Brooklyn & Richmond Ferry Co. v. Commissioner, 9 T.C. 896 (1947)

A corporation undergoing reorganization under Section 77B of the National Bankruptcy Act, while continuing to operate its business under court supervision, is considered to be 'carrying on or doing business' and is thus liable for capital stock and excess profits taxes.

Summary

Brooklyn & Richmond Ferry Co. contested deficiencies in excess profits taxes, arguing it wasn't 'carrying on or doing business' due to reorganization under Section 77B of the National Bankruptcy Act. The Tax Court held that the corporation was indeed 'carrying on or doing business' because it continued to operate under court supervision. The court also upheld the Commissioner's use of the originally declared capital stock value for calculating the excess profits tax, rejecting the taxpayer's attempt to amend it retroactively. The key factor was the company's continued operation, differentiating it from cases where trustees or receivers fully controlled the business.

Facts

- Brooklyn & Richmond Ferry Co. was undergoing reorganization under Section 77B of the National Bankruptcy Act.
- The company continued to operate its business during the reorganization, subject to court orders and directions.
- The corporation filed capital stock tax returns, declaring a specific value for its capital stock.
- Later, the company attempted to amend these returns to declare a different, lower value for its capital stock.
- The Commissioner assessed deficiencies in excess profits taxes based on the original capital stock valuation.

Procedural History

- The Commissioner determined deficiencies in the petitioner's excess profits tax for the taxable years in question.
- The petitioner challenged the deficiencies in the Tax Court.

Issue(s)

1. Whether the petitioner was "carrying on or doing business" during the taxable years while undergoing reorganization under Section 77B, thus subjecting it to capital stock and excess profits taxes.
2. Whether the Commissioner erred in computing the excess profits taxes by using the value of the petitioner's capital stock as declared in its original, timely filed capital stock tax return, disregarding the declaration of capital stock value contained in the so-called amended capital stock tax return.

Holding

1. Yes, because the petitioner, as a debtor in possession, continued the “carrying on” of its corporate business as a principal in its own right throughout the taxable years, subject to the restrictions imposed by the court.
2. No, because the legislative mandate in section 601 (f) (2) states that the value of capital stock upon which both the capital stock tax and the excess profits tax are computed “shall be the value, as declared by the corporation in its return for such declaration year (which declaration of value cannot be amended).”

Court’s Reasoning

The court reasoned that despite the reorganization proceedings, the company maintained control and operation of its business. The court distinguished this situation from cases where trustees or receivers fully managed the business. The court cited *United States Shipyards, Inc. v. Hoey*, 131 Fed. (2d) 525, as persuasive precedent. The order from the bankruptcy court directed “That the Debtor Corporation continue in possession and operation of its property and business under and pursuant to the orders and directions of this Court.” The court emphasized the lack of a designated trustee, highlighting that the corporation filed bonds and conducted its business as a principal. As to the second issue, the court relied on the clear language of the statute stating that the declared value of capital stock “cannot be amended”. The court found the original return controlling, and any office rulings to the contrary could not override the statutory mandate. The court stated,

