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

1968

* Mar. 22
Apr. 1

AND

ALGOMA CENTRAL RAILWAY ..... RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Taxation—Income tax—Deductible expense or capital outlay—Moneys paid by railway company for geological survey—Income Tax Act, R.S.C. 1952, c. 148, s. 12(1)(b).

In order to improve its transportation business, the respondent company arranged for a geological survey of the mineral possibilities of a section of the unpopulated land through which its railway ran in the province of Ontario. The purpose was to make the information arising from the survey available to the public, in the hope and expectation that it would lead to development of the area and thus increase traffic over the transportation system. In the computation of the respondent's income for the years 1960, 1961 and 1962, the Minister refused to allow the deduction of the moneys paid for the survey on the ground that these expenditures were outlays "of capital" or payments "on account of capital" within the meaning of s. 12(1)(*b*) of the *Income Tax Act*, R.S.C. 1952, c. 148. The Exchequer Court allowed the deduction and the Minister appealed to this Court.

Held: The Minister's appeal should be dismissed.

The application or non-application of the expressions "outlay ... of capital" or "payment on account of capital" to any particular expenditures must depend upon the facts of the particular case, and no single test applies in making that determination. The decision in *B.P. Australia Ltd. v. Commissioner of Taxation of the Commonwealth of Australia.* [1966] A.C. 224, approved. The conclusion reached by the Exchequer Court that these expenditures were not of a capital nature was right.

* PRESENT: Fauteux, Martland, Ritchie, Spence and Pigeon JJ.

1968

MINISTER OF NATIONAL REVENUE v. ALGOMA CENTRAL RAILWAY

Revenu—Impôt sur le revenu—Dépenses déductibles ou dépenses de capital—Montants payés par une compagnie de chemin de fer pour un relevé géologique—Loi de l'impôt sur le revenu, S.R.C. 1952, c. 148, art. 12(1)(b).

Dans le but d'améliorer son entreprise de transport, la compagnie intimée a fait faire un relevé géologique des possibilités minérales d'un territoire en Ontario ayant peu de population et à travers lequel son chemin de fer circulait. Le but de ce relevé était d'informer le public des richesses du territoire dans l'espérance que la région serait développée, ce qui aurait pour résultat d'augmenter le trafic sur la voie ferrée. Dans le calcul du revenu de la compagnie pour les années 1960, 1961 et 1962, le Ministre a refusé de permettre la déduction des sommes payées pour le relevé pour le motif que ces dépenses étaient des dépenses «de capital» ou au paiement «à compte de capital» dans le sens de l'art. 12(1)(*b*) de la *Loi de l'impôt sur le revenu*, S.R.C. 1952, c. 148. La Cour de l'Échiquier a permis la déduction et le Ministre en appela à cette Cour.

Arrêt: L'appel du Ministre doit être rejeté.

Que les expressions «somme déboursée ... de capital» ou «paiement à compte de capital» s'appliquent ou non à des dépenses particulières dépend des faits du cas particulier, et il n'existe pas un unique guide pour déterminer cette question. La décision dans *B.P. Australia Ltd. v. Commissioner of Taxation of the Commonwealth of Australia,* [1966] A.C. 224 est approuvée. La Cour de l'Échiquier est arrivée à la bonne conclusion en déclarant que les dépenses en question n'avaient pas la nature d'une dépense de capital.

APPEL d'un jugement du Président Jackett de la Cour de l'Échiquier du Canada[1] en matière d'impôt sur le revenu. Appel rejeté.

APPEAL from a judgment of Jackett P. of the Exchequer Court of Canada[1] in an income tax matter.

D. G. H. Bowman and *J. R. London,* for the appellant.

R. F. Wilson, Q.C., and *D. A. Berlis, Q.C.,* for the respondent.

The judgment of the Court was delivered by

FAUTEUX J.:—This is an appeal from a judgment of the Exchequer Court of Canada[1], pronounced by the learned President of the Court, on March 16, 1966, whereby he allowed an appeal by respondent from assessments made under the *Income Tax Act,* for the 1960, 1961 and 1962 taxation years.

[1] [1967] 2 Ex. C.R. 88, [1967] C.T.C. 130, 67 D.T.C. 5091.

The circumstances giving rise to the question to be determined in this appeal can be summarized as follows: In July 1960, respondent, in order to improve its transportation business, arranged, with Franc. R. Joubin & Associates Mining Geologists Limited,—hereafter referred to as the Joubin company,—for a broad general geological survey, over a period of five years, of the mineral possibilities of a section of the unpopulated land through which respondent's railway ran in the province of Ontario, and which is, essentially, either crown land or respondent's property. This arrangement was made with the declared intention of making the information arising from the survey available to interested members of the public, in the hope and expectation that it would lead to development of the area (possible mines, secondary industry, etc.) that would produce traffic for respondent's transportation system. Consequent to this arrangement, the amounts admittedly paid by respondent to the Joubin company are $43,603.40 in respect of 1960, $85,189.06 in respect of 1961 and $138,369.41 in respect of 1962. The question is whether these amounts are deductible in computing respondent's profits from its business for those respective years. More precisely, the issue is whether, as contended for by appellant and successfully disputed by respondent, in the Court below, these expenditures are outlays "of capital" or payments "on account of capital", within the meaning of those expressions in s. 12(1)(*b*) of the *Income Tax Act* and, as such, not deductible in computing the profits of the respondent's business.

Parliament did not define the expressions "outlay ... of capital" or "payment on account of capital". There being no statutory criterion, the application or non-application of these expressions to any particular expenditures must depend upon the facts of the particular case. We do not think that any single test applies in making that determination and agree with the view expressed, in a recent decision of the Privy Council, *B.P. Australia Ltd. v. Commissioner of Taxation of the Commonwealth of Australia*[2], by Lord Pearce. In referring to the matter of determining whether an expenditure was of a capital or an income nature, he said, at p. 264:

> The solution to the problem is not to be found by any rigid test or description. It has to be derived from many aspects of the whole set

[2] [1966] A.C. 224, [1965] 3 All E.R. 209.

1968

MINISTER OF NATIONAL REVENUE v. ALGOMA CENTRAL RAILWAY

Fauteux J.

of circumstances some of which may point in one direction, some in the other. One consideration may point so clearly that it dominates other and vaguer indications in the contrary direction. It is a commonsense appreciation of all the guiding features which must provide the ultimate answer.

The learned President, after considering all the facts in the present case, decided that the expenditures in issue were not of a capital nature within the provisions of s. 12(1)(*b*) of the *Income Tax Act*. We agree with his conclusion. Hence, the appeal should be dismissed with costs.

Appeal dismissed with costs.

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

Solicitors for the respondent: Edison, Aird & Berlis, Toronto.