

BETWEEN :

1946
Oct. 2
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ALBERTA PACIFIC CONSOLIDATED OILS LIMITED,..... } APPELLANT,

AND

THE MINISTER OF NATIONAL REVENUE, } RESPONDENT.

Revenue—Income Tax—Income War Tax Act, R.S.C. 1927, c. 97, s. 4 (k) (i)—“Business operations carried on entirely outside of Canada” —“Assets situated entirely outside of Canada”—Failure of appellant to bring itself within terms of exempting provision of the Act—Appeal dismissed.

(1) (1946) Ex. C.R. 246 at 263. (2) (1921) A.C. 288 at 290.

Appellant company during the year 1940 unsuccessfully carried on exploration and drilling operations for oil in the Province of Alberta. It sublet a part of its business offices in Calgary, Alberta, receiving rents therefor, and also owned leases and royalties of a value in excess of \$1,000,000, a warehouse, stocks, loans, credits, accounts receivable and an interest in syndicates, all within Canada. Appellant was assessed for income tax for the year 1940 and appealed from such assessment. It contended that its oil drilling operations did not constitute carrying on business in Canada and that the assets in Alberta were not assets productive of income.

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Held: That the appeal must be dismissed as appellant has not brought itself within the terms of s. 4 (k) (i) of the Income War Tax Act to exempt it from taxation.

2. That the appellant is not such a company as is described in s. 4 (k) (i) of the act since the "business operations" and "assets" therein referred to are not to be restricted to those resulting in income or profit.

APPEAL under the provisions of the Income War Tax Act.

The appeal was heard before the Honourable Mr. Justice Cameron, at Calgary.

L. H. Fenerty, K.C. for appellant.

M. J. Edwards and E. S. MacLachy for respondent.

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

CAMERON J. (October 2, 1946) orally delivered the following judgment:

This is an appeal by the appellant, Alberta Pacific Consolidated Oils Limited, in respect of the assessment for income tax for the year 1940. A return was made on April 17, 1941, and notice of assessment was given on August 31, 1945. Following that the appellant gave notice of appeal on September 20, 1945, and by the decision of the Minister, dated December 14, 1945, the assessment was affirmed. On January 3, 1946, the appellant gave notice of dissatisfaction, and this was followed by the reply of the Minister, dated January 30, 1946, by which he denied the appeal and affirmed the assessment, and the matter now comes before this Court for decision.

No evidence has been given at the hearing, the parties having agreed on a statement of facts which has been filed as exhibit 1.

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The contention of the appellant is that it comes within the exempting section of section 4 of the Income War Tax Act, subsection 1, paragraph (*k*). The charging section is the general one, section 9, subsection 2. The charging section covers all companies, including the appellant. It is, therefore, the duty of the appellant, and the onus is definitely on the appellant, to show that it comes within the terms of the exempting section. This section referred to as 4-1 (*k*) has been in effect as it now stands for many years, and was in effect in the taxation year 1940, and reads as follows:—

The income of incorporated companies (except personal corporations), (e) whose business operations are of an industrial, mining, commercial, public utility or public service nature, and are carried on entirely outside of Canada, either directly or through subsidiary or affiliated companies, and whose assets (except securities acquired by the investment of accumulated income and such bank deposits as may be held in Canada) are situate entirely outside of Canada, including wholly owned subsidiary companies which are solely engaged in the prosecution of the business outside of Canada of the parent company.

The opening words of section 4, are as follows:—"The following incomes shall not be liable to taxation hereunder."

In my view, in order to claim the benefit of this exempting section, the appellant must qualify on three points—and I am satisfied, as suggested by counsel for the respondent, that this section, at least the subsection which we now have reference to, is descriptive of those companies alone which are entitled to the exemption. As I have said there are three things required in order to qualify. The company must be of the type whose operations are of the class described, namely, "industrial, mining, commercial, public utility or public service nature."

Secondly, its business operations must be carried on entirely outside of Canada, either directly or through a subsidiary or affiliated company; and finally, the company's assets, except securities acquired by the investment of accumulated income and such bank deposits as may be held in Canada, must be situate entirely outside of Canada. It is admitted by the parties that the appellant company is of a character described in the subsection, namely, that it is either a mining or possibly a commercial company. So no difficulty arises in regard to that point.

The company in question, as shown by the agreed facts, was incorporated in 1914 under the Companies Act of the Province of Alberta for the purpose of exploring for oil and developing oil property. The first question that arises, therefore, for consideration, is whether, on the agreed facts, this company did during the taxation year 1940, carry on business operations entirely outside of Canada, or whether in the alternative, it did carry on some business operations in Canada, and it is clear to me that if it did carry on business operations in Canada in 1940, then it is not such a company as is described in the subsection and is, therefore, not entitled to the exemption provided for in that section.

It is admitted by paragraph 9 of the agreed statement of facts that during the year 1940 the company carried out exploratory and drilling operations in Alberta on the A.P. Consolidated-Shepherd Creek Well No. 1, at a total cost in the sum of \$66,477.30 of which amount the sum of \$35,621.50 was expended in the year 1940. By its charter one of the purposes and objects of the company was to explore for oil, and I am satisfied that this operation carried on in the year 1940, was in accordance with its charter and was therefore a business operation. Counsel for the appellant, however, indicates what is the fact that that operation was totally unsuccessful and that the money expended was completely wasted. Oil was not discovered. The well proved to be a dry hole, and in the year 1940 no production or income was obtained therefrom. Counsel for the appellant suggests that while this might have been a business operation authorized by the charter of the company, and carried out by it in the taxation year 1940, yet that inasmuch as it resulted in no income, much less profit, that therefore it should be considered as not a business operation, as required by subsection (*k*). In other words, I am asked to find that there should be included in the section some limitation on the words "business operations" such as "business operations which result in income" or "business operations which result in profit." I think probably counsel for the appellant confined himself to the first words which I have used "business operations which result in income". To that argument I am afraid I cannot give my approval. In addition to the words "businss operations"

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the word "entirely" is used so that summarizing that portion of the section, the company claiming the exemption must carry on business operations of the type described entirely outside of Canada. Had it been the intention of Parliament to limit the class in such a way as to provide for business operations only of a successful nature, nothing would have been easier than to say so, and in my view to add the words suggested by counsel for the appellant and limit the effect of the words "business operations" to those carried on successfully, would be doing complete violence to the terms of the section which, in this regard, I think I must find to be clear and free of all ambiguity. I find on the facts as admitted, that during the year 1940 the appellant did carry on business operations in the Province of Alberta, and in the Dominion of Canada.

There was also another operation in that same year which I think could be well described as a business operation. On the admitted facts it is shown that in that year the company sublet a portion of its business office to another company, whether a subsidiary or otherwise I am not at the moment clear. But at any rate it received an income from that and it constituted a business operation. But in the main in considering the first part of the section, I paid particular attention to the drilling of an oil well in 1940 which I think unquestionably must be considered as a business operation carried on in a place other than outside of Canada.

Thirdly, there is the question of the location of the assets of the appellant company. The words are "whose assets are situate entirely outside of Canada". I have for the moment omitted reference to that part which appears in brackets (excepting securities acquired by the investment of accumulated income and such bank deposits as may be held in Canada). I have also omitted the last words of the section, commencing with the words "including wholly owned subsidiaries", because it is admitted by counsel that the final words are not here applicable. So that I have to give consideration to the question as to whether the assets of this company are situate entirely outside of Canada, and I exclude from consideration for the moment any reference to securities acquired by the

investment of accumulated income and bank deposits, which, as I recall at the moment, aggregated in 1940 the sum of about \$98,000.

Paragraph 8 of exhibit 1, the statement of facts, states that during the year 1940 the company had *inter alia* the following assets in Alberta. The first item is leases, royalties, surface rights and development to the value of \$1,037,252.88 less an item included therein of \$21,873.51 representing properties situate in Cutbank, Montana. In other words, the book value at any rate of item 1 in paragraph 8, shows conclusively that in Alberta the company had assets of one million dollars and over. The second item in paragraph 8 shows that the company in the year 1940 had a warehouse in Turner Valley, which had been acquired at a cost of \$115 and carried at the depreciated value of \$34.50; and in that warehouse, by item 3, there were items of equipment called warehouse stocks of a value in excess of \$1,000. Item 4 shows that there were accounts receivable, part in Alberta and part in Montana, less reserves, in the sum of \$3,454.94. Item 5 shows that there were loans receivable in Alberta less reserves of \$1,424.75. Item 6 shows that during the year 1940, as the result of drilling operations, the company was entitled to drilling credits with the Government of Alberta in the sum of \$11,032.79, of which amount \$7,529.75 were expended on lease rentals in Alberta, leaving a credit, I take it to be a drilling credit, in the hands of the Government of Alberta at the end of the year 1940 of \$3,503.04. Item 7 shows that in that year the company had a one-fifth interest in a syndicate in Alberta valued at \$11,000 and finally, Item 8, shows the ownership of a Dodge automobile of the sale value of \$535. Admittedly these are assets of the company. They have been shown on their audited returns for the year 1940. But I am invited by counsel for the appellant to again limit the meaning of the word "assets". Counsel for the appellant suggests that there must be some limitation put on the word "assets" in that any company in Canada, which alone of course would be subject to taxation, would be required to have in its possession certain office furniture with which to carry on its business and that the possession of such furniture should not, of itself, exclude the company or any company from the benefit of the exemption. With-

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out deciding the point, I am inclined to agree with counsel for the appellant that that would be a fair interpretation. The whole act, so far as that point is concerned at least, goes on the assumption that the company to be taxed is in Canada and it must of necessity have the essential requirements with which to carry on business. From that argument it is suggested that a much wider interpretation should be given to the words "assets entirely outside of Canada", and that the proper interpretation should be "assets which result in income or productive assets". In other words, the argument is about the same as that used in connection with the words "business operations". With that contention again I cannot agree. The meaning of the section and the interpretation of the words in my mind are clear and do not permit of the interpretation placed on them by counsel for the appellant. The main words are "assets situate entirely outside of Canada", and from the assumption that the words "office furniture" do in a very limited way qualify the meaning of the word "assets". I cannot move to the position taken by Mr. Fenerty that the possession of over a million dollars in assets in Canada—and that is admitted by the statement of facts,—means that all the assets are situate entirely outside of Canada. In my view that would be doing the greatest possible violence to what I consider to be the clear meaning of the section. Not only are there leases and royalties of a value in excess of a million dollars, but the warehouse, stocks, loans, credits, accounts receivable, and an interest in syndicates. In addition there is one other matter which is small but which has been much to the fore, and perhaps while not important in the view that I have taken and the decision which I have arrived at, I think I should mention.

In 1927 the company sold a capital asset, the nature of which appears to have been an oil lease, and received in payment certain shares in the Home Oil Company Limited. Of the shares so received there were held in the taxation year 1940, shares in Home Oil Company Limited to the value of \$100. Those shares admittedly are not within the exception mentioned in section (k) which is as follows:—

Except securities acquired by the investment of accumulated income or such bank deposits as may be held in Canada.

While the amount is small, yet definitely it is an asset in Canada not acquired in the way mentioned in the special exceptions in section (k).

I hold, therefore, the burden being on the appellant company to satisfy me that it is entitled to the exemption, I have reached the conclusion that that burden has not been satisfied. I have reached the conclusion that this company is not such a company as is described in section 4 (k) (i) in that in the taxation year 1940, while it was a mining or a commercial company, its business operations were not carried out entirely outside of Canada, but to a substantial degree in Canada as is evidenced by the amounts disbursed.

Secondly, that it is not such a company as is envisaged in the act by reason of the fact that its assets were not entirely situate outside of Canada, but on the contrary it had in Canada assets of the book value at least of over a million dollars.

In the result therefore, the burden having fallen on the appellant, I must find that the burden has not been satisfied and that the appeal must be dismissed with costs, and the assessment confirmed.

Judgment accordingly.

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