1966

*March 3
March 11

ROGER L. VINCENT ..... APPELLANT;

AND

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

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Taxation—Income tax—Farming losses—Deduction limited under s. 13(1) of the Income Tax Act, R.S.C. 1952, c. 148—Determination under s. 13(2) not made by Minister.

The Minister limited under s. 13(1) of the *Income Tax Act*, R.S.C. 1952, c. 148, the farming losses incurred in the taxation years 1957 to 1960 by the appellant, the president of a publishing company who also owned and operated a farm. The appellant objected to the Minister's computation of his farming losses on the grounds: (1) that the interest paid on the mortgage which he gave as part of the purchase price of the farm, as well as the interest paid on bank loans for capital outlays on the farm, was properly deductible in computing his general income and should not have been deducted from the farm income; (2) that, if those payments had to be included in determining his farming losses, then the mortgage interest received in respect of a farm sold earlier should be included in computing his farming income; and (3) that the capital cost allowance granted in respect of the present farm should not be deducted in computing his farming losses but should be deducted in the computation of his general income. The Exchequer Court confirmed the assessment subject to certain adjustments consented to by the Minister. The taxpayer appealed to this Court where he raised the contention that because the Minister had not made a formal determination under s. 13(2) to the effect that his chief source of income was neither farming nor a combination of farming and some other sources of income, the provisions of s. 13(1) did not come into

* PRESENT: Taschereau C.J. and Cartwright, Martland, Ritchie and Hall JJ.

operation and, accordingly, either the appeal should be allowed *in toto* or the matter should be referred back to the Minister to make such a determination.

Held: The appeal should be dismissed.

The Exchequer Court had been right in its conclusions and reasons for judgment.

In the absence of a determination by the Minister under s. 13(2), the Exchequer Court had jurisdiction to determine the question concerning the appellant's chief source of income. On the evidence, the only finding that could properly be made was that the appellant's chief source of income was neither farming nor a combination of farming and some other sources of income, which was the basis on which the Exchequer Court proceeded.

Revenu—Impôt sur le revenu—Pertes dues à une exploitation agricole—Déduction limitée en vertu de l'art. 13(1) de la Loi de l'Impôt sur le revenu, S.R.C. 1952, c. 148—Aucune décision prise par le Ministre en vertu de l'art. 13(2).

Le Ministre a limité sous le régime de l'art. 13(1) de la *Loi de l'Impôt sur le revenu,* S.R.C. 1952, c. 148, les pertes dues à une exploitation agricole encourues durant les années de taxation 1957 à 1960 par l'appelant, le président d'une maison d'édition qui exploitait aussi une ferme dont il était le propriétaire. L'appelant s'est objecté à la manière dont le Ministre avait calculé ses pertes agricoles pour les motifs: (1) que les intérets qu'il avait payés sur l'hypothèque qu'il avait consentie comme partie du prix d'achat de la ferme, ainsi que les intérêts qu'il avait payés à la banque pour des emprunts faits en vue de dépenses en capital sur la ferme, étaient proprement déductibles dans le calcul de son impôt général et n'auraient pas dû être déduits du revenu de sa ferme; (2) que, si ces paiements devaient être inclus dans la détermination de ses pertes agricoles, les intérêts reçus alors en vertu d'une hypothèque relativement à une ferme qu'il avait vendue auparavant devaient être inclus dans le calcul de son revenu agricole; et (3) que le coût en capital alloué relativement à sa ferme ne devait pas être déduit dans le calcul de ses pertes agricoles mais devait être déduit dans le calcul de son revenu général. La Cour de l'Échiquier a confirmé la cotisation, excepté pour certains ajustements approuvés par le Ministre. Le contribuable en appela devant cette Cour et a soumis que, vu que le Ministre n'avait pas pris de décision formelle en vertu de l'art. 13(2) à l'effet que le revenu de l'appelant ne provenait principalement ni de l'agriculture ni d'une combinaison de l'agriculture et de quelques autres sources, les dispositions de l'art. 13(1) n'entraient pas en vigueur et, en conséquence, l'appel devait être maintenu *in toto* ou alors l'affaire devait être retournée au Ministre pour qu'il puisse prendre une telle décision.

Arrêt: L'appel doit être rejeté.

La Cour de l'Échiquier a eu raison dans ses conclusions et ses notes à l'appui du jugement.

En l'absence d'une décision par le Ministre en vertu de l'art. 13(2), la Cour de l'Échiquier avait juridiction pour déterminer la question concernant le revenu principal de l'appelant. La preuve démontre que la seule

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conclusion à laquelle on pouvait en venir était que le revenu de l'appelant ne provenait principalement ni de l'agriculture ni d'une combinaison de l'agriculture et de quelques autres sources, ce qui fut la base en vertu de laquelle la Cour de l'Échiquier a procédé.

APPEL d'un jugement du Juge Cattanach de la Cour de l'Échiquier du Canada[1], confirmant une cotisation pour impôt sur le revenu. Appel rejeté.

APPEAL from a judgment of Cattanach J. of the Exchequer Court of Canada[1], affirming an assessment for income tax. Appeal dismissed.

F. E. Labrie, for the appellant.

G. W. Ainslie and *D. G. H. Bowman,* for the respondent.

The judgment of the Court was delivered by

CARTWRIGHT J.:—This is an appeal from a judgment[1] of Cattanach J. allowing in part on consent an appeal by the appellant from the assessments made for his 1957, 1958, 1959 and 1960 taxation years and subject to the adjustments directed pursuant to such consent dismissing the appeal and confirming the assessments.

At the conclusion of the argument of counsel for the appellant the Court was unanimously in agreement with the conclusions and reasons of the learned trial judge and counsel for the respondent were called upon in regard to only one point which was not dealt with expressly by Cattanach J. but was fully argued in this Court.

That point, briefly stated, is as follows. The appellant submits that unless the Minister determines under s. 13 (2) of the *Income Tax Act* that a taxpayer's chief source of income for a taxation year is neither farming nor a combination of farming and some other source of income the provisions of subs. (1) of that section do not come into operation, and that, since the Minister did not make a determination under subs. (2), either the appeal should be allowed *in toto* or the matter should be referred back to the Minister to make such a determination.

[1] [1965] 2 Ex. C.R. 117, [1965] C.T.C. 65, 65 D.T.C. 5056.

Section 13, as applicable to the taxation years 1958, 1959 and 1960 reads as follows:

13. (1) Where a taxpayer's chief source of income for a taxation year is neither farming nor a combination of farming and some other source of income, his income for the year shall be deemed to be not less than his income from all sources other than farming minus the lesser of

(*a*) his farming loss for the year, or

(*b*) $2,500 plus the lesser of

(i) one-half of the amount by which his farming loss for the year exceeds $2,500, or

(ii) $2,500.

(2) For the purpose of this section, the Minister may determine that a taxpayer's chief source of income for a taxation year is neither farming nor a combination of farming and some other source of income.

(3) For the purposes of this section, 'farming loss' means a loss from farming computed by applying the provisions of this Act respecting the computation of income from a business mutatis mutandis.

As applicable to the taxation year 1957 there were differences in the wording of subs. (1) which are not material to the point under discussion.

Both at the trial and before us counsel for the respondent conceded that in the case at bar the Minister did not make a determination under subs. (2).

In these circumstances we are all of opinion that the Exchequer Court had jurisdiction to determine the question whether the appellant's chief source of income for the taxation years with which the appeal is concerned was neither farming nor a combination of farming and some other source of income.

On the evidence given at the trial and the admissions made by counsel the only finding that could properly be made is that the appellant's chief source of income during the taxation years in question was neither farming nor a combination of farming and some other source of income and it was on that basis that the learned trial judge proceeded.

For the reasons given by Cattanach J. and those stated above I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitor for the appellant: F. E. Labrie, Toronto.

Solicitor for the respondent: E. S. MacLatchy, Ottawa.