LIMITED,..... APPELLANT;

AND

THE MINISTER OF NATIONAL REVENUE, ... RESPONDENT.

Revenue—Excess Profits Tax—Excess Profits Tax Act, 1940, c. 32, s. 7 (a)—The Interpretation Act, R.S.C. 1927, c. 1, s. 31 (j)—Word "shareholders" includes "shareholder"—Onus on appellant to bring itself within exempting provision of statute—Appeal dismissed.

T. owner of one share of the issued capital of appellant was also its salaried secretary. Appellant was assessed for Excess Profits Tax for 1942 and appealed on the ground that T. was not a shareholder within the meaning of s. 7 (*a*) of the Excess Profits Tax Act, since payment was made only to one shareholder.

Held: That the appeal must be dismissed since words in the singular include the plural and words in the plural include the singular (The Interpretation Act, R.S.C. 1927, c. 1, s. 31 (*j*)) and appellant had not discharged the onus on it to bring itself clearly within the exemption of s. 7 (*a*) of the Excess Profits Tax Act.

APPEAL under the provisions of The Excess Profits Tax Act.

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

C. C. Johnston for appellant.

G. J. Bryan, K.C. and E. S. MacLatchy for respondent.

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

CAMERON J. now (October 7, 1946) delivered the following judgment:

This is an appeal in respect to the assessment under The Excess Profits Tax Act for the taxation year 1942. On June 24, 1943, the appellant filed his income tax return, including his return under The Excess Profits Tax Act. Under date July 6, 1945, notice of assessment was forwarded to the appellant, the latter being assessed in the sum of $923.64 for excess profits tax instead of the sum of $253.97, as computed by the appellant at the time of filing its

return. The appellant duly gave notice of appeal from the assessment on August 3, 1945, and on November 26, 1945, the Minister gave his decision affirming the assessment as made. On December 17, 1945, the appellant gave notice of dissatisfaction and by the reply of the Minister, dated May 17, 1946, the assessment was affirmed. The matter now comes before this Court for decision.

No evidence was submitted at the hearing, the parties having agreed on a statement of facts, filed as exhibit 1. From this statement it appears that the appellant is an incorporated company under the provisions of The Companies Act of the Province of Alberta, carrying on business as a collection agency with offices in the City of Edmonton. The share capital at all relevant times consisted of 100 shares, which, in the year 1942, were owned by the following shareholders:—

Harold F. Alby	4 shares
Anna Frances Alby	70 shares
Roy E. Towns	1 share
J. Elva Towns	24 shares
Clifford Jones	1 share
	100 shares

From the statement of facts it appears also that the shareholder Roy E. Towns, the holder of 1 share, was during the year 1942, in the employ of the appellant company and for that year was paid by the appellant corporation the sum of $2,216.85, in salary and commission, the said R. E. Towns acting as secretary of the appellant. The said R. E. Towns during the said year was exclusively employed by the appellant company and had no other means of livelihood. The said moneys so paid to him by the appellant were paid to him by way of salary for services rendered, and were not paid to him or intended to be a payment to him by virtue of his share-ownership in the company. It was further agreed by paragraph 12 of the statement of facts that the sole question in issue between the parties is whether the said R. E. Towns is a shareholder within the meaning of that term as used in section 7 (*a*) of The Excess Profits Tax Act, as it was in 1942, so as to disentitle the appellant corporation to exemption from taxation under that section.

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The general charging section under The Excess Profits Tax Act is section 3, and it applied to all persons (including corporations) resident or ordinarily resident in Canada, or who are carrying on business in Canada.

The appellant, therefore, claims to be entitled to exemption under The Excess Profits Tax Act by reason of the provisions of section 7 (*a*) as it then stood, the said section 7 (*a*) then reading as follows:—

> 7 (*a*) The following profits shall not be liable to taxation under Section Three of this Act in accordance with the rates set out in the First and Second Parts of the Second Schedule to this Act:—
>
> The profits of a corporation or joint stock company which, in the taxation year, do not exceed the sum of five thousand dollars, or, where the taxation year of any corporation or joint stock company is less than twelve months, do not exceed the proportion of five thousand which the number of days in the taxation year of such corporation or joint stock company, bears to three hundred and sixty-five days, before providing for any payments to shareholders by way of salary, interest, dividends or otherwise.

Briefly, the appellant alleges that the payment of salary and commission to its secretary, R. E. Towns, in the year 1942 was not a payment to shareholders by way of salary, interest, dividends or otherwise, and that as its net profits for the year were less than $5,000, it is entitled to the exemption provided for in section 7 (*a*).

The respondent, on the other hand, takes the attitude that after including salary and commission paid to the said R. E. Towns in 1942, in the profits of the company, that the said profits for the taxation year exceeded $5,000, and that, therefore, the appellant is not entitled to the exemption provided for in section 7 (*a*).

The appellant says that the wording of section 7 (*a*) must be construed strictly, and that as it is not shown that more than one payment was made to R. E. Towns by way of salary and that the said payment was made to only one shareholder, that therefore there were *no payments to shareholders,* as required by the section. This matter, however, is disposed of by the provisions of The Interpretation Act, chapter 1, R.S.C., 1927, section 31 (*j*) reading as follows:—

> In every Act unless the contrary intention appears words in the singular include the plural and words in the plural include the singular.

Again the appellant takes the position that the general intent of section 7 (*a*) is that no company whose profits

in a taxation year are less than $5,000, should be subject to the tax in accordance with the rates set out in the first and second parts of the Second Schedule. With this contention I cannot agree. In my view, the intention of this sub-section is to exempt from certain schedules a particular type of company, namely a corporation or joint stock company whose profits in the taxation year do not exceed $5,000 "before providing for any payments to shareholders by way of salary, interest, dividends or otherwise." The meaning of the section is, in my view, quite clear and unambiguous, and inasmuch as it has admitted that after adding to the net profits of $4,198.38, as shown on the appellant's return, and as accepted by the department, the sum of $2,216.85, being the salary and commission paid to the said R. E. Towns, the profit of the corporation on that basis in the taxation year does exceed $5,000, and it follows, therefore, that the appellant is not entitled to the exemption.

Again the appellant urges that the said section should be interpreted in as generous a fashion as possible in order to give the benefit of the exempting section to the appellant. With this contention, I cannot agree. The onus is on the appellant to prove that it clearly comes within the provisions of the exempting section 7 (*a*). It seeks the benefit of an exceptional provision in the act and must comply with its context. The principles of construction to be applied are well-established. In *Wylie* v. *City of Montreal* (1), Sir W. J. Ritchie C.J. said:—

> I am quite willing to admit that the intention to exempt must be expressed in clear, unambiguous language; that taxation is the rule and exemption the exception, and therefore to be strictly construed.

Reference may also be made to *Lumbers* v. *Minister of National Revenue* (2), where it is stated that the rule to be applied is as follows:—

> In respect of what would otherwise be taxable income in his hands, a taxpayer cannot succeed in claiming an exemption from income tax unless his claim comes clearly within the provisions of some exempting section of the Income War Tax Act. He must show that every constituent element necessary to the exemption is present in his case, and that every condition required by the exempting section has been complied with.

(1) (1885) 12 S.C.R. 384 at 386. (2) (1943) Ex. C.R. 202 at 211.

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Reference may also be made to *Trapp* v. *Minister of National Revenue* (1) and to *City of Montreal* v. *College St. Marie* (2) where Duff J. said:

> Their Lordships are not disposed to differ from the view pressed upon them that an agreement in order to receive effect under the statute must be very clearly made out; such an agreement, if effective, establishes a privilege in respect to taxation, and the principle is not only well settled but rests upon obvious consideration and that those who advance claims to special treatment in such matters must show that the privilege invoked has unquestionably been created.

I must find, therefore, on the agreed statement of facts that the profits of the appellant in the year 1942, before providing for any payment to shareholders by way of salary, interest, dividends or otherwise, did in fact exceed the sum of $5,000, and that therefore the appellant is not entitled to the exemption provided for in section 7. (*a*); and that for the year in question the appellant was not such a corporation, exemption for which is provided for in the said section.

It was agreed by counsel that if the contention of the Income Tax Department were correct, and that the appellant was not entitled to the benefit of section 7 (*a*) that the computation of the Excess Profits Tax as shown in the assessment forwarded to the appellant, was correct.

It follows from what I have said, therefore, that the assessment as made, should be affirmed and the appeal will therefore be dismissed with costs.

Judgment accordingly.