BRITISH COLUMBIA FOREST PRODUCTS LIMITED

v.

ASSESSMENT DISTRICTS OF COWICHAN AND VICTORIA

Supreme Court of British Columbia (X1126/61)

Before: MR. JUSTICE J.G.A. HUTCHESON

Vancouver, January 17, 19 and 22, 1962

H.P. Legg for the appellant company
Lloyd G. McKenzie, Q.C. and Paul V. Gadvan for the respondent Provincial Assessors of the respective jurisdictions.

Reasons for Judgment

This matter came before me by way of a case stated by the Assessment Appeal Board dated the 27th of January, 1961. This case was stated pursuant to section 51 of the *Assessment Equalization Act.* At the hearing before me and by order dated 19th of January, 1962, I directed that the case stated be sent back to the Assessment Appeal Board for amendment in the respects as set forth in the order. Subsequently the amended stated case was filed dated the 31st of January, 1962. That stated case as amended is as follows:

> This case stated by the Assessment Appeal Board aforesaid humbly sheweth that the above-mentioned appeal was heard at the Courthouse in the City of Nanaimo, in the Province of British Columbia, on the 3rd and 4th days of May, 1961, and in the Courthouse in the City of Vancouver on the 6th day of October, 1961, in the presence of Mr. H. P. Legg, of counsel for the appellant, and Mr. L.G. McKenzie, Q.C., and Mr. P. V. Gadban, of counsel for the respondents.
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> The facts are as follows:
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> (1) The lands forming the subject of this appeal are Crown-granted lands owned by the appellant, all of which have been classified under the *Taxation Act*, chapter 376, R.S.B.C. 1960, as tree-farm land pursuant to section 38 of the said Act. The said lands are situated on Vancouver Island in the San Juan Valley and are designated as Tree-farm No. 16. This tree-farm lies within and forms a part of Tree-farm Licence No. 22.
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> (2) The appellant complained against the method of determining the assessed value of the said tree-farm land and the value placed on the said tree-farm land.
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> (3) The assessments of these lands were placed on the respective rolls by the Provincial Assessors pursuant to the *Taxation Act* and were derived from values initially calculated by the timberland appraiser in the Department of Finance of the Province of British Columbia in accordance with methods which he considered proper. These methods are

outlined in the evidence given by the timberland appraiser before the Assessment Appeal Board on May 4, 1961, appearing at pages 63 to 75, inclusive, of the transcript.

(4) In his initial calculation of the assessment, the timberland appraiser ignored stumpage values on the cutting permits in the same general locality as Tree-farm 16, being stumpage values paid in respect of cutting permits issued to the appellant for Crown timber lying within Block 1 of Tree-farm Licence No. 22, and in its decision of the 15th day of June, 1961, the Assessment Appeal Board directed the timberland appraiser to recalculate the assessment upon the basis outlined therein.

(5) The Board found as a fact in its decision dated the 15th day of June, 1961, that the present use of the lands of the appellant which are the subject of this appeal is to cut timber and remove it through Port Renfrew.

(6) The Board further found in its decision dated the 15th day of June, 1961, that to the extent that shipment of timber by Port Renfrew rather than through Cowichan Lake had added to the value, the factor must be deleted, and further found in that respect that the valuation determined by the timberland appraiser upon the principle of delivery to Cowichan Lake did not allow for the cost of getting the product to tidewater.

(7) The timberland appraiser recalculated the assessment for Tree-farm 16 after receipt of the Board's decision by using sales data derived from all sales legally transacted by the E. & N. Railway Company in Taxation Zone D and from Crown timber sales in Taxation Zones C and D, and by using cutting permit stumpage prices adjusted for forestry costs from Tree-farm Licence No. 22 within Zone C. The timberland appraiser stated that all stumpage prices thus used were weighted according to the volume of timber sold at each price during the pricing year.

(8) The appellant was unable to agree to the recalculation of the assessment so made by the timberland appraiser as aforesaid, and accordingly a further hearing in regard to such recalculation was held by the Assessment Appeal Board on the 6th of October, 1961, and at the request of the Board written submissions were filed with the Board on behalf of both the appellant and the respondents prior to such further hearing as aforesaid, outlining the respective positions of the appellant and the respondents as regards the said recalculation of the assessment.

(9) Upon the said further hearing the appellant contended that the data used in recalculating the assessment by the timberland appraiser should be restricted to cutting permit rates and E. & N. sales and Forest Service sales near to the immediate area of the tree-farm and should not include all E. & N. sales or Forest Service sales some distance from the area of Tree-farm 16. The appellant further contended that the E. & N. sales prices used for E. & N. timber within Forest Service Zone H should be adjusted by deducting an allowance for the cost of getting the product of the timber sales from Cowichan Lake to tidewater on the basis that such sales were appraised to Cowichan Lake and that E. & N. sales prices and Forest Service sales prices in other zones should be adjusted for differences in logging and towing costs due to differences in location.

(10) The Board held in its decision dated the 15th day of November, 1961, that the sales to which objection was taken were within Forest Service zones in which the entire tree-farm is situate, and that there was no evidence before the Board that the said zones constituted an unfair division or that timber operators were unduly affected by the division into these zones.

Wherefore the following questions are humbly submitted for the opinion of this Honourable Court:

"1. Was the basis of the assessment of the appellant's tree-farm land as determined by the timberland appraiser and confirmed by the Assessment Appeal Board in its decision dated the 15th day of November, 1961, ascertained in accordance with section 39 of the *Taxation Act*, chapter 376 of the Revised Statutes of British Columbia, 1960, or with the said section 39 as amended by sections 7 and 8 of the *Taxation Act Amendment Act, 1961*, chapter 61 of the Statutes of British Columbia, 1961?

"2. Was the Assessment Appeal Board correct in law in finding that there was no evidence before the Board that the Tax Department zones within which the entire tree-farm is situate constitute an unfair division?

"3. Was the Assessment Appeal Board correct in law in finding that there was no evidence before the Board that timber operators are unduly affected by the present division of Tax Department zones?"

I will refer to British Columbia Forest Products Limited as the appellant and the Provincial Assessors, Cowichan and Victoria Assessment Districts, as the respondents.

As to Question 1 as set out in the stated case, the lands forming the subject of the appeal to the Assessment Appeal Board were certain Crown-granted lands owned by the appellant that had been classified as tree-farm land pursuant to section 38 of the *Taxation Act* and were situated on Vancouver Island in the San Juan Valley and are designated as Tree-farm No. 16.

The Assessors placed these lands on the respective assessment rolls at values calculated by the timberland appraiser of the Department of Finance of the Province on the comparative approach based on sales that were evident in the year ending August 31, 1960.

In his initial assessment the appraiser used for comparison the sales prices originating in the lands held by the Esquimalt and Nanaimo Railway Company along with such timber sales as were available. He ignored the stumpage values paid on cutting permits fixed by the Forest Service, in particular for the appellant company.

When the matter came before the Assessment Appeal Board, that Board, on June 15, 1961, directed a reassessment, and in doing so gave as its opinion that adjusted stumpage values on cutting permits should be included with all available sales data from timber sales as well as the E. & N. lands, and that a weighted arithmetic mean average of each species should be deduced.

Following that direction, Tree-farm No. 16 was reassessed, and after a further hearing the Assessment Appeal Board, by their decision dated the 15th of November, 1961, sustained the revaluation as determined by the respondents.

It should be mentioned that Vancouver Island-I do not know if this also applies to the Mainland-is by the Tax Department divided into a number of zones. Tree-farm No. 16 is partly in Tax Department Zone C and partly in Tax Department Zone D. That portion of Tree-farm No. 16 in Zone D is known as Compartments 10 and 20. These compartments are not contiguous, and are some distance from the balance of the tree-farm.

The Assessors used for comparison the stumpage or sales prices of cutting permits and timber sales available in Zone C and Crown sales and E. & N. sales in Zone D, and from these worked out the weighted average stumpage value for Tree-farm No. 16 of $10.09.

I understand that it was conceded by counsel for the respondents that certain of the Crown sales in Zone D were appraised into Cowichan Lake, and while I understand that no information is available as to how the sales prices of the E. & N. lands are fixed, that, at least to a large extent, the lands covered by those sales are logged into Cowichan Lake and presumably are appraised on that basis. Logs cut on Tree-farm No. 16 are removed through Port Renfrew.

As I understand the submission of counsel for the appellant, it is that by using in his calculation sales prices in cases where the logs were marketed through Lake Cowichan the Assessor was in effect making his assessment on the assumption that the logs from Tree-farm No. 16 or at least Compartments 10 and 20 thereof were marketed through Lake Cowichan, whereas in fact they were removed to tidewater through Port Renfrew and the applicable market prices would be the Howe Sound or Vancouver market prices. Put another way, counsel submitted that the Assessor, if he was going to use for comparison sales of timber on lands which were admittedly or presumably appraised to Lake Cowichan, he should have made an allowance or deduction for the cost of moving logs cut on these lands from Cowichan Lake to the tidewater.

It followed, in the submission of the appellant's counsel, that since the logs from Tree-farm No. 16 were in fact being moved through Port Renfrew that the Assessor in making such assumption or failing to make such allowance has failed to comply with section 39 of the *Taxation Act* in that he has failed to ascertain the assessed value of the tree-farm land only by giving consideration to the present use of the land. It was not suggested that the Assessor had failed in any other respect to comply with section 39.

The consideration of this submission necessitates the interpretation of section 39 and raises before me the primary question of law.

Section 39 of the *Taxation Act* was amended in 1961, and Question 1 refers to the section as found in chapter 367 of the Revised Statutes of British Columbia, 1960, and in the alternative as amended in 1961.

I follow, with respect, the decision of Wilson, J., in *Re Appeal of MacMillan, Bloedel and Powell River and Others* (unreported, Vancouver Registry, No. 706/61), dated October 18, 1961, in which he held in effect that the amendment of 1961 to this section did not change its effect, and I therefore quote only the section as amended:

> 39. Notwithstanding the provisions of section 31, the assessed value of tree-farm land, exclusive of any improvements thereon, shall be ascertained only by giving consideration to the present use of the land and to the present value of the anticipated revenue from present and future annual or periodic harvests of the forest trees.

Counsel for the appellant contends that the "present use of the land" included the fact that the logs cut upon Tree-farm No. 16 were moved or marketed through Port Renfrew and that the Assessor was therefore disregarding the mandatory provision in that section that "the assessed value. . . shall be ascertained only by giving consideration to the present use of the land" when he assessed as though the logs from this tree-farm, or at least Compartments 10 and 20 thereof, were being marketed through Lake Cowichan or did not make the necessary adjustment in the sales prices of logs marketed through Cowichan to provide for their movement to tidewater before using those prices as a basis for fixing the stumpage on Tree-farm No. 16. This contention raises to put it more specifically the meaning of the phrase "present use of the land" as found in section 39.

In my view the "present use of the land" as applied to the Crown-granted land in question is the use of that land as a tree-farm but does not mean or include the method by which the land was so used. The Assessor is bound by section 39 to ascertain the assessed value of the tree-farm land only by giving consideration to the present use of that land; that is, as a tree-farm. This is for the harvesting of forest trees from that land. In my opinion the Assessor is not required by the provisions of section 39 to give consideration to the method by which the particular owner for the time being of that tree-farm saw fit to carry out that harvesting or to move the logs resulting from the cutting carried on upon the tree-farm or to that owner's choice of the market through which he would dispose of those logs. On the other hand, for example, the Assessor or appraiser would be prohibited by section 39 from considering in arriving at the assessed value the potential value the Crown-granted land might have if put to other uses than that of a tree-farm.

The method adopted by the Assessors to arrive at the assessed value was by the comparative sales approach, and in that way arrive at a weighted average stump age value for Tree-farm No. 16. Whether that comparative approach was or was not the best method of approach to this particular assessment or was or was not properly carried out or whether in the course of using that method any or what adjustments or deductions should be made by reason of the difference in localities, these, in my view, are questions of valuation and are not questions of law raised for my consideration by the case stated by the Appeal Board.

In my opinion the Assessors and the appraiser in making the assessment of Tree-farm No. 16 have complied with section 39 of the *Taxation Act*.

Question 1 is therefore answered in the affirmative.

As to Questions 2 and 3, these questions were dealt with together upon the argument before me. Counsel for the appellant in the course of his argument in reply said that he was not pointing to any particular evidence that the Tax Department's zones within which the tree-farm is situated constituted an unfair division or that the timber operators are unduly affected by the present division of the Tax Department's zones, but that it was just part of the whole picture.

Appellant's counsel had earlier in his argument referred to Exhibit 18, which is a copy of a letter written by the appellant to the Chief Forester dated November 16, 1960, and a copy of the reply of the Chief Forester dated March 11, 1961, but this correspondence refers not to the zones of the Tax Department but, as I understand it, to different zones laid down by the Forestry Department in connection with the appraisals made by them for the sale of Crown timber.

As I have not been referred to any particular evidence, and as it appears to me that the main contention of the appellant was not that the zones as such were an unfair division or that timber operators are unduly affected by the present division of Tax Department zones, but rather that it was necessary in certain instances that adjustments or allowances should be made in zone averages by reason of the difference in localities or outlets within those zones, I feel that Questions 2 and 3 should be answered in the affirmative.