21 T.C. 308 (1953)

The Tax Court addressed the application of the "push-back rule" under Section 722(b)(4) of the Internal Revenue Code, determining whether a corporation that commenced business during the base period could calculate a constructive average base period net income for excess profits tax relief.

Summary

Yeast Products, Inc. (Petitioner) sought excess profits tax relief under Section 722 of the Internal Revenue Code, claiming its business commenced during the base period, making its actual base period net income an inadequate measure of normal earnings. The Tax Court agreed, finding the petitioner's business, which began in 1938, did not reach its full earning potential by the end of 1939. The court applied the "push-back rule," essentially assuming the business started two years earlier. It calculated a constructive average base period net income for 1943 and 1944, granting relief by allowing for the unused excess profits credit adjustments.

Facts

Yeast Products, Inc. was incorporated in 1938 and began business in May 1938, collecting and processing waste yeast from breweries to produce various yeast products. The company filed for excess profits tax relief for 1943 and 1944. The company's operations involved a period of experimentation and development of its products and markets in 1938 and 1939, with limited sales. Significant progress in production techniques, particularly in concentrate production, and development of market demand occurred near the end of 1939. The company's sales increased substantially in 1939 compared to 1938. The company had substantial operating losses in 1938 and 1939.

Procedural History

The petitioner filed timely applications for excess profits tax relief for 1943 and 1944 under Section 722. The Commissioner of Internal Revenue disallowed the claims. The Tax Court initially issued an opinion but reconsidered and vacated it on October 9, 1953. After consideration, the Tax Court granted the relief.

Issue(s)

1. Whether the petitioner is entitled to excess profits tax relief under Section 722 for 1943 and 1944.

2. Whether the petitioner is entitled to use a constructive average base period net income under Section 722(b)(4), and if so, the amount.

3. Whether the petitioner is entitled to unused excess profits credit adjustments for carry-overs and carry-backs.

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Holding

1. Yes, because the petitioner met the qualifying factors under Section 722, establishing that its base period net income was an inadequate standard of normal earnings, and the tax was excessive and discriminatory.

2. Yes, because the petitioner's business commenced during the base period, and its earning level did not reflect normal operations. The court determined a constructive average base period net income of $36,760.

3. Yes, because the court applied the "variable credit rule" to compute the unused excess profits credit adjustment.

Court's Reasoning

The court applied Section 722(b)(4), the

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