

1960  
 Apr. 20, 21

BETWEEN:

CANIM LAKE SAWMILLS LIMITED . . . APPELLANT;

1961  
 Jan. 26

AND

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

*Revenue—Income—Income tax—Whether expense in respect of aircraft used to transport executive incurred for purpose of earning income—Income Tax Act, R.S.C. 1952, ss. 11(1)(a), 12(1)(a), 20(5)(a), 20(6)(e)—Income Tax Regulations, s. 1102(1)(c).*

The appellant, a British Columbia corporation, operates saw mills in the vicinity of 100 Mile House and maintains a sales office in Vancouver. Its president, who is also its sales manager, resides in that city and to permit his making weekly trips between the sales office and the mills with the greatest despatch the appellant in 1955 purchased a single-engined aircraft. Piloted by the president it was used as his means of transportation in 1955 and 1956. In 1957 with the object of increasing the safety factor, reducing the flying time, and to permit of more flights in marginal weather, this aircraft was traded in for a twin-engined model. In filing its income tax returns for the years 1955 and 1956 the appellant had claimed and was allowed a deduction of 85% of the expense of operating the single-engined aircraft and as capital cost allowance 85% of the purchase price. A claim to similar deductions with respect to the twin-engined aircraft made in the 1957 income tax return was disallowed. The Minister ruled that the expenditure had not been incurred for the purpose of gaining or producing income from the business. In an appeal from the re-assessment to this Court.

*Held:* That the appeal must be allowed as the evidence adduced established that the twin-engined aircraft had been used by the appellant company for the purpose of gaining or producing income from its business.

2. That since the appellant admitted a 15% personal use of the aircraft the deduction to be allowed should be 85% of the operating expenses and a proportionate deduction of the capital cost computed on the 40% annual exemption foreseen in Schedule B, Class 16 of the *Income Tax Regulations*.

APPEAL under the *Income Tax Act*.

The appeal was heard before the Honourable Mr. Justice Dumoulin at Vancouver.

*J. A. Clark, Q.C.* and *J. C. MacDonald* for appellant.

*J. G. A. Hutcheson, Q.C.* and *T. E. Jackson* for respondent.

DUMOULIN J. now (January 26, 1961) delivered the following judgment:

This is an appeal from a decision rendered, August 19, 1959, by the Minister of National Revenue, dismissing appellant's Notice of Objection to a reassessment of its 1957 taxable income, which had thereby been raised from \$105,055.19 to \$124,054.42.

1961  
CANIM LAKE  
SAWMILLS  
LTD.  
v.  
MINISTER OF  
NATIONAL  
REVENUE  
—  
Dumoulin J.  
—

This increase, according to exhibit 4, a Notice of Assessment, and more explicitly to s-ss. (i) and (ii) of s. 8 in respondent's Reply to Notice of Appeal, was brought about by the disallowance,

8. . . .

- (i) as an expense the sum of \$1,987.99 claimed in respect of the operation of the said Piper Apache aircraft, and,
- (ii) as a deduction the sum of \$18,299.59 of the sum of \$84,836.20 claimed as a capital cost allowance.

The grounds for such a decision are outlined in s-ss. (a) and (b) of the same s. 8, and would be:

8. . . .

- (a) that the Piper Apache aircraft was not acquired by the Appellant for the purpose of gaining or producing income from its business, and,
- (b) the expenses incurred by the Appellant in operating the said Piper Apache aircraft were not outlays or expenses incurred by the Appellant for the purpose of gaining or producing income from its business.

The framework of the case is quite simple. Canim Lake Sawmills Limited, as its trade name denotes, operates a saw and planing mill in the vicinity of 100 Mile House, Cariboo County, a vantage point of British Columbia's heavily wooded hinterland, some 240 air miles from Vancouver City.

I also understand this firm owns an assembly yard at Exeter, B.C.

The company's industrial and financial growth since its corporate inception, in 1943, and more so from 1950 up to the material year, 1957, may, aptly enough, be qualified spectacular.

Exhibit 8 uniformly traces a sustained climb towards the upper commercial brackets. Totals, out of this document's last row of figures, show that the sales footage, F.B.M. of 4,945,925, in 1950, had risen to 29,283,811 feet by 1957.

1961  
 CANIM LAKE  
 SAWMILLS  
 LTD.  
 v.  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 Dumoulin J.

One of the two witnesses heard, Mr. Rudolph Jens, Canim Sawmills' President, General Manager and half-owner of the enterprise with his brother, Theodore Jens, lucidly describes its extensive and steady expansion. I could do no better than quote from pages 22 and 23 of the official transcript.  
*Page 22:*

I am Sales Manager of Canim Lake Sawmills Ltd. and in the year 1950 we sold some 5,000,000 board feet of lumber. In my capacity as Sales Manager I made numerous trips in 1950 to Vancouver to dispose of the production of Canim Lake Sawmills Ltd. In 1951 our production increased to approximately 7,000,000 board feet. In 1952 it again increased to approximately 11,000,000 feet. In 1953 it increased to some 16,000,000 feet and my trips to Vancouver at this time were becoming so numerous that I maintained an apartment in Vancouver for my convenience when I came to Vancouver to sell this production.

*Page 23:*

In 1954 we shipped approximately 18,000,000 feet. In 1955 we again increased our production to approximately 24,000,000 feet and my presence in Vancouver to handle this increased production was becoming so necessary that as a company we decided to establish our Sales Manager who was myself in Vancouver to look after the sales of the company's production.

The witness (page 23 of transcript) next proceeds to mark out the company's added sources of supply and also a particular aspect of its industrial activities; he says:

Now, our company's production is not derived from one sawmill but rather from 30 sawmills who ship their production to our assembly yard at Exeter, B.C. . . .

In order to keep the Sales Manager fully conversant with the production and the production capabilities of these various small mills it was decided that the Sales Manager would be in Vancouver weekly to attend to sales of this production and during this same week to be at 100 Mile House to have full knowledge of the production capabilities and the actual production of these various mills. This was necessary in order to obtain the most premium business that could be had for our production.

This business policy proved effective as evidenced in Mr. Rudolph Jens' own words reported at page 36:

. . . We discussed this with MacMillan & Bloedel [possibly the largest lumber concern in Canada, with Head Office at Vancouver] and as a result of these discussions an arrangement was arrived at between the two companies wherein Canim Lake Sawmills agreed to market its entire production through MacMillan & Bloedel. This production was to be increased to approximately 3,000,000' per month. MacMillan & Bloedel in turn agreed to handle this production for a flat sum of \$2 per thousand and as opposed to the minimum five per cent commission charge which was the practice prior to this agreement.

To this exceptionally favourable rate of \$2 per thousand feet F.B.M. marketed through MacMillan & Bloedel's contacts, Mr. Jens credits a large proportion of the 1957 "premium business" listed on exhibit 11, at no less than \$66,250.

1961  
CANIM LAKE  
SAWMILLS  
LTD.  
v.  
MINISTER OF  
NATIONAL  
REVENUE  
—  
Dumoulin J.

One can readily conceive that supervising the weekly output of 30 sawmills, spread over a broad extent of wooded territory, coupled with the essential obligation of ensuring constant selling facilities for 3,000,000 feet of lumber each month, through regular business trips to Vancouver, a distance of 240 air miles, would indeed require an unwonted degree of dispatch, made possible by a recourse to the speediest modes of transport available, obviously air travel.

Consequently, Canim Sawmills Ltd. acquired, in 1955, its first plane, a "Cessna 180", and another in 1957, a twin-engined "Piper Apache" craft, the latter at a price of \$44,189.50, less a trade-in allowance of \$13,000 for the older and slower "Cessna 180" (cf. ex. 9, dated July 15, 1957). Due to the manifold calls incumbent, as noted, upon the sales manager, one aeroplane could not suffice. On July 2, 1957, a "Cessna 182" was purchased, costing \$17,076.75 (cf. ex. A), but exclusively detailed to a special purpose, namely, forestry work, which the witness describes thus (transcript, p. 31):

. . . in 1956 the Forestry Department [of British Columbia] came out with a regulation that said all timber sales would in future have to be accompanied by a logging plan and to facilitate the making of these logging plans we used an aircraft and this aircraft has to be of a particular type, a high wing aircraft and slow flying aircraft, a very manoeuvrable aircraft and such an aircraft is the 182.

Jens also unhesitatingly corroborated the explanation hereunder vouchsafed by his learned counsel, that (transcript, p. 30):

. . . The 182 . . . was used for another purpose entirely, not for the purpose of the trips from 100 Mile House to Vancouver to sell the production of these mills but for forestry work at 100 Mile House . . .

In order to sum up this aspect of the matter, I should say Mr. Jens testified his company obtained six (6) additional timber sales in 1956, and seven (7) others in 1957, thereby extending considerably those holdings over which it should exercise its surveillance as a legal requirement.

1961  
 CANIM LAKE  
 SAWMILLS  
 LTD.  
 v.  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 Dumoulin J.

We already know that the appellant's claim, in its 1957 income tax return, to an 85% capital and operating costs deduction, in relation to the Piper Apache plane, was disallowed under the pretext that such expenditures had not been incurred for the purpose of gaining or producing income, albeit similar deductions were granted for the Cessna 180 in 1955 and 1956.

The information conveyed in the preceding pages about the financial achievements of Canim Lake Sawmills surely indicates that a pursuit of this nature, to flourish as it did, is dependent upon both managerial skill and well suited material devices.

Did this Piper Apache plane, piloted by appellant's president and sales manager, afford a regular and practical contribution in securing vitally important contacts, or, in statutory wording, did it concur in "the purpose of gaining or producing income?" A comparable question could arise in relation to a country doctor's automobile.

Let us, to begin with, investigate the saving in man hours and in corresponding terms of dollars, consequent upon the utilization of aerial transport.

I will again resort to Rudolph Jens' evidence, citing at some length from the official transcript at pages 33 and 34:

A. . . . I have had occasion to look at the logs of both aircraft [i.e. the Cessna 180 and Piper Apache] for 1955, 1956 and 1957. We purchased the twin-engined aircraft [Apache] in 1957, in August, and flew it until December of that same year [cf. ex. E]. In 1955 in the 180 [Cessna] we were able to make 22 trips from 100 Mile House to Vancouver or Vancouver to 100 Mile House and in 1956 we were able to make 19 such trips. In 1957 through the use of the twin-engined aircraft [Apache], we were able to make 33 such trips, this at a time when the same number of trips was required to be made each year and the trips that were not made by plane in 1955 and 1956 [previous to the acquisition of the Apache] had to be made by car.

Q. What is the difference in the time involved between making the trip by car and making it by air?

A. The use of a motor car for the trips in question would take approximately one-third of our working year on the road. I think it would be closer to two-fifths of our working year on the road driving time and to tie up the services of an executive and director of the company for two-fifths of the working year did not seem to be economic as far as the Canim Lake Sawmills Ltd. was concerned.

Q. And your salary is what?

A. My salary is \$40,000 a year, sir.

Q. And two-fifths of that would be \$16,000?

A. That is correct.

Q. That would be the cost to the company of driving if you did it by automobile? 1961  
CANIM LAKE  
SAWMILLS  
LTD.  
v.  
MINISTER OF  
NATIONAL  
REVENUE

A. By working time lost that is the cost.

Q. And what proportion of your year's time would be taken up by flying? Dumoulin J.

A. The proportion of the time lost in using an aircraft for this trip would be 18 working days per year out of the total working year of 240 days.

Q. That would be about three-fortieths?

A. Yes.

Q. Or, a cost to the company for your time of about \$3,000?

A. Yes.

These figures remained uncontradicted, thereby substantiating a \$13,000 economy in travelling expenses, a result which assuredly does not run counter to any notion of "producing income".

However, there is better still, as a glance at the company's "Statement of Profit and Loss" (ex. 8) will prove. Comparing the company's net profit for the years 1950 and 1957, the latter a poor period in the lumber industry, we find a progression from \$32,587.03 to \$64,026.52. The year preceding, 1956, attested net profit gains in a sum of \$118,120.10. Of greater significance, I presume, in respondent's appraisal, three columns of this audit sheet, (ex. 8) labelled "Provision for Income Taxes", read as follows: 1950: \$17,616.27—1956: \$94,559.34—1957: \$43,975.94.

Even this last figure, although somewhat shrunk through cyclical regression, does not operate as an anti-climax to "the purpose of gaining or producing income from its business", as mentioned in s. 8, s-s. (a) of the Reply.

The witness at bar wound up this part of his testimony by stating that, for 1957, out of 111 nights, he spent 43 at 100 Mile House, and the remainder in Vancouver or elsewhere. It could go without saying that, since his people reside in this city, he naturally took his abode at the family home. Moreover, Jens' repeated assertions that imperative business needs urged his weekly attendance at MacMillan & Bloedel's offices, are enhanced by the fact that the frequency of such trips persist throughout the summer months, when his wife and children are absent from Vancouver, vacationing at Qualicum.

1961  
 CANIM LAKE  
 SAWMILLS  
 LTD.  
 v.  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 ———  
 Dumoulin J.  
 ———

The learned counsel for respondent, in cross-examination, drew the witness' attention to certain replies of his at an examination for discovery, held April 4, 1960. I now refer to excerpts of this evidence as read in Court, viz. questions 302-303-304-305 and answers thereto; the examining lawyer, Mr. J. G. A. Hutcheson, Q.C.:

302 Q. Putting the matter generally, first, without getting down to specific flights, I notice that from your logs there is a—running throughout it is local flying done in Vancouver?

A. Yes.

303 Q. Would it be fair or right to assume that that was pleasure flying?

A. In some instances, yes. In the bulk of it it would probably be right to say that.

304 Q. Was there any business at all for local flying in Vancouver?

A. Yes, there would be a business reason for local flying in Vancouver.

305 Q. What, for instance, would be the nature of a business reason which would call for local flights in Vancouver?

A. Well, there could be a check-out of the aircraft, for one thing; another was that we were interested in timber around Pemberton way.

The notion conveyed to my mind by the expression "pleasure flying" pales into vagueness after reading the deponent's explanatory commentaries. To be sure, engine testing flights, perilous chores at most times; the aerial inspection of timber lands around Pemberton, where no landing facilities exist, are hardly reconcilable with idle pleasure cruising. And again, the frequency of such flights remained unspecified. I cannot attach any significance to what assuredly is, in the light of unshaken evidence, an inaccurate expression.

Should any lingering doubt persist as to the compelling nature of the regular business attendance in Vancouver, of Canim's sales manager, the second and last witness, Mr. C. Bruce Campbell, would completely dispel it.

At the material time, Campbell was one of MacMillan & Bloedel's lumber buyers, since promoted to head buyer. He has checked the summary of appellant company's export shipments for 1957, as expressed in exhibit 11, and is satisfied with its accuracy. Furthermore, Mr. Campbell insists upon the all-important necessity of continued personal liaison between both firms, his and Canim Sawmills Ltd.,

so as to ensure a satisfactory expedition of their heavy industrial commitments, transacted on the before-mentioned premium basis. Business of such magnitude, says the witness, never could be secured "over the telephone".

1961  
CANIM LAKE  
SAWMILLS  
LTD.  
v.  
MINISTER OF  
NATIONAL  
REVENUE  
Dumoulin J.

A few excerpts of his evidence, in reply to quite a probing cross-examination, may shed conclusive enlightenment concerning the number and duration of those business conferences. At page 158 of the transcript:

- Q. How often or how frequently would Mr. Jens see you in the years, take first 1956 and then 1957?
- A. Certainly once a week at a minimum.  
On page 160:
- Q. These meetings you said on Mondays, how long would they last or take?
- A. It varies—two to three hours. If the business warrants they will go on longer and will be more frequent.
- Q. You mean more frequent on the Monday?
- A. Or Tuesday.
- Q. If he was here?
- A. Well, if there was business of that nature he would be here.

I now quote from pages 162 and 163; Mr. Hutcheson is pursuing the cross-examination:

- Q. Am I right in assuming . . . that practically all the meetings with Mr. Jens were on the Monday or, for instance, the Tuesday?
- A. In the main they would be in the early part of the week. However, we did meet on other occasions.
- Q. Well, in the two years [i.e. 1956 and 1957] I have spoken of were there any meetings which you recall which took place on Saturday?
- A. Yes.
- Q. What number would that be? Was it a frequent thing or seldom?
- A. During those years, it was fairly frequent that we met on a Saturday.
- Q. That would be by his being in and calling you . . . and then meeting you at the office, would that be it?
- A. No, perhaps we would meet at his place of residence to discuss the matter.
- Q. They were not merely phone conversations?
- A. No.
- Q. If you considered it was necessary for Mr. Jens to come down to Vancouver other than on a week-end . . . would you notify him?
- A. Yes, sir.
- Q. You have mentioned the mills for whom you act as the selling outlet, . . . Was Canim Lake Sawmills one of the larger?
- A. Yes, sir.
- Q. Was it the largest?
- A. Yes.



1961  
 CANIM LAKE  
 SAWMILLS  
 LTD.  
 v.  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 Dumoulin J.

The whole problem, I repeat, narrows down to a reversal, in 1957, of the respondent's erstwhile practice of allowing a 15% operating deduction for planes, plus a second one annually, equivalent to 40% of their capital cost, as would appear from exhibit 4.

Strangely enough, the underlying explanation of this "new departure" seems to be none other but the purely coincidental presence of the Rudolph Jens family in Vancouver, and the far from startling fact that appellant's president incidentally enjoys, during business trips, the comforts of his home.

It goes without saying that this grievance is not proffered in so flimsy a disguise, and that an attempt was made to clothe it in the more decorous raiment of legal phraseology, such as found in s-s. 1 of s. 11, s-ss. 1(a) and (2) of s. 12 of the *Income Tax Act*, and also s-s. 5 of s. 20.

In the instant case, the governing legal proposition is the oft quoted ss. 12(1) and 12(1)(a), reading:

12. (1) In computing income, no deduction shall be made in respect of  
 (a) General limitation.—an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from property or a business of the taxpayer.

I entertain no doubt but that appellant successfully rebutted the presumption favouring *a priori* the Notice of Assessment. The evidence adduced, literal and oral, compellingly calls forth the conclusion that Canim Lake Sawmills Ltd. utilized this specific item of property, its Piper Apache aircraft, "for the purpose of gaining or producing income", and may therefore avail itself "of the exception to the prohibition".

A breakdown of 15% attributed to "personal use" of the plane fully corresponds to all similar purposes as revealed in Court.

Further authority, now, for the capital cost allowance of "depreciable property", defined in s-s. (5)(a) of s. 20, may be derived from s. 11, s-s. (1)(a) which refers to the Regulations for the proper ratio of such deductions, actually class 16 of Schedule B, permitting of a 40% deduction on aircrafts, as restricted again by s. 20(6)(e) of the Act.

I do not propose to reproduce so verbose a provision. If some meaning can be squeezed out of this pulpy jumble of words it would seem to imply that where property has been regularly used for the purpose of gaining or producing income and in part for some other purposes, as occurs here, the capital cost deduction allowed should be in a direct ratio to the numerical index of the unexempted use of such property. In the case at issue a 15% personal use of the Piper Apache being admitted by the appellant, then the proportionate ratio of capital cost deduction, for taxation year 1957, should be 85% of the statutory 40% (Class 16 of Schedule B).

1961  
CANIM LAKE  
SAWMILLS  
LTD.  
v.  
MINISTER OF  
NATIONAL  
REVENUE  
Dumoulin J.

The reasons above entitle the appellant company, for taxation year 1957, in connection with the Piper Apache plane, to 85% of the operating expenses and a proportionate deduction of the capital cost, computed on a 40% annual exemption foreseen in Schedule B, class 16.

Should the figures appearing in s. 8, s-ss. (i) and (ii) of the Reply be correct, then the respective deductions hereabove enjoined, translated in monetary exponents, would be, in the first instance 85% of \$1,987.99, i.e. \$1,689.79, in the second, 85% of \$18,299.59, viz. \$15,554.65.

Therefore I would allow the appeal with costs, set aside the said Notice of Assessment for the taxation year 1957, dated December 22, 1958, and direct the record of this case be returned to the Minister and a further assessment made pursuant to the findings above.

*Judgment accordingly.*