1950

Apr. 12
Apr. 14

BETWEEN:

THE ROYAL CITY SAWMILLS LIMITED .... APPELLANT;

AND

THE MINISTER OF NATIONAL REVENUE .... RESPONDENT.

Revenue—Excess Profits Tax Act 1940, s. 15A—Standard profits—Controlled company—Amount of standard profit fixed by s. 15A of the Act—Appeal dismissed.

(1) (1931) 39 M.R. 445.

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ROYAL CITY SAWMILLS LTD. v. MINISTER OF NATIONAL REVENUE

Sidney Smith D.J.A.

Held: That the standard profit of a controlled company is fixed at an amount not exceeding $5,000 by s. 15A of the Excess Profits Tax Act, 1940, notwithstanding that such company may have been formerly granted a greater standard profit.

APPEAL under the Excess Profits Tax Act, 1940.

The appeal was heard before the Honourable Mr. Justice Sidney Smith, Deputy Judge of the Court, at Vancouver.

J. T. Jackson and *W. J. Hulbig* for appellant.

W. S. Owen, K.C., A. H. Laidlaw and *W. R. Mead* for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

SIDNEY SMITH, D.J. now (April 14, 1950) delivered the following judgment:—

This is an appeal from the Minister of National Revenue with respect to the standard profits of the appellant. It turns wholly upon the construction of sec. 15A of the Excess Profits Tax Act. The section reads as follows:—

15A. Notwithstanding anything in this Act contained, in any case where a company has a controlling interest in any other company or companies (hereinafter called controlled company or companies) incorporated in 1940 or thereafter . . . and the sum of the capital employed by such company and such controlled company or companies at the time of incorporation is not in the opinion of the Minister of National Revenue substantially greater than the capital employed by such first-mentioned company prior to the incorporation of such controlled company or companies, the standard profits of all such controlled companies taken together shall not exceed $5,000 in the aggregate, and shall be allocated to each of such controlled companies in such amounts as the Minister of National Revenue may direct.

In any such case a reference to the Board of Referees shall not be made notwithstanding the provisions of section five of this Act.

The appellant was incorporated on 13 April 1940. On 17 September 1941 it applied to have its standard profits determined under section 5 of the Excess Profits Tax Act. There was a reference to the Board of Referees, the decision of the Board awarding a standard profit of $28,500 per year was approved by the Minister, and the appellant was so notified on 31st March, 1942. Section 15A of the Act was assented to on 20th May, 1943, and made applicable to the profits of the 1942 taxation period and of fiscal periods ending therein and of subsequent

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periods. For the years 1944 and 1945 the appellant was assessed excess profits tax based on standard profits of $5,000 only. The appellant argues that it does not fall within the operation of sec. 15A *supra*.

In my opinion there can be no doubt that, from first to last, this was a controlled company in the sense of this section (indeed the point was not contested); that in the opinion of the Minister of National Revenue (and, I may add, in my own as well) the sum of the capital of parent and offspring was not substantially greater than the capital of the parent company at the relevant time; and that its date of incorporation and chargeable accounting periods come within the statutory time. How, then, can it be said that the company falls outside the wide net of this section?

The main argument was that having had its standard profits fixed at $28,500 in 1941, the section could not now operate to reduce them to $5,000; that this would be tantamount to retrospective legislation; and that the section left much room for doubt as to whether this was the intention.

But the section introduced a new standard profit for certain companies of which this was one. It contains no hint that Parliament intended that the section should not apply to companies within its ambit whose standard profits had previously been fixed by some other measure. If such had been the intention nothing would have been easier than to say so. In the absence of such language the qualification of its terms by any such implication is not legitimate. The provision may seem harsh to the appellant company, but if the provision is clear the Court has no jurisdiction to mitigate such harshness, if any there be.

In my opinion this statutory provision interpreted according to income tax principles and to the actual terms of the language used amounts to saying: "If you are a controlled company your standard profits shall not exceed $5,000 notwithstanding any machinery in the Act which may hitherto have given you a greater standard profit."

The appeal must be dismissed with costs.

Judgment accordingly.