Montreal 1965 Mar. 15-17 Mar. 19

BETWEEN:

JOHNSON'S ASBESTOS CORPORATION..APPELLANT;

AND

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

Income tax—Income from mining—Exemption of—"Exploration" and "development"—Deduction of expenditures after expiry of exemption period—Deduction confined to income derived from operation of mine—Whether exploration and development expenses included—Computation of income from one or more sources—Income Tax Act, ss. 3, 83A(3)(c)(ii), 83(5), 139(1a)(a).

Appellant company, whose principal business was mining asbestos, carried on testing and exploration work from 1947 to 1951 in an area known as the Megantic Mine in Quebec to ascertain if asbestos existed there in commercial quantities, and for that purpose it extracted considerable quantities of the mineral. In 1952 it erected a mill and in 1954 obtained a certificate under s. 83(5) of the *Income Tax Act* that it had been producing asbestos from the mine in reasonable commercial quantities since 1 March 1954, in consequence of which it was exempt from taxation for 1954, 1955 and 1956 on "income derived from the operation of the mine". In those three years it made substantial expenditures in removing waste rock to ascertain if asbestos existed in the Megantic Mine in commercial quantities and also in stripping and diamond drilling operations in that area and elsewhere. The company sought to deduct these expenses from its income for 1958 and following years under s. 83A(3) of the *Income Tax Act* which permits the deduction *inter alia* of (*c*)(ii) "exploration and development expenses incurred . . . in searching for minerals . . . after . . . 1952 . . . to the extent that they were not deductible in computing income for a previous taxation year".

Evidence was given with respect to the state in which asbestos is found in the ground, the meaning of the expressions "prospecting", "exploration" and "development" in the jargon of mining engineers and others in the mining industry, and the manner in which asbestos is mined or extracted.

Held, (1) the expenditures in question were exploration or development expenses incurred by the appellant in searching for minerals in Canada, within the meaning of s. 83A(3)(*c*)(ii).

(2) Some part of the expenses so incurred in the exempt period were also current expenses of operating the mine, and such part were eligible for deduction in subsequent years under s. 83A(3) since they were not deductible in computing income in the years in which they were incurred. The effect of the exemption of "income derived from the operation of a mine" in s. 83(5) was, by virtue of the rule in s. 139(1a)(*a*) relating to the computation of income from one or more sources, to exclude from the calculation of income for an exempt year all revenues from the operation of the mine and all deductions reasonably regarded as applicable to the operation of the mine.

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(3) Exploration or development expenses incurred by the appellant during the exempt years that were not current expenses of operating the mine were not eligible for deduction in subsequent years under section 83A(3)(*c*)(ii) to the extent that the appellant had, during the exempt years, income from sources other than the mine from which they could have been deducted, but, to the extent that there was, during the exempt years, no such other income from which they could have been deducted, such expenses are deductible under s. 83A(3)(*c*)(ii) in subsequent years.

APPEAL under the *Income Tax Act*.

H. Heward Stikeman, Q.C. and *Maurice Regnier* for appellant.

Paul Boivin, Q.C. and *Raymond G. Decary, Q.C.* for respondent.

JACKETT P. (Delivered orally at the conclusion of the trial):—This is an appeal from each of the appellant's assessments under Part I of the *Income Tax Act* for the 1958, 1959, 1960 and 1961 taxation years. Each appeal raises precisely the same question. That question is whether the appellant is entitled to a deduction in respect of certain expenditures made in the years 1954, 1955 and 1956 by virtue of subsection (3) of section 83A of the *Income Tax Act*.

What has been described as a predecessor company of the appellant carried on an operation of extracting the mineral known as asbestos from material taken from its Black Lake mine near Thetford Mines, P.Q., which operation came to an end in 1946.

In the period from 1947 to 1951, the appellant carried on certain operations on other property of the appellant in the same general area as a result of which it made a decision in 1951 to build a new mill for the purpose of processing asbestos from material taken from that property, which became known as the Megantic Mine, and a mill was built pursuant to that decision.

Substantial production was involved in the operations before the new mill was built as is shown by the fact that in the years 1947 to 1952, the company had, as a result of those operations, profits for certain years aggregating over $426,000 and losses for other years aggregating over $436,000.

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On October 26, 1954, the Deputy Minister of National Revenue came to the conclusion that the appellant had on March 1, 1954, achieved production in reasonable commercial quantities from the Megantic Mine and issued a certificate of exemption under subsection (5) of section 83 of the *Income Tax Act*, which provision reads as follows:

> (5) Subject to prescribed conditions, there shall not be included in computing the income of a corporation income derived from the operation of a mine during the period of 36 months commencing with the day on which the mine came into production.

Subsection (5) must be read with subsection (6) which reads as follows:

> (6) In subsection (5),
>
> (*a*) "mine" does not include an oil well, gas well, brine well, sand pit, gravel pit, clay pit, shale pit or stone quarry (other than a deposit of oil shale or bituminous sand); and
>
> (*b*) "production" means production in reasonable commercial quantities.

It is a matter of some importance in this appeal that the Megantic Mine in respect of which the certificate was issued is, according to the brief presented in support of the application for the certificate, the test pit then being operated on what is called Number 2 Pit area and the surrounding area.

During the period of 36 months commencing March 1, 1954, the following expenses, among others, were incurred by the appellant:

	Old Waste Rock Dump Removal	Diamond Drilling	Stripping
1954	$ 9,092.19	—	$ 172,436.50
1955	6,831.43	—	262,636.70
1956	80,027.45	$ 36,939.49	86,922.46
	$ 95,951.07	$ 36,939 49	$ 521,995.66

The sole question raised by these appeals is to what extent, if at all, those amounts qualify as deductions under subsection (3) of section 83A of the *Income Tax Act*, which reads in part as follows:

> (3) A corporation whose principal business is
>
> . . . .
>
> (*b*) mining or exploring for minerals,
>
> may deduct, in computing its income under this Part for a taxation year, the lesser of

(*c*) the aggregate of such of

. . . .

(ii) the prospecting, exploration and development expenses incurred by it in searching for minerals in Canada,

as were incurred after the calendar year 1952 and before the end of the taxation year, to the extent that they were not deductible in computing income for a previous taxation year, or

(*d*) of that aggregate, an amount equal to its income for the taxation year

(i) if no deduction were allowed under paragraph (*b*) of subsection (1) of section 11, and

(ii) if no deduction were allowed under this section,

minus the deductions allowed for the year by subsections (1), (2) and (8a) of this section and by section 28.

It is admitted that the principal business of the appellant for the 1954 to the 1961 taxation years, inclusive, was "mining" and it has been established that asbestos is a mineral.

The initial question to be considered is whether the expenses in question were "exploration and development expenses" incurred by the appellant in "searching for minerals" within those words in subparagraph (ii) of paragraph (*c*) of subsection (3) of section 83A. The appellant says that they were and the respondent says that they were not. If they were such expenses, it is conceded by counsel for the respondent that they were incurred in searching for minerals "in Canada".

If the appellant succeeds in the first issue, it is faced with the further contention of the respondent that the expenses were "current mining expenses to be taken into account in computing the income of the taxation year in which they were incurred". In other words, the respondent contends that the expenses in issue are excluded from subsection (3) of section 83A by the concluding words of paragraph (*c*) of that subsection, which permits the deduction of the described expenses only to the extent "that they were not deductible in computing income for a previous taxation year".

The Court has been assisted in coming to a conclusion on the first of these two questions by evidence tendered by the appellant as to

(*a*) the state in which asbestos is found in the ground,

(*b*) the meaning of the expressions "prospecting", "exploration" and "development" in the jargon of

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mining engineers and others in the mining industry and the manner in which such operations are carried on in connection with the mineral asbestos, and

(*c*) the manner in which asbestos in mined or extracted.

(In order to avoid confusion as to whether the word mining is used to refer to all of the operations commencing with prospecting and ending with removal of the mineral from the gound or is used to refer only to removal of the mineral from the ground, I shall use the word "extraction" to refer to the removal of the mineral from the ground.)

Asbestos is a mineral that is found in the form of relatively small veins in certain kinds of rocks. Such veins are not more than one inch thick and vary in length from a few inches to ten feet. Asbestos exists in the form of fibres. The veins are sometimes found close together and are sometimes separated by substantial quantities of barren rock. The quality of the fibres will vary substantially from one area to another and even as between veins found close to each other. The essential difficulty facing a person who proposes to extract asbestos from the earth appears to be the virtual impossibility of forecasting with any degree of precision what quality or quantity of asbestos will be found in any particular portion of the earth without undertaking major operations that enable more or less detailed examination of the mineral content of that portion of the earth. Appreciation of this fact, concerning which much persuasive evidence was led by the appellant, is essential to an appreciation of the appellant's case.

I need not set out the sense in which mining engineers use the word "prospecting". It does not seem to be relevant to the issue before me. It is sufficient to say that it is the initial stage of locating the site of a possible mining operation.

"Exploration", in general terms, is the operation of testing for the existence and the extent of an ore body and includes prospecting. In relation to asbestos, I take it that, for the purpose of this definition, "ore body" means an area of rock containing veins of asbestos in such quantity and of such quality as to make the removal of the rock containing the asbestos a commercially feasible proposition. In the case of asbestos, when the prospecting is finished, it is necessary to expose as much of the surface as possible—for

example, by stripping off the overburden, or by digging pits through the overburden. This may be followed by a process known as "core drilling", which is a process whereby a diamond drill is used to remove a pencil shaped sample from the ground ranging from $\frac{7}{8}''$ to $2''$ in diameter. Shafts may be sunk. Tunnels may be driven. Various combinations of such methods are used to enable the explorer to obtain suitable samples of rock for examination. If preliminary results warrant it, bulk samples are taken for analysis. This involves extracting tens of thousands of tons of the asbestos-bearing rock. That rock is crushed over screens and the asbestos fibres are removed and examined to determine their quantity and quality. This bulk sampling is part of the process of trying to determine what is in the ground. Bulk sampling should be carried on at more than one place. It may be necessary to build a special mill for bulk sampling. It is all part of exploration because it is part of the search to determine the extent and quality of the mineral rock. Bulk sampling gives some idea of the quantity and quality of the asbestos rock in the general area where it takes place but there is never any real degree of certainty by reason of the irregular manner of its occurrence.

"Development" of a mine, in general terms, means to uncover the body or area which is to be the subject matter of the extraction process. Development is the preparation of the deposit or mining site for actual mining. In the case of asbestos, it involves the removal of the overburden and of waste rock. It is of particular importance, in considering the words of sub-paragraph (ii) of paragraph (*c*) of subsection (3) of section 83A to realize that this process also serves, in the case of asbestos, by exposing more fibre-bearing rock, to give more information as to the extent of the fibre-bearing rock. In other words, as the words of sub-paragraph (ii) imply, in the case of asbestos at least, you may be continuing the search for the asbestos right up to the actual extraction process.

The actual production or extraction process can be described simply as one of drilling the rock and breaking it up with explosives, the selection of the fibre-bearing portions and the transportation of them to the mill for the separation of the asbestos.

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I must now refer to what the evidence has established as to the character of the operations in respect of which the expenditures in issue were made.

The decision to build a new mill taken in 1951 was based largely, if not exclusively, on estimates that had been made as to the existence of economic asbestos ore in Number 2 Pit area, where a bulk test pit had been operated for some years. This test pit and the surrounding area was what, at that time, had become known as the Megantic Mine. As already indicated, this appears from the brief filed by the appellant with the respondent in support of its application for certification under subsection (5) of section 83, which brief was filed as an exhibit by the respondent. Number 2 Pit was approximately 2,000 feet to the northeast of the mine which was abandoned in 1946, which mine was known as Number 1 Pit.

In 1951, some exploration work had been done on two other areas known as "Pine Tree" and Number 3 Pit, respectively. These areas were quite separate from Number 2 Pit and Number 1 Pit. The exploration work done on Pine Tree and Number 3 Pit was, at that time, quite insufficient to form the basis for any plans for extraction of asbestos ore on a commercial basis.

The operation known as "Old Waste Rock Dump Removal" consisted of the removal of the waste rock which had been produced during the course of the operation of Number 1 Pit prior to cessation of its operation in 1946. It existed in the form of a hill of rock some distance from Number 1 Pit and not far distant from Number 2 Pit. Before it was removed, there was no real information as to whether asbestos ore was to be found beneath it in such quantity and quality as to warrant its commercial exploration and the appellant desired the removal of the dump in order to enable it to carry on exploration operations in connection with the area covered by it. There was, in addition, a further reason for removal of this dump. While it did not cover any part of the Number 2 Pit area for which mining plans had been made in 1951, nevertheless, the nature of the open pit type of mining operation that was being used—involving the cutting back of the rock surface at an angle of 45°—required the removal of this rock dump in order to fully exploit Number 2 Pit area. The evidence establishes that the removal of this rock dump

was just as much a part of the appellant's operations for exploring the area covered by it as it was a part of the operation of extracting ore from Number 2 Pit area, and I so hold.

The drilling operation in 1956, the expenses of which are in issue, consisted in the taking of test "cores" from 36 holes by way of diamond drilling. The purpose, in the case of each hole, was to ascertain information concerning the existence of asbestos ore when such information previously was not available or not available in sufficient detail to make it possible to decide what areas warranted extraction on a commercial basis. A few of these holes were sunk on Number 2 Pit area but most of them were outside that area.

The drilling programme, to a large extent, if not entirely, followed upon the stripping programme, most of which was carried out in 1954 and 1955. Part of the stripping programme was on or adjoining the perimeter of Number 2 Pit but the remainder of it was between Number 2 Pit and Number 3 Pit and on Number 3 Pit area. While stripping operations are a condition precedent to extraction of the ore, if, upon further exploration, it becomes reasonable to proceed with extraction, stripping is, on the evidence, a normal part of the exploration process and, on the evidence, it would seem that a substantial part of the stripping in issue, if not all of it, was carried out for exploration purposes, and I so find.

While the test of whether an operation is or is not an exploration operation is the purpose for which the operation was carried on, and not whether or not there was a resulting discovery, it is not without significance that, as a result of the combined operation of removal of the rock dump, the stripping of overburden and the drilling programme, the appellant was enabled to work out a project for its extraction operation that included Number 3 Pit, the Pine Tree area and the area between them and Number 2 Pit, as well as Number 2 Pit, whereas, prior to that exploration programme, the appellant's knowledge of the existence of asbestos ore in a state that warranted commercial operations was limited to that existing in the Number 2 Pit area.

The appeal was fought on the basis that the expenses *did* or *did not* qualify as being of the kind described in sub-

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paragraph (ii) of paragraph (*c*) of subsection (3) of section 83A. There was no attempt to show that, even if a substantial part of the stripping expenses were exploration or development expenses, some part of them were exclusively in relation to extraction of the mineral. In these circumstances, as I find that the evidence establishes that the stripping operations in issue were, in the main, exploration or development expenses incurred in searching for minerals, and that there is no evidence whereby I can exclude any part of such expenses from that finding, I apply that finding to all the stripping expenses in issue.

On the facts, as I have found them, all of the expenses in issue, *prima facie,* fall within the words in subparagraph (ii) of paragraph (*c*) of subsection (3) of section 83A, "exploration and development expenses incurred . . . in searching for minerals".

The respondent, however, contends that the appellant had discovered its mineral deposit before it decided in 1951 to build its mill, that once it had discovered the deposit, it could no longer be said to be searching for minerals and that, therefore, there could not, after that time, be any expenses incurred in searching for minerals. Reliance is placed by the respondent on the evidence of one of the witnesses for the appellant who, on cross-examination, said that no new "ore deposits" had been discovered as a result of the exploration programme. It must be noted, however, that the same witness added that they did find new "ore bodies". Counsel for the respondent put the contention slightly differently when he said that, once you make a discovery of a mineral field, you stop searching and you start digging or extracting.

This argument is one that strikes me as having great weight. My difficulty is in applying it to the facts as established by the evidence concerning this particular operation of searching for asbestos and extracting it, and also in the rather special wording of sub-paragraph (ii) of paragraph (*c*) of subsection (3) of section 83A.

If I assume the case of a mineral that is known to exist in a continuous mass of determinable limits beneath the earth's surface, I have no difficulty in holding that, upon an explorer having satisfied himself that he has discovered such a mass, even though he does not know its extent, he has discovered the whole of that mass of mineral.

Where, however, the situation is that asbestos exists in the form of veins in rocks, which veins are separated from each other in such an irregular and unforeseeable way that knowledge of their existence in ample quantity in one area is no basis for conluding that they will also exist in adjoining areas, I cannot find that discovery of the existence of the mineral in one defined area is the end of the search in respect of nearby areas when the situation is that the mineral may or may not exist in such nearby areas according to the evidence available as appraised in the light of existing scientific knowledge. It is to be remembered that the requirement of the statute is that the expenditures must have been incurred in searching for "minerals" and not in searching for mineral deposits, mineral bodies or mineral areas. In my view, it is a question of fact in the circumstances of each particular case as to whether expenses of the defined classes were incurred in searching for "minerals". In the case of some minerals, the search may be over when the ore deposit is found. In the case of asbestos, on the evidence in this case, the matter is not quite so simple and it is quite possible to have a case where one area has been developed and is being operated as a producing mine at the same time that exploration expenses are being incurred in the search for minerals in adjoining areas. I therefore find that, even though production of asbestos in reasonable commercial quantities from Number 2 Pit area was proceeding during the years in question, the appellant was carrying on an exploration programme in a search for asbestos in other areas during those same years.

I might add that I have difficulty in seeing any special significance, for the purpose of subsection (3) of section 83A, in the commencement of production in commercial quantities, which event is given significance by the statute for the purpose of subsection (5) of section 83. The appellant knew in 1947 that there was some asbestos in the Number 2 Pit area. From that year on he was extracting it for bulk testing purposes to determine whether asbestos existed in that area in such quantity and quality as to have significance for commercial or practical purposes. From 1947 to 1951, he carried on exploration work to determine the answer to that question. There is no doubt in my mind that that work carried on prior to being satisfied that there was enough asbestos ore to warrant a commercial operation

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was exploration. I did not understand the respondent to suggest that it was not. I cannot see any difference between work in that period and similar work carried on after the commencement of operation of Number 2 Pit to find the same answer with regard to areas outside Number 2 Pit area. If the respondent's submission is valid, however, it leads to the conclusion that there can be no exploration after the presence of the mineral on some part of the appellant's property is discovered. I cannot accept such an extreme and barren interpretation of the words of the section.

There is a further answer to the respondent's contention and that is that, even if the expenses in question are not exploration expenses, they are development expenses. While Number 2 Pit was developed for production before the extraction operation commenced, this was certainly not true of the much larger mining area, of which Number 2 Pit was only a part, which, if it was not being explored, was certainly being developed by the work the expenses of which are in question. While exploration in the search for minerals may be said to come to an end when the existence of minerals, or their existence in a state that warrants extraction on a commercial basis, is discovered, this cannot be said of development in searching for minerals. Development presupposes knowledge of the existence of the area to be exploited. "Searching for minerals" in subsection (3) of section 83A must have a meaning that gives some room for the inclusion of "development expenses" incurred in searching for minerals. It follows that the words "searching for minerals" must be given a sense that encompasses ascertainment of the extent and nature of the minerals that have been discovered in the way that such things are ascertained by development operations. If the provision is not so read, the words "development expenses" can have no effect and the rule of statutory interpretation, as I understand it, is that the statute must be so read, if at all possible, so as to give meaning to all the words employed. I hold that, if the expenses in question are not within the words "exploration . . . expenses incurred . . . in searching for minerals", they are within the words "development expenses incurred . . . in searching for minerals" when the latter words are understood in the manner that I have just indicated.

One other problem that has troubled me in attempting to interpret subsection (3) of section 83A arises out of the fact that some part of the expenses in issue would have qualified, if the appellant had been taxed on income from the operation of the mine for the years in which they were incurred, as ordinary current expenses because they were not only the expenses of part of the exploration programme but they were also the expenses of an operation necessary to remove the ore from Number 2 Pit. (Indeed, it may be that they would qualify as current expenses even though they were merely expenses incurred, when the company was operating a producing mine, in determining whether there was further asbestos ore available for its mill. I express no opinion as to that.) Subsection (3) of section 83A was obviously intended to permit the deduction of expenses that are not otherwise deductible and would not have been enacted if it were not for the fact that the described expenses are generally speaking incurred in such circumstances that they would not otherwise be deductible. This raises a question in my mind as to whether subsection (3) of section 83A should be interpreted as not applying to expenses that qualify as a current expense of a mining operation. However, the provision is so worded as to include all expenses of the described classes whenever or however occurring and any possibility of the same expense being deducted twice is avoided by the concluding words of paragraph (*c*) of subsection (3) of section 83A, by which the deduction of the described expenses is permitted only to the extent that they were not deductible in computing income for a previous year. That being so, I see no justification for implying any exclusion of current expenses from the expenses to which the provision applies.

Another contention on the part of the respondent that appealed to me, at first, as being of some significance was that the appellant is, in effect, attempting to get a double exemption. It paid no tax on its income from mining in the three year exemption period and it is claiming to deduct expenses incurred in that period in computing its income for later periods. I have, however, come to the conclusion that the appellant is not claiming anything twice and is claiming precisely what Parliament intended that it should have. In the first place, Parliament conferred on it a right to freedom from taxation on the profits of operating its new

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mine for three years. In the second place, Parliament conferred on it a right to deduct certain expenses of searching for minerals from its income from all sources until such time as the full amount is deducted. If the mine had been operated by one company and the exploration operations had been carried on by another company, there would have been no doubt as to their respective entitlements. The result is the same when both operations are carried on by the same company.

The final question to be considered is whether the expenses were "deductible in computing income for a previous taxation year" because, if they were, they are excluded from subsection (3) of section 83A by the concluding words of paragraph (*c*) of that subsection.

The difference between the positions taken by the parties in connection with this question has to do with the effect of subsection (5) of section 83 which provided, in effect, in respect of the years when the expenses in question were incurred, that there shall not be included in computing the income of the appellant "income derived from the operation" of the new mine. The appellant submits that this had the effect of excluding from the computation of the appellant's incomes for the years in question both the revenues of the mine and the expenses of operating the mine and that it follows that the expenses in issue were not deductible in computing its incomes for those years within the meaning of the concluding words of paragraph (*c*) of subsection (3) of section 83A. The respondent says that what is excluded by subsection (5) of section 83 from the appellant's incomes for the three year exempt period is the "income" from the operation of the mine, that to determine that income, the expenses of operation of the mine must be deducted from the revenues from the mine and that the expenses in question were therefore "deductible" in computing its incomes for the years in which they were incurred. I am of opinion that the effect of subsection (5) of section 83 is to exclude the income derived from the mine from the totality of income that is contemplated by section 3 of the Act and that, therefore, income must be computed from all sources other than the mine as if the income from the mine did not exist. This brings into play the rule in paragraph (*a*) of subsection (1a) of section 139 of the *Income Tax Act*, which reads as follows:

> (*a*) a taxpayer's income for a taxation year from a business, employment, property or other source of income or from sources in a particular place means the taxpayer's income computed in accordance with this Act on the assumption that he had during the taxation year no income except from that source or those sources, and was allowed no deductions in computing his income for the taxation year except such deductions as may reasonably be regarded as wholly applicable to that source or those sources and except such part of any other deductions as may reasonably be regarded as applicable to that source or those sources;

While paragraph (*a*) of subsection (1a) of section 139 is drafted in relation to a single source of income, by virtue of paragraph (*j*) of subsection (1) of section 31 of the *Interpretation Act*, R.S.C. 1952, chapter 158, it is equally applicable to determining a taxpayer's income for a year from several sources. The effect in my view is to exclude from the calculation of income for an exempt year all revenues from the operation of the new mine and all deductions reasonably regarded as applicable to the operation of that mine.

Unfortunately, this is not the end of the matter for, in my view, to the extent that the expenses in issue qualify for deduction only because they fall within the incentive deduction permitted by subsection (3) of section 83A, they cannot reasonably be regarded as applicable in whole or in part to the operation of the mine that was the subject matter of the exemption under subsection (5) of section 83 for the years in question. The deduction under subsection (3) of section 83A is a deduction permitted in computing income from any source in any year to the extent that there would otherwise be income in that year. An amount deductible by virtue of subsection (3) of section 83A is deductible in computing income even though the taxpayer's income in a particular year is all from sources other than mining. It is not deductible because it is regarded as a current cost of a mining operation. It is true that a similar deduction was regarded in *Home Oil Company, Limited v. Minister of National Revenue*[1] as attributable, for certain purposes, to particular oil wells. The reason for this was that the regulation being applied in that case specifically required the deduction of such expenses in "computing the profits reasonably attributable to the production of oil or gas". A similar regulation was applied in *Minister of National Revenue v. Imperial Oil, Limited*[2]. In the latter

[1] [1955] S.C.R. 733.

[2] [1960] S.C.R. 735.

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case, rules were provided to determine a special concept of profit as a base for a depletion allowance and the governing law required the deduction of this class of expense in determining that base. The question there was to what extent such expenses were so required to be deducted. Here, the question is which of the deductions permitted in the calculation of what would otherwise be the appellant's world income may reasonably be regarded as applicable to the appellant's sources of income other than the operation of the exempt mine for the purpose of determining its income for the purpose of Part I of the *Income Tax Act* having regard to the rule in subsection (5) of section 83, and, in particular, whether the deduction under subsection (3) of section 83A is reasonably regarded as applicable to the operation of the exempt mine or as applicable to all other sources of income. In this particular case, in any event, I am of opinion that the deduction of amounts that are deductible solely by reason of subsection (3) of section 83A cannot be reasonably regarded as applicable to the operation of the exempt mine. (It might be different if the amounts were expenses of exploration that resulted in discovery of the exempt mine.) I am of opinion, therefore, that the appellant was entitled to deduct such expenses —that is, expenses that were deductible solely by reason of subsection (3) of section 83A—in computing its income for the three year exemption period. It must not be forgotten, however, that the described expenses were deductible only to the extent, for each of those years, that the appellant would, if it were not for this and certain other deductions, have had income for the year. The rule in subsection (3) of section 83A is that the amount that can be deducted for any year is the lesser of the described expenses or the amount that the income would have been if the taxpayer had not been entitled to the deduction in question and certain other specified deductions. See paragraph (*d*) of subsection (3) of section 83A. To the extent that the appellant was entitled to deduct the expenses in question in computing its income for one of those years, solely by reason of subsection (3) of section 83A, they were "deductible in computing income" for a year prior to the years under appeal and are therefore not deductible by virtue of subsection (3) of section 83A in computing income for one of the years under appeal.

That leaves for consideration the part of the expenses in issue that would have been deductible for one of the three years in question, if it had not been for the exemption conferred by subsection (5) of section 83, under either one of two heads, that is

(*a*) as being current expenses of operating the exempt mine, or

(*b*) by virtue of subsection (3) of section 83A as being exploration or development expenses incurred in searching for minerals,

because they were at one and the same time incurred for both purposes. To what extent there were such double purpose expenses was not made an issue in these appeals. I have already held that the expenses for the removal of the old waste rock dump did fall into both classes of expense. In my view, when determining which of the deductions for the exempt years should be regarded as applicable to the operation of the exempt mine rather than to other sources of income, these double purpose expenses, by virtue of being part of the current costs of operating the mine, should be regarded as applicable thereto and thus, on the view that I have already adopted as to the effect of subsection (5) of section 83, as being excluded from the computation of the appellant's incomes for those years. Such double purpose expenses are not therefore expenses that were "deductible in computing income for a previous taxation year" within the meaning of those words at the end of paragraph (*c*) of subsection (3) of section 83A and they are not therefore excluded from the benefits of subsection (3) of section 83A by those words.

The appeal is allowed with costs. The assessments appealed from are referred back to the respondent for reassessment on the basis that the expenses referred to in paragraph 4 of the Notice of Appeal qualify for deduction under subsection (3) of section 83A of the *Income Tax Act* in computing the incomes of the appellant for the years under appeal to the extent that such expenses were

(*a*) in addition to being exploration or development expenses incurred by the appellant in searching for minerals, also current expenses of operating the mine that was the subject matter of the certificate under subsection (5) of section 83 of the *Income*

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Tax Act (whether or not there are any such double purpose expenses other than those for the removal of the old waste rock dump is a matter to be determined by the respondent in the course of the reassessment), or

(*b*) not of the kind referred to in paragraph (*a*) *supra* and not deductible in computing the appellant's incomes for one of the three years in which they were incurred, by virtue of subsection (3) of section 83A, having regard to what would otherwise have been the appellant's incomes for those years from sources other than the operation of the mine that was the subject matter of the aforesaid certificate.