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WILLIAM T. JOYCE COMPANY

v.

VERNON ASSESSMENT DISTRICT

Supreme Court of British Columbia (X545/61)

Before: MR. JUSTICE ARTHUR E. LORD

Vancouver, October 10, 1961

D.L. Vaughan for the Appellant
Lloyd G. McKenzie Q.C., and Paul Gadban for the Respondent Provincial assessment district

Reasons for Judgment

An appeal by way of stated case from the judgment of the Assessment Appeal Board which had confirmed the judgment of the Court of Revision.

The appeal requires consideration of section 46 (1) and section 37 (1), (2), and (3) of the *Assessment Equalization Act*, which read as follows:-

> 46. (1) The amount of the assessment of real property appealed against may be varied by the Board where, in the opinion of the Board, either
>
> (a) the value at which an individual parcel under consideration is assessed does not bear a fair and just relation to the value at which other land and improvements are assessed in the municipal corporation or rural area in which it is situate; or
>
> (b) the assessed values of such land and improvements are in excess of the assessed value as properly determined under section 37.
>
> 37. (1) The Assessor shall determine the actual value of land and improvements. In determining the actual value, the Assessor may give consideration to present use, location, original cost, cost of replacement, revenue or rental value, and the price that such land and improvements might reasonably be expected to bring if offered for sale in the open market by a solvent owner, and any other circumstances affecting the value; and without limiting the application of the foregoing considerations, where any industry. commercial undertaking, public utility enterprise, or other operation is carried on, the land and improvements so used shall be valued as the property of a going concern.
>
> (2) The Assessor shall also determine the base-year actual value of land and improvements, which shall be what the actual value of land and improvements determined under subsection (1) would have been in the base year. The Lieutenant Governor in Council shall specify the base year to be used with respect to both land and improvements or the base year to be used with respect to land and the base year to be used with respect to improvements.

(3) The assessed values of land and improvements for the purposes of real property taxation under the *Public Schools Act* are the amounts that bear to the base-year actual values as determined under subsection (2) by the Assessor the ratios or percentages as set by Order of the Lieutenant-Governor in Council. and the Lieutenant-Governor in Council may set the same ratios or different ratios, to be applicable to land and to improvements for the said purposes.

The base year required to be specified in section 37 (2) was named as the year 1955 for land.

The principal argument advanced by the appellant is that the assessment was based on 1960 upset prices for timber sales and not on 1955 upset prices as required by section 37 (2). It is necessary to determine the actual value of the land in the base year so that the assessed values for purposes of taxation under the *Public Schools Act* may be arrived at in accordance with the percentages to be set by the Lieutenant-Governor in Council, and that actual value must be determined under subsection (1) of section 37. which seems to supply a formula as wide and flexible as could be imagined. including, as it does, "present use" for arriving at the 1955 actual value, and also "any other circumstances affecting the value."

It seems clear to me on the evidence that the Assessor did determine the actual value of the land in 1955 in the sense that he found the upset prices were higher in that year than in 1960. With the wide formula provided by the Act, it seems to me he is justified in making such a finding under the considerations he outlined and gave the taxpayer a "break" by giving him a lower assessment.

I am in agreement with the reasoning of the Board as outlined in its reasons for judgment.

The questions are answered as follows:-

Q.-(a) Did the Assessment Appeal Board err in not holding that the assessments herein were made contrary to the law and, in particular, the provisions of the *Assessment Equalization Act* as amended, and should therefore be set aside?

A.-No.

Q.-(b) Was the Board right in holding that all the powers necessary to deal with these assessments are contained within the provisions of section 46 of the *Assessment Equalization Act* as amended?

A.-Yes.

Q.-(c) Was the Board right in holding that there was no evidence before it to indicate that subsection (a) of section 46 of the *Assessment Equalization Act* of British Columbia applied to the assessments herein?

A.-Yes.

Q.-(d) Was the Board correct in finding that the evidence was uncontradicted that the assessed values are not in excess of the assessed values properly determined under section 37 of the said Act?

A.-Yes.

Q.-(e) In view of the method of determining assessed values adopted by the Assessor, was the Board right in holding that if the assessments had been properly determined on the basis of 1955 values in the first instance the assessments would be higher than they are?

A.-Yes.

Q.-(f) Was the Board correct in holding that in view of the provisions of section 46 of the said Act, it was without jurisdiction to interfere with the assessments?

A.-Yes.

Q.-(g) Did the Board err in holding that the lands in question were assessed at the normal upset price in accordance with the usual procedures which had received the approval of the Court of Appeal of British Columbia in the case of *Regina* v. *Penticton Sawmills Ltd.* reported in (1954) 11 W.W.R. (N.S.) 351?

A.-No.