
Toronto 1969 Sept. 9-11 Ottawa Sept. 25

SUSAN HOSIERY LIMITED ..... APPELLANT;

AND

THE MINISTER OF NATIONAL REVENUE ..... RESPONDENT.

Income tax—Employees' pension plan approved for registration—Payments for current and past service—Plan terminated in first year—Whether bona fide or masquerade—Contributions not deductible—Income Tax Act, secs. 11(1)(g), 76.

Appellant company, which had been in the hosiery manufacturing business in Toronto since 1956, was wholly-owned by *S*, his wife and two children, who were the directors and officers of the company. In December 1964 the company, in furtherance of a plan recommended by professional advisers, directed that a pension plan be set up for its four officers, and payments of $6,000 for current service and $15,000 for past service were made to the trustee of the plan. In January and March 1965 the company was advised by the Department of National Revenue of the acceptance of its pension plan, that the actuarial deficit for past service was $232,000 and that contributions for current and past service were deductible as provided by secs. 11(1)(*g*) and 76 of the *Income Tax Act*. On April 26, 1965, the company, in furtherance of its plan, borrowed $220,000 from a bank, paid the trustee the remaining $217,000 required for past service, and then caused the plan to be terminated. On the same day the pension funds were paid out to the four officers, who loaned the bulk of the funds to

the company, which thereupon repaid the bank loan. The four beneficiaries of the plan knew that the pension funds distributed to them on April 26, 1965, would be taxable in their hands under the special relieving provisions of sec. 36 of the *Income Tax Act*. It was never intended by the company, its officers, or the trustee of the plan, to implement a *bona fide* pension plan with legal rights and obligations that the parties would act upon.

Held, in computing its income for 1964 and 1965 the company was not entitled under secs. 11(1)(*g*) and 76 of the *Income Tax Act* to deduct the $238,000 contributed to the pension plan. Appellant's purported employees' pension plan was a masquerade. The round-robin of payments on April 26, 1965, did not establish a pension plan, any relationship of trustee and *cestui que trust,* or any other legal or equitable rights or obligations in any of the parties, and none of the parties intended at any material time that there should be any.

Snook v. London & West Riding Investments Ltd [1967] 1 All E.R. 518; *C.I.R. v. Duke of Westminster* [1936] A.C. 1; and *M.N.R. v. Shields* [1963] Ex.C.R. 91, referred to.

APPEAL from income tax assessments for 1964 and 1965.

Wolfe D. Goodman, Q.C. and *F. E. Cappell* for appellant.

George W. Ainslie, Q.C. and *Ian H. Pitfield* for respondent.

GIBSON J.:—This is an income tax appeal against re-assessments for the taxation years 1964 and 1965 of the appellant company Susan Hosiery Limited arising out of the disallowance of a deduction of $238,000 described in the re-assessments as "contributions made to Employees' Pension Plan disallowed". These were claimed by the appellant to be (1) *current contributions* "... to or under a registered pension fund or plan in respect of services rendered by employees of the taxpayer in the year, ..." under the provisions of section 11(1)(*g*) of the *Income Tax Act,* and (2) *past service contributions* "... on account of an employees' superannuation or pension fund or plan in respect to past services of employees..." pursuant to section 76(1) of the Act.

These current contributions and past service contributions were composed of the following amounts:

On December 21, 1964	current	$ 6,000 00
	past services	15,000 00
On April 26, 1965	past services	217,000.00
		$238,000.00

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Sections 76 and 11(1)(*g*) of the *Income Tax Act* permit deductions by an employer of contributions to certain pension plans for employees. Section 76(1) permits a deduction of a lump sum past service contribution provided it is:

> ...a special payment in a taxation year on account of an employees' superannuation or pension fund or plan in respect of past services of employees pursuant to a recommendation by a qualified actuary in whose opinion the resources of the fund or plan required to be augmented by an amount not less than the amount of the special payment to ensure that all the obligations of the fund or plan to the employees may be discharged in full, and has made the payment so that it is irrevocably vested in or for the fund or plan and the payment has been approved by the Minister on the advice of the Superintendent of Insurance, there may be deducted in computing the income of the taxpayer for the taxation year the amount of the special payment.

Section 11(1)(*g*) permits the deduction for current service contributions by an employer in computing its income for a taxation year providing it is:

> ...an amount paid by the taxpayer in the year or within 120 days from the end of the year to or under a registered pension fund or plan in respect of services rendered by employees of the taxpayer in the year, subject, however, as follows:
>
> (i) in any case where the amount so paid is the aggregate of amounts each of which is identifiable as a specified amount in respect of an individual employee of the taxpayer, the amount deductible under this paragraph in respect of any one such individual employee is the lesser of the amount so specified in respect of that employee or $1,500, and
>
> (ii) in any other case, the amount deductible under this paragraph is the lesser of the amount so paid or an amount determined in prescribed manner, not exceeding, however, $1,500 multiplied by the number of employees of the taxpayer in respect of whom the amount so paid by the taxpayer was paid by him.
>
> plus such amount as may be deducted as a special contribution under section 76.

"A registered pension fund or plan" within the meaning of section 11(1)(*g*) of the *Income Tax Act* is defined in section 139(1)(*ahh*) as follows:

> ..."registered pension fund or plan" means an employees' superannuation or pension fund or plan accepted by the Minister for registration for the purposes of this Act in respect of its constitution and operations for the taxation year under consideration;

Since incorporation in 1956 under the Ontario *Corporations Act*, the appellant has carried on a business of manufacturing and distributing hosiery in what is now the Municipality of Metropolitan Toronto. In the years 1964 and 1965 the appellant had approximately 150 employees,

which number included its officers and sole shareholders, four in number, from the same family group, namely Mr. and Mrs. Samuel Strasser, their son Alexander S. Strasser and their daughter Susan Strasser (now Susan Karol). The main subject matter in this appeal, namely, the pension plan, was for the benefit of these four persons only.

The fiscal year end of the appellant company was June 30.

The net trading profit of the appellant company for the year ended June 30, 1964, before provision for income tax, was $57,002.76. The surplus account as of June 30, 1964, according to the balance sheet of the appellant was in the sum of $82,813.67. As of the same time the liabilities by way of loan to the shareholders, namely, the four members of the Strasser family, were $136,000.

The net trading profit of the appellant for the year ended June 30, 1965, before taxes, was $213,965.44. From this sum the appellant in its tax return deducted the above referred to sum of $238,000 as its "contribution to Employees' Pension Plan".

By reason of what was done with this $238,000, which resulted in it being returned to the appellant company, the surplus account of the appellant, according to the balance sheet as of June 30, 1965, was in the sum of $15,918.05; and the liability to shareholders by way of loan or advances, being to the four members of the Strasser family, was in the sum of $310,394.39. The deduction of the $238,000 resulted in the appellant company showing a loss on its trading and profit and loss statement for the year ended June 30, 1965, in the sum of $24,034.56, which loss it deducted from its surplus account for the year ended June 30, 1965.

According to the evidence, towards the end of the year 1964, the appellant company through its directors, who were the four members of the Strasser family, commenced to take steps to establish a pension plan for the benefit of the said four members of the Strasser family.

It made arrangements with the Canada Trust Company to be trustee of its proposed pension fund and on December 18 paid over to the Canada Trust Company the sum of $21,000, being $15,000 on account of past service and $6,000 as a current contribution for the benefit of em-

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ployees to be designated. The letter of transmittal to the Canada Trust Company accompanying the cheque for this money reads in part as follows:

> Susan Hosiery Limited is presently in the process of establishing a pension plan for its employees, to be effective December 15th, 1964.
>
> . . .
>
> This deposit is irrevocable provided the plan as finally written is accepted for registration by the Minister of National Revenue. Should the plan not be accepted for registration, the money would of course revert to the Company.
>
> This letter will be sufficient authority for The Canada Trust Company to open a savings trust account in the name of "Pension Plan for Employees of Susan Hosiery Limited" and to deposit this remittance therein....

By resolution of the directors of the company dated December 24, 1964, it was resolved:

> 1. That the Employees' Pension Plan of Susan Hosiery Limited effective December 15th, 1964, in the form presented to the meeting, be approved and adopted subject to the approval for registration by the appropriate governmental authority.
>
> 2. That The Canada Trust Company be appointed as Trustee for the administration of the Pension Fund under the Plan, and that the President and Secretary be authorized and directed to execute and deliver on the Company's behalf a Trust Agreement in the form presented to the meeting.

This plan was filed on this trial as Exhibit A-4.

Subsequently, the following action was taken: Steps were taken to have the company's pension plan accepted for registration under section 139(1)(*ahh*) of the *Income Tax Act*. As a result, its plan was accepted by the Department of National Revenue as evidenced by letters dated January 25, 1965; and the appellant company was advised that its contributions to the plan in respect of services rendered in the year may be claimed as deductions to the extent set out in section 11(1)(*g*) of the *Income Tax Act*.

Then by letter from the Department of National Revenue dated March 22, 1965, the appellant company was advised that after submitting the plan for the purpose of considering the company's special payments to the plan in respect of the past services of employees for advice from the Superintendent of Insurance under section 76 of the *Income Tax Act*, that the advice of the Superintendent had been received and that "in effect he confirms your (the appellant company's) actuary's estimate of the total deficit in the plan in respect of past service pensions . . ."; and

that "the Employer's special past service payments to the plan in respect of the . . . deficit may be claimed as deductions in determining taxable income as provided under section 76 of the Act".

On December 24, 1964, also, the directors of the appellant by enacting By-law No. 5 of the company set up a deferred profit-sharing plan. This purported to be a deferred profit-sharing plan within the meaning of section 79c of the *Income Tax Act*.

No moneys were ever paid into this plan and no other action was taken in respect of it other than to have enacted it as a by-law of the company.

On April 26, 1965, which was the date that a new budget by the federal government was brought down, the appellant company and its principal officers, the beneficiaries of the purported pension plan, Exhibit A-4, took certain action, namely, as follows:

The appellant borrowed from the Canadian Imperial Bank of Commerce the sum of $220,000.

It issued a cheque in the sum of $217,000 to the Canada Trust Company, the trustees of the purported pension plan.

The Canada Trust Company issued four cheques in the sums of $70,465, $26,690, $72,420 and $32,725 respectively to Samuel Strasser, Susan Karol, Helena Strasser and Alexander S. Strasser, totalling $202,300.

The Canada Trust Company withheld as withholding tax, $35,700.

Then on April 27, 1965, the said four members of the Strasser family issued cheques to the appellant company in the similar sums of $70,465, $26,690, $72,420 and $32,725 totalling again $202,300; and all these were deposited in the appellant's bank account immediately. The amounts of these cheques were credited on the company's books as loans from these shareholders.

At the same time, the loan obtained on April 26, 1965, from the Canadian Imperial Bank of Commerce by the appellant company in the sum of $220,000, was repaid to it.

The purpose of this round-robin of cheques on April 26, 1965, was, firstly, to pay in the sum of $217,000 to the credit of the said purported Employees' Pension Plan of Susan Hosiery Limited to be applied on account of past

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services; and to wind up immediately the said purported Employees' Pension Plan so that "the fund be distributed to the beneficiaries of the plan in accordance with their respective interests" (see Exhibit A-18, a copy of the minutes of a meeting of the Board of Directors of Susan Hosiery Limited; Exhibit A-21, being a letter from Susan Hosiery Limited to the Canada Trust Company, April 26, 1965, directing the trust company to terminate the Susan Hosiery Limited Employees' Pension Plan and to pay out the funds held under this plan to the employees of the company in accordance with the schedule attached to that letter; and Exhibits A-22, A-23, A-24 and A-25, being respectively letters to the Canada Trust Company dated April 26, 1965, from Alexander Strasser, Samuel Strasser, Susan Karol and Helena Strasser respectively requesting that the moneys at credit in their names under the pension plan be paid to each of them in lump sum).

It was argued by the appellant that its plan was in two parts, namely, firstly, "the Employees' Pension Plan of Susan Hosiery Limited" set up by resolution of the directors of the appellant on December 24, 1964, a copy of which had been forwarded to the Minister for the purpose of obtaining approval by the Minister of lump sum past service contributions to the pension plan under the provisions of section 76(1) of the Act, and for the purpose of registration of the plan under the provisions of section 139(1)(*ahh*) of the Act, so as to have current contributions to the plan qualify as a deduction for income tax purposes under the provisions of section 11(1)(*g*) of the *Income Tax Act;* and secondly, By-Law No. 5, being a purported deferred profit-sharing plan enacted by the appellant company as such a plan within the meaning of section 79c of the *Income Tax Act.*

In November 1964, the accountants and the solicitors for the appellant company advised the appellant and its officers, the four members of the Strasser family above referred to, that there were decided advantages in setting up a pension plan for the said officers and special advantages in having lump sum past service contributions made into such a plan before January 1, 1965. The reason for this date was the fact that the Ontario *Pension Benefits Act* was to come into force then and under that Act, payments made after that date could not be withdrawn as freely

from a pension plan. Specifically, after that date moneys in a pension plan could not be invested in shares of the appellant.

The recommendation to the appellant and its said officers at that time was to set up a new pension plan for the said officers, to make lump sum payments into such a plan before December 31, 1964, and to withdraw the moneys paid into such a pension plan before December 31, 1964, by payments out to the beneficiaries of the plan and to immediately cause the beneficiaries thereafter to pay the moneys so withdrawn into a deferred profit-sharing plan which would at that time also be set up for the benefit of the said officers. The proposal was further that the proceeds of such a deferred profit-sharing plan would then be reinvested in preference shares of the appellant company. The advice given also was that the withdrawal of moneys by the beneficiaries from such a pension plan would ordinarily be fully taxable, but by reason of the then provisions of section 11(1)(*u*) of the *Income Tax Act* no net tax would be payable if the moneys were put into a deferred profit-sharing plan. (This subsection has since been repealed, namely, section 11(1)(*u*)(i)(C) by S. of C. 1966-67 c. 91, s. 3(5) applicable with respect to any amount paid after March 29, 1966. Clause (C) formerly read as follows:

(C) to a trustee under a deferred profit sharing plan,

Advice was also given that restrictions on investments of pension plans under the Ontario *Pension Benefits Act* were not applicable to deferred profit-sharing plans and that therefore any deferred profit-sharing plan set up by the appellant for the benefit of its said officers could hold or invest in shares of the appellant.

As indicated above, no steps were taken by the appellant to set up a pension plan prior to January 1, 1965, except to pay over on December 18, 1964, $21,000 to the Canada Trust Company with the request that the funds be held pending the establishment of such a plan; and the passing of a resolution by the directors of the appellant on December 24, 1964, to establish an Employees' Pension Fund; and the passing of By-Law No. 5, being the by-law to establish a deferred profit-sharing plan.

As a result, in 1965 there was no way that the trustee of any pension plan of the appellant could use funds to

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invest in shares of the appellant company. The only way at that time that any funds set aside purportedly for pension plan purposes for the said officers of the appellant could be invested in shares of the company was by arranging that such funds be put in a deferred profit-sharing plan within the meaning of section 79c of the Act.

It was finally decided just at budget time, which was April 26, 1965, after receiving the approvals for past service contributions under section 76(1) of the Act and approval for the deductibility of current contributions under section 11(1)(*g*), that funds would be put into this alleged pension plan and immediately that the plan would be wound up.

Mr. Alexander Strasser in evidence at this trial stated that it was always the scheme that the pension plan would be wound up immediately after the payment in of the moneys that were paid in, namely, $217,000 (plus the $21,000 that had been paid in on December 18, 1964) and immediately paid out to the purported beneficiaries of such a pension plan and that the beneficiaries would then be free to do what they wished with the funds. Mr. Strasser stated that it was the intention then to transfer the funds to a deferred profit-sharing plan. But none of the documentary evidence indicates that there was any such intention. On the contrary, By-Law No. 5, the by-law which set up the deferred profit-sharing plan, does not provide for any contributions to be made to it by any person other than the appellant company. In addition, there was no restriction put on the beneficiaries of the purported pension plan by way of contract or otherwise requiring them to do anything with any funds they received on the winding up of such pension plan.

The appellant and the purported beneficiaries of its pension plan on April 26, 1965, I am of the view on the evidence, knew that if they received payments out of such a pension plan as was purported to be set up in this case by the appellant they could receive substantial sums of moneys from such a plan and could take advantage of the relieving provisions then in existence of section 36 of the *Income Tax Act* by minimising their incomes for the three immediately preceding tax years. In 1965 at this time it is a reasonable inference, and I make it, that the appellant

and the beneficiaries of its alleged pension plan, the said four members of the Strasser family, knew of these provisions.

It was also open to them, of course, and I am of the view that the appellant and the said beneficiaries knew that they could, as beneficiaries, having received such lump sum payments, pay such moneys so received into a deferred profit-sharing plan and obtain the benefit of the relieving provisions as then existing of section 11(1)(*u*) of the *Income Tax Act,* but nowhere is there any evidence that the appellant or the said four officers of it, the four members of the Strasser family, ever considered or intended to adopt this latter course of action.

Instead the appellant through its said executive officers, the four members of the Strasser family and the beneficiaries under the appellant's purported pension plan, caused this $217,000 to be paid into this purported pension plan on April 26, 1965 ($15,000 having been paid on December 18, 1964, in respect of past service contributions and $6,000 for current contributions, totalling $238,000) for the purpose of attempting to obtain for the company a deduction for income tax purposes under the provisions of section 76 of the *Income Tax Act* for that taxation year in the sum of $232,000 for past service contributions into such a purported Employees' Pension Plan ($15,000 paid on December 18, 1964, and $217,000 paid on April 25, 1965) and a deduction under section 11(1)(*g*) of the Act for current service contribution in the sum of $6,000 paid into the purported Employees' Pension Plan on December 18, 1964. They also caused, as indicated above, this money to be paid by the trustees to the beneficiaries of the alleged pension plan (after causing the trustees to withhold tax in the sum of $35,700) and caused these moneys to be loaned back to the company by them.

The result of all this was to move on the books of the company $238,000 from the surplus line of the balance sheet up to the advances from shareholders line so that no profit was shown by the company for the year ended June 30, 1965. The net trading profit, as mentioned above, prior to deducting this $238,000 was $213,965.44, which purported to result in a loss for the year ended June 30, 1965, of $24,034.56. The result, if this transaction was held

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to be legal within the provisions of the *Income Tax Act* would be that future profits could be repaid to the shareholders on the basis of capital payments, that is, the repayment of a shareholder's loans, and not as income receipts, and not through the surplus account of the appellant.

From a consideration of the whole of the evidence one crucial fact was proven, namely, that the appellant and its chief executive officers who, as stated, were also the main shareholders and the beneficiaries under the purported Employees' Pension Plan, the four members of the Strasser family, and the Canada Trust Company, the purported trustee, never intended at any material time to implement a *bona fide* "employees' superannuation or pension fund or plan" so as to enable the appellant company to qualify for a deduction in the current taxation year for a lump sum or special payment made in respect of past services of the employees of such a pension plan under the provisions of section 76(1) of the Act, or for current contributions under section 11(1)(*g*) of the Act. In other words, none of these parties nor Canada Trust Company, the named trustee of the subject Employees' Pension Plan, ever intended at any material time to set up any legal rights and obligations under Exhibit A-4, the so-called pension plan. They never intended that it be a document that the parties would act upon.

I say this notwithstanding that prior to December 31, 1964, the company and its executive officers considered setting up the pension plan and considered such pension plan in two parts, namely, one under the provisions of Exhibit A-4 into which funds would be paid and subsequently transferred or caused to be reinvested by the beneficiaries after pay-out into a deferred profit-sharing plan under the provisions of section 79C of the Act; obtained the Minister's approval for past service or special payment contributions to such a plan under section 76 of the Act; and obtained the registration of such a plan so as to be a plan within the meaning of a registered pension plan under section 139(1)(*ahh*) of the Act so as to qualify current contributions to such a plan as a deduction under section 11(1)(*g*) of the Act.

All these things, including the payment of the $21,000 on December 18, 1964, to the Canada Trust Company as trustee for a proposed Employees' Pension Plan prior to the

final decision of all these parties, culminated in the action taken on April 26, 1965, which was the implementation of the joint intention of the appellant, its executive officers and the Canada Trust Company. Such intention was not to establish a *bona fide* pension plan within the said provisions of the Act. Instead, section 76(1) and section 11(1)(*g*) of the Act were employed by the company to obtain deductions from income for the year ended June 30, 1965, and a readjustment of tax by reason of the loss carry back to the fiscal year ended June 30, 1964. The beneficiaries of the alleged pension plan, the executive officers sole shareholders of the appellant company, the four members of the Strasser family, then caused the moneys so obtained by them by the purported winding up of this pension plan to be loaned back to the company. This purported to result in the company showing a liability to them in capital form of $217,000 more, which it was hoped would be available for payment out as a capital receipt to them in the future rather than as an income receipt. In doing so the tax disadvantages of paying out of surplus on behalf of the company and also the tax disadvantage of having such moneys from the surplus paid to these persons as an income receipt it was hoped would be thereby avoided.

What was done in respect of Exhibit A-4, that is, the purported Employees' Pension Plan of the appellant, at the material time as mentioned above constituted in essence a sham.

In this regard the words of Lord Diplock in *Snook v. London & West Riding Investments Ltd*[1] are apt:

> As regards the contention of the plaintiff that the transactions between himself, Auto-Finance, Ltd. and the defendants were a "sham", it is, I think, necessary to consider what, if any, legal concept is involved in the use of this popular and pejorative word. I apprehend that, if it has any meaning in law, it means acts done or documents executed by the parties to the "sham" which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create. One thing I think, however, is clear in legal principle, morality and the authorities (see *Yorkshire Railway Wagon Co. v. Maclure* ((1882), 21 Ch. D. 309); *Stoneleigh Finance, Ltd. v. Phillips* ([1965] 1 All E.R. 513; [1965] 2 Q.B. 537), that for acts or documents to be a "sham", with whatever legal

[1] [1967] 1 All E.R. 518 at 528.

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consequences follow from this, all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating. No unexpressed intentions of a "shammer" affect the rights of a party whom he deceived....

This language should also be compared with the *caveat* in the case of *Commissioners of Inland Revenue v. Duke of Westminster*[2] at page 21:

> There may, of course, be cases where documents are not bona fide nor intended to be acted upon, but are only used as a cloak to conceal a different transaction. No such case is made or even suggested here. ...(Lord Tomlin)

And also at page 21, Lord Russell of Killowen:

> It is conceded that the deeds are genuine deeds, i.e., that they were intended to create and do create a legal liability on the Duke to pay in weekly payments the annual sum specified in each deed, whether or not any service is being rendered to the Duke by the covenantee. Further, it is conceded that the sums specified in the deeds were paid to the covenantees under the deeds.

In this connection, also see *Minister of National Revenue v. Shields*[3] Cameron J. at page 96:

> I think it is settled law, however, that for income tax purposes it is insufficient to establish a partnership in fact merely by the production of a partnership deed. It must also be shown that the parties thereto acted on it and that it governed their transactions in the business being carried on.

And at pages 112-13:

> These facts lead me to the conclusion that while there was a partnership agreement, it was never considered by the respondent as binding on him. It was put aside and did not in fact govern the actions of the parties thereto, except to the extent that it was helpful in carrying out his scheme to reduce his own taxable income, namely, by making payments of income tax on account of Victor's alleged profits.

In this case Exhibit A-4, the purported Employees' Pension Plan of the appellant, was treated by all the parties to it, that is the appellant, the purported beneficiaries, the four executive officers and sole shareholders of the appellant, the four members of the Strasser family and the Canada Trust Company, the trustee, as a mere simulate. It masqueraded as an employees' pension plan but was nothing of the sort. The directions to pay in and to pay

[2] [1936] A.C. 1.

[3] [1963] Ex. C.R. 91.

out contemporaneously given to the Canada Trust Company on April 26, 1965 (see Exhibits A-17, A-22, A-23, A-24 and A-25) resulting in the round-robin of cheques above referred to, never established a pension plan, nor any relationship of trustee, *cestui que trust*, nor any other legal or equitable rights or obligations in any of the parties and none of the parties intended at any material time that there should be any.

It follows that the payments made by the appellant on April 26, 1965, in the sum of $217,000 do not qualify as deductions under either section 76(1) of the Act as past service contributions, nor do the payments made on December 18, 1964, in the sum of $21,000, being $15,000 in respect of past service contributions, and $6,000 in respect of current contributions, qualify as a deduction under section 76 or section 11(1)(*g*) of the Act, because in fact there was never at any time any *bona fide* Employees' Pension Plan established.

The $6,000 in respect of current contributions paid at that time also does not qualify under any general law for deduction or under section 11(1)(*g*) of the Act because again, there never was a *bona fide* pension plan established.

As to the pleading of the appellant in the alternative by paragraph 7 of its notice of appeal that:

> ...if the said payments are not otherwise allowable as deductions, as claimed above, (which is not admitted but expressly denied), they are nevertheless allowable as deductions under Sections 3 and 4 of the Income Tax Act, as remuneration paid to its officers and employees for services rendered to the appellant.

I am of the view that this pleading fails because no evidence was adduced at this trial to establish that these amounts were paid out to the four members of the Strasser family above referred to as salaries or other remuneration.

The appeal is dismissed with costs.