THE MINISTER OF NATIONAL REVENUE .... APPELLANT;

1961

*Nov. 17
Dec. 15

AND

HADDON HALL REALTY INC. ....RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Taxation—Income—Taxpayer in business of renting apartments—Replacement of refrigerators, stoves and blinds in apartments—Whether expenditure a deductible expense or capital outlay—Income Tax Act, R.S.C. 1952, c. 148, s. 12(1)(a) and (b).

The taxpayer, a real estate holding company, owned and operated a high-class apartment building containing 210 suites. As part of a program for the gradual replacement of worn-out and defective equipment, the taxpayer spent some $11,000 in 1955 for the replacement of refrigerators, stoves and venetian blinds. This expenditure was claimed as a deduction from income under s. 12(1)(*a*) of the *Income Tax Act*. The Minister contended that it was made for the replacement of capital within the meaning of s. 12(1)(*b*) of the Act. It was conceded that the expenditure was incurred for the purpose of gaining or producing income. The question was whether it was an income expense incurred to earn the income and allowable as a deduction from gross income, or a capital outlay to be amortized or written off over a period of years under the capital cost allowance regulations made under s. 11(1)(*b*). Both the Income Tax Appeal Board and the Exchequer Court allowed the deduction. The Minister appealed to this Court.

Held: The taxpayer was not entitled to the deduction.

Among the tests which may be used in order to determine whether an expenditure is an income expense or a capital outlay, it has been held that an expenditure made once and for all with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade is of a capital nature. Expenditures to replace assets which have become worn out or obsolete are something quite different from those ordinary annual expenditures for repairs which fall naturally into the category of income disbursements. Applying that test, the expenditures in question were clearly capital outlays within the provisions of s. 12(1)(*b*) of the Act.

APPEAL from a judgment of Fournier J. of the Exchequer Court of Canada[1], affirming a decision of the Income Tax Appeal Board. Appeal allowed.

P. Ollivier, for the appellant.

P. F. Vineberg, Q.C., for the respondent.

The judgment of the Court was delivered by

*PRESENT: Kerwin C.J. and Taschereau, Locke, Fauteux and Abbott JJ.

[1] [1959] Ex. C.R. 345, [1959] C.T.C. 291, 59 D.T.C. 1145.

1961

MINISTER OF NATIONAL REVENUE v. HADDON HALL REALTY INC.

ABBOTT J.:—This is an appeal by the Minister of National Revenue from a judgment of the Exchequer Court[1] confirming a decision of the Income Tax Appeal Board which had allowed respondent's appeal against its income tax assessment for 1955.

The facts are not in dispute. The respondent owns and operates a large apartment house property in Montreal which it acquired in 1948. The buildings had been constructed in 1924. Each year during the period 1950 to 1955, respondent incurred expenses for the replacement of stoves, refrigerators and window blinds which had become worn out, obsolete or unsatisfactory to its tenants.

Expenditures under this head in the year 1955 amounted to $11,675.95. In its Income Tax Return for 1955, respondent treated this amount as an operating expense and as such deductible from its gross income for that year. That deduction was disallowed by the Minister on the ground that it was a capital outlay within the meaning of s. 12(1)(*b*) of the *Income Tax Act*, 1948.

Section 12(1)(*a*) and (*b*) reads:

> 12. (1) In computing income, no deduction shall be made in respect of
>
> (*a*) an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from property or a business of the taxpayer.
>
> (*b*) an outlay, loss or replacement of capital, a payment on account of capital or an allowance in respect of depreciation, obsolescence or depletion except as expressly permitted by this Part.

It is conceded by appellant that the expenditures in question were incurred by respondent for the purpose of gaining or producing income. The sole matter in issue here is whether such expenditures were an income expense incurred to earn the income of the year 1955 and allowable as a deduction from gross income in that year under s. 12(1)(*a*) of the *Income Tax Act*, or a capital outlay to be amortized or written off over a period of years under the capital cost allowance regulations made under s. 11(1)(*b*) of the said Act.

The general principles to be applied in determining whether a given expenditure is of a capital nature are fairly well established: *Montreal Light Heat and Power*

[1] [1959] Ex. C.R. 345, [1959] C.T.C. 291, 59 D.T.C. 1145.

Consolidated v. Minister of National Revenue[1]; *British Columbia Electric Railway Company Limited v. Minister of National Revenue*[2]. Among the tests which may be used in order to determine whether an expenditure is an income expense or a capital outlay, it has been held that an expenditure made once and for all with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade is of a capital nature.

Expenditures to replace capital assets which have become worn out or obsolete are something quite different from those ordinary annual expenditures for repairs which fall naturally into the category of income disbursements. Applying the test to which I have referred to the facts of the present case, the expenditures totalling $11,675.95, made by respondent in the year 1955 for replacing refrigerators, stoves and blinds in its apartment building were, in my opinion, clearly capital outlays within the provisions of s. 12(1)(*b*) of the Act.

The appeal should be allowed, the judgments of the Exchequer Court and the Income Tax Appeal Board set aside and the assessment restored. It was agreed at the hearing that in this event there would be no costs to the appellant in this Court. The appellant is entitled to his costs in the Exchequer Court.

Appeal allowed.

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

Solicitors for the respondent: Philipps, Bloomfield, Vineberg & Goodman, Montreal.

[1] [1942] S.C.R. 89, 1 D.L.R. 593.
[2] [1958] S.C.R. 133, [1958] C.T.C. 21, 77 C.R.T.C. 29, 58 D.T.C. 1022, 12 D.L.R. (2d) 369.