

F. H. E. OIL CO. *v.* HELVERING, COMMISSIONER
OF INTERNAL REVENUE.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
FIFTH CIRCUIT.

No. 26. Argued October 9, 10, 1939.—Decided November 6, 1939.

A regulation under the Revenue Act of 1932, requiring that development as well as operative expenses be deducted from gross income from oil wells, in ascertaining "net income from the property" under § 114 (b) (3), *sustained*, upon the authority of *Helvering v. Wilshire Oil Co.*, *ante*, p. 90.

102 F. 2d 596, affirmed.

CERTIORARI, 307 U. S. 618, to review a judgment of the court below which reversed a decision of the Board of Tax Appeals (36 B. T. A. 1327), reducing a deficiency assessment.

Mr. Harry C. Weeks for petitioner.

Mr. Arnold Raum, with whom *Solicitor General Jackson*, *Assistant Attorney General Clark*, and *Messrs. Sewall Key and Ellis N. Slack* were on the brief, for respondent.

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This case presents the same issue as is involved in *Helvering v. Wilshire Oil Co.*, *ante*, p. 90, except that it arises under the Revenue Act of 1932 (47 Stat. 169). In computing its taxable net income under that Act, petitioner deducted certain development expenditures as it had done since its organization in 1925. But it refused to take these same deductions in computing net income for the purpose of applying the 50 per cent limitation on the depletion allowance, as provided in § 114 (b) (3) of the

1932 Act.¹ That section, so far as material here, was the same as § 114 (b) (3) of the 1928 Act (45 Stat. 791). And Treasury Regulations 77, Art. 221 (h) promulgated under the 1932 Act² defined "net income . . . from the property" as used in § 114 (b) (3) so as to require "development costs" of the kind here involved to be deducted from "gross income from the property."³ The Board of Tax Appeals held that petitioner need not deduct these

¹ That section provided:

"In the case of oil and gas wells the allowance for depletion shall be 27½ per centum of the gross income from the property during the taxable year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance be less than it would be if computed without reference to this paragraph."

² Section 23 (1) of the Revenue Act of 1932 provided:

"In computing net income there shall be allowed as deductions:

"(1) *Depletion.*—In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the Commissioner, with the approval of the Secretary. . . ."

³ Treasury Regulations 77, Art. 221 (h) provided:

"'Net income of the taxpayer (computed without allowance for depletion) from the property,' as used in section 114 (b) (2), (3), and (4) and articles 221 to 248, inclusive, means the 'gross income from the property' as defined in paragraph (g) less the allowable deductions attributable to the mineral property upon which the depletion is claimed and the allowable deductions attributable to the processes listed in paragraph (g) in so far as they relate to the product of such property, including overhead and operating expenses, development costs properly charged to expense, depreciation, taxes, losses sustained, etc., but excluding any allowance for depletion. . . ."

development expenditures in applying the 50 per cent limitation on depletion allowance (36 B. T. A. 1327) and the Circuit Court of Appeals reversed (102 F. 2d 596). Since we have this day decided in *Helvering v. Wilshire Oil Co.*, *supra*, that comparable regulations under the 1928 Act were lawful, *a fortiori* those here involved are valid and binding on petitioner. The judgment of the court below was therefore right and is

Affirmed.

MR. JUSTICE BUTLER and MR. JUSTICE REED took no part in the consideration or disposition of this case.

CASE ET AL. *v.* LOS ANGELES LUMBER PRODUCTS
CO., LTD.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT.

Nos. 23 and 24. Argued October 18, 1939.—Decided
November 6, 1939.

1. The question whether a plan of reorganization is "fair and equitable" within the meaning of § 77B of the Bankruptcy Act is a question of law. P. 114.
2. Where a plan of reorganization is not fair and equitable as a matter of law, it can not be approved by the court even though the percentage of the various classes of security holders required by § 77B (f) for confirmation of a plan has consented. *Id.*
3. The fact that a great majority of the security holders have approved the plan is not the test of whether the plan is a fair and equitable one. *Id.*
4. Under § 77B of the Bankruptcy Act, as in equity reorganizations, the court must use its own informed and independent judgment in every important determination in the administration of the proceedings. P. 115.
5. Where words are employed in an Act which had at the time a well known meaning in the law, they are used in that sense unless the context requires the contrary. *Id.*
6. It is a fixed principle, governing under § 77B of the Bankruptcy Act as well as in equity reorganizations, that, to the extent of their