85-SBE-053

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
THE BANK OF TOKYO, LTD.)

For Appellant: Norman J. Laboe
Attorney at Law

For Respondent: Elleene K. Tessier
Counsel

OPINION

This appeal is made pursuant to section 26075, subdivision (a),[1] of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of The Bank of Tokyo, Ltd., for refund of franchise tax in the amounts of $3,351 and $2,675 for the income years ended March 31, 1970, and March 31, 1971, respectively.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the income years in issue.

Two questions are presented by this appeal: (1) whether appellant and its California subsidiary, California First Bank (CFB), were engaged in a single unitary business during the appeal years, and (2) if so, whether respondent properly determined that appellant must file a combined report which includes its California subsidiary and use formula apportionment to compute its net income derived from or attributable to California sources.

This appeal and the Appeal of California First Bank (CFB's appeal), decided this day, are companion cases in which the appellants have raised the same issues and filed identical briefs. Therefore, the statement of facts and the discussion of the issues raised in CFB's appeal are hereby adopted and incorporated by reference insofar as relevant to this appeal.

Only a few of appellant's arguments were not covered in CFB's appeal. Of these, all but one involve constitutional issues which we are precluded from deciding by constitutional mandate, as explained in CFB's appeal. Appellant does make a slightly different argument in contending that a combined report is invalid where a unitary subsidiary is less than wholly owned. Appellant argues here that only that portion of the income attributable to the majority interest in a subsidiary is properly included in a combined report used to determine the apportionable tax base of a parent corporation.

Appellant's argument begins with the assertion that Edison California Stores, Inc. v. McColgan, 30 Cal.2d 472 [183 P.2d 16] (1947), requires the method propounded by appellant for computing the apportionable income of a parent corporation. Suffice it to say that, reading the same language, we are simply unable to reach the same conclusion.

We have held that "controlling ownership over all parts of the [unitary] business" (Appeal of Revere Copper and Brass Incorporated, Cal. St. Bd. of Equal., July 26, 1977) is both necessary and sufficient for 100-percent combination in the case of corporations. (See, e.g., Appeal of Nippondenso of Los Angeles, Inc., Cal. St. Bd. of Equal., Sept. 12, 1984 (75 percent owned); Appeal of Kikkoman International, Inc., Cal. St. Bd. of Equal., June 29, 1982 (70 percent owned); Appeal of Saga Corporation, Cal. St. Bd. of Equal., June 29, 1982 (50.51 percent owned); Appeal of AMP, Inc., Cal. St. Bd. of

Equal., Jan. 6, 1969 (73 percent owned): Appeals of Eljer Co. and Eljer Co. of California, Cal. St. Bd. of Equal,, Dec. 16, 1958 (over 50 percent owned).) The remainder of appellant's argument against 100-percent combination is based on the detrimental impact on minority, shareholders. We have already rejected that argument in CFB's appeal,' and there is no need to repeat our discussion here,

For the reasons stated above'and in the Appeal of California First Bank, supra, we must sustain respondent's action.

Appeal of The Bank of Tokyo, Ltd.

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 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of The Bank of Tokyo, Ltd., for refund of franchise tax in the amounts of $3,351 and $2,675 for the income years ended March 31, 1970, and March 31, 1971, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 25th day of June , 1985, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Collis, Mr. Bennett and Mr. Nevins present.

Ernest J. Dronenburg, Jr. , Chairman

Conway H. Collis , Member

William M. Bennett , Member

Richard Nevins , Member

_______________ , Member