BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
W. J. VOIT RUBBER CORP,)

Appearances:

For Appellant: Patrick James Kirby, Attorney.at Law

For Respondent: A. Ben Jacobson, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of W. J. Voit Rubber Corp. against a proposed assessment of additional franchise tax In the amount of $7,463.21 for the taxable year 1957.

Appellant, a California corporation, is a manufacturer of rubber'products. For many years it operated a plant at Danville, Illinois, as part of its unitary business. On September 26, 1956, appellant contracted to sell the Danville operation to Ridbo Laboratories, Inc., an outside party. The particular items to be sold were Inventories, customers' accounts receivable, machinery and shop equipment, a leasehold interest In the Danville premises and a patent application and license agreement relating to the manufacture of rubber hose.

The contract specified a closing date of October 31, 1956, with the plant to be shut down for three days prior thereto for the purpose of taking inventory. 'The contract was modified by a letter dated October 17, 1956, advancing the date of closing to October 29, 1956, a Monday, and setting the taking of inventory for the three days immediately preceding. A second modification, dated October 19, 1956, provided that all business transacted "on October 29, 30 and 31 and before the closing shall be at the expense of Ridbo." The plant was shut down October 26, 27 and 28, 1956, the. employees of Voit were discharged as of October 27, 1956, the inventory was

completed October 28, 1956, and the closing took place on October 29, 1956.

Respondent's regulations provide that "Income from property, which is not a part of or connected with the unitary business, is excluded from the income of the unitary business which is allocated by formula." (Cal, Admin. Code, tit. 18, reg. 25101, subd. (d)(1), formerly reg. 24301, subd. (c)(1).) By implication, then, the income from all property which is a part of or connected with the unitary business is to be included in unitary income..:

Consistent with this regulation, we have previously held that income from an abnormal liquidation of inventories (Appeal of Wesson Oil and Snowdrift Sales Co., Cal, St. Bd. of Equal., Feb. 5,1957), from accounts receivable (Appeal of M. Seller Co., Cal. St. Bd, of Equal., Aug. 22, 1946), and from patents (Appeal of International Business Machines Corp., Cal, St. Bd. of Equal,, Oct. 7, 1954), was includible in unitary income. We have also held that capital gain from the sale of aircraft (American Airlines, Inc., Cal. St. Bd. of Equal., Dec. 18, 1952) and from the sale of ships (Appeal of American President Lines, Ltd., Cal. St. Bd. of Equal.. Jan. 5, 1961) constituted income of the unitary business subject to allocation.

The underlying principle *in* these cases is that *any* income from assets which are Integral parts of the unitary business is unitary income. It is appropriate that all returns from property which is developed or acquired and maintained through the resources of and in furtherance of the business should be attributed to the business as a whole. And, with particular reference to assets which have been depreciated or amortized in reduction of the unitary income, it is appropriate that gains upon the sale of those assets should be added to the unitary income.

It is readily apparent from the description of the assets'sold by appellant that they were integral parts 'of the unitary business, at least before the plant was shut down.

Appellant contends that the three day shut-down of the plant immediately preceding the closing date constituted a.withdrawal of the plant from its unitary business, and that the purchase price, therefore, was not subject to allocation as part of unitary income.

A legal ruling published by respondent, FTB LR 143, Dec. 5, 1958, provides that:

Idle property of a unitary business may not be included in the property factor of the allocation formula if the property is not available for use In the unitary business during the period of idleness and the maintenance of such idle property may not be deducted from unitary income,

It is appellant's argument that, as the Danville, Illinois, plant was closed for three days, this ruling, by extension of its reasoning, requires that the gain from the sale be treated as non-unitary income.

The cited ruling, however, has no rational application to the case at hand. The contract of sale was negotiated and signed while the plant was admittedly still a unitary asset. The shutting down of the plant was, according to the letter of modification dated October 17, 1956, "To accommodate a closing of the sale agreement," and to enable the parties "to complete the taking of the physical inventories." It was merely a matter of simplifying the mechanics of a sale which had been agreed upon previously.

The modification of October 19, 1956, providing that "All business transacted on October 29, 30 and 31 and before the closing shall be at the expense of Ridbo," is emphasized by appellant, No reasonable interpretation of this provision, however, could alter the clear import that the plant was shut down to facilitate the sale.

The closing of the sale was not an isolated event that took place after the closing of the plant, It, the discharging of the employees, the inventory-taking, and the shutting-down were all parts of one transaction that was decided upon in the course of, and for the benefit of, an admittedly unitary business. Accordingly, we find that the assets of the Danvflle, Illinois, plant remained integral assets of appellant's unitary business until the sale and that the gain from the sale was part of appellant's unitary income,

Appellant's further contention regarding the constitutionality of taxing this transaction is unfounded. Hans Rees' Sons, Inc. v. North Carolina, 283 U.S., 123 [75 L. Ed. 879], cited by appellant, concerned the method of properly allocating income. It did not deny the state the right to allocate income determined to be unitary, Appellant has not contested respondent's method of allocation, but rather contests the inclusion of the proceeds of the sale In allocableincome. As the income is unitary income, and appellant has not shown by clear and cogent evidence that extraterritorial values are being taxed, respondent's action must be upheld.

Appeal of W. J. Voit Rubber Corp.

(Butler Bros. v. McColgan, 315 U.S. 501 [86 L. Ed. 991], Edison California Stores, Inc. v. McColgan, 30 Cal. 2d 472 [183 P.2d 16].)

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of W. J. Voit Rubber Corp. against a proposed assessment of additional franchise tax in the amount of $7,463.21 for the taxable year 1957, be and the same is hereby sustained.

Done at Sacramento, California, this 12th day of May, 1964, by the State Board of Equalization.

Paul R. Leake, Chairman

Member

Member

Member

Member

Attest: J. K. Treanor, Secretary