[HIGH COURT OF AUSTRALIA.]

MOUNT ISA MINES LIMITED . . . APPELLANT;

AND

FEDERAL COMMISSIONER OF TAXATION RESPONDENT.

H. C. OF A. 1954.

SYDNEY, *Aug.* 13; *Oct.* 22.

Taylor J.

Income Tax (Cth.)—Deduction—Mining operations—Expenditure on "development"—Housing accommodation—Provision for employees—Attendant community services—Mine—Establishment—Preparatory prospecting work—Income Tax Assessment Act 1936-1949, *ss.* 122, 123AA.

Section 122 of the *Income Tax Assessment Act* 1936-1949 provided:—"(1) Where a person, who is carrying on mining operations (other than coal mining) in Australia for the purpose of gaining or producing assessable income, incurs expenditure on necessary plant and development of the mining property, an amount ascertained in accordance with the provisions of the section shall be an allowable deduction".

Held, that all expenditure, other than expenditure on plant, of a capital nature directly attributable to the establishment of the mine and to the working of it or to its expansion or extension from time to time should, for the purposes of s. 122, be regarded as expenditure on the "development" of the mining property.

Held, further, that the word "development" in s. 122 did not embrace prospecting work undertaken antecedently to any decision to establish a mine, although it would include work broadly answering the description of prospecting, in one sense, carried on upon an established mining property for the purpose of determining the best means to be adopted to facilitate the winning of minerals, the existence of which was already known.

Following upon a successful period of exploration and investigation, M. Ltd. had carried on a mining undertaking in a remote and isolated part of Western Queensland. In 1925, when the first exploration shafts had been sunk, there was a small township known as Mount Isa which was distant some two miles from the mining property. The existing facilities in the vicinity were totally inadequate for the reasonable accommodation and living amenities of the staff of 120 men then employed by M. Ltd., which number increased to 800 in 1930 and 1,100 in 1936. In 1926 or 1927, M. Ltd. commenced the construction of twenty houses for the accommodation of some of its employees

H. C. OF A. 1954.

MOUNT ISA MINES LTD. v. FEDERAL COMMISSIONER OF TAXATION.

and, shortly thereafter, the major development of a new township began. This project involved the construction of houses, provision of an adequate water supply, electrical power, abattoirs, bakery, sanitary services, medical, hospital and educational facilities and attendant amenities such as a sports ground, other recreational areas, a swimming pool and a community club house. All of these things were provided out of M. Ltd.'s resources.

Held, that, in the circumstances of the case, the provision of accommodation and amenities was a necessary part of the establishment and conduct of M. Ltd.'s undertaking, and, accordingly, should be treated as expenditure incurred in the development of the mining property for the purposes of s. 122 of the Act.

APPEALS.

These were two appeals by Mount Isa Ltd. from assessments to income tax upon returns of income for the years ended 30th June 1950 and 30th June 1951, respectively. In each appeal the company contended that substantial amounts of expenditure of a capital nature which it had incurred were incurred by it in the development of its mining property in western Queensland, and, accordingly, in respect of those amounts it was entitled to deductions in the years under review in accordance with s. 122 of the *Income Tax Assessment Act* 1936-1949, the text of which is set out in the headnote.

The work upon which the bulk of the expenditure in question was incurred took place during three different phases of the company's activities. The first was the work of prospecting and exploration which, of necessity, preceded, in part at least, the decision to establish a mining undertaking in the area. The results of this work no doubt led to the decision to exploit the mineral resources of the area and that decision was succeeded by a period in which the work of assembling the necessary plant and the other preparatory work essential to the commercial operation of the undertaking took place. Possibly the work of prospecting continued into this period, though whether it did or not did not clearly appear. The third phase commenced in 1931 since when the company had been engaged in working the mining property for profit.

The relevant facts are set out in the headnote.

Sir *Garfield Barwick* Q.C., *N. H. Bowen* Q.C. and *R. D. Conacher*, for the appellant.

B. P. Macfarlan Q.C. and *E. J. Hooke*, for the respondent.

Cur. adv. vult.

The following written judgment was delivered by :—

TAYLOR J. These two appeals from assessments to income tax upon returns of income for the years ended on 30th June 1950 and 30th June 1951 respectively raise questions of considerable difficulty in relation to the application of s. 122 of the *Income Tax Assessment Act* 1936-1949. In each appeal the appellant contended that substantial amounts of expenditure of a capital nature which it had incurred were incurred by it on the development of its mining property in western Queensland and, accordingly, it claimed to be entitled to deductions in the years under review in accordance with the provisions of that section. The expenditure in question was incurred over a number of years and the tabulated material put before the Court indicates the diverse nature of the expenditure with some particularity. Nevertheless, it was apparent at an early stage of the proceedings that further evidence might well be necessary after consideration of the questions of principle involved before attempting to deal specifically with many of the items of expenditure. In these circumstances I was invited by the parties to deal with the broad questions which the appeal raises leaving the parties, thereafter, to agree as far as possible upon an appropriate allocation of the various items and, to the extent to which the parties should fail to agree, to reserve the matter for further consideration. The course proposed commended itself to me and the joint hearing proceeded on this basis.

A company known as Mount Isa Mines Ltd. was incorporated on 15th January 1924 by registration pursuant to the *Companies Act* 1899 (N.S.W.) and in that year and later years the company became the holder of mineral leases granted by the Government of Queensland under Div. II of Pt. IV of the *Mining Act of* 1898 of that State. The land the subject of the leases was thought to contain deposits of silver-bearing lead, zinc and copper and, following upon a successful period of exploration and investigation, a new company of the same name was formed in 1931 and commercial production commenced. The latter company has carried on the mining undertaking since that year and is the appellant in these matters. A substantial portion of the expenditure which is said to have been incurred on the development of the mining property was incurred by the old company before 1931, but, by agreement between the parties, the questions involved in the appeals are to be dealt with as if the old and new companies were identical.

Much of the expenditure in question in these appeals was incurred in establishing what virtually was a new township in western

H. C. OF A. 1954.

MOUNT ISA MINES LTD. v. FEDERAL COMMISSIONER OF TAXATION.

Taylor J.

Queensland and some general information concerning the circumstances in which the mining undertaking was established, and in which it has been conducted since its establishment, is necessary for a full appreciation of the contentions which have been advanced by the appellant.

The Mount Isa mines are situated in western Queensland some 1,450 miles by rail from Brisbane and approximately 600 miles from Townsville. In 1925, when the first exploration shafts were sunk, there was a small township, known as Mount Isa, in existence on the farther side of the Leichhardt River which itself is distant about two miles from the north-east boundary of the mining property. This township was quite incapable of providing in any way for any substantial number of newcomers to the district. The nearest township to Mount Isa was Duchess some fifty miles away. It consisted of about a dozen houses and one hotel. Cloncurry was the nearest settlement of any size and it was situated nearly 150 miles away and was connected with Mount Isa by a poor road. The railway line was extended from Cloncurry to Mount Isa in 1929 and, a little later, a new road was constructed between these two places which reduced the distance by road between them by approximately sixty miles. The Mount Isa region consisted of low rolling hills carrying stunted gum trees and spinifex grass and was desolate country. It is well within the Tropic of Capricorn, it is a very dry area with an average annual rainfall of about fourteen or fifteen inches and is subject to great heat. Temperatures of 110 degrees are by no means uncommon. From these brief observations it is apparent that the labour requirements of an undertaking of considerable magnitude were not to be found in the Mount Isa district itself, and that it was unlikely that an adequate and suitable labour force could have been obtained had the appellant not embarked upon a policy designed to ensure, at least, some form of reasonable accommodation and amenities in the area.

In 1925 four exploration shafts were sunk and in the course of these operations about 120 men were employed. Most of the labour was unskilled and was said to have been drawn from the country districts of Queensland. Little, if any, accommodation was available for them in the township of Mount Isa and, in the main, accommodation was provided by the appellant for its employees at that time. This accommodation was of the most primitive type In the vicinity of the property there were three unlined galvanized iron sheds, two of which were occupied by the general superintendent of the company and the resident director respectively The third was used partly as a store and for the accommodation of the company's

paymaster. The other employees, generally, were housed in canvas tents or in primitive shacks built of bush timber or galvanized iron. Sanitary arrangements were, again, of the most primitive kind and water supplies were carried from a soak in the Leichhardt River. The nearest medical practitioner was at Cloncurry 150 miles away by a poor road. A few years later the services of tradesmen, technicians and other skilled employees were required. Investigation had proved the worth of the site and skilled employees were needed in the construction of works necessary for the launching of the undertaking. By 1930 some 800 employees were working on the property and between 1931 and 1936 this number grew to over 1,100. In 1926 or 1927 the appellant commenced the construction of twenty houses for the accommodation of some of its employees and, shortly thereafter, the major development of a new township began. Over the years since then a new township with modern services has been established and the appellant's claim is mainly concerned with the expenditure involved in or associated with this project. The statement of facts agreed upon by the parties and the accompanying schedules (Exhibit C) afford a comprehensive picture of the works which were undertaken and it is sufficient for the purposes of these reasons, briefly, to say that the project involved the construction of houses, provision of an adequate water supply, electrical power, abattoirs, bakery, sanitary services, medical, hospital and educational facilities and attendant amenities such as a sports ground, other recreational areas, a swimming pool and a community club house. All of these things were provided out of the appellant's resources and the carrying out of the project was one which reflects the greatest credit on all concerned. Unfortunately, however, this is not the test to be applied in determining these appeals. The question is whether the expenditure involved was incurred on the development of the mining property.

In support of the contention that it was, evidence was called to establish that the expenditure was undertaken in order to attract suitable labour to the district. Indeed, it was said that unless this course had been pursued it would have been difficult, if not impossible, for the appellant to secure the services of an adequate and suitable labour force. I should say at once that I have no doubt that this was so. It is, I think, inconceivable that the appellant would have been able to secure adequate and suitable labour in competition with other undertakings in less inaccessible and more highly developed communities unless special attention had been paid to the provision of accommodation or unless some

H. C. OF A. 1954.

MOUNT ISA MINES LTD. v. FEDERAL COMMISSIONER OF TAXATION.

Taylor J.

special, and adequate, incentive had been offered to prospective employees. At all events, I am satisfied that the project was undertaken because the appellant regarded it as one necessarily involved in the establishment and maintenance of its mining undertaking at Mount Isa and its belief that this was so was, in my opinion, an eminently reasonable one.

The work upon which the bulk of the expenditure in question was incurred took place during three different phases of the appellant's activities. The first was the work of prospecting and exploration which, of necessity, preceded, in part at least, the decision to establish a mining undertaking in the area. The results of this work no doubt led to the decision to exploit the mineral resources of the area and that decision was succeeded by a period in which the work of assembling the necessary plant and the other preparatory work essential to the commercial operation of the undertaking took place. Possibly the work of prospecting continued into this period, though whether it did or not does not clearly appear. The third phase commenced in 1931 since when the appellant has been engaged in working the mining property for profit. Other expenditure, not directly incurred on account of work done on or in the vicinity of the mining area, is also embraced by the company's claim and to this reference will be made after some consideration has been given to the meaning of s. 122.

It was urged by the appellant that the policy of this section is clearly apparent from its provisions and from those of its predecessors from time to time. It was, it was said, broadly intended, for the purposes of the Act, to enable a person engaged in mining operations for the purpose of gaining or producing assessable income, in effect, to treat the products of capital expenditure of a wide class as wasting assets with a life commensurate with that of the mine. In these circumstances, the appellant argues, the widest possible meaning should be given to the word "development". The difficulties involved in this expression are, of course, readily apparent. Is it intended to refer only to operations which are undertaken or which are necessary to enable the task of winning minerals to commence and to proceed from time to time? Or is it intended to embrace not only these operations but also the day-to-day operations which may be said with some truth to result not only in the winning of minerals but also in the development or extension of the mine itself? If "development" should be regarded as limited to the former operations then there is a simple answer to the bulk of the appellant's claim for most, if not all, of the expenditure involved was incurred in relation to operations

of a much wider class including the day-to-day conduct of the mining undertaking.

The purely developmental phase of many projects may, perhaps, readily be recognized, but in the case of a mining venture this is not so. A mine is not constructed once and for all, it is not static but constantly progresses and grows to enable the winning of minerals to proceed. Sometimes this process goes hand in hand with working operations whilst on other occasions it may be the outcome of deliberate and independent operations designed to render the underlying minerals more easily accessible or to further plans for the expansion or extension of the mining operations. The expression in s. 122 is, however, one of wide import and was, I think, intended to signify, apart from expenditure on plant, all expenditure of a capital nature directly attributable to the establishment and conduct of the mining operations in which the taxpayer is engaged. There are, I think, sufficiently clear indications that this is so. The section permits a person who is carrying on mining operations for the purpose of gaining or producing assessable income to treat a wide class of expenditure of a capital nature as deductible for the purposes of the Act over a period calculated by reference to the estimated life of the mine, and it is inconceivable that the legislature intended to permit such a deduction in the case of capital expenditure incurred on development, in the sense of work preparatory to the commencement of or ancillary to actual mining operations, and yet deny such a deduction in respect of expenditure of a capital nature necessarily incurred contemporaneously with and directly in association with mining operations. This consideration alone would, I think, dispose of any suggestion that the word " development " should be understood in any restricted sense but there is a further contrary intention to be found in the section. The deduction which is permitted in respect of plant is a deduction in relation to expenditure of a capital nature incurred on *necessary* plant. That is, on the language of the section, plant which is necessary for the carrying on of the mining operations for the purpose of gaining or producing assessable income. In the case of plant the allowable deduction is not subject to any restriction other than that to be found in the wide words of the section. Accordingly, expenditure on plant is within the scope of the section whether it is necessary for the day-to-day working of the mine or for developmental work in the narrowest sense and I should think this circumstance throws some little light on the meaning of the word " development " as used in the section. The deduction in each case is clearly intended to serve the same purpose and it would be out of keeping

H. C. OF A. 1954.

MOUNT ISA MINES LTD. v. FEDERAL COMMISSIONER OF TAXATION.

Taylor J.

with the general sense of the section to give a restricted meaning to the latter word and thereby limit the range of expenditure on development in respect of which a deduction might be claimed. Perhaps, the import of the section is best understood by regarding the use of the word "development" as intended to amplify the section and to cover capital works not covered by the word "plant". At all events I am satisfied that all other expenditure of a capital nature directly attributable to the establishment of the mine and to the working of it or to its expansion or extension from time to time should, for the purposes of the section, be regarded as expenditure on the development of the mining property.

While no difficulty may be experienced in recognizing some types of expenditure as expenditure of this nature, cases where difficulties will occur must inevitably present themselves. In the present case two main difficulties arise. The first arises in relation to the expenditure incurred on the establishment and maintenance of the new community at Mount Isa and the second in relation to prospecting work undertaken antecedently to any decision to establish a mine. With respect to expenditure of the latter class my attention was drawn to s. 123AA. This section makes special provision with respect to expenditure incurred on certain classes of exploration and prospecting and this circumstance was relied upon to establish that "expenditure . . . on . . . development", in s. 122, was not intended to include expenditure of this nature. Section 123AA was a new section introduced in 1947 and it was contended, in effect, that if the word "development" in s. 122 in the form in which it stood from 1936-1947 or after that year, included a reference to expenditure on prospecting, there was no need for the enactment of s. 123AA. It is clear, however, that the latter section made some provision for expenditure on prospecting and exploration even though it might not result in the establishment of a mining undertaking and that in such a case s. 122 gave no relief to the taxpayer concerned however wide the meaning of the word "development" might be. But quite apart from the provisions of s. 123AA it is reasonably clear that, in general, prospecting and exploration work precedes the work of "development" however broadly that term may have been used in s. 122. As a rule the former work is undertaken to ascertain, as far as possible, whether the commencement of mining operations would be justified or prudent. Prospecting work which is preparatory in this sense is, in my opinion, not embraced by the word "development". It is probable, however, that work which may broadly answer the description of prospecting, in one sense, may be carried on upon

an established mining property for the purpose of determining the best means to be adopted to facilitate the winning of minerals, the existence of which is already known. Such work goes hand in hand with the development of the mining property and should, I think, be regarded as expenditure on development.

With respect to the expenditure incurred in the establishment of the new community at Mount Isa other difficulties arise. In the first place, it is said that though this expenditure may be regarded as having been incurred in association with or incidentally to the establishment and maintenance of the mining undertaking it was not, in truth, an expenditure incurred on the development of the mining property in any sense. It was, it was said, incurred solely on the establishment and development of the new township. As a statement of the immediate result of this expenditure these propositions are not without validity, but in my view the question of the true character of the expenditure can be resolved only by examination of the broader facts of the case. This is perhaps merely another way of saying that the nature of the assets brought into existence by the expenditure is by no means conclusive and that the vital matters for consideration are the circumstances which called for the expenditure and the purpose which it was designed to serve.

Perhaps some light is cast on the problem on this aspect by the decision in *State Electricity Commission of Victoria* v. *McWilliams* (1) in which this Court was concerned with the extent of the commission's authority to provide accommodation and amenities for its employees under a power " to do all such acts matters and things as should be necessary or incidental to the execution and discharge of their powers duties and authorities under the Act ". The problem in that case—and the answer—is apparent from the following passage from the joint judgment of *Dixon* C.J. and *Kitto* J. :—

" The learned judge was clearly right in holding that in the circumstances the provision in the manner proposed of homes for employees and persons ministering to the ordinary needs of employees was fairly incidental to the effectuation of the purposes for which the Acts provided. Indeed, it is not too much to say that in the situation proved to have existed in the Morwell district in 1950, it was painfully clear that an adequate performance of the commission's statutory functions over the next few years would be impossible unless housing on the scale contemplated by the commission were provided. But that entailed, as a matter of practical necessity, the establishment of a new settlement. The

(1) (1954) 90 C.L.R. 552.

H. C. OF A. 1954.

MOUNT ISA MINES LTD. v. FEDERAL COMMISSIONER OF TAXATION.

Taylor J.

object in view, to attract and retain, by means of suitable housing provision, a large body of employees close to a scene of expanding industrial activity in a country district, simply could not be achieved unless the living conditions to be provided conformed to a reasonable extent with the accepted standards of life in a modern community. The orderly arrangement and convenience of access which planned streets provide, the lighting, heating and drainage services which are now regarded as necessities, reasonable facilities for education, recreation and religious observance—all these things were inevitably involved in the provision of the kind of housing which employees would be likely to regard as acceptable. It was submitted on behalf of the respondent that, while the provision of houses for employees may be reasonably incidental to the conduct of such an undertaking as the commission had at Yallourn, to add the amenities of a town is (as it was put) only incidental to the incidental, and is too remote from the conduct of the undertaking to be regarded as incidental to it. But it is quite an untenable proposition that in a case such as this the frontiers of the incidental are reached when a house is built. The short answer to it in this case is that, in the circumstances which are proved to have confronted the commission, the establishment of the Newborough settlement, as a whole and with all its features, was an appropriate means, and the means which practical considerations were reasonably considered to dictate, for providing the living conditions without which the commission could not hope to obtain the labour force necessary for its purposes " (1).

As appears the commission's authority to acquire the respondent's land and to proceed with its project was, upon a consideration of the circumstances, upheld as an exercise of its express power " to do all such acts matters and things as should be necessary or incidental to the execution and discharge of their powers duties and authorities under the Act ". The Court was not, of course, called upon to say whether the necessary expenditure was part of the capital cost of extending and maintaining the commission's undertaking. But if the capital expenditure was reasonably necessary to secure that supply of labour without which the undertaking could not function can it be doubted that any other view was open ? The fact that the project was justifiable as an exercise of the commission's express incidental power does not mean that the necessary expenditure was not or should not be directly chargeable as part of the cost of extending and maintaining the undertaking.

(1) (1954) 90 C.L.R., at pp. 566, 567.

In the present case the facts appear to work at least as strongly in favour of the appellant. Sufficient has already been said to indicate that the provision of some reasonable accommodation was necessary in order to enable the company to secure and retain the necessary labour force in the vicinity of its project. The area in which it sought to establish its undertaking was so remote and desolate and the existing facilities in the vicinity were so completely inadequate that there is no doubt that the establishment of it could not even have been considered without contemplating, as an integral part of the cost, the provision of housing and amenities for its employees. Indeed, if the accommodation provided had consisted merely of tents or sheds erected by the appellant on its property I doubt if the question would ever have arisen, for I can see nothing to commend to me the suggestion that the cost of such accommodation could not, in the circumstances, be regarded as part of the cost of establishing and maintaining the undertaking. It would, in my opinion, be just as much part of that cost as the cost of plant and buildings in which to house it. Nor does the case fall to be decided upon any different principle because accommodation of a higher standard and modern services and amenities were provided for, if it was necessary to provide some form of accommodation and if the cost of making that provision is properly characterized as capital expended on development of the mining property, it matters little whether the accommodation was meagre or substantial or whether the expenditure was small or great. The vital consideration is that an expenditure for this purpose was necessary and that this necessity alone brought about the expenditure. I do not wish, however, to be understood to say that the nature of the provision made cannot in any circumstances be a relevant consideration for, in some circumstances, it may appear the provision made and the consequent expenditure has entirely outstripped the necessities of the occasion, but, as I understood the argument it was not suggested that this had happened in the present case. In any event I am satisfied on the facts that, in the circumstances of this case, the provision of accommodation and amenities was a necessary part of the establishment and conduct of the appellant's undertaking, that the establishment of the appellant's undertaking could not have been considered without immediately contemplating the cost of making some such provision as an integral part of the project and that the provision which was made might reasonably have been, and in fact was, regarded by the appellant as no more than sufficient to meet the force of circumstances.

H. C. OF A. 1954. MOUNT ISA MINES LTD. v. FEDERAL COMMISSIONER OF TAXATION. Taylor J.

With these observations in mind it is possible to make some approach to the various items of expenditure involved in the appellant's claim. In the statements presented to the Court a distinction is made between the expenditure incurred from the year 1924 to 1st June 1931, when the appellant commenced to win ore from the property, and that which was thereafter incurred. The items of expenditure incurred prior to 1st June 1931 fall into five main categories and I make the following observations concerning them :—

1.—*Direct expenditure on the establishment of the new community.*—These items appear in the first schedule to Exhibit C and they all appear to relate to the provision of accommodation for employees and attendant community services. On the views which I have expressed they should be treated as expenditure incurred on the development of the mining property, except in so far as any part is attributable to preliminary exploration or prospecting.

2. *Sundry Mine Expenses.*—This category comprises some thirty-one items of expenditure and probably, at least, some part of them may have been attributable to development in the sense in which I understand that word. To the extent to which they were they should be taken into consideration in calculating the deduction to which the appellant is entitled. There is, however, insufficient material in the case to enable me to deal finally with these items though some of them appear to have no relation to development in any sense. I refer, for instance, to the items fire insurance, legal expenses, lease rents and rates.

3. *Fees paid for technical advice and assistance.*—It does not appear how far, if at all, these fees were paid for technical advice and assistance in the project of establishing the mining undertaking as distinct from preliminary prospecting work. In so far as they were incurred for the former purpose, they were, in my opinion, expenditure incurred on the development of the mining property.

4. *Office Expenses : Brisbane, Sydney and London.*—No part of the items specified under this heading was, I should think, incurred on the development of the mining property. The fact that they were incurred during the period when developmental work was being carried out on the property does not constitute any reason for thinking otherwise and in the absence of any special reason to the contrary they should be wholly excluded.

5. *Bank charges, debenture interest and brokerage expenses.*—These items appear to relate to expenditure incurred by the company in obtaining finance for its operations. No part of it, in my opinion,

represents expenditure incurred in the development of the mining property.

The items of expenditure from 1st June 1931 onwards which are involved in the appellant's claim appear in yearly statements in Exhibit C and they appear to relate exclusively to the provision and maintenance of housing for employees, attendant services and amenities. On the views I have expressed they should be taken into consideration in calculating the deduction to which the appellant is entitled.

In view of the suggestion made by the parties I now propose to afford them an opportunity of reviewing the multitude of items involved in the appellant's claim and of recasting the calculations necessary to ascertain the amount of the deduction to which the appellant is entitled. If complete agreement as to the application of these reasons be reached, I will, in the light of that agreement, make a final order disposing of the appeals. Failing complete agreement an opportunity will be given to the parties to call further evidence in relation to any items which remain in dispute. In the meantime, the appeals will stand over generally and each party will have liberty to restore them to the list on seven days' notice.

Appeals stood over generally. Each party to have liberty to restore them to the list on seven days' notice.

Solicitors for the appellant, *Allen, Allen & Hemsley.*

Solicitor for the respondent, *D. D. Bell*, Crown Solicitor for the Commonwealth.

J. B.