1952
Jan. 21
Mar. 14

BETWEEN:

ALLOY METAL SALES LTD. .....APPELLANT;

AND

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

Revenue—Excess Profits Tax Act 1940, s. 15A—Standard profit—Controlled company—No ambiguity in the wording of Section 15A—Meaning of the wording of Section 15A—Appeal dismissed.

The appellant company was incorporated in 1940, and has been since its inception a wholly owned subsidiary of the International Nickel Company of Canada Limited for the purpose of distributing the latter company's products. Appellant company's standard profit was fixed by the Board of Referees under the Excess Profits Tax Act, prior to the enactment of Section 15A of that statute, at the sum of $60,000. Subsequent to the enactment of that section, in May 1943, and in accordance with its provisions the appellant's standard profit in respect of the taxation years of 1942, 1943, 1944 and 1945 was fixed by the Minister at the sum of $5,000. Hence the appeal.

Held: That there is no ambiguity in the wording of Section 15A of the Excess Profits Tax Act, 1940.

2. That the wording of the section simply means that the standard profit of a controlled company cannot exceed $5,000 a year, notwithstanding any provision in the Act. *The Royal City Sawmills Limited* v. *The Minister of National Revenue,* (1950) Ex. C.R. 276 followed.

(1) (1948) Ex. C.R. 10.
(2) (1948) S.C.R. 486 at 490 and 492.
(3) (1950) Ex. C.R. 15 at 23.
(4) (1951) Ex. C.R. 274.

APPEAL under the Excess Profits Tax Act, 1940.

The appeal was heard before the Honourable Mr. Justice Archibald at Toronto.

H. C. F. Mockridge, Q.C. for appellant.

J. W. Pickup, Q.C. and *T. Z. Boles* for respondent.

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

ARCHIBALD J. now (March 14, 1952) delivered the following judgment:

The appellant, Alloy Metal Sales Limited, was incorporated on December 27, 1940, to become the organization for the distribution of certain products of the International Nickel Company of Canada, Limited. Prior to that date, the International Nickel Company of Canada, Limited, had attended to the distribution of its own products.

Paragraph 6 of the appeal contains the following words:

6. The appellant has accordingly since the first of January, 1941, carried on the business of distributing and selling the products of The International Nickel Company of Canada, Limited and its subsidiaries such as nickel alloys and rolled nickel and nickel alloy shapes and in addition has distributed certain metals such as stainless steel produced by others and its standard profit was fixed by the Board of Referees under The Excess Profits Tax Act, prior to the enactment of Section 15A of that Statute at the sum of $60,000.

Section 15A of the Excess Profits Tax Act reads as follows:

15A. Notwithstanding anything in this Act contained in any case where a company has a controlling interest in any other company or companies (hereinafter called controlled company or companies) incorporated in 1940 or thereafter . . . and the sum of the capital employed by such company and such controlled company or companies at the time of incorporation is not in the opinion of the Minister of National Revenue substantially greater than the capital employed by such first-mentioned company prior to the incorporation of such controlled company or companies, the standard profits of all such controlled companies taken together shall not exceed $5,000 in the aggregate, and shall be allocated to each of such controlled companies in such amounts as the Minister of National Revenue may direct.

In any such case a reference to the Board of Referees shall not be made notwithstanding the provisions of section five of this Act.

The contention on behalf of the appellant is that inasmuch as this legislation is retroactive and has retrospective effect, this section must be strictly construed and that

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ambiguity being evident by reason of the second paragraph of the section the Court should, in construing the whole of section 15A resort to discussions in Parliament to assist it in determining the reason for the legislation.

After giving careful thought to the wording of the subsection, I am unable to see that there is any such ambiguity in the wording of the section as to justify resort to the discussions in Parliament at the time when consideration was being given to the legislation.

The argument on behalf of the appellant is that if resort is had to the Hansard debates at the time of the enactment of this legislation, it will be apparent that the purpose of the Act was to prevent an abuse from creeping in which would permit companies to incorporate wholly owned subsidiaries for the purpose of limiting income tax assessments. There is certainly nothing in the section itself containing any reference to such an abuse. There is no recital nor any preamble to indicate anything of the kind. If the wording of the section means anything at all, it means that the standard profits of the Alloy Metal Sales Limited cannot exceed $5,000 a year, notwithstanding any provision in the Act.

The point was squarely before this Court in the appeal of *The Royal City Sawmills Limited* v. *The Minister of National Revenue* (1). That case was tried before Sidney Smith, D.J., and at p. 278, the learned judge states:

> In my opinion there can be no doubt that, from first to last, this was a controlled company in the sense of this section (indeed the point was not contested); that in the opinion of the Minister of National Revenue (and, I may add, in my own as well) the sum of the capital of parent and offspring was not substantially greater than the capital of the parent company at the relevant time; and that its date of incorporation and chargeable accounting periods come within the statutory time. How, then, can it be said that the company falls outside the wide net of this section?
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> The main argument was that having had its standard profits fixed at $28,500 in 1941, the section could not now operate to reduce them to $5,000; that this would be tantamount to retrospective legislation; and that the section left much room for doubt as to whether this was the intention.
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> But the section introduced a new standard profit for certain companies of which this was one. It contains no hint that Parliament intended that the section should not apply to companies within its ambit whose standard profits had previously been fixed by some other measure. If such had

(1) (1950) Ex. C.R. 276.

been the intention nothing would have been easier than to say so. In the absence of such language the qualification of its terms by any such implication is not legitimate. The provision may seem harsh to the appellant company, but if the provision is clear the Court has no jurisdiction to mitigate such harshness, if any there be.

In my opinion this statutory provision interpreted according to income tax principles and to the actual terms of the language used amounts to saying: "If you are a controlled company your standard profits shall not exceed $5,000 notwithstanding any machinery in the Act which may hitherto have given you a greater standard profit."

The appeal must be dismissed with costs.

In this appeal, it is complained that the result has worked hardship on the appellant because the income tax as assessed is greatly in excess of any assessment that would have been made had no wholly owned subsidiary been established for the purpose of attending to the sales of the various products referred to in its Letters Patent, and, while it may be regretable that this condition has resulted, nevertheless, in my view, proper construction of the statute does not permit the interpretation sought by the appellant.

The appeal will be dismissed with costs.

Judgment accordingly.