

[HIGH COURT OF AUSTRALIA.]

CHRISTIE APPELLANT ;

AND

FEDERAL COMMISSIONER OF TAXATION . RESPONDENT.

Income Tax (Cth.)—Assessable income—Income—Gift of shares to friend and business associate—Motivated in part by gratitude for advice given by donee in his capacity as real estate agent over many years—Absence of necessary connexion between receipt of shares and income-producing activity—Income Tax and Social Services Contribution Assessment Act 1936-1950 (No. 27 of 1936—No. 48 of 1950) ss. 6, 26 (e).

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C. was a partner in a firm of real estate agents. For some years prior to 1950 he had informally on many occasions advised R. in connexion with real estate dealings contemplated either by R. or a private company in which he was interested. If business resulted C.'s firm received the usual commission but otherwise received no remuneration. C. was on terms of close personal friendship with R. On the incorporation of a public company which took up the shares in the private company in which R. was interested and also acquired certain properties owned by R., R. received a large number of shares therein, some of which he gave to C.

Held, that the receipt of the shares by C. was not a receipt of income, the connexion necessary to make the receipt income not subsisting between what was given by the donor and anything done by the donee.

APPEAL under the *Income Tax and Social Services Contribution Assessment Act 1936-1950*.

Henri Albert Christie, appealed to the High Court from a decision of the Taxation Board of Review (1) confirming the disallowance of an objection by him to the inclusion in his assessable income for the year ended 30th June 1951 of the sum of £3,000 being the face value of certain shares given to him by one Richardson.

The appeal was heard before *Fullagar J.*, in whose judgment the material facts appear.

A. J. Solomon for the appellant.

G. H. Lush for the respondent.

Cur. adv. vult.

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FULLAGAR J. delivered the following written judgment :—

This is an appeal from a decision of the Taxation Board of Review. In the year ended 30th June 1951 the appellant taxpayer received from Mr. George William Richardson 12,000 fully paid shares of 5s. 0d. each in a company named Richardson's Meat Industries Ltd. The commissioner included the face value of these shares (£3,000) in the taxpayer's assessable income of that year. A majority of the board of review were of opinion that the sum in question was rightly so included, and from that decision the taxpayer appeals to this Court. I have stated in *Hayes v. Federal Commissioner of Taxation* (1) my reasons for thinking that that decision involves a question of law, so that the appeal is competent.

The appeal was heard together with the appeal of Mr. Lewis Hayes, who received from Mr. Richardson at the same time a parcel of the same number of shares. The two appeals raise the same questions, and the general circumstances leading up to the distribution of the shares are set out in my reasons for judgment in *Hayes v. Commissioner of Taxation* (1). The following special facts relating to the case of Christie are taken substantially from the reasons given by the majority of the board of review.

The appellant, Christie, was at all material times one of two members of the proprietary company named Crozier & Christie Pty. Ltd., which carried on in Hobart the business of a real estate agent. For a period of some years before 1950 Christie had informally on many occasions advised Richardson in connexion with real estate dealings. In addition to the meat business Richardson himself was interested in real estate investment on a considerable scale. It appears to have become customary for Richardson to discuss with Christie any sale or purchase of real estate which was contemplated either by himself or by Richardson's Choice Provisions Pty. Ltd. As in the case of Hayes, the advice received seems to have been generally accepted, and seldom, if ever, regretted. If no business resulted, no fee was ever charged for advice given. Probably nothing was further from the mind of either party than that there should be any payment for advice or discussion as such. If, however, business did result, Crozier & Christie received the usual remuneration for their efforts and services. It should be added that, as was the case with Hayes, Richardson was on terms of close personal friendship with Christie. It may be taken as clear that the motives which led Richardson to make the "gift" to Christie were the same as those which led him to make the "gift" to Hayes. One specific factor—appreciation of Hayes' conduct in

(1) (1956) 96 C.L.R. 47.

selling his shares—is absent in Christie’s case, but the general nature of the reasons for making the gift was the same in both cases.

I am of opinion, for the reasons which I have given in the case of Hayes, that the receipt of the shares by Christie was not a receipt of income by him. It is necessary, I think, to add only a very few words.

Like the dissentient member of the board, I have felt slightly more difficulty over this case than over the case of Hayes. This is because it may be said that the “services” rendered by Christie were incidental to, and rendered in the ordinary course of carrying on, an occupation undertaken for the purpose of gain, viz. the ordinary business of a real estate agent. This is not, I think, true in the same sense in the case of Hayes. But the slight difference in this respect between the two cases is not sufficient, in my opinion, to lead to a different result. I do not think it can be held on the evidence that the connexion necessary to make the receipt income subsisted between what was given by the donor and anything done by the donee. It is not enough, as I have said in the case of Hayes (1), that a gift should be motivated, in part or even in whole, by gratitude for services rendered. That mere fact does not supply the necessary connexion, and, in my opinion, there was here no other relation between “gift” and “services” than is supplied by the fact that one of several motives inspiring the gift was gratitude for general help freely given in the past, in the course of many informal discussions, and believed by the donor to have been a factor in the amassing by him of a considerable fortune. One feels that the truth and substance of the whole matter is not stated by saying that what was given was remuneration for work and labour done. And, unless that can be truly said, what was received was not “income” of the recipient.

This appeal also should, in my opinion, be allowed.

Appeal allowed with costs. Order that assessment be reduced by excluding from appellant’s assessable income of the year ended 30th June 1951 the sum of £3,000 representing the value of shares in Richardson’s Meat Industries Ltd. received by appellant in that year.

Solicitors for the appellant, *Finlay, Watchorn, Baker & Solomon*.
Solicitor for the respondent *H. E. Renfree*, Crown Solicitor for the Commonwealth of Australia.

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(1) (1956) 96 C.L.R., at pp. 55, 56.

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