BETWEEN:

HARGAL OILS LIMITED ..... APPELLANT;

1962
Sept. 17
Oct. 22

AND

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

Revenue—Income tax—Income Tax Act, R.S.C. 1952, c. 148, s. 83A and 83A(8a)—Deductibility of prospecting, exploration and development expenses—Deduction not allowed for same taxation year in which predecessor corporation sells its assets to successor corporation—Appeal dismissed.

The *Income Tax Act*, R.S.C. 1952, c. 148, s. 83A provides that a corporation whose principal business is the production, refining or marketing of petroleum or mining or exploring for minerals may deduct preproduction expenses from income. Section 83A(8a) provides that such a corporation which acquires substantially all the property of a predecessor corporation may deduct the carry-over of drilling and exploration expenses of the predecessor corporation in calculating income. The section provides that "no deduction may be made under this section by a predecessor corporation in computing its income for the taxation year in which the property so acquired was acquired by the successor corporation . . . .".

Appellant during its taxation year which ended June 30, 1958, sold its assets to Freehold Gas and Oil Ltd. and claimed a deduction from income for the year 1958 of $29,136 of drilling and development expenses pursuant to s. 83A(8*a*) of the Act which claim was disallowed by the respondent. An appeal from such disallowance to the Tax Appeal Board was dismissed and appellant now appeals to this Court from the finding of the Tax Appeal Board.

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Held: That the appeal must be dismissed.

2. That the predecessor corporation cannot claim a deduction of drilling and exploration expenses in the taxation year in which it sells substantially all its assets to a successor corporation.

APPEAL under the *Income Tax Act.*

The appeal was heard before the Honourable Mr. Justice Dumoulin at Victoria.

Kenneth E. Meredith for appellant.

E. S. MacLatchy, Q.C. and *R. L. Radley* for respondent.

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

DUMOULIN J. now (October 22, 1962) delivered the following judgment:

This is an appeal from a decision of the Income Tax Appeal Board, dated September 26, 1961[1] dismissing Hargal Oils' appeal in respect of the re-assessment of its income tax for 1958.

The appellant, a public company incorporated under the *Companies Act of British Columbia,* has its Head Office at Vancouver, and, for the taxation year ended June 30, 1958, was entirely engaged in the business of petroleum production and exploration for petroleum or natural gas.

By June 30, 1957, the company aforesaid claims to have incurred since the calendar year 1952, "drilling and exploration expenses" in a sum of $95,614.57, which were not deductible from its income for previous years.

Paragraphs 4 and 5 of the Notice of Appeal go on to say that:

4. During the year ended June 30th, 1958, but prior to this date, the assets of the Appellant were sold by the Appellant to Freehold Gas & Oil Ltd. (N.P.L.).

5. The Appellant filed its income tax return for the year ended June 30th, 1958, and claimed a deduction of the sum of $29,136 for drilling and development expenses pursuant to the provisions of the Income Tax Act leaving a balance unclaimed of $66,478.57.

On December 29, 1959, the Minister disallowed this deduction of $29,136 and reassessed the appellant accordingly.

[1] (1961) 27 Tax A.B.C. 408.

The fiscal provisions just alluded to are section 83A (1952, R.S.C. c. 148), more particularly its sequences 83A(3) and 83A(8*a*).

This encompassing enactment despite—or perhaps on account of—its pretensions at exhaustiveness, resolves itself into another statutory Noah's Ark, corralling together a menagerie of conjectures, deductions hinted at or refused and criss-cross references to other sections, inevitably jeopardizing the task of making "head or tails" of such a jumble.

However, a sufficient and practical summing-up of the parties' conflicting views may be derived from their respective briefs. Beginning with the appellant's Summary of Argument, page 1, we are told that:

> Basically the taxpayer relies on the provisions of paragraph 83A(3). An abbreviated version of this paragraph, stripped of its non-essentials for the purposes of this case could read as follows:
>
> > An oil company may deduct from its income for the year exploration and drilling and other expenses in an amount not exceeding its income for the year.

On page 2, in paragraphs (*c*) and (*d*), the comments hereunder appear:

> (*c*) The deductibility of the expenses is limited to the income of the company for the year. This means that there may be a carry over of expenses from year to year by a company (duly qualified) which could be applied against its income in succeeding years to the extent of that income . . .
>
> (*d*) The working of the section [i.e. 83A(3)] might be illustrated by a simple example as follows:
> Company incurs drilling and exploration

expenses from 1952—total	$50,000
Income Year 1	10,000
Excess expenditure remaining	40,000
Income Year 2	30,000
Excess expenditure	10,000
Income Year 3	10,000
Excess expenditure	Nil.

Assuredly these statements have, at the very least, the merit of clarity.

I may immediately rule out s. 83A(3) as it obviously relates to a different contingency: that of a corporation's yearly income tax returns. The instant problem is wholly separate and falls in the category dealt with in s. 83A(8*a*), namely: the determination of deductions allowed to a

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"successor" company for the year it acquired the assets of a "predecessor" corporation. To this latter enactment I now return.

The respondent, in his written reply, admits that Freehold Gas and Oil Ltd. was a "successor corporation" and Hargal Oils a "predecessor corporation" within the meaning of the applicable sections; also that, "but for the provisions of subsections (8*a*) of section 83A . . . Hargal would be entitled to the deduction of $29,136 for the 1958 taxation year as provided by subsection (3) of section 83A".

Consequently, in the very words of respondent's Summary, paragraph 4:

> The only issue in dispute is whether subsection 8(*a*) operates to deprive Hargal of any deduction under section 83A in the 1958 taxation year, being the year the property was transferred to Freehold.

From this last starting point, the respondent proceeds on a course of reasoning which, in my opinion, savours more of hair-splitting than of a rational interpretation of the law, as might be deduced from its paragraph 6, hereunder recited (cf. Summary of Argument p. 2):

> 6. Clause (iii) of paragraph (*e*) of the subsection may seem to imply that the predecessor might be able to claim in the year of transfer. This would be the situation where, for example:
>
> (*a*) The predecessor's taxation year ended March 31, 1962;
>
> (*b*) The transfer took place in May 1962;
>
> (*c*) The successor's taxation year ended December 31, 1962.

My only additional comments to this are that I am at a loss to find a justification for it in clause (iii) of (*e*); furthermore that it would flatly derogate from the sweeping and overriding prohibition of "the concluding words of subsection (8*a*)" as said in the two first lines of respondent's paragraph 5. I fully share, on this point, the appellant's rejoinder that:

> (*a*) Nothing in the Subsection [viz. (iii) of (*e*)] suggests this peculiar and particular alleged limitation.

In point of fact, the solution is a simpler one, plainly implied, I believe, by the interplay of:

1. The entitlement of s. 83A(8*a*) to wit: "Property acquired by successor corporation", especially devoting this section's purview to the case of a "successor" and not that of a "predecessor" corporation;

2. The wording of clause (iii) of paragraph (*e*) in which the expression "predecessor corporation, etc." appears merely as a condition precedent to a "successor" corporation's right to a deduction;

3. Finally the concluding and also conclusive lines of 83A (8*a*) which sufficiently speak for themselves *"res ipsa loquitur"*. I quote:

> and, in respect of any such expenses (i.e. *inter alia*, drilling, exploration and prospecting costs) included in the aggregate determined under paragraph (*e*) no deduction may be made under this section "by the predecessor corporation" (underlining is mine) in computing its income for the taxation year in which the property so acquired was acquired by the successor corporation or its income for any subsequent taxation year.

Since those operational expenditures were not deductible from the appellant's income for the years 1952 to 1957 inclusive, as admitted in paragraph 3 of the Notice of Appeal, then, nothing short of a positive statutory provision could suffice to bestow upon such outlays the privilege of deductibility otherwise denied to them during the sequential period of their occurrence. Again, a scrutiny of the verbose texts involved fails to convince me that I should find in them the rehabilitating effect—*si ita licet dicere*—sought by the appellant. Indeed, it was seen that the imperative direction in the ultimate paragraph of 83A(8*a*) irretrievably defeats the company's interpretation of the law.

I cannot reach any other conclusion but that the sum of $29,136 was properly added to Hargal Oils' income for the taxation year 1958.

For the above reasons, this appeal is dismissed and the respondent entitled to recover taxable costs.

Judgment accordingly.