BETWEEN:

THE MINISTER OF NATIONAL REVENUE ..... APPELLANT;

1955
Sept. 7
Nov. 16

AND

ALBERT PAPER COMPANY INCORPORATED ..... RESPONDENT.

Revenue—Income—Income tax—Corporation—"Taxation year" of corporation ending after commencement of 1953—Method of computation of tax—Taxation rates—Deductions from corporation tax—"Ultimate amount of tax"—The Income Tax Act, R.S.C. 1952, c. 148, as amended, ss. 39(1)(a)(b), 40(1)(a)(b) and (2), 46(1), 139(1)(ba) and (2)—An Act to amend The Income Tax Act, S. of C. 1952-53, c. 40, s. 58(4)—Pro-rating provision in s. 58(4) of the amending Act—Meaning of "except where otherwise provided" in s. 39(1) of the Income Tax Act—Appeal to Income Tax Appeal Board dismissed.

Sections 39(1)(*a*) and (*b*) and 40(1)(*a*) and (*b*) and (2) of the Income Tax Act, R.S.C. 1952, c. 148, as amended, and section 58(4) of An Act to Amend the Income Tax Act, S. of C. 1952-53, c. 40, read as follows:

39. (1) The tax payable by a corporation under this Part upon its taxable income or taxable income earned in Canada, as the case may be (in this section referred to as the "amount taxable") for a taxation year is, except where otherwise provided,

(*a*) 18% of the amount taxable, if the amount taxable does not exceed $20,000, and

(*b*) $3,600 plus 47% of the amount by which the amount taxable exceeds $20,000, if the amount taxable exceeds $20.000.

1955

MINISTER OF NATIONAL REVENUE v. ALBERT PAPER CO. INC.

40. (1) There may be deducted from the tax otherwise payable by a corporation under this Part for a taxation year an amount equal to

(a) in the case of a corporation of a class prescribed by a regulation made on the recommendation of the Minister of Finance for the purposes of this paragraph, 5%, and

(b) in the case of any other corporation, 7%, of the corporation's taxable income earned in the year in a province prescribed by a regulation made on the recommendation of the Minister of Finance.

(2) This section is applicable to the 1953 and subsequent taxation years.

58. (4) This section is applicable to the 1953 and subsequent taxation years but, where a corporation has a taxation year part of which is before and part of which is after the commencement of 1953, the tax payable by the corporation under Part I of the *Income Tax Act* for that taxation year is the aggregate of

(a) that proportion of the tax computed under Part I of the *Income Tax Act* as it was before being amended by this Part that the number of days in that portion of the taxation year that is in 1952 is of the number of days in the whole taxation year, and

(b) that proportion of the tax computed under Part I of the *Income Tax Act* as amended by this Part that the number of days in that portion of the taxation year that is in 1953 is of the number of days in the whole taxation year.

Respondent company's 1953 taxation year ended on January 31, 1953. In determining the amount of tax payable by the company upon its taxable income for that year the Minister computed the tax payable for two full years by applying separately to its full income the 1952 and 1953 corporation tax rates and corporation tax deductions in ss. 39 and 40 of the Income Tax Act, before and after the 1952-53 amendments, and then applying the formula set out in the amending statute, 1-2 Eliz. II, c. 40, s. 58(4) (which section forms part only of the latter and is not carried into the Income Tax Act). An appeal from the Minister's assessment to the Income Tax Appeal Board was allowed and the Minister now appeals to this Court.

Held: That the computation of tax by the Minister is not in accord with s. 40 of the Income Tax Act, as amended. The section contemplates a deduction "from the tax otherwise payable by a corporation under this Part for a taxation year." In the course of his computation the Minister makes a deduction of 5% of the income for the 1953 taxation year of the respondent from an amount ascertained by applying 1952 tax rates to the full taxable income for the 1953 taxation year. Because the amount so ascertained was not at any stage of the computation an amount of tax payable by the respondent that method of computation cannot be correct. The Minister likewise is in error when he deducts 7% of the taxable income from an amount ascertained by applying 1953 taxation year rates to the full taxable income of the respondent for the 1953 taxation year.

2. The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention of the Parliament which passed them. The intention of Parliament here is indicated by the

fact that in chapter 40 of the 1952-53 Statutes the twelve sections, 46 to 57 inclusive, which precede section 58 and the fourteen sections, 59 to 72 inclusive, which follow section 58 all contain unqualified pronouncements respecting the years to which they apply. In twenty-seven consecutive sections, 46 to 72 inclusive, it is only in section 58 that the applicability wording is subject to qualification. Had Parliament intended that the qualification of the applicability wording of section 58(4) of the 1952-1953 amending statute should extend to sections of the Income Tax Act other than section 39 surely Parliament would not have taken such care to spell out the specific application of the twelve preceding and the fourteen following sections and would not have omitted from the section 40 amendment the provision which previously had required pro-rating of the corporation tax deduction.

3. The words of sections 39 and 40 of the Income Tax Act and of subsection (4) of section 58 of chapter 40 of the 1952-1953 Statutes are clear and unambiguous when read in their ordinary and natural sense. The qualification in s. 58(4) of the amending statute, 1-2 Eliz. II, c. 40, relates only to the applicability of s. 39 of the Income Tax Act, R.S.C. 1952, c. 148, as amended.

APPEAL from a decision of the Income Tax Appeal Board.

The appeal was heard before the Honourable Mr. Justice Ritchie at Ottawa.

W. R. Jackett, Q.C. and *F. J. Cross* for appellant.

P. F. Vineberg and *Neil F. Philipps* for respondent.

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

RITCHIE J. now (November 16, 1955) delivered the following judgment:

This is an appeal by the Minister of National Revenue from a decision of the Income Tax Appeal Board, rendered on December 1, 1954, allowing an appeal from the assessment by the Minister on the income of the respondent company under the Income Tax Act in respect to its 1953 taxation year, which ended on January 31, 1953.

Eleven months of the appellant's taxation year were included in the 1952 calendar year while one month was included in the 1953 calendar year.

The sole point of difference between the parties is in respect to the application and effect of sections 39 and 40 of the Income Tax Act, firstly as enacted by chapter 148,

1955

MINISTER OF NATIONAL REVENUE v. ALBERT PAPER CO. INC.

Ritchie J.

R.S.C. 1952 and secondly as amended by chapter 40 of the 1952-1953 Statutes. Section 39 deals with taxation rates. Section 40 permits a deduction from tax.

The difference, or issue, concerns the amount of deduction which the respondent may make from tax otherwise payable on its income for the 1953 taxation year by reason of section 40 and regulation 400 made thereunder on the recommendation of the Minister of Finance because of the corporation income tax levied by the Province of Quebec.

The amount of deduction first allowed by section 40 in respect to Quebec corporation tax was 5% of the taxpayer's taxable income. By virtue of a 1952-1953 amendment to section 40, the amount of the deduction was increased to 7% for the 1953 and subsequent taxation years.

Subsection (1), the only relevant part of section 39, as enacted in chapter 148, R.S.C. 1952 read as follows:

39. (1) The tax payable by a corporation under this Part upon its taxable income or taxable income earned in Canada, as the case may be (in this section referred to as the "amount taxable") for a taxation year is, except where otherwise provided,

(*a*) 20% of the amount taxable, if the amount taxable does not exceed $10,000, and

(*b*) $2,000 plus 50% of the amount by which the amount taxable exceeds $10,000, if the amount taxable exceeds $10,000.

The relevant parts of the amendment to section 39 are subsections (1) and (4) of section 58 of chapter 40 of the 1952-1953 Statutes which read:

58. (1) Paragraphs (*a*) and (*b*) of subsection (1) of section 39 of the said Act are repealed and the following substituted therefor:

(*a*) 18% of the amount taxable, if the amount taxable does not exceed $20,000, and

(*b*) $3,600 plus 47% of the amount by which the amount taxable exceeds $20,000, if the amount taxable exceeds $20,000.

(4) This section is applicable to the 1953 and subsequent taxation years but, where a corporation has a taxation year part of which is before and part of which is after the commencement of 1953 the tax payable by the corporation under Part I of the Income Tax Act for that taxation year is the aggregate of

(*a*) that proportion of the tax computed under Part I of the Income Tax Act as it was before being amended by this Part that the number of days in that portion of the taxation year that is in 1952 is of the number of days in the whole taxation year, and

(*b*) that proportion of the tax computed under Part I of the Income Tax Act as amended by this Part that the number of days in that portion of the taxation year that is in 1953 is of the number of days in the whole taxation year.

It should be noted that subsection (4) of section 58 forms part only of the amending statute and is not carried into the Income Tax Act. The pro-rating provision or rule in subsection (4) is of particular importance in the consideration of this appeal.

Section 40 of the Income Tax Act, c. 148, R.S.C. 1952, as applicable to the 1952 taxation year, was as follows:

40. (1) There may be deducted from the tax otherwise payable by a corporation under this Part for a taxation year an amount equal to 5% of the corporation's taxable income earned in the year in a province prescribed by a regulation made on the recommendation of the Minister of Finance.

(2) In this section, "taxable income earned in the year in a province" means the amount determined under rules prescribed for the purpose by regulations made on the recommendation of the Minister of Finance.

Section 40 was formerly section 37 of the 1948 Income Tax Act and first was enacted in the form above quoted by section 13(1) of chapter 29, Statutes of 1952, being, by subsection (2), made applicable as follows,

(2) Subsection (1) is applicable to the 1952 and subsequent taxation years but, where a corporation has a taxation year part of which is before and part of which is after the commencement of 1952, the amount that may be deducted under section thirty-seven of the Income Tax Act, as enacted by subsection one of this section, for the 1952 taxation year is that proportion of the amount that would otherwise be deductible thereunder that the number of days in that portion of the taxation year that is in 1952 is of the number of days in the whole taxation year.

I regard as important the inclusion of the rule or formula for computing the amount of deduction by corporations having taxation years which overlap the 1951 and 1952 calendar years.

Subsection (1) of section 40, chapter 148, R.S.C. 1952 was amended by section 59 of chapter 40 of the 1952-1953 Statutes so as to read as follows:

40. (1) There may be deducted from the tax otherwise payable by a corporation under this Part for a taxation year an amount equal to

(*a*) in the case of a corporation of a class prescribed by a regulation made on the recommendation of the Minister of Finance for the purposes of this paragraph, 5%, and

(*b*) in the case of any other corporation, 7%, of the corporation's taxable income earned in the year in a province prescribed by a regulation made on the recommendation of the Minister of Finance.

Subsection (2) of section 59 of the 1952-1953 amending Act provides

This section is applicable to the 1953 and subsequent taxation years.

1955

MINISTER OF NATIONAL REVENUE v. ALBERT PAPER CO. INC.

Ritchie J.

Subsection (2) of section 59 of chapter 40 of the 1952-1953 Statutes also is of special importance in the consideration of this appeal because there is contained in it no provision for pro-rating the deduction such as is contained in the basic section 37 as enacted by section 13(2) of chapter 29, Statutes of 1952, above quoted.

The effect of the 1952-1953 amendment of section 40 is to continue the applicability of the 5% rate of deduction to a corporation of a class prescribed by a regulation but to create a higher rate of 7% to apply in the case of any other corporation. Because section 40, as worded in the 1952 Revised Statutes, remains applicable to the 1952 taxation year, there was not an absolute or complete repeal of the section as enacted in chapter 148 of the 1952 Revised Statutes.

It was agreed by counsel

1. that the respondent does not belong to a class that has been prescribed for the purposes of paragraph (*a*) of subsection (1) of section 40 of the Income Tax Act as enacted by section 59 of chapter 40 of the 1952-1953 Statutes;
2. that the taxable income of the respondent for its 1953 taxation year is $36,936.38.

It is common ground that the effect of the agreement between counsel in respect to the non-applicability of section 40(1) (*a*) to the respondent company is to make clause (*b*) of section 40 (1) applicable to it and so entitle the respondent to the 7% rate of deduction.

The question for determination is whether the effect of the special rule enacted by subsection (4) of section 58 of chapter 40 of the 1952-1953 statutes for corporations that have fiscal years overlapping the calendar years 1952 and 1953 is that such a corporation is entitled to the benefit of the reduction in tax rates and the increase in the rate of deduction for provincial tax for only that portion of its taxable income related to the part of its taxation year that is within the 1953 calendar year.

The first submission on behalf of the Minister was that the tax which section 46(1) of the Income Tax Act requires the Minister to assess is the final amount of tax, after

applying all computations—or, as counsel put it, "the ultimate amount of tax". Subsection (1) of section 46 of the Income Tax Act, R.S.C. 148, reads:

> The Minister shall, with all due dispatch, examine each return of income and assess the tax for the taxation year and the interest and penalties, if any, payable.

Counsel for the Minister next directed attention to section 139(1) (*ba*), which provides that the tax payable by a taxpayer under Part I or Part II means the tax payable by him as fixed by assessment or by reassessment, subject to variation on objection or appeal, if any, in accordance with the provisions of Part I or Part II, as the case may be.

Using sections 46(1) and 139(1) (*ba*) as a base, it then was argued that the words "tax payable", wherever used in the Income Tax Act, mean the "ultimate amount of tax", after all deductions, determined by the assessment to be payable by the taxpayer.

The main argument advanced on behalf of the Minister in support of the appeal dealt with the manner in which the tax payable should be computed and was that, while the wording of section 40 after amendment as above quoted, is expressed to apply only to 1953 and subsequent taxation years, it must, nevertheless, be read with the 1952-1953 amendment to section 39 of the Income Tax Act and also with sections 46(1) and 139(1) (*ba*) and that when so read it is clear that, to determine the tax payable, regard must be had to both taxation and deduction rates applicable to the 1952 and 1953 taxation years.

In substance, the position of the Minister is that, notwithstanding the non-qualification of the applicability of the amendment to section 40 as expressed in the 1952-1953 amending statute, both the 1952 rates of tax and the 1952 rate of deduction for corporation tax continued to apply until the end of the 1952 calendar year and therefore must be aplied to that part of the income earned in the 1952 calendar year when determining the income of corporations that had a taxation year part of which was before and part of which was after the commencement of the 1953 calendar year.

1955

MINISTER OF NATIONAL REVENUE v. ALBERT PAPER CO. INC.

Ritchie J.

The viewpoint of the Minister is that under the wording of section 39, as amended in 1952-1953, the tax payable by the respondent for its 1953 taxation year must be determined by computing the tax payable for two full years by applying separately to the full income the 1952 and 1953 taxation and corporation tax deduction rates contained in sections 39 and 40 of the Income Tax Act, before and after amendment, and in section 10 of the Old Age Security Act, 1951 (second session), c. 18, and then applying the formula set out in section 58(4) of chapter 40 of the 1952-1953 Statutes.

To compute the tax in accordance with his interpretation of sections 39 and 40, as amended, the Minister

Firstly, applies to all of the $36,936.38 taxable income the following tax rates applicable during the 1952 taxation year:

20% of $10,000.00	2,000.00
50% of $26,936.38	13,468.19
2% of $36,936.38 (Old Age Security Act Assessment)	738.73
	16,206.92

Secondly, deducts an amount of $1,846.82, being 5% of $36,936.38, the credit for Quebec corporation tax allowed by section 40 in respect to the 1952 taxation year, and so determined the tax payable for a full taxation year at 1952 rates to be 1,846.82

$ 14,360.10

Thirdly, applies to all of the $36,936.38 taxable income the following tax rates applicable during the 1953 taxation year:

18% of $20,000.00	3,600.00
47% of $16,936.38	7,960.10
2% of $36,936.38 (Old Age Security Act Assessment)	738.73
	12,298.83

Fourthly, deducts an amount of $2,585.55, being 7% of $36,936.38, the credit for Quebec corporation tax allowed by section 40 in respect to the 1953 taxation year, and so determines the tax payable for a full taxation year at 1953 rates to be 2,585.55

$ 9,713.28

Fifthly, applies the pro-rating rule or formula contained in paragraphs (*a*) and (*b*) of section 58 of chapter 40 of the 1952-1953 statutes and by taking	
$\frac{335}{366} \times 14,360.10 =$	13,143.80
then adding	
$\frac{31}{366} \times 9,713.28 =$	822.71
determines the tax payable by the respondent for the 1953 taxation year to be	
	$ 13,966.51

Under the above method of computation the tax payable is not pro-rated item by item. Likewise the deduction for corporation tax is not pro-rated. The apportionment in respect to the two periods, one of eleven months and the other of one month, into which the Minister divides the 1953 taxation year of the respondent, is of the two end results of the separate computations made at 1952 and 1953 rates for two full years. Tax is computed at 1952 tax rates for a full year and the corporation tax deduction made at the 1952 rate of 5% of the full taxable income for the 1953 taxation year. The 1953 tax rates then are applied to the full income for the 1953 taxation year and from the result there is subtracted the corporation tax deduction at the 1953 deduction rate of 7%. It is only then that the pro-rating rule or formula is applied. For computation of the final, or ultimate, amount of tax payable 335/336 of the tax computed at 1952 rates for a full year is added to 31/366 of the tax computed at 1953 rates for a full year. The sum of the two amounts is claimed to be the tax payable or, as counsel for the Minister put it, the ultimate amount of tax payable.

In support of the above method of computation the Minister contends

(*a*) that it is in accord with the formula or rule contained in section 58(4) of chapter 40 of the 1952-1953 statutes; and

(*b*) that the statutory formula or rule is not confined to computations under section 39, as amended, but is an over-all formula having application to all steps in assessing tax payable under Part I of the Income Tax Act, by any corporation having a taxation year part of which is before and

1955

MINISTER OF NATIONAL REVENUE v. ALBERT PAPER CO. INC.

Ritchie J.

part of which is after the commencement of the 1953 calendar year. To put it another way, the Minister says the formula, contained in section 39, as amended, is not confined to apportioning the tax computed as payable under section 39 alone and because of its overall nature is not intended to be applied until after the deduction permitted by section 40 has been made.

The argument advanced on behalf of the respondent company consisted, as I understand it, of the following six principal submissions.

1. Subsection (2) of section 139, the interpretation section, says that, in the case of a corporation, a "taxation year" is a fiscal period but does not contain any provision for pro-rating or for dividing the fiscal period for the purpose of tax computations.

2. Regard must be had to the inclusion of the expression "except where otherwise provided" in the introductory words of section 39(1), which are, "The tax payable by a corporation under this Part upon its taxable income or taxable income earned in Canada, as the case may be, (in this section referred to as the 'amount taxable') for a taxation year is, except where otherwise provided." Stress was laid on the fact that the words "tax payable" are qualified immediately by the words "except where otherwise provided". In reply to that submission the Minister says the use in section 39(1) of the qualifying words "otherwise provided" supports his method of computation because the qualification extends to section 58(4) of chapter 40 of the 1952-1953 Statutes, which section is completely outside the Income Tax Act.

3. The opening words of section 40, which are, "There may be deducted from the tax otherwise payable by a corporation under this Part for a taxation year", are especially designed to fit in with the opening words of section 39, because the deduction allowed by section 40 is to be made from "the tax otherwise payable," the same expression used in section 39,

4. Parliament when amending those sections of the Income Tax Act which affect the tax computation or tax deduction provisions contained in Part I of the Act has, with few exceptions, set out at the end of, or in, each section

the year or years to which that particular section of the amending statute is to apply and that in the 1952-1953 amending statute section 58 (amending the basic section 39) is the only section in which the applicability is qualified or in which there is a provision for pro-rating. Reference to the amending statutes seems to confirm this submission.

5. Particular significance is to be attached to the contrast in the wording of the applicability references of sections 39 and 40 because

(*a*) subsection (4) of section 58 of the 1952-1953 statute amending the basic section 39 says "This section is applicable to the 1953 and subsequent taxation years" but immediately qualifies the application by setting out a pro-rating formula for computation of the tax payable under Part I in the case of a corporation having a 1953 taxation year part of which is before and part of which is after the commencement of the 1953 taxation; while

(*b*) the qualifying words in subsection (4) of section 58 of the 1952-1953 amending statute are those which follow the word "but" so that the qualification relates only to the words contained in the section which precede the word "but". The only amendments contained in section 58 of the 1952-1953 amending statute, affecting the assessment forming the subject matter of this appeal, are the changes made in paragraphs (*a*) and (*b*) of the basic section 39. The qualification subtracts from the rule contained in paragraphs (*a*) and (*b*) of the basic section 39 as amended but does not add to the rule so as to make it applicable to any section of the Act other than "this section".

(*c*) subsection (2) of section 59 of the 1952-1953 Statutes, amending the basic section 40, reads simply, "This section is applicable to the 1953 and subsequent taxation years," without qualification or provision for payment on a pro-rating or other basis.

6. The computation of tax made by the Minister does not comply with section 40 because the deductions of 5% and 7% have not been made from an amount of tax otherwise payable by a corporation for a taxation year.

The respondent company's method of computing the ultimate or actual amount of tax payable by it in respect of the 1953 taxation year differs from that adopted by the Min-

1955

MINISTER OF NATIONAL REVENUE v. ALBERT PAPER CO. INC.

Ritchie J.

ister. The respondent applies the pro-rating formula contained in section 39 to the initial computation of the tax payable but does not pro-rate the corporation tax deduction under section 40. The deduction is made after computation of what the respondent contends is "the tax otherwise payable".

The respondent computes the tax payable at 1952 taxation rates for 335/366 of the 1953 taxation year and at 1953 rates for 31/366 of the 1953 taxation year and so arrives at what it terms a "tax otherwise payable" amount of $15,875.91 from which it deducts $2,585.55, or 7% of its taxable income and secures an end result of $13,290.36 as the actual amount, or the ultimate amount, of tax payable.

The submission of the respondent company that the computation of tax made by the Minister is not in accord with section 40 appeals to me as sound. Section 40 contemplates a deduction "from the tax otherwise payable by a corporation under this Part for a taxation year." In the course of his computation the Minister makes a deduction of 5% of the income for the 1953 taxation year of the respondent from an amount ascertained by applying 1952 tax rates to the full taxable income for the 1953 taxation year. Because the amount so ascertained was not at any stage of the computation an amount of tax payable by the respondent that method of computation cannot, (in my opinion) be correct. The Minister likewise (in my opinion) is in error when he deducts 7% of the taxable income from an amount ascertained by applying 1953 taxation year rates to the full taxable income of the respondent for the 1953 taxation year.

The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention of the Parliament which passed them. (*Craies on Statute Law,* p. 64). The intention of Parliament is indicated by the fact that in chapter 40 of the 1952-1953 Statutes the twelve sections, 46 to 57 inclusive, which precede section 58 and the fourteen sections, 59 to 72 inclusive, which follow section 58 all contain unqualified pronouncements respecting the years to which they apply. In twenty-seven consecutive sections, 46 to 72 inclusive, it is only in section 58 that the applicability wording is subject to qualification.

When section 37 (now section 40) was enacted by section 13 of the 1952 Statutes it was specifically provided that in the case of a corporation having a taxation year part of which is before and part of which is after the commencement of 1952 the deduction for the 1952 taxation year should be that proportion of the amount that would otherwise be deductible that the number of days in the portion of the year that is in 1952 is of the number of days in the whole taxation year. The omission of a similar pro-rating provision in the amendment of section 40 as enacted by section 59 of chapter 40 of the 1952-1953 Statutes must have significance.

Had Parliament intended that the qualification of the applicability wording of section 58(4) of the 1952-1953 amending statute should extend to sections of the Income Tax Act other than section 39 surely Parliament would not have taken such care to spell out the specific application of the twelve preceding and the fourteen following sections and would not have omitted from the section 40 amendment the provision which previously had required pro-rating of the corporation tax deduction.

"If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the law giver." (*Craies on Statute Law,* 5 Ed., p. 64).

The words of sections 39 and 40 of the Income Tax Act and of subsection (4) of section 58 of chapter 40 of the 1952-1953 Statutes are clear and unambiguous when read in their ordinary and natural sense.

I am unable to accord to section 58(4) of chapter 40 of the 1952-1953 Statutes the extended application which results from the manner in which the Minister interprets it, and I can find no justification for the Minister computing the income tax payable by the respondent in the manner in which he did compute it. The qualification contained in section 58(4) relates only to the applicability of the basic section 39, as amended.

1955

MINISTER OF NATIONAL REVENUE v. ALBERT PAPER CO. INC.

Ritchie J.

In my view section 58(4) of chapter 40, Statutes of 1952-1953, permits only one possible interpretation and that is the interpretation advanced by the respondent.

The appeal, therefore, will be dismissed, with costs to be taxed.

Judgment accordingly.