

1942
Feb. 23-25.
July 24.

BETWEEN:

WALKERVILLE BREWERY LIMITED . . APPELLANT;

AND

THE MINISTER OF NATIONAL }
REVENUE } RESPONDENT.

Revenue—Income War Tax Act, R.S.C., 1927, c. 97, s. 5, ss. 1 (a)—Depreciation—Discretion of the Minister—Income—Appeal from decision of Minister of National Revenue dismissed.

Appellant company purchased the assets of another company of the same name and commenced business on January 1st, 1931. These assets had been valued for the purpose of sale at figures established by an appraisal made in 1928 by an appraisal company, which figures were greatly in excess of the cost value at which these assets had been carried in the books of the vendor company.

The Commissioner of Income Tax in assessing appellant for income tax for the years 1936 and 1937 allowed depreciation based on the cost value of the assets. This assessment was affirmed by the Minister of National Revenue whose decision was appealed to this Court. The appellant contends that the depreciation should be based on the appreciated value established by the appraisal.

Held: That the Minister exercised his discretion in a reasonable and proper manner and in accordance with the provisions of the Income War Tax Act in basing the assessment on the cost value of the assets.

APPEAL from the provisions of the Income War Tax Act from the decision of the Minister of National Revenue.

The appeal was heard before the Honourable Mr. Justice Maclean, President of the Court, at Ottawa.

S. L. Springsteen, K.C. for appellant.

G. L. Fraser, K.C. and *E. S. McLatchey* for respondent.

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

THE PRESIDENT now (July 24, 1942) delivered the following judgment:

This is an appeal from the decision of the Minister of National Revenue (hereafter called "the Minister") affirming an assessment levied against the appellant company for income tax for the calendar years 1936 and 1937. The only issue involved in the appeal relates to the matter of depreciation. For the year 1936 the appellant claimed depreciation in the sum of \$29,528.03 while the amount allowed by the Commissioner of Income Tax was \$13,864.30, the amount of the disallowance being \$15,663.73. For the year 1937 the appellant claimed depreciation in the sum of \$30,952.09 while the amount allowed by the Commissioner of Income Tax was \$17,175.08, the amount of the disallowance being \$13,777.01. The appeal herein is from the amounts disallowed for depreciation during the two taxation periods in question, and which disallowance the Minister affirmed. The issue is therefore confined to the one point, and I think all the relevant facts may be stated in brief terms.

The dispute as to depreciation for the years 1936 and 1937 relate almost entirely to those items of fixed assets usually classified as "machinery, plant and equipment". At some stage in the proceedings I was informed by counsel for the Minister that the amount claimed for the year 1936 under this head was \$19,405.52 of which \$15,378.22 was disallowed, and \$4,027.30 only was allowed. I think these figures may be assumed to be substantially accurate. As the total amount disallowed for depreciation for the year 1936 was but \$15,663.73 any difference between what was claimed and what was allowed in respect of other fixed assets such as buildings, office furniture, retail store equipment, and delivery equipment, was very slight indeed, only a few hundred dollars. And the

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corresponding figures were given me in respect of the year 1937, and, there, the amount in dispute in respect of depreciation related almost wholly to that of machinery, plant and equipment, the amount claimed under that head being \$19,264.84, and the amount disallowed being \$13,459.90, so that the amounts disallowed under other heads for depreciation would be rather insignificant, just as in the year 1936. I understood Mr. Springsteen to say that the appeal in question might be regarded as one relating entirely to the allowance for depreciation on account of machinery, plant and equipment.

The appellant company was incorporated under the laws of the Dominion of Canada, and it began business on January 1st, 1931, then taking over the assets of another company of the same name and which was incorporated under the laws of the Province of Ontario. The consideration paid for the transfer of the assets from the old company to the appellant company was in the form of an issuance of preferred and common shares of the latter company. The fixed assets of the vendor company were valued for the purposes of this transaction at figures established by an appraisal made in 1928, by an appraisal company. These figures were greatly in excess of the net value at which these assets had been carried in the books of the vendor company, approximately in the sum of \$328,000, whereas the appraisal value was \$1,096,000. The shareholders of the appellant company were the same as the vendor company, and no new capital was introduced at the time of the transfer of the assets from the vendor to the appellant company.

The depreciation allowed by the Income Tax Division of the Department of National Revenue throughout the years in question, and in earlier years, was based on the value given to the fixed assets by the vendor company and which had been applied by the appellant company when it began business in 1931. In a business journal of the appellant company there is to be found a statement showing the original cost of the fixed assets to the vendor company, and this was taken to be the value of the assets to the appellant company for depreciation purposes by the Minister. The original cost to the vendor company was undoubtedly that found in the business journal of the appellant company and this appears also on the books of

the vendor company, and I understand that it was upon this valuation of fixed assets that the vendor company based its claim for depreciation in the computation of its taxable income. However, any new assets acquired from time to time were always taken into consideration, increasing the amounts allowed for depreciation according to the cost of such new assets.

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For the first two years in its business career, 1931 and 1932, the appellant company claimed depreciation on the basis of the original cost of the fixed assets to the vendor company, and, as this was in accordance with the views of the taxing authorities, they, of course, readily agreed to the claim for depreciation made for those two years. In both of those years the appellant operated at a profit and accordingly paid income tax and, of course, without objection being made as to the amount allowed for depreciation and the method of determining the same.

In the years 1933, 1934 and 1935, the appellant in its tax returns claimed depreciation based on the appreciated asset values, that is, the values found by the appraisal company in 1928. But as the appellant operated at a loss in those three years the question of depreciation was not material to the appellant company, and probably the taxing authorities did not feel obliged to express any formal dissent in respect of the claim made for depreciation based on the valuation of fixed assets found by the appraisal company. One, however, may fairly assume that the revenue authorities would only have allowed depreciation for those three years on the same valuation of assets claimed and allowed for the years 1931 and 1932, had the appellant earned a net taxable income and a decision had to be made in respect of the amount to be allowed for depreciation.

Thus the revenue authorities continued to base the allowance for depreciation in respect of the fixed assets acquired by the appellant from its predecessor company on the original value or cost of the same, as did the appellant company itself in the years 1931 and 1932. However, in 1933, and in the following years, as I have explained, the appellant company began to base its claim for depreciation on the appreciated values established by the appraisal to which I have referred, but this issue never arose in concrete form till the years 1936 and 1937, and

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they are now the subject of this appeal. In short the dispute here revolves around the valuation of the assets acquired in 1931 and does not concern any assets subsequently acquired, because due allowance was made from time to time for depreciation of such additional assets, replacements or renewals, as the case might be.

Sec. 5, ss. 1 (a) of the Income War Tax Act states that "income" as defined in the Act shall for the purposes of the Act be subject to certain exemptions and deductions and one was "such reasonable amount as the Minister, in his discretion, may allow for depreciation." The facts here seem to indicate that the Minister based his valuation of fixed assets for the ascertainment of "depreciation" largely upon the cost of the same to the vendor company from which the appellant company acquired the same, and which basis was adopted by the appellant itself for two years. Due allowance was made for depreciation of any new assets in the meanwhile acquired by the appellant company. It seems to me that the Minister, in the exercise of his discretion, in fixing the "reasonable amount" that should be allowed for depreciation adopted a method or basis that is hardly open to attack, and at least I was shown no authority to the contrary. I have not been satisfied that the Minister adopted any wrong principle in determining the amount that should be allowed for depreciation, or that the amount allowed was not a reasonable and proper one. I do not see how it can be alleged that the Minister acted against proper legal principles in fixing the amount he allowed for the years 1936 and 1937, for depreciation, or that he exercised his discretion improperly or in any way against proper legal principles. Mr. Springsteen referred to and discussed at length the Pioneer Laundry case (1), but in that case no allowance at all was made for depreciation and the grounds upon which the disallowance of depreciation was arrived at were held to be against proper legal principles. It seems to me that the decision in that case is not applicable to the facts of this case and really affords no assistance in the question here to be decided.

The appeal is therefore dismissed and with costs.

Judgment accordingly.