BETWEEN: 1952 Mar. 19 & 20 — Oct. 7

ST. CHARLES HOTEL LIMITED ......APPELLANT;

AND

MINISTER OF NATIONAL REVENUE RESPONDENT.

Revenue—Excess Profits Tax—Excess Profits Tax Act, 1940, 4 Geo. VI, c. 32, s. 15A—Controlling interest in company—Not necessary that controlling company engage in same business as controlled company—Proper notice by Minister of National Revenue—Appeal dismissed.

Held: That a company holding the majority stock in another company is a controlling company within the meaning of s. 15A of the Excess Profits Tax Act and it is not necessary that it be engaged in the same class of business as the controlled company.

2. That in the circumstances herein proper notice of the fixing of standard profits was given to the appellant by the respondent.

APPEAL under the Income War Tax Act and The Excess Profits Tax Act 1940.

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

C. E. Finkelstein and *D. A. McCormick* for appellant.

Irving Keith, Q.C. and *D. K. Petapiece* for respondent.

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

ARCHIBALD J. now (October 7, 1952) delivered the following judgment:

This appeal is against an assessment for both income tax and excess profits tax made with respect to the taxable income for the period ending April 30, 1944, and confirmed by the Minister of National Revenue.

The principal ground taken in this appeal is directed to the refusal of the Minister to require the Board of Referees to fix standard profits for the appellant, pursuant to the provisions of The Excess Profits Tax Act.

In order that the objections taken by the appellant and in order that the relevant sections of The Excess Profits Tax Act may be followed more easily, there are certain questions of fact which I find either as stated in the plead-

1952
ST. CHARLES HOTEL LTD. v. MINISTER OF NATIONAL REVENUE
Archibald J.

ings, in the admissions of counsel, in the exhibits or in other evidence submitted to me. These facts are:

(1) That the appellant was incorporated on the 18th day of April, 1945, it having acquired from the *St. Charles Hotel Company Limited* all the assets that company employed in the hotel business operated by it in Winnipeg.

(2) That the appellant has continued to occupy the hotel building which it so purchased and operated in said building a hotel business, pursuant to the Letters Patent granted to it by the province of Manitoba, and in which is specified its powers and objects.

(3) That at the time of its incorporation, the shareholders of the appellant consisted of four individuals, holding *one share each*. On the same date, a firm known as Rothlish Investments Limited acquired 246 shares of the capital stock of the appellant, in return for which it brought to the appellant a large sum of money by way of additional capital. There is no indication that, at the time of incorporation or at any other date material to this appeal, there were any other shareholders of the appellant.

(4) That the appellant, being a new company, subsequently made an application to have its standard profits fixed.

(5) That the Minister of National Revenue however, refused to refer the appellant's application to the Board of Referees contending that the appellant was a controlled company within the meaning of section 15A of The Excess Profits Tax Act.

(6) That on the 3rd day of December, 1949, the appellant received from the Department of National Revenue, an assessment indicating the amount assessed by it for both income tax and excess profits tax, in the sums of $7,908.11 and $27,515.35 respectively.

(7) That the appellant appealed from this Notice of Assessment, which said assessment was confirmed by the Minister of National Revenue on the 23rd day of March, 1950. Subsequently, an appeal was taken to this Court and a Statement of Claim was filed on behalf of the appellant on the 30th day of August, 1951, and in due course a reply, on behalf of the respondent, was filed at this Court.

The appellant contends:

(i) That in the circumstances applicable in this matter, the Minister could not refuse to refer to the Board of Referees the application to fix standard profits, and,

(ii) in any event, the Minister did not adopt the proper procedure in arriving at the standard profits pursuant to section 15A of The Excess Profits Tax Act. This section reads as follows:

> 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 (other than companies incorporated to carry out a contract or arrangement negotiated by the Minister of Munitions and Supply and in receipt thereunder of a management fee or other similar compensation), 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. (1943, c. 13, s. 7).

On behalf of the appellant it was urged that standard profits could be ascertained and determined in the circumstances of this case only by a reference by the Minister to the Board of Referees, pursuant to section 15A of The Excess Profits Tax Act. On the other hand, counsel for the respondent argued that section 15A must apply and that the Minister under the Act *could not* refer the question to the Board of Referees. However, counsel for the appellant contends that the wording of section 15A is ambiguous in the use of the words "other company or companies" and that resort must be had to statements made by the Minister of Finance at the time the legislation was being considered in Parliament. In my opinion, the wording of section 15A is plain and unambiguous and free from all doubt. In such circumstances, it is not open to this Court to refer to statements and speeches in Parliament, because no construction or interpretation of this section is necessary or allowable.

1952
ST. CHARLES HOTEL LTD. v. MINISTER OF NATIONAL REVENUE
Archibald J.

It is then argued that Rothlish Investments Limited cannot be classed as a *controlling* company within the meaning of section 15A, because it is not engaged in a business similar to that engaged in by St. Charles Hotel Limited. I find that Rothlish Investments Limited actually did, within the meaning of section 15A of The Excess Profits Tax Act, exercise control of St. Charles Hotel Limited by reason of its ownership of the capital stock of that company. In this connection, see the decision of Cameron, J. in *Vancouver Towing Company Limited* v. *The Minister of National Revenue* (1).

On behalf of the appellant it is urged also that if section 15A governs, then the Minister did not follow the proper procedure because he did not afford any opportunity to the appellant to state its intention with respect to the employment of capital. In considering this contention, it must be remembered, however, that the Director of Income Tax did, on the 12th day of April, 1948, communicate with the appellant in writing as follows:

Attention Mr. Nathan Rothstein
St. Charles Hotel Limited,
Notre Dame Avenue at Albert Street,
Winnipeg, Manitoba.

Dear Sirs:

St. Charles Hotel Limited, Standard Profits Claim

In connection with the S. P. 1 Claim of St. Charles Hotel Limited it is noted that at incorporation of the Company, 18th April, 1945, all the capital stock of the Company, with the exception of four directors' qualifying shares, was owned by Rothlish Investment Limited. It is noted also that the capital employed by the two companies at the date of incorporation is not substantially greater than the capital employed by Rothlish Investment Limited at date of incorporaion of St. Charles Hotel Limited.

In view of the above it appears that, in the matter of Standard Profits, St. Charles Hotel Limited is subject to the provisions of Section 15A of the Excess Profits Tax Act.

You are requested, if you are not in agreement with the foregoing, to forward (in duplicate) any submission you may wish to make as to why Section 15A of the Excess Profits Tax Act should not apply.

If no submission is received within fifteen days from this date, assessment of the returns will be proceeded with on the above basis.

A reply to this letter was sent to the Director of Income Tax at Winnipeg by the appellant's auditor, in which letter the position of the appellant is stated.

(1) (1946) Ex. C.R. 623.

In my opinion, adequate notice, if any notice was required, was given by the respondent to the appellant, and there is no foundation for any claim made by the appellant, as stated in the pleadings or as stated in the hearing of this appeal, to justify any conclusion that the standard profits were determined by the Minister without adequate notice to the appellant or without providing the said appellant opportunity to submit reasons why the Minister should have sought from the Board of Referees the standard profits for St. Charles Hotel Limited. In this connection, it should be remembered that the Minister had before him on the files of the Department, the returns and statements filed by Rothlish Investments Limited as well as any filed by St. Charles Hotel Limited.

Counsel for the appellant also argues that the assessment as made would effect confiscation of a provincial company. I must point out, however, that without considering his argument in this regard or the authorities cited by him, it must be pointed out that there is no proof that any such result would follow. The Court has only his assertion to guide it, and, in my opinion, that is not sufficient. It is therefore unnecessary to deal with the cases and authorities cited by him in this connection.

The appeal will therefore be dismissed with costs.

Judgment accordingly.