BETWEEN:

SPRUCE FALLS POWER AND PAPER CO. LTD..... APPELLANT;

AND

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

1951
May 28, 29 & 30
Dec. 14

Revenue—Excess Profits Tax—Excess Profits Tax Act, 1940, Income War Tax Act, R.S.C. 1927, c. 97, s. 3, s. 5(1) (w)—P.C. 331, January 30, 1948, re-enacted on March 6, 1948—Interpretation Act, R.S.C. 1927, c. 1, s. 20(a)—Tax on logging operations—Preamble to be disregarded when language of an enactment is clear—Calculation of amount deductible in case of integrated business—Cost-ratio basis of arriving at amount deductible correct—Method of calculation based on sound accounting principles—Appeal allowed.

Appellant, incorporated under the laws of the Province of Ontario and carrying on business in Ontario, appeals from its assessment for the year 1947 under the Excess Profits Tax Act, 1940, by which its claim to deduct from its taxable income a portion of the total sum paid by it to the Province of Ontario under the provisions of the Ontario Corporations Tax Act for the year 1947 was disallowed.

Appellant's business is the manufacture and sale of unbleached sulphite pulp and newsprint. Its business is wholly integrated in that its total operations comprise the acquisition of timber and logs, the transport of them to its mill and their conversion by a series of separate operations into sulphite or newsprint and the eventual sale thereof to the ultimate consumer. The logging phase of the operation is completed when the logs are delivered to the mill. None of the logs are sold as such and appellant's income is received only upon the sale of the finished or semi-finished products.

The tax paid the Province of Ontario by appellant was a general corporations income tax and not in any sense limited to corporations carrying on a specific type of business such as logging. The tax paid was on the whole of its net income and not merely on that part which might be considered as attributable to its logging operations.

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By s. 5(1) (*w*) of the Income War Tax Act, R.S.C. 1927, c. 97 a deduction from income was permitted corporations in "such amount as the Governor in Council may, by regulation, allow in respect of taxes on income for the year from mining or logging operations." P.C. No. 331 January 30, 1948, re-enacted on March 6, 1948, provided these regulations for determining the allowance under s. 5(1) (*w*) of the Act, "the amount that a person may deduct from income under Paragraph (*w*) . . . is an amount not exceeding the proportion of the total taxes therein mentioned paid by him to

(a) the government of a Province . . . that the part of his income that is equal to the amount of

(*c*) . . .

(*d*) income derived from logging operations as defined herein is of the total income in respect of which the taxes therein mentioned were so paid.

2. . . .

3. In these regulations

(*a*) 'Income derived from logging operations' by a person means

(i) .....

(A) .....

(B) .....

(ii) when he does not sell but processes, manufactures or exports from Canada logs owned by him the net profit or gain reasonably deemed to have been derived by him from

(A) the acquisition of the timber or the right to cut the timber from which the logs were obtained, and the cutting and the transportation of the logs to the sawmill, pulp or paper plant or other place for processing or manufacturing or to the carrier for export from Canada, as the case may be, or

(B) the acquisition of the logs and the transportation of them to such point of delivery

computed in accordance with sound accounting principles with reference to the value of the logs at the time of such delivery, excluding any amount added thereto by reason of processing or manufacturing the logs;

Appellant apportioned its net income as between the logging operations and its total operations in the same proportion as the cost of the logging operations bears to the total cost of all its operations, namely, 46·36 per cent, and claims to be entitled to deduct 46·36 per cent of the tax paid to the Province of Ontario as being a tax paid to a province in respect of income from logging operations.

Held: That when a taxpayer is engaged in an integrated business such as the appellant he has a right to apportion his income as between logging and other operations and to claim a deduction for provincial and municipal taxes in respect thereof.

2. That if the language of an enactment is clear, the preamble must be disregarded and there is no inconsistency between the provisions of P.C. 331 as amended and the final version of Para. (*w*) of s. 5(1) of the Income War Tax Act.

3. That appellant in 1947 did conduct logging operations and that P.C. 331 remained in full effect throughout 1947 and appellant is entitled to have its rights determined thereunder.

4. That the basis of arriving at the amount claimed for deduction on a cost-ratio basis, that is, by apportioning the profit of appellant as between logging operations and other operations in the same proportion as the cost thereof and *not* on a market value basis of the logs delivered to the mill is established by the evidence and is made on sound accounting principles and is within the provisions of P.C. 331.

APPEAL under the Excess Profits Tax Act.

The appeal was heard before the Honourable Mr. Justice Cameron at Ottawa.

Roderick Johnston, K.C. for appellant.

D. W. Mundell, K.C. and *T. Z. Boles* for respondent.

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

CAMERON J. now (December 14, 1951) delivered the following judgment:

This is an appeal from an assessment for the year 1947, and made under the Excess Profits Tax Act, 1940, as amended, whereby the respondent totally disallowed the appellant's claim to be entitled to a deduction from its taxable income of $188,454, being a portion of the total sum of $406,501.29 paid by it to the Province of Ontario for the year 1947 under the provisions of the Ontario Corporations Tax Act, 1939. The dispute centres around the interpretation to be placed on section 5(1) (*w*) of the Income War Tax Act, R.S.C. 1927, c. 97, and on the provisions of P.C. 331.

I think it is advisable at once to set out certain facts in regard to the operations of the appellant in order that the issues may be clarified. The appellant is incorporated under the laws of the Province of Ontario, having its head office at Toronto. Its business is the manufacture and sale of unbleached sulphite pulp and newsprint. Its mill is located at Kapuskasing, Ontario. Its basic raw material is pulp wood. In that district it is the owner of 175,488 acres of timberland and also holds eighty-two townships under Crown lease. Camps are established in these areas, the trees are felled, the branches trimmed and the trees cut into logs. The logs are then transported to the mill at

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Kapuskasing by river, rail or truck. The extent of the woods operations is apparent from the fact that in 1947, 1,650 men were engaged thereon in the winter (a number somewhat in excess of the average number employed in the mill proper), that the man-days thereon totalled 514,938 (also in excess of the man-hours worked at the mill), and that 339,627 cords of wood were actually consumed in the mill operations. To supplement its supply of pulp wood, the appellant also purchased a substantial quantity of logs from settlers and then transported them by rail or truck to the mill.

The "logging" phase of the operation is completed when the logs are delivered to the mill. None of the logs are sold as such. The appellant's business is wholly integrated in that its total operations comprise the acquisition of the timber or logs, the transport thereof to the mill, its conversion by a series of separate operations into sulphite pulp or newsprint, and the eventual sale thereof to the ultimate consumer. Its income therefore is received only upon the sale of the finished or semi-finished products.

For the taxation year 1947, the appellant, pursuant to the provisions of section 14(1) of the Ontario Corporations Tax Act, 1939, as amended, paid to the Province of Ontario the sum of $406,501.29, that section being as follows:

> 14. (1) In addition to the taxes imposed in sections 10 and 12, and save as in this section otherwise provided, every incorporated company which has its head or other office in Ontario, or which holds assets in Ontario, or which transacts business in Ontario, shall for every fiscal year of such company pay a tax of seven per centum calculated upon the net income of the incorporated company.

Certain corporations by section 14(3) were exempted from payment of that tax. It is clear, however, that the tax was a general corporations income tax and was not in any sense limited to corporations carrying on a specific type of business such as logging; and that the tax was payable on the whole of the net income computed in accordance with the provisions of the Act. The appellant, therefore, after estimating its net profit in accordance with that Act, paid the tax on the whole of its net income and not merely on that part thereof which might be considered as attributable to its logging operations.

Under the Excess Profits Tax Act, the "profits" of a corporation means the amount of its net taxable income as determined under the provisions of the Income War Tax Act, R.S.C. 1927, c. 97, as amended, subject to certain exemptions not here of importance. Under the latter Act, "income" is defined by section 3, and by section 5 certain defined deductions and exemptions are allowed. For the taxation year 1947 the relevant permissible deduction was as follows:

5(1) (*w*) Such amount as the Governor in Council may, by regulation, allow in respect of taxes *on income for the year from* mining or *logging operations.*

The appellant bases its claim on para. (*w*) and on the regulations of the Governor in Council thereunder as enacted by P.C. 331. That Order in Council was passed on January 30, 1948, but on March 6, 1948, section 1 thereof was revoked and re-enacted in another form. Thereafter, the operative and relevant portions of P.C. 331 as so amended and as they related to the taxation year 1947, were as follows:

1. Subject to these regulations the amount that a person may deduct from income under paragraph (*w*) of subsection one of section five, is an amount not exceeding the proportion of the total taxes therein mentioned paid by him to

(*a*) the Government of a Province, . . .

that the part of his income that is equal to the amount of

(*c*) income derived by him from mining operations as defined herein, or

(*d*) income derived by him from logging operations as defined herein

is of the total income in respect of which the taxes therein mentioned were so paid.

2. No deduction from income shall be allowed under these regulations unless the taxpayer produces to the Minister a receipt or receipts for payment of the taxes in respect of which the deduction is claimed.

3. In these regulations,

(*a*) 'Income derived from logging operations' by a person means

(i) where logs are sold by him to any person at the time of or prior to delivery to a sawmill, pulp or paper plant or other place for processing or manufacturing logs, or delivery to a carrier for export from Canada, or delivery otherwise, the net profit or gain derived by him from

(A) the acquisition of the timber or the right to cut the timber from which the logs were obtained, and the cutting and sale, or the cutting, transportation and sale of the logs, or

(B) the acquisition, transportation and sale of the logs, or

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(ii) where he does not sell but processes, manufactures or exports from Canada logs owned by him, the net profit or gain reasonably deemed to have been derived by him from

(A) the acquisition of the timber or the right to cut the timber from which the logs were obtained, and the cutting and the transportation of the logs to the sawmill, pulp or paper plant or other place for processing or manufacturing, or to the carrier for export from Canada, as the case may be, or

(B) the acquisition of the logs and the transportation of them to such point of delivery

computed in accordance with sound accounting principles with reference to the value of the logs at the time of such delivery, excluding any amount added thereto by reason of processing or manufacturing the logs;

In brief, the contention of the appellant is that para. (*w*) is not limited in its scope to taxes paid specifically on logging operations as such, but that in an integrated business such as its, where one of its operations is a logging operation, it is entitled to apportion its net income between the various operations; that such an apportionment is a commonly recognized principle, and is specifically recognized in the regulations of P.C. 331. It has, therefore, apportioned its net income as between the logging operations and its total operations in the same proportion as the cost of the logging operations bears to the total cost of all its operations, namely, 46·36 per cent. Applying the same principle to the tax paid to the Province of Ontario, it claims to be entitled to deduct 46·36 per cent of that tax as being a tax paid to a province in respect of income from logging operations.

The defence is a denial that the appellant comes within the provisions of para. (*w*) or the regulations, for the reasons later to be referred to. In his decision and in the pleadings, the respondent had also alleged that the deduction was barred by the provisions of section 6(1) (*o*) of the Income War Tax Act and the regulations thereunder (P.C. 5948), but in argument his counsel abandoned that defence entirely. It is not necessary therefore, to consider the alternative claim of the appellant as set out in para. 18 of the statement of claim. It is admitted that section 2 of P.C. 331 has been complied with.

The first question that arises is in regard to P.C. 331. Mr. Mundell, counsel for respondent, submits that as it was enacted and amended prior to the enactment of para. (*w*)

in the form which I have set out above, it must be read with reference to the form in which para. (*w*) existed at the time such regulations were passed and amended. Para. (*w*) was first added to section 5(1) in 1946 and made applicable to the year 1947. The form in which it then appeared is of no importance as it was repealed in 1947, and as then re-enacted was made applicable to the taxation year 1947 and subsequent years, and was as follows:

(*w*) Such amount as the Governor in Council may, by regulation, allow for amounts paid in respect of taxes imposed on the income, or any part thereof, by the Government of a Province by way of tax on income derived from mining operations or income derived from logging operations.

While it was in that form P.C. 331 was passed and amended. Later, in 1948, the 1947 version of para. (*w*) was repealed and re-enacted in the form I have above set out and made applicable to the year 1947. As I have already stated, P.C. 331 was not further amended or annulled and remained in effect for the year 1947. Mr. Mundell submits, therefore, that notwithstanding that the 1947 para. (*w*) was repealed, the regulations passed while it was unrepealed must be construed with reference to it in that form.

In my opinion that is the wrong approach to the question. The 1947 version of para. (*w*) never came into operation so far as the 1947 taxation year was concerned and I do not think it need be considered. It is to be noted, also, that P.C. 331 was enacted shortly prior to and in anticipation of the proposed revision of para. (*w*). The matter is governed, I think, by the provisions of the Interpretation Act, R.S.C. 1927, c. 1, s. 20 (*a*), which was as follows:

20. Whenever any Act or enactment is repealed, and other provisions are substituted by way of amendment, revision or consolidation,

(*a*) all regulations, orders, ordinances, rules and by-laws made under the repealed Act or enactment shall continue good and valid, in so far as they are not inconsistent with the substituted Act or enactment, until they are annulled and others made in their stead.

P.C. 331 as amended continued, therefore, to be good and valid following the 1948 enactment of para. (*w*) insofar as it was not inconsistent therewith. To ascertain whether there is any inconsistency, it becomes necessary to ascertain the meaning of para. (*w*).

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Mr. Mundell's submission is that "taxes on income from logging operations" means taxes levied specifically on logging operations as such and does not include taxes levied under a general corporations income tax on corporations whose business is wholly or in part "logging operations." He says that the deductibility is not to be determined by the nature of the business operations but by a tax which is levied only on a logging operation. He admits that if such a tax were levied, a taxpayer whose business was solely that of logging operations would be entitled to the full deduction of the provincial or municipal tax under section 1 of P.C. 331; but says that a taxpayer such as a pulp and paper manufacturer could deduct nothing for the tax so paid unless that tax was levied solely on its income from logging operations. It is shown that no specific tax on logging operations as such was enacted in Ontario until some years after 1947.

In support of his contention, Mr. Mundell refers to three clauses of the preamble to P.C. 331 as follows:

> AND WHEREAS, at the present session of Parliament, an amendment will be proposed to Paragraph (*w*) of Subsection (1) of Section 5 of the Income War Tax Act to provide therein for the deduction from income of amounts paid in respect of taxes imposed on the income, or any part thereof, by any municipality authorized by a province by way of tax on income derived from mining or logging operations;
>
> AND WHEREAS Paragraph (*w*) of Subsection (1) of Section 5, as proposed to be amended, will implement the undertaking of the Dominion of Canada contained in Clause 8 of the Dominion-Provincial Agreements relative to taxes on income derived from mining or logging operations;
>
> AND WHEREAS it is desirable that the applicable provisions and definitions of the Dominion-Provincial Agreements shall be included in any regulation governing the deduction from income of amounts paid in respect of such taxes;

Further, he submitted that in order to ascertain the full import of P.C. 331, the Court should examine the Dominion-Provincial Agreements themselves and he tendered them in evidence. It is said that an examination of these Agreements will support the contention of the respondent that para. (*w*) was amended in 1948 in pursuance of the Dominion-Provincial Agreements, and that by those Agreements, the contracting provinces and their municipalities could levy only a tax specifically directed to mining and logging operations. It may be noted that the provinces of

Ontario and Quebec were not parties to these Agreements. Objection being raised as to their admissibility, I heard argument thereon and reserved my finding.

The principle of the right of a taxpayer who is engaged in logging operations to claim a deduction for provincial and municipal taxes in respect thereof, and where he is engaged in an integrated business such as the appellant, to apportion his income as between logging and other operations, is so clearly set forth in the enacting portions of P.C. 331 that I find no necessity whatever to refer to the preamble or the Agreements therein referred to in explanation thereof. If the language of an enactment is clear, the preamble must be disregarded. In *Powell* v. *Kempton Park Race Course Co.* (1) the rule was thus stated by the Earl of Halsbury:

> Two propositions are quite clear, one that a preamble may afford useful light as to what a statute intends to reach, and the other that if an enactment is itself clear and unambiguous, no preamble can qualify or cut down the enactment.

On that ground, therefore, I must find that the Dominion-Provincial Agreements are inadmissable as evidence. I might add also that I do not think that the provisions of an agreement between Canada and some of the provinces could be used to limit or vary the provisions of a general enactment, applicable to the whole of Canada.

Disregarding for the moment the definition contained in P.C. 331, section 3, what meaning is to be attributed to "taxes on income from logging operations?" I put that question because of Mr. Mundell's contention that to the extent that the definition in P.C. 331 allowed a deduction of the tax not specifically imposed on income from logging operations, the Governor in Council in enacting P.C. 331 exceeded the powers conferred by para. (*w*).

Let me assume a case in which a corporation in Ontario engaged only in logging operations paid a tax under the Ontario Corporations Tax Act, 1939, on its income therefrom in 1947. Would that not have been "taxes on income from logging operations?" For the reasons I have stated above, the respondent says it would not, but I cannot agree. In my opinion, the tax so paid would fall squarely within the section. If Parliament had intended to limit the

(1) (1899) A.C. 143 at 157.

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deduction in the way suggested by the respondent, it would have used clear words to express that intention, such as "taxes levied specifically on income from logging operations." It is not improbable that as the amended para. (*w*) was to have application throughout Canada, the intention was to confer the same right on taxpayers who resided in the non-agreeing provinces as were conferred on the others by the Dominion-Provincial Agreements, and thereby avoid discrimination.

It is not contended by the respondent that a taxpayer whose integrated business included "logging operations" is in any different position under para. (*w*) than one whose business is solely that of logging. In view, therefore, of the finding I have just made, I do not need to pursue further the right of the appellant under para. (*w*) to apportion its tax as between logging and other operations. I find that there is no inconsistency between the provisions of P.C. 331 as amended and the final version of para. (*w*). I find also that the appellant in 1947 did conduct logging operations. P.C. 331 therefore remained in full effect throughout 1947 and the appellant is entitled to have his rights determined thereunder.

If there were any doubt as to the appellant's right to apportionment of its tax paid to the province, as between logging and other operations, it is completely removed by the provisions of P.C. 331 which was clearly designed to include such a case as the present one. If the Governor-in-Council had intended to limit the right in a manner proposed by the respondent, it would have been necessary only to say that the taxes so paid would be allowed in full. But provision is made in section 1 for an apportionment on the basis of the proportion existing between income from logging operations (as defined by s. 3) and the total income in respect of which the taxes were paid. Then section 3 defines "income derived from logging operations," and by section 3(*a*) (ii) provides a method for the ascertainment of "logging income" in the case of an integrated operation, not only where the taxpayer processes its own logs but also where it buys other logs and processes them. It therefore is unnecessary to refer at any length to the cases cited which indicate that the principle of apportionment of income over the various operations of an integrated business is well established. Reference, how-

ever, may be made to *Commissioners of Taxation* v. *Kirk* (1); *International Harvester Co. of Canada Ltd.* v. *Provincial Tax Commissioners* (2); and to *Provincial Treasurer of Manitoba* v. *Wm. Wrigley Jr. Co. Ltd.* (3).

The respondent submits that even if the appellant be entitled to a deduction of a portion of the tax, it has not brought itself within the provisions of P.C. 331. By section 1 thereof, the appellant is entitled to deduct an amount not exceeding the proportion of the total taxes paid to the Province of Ontario which the part of its income that is equal to the amount of its income derived by it from logging operations (as defined in section 3) is of the total income in respect of which the taxes therein mentioned were so paid. It is established that the tax paid to the province (although the assessment at the time of the trial was not finalized) was $406,501.29, and that the total income in respect of which that tax was so paid was $5,806,653.01. The appellant's income from its logging operations is to be determined under section 3(*a*) (ii) (*supra*). It is therefore the net profit or gain reasonably deemed to have been derived by it from the operations set out in para. A and B, and computed in accordance with sound accounting principles with reference to the value of the logs at the time of such delivery, excluding any amount added thereto by reason of processing or manufacturing the logs.

As the appellant sold no logs as such, it made no profit from the sale of logs. It is submitted that it is necessary to establish a notional profit which on sound accounting principles might be reasonably deemed to have been derived therefrom. The basis proposed by the appellant is that of cost-ratio, namely, by apportioning its profit as between logging operations and other operations (manufacturing and selling) in the same proportion as the cost thereof, which were said to be respectively $7,216,162 and $15,566,208, the logging cost, therefore, being 46·36 per cent of the total. Its claim, therefore, is to deduct 46·36 per cent of the total tax paid to the Province of Ontario of $406,501.29—or $188,454.

This method of apportionment—and for the moment I am not referring to the figures included in the method—is said to be in accordance with sound accounting principles

(1) (1900) A.C. 588. (2) (1949) A.C. 36.
(3) (1950) A.C. 1.

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and to be a method properly used to ascertain the profit or gain reasonably deemed to have been derived from logging operations. Evidence to that effect was given by Mr. A. J. Little, a partner in the accounting firm of Clarkson, Gordon & Co., and who personally had charge of the audit of the appellant's books. That evidence was not challenged in any way. It is also supported by the evidence of Mr. R. F. Burns, a chartered accountant and a partner in the firm of McDonald, Currie & Co., and who gave evidence in another case which by consent was heard at the same time as this appeal.

The respondent contends, however, that such a computation is not in accordance with the Order in Council. He points out that the computation must not only be on sound accounting principles, but must be made "with reference to the value of the logs at the time of such delivery." In his opinion, that "value" means the market value, namely, the amount which the appellant would have received had it sold the logs at the time they were received at the mill, instead of processing them. In that way, he says, the income attributable to the logging operations would have been on precisely the same basis as that of a taxpayer whose operations were limited to logging. By that method, it is said, the profit, if any, on the logging operations could be precisely determined, presumably by deducting costs from the market value; if the market value were less than the costs, there would be no profit on that part of the operations and any profit eventually arising on the total operation would be attributable to manufacturing and sale. I might state here that the evidence is conclusive that the woods and logging operations of the appellant were carried out with maximum efficiency, and that the total costs thereof are shown to be much below the average in the industry.

Now the section does not refer to "market value" but to value of the logs at the time of such delivery . . . to the pulp or paper plant, etc. It seems to me that the regulation was drafted with full knowledge that there is, in fact, no market—and therefore no market value—for pulp wood at the time of its delivery to the mill where it is to be processed. That fact was established to my satisfaction at the trial. Paper mills are of necessity located in or near the area in which their extensive timber limits are located

and when the pulp wood is brought long distances by river, train or truck to the mill, it is brought there not for the purpose of re-sale but to manufacture it into sulphite pulp or paper. It is true in some cases—as in the other case now before me—that a company in the course of cutting its own pulp wood may also cut and sell other types of wood which it does not require for its mill. But those logs are not brought to the mill for manufacturing or processing. Moreover, I do not think that the purchases of logs made by the appellant from settlers throughout the district is of any help in establishing market value at the time of its delivery to the mill. The evidence is all one way and establishes that there was no market for logs at the time of their delivery to the mill.

It is my opinion that too much emphasis should not be placed on the single word "value" in the final part of section 3(*a*) (ii), which I shall repeat.

computed in accordance with sound accounting principles with reference to the value of the logs at the time of such delivery, excluding any amount added thereto by reason of processing or manufacturing the logs;

The main purpose of that phrase is that the portion of the income which in an integrated operation is to be considered as "income from logging operations," is to be ascertained at a given point in the integrated operation, namely, when logs are delivered at the mill, and to exclude any value which might have been added by the processing or manufacturing of the logs thereafter. The "value" of the logs at that point is a clearly notional one and not capable of being precisely ascertained. I think the Order in Council was drawn with full knowledge of that fact and that therefore provision is made that the proportion of the net income which is to be apportioned to logging is that which on sound accounting principles may reasonably be deemed to have arisen at that point.

It is for that reason that the accountants, lacking any market value for logs delivered at the mill, have found it necessary to depart from the practice which they would have followed had such a yardstick been available. In doing so, they have adopted allocation of profit on a cost-ratio basis and they are in agreement that that is in accordance with sound accounting principles, under the circumstances, and that it accurately represents the proper ratio existing between the value at the time of delivery to the

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mill and the total value at the time of the sale of the finished product. No alternative scheme was suggested by the respondent and I am satisfied on the evidence of the accountants that it is the only one which under the circumstances would be fair and reasonable and of assistance in arriving at the allowance which P.C. 331 so clearly contemplates.

Mr. Little considered various methods of computing the apportionment of income on a cost-ratio basis and also on a capital-employed return basis and filed Ex. 5 to indicate the results of these various methods. The latter method he rejected after pointing out that by one computation the logging costs could be considered as representing 35·21 per cent of the total, and by another equally valid on accounting principles they would represent 67·08 per cent of the total.

He pointed out that there were four possible methods of making the computations on a cost-ratio basis, the results depending on whether the indirect costs of general administration, selling and miscellaneous items (totalling $590,108.39) and certain other items of overhead were excluded or included entirely, or whether they were apportioned in part between logging and other operations and the manner of such apportionment.

Basis 2 of Ex. 5 is that claimed by the appellant, and Mr. Little stated that it was computed on sound accounting principles. In that basis the actual direct logging costs are $7,216,162 and in that figure no amount is included for general administrative, selling or miscellaneous items totalling $590,108.39, all of which are added to the total direct costs which thereby aggregate $15,566,208. On that basis the direct logging costs are 46·36 per cent of the total cost so computed, and that is the basis on which the claim of the appellant is put forward. In that computation the company has not included on either side such costs as interest payments, payment to the retirement trust funds, loss on townsite operations, and the like.

Mr. Little personally preferred the computation as shown in Basis 4 of Ex. 5. By that method he would have apportioned certain general expenses between the direct logging costs and the direct total costs, in which case the former would have been 47·58 per cent of the latter—a percentage in excess of that claimed by the appellant.

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I find, therefore, that the apportionment proposed by the appellant is established by the evidence to have been made on sound accounting principles and otherwise to be within the provisions of P.C. 331. I might add here that in computing direct logging costs, nothing has been included for "barking" the logs.

One further objection of the respondent should be noted. The direct logging costs as computed by the appellant and its accountant are not in one small respect precisely the actual costs incurred in 1947. The figure $7,216,162 given as "logging costs" is—as stated by Mr. Little—a composite figure representing that portion of the current year's expenditures and the previous year's expenditures applicable to the wood delivered into the mill during the twelve months of 1947. By that he means that some of the logs which were cut or purchased in 1946 would not be delivered to the mill until 1947, and some of those cut or purchased in 1947 might not reach the mill until 1948. The respondent contended, therefore, that the costs computed in that manner are incorrect, and do not accurately reflect the 1947 costs. In the industry, logging and milling operations are practically continuous throughout the year. At any given time there are large quantities of logs cut and lying in the bush, others are being moved to the mill and still others are in the stockpile at the mill, and costs are incurred at every stage. From a practical point of view, it would be an impossible task—and I think a useless one—to endeavour to apportion each item of costs, such as cutting and transportation, to the precise year in which the cost was actually incurred. The only method that could reasonably be followed is that adopted by the appellant and is to relate such costs to the cost of the logs actually put through the mill in 1947, and which alone resulted in the income subject to taxation. I accept the evidence of Mr. Little that that method is in accordance with sound accounting principles.

The appellant is entitled to succeed and the appeal will be allowed. The appeal is under the Excess Profits Tax Act only and I must therefore confine my decision to the provisions of that Act.

There is no dispute between the parties as to the net taxable income of the appellant if its claim is allowed. The notice of assessment dated March 10, 1950, and which

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makes certain other adjustments to the amended return of the appellant dated September 10, 1948, is accepted by both parties except on the one point which has now been determined; it fixes the net taxable income at $7,018,113.30. From that amount there should now be deducted $188,454, plus 46·36 per cent of such further amount, if any, as may be paid by the appellant to the Province of Ontario in respect of the taxation year 1947 under the Ontario Corporations Tax Act, 1939, as and when it has paid the final assessment thereunder.

There will therefore be a declaration that under the provisions of section 5(1) (*w*) of the Income War Tax Act, as it was in effect in the taxation year 1947, and under the provisions of the regulations established by P.C. 331 as amended, the appellant in computing its taxable income under the provisions of the Excess Profits Tax Act of the year 1947, is entitled to deduct therefrom 46·36 per cent of taxes paid (and payable) by it to the Province of Ontario under the provisions of the Corporations Tax Act, 1939 as amended, for the taxation year 1947; that in respect of the sum of $406,501.29 already paid by the appellant to the Province of Ontario thereunder, the appellant is entitled to deduct the sum of $188,454. The appellant is also entitled to a deduction of 46·36 per cent of any additional amount paid or to be paid by it to the Province of Ontario thereunder upon producing to the respondent satisfactory receipts evidencing such additional payment. In view of these findings, I do not think it necessary or advisable to state the amount of the appellant's net taxable income or its excess profits which are assessable to tax, as asked for in the Claims (*d*) and (*e*) of the prayer in the statement of claim. Such amounts can be readily ascertained and agreed upon as soon as the total liability of the appellant to the Province of Ontario has been finally ascertained.

The appeal is therefore allowed, the assessment dated March 10, 1950, is set aside to the extent I have indicated, and the matter is referred back to the Minister to re-assess the appellant in accordance with my findings.

The appellant will be entitled to its costs.

Judgment accordingly.