1962

*Feb. 14
Apr. 24

WESTERN MINERALS LTD. .....APPELLANT;

AND

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

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Taxation—Notice of assessment showing income tax at figure disclosed in taxpayer's return—Further examination and subsequent re-assessment—Interest on unpaid tax—Whether initial notice was "the notice of the original assessment for the taxation year"—The Income Tax Act, 1947-48 (Can.), c. 52, ss. 42, 50(6) (Income Tax Act, R.S.C. 1952, c. 148, ss. 46, 54(6).

The appellant's 1952 income tax return, filed June 30, 1953, showed income tax payable in the amount of $240,342.24, which was paid. On July 22, 1953, the respondent mailed a notice of assessment to the appellant, showing its income tax at the figure which had been disclosed in the return. Subsequently, on December 21, 1956, the respondent mailed a

*PRESENT: Locke, Fauteux, Martland, Judson and Ritchie JJ.

notice of re-assessment to the appellant, showing its income tax to be $324,286.36. There were two subsequent notices of re-assessment, on February 13, 1957, and on July 10 of the same year, reducing the appellant's income tax to $308,571.81. The appellant was charged, for that portion of its income tax which was not paid until 1957, interest in the amount of $17,123.57, of which sum $10,488.25 was interest for the period from June 30, 1954, to January 21, 1957.

The appellant contended that the notice mailed on July 22, 1953, was a nullity because, before it was mailed and at the time it was mailed, it had been decided by the officers and employees of the Department of National Revenue to conduct a further examination of the appellant's return. Until that intention had been carried out, there had not been an examination of the return, within s. 42(1) of *The Income Tax Act*, and there was, therefore, no assessment made pursuant to that subsection. If the notice of July 22, 1953, was a nullity, the notice of original assessment would then be that of December 21, 1956, and, accordingly, the appellant, by virtue of s. 50(6), would not be liable for payment of interest for the period from June 30, 1954, being the date twelve months after the date fixed for filing the appellant's return, to January 21, 1957, being the date thirty days after the mailing of the notice of December 21, 1956. Having lost its appeal in the Exchequer Court, the appellant appealed to this Court.

Held: The appeal should be dismissed.

The Minister had full authority, under s. 42 of the Act, to assess tax on the basis of the appellant's return and thereafter, if he so decided, to re-assess on the basis of a further examination of that return. The time at which he decided to make that further examination did not, in any way, affect the validity of the initial assessment which he had made and consequently the notice of that initial assessment constituted "the notice of the original assessment for the taxation year" within the meaning of s. 50(6). *Provincial Paper, Ltd. v. M.N.R.*, [1955] Ex. C.R. 33; *Western Leaseholds Ltd. v. M.N.R.*, [1958] Ex. C.R. 277, applied.

APPEAL from a judgment of Thorson P. of the Exchequer Court of Canada[1], dismissing the appellant's appeal against re-assessment of its income tax for the year 1952. Appeal dismissed.

C. M. Leitch, for the appellant.

D. S. Maxwell, Q.C., and *T. Z. Boles,* for the respondent.

The judgment of the Court was delivered by

MARTLAND J.:—This is an appeal from a judgment of the learned President of the Exchequer Court[1], which dismissed the appellant's appeal against re-assessment of its income tax for the year 1952. It relates solely to the amount of $10,488.25, being a part of the amount of $17,123.57 included in the final assessment for that year as interest upon the appellant's unpaid income tax.

[1] [1961] C.T.C. 477, 61 D.T.C. 1270.

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The facts are contained in an agreed statement of facts. On June 30, 1953, within the time limited by *The Income Tax Act* for filing its income tax return, the appellant filed its return for the period ending December 31, 1952. In the return the appellant showed income tax payable in the amount of $240,342.24, which was paid.

On July 22, 1953, the respondent mailed a notice of assessment to the appellant, showing its income tax at the figure which had been disclosed in the return. Subsequently, on December 21, 1956, the respondent mailed a notice of re-assessment to the appellant, showing its income tax to be $324,286.36. There were two subsequent notices of re-assessment, on February 13, 1957, and on July 10 of the same year, reducing the appellant's income tax to $308,571.81.

The appellant was charged, for that portion of its income tax which was not paid until 1957, interest in the amount of $17,123.57, of which sum $10,488.25 was interest for the period from June 30, 1954, to January 21, 1957.

When the appellant's income tax return had been received in the Calgary District Taxation Office, the mathematical computations which it contained were checked by an assessor. The return was then handed to another assessor, who checked it to ensure that there had not been any errors. Following this, the original notice of assessment was prepared and mailed to the appellant on July 22, 1953. It was admitted that the total time spent by the two assessors working on this return prior to the mailing of the notice of assessment would not exceed fifteen minutes.

At the time the first assessor performed his work, he wrote the letter "R" in the lower right-hand corner of the first page of the return. This letter is an abbreviation of the word "Review" and, by marking the return in this way, it was thereby segregated to ensure that it would be subject to further examination. It is admitted that prior to and at the time the notice of July 22, 1953, was mailed it had been decided by the officers and employees of the Department of National Revenue to conduct a further examination of the appellant's return.

That examination was conducted by another assessor prior to December 21, 1956. His work consisted in reviewing the seven exhibits attached to the return and the obtaining

of additional information as to the appellant's income for 1952 by an examination of the appellant's books and records and by interviews with officers and servants of the appellant.

The only question in issue is as to whether the judgment below was right in holding that the original notice, mailed on July 22, 1953, was "the notice of the original assessment for the taxation year" within the meaning of s. 50(6) of *The Income Tax Act*, 1947-48 (Can.), c. 52, as amended, (later s. 54(6) of c. 148, R.S.C. 1952, and subsequently repealed in 1955).

The relevant sections of *The Income Tax Act* are as follows:

42. (1) The Minister shall, with all due despatch, examine each return of income and assess the tax for the taxation year and the interest and penalties, if any, payable.

(2) After examination of a return, the Minister shall send a notice of assessment to the person by whom the return was filed.

* * *

(4) The Minister may at any time assess tax, interest or penalties and may

(*a*) at any time, if the taxpayer or person filing the return has made any misrepresentation or committed any fraud in filing the return or supplying information under this Act, and

(*b*) within 6 years from the day of an original assessment in any other case,

reassess or make additional assessments.

(5) The Minister is not bound by a return or information supplied by or on behalf of a taxpayer and, in making an assessment, may, notwithstanding a return or information so supplied or if no return has been filed, assess the tax payable under this Part.

(6) An assessment shall, subject to being varied or vacated on an objection or appeal under this Part and subject to a re-assessment, be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.

* * *

50. (6) No interest under this section upon the amount by which the unpaid taxes exceed the amount estimated under section 41 is payable in respect of the period beginning 12 months after the day fixed by this Act for filing the return of the taxpayer's income upon which the taxes are payable or 12 months after the return was actually filed, whichever was later, and ending 30 days from the day of mailing of the notice of the original assessment for the taxation year.

The contention of the appellant is that, on the admitted facts, the notice mailed on July 22, 1953, was a nullity because, before it was mailed and at the time it was mailed, it had been decided to conduct a further examination of the appellant's return. Until that intention had been carried

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out, there had not been an examination of the appellant's return, within s. 42(1), and there was, therefore, no assessment made pursuant to that subsection. If the notice of July 22, 1953, was a nullity, the notice of original assessment would then be that of December 21, 1956, and, accordingly, the appellant, by virtue of s. 50(6), would not be liable for payment of interest for the period from June 30, 1954, being the date twelve months after the date fixed for filing the appellant's return, to January 21, 1957, being the date thirty days after the mailing of the notice of December 21, 1956.

In two cases decided in the Exchequer Court in circumstances similar to the present one, it has been decided that an assessment made on the basis of the taxpayer's return, subject only to the checking of the computations made in it, was an assessment within the meaning of *The Income Tax Act: Provincial Paper, Limited v. Minister of National Revenue*[1], and *Western Leaseholds Limited v. Minister of National Revenue*[2]. The appellant does not take issue with these two decisions in the present appeal, but seeks to distinguish them on the ground that in the present case the evidence established that the intention to make the further examination of the appellant's return existed before the notice of July 22, 1953, was mailed.

The conclusions reached in the first of those two cases and applied in the second are accurately stated in the headnote as follows:

Held: That it is not for the Court or anyone else to prescribe what the intensity of the examination of a taxpayer's return in any given case should be. That is exclusively a matter for the Minister, acting through his appropriate officers, to decide.

2. That there is no standard in the Act or elsewhere, either express or implied, fixing the essential requirements of an assessment. It is exclusively for the Minister to decide how he should, in any given case, ascertain and fix the liability of a taxpayer. The extent of the investigation he should make, if any, is for him to decide.

3. That the Minister may properly decide to accept a taxpayer's income tax return as a correct statement of his taxable income and merely check the computations of tax in it and without any further examination or investigation fix his tax liability accordingly. If he does so it cannot be said that he has not made an assessment.

I am in agreement with these propositions.

[1] [1955] Ex. C.R. 33. [2] [1958] Ex. C.R. 277.

Do they cease to be applicable if, at the time the first notice was mailed, there existed an intention to conduct a further examination of the appellant's return? I do not think that they do. I cannot agree that that which would constitute a valid assessment if not accompanied by a present intention to conduct a further examination is not a valid assessment if that intention does exist. In my opinion there can be a valid assessment made even though a further examination of the return is intended. The examination of the return which was made prior to July 22, 1953, was, in my view, an examination within the meaning of subs. (1) of s. 42. I think the Minister had authority under s. 42 to make the assessment of which notice was given on July 22, 1953. I am reinforced in this conclusion by other subsections of s. 42. Subsection (4) provides that "the Minister may at any time assess tax . . .", subs. (5) empowers him to assess tax notwithstanding a return and subs. (6) provides that an assessment shall be deemed to be valid notwithstanding any error, defect, or omission therein or in any proceeding under the Act relating thereto.

In summary, my opinion is that the Minister had full authority, under s. 42, to assess tax on the basis of the taxpayer's return and thereafter, if he so decided, to re-assess on the basis of a further examination of that return. The time at which he decided to make that further examination did not, in any way, affect the validity of the initial assessment which he had made and consequently the notice of that initial assessment constituted "the notice of the original assessment for the taxation year" within the meaning of s. 50(6).

In my opinion, therefore, the appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: Macleod, McDermid, Dixon, Burns, Love & Leitch, Calgary.

Solicitor for the respondent: A. A. McGrory, Ottawa.