

[HIGH COURT OF AUSTRALIA.]

SHAW AND ANOTHER APPELLANTS ;

AND

THE FEDERAL COMMISSIONER OF TAXA-
TION } RESPONDENT.H. C. OF A.
1920.MELBOURNE,
March 10.Knox C.J.,
Gavan Duffy
and Starke J.J.*War-time Profits Tax—Assessment—Profits—Sale of wattle bark—Expenses incurred in previous years—Deduction—War-time Profits Tax Assessment Act 1917-1918 (No. 33 of 1917—No. 40 of 1918), secs. 7 (1), 10 (1), 15—Income Tax Assessment Act 1915-1918 (No. 34 of 1915—No. 18 of 1918), sec. 18 (1).*

Sec. 7 (1) of the *War-time Profits Tax Assessment Act 1917-1918* imposes a tax on war-time profits arising from a business after 30th June 1915. Sec. 15 (1) provides that the profits shall be taken to be the actual profits arising in the accounting period from sources in Australia.

Held, that the profit arising from the sale of wattle bark stripped from trees grown on the taxpayer's land was properly included in the profits of the accounting period during which the sale was made and should not be distributed over the period during which the trees were growing.

Semble, that in ascertaining the profits in such a case a deduction should be made of the expenses properly incurred in producing the commodity and realizing the proceeds out of which the profits arose, even though those expenses were incurred in years preceding the accounting period.

CASE STATED.

On an appeal to the High Court by Edward Bernard Shaw and Frederick Charles Shaw from an assessment of them by the Federal Commissioner of Taxation for war-time profits tax, *Starke J.* stated the following case for the opinion of the Full Court :—

1. The appellants at all times material to this case have resided in the State of Tasmania.
2. The appellants duly furnished to the respondent the returns

required by the *War-time Profits Tax Assessment Act* 1917, setting forth a statement of the profits of their business during the financial year ending 30th June 1916.

3. The Commissioner caused an assessment to be made thereon for the purpose of ascertaining the profits upon which war-time profits tax should be levied for the period from 1st July 1915 to 30th June 1916, and subsequently amended the same.

4. The Commissioner assessed the appellants to war-time profits tax in the sum of £1,310 17s. 8d. by the said amended assessment.

5. The Commissioner included in the said assessment certain returns from the bark of wattle trees which had been stripped by the appellants from certain lands in their possession and sold and the proceeds received, all during the said financial year ending on 30th June 1916.

6. A wattle tree must be from three to four years old before its bark is suitable for stripping, and the tree can only be stripped once inasmuch as the stripping results in the death of the tree.

7. The appellants by notice of objection objected to the said amended assessment, and claimed that the respondent had erroneously included in the said amended assessment as part of the profits for the said period the whole of the proceeds of wattle bark stripped and sold during the said period although such proceeds included the growth of wattle bark during several years. The appellants claimed that the proceeds received upon the sale of such wattle bark should be divided by the number of years during which such bark had grown, and that the proportion of profits attributable to the accounting period should be arrived at by dividing the total amount of profits from the sale of the bark by the number of years of the growth of the bark before it was stripped.

8. The Commissioner disallowed the said objection, and the parties agreed that the said notice of objection should be, and the same was, treated as an appeal and forwarded to this Court pursuant to sec. 28 of the said Act.

9. On the hearing of the appeal before me the following questions, which in my opinion are questions of law, have arisen, which I state for the opinion of the High Court :—

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- (1) Was the whole of the proceeds of the sale of the said wattle bark rightly included in the assessment of the period between 1st July 1915 and 30th June 1916 ?
- (2) Is the contention of the appellants correct ?
- (3) Upon what principle should the proceeds of the said bark be assessed by the Commissioner ?

Shelton, for the appellants. Sec. 7 of the *War-time Profits Tax Assessment Act* 1917-1918 imposes the tax upon profits arising in the year in respect of which the assessment is made. The profits arising from growing wattle trees for their bark, stripping the bark and selling it, arise in the years during which the wattle trees are growing as well as in the year in which the sale is made. It cannot be said that there is any profit unless it has been proved that there is some gain from the realization of the asset.

[KNOX C.J. No objection is taken from that point of view. Has no claim been made for expenses incurred in previous years in producing the profit ?]

There is nothing to show whether such a claim has been made.

Pigott, for the respondent. The Commissioner only allows deductions in respect of expenses incurred in the year of assessment. Sec. 10 of the *War-time Profits Assessment Act* provides that profits are to be determined in accordance with the provisions of the *Income Tax Assessment Act* 1915-1918, and under sec. 18 (1) of the latter Act the only expenses incurred in producing income which are allowed to be deducted are expenses incurred in the year of assessment. That is also the practice under the Victorian *Income Tax Act*.

[STARKE J. Those Acts deal with the taxation of income, but this Act deals with the taxation of profits. The ordinary commercial process for ascertaining profits is to deduct the expenses of producing the proceeds of realization from those proceeds (*Usher's Wiltshire Brewery v. Bruce* (1)).]

The judgment of the COURT, which was delivered by KNOX C.J., H. C. OF A.
was as follows :— 1920.

We think that the first question ought to be answered Yes. We have no doubt that the whole of the proceeds of sale, having been realized in the financial year ending 30th June 1916, must be brought into account, and that such proceeds of sale were properly included in the assessment ; in other words, the proceeds of the sale cannot be notionally spread over other years than that in which they were realized. As to the second question we think that it should be answered No. As to the third question we do not think that it should be answered at all.

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That is our decision on the special case, but, as what I may call an extra-judicial opinion, we desire to say that in our opinion the Commissioner ought to consider whether it would not be consistent with the Act, as it certainly would be fair to the taxpayer, not to limit the expenses incurred in the production of the profits assessable under the Act to expenses actually incurred in the accounting period. I mean by "accounting period" the year in which the profits arise. We do not decide judicially that such an allowance should be made to the taxpayer, and we are far from deciding that it should not. The case does not raise that question, and we are not in a position to decide it. But we think, on the plain common sense of the case fortified by the authority of *Usher's Wiltshire Brewery v. Bruce* (1), referred to by our brother *Starke*, that the use of the word "profit" *prima facie* involves a deduction of the expenses properly incurred in realizing the proceeds out of which the profit arises.

*Questions answered : (1) Yes ; (2) No. Question
3 not answered.*

Solicitors for the appellants, *Lynch, McDonald & Elliott*, for *Simmons, Wolfhagen, Simmons & Walsh*, Hobart.

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

B. L.

(1) (1915) A.C., 433.