[HIGH COURT OF AUSTRALIA.]

YARRA GLEN AND LILYDALE HUNT CLUB APPELLANT;

AND

FEDERAL COMMISSIONER OF TAXATION RESPONDENT.

H. C. OF A. 1954.

MELBOURNE, *Sept.* 17, *Oct.* 29.

McTiernan J.

Income Tax (Cth.) — Assessable income — Allowable deductions — Expenditure "necessarily incurred in carrying on a business for the purpose of gaining or producing such assessable income"—Hunt and race club—Assessable income from conducting race meetings—Eligibility to conduct race meetings dependent on club being a "hunt club"—Expense of upkeep of pack of hounds—Whether an allowable deduction from such assessable income—Income Tax Assessment Act 1936-1947 (*No.* 27 *of* 1936—*No.* 63 *of* 1947) *s.* 51 (1).

A club which was both a hunt club and a race club housed, maintained and trained a pack of hounds. In its financial year ended April 15th 1948 part of the club's assessable income consisted of the profits of a race meeting conducted by it in association with other hunt clubs and part consisted of money received from non-member patrons of a point-to-point meeting conducted by it alone. The pack of hounds was not used at either meeting. Under statute the eligibility of the club to conduct these meetings depended on it being a hunt club.

Held, that the proportion of the total expenditure incurred in keeping up the pack of hounds applicable to the assessable income derived from conducting the race meetings was an allowable deduction from that assessable income being expenditure "necessarily incurred in carrying on a business for the purpose of gaining" that assessable income within the meaning of s. 51 (1) of the *Income Tax Assessment Act* 1936-1947.

APPEAL under the *Income Tax Assessment Act* 1936-1947.

Yarra Glen and Lilydale Hunt Club appealed to the High Court from a majority decision of a board of review confirming a decision by the commissioner of taxation that expense incurred by the taxpayer in maintaining a pack of hounds was not an allowable deduction from assessable income received by it, in the year ended 15th April 1948, from conducting a race meeting and a point-to-point meeting.

The appeal was heard by *McTiernan* J. in whose judgment the material facts are set forth.

D. I. Menzies Q.C. and *H. R. Newton*, for the appellant.

A. H. Mann, for the respondent.

Cur. adv. vult.

McTiernan J. delivered the following written judgment:—

The commissioner of taxation assessed tax payable by the Yarra Glen and Lilydale Hunt Club on its income of the year ended April 15th 1948. The assessment was made in pursuance of the *Income Tax Assessment Act* 1936-1947. The taxpayer objected to the assessment upon the ground that the commissioner did not treat the expenditure incurred by the taxpayer in housing, maintaining, and training a pack of hounds as "allowable deductions". The expenditure included the cost of insurances incidental to those operations. The objection was founded upon s. 51, sub-s. (1) of the Act. The commissioner amended the assessment in order to include an item of income and to correct an error of calculation. The amendment was not related to the grounds of the objection. The taxpayer did not lodge a further objection. The commissioner disallowed the objection. At the request of the taxpayer he referred his decision to a Commonwealth Taxation Board of Review. The majority of the board gave a decision that the commissioner's decision be confirmed. The chairman of the board dissented. The taxpayer appealed in pursuance of s. 196, sub-s. (1) of the Act from the decision of the board to the High Court. The notice of appeal states that the question of law involved in the board's decision is "the extent to which the expenditure by the appellant during the year ended 15th April 1948 in respect of (a) the upkeep and care of its hounds and kennels and (b) insurance was an allowable deduction for the purposes of the *Income Tax Assessment Act* 1936-1947". At the hearing of the appeal the materials which were before the board were by consent put before the Court. There were no fresh materials.

The taxpayer is a voluntary association formed in the ordinary way as a club. It is not a body incorporate but it is a "company" within the meaning of the *Income Tax Assessment Act* 1936-1947. There are in evidence rules adopted in 1922 by the members, but this club appears to have begun in 1900. According to the rules, the name of the club is the Yarra Glen and Lilydale Hunt Club. The rules do not expressly say that the club was formed for any particular objects. But they clearly imply that hunting and horse racing are two of its objects. It appears from the rules that one of the club's officers is the "Master of the Yarra Glen and Lilydale Hounds" and another "Steward at a Race Meeting". A rule requires the committee of the club to "prepare the programmes for the race meetings to be held during the financial year". The rules strongly suggest that the taxpayer was both a hunt club and a race club.

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The taxpayer derived assessable income from two race meetings which were held in the taxpayer's financial year ended April 15th 1948. The pack of hounds kept by the taxpayer was not used at either of these race meetings. One meeting was held at the Moonee Valley race-course. It was a joint enterprise of the taxpayer and other hunt clubs. The taxpayer's share of the profits was £526. This amount was assessable income and the commissioner included it in the assessment. The events at the other race meeting were point-to-point races. Races of this kind were described in evidence as steeple-chasing across open country. The taxpayer conducted this race meeting. From persons, other than members, who patronised this meeting the taxpayer received £69. This amount was one of the items of assessable income which the commissioner included in the assessment. These two race meetings constituted the taxpayer's programme of horse racing for the financial year.

The taxpayer's financial year ended on April 15th in each year. The only other item of assessable income was rent. The amount of that item was £143, from which the commissioner allowed a deduction of £40 in respect of rates. The appeal relates to the assessable income that the taxpayer derived from the race meeting held at Moonee Valley and from patrons who were not members at its point-to-point meeting. The question which has to be considered by the Court is whether upon the true construction of s. 51, sub-s. (1) of the *Income Tax Assessment Act* 1936-1947 the expenditure on the pack of hounds in the year ended April 15th 1948 was " incurred in gaining " the assessable income derived from those two race meetings or was " necessarily incurred in carrying on a business for the purposes of gaining " that assessable income. The construction and application of this provision were explained in *Ronpibon Tin N.L.* v. *Federal Commissioner of Taxation* (1). It is pointed out in this case that by reason of the definition which appears in s. 6 (1) of " business ", s. 51 (1) covers a wide description of activities but not the occupation of an employee. It was also said in that case that probably the word " necessarily " is intended to mean " no more than ' clearly appropriate or adapted for ' ". But I do not think that the Court intended the provision to be read as if " necessarily " were deleted and these words substituted for it. I think that the effect of what the Court said is to broaden the construction of the alternative.

The matters upon which the taxpayer relies to bring the expenditure within s. 51, sub-s. (1), depend upon certain reservations, which were made in Acts restricting horse racing, in order to protect the interests of the taxpayer and other hunt clubs in horse

(1) (1949) 78 C.L.R. 47.

racing. In the case of point-to-point racing, the reservations extended to hunt clubs in general. Section 151, sub-s. (12), of the *Police Offences Act* 1928 (Vict.) provided that notwithstanding any of the restrictions upon horse racing introduced by its provisions, any hunt club might with the prior consent of the Chief Secretary hold point-to-point steeple-chase races for horses on any land approved by him for the purpose on any specified day. It seems that it would not have been lawful for the taxpayer to hold the point-to-point race meeting unless it had the previous consent of the Chief Secretary. His power was to give consent only to hunt clubs. The taxpayer's pack of hounds was therefore very material in establishing its eligibility to get the Chief Secretary's consent to conduct a point-to-point meeting, and it seems that if the taxpayer had dispensed with them it would not have been practical to include point-to-point racing in its programme of horse racing for the year ended April 15th 1948. The holding of the race meeting at Moonee Valley and the division of the profit were authorized by the Chief Secretary under the *Police Offences* (*Race Meetings*) *Act* 1929 (Vict.) (No. 3818) as amended by a subsequent Act, with a similar title, passed in 1946 (No. 5187). The effect of this legislation was that no hunt club was permitted to hold a race meeting on any race-course within thirty miles of the General Post Office, Melbourne, but an exception was made in favour of four hunt clubs. The Chief Secretary had power under the legislation to authorize a limited number of horse race meetings to be held for their benefit on certain race-courses. The names of these four hunt clubs were mentioned in the first schedule to the *Police Offences* (*Race Meetings*) *Act* 1929 and in the first schedule to the amending Act, which was substituted for the former schedule. The names were the Findon Harriers Hunt Club, the Melbourne Hunt Club, the Oaklands Hunt Club and the Yarra Glen and Lilydale Hunt Club. The race meeting of which the taxpayer received a share of the profits was conducted by the agency of the Moonee Valley Racing Club upon a commercial basis. If there had been a loss the taxpayer would have borne a share of it. The four hunt clubs whose names were specified by the legislature were known as the "recognised hunt clubs". Mr. Supple, the master and honorary secretary of the taxpayer, gave evidence to the effect that if the club ceased to keep a kennel of hounds trained for hunting it would lose its standing as one of the recognized hunt clubs. Mr. Graham, the honorary treasurer of the Moonee Valley Racing Club and a member of the committee of the Oaklands Hunt Club, gave evidence to the effect that, if any one of those clubs gave up its facilities for hunting

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and discontinued that sport, it would have " no hope " of participating in the profits of any race meeting authorized to be held for the benefit of the four recognized hunt clubs. It is clear that the taxpayer carried on during the year of income the business of holding race meetings for the purpose of gaining income which in its hands would be assessable income. The carrying on of this business was dependent upon the taxpayer being a hunt club. It obtained official consent or authority to hold the race meetings, and so far as one of them was concerned to receive a share of the profits, because it was a hunt club, especially because it was one of the four recognized hunt clubs. It owed its standing as such to the fact that it kept and trained a pack of hounds. Indeed the race meetings were no less hunt club affairs than the club's hunting events. It follows that the expenditure in housing, maintaining and training the hounds related to the club's business of racing as well as to the club's hunting events. Virtually the club was under the necessity of keeping a pack of hounds in order to be eligible to exercise the privileges granted under the law to hunt clubs to hold race meetings. In my opinion the expenditure in question was related to the gaining of the assessable income derived from the two race meetings in the sense contemplated by the alternative in s. 51 (1). Of course it was not expenditure of a capital nature. I think it is not true to say that the whole of the expenditure was of a " private or domestic nature ". The expenditure was brought upon the club not only by the need of providing hunting facilities for its own members but also by the need of preserving its recognition as a hunt club without which its eligibility under the law to hold race meetings would cease. The total amount of expenditure in question was £628 7s. 3d. The proportion of this amount applicable to the income derived from the two race meetings should be treated as an allowable deduction in calculating the appellant's taxable income. The amended assessment should be remitted to the commissioner and the taxpayer re-assessed on this basis.

The appeal is allowed with costs.

Appeal allowed with costs. Amended assessment to be remitted to commissioners for re-assessment on basis indicated in reasons for judgment.

Solicitors for the appellant, *Cook & McCallum.*

Solicitor for the respondent, *D. D. Bell*, Crown Solicitor of the Commonwealth of Australia.

R. D. B.