1951
Oct. 16
Nov. 9

BETWEEN:

HALLET AND CAREY (B.C.) LIMITED ..... } APPELLANT;

AND

MINISTER OF NATIONAL REVENUE, RESPONDENT.

Revenue—Excess Profits Tax—Excess Profits Tax Act 1940, s. 3—"Continuation of a previous business"—Appellant liable for excess profits tax even though previous definite business was formerly part of a business carried on in more than one province—Handling of additional line of produce by appellant does not alter fact that there is a continuation of the previous business—"Substantial interest" does not mean a majority or controlling interest—Appeal dismissed.

Held: That s. 3 of the Excess Profits Tax Act contemplates a previous definite business which is carried on by a new company and that it can make no difference for the purposes of the Act whether that previous definite business was formerly part of a greater business carried on in more than one province.

2. That the fact that the new company deals in lines of merchandise in addition to those dealt in by the previous company does not make it any the less a continuation of the previous business.

3. That "substantial interest" does not mean a controlling or majority interest.

APPEAL under the Excess Profits Tax Act.

The appeal was heard before the Honourable Mr. Justice Sidney Smith, Deputy Judge of the Court, at Vancouver.

A. S. Gregory for appellant.

R. V. Prenter and *F. J. Cross* for respondent.

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

SIDNEY SMITH D.J. now (November 9, 1951) delivered the following judgment:

The appellant was assessed under sec. 3 of the Excess Profits Tax Act for excess profits tax in respect of the taxation year ending 31st March, 1947, notwithstanding that this was its first year of operation. The Minister in giving his decision, from which this appeal is brought, held that the appellant was not entitled to the exemption set out in the proviso to said sec. 3, in that the appellant, being a new company, (*a*) continued the business formerly operated by Hallet and Carey Limited of Winnipeg, Manitoba; and (*b*) that the same person or persons has or have a substantial interest in both corporations. The appellant disputes both points.

Hallet and Carey (B.C.) Limited was incorporated under the British Columbia Companies Act on the 2nd July, 1946, and its first fiscal period ended on 31st March, 1947. The company was incorporated for the purpose of purchasing that part of the business of Hallet and Carey Limited of Winnipeg, which was being carried on in British Columbia. The appellant argues that since it did not purchase the whole business of Hallet and Carey Limited, but only that part carried on in British Columbia, it cannot be said that "the new business is . . . a continuation" of a previous business. I am unable to agree with this view, and think that there is nothing in the section to support it. I am unable to find that the business of Hallet and Carey (B.C.) Limited is not a continuation of the previous business in British Columbia carried on by Hallet and Carey Limited, through a branch office at Vancouver. It seems to me that the Act contemplates a previous definite business which is carried on by a new company, and that it can make no difference for the purposes of the Act whether that previous definite business was formerly part of a greater business carried on in more than one province. The emphasis is on the *continuation* of a *previous business.*

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A further point made was that the business of Hallet and Carey Limited carried on in British Columbia related to the buying, selling and exporting of wheat, barley, oats and rye, whereas the present business of appellant consists of dealing in other lines of merchandise in addition to the above. Nevertheless, the company's main business is what it took over from Hallet and Carey Limited, and I do not think the additional produce it now handles makes it any the less a continuation of the previous business. It is, in my view, substantially the same business, and not a substantially different business.

Lastly, appellant says that the same person or persons as shareholders of Hallet and Carey Limited had not and did not have at the time of commencement of the business of the appellant, a substantial interest in both corporations. I did not understand it to be contested that Mr. K. A. Powell had a substantial interest in the Winnipeg business. The argument was that he had not a substantial interest in appellant company, because he owned only 49 per cent of its shares. But I held the other day in *Manning Timber Products Limited* v. *Minister of National Revenue* (1) that this percentage of shares was a substantial interest, within the section.

The appeal must be dismissed with costs.

Judgment accordingly.

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(1) (1951) Ex. C.R. 338.