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Court No. T-897-89

BETWEEN:

LIAMPAT HOLDINGS LTD.,

Plaintiff,

-and-

HER MAJESTY THE QUEEN,

Defendant.

REASONS FOR ORDER

CULLEN, J.:

This is a motion by the plaintiff under Rule 324 to reconsider the terms of the pronouncement of my judgment in this matter, dated November 30, 1995. Specifically, the plaintiff requested that I address the issue of whether it can claim a non-capital loss for the 1982 taxation year, carrying in back to the 1981 taxation year.

Upon reading submissions and affidavit from counsel for the plaintiff, I agree that this matter was overlooked by the Court and I will consider it now. I am following the interpretation of *AAllcann Wood Suppliers Inc. v. Her Majesty the Queen*, 94 D.T.C. 1475 (T.C.C.), that I expressed earlier: the Court has jurisdiction to consider a nil assessment year where the computations from the nil assessment year have an actual impact on another taxation year. Accordingly, the carry-back of a non-capital loss from 1982 (the nil assessment year) to 1981 is validly before this Court.

I found, and still maintain, that the Minister properly deemed interest to have been received by the plaintiff in the 1981 and 1982 taxation years pursuant to

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subsection 17(1) of the *Income Tax Act* (the Act), and that the Minister properly included those amounts in the plaintiff's income for 1981 and 1982 taxation years pursuant to paragraph 12(1)(c) of the Act. However, at no time did the plaintiff actually receive payment from Tennis World to whom it had loaned money.

As both parties agree, when the debt was deemed bad in 1982, the plaintiff was able to write off the outstanding principal balance as a capital loss in its 1982 taxation year. The interest which had been included in the plaintiff income, however, was not included as part of that capital loss. The plaintiff is not claiming an interest deduction pursuant to paragraph 20(1)(c) of the Act; rather, it is seeking to declare the interest deemed to have been received as a bad debt expense pursuant to paragraph 20(1)(p). If I understand counsel for the plaintiff's argument correctly, the plaintiff was deemed to have received income in 1981 and 1982 that it did not actually receive. When it became clear that the interest would not be received, it became a bad debt expense. This bad debt expense is simply a set-off against the interest inclusion made pursuant to subsection 17(1) and paragraph 12(1)(c) of the Act.

I find the plaintiff's argument to be very persuasive. For example, if the plaintiff had, at some later point, received the interest which it had already included in its income for the 1981 and 1982, it would not have had to declare the interest as income a second time. On the other hand, when it became clear that the interest payments would not be received, it is only logical that the plaintiff be able to claim some off-setting amount.

While the Minister was correct in including in the income of the plaintiff the interest on its loan to Tennis World, I have decided that the plaintiff should also be allowed a bad debt expense in respect of the interest portion of the debt in its 1982

taxation year as a bad debt expense. The bad debt expense would increase the plaintiff's 1982 non-capital loss available to carry back and would off-set the income inclusion made pursuant to subsection 17(1) and paragraph 12(1)(c) of the Act.

The plaintiff will be allowed to claim a bad debt expense in respect of the interest portion of the debt to Tennis World in its 1982 taxation year.

OTTAWA
January 4, 1996.

B. Cullen

J.F.C.C.

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS ON THE RECORD

COURT FILE NO.:

T-897-89

STYLE OF CAUSE:

Liampat Holdings Ltd.
v.
Her Majesty The Queen

MOTION DEALT WITH IN WRITING WITHOUT THE APPEARANCE OF PARTIES

REASONS FOR ORDER BY THE HONOURABLE MR. JUSTICE CULLEN

DATED:

January 4, 1996

WRITTEN REPRESENTATIONS BY:

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