

Barclay and Co., Inc. Vs. Edwards

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Court : US Supreme Court

Decided On : Nov-24-1924

Appeal No. : 267 U.S. 442

Appellant : Barclay and Co., Inc.

Respondent : Edwards

Judgement :

Barclay & Co., Inc. v. Edwards - 267 U.S. 442 (1924)

U.S. Supreme Court Barclay & Co., Inc. v. Edwards, 267 U.S. 442 (1924)

Barclay & Company, Incorporated v. Edwards

No. 547

Argued November 24, 1924

Decided Dec. 15, 1924

267 U.S. 442

ERROR TO THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

1. The taxation by Congress of the income of domestic corporations derived from sale abroad of goods bought or made by them in this country is not a tax on exports, nor does it violate due process of law because a like tax is not imposed on the income similarly derived by foreign corporations. *National Paper Co. v. Bowers*, [266 U. S. 373](#) . P. [267 U. S. 447](#) .
2. The exemption of foreign corporations is equally valid whether complete or only partial. Revenue Acts of 191, and 1921 considered. P. [267 U. S. 448](#) .
3. The power of Congress in laying taxes is very wide, and the Fifth Amendment does not apply to discrimination between taxpayers based on a classification that is not arbitrary and capricious, but reasonable. P. [267 U. S. 450](#) .

Error to a judgment of the district court dismissing an action to recover money paid under protest as a federal income tax. The case here (547) was first decided on December 15, 1924, upon authority of *National Paper & Type Co. v. Bowers*, No. 320, decided on the same day and reported in [266 U. S. 266](#) U.S. 373. Due to a motion for rehearing, the opinion was withheld from publication. It is now printed, following the opinion overruling the motion.

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MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

On December 15, 1924, Mr. Justice McKenna delivered the opinion of this Court in the case of *National Paper & Type Co. v. Frank K. Bowers, Collector*, [266 U. S. 373](#) . That case was heard at the same time with this. They were suits to recover taxes which it was claimed had been illegally collected, for the reason that the statutes under which they had been exacted deprived the taxpayers of their property without due process of law. The statute attacked in No. 320 was the income tax of 1921; that in this case was the income tax of 1918.

The plaintiffs in the two cases were corporations of this country engaged in the business of the purchase and manufacture of personal property within the United States and the sale thereof without the United

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States. Their objection to the taxes both of 1921 and 1918 was that they were subjected to a tax on all of their net income, including profits made by them in the sale of their goods abroad, while foreign corporations engaged in the same business of buying and manufacturing goods in this country and selling them abroad were not taxed upon their whole net income, but were exempted from a tax on all or a part of it.

Another objection to the tax was that the tax in both instances was a tax on exports. That was disposed of by this Court in opinion No. 320 by reference to the case of *Peck & Co. v. Lowe*, [247 U. S. 165](#) .

The court further pointed out that, in respect to what was called discrimination in favor of foreign corporations, Congress might adopt a policy calculated to serve the best interests of this country in dealing with citizens or subjects of another country, and might properly say as to earnings from business begun in one country and ending in another that the net income of foreign subjects or citizens should be left to the taxation of their own government, or to that having jurisdiction of the sales; that the question of taxing foreign corporations on such income might properly be affected by the consideration that domestic corporations had the power of the United States to protect their interests and redress their wrongs in whatever part of the world their business might take them, while the foreign corporations must look to the country of their origin for protection against injury or redress of losses occurring in countries other than the United States. Having disposed of No. 320 for these reasons in favor of the government by affirming the judgment below, a short opinion was delivered by Mr. Justice McKenna in No. 547, in which he said that the charge of invalidity in that case was on the same grounds as those set up in No. 320, and that, upon authority of the decision in No. 320, the judgment should be affirmed.

A petition for rehearing seeks now to differentiate the present case from that considered and decided in No. 320.

The Revenue Act of 1918, 40 Stat. 1076, 230, provided for a tax of 12 percent on the net income in excess of certain credits upon domestic corporations, but contained this provision in case of foreign corporations, under 233(b):

"In the case of a foreign corporation, gross income includes only the gross income from sources within the United States, including the interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, dividends from resident corporations, and including all amounts received (although paid under a contract for the sale of goods or otherwise) representing profits on the manufacture and disposition of goods within the United States."

40 Stat. 1077.

The Revenue Act of 1921 taxed the net income (meaning the gross income, less certain deductions) of domestic corporations. 42 Stat. 252, 254. The same section, No. 232, provided that: "In the case of a foreign corporation . . . , the computation shall also be made in the manner provided in 217."

The relevant parts of 217 and 233 were as follows:

"Sec. 217. (a) That, in the case of a nonresident alien individual or of a citizen entitled to the benefits of 262. . . ."

"(e) Items of gross income, expenses, losses and deductions, other than those specified in subdivisions (a) and (c), shall be allocated or apportioned to sources within or without the United States under rules and regulations prescribed by the Commissioner with the approval of the Secretary. . . . Gains, profits and income from (1) transportation or other services rendered partly within and partly without the United States, or (2) from the sale of personal property produced (in whole or in part) by the taxpayer within and sold without the United States, or produced (in whole or in part) by the taxpayer

without and sold within the United States, shall be treated as derived partly from sources within the partly from sources without the United States. Gains, profits and income derived from the purchase of personal property within and its sale without the United States or from the purchase of personal property without and its sale within the United States shall be treated as derived entirely from the country in which sold. . . ."

42 Stat. 243, 244, 245.

"Sec. 233. . . ."

"(b) In the case of a foreign corporation, gross income means only gross income from sources within the United States, determined (except in the case of insurance companies subject to the tax imposed by 243 or 246) in the manner provided in 217."

42 Stat. 254.

Counsel contend in their petition for rehearing that the Revenue Act of 1921 provided with respect to the manufacture within the United States by foreign corporations of goods which they sold in foreign countries that the income derived should be allocated to sources within the United States and imposed a tax on that part of such income allocated to manufacture, whereas the Revenue Act of 1918, under which this case arose, exempted from tax all income of foreign corporations derived from the manufacture or purchase of goods within the United States which they sold or disposed of in foreign countries. But we do not think that that distinction makes any difference in the application of the principle upon which the judgment in No. 320 was based. Whatever the difference between the acts, whether the foreign corporations were wholly exempted or only partially exempted, they constituted a class all by themselves, and could be properly so treated by Congress because of the considerations suggested in the opinion in No. 320. The attack made upon the law of 1921 for discrimination against American corporations in favor of foreign corporations was quite as

vigorous in the briefs of counsel for the plaintiffs in error in No. 320 as in No. 547, and rested on the same argument, and, while the exemption of the net income of foreign corporations from manufacture in the United States did not exist in the Act of 1921 as in the Act of 1918, the question of discrimination in the two cases only differed in extent and did not call for any real distinction in deciding them. The question where an income is earned is always a matter of doubt when the business is begun in one country and ended in another. As pointed out by the plaintiff in error in his brief in No. 320, much of the business in such foreign trade, in addition to the manufacture, is done in the United States in storehouses and docks and in other ways after the manufacture, but whatever of that might be equitably allocated as done in the United States is exempted from taxation of foreign corporations by the Act of 1921. Thus, exactly the same question presents itself as in No. 320. It is only a difference in degree.

The power of Congress in levying taxes is very wide, and where a classification is made of taxpayers that is reasonable, and not merely arbitrary and capricious, the Fifth Amendment cannot apply. As this Court said, speaking of the taxing power of Congress in *Evans v. Gore*, [253 U. S. 245](#) , [253 U. S. 256](#) :

"It may be applied to every object within its range 'in such measure as Congress may determine,' enables that body 'to select one calling and omit another, to tax one class of property and to forbear to tax another,' and may be applied in different ways to different objects so long as there is 'geographical uniformity' in the duties, imposts and excises imposed. [McCulloch v. Maryland](#), 4 Wheat. 316, [17 U. S. 431](#) ; [Pacific Insurance Co. v. Soule](#), 7 Wall. 433, [74 U. S. 443](#) ; [Austin v. Aldermen](#), 7 Wall. 694, [74 U. S. 699](#) ; [Veazie Bank v. Fenno](#), 8 Wall. 533, [75 U. S. 541](#) , [75 U. S. 548](#) ; [Knowlton v. Moore](#), [178 U. S. 41](#) , [178 U. S. 92](#) , [178 U. S. 106](#) ; [Treat v. White](#), [181 U. S. 264](#) , [181 U. S. 268](#)269 ; [McCray v. United](#)

States, [195 U. S. 27](#) , [195 U. S. 61](#) ; *Flint v. Stone Tracy Co.*, [220 U. S. 107](#) , [220 U. S. 158](#) ; *Billings v. United States*, [232 U. S. 261](#) , [232 U. S. 282](#) ; *Brushaber v. Union Pacific R. Co.*, [240 U. S. 1](#) , [240 U. S. 24](#) -26."

The power of Congress to make a difference between the tax on foreign corporations and that of domestic corporations is not measured by the same rule as that for determining whether taxes imposed by one state upon the profits of a manufacturing corporation are an imposition of tax upon a subject matter not within the jurisdiction of the taxing state. Cases on that subject like *Underwood Typewriter Co. v. Chamberlain*, [254 U. S. 113](#) , have no application to the question here. Considerations of policy toward foreign countries may very well justify an exemption of the foreign corporations from taxes that might legitimately be imposed on them, but which Congress does not think it wise to exact. Such considerations justify a different classification of foreign corporations doing business in the United States either of manufacture or purchase, and making profit out of that business in other countries from that which would apply to its own corporations. The injustice thought to be worked upon domestic corporations engaged in sales abroad by a different classification for purposes of taxation of foreign corporations similarly engaged is an argument not for the constitutional invalidity of the law before a court, but for its repeal before Congress.

The opinion of Mr. Justice McKenna applying the same principles in this case to those applied in No. 320 was entirely justified, and the petition for rehearing is *Overruled*.

The original opinion is as follows:

MR. JUSTICE Mc KENNA delivered the opinion of the Court.

The plaintiff in error is a domestic corporation engaged in business as a manufacturer. It is subjected to

an income tax from which foreign corporations are exempted. It charges invalidity on the same grounds as those set up in *National Paper & Type Co. v. Bowers*, [266 U. S. 373](#) , and brought suit to recover the amount of the tax. Its complaint was dismissed on motion of the district attorney upon the authority of *National Paper & Type Co. v. Edwards, Collector of Internal Revenue*, 292 F. 633, and judgment went on the merits.

The cause was submitted with No. 320, just decided. It presents the same contentions, based upon the same grounds. And, upon the authority of our decision in that case, the judgment below is

Affirmed.

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