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G.P.-S.51994—1976-77—3 000 (P) J 219

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

(Appèl ~~Provincial~~ Division)
(~~Provinsiale~~ Afdeling)

Appeal in Civil Case
Appèl in Siviele Saak

African Detining Works (Pty) Ltd *Appellant,*

versus

Secretary for Inland Revenue *Respondent*

Appellant's Attorney
Prokureur vir Appellant Cowie & Sons

Respondent's Attorney
Prokureur vir Respondent DSA BFN.

Appellant's Advocate
Advokaat vir Appellant d.R. Dixon

Respondent's Advocate
Advokaat vir Respondent J.L. Foxcroft

Set down for hearing on
Op die rol geplaas vir verhoor op

(CPD) Coram: Jansen & Corbett AARR; Holmes; Trollip & Galgut WAARR.

(16/11/81)

(3 L 14 15 11)

Vir Appellant: Adv d.R. Dixon SC

Vir Respondent: Adv J.L. Foxcroft

Dixon: 9h45 - 11h00; 11h15 - 11h45

Foxcroft: 11h45 - 12h25

Dixon: 12h25 - 12h45

CoAoV

dismissed

Writ issued Lasbrief uitgereik	Bills taxed—Kosterekenings getakseer		
	Date Datum	Amount Bedrag	Initials Paraaf
Date and initials Datum en paraaf			

AFRICAN DETINNING WORKS (PROPRIETARY) LTD.

AND

THE SECRETARY FOR INLAND REVENUE.

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

AFRICAN DETINNING WORKS (PROPRIETARY) LTD. ..... Appellant

AND

THE SECRETARY FOR INLAND REVENUE ..... Respondent.

Coram: JANSEN, CORBETT, JJ.A., HOLMES, TROLLIP et GALGUT, A.JJ.A.

Heard: 16 November 1981.

Delivered: 30 November 1981.

JUDGMENT

TROLLIP, A.J.A. :

The single, narrow issue raised by this appeal is whether or not the appellant taxpayer is entitled to deduct from its income for the year of assessment ended

30 June 1976 .... /2

30 June 1976 the amounts of R238 and R2 383 respectively by way of a building allowance and a building investment allowance under section 13(1)(f) and (5)(e), read with section 13(9) of the Income Tax Act, No. 58 of 1962, as amended. The Cape Income Tax Special Court held in appellant's favour. That decision was, however, reversed by the majority of the Full Bench of the Cape of Good Hope Provincial Division (GROSSKOPF, J, with VAN WINSEN, J, concurring, and VOS, J, dissenting). The appellant has now appealed to this Court against the decision of the Court a quo.

The facts were not in dispute. Those that are relevant may be summarized thus:

1. The appellant buys tinplate scrap, off-cuts, and rejects. These constitute its raw materials. They

are processed in its factories and manufactured into tin-free steel scrap and tin ingots which are then sold. It is the only manufacturer of this kind in South Africa. The factories are located in Cape Town and Vanderbijlpark. The appeal is concerned only with latter factory.

2. The structure housing this factory was erected in 1966 on a stand in an industrial township. It has walls and a roof. In the course of its erection the structure was also surrounded on its outside by a concrete "apron". (The word "apron" was used by appellant's counsel. It is a somewhat question-begging term since it implies that it is so attached to the structure that it is part of it. That is very much in issue in the appeal. I shall however also use it as a conveniently concise term but in a neutral sense.)

The apron consisted of concrete slabs or panels, each about 15 feet square, that were laid down permanently to serve a purpose presently to be mentioned. The slabs adjoined the outside of the walls of the factory structure and also one another to form a continuous paving with no intervening gaps except for small, narrow open strips to allow for expansion and the drainage of rain-water. They were otherwise not connected with the factory structure or with one another. Except for the walls of the factory structure the whole of the apron was completely open in the sense that no walls enclosed it or roof covered it.

3. The purpose of the apron was this. The raw materials were mostly delivered to the nearby railway siding. They were transported from there to appellant's premises.

Those .... /5

Those that the factory could absorb immediately went straight into it. The rest were stored on the apron until the factory could take them. According to appellant's letter of 15 June 1977 to the Receiver of Revenue -

> "it was found that the construction of a concrete floor conveniently close to the factory premises and within the confines of the company's landed property would serve the purpose of storage of the bulk intake of raw material and facilitate its periodic movement to the plant and machinery for de-tinning .... "

The reason for the apron being concrete was to enable the raw materials to be lifted and moved by fork-lift trucks. Such vehicles, because of their very small ground clearance, must have a hard, level, smooth surface on which to operate and move.

4. In subsequent years the original apron was

estended by adding similar adjoining aprons until a substantial area of appellant's premises (judging by the plan handed to us) was covered by them.

5. In 1976 an abnormally and unexpectedly large quantity of raw materials became suddenly available. These were offered to appellant by one of its regular suppliers. Appellant had to accept them. To do otherwise would have invited a competitor to enter the field. But at such short notice appellant could not increase its factory capacity to cope with the normal intake and this additional quantity of raw materials. The only solution was to store the latter until they could be absorbed in the factory. For that purpose appellant decided to extend its existing concrete aprons by adding two new ones, marked A and B on the plan. Their

areas were 1082 square metres and 461 square metres respectively.

6. These new aprons A and B were constructed differently from the existing ones. They were laid down with interlocking concrete blocks, about 100 mm. thick, which fitted into a closely-knit zig-zag pattern. They adjoined and were linked to the existing aprons in the sense that they were placed right up against them except for a narrow intervening strip to allow for expansion and the drainage of rain-water. This different system of paving the new aprons was adopted because it was considered to be more suitable. But the new aprons were to serve precisely the same purpose.

7. In respect of the cost of constructing and paving the A and B aprons appellant claimed to deduct the

abovementioned amounts from its income as allowances within the terms of the relevant provisions of the Act. The deductions were disallowed by or on behalf of the respondent (the Secretary) and this litigation then ensued.

Now section 13 of the Act provides for the deduction from the income of a taxpayer of a building investment allowance and an annual building allowance in respect of certain "buildings" wholly or mainly used by him during the relevant year of assessment for the purpose of carrying on therein any process of manufacture in the course of his trade and also in respect of certain "improvements" to such "buildings". The word "building" is not defined in the Act. Its precise connotation need not be considered here. For it was common cause before us that the structure housing

appellant's factory was an ordinary building in the sense of its being a structure with walls and a roof (herein called "the factory building") and that the new aprons, A and B, were themselves not buildings within the meaning of that term in section 13. The contention for appellant before us was simply that the new aprons were "improvements" to the factory building within the meaning of the definition of that term in section 13(9).

According to section 13(1)(f) and (5)(e) - in so far as their provisions are relevant here - the annual building allowance and the building investment allowance may be deducted from the taxpayer's income at a specified percentage of the cost of "any improvements ... to any building" which was wholly or mainly used for the purpose of carrying

on therein any process of manufacture in the course of his trade.

The relevant part of section 13(9) reads -

> "For the purposes of this section - 'improvements' .. .... means any extension, addition or improvements (other than repairs) to a building which is or are effected for the purpose of increasing or improving the industrial capacity of the building."

Now at first blush it seems far-fetched to describe the new aprons as being such improvements when they are located some distance away from the factory building. But for appellant it was contended that -

(1) the definition of "improvements" does not require the "extension, addition or improvement" to be physically part of or attached to the building; for a structure to constitute such an improvement it can be separately located from the building so long as it is connected

with it functionally, that is, it promotes, serves, or otherwise assists or is used in the fulfilling of the industrial purpose of the building; or

(2) in any event, the original apron was part of the factory building, the subsequent aprons also became part by virtue of their being improvements to it, and the adjoining new aprons A and B were extensions or additions to the existing aprons and were therefore improvements to the so expanded factory building.

As to contention (1).

Counsel referred us to certain overseas cases in support of his contention. But those decisions turned on the particular wording of the statutes there involved. The present problem is governed wholly by the provisions of section 13 of the Act. Its solution is not, in my view, facilitated by those decisions.

The above definition of "improvements"

postulates two separate essential elements both of which have to be satisfied before the new aprons A and B can be held to be improvements to the factory building. These elements are -

(a) those aprons have to be "extensions, additions, or improvements" to the factory building;

(b) if they are, they must have been constructed "for the purpose of increasing or improving the industrial capacity" of the factory building.

In my view (a) postulates a physical requirement, (b) a functional one. (I should mention immediately that it will not be necessary to consider the functional requirement (b) since, for reasons about to be given, the physical requirement was not satisfied.)

The fundamental fallacy in counsel's contention in (1) above is that it ignores the physical requirement (a) of the definition of "improvements". I say that (a) postulates a physical requirement for these reasons.

The object of granting the allowances under section 13 was obviously to encourage industrialists, by reducing their taxability, to establish factories for the production of manufactured goods and thereafter to extend, add to, and improve the factories in order to increase their output. The basic concept underlying the granting of the allowances relates to a "building". That word, as used in the section, obviously means a physical, corporeal, non-abstract entity. Something that usually has at least walls and a roof (cf. Mohr v. Divisional Council, Cape 1976 (2)

S.A. 905 (A) at p. 918c). That is confirmed by the context of section 13. The phrases that are repeatedly used are (my italics) : "any building the erection of which ...."; "any building used by the taxpayer for the purpose of carrying on therein in the course of his trade .... any process of manufacture ....". Hence the definition of "improvements" relates to an "extension, addition, or improvement" to a building that is a physical or corporeal entity. I think that indicates that to constitute "improvements" the extension, addition, or improvement must itself be physically attached to, connected or integrated with the building. Indeed, the definition says that the extension, etc., is to be "effected"; the Afrikaans text speaks of "n uitbreiding of aanbousel of verbeterings .... aan n gebou wat aangebring

word," and the purpose of the "effecting" must be to increase or improve "the industrial capacity of the building". The use of such language confirms my view. I cannot see how an "extension (uitbreiding)" or "addition (aanbousel)" can be "effected to a building (aan 'n gebou aangebring word)" without its being physically attached to or connected or otherwise integrated with the building. Therefore, in regard to a structure constructed after the erection of the building in question, it would only qualify for the allowances if it was in itself a building, or if not, it was physically attached to or connected or otherwise integrated with the building for the purpose mentioned in the definition. It is not necessary here to prescribe the manner, nature or degree of the attachment, connection or integration required. It

suffices merely to say that for the foregoing reasons counsel's contention in (1) is untenable.

I turn now to counsel's contention in (2) above, namely, that the new aprons A and B were extensions or additions to the existing aprons which formed part of the factory building. That depends in the first instance upon whether the original apron, constructed when the factory building was erected and located outside its walls, constituted a part of (and not merely an "improvement to") that building. The Court a quo, by a majority, held that it was not. For reasons about to be given, I think that that decision was correct.

Whether or not a structure is part of a building is essentially a question of fact and degree. The

tests that are applied are collected and mentioned in S.I.R. v. Charkay Properties (Pty.) Ltd. 1976 (4) S.A. 872 (A). There the problem was different. It concerned section 11(e) of the Act which provided for a deduction from income of depreciation of articles etc. used in trade but excluded depreciation for "buildings or other structures or works of a permanent nature". Care must therefore be exercised in applying those tests to the present case. But there it was held by the majority that, at the very least, for an article to form part of a building it must have been structurally integrated or otherwise physically incorporated into that building. And I think that in the circumstances of the present case that test is also applicable.

Merely because the structure is located

outside the building does not necessarily mean that it is not part of it. But it may then be more difficult to prove that it is part of it. Here it was not necessary for the erection or for the purpose of the factory building that the original apron should be laid down next to its outside walls. It was merely a matter of convenience - see paragraph 3 above. It could have been located somewhere else on appellant's premises away from the factory building without impairing the factory building structurally or functionally. Indeed, the concrete slabs or panels of the original apron were merely laid down next to the outside walls; they were not physically connected to them, let alone structurally integrated or physically incorporated into them. Consequently, the original apron cannot be said to have been an integrated or incorporated

part of the factory building when it was erected.

The dissenting Judge in the Court a quo said:

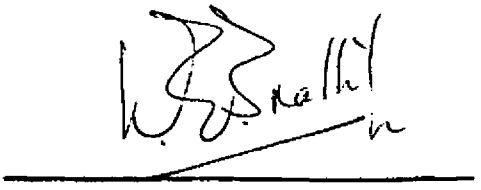
> "In my view the aprons were just as much part of the factory building as a stoep is part of a house, indeed an integral part of the building. I think they were at least necessary appurtenances to the factory building."

With respect, the example of the stoep takes the matter no further. It can only be said to be part of the house (if a similar problem to the one here ever arose) if it is structurally or physically part of the house by reason of its integration, incorporation or attachment. Moreover, for reasons already given, I do not agree that the original apron was a "necessary appurtenance" of the factory building.

It follows that the subsequent aprons,

including A and B, were not "improvements" to the factory building. Counsel's second contention therefore also fails.

The appeal is dismissed with costs.



W.G. TROLLIP, A.J.A.

JANSEN, J.A.)
CORBETT, J.A.) concur
HOLMES, A.J.A.)
GALGUT, A.J.A.)