The Burger Court Opinion Writing Database

Commissioner v. National Alfalfa Dehydrating & Milling Co.

417 U.S. 134 (1974)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 21, 1974

Re: 73-9 - CIR v. National Alfalfa Dehydrating & Milling Co.

MEMORANDUM TO THE CONFERENCE:

I have now read the Tax Court opinion in this case which, I confess, I had not previously done. I had relied on the CA opinion which takes the "practical" approach and produces a plausible result. The Tax Court opinion, however, makes out a strong case for a result that will be easier to administer and will likely produce uniformity and probably fewer appeals.

I therefore now vote to reverse.

Regards,

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 22, 1974

Re: 73-9 - CIR v. National Alfalfa Dehydrating & Milling

Dear Harry:

Please join me.

Regards,

Mr. Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 8, 1974

Dear Harry:

Please join me in your opinion in 73-9, COMMISSIONER OF INTERNAL REVENUE v. NATIONAL ALFALFA DEHYDRATING AND MILLING CO.

William O. Douglas

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 7, 1974

RE: No. 73-9 C.I.R. v. National Alfalfa Dehydrating, etc.

Dear Harry:

I agree.

Sincerely,

Bill

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 8, 1974

Re: No. 73-9, Commissioner v. Nat. Alfalfa Dehydrating

Dear Harry,

I should appreciate your adding the following at the foot of your opinion in this case:

"Mr. Justice Stewart concurs in the judgment and in Parts I, II, and III of the Court's opinion."

Sincerely yours,

P.S.

Mr. Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 8, 1974

Re: No. 73-9 - CIR v. National Alfalfa Dehydrating & Milling Co.

Dear Harry:

Please join me.

Sincerely,

Mr. Justice Blackmun

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 15, 1974

Re: No. 73-9 -- Commissioner of Internal Revenue v. National Alfalfa Dehydrating and Milling Company

Dear Harry:

Please join me.

Sincerely,

T.M.

Mr. Justice Blackmun

cc: The Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

From: Blackmun, J.

Circulated: 5/7/74

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 73-9

Commissioner of Internal Revenue, Petitioner, *v.* National Alfalfa Dehydrating and Milling Company. } On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

[May —, 1974]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

A corporate taxpayer in 1957 issued $50 face value 5% sinking fund debentures in exchange for its outstanding $50 par 5% cumulative preferred shares. At the time, the preferred apparently had a fair market value of less than $50 per share. This case presents the question whether, under § 163 (a) of the Internal Revenue Code of 1954, 26 U. S. C. § 163 (a),[1] the taxpayer is entitled to an income tax deduction for amortizable debt discount claimed to be the difference between the face amount of the debentures and the preferred's value at the time of the exchange.

The facts are stipulated. The respondent, National Alfalfa Dehydrating and Milling Company (hereinafter called "NAD" or the "taxpayer"), is a Delaware corporation organized in May 1946. It has its principal office at Shawnee Mission, Kansas. It is engaged in the business of dehydrating and milling alfalfa.

[1] "§ 163. Interest.

"(a) General rule.

"There shall be allowed as a deduction all interest paid or accrued within the taxable year on indebtedness."

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

STYLISTIC CHANGES

3rd DRAFT

From: Blackmun, J.

Circulated: _____

Recirculated: 5/15/74

SUPREME COURT OF THE UNITED STATES

No. 73-9

Commissioner of Internal Revenue, Petitioner, *v.* National Alfalfa Dehydrating and Milling Company. } On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

[May —, 1974]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

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I

The facts are stipulated. The respondent, National Alfalfa Dehydrating and Milling Company (hereinafter called "NAD" or the "taxpayer"), is a Delaware corporation organized in May 1946. It has its principal office at Shawnee Mission, Kansas. It is engaged in the business of dehydrating and milling alfalfa.

[1] "§ 163. Interest.

"(a) General rule.

"There shall be allowed as a deduction all interest paid or accrued within the taxable year on indebtedness."

p. 20

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

4th DRAFT

From: Blackmun, J.

Circulated:

Recirculated: 5/21/74

SUPREME COURT OF THE UNITED STATES

No. 73-9

Commissioner of Internal Revenue, Petitioner, *v.* National Alfalfa Dehydrating and Milling Company. | On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

[May —, 1974]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

A corporate taxpayer in 1957 issued $50 face value 5% sinking fund debentures in exchange for its outstanding $50 par 5% cumulative preferred shares. At the time, the preferred apparently had a fair market value of less than $50 per share. This case presents the question whether, under § 163 (a) of the Internal Revenue Code of 1954, 26 U. S. C. § 163 (a),[1] the taxpayer is entitled to an income tax deduction for amortizable debt discount claimed to be the difference between the face amount of the debentures and the preferred's value at the time of the exchange.

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[1] "§ 163. Interest.

"(a) General rule.

"There shall be allowed as a deduction all interest paid or accrued within the taxable year on indebtedness."

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 28, 1974

MEMORANDUM TO THE CONFERENCE

Re: No. 73-9 - Commissioner of Internal Revenue v. National Alfalfa Dehydrating & Milling Company

There are two holds for this case.

No. 73-73 - AMF, Inc. v. United States, comes from a unanimous opinion of the Court of Claims, 476 F. 2d 1351 (1973). This is a refund suit for income taxes paid for the calendar years 1961-1963 inclusive. The United States moved for judgment on the pleadings and the Court of Claims granted this motion.

In 1961 the petitioner issued 4 1/4% debentures in an aggregate face amount of $39,911,100. Each $100 debenture was convertible into 5/6 share of the common stock of the petitioner. There was a subsequent two-for-one common stock split, and the conversion rate was adjusted accordingly.

The taxpayer alleged that as of the date of issuance, the value of the conversion right was $3,591,999 and the value of the debt was $36,319,101. The taxpayer asserts that the value of the conversion right reflects a debt discount amortizable for the three taxable years.

It seems to me that what this comes down to is whether the conversion right was a cost of obtaining capital. The taxpayer likens the situation to the case of a bond issued with a detachable warrant. The Court of Claims thought the analogy was unsound. This was so, it said, because in the case of a debenture issued with a conversion feature, the holder may either convert the debenture into stock or redeem the debenture at the end of the prescribed period, but cannot do both. The issuer will not incur cost over and above the face value of the debenture plus the stated interest. In contrast,

where a bond is issued with a warrant, the holder may exercise either or both of his options. Thus, the issuer is faced with the possibility of incurring economic detriment over and above the stated interest.

I think the Court of Claims is correct, and I shall vote to deny certiorari. We held the case, I believe, so that our action would not telegraph the then tentative result in National Alfalfa.

No. 72-1425 - St. Louis-San Francisco R. Co. v. United States

This case also comes from the Court of Claims. There was a dissent, in part, by two judges, but the dissent is not relevant on the issue with which we are concerned.

This is a refund suit for income taxes for the calendar years 1953-1961. Certain aspects of it were decided some time ago on cross-motions for partial summary judgment; the ruling was against the railroad's motion. 444 F.2d 1102 (1971). We denied certiorari. 404 U.S. 1017 (1972). What was decided there is that the railroad, which in 1947 exchanged new stock, new bonds and cash for outstanding loans, bonds and interest, and which in 1956 redeemed 5% preferred for 5% debentures plus cash plus common, was entitled to no deduction for discount claimed to arise from the exchanges. The rationale, 444 F.2d, at 1104, 1106, was that the bonds issued in 1947 had a maturity value less than the face of the old bonds, and that in 1956 the railroad received a $100 par share of preferred for each $100 debenture given up, so that there was an exchange of equals.

The second and present chapter of the litigation went off on cross-motions for summary judgment. The Court of Claims observed that this required it to decide two additional issues not raised in the earlier decision, and one issue which the parties agreed was governed by the first decision.

The Court of Claims in the later opinion ruled that the original issue discount question was determined on the first adjudication. I agree. The only difference is that other tax years are

involved. The new claim is for unamortized debt discount and expense carried over from the old debt eliminated in the 1947 reorganization. Again, the face amount of the new bonds, plus the preferred and common, was less than the amount the railroad had received when it issued the old bonds. The SG claims that the railroad was not obligated to pay out more than it received on the old bonds. Thus, it is said, there is no basis for claiming that a debt discount existed as to the old bonds and, further, that it could be carried over.

I think the primary issue was decided on the first go-around as to which certiorari was denied. In any event, it is decided, I think, by National Alfalfa. I, therefore, would deny certiorari.

H. A. B.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 8, 1974

No. 73-9 Commissioner v. National Alfalfa

Dear Harry:

Please join me.

Sincerely,

Mr. Justice Blackmun

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 20, 1974

Re: No. 73-9 - CIR v. National Alfalfa

Dear Harry:

Please join me in your opinion for the Court in this case.

Sincerely,

WHR

Mr. Justice Blackmun

Copies to the Conference