

No. 12 of 1955.

In the Privy Council.

ON APPEAL  
FROM THE SUPREME COURT OF CANADA.

BETWEEN—

THE MINISTER OF NATIONAL REVENUE  
*Appellant*

— AND —

ANACONDA AMERICAN BRASS LIMITED  
*Respondent.*

25 OCT 1955

44824

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CASE FOR THE RESPONDENT.

1. This is an Appeal, pursuant to Special Leave granted in that behalf, from a Judgment of the Supreme Court of Canada (Taschereau, Locke and Cartwright, J.J., Kerwin, C.J., and Estey, J., dissenting) pronounced on 1st November, 1954, dismissing the Appellant's appeal from a judgment of the President of the Exchequer Court of Canada pronounced on 7th June, 1952. The latter judgment allowed an appeal of the Respondent from an assessment made by the Appellant for the Respondent's 1947 tax year pursuant to the provisions of the Excess Profits Tax Act, 1940.

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2. The question in issue on this Appeal is whether in computing the annual net taxable income or profit or gain of the Respondent from its business of manufacturing semi-finished products of copper and copper-based alloys the cost of the metal content of the products sold during the tax year is to be ascertained in accordance with commercial and accounting principles commonly accepted in Canada or whether for the purpose of assessing net taxable income such principles are displaced by some positive provision of the law as to the method of valuing the opening and closing inventories (stocks) of the metals which constitute the raw materials of the Respondent's manufacturing business.

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3. In computing its net taxable income, or profit, for 1947 the Respondent deducted from its gross revenue derived from the sale of its products, the cost of their metal content for copper, zinc, lead and tin as ascertained by the last in, first out method of allocation of costs and inventory valuation, commonly called the Lifo method.

RECORD.

4. The learned President of the Exchequer Court of Canada and the majority of the Supreme Court of Canada decided that the Lifo method was an acceptable and recognized inventory accounting method in Canada in the circumstances that are appropriate to it and that in the particular circumstances of the Respondent's business this method most nearly accurately determined the Respondent's costs of metal and taxable profits for the year 1947. These it is submitted are concurrent findings of fact which ought not to be disturbed.

Vol. II, p. 407,  
l. 11, p. 450, l. 9.

5. The Appellant, having contested unsuccessfully the question of fact as to whether the Lifo method of inventory accounting most nearly accurately reflected the income position of the Respondent according to the manner in which it carries on its business, contends that it is a rule of law that the cost of sales of the Respondent for the year 1947 should, wherever that is possible, be determined by specifically identifying the cost of each item of material used; and if that is not possible then according to the first in, first out method of allocation of cost and inventory valuation, commonly called the Fifo method, notwithstanding that it was held by the learned President of the Exchequer Court of Canada and the majority of the Supreme Court of Canada that this method did not fairly reflect the income position of the Respondent.

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Vol. III, Ex. A;  
Vol. I, p. 79, l. 2.

6. The Respondent was incorporated under the laws of Canada in 1922 and since that time its manufacturing operations have been carried on at its plant at New Toronto, in the Province of Ontario.

Vol. I, p. 79, l. 27;  
Vol. III, Ex. 3;  
Vol. I, p. 104, l. 6  
*et seq.*

7. The Respondent operates what is known as a primary copper and brass mill and produces copper and copper-base alloys in the form of sheets, rods, seamless tubes, and shapes from raw metals and scrap. Most of its products are semi-finished and are used as primary materials for further fabrication by other manufacturers. About 98% of the metal content of the products consist of copper and zinc, copper making up over 80% and zinc 15%.

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Vol. I, p. 104,  
l. 31 to p. 105, l. 13.

8. The Respondent receives two types of orders from its customers—

(a) Orders which must be made up to the specifications of the customer. These comprise more than 80% of the Company's business.

(b) Orders for material which can be supplied from stocks of finished goods.

Vol. I, p. 83, l. 1;  
p. 112, l. 4; p. 132,  
l. 34 to p. 133,  
l. 18.  
Vol. I, p. 98, l. 17;  
p. 81, l. 32 to  
p. 82, l. 11; p. 98,  
l. 12; Vol. II,  
p. 408, l. 29;  
Vol. III, Ex. 1;  
Vol. I, p. 83, l. 31  
*et seq.*

9. The Respondent has no control over the price for which it purchases raw metals. The raw metals used by it are purchased from Canadian refineries which have no connection of any kind with it. Historically the prices of such metals have fluctuated very widely. For example, the price paid by the Respondent in 1947 for raw copper advanced from 11½ cents per pound to 21½ cents per pound and the price paid for raw zinc advanced from 5.75 cents per pound to 11 cents per pound. The Respondent, however, seeks to make its profit solely from

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the fabrication of metals and to avoid speculation in the metal itself with resulting profit or loss.

10 10. The prices charged by the Respondent for its products are made up of two factors, namely, the current replacement cost of the metal content of the finished product and a processing charge. The processing charge covers all expenses, other than the replacement cost of the metal, including labour, manufacturing expenses and supplies, electric power, fuel, maintenance of plant and equipment, depreciation, packaging and shipping expenses, shrinkage, selling and administrative expenses and an allowance intended to produce a normal profit. The processing charge is entirely independent of and has never been affected by fluctuations in the price of raw metals.

11. The Respondent's prices are calculated from regular base price lists issued by it to the general trade and from a catalogue of manufacturing extras dealing with various sizes and special manufacturing processes. In order that the current replacement cost of metals may be closely reflected in the prices charged, a new price list is normally issued following any important change in the price of raw metals.

20 12. The terms of sale used by the Respondent from time to time have permitted it to reflect substantially the replacement cost of metals in the sales prices. Prior to the war, metals were purchased at firm prices for future delivery and sales were made at firm prices for future delivery. This permitted a close matching of purchases to sales. During the war and until June 10th, 1947, prices were controlled and, accordingly, the Respondent could accurately reflect the replacement cost of metals in its sales prices. During 1947 the Respondent was unable to purchase at firm prices for future delivery and prices advanced substantially on February 1st and again on June 10th. From 30 January 1st, 1947, until February 28th, 1947, it accepted orders on the condition that the price would be that shown on the price list in effect on the first day of the month in which the order was shipped; from February 28th, 1947, until December 31st, 1947, it accepted orders on the condition that the price would be that shown on the price list in effect on the date when the order was shipped. Thus in 1947 there was a close matching of sales prices and replacement cost of metals.

40 13. There were two exceptions to the selling policy described in paragraphs 11 and 12. Certain customers such as automobile manufacturers regularly purchased on what is known as a "commodity price" composed of a special processing charge and current replacement cost of the metal content at the date of shipment without regard to the base price list then in force. Government and Export business, a small percentage of the whole, was regularly accepted on a firm price basis, using the price list in force at the date of acceptance of the order.

14. The primary objective of the Respondent in purchasing raw metal and scrap in 1947 was to match purchases of raw metal and scrap

Vol. I, p. 83, l. 1;  
p. 106, l. 13 to  
l. 29; Vol. II,  
p. 409, l. 13.

Vol. I, p. 108,  
l. 11; Vol. III,  
Ex. 3; Vol. I,  
p. 117, l. 11;  
p. 83, l. 11-16;  
Vol. III, Ex. 1;  
Vol. I, p. 107, l. 1.

Vol. I, p. 108,  
l. 22; p. 109, l. 10;  
p. 84, l. 25; p. 85,  
l. 1; p. 98, l. 23;  
Vol. II, p. 408,  
l. 23, Vol. III,  
Ex. 1; Ex. 4.

Vol. I, p. 109,  
l. 33; p. 110, l. 8.

Vol. I, p. 110,  
l. 20 *et seq.*;  
p. 82, l. 12; p. 91,  
l. 10; p. 131, l. 5;  
p. 132, l. 7;  
Vol. II, p. 410,  
l. 8.

as to quantity in each month with the sales orders to be shipped in that month. The matching was not exact because it involved estimates of dates of receipts of raw metals and shipments of finished goods, the amount of scrap generated in the process of manufacture, the amount of shrinkage in manufacture, the quantity of customers' and dealers' scrap to be delivered during the period, and fluctuations in the number of orders received which could be filled from finished stock on hand.

Vol. I, p. 110,  
l. 20 *et seq.*;  
p. 132, l. 10;  
p. 112, l. 4; p. 112,  
l. 30; Vol. II,  
p. 410, l. 3.

15. During the first few days of each month an estimate of the raw metal required for the next calendar month was made. An estimate was made of the sales orders which the Respondent could reasonably anticipate would be shipped in the next calendar month. The records of current inventory position were examined and consideration was given to the amount of scrap which might be produced in the current month's processing and the amount of scrap which might come in from customers. In the light of these factors an estimate was made of the quantities of raw metals required from the refineries for regular shipment commencing the first of the succeeding month. The amount of raw metals ordered was the amount which it was so estimated would be required in the next calendar month. In calculating orders for raw metals regard was had only to quantities necessary for manufacturing purposes and without consideration of possible changes in the price of raw metals as any rise or fall in the price of raw metal was reflected in the price to the customer. 10 20

Vol. III, Ex. 12-21  
inclusive; Vol. I,  
p. 183, l. 27 to  
p. 196, l. 2;  
Vol. II, p. 410,  
l. 1.

16. During the year 1947 the Respondent succeeded in its primary objective as the quantity of its purchases of raw metal at each price level prevailing during that period was almost equivalent to the quantity of metal content sold by it at each such price level.

Vol. I, p. 111,  
l. 27; p. 134,  
l. 11-32.

17. Fabrication according to customer's specification is a relatively slow process and the Respondent turns over its inventory only about three to four times a year. 30

Vol. I, p. 111,  
l. 27; p. 113,  
l. 17; p. 111, l. 8  
*et seq.*; p. 134,  
l. 22; p. 157, l. 2.

18. To carry on efficient operations the Respondent must have large quantities of metals in its inventories at all times. The inventory required is large physically and in value because of the slow manufacturing process and because, in recent years, approximately 60% of sales prices represents cost of metal. The business is not seasonal and at no time are inventories necessarily lower or higher than at any other time. The inventory necessary to efficient operation at any given time varies, however, with the volume and pattern of business, the certainty and rapidity of deliveries of raw metal and other factors. At the level of business current in 1947 about ten to twelve million pounds of metal were actually in process in the plant at all times. 40

Vol. I, p. 135,  
l. 21 *et seq.*

19. The nature of the manufacturing process inevitably results in both shrinkage and the production of a considerable quantity of scrap metal. Experience has shown that to fabricate a product containing 70 pounds of metal it is necessary to commence the process with

approximately 100 pounds of metal. Scrap is generated at almost every stage of processing. This scrap is collected and sent to the scrap room where it joins scrap purchased from customers or dealers. It is then sent to the casting shop and again put into process and once again a quantity of new scrap is generated.

20. The Respondent maintains inventory records of the total quantity of each metal on hand whether in raw or finished form or in process. The annual financial statements are based on these records which are verified by physical count each mid-year. Experience has shown that the variations between the inventory records and the physical inventories are not significant.

Vol. I, p. 155,  
l. 33; p. 156, l. 13  
*et seq.*

21. Each pound of metal in inventory has the same usefulness to the Respondent's manufacturing processes as another pound of the same metal, as the metals used by the Respondent do not deteriorate with age. The Respondent therefore does not attempt to identify any portion of the metal contained in its inventories, although new raw metal can be identified until it is put into production but not thereafter. Identification even up to the stage of putting into production would serve no useful purpose, and would involve needless expense. Any record of scrap would be so cumbersome as to be of little use.

Vol. I, p. 113, l. 7;  
p. 141, l. 1; p. 113,  
l. 28, p. 114, l. 23;  
p. 128, l. 1; p. 129,  
l. 7; p. 130, l. 10.

22. The Respondent's method of recording transactions in its accounts and preparing its financial statements are those used by any normal manufacturing company. No dispute arises as to its gross income from the sale of its manufactured products nor as to the costs of processing the products sold. The sole issue is as to the costs properly attributable to the metal content of such products. The Lifo method contended for by the Respondent, which is described in the succeeding paragraphs, had been adopted by it in its corporate accounts for the major metals, copper and zinc, as long ago as 1936 and for lead and tin in 1947.

Vol. I, p. 155,  
l. 29; p. 157, l. 12;  
p. 181, l. 12;  
p. 183, l. 12.

23. As the name "Lifo" implies the costs of metal in the inventory account most recently incurred are the first to be charged out against sales. The basic concept of the Lifo method adopted by the Respondent is that the cost of sales in respect of each metal during any year should reflect substantially the prices at which purchases of that metal were made during that year. This is in accordance with the business practice followed by the Respondent of selling on the basis of metal replacement cost and matching replacement purchases with sales. If the quantities purchased in each year corresponded exactly with the quantities of metal used in sales during the same year the cost of metals charged against sales would be exactly the cost of the actual purchases of metals during the year. The Respondent would thus start and finish each year with the same quantity of metals in its inventory, and the above method of ascertaining the costs properly attributable to the metal content of the products sold during each year would, it is submitted, accurately reflect

Vol. II, p. 247,  
l. 25 *et seq.*

the annual net profit or gain of the Respondent from its business *in the way in which that business was in fact carried on*. Such annual net profit would not be affected by a difference between the market price of the metals in its inventory at the beginning and end of the year since, unless it went out of business, the Respondent could not in the following year sell the metals in its closing inventory without replacing them at the prices current at the time of replacement, just as it had replaced the metals in its opening inventory at the prices current during the year for which its annual net profit was being ascertained.

Vol. II, p. 248,  
l. 8 *et seq.*

24. Although in the case of a company carrying on business in the manner adopted by the Respondent in 1947 the matching of replacement purchases of metal with metal content of sales is very close, perfect matching is not possible and some slight excess or shortfall occurs. Under the Lifo method, where the purchases of any metal for the year exceed the quantity of that metal used in sales the quantitative balance is added to the inventory at the end of the year and valued at the average cost of all purchases of that metal during the year. Since this metal was not actually required for replacement of metal sold during the year the cost of it is properly attributable not to current year's but to future year's sales. If in the next or any subsequent year the purchases of any metal for that year are less than the actual quantity used in sales made in that year i.e. if the total amount sold is not replaced by fresh purchases, the shortfall is treated as being withdrawn from the quantity of metal most recently added to the inventory at the cost at which it was so added.

Vol. III, Exs. 7, 8;  
Vol. I, p. 150,  
l. 10 *et seq.*

25. In 1947 the metal content of the Respondent's sales slightly exceeded its purchases. The results of the Lifo method in ascertaining cost of sales for the Respondent's operations in 1947 in regard to copper was accordingly as follows:—

	Quantity lbs.	Price.	Amount.	30
Quantity used in sales during the year (from inventory record) ... ..	63,999,258			
Purchases of copper during the year ... ..	63,268,555	18.854c	\$11,928,728.71	
Drawn from the quantity most recently added to the opening inventory (viz. in 1946) at the average price of purchases in 1946 ...	730,703	11.5c	84,030.85	40
Cost of copper sales ... ..			<u>\$12,012,759.56</u>	

The close correspondence of total purchase and the quantity used during the year is noteworthy, the difference being about one per cent.

26. There are several acceptable accounting methods used in Canada for determining the raw materials element in the costs of sales for the year in a manufacturing business. Which of them is appropriate depends upon the circumstances of the particular business. The method to be used is that which will mostly nearly reflect the true income position of the business.

Vol. II, p. 260,  
l. 16; p. 262, l. 8  
*et seq.*; p. 417,  
l. 27.

10 27. In each of these methods the ascription of a particular value to the raw material in the inventory account at any time is not an end in itself; it is primarily an accounting step towards the determination of the cost of current sales. In none of the methods commonly used does the value ascribed to the raw material in the inventory account at any particular date necessarily represent the market value of the raw material at that date. This, it is submitted, is plainly right because what one is seeking to do is to allocate incurred costs as between those chargeable to current gross revenue and those chargeable to future operations and for such purpose market values are irrelevant.

Vol. II, p. 235,  
l. 31; p. 237, l. 1;  
p. 262, l. 14;  
p. 269, l. 11.

20 28. In each of the acceptable accounting methods used in Canada the items in the inventory account are costed at a figure which represents an actual "incurred cost". The "incurred cost" figure used, except under the method of specific identification, depends upon the assumption made as to the order in which incurred costs are to be charged against current revenues. The difference between various accounting methods is in the different assumptions or conventions applied. It is common ground that in the case of the business carried on by the Respondent it is not possible to identify the actual metal used in any particular sale so as to enable one to ascertain that the metal so used was in fact purchased by the Respondent at a particular price. The method of  
30 specific identification could not thus, in any event, be applied to the Respondent's business. Even if it were possible to apply this method, however, it is submitted that it would be inappropriate for the purpose of assessing the annual profits of a business of the kind carried on by the Respondent. The true gain from the business in a year cannot depend upon the fact that by chance or by choice the Respondent used in a particular sale one parcel of metal rather than another parcel. In a business carried on in the manner followed by the Respondent, where its profit flows solely from a charge for processing metals (incorporated in the sale price) and not from any factor of profit or loss in the metals  
40 themselves, the annual gain from the business can only be determined by a proper matching of revenues with the costs incurred to earn such revenues. The specific cost of the metal used has no bearing on the sales price of the product.

29. In none of the principal accounting methods used in Canada for determining the material costs of sales is the conventional figure of "incurred cost" ascribed to the raw materials in the inventory account

Vol. II, p. 241,  
l. 28; p. 242; l. 1  
*et seq.*

dependent upon any assumption as to the physical flow of raw materials and processed goods. Lifo (last in, first out) does not mean that the metal last to be received into stock is in fact the first to be processed and sold; it means that the cost per lb. of the metal most recently purchased and added to stock is the cost per lb. of metal content to be charged against the next sale of processed metal product. In the same way Fifo (first in, first out) does not mean that the metal which was earliest received into stock is in fact the earliest to be processed and sold; it means that the cost per lb. of metal first received into stock is the cost per lb. assigned to the metal content of the processed metal product first sold. That the actual physical flow of raw materials and processed goods is irrelevant in determining whether Lifo or Fifo is the accounting method appropriate to determine the annual profits of a particular business can be illustrated by considering two similar businesses processing wheat, one of which keeps its stock of wheat in a silo filled from the top and emptied from the top, the other in a silo filled from the top and emptied from the bottom. In the former the physical flow of raw materials and processed goods is last in, first out, in the latter it is first in, first out. Nevertheless if all other factors are the same the annual profits of the two businesses would be the same.

Vol. II, p. 322,  
l. 22; p. 259, l. 1;  
p. 273, l. 16;  
p. 309, l. 1; p. 425,  
l. 9; p. 426, l. 23;  
p. 427, l. 8.

30. The evidence of the expert witnesses called by the Respondent was that whereas the Fifo method contended for by the Appellant gives the best reflection of the income of a business where sales prices are based on the prices paid for stock received and are altered only when the stock purchased at earlier prices has been exhausted, the Lifo method (described in paragraphs 23 and 24) should be used where a business is carried on so that the selling prices of the products closely reflect the replacement cost of the raw materials, where the rate of inventory turnover during the year is slow and where the inventories maintained by the business are large.

Vol. II, p. 427,  
l. 37 *et seq.*;  
p. 420, l. 15;  
p. 304, l. 14;  
p. 292, l. 18;  
p. 315, l. 1; p. 307,  
l. 11; p. 331, l. 33  
*et seq.*; p. 269, l. 9;  
p. 269, l. 18.

31. The expert witnesses for the Respondent testified that the Lifo method of inventory accounting and ascertaining the materials cost of sales is now in Canada an accepted method in the circumstances in which it is appropriate, and is in common use throughout the brass industry in the United States.

Vol. II, p. 427,  
l. 24.

32. The learned President of the Exchequer Court considered that the problem in determining the Respondent's taxable net income or profits for 1947 was the ascertainment of the Company's materials cost of sales in 1947 which might properly be chargeable against its gross income from sales for 1947. He concluded that as there was no definition of "costs" in the Income War Tax Act, that costs properly chargeable against the gross income must be determined upon business and accounting principles accepted in Canada. Accordingly he stated that the question for decision was whether the Lifo method properly ascertained the Company's materials cost of sales in 1947, which depended in turn on whether that method was an acceptable accounting



method in Canada and whether it was appropriate in the circumstances of the Company's business.

33. He reviewed the evidence of the witnesses as to the use of the Lifo method of inventory accounting and ascertaining the materials cost of sales and found that it was now an accepted method in Canada in the circumstances in which it was appropriate.

Vol. II, p. 427,  
l. 37 to p. 429,  
l. 8.

34. After reviewing the opinions of the expert witnesses, His Lordship concluded that where a manufacturing company—

Vol. II, p. 429,  
l. 9.

- 10 (a) avoided speculation or trading in its materials;  
(b) made the sale price of its finished products closely reflect the current replacement cost of their materials content;  
(c) matched its purchases of materials to its sales of finished products so that the inflow of the materials equalled the outflow of the materials content of the finished product;  
(d) must continuously maintain a large inventory, and  
(e) the rate of the inventory turnover was slow,

the Lifo method of inventory accounting and of ascertaining the materials cost of its sales for the year was the method that most nearly accurately reflected its income position according to the manner in which it carried on its business and was the method that ought to be  
20 applied in ascertaining the materials cost of its sales in determining its net taxable income.

35. His Lordship concluded that the evidence as to the Lifo method being appropriate in the circumstances of the Company's business was overwhelming, that it was entitled to use the method in ascertaining the cost of the metal content of its finished products which was properly chargeable against its gross income for sales and that the method correctly reflected its net taxable income for 1947.

Vol. II, p. 429,  
l. 29 to p. 430,  
l. 14.

36. His Lordship also found that the method employed by the Minister in arriving at his assessment was not a proper one as this was  
30 not a case in which either of two accounting methods was acceptable.

Vol. II, p. 430,  
l. 15.

Accordingly, the Fifo method which the Minister used in ascertaining the Company's materials cost of sales was inappropriate and left it with a much larger income than it earned.

37. On the Appeal to the Supreme Court of Canada the Court divided, three of their Lordships, viz.: Taschereau, Locke and Cartwright, JJ. deciding that the Appeal should be dismissed and two, viz.: Kerwin, C.J. and Estey, J. that it should be allowed. In the result the Appeal failed.

40 38. Mr. Justice Locke in his reasons stated that the point to be determined is as to what is the method of inventory accounting which will more accurately determine the income of the Company for 1947, as that term is defined in the Act. Since the Act does not define the manner in which manufacturing costs such as the cost of metals are to be calculated, they are to be determined, in his opinion, upon the ordinary principles of commercial trading. On his consideration of the

evidence it was his conclusion that in a business operation such as the one in question, the Lifo method determines the true income with greater accuracy than any other method which it was practical to apply. He agreed with the conclusion of the learned President.

39. Mr. Justice Cartwright agreed with the reasons and conclusions of the learned President and added only a few observations. He considered that the question was as to which of two well-recognized systems of accounting will most nearly arrive at the true figure for the material cost of the Company's sales for the year and that that question was one of fact. In his opinion, the evidence supported the findings of fact made by the learned President. 10

40. Mr. Justice Taschereau would dismiss the appeal for reasons given by both Mr. Justice Locke and Mr. Justice Cartwright.

41. Chief Justice Kerwin, who dissented, considered that what is required is the cost of the metals used so as to ascertain the profit for the year and not what the Company adopts as a wise plan to cover fluctuations over the years in the cost of its raw materials. He thought that an assumption (referring to the Lifo method) the result of which indicates that 6,500,000 pounds of copper has been in the premises since 1936, would be unwarranted. It is respectfully submitted that this shows a failure on the part of the Chief Justice to appreciate that neither of the accounting methods contended for, Lifo or Fifo, depends on any assumption as to the physical flow of raw materials and processed goods (see paragraph 29). 20

42. The Chief Justice was of the opinion that even though the Lifo assumption is recognized as a proper accounting method for corporate purposes the authorities show that that is not sufficient and, therefore, the view of the learned President of the Exchequer Court that the question to be determined was whether Lifo was an acceptable accounting method for the Company was incorrect. The learned Chief Justice further held that the Lifo method does not determine the Company's profits for 1947 more accurately than the Fifo method, but that the latter is more in accordance with the known facts. 30

43. Mr. Justice Estey, who also dissented, said that the issue raised is whether under the taxing statutes the Minister must accept returns computed upon any recognized accounting system which is deemed appropriate to its business by a company or whether the Minister may insist upon that accounting system which will the more closely arrive at the actual value of the inventory. He thought that the problem which must be decided for taxation purposes was which of the two methods, Fifo or Lifo, more nearly approaches the actual value or market value of the metals in the inventory and that because a particular method has the greatest merit from a corporate point of view, it does not follow that it must be accepted for taxation purposes. He concluded that the Minister was justified in refusing to accept the Lifo method and in 40

requiring the Company to compute its inventories upon a basis that more nearly approximated its current market value. It is respectfully submitted that the learned Judge misapprehended the nature of the question involved, which is not the ascription of market value or a figure approximating market value to the raw material in the inventory but the determination of the materials cost of current sales (see paragraph 27 above).

44. It is submitted that the Judgments of the learned President of the Exchequer Court and of the Supreme Court of Canada were clearly  
10 right and ought to be upheld and affirmed for the following among other

### REASONS.

1. BECAUSE the word "profits" is defined for the purpose of the Excess Profits Tax Act of Canada, as the amount of net taxable income of the Company as determined under the provisions of the Income War Tax Act of Canada for the same taxation period (Sec. 2 (1) (f) ).
2. BECAUSE the word "income" is defined by Sec. 3 (1) of the same Income War Tax Act as "the annual net profit or gain or gratuity, whether ascertained and capable of computation as being wages, salary, or other fixed amount, or unascertained as being fees or emoluments, or as being profits from a trade or commercial or financial or other business or calling, directly or indirectly received . . . from any trade, manufacture or business as the case may be . . ."
- 20 3. BECAUSE the Income War Tax Act does not contain any definition of "annual net profit or gain". The Act is silent as to the deduction from gross revenue of the cost of sales incurred during the year. It is equally silent as to the method to be employed in the calculation of cost of sales or valuation of inventory.
- 30 4. BECAUSE there being no directions in the Act as to how profits or cost of sales are to be ascertained it is submitted that they are to be determined by the application of ordinary commercial principles, except where such principles are expressly excluded by the Act.
5. BECAUSE in the absence of any governing provision in the Income War Tax Act, the question as to what commercial principles are to be applied in ascertaining the "annual net profit or gain" is a question of fact.
- 40 6. BECAUSE in this case there have been concurrent findings of fact made by the learned President of the Exchequer Court of Canada, and the majority of the Supreme Court of Canada, that the annual profit of the Respondent, Anaconda American Brass Limited, for the year 1947 was

most accurately determined by the use of the Lifo method of determining cost of sales.

7. BECAUSE any other results mean that the word "profits" as used in the Income War Tax Act has a meaning attributed to it other than the meaning normally used in the commercial sense.

KENNETH DIPLOCK.

A. S. PATTILLO.

A. J. MACINTOSH.

In the Privy Council.

**ON APPEAL**

FROM THE SUPREME COURT OF CANADA.

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**THE MINISTER OF NATIONAL  
REVENUE**

— *v.* —

**ANACONDA AMERICAN BRASS  
LIMITED.**

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**CASE FOR THE RESPONDENT.**

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