1929
March 27-28.
May 29.

THE SASKATCHEWAN CO-OPERATIVE WHEAT PRODUCERS, LTD.. } APPELLANT;

AND

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

Revenue—Income Tax—Voluntary association—Gain and profit—Agency —Income War Tax Act, 1917, and amendments

The appellant is a voluntary association of people,—incorporated under the Saskatchewan Companies' Act, pursuant to a memorandum of association, confirmed by Act of the Legislature—who pool together their wheat or grain crops so as to dispose of them to best advantage, with the idea of obviating and reclaiming the waste experienced when each farmer personally disposed of his crop. The officers and employees are paid wages, as part of the operating expense, which

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are not gains or profits depending on the state of the market. A farmer takes his grain to the elevator, obtains a certificate or receipt for the same together with a first instalment payment, previously adjusted, until he finally gets the last instalment, subject to three deductions: *First,* a deduction for operating expense. *Second,* one for elevator reserve, and *third,* one for commercial reserve. The Crown has assessed the last two for income tax as being income, gains or profits of the association. Hence the appeal. These deductions belong to the farmer and must be accounted for to him and the association retains nothing but the expense, including capital to acquire elevators for the farmers to handle the grain in question, the said deductions being made solely to earn income to the farmers and not to the association.

Held, that the deductions in question are but loans or advances under contract made by the farmers out of the price of their grain to the appellant for carrying on the business and acquiring elevators, which are all repayable to the grower, and are not gains or profits of the association within the meaning of the Income War Tax Act, 1917, and are not taxable under the said Act.

(2) That "profits and gains" must not be regarded loosely, the words as used in the taxing Act must be read in conjunction with the meaning of the words used in the context.

APPEAL under the provisions of the Income War Tax Act, 1917, from appellant's assessment for the years 1925 and 1926.

The appeal was heard before the Honourable Mr. Justice Audette at Regina.

O. M. Biggar, K.C., and *R. H. Milliken, K.C.,* for appellant.

C. F. Fraser, K.C., and *Mr. Fisher* for respondent.

The facts are as stated in the reasons for judgment.

AUDETTE J., now (May 29, 1929), delivered judgment.

This is an appeal, under the provisions of the Income War Tax Act, 1917, and amendments thereto, from the appellant's assessments for the year 1925 at the sum of $154,143 and for the year 1926 at the sum of $302,489.61.

The appellant was duly incorporated under the Saskatchewan Companies Act in 1923, pursuant to a memorandum of Association (exhibit No. 4), and this incorporation was confirmed by a Special Act of the Legislature (chap. 66 of 1924), assented to on the 25th March, 1924. The object of the company, generally speaking, consists in establishing and carrying on the business of the buying, selling, marketing and handling of grain and its products

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and the general business of elevator operators and warehousemen, and to operate a pool or pools for grain, as more fully set forth in the preamble of the Act and sec. 4 thereof, and to enter into contracts incidental to this co-operating, selling and marketing of grain, etc.

Under sec. 6 no dividend can be declared or paid to the shareholders.

In the result the appellant is a voluntary association of people who pool together their wheat or grain crops so as to dispose of them under a particularized system with the idea of obviating and reclaiming the waste which was experienced when the farmers or growers personally sold or disposed of such crops,—and to get the best prices for the same.

It is an economic organization with modalities superior to the possibilities of the individual handling of such a large business.

This pool, or collectivity of grain producers, formed on a syndical basis through officers selected from men of experience in their business, entrusts the association, upon consideration in the form of salaries to its officers (paid out of the hereafter mentioned "deduction" for operation) with the carrying on and the administration of its business or enterprise, obviously involving, as agent, the discharge of fiduciary and constructive task.

The pool or association may be likened to an agent or factor who intervenes in the sale of goods and who conveys the same, which are in process of exchange, between the producer and the purchaser. In effect the growers have constituted the association as their agent to sell their grain under the conditions mentioned in the Act and the contract made thereunder.

An analysis of the relations subsisting between the pool and the producers discloses that the Association's officers and employees are paid wages, as part of the operating expenses, which are in no sense gains or profits dependent on the state of the market. In other words the amount of wages is unaffected by profits or loss, as neither of them arise under the adopted system.

The farmer, in the first place, takes his grain to the elevator, he gets a certificate or receipt for the same together with a first instalment payment, previously adjusted, until

he finally gets the last instalment, subject to three distinct deductions. First a certain deduction for operating expenses which have already been mentioned and do not come in question in this case. As one will readily understand these expenses are constantly incurred and are paid currently throughout the year.

Then there is also a percentage of deduction for the Elevator Reserve and another for commercial reserve.

The only question which is the subject of the present controversy, is whether or not the amounts of these two last deductions are income and gains or profits to the appellant and are subject to taxation.

It is well to bear in mind that these deductions are so much less of the price, the proceeds of the sale, of the farmer's grain which he leaves, by agreement, in the hands of such association for the purpose of handling his grain to his best advantage in giving the pool, his agent, the commercial facilities necessary, that is the capital or moneys necessary to finance expenses and carry on; together with the other deduction for the establishment of elevators to handle the grain. Both deductions belong to the grower and are to be accounted to him at a time to be decided by the Directors, as agreed upon.

These moneys are in the hands of the pool (the membership of which being entirely farmers), the agent of the farmer, for a certain time; but they are to be accounted to the farmer and will be in the end retained as his property.

The perusal of exhibit No. 6 will show how all of this is done.

The Association, acting in a fiduciary capacity for the growers, accounts for every cent it receives and retains nothing that could amount to a gain or profit. See subsec. cc. of sec. 4 of ch. 66, Sask., and clause 26 of the contract exhibit No. 2.

If the Association were to pay the tax claimed upon these deductions, it could not live up to the contract with the grower and pay back these temporary deductions when the time comes,—they would not have the money to do it.

The deductions are nothing but loans or advances under the contract, for the purposes of carrying on and in addition it is repayable to the grower, the person who voluntarily permits it.

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It is the whole amount received from the sale of the grain that is placed to the credit of the grower, including the amount of deductions. It is true the pool, under the Act and the contract, has for a time legal title to this money, that is capital to carry on and capital to acquire elevators; but that was necessary to permit the pool to properly contract for that purpose. That kind of ownership however is determined by the Statute and the contract. And the pool has bound itself to pay these moneys or what they represent back to the farmer. These deductions are part of the purchase price of the grain which must be accounted for in full and paid into the hands of the grower at the proper time, and it could not in any case be considered a profit or gain to the Association.

The Association, the collectivity of grain growers, derives no benefit from these transactions, other than the salaries that are paid to its officers and employees; it is the individual farmer who derives the benefit from such organization.

Possibly special mention should be made with respect to the Elevator Reserve. This amount—we must bear in mind is taken from part of the price of wheat belonging to the grower—and is turned over to the Saskatchewan Pool Elevator, as capital for the purpose of acquiring elevators to handle this very grain. That capital, which belongs to the grower, is credited to him and it is a liability of the pool to him.

Moreover, it is well to mention that these deductions,—the amounts representing these individual deductions for commercial reserve and Elevator—have already in certain cases been dealt with and returned to 119 growers or contributors in connection with estates; that is when a grower died and left a family in poor condition, the reserve has been refunded in full; as will be done with all other contributions when the Directors have decided the time has come to do as per the Act and the contract.

There was no profit or gain realized by the association. Its business was merely marketing and selling the farmers' grain and retaining from the price obtained for such grain a certain amount to be used as a fund to purchase elevators which were being used for the farmers' grain, and which belonged to the farmers, credited to them, and their

value to be at a given time distributed among them. The deductions were made for the purpose alone of earning income to the farmers and not to the association.

Indeed, if transactions in the nature of those in question had been carried on in due course between a farmer and a broker, no question would have arisen suggesting that such deductions were profits and gains, and were subject to taxation. What might have been the subject of taxation would be the commission charged by the broker, which could be considered as part of his own income; as it is here the case with respect to the officers and employees of the association; but it could in no case be considered a gain or profit of the association and much less subject to taxation, as it could by no means be construed as its income.

The facts of this case fail to bring the appellant within the scope of the law imposing a tax upon an income showing gain and profit. There is no equitable construction of a taxing statute in favour of the Crown, the exact meaning of the words in the Act used must be adhered to. *Partington* v. *Attorney-General* (1).

The elevator deduction is made up of nothing but a certain portion of the price or proceeds from the sale of the farmer's wheat, which he sets aside temporarily as capital. If it is capital it cannot be treated as income. " Profits and gains " must not be regarded loosely, the words as used in the Taxing Act must be read in conjunction with the meaning of the words used in the context. See per Halsbury L.C. in *Y. & P. Main Sewerage Board* v. *Bensted* (2).

No one can be held to make a profit or gain by dealing with himself only; two parties are needed, and under the pool scheme, the associations being the agent of the farmer, they are one and the same.

In the absence of facts bringing the case within the statute, it is perhaps well to recall the rules of taxation as laid down by Sismondi, following Adam Smith, and that is that: Every tax should fall on revenue and not on capital; that in the assessment of taxation gross produce should not be confounded with revenue; that taxation should never touch what is necessary for the existence of the contributor and that taxation should not put to flight the

(1) (1869) L.R. 4 H.L. 100 at 122. (2) (1907) A.C. 264.

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wealth which it strikes. See C. F. Bastable's Public Finance, 3rd ed., 1903, p. 416.

Now what is sought to be taxed here is gross revenue placed as capital to buy elevators for the purposes of the farmer's trade and business, such advances to be hereafter accounted and paid back to him. The pool was organized in aid of the grain farmers of Saskatchewan who severally and individually suffered loss and inconvenience in handling the produce of their farms. By pooling their grain, it was sold to advantage. If the appellant were to be subjected to an income tax when its dealings have shown no such income or gain from third parties, then this tax would prove a burden beyond justification upon the grain growers of Saskatchewan.

Capital must not be confused with income which is equivalent to the expression of "balance of gains and profits." *Taxation Commissioner* v. *Antill* (1).

Under all the circumstances of the case, I find that the deductions in question are but temporary loans and advances made by the farmer, out of the price of his grain, to the pool as capital for carrying on and acquiring elevators —the value thereof being credited to him as his own, having been his own all through under the true meaning of the Provincial Act and the contract made thereunder, and that the association, acting in such fiduciary capacity for the grain growers, accounts for every cent it receives and retains nothing that could amount to gain or profit.

The appeal is allowed and with costs.