

BETWEEN :

DR. EDWARD GORDON MURPHY . . . . . APPELLANT ;

AND

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

Toronto  
1968  
Mar. 15  
Ottawa  
May 3

*Income tax—Doctor's wife employed by office management company—  
Wife's services rendered husband—Whether remuneration deductible—  
Wife employee of husband—Artificial reduction of income—Income  
Tax Act, s. 21(2), 137(1).*

Prior to 1963 appellant, a medical doctor, paid his wife \$250 a year for attending to his office needs as receptionist and his bookkeeping work while at home. In 1963 appellant made an arrangement with his wife and accountant, with a view to avoiding taxes, for the provision of his receptionist, accounting, management and stenographic services for \$500 a month by a company controlled by his accountant. That company in turn employed appellant's wife at \$465 a month to perform the above services for appellant and kept \$35 a month for performing the services which the accountant had previously performed. Appellant's wife deposited her monthly remuneration in her husband's bank account.

*Held*, the \$6,000 paid the company in 1963 pursuant to the above arrangement was prohibited from deduction in computing appellant's income (1) under s. 21(2) of the *Income Tax Act* as being remuneration paid by appellant to his wife as his employee, and (2) under s. 137(1) as being an expense in respect of a transaction or operation that would unduly or artificially reduce his income.

INCOME TAX APPEAL.

*Wolfe D. Goodman* and *Arnold L. Cader* for appellant.

*J. R. London* for respondent.

DUMOULIN J.:—Dr. Edward Gordon Murphy, a Toronto medical practitioner, hereby appeals from a decision of the Tax Appeal Board, dated February 3, 1967<sup>1</sup>, dismissing his initial appeal from an assessment made by the respondent, March 29, 1965, wherein, *inter alia*, an attempted income tax deduction of \$6,000, for taxation year 1963, was disallowed.

The grounds alleged by appellant to justify the above-mentioned deduction are that, in January 1963, he commissioned a local organization, by the name and style of Nexus Corporate Services Limited, to provide his professional

<sup>1</sup> [1967] Tax A.B.C. 132

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administrative requirements with regular receptionist, accounting, office management and stenographic services for a monthly fee of \$500; that these ministrations, being duly procured during 1963, he paid Nexus the stipulated price of \$6,000, deducting the said sum from his income returns "as an expense of carrying on his medical practice". Respondent refused to countenance this claim for the reasons stated in paragraphs 8 and 9, hereafter quoted, of the reply to the notice of appeal:

8. The respondent submits that the sum of \$6,000.00 paid to Nexus Corporate Services was remuneration for services performed by his wife as an employee of the Appellant and the deduction of which, in computing his income, was prohibited by subsection (2) of Section 21 of the Income Tax Act.
9. The respondent further submits that the payment of the said sum of \$6,000.00 to Nexus Corporate Services was a disbursement or expense made or incurred in respect of a transaction or operation that, if allowed, would unduly or artificially reduce the Appellant's income and therefore, the deduction of the said sum in computing the Appellant's income is prohibited by subsection (1) of Section 137 of the Income Tax Act, R.S.C. 1952, Chapter 148.

The evidence adduced in Court revealed that, prior to 1963, as testified to by the appellant, Dr. Murphy, his wife, born Nadia Kamil, of Egyptian extraction, attended to his office needs as a receptionist, performing also "a good deal of the bookkeeping work when at home". The Doctor adds, but rather unconvincingly, that "a regular receptionist was often employed to fill in the gap during his absence on calls at the hospital, a matter of some three hours daily". If so, I do not remember being given the names of any of those would-be "regular employees", and nothing dispelled my impression that Appellant's wife fulfilled most of the daily tasks associated with a medical office for a nominal compensation of \$250 per annum.

Dr. Murphy next proceeds to explain that the agreement eventually concluded with Nexus Corporate Services, as outlined in Exhibit 1, a typewritten letter, dated November 26, 1962, on the above firm's stationery, addressed to "Nadia" and signed "Ted", "was an attempt to properly evaluate Mrs. Murphy's services". At all events those services, after due consultation between the three persons concerned, to wit: Dr. Murphy, his wife Nadia Kamil Murphy, and Edward William Imrie, Chartered Accountant, owner of Nexus Corporate Services Limited, were set at no less

than \$500 per month to be paid by the appellant to Nexus who, in turn paid back, each month, \$465 to "Nadka Services" a puerile effort to transmute Mrs. Murphy's cheque receiving hands into some sort of company cash register. Unincorporated, unregistered and unknown, the so-called "Nadka Services" are devoid of all legal existence and, if I may slip into journalistic parlance, utterly fail to serve even as a mini-screen for Mrs. Murphy's personality.

Reverting now to reality, the monthly sum of \$35 retained by Nexus, out of each \$500 instalment received from the appellant, compensated "Ted" Imrie for the preparation of Dr. Murphy's income tax returns and some occasional accountancy work, as he was in the habit of doing for this client.

Edward William Imrie, a chartered accountant, the second witness heard, is, to all appearances, a close friend of the Murphys. He repeats, what we already knew, that Nexus Corporate Services had contracted to provide Dr. Murphy with receptionist, accounting, office management and stenographic services, at the above-stated remuneration of \$500 monthly, entailing a corresponding refund of \$465 to "Nadka Services".

This witness agrees he recommended the contract entered into by Nexus and Nadka Services "as a way or manner of avoiding income tax in connection with Dr. Murphy's office services and administration".

Most of this repetitious information appears in Exhibit 2, a letter of April 30, 1963.

This communication assumes a business style and is obviously meant to implement the innocuous scheme devised by the three participants. Its tone is formal, it is no longer addressed to "Nadia", nor signed "Ted"; I quote:

Dr. E. G. Murphy,  
3 Cumberland Drive,  
Port Credit, Ontario.

Dear Mr. Murphy:

Pursuant to our verbal agreement of January, wherein Nexus Corporate Services Limited agreed to provide the following services:

Receptionist, accounting, office management and stenographic services

for your practice, the trial period discussed has been completed. I am satisfied that the work is being done properly by the *agent* (em-

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phasis, mine) we have contracted with to do the work. If you are satisfied with the arrangement would you be good enough to forward fees covering the trial period (\$500 × 4 months).

Yours very truly,  
 Nexus Corporate Services Limited  
 E. W. Imrie,  
 President.

A single remark suffices to focus Ex. 2 in its appropriate light. After some probing Dr. Murphy admitted that the expression “agent” in the text above “could well qualify his wife, Nadia”; and so it did.

For duty's sake, I would note Dr. Murphy's mention that, during 1963, his wife's daily attendance at the office was more frequent and for longer periods than previously. Mrs. Murphy stated, in turn, that the sums reimbursed to her by Nexus were, eventually, turned over to her husband's bank account “in order to avoid risk of double taxation”, apparently in pardonable oblivion that section 21(2) of the *Act* had thoughtfully averted all such duplication.

It now remains to cite the two sections of the pertinent law which, in keeping with the proven facts, superabundantly dispose of the case. Section 21(2) enacts that:

21(1) . . .

(2) Where a person has received remuneration as an employee of his (or her) spouse, the amount thereof shall not be deducted in computing the spouse's income and shall not be included in computing the employee's income.

We know the roundabout workings of the little play: Nexus hires appellant's wife to do administrative work in her husband's office; the latter performs the ostensible gesture, each month, of paying \$500 to Nexus which, as regularly, pays back \$465 to the “agent” wife, who, finally, tunnels back these refunds to her “spouse” Dr. Murphy.

And, lastly, Section 137, ss. (1), dealing with “Artificial Transactions”, fits to a nicety the matter at issue: it is as follows:

137(1) In computing income for the purposes of this Act, no deduction may be made in respect of a disbursement or expense made or incurred in respect of a transaction or operation that, if allowed, would unduly or artificially reduce the income.

For the reasons given, this appeal is dismissed with costs in favour of the respondent.