

Ottawa, Tuesday, August 4, 1992

**Appeal No. AP-91-108**

IN THE MATTER OF an appeal heard on July 7, 1992,  
under section 81.19 of the *Excise Tax Act*, R.S.C., 1985,  
c. E-15, as amended;

AND IN THE MATTER OF a decision of the Minister of  
National Revenue dated February 12, 1991, with respect to  
a notice of objection served under section 81.15 of the  
*Excise Tax Act*.

**BETWEEN**

**C.C. COLOR CORPORATION OF CANADA LTD.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Robert C. Coates, Q.C.  
Robert C. Coates, Q.C.  
Presiding Member

Charles A. Gracey  
Charles A. Gracey  
Member

Desmond Hallissey  
Desmond Hallissey  
Member

Robert J. Martin  
Robert J. Martin  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-91-108**

**C.C. COLOR CORPORATION OF CANADA LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The appellant performs photofinishing services on exposed films supplied by customers. In addition, it produces posters, graphic panels, large colour prints and colour transparencies. The representative of the appellant noted that his client was not disputing that the company had mistakenly applied the tax law. He noted that the appellant was looking for some type of fairness in the application of the Department of National Revenue's policy on the use of determined values.*

**HELD:** *The appeal is dismissed. The Tribunal's jurisdiction does not allow it to grant equitable relief. It cannot refuse to apply the law, even on grounds of equity.*

*Place of Hearing: Ottawa, Ontario*

*Date of Hearing: July 7, 1992*

*Date of Decision: August 4, 1992*

*Tribunal Members: Robert C. Coates, Q.C., Presiding Member  
Charles A. Gracey, Member  
Desmond Hallissey, Member*

*Counsel for the Tribunal: David M. Attwater*

*Clerk of the Tribunal: Dyna Côté*

*Appearances: Paul Grossi, for the appellant  
Meg Kinnear and Jocelyn Danis, for the respondent*

**Appeal No. AP-91-108**

**C.C COLOR CORPORATION OF CANADA LTD.**

**Appellant**

**and**

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TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member  
CHARLES A. GRACEY, Member  
DESMOND HALLISSEY, Member

**REASONS FOR DECISION**

The appellant performs photofinishing services on exposed films supplied by customers. In addition, it produces posters, graphic panels, large colour prints and colour transparencies. As stated by the respondent in his brief and undisputed by the appellant, the majority of the appellant's clients are advertising agencies, professional film and photo service agencies and professional photographers. The number of sales to amateur users is minimal.

A first audit of the appellant was conducted in 1981, which resulted in no assessment. All sales by the appellant, including photofinishing sales to amateur users, were charged federal sales tax on the sale price. The auditor advised the appellant that it could use determined values to calculate tax on photofinishing sales to amateur users. This was confirmed in a letter dated August 14, 1981, in which the auditor explained that determined values could be used for "photofinishing sales only to amateur users."

A second audit was conducted covering the period June 30, 1981, to April 30, 1990. It was determined that the appellant had taken a 42-percent deduction on sales of photofinishing to other than amateur users. Such deductions were disallowed as they did not meet the conditions for the use of determined values as published in Ruling Cards 3700/82 and 3700/82-1.

At the hearing, the representative of the appellant noted that his client was not disputing that the company had mistakenly applied the tax law. He noted that the appellant was looking for some type of fairness in the application of the Department of National Revenue's policy on the use of determined values.

Though the Tribunal appreciates the appellant's difficulties, it cannot provide relief. As noted in several decisions of the Tribunal, its jurisdiction does not allow it to grant equitable relief. It cannot refuse to apply the law, even on grounds of equity. Accordingly, the appeal is dismissed.

Robert C. Coates, Q.C.  
Robert C. Coates, Q.C.  
Presiding Member

Charles A. Gracey  
Charles A. Gracey  
Member

Desmond Hallissey  
Desmond Hallissey  
Member