IT 234 - Amended assessments - deductions for losses: calculation of average income

TAXATION RULING NO. IT 234

AMENDED ASSESSMENTS - DEDUCTIONS FOR LOSSES: CALCULATION OF AVERAGE INCOME

F.O.I. EMBARGO: May be released

REF N.O. REF: J97,31 P6 F297 DATE OF EFFECT:

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1102705	AMENDMENT OF ASSESSMENTS	80(2)
	PRIOR YEAR LOSSES	170
	AVERAGE INCOME	

FACTS Consideration has been given to a case in which a private company was assessed for the year ended 30 June 1963 on a taxable income of $2,932 but the amount shown as purchases in its return of income had been understated by $20,080. This meant that the company had actually incurred a loss of $17,148. By the time the company had discovered the error and brought it to notice, however, the permissible period for amendment specified in section 170 had expired. The incorrectly based 1963 assessment therefore had to stand but the question arose whether any section 80(2) deduction was nevertheless allowable in subsequent years in respect of the actual loss of $17,148.

2. It has already been ruled that later assessments may be amended to remedy such a defect where the fault in the earlier assessment has been corrected by amendment (Head Office reference J 97,31 P6 dated 2 December 1965).

RULING 3. In the case referred to in paragraph 1, it was decided that the prohibition of any amendment by section 170 did not prejudice the taxpayer's entitlement to section 80(2) deductions aggregating $17,148 in subsequent years.

4. In dealing with similar cases in the future, the principle to be followed is that the deduction allowable under section 80(2) in respect of a prior year's loss is available if, in fact, such a loss has been incurred and remains unrecouped. In other words, the availability of the deduction is not affected by the fact that the provisions of section 170 preclude the earlier year's assessment being reopened to convert an assessed figure of taxable income into a loss. Correspondingly, a prohibition against the amendment of a prior year's assessment should not be treated as a barrier against the use of the correct amount of taxable income (i.e., assessable income less allowable deductions) for the year concerned in calculating the average income of a primary producer for a later year.

5. These rulings are based on the view that the raising of an

assessment for a particular year requires, independently of anything that has occurred in relation to any other year's assessment, a proper application of every provision of the legislation which affects the determination of the amounts of taxable income and tax payable for that year.

6. Support for this view may be found in the judgment of Kitto J. in V.J. & F. Barnes v FC of T, (1957) 96 CLR 294. It had been suggested to the Court that, in making an assessment of further tax payable by a company under Division 7 of the Act, the Commissioner was bound to start with the amount of taxable income in the company's ordinary assessment, which had been confirmed by a Taxation Board of Review. With regard to this suggestion, His Honour said at page 315:-

> 'In my opinion, however, it is not correct to say that he was bound to accept the figure of taxable income as conclusively established by the assessment of ordinary income tax. Section 177 was referred to in argument, but I do not think it has any application to the problem. No doubt in practice the sensible course in assessing Div.7 tax is to start with the taxable income as already assessed for ordinary income tax. It would ordinarily be foolish to go through the process again. but when the Commissioner does start with the taxable income as assessed, he is not obeying any positive requirement of the Act that he shall do so; he is simply adopting, for the purpose of the assessment he is engaged in making, that which he has already done for another purpose.'

7. While a prohibition against the amendment of an incorrect assessment for a loss or an average year is not an estoppel against the use of the correct figure in later years, the terms of section 170 could, of course, operate to preclude the amendment of an assessment for one or more of the later years. In the case referred to in paragraph 1, for example, the 1964 assessment was amended to allow a section 80(2) deduction equal to the assessed taxable income of $5588. This would not have been possible if a request for amendment of the 1964 assessment had not been made within the time specified in section 170(6).

8. In general, the rulings referred to above may be applied irrespective of which particular restriction in the terms of section 170 precluded an amendment of the earlier assessment. An exception to this general rule could arise in a case where the fault in the earlier year was due to a mistake of law and, in the absence of knowledge that the view of the law was mistaken, the fault was perpetuated in later assessment. In these circumstances, there would be no authority to amend the later assessment to allow a section 80(2) deduction or correct the average income unless the purpose of the amendment was to give effect to a decision on an objection, appeal or review in respect of that assessment or (in accordance with the interpretation of section 170(7) given in the memorandum of 2 December 1965) the earlier assessment. Correct figures for section 80 or average income purposes may, of course, be used in an original assessment for a later year whether the fault in the

earlier year was due to a mistake either of law or of fact.

COMMISSIONER OF TAXATION