1955
*Oct. 31
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OKALTA OILS LIMITED ....APPELLANT;

AND

THE MINISTER OF NATIONAL REVENUE .... RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Revenue—Income tax—Assessment nil—Whether right to appeal to Income Tax Appeal Board—"Assessment" in ss. 69a and 69b of the Income War Tax Act, R.S.C. 1927, c. 97.

The word "assessment" in ss. 69*a* and 69*b* of the *Income War Tax Act,* R.S.C. 1927, c. 97, means the actual sum in tax for the payment of which the taxpayer is held liable by the decision of the Minister. If there is no tax claimed by such decision, there is no assessment within the meaning of s. 69*a* and therefore no right of appeal under s. 69*b*.

APPEAL from the judgment of the Exchequer Court of Canada (1), Cameron J., dismissing the appellant's appeal from the decision of the Income Tax Appeal Board.

J. M. Robertson for the appellant.

H. W. Riley, Q.C., J. Boland and *W. R. Lattimer* for the respondent.

The judgment of the Court was delivered by:—

FAUTEUX J.:—Originally assessed for one thousand dollars, in respect of its taxation year ending December 31, 1946, the appellant company, pursuant to section 69*a* of the *Income War Tax Act,* served a notice of objection to the Minister who, upon re-consideration, re-assessed the company at nil dollars. An appeal, purporting to be taken by the latter under section 69*b*(1), to the *Income Tax Appeal Board,* was disallowed and this decision was affirmed by the judgment of the Exchequer Court (1) now before us for review.

At the end of the hearing, the Court, indicating that reasons would be later delivered, dismissed the appeal with costs.

The substantial question considered below was whether, in computing its tax, the appellant had the right to apply the provisions of section 8(6) of the *Income War Tax Act*

*PRESENT: Rand, Estey, Locke, Cartwright and Fauteux JJ.

(1) [1955] Ex. C.R. 66.

relating to certain deductions from taxes and applicable in certain circumstances with respect to drilling and exploration costs incurred on oil wells ultimately found unproductive and abandoned. Upon the consideration of this or any other question related to the merit of this case, we are precluded to enter, for there was no right of appeal from the decision of the Minister to the Board nor, therefore, to the Exchequer Court; the objection taken in this respect, by the respondent, before the Board and again in the Exchequer Court, should have been decided and maintained.

A right of appeal is a right of exception which exists only when given by statute. Under section 69*c*(1) of the *Income War Tax Act,* a right of appeal to the Exchequer Court is given from the decision of the Income Tax Appeal Board; and under section 69*b*(1), a taxpayer who has served a notice of objection to an assessment under s. 69*a* may, after "the Minister has confirmed the assessment or re-assessed", appeal to the Income Tax Appeal Board "to have such assessment vacated or varied."

It is the contention of the respondent that, construed as it should be, the word "assessment", in sections 69*a* and 69*b*, means the actual amount of tax which the taxpayer is called upon to pay by the decision of the Minister, and not the method by which the assessed tax is arrived at; with the result that if no amount of tax is claimed, there being no assessment within the meaning of the sections, there is therefore no right of appeal from the decision of the Minister to the Income Tax Appeal Board.

In *Commissioners for General Purposes of Income Tax for City of London and Gibbs and Others* (1), Viscount Simon L.C., in reference to the word "assessment" said, at page 406:—

> The word "assessment" is used in our income tax code in more than one sense. Sometimes, by "assessment" is meant the fixing of the sum taken to represent the actual profit for the purpose of charging tax on it, but in another context the "assessment" may mean the actual sum in tax which the taxpayer is liable to pay on his profits.

That the latter meaning attached to the word "assessment", under the Act as it stood before the establishment of the Income Tax Appeal Board and the enactment of Part VIIIA

(1) [1942] A.C. 402.

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—wherein the above sections are to be found—in substitution to Part VIII, is made clear by the wording of section 58(1) of the latter Part, reading:—

58(1). Any person who objects to the *amount* at which he is assessed . . .

Under these provisions, there was no assessment if there was no tax claimed. Any other objection but one ultimately related to an amount claimed was lacking the object giving rise to the right of appeal from the decision of the Minister to the Board. Under section 69*a*(1), there is a difference in the wording, as it was in prior section 58(1), but not one indicative of a change of view as to the substance in the matter. In Part VII, which deals with "assessment", a similar meaning is implied in section 54(1) providing that "the Minister shall send a notice of assessment to the taxpayer verifying or altering the amount of the tax . . ." and in section 55, providing that notwithstanding any "prior assessment, or if no assessment has been made, the taxpayer shall continue to be liable for any tax and to be assessed therefore, and the Minister may, at any time, assess any person for tax, interest and penalties . . ." In *Case No. 111 and Minister of National Revenue* (1), a similar objection was made and maintained. No argument was advanced by the appellant herein to justify the adoption of a contrary view in this case.

It was conceded by counsel for respondent—and with this view, we agree—that the action of the Minister in modifying the tax return submitted by the appellant, would have no future binding effect.

The appeal, as indicated, is dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Fenerty, Fenerty, McGillivray, Robertson, Prowse & Brennan.*

Solicitor for the respondent: *A. A. McGrory.*

(1) 8 C.T.A.B.C. 440.