

**WH LATEGAN v COMMISSIONER FOR INLAND REVENUE
2 SATC 16**

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Division: Cape Provincial
Judges: BENJAMIN, WATERMEYER AND LOUWRENS JJ
Date: 4 November 1925 and 10 February
1926
Also cited as: 1926 CPD 203

Gross Income. - "Total amount" - Accruals "to or in favour of" taxpayer - Instalments payable after close of year of assessment in respect of earnings of that year - Inclusion in gross income of year of assessment at value - [Section 6, Act 41 of 1917](#) - Deductions - Amounts retained by co-operative society for creation of reserve funds - Capitalisation on behalf of member contributing - Sections 9(1) and 17(1)(a), [Act 41 of 1917](#).

Appellant, a wine farmer, in May, 1920, entered into an agreement under which he disposed of the wine he had made during the year of assessment ended 30th June, 1920, for the sum of £5,924. Of this sum £3,500 were payable and, subject to certain deductions mentioned below, were paid prior to the 30th

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June of that year, and the balance was payable in instalments after that date. Appellant was a member of De Ko - operatiewe Wynbouwen Vereniging van Zuid Afrika Beperkt, a company formed for the purpose of controlling and regulating the sale of the wine made by its members. Under the terms of the articles of the company there were deducted from the amount payable to the appellant two amounts due to the company as "retention" and "contribution" money. Of these amounts the "retention" money was applied by the company towards its working expenses and the "contribution" money was in part treated as a contribution to the administrative costs of the company while the balance was retained by the company as a reserve - the appellant being entitled to receive shares in the company of equivalent value.

In his assessment of the appellant, the Commissioner for Inland Revenue included in the determination of appellants' taxable income for the year ended 30th June, 1920, the whole amount of £5,924 for which the wine had been sold and disallowed the claim to deduct as an expense incurred in the production of the income the amounts paid to the company as "retention" and "contribution" moneys, save that proportion of the latter amount which had been actually applied towards meeting the administrative costs of the company.

On appeal to the Special Court for the Cape Province, that Court allowed the appeal in respect of the disallowance of the deduction of the "retention" moneys, holding those amounts to be an outgoing incurred in the production of the income, but otherwise confirmed the assessment made, holding that the instalment payable after the close of the year of assessment had accrued to the appellant within that year and that the balance of the "contribution" moneys had formed part of that accrual of income and had been capitalised on appellant's behalf.

Thereupon appellant required a case to be stated to the Cape Provincial Division of the Supreme Court in terms of section 86 of Act 41 of 1917, submitting for decision the following question:-

- (a) Should instalments which in terms of the agreement of sale were not payable during the year of assessment be regarded as gross income within the meaning of section 6 of the Income Tax (Consolidation) Act, 1917?
- (b) Should the amounts retained by the Ko - operatiewe Wijnbouwers Vereniging van Zuid - Afrika Beperkt be regarded as "gross income" or alternatively should not this amount be deducted from and set off against the appellant's income under section 17(1)(a) of the said Act?

Held, that the instalments payable after the year of assessment in respect of the wine produced during the year of assessment formed part of the "gross income" of the appellant for that year, but should be included in that gross income at their value as at the 30th June of that year, and that the balance of the contribution money in respect of which the appellant had been entitled to receive shares had rightly been treated as income which had accrued to the appellant and had been capitalised on his behalf.

WATERMEYER J (after briefly summarising the facts), said that the Commissioner had claimed that the whole purchase price should

be included in the appellant's gross income for the year ending 30th June, 1920, while the appellant had claimed that the instalments payable after June, 1920, should be excluded; and the first question submitted for decision was whether the instalments payable after June, 1920, should be included in or excluded from the appellant's gross income for the year ending 30th June, 1920. It was not so stated but the Court must take it that the appellant as a farmer had chosen to be assessed according to the terms of the first proviso to sec 9(1) of the Act, *i.e.* on the basis of produce sold and not on the basis of what he had produced but not sold. In [sec 6](#) of Act [41 of 1917](#) the words "gross income" were defined as "the total amount received by or accrued to or in favour of any person other than receipts or accruals of a capital nature, in any year or period assessable under this chapter from any source within the Union or deemed to be within the Union, and includes rents, interest, salaries, stipends, wages, allowances, the estimated annual value of any quarters or board or residence or any other benefit or advantage of any kind granted in respect of employment, whether in money or otherwise, or any pension, stipend, charge or annuity." In the earlier Act [28 of 1914](#) income was defined as "gains or profits," but in redrafting the Act the definition had been changed. It was doubtful whether the result had been an improvement. There were a number of sections of the Act which had been based upon the old definition and which had not been modified in accordance with the new.

The word "income" in the new Act was given the artificial meaning of "what remains of the gross income after certain deductions," yet a number of sections of the Act used the word "income" not in this artificial sense but in the ordinary sense of the word. Again it would be noticed that the definition of "gross income" did not seem to limit receipts of money in the year of assessment to such receipts as were the reward of work done or capital employed in the year of assessment. So far as receipts were concerned the time of the receipt seemed to be looked to rather than the time when the work was done which earned the receipt, whereas so far as earnings which were due but had not been received were concerned, the time when the work was done was looked to and not the time of receipt.

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This seemed to be an attempt to combine in the definition two fundamentally different conceptions of income, because the same sum of money might accrue in one year and be received in another, and it could never have been intended that income tax should be paid twice over. Again an amount might both accrue and be received in one year, but it might be in respect of work done in another year.

Thus a man might let his house and receive payment in advance for, say, two years. Was this whole amount income for the year when the rent was received? If the definition were read as if some such words as "in respect of work done or capital employed in the year of assessment" appeared after the word "person" these difficulties would disappear.

The definition seemed also to contemplate that "gross income" should, except in the case of income from employment, always be a sum of money, because it used the words "total amount," and amount usually meant an amount of money. But the word "income" in its ordinary sense did not always consist of money, as had been pointed out in *Booyesen's case* (1918, A.D. 576). "Income," unless it was in some form such as a pension or annuity, was what a man earned by his work or his wits or by the employment of his capital. The rewards which he got might come to him in the form of cash or of some other kind of corporeal property or in the form of rights.

Ordinarily speaking the *value* of those rewards was the man's income. Unless the word "amount" meant something more than amount of money the definition given in the Act would not seem to be wide enough to include the "value" of property or rights earned by the taxpayer unless they were benefits granted in respect of employment. The Legislature could hardly, however, have intended such a result because then it would be open to any taxpayer (who did not earn his income by employment) to receive payment in some form other than money and thus escape taxation. In his Lordship's opinion the word "amount" had to be given a wider meaning and must include not only money but the value of every form of property earned by the taxpayer whether corporeal or incorporeal which had a money value.

Support for the view that this must have been the intention of the Legislature was afforded by the proviso to sec 9(1) of the Act which contemplated that a farmer might take into account the

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value of his produce or livestock. The annual product of a farmer's capital and labour was his agricultural produce and the increase of his stock and he was entitled to base his annual return of income either upon the *value* of this stock or produce or upon the proceeds of so much of it as he sold. Unless the definition of income had been intended to include the *value* of the annual earnings of the taxpayer's labour, wits and capital the farmer could not include the *value* of his produce in his income.

Sec 39 of the Act also provided for the value of dividends paid otherwise than in cash being fixed by the Commissioner and such dividends would have to be included in "gross income" though they might be deducted under sec 16(n) to arrive at "income."

Not only did the sections of the Act referred to indicate that value of earnings was the basis of taxation, but similar views had been expressed by GREGOROWSKI, J., in the case of *De Beers Consolidated Mines v Commissioner for Inland Revenue* (1922, W.L.D. 184). If this view were correct then the taxpayer's income for taxation purposes included not only the cash which he had received or which had accrued to him, but the value of every other form of property which he had received or which had accrued to him, including debts and rights of action.

It had been argued on behalf of the appellant that a debt payable in the future was not an amount of money "accrued to" the taxpayer and consequently it was not part of his "gross income" and a number of cases were cited on the meaning of the word "accrue." In his Lordship's opinion the words in the Act "has accrued to or in favour of any person" merely meant "to which he has become entitled."

So far as a debt was concerned which was payable in the future and not in the year of assessment, it might be difficult to hold that the *cash amount* of the debt had accrued to the taxpayer in the year of assessment. He had not become entitled to a right to claim payment of the debt in the year of assessment but he had acquired a right to claim payment of the debt in future. This right had vested in him, had accrued to him in the year of assessment and it was a valuable right which he could turn into money if he wished to do so.

According to what had been stated above the value of this right must, in his Lordship's opinion, be included in the taxpayer's gross income for taxation purposes.

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There were no doubt difficulties in the way of this interpretation of the Act. There were for example many cases in which the Court has held that unpaid debts were not "*income*". See for example: *St. Lucia Usines and Estates Co., Ltd. v Colonial Treasurer of St. Lucia* (1924, A.C. 508) and certain Australian cases referred to by *Rydge (Commonwealth Income Tax, p.141)*, decided on the meaning of a section of the Commonwealth Act which was very similar to [sec 9](#) of Act [41 of 1917](#).

But the Acts upon which those cases were decided were in terms different from the South African Act.

The main difficulty which his Lordship felt in the way of the view which he had expressed was caused by the terms of sec 21(2) (e) of the Act. That section, while it supported the view that unpaid debts were "gross income," made it appear that unpaid debts must be brought up in the return of "gross income" at their face value and not at their actual value, but that a deduction could be made for bad and doubtful debts to arrive at the "taxable income."

If this were so then "debts owed to the taxpayer" formed an apparent exception to the general principle that "gross income" consisted of the "value" of the taxpayer's earnings whatever their form might be. But the exception might be more apparent than real, if sec 21(2)(e) were construed not as a section creating a new deduction in addition to those contained in sec 17, but as a section merely providing a method for fixing the value of the debts to be brought up as "gross income" before any deduction was made to arrive at taxable income.

In his opinion, therefore, the answer to the first question in the special case was that the instalments had to be regarded as gross income but something had to be deducted from their face value to allow for the fact that they were not payable at the close of the year of assessment. Assuming that the right to receive the instalments had not been converted into money by sale or otherwise during the year of assessment the value to be fixed (apart from any question whether the debt was good or bad) would be the present worth of the instalments at the end of the year, *i.e.*, 30th June, 1920.

With regard to the second question in the special case he agreed with the decision of the Special Court for the reasons stated in its judgment.

The appellant would have to pay the costs.

BENJAMIN and LOUWRENS, JJ., concurred.
