1954

Jan. 21

Feb. 22

BETWEEN:

MIRON & FRERES LIMITEE ....APPELLANT;

AND

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

Revenue—Income Tax—The Income Tax Act, S. of C. 1948, c. 52, ss. 11(1)(a), 20(2)(a), 127(5)—"A corporation and one of several persons by whom it is directly and indirectly controlled"—Arms-length —Capital cost of property—Finding of fact by Minister—Assessment based on finding of fact—Onus on appellant to demolish basic fact on which taxation rests—Failure to contradict Minister's finding of fact—Appeal from Income Tax Appeal Board dismissed.

In 1948 one M. bought a stone quarry for the price of $90,000 and sold it in 1949 to the appellant company for $600,000. At the time of the sale M. was the owner of 200 common voting shares of the 1,000 issued by the company and his five brothers owned the balance less three shares: one brother owned 200 shares and each of the other four 149. In its income tax return for the taxation year 1950, signed by M. as president of the company, appellant claimed a capital cost allowance on its purchase price of the quarry. The Minister contending that appellant came within the provisions of s. 20(2) of the Income Tax Act, S. of C. 1948, c. 52, assessed the company on the basis of the actual cost of the property to M., the previous owner. An appeal from the assessment to the Income Tax Appeal Board was dismissed and from that decision appellant appealed to this Court, its ground of appeal being that the sale of the quarry from M. to it was a transaction between parties dealing at arms-length.

Held: That the Minister having found as a matter of fact and having based his assessment on that fact, that M. was one of several persons by whom the appellant company was controlled, the onus of proof that the Minister's conclusion was not warranted rested on appellant who had challenged that fact. His obligation was to demolish the basic fact on which taxation rested. *Johnston* v. *Minister of National Revenue* [1948] S.C.R. 486 at 489 referred to and followed.

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2. That by not bringing forth evidence to contradict the Minister's finding of fact appellant has failed to establish that the transaction was at arms-length.

APPEAL from a decision of the Income Tax Appeal Board.

The appeal was heard before the Honourable Mr. Justice Fournier at Montreal.

Alderic Laurendeau, Q.C. for appellant.

Raymond G. Decary and *Claude Couture* for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

FOURNIER J. now (February 22, 1954) delivered the following judgment:

This is an appeal from the decision of the Income Tax Appeal Board, dated August 26, 1953, dismissing the appellant's appeal from his income tax assessment for 1950, whereby the Minister reduced the amount of the capital cost allowance claimed by the appellant in his income tax return for that year.

The facts not being disputed, no verbal evidence was heard at the hearing of this appeal.

The pleadings and documents filed state that Gérard Miron was at all time material a shareholder of Miron & Frères Limitée, the appellant company. In 1948 he brought a farm property in the Town of St. Michel for the price of $90,000 and in 1949 he sold this property to Miron & Frères Limitée for the price of $600,000. The farm contained a stone quarry and since its acquisition the company has operated the property as such. At the time of the sale Gérard Miron was the owner of 200 common voting shares of the 1,000 issued by the company and his brothers owned the balance of the shares less three shares out of 800 which were owned by other parties. One of his brothers owned 200 shares and each of the other four brothers owned 149 shares.

On June 7, 1951, the company in its income tax return for its taxing year 1950 signed by Gérard Miron, President, claimed a capital cost allowance of $44,000 on its purchase price of the above property. On January 4, 1952, the Minister in assessing the appellant reduced the capital cost

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allowance to $6,800. On March 11, 1952, the company served a notice of objection to this assessment. On July 22, 1952, the Minister issued his notification in which he notified the company of his intention to reduce the capital cost allowance still further from $6,800 to $3,163, but confirmed the said assessment in other respects as having been made in accordance with the Act and, in particular, on the ground that, for the purposes of paragraph (*a*) of subsection (1) of section 11 of the Act and the Income Tax Regulations made thereunder, the capital cost of the property acquired from Gérard Miron had been determined at its cost to the said Gérard Miron in accordance with the provisions of subsection (2) of section 20 of the Act.

From this assessment the company appealed to the Income Tax Appeal Board and the appeal was dismissed. The appeal to this Court is from that decision.

The appellant contends that the above sale of the said property from Gérard Miron to the company was a transaction between parties dealing at arms-length and that subsection (2) of section 20 and subsection (5) of section 127 of the Act are not applicable in the present case. Therefore the appellant claims that it should receive a capital cost allowance based on the amount it paid for the property and not on the cost to the former owner. The Minister by having, in his assessment, allowed a capital cost allowance on the cost to the previous owner gave an erroneous interpretation to subsection (5) of section 127 of the Act.

The sections of the Income Tax Act referred to above read as follows:

20 (2) Where depreciable property did, at any time after the commencement of 1949, belong to one person (herinafter referred to as the original owner) and has, by one or more transactions between persons not dealing at arms-length, become vested in the taxpayer, the following rules are, notwithstanding section 17, applicable for the purposes of this section and regulations made under paragraph (*a*) of subsection (1) of section 11;

(*a*) the capital cost of the property to the taxpayer shall be deemed to be the amount that was capital cost of the property to the original owner;

127 (5) For the purposes of this Act,

(*a*) A corporation and a person or one of several persons by whom it is directly or indirectly controlled;

(*b*) Corporations controlled directly or indirectly by the same person, or

> (c) Persons connected by blood relationship, marriage or adoption shall without extending the meaning of the expression 'to deal with each other at arms-length', be deemed not to deal with each other at arms-length.

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It is clear that certain words in paragraph (a), viz. "a corporation and a person by whom it is directly or indirectly controlled", and paragraphs (b) and (c) are not applicable to the facts of this case.

The dispute between the parties is on the interpretation to be given to the words "a corporation and one of several persons by whom it is directly or indirectly controlled shall be deemed not to deal at arms-length."

Whatever interpretation is given to the above words, one thing is certain, the Minister found as a matter of fact that Gérard Miron was one of several persons by whom the corporation was controlled. On this fact the Minister based his assessment. The appellant having challenged this fact, the burden of proof that this was incorrect rested on him. The onus was his to show that the Minister's conclusion was not warranted and he could have brought forth evidence to that effect. His obligation was to demolish the basic fact on which the taxation rested.

That directive given by Mr. Justice Rand in the case of *Roderick W. S. Johnston and Minister of National Revenue* (1) is followed by this Court.

The only evidence is to the effect that Géard Miron was a minority shareholder, but the file reveals that he was president of the Company. It may be presumed that he was also one of its directors. Being a minority shareholder would not bar him from being a shareholder with several (four or five) shareholders by whom the corporation was controlled. When this took place it would be a question of fact. This was the finding of the Minister; if he had found otherwise, the assessment would have been on a different basis. Nothing in the pleadings and in the documents filed indicates that he was not a person, one of several by whom the corporation was controlled.

Keeping in mind that evidence would be adduced to substantiate the facts, one could imagine situations and circumstances under which a shareholder could be considered

(1) [1948] S.C.R. 489.

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as dealing at arms-length with a corporation and this would render the section inapplicable.

As an instance, a minority shareholder dies, say Gérard Miron. His shares are bought by an outsider. This new shareholder never takes part in the activities or the management of the affairs of the company except to receive his dividends and the several other owners administer the business of the corporation. I would be inclined, these facts being proven, to consider that this shareholder was not one of several persons in control.

I cannot agree that this section applies only when a sufficient number of shares to control a company are owned jointly by several persons, of whom the person dealing with the company was one. This would be giving the phrase "one of several persons" a meaning difficult to justify in the context of the section.

I would doubt also that the decision in this case would mean that any transaction between a corporation and any shareholder, even though he might own only one share, could be considered as a deal not at arms-length. I believe that this would be a much too sweeping deduction.

It seems to me that the appellant has not brought forth evidence to contradict the finding of the Minister that Gérard Miron was one of several persons by whom the company was controlled. That being so, he failed to establish that the transaction in this instance was at arms-length and that the provisions of section 20(2) were not applicable.

For these reasons, I am of the view that when Gérard Miron, one of the shareholders, sold the property to the company he was one of four or five shareholders by whom the corporation was controlled and was not dealing at arms-length and that the assessment made under the provisions of section 20, subsection (2) of the Income Tax Act is in accordance with the law.

Therefore the appeal is dismissed with costs.

Judgment accordingly.