

Windsor
1966
Oct. 6
Ottawa
Oct. 21

BETWEEN :
HENRY GORDON STRATTON APPELLANT;
AND
THE MINISTER OF NATIONAL }
REVENUE } RESPONDENT.

Income tax—Income Tax Act, R.S.C. 1952, c. 148, ss. 3, 4, 21(1)—Transfer of property from husband to wife—Losses—Deduction by husband.

On April 16, 1951, the appellant, a physician, purchased in the joint names of himself and his wife a farm. Being unable to farm themselves, the farm was worked by a tenant. By arrangement with their tenant, they shared in the proceeds of the sale of the farm produce and in definite expenses although the appellant was alone responsible in full for other expenditures. After several years of the ownership of this farm, the appellant disposed of his one-half interest in the farm to his wife. The tenant continued the operation of the farm under the same conditions, and then the appellant's spouse sustained a loss on the farming operations in each of the four years following the transfer.

Allegedly pursuant to the provisions of Section 21(1) of the Act, the appellant deducted the losses from his income. The Minister disallowed this deduction for the year 1963 although for the taxation years 1960, 1961 and 1962, he hadn't so disallowed.

Held, The appeal is dismissed.

2. That Section 21(1) of the Act provided only that income from transferred property was imputable to the transferor and that the section has no application to a loss.
3. That "income from all sources" taxable under section 3 of the *Income Tax Act*, means net income.
4. That under Section 21(1) of the Act, property transferred by a taxpayer to his spouse is a "source" of his income, additional to the specified sources mentioned in section 3.

5. That the loss was "from property owned by the appellant's wife, and there is no basis not only on ordinary principles of commercial accounting acceptable and within the purview of the general scheme of the Act or otherwise, but also in interpreting Section 21(1) of the Act, for utilizing this loss to reduce the taxable income of the appellant for the taxation year 1963".

1966
 HENRY
 GORDON
 STRATTON
 v.
 MINISTER OF
 NATIONAL
 REVENUE

APPEAL from an assessment of the Minister of National Revenue.

Keith Laird, Q.C. for the appellant.

D. G. H. Bowman for the respondent.

GIBSON J.:—In this appeal the issue is whether the appellant, a married person, who had heretofore transferred certain farm property to his wife, is entitled for the taxation year 1963 to deduct the loss in that year from the operations of such property, or whether by reason of section 21 (1)¹ of the *Income Tax Act* it is only the income², in the sense of the profit from the operations of such property and not the loss that is attributable to the appellant.

The facts are as follows:

The appellant is a physician practising psychiatry at the City of Windsor.

On or about April 16, 1951 the appellant purchased in the joint names of himself and his wife a farm, being the east one-half of Lot 20 in Concession 2 in the Township of Malden in the County of Essex and resided thereon. The farm was worked by one Thomas H. Bratt, who grew crops and sold the farm produce to the Harrow Farmers Co-operative. Under an oral arrangement with Bratt, two-thirds of the proceeds from the sale of the produce was sent by the Co-operative to Bratt and one-third to the appellant and his wife. The responsibilities of the appellant and his wife were to pay for electricity, municipal taxes, the upkeep of the farm and buildings and one-third of the cost of fertilizer. The farming operation in each year from the

¹ 21(1) Where a person has, on or after August 1, 1917, transferred property, either directly or indirectly, by means of a trust or by any other means whatsoever, to his spouse, or to a person who has since become his spouse, the income for a taxation year from the property or from property substituted therefor shall, during the lifetime of the transferor while he is resident in Canada and the transferee is his spouse, be deemed to be income of the transferor and not of the transferee.

² See section 4 of the Act, which reads:

Subject to the other provisions of this Part, income for a taxation year from a business or property is the profit therefrom for the year.

1966
 HENRY
 GORDON
 STRATTON
 v.
 MINISTER OF
 NATIONAL
 REVENUE
 Gibson J

acquisition of the farm by the appellant and his wife until the disposal by the appellant of his one-half interest to his wife resulted in a loss to the appellant and his wife.

On or about August 10, 1960, the appellant transferred his one-half interest in the said farm to his wife, Gwen Stratton.

Shortly before the transfer to the appellant's wife of the appellant's remaining one-half interest in the farm the appellant and his wife moved to Windsor and the farm was occupied by Bratt, who continued to work the farm in accordance with an oral agreement between himself and the appellant's wife, as owner. Under that agreement:

- (a) Bratt paid \$500 rent annually to Mrs. Stratton, the appellant's wife;
- (b) Bratt paid the cost of electricity consumed on the farm;
- (c) the appellant's wife paid for the upkeep of the farm and one-third of the cost of fertilizer (two-thirds thereof being paid by Bratt);
- (d) when fertilizer was purchased from the Harrow Farmers Co-operative the appellant's wife and Bratt were each billed directly by the Co-operative for their proportionate share of the cost and when fencing, stock spray and other miscellaneous items were purchased, the appellant's wife was billed directly by the Co-operative;
- (e) Bratt was entitled to two-thirds of the proceeds from the sale of farm produce and the appellant's wife was entitled to one-third. By arrangement with the Co-operative cheques for Bratt's and Mrs. Stratton's proportionate share of the sale price of farm produce sold were sent to Bratt and Mrs. Stratton directly;
- (f) municipal taxes on the farm and insurance on the farm buildings were paid by Mrs. Stratton,

In the taxation year 1963 the appellant's wife sustained a loss on the farming operation of \$1,322.88, made up as follows:

<i>Receipts</i>	
Sale of farm products	\$ 782 73
Rent received	500 00
	\$1,282.73
Total	\$1,282.73

<i>Expenses</i> (incurred and paid by Mrs. Stratton)	
Taxes	\$ 308 42
Insurance	362 05
Mortgage Interest	389.45
Harrow Farmers Co-operative	260 96
Repairs and Maintenance	11 53
Depreciation	1,273 20
	<hr/>
Total	\$2,605.61
Loss	\$1,322 88

1966
 HENRY
 GORDON
 STRATTON
 v.
 MINISTER OF
 NATIONAL
 REVENUE
 Gibson J.

For the taxation years 1960, 1961 and 1962 the appellant, in computing his income, deducted the losses incurred by his wife on the farming operation without objection from the respondent.

In computing his income for 1963 the appellant deducted the loss of \$1,322.88 sustained by his wife and this deduction was disallowed by the respondent.

At no time did the appellant or his wife physically participate in, supervise, direct or advise on the actual farming operations.

The question for determination on this appeal is whether upon a proper construction of the *Income Tax Act* and in particular section 21(1) thereof, the said loss sustained by the appellant's wife on the farming operations may be taken into consideration to reduce the appellant's taxable income for the taxation year 1963.

Section 3 of the Act prescribes that "The income of a taxpayer for a taxation year for the purposes of this Part (Division B—Computation of Income) is his income for the year from all sources inside or outside Canada and, without restricting the generality of the foregoing, includes income for the year from all (a) businesses, (b) property, and (c) offices and employments.

"Income . . . from all sources" for a taxation year in section 3 of the Act means net income. (See *George H. Steer v. M.N.R.*¹; and *Wood v. M.N.R.*²).

By section 21(1) of the Act Parliament has also prescribed that property transferred by a taxpayer to his spouse is a "source" of his income, additional to the specified sources mentioned in section 3.

¹ [1965] 2 Ex C.R. 458.

² [1967] 1 Ex. C.R. 199.

1966

HENRY
GORDON
STRATTON

v.

MINISTER OF
NATIONAL
REVENUE

Gibson J.

And section 12(1)(a) and (b)¹ do not alter the general scheme of the Act in respect to certain "sources" of income, so as to render taxable, gross revenue rather than net income.

But here the loss is from property owned by the appellant's wife, and there is no basis not only on ordinary principles of commercial accounting acceptable and within the purview of the general scheme of the Act or otherwise, but also in interpreting section 21(1) of the Act, for utilizing this loss to reduce the taxable income of the appellant for the taxation year 1963.

This appeal is therefore dismissed with costs.

¹ 12(1) In computing income, no deduction shall be made in respect of

- (a) General limitation.—an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from property or a business of the taxpayer,
- (b) Capital outlay or loss—an outlay, loss or replacement of capital, a payment on account of capital or an allowance in respect of depreciation, obsolescence or depletion except as expressly permitted by this Part,