1952

Apr. 17

Sept. 23

BETWEEN:

ARMY AND NAVY DEPARTMENT STORE (WESTERN) LTD. ..... } APPELLANT,

AND

MINISTER OF NATIONAL REVENUE RESPONDENT;

AND

ARMY AND NAVY DEPARTMENT STORE, LTD. ..... } APPELLANT,

AND

MINISTER OF NATIONAL REVENUE RESPONDENT.

Revenue—Income Tax—Income Tax Act, S. of C. 1948, c. 52, ss. 36(1) (2) (3) (4) (5), 127(5)—Section 36(4) and section 127(5) of the Act clearly define words "related corporations" and specify when "one corporation is related to another"—Words used in s. 127(5) of the Act not ambiguous—Appeals from the Income Tax Appeal Board dismissed.

The appellant companies carry on a retail business, the first company, in British Columbia, the second company, in Alberta. One half of the issued shares of the British Columbia company is held by the Alberta company and the other half, less two shares, by the Army and Navy Department Store Limited, a third company which carries on a similar business, with its head office in Saskatchewan. The shareholders of the Alberta company are two brothers and a brother-in-law and the same two brothers and a son of one of the latter are the shareholders of the Saskatchewan company. All three companies were assessed under the provisions of the Income Tax Act for the taxation year 1949, but none of them was given any deduction pursuant to s. 36(1) of the Act. Later the Minister ruled that the Saskatchewan company was entitled to receive the 15 per cent deduction in s. 36(1). Against this ruling an appeal was taken to the Income Tax Appeal Board which dismissed the appeal. From this decision the appellants now appeal.

Held: That the words in s. 36(4) together with those in s. 127(5) of the Income Tax Act, S. of C. 1948, c. 52 clearly define the words "related corporations" and specify when "one corporation is related to another".

2. That the words "persons connected by blood relationship" as used in s. 127(5) of the Act are not ambiguous and do not require or permit any interpretation of being restricted in their meaning.

3. That the Minister sufficiently indicated his selection of the company entitled to be designated as the one to receive the deduction in s. 36 of the Income Tax Act.

APPEALS from a decision of the Income Tax Appeal Board.

The appeals were heard before the Honourable Mr. Justice Archibald at Vancouver.

M. M. Grossman, Q.C. for appellants.

J. D. C. Boland for respondent.

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

ARCHIBALD J. now (September 23, 1952) delivered the following judgment:

This appeal was heard at Vancouver, British Columbia, at the same time the appeal in Army & Navy Department Store (Western) Limited was heard. The two appeals involve exactly the same question and the only evidence taken was a brief statement respecting the incorporators of Army & Navy Department Store (Western) Limited. The hearing before me, with the exception of this evidence, was entirely taken up with the arguments of M. M. Grossman, Esq., Q.C., counsel for the appellants and J. D. C. Boland, Esq., counsel for the respondent.

In order that the questions at issue may be more easily understood, I think it desirable to recite briefly from the preliminary statement made by counsel for the appellants together with information from the statement of facts filed by him and concurred in by the respondent. This statement is as follows:

There are three companies involved in these proceedings, namely, Army & Navy Department Store (Western) Limited (hereinafter referred to as the "Western company"); Army & Navy Department Store Limited (hereinafter referred to as the "Alberta company") and Army & Navy Department Store Limited (hereinafter referred to as the "Saskatchewan company").

These stores conduct a general retail and merchandising business as follows: the Western company in New Westminster, in the province of British Columbia; the Alberta company in Edmonton, in the province of Alberta and the Saskatchewan company in Regina and Moose Jaw, in the province of Saskatchewan and at Vancouver, in the province of British Columbia.

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Archibald J.

All three companies were assessed under the provisions of The Income Tax Act for the year 1949, but none of them was given any concession or adjustment pursuant to section 36(1) of The Income Tax Act.

The assessment was appealed to the Minister of National Revenue, and he ruled that the Saskatchewan company was entitled to receive the deduction pursuant to section 36 of The Income Tax Act. Against this ruling there was an appeal to the Income Tax Appeal Board and the ruling was confirmed. Against the decision of the Income Tax Appeal Board, the Western company and the Alberta company have appealed to this Court.

Before giving consideration to the matters raised on this appeal, it should be added that counsel for the parties agreed that this information respecting the shareholders in these three companies should be submitted as follows:

(1) *The Saskatchewan company*—the shareholders are—

40 per cent to S. J. Cohen
20 per cent to J. W. Cohen (his son)
40 per cent to H. R. Cohen (a brother of S. J. Cohen)

(2) *The Alberta company*—the shareholders are—

50 per cent to H. R. Cohen
10 per cent to S. J. Cohen (his brother)
40 per cent to S. G. Leshgold (son-in-law of S. J. Cohen)

(3) *The Western company* have 5,000 shares *to the value of* $10 each, divided as follows:

to the Alberta company	2,500 shares
to the Saskatchewan company	2,498 shares
to H. R. Cohen	1 share
to J. F. Bolecon	1 share

The shares in the name of H. R. Cohen and J. F. Bolecon in the Western company are director's qualifying shares.

The preceding paragraph indicates the admissions with reference to the family relationship between the shareholders in the three companies.

Counsel for the appellants urged four reasons why the appeals should be allowed. However, quoting from the transcript of his argument, he says, "I rely most strongly on the meaning of the words 'relations' and 'connected by blood.'" In fact his argument as to the correct meaning to be given to these words as used in the sections 36 and 127 of The Income Tax Act, constituted in the main his argument. In support of his argument numerous authori-

ties were cited to me. In my opinion, subsections (2) (3) and (4) to section 36 of the Act, form a conclusive answer to the argument advanced by him. He argued that the absence of a formula made it necessary to rely on a statute of distributions to obtain the proper meaning for the word "relative", "related to" or "persons connected by blood relationship." I am unable to agree.

Referring again to section 36, subsection (4), it is stated in (4) that:

> For the purpose of this section, *one corporation is related to another* in a taxation year if, at any time in the year,
>
> (*b*) 70 per cent or more of all the issued common shares of the capital stock of each of them is owned directly or indirectly by
>
> (iii) persons not dealing with each other at arms length one of whom owned directly or indirectly one or more of the shares of the capital stock of each of the corporations.

Those words together with those in section 127(5) clearly define the words "related corporations" and specify when "one corporation is related to another."

The decisions in *Ross* v. *Ross* (1) and *Sifton* v. *Sifton* (2) as well as many others referred to me by counsel are not applicable in these appeals.

I wish to add that the use of the words "persons connected by blood relationship" as appearing in section 127(5) (*c*) does not, in my opinion, restrict their meaning to that submitted by counsel for the appellants. The words as used in the Act are not ambiguous and do not require or permit any such interpretation. It may be noted in passing that this subsection was amended in 1952. The amendment, however, is not applicable to these appeals. Nor do I think the reference to the application of the words "deemed" and "dealing" advance appellants' argument.

I am satisfied also that the Minister of National Revenue sufficiently indicated his selection of the company entitled to be designated as the one to receive the deduction in section 36 of The Canadian Income Tax Act.

I am therefore unable to see any good reason why the appellants are entitled to receive any such deduction.

This appeal will therefore be dismissed with costs.

Judgment accordingly.

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(1) (1895) 25 S.C.R. 307. (2) (1938) 3 All E.R. 435.