67-SBE-065

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
)
SIMONDS SAW AND STEEL COMPANY,)
SIMONDS ABRASIVE COMPANY, HELLER)
TOOL COMPANY, AND WEST COAST SAW)
& KNIFE COMPANY)

Appearances:

For Appellants: Richard C. O'Connor
Attorney at Law

Charles F. Gilmore
Tax Representative

For Respondent: Peter S. Pierson
Tax Counsel

OPINION

These appeals are made pursuant to section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on protests against proposed assessments of additional franchise-tax as follows:

Appellant	Income Year	Assessment
Simonds Saw and Steel Company	1961	$ 95.49
Simonds Abrasive Company	1959	2,639.46
	1960	1,343.41
	1961	870.15
Heller Tool Company	1959	610.50
	1960	343.93
	1961	525.94
West Coast Saw & Knife company	1959	945.32
	1960	587.47

The sole question for decision is whether appellants and two affiliated Canadian corporations were all engaged in a single unitary business during the years in question.

Simonds Saw and Steel Company (hereafter referred to as the "parent company") owns all of the stock of Simonds Abrasive Company (hereafter "Simonds Abrasive"), Heller Tool Company (hereafter "Heller Tool"), West Coast Saw & Knife Company (hereafter "West Coast") and Simonds Canada Saw Co., Ltd. (hereafter "Simonds Canada"). Simonds Abrasive owns the entire capital stock of Simonds Canada Abrasive Co., Ltd. (hereafter "Canada Abrasive"),

The parent company is a Massachusetts corporation which began doing business in California in 1923. It manufactures and sells saws and a variety of other steel cutting tools. Its head office and principal manufacturing plant are located in Fitchburg, Massachusetts, and it has branch offices and warehouses in various cities in the United States, including San Francisco and Los Angeles, California.

The parent company owns and operates a steel mill located in Lockport, New York, which manufactures a high-grade steel required in the production of quality cutting tools. Approximately one-half of the mill's steel output is used by the parent company and Simonds Canada in the manufacture of their products. The remaining steel is sold to outsiders.

Simonds Abrasive, a Pennsylvania corporation, was acquired by the parent company in 1927, and it has done business in California since 1954. It manufactures and sells grinding wheels and abrasive products. The main office and principal manufacturing plant of Simonds Abrasive are in Philadelphia, Pennsylvania, and it also has a small plant in El Monte, California, which serves the West Coast market.

Heller Tool, a Massachusetts corporation, has done business in California since 1955, the year in which it was acquired by the parent company. It manufactures and sells metal files, saws, hammers, and other small tools. Some of the products manufactured by Heller Tool are sold under the "Simonds" brand name. Heller Tool's principal offices and manufacturing plant are located in Newcomerstown, Ohio.

West Coast, a California corporation, was formed in 1942 and began doing business here in that year. The parent company acquired all of West Coast's stock in 1947. West Coast is a service corporation which repairs and stores the products of the parent company and Heller Tool. Its head office and warehouse are located in San Francisco, California, in facilities which are shared by the parent company and the other appellants, Simonds Canada is a Canadian corporation which has its main office and plant in Granby, Province of Quebec, Canada. It manufactures and sells a line of products which are similar to those manufactured by the parent company, although the Simonds Canada line differs somewhat as a result of the distinct Canadian market. Simonds Canada has branch offices and warehouses in five major Canadian cities. It also has a plant in Brockville, Province of Ontario, Canada, which manufactures products similar to those manufactured by Simonds Abrasive at its plant in Philadelphia, Pennsylvania.

Canada Abrasive, a Canadian corporation, has its headquarters in Arvida, Province of Quebec, Canada, It produces crude abrasive materials.

Appellants and the two Canadian companies each have an executive officer who is in charge of the day-to-day operations of his company. In the years in question a majority of the officers and directors of the parent company also served as officers or directors of Simonds Abrasive, Heller Tool, Simonds Canada, and Canada Abrasive. None of the officers and directors of West Coast served in a similar capacity in any of the other Simonds companies.

During the years on appeal the parent company purchased metal files for resale from Heller Tool, at a price 20 percent below the distributors' list prices. Both the parent company and Heller Tool purchased grinding wheels from Simonds Abrasive for use in their manufacturing operations. Heller Tool purchased saws and die steel for resale from the parent company at a discounted price. A portion of the output of the parent company's steel mill was sold to Simonds Canada. Substantially all of the crude abrasive materials produced by Canada Abrasive were purchased by Simonds Abrasive for use in manufacturing grinding wheels.

These various intercompany sales totalled $6,809,898, $6,424,285, and $6,523,224 in the years 1959, 1960, and 1961, respectively. These figures represent approximately 10 percent of the companies' total sales in each year.

Each corporation maintained its own purchasing department and its separate sales force. Each company handled the training of its own sales personnel. Research facilities were maintained by each corporation, but research findings were transferred between companies when such findings would be beneficial to one of the other corporations.

Individual accounting departments were maintained by each company, although periodic reports were made to the parent company so that the parent's accounting department could make consolidated reports and prepare the tax returns of each corporation. A wire network system centered at the parent company's head office interconnected all branch offices and factories located in the United States. The payroll was handled separately by each company. The employees of the various companies were covered by several different insurance and pension plans.

Section 25101 of the Revenue and Taxation Code provides that when the income of a taxpayer is derived from or attributable to sources both within and without California, the franchise tax shall be measured from the net income derived from or attributable to sources within this state,, The combined net income of affiliated corporations is subject to apportionment by formula where the business conducted by such corporations constitutes a unitary business. (Edison California Stores, Inc. v. McColgan, 30 Cal. 2d 472 [183 P.2d 16]; John Deere Plow Co. v. Franchise Tax Board, 38 Cal. 2d 214 [238 P.2d 569, appeal dismissed, 343 U.S. 939 [96 L. Ed. 1345].)

In the franchise tax returns which appellants filed for the years in question, the parent company, Simonds Abrasive, and Heller Tool each used a three-factor formula of property, payroll, and sales to determine that portion of their net income which was attributable to California. The entire net income of West Coast was reported as California income., Simonds Canada and Canada Abrasive did not file California franchise tax returns.

Respondent determined that appellants and their two Canadian affiliates were engaged in a single unitary business during the years in question. Respondent accordingly recomputed appellants! net income derived from California sources on the basis of the combined operations of all of the corporations, The resulting proposed additional assessments gave rise to these appeals.

In its decisions in Superior Oil Co. v. Franchise Tax Board, 60 Cal. 2d 406 [34 Cal. Rptr. 545, 386 P.2d 33] and Honolulu Oil Corp. v. Franchise Tax Board, 60 Cal. 2d 417 [34 Cal. Rptr, 552, 386 P.2d 40], the California Supreme Court reaffirmed the two tests which it has promulgated for determining the existence of a unitary business. The first of these tests, originally set forth in the case of Butler Bros v. McColgan, 17 Cal. 2d 664 [111 P.2d 334], aff'd, 315 U.S. 501 [86 L. Ed, 991], provides that a unitary business exists when there is unity of ownership; unity of operation as evidenced by central purchasing, advertising, accounting and management, and unity of use in centralized executive forces and the general system of operation. Under the second test, as it was expressed in Edison California Stores, Inc. v. McColgan, supra, 30 Cal. 2d 472 [183 P.2d 16], a business is unitary when the operation of the portion of the business done within the state is dependent upon or contributes to the operation of the business without the state,

Application of the above tests to the facts presented by these appeals causes us to conclude that appellants and their two Canadianaffiliates were all engaged in a single unitary business operation.

Appellants contend that each corporation operates as a separate and independent business. They urge that this fact, plus the absence of centralized purchasing, advertising or accounting, precludes a finding that they are all engaged in one unitary business. We have previously held, however, that there need not be centralized performance of all service functions in a unitary business if the operations are otherwise unified to the extent that they are mutually dependent and contribute to each other. (Appeal of Combustion Engineering, Inc., Cal, St. Bd. of Equal., June 7, 1967; Appeal of McCall Corp., Cal. St. Bd. of Equal., June 18, 1963.)

The businesses of the appellants and the two Canadian companies are very closely related and are linked together by interlocking directorates-and common officers. In each of the years on appeal substantial numbers of finished goods were transferred between companies for resale. Both Simonds Canada and Simonds Abrasive relied on their affiliates for raw materials, The parent corporation and Heller Tool obtained grinding wheels necessary in their manufacturing processes from Simonds Abrasive, In addition there is widespread use among the related companies of the well-known "Simonds" name, both as a trade name and as a part of their corporate names,, The parent company keeps in touch with the various appellants by means of its nationwide wire network system. One of the appellants, West Coast, is solely engaged in rendering services for the other appellants.

A review of the above facts causes us to conclude that the requisite mutual dependence and contribution are clearly present in the instant case. We find, therefore, that the business operations of appellants and the two Canadian affiliates were not truly separate and that formula allocation of their combined income was proper. Accordingly, respondent's action in this matter must be sustained,

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, Appeals of Simonds Saw and Steel Company, et al.

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 protests'against proposed assessments of additional franchise tax in the following amounts for the years specified, be and the same is hereby sustained:

ellant	Income Year	Assessment
Simonds Saw and Steel Company	1961	$ 95.49
Simonds Abrasive Company	1959	2,639.46
	1960	1,343.41
	1961	870.15
Heller Tool Company	1959	610.50
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	1961	525.94
West Coast Saw& Knife company	1959	945.32
	1960	587.47

Done at Sacramento , California, this 12th day of December , 1967, by the Stats-Board of Equalization.

Paul R. Leake, Chairman

______, Member

John W. Lynch, Member

Richard Nevins, Member

______, Member

ATTEST: ______, Acting Secretary