ELECTRO-CHEMICAL ENGRAVING CO., INC. *v.* COMMISSIONER OF INTERNAL REVENUE.

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

No. 62. Argued December 12, 1940.—Decided January 6, 1941.

A loss sustained by a corporation upon foreclosure sale of its mortgaged property, *held*, in computing taxable income under the Revenue Act of 1934, deductible only to the limited extent allowed by §§ 23 (j) and 117 (d) for losses from "sales" or exchanges of capital assets. *Helvering* v. *Hammel, ante,* p. 504, followed. P. 514.

110 F. 2d 614, affirmed.

CERTIORARI, 310 U. S. 622, to review the reversal of a decision of the Board of Tax Appeals redetermining a deficiency in income tax.

Mr. George P. Halperin, with whom *Mr. Bernard S. Barron* was on the brief, for petitioner.

Mr. Norman D. Keller, with whom *Solicitor General Biddle, Assistant Attorney General Clark,* and *Mr. Sewall Key* were on the brief, for respondent.

MR. JUSTICE STONE delivered the opinion of the Court.

This is a companion case to *Helvering* v. *Hammel, ante,* p. 504.

The question is whether the loss suffered by petitioner on foreclosure sale of his mortgaged property, acquired for profit, may be deducted in full from gross income or only to the extent provided by § 117 (d) of the 1934 Revenue Act. The statutory provisions involved are those of the 1934 Act relating to capital gains or losses, particularly "losses from sales or exchanges of capital assets" considered in the *Hammel* case which are made applicable to petitioner, a corporation, by § 23 (f) (j).

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The Board of Tax Appeals ruled that petitioner's loss was deductible in full from its ordinary income. The court of appeals for the second circuit reversed the Board, 110 F. 2d 614, holding that the loss sustained by petitioner was a loss from a sale of capital assets, § 23 (j), which under § 117 (d) could be deducted from the gross income only to the extent of capital gains, plus $2,000. We granted certiorari, 310 U. S. 622, so that the case might be considered with the conflicting decision of the court of appeals for the sixth circuit in the *Hammel* case, 108 F. 2d 753. For the reasons stated in our opinion in the *Hammel* case we think that this case was rightly decided below.

Affirmed.

MR. JUSTICE ROBERTS dissents.

H. J. HEINZ COMPANY *v.* NATIONAL LABOR RELATIONS BOARD.

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

No. 73. Argued December 17, 18, 1940.—Decided January 6, 1941.

1. The question of the responsibility of an employer, under the National Labor Relations Act, for unauthorized activities of supervisory employees is not one of legal liability on principles of agency or *respondeat superior,* but only whether the Act condemns such activities as unfair labor practices so far as the employer may gain from them in the bargaining process any advantage of a kind which the Act proscribes. To that extent the employer is amenable to the Board's authority to prevent repetition of such activities and to remove the consequences of them upon the employees' right of self-organization. Pp. 518, 521.

So *held* where the employer, when advised of activities of supervisory employees encouraging the formation of a plant union, took no step to notify the employees that such activities were unauthorized, or to correct their impression that support of a rival labor union was not favored by the employer and would result in reprisals. P. 521.