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Distinguished by Commissioner of Internal Revenue v. Sansome, C.C.A.2, July 26, 1932

45 S.Ct. 575
Supreme Court of the United States

MARR
v.
UNITED STATES.

No. 236.
|
Reargued March 12, 1925.
|
Decided June 1, 1925.

Synopsis
Appeal from the Court of Claims.

Suit by Walter L. Marr against the United States. Judgment for the United States (58 Ct. Cl. 658), and plaintiff appeals. Affirmed.

West Headnotes (1)

[1] **Internal Revenue**
Exchange of Stocks and Bonds

Difference between cost of stock in one corporation, and value of stock in other corporation received therefor, *held* taxable as "income."

102 Cases that cite this headnote

Attorneys and Law Firms

****576 *537** Messrs. Wm. L. Frierson, of Washington, D. C., and James Byrne, of New York City, for appellant.

Mr. James M. Beck, Sol. Gen., of Washington, D. C., and The Attorney General, for the United States.

Opinion

***538** Mr. Justice BRANDEIS delivered the opinion of the Court.

Prior to March 1, 1913, Marr and wife purchased 339 shares of the preferred and 425 shares of the common stock of the General Motors Company of New Jersey for $76,400. In 1916, they received in exchange for this stock 451 shares of the preferred and 2,125 shares of the common stock of the General Motors Corporation of Delaware which (including a small cash payment) had the aggregate market value of $400,866.57. The difference between the cost of their stock in the New Jersey corporation and the value of the stock in the Delaware corporation was $324,466.57. The Treasury Department ruled that this difference was gain or income under the Act of September 8, 1916, c. 463, title 1, §§ 1 and 2, 39 Stat. 756, 757 (Comp. St. §§ 6336a, 6336b); and assessed, on that account, an additional income tax for 1916 which amounted, with interest, to $24,944.12. That sum Marr paid under protest. He then appealed to the Commissioner of Internal Revenue by filing a claim for a refund; and, upon the disallowance of that claim, brought this suit in the Court of Claims to recover the amount. Judgment was entered for the United States. 58 Ct. Cl. 658. The case is here on appeal under section 242 of the Judicial Code (Comp. St. § 1219).

The exchange of securities was effected in this way. The New Jersey corporation had outstanding $15,000,000 of 7 per cent. preferred stock and $15,000,000 of the common stock; all shares being of the par value of $100. It had accumulated from profits a large surplus. The actual value of the common stock was then $842.50 a share. Its officers caused to be organized the Delaware corporation, with an authorized capital of $20,000,000 in 6 per cent. nonvoting preferred stock and $82,600,000 in common stock; all shares being of the par value of $100. The Delaware corporation made to stockholders in the New ***539** Jersey corporation the following offer for exchange of securities: For every share of common stock of the New Jersey corporation, five shares of common stock of the Delaware corporation. For every share of the preferred stock of the

New Jersey corporation, one and one-third shares of preferred stock of the Delaware corporation. In lieu of a certificate for fractional shares of stock in the Delaware corporation, payment was to be made in cash at the rate of $100 a share for its preferred and at the rate of $150 a share for its common stock. On this basis all the common stock of the New Jersey corporation was exchanged and all the preferred stock except a few shares. These few were redeemed in cash. For acquiring the stock of the New Jersey corporation only $75,000,000 of the common stock of the Delaware corporation was needed. The remaining $7,600,000 of the authorized common stock was either sold or held for sale as additional capital should be desired. The Delaware corporation, having thus become the owner of all the outstanding stock of the New Jersey corporation, took a transfer of its assets and assumed its liabilities. The latter was then dissolved.

It is clear that all new securities issued in excess of an amount equal to the capitalization of the New Jersey corporation represented income earned by it; that the new securities received by the Marrs in excess of the cost of the securities of the New Jersey corporation theretofore held were financially the equivalent of $324,466.51 in cash; and that Congress intended to tax as income of stockholders such gains when so distributed. The serious question for decision is whether it had power to do so. Marr contends that, since the new corporation was organized to take over the assets and continue the business of the old, and his capital remained invested in the same business enterprise, the additional securities distributed were in legal effect a stock dividend; and that under the rule of Eisner v. Macomber, 252 U. S. 189, 40 S. Ct. 189, 64 L. Ed. 521, 9 A. L. R. 1570, applied in ***540** Weiss v. Stearn, 265 U. S. 242, 44 S. Ct. 490, 68 L. Ed. 1001, 33 A. L. R. 520, he was not taxable thereon as income, because he still held the whole investment. The government insists that identity of the business enterprise is not conclusive; that gain in value resulting from profits is taxable as income, not only when it is represented by an interest in a different business enterprise or property, but also when it is represented by an essentially different interest in the same business enterprise or property; that, in the case at bar, the gain actually made is represented by securities with essentially different characteristics in an essentially different corporation; and that, consequently, the additional value of the new securities, although they are still held by the Marrs, is income under the rule applied in United States v. Phellis, 257 U. S. 156, 42 S. Ct. 63, 66 L. Ed. 180; Rockefeller v. United States, 257 U. S. 176, 42 S. Ct. 68, 66 L. Ed. 186; and Cullinan v. Walker, 262 U. S. 134, 43 S. Ct. 495, 67 L. Ed. 906. In our opinion the government is right.

In each of the five cases named, as in the case at bar, the business enterprise actually conducted remained exactly the same. In United States v. Phellis, in Rockefeller v. United States, and in Cullinan v. Walker, where the additional value in new securities ****577** distributed was held to be taxable as income, there had been changes of corporate identity. That is, the corporate property, or a part thereof, was no longer held and operated by the same corporation; and, after the distribution, the stockholders no longer owned merely the same proportional interest of the same character in the same corporation. In Eisner v. Macomber and in Weiss v. Stearn, where the additional value in new securities was held not to be taxable, the identity was deemed to have been preserved. In Eisner v. Macomber the identity was literally maintained. There was no new corporate entity. The same interest in the same corporation was represented after the distribution by more shares of precisely the same character. It was as if the par value of the stock had been ***541** reduced, and three shares of reduced par value stock had been issued in place of every two old shares. That is, there was an exchange of certificates but not of interests. In Weiss v. Stearn a new corporation had, in fact, been organized to take over the assets and business of the old. Technically there was a new entity; but the corporate identity was deemed to have been substantially maintained because the new corporation was organized under the laws of the same state, with presumably the same powers as the old. There was also no change in the character of securities issued. By reason of these facts, the proportional interest of the stockholder after the distribution of the new securities was deemed to be exactly the same as if the par value of the stock in the old corporation had been reduced, and five shares of reduced par value stock had been issued in place of every two shares of the old stock. Thus, in Weiss v. Stearn, as in Eisner v. Macomber, the transaction was considered, in essence, an exchange of certificates representing the same interest, not an exchange of interests.

In the case at bar, the new corporation is essentially different from the old. A corporation organized under the laws of Delaware does not have the same rights and powers as one organized under the laws of New Jersey. Because of these inherent differences in rights and powers, both the preferred and the common stock of the old corporation is an essentially different thing from stock of the same general kind in the new. But there are also adventitious differences, substantial in character. A 6 per cent. nonvoting preferred stock is an essentially different thing

from a 7 per cent. voting preferred stock. A common stock subject to the priority of $20,000,000 preferred and a $1,200,000 annual dividend charge is an essentially different thing from a common stock subject only to $15,000,000 preferred and a $1,050,000 annual dividend charge. The case at bar is not one in which after the ***542** distribution the stockholders have the same proportional interest of the same kind in essentially the same corporation.

Affirmed.

The separate opinion of Mr. Justice VAN DEVANTER, Mr. Justice McREYNOLDS, Mr. Justice SUTHERLAND, and Mr. Justice BUTLER.

We think this cause falls within the doctrine of Weiss v. Stearn, 265 U. S. 242, 44 S. Ct. 490, 68 L. Ed. 1001, 33 A. L. R. 520, and that the judgment below should be reversed. The practical result of the things done was but the reorganization of a going concern. The business and assets were not materially changed, and the stockholder received nothing actually severed from his original capital interest-nothing differing in substance from what he already had.

Weiss v. Stearn did not turn upon the relatively unimportant circumstance that the new and old corporations were organized under the laws of the same state, but upon the approved definition of income from capital as something severed therefrom and received by the taxpayer for his separate use and benefit. Here stockholders got nothing from the old business or assets except new statements of their undivided interests, and this, as we carefully pointed out, is not enough to create taxable income.

All Citations

268 U.S. 536, 45 S.Ct. 575, 69 L.Ed. 1079, 1 USTC P 137, 5 A.F.T.R. 5393

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