BETWEEN:

1954

Nov. 23

Nov. 26

PROVINCIAL PAPER, LIMITED ..... APPELLANT,

AND

THE MINISTER OF NATIONAL REVENUE ..... RESPONDENT.

Revenue—Income Tax—The Income Tax Act, S. of C. 1948, c. 52, ss. 42(1), 42(2), 50(6)—Examination of taxpayer's return—Nature of Minister's assessment function—Minister not precluded from accepting taxpayer's return as correct.

On July 27, 1951, the Minister sent the appellant a "notice of assessment" for the year 1950 showing the same amount of tax levied as it had shown on its return. On January 27, 1953, the Minister sent the appellant a "notice of re-assessment" for the same year showing a balance of tax unpaid and interest thereon from July 1, 1951, to January 27, 1953. The appellant contended that under section 50(6) of The Income Tax Act interest was payable only from July 1, 1951, to June 30, 1952, on the grounds that the Minister did not examine its income tax return within the meaning of section 42(1) and did not assess the tax for the taxation year or the interest payable by it within the meaning of the section and that, consequently, the notice dated July 27, 1951, was not a notice of assessment since there had not been an assessment prior to that date and that the notice dated January 27, 1953, was really the original assessment within the meaning of section 50(6). The contention was that the acceptance of the appellant's return, subject only to the checking of its computations, was not an assessment within the meaning of the Act.

Held: That it is not for the Court or anyone else to prescribe what the intensity of the examination of a taxpayer's return in any given case should be. That is exclusively a matter for the Minister, acting through his appropriate officers, to decide.

2. That there is no standard in the Act or elsewhere, either express or implied, fixing the essential requirements of an assessment. It is exclusively for the Minister to decide how he should, in any given case, ascertain and fix the liability of a taxpayer. The extent of the investigation he should make, if any, is for him to decide.

3. That the Minister may properly decide to accept a taxpayer's income tax return as a correct statement of his taxable income and merely check the computations of tax in it and without any further examination or investigation fix his tax liability accordingly. If he does so it cannot be said that he has not made an assessment.

APPEAL under The Income Tax Act.

The Appeal was heard by the President of the Court at Toronto.

R. M. Sedgewick for appellant.

W. R. Jackett Q.C. and *T. Z. Boles* for respondent.

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The facts and questions of law raised are stated in the reasons for judgment.

THE PRESIDENT now (November 26, 1954) delivered the following judgment:

The appellant's appeal against its income tax assessment for 1950 is confined to the item of $1,506.50 for interest on unpaid tax which is included therein.

Certain facts are not in dispute. On June 25, 1951, the appellant filed its income tax return for its fiscal period ending December 31, 1950, showing its taxable income for the period at $2,409,751.33, the tax at $835,490.49, the instalments paid at $860,000.00 and a refund due to it of $24,509.91. On July 27, 1951, the Minister sent the appellant a notice which he called a "notice of assessment" for the taxation year 1950 showing $835,490.49 as the tax levied, $860,000.00 as the amount paid on account and $24,509.51 as a refund. These are the same amounts as those shown on the appellant's return. Subsequently, on January 27, 1953, the Minister sent the appellant another notice which he called "notice of re-assessment" for the taxation year 1950 showing $874,874.60 as the tax levied, $859,776.05 as the amount paid on account and $15,098.55 as the balance of tax remaining unpaid together with interest thereon at $1,506.50, this being interest at 6 per cent on the unpaid tax from July 1, 1951, to January 27, 1953. The change in the amount of tax levied was the result of disallowing certain amounts which the appellant had claimed as deductions and adding them back to the amount of taxable income which it had shown on its return. All the adjustments made in the amount were based on material supplied by the appellant. On March 20, 1953, the appellant sent the Minister a notice of objection in which it objected only to the item of interest as included in the assessment, claiming that the only interest on the unpaid tax payable by it was interest from July 1, 1951, to June 30, 1952, amounting to $905.91. The amount of interest thus in dispute amounts to $600.59. On July 20, 1953, the Minister sent the appellant a notification that he had confirmed the assessment. Thereupon the appeal to this Court was taken.

The appellant based its complaint on subsection (6) of section 50 and subsections (1) and (2) of section 42 of The Income Tax Act, Statutes of Canada, 1948, Chapter 52. Subsection (6) of section 50, as amended in 1949, read as follows:

50. (6) No interest under this section upon the amount by which the unpaid taxes exceeds the amount estimated under section 41 is payable in respect of the period beginning 12 months after the day fixed by this Act for filing the return of the taxpayer's income upon which the taxes are payable or 12 months after the return was actually filed, whichever was later, and ending 30 days from the day of mailing of the notice of the original assessment for the taxation year.

Subsections (1) and (2) of section 42 provided:

42. (1) The Minister shall, with all due dispatch, examine each return of income and assess the tax for the taxation year and the interest and penalties, if any, payable.

(2) After examination of a return, the Minister shall send a notice of assessment to the person by whom the return was filed.

It was contended for the appellant that the Minister did not examine its income return, within the meaning of section 42 (1), and that he did not assess the tax for the taxation year or the interest payable by it, within the meaning of such section, that, consequently, the notice dated July 27, 1951, was not a notice of assessment since there had not been an assessment prior to that date and that the notice dated January 27, 1953, was really the notice of the original assessment for the taxation year. On that basis it was submitted that under section 50(6) the interest on the appellant's unpaid tax ran only for the period of 12 months from June 30, 1951, which was the day fixed for the filing of its return, that it then ceased to run and that it did not begin to run again until February 27, 1953, which was 30 days after the mailing of the notice dated January 27, 1953. Thus the appellant claimed that it was not liable to interest on the amount of its unpaid tax for the period from July 1, 1952, to February 27, 1953.

It was properly conceded that if the Minister did make an assessment prior to sending the notice dated July 27, 1951, the appellant had no claim for relief under section 50(6) and its appeal against the assessment must fail. To succeed in its appeal it must establish that the Minister did not make any assessment prior to the said date.

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Counsel agreed on a statement of facts which was filed as Exhibit 1. The most important facts are set out as follows:

3. After the appellant filed its income tax return for the 1950 taxation year,

(a) the return was inspected by an assessor who checked the computation of the tax payable by the appellant on the basis that the taxable income shown by the income tax return was correct;

(b) the work of the original assessor was checked by another assessor;

(c) the payments claimed to have been made were checked by an appropriate section of the Toronto Office of the Department;

(d) the tax payable by the appellant was determined by the Deputy Minister as indicated on the original "Notice of Assessment" without further investigation than indicated by subparagraphs (a), (b) and (c) of this paragraph;

(e) the original "Notice of Assessment" was sent out on behalf of the Deputy Minister;

(f) it having been decided that the return should be reviewed to ascertain whether a "reassessment" was appropriate, another assessor inspected the return and, upon checking the computation of taxable income, conducted an examination of the Company's records as a result of which a "reassessment" of the Company was considered by the appropriate officers of the Department and the tax payable by the taxpayer was redetermined by the Deputy Minister as indicated on the "Notice of Reassessment"; and

(g) the "Notice of Reassessment" was sent out on behalf of the Deputy Minister.

4. The examination before the original "assessment" was confined to the steps described above.

It was on the facts set out in paragraphs (a) to (d) of section 3 of the agreed statement of facts that counsel for the appellant contended that the Minister had neither examined the appellant's income return nor assessed the tax or interest payable by it within the meaning of section 42(1) of the Act. The contention that he had not examined the return may be dealt with briefly. It is clear, of course, that the examination referred to need not be made by the Minister personally. It is sufficient if it is made by his appropriate officers in the course of their duty. In the present case it seems clear to me that the officers referred to in the statement of facts did examine the appellant's return. The assessors could not have checked the computations in it without making some examination of it. Nor could the amounts of payments made have been verified without such examination. It is not for the Court or any one else to prescribe what the intensity of the examination in any given case should be. That is exclusively a matter for the Minister, acting through his appropriate officers, to decide. In

my judgment, while the examination may not have been an exhaustive one, as to which I do not express any opinion, it was, nevertheless, an examination within the meaning of section 42(1). The appellant has thus failed to establish this portion of the submission made on its behalf.

The contention that the Minister did not make an assessment prior to sending his notice of assessment, dated July 27, 1951, although equally untenable, requires more consideration in view of the serious consequences that would follow from its adoption. I shall now summarize the argument of counsel in putting forward this contention. He submitted that all that the Minister had done by the checks made by his officers and his determination, through the Deputy Minister, of the tax as indicated in the original notice without further investigation, as set out in paragraphs (*a*) to (*d*) of section 3 of the agreed statement of facts was the performance of a purely mathetmatical function, but the assessment function required more than this; that it cannot be said that the Minister made an assessment if all that his officers did was to peruse the return and compute the tax on the basis shown by the taxpayer without any separate computation by them; that the Minister must do more than merely have his officers peruse or inspect the taxpayer's return and accept his computations, as checked, of his income, his taxable income and his tax; that assessment is a formal and important operation; that while the Minister may make certain assumptions, such as that the return is in accordance with the books, that what is listed as income has been received or is receivable, that the stated expenditures have been made, that the taxpayer's method of accounting is consistent with that of prior years, that the items in the return are the only ones to be considered and the like, he must, nevertheless, ascertain for himself that the taxpayer has properly computed his income, his taxable income and his tax; that in the course of such ascertainment the Minister must decide whether the deductions claimed are proper and check all additions and subtractions; that the Minister must also determine whether instalment payments have been made as required and whether any interest is payable; and that the Minister must do all these acts before it can be said that he has made an assessment. The essence of the argument was that the

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acceptance of the taxpayer's return, subject only to the checking of his computations, and the determination of his liability on the assumption of its correctness was not an assessment within the meaning of the Act.

In support of his submissions counsel referred to certain decisions of this Court in which the nature of the assessment operation was considered. In *Pure Spring Company Limited* v. *Minister of National Revenue* (1) I dealt with the matter in considerable detail stressing that the assessment operation, as distinct from the exercise of a discretionary power, was solely administrative and referred to the statement of Isaacs A. C. J., the Chief Justice of Australia, in *Federal Commissioner of Taxation* v. *Clarke* (2) that "an assessment is only the ascertainment and fixation of liability". Then, at page 500, I defined assessment as follows:

> The assessment, as I see it, is the summation of all the factors representing tax liability, ascertained in a variety of ways, and the fixation of the total after all the necessary computations have been made.

In *Dezura* v. *Minister of National Revenue* (3) I said:

> The object of an assessment is the ascertainment of the amount of the taxpayer's taxable income and the fixation of his liability in accordance with the provisions of the Act.

And in *Morch* v. *Minister of National Revenue* (4) I described the assessment as "an important administrative act within the exclusive function of the Minister."

There is no justification in any of the statements made in these cases for counsel's contention that the Minister did not make any assessment prior to July 27, 1951. There are several errors implicit in it. It is erroneous to say that unless the Minister has done all the acts that he may possibly do in the performance of his administrative function of assessment he has not made an assessment at all. There is no standard in the Act or elsewhere, either express or implied, fixing the essential requirements of an assessment. It is, therefore, idle to attempt to define what the Minister must do to make a proper assessment. It is exclusively for him to decide how he should, in any given case, ascertain and fix the liability of the taxpayer. The extent of the investigation that he should make, if any, is for him to decide. Of necessity it will not be the same in all cases.

(1) [1946] Ex. C.R. 471 at 498.
(2) (1927) 40 C.L.R. 246 at 277.
(3) [1948] Ex. C.R. 10 at 15.
(4) [1949] Ex. C.R. 327 at 335.

But the basic fallacy in the contention lies in the assumption that the Minister is precluded from ascertaining and fixing a taxpayer's liability on the basis of the assumed correctness of his income tax return but must do something else and that if he does not do so he has not made an assessment. While the Minister is not bound by the taxpayer's return, as was emphasized in the *Dezura* case (*supra*), there is nothing in the Act to prevent him from accepting it as correct and fixing the taxpayer's liability accordingly. In *Davidson* v. *The King* (1) I made the statement that the taxpayer's own return of his income, while not binding upon the Minister, may be the basis of the assessment made by him and I pointed out that it was reasonable that this should be so, since the taxpayer knew better than anyone else what his income was.

The Minister may, therefore, properly decide to accept a taxpayer's income tax return as a correct statement of his taxable income and merely check the computations of tax in it and without any further examination or investigation fix his tax liability accordingly. If he does so it cannot be said that he has not made an assessment.

It may happen that it will subsequently appear that an assessment so made is inaccurate and that a re-assessment is desirable. But there is a vast difference between an assessment that has turned out to be erroneous and an act that is not an assessment at all. It is for the Minister to decide in each case what he shall do. Indeed, in the vast majority of cases he accepts the taxpayer's statement of taxable income as correct and fixes his liability accordingly. It would be fantastic to say that in such cases he has not made an assessment at all. In my opinion, he has plainly done so. Counsel was, therefore, in error in contending that there was no assessment because the Minister's assessors merely checked the accuracy of the computations of the tax payable by the appellant on the basis that the taxable income shown by its income tax return was correct and the Minister determined its liability accordingly without any further investigation. In my opinion, the Minister did make an assessment within the meaning of section 42 (1).

(1) [1945] Ex. C.R. 160 at 170.

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That being so, the notice dated July 27, 1951, was a valid notice of assessment and the appellant has no claim for relief under sections 50 (6). That disposes of its claim.

I am not impressed with the argument that by assessing the appellant in such a perfunctory manner the Minister deprived it of its rights to relief from interest under section 50 (6). The appellant may have cause for annoyance by reason of the delay in re-assessing it but this does not affect the legal question involved. Moreover, I might observe that if the appellant had made a correct return in the first place it could have saved itself from any liability for interest on unpaid tax by paying the full amount of the tax.

It follows from what I have said that the appellant's attack on the assessment fails and its appeal against it must be dismissed with costs.

Judgment accordingly.