
MIRON AND FRÈRES LIMITEDAPPELLANT;

AND

THE MINISTER OF NATIONAL }
REVENUE} RESPONDENT.

1955

*Mar. 7

*Jun. 28

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Revenue—Income tax—Whether transaction between shareholder and company was at arm's length—Onus—Income Tax Act, S. of C. 1948, c. 52, ss. 20(2), 127(5).

The appellant acquired a farm from one of its shareholders at a price far exceeding the original cost to the vendor. The appellant claimed a capital cost allowance based on the price paid. All the issued shares of the appellant, minus three, were owned by the vendor and his five brothers, with more than one-half of the shares being owned by the vendor and any three of his brothers. Considering that the purchase by the appellant was not a transaction "at arm's length" but was one between a corporation and one of several persons by whom the corporation was controlled, the Minister rejected the claim and based the allowance on the original cost to the vendor. The appeals to the Income Tax Appeal Board and to the Exchequer Court respectively were dismissed.

Held: The appeal should be dismissed. Under s-s. (5) of s. 127 of the *Income Tax Act, 1948, c. 52*, the appellant and the vendor were deemed not to have dealt with each other at arm's length.

Per Kerwin C.J. and Fauteux J.: Since the appellant was controlled by the vendor and three of his brothers, the vendor was one of several persons by whom the appellant was directly or indirectly controlled.

*PRESENT: Kerwin C.J. and Taschereau, Kellock, Fauteux and Abbott JJ.

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Per Taschereau, Kellock and Abbott JJ.: The appellant failed to show error in respect of the Minister's conclusion that the transaction was not one between persons dealing at arm's length.

APPEAL from the judgment of the Exchequer Court of Canada (1), Fournier J., dismissing the appellant's appeal from the Income Tax Appeal Board which in turn had dismissed his appeal from the Minister's assessment.

A. Laurendeau, Q.C. for the appellant.

D. H. W. Henry and *R. G. Décary* for the respondent.

The judgment of the Chief Justice and of Fauteux J. was delivered by:—

THE CHIEF JUSTICE:—I am unable to agree that this case is governed by the decision of this Court in *Johnston v. Minister of National Revenue* (2). Here there was an appeal to the Income Tax Appeal Board, and, before the Board counsel for the appellant outlined facts to which counsel for the respondent agreed. As stated in the reasons for judgment in the Exchequer Court (1), when the appeal to it came on for hearing, "the facts not being disputed, no verbal evidence was heard". It appears to me that upon the statement of facts in the Notice of Appeal to the Exchequer Court and the reply to that notice both parties considered that all the evidence that had any bearing upon the matter appeared in what was agreed upon. The parties having gone to trial under those circumstances it must be assumed that there are no other facts upon which the appellant relies, but it is entitled to a decision as to whether upon those admitted facts the purchase by it from one of its shareholders was a transaction "between persons not dealing at arm's length" within s-s. (2) of s. 20 of *The Income Tax Act*, as enacted in 1949.

In that connection it is necessary to refer to s-s. (5) of s. 127 of the Act by which

5. For the purposes of this Act,

(a) a corporation and a person or one of several persons by whom it is directly or indirectly controlled

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shall, without extending the meaning of the expression "to deal with each other at arm's length" be deemed not to deal with each other at arm's length.

(1) [1954] Ex. C.R. 100;
 C.T.C. 45; 54 DTC 1022.

(2) [1948] S.C.R. 486.

This and the other provisions of this sub-section are not exhaustive of the meaning to be attached to the expression "persons not dealing at arm's length" in s-s. (2) of s. 20, but it is sufficient for the disposition of this appeal to refer to s-s. 5 (a) as set forth above.

Gérard Miron and any three of his brothers owned more than one-half of all the common (voting) shares of the appellant (at least 650 shares) and consequently the appellant was controlled by Gérard Miron and any three of his brothers. Gérard Miron and his five brothers owned 997 common (voting) shares out of the 1,000 common (voting) shares of the capital stock of the appellant. Gérard Miron was, therefore, one of several persons by whom the appellant was directly or indirectly controlled.

The appeal should be dismissed with costs.

The judgment of Taschereau, Kellock and Abbott JJ. was delivered by:—

KELLOCK J.:—The appellant, having acquired from one of its shareholders in June, 1949, for a consideration of \$600,000, a farm which the said shareholder had in the latter part of 1948 himself purchased at a price of \$90,000, claimed capital cost allowance on the basis of the price paid by it. Of a total issue of 1,000 common shares, the said shareholder held 200, another brother 200, a third brother 150, and three other brothers 149 each, and three remaining shares being held by other individuals.

The Minister, in the view that the transaction by which the property had been acquired by the appellant had taken place "between persons not dealing at arm's length" within the meaning of s. 20, s-s. (2) of the statute, rejected the claim and made the allowance on the basis of the cost to the shareholder, in conformity with paragraph (a) of the said subsection.

Both in his reply to the notice of appeal to the Tax Appeal Board and in his reply to the notice of appeal to the Exchequer Court (1), the Minister stated that he relied upon the provisions of s. 127, s-s. (5), particularly upon that part of paragraph (a) of the said subsection which provides that for the purposes of the statute, a corporation and one of several persons by whom it is "directly or

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indirectly controlled" shall, without extending the meaning of the expression "to deal with each other at arm's length", be deemed not to deal with each other at arm's length.

Notwithstanding that an assessment is, by virtue of s. 42(6) deemed to be valid and binding, subject to appeal, the appellant saw fit to adduce no evidence with respect to the shares or the subject matter of control apart from the share-holdings as above set out. It is now argued on behalf of the appellant that it was for the respondent to support his decision by such evidence relative to control of the shares so held as he saw fit. In my view this is a misconception. The Minister, having concluded in the making of the assessment that the relevant transaction was not one between persons dealing at arm's length, it was for the appellant to show error on the part of the Minister in this respect; *Johnston v. Minister of National Revenue* (1). This it did not attempt to do.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Laurendeau & Laurendeau.*

Solicitor for the respondent: *R. G. Décary.*
