

[HIGH COURT OF AUSTRALIA.]

HENDERSON AND SONS APPELLANTS ;

AND

THE FEDERAL COMMISSIONER OF TAXATION RESPONDENT.

H. C. OF A. *War-time Profits Tax—Assessment—Accounting period—Pre-war trade year—War-time Profits Tax Assessment Act 1917-1918 (No. 33 of 1917—No. 40 of 1918), secs. 7 (4), 16 (3), (12)—Acts Interpretation Act 1901-1918 (No. 2 of 1901—No. 8 of 1918), sec. 22.*

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A partnership, which commenced business in June 1912, pursuant to its deed of partnership took yearly accounts of its transactions as on the last day of December in each year. In assessing the partnership for war-time profits tax for the year 1916-1917, the Commissioner adopted the period of the calendar year for the purposes of computing the war-time profits.

Held, that, for the purposes of assessing the partnership for war-time profits tax under the *War-time Profits Tax Assessment Act 1917-1918*, the "accounting period" was the yearly period ending on the last day of December, and that, as there was only one of such periods before 5th August 1914, there was within the meaning of sec. 16 (12) only one pre-war trade year.

Walker & Co. v. Federal Commissioner of Taxation, (1923) 32 C.L.R. 401, followed and applied.

APPEAL from the Federal Commissioner of Taxation.

A partnership under the name of Henderson & Sons, having been assessed for war-time profits tax for the year 1916-1917, appealed to the High Court from the assessment, and the appeal was heard by *Starke J.*

The grounds of the appeal and the other material facts appear in the judgment hereunder.

Latham K.C. and *Richardson*, for the appellants.

Ham and *Herring*, for the respondent.

Cur. adv. vult.

STARKE J. delivered the following written judgment :—

Henderson & Sons have been assessed to war-time profits tax for the financial year 1916-1917, and have appealed from that assessment. The appeal depends upon the proper method of computing the pre-war standard of profits.

The appellants carried on the business of pastoralists upon Mahrigong station in Queensland. They commenced that business at the beginning of June 1912, and it has been carried on continuously ever since, despite the death of two of the partners of the firm. Consequently, the business was in fact carried on over a period of two financial years of the Commonwealth prior to 5th August 1914, namely, from the beginning of June 1912 to 30th June 1914 (see *Acts Interpretation Act*, sec. 22, "Financial year"). The deed of partnership of the firm provided for a yearly account of its transactions as on the last day of December in every year. And I find, in point of fact, that this yearly account was regularly taken, and that it represented the trading year of the firm, or the period for which accounts of the trade or business of the firm were actually made up.

I was asked to say that the firm had also another yearly accounting period, ending on 30th June in each year. The Australian Mercantile Land and Finance Co. Ltd. acted as agents, brokers and bankers of the firm, and on 30th June in each year prepared statements showing the transactions of the firm during the preceding twelve months and its position relatively to the company. But these statements were not with respect to the trading or balancing periods of the firm, but in reference to those of the Company, and were kept by it as a creditor of the firm. This brings me to the dispute in the case.

Neither party contends that the business has had three pre-war trade years, but the firm insists that there have been two pre-war trade years, whilst the Commissioner submits that there has been only one pre-war trade year for the purposes of the *War-time Profits Tax Assessment Act* 1917 (see sec. 16 (3), (12), and sec. 7 (4)). The question depends upon the proper meaning attributable to the phrase "accounting period" in the various provisions of the Act. If the accounting period were the twelve months ending 30th June

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in each year—the financial year for public purposes—then I should think the pre-war profits should be computed on a basis of two pre-war years. But *Walker & Co. v. Federal Commissioner of Taxation* (1) precludes that view, in my opinion; and I am bound by the decision. Accounts were kept in this business for definite periods, namely, for each calendar year. And this, as I follow *Walker's Case*, is the “accounting period” for the purposes of the Act. The Act “does not expressly provide that, where the accounts have not been made up for purposes of income tax but have been made up as usual for the purposes of the business, the accounting period shall be the period for which the accounts of the business have in fact been so made up; but we think this provision must be implied” (*Walker's Case* (2)). The Commissioner, as I understand the assessment, has adopted the period of the calendar year in this case for the purposes of computing war-time profits, and, if so, the accounting period for the purposes of computing the pre-war standard of profits ought, for a proper comparison, to cover a similar period. And in *Walker's Case* the Court, referring to the computation of the pre-war profits, say that the only method provided for determining the accounting period is that of adopting the period for which the accounts of the business have been made up. I accordingly adopt, in this case, the period of the calendar year. Consequently, before 5th August 1914 there had been, on this basis, only one pre-war trade year, namely, 1st January 1913 to 31st December 1913.

The appeal is therefore dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant, *Hedderwick, Fookes & Alston*.

Solicitor for the respondent, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.

(1) (1923) 32 C.L.R. 401.

(2) (1923) 32 C.L.R., at p. 407.