

BETWEEN:

THE MINISTER OF NATIONAL
REVENUEAPPELLANT;

AND

STOVEL PRESS LIMITEDRESPONDENT.

1953
Mar. 9
Mar. 14

*Revenue—Income Tax—Income War Tax Act, R.S.C. 1927, c. 97, s. 6(n)—
Interpretation Act, R.S.C. 1927, c. 1, s. 31(j)—Minister’s discretion to
allow depreciation deductions.*

The respondent acquired land, buildings, machinery and equipment from a company which had a controlling interest in it and claimed a deduction in respect of the buildings, machinery and equipment, based on their cost to it. In the case of certain assets which had been fully depreciated in the hands of their former owner the Minister allowed no further deduction and in the case of the other depreciable assets he based his deduction allowance on their cost to their former owner and on his assessment added the difference to the respondent’s taxable income. The Income Tax Appeal Board allowed the respondent’s appeal from this assessment and the Minister appealed from this decision.

Held: That the issue in this appeal is substantially the same as that in *Minister of National Revenue v. Simpson’s Limited* [1953] Ex. C.R. 93 and the reasons for judgment in that case are applicable, *mutatis mutandis*, in this one.

2. That the word assets in the first proviso to section 6(n) should be read as meaning asset when the occasion requires.
3. That the Minister was right in concluding that the first proviso in section 6(n) applied to some of the acquired assets and not to others.
4. That there was no valid reason why the Minister, in determining whether he should base his allowance of deductions in respect of depreciation of the assets in question on their cost to the former owner or on the amount for which they were acquired by the respondent, should not consider the proviso to section 6(n) and its possible effect in future.
5. That the Minister validly exercised the discretion vested in him.

(1) [1952] Ex. C.R. 331.

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 APPEAL from a decision of the Income Tax Appeal Board.

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

Irving C. Keith, Q.C. and *F. J. Cross* for appellant.

D. A. Thompson Q.C. and *D. C. McGavin* for respondent.

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

THE PRESIDENT now (March 14, 1953) delivered the following judgment:

This is an appeal from the decision of the Income Tax Appeal Board (1), dated July 17, 1951, allowing the respondent's appeal from its income tax assessment for the taxation year ending December 31, 1947, on the ground that the Minister had not properly exercised his discretion under section 6(n) of the Income War Tax Act, R.S.C. 1927, chapter 97. The appeal relates to the nature and extent of the discretion vested in the Minister to allow deductions in respect of depreciation from what would otherwise be taxable income. So far as relevant to the appeal section 6(n) reads as follows:

6. In computing the amount of the profits or gains to be assessed, a deduction shall not be allowed in respect of

(n) depreciation, except such amount as the Minister in his discretion shall allow, including

Provided, however, that the Minister shall not allow a deduction in respect of depreciation of assets owned by an incorporated taxpayer from the income of the said taxpayer if he is satisfied that the said taxpayer directly or indirectly had or has a controlling interest in a company or companies previously the owner or owners of the said assets or that the said previous owner (which term shall include a series of owners) directly or indirectly had or has a controlling interest in the said taxpayer or that the said taxpayer and the previous owner were or are directly or indirectly subject to the same controlling interest and that the aggregate amount of deductions which have been allowed to the said taxpayer and/or the said previous owner in respect of the depreciation of such assets is equal to or greater than the cost of the said assets to the said previous owner or to the first of the previous owners where more than one;

The facts are not in dispute. In 1947 the respondent purchased from Stovel Company Limited certain land, buildings, machinery and equipment for \$1,300,000 of which \$509,500 was allocated to the buildings and \$692,000 to the machinery and equipment. The cost of these assets to Stovel Company Limited was \$849,701.74, that of the buildings being \$227,591.43 and that of the machinery and equipment \$523,858.22. Prior to the date of the purchase the aggregate amount of the deductions in respect of depreciation of the said assets which the Minister had allowed to Stovel Company Limited was, except in respect of certain assets, less than their cost to Stovel Company Limited. There was an exception in the case of certain machinery and equipment which had been acquired by Stovel Company Limited prior to June 30, 1938, at a cost of \$319,066.06, in respect of which an aggregate amount of \$335,243.18 had been allowed as deductions for depreciation. There were also some other assets which had been fully depreciated except for the nominal amounts at which they were carried on the books of Stovel Company Limited.

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At and subsequent to the date of the purchase of the said assets Stovel Company Limited had a controlling interest in the respondent.

In its income and excess profits tax return, dated April 30, 1948, for its taxation year ending December 31, 1947, the respondent claimed a deduction of \$33,038.03 in respect of depreciation of the buildings, machinery and equipment which it had purchased from Stovel Company Limited, but the Minister in his assessment allowed a deduction of only \$13,675.03. In doing so he did not allow any deduction in respect of the assets acquired by Stovel Company Limited prior to June 30, 1938, to which reference has been made, or in respect of the assets which had been fully depreciated as stated. In respect of the buildings and other machinery and equipment he based his allowance of deductions in respect of their depreciation on their cost to Stovel Company Limited. In doing so he allowed a rate of 10 per cent. on such base although the respondent had claimed only 7½ per cent. on the base on which it claimed its deductions. The amounts disallowed by the Minister were added back to the amount of taxable income reported by the respondent in its return.

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The respondent objected to the assessment and appealed against it to the Income Tax Appeal Board. The Board allowed the appeal and referred the assessment back to the Minister for reconsideration and reassessment by allowing depreciation based on the *cost to the appellant* (the respondent herein) of the plant and equipment purchased by it. The reasons for the Board's decision were given by Mr. W. S. Fisher, Q.C., with the Chairman, Mr. F. Monet, Q.C., concurring.

The issue in this appeal is substantially the same as that in *Minister of National Revenue v. Simpson's Limited*(1) in which I have just rendered judgment allowing the Minister's appeal from the Board's decision. The reasons for judgment in that case are applicable, *mutatis mutandis*, in this one and are incorporated herein without repetition of them.

I shall merely confine myself to the submissions made in this appeal that were different from those put before me in the *Simpson's Limited* case (*supra*). It was argued by counsel for the respondent that the Minister had no right to look at the assets in question separately and determine that the first proviso of section 6(*n*) applied to some of them, as he did in the case of the assets acquired by Stovel Company Limited prior to June 30, 1938, and the other assets that had been fully depreciated subject to the nominal amount left. It was his submission that the word assets in the first proviso of section 6(*n*) meant all the assets acquired in bulk and must be so considered by the Minister in determining whether the proviso applied and that it was not competent for him to decide that the proviso was applicable in the case of some of the acquired assets and not applicable in the case of other assets. That being so, the Minister had not exercised his discretion on proper legal principles. I do not agree with this interpretation of the proviso. Section 31(*j*) of the Interpretation Act, R.S.C. 1927, chapter 1, provides that words in the singular shall include the plural and words in the plural include the singular. Thus the word assets in the proviso should be read as meaning asset when the occasion requires. Moreover, it seems to me that the Minister in determining

(1) [1953] Ex. C.R. 93

whether the proviso applies must, of necessity, consider each asset in respect of which a claim of a deduction for depreciation is made to see whether in respect of that asset the aggregate amount of the deductions in respect of the depreciation which have been allowed is equal to or greater than its cost to the former owner. The words of the proviso are, in my opinion, capable of this interpretation and it is the only interpretation that is consistent with the workability of the proviso. The adoption of the interpretation urged for the respondent would create such great difficulties of administration that they could not have been intended by Parliament. I am, therefore, of the opinion that the Minister's interpretation of the proviso was correct and that his disallowance of the deduction claimed in respect of the depreciation of the assets acquired up to June 30, 1938, was proper.

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The other submission to which I shall refer relates to a letter, dated August 30, 1948, from the Director General of the Corporation Assessments Branch of the Taxation Division of the Department of National Revenue to the respondent's chartered accountants in which the following statement appears:

We will not recognize for depreciation purposes the inflated value of the assets purchased by Stovel Press Limited from Stovel Company Limited. The amount of depreciation to be allowed will be calculated on the book value of the assets turned over by the latter Company. This is because of the fact that both Companies were controlled by the same interests at the time the sale of the assets was completed, and the first proviso of section 6(1)(n) is specific in this connection.

and also to paragraph 15 in the Notice of Appeal herein which alleged:

15. That, in exercising his discretion under paragraph (n) of section (1) of Section 6 of the Income War Tax Act to allow an amount for depreciation in respect of the buildings, machinery and equipment referred to in paragraph 5 hereof for the 1947 taxation year, the Minister properly had regard, in determining the amount of the allowance, to the fact that the first proviso to the said paragraph (n) would operate in some subsequent year to prohibit any further allowance.

It was stressed by Mr. Fisher in the decision *a quo* that until the time arrives when both of the conditions referred to in the proviso exist, the proviso can have no application and that, in the meantime, the Minister's discretion must be exercised without regard to any special provision which may be set forth in it. I have already in the *Simpson's*

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Limited case (supra) indicated my disagreement with this view. But counsel for the respondent urged that the Minister had no right to assume what would happen in the future and that in exercising his discretion with that assumption weighing on him he had not exercised his discretion on proper principles.

In my view there was no valid reason why the Minister in determining whether he should base his allowance of deductions in respect of depreciation of the assets in question on their cost to the former owner or on the amount for which they were acquired by the respondent should not consider the proviso and its possible effect in the future. But that is not the question before the Court. It is not so much concerned with why the Minister did what he did as with whether what he did was within his discretion to do. He may have been moved to his decision by considerations in respect of which there might be differences of opinion but the real question in this appeal as in the *Simpson's Limited case (supra)* is whether he acted within his discretion in basing his allowances of the deductions claimed in respect of depreciation of the acquired assets on their cost to the previous owner. If the Minister thought that in doing so he was acting consistently with the declared policy of Parliament as embodied in the proviso, as is by implication suggested, how can it be said that he exercised his discretion improperly? I do not think that he did. Indeed, I am unable to find any reason for holding that he was precluded from exercising his discretion as he did. His action, in my judgment, was a valid exercise of the discretion vested in him.

It follows from these reasons and those in the *Simpson's Limited case (supra)* that the appeal herein must be allowed with costs and the assessment appealed against restored.

Judgment accordingly.
