TIME MOTORS LIMITED .....APPELLANT;

AND

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

1969

*Feb. 19
March 4

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Taxation—Income tax—Deductions—Car dealer issuing credit notes—Notes redeemable on later purchase of car before specified date—Whether unredeemed notes current liabilities or contingent account—Accounting principles—Income Tax Act, R.S.C. 1952, c. 148, s. 12(1)(a), (e).

The appellant company was a used car dealer and sometimes gave credit notes in partial payment of used cars acquired by it. These notes were not transferable and could be applied by the holder within a stated

* PRESENT: Fauteux, Abbott, Judson, Spence and Pigeon JJ.

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time to the purchase of a car of not less than a specified value. In the appellant's accounts, credit notes outstanding were treated as current liabilities. If they were not redeemed, the amount at expiration was removed from accounts payable and treated as a profit. The Minister took the view that the outstanding credit notes were not existing liabilities and should be disallowed under s. 12(1)(*e*) of the *Income Tax Act* as being contingent. The Tax Appeal Board set aside the Minister's assessment, but this judgment was reversed by the Exchequer Court. The taxpayer appealed to this Court.

Held: The appeal should be allowed.

It was not possible to uphold the Minister's contention that the issuance of a credit note did not create any contract or agreement giving rise to any liability or obligation because, in particular, there was no agreement as to the price or the model of the car which could be purchased by the customer on presenting the credit note. The note could not be considered apart from the transaction out of which it arose. It was part of the consideration for an executed contract, the purchase of a used car. It could not be considered otherwise than as evidence of the conditions of the appellant's obligation to pay the balance of the purchase price. The customer had an enforceable obligation for that balance. Even if the notes were to be considered by themselves they could not be considered as unenforceable for indefiniteness.

The wording of s. 12(1)(*e*) of the Act clearly refers to accounting practice. This provision is to be construed by reference to proper accounting practice in a business of the kind with which one is concerned. The evidence showed that in the appellant's accounts credit notes were treated according to standard practice as current liabilities until they were redeemed or expired.

Revenu—Impôt sur le revenu—Déductions—Commerçant d'automobiles délivrant des notes de crédit—Notes rachetables sur achat subséquent d'une automobile avant une certaine date—Les notes non rachetées sont-elles des exigibilités ou des comptes de prévoyance—Principes de comptabilité—Loi de l'impôt sur le revenu, S.R.C. 1952, c. 148, art. 12(1)(a), (e).

La compagnie appelante faisait le commerce d'automobiles usagées et, en paiement partiel d'automobiles usagées qu'elle acquérait, donnait parfois des notes de crédit. Ces notes n'étaient pas cessibles et pouvaient être affectées par le détenteur à l'achat d'une automobile d'une valeur non moindre qu'un montant spécifié. Dans ses livres, l'appelante a inscrit les notes dues comme étant des exigibilités. Si elles n'étaient pas rachetées, le montant, à leur expiration, était retranché des comptes payables et traité comme un profit. D'après le Ministre, les notes de crédit dues n'étaient pas des dettes existantes et leur déduction n'était pas permise en vertu de l'art. 12(1)(*e*) de la *Loi de l'impôt sur le revenu* comme comptes de prévoyance. La Commission d'appel de l'impôt a mis de côté la cotisation du Ministre, mais ce jugement a été infirmé par la Cour de l'Échiquier. Le contribuable en appela à cette Cour.

Arrêt: L'appel doit être accueilli.

Il n'est pas possible de faire droit à la prétention du Ministre que la délivrance d'une note de crédit ne créait pas un contrat ou une convention engendrant une dette ou une obligation parce que, entre autres, il n'y avait aucune entente concernant le prix ou le modèle de l'automobile qui pouvait être achetée par le client sur présentation de la note de crédit. On ne peut pas considérer la note indépendamment de la transaction dont elle émane. Elle fait partie de la considération d'un contrat exécuté, l'achat d'une automobile usagée. On ne peut pas la considérer autrement que comme une preuve des conditions de l'obligation de l'appelante de payer le solde du prix d'achat. Le client avait une créance valable pour ce solde. Même si l'on considère les notes en elles-mêmes, on ne peut pas les déclarer invalides pour cause d'indétermination.

Le texte de l'art. 12(1)(*e*) de la Loi réfère clairement aux principes de comptabilité. Cette disposition doit être interprétée en se rapportant à la pratique de comptabilité appropriée au genre d'affaire en question. La preuve établit que l'appelante a inscrit les notes de crédit dans ses livres selon la pratique normale comme des exigibilités jusqu'à ce qu'elles soient rachetées ou expirées.

APPEL d'un jugement du Juge Gibson de la Cour de l'Échiquier du Canada[1], en matière d'impôt sur le revenu. Appel accueilli.

APPEAL from a judgment of Gibson J. of the Exchequer Court of Canada[1], in an income tax matter. Appeal allowed.

John Hopwood, for the appellant.

G. W. Ainslie, Q.C., for the respondent.

The judgment of the Court was delivered by

PIGEON J.:—Appellant is a used car dealer also selling new cars to a limited extent. Credit notes are sometimes given in partial payment of used cars acquired for resale. In such case, the cash payment and the amount of the credit note are stated in the bill of sale. The note is signed by both parties and the conditions are set forth on its face. These are that:

1. It is not transferable;
2. It is valid only within a stated delay, usually between one and two years;
3. It is good only for the purchase of a car of not less than a stated value.

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[1] [1968] C.T.C. 131, 68 D.T.C. 5081.

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Sometimes the credit note would be good for the purchase of a new car but generally it was good for the purchase of any used car owned by the appellant of not less than a specified value. The price of the cars offered for sale was posted but, of course, bargaining was not excluded. In appellant's accounts credit notes outstanding were treated as current liabilities. If they were not redeemed, the amount at expiration was removed from accounts payable and treated as a profit.

In 1965, the Minister took the view that the outstanding credit notes were not existing liabilities and should be disallowed for tax purposes as being contingent. On that basis, reassessments were issued whereby additional tax was levied for appellant's 1961, 1962 and 1963 taxation years disallowing $4,415, $9,870 and $1,615 in those years respectively. By judgment dated December 23, 1966, signed by Maurice Boisvert, the Tax Appeal Board allowed the taxpayer's appeal. This judgment was reversed by Gibson J. on further appeal to the Exchequer Court[1] (March 13, 1968).

On the appeal to this Court, counsel for the Minister contended that when appellant issued each credit note there was not, in fact, created any contract or agreement which would give rise to any liability or obligation because, in particular, there was no agreement as to the price or the model of car which could be purchased by the customer upon presentment of the credit note. This contention cannot be upheld. The credit note should not be considered apart from the transaction out of which it arises. It is part of the consideration for an executed contract, the purchase of a used car. Under that contract, appellant became obliged to pay a stated sum of money, a part only of that sum was paid in cash, the balance remaining due was stipulated payable in merchandise of a stated kind. While the contract is spelled out in two separate documents, the bill of sale and the credit note, the latter cannot be considered otherwise than as evidence of the conditions of the obligation to pay the balance of the purchase price. That obligation must be considered as subsisting until satisfied or expired. No special reason was advanced, no authority was cited to support the contention that the credit note should be considered otherwise.

[1] [1968] C.T.C. 131, 68 D.T.C. 5081.

The fact that the merchandise to be obtained by virtue of a credit note was not specified does not mean that appellant's customer had no enforceable obligation for the balance due. He could select any of the cars offered for sale coming within the general description in his credit note and require delivery by tendering the note and cash to make up the posted price. Appellant could not have evaded this obligation by posting inflated prices. This would have been a fraud against which the credit note holder would have been entitled to a remedy.

Even if the credit notes were to be considered by themselves they could not be considered as unenforceable for indefiniteness. It should be noted that Viscount Dunedin's dictum in *May & Butcher v. The King*[2] (Feb. 22, 1929):

> To be a good contract there must be a concluded bargain, and a concluded contract is one which settles everything that is necessary to be settled and leaves nothing to be settled by agreement between the parties.

was explained in a *later* decision of the House of Lords, *Hillas & Co. v. Arcos Ltd.*[3]. Reversing a judgment of the Court of Appeal based on it Lord Wright said (at pp. 507-508):

> When the learned lord justice speaks of essential terms not being precisely determined, i.e. by express terms of the contract, he is, I venture with respect to think, wrong in deducing as a matter of law that they must, therefore, be determined by a subsequent contract; he is ignoring, as it seems to me, the legal implication in contracts of what is reasonable, which runs throughout the whole of modern English law in relation to business contracts. To take only one instance, in *Hoadly v. McLaine,* Tindal C.J. (after quoting older authority), said (10 Bing. at p. 487):
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> 'What is implied by law is as strong to bind the parties as if it were under their hand. This is a contract in which the parties are silent as to price, and therefore leave it to the law to ascertain what the commodity contracted for is reasonably worth.'

That decision was relied on by Estey J. in *Dawson v. Helicopter Exploration Co. Ltd*[4].

Respondent's second contention is that because appellant's obligation was conditional it should not, until the condition was realized, be treated for purposes of income tax as a current liability but as an amount properly to be

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[2] [1934] 2 K.B. 17, 103 L.J.K.B. 556.
[3] [1932] All E.R. 494.
[4] [1955] S.C.R. 868 at 878, [1955] 5 D.L.R. 404.

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entered in a contingent account. As a result, the deduction would be prohibited by s. 12(1)(*e*) of the *Income Tax Act*:

> 12(1) In computing income, no deduction shall be made in respect of
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> * * *
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> (*e*) an amount transferred or credited to a reserve, contingent account or sinking fund except as expressly permitted by this Part,

The wording of that provision clearly refers to accounting practice. The only expression applicable to the present case is not "contingent liability" but "contingent account". This means that the provision is to be construed by reference to proper accounting practice in a business of the kind with which one is concerned. In the present case, the only evidence of accounting practice is that of appellant's auditor, a chartered accountant. His testimony shows that in appellant's accounts credit notes are treated according to standard practice as current liabilities until they are redeemed or expired. They are not classed as contingent liabilities. When asked why he considered the obligation under a credit note as current liability and the obligation under a warranty as contingent, he said:

> . . . the credit note, while it is a liability, is also an existing obligation today. A warranty may be a liability in the future. It may be determinable in the future but isn't an existing obligation until the future. At least, this is my interpretation of the difference.

With respect, Gibson J. was in error in holding that whether or not appellant's financial statements were drawn up according to generally accepted accounting principles could be disregarded. On the contrary, the wording of the relevant provision of the *Income Tax Act* implies that this is the essential question.

The appeal should be allowed and the judgment of the Exchequer Court set aside, with costs both in this Court and in the Court below; and it should be ordered that the reassessments of the taxation years 1961, 1962 and 1963 be referred back to the Minister of National Revenue for reassessments and adjustments in accordance with these reasons.

Appeal allowed with costs.

Solicitors for the appellant: Hopwood & Molyneux, Calgary.

Solicitor for the respondent: D. S. Maxwell, Ottawa.