FURNESS, WITHY & COMPANY LIMITED ..... APPELLANT;

AND

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

1967
*Dec. 1, 4, 5

1968
Jan. 29

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Taxation—Income tax—Shipping company—Income from business carried on in Canada by non-resident—Operation of ships—Canada-U.K. Tax Agreement (1946), Articles II, III, IV, V—Income Tax Act, R.S.C. 1952, c. 148, ss. 2(2), (4), 10(1)(c), 31(1).

The appellant shipping company was incorporated in the United Kingdom and was a resident in that country but not in Canada, where it operated branch offices at various ports. In Canada, it carried on the business of a general agent or ship broker, and in relation to ships owned by it, performed the duties and functions which would normally be performed by a general agent or ship broker. It also carried on the business of stevedoring in Canada and, in relation to some ships owned by it, performed the duties and functions which would normally be performed by a stevedore. It also performed similar services as agent, ship broker or stevedore for ships owned by other companies, in many of which the appellant, as a shareholder, held either a majority or a minority interest. Two issues were raised in this case: (1) Whether the income earned in Canada by the appellant as

*PRESENT: Cartwright C.J. and Abbott, Judson, Ritchie and Pigeon JJ.

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general agent or stevedore was income "earned in Canada from the operation of a ship" within the meaning of s. 10(1)(*c*) of the *Income Tax Act* and Article V of the Canada-U.K. Tax Agreement (1946), and (2) Whether income it earned in Canada in respect of servicing or stevedoring its own ships whilst in Canada was also that kind of income.

The Exchequer Court held: (1) that neither s. 10(1)(*c*) of the Act nor Article V of the Convention exempted earnings of the appellant from managing or agency or stevedoring services which it rendered in Canada to other corporations; (2) that the appellant was entitled to exemption under these provisions in respect of the portions of the amounts treated as income by the Minister which arose from entries of charges made by the branches for agency and stevedoring services to ships which were owned or chartered by the appellant and operated in its own service; (3) that the appellant was entitled to deduct, in computing its income from business carried on in Canada, that portion of general head office administration expenses properly chargeable to its operations in Canada.

The company appealed to this Court from the first finding and the Minister cross-appealed as to the second. The third finding was not in issue.

Held: The appeal and the cross-appeal should be dismissed.

Nothing needed be added to the reasons for judgment delivered by the trial judge. However, no reliance was placed upon the French text of the Canada-U.K. Tax Agreement.

Revenu—Impôt sur le revenu—Compagnie de navigation—Revenu provenant d'une entreprise exercée au Canada par une compagnie non résidante—Exploitation de navires—Convention entre le Canada et le Royaume-Uni relative à l'impôt (1946), Articles II, III, IV, V—Loi de l'impôt sur le revenu, S.R.C. 1952, c. 148, arts. 2(2), (4), 10(1)(c), 31(1).

L'appelante, une compagnie de navigation, a reçu son incorporation au Royaume-Uni et était une résidente de ce pays mais non pas du Canada, où elle opérait des succursales dans plusieurs ports. Au Canada, l'appelante agissait comme agent général ou courtier maritime, et accomplissait, par rapport aux navires lui appartenant, les devoirs et charges qui sont normalement accomplis par un agent général ou courtier maritime. Elle s'occupait aussi de l'arrimage des navires au Canada et accomplissait, par rapport à certains navires lui appartenant, les devoirs et charges qui sont normalement accomplis par un arrimeur. Elle agissait aussi comme agent, courtier maritime ou arrimeur pour des navires appartenant à d'autres compagnies et dont elle détenait, comme actionnaire, une majorité ou une minorité des actions. Deux questions se soulèvent dans cette cause: (1) Est-ce que le revenu gagné au Canada par l'appelante comme agent général ou arrimeur était un revenu «gagné au Canada par suite de l'exploitation d'un navire» dans le sens de l'art. 10(1)(*c*) de la *Loi de l'impôt sur le revenu* et de l'Article V de la Convention entre le Canada et le Royaume-Uni relative à l'impôt (1946), et (2) Est-ce que le revenu qu'elle a gagné au Canada par suite des services d'arrimage ou autres rendus à ses propres navires alors qu'ils étaient au Canada tombait aussi dans cette catégorie.

La Cour de l'Échiquier a statué: (1) que ni l'art. 10(1)(*c*) de la Loi et ni l'Article V de la Convention n'exemptaient les recettes provenant des services de gérant ou d'arrimeur que la compagnie a rendus au Canada à d'autres corporations; (2) que l'appelante avait droit à une exemption, en vertu de ces dispositions, quant à la partie des montants, considérés par le Ministre comme étant un revenu, provenant de charges soumises par les succursales pour des services d'agence et d'arrimage à des navires lui appartenant ou affrétés par elle et affectés à ses propres services; (3) que l'appelante avait droit de déduire, en calculant le revenu lui provenant d'une entreprise exercée au Canada, cette partie des dépenses générales provenant de l'administration du bureau-chef, qui était à bon droit à la charge des opérations au Canada.

La compagnie en appela devant cette Cour à l'encontre de la première conclusion de la Cour de l'Échiquier, et le Ministre produisit un contre-appel à l'encontre de la deuxième conclusion. La troisième conclusion de la Cour de l'Échiquier n'est pas en question.

Arrêt: L'appel et le contre-appel doivent être rejetés.

Il n'y a rien à ajouter aux motifs du jugement rendu par le juge de première instance. Cependant, le tribunal déclare ne pas s'appuyer sur le texte français de la Convention entre le Canada et le Royaume-Uni relative à l'impôt.

APPEL et CONTRE-APPEL d'un jugement du Juge Thurlow J. of the Exchequer Court of Canada[1], in an d'impôt sur le revenu. Appel et contre-appel rejetés.

APPEAL and CROSS-APPEAL from a judgment of Thurlow J. of the Exchequer Court of Canada[1], in an income tax matter. Appeal and cross-appeal dismissed.

H. Heward Stikeman, Q.C., W. David Angus and *Peter F. Cumyn,* for the appellant.

G. W. Ainslie and *M. A. Mogan,* for the respondent.

The judgment of the Court was delivered by

ABBOTT J.:—This is an appeal and cross-appeal from a judgment of Mr. Justice Thurlow of the Exchequer Court of Canada[1], which allowed in part the appellant's appeal from income tax assessments made for its taxation years 1957 to 1963 inclusive.

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[1] [1967] 1 Ex. C.R. 353, [1966] C.T.C. 482, 66 D.T.C. 5358.

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The principal issue on both the appeal and cross-appeal is the meaning to be ascribed to the phrase, "income...earned in Canada from the operation of a ship" found in para. (*c*) of subs. (1) of s. 10 of the *Income Tax Act*, R.S.C. 1952, c. 148, and the phrase "profits which a resident...derives from operating ships" found in Article V of the Tax Convention of June 5, 1946, between Canada and the United Kingdom of Great Britain and Northern Ireland; Statutes of Canada 1946, c. 38.

This raises two questions, namely:

(1) Whether income which the appellant earned in Canada in its character as a general agent or stevedore is "income...earned in Canada from the operation of a ship" or "profits which...(the appellant) derives from operating ships"; and

(2) Whether income which the appellant earned in Canada in respect of servicing or stevedoring its own ships whilst in territorial waters in Canada is "income... earned in Canada from the operation of a ship" or "profits which ... (the appellant) derives from operating ships".

Section 10(1)(*c*) of the *Income Tax Act* provides:

10. (1) There shall not be included in computing the income of a taxpayer for a taxation year

(*c*) the income for the year of a non-resident person earned in Canada from the operation of a ship or aircraft owned or operated by him, if the country where that person resided grants substantially similar relief for the year to a person resident in Canada.

Article V of the Canada-U.K. Tax Convention provides:

Notwithstanding the provisions of Articles III and IV, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

There is no serious dispute between the parties as to the relevant facts. The appellant was incorporated under the laws of the United Kingdom and has its registered office in London. It operates branch offices at various Canadian ports and its chief Canadian office is at Montreal. It is common ground that appellant is resident in the United Kingdom and is not resident in Canada.

In Canada, the appellant carries on the business of a general agent or ship-broker and, in relation to ships owned by it, performs the duties and functions which

would normally be performed by a general agent or ship-broker. Also, the appellant carries on the business of stevedoring in Canada and, in relation to some ships owned by it, performs the duties and functions which would normally be performed by a stevedore. It also performs similar services as agent, ship-broker or stevedore for ships owned by other companies, in many of which appellant, as a shareholder, holds either a majority or minority interest.

The learned trial judge held:

1. That neither s. 10(1)(*c*) of the *Income Tax Act* nor Article V of the Tax Convention exempts earnings of the appellant from managing or agency or stevedoring services which it renders in Canada to other corporations.
2. That appellant is entitled to exemption under these provisions in respect of the portions of the amounts treated as income by the Minister, which arose from entries of charges made by the branches for "agency" and stevedoring services to ships which were owned or chartered by the appellant and were operated in its own service.
3. That appellant is entitled to deduct, in computing its income from business carried on in Canada, that portion of general head office administration expenses properly chargeable to its operations in Canada.

Appellant appealed to this Court from the first finding and the Minister cross-appealed as to the second. There is no cross-appeal from the third finding.

There is nothing that I can usefully add to the able and exhaustive reasons for judgment of Thurlow J., with which I am in agreement, and I am content to adopt them with one minor exception. In interpreting Article V of the Canada-U.K. Tax Convention, I do not rely upon the translation of the Convention, which appears as a Schedule to the French text of the Statutes of Canada 1946, c. 38.

I would therefore dismiss the appeal and the cross-appeal with costs.

Appeal and cross-appeal dismissed with costs.

Solicitors for the appellant: Stikeman, Elliott, Tamaki, Mercier & Robb, Montreal.

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