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Oct. 11
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BETWEEN:

FURNESS (PACIFIC) LIMITED.....APPELLANT;

AND

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

Revenue—Income tax—Income—Deductions from income—Income War Tax Act R.S.C. 1927, c. 97, secs. 3, 5(1) (p), 6(1) (j), 8—"Taxation period"—"Taxation year"—Losses sustained in business operations in foreign country—Appeal dismissed.

Appellant, incorporated in the Province of British Columbia, carries on business in Canada and in the United States of America. In the years 1944 to 1946 it sustained losses on its United States operations and in 1947 and 1948 it made a profit on those operations. In its return under the provisions of the Income War Tax Act for the years 1947 and 1948 it claimed a deduction on its United States operations of the losses in the years 1944 to 1946 from its income earned in the United States for 1947 and 1948. These deductions were disallowed and the Income Tax Appeal Board affirmed the income tax assessments for 1947 and 1948. The Company appealed to this Court.

Held: That "taxation period" in s. 6(1) (*j*) of the Income War Tax Act is not synonomous with "taxation year" in s. 5(1) (*p*) of the Act.

2. That the provisions of s. 5(1) (*p*) of the Act are general while those of s. 6(1) (*j*) are specific in that they deal with the computation of tax on foreign income and so override those of s. 5(1) (*p*) and the appeal must be dismissed.

APPEAL from the judgment of the Income Tax Appeal Board.

The appeal was heard before the Honourable Mr. Justice Sidney Smith, Deputy Judge of the Court, at Vancouver.

D. N. Hossie, K.C. for appellant.

R. M. Howard and *F. J. Cross* for respondent.

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

SIDNEY SMITH D.J. now (January 9, 1952) delivered the following judgment:

This appeal is brought from a judgment of the Income Tax Appeal Board sustaining the appellant's income tax assessments for the years 1947 and 1948. Only the former year need be dealt with as the same principles apply to both.

The appellant was incorporated in the Province of British Columbia and carries on a general shipping business in this Province and also in the United States of America by means of branches in Los Angeles and San Francisco and sub-agents in Seattle and Portland.

In the taxation years prior to 1944 the appellant, generally speaking, made a profit on its United States operations as well as on its Canadian operations. During the relevant years it claimed and received, under sec. 8 of the Income War Tax Act, relief for income taxes paid to the Revenue authorities of the U.S. on income earned in the United States. In the taxation years 1944 to 1946 however appellant suffered losses on its United States operations and did not then claim such losses as a deduction from income in these taxation years. But in the taxation years 1947 and 1948 appellant again made a profit on its U.S. operations, and in its income tax returns for such years it claimed that it was entitled to deduct the losses suffered by it in the taxation years 1944 to 1946 from its income earned in the U.S. in the taxation years 1947 and 1948. Appellant says that it is entitled to deduct these losses under sec. 5(1) (*p*) of the Income War Tax Act; it admits that under sec. 6(1) (*j*) of the Act it is prohibited from deducting such losses in the taxation year in which the losses were incurred; but it contends there is no such prohibition in sec. 6(1) (*j*) with respect to losses suffered in the previous three years. The respondent contends otherwise and that is the issue in this case.

The relevant statutory provisions of secs. 5 and 6, reduced to material skeleton form, are as follows:

Sec. 3—"Income" means the annual net profit . . . directly or indirectly received by a person . . . from any . . . business . . . whether derived from sources within Canada or elsewhere.

Sec. 5(1) "Income" . . . shall . . . be subject to the following deductions:—

(*p*) Amounts in respect of losses sustained in the 3 years immediately preceding . . . the taxation year, but . . .

Sec. 6(1) . . . a deduction shall not be allowed in respect of

(*j*) net losses sustained in . . . any taxation period . . . in any foreign country, after the tax-payer has in respect of any such period . . . received reciprocal tax relief under this Act for taxes paid to any such country in respect of profits earned therein.

1951

FURNESS (PACIFIC) LTD. v. MINISTER OF NATIONAL REVENUE

Sidney Smith D.J.

It is common ground that the amount of income subject to Canadian taxation in any particular year must be ascertained under the provisions of the Canadian Income War Tax Act; that appellant elected to claim and received tax relief under sec. 8 of the Act during the relevant period; that accordingly sec. 6(1) (*j*) precludes it from deducting net losses sustained in the taxation year for which the tax is being computed. But on the other hand appellant says it is not precluded by sec. 6(1) (*j*) from deducting losses for the three preceding years (1944, 1945, 1946) from U.S. profits earned in 1947; that it retains this right under sec. 5(1) (*p*); that the quantum of income derived from sources within the U.S. during the years 1947 can only be arrived at after due allowance for business losses incurred in the U.S. during 1944, 1945 and 1946, as provided by sec. 5(1) (*p*) of the Act; that the question in issue is not the deduction of losses as envisaged in sec. 6(1) (*j*) but rather the proper application of the overriding definition of income in sec. 3 and in sec. 5(1) (*p*).

The respondent's answer is short and simple, if anything can be regarded as simple in income tax matters. It says it comes squarely within the provisions of sec. 6(1) (*j*). It submits that this section was enacted in 1935 to remedy an unfavourable situation which was found to exist in the case of a company carrying on business both in Canada and abroad. The respondent brought to my attention and adopted the observations of Mr. H. H. Stikeman K.C. on this point in the Dominion of Canada Taxation Service, vol. 1, sec. 6, para. J., p. 6-501:

> This section was designed to remedy a condition whereby the Canadian Revenue would bear a burden when losses were incurred and receive no tax when profits were earned. As it now stands, a Canadian company which brings into account profits earned in any country which affords reciprocal relief from taxation under section 8 of the Act may claim as a credit against the Canadian Tax on such profits the tax paid to the Country where the profits arose. It follows, therefore, that little or no tax is paid in Canada in respect of such profits. It would therefore be improper to permit profits made in Canada to be reduced by losses incurred in a foreign country and in respect of which no tax is ever paid in Canada.

I accept this statement of the respondent's submission. The question is whether the section, as drafted, is adequate to bring the circumstances of appellant's case within its scope. I think it is. The language of the section is wide.

It speaks of "taxation period"; not "taxation year". I cannot find these terms synonymous. It provides no ground for saying that while the losses of any one taxation year may not be offset against income in that year, yet by virtue of sec. 5(1) (*p*) losses of the three preceding years may be thus set off. As pointed out by the learned Appeal Board this would be a curious anomaly, were it so. It seems to me such a construction would require very express language, which is altogether missing here.

Appellant based an argument on the expression "net losses" found at the commencement of sec. 6(1) (*j*). Whatever these words may mean in their context I do not think they mean that the aforesaid foreign losses are to be deducted from foreign income before the computation of tax. Nor do I think any inference favourable to appellant can be drawn from the circumstance that sec. 5(1) (*p*) was first passed in 1940 and did not assume its present form until 1944. I must take the Act as it stood during the years in question. And doing so, I cannot overlook the force of the respondent's submission that the provisions of sec. 5(1) (*p*) are general, while those of sec. 6(1) (*j*) are specific in that they deal with the computation of tax on foreign income, and thus override those of sec. 5(1) (*p*).

An alternative point raised by appellant was the question of double taxation, and Article XVI of the Canada-United States of America Tax Convention Act, 1943, was referred to. But I can find no case of double taxation here, and even if there were, I do not see what this Court could do about it.

I have not found this an easy case. Appellant's argument was attractive, and reasonable, and it is with some regret that I find I am unable to give way to it. But in the end, it seems to me clear enough that the language of the statute cannot be construed as appellant would have it. And I am bound by the statute.

The result is that the argument put forward on behalf of appellant fails and this appeal must be dismissed with costs.

Judgment accordingly.

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