

BETWEEN:

THE MINISTER OF NATIONAL }  
REVENUE .....

APPELLANT;

AND

CROSSLEY CARPETS (CANADA) }  
LIMITED .....

RESPONDENT.

Toronto  
1968  
Dec. 10-12  
Ottawa  
Dec. 12

*Income tax—Income Tax Act, R.S.C. 1952, c. 148, s. 110B—Additional tax on non-resident corporations, carrying on business in Canada—Residence of corporation—Dual residence—Whether taxpayer a “non-resident corporation”.*

The country of residence for income tax purpose under the *Income Tax Act* was in dispute in this case.

The respondent corporation was assessed an additional 15% income tax assessment pursuant to section 110B of the *Income Tax Act*, on the basis that it was a company non-resident in Canada in the taxation years 1961-62.

*Held:* That the place of exercise of paramount authority of central management and control of the subject corporation was divided between Canada and England and therefore this corporation was resident for income tax purpose in both England and Canada.

2. That the appeal of the Minister is dismissed upholding the conclusion reached by the Tax Appeal Board.

APPEAL from the decision of the Tax Appeal Board.

*L. R. Olsson* and *W. J. A. Hobson* for appellant.

*W. R. Herridge* for respondent.

GIBSON J. (*orally*):—The issue for decision is whether or not in its taxation years 1961 and 1962 the respondent Crossley Carpets (Canada) Limited is liable to pay an additional 15 per cent income tax pursuant to section 110B of the *Income Tax Act*, and calculated thereby, by reason of being a corporation non-resident in Canada during those years.

At all material times the respondent, an English corporation registered in England, carried on the whole of its carpet merchandising distribution business in Canada.

The Minister submits that the respondent corporation during those taxation years was not resident in Canada within the meaning of section 110B of the Act, but only resident in England. The respondent submits it was resident both in Canada and in England or, alternatively, resident in Canada only.

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I am of the opinion that the respondent corporation was so resident in England, and the only question for decision is whether or not it was also resident in Canada within the meaning of that section of the *Income Tax Act*.

The law, as I understand it, is that a corporation is resident, for income tax purposes, in the country where its central management and control is exercised, (see *De Beers Consolidated Mines, Limited v. Howe*<sup>1</sup>) and the place of central management and control is sometimes in the cases said to be the place of paramount authority, (see *The San Paulo (Brazilian) Railway Co. v. S. G. Carter*<sup>2</sup> and *American Thread Company v. Joyce*<sup>3</sup>) but if the place of exercise of paramount authority is divided between two or more countries then in my view the corporation is resident in each of those countries. (See *Swedish Central Ry. Co. v. Thompson*<sup>4</sup> and cf. *Unit Construction Co. v. Bullock*<sup>5</sup>).

The pure question of fact for decision by this Court (which as Lord Loreburn stated in the *De Beers (supra)* case at page 458 is "to be determined, not according to the construction of this or that regulation or by-law, but upon a scrutiny of the course of business and trading") is whether or not on the evidence the place of exercise of paramount authority of central management and control of the respondent corporation was divided between Canada and England during its taxation years 1961 and 1962.

The Tax Appeal Board on the evidence adduced before it came to the conclusion that the place of exercise of such authority was divided between Canada and England during those taxation years and held that the Minister's contention that the respondent (in those proceedings the appellant) was a non-resident corporation carrying on business in Canada was wrong and accordingly vacated the two re-assessments.

On the evidence adduced in this Court on the Minister's appeal from this decision I have come to the same factual conclusion as the Tax Appeal Board and agree with the result found by it.

The appeal of the Minister is therefore dismissed with costs.

<sup>1</sup> [1906] A.C. 455.

<sup>3</sup> (1913) 6 Tax Cases 163.

<sup>5</sup> [1960] A.C. 351.

<sup>2</sup> [1896] A.C. 31.

<sup>4</sup> (1925) 9 Tax Cases 342.