THE MINISTER OF NATIONAL REVENUE ..... APPELLANT;

AND

HOLLINGER NORTH SHORE EXPLORATION COMPANY, LIMITED RESPONDENT.

1962 *Dec. 3, 4

1963 Jan. 22

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Taxation—Income tax—Exemption for new mines—Mine operated by sub-lessee—Whether royalties paid to lessee by sub-lessee on ore shipped from leased mine exempt as "income derived from the operation of a mine" within meaning of s. 83(5) of the Income Tax Act, R.S.C. 1952, c. 148, as enacted by 1955 (Can.), c. 54, s. 21(1).

Section 83(5) of the *Income Tax Act* provides that income derived from the operation of a mine during the period of 36 months commencing with the day on which the mine came into production is not to be included in computing the income of a corporation.

In 1953, the respondent company was granted a licence in the form of a lease on a large iron ore property in northern Quebec. It then granted to I Co., by sub-lease, part of the ore located on the property with the right to mine it. I Co. agreed to pay the respondent a royalty on all ore shipped. I Co. also undertook to mine for the respondent the

*PRESENT: Cartwright, Fauteux, Abbott, Martland and Ritchie JJ.

1963

MINISTER OF NATIONAL REVENUE v. HOLLINGER NORTH SHORE EXPLORATION CO.

ore from the property which the latter had retained. What followed was a single uniform operation whereby ore was extracted from a single mine, transported and sold. In 1956 (well within the 36 months mentioned in s. 83(5)), the respondent received over $3 million from I Co. as royalties under the sub-lease, in addition to the proceeds of the sale of its share of the ore, which proceeds were conceded to be tax-exempt. The Minister argued that the royalties were not tax-exempt since the mine was not being operated by the respondent and that the source to the respondent of the royalties was the property right for which they were payable and not the operation of a mine. The Exchequer Court ruled in favour of the respondent. The Minister appealed to this Court.

Held: The appeal should be dismissed.

The royalties were exempt from tax as income "derived from the operation of a mine" within the meaning of s. 83(5) of the Act. The word "derived" in the context of the section is broader than "received" and is equivalent to "arising or accruing"; the expression is not limited to income arising or accruing from the operation of a mine by a particular taxpayer.

The mine was operated as a unit by the respondent and I Co. as a joint venture for their joint benefit, and the ore in place represented a capital investment of both companies. A return on that capital could be realized only through the operation of the mine, and, in the circumstances here, such operation was the source of the respondent's income within the meaning of s. 83(5), whether that income came from the extraction and sale of its own ore or from the royalties paid to it with respect to the remainder of the ore belonging to I Co.

APPEAL from a judgment of Thurlow J. of the Exchequer Court of Canada[1], reversing a ruling of the Minister of National Revenue. Appeal dismissed.

Paul Ollivier, for the appellant.

H. H. Stikeman, Q.C., C. G. Cowan, P. N. Thorsteinsson and *D. J. Johnston,* for the respondent.

The judgment of the Court was delivered by

ABBOTT J.:—This appeal is from a judgment of Thurlow J. of the Exchequer Court of Canada[1], allowing respondent's appeal from assessment of income tax for the year 1956. The sole question at issue is whether respondent is entitled to claim exemption from taxation with respect to a sum of $3,182,936.93, as being income derived from the operation of a mine, within the meaning of s. 83(5) of the *Income Tax Act,* R.S.C. 1952, c. 148, enacted by 3-4 Eliz. II, c. 54, which reads:

83. (5) Subject to prescribed conditions, there shall not be included in computing the income of a corporation income derived from the operation of a mine during the period of 36 months commencing with the day on which the mine came into production.

[1] [1960] Ex. C.R. 325.

The material facts are not in dispute. The respondent is a corporation organized under *The Quebec Mining Companies' Act* and from 1943 to 1949 expended substantial amounts in exploration work and diamond drilling to prove up certain iron ore deposits in the province of Quebec.

In February 1953, under appropriate legislative authority, respondent was granted by the Crown an "operating licence in the form of a lease" by which it obtained, *inter alia,* the right to mine and take iron ore from a tract of land in the northern part of the province.

After obtaining this licence respondent, by what is referred to as a sublease, granted to Iron Ore Company of Canada certain proportions of the iron ore located on the said tract of land, with the right to mine and carry away the ore so granted. The consideration for this grant, as set out in the sublease, consisted of (a) a payment of $100,000 per year to be made to the Province of Quebec, (b) the sublessee's share of the duties payable under the Quebec Mining Act, and (c)

an overriding royalty on all iron ore and specialties shipped by the Sublessee under this Sublease from any mines upon the described lands (except iron ore and specialties shipped for the account of the Sublessor) and sold and delivered each year by the Sublessee, of seven per cent of the then competitive market price f.o.b. vessels at Seven Islands, Quebec (determined as provided in Section 2 of the Mutual Covenants of this Sublease) for each grade and kind of such iron ore and specialties, which the Sublessee binds itself to pay to the sublessor during the term hereof; provided however, that, in the event seven per cent of such competitive market price for any grade or kind of such iron ore or specialties shall be less than twenty-five cents a ton, then the overriding royalty on such iron ore and specialties shall be twenty-five cents a ton.

The contract also provided that, beginning with the year 1955, Iron Ore Company of Canada should pay royalty based on a certain minimum tonnage of iron ore per year, but counsel for appellant stated that this provision has no bearing on the present appeal.

In December 1949, Iron Ore Company of Canada entered into a management contract with Hollinger-Hanna Limited, whereby the latter undertook to provide management services and supervision of the operations and properties of Iron Ore Company of Canada.

In June 1954, the respondent made a similar contract with Hollinger-Hanna Limited for the management of the respondent's iron ore operations and properties not subleased to Iron Ore Company of Canada.

1963

MINISTER OF NATIONAL REVENUE v. HOLLINGER NORTH SHORE EXPLORATION CO.

Abbott J.

In March 1955, the respondent made a further contract with Iron Ore Company of Canada whereby the latter undertook to mine for the respondent iron ore from the retained undivided interest of the respondent which had not been subleased to Iron Ore Company of Canada.

What followed was a single uniform operation whereby iron ore was extracted from a single mine, transported to Sept-Iles, Quebec, and sold. The sale price of the ore was received by the management company, Hollinger-Hanna Limited, which after deducting its charges, remitted to the respondent the amount representing the proceeds of sale of its share of the ore. The appellant concedes that this sum is not to be included in the respondent's income for the 1956 taxation year by virtue of the provisions of section 83(5) of the *Income Tax Act*.

Hollinger-Hanna Limited also paid to Iron Ore Company of Canada the amount representing the proceeds of sale of the latter's share of the iron ore and from this amount Iron Ore Company of Canada then paid to the respondent the overriding royalty payable under the sublease, which in 1956 amounted to $3,182,936.93. The appellant included this amount in computing respondent's income for the year 1956, although it is common ground that the whole of that year was within the period of 36 months after the mine came into production.

Shortly stated, appellant's position is (1) that the expression "income derived from the operation of a mine" in s. 83(5) refers to income from a particular source namely the operation of a mine, (2) that the operation of a mine being a business, the income exempted from taxation is the profit from such business received by the particular corporation claiming the exemption, and (3) that the source to respondent of the income in issue here was merely the property right for which royalty was payable and not the operation of a mine.

I share the view expressed by the learned trial judge that the ordinary meaning of the words "derived from the operation of a mine" is broader than that contended for by appellant, that the word "derived" in this context is broader than "received" and is equivalent to "arising or accruing" (vide

Commissioner of Taxation v. Kirk[1]) and that the expression is not limited to income arising or accruing from the operation of a mine by a particular taxpayer.

The mine in question was operated as a unit by respondent and Iron Ore Company of Canada as a joint venture for their joint benefit, and the ore in place represented a capital investment of both companies. A return on that capital investment could be realized only through the operation of the mine, and in the circumstances here, in my opinion, such operation was the source of respondent's income within the meaning of s. 83(5), whether that income came from the extraction and sale of its own ore or from the royalty paid to it with respect to the remainder of the ore belonging to the Iron Ore Company of Canada.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitor for the appellant: E. A. Driedger, Ottawa.

Solicitors for the respondent: Holden, Murdoch, Walton, Finlay, Robinson & Pepall, Toronto.

[1] [1900] A.C. 588 at 592.