

BETWEEN:

INTERNATIONAL FRUIT DISTRIB- }
UTORS LIMITED }

APPELLANT;

1953
Sept. 28
Sept. 30

AND

THE MINISTER OF NATIONAL }
REVENUE }

RESPONDENT.

Revenue—Income Tax—The Income Tax Act, S. of C. 1948, c. 52 ss. 36(4) (b)(i), 36(5), 127(1)(a b), 127(5)—Meaning of related corporations—Term person in s. 36 (4)(b)(i) includes foreign corporation.

All the issued shares of the appellant and another Canadian company were owned by a United States company and the appellant was assessed for 1949 as a related corporation within the meaning of s. 36(4)(b)(i) of The Income Tax Act, as amended.

Held: That it is not a proper approach to the construction of The Income Tax Act to regard it as necessarily consistent in the use of its various terms throughout the Act or to assume that inconsistency in their use necessarily results in ambiguity in their meaning.

2. That the term "person" in section 36(4)(b)(i) of the Act includes a foreign corporation and that the appellant was a related corporation within the meaning of the section.

APPEAL from a decision of the Income Tax Appeal Board.

The appeal was heard before the President of the Court at Toronto.

J. B. Hamilton Q.C. and *W. D. Lyon* for appellant.

T. Z. Boles for respondent.

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

1953
 INTER-
 NATIONAL
 FRUIT
 DIS-
 TRIBUTORS
 LIMITED
 v.
 MINISTER
 OF
 NATIONAL
 REVENUE

THE PRESIDENT now (September 30, 1953) delivered the following judgment:

This is an appeal from the decision of the Income Tax Appeal Board (1), dated March 5, 1952, which dismissed the appellant's appeal from its income tax assessment for 1949. The issue is whether the appellant was a related company within the meaning of section 36(4)(b)(i) of The Income Tax Act, Statutes of Canada 1948, chapter 52, as amended by section 11 of Chapter 51 of the Statutes of 1951, assented to on June 30, 1951, and made applicable to 1949 and subsequent taxation years, the relevant parts of which read as follows:

36. (4) For the purpose of this section, one corporation is related to another in a taxation year if, at any time in the year, . . .

(b) 70 per cent or more of all the issued common shares of the capital stock of each of them is owned directly or indirectly by

(i) one person . . .

The facts of the case are simple and not in dispute. The appellant was incorporated under the laws of Canada and has its head office at North Bay in Ontario. Another company to which it is said to be related, namely, Gamble Robinson Limited, was also incorporated under the laws of Canada and has its head office at North Bay. All the issued shares of each of these companies were at all times relevant to this appeal owned by Pacific Gamble Robinson Company, a company incorporated under the laws of Delaware, one of the United States of America, and having its head office at Seattle in the State of Washington.

On these facts it was contended for the respondent that the appellant was a related company within the meaning of section 36(4)(b)(i) of the Act and properly assessed accordingly.

The submission of counsel for the appellant, put shortly, is that the term "person" in section 36(4)(b)(i) does not extend to a corporation or, alternatively, does not extend to a foreign corporation. It was urged that if it was read as extending to a corporation then section 36(5), which reads as follows:

36(5) When two corporations are related, or are deemed by this subsection to be related, to the same corporation at the same time, they shall, for the purpose of this section, be deemed to be related to each other.

would be unnecessary surplusage, that the specific reference in it to corporations has the effect of excluding a corporation from the meaning of the term "person" in section 36(4)(b)(i), that this creates an ambiguity in its meaning and that such ambiguity should be resolved in the appellant's favor.

I am unable to agree. It is not a proper approach to the construction of The Income Tax Act to regard it as necessarily consistent in the use of its various terms throughout the Act or to assume that inconsistency in their use necessarily results in ambiguity in their meaning.

In my judgment, there is a complete answer to the appellant's submission in the definition of "person" in section 127(1)(a b) which reads as follows:

127. (1) In this Act,

(a b) "person" or any word or expression descriptive of a person, includes any body corporate and politic, and the heirs, executors, administrators or other legal representatives of such person, according to the law of that part of Canada to which the context extends;

As I understand this definition the term "person" in section 36(4)(b)(i) of the Act clearly includes a corporation. Indeed, it includes "any" corporation and there is no reason for holding that it does not extend to a foreign corporation such as Pacific Gamble Robinson Company. I am unable to find any ambiguity in its meaning by reason of the use of the term "corporations" in section 36(5). Nor can the appellant derive any assistance from the arms length provisions of section 127(5).

In my opinion, the appellant was clearly a related corporation within the meaning of section 36(4)(b)(i) of the Act and properly assessed accordingly. It follows that its appeal must be dismissed with costs.

Judgment accordingly.

1953
INTER-
NATIONAL
FRUIT
DIS-
TRIBUTORS
LIMITED
v.
MINISTER
OF
NATIONAL
REVENUE
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