***29 T.C. 972 (1958)***

The court determined that the taxpayer was entitled to excess profits tax relief due to labor difficulties that interrupted and diminished its normal production during the base period, thus entitling it to a constructive average base period net income calculation under Section 722 of the Internal Revenue Code of 1939.

**Summary**

The case involves Jerry Anderson, Inc. (formerly Faries Manufacturing Company), seeking relief under Section 722 of the Internal Revenue Code of 1939 regarding its excess profits tax. The company argued that labor difficulties, including a strike, disrupted its normal production during the base period, leading to an inadequate average base period net income. The Tax Court agreed, determining that the company was entitled to a constructive average base period net income of $230,000, taking into account the adverse impact of the labor issues on its business operations.

**Facts**

Faries Manufacturing Company, later renamed Jerry Anderson, Inc., experienced labor difficulties, including a strike from October 16 to December 3, 1937, during its base period (which included fiscal years 1936-1940). The strike and subsequent labor troubles significantly reduced the company's production, output, and operation. Net sales and income were substantially lower during the base period due to these labor issues. The company filed for relief under Section 722, claiming its normal earnings were misrepresented by the average base period income due to these unusual circumstances.

**Procedural History**

Faries Manufacturing Company (later Jerry Anderson, Inc.) filed applications for excess profits tax relief. The Commissioner granted partial relief for the fiscal year ended June 30, 1942, but denied relief for subsequent years. The Commissioner determined a constructive average base period net income of $180,600 for the fiscal year 1942. Jerry Anderson, Inc., then petitioned the United States Tax Court for a redetermination of its excess profits tax liability, arguing for a higher constructive average base period net income. The Tax Court considered the evidence and, after hearing, decided that the company was entitled to relief under Section 722.

**Issue(s)**

1. Whether Jerry Anderson, Inc. had the legal authority to file a petition with the Tax Court.

2. Whether the taxpayer was entitled to relief under Section 722 of the Internal Revenue Code of 1939, given the labor difficulties experienced during the base period.

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3. If relief was granted, what would be a fair and just amount representing normal earnings to be used as constructive average base period net income?

**Holding**

1. Yes, because the court found the petition filed in the name of Jerry Anderson, Inc., was properly filed despite the company's prior change of name and subsequent dissolution, as the action was commenced within the statutory two-year period post-dissolution as allowed by the Illinois statutes.

2. Yes, because the Commissioner conceded the taxpayer qualified for relief under Section 722 (b)(1), and the court agreed that labor difficulties warranted the application of Section 722 relief.

3. The court determined that a fair and just amount for constructive average base period net income was $230,000.

**Court's Reasoning**

The court first addressed the jurisdictional issue, determining that Jerry Anderson, Inc., could properly file the petition despite its name change and subsequent dissolution because the action was commenced within the two-year period allowed by Illinois law. The court noted the parties' agreement that the taxpayer met the requirements for relief under Section 722 of the Internal Revenue Code of 1939, as the unusual labor difficulties disrupted the normal production during the base period. The court then assessed the evidence to determine a

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