

MICHAEL A. O'CONNILL
(INSPECTOR OF TAXES)

-v-

WATERFORD GLASS LIMITED

Judgment delivered by Mr. Justice McWilliam on the 14th April, 1983.

This Appeal is brought by the Inspector of Taxes against a decision of the Circuit Court Judge for the County of Waterford who held that a building, described in a case stated by him as "Stage 5", was an industrial building or structure within the meaning of Chapter 11, Part IV, of the Income Tax Act, 1967. I am not concerned with the rate of tax or the amount which would be payable if the Inspector is right in his contentions.

In or about the year 1964, Waterford Glass Limited (hereinafter called the Company) acquired a new site containing 42 acres to accommodate its expanding business at its crystal glass factory and plans were drawn up for the construction of a new factory to be completed in stages. The building with regard to which these proceedings are concerned was Stage 5,

hence the adoption of this name in the case stated.

Stage 5 was constructed well apart from the main factory premises and there is a security barrier between Stage 5 and the other buildings. It houses a computer, showrooms displaying goods manufactured by the Company, and general administration facilities. The computer is used to control the daily, weekly and monthly production programmes from the first operation on the raw materials to the despatch of the finished articles to customers. Ideally, the computer should have been located in the middle of the factory but could not be sited there owing to noise, dirt, vibration and fumes. It is also used to record and monitor output, to identify faults and for various other aspects of the manufacture of the products of the factory. It is also used for the computation of wages, the recording of sales and to facilitate the general office work of a very substantial business. In addition, it is used to provide similar services for a subsidiary company manufacturing crystal glass at Durgarvan. The showrooms are not used for any sales but are

well apart

houses computer showrooms

see else

monitors output

used only to display the finished products to the very large numbers of visitors who are shown over the factory each year.

Section 254 of the Act of 1967 provides as follows:-

"(1) Subject to the provisions of this Act, where a person incurs capital expenditure on the construction of a building or structure which is to be an industrial building or structure occupied for the purposes of a trade carried on by him, there shall be made to him, for the year of assessment in the basis period for which the expenditure is incurred, an allowance (in this Chapter referred to as an industrial building allowance).

"(2) Notwithstanding any other provision of this section, industrial building allowance shall be made in respect of any expenditure on a building or structure if the building or structure, when it comes to be used, is not an industrial building or structure"

Section 255 of the 1967 Act, as amended by section 64 of the Finance Act, 1969, provides as follows:-

"(1) In this Chapter, "Industrial building or structure" means a building or structure in use -

(a) for the purposes of a trade carried on in a mill,

"factory or other similar premises, or

and, in particular, the said expression includes any building or structure provided by a person carrying on such a trade or undertaking for the recreation or welfare of workers employed in that trade or undertaking and in use for that purpose."

"(4)(a) Notwithstanding anything in subsection (1) or (3) but subject to subsection (5), in this Chapter "industrial building or structure" does not include any building or structure in use as, or as part of, a dwelling-house, retail showroom or office or for any purpose ancillary to the purposes of a dwelling-house, retail shop, showroom or office."

"(5) Where part of the whole of a building or structure is, and part thereof is not, an industrial building or structure and the capital expenditure which has been incurred on the construction of the second-mentioned part is not more than one tenth of the total capital expenditure which has been incurred on the construction of the whole building or structure, the whole building or structure and every part thereof shall be treated as an industrial building or structure."

"(6) Any reference in this Chapter to a building or

"structure shall be construed as including a reference to a part of a building or structure except where the reference is comprised in a reference to the whole of a building or structure."

I have not been asked to consider the application of subsections (5) and (6) to the facts of this case but it is relevant to notice that they expressly provide that, for the purposes of Chapter 11, part of the same building or structure may be treated as an industrial building or structure although part of it may not.

On behalf of the Inspector it is argued that Stage 5 is in the same position as an office, that the computer is really an advanced form of clerical work normally done in an office, that subsection (4) expressly excludes an office or a showroom and that the finding of the Circuit Judge could only be justified if the computer actually activated the machinery or some of it.

Is it an office

advanced form of clerical work

On behalf of the Company it is urged that the complex must be looked at as a whole, that Stage 5 is an essential part of the factory and an essential part of the manufacture of the

complex must be looked at as a whole

glass and that, under modern conditions, it is an essential piece of industrial equipment and, although the building is separate, it cannot be considered merely as an office or showroom.

I was referred to a number of cases, but most of them are not of much assistance in the circumstances of the present case.

The cases to which I have been referred are:-

Saxone Lilley & Skinner Holdings Ltd. -v- Commissioners of Inland Revenue, 44 Tax Cases 122

Sinclair -v- Cadbury Brothers, 18 Tax cases 157.

Commissioners of Inland Revenue -v- Lambhill Ironworks L
31 Tax Cases 193.

O'Grady -v- Bullcroft Main Collieries, 17 Tax Cases 93.

Samuel Jones & Co. (Devondale) Ltd. -v- Commissioners of Inland Revenue, 32 Tax Cases 513

Abbott Laboratories Ltd. -v- Carmody, 44 Tax Cases 569.

Hodgins -v- Plunder & Pollak (Ireland) Ltd. (1957) I.R. 5

The case of C.I.R. -v- Lambhill Ironworks Ltd., decided by the Scottish Court of Session in 1950, has most relevance to the circumstances of the present case. There, on the interpretation of a similar section of the English Income Tax Act of 1945, the three judges held unanimously that a drawing office for the preparation of drawings from which articles were manufactured

in a factory was an industrial building or structure within meaning of that Act, although there was no physical attachment between the building in which the drawing office was housed the main workshops of the company, and although a small proportion of the work done in the drawing office was done for purposes ancillary to the purposes of the general office of the company. It appears from observations of the Lord President at page 399 and of Lord Keith at page 400 of the report that they considered that the character of a building or structure should be determined by reference to its predominant purposes or use. In some cases this may be difficult to determine, but the facts set out at paragraph 4, clause (x), of the present case state and make it clear that the computer is a most important part of the equipment for the manufacture of the glass and that its use for the purposes of the general office is only a minor part of its total use.

This being so, I agree with the view taken by the Circuit Court Judge that Stage 5 is a vital nerve centre for the whole industrial complex and forms part of it but only in so far as

he was referring to the premises housing the computer or used for the purpose of collating or distributing the information processed and produced by it. I do not agree with his finding that no part of the building is an office or a showroom. There are no facts in the case stated to indicate whether there are or are not what I might describe as general offices in Stage 5 except that it houses general administration facilities, but I cannot ignore the fact, stated at clause (iv) of paragraph 4, that Stage 5 houses showrooms. Although no sales are made in the showrooms, it seems to me that it would be necessary to refuse to accept plain language to suggest that the showroom does not come within the meaning of showroom mentioned at clause (a) of subsection (4) of section 255. However, no arguments having been advanced with regard to the application of subsections (5) and (6) of this section, I do not propose to consider this aspect further.

In answer to the question asked in the case stated, I am of opinion that the Circuit Court Judge was correct in holding that the main part of the building described at Stage 5 is an

industrial building or structure within the meaning of the
statute but I would except such portions as consist of showro
or general administration offices.

Herbert R. McWilliam

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