THE FRASER VALLEY MILK PRODUCERS ASSOCIATION ..... } APPELLANT;

AND

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

1928
June 28.
Oct. 6.

Revenue—Income War Tax Act, 1917—Co-operative societies—English Act—1 Geo. V, c. 2 (B.C.).

Held that the appellant, a co-operative society incorporated under the provisions of 1 Geo. V, c. 2 (B.C.) must be considered as a commercial company, and that the dividends paid by it to its shareholders, as interest on capital, are profits and gains, liable to assessment as income, under the Income War Tax Act, 1917.

2. The contention that such a company acts as a factor, and that the dividends paid by it to its shareholders are disbursements on capital in the hands of the company as trust moneys, cannot be sustained.

3. The specific legislation existing in England in respect to co-operative societies referred to and commented upon.

APPEAL by the appellant from the decision of the Minister, assessing them for tax on income under the Income War Tax Act, 1917.

This appeal was heard before the Honourable Mr. Justice Audette, at Ottawa, on June 28, 1928.

Lewis Duncan for appellant.

C. F. Elliott and *W. S. Fisher* for respondent.

The facts are stated in the reasons for judgment.

AUDETTE J., now, this 6th October, 1928, delivered judgment.

1928

THE FRASER VALLEY MILK PRODUCERS ASSOCIATION v. MINISTER OF NATIONAL REVENUE.

Audette J.

This is an appeal under the provisions of secs. 15 *et seq* of *The Income War Tax Act, 1917*, and amendments thereto, from the assessment for the appellant company's fiscal year ending 31st December, 1923.

The appellant company (hereinafter named the company) was incorporated on the 18th June, 1913, under the provisions of (1911) 1 Geo. V, ch. 2, B.C.) the "Agricultural Association Act, 1911," and more especially under Part II of that Act which deals with "*Association with share capital.*"

The company has a duly paid up capital (sec. 39) for which it issues shares (secs. 39 and 40) in the form of exhibit No. 1, the shareholder's liability being limited to the amount of his shares. Provision is made, by sec. 43, securing to all producers, who are members of the company, *a share in the profits* in proportion to the value of the product supplied by them, after *payment of a dividend upon the capital stock* now not exceeding 8 per cent per annum.

The company, after being duly constituted, is supposed to deal exclusively with producers who are shareholders (with a few exceptions mentioned at trial) and enters into a contract with them in the form of Exhibit No. 2, whereby it is, among other things, provided, viz:—

(*c*) For the purpose of paying a cash dividend on the paid-up shares in the capital stock of the Association at such rate as may be fixed by the said Association in annual general meeting, such dividend not to exceed 8% per annum.

Moreover, the contract (exhibit No. 2) further provides that:—

(*e*) Any balance remaining over shall be disposed of in such manner as shall be decided by the members of the Association in Annual General Meeting, and the Producer hereby agrees to be bound by the decision of such meeting, whether he be present or not.

The dividend in question was part of the auditor's report which was approved of at a general meeting, as testified to by witness Hillar.

In other words the profits earned and on hand at the end of the year are distributed to the shareholders, members and shippers, both in the form of a dividend of 8 per cent and the balance on a percentage basis; that is the shareholder-shipper receives his portion in proportion to the

quantity of milk supplied, and not controlled by the shares, —according to his contract with the company—Exhibit No. 2.

The By-laws (Exhibit No. 3), speak of that dividend in Article IV as interest, but Article 34 as dividend. The statute, which is paramount, calls it dividend.

The company has a capital, like other companies; it owns real estate and pays an annual dividend on the capital, which however, the appellant calls a disbursement on the capital in the hands of the company as trust moneys,— the company acting as a factor. With this contention I am unable to agree.

The company is but a combination of a number of persons organized for the purpose of carrying on a business with a view to the economic distribution of milk, and with the object of saving for the benefit of shareholders, the whole body of producers, that which otherwise would become the profits of the individual. The object of the company is to realize profits and to distribute them to its shareholders in the same manner as any other company. It is a very commendable action for the producers of milk to combine and form an association, a company, with the object of reducing the cost of collection and distribution, thereby realizing better and larger profits or dividends; but that does not entitle such company or association to discriminate as against the public, the taxpayers, and place it in a position whereby it would become exempt from paying the income tax. The company has been able by combination to secure an advantage measured in money which it could not have enjoyed but for such combination.

The company is, under the Act, a person liable to pay income (secs. 1 and 3) and it does not come within any of the exemptions mentioned in sec. 5 of the said Act.

The dividend paid, notwithstanding any ingenious or plausible argument to the contrary, is a dividend upon the capital of the company, and the appellant cannot and should not be treated in any other manner than any other company doing a similar business and yet paying the income tax as required by law.

1928

THE FRASER VALLEY MILK PRODUCERS ASSOCIATION v. MINISTER OF NATIONAL REVENUE.

Audette J.

In the case of *The Commissioners of Inland Revenue* v. *The Sparkford Vale Co-operative Society Limited* (1), a case dealing with a co-operative society dealing in milk, it was clearly held that the company's profits arose from selling to the public and not from buying from its members, and that it was accordingly not entitled to the exemption from the tax.

In the case of *Liverpool Corn Trade Association Limited* v. *Monks* (2) it was held that any profits arising from the association's transactions with members were assessable to Income Tax as part of the profits of its business. See also *The Commissioners of Inland Revenue* v. *The Cornish Mutual Assurance Co.* (3); See *Mersey Docks and Harbour Board* v. *Lucas* (4); *Nizam's Guaranteed State Ry. Co.* v. *Wyatt* (5); *Last* v. *London Assurance Corporation* (6); *Equitable Life Assurance Society of U.S.* v. *Bishop* (7).

There is specific legislation in England with respect to co-operative societies,—or a society registered under the Industrial and Provident Societies Act, 1893; but the Canadian Income Tax Act is silent in that respect and a co-operative company is not distinguished from any other company and is therefore liable to taxation. Dowell's Income Tax Laws—9th ed., 90; 15-16 Vict., ch. 31 Imp. (1852) sec. 8; 56 and 57 Vict., ch. 39 (1893) Imp., sec. 24, etc. . . . This Imperial legislation by way of exemption, as is well known, has roused quite an amount of feeling in England on the part of the ordinary traders whose idea is that such companies enjoy an unfair advantage over them.

The company must be considered as a commercial company, notwithstanding contention to the contrary, and its dividends must be treated as profits and gains which become liable to assessment as income. The goods handled by the company are sold to the public and paid for by the public. It is true that most of the goods were obtained by the company from its shareholders, but that does not alter matters. *Liverpool Corn Trader Association* v. *Monk (ubi supra)*.

(1) (1925) 12 Tax Cases 891.
(2) (1926) 10 Tax Cases 442.
(3) (1926) 12 Tax Cases 841.
(4) (1883) 2 Tax Cases 25, at p. 29.
(5) (1890) 2 Tax Cases 584.
(6) (1884) 2 Tax Cases 100.
(7) 4 (1889) Tax Cases 147; (1900) 1 Q.B. 177.

The dividends were paid by the company from the profits or gain resulting from their business as representing a percentage on the capital invested by the shareholders. The sums acquired by the company and distributed as dividend, or otherwise dealt with, are in their nature indistinguishable from the profits and gains of ordinary traders and are therefore a fit subject for taxation. The company is an independent entity in itself and has realized excess profits over expenditures which are identical with all other traders' profits. The profit distributed is the difference between the cost of production and the price realized.

Therefore, in view of the considerations to which I have just adverted, I find that, in Canada, under the Income War Tax Act, 1917, the appellant, a co-operative company, is not exempt from the liability of paying income tax.

The appeal is dismissed with costs.

Judgment accordingly.