

1933

*June 8.
*June 16.

IN RE THE INCOME WAR TAX ACT

DAVID JUNE WATEROUS.....APPELLANT;

AND

THE MINISTER OF NATIONAL REV- }
ENUE } RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Income tax—Income War Tax Act, R.S.C., 1927, c. 97—Dividend of company paid in Dominion of Canada bonds issued exempt from Dominion income tax—Assessment of shareholder for income tax upon dividend so paid—Exemption provision in bond.

A company declared a dividend payable in Dominion of Canada war loan bonds held by it, at the par value thereof. The bonds each provided that “the obligation represented by this bond and the annexed interest coupons and all payments in discharge thereof are and shall be exempt from taxes—including any income tax—imposed in pursuance of any legislation enacted by the Parliament of Canada.” Appellant, a shareholder in the company, received a dividend in bonds as aforesaid, and was assessed upon the amount thereof under the *Income War Tax Act*, R.S.C., 1927, c. 97.

Held: The assessment was valid. The taxation was not on “the obligation represented by the bond,” but upon appellant’s income, which was in part measured by the amount of the bonds which he received as dividend, and which constituted income.

Judgment of the Exchequer Court (Audette J.), [1931] Ex. C.R. 108, affirmed.

Lamont J. dissented.

APPEAL from the judgment of Audette J., of the Exchequer Court of Canada (1), dismissing the present appellant’s appeal from the decision of the Minister of National Revenue affirming the assessment of appellant for income tax for the year 1928. The material facts of the case and the question in dispute are sufficiently stated in the judgment now reported, and are indicated in the above

*PRESENT:—Rinfret, Lamont, Smith, Crocket and Hughes JJ.
(1) [1931] Ex. C.R. 108.

head-note. The appeal was dismissed with costs (Lamont J. dissenting).

W. T. Henderson K.C. and *A. M. Latchford* for the appellant.

C. F. Elliott K.C. and *W. S. Fisher* for the respondent.

The judgment of the majority of the court (Rinfret, Smith, Crocket and Hughes JJ.) was delivered by

1933
WATEROUS
v.
THE
MINISTER
OF
NATIONAL
REVENUE.

SMITH J.—On April 27, 1929, the appellant made a return of his income for the year ending December 31, 1928, which return contained the following entry under Clause 6:

Income from Dividends

* * *

Received from Waterous Limited, Brantford, Ontario, Dominion of Canada Victory Loan Bonds, maturing November 1st, 1933, as dividend declared payable in bonds; these bonds being tax free as to principal and interest. Face value, \$30,500.

The appellant was a shareholder in the company mentioned. At a meeting of the directors of Waterous Limited, held on June 28, 1928, the following resolution was passed:

It was moved by C. A. Waterous and seconded by L. M. Waterous that a dividend of thirty per cent be declared, payable in Dominion of Canada War Loan Bonds now held by the Company at the par value thereof and that bonds be distributed to the shareholders in accordance herewith. Carried.

In pursuance of this resolution, the appellant received from the company the bonds in question, as shown in the receipt quoted above.

The appellant was assessed under the *Income War Tax Act*, R.S.C., 1927, ch. 97, upon this sum as part of his income, and took an appeal to the Minister of National Revenue, which was dismissed. He then appealed to the Exchequer Court of Canada, from the decision of the Minister, and this appeal was dismissed by Mr. Justice Audette on the 4th April, 1931 (1); and from that judgment the present appeal is taken.

Section 4 of the Act reads as follows:

4. The following incomes shall not be liable to taxation hereunder:

* * *

(j) The income derived from any bonds or other securities of the Dominion of Canada issued exempt from any income tax imposed in pursuance of any legislation enacted by the Parliament of Canada;

1933
 WATEROUS
 v.
 THE
 MINISTER
 OF
 NATIONAL
 REVENUE.
 ———
 Smith J.

The appellant contends that he was not liable to taxation for income on the amount of these bonds, and relies upon the following provision, set out in the bond itself, as follows:

The obligation represented by this bond and the annexed interest coupons and all payments in discharge thereof are and shall be exempt from taxes—including any income tax—imposed in pursuance of any legislation enacted by the Parliament of Canada.

It is argued on behalf of the appellant that the taxation levied on the amount of this bond is taxation on “the obligation represented by the bond,” which obligation is non-taxable under the provisions of the bond itself, issued in pursuance of statutory authority.

The respondent contends that the amount of the bond in question is income of the appellant, as defined by sec. 3 of the *Income War Tax Act*, R.S.C., 1927, ch. 97, and that the taxation is not upon the bond itself, or upon the obligation represented by the bond, but upon the appellant personally, on his income, part of which is merely represented by the amount of the bond.

I am entirely in agreement with the reasons of Mr. Justice Audette in the court below, containing the following statement:

The dividend paid and distributed from the gains and profits of the company remains a gain and profit in the hands of the shareholder, whether that dividend is paid in kind, specie or in bond; because it is all through a dividend from, and of, profit and gain; it remains of such nature in the hands of both the company and the shareholder.

I think it is clear that this is not a taxation on the obligation represented by the bond or upon payments in discharge thereof, but merely taxation upon the appellant's income, which is in part measured by the amount of the bond which he received as dividend, and which constitutes income.

In the case of *In re McLeod v. The Minister of Customs and Excise* (1), Mr. Justice Mignault has the following remark:

All this is in accord with the general policy of the Act which imposes the income tax on the person and not on the property. In other words, it is the person who is assessed in respect of his income.

We are also referred to the case of *Hitner v. Lederer* (2). This case, though not binding here, seems to be precisely

(1) [1926] Can. S.C.R. 457, at 464.

(2) (1926) 14 Federal Reporter, 2nd Series, 991.

in point, and the reasoning is in accord with what has been said above. The United States issued Liberty Bonds. One of the provisions of the Act authorizing these bonds was that the bonds were exempt, both as to principal and interest, from all taxes. An employee received one of these bonds in payment of salary, and the question there, as here, was whether or not the amount of the bond should be regarded as income, for the purposes of taxation; and it was held that it was income, subject to income tax.

It is pointed out in the reasons that it was not a tax because of the ownership of the bonds, which would have been a tax upon the principal; it was solely and exclusively income in payment of salary for compensation of services, and had nothing whatever in this sense to do with Liberty Bonds.

Again, it is said at p. 993:

The bonds are by the express provision of the Act of 1917 not a medium of exchange recognized by law. This means that what was taxed was not "bonds," but "income."

The appeal should be dismissed, with costs.

LAMONT J. dissented, but did not deliver written reasons.

Appeal dismissed with costs.

Solicitors for the appellant: *Henderson & Boddy.*

Solicitor for the respondent: *W. S. Fisher.*

1933
WATEROUS
v.
THE
MINISTER
OF
NATIONAL
REVENUE
Smith J.
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