

1964
May 21, 22
May 22

BETWEEN:

ALBERT PICHOSKY APPELLANT;

AND

THE MINISTER OF NATIONAL }
REVENUE } RESPONDENT.

Revenue—Income tax—Income Tax Act, R S C. 1952, c. 148, ss. 21(1), 22(1), 63(6), (7) and 67(1)—Transfer of property by taxpayer to wife or children by means of trust.

In the 1959 taxation year, the Stork Company paid a dividend of \$60,000 to Albert Pichosky Limited, all the shares of which belonged to the trustees of the Albert Pichosky Trust, the income from which was payable to Mrs. Albert Pichosky during her life, then to their two sons until they attained the age of thirty years. The shares in Albert Pichosky Limited were acquired by the Trust out of a sum of \$1,600 paid by the appellant to the trustees as the corpus of the Trust. The dividend of \$60,000 was included by the respondent in the income of the appellant for 1959.

Held: That s. 21(1) and 22(1) of the *Income Tax Act* provide only for income that otherwise would be taxable in the hands of the transferee being taxable in the hands of the transferor.

- 2. That assuming that Albert Pichosky Limited was a personal corporation so that the dividend is deemed to have been received by its shareholders in 1959, thus making it income deemed to have been received by the Albert Pichosky Trust for purposes of the *Income Tax Act*, the fact is that the Trust received no income in 1959 and no income would therefore be payable to a beneficiary in 1959 so as to be taxable in the hands of that beneficiary in 1959. The dividend would not therefore have been otherwise taxable in the hands of Mrs. Pichosky or the sons and it follows that the dividend is not taxable in the hands of the appellant.
- 3. That the appeal is allowed.

APPEAL under the *Income Tax Act*.

The appeal was heard by the Honourable Mr. Justice Jackett, President of the Court, at Toronto.

F. E. LaBrie for appellant.

M. A. Mogan and *D. G. H. Bowman* for respondent.

1964
 PICHOSKY
 v.
 MINISTER OF
 NATIONAL
 REVENUE

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

JACKETT P. now (May 22, 1964) delivered the following judgment:

I think I should dispose of this case now. I have a clear view on a point that disposes of the appeal and I do not think that I should undertake to decide points that are not relevant on the view that I take of that point.

The essential facts are that a company, which I may refer to as the Stork Company, paid a dividend of \$60,000 to Albert Pichosky Limited in the 1959 taxation year and that that dividend has been included in the income of the appellant, Albert Pichosky, by the Minister of National Revenue in assessing him under the *Income Tax Act* for the 1959 taxation year.

The validity of the assessment has been sustained on assumptions that I might summarize as being

- (a) that Albert Pichosky Limited is a personal corporation within section 68 of the *Income Tax Act* and that its income for its 1959 taxation year is therefore deemed to have been distributed to and received by its shareholders at the end of that year by virtue of section 67 of the *Income Tax Act*;
- (b) that the shares of Albert Pichosky Limited belonged to the trustees of the Albert Pichosky Trust, the income from which is payable to Mrs. Albert Pichosky during her life, and after her death to their sons until they attain the age of thirty years;
- (c) that the shares in Albert Pichosky Limited were acquired by the Albert Pichosky Trust out of a sum of \$1,600 paid by the appellant to the trustees as the corpus of the Trust, and that section 21 or section 22, or both, have the effect of making the income from the shares taxable in the hands of the appellant on the view that the \$1,600 was property transferred by the appellant to Mrs. Pichosky, the sons, or both Mrs. Pichosky and the sons, within the meaning of those sections.

1964
 PICHOSKY
 v.
 MINISTER OF
 NATIONAL
 REVENUE
 ———
 Jackett P.

In my view, subsection (1) of section 21 and subsection (1) of section 22 clearly provide only for income that otherwise would be taxable in the hands of the transferee being taxable in the hands of the transferor. I think this view is clinched by the enacting words at the end of subsection (1) of section 21, which provide that the income from the property or the property substituted therefor shall be deemed to be income of the transferor "and not of the transferee". Similar words are to be found in subsection (1) of section 22.

Assuming that Albert Pichosky Limited was a personal corporation, the \$60,000 dividend is deemed to have been received by its shareholders in 1959. That would make it income deemed to have been received by the Albert Pichosky Trust for purposes of the *Income Tax Act*. (See section 67(1).) In fact, however, the Trust received no income in 1959 and no income would therefore be "payable" to a beneficiary in 1959 so as to be taxable in the hands of that beneficiary in 1959. (See section 63, subsection (6) and subsection (7).) The \$60,000 dividend would not therefore have been otherwise taxable in the hands of Mrs. Pichosky or the sons and it follows therefore, on the view of section 21 and section 22 that I have already indicated, that the \$60,000 dividend is not taxable in the hands of the appellant.

The appeal is allowed with costs.

Judgment accordingly.