67-SBE-013

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
CARRIER CORPORATION)

For Appellant: Leonard B. Bartchak
Attorney at Law

Morris L. Rinehart
Assistant Treasurer and
Director of Taxes

For Respondent: Crawford H. Thomas
Chief Counsel

Lawrence C. Counts
-Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Carrier Corporation for refund of franchise tax in the amount of $11,116.96 for the income year ended October 31, 1964.

Appellant, a Delaware corporation, manufactures and sells air conditioners and related equipment. Its executive offices and chief manufacturing plants are in New York and it is engaged in a multistate business. It commenced doing business in California in 1936.

To prevent continuing sales losses resulting from lack of a readily available financing medium, appellant contracted with Whirlpool Corporation. It was agreed that if appellant purchased a designated amount of stock of Appliance Buyers Credit Corporation (hereafter referred to as ABCC), a

Delaware financial corporation then wholly owned by Whirlpool, ABCC would then handle appellant's sales financing. Thereafter, pursuant to the plan, by acquisitions in 1958 and 1960, appellant acquired 20 percent of ABCC's common stock. ABCC commenced doing business in California in 1959. Appellant never claimed it was engaged in a unitary business with ABCC.

ABCC incurred a sizable net operating loss in 1963, causing appellant to sell all the ABCC stock. The last sale of the stock occurred September 15, 1964, at a loss to appellant of $2,062,025.

Appellant also contracted to purchase a majority of the common stock of the Air Conditioning Corporation (hereafter referred to as ACC), one of appellant's independent distributors. This was an arrangement undertaken to improve ACC's management. Pursuant to the agreement, an experienced manager was hired for ACC, and appellant acquired the stock with the understanding that it would ultimately be retired and the manager would acquire controlling interest in ACC when a loan by appellant to ACC was repaid and ACC had accumulated sufficient earnings. The stock was retired pursuant to the agreement in 1964 at a loss to appellant of $19,409.

The losses from the stock sales of ABCC and ACC were not claimed on appellant's return. However, in its disallowed claim for refund appellant asserted that the losses were unitary business losses deductible from appellant's unitary business income and thus allocable in part to California.

For franchise tax purposes, the net income of a unitary business must be allocated within and without the state by a formula consisting of factors such as property, payroll, and sales of the entire business. (Rev. & Tax. Code, § 25101; Butler Bros. v. McColgan, 17 Cal. 2d 664 [111 P.2d 334], aff'd, 315 U.S. 501 [86 L. Ed. 991].) If appellant's position is correct, therefore, the stock losses would reduce the net income attributable to California. Respondent, however, contends that the stock losses are attributable entirely to appellant's commercial domicile in New York.

In support of its contention that the stock losses should be deducted from the unitary income as unitary business losses, appellant cites federal decisions holding that losses from sales of stock are deductible in full as ordinary and necessary business expenses or losses rather than as capital losses where the stock had been acquired and held for reasons of business necessity and not for investment purposes. (See, e.g., Western Wine and Liquor Co., 18 T.C. 1090, appeal dismissed 205 F.2d 420; John J. Grier Co. v. United States, 328 F.2d 163; Weather-Seal, Inc., T.C. Memo., Dkt. No. 93799, April 8, 1963;

Smith & Welton, Inc. v. United States, 164 F. Supp. 605.) However, these cases were not concerned with the allocation of income under California law.

The California law as it applies to the facts of this case is exemplified in Southern Pacific Co. v. McColgan, 68 Cal. App. 2d 48 [156 P.2d 81]. That case concerned the allocation of dividends from stock which was integrally connected with and used to further the multistate business of the corporate stockholder. The court held that the dividends were attributable to the situs of the stock and that the situs of the stock was at the commercial domicile of the stockholder, that is, the place from which the business was directed and controlled and where a major part of the business was conducted. The same rule logically applies to stock losses, and we have previously so held. (Appeals of Safeway Stores, Inc., Cal. St. Bd. of Equal., March 2, 1962.)

Accordingly, inasmuch as appellant's corporate domicile is in New York, we conclude that the stock losses are not deductible from income attributable to California.

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 claim of Carrier Corporation for refund of franchise tax in the amount of $11,116.96 for the income year ended October 31, 1964, be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of March, 1967, by the State Board of Equalization.

Paul R. Leake, Chairman

John W. Lynch, Member

Richard Nevins, Member

Geo. R. Reilly, Member

_____, Member

ATTEST: _____, Secretary