

THE MINISTER OF NATIONAL
REVENUE

APPELLANT;

1966
*June 7, 8
June 28

AND

BEN LECHTERRESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

*Taxation—Income tax—Expropriation of land by federal government—
Time at which profit required to be accounted for—Date of taxation
year.*

In 1952, the respondent had acquired certain lands which, at a later date, were expropriated by the federal government. The respondent, who operated a jewelry business and was engaged in extensive real estate dealings, carried out his business accounting on the accrual basis. His fiscal year ended on January 31 of each year. The taxability of the moneys received from the expropriation was not in issue before this Court. But the year in which the profit became income was disputed. The Minister contended that it was in the taxation year ending January 31, 1956, since the Treasury Board had authorized the payment in February 1955, and payment had been received in May 1955. The taxpayer contended that it was either in the taxation year ending January 31, 1954, since the notice of expropriation by virtue of which the property was deemed to be transferred was served on January 15, 1954; or, alternatively, the taxation year ending January 31, 1955, since the government's formal order of settlement was made and accepted in July 1954. The Exchequer Court annulled and set aside the Minister's reassessment. The Minister appealed to this Court, where the respondent agreed that three minor items, not specifically dealt with by the trial judge should not have been disallowed.

Held: The appeal should be allowed in part.

Assuming that ratification of the authority of the government agent to make the settlement was required, such ratification was afforded by

*PRESENT: Taschereau C.J. and Fauteux, Abbott, Martland and Spence JJ.

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the Treasury Board minute of February 1955 (which was during the taxpayer's 1956 taxation year) and, in accordance with the ordinary rules of mandate, it had retroactive effect to July 1954 (which was the date of the offer and which was during the taxpayer's 1955 taxation year). It followed that the respondent, operating on an accrual basis, was bound to treat the profit as having been earned prior to January 31, 1955, and that it was not taxable income in his taxation year ending January 31, 1956.

Revenu—Impôt sur le revenu—Expropriation de terrains par le gouvernement fédéral—Période lors de laquelle le contribuable doit rendre compte du profit—Année d'imposition.

En 1952, l'intimé avait acquis des terrains qui furent subséquemment expropriés par le gouvernement fédéral. L'intimé, qui était un bijoutier et qui s'occupait beaucoup d'achats et de ventes d'immeubles, se servait du principe de comptabilité d'exercice. Son année fiscale se terminait le 31 janvier de chaque année. Il ne fut pas contesté devant cette Cour que les argents reçus en vertu de l'expropriation étaient taxables. Mais, cependant, l'année durant laquelle le profit était devenu un revenu fut mise en doute. Le Ministre prétend que c'était durant l'année d'imposition se terminant le 31 janvier 1956, puisque le Conseil du Trésor avait autorisé le paiement en février 1955 et que ce paiement avait été reçu en mai 1955. Le contribuable prétend que l'année en question était l'année d'imposition se terminant le 31 janvier 1954, puisque l'avis d'expropriation en vertu duquel la propriété était censée avoir été transférée a été signifié le 15 janvier 1954; ou, alternativement, l'année d'imposition se terminant le 31 janvier 1955, puisque l'offre formelle de règlement de la part du gouvernement a été reçue et acceptée en juillet 1954. La Cour de l'Échiquier a annulé et mis de côté la cotisation du Ministre. Durant l'appel du Ministre devant cette Cour, l'intimé a admis que trois item mineurs, qui n'avaient pas été spécifiquement traités par le juge au procès, n'auraient pas dû avoir été désavoués.

Arrêt: L'appel doit être maintenu en partie.

Assumant qu'une ratification de l'autorité du représentant du gouvernement d'offrir un règlement était requise, une telle ratification se trouve dans les minutes du Conseil du Trésor en date de février 1955, et, en vertu des règles ordinaires du mandat, cette ratification avait un effet rétroactif à juillet 1954. Il s'ensuit que l'intimé, qui faisait affaires en vertu du principe de comptabilité d'exercice, devait traiter le profit comme ayant été obtenu avant le 31 janvier 1955, et que ce profit n'était pas un revenu taxable de l'année d'imposition se terminant le 31 janvier 1956.

APPEL d'un jugement du Juge Dumoulin de la Cour de l'Échiquier du Canada¹, mettant de côté la cotisation du Ministre. Appel maintenu en partie.

¹ [1965] 1 Ex. C.R. 413, [1964] C.T.C. 510, 64 D.T.C. 5311.

APPEAL from a judgment of Dumoulin J. of the Exchequer Court of Canada¹, setting aside the Minister's assessment. Appeal allowed in part.

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Paul Ollivier, Q.C., for the appellant.

Philip F. Vineberg, Q.C., *Norman Genser, Q.C.*, and *S. Phillips, Q.C.*, for the respondent.

The judgment of the Court was delivered by

ABBOTT J.:—This is an appeal from a judgment of Mr. Justice Dumoulin of the Exchequer Court¹ allowing the respondent's appeal from an assessment made on March 15, 1962, with respect to the 1956 taxation year of the respondent, whereby a sum of \$251,166.59 was added to the respondent's income.

The said sum of \$251,166.59 consists, for the most part, of profit alleged to have been made by the respondent on the disposition of land (including land acquired by the Crown) and is made up as follows:

Casual McCauley Realities (See T-4 1956)

casual	\$ 4,500.00
Land profits—507 Parish of St. Laurent	125,100.36
“ “ 507 Parish of St. Laurent	109,406.55
“ “ 368 Parish of St. Laurent	3,847.70
“ “ 25-27 Pointe-Claire	8,311.98
	————— \$251,166.59

The respondent operates a jewelry business in Montreal under the name “American Watch Company of Canada”. In addition to this business, he was engaged in extensive real estate dealings in 1954 and for some time prior thereto, and in March 1952 had purchased lot 507 in the Parish of St. Laurent. Respondent carried out his business accounting on the accrual basis and was operating on this basis in 1954, 1955 and subsequent years. His fiscal year, accepted by the Department of National Revenue, for the years in question, ended on January 31 of each year, so that his taxation year 1954 ended January 31, 1954, his taxation year 1955 January 31, 1955, and his taxation year 1956 January 31, 1956.

¹ [1965] 1 Ex. C.R. 413, [1964] C.T.C. 510, 64 D.T.C. 5311.

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The chronological order of events with respect to the land expropriated by the Crown and a contiguous parcel sold to the Crown under threat of expropriation, is as follows:

Abbott J. *January 7, 1954*—A notice of expropriation dated December 28, 1953, covering part of Lot 507 was deposited at the Montreal Registry Office.

January 15, 1954—An expropriation notice was served on respondent. This notice specified that the expropriation was made pursuant to the Expropriation Act and that title “vests in Her Majesty the Queen in the Right of Canada as from the date of deposit of record in the Office of the Registrar of Deeds of a plan and description of the said lands”.

July 13, 1954—A formal offer of settlement in the amount of \$318,776 was made to respondent with respect to the expropriated parcel and “that part of Lot 507 severed by reason of the expropriation”, and covered also all damages arising from the expropriation.

July 14, 1954—Respondent accepted in writing the offer of settlement contained in the letter of July 13.

May 13, 1955—Respondent received payment in accordance with the settlement.

In the Court below, respondent argued that the moneys received from the disposal of the lands in question were not taxable, but this is no longer in issue. Alternatively, he argued that, if they were taxable, assessment should not have been made for the year 1956, because:

- (a) With respect to the part expropriated, the amount attributable under this portion was taxable at the moment of the transfer of title, which took place on January 7, 1954, in the taxpayer's 1954 taxation year.
- (b) Alternatively, that compensation for all the land taken should, at the latest, be taxable at the time the amount was clearly established, which was in July, 1954, during the taxpayer's 1955 taxation year.

The amount of the payment received by respondent in May 1955 was assessed as taxable in his 1956 taxation year. At the hearing before us counsel for the Crown agreed that if it should have been assessed in an earlier year, it was immaterial for the purposes of this appeal whether that year were 1954 or 1955.

The principal issue to be determined on this appeal is whether respondent's profit of \$234,506.91 with respect to lot 507, was taxable income in his taxation year ending January 31, 1956.

The answer to this question depends primarily upon the effect of the two letters of July 13, 1954, and July 14, 1954, above referred to, and I quote them in full.

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Your file No.

Our file No. Q-1003-71-1

Canada

DEPARTMENT OF TRANSPORT

Room 222,
131 St. James S. West,
MONTREAL,
July 13, 1954.

REGISTERED

Mr. Ben Lechter,
1470 Peel Street,
MONTREAL.

Dear Sir:

Pursuant to the expropriation of January 7th 1954 affecting part of lot 507 in the Parish of St. Laurent, we are now authorized to make you a formal offer of settlement in the amount of \$318,776 in full compensation for the area expropriated, that part of lot 507 severed by reason of the expropriation and all damages arising from the said expropriation. The foregoing is all without prejudice to the rights of the Crown.

Would you kindly advise us as soon as possible of your decision with respect to this offer.

Yours truly,

(signed) J. P. Adam

J. P. Adam
District Land Agent

PL:jdb

Ben H. LECHTER

Montreal, July 14th, 1954

Registered

Department of Transport, Lands Branch,
Room 222,
131 St. James St. West,
Montreal.

Re: Your file No. Q-1003-71-1
Att'n: Mr. J. P. Adam

Dear Sirs:

In reply to your letter of the 13th instant, I wish to notify you that I accept your formal offer of settlement in the amount of Three Hundred and eighteen thousand seven hundred and seventy-six dollars (\$318,776.) in full compensation for all damages arising out of the expropriation of January 7th, 1954 affecting part of my property bearing lot No. 507 Parish of St. Laurent.

In view of the expropriation having been filed six months ago, I would appreciate payment within the next sixty days.

Very truly yours,

(signed) Ben H. Lechter.

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On February 11, 1955, payment to respondent of the sum of \$318,776 above referred to, was authorized by a Treasury Board Minute, and the amount appears to have been actually paid in May 1955, when notarial deeds of sale and release were executed.

Appellant's contention is that no taking of land and no agreement of sale is valid until the approval of Treasury Board has been obtained—in this case February 11, 1955—and that in consequence the amount in question only became an account receivable by respondent on that date.

Mr. J. P. Adam, who signed the letter of July 13, 1954, was District Land Agent of the Department of Transport at Montreal. There is no suggestion that he was acting in bad faith or that he was not authorized by his Departmental superiors to write the letter which he did. By his letter of July 14, 1954, respondent accepted the offer contained in the letter of July 13, and he was bound by that acceptance. In fact, settlement was eventually made in the precise amount specified in the two letters and Adam himself signed the notarial deeds of sale and release acting under a power of attorney from the then Minister of Transport.

Appropriate Treasury Board authority was necessary to make the payment agreed upon and this was forthcoming in due course. Assuming that ratification of the authority of Adam to make the settlement was required, such ratification was afforded by the Treasury Board Minute of February 11, 1955, and, in accordance with the ordinary rules of mandate, it had retroactive effect to July 13, 1954—See Mignault, *Droit Civil canadien*, vol. 8 at p. 58.

It follows, that respondent, operating on an accrual basis, was bound to treat the profit of \$234,506.91 on the disposition of part of lot 507, as having been earned prior to January 31, 1955, and that it was not taxable income in his taxation year ending January 31, 1956.

One minor point remains. The Minister's assessment of March 15, 1962, in addition to the two items relating to lot 507, included as income of respondent three amounts of \$4,500, \$3,847.70 and \$8,311.98 relating to other properties. No evidence was adduced at the trial with respect to these three items, and they are not dealt with in the judgment below but the assessment was vacated *in toto*. Counsel for

respondent agreed that in the circumstances these three items should not have been disallowed, and that to this extent the appeal should succeed.

The appeal is therefore allowed in part, the judgment below varied and the assessment appealed from referred back to the Minister for reconsideration and reassessment on the basis that the sums of \$125,100.36 and \$109,406.55, being the profit realized by respondent as a result of the sale and expropriation of a part of lot 507 in the Parish of St. Laurent, did not constitute income in the hands of respondent for his taxation year 1956.

The respondent is entitled to his costs in this Court.

Appeal allowed in part, costs to the respondent.

Solicitor for the appellant: E. S. MacLatchy, Ottawa.

Solicitors for the respondent: Genser, Friedman, Phillips & Friedman, Montreal.

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