

COPY/

IN THE SUPREME COURT)
OF THE TERRITORY OF)
PAPUA AND NEW GUINEA)

CORAM : FROST, J.
Friday,
24th May, 1968.

BETWEEN ANTHONY HUMPHREY GERMAIN Appellant
AND THE CHIEF COLLECTOR OF TAXES Respondent

J U D G M E N T.

This is an appeal under the Income Tax Ordinance 1959-1965 Section 247 against the disallowance by the Chief Collector of Taxes of the taxpayer's objection to the assessment of his taxable income for the year ending 30th June, 1965.

In his return of income for that year the appellant claimed as a deductible "therapeutic" expense the sum of £170. 0. 4. being part of the passage money incurred for a sea trip from Port Moresby to Hong Kong. Part only of the passage money was claimed having regard to the allowable maximum for medical expenses of £300. 0. 0. The Chief Collector assessed the taxpayer's taxable income to exclude this deduction. The appellant being dissatisfied with the assessment lodged with the Chief Collector an objection which was disallowed, and the appellant now appeals against the Chief Collector's decision to this Court.

It appears from two medical certificates given by Dr. Larkin of Port Moresby which the taxpayer submitted to support his claim for the deduction, that the taxpayer was suffering from post viral neurasthenia, and as a consequence Dr. Larkin had ordered the appellant to take a complete rest and "he embarked on a sea trip to the East as a result of my instructions". An affidavit by Dr. Burton-Bradley who is Assistant Director of the Department of Public Health and a specialist psychiatrist was also filed in support of the appeal. Dr. Burton-Bradley was consulted on the 11th January, 1965 and made a diagnosis that the appellant was suffering from an acute post viral depression and also tropical neurasthenia which indicated that the condition was aggravated by a tropical environment. Dr. Burton-Bradley considered that the appellant needed a complete rest of at least three to four weeks. Upon this medical evidence it was not disputed by the respondent that the appellant did suffer from a nervous disorder for which it was reasonable to prescribe a complete rest to be taken outside the Territory by means of a sea voyage.

The relevant Section of the Income Tax Ordinance, 1959-1965, is Section 111 which is as follows:-

(1) Amounts paid by the taxpayer in the year of income as medical expenses in respect of himself,, are,, allowable deductions.

(3) In this section

"medical expenses" means payments -

(a) to a legally qualified medical practitioner, nurse or chemist, or to a public or private hospital, in respect of an illness or operation;

(b)

(c) for therapeutic treatment administered by direction of a legally qualified medical practitioner;

(d) in respect of an artificial limb (or part of a limb), artificial eye or hearing aid;

(e) in respect of a medical or surgical appliance (not otherwise specified in this definition) prescribed by a legally qualified medical practitioner.

(f)

(g)

and includes payments made to meet the cost, to the extent that that cost exceeds the sum of Ten pounds, incurred in conveying a person, and any attendant of that person, to and from a place for the sole purpose of enabling that person to obtain at that place -

(h) advice or treatment from a legally qualified medical practitioner or nurse;

(i) admission to a hospital;

(j)

(k) therapeutic treatment administered by direction of a legally qualified medical practitioner,

if the Director of Public Health, or a medical officer of the Department of Public Health authorized by the Director of Public Health for that purpose, certifies that the cost was reasonably incurred.

Mr. Pratt submitted that the sum claimed was an allowable deduction first, as a payment for "therapeutic" treatment administered by direction of a legally qualified medical practitioner pursuant to the Income Tax Ordinance 1959 Section 111, and secondly as a travelling expense within the meaning of that Section, although he did not elaborate upon this further ground. His main argument was that "therapeutic" in Section 111 carried the meaning, as defined in the Shorter Oxford Dictionary, "of or pertaining to the healing of disease", and that as it was medically necessary

for the appellant temporarily to leave the tropics, the sea voyage constituted therapeutic treatment as so defined.

Mr. Kinna who appeared for the Chief Collector accepted the dictionary meaning of "therapeutic" but also strongly relied on the significance of each of the words in the expression "therapeutic treatment administered" as involving services of a medical or surgical nature, and he gave instances such as radio therapy, speech therapy and physio therapy. He also submitted that the provision contained in Section 111 for travelling expenses supported that meaning.

In my opinion, Mr. Kinna's argument is substantially sound. To constitute an allowable deduction, the claim must be for services of a healing nature administered, of course, by direction of a qualified medical practitioner. (It is unnecessary to consider whether in certain circumstances self-administered treatment could constitute a deduction). The passage money was paid for the provision of meals, maintenance and travel on board ship. It cannot be said that the services so provided were services of a healing nature.

The fact of the matter is that at the stage when the appellant's doctors instructed him to make a sea trip out of the Territory there was no further treatment of a medical or surgical nature which would assist in his recovery. All that the doctors could do was to advise him to leave the Territory on a sea voyage. In taking that sea voyage he was carrying out medical advice which was necessary for the cure of his nervous disorder, but in my opinion the provision of his maintenance and travel on board ship whilst outside the Territory did not constitute "therapeutic" treatment administered within the meaning of the Ordinance.

Further, as it was never contemplated that the appellant should obtain services of a healing nature at any place during the voyage, the cost of the voyage was not deductible as being incurred in conveying the appellant to and from a place for the sole purpose of enabling him to obtain therapeutic treatment at that place.

Accordingly the appeal is dismissed.

Solicitor for the Appellant : Richard Major and Co.

Solicitor for the Respondent : S. H. Johnson,
Crown Solicitor.