BETWEEN:

W. A. SHEAFFER PEN COMPANY OF CANADA LIMITED ..... } APPELLANT;

AND

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

1953
Sept. 28
Oct. 5

Revenue—Income Tax—Income War Tax Act, R.S.C. 1927, c. 97, ss. 2(l), 2(w), 5(p)—S. of C. 1944-1945, c. 43, ss. 4(5), 4(6)—Deduction of losses from profits—Meaning of words "year" and "taxation year"—Meaning of word "year" in s. 5(p)—Context in which word appears always to be considered.

The appellant's fiscal year coincided with the calendar year up to the end of 1945 but thereafter its fiscal year ended on February 28. In 1945 and in the two-month period ending February 28, 1946, it earned profits but in the taxation year ending February 28, 1947, it sustained a loss. It sought to deduct from the amount of its profits in 1945 the amount of loss sustained in the calendar year 1946.

Held: That a taxpayer cannot succeed in claiming a deduction from what would otherwise be taxable income unless his claim comes clearly within some provision of the Income War Tax Act permitting the deduction: he must show that every constituent element necessary to the right of deduction is present in his case and that every condition required by the permitting provision has been complied with. If he cannot clearly bring his claim within the express terms of the provision conferring the right of deduction he is not entitled to it.

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2. That a word defined by section 2 of the Act must be read according to its statutory definition wherever it appears in the Act unless the context otherwise requires and, conversely, it must not be read in its statutory meaning if the context in which it appears requires otherwise. It is thus a cardinal rule of interpretation that the context in which a word in the Act appears must always be considered in order to ascertain its true meaning.

3. That the word "year" in the expression "year immediately following the taxation year" in section 5(*p*) must be read as meaning "taxation year".

APPEAL under the Income War Tax Act.

The appeal was heard before the President of the Court at Toronto.

W. Z. Estey for appellant.

G. Beaudoin Q.C. and *J. D. C. Boland* for respondent.

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

THE PRESIDENT now (October 5, 1953) delivered the following judgment:

This is an appeal against the appellant's income and excess profits tax assessment for the taxation year ending December 31, 1945.

The facts are not in dispute. Up to the end of the calendar year 1945 the appellant's fiscal year coincided with the calendar year. But on December 21, 1945, it applied to the Inspector of Income Tax at Toronto for approval of a change in its fiscal year so that it would end on February 28. The reason given for the change was that there had been a change in the ownership of the shares and it was desirable to have the appellant end its fiscal year on February 28 in order to coincide with the end of the fiscal year of the Sheaffer Pen Company in the United States. The appellant's application was approved and thereafter its fiscal year ended on February 28.

The appellant's taxable income for the taxation year ending December 31, 1945, amounted to $101,496.91, as appears from the notice of assessment for 1945, dated February 23, 1948. The appellant filed an income and excess profits tax return for its new taxation year ending February 28, 1946, that is to say, for the period from December 31, 1945, to February 28, 1946, and its taxable income for that taxation period came to $2,739.95, as

appears from the first notice of assessment for 1946, dated March 23, 1948. But in its first full new fiscal year ending February 28, 1947, it sustained a loss of $50,894.31, as appears from the profit and loss statement for that taxation year prepared by its auditors, and on August 22, 1947, it filed its return for the taxation year ending February 28, 1947, showing the said loss. Subsequently, it was allowed to deduct part of this loss, namely, $2,739.95 from what would otherwise have been its taxable income for the taxation year ending February 28, 1946, leaving it with no taxable income for that taxation year, as appears from the amended notice of assessment for 1946, dated March 11, 1950.

Thus far there is no difficulty. The issue arises from the appellant's contention that it is entitled to deduct from the amount of its profits in the taxation year ending December 31, 1945, the amount of the loss sustained by it in the calendar year 1946. This claim is put forward under section 5(*p*) of the Income War Tax Act, R.S.C. 1927, chapter 97, as amended by section 4(5) of chapter 43 of the Statutes of 1944-1945, assented to on August 15, 1944, which reads in part as follows:

> 5. "Income" as hereinbefore defined shall for the purposes of this Act be subject to the following exemptions and deductions:—
>
> (*p*) amounts in respect of losses sustained in the three years immediately preceding and the year immediately following the taxation year, . . .

The appeal turns on the meaning of the word "year" in the expression "the year immediately following the taxation year". It was contended for the respondent that the word means "taxation year" which is defined in section 2(*w*) of the Act as follows:

> 2. In this Act, and in any regulations made hereunder, unless the context otherwise requires,
>
> (*w*) "taxation year" or "taxation period" means a year or other fiscal period upon the income of which tax is, by this Act, required to be assessed, levied or paid and a reference to the taxation year or taxation period of a certain calendar year is a reference to the taxation year or taxation period, as the case may be, ending in that calendar year.

Thus a taxation year may be less than a year in the ordinary meaning of the word. On the application of this definition it follows that the taxation year immediately following the taxation year under review herein, namely,

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the taxation year ending December 31, 1945, was the taxation year ending in 1946, that is to say, the two-month period from December 31, 1945, to February 28, 1946.

It was properly conceded by counsel for the appellant that if the word "year" in section 5(*p*) had been preceded by the word "taxation" the appellant would have no case but it was contended that since it was not so preceded it must be read according to its statutory definition in section 2(*l*) of the Act, which is as follows:

> 2. In this Act, and in any regulations made hereunder, unless the context otherwise requires,
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> (*l*) "year" means the calendar year.

and it was submitted that under this reading of section 5(*p*) the appellant was entitled to deduct from the amount of its profits in the taxation year ending December 31, 1945, the amount of the loss sustained by it in the calendar year 1946, that being the year immediately following the taxation year under review herein, less, of course, the amount deducted from the amount of its profits in the two-month taxation year ending February 28, 1946.

Alternatively, the submission was that the word year in its ordinary acceptance means a period of 365 days and that the appellant was entitled to deduct the loss sustained in the period of 365 days immediately following the taxation year ending December 31, 1945, and was not confined to deduction of the loss sustained in the 59 day period ending February 28, 1946, as would be the case if the contention on behalf of the respondent is right.

While the appellant's submission appears attractive at first sight and merits consideration I am of the opinion that it is unsound and must be rejected. There are several reasons for this conclusion. While it is well established that all charges must be imposed by clear and unambiguous language and that a person is not to be subjected to tax unless the words of the taxing statute expressly impose it and he is caught by them; *vide Partingdon* v. *Attorney-General* (1) and *Tennant* v. *Smith* (2) and numerous decisions of this Court such as *Connell* v. *Minister of National Revenue* (3); *David Fasken Estate* v. *Minister of National Revenue* (4); it should be noted that in the present case

(1) (1869) 4 E & I App. 100 at 122.
(2) [1892] A.C. 150 at 154.
(3) [1946] Ex. C.R. 562 at 566.
(4) [1948] Ex. C.R. 580 at 588.

there is no question of imposition of any charge. Here the appellant seeks the benefit of a right of deduction to which it would not be entitled except for section 5(*p*) the opening words of which refer to the exemptions and deductions to which what would otherwise be taxable income is subject. The manner in which an exempting provision in a taxing statute should be construed has been dealt with in a number of cases. In *Lumbers* v. *Minister of National Revenue* (1), which was affirmed by the Supreme Court of Canada (2), I held that it is a well established rule that the exemption provisions of a taxing act must be construed strictly and cited the statement to that effect of Sir W. J. Ritchie C. J. of the Supreme Court of Canada in *Wylie* v. *City of Montreal* (3) where he said:

> I am quite willing to admit that the intention to exempt must be expressed in clear unambiguous language; that taxation is the rule and exemption the exception, and therefore to be strictly construed;

Then I put the rule of construction of an exempting provision of the Income War Tax Act as follows:

> Just as receipts of money in the hands of a taxpayer are not taxable income unless the Income War Tax Act has clearly made them such, so also, in respect of what would otherwise be taxable income in his hands a taxpayer cannot succeed in claiming an exemption from income tax unless his claim comes clearly within the provisions of some exempting section of the Income War Tax Act: he must show that every constituent element necessary to the exemption is present in his case and that every condition required by the exempting section has been complied with.

A similar rule of construction should be applied in the case of a statutory right of deduction such as that conferred by section 5(*p*) from which it follows that if a taxpayer cannot clearly bring his claim for deduction within the express terms of the provision conferring the right of deduction he is not entitled to it.

In the case at bar the appellant encounters an initial difficulty. It has not proved and cannot prove what amount of loss, if any, it sustained in the calendar year 1946. For the first two months of that calendar year it had a profit of $2,739.95. In the taxation year ending February 28, 1947, it sustained a loss of $50,894.31, due to a fire on its premises and the moving of its plant, both of which events occurred in 1946, but it did not maintain its accounts in such a way as to show its income position as at December 31, 1946.

(1) [1943] Ex. C.R. 202. (2) [1944] S.C.R. 167.
(3) (1885) 12 Can. S.C.R. 384 at 386.

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Nor did it keep its accounts in such a way as to show its profit or loss at the end of any month. It could not, therefore, prove what portion, if any, of the $50,894.31 loss was sustained in the ten-month period from February 28, 1946, to December 31, 1946. Mr. C. A. Patterson sought to meet this difficulty by apportioning or pro-rating the loss for the whole fiscal year on a daily basis and then computing it for the period of 306 days from February 28, 1946, to December 31, 1946. This came to $42,667.56 from which the sum of $2,739.95 was deducted to offset the profit in the taxation year ending February 28, 1946, leaving $39,927.61 as the balance of the loss for the calendar year 1946 claimed as deductible under section 5(*p*) from the profits of $101,496.61 in the taxation year ending December 31, 1945. There is no statutory authority for any apportionment or pro-rating of the loss sustained in a taxation year for a portion of a year except in a case such as that specifically provided for by section 21(2) of chapter 55 of the Statutes of 1946 where there was a change in the rates of tax during the year. Strictly speaking, therefore, I am of the opinion that the appellant has not proved that it sustained a loss in the calendar year 1946 or, alternatively, has not proved and cannot prove the amount of its loss, if any, in the calendar year 1946.

But there is a much stronger reason for rejecting the appellant's submission. It must be kept in mind that the Income War Tax Act is not necessarily consistent throughout the Act in the use of its various terms, that is to say, that its words do not necessarily convey the same meaning wherever they appear in it. This is true even when a word has been given a statutory definition by section 2 or some other section. Indeed, section 2 itself recognizes this fact in its opening statement to the effect that the words defined by it have the meaning specified by it "unless the context otherwise requires". Consequently, a word defined by section 2 must be read according to its statutory definition wherever it appears in the Act unless the context otherwise requires and, conversely, it must not be read in its statutory meaning if the context in which it appears requires otherwise. It is thus a cardinal rule of interpretation that the context in which a word in the Act appears must always be considered in order to ascertain its true meaning. Here the

meaning of the word "year" in the expression "year immediately following the taxation year" in section 5(*p*) must be determined and the context in which it appears must be considered.

Counsel for the respondent contended that such context requires that the word be read as meaning "taxation year". In my opinion, this contention is correct. In support of it counsel referred to the amendments of 1944 which brought section 5(*p*) in the terms specified into effect. I have already referred to section 4(5) of chapter 43 of the Statutes of 1944-1945 but section 4(6) of the 1944 amendments should also be considered. Its relevant provisions are as follows:

> 4. (6) Paragraph (*p*) of the said section five, as enacted by subsection five of this section, is applicable only with reference to the deduction of
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> . . .
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> (*c*) losses sustained in the nineteen hundred and forty-four taxation year and all subsequent years by any person carrying on farming or any other business.

While it is true that the draughtsmanship of this section leaves room for improvement it is clear that the term "subsequent years" means "subsequent taxation years". There would be no sense in assuming otherwise. In my view, it necessarily follows that the word "year" in the expression "year immediately following the taxation year" in section 5(*p*) must be read as meaning "taxation year" for section 5(*p*) was made applicable only with reference to the deduction of losses sustained in the 1944 taxation year and in the subsequent taxation years. The only losses that are made deductible are those that are sustained in taxation years commencing with the 1944 taxation year. Thus the context sets the meaning of the word "year" in the expression under consideration as "taxation year", for the whole scheme of deductibility of losses applies only in the case of losses sustained in taxation years. In my view, section 4(6)(*c*) of the 1944 amendment is conclusive in favour of the respondent's contention. This opinion is supported by the fact that the interpretation put forward for the appellant would make section 5(*p*) unworkable and defeat its purpose in the case of taxpayers whose fiscal years end otherwise than at the end of the calendar year. For example, if the appellant sustained a loss between February 28 and December 31 in any year it could not deduct

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the amount of such loss from the taxable income of the taxation year ending on February 28 of such year for there would not in that event be a loss sustained in the "calendar year immediately following the taxation year" but only a loss sustained in the ten-month period following such taxation year in respect of which there is no statutory right of deduction.

The turn of events has been unfortunate for the appellant. If no question of excess profits tax were involved it is unlikely that this appeal would have been taken for the amount of the unused portion of the loss sustained by it in the taxation year ending February 28, 1947, may be deductible in the future from its taxable income in a subsequent taxation year. If it had deferred its decision to alter the end of its fiscal year until after the end of the calendar year 1946 it would then have been able to show what loss it sustained in such year, for that year would have coincided with its fiscal year and it would have kept its accounts accordingly. It would then have been able to deduct the amount of whatever loss it sustained in the calendar year 1946 from the amount of its taxable income in the taxation year ending December 31, 1945 for the calendar year 1946 would then have been the taxation year immediately following the taxation year under review. This might have resulted in a substantial saving of excess profits tax as well as of income tax. Unfortunately for it, it cannot now make any saving of excess profits tax for by its own act in changing the end of its fiscal year from December 31 to February 28 it interposed the new two-month taxation year ending February 28, 1946, between the taxation year ending December 31, 1945, in which it made a profit and the taxation year ending February 28, 1947, in which it sustained a loss. It is true that this intervening taxation year ending February 28, 1946, consisted of a period of only two months but it is a taxation year within the meaning of section 2(*w*) of the Act. Thus since the word "year" in the expression "year immediately following the taxation year" in section 5(*p*) of the Act means "taxation year" it follows that the taxation year immediately following the taxation year ending December 31, 1945, was the two-month taxation year ending February 28, 1946, in which the appellant did not sustain any loss. It is, therefore, not entitled to

any deduction from its income for the taxation year ending December 31, 1945, of loss sustained by it in the taxation year following such taxation year for it did not sustain any in such immediately following taxation year. It has, therefore, failed to prove that the assessment appealed against was erroneous and its appeal must be dismissed with costs.

Judgment accordingly.