Background Facts

July 14, 1928, respondent caused Peterson Investment Company to be organized and transferred to the latter real estate, investments and miscellaneous assets in exchange for the transferee's entire capital stock. The shares thus obtained were immediately distributed among the three stockholders. August 23, 1928 it transferred all remaining assets to Grand Union Company in exchange for voting trust certificates, representing 18,000 shares of the transferee's common stock, and $426,842.52 cash. It retained the certificates; but immediately distributed the money among the stockholders, who agreed to pay $106,471.73 of its outstanding debts. Although of opinion that there had been reorganization, the Commissioner treated as taxable gain the amount of the assumed debts upon the view that this amount of the cash received 382*382 by the company was really appropriated to the payment of its debts

Procedural History

The matter went before the Board of Tax Appeals upon the question whether the Commissioner ruled rightly in respect of this taxable gain. Both parties proceeded upon the view that there had been reorganization. Of its own motion, the Board questioned and denied the existence of one. It then ruled that the corporation had realized taxable gain amounting to the difference between cost of the property transferred and the cash received plus the value of the 18,000 shares — $712,195.90.

Procedural History

Respondent, a Minnesota corporation with three stockholders, assailed a deficiency assessment for 1928 income tax, and prevailed below. The Commissioner seeks reversal. He claims the transaction out of which the assessment arose was not a reorganization within § 112, par. (i) (1) (A), Revenue Act, 1928, c. 852, 45 Stat. 791

Procedural History

The Circuit Court of Appeals found there was reorganization within the statute and reversed the Board. It 383*383 concluded that the words "the acquisition by one corporation of .. . substantially all the property of another corporation" plainly include the transaction under consideration. Also that Clause (B), § 112 (i) (1), first introduced by Revenue Act of 1924, and continued in later statutes, did not narrow the scope of Clause (A). Further, that reorganization was not dependent upon dissolution by the conveying corporation. And finally, that its conclusions find support in Treasury regulations long in force.

Procedural History

The Circuit Court of Appeals held otherwise and remanded the cause for determination by the Board whether the whole of the cash received by the Minnesota Tea Company was in fact distributed as required by the act. We granted certiorari because of alleged conflicting opinions.

Procedural History

The petition also stated that, as the taxpayer made an earlier conveyance of certain assets, the later one, here in question, of what remained to the Grand Union Company did not result in acquisition by one corporation of substantially all property of another. This point was not raised prior to the petition for certiorari and, in the circumstances, we do not consider it.

Rule

§ 112, par. (i) (1) (A), Revenue Act, 1928, c. 852, 45 Stat. 791: "The term `reorganization' means (A) a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes 380*380 of stock of another corporation, or substantially all the properties of another corporation)."

Rule

But the mere purchase for money of the assets of one Company by another is beyond the evident purpose of the provision, and has no real semblance to a merger or consolidation. Certainly, we think that to be within the exemption the seller must acquire an interest in the affairs of the purchasing company more definite than that incident to ownership of its short-term purchase-money notes." And we now add that this interest must be definite and material; it must represent a substantial part of the value of the thing transferred.

Analysis

The Commissioner maintains that the statute presents two definitions of reorganization by transfer of assets. 384*384 One, Clause (B), requires that the transferror obtain control of the transferee. The other, Clause (A), is part of the definition of merger or consolidation, and must be narrowly interpreted so as to necessitate something nearly akin to technical merger or consolidation. These clauses have separate legislative histories and were intended to be mutually exclusive. Consequently, he says, Clause (A) must be restricted to prevent overlapping and negation of the condition in Clause (B). Also, the transaction here involved substantially changed the relation of the taxpayer to its assets; a large amount of cash passed between the parties; there are many attributes of a sale; what was done did not sufficiently resemble merger or consolidation as commonly understood.\n\nWith painstaking care, the opinion of the court below gives the history of Clauses (A) and (B), § 112 (i) (1). We need not repeat the story. Clause (A) first appeared in the Act of 1921; (B) was added by the 1924 Act. We find nothing in the history or words employed which indicates an intention to modify the evident meaning of (A) by what appears in (B). Both can have effect, and if one does somewhat overlap the other the taxpayer should not be denied, for that reason, what one paragraph clearly grants him. Treasury regulations long enforced support the taxpayer's position, as the opinion below plainly points out.\n\nPinellas Ice Co. v. Commissioner, 287 U.S. 462, 470, considered the language of § 203 (h) (1) (A), Act of 1926, which became § 112 (i) (1) (A), Act of 1928, and held that a sale for money or short-term notes was not within its intendment. We approved the conclusion of the Commissioner, Board of Tax Appeals and Court of Appeals that the transaction there involved was in reality a sale for the equivalent of money — not an exchange for securities. But we disapproved the following assumption 385*385 and observations of the court: "That in adopting paragraph (h) Congress intended to use the words `merger' and `consolidation' in their ordinary and accepted meanings. Giving the matter in parenthesis the most liberal construction, it is only when there is an acquisition of substantially all the property of another corporation in connection with a merger or consolidation that a reorganization takes place. Clause (B) of the paragraph removes any doubt as to the intention of Congress on this point." And we said: "The words within the parenthesis may not be disregarded. They expand the meaning of `merger' or `consolidation' so as to include some things which partake of the nature of a merger or consolidation but are beyond the ordinary and commonly accepted meaning of those words — so as to embrace circumstances difficult to delimit but which in strictness cannot be designated as either merger or consolidation.

Analysis

True it is that the relationship of the taxpayer to the assets conveyed was substantially changed, but this is not inhibited by the statute. Also, a large part of the consideration was cash. This, we think, is permissible so long as the taxpayer received an interest in the affairs of the transferee which represented a material part of the value of the transferred assets.

Analysis

Finally, it is said the transferror was not dissolved and therefore the transaction does not adequately resemble consolidation. But dissolution is not prescribed and we are unable to see that such action is essential to the end in view.

Conclusion

The challenged judgment is\n\nAffirmed.