

## [HIGH COURT OF AUSTRALIA.]

TOOMAROO PTY. LTD. . . . . APPELLANT ;

AND

FEDERAL COMMISSIONER OF TAXATION RESPONDENT.

*Income Tax (Cth.)—Allowable deduction—Depreciation on plant—“Structural improvements on land which is used for the purposes of agricultural or pastoral pursuits”—City building used for the purpose of administering pastoral properties—Income Tax and Social Services Contribution Assessment Act 1936-1950 (No. 27 of 1936—No. 48 of 1950), ss. 54, 56, 57A.*

H. C. OF A.

1954.

BRISBANE,

Aug. 2;

SYDNEY,

Nov. 22.

Webb J.

The appellant, a pastoral company, owned certain freehold land in the city of Toowoomba on which was erected a building from which for part of the fiscal year in question it conducted the administration of several of its pastoral properties situated in the Cunnamulla-Thargomindah district, several hundred miles away. The administration included not only accountancy, but also purchases of foodstuffs for station hands and of the plant and equipment for the stations, and arrangements for the reconditioning of plant and equipment. Machinery already or about to be reconditioned or repaired was sometimes parked in the office yard on its way to or from the pastoral properties. The appellant had purchased the land and building thereon in 1949 and during the financial year in question had effected some structural improvements thereto. It claimed that the building fell within the phrase “other structural improvements on land which is used for the purposes of agricultural or pastoral pursuits” in s. 54 (2) (b) of the *Income Tax and Social Services Contribution Assessment Act 1936-1950* and was therefore “plant” on which it was entitled to deductions for depreciation under s. 54 of the Act and, in respect of additions made to the building during the year of income in question, under s. 57A of the Act.

*Held* that the building was not a structural improvement on land used “for the purposes of agricultural or pastoral pursuits” within the meaning of s. 54 (2) (b) of the Act.

The phrase “for the purposes of agricultural or pastoral pursuits” should be read as meaning “for purposes, being agricultural or pastoral pursuits,” and not as “for purposes incidental to agricultural or pastoral pursuits.”

*Melbourne Hunt Club v. Federal Commissioner of Taxation* (1930) V.L.R. 365; 1 A.T.D. 49, applied.



H. C. OF A. APPEAL from a Board of Review.

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This was an appeal by Toomaroo Pty. Ltd. from the decision of Board of Review No. 3, Brisbane, which affirmed the disallowance by the Commissioner of Taxation of an objection by the company to the refusal of the commissioner to allow a deduction of £1,081 as depreciation of plant in the assessment of the income of the company for the financial year ended 30th June 1951. The material facts appear in the judgment:

*M. B. Hoare*, for the appellant.

*G. A. G. Lucas*, for the respondent.

*Cur. adv. vult.*

Nov. 22.

WEBB J. delivered the following written judgment:—

This is an appeal by a taxpayer, a pastoral company, from the decision of the Board of Review which affirmed the disallowance by the Commissioner of Taxation of an objection by the taxpayer to the refusal by the commissioner to allow a deduction of £1,081 as depreciation of “plant” in the assessment of the income of the taxpayer for the year ended 30th June 1951. The plant was actually a building in Toowoomba which for part of the income year was used by the taxpayer in connection with the administration of its pastoral business. The taxpayer was one of a group of five pastoral companies all of which had the same managing director and secretary. The members of the staff of all these companies were on the same pay-roll. They shared the same office, and the cost of running the office in any year was apportioned between all the companies on the basis of turn-over in the previous year. The office was in the city of Toowoomba, but the pastoral holdings or properties were in the Cunnamulla-Thargomindah district several hundred miles away. The administration of the pastoral properties was conducted from the Toowoomba office, and included not only accountancy, but also purchases of foodstuffs for station hands and of the plant and equipment for the stations, and arrangements for the reconditioning of plant and equipment. Machinery already or about to be reconditioned or repaired was sometimes parked in the office yard on its way to or from the pastoral properties.

During the year 1949 the taxpayer purchased this building and made structural improvements. Some of the improvements were made during the income tax year in question. However, there were tenants in the building when it was purchased, and the last of these tenants did not vacate the premises until May 1951. Meanwhile, members of the taxpayer's staff began to work in the building



as it became available for office use following the departure of the tenants and the necessary structural alterations.

The sections of the *Income Tax and Social Services Contribution Assessment Act* 1936-1950 under which the claim for depreciation was made provide, so far as it is necessary to set them out: "s. 54 (1). Depreciation during the year of income of any plant, being plant . . . owned by a taxpayer and used by him during that year for the purpose of producing assessable income, and of any property being plant . . . owned by the taxpayer which has been installed ready for use for that purpose and is during that year held in reserve by him shall . . . be an allowable deduction. (2). In this section 'plant' includes . . . (b) fences, dams and other structural improvements on land which is used for the purposes of agricultural or pastoral pursuits but does not include improvements used for domestic or residential purposes, or structural improvements, bores or wells expenditure on which has been allowed . . . as a deduction".

Section 56 provides for the calculation of depreciation, and s. 57A for special depreciation of property "acquired or installed" during the year of income, but within seven years after 30th June 1945.

The first question that arises is whether the office building was "plant" within the meaning of s. 54 (1) (b), that is, whether it was a structural improvement on land which was used for the purpose of agricultural or pastoral pursuits.

I think that the phrase "for the purposes of agricultural or pastoral pursuits" should be read as meaning "for purposes, being agricultural or pastoral pursuits", and not "for purposes incidental to agricultural or pastoral pursuits": see *Melbourne Hunt Club v. Federal Commissioner of Taxation* (1). That was a decision of *Macfarlan J.* under the *Land Tax Assessment Act* 1910-1928 (Cth.), but nothing in the context or subject matter of that Act or of the *Income Tax and Social Services Contribution Assessment Act* renders the decision inapplicable. There the question was, as it is here, simply one of the grammatical construction of words not affected by context or subject matter. I think that decision was correct, if I may say so with respect, and I will apply it.

No doubt the work done in the Toowoomba building and the parking of machinery in or about the building were incidental to pastoral pursuits; but it would, I think, involve an undue straining of language to hold that this office work and parking of machinery constituted, or was part of, pastoral pursuits. If the context of the *Income Tax and Social Services Contribution Assessment Act*

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throws any light on the question of construction, then the legislature in specifying fences, dams, wells or bores in s. 54 gives, I think, an indication of the kind of improvements it has in mind, that is to say, those on a pastoral holding or property itself, and not a city building hundreds of miles distant, but used as an office for the conduct of business incidental to pastoral operations, or for parking machinery on its way to or from the station property. It is common knowledge that there are companies which own and operate pastoral properties and which have in the capital cities office buildings in which the business associated with these operations is conducted; but it cannot seriously be claimed that those offices are on land used for pastoral pursuits, even if in or about those buildings parking is sometimes provided for machinery intended for use on the pastoral properties; and what is true of these buildings in capital cities is also true of such buildings in other cities.

I think, then, that the Toowoomba building was not a structural improvement on land used for pastoral pursuits, and that the depreciation claimed was rightly disallowed.

It becomes unnecessary to consider other questions which might be thought to arise but to which little or no argument was directed.

The appeal is dismissed with costs.

*Appeal dismissed with costs.*

Solicitors for the appellant, *Flower & Hart*.

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

W. J. C.