[HIGH COURT OF AUSTRALIA.]

CROWE . . . . . APPELLANT;

AND

COMMISSIONER OF TAXATION . . . RESPONDENT.

H. C. OF A. 1958.

BRISBANE, *June* 27;

SYDNEY, *Aug.* 1.

Fullagar J.

Income Tax (Cth.)—Assessable income—Allowable deduction—Insurance premium on life of taxpayer—Taxpayer member of partnership of four—Policy one of four effected by partnership on the separate lives of partners—Sums assured payable to the four partners their executors administrators and assigns as tenants in common—Premiums paid to insurance company by partnership's bank in pursuance of a bank order given by the partnership—Debited to partnership bank account—Each partner debited in books of partnership with amount of premium paid on the policy on his life—Income Tax and Social Services Contribution Assessment Act 1936-1954, s. 82H (1) (*a*) (i).

A partnership effected four life insurance policies, one on each of the lives of its partners, for the benefit of all four partners, their executors administrators and assigns as tenants in common. The premiums were paid to the insurance company by the partnership's bank in pursuance of an order given by the partnership and debited by the bank to the partnership account. Each of the partners was debited in the books of the partnership with the amount of the premium paid on the policy on his life. One of the partners claimed as a deduction from her income the amount of the premium with which she had been debited in the books of the partnership.

Held, that the premium paid on the policy on the life of a partner was not an allowable deduction from the income of that partner under s. 82H (1) (*a*) (i) of the *Assessment Act* 1936-1954 because it was not paid by the taxpayer but was paid and payable by the partnership, and that fact could not be altered or affected by any antecedent or subsequent agreement among the partners as to the manner in which as between themselves it should be borne.

Wilson v. *Simpson* (1926) 2 K.B. 500, followed.

Semble, a taxpayer is not entitled to a deduction under s. 82H (1) (*a*) (i) unless the premium is not only paid by him but payable by him by virtue of a contract of insurance between him and an insurer.

APPEAL under the *Income Tax and Social Services Contribution Assessment Act* 1936-1954.

A partnership of four persons including one Mrs. Gladys Veronica Crowe (hereinafter called the taxpayer) effected four insurance policies for £2,500 each, one on each of the lives of the four partners

for the benefit of all the partners as tenants in common. The policy on the life of the taxpayer provided that " in consideration of the payment by the member named in the first column of the Schedule hereunder of the premium specified in the second column of the said Schedule on the days specified in the third column of the said Schedule in each year during the life of the Assured named in the first column of the said Schedule, The City Mutual Life Assurance Society Limited will (subject to the Conditions on the back hereof which shall be held to form part of the Policy) on the death of the said Assured pay the sum specified in the fourth column of the said Schedule together with vested bonuses to the said Member or his/her Executors, Administrators or Assigns on the Policy being delivered up to the Society." As the member named in the first column the names of the four partners were set out followed by the words and brackets : " (Tenants in Common) " and the taxpayer was named as the assured in the same column. The premium specified in the second column was £8 0s. 5d. monthly " under Bank Order ".

The premiums on all the policies were paid to the insurance company by the partnership's bank in pursuance of the order mentioned and were debited by the bank to the partnership account. Each of the partners was debited each year in the books of the partnership with the amount of the premium paid on the policy on his life and in the annual partnership balance sheets the amounts of the premiums paid appeared as deductions from the respective partners' capital accounts. For the year in question the taxpayer claimed £96 which was debited to her account in the books of the company as a deduction from her income under s. 82H (1) (*a*) (i) of the *Income Tax and Social Services Contribution Assessment Act* 1936-1954 but it was disallowed by the commissioner to the extent of £72 and on review a board of review confirmed the commissioner's assessment.

The taxpayer appealed from the decision of the board to the High Court.

D. G. Andrews, for the appellant.

W. B. Campbell, for the respondent.

Cur. adv. vult.

Aug. 1.

FULLAGAR J. delivered the following written judgment :—

This is an appeal by a taxpayer from a decision of an income tax board of review. The argument before me was as admirable for its clarity as for its brevity.

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In her return of income derived in the year ended 30th June 1954 the taxpayer, Mrs. Gladys Veronica Crowe, claimed as a deduction from her assessable income a sum of £96 0s. 0d. under s. 82H (1) (*a*) (i) of the *Income Tax and Social Services Contribution Assessment Act* 1936-1954. This provides (so far as material) that " Amounts paid by the taxpayer as premiums or sums for insurance on the life of the taxpayer shall be allowable deductions." The commissioner disallowed the deduction to the extent of £72 0s. 0d., and the board of review confirmed his assessment.

The taxpayer is a member of a partnership, the firm name of which is " Twenty-nine Murray Street ". The firm carries on a catering business at 29 Murray Street, Willston, which is a suburb of Brisbane. There are four partners. The partners other than the taxpayer are Rita Marion McLean (who is her sister), and Keith James Sullivan and Douglas Michael Sullivan (who are her brothers). There is apparently no partnership deed, but the partners share equally in the profits of the partnership. On 14th December 1949 the partners effected four policies of life assurance with the City Mutual Life Assurance Society Ltd. Each assurance is on the life of one of the partners for the benefit of all four partners " as tenants in common ". That is to say, there is one policy on the life of each of the four partners, and in each case on his or her death the sum assured is payable to his or her personal representative and the three surviving partners. The sum assured is in each case £2,500, but the premiums payable differ because of the different ages of the partners. The premiums are payable monthly. On the assurance of the life of the taxpayer, Mrs. Crowe, the total annual sum payable is £96, on that of the life of Mrs. McLean £103, on that of Mr. K. J. Sullivan £86, and on that of Mr. D. M. Sullivan £63. The premiums are paid to the society by the firm's bank in pursuance of a " bank order ", and are debited to the account of the partnership.

In the years ended 30th June 1950 and 30th June 1951 the premiums on these life policies were simply debited to the profit and loss account of the partnership. This meant, of course, that, as between the partners, the total amount of the premiums payable on the four policies was borne by them equally. In every subsequent year, however, each of the partners has been debited in the books of the partnership with the amount of the premium paid on the policy on his or her life, and in the partnership balance sheet that amount has appeared as a deduction from each partner's capital account. It was stated by Mr. *Campbell*, and not disputed by Mr. *Andrews*, that, although the sum of £96, which is now in question, was paid in monthly instalments by the bank to the society in the

year of income with which we are now concerned, the total sum of £96 was debited to the taxpayer in the books of the partnership after the end of that year of income. I mention this fact (if it be a fact), but my opinion on the case would be the same if the relevant book entries had been made in the year of income.

On the facts above stated I am of opinion that the board of review was right in confirming the disallowance by the commissioner of the deduction claimed by the taxpayer.

The apparent difficulty of the case arises, I think, from two factors. The first is that a partnership has, in English law, no legal personality distinct from those of the individual partners. This, however, does not mean that there is not a very real difference between a right or obligation of a partnership (or partners as such) and a right or obligation of an individual member of a partnership. It will not, therefore, be wrong or misleading if we speak of the partnership as a party to the contract evidenced by the policy. The second source of difficulty lies in the fact that there is, under the policy, no obligation resting upon anybody to pay premiums. The due payment of premiums is merely a condition of the liability of the society to pay on maturity the sum assured. There must, however, be a definite person or definite persons who are party or parties to the contract of assurance, and by whom that condition is contemplated as being performed. It will not, therefore, be wrong or misleading if we speak of the premiums as being, as between the society and the partnership, payable by the partnership.

I am inclined to think that a taxpayer is not entitled to a deduction under s. 82H (1) (*a*) (i) unless the premium is not only paid by him but payable by him by virtue of a contract of insurance between him and an insurer. Otherwise it might well be said that the premium had not been paid by him "*for insurance*" within the fair meaning of those words in s. 82H (1) (*a*) (i). On this view, if A, a creditor, effects an insurance on the life of B, his debtor, and B voluntarily pays a premium on the policy, neither A nor B would be entitled to deduct that premium from his assessable income. A could not because he has not paid it, and B could not because he has not paid it for insurance—he has paid it for no consideration whatever. It is not necessary, however, to express a concluded opinion on this point. In the case supposed B could at least say that he had paid the premium to the insurer. In the present case it cannot, in my opinion, be said that the taxpayer has paid the premium. The premium was not only payable by the partnership : it was paid by the partnership in each month of the year of income when the bank acted on the

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bank order and debited the amount of the payment to the partnership's current account. The fact that the payment was made by the partnership to the society cannot, as it seems to me, be altered or affected in any way by any antecedent or subsequent agreement among the partners as to the manner in which, as between themselves, the burden of the outgoing shall be borne.

It is true, as Mr. *Andrews* said, that both common law and equity have always taken a liberal and commonsense view of what constitutes payment. In order to establish payment, it is not necessary to prove an actual handing over of cash or a cheque by debtor to creditor. So, if the taxpayer had effected an insurance on her own life, and the partnership had paid a premium on the policy at her request and debited the amount to an advance account in its books, I should have said that she ought to be held to have "paid" the premium, although no money or money's worth passed from her hand to the hand of the insurer. But such a case is remote from this. Here there was clearly a payment, but the amount paid was not payable by the taxpayer, and was not paid by her.

It is true also, of course, that the taxpayer was herself a member of the partnership, and therefore one of the persons who jointly made the payment. But to be a party to a payment in that way is not the same thing as making that payment: cf. *Wilson* v. *Simpson* (1). The decision of *Rowlatt* J. in that case was based on two grounds. The first ground depended on an expression which does not occur in s. 82H (1) (*a*) (i), but, so far as it rests on the second ground, the case seems to me to be apposite here. As between the partnership (the payor) and the society (the payee) neither the whole nor any ascertainable part of the amount paid can be attributed to the taxpayer.

The appeal should, in my opinion, be dismissed.

Appeal dismissed with costs.

Solicitors for the appellant, *O'Shea, Corser & Wadley.*

Solicitor for the respondent, *H. E. Renfree,* Crown Solicitor for the Commonwealth.

T. J. L.

(1) (1926) 2 K.B. 500.