

BETWEEN:

1951  
 Oct. 18  
 Nov. 9

LIONS GATE LUMBER COMPANY }  
 LIMITED ..... } APPELLANT;

AND

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

*Revenue—Excess Profits Tax—Excess Profits Tax Act, 1940, s. 15A, s. 1 of First Schedule—Combined capital of appellant and parent companies not substantially greater than capital employed by parent company—Appeal dismissed.*

*Held:* That “capital employed in any year or fiscal period” as defined by s. 1 of the First Schedule to the Excess Profits Tax Act is different from capital employed “at the time of incorporation” and “Prior to incorporation” as set forth in s. 15A of the Act.

2. That since the appellant company acquired all but four dollars of its capital employed at date of incorporation from the working capital of its parent company the combined capital of the two companies was not substantially greater than that of the parent company prior to incorporation of appellant.

APPEAL under the Excess Profits Tax Act.

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

*A. S. Gregory* for appellant.

*D. Donaghy, K.C.* and *F. J. Cross* for respondent.

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

SIDNEY SMITH D.J. now (November 9, 1951) delivered the following judgment:

This is an appeal from the decision of the Minister of National Revenue, dated 12th June, 1950, affirming the assessments for excess profits tax in respect of the taxation years ended 31st March, 1946, 1947 and 1948, upon the ground that they were made in accordance with sec. 15A of the Excess Profits Tax Act in that the sum of the capital employed by the Appellant Company and by Allison Logging Company Limited (the parent company) at the time of incorporation of the Appellant Company was not substantially greater than the capital employed by Allison Logging Company Limited prior to the incorporation of Appellant.

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The date of incorporation of Appellant was 14th March, 1942, and on 24th February, 1943, the Allison Company obtained control of Appellant. Appellant contends that the time of its incorporation within sec. 15A is the latter date, while Respondent says it is the former. It is not necessary in the present case, as I see it, to reach a conclusion on this point.

Sidney  
 Smith D.J.

But assuming that it was 24th February, 1943, then at that date the capital employed by Appellant Company was \$49,604, of which \$49,600 came from the working capital of the Allison Company, and \$4 from outside sources. Therefore it seems to me that however one looks at this matter the combined capital of the two was not substantially greater than that of the Allison Company prior to incorporation of Appellant.

Appellant however points to sec. 1 of the First Schedule in the Act and says that the Allison capital must be considered as of 1st December, 1941, if computed in accordance with that section. But with respect, I do not see that the section has any relevance here. It defines "capital employed in any year or fiscal period", while sec. 15A is concerned with capital employed "at the time of incorporation" and "prior to incorporation". This seems to me to be quite a different thing.

I would dismiss the appeal with costs.

*Judgment accordingly.*