

Montreal  
1966  
May 5, 6  
May 6

BETWEEN:

CANADA STEAMSHIP LINES LIM-  
ITED .....

APPELLANT;

AND

THE MINISTER OF NATIONAL  
REVENUE .....

RESPONDENT.

*Income tax—Repairs to ship—Whether current expense or capital outlay—  
Replacement of damaged floors and walls of holds—Replacement of  
boilers—Income Tax Act, s. 12(1)(b).*

*Jurisdiction—Desirability of consistency of decisions of court—Stare decisis  
not applicable.*

The replacement of damaged boards and plates in the floors and walls of  
the holds of appellants' ships held to be a repair and the cost thereof  
a current expense, and not a capital outlay merely because the  
replacements required were extensive and their cost substantial.

While a ship's boiler might be regarded as an integral part of a capital  
asset, to wit the ship, rather than a distinct capital asset in itself, and  
the cost of its replacement therefore a current expense, held, in view of  
contra decisions of this court and the desirability that the decisions of  
the court be consistent, the cost of replacing the boiler was a capital  
outlay.

*Thompson Construction (Chemong) Ltd. v. M.N.R.* [1957] Ex. C.R. 96;  
*M.N.R. v. Vancouver Tug Boat Co. Ltd.* [1957] Ex. C.R. 160, followed.

APPEAL under *Income Tax Act*.

*Charles Gavsie, Q.C.* and *J. Claude Couture, Q.C.* for  
appellant.

*P. R. D. MacKell* and *Paul Boivin, Q.C.* for respondent.

JACKETT P.:—These appeals are from the assessments of  
the appellant under the *Income Tax Act* for the 1956 and  
1957 taxation years. The only question to be decided in the  
appeals is whether certain expenditures made during the  
years in question on ships operated by the appellant in the  
course of its business of operating ships for the transporta-  
tion of goods are outlays of capital the deduction of which,  
as such, is prohibited by section 12(1)(b) of the *Income  
Tax Act* or are expenditures for the repair of capital assets  
used in the business which are deductible in the computa-  
tion of profit from the business in accordance with ordinary  
business or commercial principles and the deduction of  
which is not prohibited by section 12(1)(b).

The expenditures fall into two classes:

- (a) the expense of replacing what are, in effect, floors and walls of cargo-carrying holds in certain ships and of incidental work in respect of the apparatus or members whereby such floors and walls were joined to the outside surface or "skin" of the ship—such work having been made necessary by the wear and tear arising out of the loading, carrying and unloading of cargoes; and
- (b) the expense incurred in the replacement of boilers in one of the ships.

So far as the first class of expenditures is concerned, I do not, myself, have much difficulty in reaching the conclusion that these expenditures are deductible. In effect, the ship has a double bottom—an outside layer and an inside layer separated by appropriate structural members. If one or more plates constituting a part of the outside layer require to be replaced because they have been stove in or otherwise damaged, so long as the damage is not so extensive that the ship must be regarded as having been virtually destroyed and as having, in effect, ceased, from a businessman's point of view, to exist as a ship, their replacement is, I should have thought, the most typical kind of ship repair. Where the inside layer of the ship's bottom, which also serves as the floor for the ship's cargo-carrying holds, has to be replaced, in whole or in part, by reason of wear and tear and of damage caused by the cargo carried in the ship, it seems clear to me that the expense falls in the same class as the expenses of replacement of portions of the outside skin. So long as the ship survives as a ship and damaged plates are being replaced by sound plates, I have no doubt that the ship is being repaired and it is a deductible current expense. (I exclude, of course, a possible replacement by something so different in kind from the thing replaced that it constitutes a change in the character—an upgrading—of the thing upon which the money is expended instead of being a mere repair.)

What I have said with reference to the replacement of all or part of the floors of the holds, which serve as the inner layer of the ship's bottom, applies in principle to the walls of the holds which are related to the sides of the ship in the same way as the floors of the hold are related to the ship's bottom.

1966  
 CANADA  
 STEAMSHIP  
 LINES LTD.  
 v.  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 Jackett P.

1966

CANADA  
STEAMSHIP  
LINES LTD.

v.

MINISTER OF  
NATIONAL  
REVENUE

Jackett P.

The Minister's argument against the conclusion that I have just expressed may, as I understand it, be summarized as follows: The expenditures are in respect of the replacement of a substantial part of the ship's holds, which are of "signal" importance in the operation of a cargo-carrying ship, and the cost of the replacement is substantial when compared with the value of the ship and the cost of repairs done to the ship in other years; such expenditures should, therefore, be regarded as being for capital repairs or renewals and not as being for current repairs. I have tried unsuccessfully to appreciate the full significance of the Minister's submission. I have not, however, been able to escape the conclusion that a replacement of a worn or damaged board or plate that is an integral part of an asset used in a business is a repair and that the costs of repairs are current expenses and not outlays of capital.<sup>1</sup> I cannot accept the view that the cost of repairs ceases to be current expenses and becomes outlays of capital merely because the repairs required are very extensive or because their cost is substantial. There is, of course, in other types of cases, a problem as to whether the thing replaced is, from the relevant point of view, an integral part of a larger asset or a distinct capital asset, that must be, from a businessman's point of view, treated separately. In deciding a problem of this kind, the amount of the expenditure for replacement in relation to the cost of the larger asset and in relation to past expenditures for repairs of the larger asset may well be significant. This was the type of problem dealt with in the cases to which I will refer later in these reasons.

With reference to the expenditures in replacing the boilers in one of the appellant's ships, I have more difficulty. I understand, although I have had no very clear evidence on the matter, that the boilers are one unit of some three or four units constituting the plant and apparatus whereby power is created and applied to propelling the ship through the water. My understanding is that they are a self-contained unit that operates so as to produce steam under high

<sup>1</sup>Even if repairs are neglected so long that they temporarily prevent the continuance of the business, they are deductible "when the expenditure is made" and not "when in the prudent carrying on of the business it ought to be made". Compare *The Naval Colliery Co. Ltd. v. The Commissioners of Inland Revenue*, [H.L.] [1928] 12 T.C. 1017 per Lord Buckmaster at page 1048.

pressure, which is the source of the power that is communicated to other plant or machinery employed to propel the ship. I also understand that removal of these boilers and replacement of them by others was a major task involving removal of a part of the exterior of the ship to create a hole through which the old boilers could be removed from the ship and the new boilers brought into the ship.

1966  
CANADA  
STEAMSHIP  
LINES LTD.  
v.  
MINISTER OF  
NATIONAL  
REVENUE  
Jackett P.

The matter must be decided, as I see it, on an interpretation of section 12(1)(b):

- 12.(1) In computing income, no deduction shall be made in respect of  
 . . .  
 (b) an outlay, loss or replacement of capital, a payment on account of capital or an allowance in respect of depreciation, obsolescence or depletion except as expressly permitted by this Part,  
 . . .

Things used in a business to earn the income—land, buildings, plant, machinery, motor vehicles, ships—are capital assets. Money laid out to acquire such assets constitutes an outlay of capital. By the same token, money laid out to upgrade such an asset—to make it something different in kind from what it was—is an outlay of capital. On the other hand, an expenditure for the purpose of repairing the physical effects of use of such an asset in the business—whether resulting from wear and tear or accident—is not an outlay of capital. It is a current expense.

The problem arises here because, depending on one's conception of the facts, an expenditure made in replacing the boilers of a ship when they have worn out may be regarded as

- (a) being nothing more than an expenditure for the repair of the ship by replacing a worn out part, or
- (b) the acquisition of a new piece of plant or machinery to replace an old piece of plant or machinery which has an existence separate and distinct from the ship even though it is used in the ship and as part of the equipment by which the ship is propelled.

In the case of ordinary plant or machinery in a factory or a machine shop, I should have thought that there is no doubt that each engine and each machine is a capital asset quite separate and distinct from the building in which it is installed and in which it is used. The cost of acquisition of

1966  
 CANADA  
 STEAMSHIP  
 LINES LTD.  
 v.  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 Jackett P.

such an asset is, I should have thought, an outlay of capital. On the other hand, in the case of a ship, the function of which involves movement, I should have thought that it was a tenable or arguable view that the equipment or machinery required to effect such movement is, from a businessman's point of view, an integral part of the ship as a capital asset. If this were the right view, I should have thought that it would follow that the cost of the replacement of the whole of the propulsion machinery or of some unit thereof would be a current expense even though the thing replaced were an asset that, by itself, was an engine or machine that could be installed in a factory as a distinct and separate capital asset. I do not, however, feel free to consider whether I should adopt that approach in disposing of the present problem having regard to two previous decisions of this Court. I refer to *Thompson Construction (Chemong) Limited v. Minister of National Revenue*<sup>1</sup> and *Minister of National Revenue v. Vancouver Tug Boat Company, Limited*<sup>2</sup>. In each of these cases the result would have been different if the power plant, whereby the structure in which it was installed was moved from place to place, had been regarded as being merely an integral part of that structure. I think I am bound to approach the matter in the same way as the similar problem was approached in each of these cases until such time, if any, as a different course is indicated by a higher Court. When I say bound, I do not mean that I am bound by any strict rule of *stare decisis* but by my own view as to the desirability of having the decisions of this Court follow a consistent course as far as possible.

According to the evidence, some of the expenditures that have been disallowed as having to do with the replacement of the boilers were in relation to ordinary repairs.

The appeal is allowed and the assessments are referred back for re-assessment so as to allow the expenditures which are the subject matter of the appeals except those expenditures which were incurred in connection with, or as a necessary incident of, replacing the boilers in the *S.S. Renvoyle* in 1956.

The appellant is to have its costs of the appeal.

<sup>1</sup> [1957] Ex. C.R. 96.

<sup>2</sup> [1957] Ex. C.R. 160.