

Vancouver
1967
Nov. 13
Nov. 16

BETWEEN :

ELECTRIC POWER EQUIPMENT }
LIMITED

APPELLANT;

AND

THE MINISTER OF NATIONAL }
REVENUE

RESPONDENT.

Income tax—Associated companies—Income Tax Act, s. 39(4)(d)—Group of companies—Construction of enactment.

Appellant company was controlled by the four children of B. B controlled a second company. The second company controlled a third company. The third company was a shareholder of appellant company.

Sec. 39(4)(d) of the *Income Tax Act* provides:

"... one corporation is associated with another ... if ... one of the corporations was controlled by one person and that person was related to each member of a group of persons that controlled the other corporation, and one of those persons owned directly or indirectly one or more shares of the capital stock of each of the corporations ...".

1967
ELECTRIC
POWER
EQUIPMENT
LTD.
v.
MINISTER OF
REVENUE

Held, appellant company was associated with the third company within the meaning of such enactment. The phrase "one of those persons" therein refers not merely to the "group of persons" that controls one of the corporations but to all persons referred to, including the person controlling the other corporation; and the word "person" therein includes a corporation.

INCOME TAX APPEAL.

Allan D. McEachern for appellant.

D. G. H. Bowman for respondent.

SHEPPARD D.J.:—This appeal is by Electric Power Equipment Limited as appellant from an assessment for the taxation years 1964 and 1965 by the Minister, who held that the appellant and two other corporations, namely, Grassington Estates Limited and Bartholomew Engineering Limited, were associated with each other and therefore taxable as associated under section 39 of the *Income Tax Act*, R.S.C. 1952, c. 148 and amendments.

The appellant contends that it was not associated with those companies and therefore the assessment was in error. That is the issue.

The facts follow.

In Electric Power Equipment Limited (the appellant) four sons and daughters of F. J. Bartholomew held 133 of the voting common shares out of 191 issued, therefore that group controlled the corporation; Bartholomew Engineering Limited held 6,958 non-voting common shares out of 18,909 issued.

In Grassington Estates Limited, Bartholomew Engineering Limited held 2,498 voting common shares out of 2,500 issued and in Bartholomew Engineering Limited, F. J. Bartholomew held 51 of the voting common shares out of 100 issued.

After the appellant had filed returns for the taxation years 1964 and 1965, the Minister made a re-assessment holding that the appellant was deemed to be associated

1967
 {
 ELECTRIC
 POWER
 EQUIPMENT
 LTD.
 v.
 MINISTER OF
 REVENUE
 —
 Sheppard
 D.J.
 —

within section 39 and assessed accordingly. The appellant then filed a notice of objection and the Minister confirmed the re-assessment. Eventually there was an appeal to this Court.

The parties have agreed that if the appellant and Grassington Estates Limited were held to be associated, then Bartholomew Engineering Limited would be associated, hence the sole question is whether the appellant and Grassington Estates Limited are associated, and that turns upon the meaning of section 39(4)(d) of the *Income Tax Act* which reads as follows:

39.

* * *

(4) For the purpose of this section, one corporation is associated with another in a taxation year if, at any time in the year,

* * *

(d) one of the corporations was controlled by one person and that person was related to each member of a group of persons that controlled the other corporation, and one of those persons owned directly or indirectly one or more shares of the capital stock of each of the corporations,...

The issue turns upon the meaning of the words "one of those persons" appearing in section 39(4)(d). The appellant contends that those words refer to "each member of a group of persons" so that the true meaning is that one of the group of four sons and daughters of F. J. Bartholomew who controlled the appellant corporation must also hold shares in Grassington Estates Limited, and as no member of that group held shares in Grassington Estates Limited, therefore the appellant and the Grassington Corporation were not associated.

On the other hand, the Minister contends that the phrase to be construed "one of those persons", means that the "one" may be selected from all those "persons" previously referred to in section 39(4)(d) as "one person", "that person" and "each member of a group of persons", and further that in each instance the person or persons may be a natural person or a body corporate.

The appellant supports its contention on the grounds:

- (a) that the words "those persons" appearing in section 39(4)(d) should be taken to refer back to the nearest possible antecedent, and that is "a group of persons", and

- (b) that a taxing statute should be clear in imposing a tax and there is at least an ambiguity as to whether the antecedent referred to by the words "one of those persons" is one of the group or all of the persons which are referred to previously in that subsection.

1967
 ELECTRIC
 POWER
 EQUIPMENT
 LTD.
 v.
 MINISTER OF
 REVENUE
 —
 Sheppard
 D.J.
 —

Therefore, as the group does not hold shares in the Grassington Estates Limited the two corporations are not associated and the appeal should be allowed.

That contention fails for various reasons.

- (1) The intention of the section is apparent that "one of those persons" who by the subsection is to own one or more shares in each of the corporations is not necessarily one of the group.
- (a) "One of those persons" need hold only "one or more shares"—of each of the corporations. That does not require the holding of shares as one of the group having control.
- (b) "One person" referred to in the first part of the subsection and again referred to as "that person" is described as "related to each member of a group", hence he need not be one of the group, otherwise being related to each member of the group, he would be related to himself. Being related to oneself can only occur where permitted by statute, as in section 139(5d)(c) referred to in *Motivair Ltd. v. M.R.N.*¹, but is not a usual meaning of being related.

It follows that there is some difficulty in construing "one of those persons" as referring back to "a group of persons" so as to exclude "one person" and "that person", also previously mentioned in section 39(4)(d).

- (2) In effect section 39(4)(d) deals expressly with two corporations of which
- (a) one corporation is controlled by one person who is related to each member of a group of persons;
- (b) another corporation which is controlled by that group of persons, and the section requires;
- (c) that "one of those persons" holds one or more shares of each of the *two* corporations.

¹ 66 DTC 77 at p. 81.

1967
 }
 ELECTRIC
 POWER
 EQUIPMENT
 LTD.
 v.
 MINISTER OF
 REVENUE
 ———
 Sheppard
 D.J.
 ———

The words "each member" and "group" are here distinctive as readily identifying certain persons and if the words in question, "one of those persons" were intended to be restricted to that group, that could have been done clearly by using such distinctive terms as "member" or "group". In place of doing so, Parliament has chosen other words, namely, "one of those persons", and the word "persons" is different:

- (a) as a word capable of including all who have been previously referred to in that subsection as "one person", "that person" or "each member of a group of persons", in that the plural includes the singular: *Interpretation Act*, R.S.C. 1952, c. 158, section 31(j);
- (b) as the word "persons" has been expressly defined as extending to include a body corporate (section 139(1)(ac)).

In a proper construction due effect may be given to that difference: *Hurlbatt v. Barnett*², Lord Esher M.R. at p. 79 and Lopes L.J. at p. 80; *Bradlaugh v. Clarke*³, the Earl of Selborne L.C. at p. 368, and that may be done here by construing the words in question, "one of those persons" as intending to select one from that class of persons which includes all those previously designated as "person" or "persons". Such implied intention is against construing "one of those persons" as equivalent to "each member of a group of persons", and thereby restricting "persons" to a member of that group.

- (3) However much could be said for the contention of the appellant, if the words "person" or "persons" were to be construed as referring only to a natural person, that is not the case here.

Under the statute a natural person is defined as an individual (section 139(1)(u)) but "person" includes a body corporate (section 139(1)(ac)), also the plural includes the singular: *Interpretation Act*, (*supra*), section 31(j). Therefore wherever "person" or "persons" appears

² (1893) 1 Q.B. 77.

³ (1882) 8 A.C. 354

in the section that word must be read as including an individual and a body corporate and when so construed, section 39(4)(d) may be read as follows:

- (d) one of the corporations (Grassington Estates Limited) was controlled by one person (which could include Bartholomew Engineering Limited) and that person (Bartholomew Engineering Limited) was related to each member of a group of persons (which may be individuals or corporations, and here contended by the Minister to be the four sons and daughters) that controlled the other corporation (Electric Power Equipment Limited), and one of those persons (which may be a corporation, and hence Bartholomew Engineering Limited) owned directly or indirectly one or more shares of the capital stock of each of the corporations (that is capital stock of Electric Power Equipment Limited and of Grassington Estates Limited), ...

1967
 {
 ELECTRIC
 POWER
 EQUIPMENT
 LTD.
 v.
 MINISTER OF
 REVENUE
 —
 Sheppard
 D.J.
 —

As Bartholomew Engineering Limited held 6,958 non-voting shares in the appellant company and 2,498 shares of the Grassington Estates Limited, therefore Bartholomew Engineering Limited held "one or more shares of the capital stock of each of the corporations" as required by the subsection, namely, in the appellant and in Grassington Estates Limited.

Further, Bartholomew Engineering Limited was "related to each member of a group of persons that controlled the other corporation" (Electric Power Equipment Limited), that is, was related to the four sons and daughters who controlled the appellant company. That is admitted (Agreement, Exhibit 1, Clause 6) and appears from the *Income Tax Act*, section 139(5a) (made applicable by section 39(4a)(a)) as follows:

F. J. Bartholomew controlled and therefore was related to Bartholomew Engineering Limited (section 139(5a)(b)(i)) and the four sons and daughters who controlled the appellant being related to their father, F. J. Bartholomew, (section 139(5a)(a)) who was related to Bartholomew Engineering Company (section 139(5a)(b)(i)), were also related to Bartholomew Engineering Limited (section 139(5a)(b)(iii)). Therefore Bartholomew Engineering Limited, the person which controlled Grassington Estates Limited, "was related to each member of the group of persons" (the four sons and daughters) "that controlled the other corporation" (Electric Power Equipment Limited). Hence all is as required by section 39(4)(d).

1967

ELECTRIC
POWER
EQUIPMENT
LTD.v.
MINISTER OF
REVENUESheppard
D.J.

Under section 39(4)(d) "one of those persons" must be read as capable of referring to a natural person or to a corporation, and therefore cannot necessarily be confined to that group of individuals who controlled the appellant. Again, the contention of the appellant does not include those instances clearly within section 39(4)(d) where one corporation is controlled by another corporation ("a person") and that controlling corporation (described as "that person") is related to each member of the group of individuals who control the other corporation and has the requisite share in the two controlled corporations. That is a meaning which is here contended for by the Minister and should be accepted.

In conclusion, the re-assessments are affirmed and the appeal is dismissed, with costs to the Minister.