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ASSESSOR OF AREA 17 - PENTICTON

v.

LEADER POTATO ASSOCIATION LTD.

Supreme Court of British Columbia (A850137) Vancouver Registry

Before: MADAM JUSTICE M. SOUTHIN

Vancouver April 19, 1985

R.S. Gill for the Appellant
John R. Lakes for the Respondent

Reasons for Judgment

April 23, 1985

Pursuant to section 74 of the *Assessment Act*, the Assessment Appeal Board has submitted a stated case for the opinion of this court on two questions of law:

THIS CASE STATED by the Board, pursuant to section 74 (2) of the *Assessment Act*, at the requirement of the Assessor of Area #17-Penticton, seeks the opinions of the Supreme Court on the questions of law set out below in respect to which the following are the material facts:

1. The respondent company, Leader Potato Association Ltd., incorporated under the *Company Act*, R.S.B.C. 1979, Ch. 59, is the owner of the subject land and operates a potato grading, sorting, storage and packaging facility on the subject land located in the City of Grand Forks.
2. The facility is used primarily by the four shareholders of the company who themselves are the farmers who produce potatoes, although other potato farmers than the four shareholder/farmers have access at cost to use this facility.
3. The four shareholder/farmers grow potatoes on other lands in the immediate vicinity, however, there are no potatoes grown on the subject land nor does Leader Potato Association Ltd. grow potatoes on any other lands.
4. The Board found that the grading, sorting, storage and packaging of potatoes which occurs on the subject land is an integral part of the growing and farming process.
5. The Board having found the growing, sorting, storage and packaging of potatoes is an integral part of the growing and farming process, the Board classified the subject land as "farm" pursuant to B.C. Regulation 288/79, as consolidated, section 7 thereof.
6. In classifying the subject land as "farm", the Board held that ". . . Ownership of such a facility is ostensibly the same regardless of form, i.e., personal ownership v. a co-op ownership as a limited company. The business reasons for such a legal entity do not, in this Board's opinion, alter the primary purpose for this facility."

THE QUESTIONS on which the Board is required to ask for the opinions of the Supreme Court are:

1. Did the Assessment Appeal Board err in law when it held that the provision of storage facilities for potatoes was "primary agricultural production" within the meaning of the Regulations passed pursuant to section 28 of the Assessment Act?
2. Did the Assessment Appeal Board err in law when it held that the ownership of the appealed property held by the shareholder/farmers in the form of an incorporated company does not preclude classification of the property as "farm" pursuant to section 28 of the *Assessment Act* and B.C. Regulation 288/79, 364/80 and 413/82 as consolidated?

By the *Assessment Act* s. 1 . . .

"farm" means an area of land classified as such by the assessor . . .

section 28

(1) An owner of land may apply to the commissioner to have all or part of his land classified as a farm and the application shall be made in the form and manner the commissioner prescribes and the commissioner may, subject to this Act, approve the classification of the land as a farm.

(2) The commissioner shall, subject to the approval of the Lieutenant Governor in Council, prescribe standards for classification of land as a farm and the assessor shall classify as a farm land that is in accordance with the standards.

The commissioner has duly made the standards by B.C. Reg. 288/79 as amended by B.C. Reg. 264/80 and 413/82 which, so far as material, are these:

1. (1).....

"primary agricultural production" means . . . horticulture,. . . and the growing or raising of a crop referred to in Schedule A . . .

.....

2. In order to classify land as a farm, the primary agricultural production on the land by the owner or lessee and sold in either the 12-month period ending November 30 of the year in which the assessment roll was prepared or in the preceding 12-month period must have a gross value of production at farm gate prices of

(a) at least \$1,600 on the first 4 ha, and in addition

(b) an amount equal to 5 per cent of the actual value of the land for farm purpose that exceeds 4 ha.

7. Land may be classified as a farm where it consists of all or part of any parcel or group of parcels of land, contiguous or not, making up a tract of land owned or held under a written lease by a person singly or jointly with any other person or persons and operated as an integrated farm operation for primary agricultural production.

Potatoes are a crop listed in Schedule A.

At first glance, one might consider that as the assessor did not classify the land in question as a "farm", it is not a farm because of the definition. However, the *Act* by section 69 gives power to

the Assessment Appeal Board to determine whether or not land has been properly classified and by section 78 there may be what is essentially an appeal on a question of law from the Board to this court and then to the Court of Appeal.

Thus, on the whole of the *Act* the definition of "farm" should be considered to be something of this order:

"Farm' means an area of land classified as such by the assessor or classified as such by the tribunal last determining the classification in accordance with this Act."

For the taxpayer, Mr. Lakes argued that the storage of potatoes was itself "primary agricultural production" because the essence of the matter is not only to get the crop out of the ground but also to do what is necessary to get it to market. The process, he says, of "growing or raising of a crop" does not stop at the maturity of the potatoes. It includes harvesting and storing them for the purpose of marketing.

One must ask, what did the draftsman mean by "growing or raising" a crop, for the words, out of the context of the regulation, could mean what Mr. Lakes says they mean.

I consider that the word "raising" includes "harvesting" but does it mean grading, sorting and storing?

I think one can look to section 7 of the regulations to determine whether the meaning extends to acts happening after harvest.

In that regulation, the draftsman uses the words "integrated farming operation". These words, although not defined, have obviously a much broader meaning than "growing or raising of a crop" and point the way to a limitation on the meaning of the latter phrase. I think that limitation is such that while "harvesting" is included in "raising" that "grading, sorting, storage and packaging" to use the words of paragraph 4 of the stated case are not.

I find, therefore, that the acts carried on on the parcels in question are not "primary agricultural production" within regulation 1 (1) and, therefore, the answer to the first question is "yes".

The taxpayer must, therefore, fall back on regulation 7 which relates to "integrated farming operations". I have no doubt that that phrase does cover the storing, grading and packing of the crop for the purpose of its being marketed.

The issue then becomes whether the owner of this land is in other respects within section 7. The crucial words are "owned . . . by a person . . . and operated as an integrated farming operation for primary agricultural production".

In the case at bar, the "owner" is Leader Potato Association Ltd. Leader does not operate this land as an integrated farming operation for primary agricultural production. It operates the land for the marketing of a crop raised by others. Parenthetically, I must say I find the use of the word "operating" odd in the context as I do not see how in proper English usage one can "operate" land.

Mr. Lakes said I should overlook the existence of the corporation for it is plain, as indeed it is, that each of the shareholders could have his own facilities on his own land and that land would then be within section 7. The corporation, he says, is a mere fiction to be put aside.

I do not agree with him. To speak of a corporation as a fiction, i.e., something contrary to fact, seems to me to be unreal in the sense that that is to ignore the whole history of the modern corporation as something distinct from its shareholders. I know that from time to time the courts

have, as the phrase is, pierced the corporate veil. This is not the time for an analysis of when such is permissible or to comment on the illogicality of doing it at all.

Suffice it to say, that if the Assessment Commissioner in the exercise of his powers within section 28 thought it appropriate he could easily have added to regulation 7 some such words as "or where it is owned by a corporation the shareholders of which are persons engaged in primary agricultural production and it is used by them for the preparation of their crops for the market".

I do not see how the present words of regulation 288/79 as amended can be construed as if those words were present.

It follows that the answer to the second question is "yes".

I wish to make it clear that I am not addressing the question of what the proper answer would be if the corporation held the lands in question as a bare trustee for the shareholders/farmers. Presumably, that would depend on the definition of "owner" in the Act.

In the course of argument Mr. Lakes suggested that if 'the regulations bore what I might describe as the narrow interpretation which has been adopted here the regulation was beyond the power of the commissioner to make under section 28 (2).

Because of the peculiar definition of "farm" in the Act there is something of a chicken and egg conundrum in understanding section 28 (2), although there would be no such difficulty if "farm" was defined as land within the classification standards established under section 28 (2) and so classified by the assessor.

There is no doubt some limitation on the power of the commissioner to classify land as a "farm". He could not, I think, say in the standards that an area of land used for the production of computers was a farm.

Whether he could say that land used for the growing and raising and, or alternatively, preparing for market crops is a farm I need not answer. I say simply that the regulations as I have construed them do not run contrary to or in any way undermine the legislative purpose expressed in section 28.

This matter is, therefore, remitted to the Assessment Appeal Board in accordance with section 74 (6) of the *Assessment Act*.