High Court of Justice (Chancery Division)—
17th, 18th and 20th December, 1963

Court of Appeal—9th and 10th June, 1964

House of Lords—8th March and 8th April, 1965

Duckering (H.M. Inspector of Taxes)

v.

Gollan[1]

Income Tax, Schedule D—Double taxation relief—Tax credit—Whether tax paid " in respect of " income of year of assessment or basis year—Income Tax Act, 1952 (15 *&* 16 *Geo.* VI *&* 1 *Eliz.* II, *c.* 10), *Section* 347; *Double Taxation Relief (Taxes on Income) (New Zealand) Order*, 1947 (*S.R. & O.* 1947 *No.* 1776), *Schedule, Article* XIV (1).

Under the Double Taxation Agreement between the United Kingdom and New Zealand, New Zealand tax payable in respect of income arising to the Respondent in New Zealand was allowable as a credit against United Kingdom tax payable in respect of that income. The United Kingdom tax for the year 1958–59 *was based on the income arising in* 1957–58. *New Zealand tax for* 1958–59 *was based on the current year's income but for* 1957–58 *had been based on the preceding year's income, so that no assessment was based on the income of* 1957–58. *The Respondent claimed that the New Zealand tax for* 1958–59 *should be allowed as a credit against the United Kingdom tax for that year, but the Inspector of Taxes objected to the claim.*

On appeal, the Respondent contended that, within the meaning of the Agreement, the income " in respect of " which the United Kingdom tax for 1958–59 *was chargeable was the income of that year; the Crown contended that it was the income of* 1957–58, *the basis year. The Special Commissioners upheld the Respondent's contention.*

Held, *that the Commissioners' decision was correct.*

Case

Stated under the Income Tax Act, 1952, Section 64, and Paragraph 13, Sixteenth Schedule, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 6th February, 1962, Donald Herbert Louis Gollan (hereinafter called " the Respondent ") appealed against the objection by H.M. Inspector of Taxes to his claim for an allowance by way of credit for foreign tax against United Kingdom taxes payable in respect of the year 1958–59.

2. The Respondent was at all material times resident in the United Kingdom for the purposes of United Kingdom tax.

[1] Reported (Ch. D.) [1964] 1 W.L.R. 414; 108 S.J. 55; [1964] 1 All E.R. 556; 235 L.T. Jo. 151; (C.A.) [1964] 1 W.L.R. 1178; 108 S.J. 500; [1964] 3 All E.R. 95; 235 L.T. Jo. 444; H.L.) [1965] 1 W.L.R. 680; 109 S.J. 355; [1965] 2 All E.R. 115; 236 L.T. Jo. 262.

3. For many years past the Respondent has had income from sources in New Zealand. In the year to 31st March, 1958, the income which arose from those sources amounted to £3,624 in New Zealand pounds, being £3,588 sterling. In the year to 31st March, 1959, the income which arose from those same sources amounted to £3,496 in New Zealand pounds, being £3,456 sterling.

4. Under Section 77 of the Land and Income Tax Act, 1954, of New Zealand which applied up to and including the year of assessment 1957–58 (being the year ended on 31st March, 1958), New Zealand Income Tax for a year of assessment was payable on income derived during the preceding year (called " the income year ").

5. Under Section 4 of the Income Tax Assessment Act, 1957, of New Zealand, which applied to the year of assessment 1958–59 (being the year ended on 31st March, 1959) and onwards, New Zealand Income Tax for a year of assessment was payable on income derived during the year of assessment, the income year thus becoming coincident with the year of assessment.

6. (*a*) New Zealand Income Tax paid by the Respondent for the year of assessment 1957–58 was paid on the income derived by him in the year ended 31st March, 1957, in accordance with Section 77 of the Land and Income Tax Act, 1954.

(*b*) New Zealand Income Tax paid by the Respondent for the year of assessment 1958–59 was paid on the income derived by him in the year ended 31st March, 1959, in accordance with Section 4 of the Income Tax Assessment Act, 1957.

(*c*) Because of the above change in the basis of assessment of New Zealand Income Tax the Respondent paid no New Zealand Income Tax on the income derived by him in the year ended 31st March, 1958.

7. New Zealand Income Tax paid by the Respondent for the year of assessment 1958–59 amounted to £1,033 9*s.* 6*d.* in New Zealand pounds, such tax being paid on the Respondent's New Zealand income arising in the year to 31st March, 1959.

8. For the United Kingdom year of assessment 1958–59 the Respondent was assessed to United Kingdom Income Tax and Surtax in respect of his New Zealand income, the tax being computed, in accordance with Section 132(1) of the Income Tax Act, 1952, on the full amount of the income arising in the year preceding the year of assessment, which for convenience was taken to be the year ended 31st March, 1958 (instead of the year ended 5th April, 1958).

9. The Respondent claimed allowance of the said New Zealand Income Tax amounting to £1,033 9*s.* 6*d.* paid by him for the New Zealand year of assessment 1958–59 (as set out in paragraph 7 above) against United Kingdom Income Tax and Surtax payable for the United Kingdom year of assessment 1958–59 in respect of his income from sources within New Zealand, in pursuance of Section 347 of the Income Tax Act, 1952, and Article XIV (1) of the Double Taxation Relief (Taxes on Income) (New Zealand) Order, 1947 (S.R. & O. 1947, No. 1776), and the Sixteenth Schedule to the Income Tax Act, 1952.

Paragraph (1) of the said Article XIV reads as follows:

> " Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom, New Zealand tax payable, whether directly or by deduction, in respect of income from sources within New Zealand shall be allowed as a credit against any United Kingdom tax payable in respect of that income. Where such income is an ordinary dividend paid by a company resident in New Zealand, the credit shall take into account the New Zealand tax payable in respect of its profits by the company paying the dividend, and where it is a dividend paid on participating preference shares

and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the New Zealand tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

For the purposes of this paragraph any amount which is included in a person's taxable income under any provision of the law of New Zealand regarding the taxation of income from the business of insurance shall be deemed to be derived from sources in New Zealand."

The Inspector of Taxes objected to this claim.

10. The following cases were cited to us:

Fry v. *Burma Corporation, Ltd*, 15 T.C. 113,

Imperial Chemical Industries, Ltd v. *Caro*, 39 T.C. 374.

11. It was contended on behalf of the Respondent that:

(1) the income from sources in New Zealand in respect of which the allowance was claimed was the income of the year 1958–59;

(2) United Kingdom assessments to tax are assessments in respect of the income of the year of assessment, whatever the basis of computation of that income may be;

(3) the United Kingdom assessments on the Respondent for the year 1958–59 were assessments in respect of his income of the year 1958–59 from sources in New Zealand;

(4) New Zealand tax had been paid in respect of the Respondent's New Zealand income of the year 1958–59. United Kingdom tax was also payable " in respect of that income "; and

(5) the Respondent was therefore entitled to credit for this New Zealand tax against the United Kingdom tax payable under the United Kingdom assessments for the year 1958–59.

12. It was contended on behalf of H.M. Inspector of Taxes that:

(1) the Respondent had paid no New Zealand tax in respect of his New Zealand income of the year 1957–58;

(2) there was therefore no New Zealand tax payable which could be allowed as a credit against the tax payable under the United Kingdom assessments for the year 1958–59; and

(3) the claim of the Respondent should be rejected.

13. We, the Commissioners who heard the appeal, reserved our decision, and gave it in writing on 2nd April, 1962, as follows:

We think it is well established that under United Kingdom Income Tax law what is taxed by an assessment for a year of assessment is the income arising in that year, and that this is so whatever may be the yardstick used to measure that income.

Tax under Cases IV and V of Schedule D is charged by Section 123(1) of the Income Tax Act, 1952,

" in respect of. . . . "

—words so important in this case—

" income arising from. . . . "

securities or possessions out of the United Kingdom. By Section 132(1) of the Act the tax chargeable under these Cases is to be computed (with immaterial exceptions) on the full amount of the income arising in the year preceding the year of assessment.

We take the position in this case to be that the assessment to United Kingdom tax made upon the Appellant for the year 1958–59 charged to tax the

income arising to him in *that year* from his sources in New Zealand, although the measure of that income was the income arising from those sources in the preceding year.

The relevant words of Article XIV of the New Zealand Double Taxation Agreement are:

> " New Zealand tax payable.... in respect of income from sources within New Zealand shall be allowed as a credit against any United Kingdom tax payable in respect of that income."

The Appellant paid New Zealand tax for 1958–59 " in respect of " New Zealand income arising in that year, and he will be entitled to credit for this tax against any United Kingdom tax payable

> " *in respect of that income* "

—i.e., New Zealand income arising in the year 1958–59. Since on our view the United Kingdom assessment for 1958–59 charged to tax the New Zealand income arising in that year, this United Kingdom tax was payable in respect of the same New Zealand income as had suffered tax for the same year. The New Zealand tax will therefore be a credit against the tax payable under the United Kingdom assessment for 1958–59.

We hold that the claim succeeds. We understand that the figure has been agreed, and we determine the claim by allowing credit of £1,023.

14. The Inspector, immediately after the determination of the appeal, declared to us his dissatisfaction therewith as being erroneous in point of law, and in due course required us to state a Case for the opinion of the High Court pursuant to the Income Tax Act, 1952, Section 64, and Paragraph 13, Sixteenth Schedule, which Case we have stated and do sign accordingly.

15. The point of law for the opinion of the High Court is whether on the facts of this case we were right in holding that the Respondent was entitled to the credit of £1,023.

R. W. Quayle } Commissioners for the Special Purposes
H. G. Watson } of the Income Tax Acts.

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London, W.C.1.

28th November, 1962.

The case came before Pennycuick, J., in the Chancery Division on 17th, 18th and 20th December, 1963, when judgment was given in favour of the Crown, with costs.

Mr Desmond C. Miller, Q.C., and Mr J. Raymond Phillips appeared as Counsel for the Crown, and Mr C. N. Beattie, Q.C., and Mr Peter Rees for the taxpayer.

Pennycuick, J.—This appeal raises a question upon the construction of Article XIV of the Double Taxation Relief (Taxes on Income) (New Zealand) Order, 1947. The Respondent, Mr Gollan, is resident in the United Kingdom. He derives income from sources in New Zealand. The Case does not contain particulars of these sources, but I understand they consist of interest on mortgages.

The interest is charged with tax in New Zealand; it is also charged with tax in this country under Case IV or Case V of Schedule D. The New Zealand tax year ends on 31st March, and is thus, for practical purposes, coincident with that of the United Kingdom. Up to and including the year 1957–58, New Zealand tax was charged on income arising during the year preceding the year of assessment. By virtue of Section 4 of the New Zealand Income Tax Assessment Act, 1957, New Zealand tax has, from the year 1958–59 onwards, been charged on income arising during the year of assessment. United Kingdom tax under Case IV and Case V is charged on income arising from any given source during the year of assessment, measured by the income arising from that source during the preceding year.

It follows that the income arising to the Respondent in New Zealand in 1956–57 formed the basis of the charge to tax in 1957–58 alike in New Zealand and in the United Kingdom. Income arising to the Respondent in New Zealand in 1957–58 never formed the basis of charge to tax in New Zealand, but formed the basis of charge to tax for 1958–59 in the United Kingdom. Income arising in 1958–59 formed the basis of charge to tax in 1958–59 in New Zealand, and formed the basis of charge to tax in 1959–60 in the United Kingdom, and so forth. The Respondent duly paid tax in New Zealand for 1958–59 on the income arising in 1958–59, this tax amounting to £1,033 9*s.* 6*d.* The Respondent claimed an allowance under the Double Taxation Order for 1958–59 on the footing that he was entitled to a credit for the tax paid in New Zealand for 1958–59. This allowance was refused on the ground that the United Kingdom assessment for 1958–59 is based on income which arose in 1957–58, and that this income never bore tax in New Zealand.

I will read the relevant statutory provisions. The Income Tax Act, 1952, Section 122:

> " The Schedule referred to in this Act as Schedule D is as follows— . . . 1. Tax under this Schedule shall be charged in respect of—(*a*) the annual profits or gains arising or accruing—(i) to any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere".

Section 123:

> " Tax under Schedule D shall be charged under the following Cases respectively, that is to say— . . . Case IV—tax in respect of income arising from securities out of the United Kingdom, except such income as is charged under Schedule C; Case V—tax in respect of income arising from possessions out of the United Kingdom".

Section 132:

> " Subject to the provisions of this and the two next following sections, tax chargeable under Case IV or Case V of Schedule D shall be computed on the full amount of the income arising in the year preceding the year of assessment, whether the income has been or will be received in the United Kingdom or not, subject "

—as therein mentioned. Section 347:

> " (1) If Her Majesty by Order in Council declares that arrangements specified in the Order have been made with the Government of any territory outside the United Kingdom with a view to affording relief from double taxation in relation to income tax or the profits tax and any taxes of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, then, subject to the provisions of this Part of the Act, the arrangements shall, notwithstanding anything in this enactment, have effect in relation to income tax and the profits tax in so far as—(*a*) they provide for relief from tax, "

and I need not read (*b*):

> " (2) The provisions of the Sixteenth Schedule to this Act shall have effect where arrangements which have effect by virtue of this section provide that tax payable under

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the laws of the territory concerned shall be allowed as a credit against tax payable in the United Kingdom."

Then, the Sixteenth Schedule:

" Provisions as to relief from income tax and the profits tax by way of credit in respect of foreign tax."

Paragraph 1 contains definitions. Paragraph 2:

" (1) Subject to the provisions of this Schedule, where, under the arrangements, credit is to be allowed against any of the United Kingdom taxes chargeable in respect of any income, the amount of the United Kingdom taxes so chargeable shall be reduced by the amount of the credit. (2) The credit to be allowed shall be first applied in reducing the amount of any profits tax chargeable in respect of the income and, so far as it cannot be so applied, in reducing the income tax chargeable in respect thereof."

Under those provisions, an agreement was made between the Government of the United Kingdom and the Government of New Zealand for the avoidance of double taxation, the terms of that agreement being, so far as now material, as follows:

" Article I. (1) The taxes which are the subject of the present Agreement are ... In the United Kingdom ... The income tax ... and the profits tax."

Article II (3):

" In the application of the provisions of the present Agreement by one of the Contracting Governments any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting Government relating to the taxes which are the subject of the present Agreement."

There follow a number of Articles which should be read for the full understanding of the Agreement but which it is not necessary for me to read now. Article XIV:

" (1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom, New Zealand tax payable, whether directly or by deduction, in respect of income from sources within New Zealand shall be allowed as a credit against any United Kingdom tax payable in respect of that income."

The present case turns wholly on the second part of the sentence which I have just read.

The Case stated by the Special Commissioners sets out in full the facts which I have summarised. It then, in paragraph 11, states the contentions of the parties as follows:

" It was contended on behalf of the Respondent that: (1) the income from sources in New Zealand in respect of which the allowance was claimed was the income of the year 1958–59; (2) United Kingdom assessments to tax are assessments in respect of the income of the year of assessment, whatever the basis of computation of that income may be; (3) the United Kingdom assessments on the Respondent for the year 1958–59 were assessments in respect of his income of the year 1958–59 from sources in New Zealand; (4) New Zealand tax had been paid in respect of the Respondent's New Zealand income of the year 1958–59. United Kingdom tax was also payable ' in respect of that income '; (5) the Respondent was therefore entitled to credit for this New Zealand tax against the United Kingdom tax payable under the United Kingdom assessments for the year 1958–59."

Paragraph 12:

" It was contended on behalf of H.M. Inspector of Taxes that: (1) the Respondent had paid no New Zealand tax in respect of his New Zealand income of the year 1957–58; (2) there was therefore no New Zealand tax payable which could be allowed as a credit against the tax payable under the United Kingdom assessments for the year 1958–59; (3) the claim of the Respondent should be rejected."

Paragraph 13:

> "We, the Commissioners who heard the appeal, reserved our decision, and gave it in writing on 2nd April, 1962, as follows: We think it is well established that under United Kingdom Income Tax law what is taxed by an assessment for a year of assessment is the income arising in that year, and that this is so whatever may be the yardstick used to measure that income. Tax under Cases IV and V of Schedule D is charged by Section 123(1) of the Income Tax Act, 1952."

They then summarise that section, and part of Section 132.

> "We take the position in this case to be that the assessment to United Kingdom tax made upon the Appellant for the year 1958–59 charged to tax the income arising to him in *that year* from his sources in New Zealand, although the measure of that income was the income arising from those sources in the preceding year. The relevant words of Article XIV of the New Zealand Double Taxation Agreement are,"

and they set them out.

> "The Appellant paid New Zealand tax for 1958–59 'in respect of' New Zealand income arising in that year, and he will be entitled to credit for this tax against any United Kingdom tax payable '*in respect of that income*'—i e., New Zealand income arising in the year 1958–59. Since on our view the United Kingdom assessment for 1958–59 charged to tax the New Zealand income arising in that year, this United Kingdom tax was payable in respect of the same New Zealand income as had suffered tax for the same year. The New Zealand tax will therefore be a credit against the tax payable under the United Kingdom assessment for 1958–59. We hold that the claim succeeds. We understand that the figure has been agreed, and we determine the claim by allowing credit of £1,023."

Subject to one qualification, the scheme of Article XIV is free from doubt. One ascertains what income is derived from sources in New Zealand, and what New Zealand tax is payable upon it. Then one allows this tax as a credit against United Kingdom tax in respect of that same income. The doubt arises upon the identification of the income arising in New Zealand with the income in respect of which tax is payable in the United Kingdom. This doubt is occasioned by the provisions of United Kingdom legislation that, under Cases IV and V of Schedule D (as under certain other heads of charge), tax is to be computed on the income arising in the year preceding the year of assessment. The Crown contends that for this purpose the United Kingdom tax in respect of an item of income arising in New Zealand is that which is computed by reference to that item of income for the purpose of charge in the following year. The Respondent contends that, for this purpose, the United Kingdom tax in respect of an item of income arising from a given source in New Zealand is that which is chargeable upon income from that source in the same year, notwithstanding that the tax is computed by reference to the income arising during the preceding year.

In *Imperial Chemical Industries, Ltd* v. *Caro*, 39 T.C. 374, the Court of Appeal was concerned with the application of the corresponding Article in the Australian Double Taxation Agreement to income arising in Australia during the first two years of a company's trade. Both parties adopted the construction of the Article relied upon by the Crown in the present case, and Counsel for the appellant company, no doubt for good reasons, refused to advance the construction relied upon by the Respondent in the present case. The Court decided the case upon the Crown's construction, and with the actual decision I am not further concerned. Each member of the Court, however, referred to the possibility that the other construction might be correct, and I must read what is said upon this point. Lord Evershed, M.R., at page 385:

> "I think Mr. Magnus is entitled to say in a case of this kind, where *prima facie* there is a clear tax liability on the subject, then, if the subject is going to say 'I claim relief by virtue of certain statutory provisions or their equivalent,' it is for the taxpayer to establish that he is entitled to that relief. We were referred, in support of that view, to a passage in the judgment of Cohen, L.J., in this Court in *Littman* v. *Barron*,

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> 33 T.C. 373, at page 386. Mr Heyworth Talbot, on the instructions of his client—though, as he said, with some personal reluctance, and certainly it has deprived us of the pleasure of hearing further argument from him—has not desired to argue this case save on the basis of the facts and figures that I have earlier stated."

I omit the next few lines, which set out the figures. Then:

> " Having regard to the instructions Mr. Heyworth Talbot has received, I express no view upon what might be the effect of an argument based on a different premise: that case has not been put and I conceive that it is not our duty, even if we had a view about it, to try, contrary to the submissions of Counsel, to state what the result might be upon a different basis. I therefore say no more about it and return to the point which alone falls for our determination."

Upjohn, L.J., at page 387[1]:

> " I agree with the judgment that has just been delivered. This is a short point of construction and depends on the meaning to be given to a few words in Article XII (1) of the Australian Double Taxation Relief Agreement. It is very short and I will read it, omitting the immaterial words: ' Australian tax payable, whether directly or by deduction, in respect of income derived from sources in Australia shall be allowed as a credit against any United Kingdom tax payable in respect of that income . . .' The case has been argued before us upon the footing that the phrase ' that income ' means the actual income received in Australia and does not refer to income of a year of assessment computed in accordance with British Income Tax principles. Whether it is correct to regard ' that income ' as the actual income received is a matter which has not been argued before us, and this case is no authority for the proposition that that is a true and proper meaning to be attributed to that phrase."

Donovan, L.J., at page 389:

> " I too desire to emphasise that the Court is accepting, without deciding its correctness, the common view of the parties that, for the purpose of the Double Taxation Relief (Australia) Order, Income Tax in the United Kingdom is to be regarded as payable upon the income of the basis year, that is, the year the income for which is taken as the measure of the assessment. Ordinarily, of course, Income Tax is payable upon the income of the year of assessment for which the tax is granted by Parliament, the amount of liability simply being measured by the income of the preceding year. I agree that there is a good deal to be said for the view upon which the parties here have agreed, inasmuch as the Order has to be applied to Profits Tax as well as Income Tax and also, in the earlier years for which the Order was operating, to Excess Profits Tax. Profits Tax is levied upon the actual income of an accounting period, as was also Excess Profits Tax in past years. The same is true, we are told, of Australian Income Tax, though such tax is actually collected in the following year. Therefore, it is said, one has to find a construction of the words ' tax payable in respect of income', where they appear in the Order, which will fit all these taxes; and the solution may well be the one which the parties here have adopted. As I say, however, this is not a concluded view."

The question now before me is thus expressly left open. The decision is of significance for present purposes in that all members of the Court evidently treated either construction as being a possible and legitimate one. Donovan, L.J., appears to prefer the Crown's construction.

I have come to the conclusion that, notwithstanding an excellent argument by Mr Beattie for the Respondent, the Crown's construction is to be preferred. The words used in Article XIV, upon their natural meaning, appear to contemplate a single item of income; for example, instalments of interest which would otherwise be the subject of double taxation and will form a constant factor throughout the calculation of relief. It is not a natural construction to treat the words as referring to statutory income which may be computed on a different basis in the two countries. Then again, the expression is not " on " but " in respect of " that income. United Kingdom tax is no doubt payable " on " statutory income and only " on " that income; but it can, I think, fairly be

[1] 39 T.C.

regarded as payable " in respect of " the income which forms the measure of the statutory income. Indeed that is how liability for this year's tax by reference to last year's income would be described in ordinary speech.

Finally, the Crown's construction produces a simple and easily workable scheme. That is to say, income arising in New Zealand in the year X is charged in New Zealand immediately after the end of year X, and this tax comes in as a credit when United Kingdom tax is charged on 1st January in the succeeding year upon the statutory income for that succeeding year calculated by reference to the income arising in year X. The Respondent's construction produces a much less convenient scheme. That is to say, income arising in New Zealand in year X is charged in New Zealand immediately after the end of year X. Then, the tax must be allowed as a credit, presumably by repayment, against the tax which has already been paid in the United Kingdom on 1st January in year X upon the statutory income for year X calculated by reference to the year preceding year X.

It is important to bear in mind in the construction of the Agreement that it is not a piece of United Kingdom domestic legislation, but a contract between two Governments. Little reliance was placed on paragraph (3) of Article II, and I think rightly so. Under the law of this country, the term " income " is appropriate according to the context to denote either actual or statutory income.

The point was made on behalf of the Crown that New Zealand tax falls to be credited in the first case against Profits Tax; see the Sixteenth Schedule to the Income Tax Act, 1952, Paragraph 2. Profits Tax is chargeable on the actual income of an accounting period. This, it is said, is an indication that Article XIV is concerned with actual income for all purposes; see the passage which I have read from the judgment of Donovan, L.J.[1] On the other hand, the credit against Profits Tax does not appear to introduce any further difficulty in the operation of Article XIV, according to the Respondent's contention; and I think this point is only of limited weight.

It is a relevant consideration upon the construction of Article XIV to see which alternative produces a fair and reasonable result. It is therefore necessary to bear in mind that either construction will admittedly produce anomalies and hardship in particular cases. In the present case, the Crown's contention produces a hardship upon the Respondent in that he, in effect, loses a year's relief. In other cases the boot might well be on the other leg.

I was referred to *Rolls Royce, Ltd* v. *Short*, 10 T.C. 59, a decision under Section 27 of the Finance Act, 1920, and particularly to the observations of Rowlatt, J., where he said at page 66:

> " The object of Section 27 of the Finance Act, 1920, was to mitigate the hardship involved in paying Income Tax in the United Kingdom in full upon profits which had already been subjected to Income Tax in a Dominion, and if the Legislature had thought fit to say that wherever income had been taxed in a Dominion and the same profits came thereafter at any time to form the basis of a tax in the United Kingdom, the sum already paid on that income should form a basis of relief, the thing might have worked out very simply."

I do not think this passage affords any real guidance upon the construction of Article XIV. The scheme and language of Section 27 is quite different from that of the Agreement, and I do not think that one can properly treat the Legislature as having framed Article XIV with an eye on the words of Rowlatt, J. Had it done so, Article XIV would, I think, have been expressed in different and less ambiguous terms.

[1] 39 T.C. 374, at p. 389.

(Pennycuick, J.)

The decision in *Imperial Chemical Industries, Ltd* v. *Caro*[1] was, in effect, nullified by Section 18 of the Finance Act, 1961. No contention was advanced upon this Section before me, and I will say no more than that, so far as I can see, the Section contains nothing to suggest that the construction which I have put upon Article XIV is the wrong one. The question is one of pure law, and no issue of fact is involved. I must therefore reverse the decision of the Special Commissioners.

Mr J. Raymond Phillips.—Then I ask, my Lord, that the appeal may be allowed, the decision of the Special Commissioners reversed, and that it may be declared that the Respondent is not entitled to the credit which is claimed in the Case.

Pennycuick, J.—Is that right?

Mr C. N. Beattie.—Yes, my Lord.

Pennycuick, J.—There is no further remission?

Mr Beattie.—No, My Lord.

Mr Phillips.—There is no question of costs, because there is an agreement between the parties about that, unless my friend wants that incorporated in the Order.

Mr Beattie.—No. I am content with my friend's agreement, if he does not want it incorporated.

Pennycuick, J.—So be it.

The taxpayer having appealed against the above decision, the case came before the Court of Appeal (Lord Denning, M.R., and Danckwerts and Diplock, L.JJ.) on 9th and 10th June, 1965, when judgment was given unanimously against the Crown, with costs.

Mr C. N. Beattie, Q.C., and Mr Peter Rees appeared as Counsel for the taxpayer, and Mr Desmond C. Miller, Q.C., and Mr J. Raymond Phillips for the Crown.

Lord Denning, M.R.—This case raises a question of double taxation. Mr Gollan, who lives in England, had income from sources in New Zealand. He had mortgages on land in New Zealand and received interest on those mortgages. It came to about £3,500 a year.

Mr Gollan had, of course, to pay tax in New Zealand on that income. But as he was resident in the United Kingdom, he would have also to pay tax on it here, save for the Convention on Double Taxation. But he was entitled to the benefit of the Convention under the terms of an Order in Council made under the Income Tax Acts (now Section 347 of the Income Tax Act, 1952). The material provision is the first sentence of Article XIV of the Convention which reads as follows:

> " Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom, New Zealand tax payable, whether directly or by deduction, in respect of income from sources within New Zealand shall be allowed as a credit against any United Kingdom tax payable in respect of that income."

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[1] 39 T.C. 374.

(Lord Denning, M.R.)

That Convention came into force in 1947. At that time, Income Tax in New Zealand was assessed, charged and computed in the same way as Income Tax in the United Kingdom. That is to say, in each country the tax was assessed and *charged* for a particular year in respect of the income of that year, the year of assessment, but the amount was *computed* on the income of the previous year. I would take two passages which put it quite simply. In *Fry* v. *Burma Corporation, Ltd*, 15 T.C. 113, at page 120, Rowlatt, J., said:

> " You do not tax the years by which you measure; you tax the year in which you tax and measure by the years to which you refer."

And in *Imperial Chemical Industries, Ltd* v. *Caro*,[1] [1961] 1 W.L.R. 529, Donovan, L.J., said at page 543[2]:

> "... income tax is payable upon the income of the year of assessment for which the tax is granted by Parliament, the amount of liability simply being measured by the income of the preceding year."

So long as both countries worked on the same system Mr Gollan had no difficulty in obtaining relief from double taxation. Thus for the various years from 1947–48 to 1957–58 he paid tax in New Zealand on his New Zealand income, computed by the previous year; and when he came to pay his United Kingdom tax for that year he got credit for what he had paid in New Zealand computed by the previous year. But in the year 1957 the law in New Zealand was altered. It was enacted that for the year 1958–59, and thenceforward, the New Zealand tax was to be computed, not according to the income of the *previous* year 1957–58, but according to the income of the year of assessment; that is, the *current* year 1958–59. The result was that New Zealand missed out the year 1957–58 from its computations. You can easily see how it happened. When the taxpayer in New Zealand was assessed for the year 1957–58, the tax was computed, under the *old* legislation, according to the income of the previous year 1956–57. But when he was assessed for the next year, 1958–59, the tax was computed, under the *new* legislation, according to the income of that very year, 1958–59. So no tax was ever computed on the income of the year 1957–58.

Now the point is this. When Mr Gollan was assessed for tax for the year 1957–58, it was calculated *both* in the United Kingdom *and* in New Zealand on his income for the previous year 1956–57. He was allowed credit in the United Kingdom for the tax he had paid in New Zealand on that income. But when he was assessed for tax for the year 1958–59, it was calculated differently in the two countries. In the United Kingdom it was calculated on the income for the year 1957–58: but in New Zealand it was calculated on the income for the year 1958–59. The Crown say that, on this account, he can claim no credit against his United Kingdom tax; for the simple reason that he never paid New Zealand tax in respect of the year 1957–58.

The point is a short one depending entirely on the true construction of Article XIV of the Convention, which I have read. The Crown say that the " income " mentioned in that Article is the *actual* income on which tax is payable: whereas the taxpayer says it is the *chargeable* income, or statutory income as it is sometimes called. The Crown say that the *actual* income was accepted as the proper basis in *Imperial Chemical Industries, Ltd* v. *Caro*[1], [1961] 1 W.L.R. 529; 39 T.C. 374, and they say that it was the basis on which Section 18 of the Finance Act, 1961, was passed. I must say that it seems to me that *Imperial Chemical Industries, Ltd* v. *Caro* is no decision whatsoever on the point. The parties had agreed upon the basis there. The Court were careful to say that they expressed no opinion on it. I think we are left simply

[1] 39 T.C. 374. [2] *Ibid.*, at p. 389.

(Lord Denning, M.R.)

to construe the wording of the Schedule itself. It seems to me that this Article is dealing with the chargeable income, that is, the income assessable in respect of any year. It is not referring to the measure by which it is computed. It is obvious that if it were a case where a three-year average was used as a measure, the Article could only refer to the income of the year of assessment. So it seems to me that, whatever measure you take, nevertheless the tax is payable in respect of the chargeable income.

Mr Gollan has paid New Zealand tax in respect of his income for the year 1958–59. He is also charged with United Kingdom tax in respect of his income for that year. He is entitled to credit for what he paid in New Zealand.

It is said that much inconvenience and injustice may be done by this construction, especially in cases where the income has gone up or down. The sensible thing, it is said, is to take the *actual* income. That may be. But we have only to interpret the words of the Convention as best we can. The fair thing, in this case at any rate, is that Mr Gollan should receive the credit. I find myself, therefore, in agreement with the view taken by the Commissioners; and I take a different view from that of the learned Judge. I would allow the appeal accordingly and say that Mr Gollan is entitled to the credit for the year in question by the tax which he has paid in New Zealand.

Danckwerts, L.J.—I agree. It seems to me that the law was correctly stated in the quotation given by my Lord from the judgment of Rowlatt, J., and I think that the Special Commissioners applied the law correctly in the present case. Nothing in the judgment of Pennycuick, J., nor in the arguments of Counsel for the Crown has convinced me that they were wrong, and I agree that the appeal should be allowed.

Diplock, L.J.—I also agree. Income Tax for a year is charged and payable in respect of income arising in that year, but it is computed (under Cases IV and V of Schedule D) on the income arising in the year preceding the year of assessment. It follows that where Article XIV of the Convention refers to tax payable in respect of income from sources within New Zealand and allows a credit against Income Tax payable in respect of that income, it is a reference to the taxpayer's income arising from that source in that year irrespective of the method of computation. I too would allow this appeal.

Mr C. N. Beattie.—Would your Lordship say that the appeal should be allowed with costs? My Lord, I do not need to ask for costs in the Court below because the Crown have an arrangement under which they pay our costs there in any event.

Lord Denning, M.R.—The appeal will be allowed with costs.

Mr Desmond C. Miller.—My clients ask your Lordship if they might have permission to take the matter to the House of Lords if so advised on consideration of your Lordships' judgment.

Lord Denning, M.R.—Mr Beattie, have you any comment to make on that?

Mr Beattie.—My Lord, I find it difficult to see how I could resist it because, of course, your Lordships' judgment does affect most cases of double taxation.

Diplock, L.J.—Does your arrangement extend as far as the House of Lords?

Mr Beattie.—My Lord, we have no arrangement in this Court; we are at risk in this Court, but what I am asking is if your Lordships would be good enough to impose terms, if your Lordships were to give leave. I submit that the terms should be as strong, if I might respectfully say so, as might have been

given because in this case Mr Gollan has at stake a sum of only £1,000 and the Inland Revenue has at stake its system of double taxation relief. Therefore I would respectfully ask your Lordships to say that the Crown should not seek to disturb the Order for costs in this Court and should bear the costs of both parties in the House of Lords in any event.

Lord Denning, M.R.—Mr Miller, have you got anything to say on that?

Mr Miller.—Yes indeed, my Lord. So far as this matter is concerned, the Crown in the High Court made this offer as my learned friend has said, that if the matter had to be tested there we would pay the costs on the appropriate scale of Mr Gollan. If Mr Gollan, we said, thereafter chose to take the matter further it was at his own hazard and risk, and with respect I see no grounds here on which it can be said that your Lordship should be asked to put the Crown here upon terms to pay Mr Gollan's costs following the stage up to which the Crown said they would meet the costs.

Lord Denning, M.R.—We will grant leave to appeal to the House of Lords, but as this is a case which the Crown desires to test because of its general application we consider that the terms should be that the Order in this Court as to costs should not be disturbed and that the costs of both sides should be paid by the Crown in the House of Lords.

Mr Beattie.—I am obliged, my Lord.

The Crown having appealed against the above decision, the case came before the House of Lords (Viscount Dilhorne and Lords Reid, Hodson, Guest and Donovan) on 8th March, 1965, when judgment was reserved. On 8th April, 1965, judgment was given unanimously against the Crown, with costs.

The Solicitor-General (Sir Dingle Foot, Q.C.), Mr Desmond C. Miller, Q.C., and Mr J. Raymond Phillips appeared as Counsel for the Crown, and Mr C. N. Beattie, Q.C., and Mr. Peter Rees for the taxpayer.

Viscount Dilhorne.—My Lords, I have had the advantage of reading the opinion of my noble and learned friend Lord Donovan, with which I agree.

The material parts of Article XIV (1) of the Double Taxation Agreement between the United Kingdom and New Zealand embodied in the Double Taxation Relief (Taxes on Income) (New Zealand) Order, 1947 (S.R. & O. 1947 No. 1776), read as follows:

> "Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom, New Zealand tax payable, whether directly or by deduction, in respect of income from sources within New Zealand shall be allowed as a credit against any United Kingdom tax payable in respect of that income."

The Respondent has for many years received income from a source in New Zealand. For the year 1958–59 he paid New Zealand Income Tax on his income from this source. He claims under Article XIV (1) to be entitled to a credit of the amount so paid against United Kingdom tax payable in respect of that income for the year 1958–59.

(Viscount Dilhorne)

The object of Article XIV (1) is clearly to secure that credit shall be given for New Zealand Income Tax paid in a particular year against United Kingdom tax payable in the same year in respect of the same income. It was common ground that Income Tax in the United Kingdom is payable upon the income of the year of assessment though measured by the income of the preceding year. In 1957–58 tax was payable in New Zealand on the income derived by him during the year preceding the year in and for which the tax was payable, i.e., on the income derived by him in 1956–57 (the Land and Income Tax Act, 1954, of New Zealand, Section 77).

As a result of a change in the law, in 1958–59 the New Zealand tax payable by him was payable on the income derived by him in the year of assessment, i.e., 1958–59 (the Income Tax Assessment Act, 1957, of New Zealand, Section 4). This change in the law meant that the Respondent's income in New Zealand for the year 1957–58 was not used as a basis for assessing his New Zealand tax liability for 1958–59 or for any year. It is on this account that the Crown contend that the Respondent is not entitled to the credit which he claims against his United Kingdom tax liability for 1958–59.

Although the basis of assessment to New Zealand Income Tax was changed, the Respondent was not thereby relieved of liability to pay New Zealand tax in any year. He paid it in 1957–58 and also in 1958–59 and in my opinion he is, by virtue of Article XIV (1), entitled to a credit in respect of the amount he paid in 1958–59 against his United Kingdom tax liability in respect of his New Zealand income for that year.

In my opinion the appeal should be dismissed.

Lord Reid.—My Lords, my noble and learned friend Lord Donovan has dealt fully with this case and I shall do no more than add a brief statement of my reasons for reaching his conclusion that this appeal must be dismissed. In this country the taxpayer pays Income Tax each year in respect of his income for the year of assessment, but the Income Tax Act enacts the method by which the income for the year of assessment is to be measured or computed. That method varies according to circumstances. At one time for certain kinds of income a three-year average was taken. Now for most classes of income the taxable income for the year of assessment is computed from or measured by the taxpayer's actual income in the previous year, and that was the rule here throughout the relevant period for the income with which this case is concerned.

In this case we have to deal with New Zealand Income Tax on income from a source in New Zealand. It is a familiar rule that we must assume that the law of a foreign country on any matter is the same as the law of this country except in so far as it is proved to be different. So it is necessary to see what has been held proved by the Commissioners with regard to New Zealand law.

In the Case Stated there are the following findings of fact:

> "4. Under Section 77 of the Land and Income Tax Act, 1954, of New Zealand, which applied up to and including the year of assessment 1957–58 (being the year ended on 31st March, 1958), New Zealand Income Tax for a year of assessment was payable on income derived during the preceding year (called 'the income year'). 5. Under Section 4 of the Income Tax Assessment Act, 1957, of New Zealand, which applied to the year of assessment 1958–59 (being the year ended on 31st March, 1959) and onwards, New Zealand Income Tax for a year of assessment was payable on income derived during the year of assessment, the income year thus becoming coincident with the year of assessment."

There is no other finding with regard to the law of New Zealand, so we must assume that otherwise the position there was the same as in this country. It follows that tax was paid in New Zealand for the year of assessment 1957–58 in respect of the Respondent's income for that year, but the tax was "payable

on " his income for the year 1956–57; and for the year of assessment 1958–59 tax was paid in respect of and also " payable on " his income for the year 1958–59. There was no year during which or in respect of which the Respondent did not pay tax in New Zealand, but by reason of the change in the basis of computation his income for 1957–58 was never used in New Zealand for the purpose of computing the amount of tax which he had to pay in any year.

If that is the proper interpretation of the Commissioners' findings then this case appears to me to present no difficulty. New Zealand tax was payable each year in respect of the Respondent's income from his source in New Zealand. There was no gap in 1957–58. All that happened was that he paid tax in New Zealand on his income for that year measured in one way and on his income for 1958–59 measured in a different way. And if New Zealand tax was paid in each year in respect of the income for that year—no matter how that income was measured or computed—then it appears to me that a credit must be allowed each year.

The Crown's case is based on a construction of Article XIV of the agreement scheduled to the Double Taxation Relief (Taxes on Income) (New Zealand) Order, 1947, which I cannot accept. That Article refers to New Zealand tax payable " in respect of " income from New Zealand sources and to United Kingdom tax " payable in respect of that income ". If, when this agreement was made between the two Governments in 1947, it was the law of both countries that Income Tax was payable in respect of the income of the year of assessment and not in respect of the income of an earlier year used for the purpose of computation, I would expect to find that these phrases in the agreement were used in their ordinary legal sense. But the Crown maintain that these phrases mean in respect of the income used for the purpose of computing the tax payable. If that had been the intention I would have expected it to be made clear, and I can find no good reason for so construing the agreement. I express no opinion as to the proper method of construing a similar agreement between the British Government and the Government of a country in which the fundamental principles of Income Tax law are proved to be different from those in this country.

Lord Hodson.—My Lords, I have had the advantage of reading the opinion prepared by my noble and learned friend, Lord Donovan. I agree that the appeal should be dismissed for the reasons which he has given.

Lord Guest.—My Lords, I have had the advantage of reading the opinion of my noble and learned friend, Lord Donovan, with which I agree.

Lord Donovan.—My Lords, the facts giving rise to this appeal are set out in full in the Stated Case and summarised in the judgment of Lord Denning, M.R. It is sufficient to say here that the Respondent, who is resident in the United Kingdom, has income arising from mortgages of land in New Zealand. On that income he pays United Kingdom Income Tax under Case IV of Schedule D, the tax being computed according to the amount of such income arising in the year preceding the year of assessment. Thus, for the year of assessment 1958–59 he paid United Kingdom Income Tax calculated upon the mortgage interest which arose in the preceding year, and which amounted to £3,624.

New Zealand also exacts its own Income Tax on this interest; and arrangements are in force giving taxpayers in the situation of the Respondent a measure of relief from such double taxation. These arrangements are embodied in an agreement come to between the Government of the United Kingdom and the Government of New Zealand in the year 1947. To the extent that it applies to cases like the present, the relief consists in the granting of a credit by the

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United Kingdom authorities against any United Kingdom tax payable in respect of income which would otherwise be taxed twice, i.e., once in New Zealand and again here. I shall have to quote the language of the relevant Article of the agreement presently.

The arrangement was given legal force in the United Kingdom by Section 51 (1), Finance (No. 2) Act, 1945 (now reproduced as Section 347, Income Tax Act, 1952) and S.R. & O. 1947 No. 1776. So far as here relevant, Article XIV of that Order provides as follows:

> " . . . New Zealand tax payable, whether directly or by deduction, in respect of income from sources within New Zealand shall be allowed as a credit against any United Kingdom tax payable in respect of that income."

The Respondent claimed that he qualified for such a credit against the United Kingdom Income Tax assessed for the year 1958–59 upon this mortgage interest. The Inspector of Taxes refused the claim. The Special Commissioners on appeal allowed it. The Crown appealed by way of Case Stated to the High Court, and the appeal was upheld by Pennycuick, J. The Respondent appealed to the Court of Appeal (Lord Denning, M.R., and Danckwerts and Diplock, L.JJ.) who unanimously allowed the appeal. The Crown now ask your Lordships to reverse the Court of Appeal's decision and restore that of Pennycuick, J.

The controversy between the parties was caused by a change in New Zealand in that country's method of charging New Zealand Income Tax. Up to and including the year of assessment 1957–58 (which in New Zealand was the year ended on 31st March, 1958) Income Tax was payable " on " all income derived by the taxpayer during the year preceding the year of assessment (Section 77 (2), New Zealand Land and Income Tax Act, 1954). Commencing with the year of assessment beginning on 1st April, 1958, i.e., the year 1958–59, this was changed. For that year and thenceforward the tax became chargeable " on " all income derived by the taxpayer during the year of assessment (Section 4, New Zealand Income Tax Assessment Act, 1957). So for the year 1958–59 the Respondent paid New Zealand Income Tax on the mortgage interest derived by him in that year.

In the United Kingdom, however, the income of the year preceding the year of assessment continued to form the measure of liability. So that for the year of assessment 1958–59 the United Kingdom Income Tax payable by the Respondent under Case IV of Schedule D was computed according to the amount of the mortgage interest arising to the Respondent in New Zealand in 1957–58. When the Respondent made his claim for double taxation relief for the year 1958–59 the Inspector of Taxes replied that no New Zealand Income Tax had been paid on the income for the relevant period.

For the year 1958–59 it was true that the Respondent had paid United Kingdom Income Tax, but that (said the Inspector) was in respect of the income arising in the preceding year, i.e., 1957–58. But the Respondent had paid no *New Zealand* tax on the income arising in 1957–58. That income, because of the change in the New Zealand law, was not directly taxed, nor did it form the basis of tax liability for the following year. In that following year, when it would ordinarily have been taxed, there was a change in the system, and tax liability for 1958–59 was upon the income arising in that year. So, claimed the Inspector, the indispensable condition for claiming double taxation relief had not been fulfilled for the year 1958–59. For that year the Respondent had suffered no double taxation. The latter replied, maintaining his claim to the contrary.

The rival arguments call for a construction of Article XIV of the agreement between the United Kingdom and New Zealand already referred to. It is set out in the Schedule to S.R. & O. 1947 No. 1776. The question which arises is simply

this: What is the meaning of the words in Article XIV " United Kingdom tax payable in respect of that income " in relation to 1958–59? The Crown contend that these words refer to the income of the year used as the measure of liability, and the tax thereon. In other words, the United Kingdom tax payable on the assessment made for the year 1958–59 is " in respect of " the income arising in 1957–58. If this view be right, then the Respondent's claim must admittedly fail. On the other hand, the Respondent contends that for the year 1958–59 United Kingdom Income Tax was payable in respect of the income arising in that year. The amount of tax was computed according to the income arising in the preceding year, but the tax is still " in respect of " the income arising in 1958–59. If this view be right, then the Respondent's claim is admittedly good.

My Lords, it is a truism which the Crown do not dispute that United Kingdom Income Tax for any year of assessment for which the tax is granted by Parliament is a levy upon the income of that year. It is not a levy upon the income of a preceding year, nor does it become so by virtue of the fact that this latter income may be used to measure the amount of tax payable. If that be so, then some reason must be found for giving a contrary interpretation to the words " United Kingdom tax payable in respect of that income " in Article XIV of the aforesaid agreement—for here, so the Crown contend, the words connote the income of the year preceding the year of assessment.

The Crown argue for this interpretation on the general ground that it is more in harmony with the scheme for giving double taxation relief than is the Respondent's interpretation. Moreover, it avoids an inconvenience which would otherwise arise in the giving of the relief. If the year of assessment is the year which has to be looked at then it will be seldom that relief can be given by a straight credit against current United Kingdom tax. In the present case, for example, payment of the New Zealand tax for 1958–59 may not be made in time for it to be credited against the United Kingdom Income Tax for the same year. Relief might then have to be given by way of repayment. Next a contrast is drawn between the language of Section 27, Finance Act, 1920, which originally introduced a limited measure of double taxation relief, and the language of Section 51 (1), Finance (No. 2) Act, 1945 (now Section 347, Income Tax Act, 1952), by which it was superseded. Section 27 was in language which might have supported the Respondent's contention, but the later legislation, which is now in point, is materially different. Then, again, it is a very natural use of language to say that one pays Income Tax " in respect of " the income received in the year taken as the measure of the assessment. Finally, it is urged that the Respondent's interpretation will lead to anomalies adverse to the taxpayer, and an example was given.

My Lords, I find none of these arguments sufficiently compelling for the Crown's purpose. The interpretation which they contest may indeed lead to some inconvenience, but in other cases relief has frequently to be given by way of repayment, and sometimes always has to be given this way. The argument based on the language of Section 27, Finance Act, 1920, as contrasted with the language of the enactments now in force I find too elusive for acceptance. As regards the " natural meaning " of the expression now under construction I would not dispute that the man in the street may regard himself as paying Income Tax " in respect of " his income of the previous year; but this is hardly an interpretation which can be preferred to that which is already well established in law, namely, that one pays Income Tax " in respect of " the income of the year of assessment for which the tax was granted by Parliament. As regards the assertion that anomalies will follow from acceptance of the Respondent's interpretation, I think one must remember that any scheme designed to give relief in one country from Income Tax suffered in another on

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the same income for the same or a corresponding period is productive of many difficulties, not all of which can be perceived and provided against in advance. The disputes which have come before the Court in this connection amply bear this out. In these circumstances, anomalies cannot be treated as a satisfactory guide in matters of construction, though no doubt there are cases where they may turn the scale. The present is not such a case, and the Courts can here do no more than look at the language used and give it a fair and reasonable construction.

In *Imperial Chemical Industries, Ltd* v. *Caro*, 39 T.C. 374, the facts of which case are not here material, the Crown and the taxpayer were both content to proceed on the view that United Kingdom Income Tax was to be regarded, for the purpose of the Double Taxation Relief (Taxes on Income) (Australia) Order, 1947, as payable upon the income of the year taken as the measure of the assessment. The language of that Order is comparable to the Order in point in the present case. In giving judgment in that case, however, all the members of the Court of Appeal stressed that it would be no authority in favour of the interpretation which the parties adopted. I myself added that there was something to be said in its favour because the provisions gave relief, *inter alia*, from Profits Tax, which was always computed on the profits of the current chargeable accounting period. This was purely a provisional view, and it would need to be further explored if support for the Crown's present contention were to be found. No doubt this has been done, with negative results, for the matter was not canvassed before your Lordships.

I think the Court of Appeal came to the right conclusion and that this appeal should be dismissed.

It is unnecessary to discuss what the position was in New Zealand before 1958–59, that is to say whether Income Tax was or was not there levied upon the income of the year of assessment or of the preceding year. This case is concerned only with the position from and including the year 1958–59.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed from be affirmed and the appeal dismissed with costs.

The Contents have it.

[Solicitors:—Solicitor of Inland Revenue; Hasties.]