Edmonton 1967 Mar 6, 7 — Ottawa Mar. 20

BETWEEN:

ASSOCIATED INVESTORS OF CANADA LIMITED .... APPELLANT;

AND

THE MINISTER OF NATIONAL REVENUE .... RESPONDENT.

Income tax—Business income—Computation of—Deductions—Advances to commission salesmen—Write-off of amount deemed irrecoverable—Whether income or capital transaction—In what year deduction allowable—Income Tax Act, ss. 11(1)(f), 12(1)(a).

Appellant was in the business of investing money received from persons under contracts negotiated by its salesmen. Appellant made advances against commissions to salesmen and these were shown as an asset in its balance sheet but only the amount of advances deemed irrecoverable at the end of any year was treated as a business expense of that year In 1960 and in 1961 appellant wrote off $25,000 of approximately $85,000 which had been advanced to a certain employee in previous years and claimed the amount so written off as a business expense of 1960 and 1961.

Held, appellant was entitled to the deductions claimed in computing its income for tax purposes.

1. The advances to salesmen were not capital transactions but an integral part of appellant's business operations and a loss in their value must on ordinary commercial principles be taken into account in computing the profit of its business for the year in which the appellant as a businessman recognized that the loss had occurred.

Can. Gen. Elec. Co. v. M N R. [1962] S C.R 3; *Oxford Motors Ltd v. M.N R* [1959] S.C.R 548; *Strick v. Regent Oil Co.* [1965] 3 W.L R. 636; *M.N.R. v. Anaconda American Brass Ltd* [1956] A C. 85; *M.N.R. v. Independence Founders Ltd* [1953] S C R. 389; *B.C. Elec. Ry. Co. v. M.N.R.* [1958] S.C.R. 133; *Tip Top*

Tailors Ltd v. M.N.R [1957] S.C.R. 703; *British Insulated and Helsby Cables Ltd v Atherton* [1926] A.C. 205; *Van Den Berghs, Ld. v. Clark* [1935] A.C. 431; *Davies v. The Shell Co. of China, Ltd* (1951) 32 T.C. 133; *Landes Bros. v. Simpson* 19 T.C. 62; *Imperial Tobacco Co v Kelly* 25 T.C. 292; *Dominion Taxicab Assn v. M.N.R.* [1954] S.C.R. 82; *John Cronk & Sons Ltd v. Harrison* (1935) 20 T.C. 612; *Absalom v. Talbot* (1944) 26 T.C. 166, *C.I.R. v Gardner Mountain & D'Ambrumenil Ltd* (1947) 29 T.C. 69; *Hall's* case, 12 T.C. 382; *Collin's* case 12 T.C. 773; *Whimster's* case 12 T.C. 813; *The Naval Colliery* case 12 T.C. 1017; *M.N.R. v. Consolidated Glass Ltd* [1957] S.C.R. 167; *Owen v Southern Rly. of Peru Ltd* (1956) 36 T.C. 602; *English Crown Spelter Co. v. Baker* (1908) 5 T.C. 327; *Chas. Marsden & Sons, Ltd v. C.I.R.* (1919) 12 T.C. 217; *Curtis v. J. & G. Oldfield Ltd* (1925) 9 T.C. 319; *The Roebank Printing Co. v. C.I.R.* (1928) 13 T.C. 864; *Marshall Richards Machine Co. v. Jewitt* (1956) 36 T.C. 511, considered.

2. The deduction claimed was not impliedly excluded by reason of being outside the language of s. 11(1)(*f*) of the *Income Tax Act*, which authorizes a deduction for certain bad debts.

3. Sec. 12(1)(*a*) of the *Income Tax Act* does not limit the deduction of outlays and expenses of a business for a year to those made or incurred in that year.

   Rossmor Auto Supply Ltd v. M.N.R. [1962] C.T.C. 123 discussed and not followed; *I.R.C. v. Gardner Mountain & D'Ambrumenil Ltd.* (1947) 29 T.C. 93; *Naval Colliery Co. v. C.I.R.* (1928) 12 T.C. 1017, applied.

APPEAL from Tax Appeal Board.

Neil S. Crawford for appellant.

D. G. H. Bowman and *C. Anderson* for respondent.

JACKETT P.:—This is an appeal from a decision of the Tax Appeal Board dismissing appeals by the appellant from assessments under the *Income Tax Act*[1] for the 1960 and 1961 taxation years.

The facts established by the evidence in this Court are substantially the same as those that are set out in the judgment appealed from and it is therefore unnecessary for me to set them out at length. It is sufficient for the purpose of indicating the question that I have to decide to summarize the facts as follows:

1. During the relevant period—1954 to 1961—the appellant carried on a business that consisted of
   (*a*) negotiating contracts with members of the public under which, in consideration of being paid a

[1] R.S.C. 1952, chapter 148, as amended

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series of amounts over a period of time, it agreed to pay a specified amount at some time in the future; and

(*b*) investing the amounts received under such contracts.

2. To negotiate such contracts, the appellant employed a staff of salesmen who obtained applications from members of the public and were paid for their services by way of commissions, the payment of which depended upon the receipt by the appellant of certain of the amounts payable to it under the contracts. Such salesmen were employed, organized and supervised, for the appellant, by managers who were similarly paid having regard to the results achieved by the salesmen working under them.

3. As there was, in the nature of the appellant's business, a certain delay between the time when a sales employee expended his effort on the appellant's behalf and the receipt by the employee of commissions for such services, it was a necessary feature of the appellant's method of carrying on business that it make advances to each of its sales employees, which advances were ordinarily recovered by being set off against the commissions that became payable to the employee.

4. According to the way in which the appellant computed its annual profit from its business,

(*a*) advances so made during a year that were still regarded by the appellant at the end of the year as recoverable in the ordinary course of business were shown in the balance sheet as an asset of the business and were not treated in the profit and loss account as an expense of doing business;

(*b*) advances so made that were regarded by the appellant at the end of any year as having become, during that year, irrecoverable, were treated as an expense of doing business that year whether or not the advances were made that year or in a previous year.

5. While, in the ordinary course, an advance to a sales employee would have been relatively small, in the case of one Mitchell, who had been employed as a provincial manager by a special contract, under which he was to receive advances of $3,000 per month, in the expectation that he would be instrumental over a period of time in substantially increasing the appellant's business, the excess of the advances over commissions earned in the period from 1954 to 1960 amounted to over $85,000.

6. At the end of 1960, the appellant, having concluded that the value of its claim against Mitchell for advances that had not been repaid was at least $25,000 less than the nominal amount thereof, treated the matter in a way in which it had never had occasion to treat advances made to other sales employees, namely, it wrote the asset value of the Mitchell advances down by $25,000 and included the amount of $25,000 as an expense of doing business for the 1960 year—doing so by including it in its profit and loss account as an expense of "Sales Promotion".

7. At the end of 1961, having concluded that the value of its claim against Mitchell was then at least $50,000 less than the nominal amount thereof, the appellant wrote its asset value down by another $25,000 and included the amount of $25,000 as an expense of its business for the 1961 year—again doing so by including it in its profit and loss account as an expense of "Sales Promotion".

In these circumstances the respondent disallowed as an expense of the appellant's business for the 1960 taxation year, for purposes of the *Income Tax Act,* all of the sum of $25,000 deducted by the appellant for 1960 except the amount by which the advances to Mitchell in 1960 exceeded the commissions earned by Mitchell in 1960; and disallowed as an expense of the appellant's business for the 1961 taxation year, for purposes of the *Income Tax Act,* all of the sum of $25,000 deducted by the appellant except the amount by which the advances to Mitchell in 1961 exceeded the commissions earned by Mitchell in 1961.

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While the assessments appear to have been made on the basis that advances made by the appellant are deductible in computing the profits from its business for the year in which they were made to the extent that they have not been repaid in that year by offsetting commissions earned in the year, the position taken in this Court on behalf of the respondent was, in effect, as I understand it, that such advances can never be taken into account in the computation of profit from the appellant's business.

The contention that such advances can never be taken into account was based, in the first place, upon a submission that the advances were not made in the carrying on of the appellant's business. The alternative contention was that the deductions in dispute were, in effect, deductions for "bad debts", that no deduction for a "bad debt" may be made for purposes of the *Income Tax Act,* unless it is authorized by section 11(1)(*f*) and that section 11(1)(*f*) does not embrace such deductions.[1]

[1] A submission was also made that section 12(1)(*a*) of the *Income Tax Act*, which reads as follows:

> 12 (1) In computing income, no deduction shall be made in respect of
>
> (*a*) an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from property or a business of the taxpayer,

must be interpreted as prohibiting the deduction in the computation of profit from a business for a year of any outlay or expense not made or incurred in that year. In support of this submission, reliance was placed on *Rossmor Auto Supply Ltd. v. M N R* , [1962] C T.C 123. per Thorson P. at page 126, where he said, "As I view Section 12(1)(*a*), the outlay or expense that may be deducted in computing the taxpayer's income for the year is limited to an outlay or expense that was *made or incurred* by the taxpayer *in the year* for which the taxpayer is assessed" (the italics are mine) If this view were a necessary part of the reasoning upon which the decision in that case was based, I should feel constrained to follow it although, in my view, it is not based on a principle that is applicable in all circumstances. In that case, however, the loan was clearly not made in the course of the appellant's business and the President so held. In my view, while certain types of expense must be deducted in the year when made or incurred, or not at all, (e g., repairs as in *Naval Colliery Co. Ltd. v. C I R* , (1928) 12 T C 1017, or weeding as in *Vallambrosa Rubber Co., Ltd. v. Farmer,* (1910) 5 T.C. 529), there are many types of expenditure that are deductible in computing profit for the year "in respect of" which they were paid or payable. (Compare sections 11(1)(*c*) and 14 of the Act.) This is, for example, the effect of the ordinary method of computing gross trading profit (proceeds of sales in the year less the amount by which opening inventories plus cost of purchases in the year exceeds closing

Under the *Income Tax Act,* in determining the income tax payable by the appellant for a year, the first step is to determine the "income" from the appellant's business for the year (section 3). Subject to any special provision that may be applicable, the "income" from a "business" for a year is the "profit" therefrom for the year (section 4).

Profit from a business, subject to any special directions in the statute, must be determined in accordance with ordinary commercial principles.[1] The question is ultimately "one of law for the court". It must be answered having regard to the facts of the particular case and the weight which must be given to a particular circumstance must

inventories) the effect of which (leaving aside the possibility of market being less than cost) is that the cost of the goods sold in the year is deducted from the proceeds of the sale of those goods even though the goods were acquired and paid for in an earlier year. This is, of course, the only sound basis for computing the profits from the sales made in the year. Compare *I R C. v. Gardner Mountain & D'Ambrumenil, Ltd*, (1947) 29 T C. per Viscount Simon at page 93: "In calculating the taxable profit of a business . . . services completely rendered or goods supplied, which are not to be paid for till a subsequent year, cannot, generally speaking, be dealt with by treating the taxpayer's outlay as pure loss in the year in which it was incurred and bringing in the remuneration as pure profit in the subsequent year in which it is paid, or is due to be paid In making an assessment . . . the net result of the transaction, setting expenses on the one side and a figure for remuneration on the other side, ought to appear . . . in the same year's profit and loss account, and that year will be the year when the service was rendered or the goods delivered" (Applied in this Court in *Ken Steeves Sales Ltd v Minister of National Revenue,* [1955] Ex. C.R 108, per Cameron J at page 119) The situation is different in the case of "running expenses" See *Naval Colliery Co. Ltd. v. C.I.R*, *supra,* per Rowlatt J at page 1027: ". . . and expenditure incurred in repairs, the running expenses of a business and so on, cannot be allocated directly to corresponding items of receipts, and it cannot be restricted in its allowance in some way corresponding, or in an endeavour to make it correspond, to the actual receipts during the particular year. If running repairs are made, if lubricants are bought, of course no enquiry is instituted as to whether those repairs were partly owing to wear and tear that earned profits in the preceding year or whether they will not help to make profits in the following year and so on. The way it is looked at, and must be looked at, is this, that that sort of expenditure is expenditure incurred on the running of the business as a whole in each year, and the income is the income of the business as a whole for the year, without trying to trace items of expenditure as earning particular items of profit". See also *Riedle Brewery Ltd. v. Minister of National Revenue,* [1939] S C.R. 253. With regard to the flexibility of method permitted under the *Income Tax Act* for computing profit, see Cameron J. in the *Ken Steeves* case, *supra,* at pages 113-4.

[1] *Canadian General Electric Co. Ltd. v. Minister of National Revenue,* [1962] S.C.R. 3, per Martland J. at page 12.

depend upon practical considerations. As it is a question of law, the evidence of experts is not conclusive.[1]

My first task is therefore to determine the proper treatment of the amounts in question in accordance with ordinary commercial principles. Having ascertained that, I must consider whether any different treatment is dictated by any special provision of the statute.

Ordinary commercial principles dictate, according to the decisions, that the annual profit from a business must be ascertained by setting against the revenues from the business for the year, the expenses incurred in earning such revenues.

In considering whether the results of any transaction can be considered in computing the profit of a business for a particular year, the first question is whether it was entered into for the purpose of gaining or producing income from the business.[2] If it was not, such results cannot be taken into account in computing such profits. Even if the transaction was entered into for the purpose of the business, if it was a capital transaction, its results must also be omitted from the calculation of the profits from the business for any particular year.[3] There is no doubt that the appellant made advances to its sales employees as part of its effort to make a profit from its business. What is said, however, is, in effect, that they were capital transactions.

(It was not argued that a loss could not be taken into account in computing profit unless it arose from an operation or transaction calculated or intended to produce a profit. It is clear that such a contention could not succeed. A profit arising from an operation or transaction that is an integral part of the current profit-making activities must be included in the profits from the business. See *Minister of National Revenue v. Independence Founders Limited*,[4] and the foreign exchange cases such as *Tip Top Tailors*

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[1] See *Oxford Motors Ltd. v. Minister of National Revenue*, [1959] S.C.R. 548, per Abbott J. at page 553, and *Strick v Regent Oil Co. Ltd.*, [1965] 3 W.L.R. 636 per Reid J., at pages 645-6. See also *Minister of National Revenue v. Anaconda American Brass Ltd.*, [1956] A.C. 85 at page 102.

[2] Compare section 12(1)(*a*).

[3] Compare section 12(1)(*b*). See *B.C. Electric Railway Co. Ltd. v. Minister of National Revenue*, [1958] S.C.R. 133, per Abbott J. at page 137.

[4] [1953] S.C.R. 389.

Limited v. Minister of National Revenue.[1] If such a profit must be included in computing profits from a business, then a loss arising from any such source—that is, from an operation or transaction that is a part of the current profit-making activities of the business—must also be taken into account in computing the overall profit from the business.)[2]

No simple principle has been enunciated that serves, in all circumstances, to solve a question as to whether a transaction is a capital transaction. The general concept is that a transaction whereby an enduring asset or advantage is acquired for the business is a capital transaction.[3] This is not, however, a concept that is easy to apply in all circumstances. Clearly, the acquisition of property in which to carry on the business, or of plant or equipment to be used in carrying on the business, is a capital transaction. The acquisition of less tangible assets of an enduring nature have also been held to be a capital transaction. Transactions whereby a "trading structure"[4] is created are also capital

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[1] [1957] S C R. 703.

[2] Note that, while section 12(1)(*b*) prohibits any deduction of a "loss...of capital" in computing profit from a business, there is no prohibition against deduction of other losses in either section 12(1)(*a*) or section 12(1)(*b*).

[3] See *British Insulated and Helsby Cables, Ltd. v. Atherton,* [1926] A.C. 205.

[4] See *Van Den Berghs, Ld. v. Clark,* [1935] A.C. 431. Compare *B.C. Electric Railway Co Ltd. v. Minister of National Revenue,* [1958] S.C.R. 133, and *Davies v. The Shell Company of China, Ltd.,* (1951) 32 T.C. 133. The basic difference between the deposits in the latter case and the advances in this case is indicated by Jenkins L.J. at pages 156-7, where he says:

> "If the agent's deposit had in truth been a payment in advance to be applied by the Company in discharging the sums from time to time due from the agent in respect of petroleum products transferred to the agent and sold by him the case might well be different and might well fall within the *ratio decidendi* of *Landes Brothers v. Simpson,* 19 T.C. 62, and *Imperial Tobacco Co. v. Kelly,* 25 T.C. 292. But that is not the character of the deposits here in question. The intention manifested by the terms of the agreement is that the deposit should be retained by the Company, carrying interest for the benefit of the depositor throughout the terms of the agency. It is to be available during the period of the agency for making good the agent's defaults in the event of any default by him; but otherwise it remains, as I see it, simply as a loan owing by the Company to the agent and repayable on the termination of the agency; and I do not see how the fact that the purpose for which it is given is to provide a security against any possible default by the agent can invest it with the character of a trading receipt."

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transactions. The advances made by the appellant to its sales employees do not in my view fall in any of these categories. They were intended to provide the employees with an income during the periods while they were awaiting returns from their endeavours in the appellant's service. They were by their very nature short term loans. They did not result in the acquisition of any asset or advantage of an enduring nature, nor did they create a "trading structure" of a permanent character. In my opinion, they were an integral part of the appellant's current business operations.

Having concluded that the making of the advances was an integral part of the appellant's current business operations, the next task is to determine how the results of such transactions are to be taken into account in computing the profits from the appellant's business.

In approaching this problem, it is important to have in mind the precise elements involved in one of these "advance" transactions. What happened was that

(a) the appellant made a payment to the employee,

(b) when the payment was made, there came into existence an indebtedness from the employee to the appellant in the amount of that payment,

(c) if and to the extent that the employee repaid the advance, the indebtedness disappeared.

The situation was therefore that, at the time that the advance was made, the appellant had exchanged its money for a "right" that was, from a businessman's point of view, of equal value. It had substituted one asset in money for another of equal amount. As of that time, therefore, the making of the advance did not affect the overall value of the appellant's assets. The advance cannot, therefore, as of that time, be regarded, from a businessman's point of view, as having affected the appellant's profit from his business.[1]

[1] In *Dominion Taxicab Association v. Minister of National Revenue*, [1954] S C R 82, it was held that deposits could not be included as revenues of a business as long as there was a contingent liability to repay them. See per Cartwright J. delivering the judgment of the majority at page 86: "... unless and until the necessary conditions were fulfilled to give absolute ownership of a deposit to the appellant and to extinguish its liability therefor to the depositing member, such deposit could not properly be regarded as a profit from the appellant's business" Similarly, here, an advance cannot be regarded as an expense of the business as long as the businessman has an asset—the right to be repaid—of equivalent value.

Similarly, if the advance was entirely repaid, there was again a substitution of one asset for another of equivalent value and there was no overall effect on the appellant's asset position. When, however, the chose in action depreciated in value, there was an effect on the appellant's asset position and accordingly, at that time, for the first time, the advance transaction resulted in the appellant having sustained a loss.[1] As that loss arose out of a transaction in the course of the appellant's current business operations, it must be taken into account in computing the profits from the appellant's business or they will be overstated. In my view, it must be so taken into account in computing the profit from the business for the year in which the appellant, as a "businessman", recognized that the loss had occurred. It cannot properly be taken into account in computing the profit for a previous year. There is no sound basis for taking it into account in computing the profit for a subsequent year.[2] (It was not argued that the rule concerning when a "capital loss" is "sustained" that was established by *Minister of National Revenue v. Consolidated Glass Limited*,[3] has any application to determining when a profit or loss is to be regarded as having

[1] Just as a "receipt" from a sale of stock-in-trade in the course of business that is of dubious value should only be included in computing profit for the year of the sale at a valuation, and, in some circumstances, it may be that, if it cannot be valued, it should not be brought into account until it is realized (see *John Cronk & Sons, Ltd v. Harrison*, (1935) 20 T C. 612; compare *Absalom v. Talbot*, (1944) 26 T C 166, and *C.I.R v Gardner Mountain & D'Ambrumenil, Ltd.*, (1947) 29 T C 69), so an expenditure that is made in the carrying on of the business and that may or may not result in an actual cost of operation should only be charged against the receipts of the business in the year when the contingency is realized, and then only to the extent of the net outlay involved at that time.

[2] I am not concerned here with the question whether the method adopted by the appellant in showing the deduction in its accounts was the appropriate way of reflecting the transaction in the accounts I am only concerned with whether the "profit" was correctly computed There is no allegation or suggestion of misrepresentation that is material to the issue raised by the appeal. This is not a case of attempting to deduct an anticipated loss that has not been realized in the year (*Hall's* case, 12 T C. 382, *Collin's* case, 12 T C. 773, and *Whimster's* case, 12 T C 813), or of attempting to deduct a running expense that will have to be made in a future year. (The Naval Colliery case, 12 T C. 1017) This is, in effect, the deduction of a running expense in the year in which it becomes a cost of the business.

[3] [1957] S.C.R. 167.

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arisen in the course of current operations of a business. Presumably, having regard to *Canadian General Electric Co. Ltd. v. Minister of National Revenue*,[1] it was recognized that that rule can have no application to prevent a businessman taking into account the revaluation of an asset or liability, the amount of which affects the annual profit or loss from the business. See *Canadian General Electric* case per Martland J. at page 14. Compare *Owen v. Southern Railway of Peru, Ltd.*[2] per Lord Radcliffe at page 642.)

For the above reasons,[3] I am of opinion that the two deductions in question were properly made unless their deduction is prohibited by some provision in the *Income Tax Act*. As indicated above, the provision relied upon by the respondent as constituting such a prohibition is section

[1] [1962] S.C.R. 3. [2] (1956) 36 T.C. 602.

[3] The respondent referred to a number of cases where the factual situation bore some resemblance to the facts of the present appeal. In my view, none of these decisions is in point and, to the extent that the reasoning in them is relevant, they support the conclusion that I have reached. I propose to mention some of them to indicate what I mean In *English Crown Spelter Co. Ltd. v. Baker*, (1908) 5 T.C. 327, it was held that advances made by the appellant company to a "new Company" formed as a supplier of a raw material required by it were an investment of capital and could not be deducted as a "bad debt" when the new company went into liquidation some years after the advances were made; but Bray J. said at page 337: "Now, it is said that that is money really exclusively employed for the purposes of the trade. If this were an ordinary business transaction of a contract by which the Welsh Company were to deliver certain blende ... and that this was really nothing more than an advance on account of the price of that blende, there would be a great deal to be said in favour of the Appellants." In *Charles Marsden & Sons, Ltd. v. C.I.R.*, (1919) 12 T.C. 217, Rowlatt J. applied the *Crown Spelter* case to an advance between companies. *Curtis v. J. & G. Oldfield, Limited*, (1925) 9 T.C. 319, was a case where the managing director of a company died owing the company money. Rowlatt J. held, in effect, that the money was taken wrongfully completely apart from the business operations of the Company. In *The Rocbank Printing Company, Limited v. C.I.R.*, (1928) 13 T C. 864, Lord President Clyde held that, while he was not laying down "any universally applicable proposition to the effect that losses arising from such payments in advance can in no circumstances form a proper charge against a trading account," in that case, the advances to the managing director, that were recoverable by set-off against his commissions, played no part in, and were not conducive to, the making of profit in the company's trade. On the contrary, he thought that the managing director had been using the company "as his banker". In *Marshall Richards Machine Co., Ltd. v. Jewitt*, (1956) 36 T.C. 511, where the question was whether advances made by a parent company to a subsidiary that performed services for it, were made on capital account, Upjohn J. said that "the whole truth of the matter was this, that the parent company had to finance the subsidiary company".

11(1)(*f*). This provision should be read as part of the scheme concerning bad and doubtful debts, which is found in the following provisions:

6. (1) Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year

. . .

(*e*) the amount deducted as a reserve for doubtful debts in computing the taxpayer's income for the immediately preceding year;

. . .

(*f*) amounts received in the year on account of debts in respect of which a deduction for bad debts had been made in computing the taxpayer's income for a previous year whether or not the taxpayer was carrying on the business in the taxation year;

. . .

11. (1) Notwithstanding paragraphs (*a*), (*b*) and (*h*) of subsection (1) of section 12, the following amounts may be deducted in computing the income of a taxpayer for a taxation year:

. . .

(*e*) a reasonable amount as a reserve for
(i) doubtful debts that have been included in computing the income of the taxpayer for that year or a previous year, and
(ii) doubtful debts arising from loans made in the ordinary course of business by a taxpayer part of whose ordinary business was the lending of money;

(*f*) the aggregate of debts owing to the taxpayer
(i) that are established by him to have become bad debts in the year, and
(ii) that have (except in the case of debts arising from loans made in the ordinary course of business by a taxpayer part of whose ordinary business was the lending of money) been included in computing his income for that year or a previous year;

These provisions create a system whereby a businessman who computes his trading profit on an accrual basis under which he includes in his revenues, as "proceeds of sales", the prices at which he has sold his goods in the year in which he sold them, whether or not he has collected the amounts thereof from his customers, may in due course reflect in his profit computation in a year in which it occurs the amounts by which his claims against the customer for such prices depreciate in value.

Section 11(1)(*f*) does not, in terms, prohibit any deduction for "bad debts". It does, however, expressly authorize in qualified terms a deduction that could have been made, in accordance with ordinary business principles, in the computation of profit from a business. It might therefore have

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been thought, as the respondent contends, that a deduction for a "bad debt" that is excluded from section 11(1)(*f*) by the qualifications expressed in it is impliedly prohibited. Such an interpretation would, however, have results that cannot, in my view, have been contemplated. For example, a bond dealer, who, in effect, buys and sells "debts", would, on such an interpretation, be precluded from taking into account losses arising from bonds becoming valueless by reason of the issuing company becoming insolvent. If section 11(1)(*f*) is not to be interpreted as impliedly prohibiting such an obvious and necessary deduction in arriving at the profits of a business, I am of opinion that it is not to be interpreted as impliedly excluding the deduction of the losses that are in question in this appeal, which, in my opinion, are just as obvious and necessary in computing the profits from the appellant's business.[1]

The appeal will be allowed, with costs, and the assessments will be referred back to the respondent for re-assessment on the basis that the two amounts of $25,000 were properly deductible in computing the profits from the appellant's business for 1960 and 1961, respectively.

[1] If it had been necessary to reach a conclusion on the further question that would have arisen if I had not reached the conclusion that section 11(1)(*f*) does not impliedly prohibit such deductions, I should have had to decide that question also against the respondent, but not on the view taken by the appellant In my view, the parenthetical words in section 11(1)(*f*)(ii) extend only to debts arising from loans made in the ordinary course of the money lending part of a business although I recognize that, read literally, and without regard to the obvious purpose of the exception, the words seem to encompass the debts in question in this appeal. On the other hand, the appellant's claim against Mitchell had not become a "bad debt" within section 11(1)(*f*)(i) merely because it had depreciated in value. Section 11(1)(*f*) provides for the deduction of the whole of a debt that has become bad.