BETWEEN:

1959
Apr. 6 & 7
1960
Jan. 7

WILSON AND WILSON LIMITED .....APPELLANT;

AND

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

Revenue—Income tax—Income Tax Act R.S.C. 1952, c. 148, ss. 3, 4, 12(1)(a), 85B(1)(b) and 139(1)(w)—The 1948 Income Tax Act ss. 3, 4, 12(1)(a) and 127(1)(v)—Contracting company—Completed contract basis of computing income not correct—Progress payments to be taken into account in year received—Method of computing income for years prior and subsequent to 1953—Valuation of inventory not here relevant—All expenses incurred deductible in year incurred—Appeal allowed.

Appellant's main business is that of contracting with government and municipal bodies for the excavation of ditches and installation of sewer and water systems. Appellant normally received throughout the life of the contracts and usually about the 15th of the month a payment "on account of the contract" of 85 or 90 per cent of the value of the work done and material furnished at the site in the previous month, following the issue of supervising engineers' certificate. Appellant used the completed contract method in computing its annual income tax return. According to that method the costs of the contract over the entire life of the contract are accumulated and nothing is taken into income. When the contract is completed the total cost over the years of that contract is deducted from the total receipts or billings on the contract and resulting item comes into profit and loss. In reassessing the appellant for income tax for the years 1952, 1953 and 1954 the respondent did so on the basis that the progress payments were taxable in the year of receipt and assessed appellant accordingly. An appeal to the Income Tax Appeal Board was dismissed and appellant appeals to this Court. Counsel for respondent admitted there were errors in the assessments, that further adjustments should be made for each year and requested that the matter be referred back to the respondent for re-assessment.

Held: That the 85 or 90 per cent of the progress certificates as certified by the engineer and actually received by the appellant in a taxation year, constitute income for the year in which they were received.

2. That the "completed contract" method used by appellant in computing its income is contrary to the express provision of the 1948 *Income Tax Act* (applicable to the year 1952) and *The Income Tax Act* (applicable in subsequent years).

3. That in computing the income of appellant for the years commencing 1953 in accordance with the provisions 85B(1)(*b*) of the *Income Tax Act* the full amount to be received for property sold or services rendered up to December 31 must be included whether or not it has been certified by the engineer's progress certificates.

1960

WILSON AND WILSON LTD. v. MINISTER OF NATIONAL REVENUE

4. That for property sold and services rendered in 1952, (a) appellant must bring into income of 1952 only the amounts actually received by it in that year from each contract: (b) for services rendered and property sold in that year and for which the engineers' certificates were not issued until 1953, the 85 per cent or 90 per cent payable thereunder will be income of the 1953 taxation year: and (c) the holdbacks will be taken into income in the year in which the final engineers' certificate is approved and the holdbacks released.

5. That the question of valuation of inventory is in this case not relevant in computing appellant's income.

6. That all the expenses incurred by the appellant in connection with the contracts were deductible in full in the years in which they were incurred in accordance with s. 12(1)(*a*) of the *Income Tax Act*.

APPEAL under the *Income Tax Act*.

The appeal was heard before the Honourable Mr. Justice Cameron at Edmonton.

A. F. Moir and *J. P. Brumlik* for appellant.

M. E. Manning, Q.C. for respondent.

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

CAMERON J. now (January 7, 1960) delivered the following judgment:

This is an appeal from a decision of the Income Tax Appeal Board dated November 26, 1957[1] by which the appellant's appeals from three re-assessments dated November 30, 1955, for the taxation years ending December 31, 1952, 1953 and 1954 (as amended by the Notification by the Minister following a Notice of Objection) were dismissed.

In its Notice of Appeal to this Court, the appellant asks that the appeals be allowed and that it be assessed on the basis of its original returns which were computed on the "completed contract" method of accounting. For the moment, it is sufficient to say that that method excludes from the computation all receipts and expenditures specifically relating to the contracts which had not been completed at the end of its fiscal year, namely, December 31. The Minister, by his Reply to the Notice of Appeal, admits that there were errors in the re-assessments as varied by his Notification, requests that the appeals be

[1] 18 Tax A.B.C. 245.

allowed and the matter be referred back so that he may re-assess the appellant in accordance with Schedule C to his Reply. At the hearing, counsel for the Minister agreed that Schedule C was incorrect and that further adjustments should be made for each year. He asked that the matter be referred back to the Minister for re-assessment on the basis of the Schedules to the Reply with the adjustments he proposed at the trial. The question for consideration, therefore, is the proper method to be used by the appellant in computing its income tax return.

For the appellant, it is said that the "completed contract" method of computing income is especially suitable in its case because of the nature of its business and the risks involved therein. The appellant was incorporated in 1951 to take over a similar business formerly carried on by its three main shareholders as a partnership. Its main business consists of entering into contracts with government and municipal bodies for the excavation of ditches and installing therein sewer and water lines. In some cases the appellant contracts to supply pipe and other materials and in others these are supplied by the owner or main contractor. In all cases, the contracts are on the "unit price" basis, e.g., the unit price is for a certain fixed sum per lineal foot of work done. In bidding for such work, the appellant takes into consideration the nature of the ground in which the work is to be done, with full realization that in certain areas where rock, gravel and quicksand are encountered, the work may be much slower and more costly than elsewhere, and the unit price is fixed at such an amount per foot as will probably enable a profit to be made on the contract as a whole. To a large extent, the work is seasonal, commencing in the spring when ground conditions permit and continuing until the ground is frozen in the late autumn. Adverse weather conditions may also slow up the work and increase costs.

Much of the dispute relates to the manner in which monthly payments made by the owner to the appellant should be treated. The provisions for such payments are not uniform in every contract, but the following may be

1960

WILSON AND WILSON LTD. v. MINISTER OF NATIONAL REVENUE

Cameron J.

taken as an example. It is from Exhibit 2, a contract with Defence Construction (1951) Ltd., dated October 6, 1953, relating to the Griesbach Barracks in Edmonton.

Cash payments not exceeding ninety per cent of the value of the work done, approximately estimated from progress measurements, and materials supplied and deposited on site, computed at the price or prices agreed upon or determined by the Engineer, will be made to the Contractor monthly if practicable, on the written certificate of the Engineer, stating the work done or materials supplied for, or on account of which the certificate is granted has been done and supplied and stating the value of such work completed and materials supplied as above mentioned, and the said certificate shall be a condition precedent to the right of the Contractor to be paid the said ninety per cent or any part thereof. Provided however, that when the sum so withheld plus the security deposit equals 15% of the overall cost, subsequent monthly payments duly certified by the Engineer may be made to the Contractor for the full value of the work done and materials supplied.

The holdback mentioned above shall be released thirty-one (31) days after processing of Final Progress Claim indicating that the work has been completed to the satisfaction of the Engineer; PROVIDED, HOWEVER, that an amount of five per cent (5%) of the total contract price, including adjustments by Change Orders, shall be retained as a maintenance guarantee for a period of one year after completion of the work and its acceptance by the Engineer. The written certificate of the Engineer certifying to the final completion of the said work, to his satisfaction, shall be a condition precedent to the right of the Contractor to receive or to be paid the said holdback, or any part thereof.

If the Contractor is required by the Minister to do work additional to the work as defined in the contract, the completion of such additional work shall not, unless otherwise determined by the Minister be a condition precedent to the payment of the holdback retained as above provided, but such moneys so retained may be paid to the Contractor upon written certificate of the Engineer certifying that the work as defined in the contract has been completed to his satisfaction. Five copies of all progress estimates or invoices in connection with the work are to be rendered to the Engineer.

Another payment clause common to many of the contracts is as follows:

On or about the first day of the month the Engineer will make an approximate estimate of the value of the work done and the material furnished at site, to date and within fifteen days thereafter 90 per cent. of the value thus determined, less previous payments, and less any other deductions provided for in this Contract shall be paid to the contractor in cash and the balance retained by the Purchaser as security for the proper and faithful performance of the Contract, and for such other purposes as are provided in this Contract. Any such interim estimate shall not constitute a final acceptance of any portion of the work, it being made only for purposes of payment on account of the Contract.

The "engineer" referred to above is the engineer employed by the owner to supervise the work on his behalf. In some contracts the holdback is 15 per cent. rather than

10 per cent., as mentioned above. Counsel for both parties agree that no special consideration is to be given to the 5 per cent. retained by the owner as a maintenance guarantee, and I shall therefore treat it merely as part of the holdbacks. The evidence establishes that the appellant normally received throughout the life of the contracts, and usually about the 15th of the month, a payment "on account of the contract" of 85 or 90 per cent. of the value of the work done and the material furnished at site in the previous month, following the issue of the engineer's progress certificate.

As I have stated, the appellant used the "completed contract method" in computing its annual income tax return and it is that method which it now seeks to maintain. That method was defined by Mr. T. G. Halford, a chartered accountant who gave evidence for the appellant, as follows:

> In the completed contract method you accumulate your costs of the contract over the entire life of the contract and take nothing into income. At the time when the contract is completed you take your total receipts or billings on the contract, deduct from them the total cost over the years of that contract and that item comes into profit and loss. That is taken in only in the last year of the contract.

The appellant's tax return for the fiscal year ending December 31, 1952, will illustrate the method so followed. In its "operating statement" (Statement 2), it shows revenue from completed contracts of $79,936.09, and job costs for those contracts of $60,846.30. From the difference of $19,089.79 it deducted all administration and general expenses of $6,803.33, leaving a profit for the year on completed contracts of $12,286.46 which it carried into the balance sheet (Statement 1). After deducting a loss of $4,008.87 for the previous year and making a further small adjustment, it stated its taxable income at $8,327.59. In Schedule A to that return relating to some ten municipal contracts which were not completed by December 31, 1952, it is shown that progress estimates totalling $458,453.31 had been rendered and that costs to date totalled $480,348.84; the estimates receivable totalled $52,400 and the holdbacks aggregated $40,202.37. In computing its taxable income, the appellant did not take into account the receipts, receivables, holdbacks, disbursements or any

1960

WILSON AND WILSON LTD. v. MINISTER OF NATIONAL REVENUE

Cameron J.

other item relating specifically to uncompleted contracts, although it had actually received over $400,000 on account of the contracts and had incurred and presumably paid costs in excess of $480,000.

Mr. Baziuk, a chartered accountant in the firm of auditors employed by the appellant, and Mr. Halford, also a chartered accountant of Edmonton but having no connection with the appellant, stated that the "completed contract" method was the only proper method of computing the annual income tax return of the appellant. They agreed that due to the uncertainties regarding the cost of the unfinished parts of the contract, it was impossible to arrive at the true profit or loss for the year until the contract had been completed. They also agreed that the "completed contract" method, as outlined above, would be applicable in the case of a contractor who had entered into a single contract for the erection of a building, the construction of which might take six years, and with payments made to the contractor by the owner on the same monthly basis as in the present case. In such a case they agreed that in computing the annual income tax returns, they would defer all receipts and expenditures until the year of completion and then, when all the facts were known and no estimates required, and when the engineer in charge had given his certificate that the work had been completed to his satisfaction and had released the holdbacks, the profit and loss could be computed. In the earlier five years, the annual tax returns would show no receipts and no expenditures.

This method of accounting, however useful it may be for the purpose of the company itself as showing accurately the profit or loss on any one or more contracts, is, in my view, completely wrong when it is used for the purpose of computing the income of a taxpayer for a taxation year. By s. 3 of *The Income Tax Act,* the income of a taxpayer is his income *for the year,* including income from his business, and by s. 4, income for a taxation year from a business is the profit therefrom *for the year* (subject to the other provisions of Part 1).

Omitting for the moment any consideration as to the ten or fifteen per cent. holdbacks, as well as the amounts normally received in January for work done in the preceding

December, it is clear to me that 85 per cent. or 90 per cent. of the progress certificates as certified monthly by the engineer, and which were actually received by the appellant in a taxation year, constitute income for the year in which they were received. It is suggested that they were mere advances similar to loans made by a bank to a contractor to assist him in paying his current expenses. On the evidence, I am unable to find that such is the case. As stated by the contract referred to above, they were made for purposes of payment *on account of the contract.* There was no right in the owner to recover the payments as such and the appellant treated them as its own property, placing them in its bank account, and paying its expenses therefrom. It would be wholly improper to include them in a subsequent year merely because the engineer in a subsequent year gave his certificate that the entire work was then completed to his satisfaction, and released the holdbacks, because such payments were not in fact received or receivable in the subsequent year, having already been received. These considerations are equally applicable to the expenses made or incurred by the appellant for the purpose of gaining or producing income from the business during the year (s. 12(1)(*a*)). They cannot be deducted from income in a subsequent year because they were not made or incurred in a subsequent year.

For these reasons, therefore, I must find that the "completed contract" method used by the appellant in computing its income is contrary to the express provisions of the 1948 *Income Tax Act* (applicable for the year 1952) and *The Income Tax Act* (applicable in subsequent years), and must be rejected. The accountants who gave evidence for the appellant referred to another method of accounting called the "percentage of completion" method. Its deficiencies were pointed out both in the evidence and in argument and as counsel for the appellant did not urge that this method be accepted as an alternative method, I find it unnecessary to say anything further about it.

I turn now to a consideration of the method of computation now proposed by the Minister which, as I have said, is based on the schedules attached to his Reply to the Notice of Appeal with the variations proposed at the trial.

1960

WILSON AND WILSON LTD. v. MINISTER OF NATIONAL REVENUE

Cameron J.

In view of the conclusions which I have arrived at, it is unnecessary to refer to the amounts in question as these are matters of record.

The first submission of counsel for the Minister is stated as follows:

> The total amount of all progress estimates rendered or billed during the year should be brought into the operating statement as income, on the date at which the money payable under the certificates became a debt due to the contractor notwithstanding that they are not paid or payable in the year.

If this submission is upheld, it means that the total amount of the progress certificates (including all holdbacks) rendered or billed during a taxation year must be brought into the operating statement as income on the date on which the money payable under the certificates becomes a debt due to the contractor—and that, of course, is the date when the engineer's certificate is issued—and notwithstanding that they or any part of them (such as the holdbacks) are not paid or payable in that year. It would exclude from income in any given year the value of work done or materials supplied in that year and in respect of which the billings and engineer's progress certificates were not rendered or issued until the following year.

Now as I have stated above, the payments of 85 per cent. or 90 per cent. of the progress certificates as issued by the engineer (i.e., the amount of the certificates less the holdbacks) and which were actually received by the appellant in a taxation year, constitute income of the appellant for that year and must be taken into account in computing its income. Further questions arise, however, from this submission.

The first question is that concerning work and services performed by the appellant in one taxation year but in respect of which billings are not made and engineers' progress certificates are not issued until the next taxation year. As I have said, the appellant's taxation year ends on December 31 and normally none of the material supplied or services performed in December are billed for until the following January, and the engineer's certificates usually issue about January 15. Occasionally, and in special circumstances such as arose in the contract for the Griesbach Barracks, there is a much longer delay. That contract was

commenced in October 1953, but in November substantial changes—all permitted by the contract—were ordered by the owner. These changes involved a very considerable amount of extra work and material and while the substantial part of that work was performed in November and December of 1953, there was a long delay in securing authority from Ottawa for the change orders and in the result the engineer's certificates for that work and material were delayed some five or six months, the progress certificates not being issued till May or June of 1954.

The answer to this question in relation to the taxation years 1953 and 1954 is to be found in the provisions of s. 85B(1)(*b*) of *The Income Tax Act* which first became applicable to the 1953 taxation year and is as follows:

> 85B. (1) In computing the income of a taxpayer for a taxation year,
>
> (*b*) every amount receivable in respect of property sold or services rendered in the course of the business in the year shall be included notwithstanding that the amount is not receivable until a subsequent year unless the method adopted by the taxpayer for computing income from the business and accepted for the purpose of this Part does not require him to include any amount receivable in computing his income for a taxation year unless it has been received in the year;

The proviso in the paragraph quoted is not here applicable. The all important word "receivable" is not defined in the Act, but after a most careful consideration of the paragraph, I have come to the conclusion that in both places where that word is used, it bears the ordinary meaning "to be received". It would appear, therefore, that in enacting this subsection, Parliament has extended somewhat the ordinary concept of "income" in relation to a business in which property is sold or services rendered and that from and including the 1953 taxation year, *every* amount to be received in respect of property sold or services rendered in the course of the business in the year *shall* be included notwithstanding that the amount is not to be received until a subsequent year, subject, of course, to the proviso and to the provisions of para. (*d*) thereof relating to the deduction of a reasonable amount as a reserve in some cases. The paragraph is drawn in very wide terms so as to include every amount so receivable and such amounts are to be brought into the computation of income for the year in which the property was sold or the services rendered.

1960

WILSON AND WILSON LTD. v. MINISTER OF NATIONAL REVENUE

Cameron J.

The inclusion of such amounts is not in any way contingent on the issue of the engineer's certificate, that a certain part of the work has been completed or certain materials supplied, or upon his later certificate that the whole of the work has been satisfactorily completed and the holdbacks released. In my view, the paragraph expressly requires that there shall be included in the computation of income of the appellant for the years commencing 1953, the full amount to be received for property sold or services rendered up to December 31, and whether or not it has been then certified by the engineer's progress certificates. I see no practical difficulty resulting from this view inasmuch as under ordinary circumstances the engineer's certificate quantifying the amount of work done and materials sold in the month of December is normally issued within a fortnight and long prior to the time when the tax return is to be filed. In the case of a longer delay, the amount can be closely estimated and, if necessary, corrected, when the certificates are actually received.

But in my view, different considerations apply to the 1952 taxation year when s. 85B(1)(*b*) was not in effect. In that year, no debt from the owner to the appellant was created until the issue of the engineer's certificates. The principle is stated in Halsbury, Third Edition, Vol. 3, p. 462:

> 884. Progress certificates are conditions precedent to the right to payment, if the contract provides that no interim payments shall be made to the contractor except on the production of such a certificate and does not provide for any appeal by the contractor against the withholding or insufficiency of such certificates.
>
> In the absence of some such provision as that "no payment shall be held as legally due until the contract is completed, but advances shall nevertheless be made to the amount thereof, under the engineer's certificate (*Tharsis Sulphur and Copper Co. v. M'Elroy & Sons* (1878), 3 App. Cas. 1040, at pp. 1047, 1048), a progress certificate creates a debt due (*Pickering v. Ilfracombe Rail. Co.* (1868) L.R. 3 C.P. 235).

As will be seen from the terms of the Griesbach Barracks contract (*supra*) which may be taken as typical, the engineer's progress certificate was stated to be a condition precedent to the right of the appellant to be paid 90 per cent. of the amount certified; and his certificate certifying to the final completion of the work to his satisfaction was also a condition precedent to the right of the appellant to receive or be paid the amount of the holdbacks. In my

opinion, therefore, for property sold and services rendered in 1952, (*a*) the appellant must bring into income of 1952 only the amounts actually received by it in that year from each contract; (*b*) for services rendered and property sold in that year and for which the engineer's certificates were not issued until 1953, the 85 per cent. or 90 per cent. payable thereunder will be income of the 1953 taxation year; and (*c*) the holdbacks will be taken into income in the year in which the final engineer's certificate was given and the holdbacks released. In re-assessing the appellant for that year on this basis, the Minister may have to take into consideration the provisions of s-ss. (4) and (5) of s. 73 of c. 40, Statutes of 1952-3 if in the circumstances these subsections are applicable. That point was not discussed at the trial.

The other submission by counsel for the Minister is stated as follows:

> 2. From the progress estimates brought into the operating statement there must be deducted the job costs incurred by the contractor during the year.
>
> 3. As a matter of law, and for the purposes of computing profit from a business under the provisions of the Income Tax Act, the job costs are the sum of
>
> (*a*) the lower of value or cost of the inventory on hand at the opening of the year,
>
> (*b*) the cost of the work in progress for which no progress estimates had been rendered, at the opening of the year, and,
>
> (*c*) all costs which during the year became debts owing by the contractor notwithstanding that they have not been paid,
>
> and from this sum there must be deducted the following amounts,
>
> (1) the lower of market or cost of the inventory on hand at the close of the business year, and,
>
> (2) the cost of the work in progress which at the close of the year no progress estimates had been rendered.

It seems to me that the question of valuation of inventory on hand at the beginning and end of the taxation year does not arise in this case. In most of the contracts, the materials are provided by the owner or main contractor, the appellant providing only services; in such cases no inventories are maintained by the appellant. As I understand the evidence, the appellant, when it has contracted to supply pipe and other materials, immediately places its order for the precise amount and the particular material required in order to fulfill its contract and no more. In most cases, the materials are supplied to it on the job as needed.

1960

WILSON AND WILSON LTD. v. MINISTER OF NATIONAL REVENUE

Cameron J.

It does not stockpile inventory for later sale, but only as needed for the particular contracts which it has already entered into and by which the price of the materials has been definitely fixed. The cost of the materials is of importance in computing the appellant's profits, but that matter will be disposed of later. The rise or fall in value of the materials is of no importance to the appellant, the purchase and sale price of all such materials having already been fixed. In my view, the question of valuation of inventory is in this case not relevant in computing the appellant's income (see the definition of inventory in s. 127(1)(*v*) of the 1948 *Income Tax Act,* and s. 139(1)(*w*) of *The Income Tax Act*). The general principles as to valuation of inventory and which are applicable to merchants, manufacturers and traders, have here no application.

The remaining question is that of the job costs. The submission made on behalf of the Minister—excluding the reference to inventory valuation—is that in 1953, for example, there is brought in as part of the job costs the cost of the work in progress before January 1, 1953, and for which no progress estimates had been rendered at that date (normally for the preceding December), as well as all costs which during that year became debts owing by the contractor, whether paid or payable, but that from the total thereof there should be deducted the cost of the work in progress for which at December 31, 1953, no progress estimate had been rendered.

For the appellant it is urged that this method of tying in the job costs with the progress certificates is erroneous for a number of reasons. It is said that on some occasions an inexperienced engineer may not be willing to certify to the full amount of the work done; that his certificate relates only to the completed portion of the work, omitting therefrom all expenses for services or materials on installations such as catch-basins or hydrants, which may, in fact, be practically but not wholly complete, that it does not take into consideration such matters as moving equipment to the job site, or the construction of shacks for the workmen, these items on some occasions being of a substantial nature.

In my opinion, the matter is to be determined by a consideration of the provisions of s. 12(1)(*a*) of *The Income Tax Act* which is the same as in the 1948 *Income Tax Act*.

> 12. (1) In computing income, no deduction shall be made in respect of
>
> (*a*) an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from property or a business of the taxpayer.

As has been pointed out in a number of cases, this section is less restrictive than the former s. 6(1)(*a*) of the *Income War Tax Act* which prohibited the deduction of disbursements or expenses not wholly, exclusively and necessarily laid out for the purpose of earning *the* income. The word "the" in that section has been dropped and accordingly it is not now necessary to establish that the expense was made or incurred for the purpose of earning the income of the year in which it was made or incurred. It is sufficient to show that it was made for the purpose of gaining or producing income from the business.

In *Royal Trust Company v. M.N.R.*[1], the President of this Court said at p. 44:

> The essential limitation in the exception expressed in Section 12(1)(*a*) is that the outlay or expense should have been made by the taxpayer "for the purpose" of gaining or producing income "from the business". It is the purpose of the outlay or expense that is emphasized but the purpose must be that of gaining or producing income "from the business" in which the taxpayer is engaged. If these conditions are met the fact that there may be no resulting income does not prevent the deductibility of the amount of the outlay or expense. Thus, in a case under the *Income Tax Act* if an outlay or expense is made or incurred by a taxpayer in accordance with the principles of commercial trading or accepted business practice and it is made or incurred for the purpose of gaining or producing income from his business its amount is deductible for income tax purposes.

Now it cannot be disputed that all the outlays or expenses made or incurred by the appellant (and as set out in the records) from January 1 to December 31 in each of the taxation years in question, were made or incurred for the purpose of gaining or producing income from its business and included therein are not only wages and salaries, but such items as general administration and expense, moving-on costs, materials, and erection of work shacks at the job site for the employees. I cannot see that their

[1] [1957] C.T.C. 32.

1960

WILSON AND WILSON LTD. v. MINISTER OF NATIONAL REVENUE

Cameron J.

deductibility is to be determined by reference to the fact that the engineer's certificate for work completed did not issue until the following January or later. In my view, they are therefore deductible in full in the year in which they were made or incurred, and not in any subsequent year.

It may be suggested, however, that this view of the matter results in a lack of correlation between such expenses for December 1952 and the receipt of income in respect thereof in January of the next taxation year. This matter was also considered in *The Royal Trust Company* case (*supra*) in which the President stated at p. 43:

> It is not necessary that the outlay or expense should have resulted in income. In *Consolidated Textiles Limited v. M.N.R.*, [1947] Ex. C.R. 77 at 81; [1947] C.T.C. 63, I expressed the opinion that it was not a condition of the deductibility of a disbursement or expense that it should result in any particular income or that any income should be traceable to it and that it was never necessary to show a causal connection between an expenditure and a receipt. And I referred to *Vallambrosa Rubber Co. v. C.I.R.* (1910), 47 S.C.L.R. 488 as authority for saying that an item of expenditure may be deductible in the year in which it is made although no profit results from it in such year and to *C.I.R. v. The Falkirk Iron Co. Ltd.* (1933), 17 T.C. 625, as authority for saying that it may be deductible even if it is not productive of any profit at all. I repeated this opinion in the *Imperial Oil Limited* case. The statements made in the cases referred to, which were cases governed by the *Income War Tax Act*, are equally applicable in a case under the *Income Tax Act*.

For these reasons, the appeal will be allowed, the re-assessments made for each of the years 1952, 1953 and 1954 will be set aside and the matter referred back to the Minister to re-assess the appellant upon the basis of my findings.

The appellant will also be entitled to its costs after taxation.

Judgment accordingly.