HIGH COURT OF JUSTICE (CHANCERY DIVISION)—28TH NOVEMBER AND 3RD DECEMBER 1969

COURT OF APPEAL—9TH, 10TH AND 11TH NOVEMBER AND 9TH DECEMBER 1970

HOUSE OF LORDS—1ST, 2ND AND 22ND MARCH 1972

Commissioners of Inland Revenue. *v.* Helical Bar Ltd.[1]

Income tax, Schedule D—Profits of trade—Basis of assessment—Change of accounting date—Period included in basis years for two years of assessment—Whether double taxation involved—Income Tax Act 1952 (15 & 16 *Geo.* 6 & 1 *Eliz.* 2, *c.* 10), *s.* 127.

The Respondent Company carried on the business of designing and erecting ferro-concrete structures. At all material times up to 31*st January* 1964 *it had made up its accounts to* 31*st January each year. Having acquired five other trading companies as wholly-owned subsidiaries, the Company postponed its next accounting date and its accounts were made up for the* 15 *months ending* 30*th April* 1965. *Its profits for the year to* 31*st January* 1963 *were* £104,867, *for the year to* 31*st January* 1964 £141,203 *and for the* 15 *months to* 30*th April* 1965 £95,654*; the aggregate profits for the three periods (totalling* 39 *months) were* £341,724. *The Commissioners of Inland Revenue decided under s.* 127(2)(*b*), *Income Tax Act* 1952, *that the basis period for the Company's assessment to income tax under Case* I *of Schedule D for the year* 1965–66 *should be the period of* 12 *months to* 30*th April* 1964, *and directed under s.* 127(3) *that its Case* I *assessment for* 1964–65 *should be computed on the profits of the* 12 *months to* 30*th April* 1963. *The effect was that the Company's profits for the nine months* 1*st May* 1962 *to* 31*st January* 1963 *were taken into account in the income tax assessments for both* 1963–64 *and* 1964–65, *and its profits for the period* 1*st May* 1964 *to* 31*st January* 1965 *were charged to corporation tax instead of being taken into account in an income tax assessment. The aggregate of the profits assessed to income tax for the years* 1963–64 *to* 1965–66 *and corporation tax for the accounting period of* 12 *months to* 30*th April* 1965 (*representing a period of* 48 *months*) *was* £420,583.

On appeal against the direction for 1964–65, *the Company contended that it resulted in an injustice which could be measured by the amount of the profits included in the basis periods for both* 1963–64 *and* 1964–65, *and which should be cured by deducting* £78,798 *from the assessment for* 1964–65. *For the Crown it was contended that the proposed reduction of that assessment would result in its being based on only three months' profits, and that any apparent disadvantage to the Company resulting from its first accounting period for corporation tax commencing on* 1*st May* 1964 *was the consequence of its change of accounting date, the decision of the Commissioners of Inland Revenue under s.* 127(2)(*b*) *and the provisions of the Finance Act* 1965, *and was not relevant to an appeal against the direction under s.* 127(3). *The Special Commissioners held that, in the circumstances of the decision under s.* 127(2)(*b*) *and the consequential charge to corporation tax as from* 1*st May* 1964, *the profits of the nine months' overlap were being in a real sense charged to tax twice over, and reduced the assessment for* 1964–65 *in accordance with the Company's contention.*

[1] Reported (Ch.D.) [1971] Ch. 813; [1970] 1 W.L.R. 294; 114 S.J. 110; [1970] 1 All E.R. 1149; (C.A.) [1971] Ch. 813; [1971] 2 W.L.R. 688; 115 S.J. 225; [1971] 2 All E.R. 447; (H.L.) [1972] A.C. 773; [1972] 2 W.L.R. 880; 116 S.J. 276; [1972] 1 All E.R. 1205.

In the High Court the Company disclaimed reliance on hardship resulting from acceleration of the date for commencement of corporation tax; in the Court of Appeal it was explained that this concession related only to hardship resulting from that acceleration taken alone, but that the Company contended that it was part of the relevant circumstances to be taken into consideration. The Company did not rely on the simultaneous incidence of corporation tax and income tax. A

Held, *that the impact of corporation tax was irrelevant and there was no basis shown for reducing the assessment.* B

CASE

Stated under the Income Tax Act 1952, s. 64, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the High Court of Justice. C

1. (1) At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 9th December 1968 Helical Bar Ltd. (hereinafter called " the Company ") appealed against the following assessment to income tax:

Year 1964–65
Amount £114,099 less capital allowances. D

(2) The appeal was brought under s. 127(3) of the Income Tax Act 1952, as amended by the Income Tax Management Act 1964, Sch. 4. The assessment was made in accordance with a direction by the Board of Inland Revenue (hereinafter called " the Board ") pursuant to the said subs. (3), and the question (shortly stated) was what relief therefrom, if any, should be just.

2. The facts set out in this paragraph were agreed or proved. E

(1) The Company is a company limited by shares which was incorporated in July 1919. Its business is the design and erection of all types of ferro-concrete structures and foundations.

(2) At all material times up to 31st January 1964 the Company made up its accounts to 31st January in every year. Prior to April 1965 the Company acquired the whole of the respective issued share capitals of five trading companies, which accordingly became its wholly-owned subsidiaries. This involved a substantial increase in the business of the group, and at the same time a new chairman was appointed to the board of the Company. The next accounting date of the Company was then postponed, and its accounts were made up for a 15-month period to 30th April 1965. F

(3) The profits of the material accounting periods of the Company were: G

Year to 31st January 1963	£104,867
Year to 31st January 1964	£141,203
15 months to 30th April 1965	£95,654

(4) Following upon this change of accounting date, the Board (*a*) in pursuance of their powers under s. 127(2)(*b*) of the Income Tax Act 1952, decided that the basis period to be adopted in determining the Case I assessment on the Company for the year 1965–66 should be the period of 12 months to 30th April 1964; and (*b*) in pursuance of their powers under s. 127(3) of the said Act, directed that the Case I assessment on the Company for the preceding year 1964–65 should be computed on the profits for the twelve months ending 30th April 1963. H

There is annexed hereto, marked " A "(1), a copy of the statement from the Inland Revenue setting out the calculations falling to be made in accordance with these decisions.

(5) The decision by the Board described in sub-para. (4)(*a*) above is in accordance with its published practice. A copy of the publication setting out this practice is annexed hereto and marked " B "(2). The direction described in sub-para. (4)(*b*) above is not precisely in accordance with that practice, although the difference in figures is small. An alternative approach (not in accordance with the Board's practice) would have been to adopt 31st January as the accounting date for income tax purposes throughout. The effect of these two alternatives can be summarised as follows:

(*a*) *Basis periods following the Inland Revenue's two decisions*

Income tax year 1963–64	Basis period: year to 31.1.63
Income tax year 1964–65	Basis period: year to 30.4.63
Income tax year 1965–66	Basis period: year to 30.4.64
Corporation tax	First accounting period: 1.5.64 to 30.4.65

(*b*) *If 31st January had been adopted as the accounting date for income tax purposes throughout*

Income tax year 1963–64	Basis period: year to 31.1.63
Income tax year 1964–65	Basis period: year to 31.1.64
Income tax year 1965–66	Basis period: year to 31.1.65
Corporation tax	First accounting period: 1.2.65 to 30.4.65

(6) The effect of the decisions of the Inland Revenue described in sub-para. (4)(*a*) and (*b*) above is that:

(*a*) the profits of the Company for the period from 1st May 1962 to 31st January 1963 are brought into assessment twice over, once in respect of the year 1963–64 and again in respect of the year 1964–65, and no corresponding period drops out; and

(*b*) the Company's profits for the period from 1st May 1964 to 31st January 1965 are charged to corporation tax instead of income tax.

Neither of these two consequences would ensue if 31st January were adopted as the accounting date of the Company for income tax purposes throughout. There is annexed hereto, and marked " C ", a statement prepared by Messrs. Black Geoghegan & Till, the auditors of the Company, giving details of the figures involved(3).

(7) Shortly stated, the effect of the Board's basis for assessments is that, whereas the aggregate profits of the Company's three accounting periods (i.e. year to 31st January 1963, year to 31st January 1964 and 15 months to 30th April 1965: total 39 months) amounts to £341,724, the aggregate of the profits assessed to income tax and corporation tax as per sub-para. (5)(*a*) above (on the basis of periods totalling 48 months) amounts to £420,583. The difference of £78,859 corresponds to the profits of the nine months' period brought into assessment twice over (*vide* sub-para. (5)(*a*) above). We were later informed that the correct figure was not £78,859 but £78,798.

It was suggested to us in the course of argument that we might adjourn the appeal to enable the Board to reconsider the whole matter in the light of the possibility of adopting the alternative approach described in sub-para. (5)(*b*) above. This, in the event, we did not do.

(1) *See* page 229 *post*. (2) *See* 43 T.C., at pp. 670–2. (3) *See* page 230 *post*.

3. It was contended on behalf of the Company: A

(1) that the Board's direction in respect of 1964–65, in the circumstances created by the Board's decision in respect of 1965–66, resulted in an injustice;

(2) that the injustice could be measured by the amount of the profits of the nine months' period which was included in the basis period for 1963–64 and also in the basis period for 1964–65;

(3) that the said injustice should be cured by deducting £78,798 from the B amount of the assessment under appeal.

4. It was contended on behalf of the Board:

(1) that the Board's direction under s. 127(2)(*b*) was properly made, that it was in accordance with the Revenue's published practice, and that it was not subject to appeal;

(2) that the direction made under s. 127(3), although not precisely in C accordance with the Board's published practice, did not result in injustice, since it was more favourable to the Company than if the practice had been followed;

(3) that the power to grant such relief, if any, as is just could only be exercised within the limits of the fundamental requirement of the Income Tax Acts of assessing the profits of twelve months in each year of assessment; D

(4) that a reduction in the assessment for 1964–65 of £78,798 would result in the assessment being based upon the profits of only three months, so that the assessments to income tax for the three years in question, namely 1963–64, 1964–65 and 1965–66 would be calculated on the profits of only 27 months;

(5) that tax charged under Cases I and II of Schedule D on the preceding year basis is not tax charged on the profits of the accounting year ending in E the preceding year of assessment but is tax charged in respect of the profits of the year of assessment, those profits being measured by the profits of the aforesaid earlier accounting year;

(6) that accordingly the adoption of the profits of a particular twelve-month period for measuring the profits of two years of assessment, as for example in the commencement provisions under s. 128, did not result in double F taxation;

(7) that any apparent disadvantage to the Company which may have resulted from the first accounting period for corporation tax commencing on 1st May 1964 was the consequence of the Company's change of accounting date, the Board's decision under s. 127(2)(*b*) and the provisions of the Finance Act 1965; and it was not relevant to an appeal against the direction under s. 127(3); G

(8) that the direction under s. 127(3) should be supported and the consequential assessment for the year 1964–65 confirmed.

5. We, the Commissioners who heard the appeal, noted that the direction made in relation to 1964–65 resulted in the basis periods for 1963–64 and 1964–65 overlapping by nine months. Such overlapping of basis periods was, we thought, a thing which might not uncommonly happen in income tax com- H putations, and did not necessarily of itself give rise to any injustice. In the present case, looking at the overlap in the light of the circumstances of the Board's decision relative to 1965–66 and the consequential charge to corporation tax as from 1st May 1964, we came to the conclusion that the profits of the

nine months' overlap were being in a real sense charged to tax twice over, and this we considered was, in the particular circumstances, unjust. In all the circumstances it seemed to us that an appropriate way of relieving this injustice was to deduct £78,798 from the amount of the 1964–65 assessment.

We accordingly reduced the assessment to £35,301 less capital allowances.

6. The Board immediately after the determination of the appeal declared to us their 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, s. 64, which Case we have stated and do sign accordingly.

7. The question of law for the opinion of the Court is whether we made any error in law in deciding: (1) that the direction resulted in an injustice; and (2) that the method we chose was appropriate to relieve such injustice.

R. A. Furtado } Commissioners for the Special Purposes
D. E. Barrett } of the Income Tax Acts

Turnstile House,
94–99 High Holborn,
London W.C.1.
10th July 1969

The case came before Pennycuick J. in the Chancery Division on 28th November 1969, when judgment was reserved. On 3rd December 1969 judgment was given in favour of the Crown, with costs.

C. N. Beattie Q.C. and *Patrick Medd* for the Crown.

H. Major Allen Q.C. and *Andrew Park* for the Company.

The case cited in argument is referred to in the judgment.

Pennycuick J.—This is an appeal by the Crown against a decision of the Special Commissioners whereby they reduced the amount of the Respondent Company's assessment to income tax under Case I of Schedule D for the year of assessment 1964–65 by the amount of £78,798. The Respondent is a company known as Helical Bar Ltd. The appeal is concerned with the adjustment of profit taxable under Case I of Schedule D which falls to be made where a trader alters the dates of his period of account in such a way that the period ends earlier in the year of assessment than heretofore. The appeal is also in some way connected with the transition from income tax to corporation tax.

I propose in the first place to read the relevant provisions from the Income Tax Act 1952, as amended. It is essential in this connection to bear in mind throughout that the profit chargeable with tax under Case I of Schedule D for any given year of assessment is ascertained by reference to a previous basis period of account, normally the year of account last ended before the commencement of the year of assessment. Obviously in certain circumstances—for instance, the commencement of a trade, and, as here, an alteration in the period of account—certain adjustments have to be made. Section 127 of the Income Tax Act 1952 deals with this matter. The section as it stands amended under certain subsequent provisions now reads as follows:

"(1) Subject to the provisions of this and the three next following sections, tax shall be charged under Cases I and II of Schedule D on the

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full amount of the profits or gains of the year preceding the year of assessment. (2) Where, in the case of the trade, profession or vocation, an account has or accounts have been made up to a date or dates within the period of three years immediately preceding the year of assessment—(*a*) if an account was made up to a date within the year preceding the year of assessment and that account was the only account made up to a date in that year and was for a period of one year beginning either at the commencement of the trade, profession or vocation, or at the end of the period on the profits or gains of which the assessment for the last preceding year of assessment was to be computed, the profits or gains of the year ending on that date shall be taken to be the profits or gains of the year preceding the year of assessment; (*b*) in any case to which the provisions of paragraph (*a*) do not apply, the Commissioners of Inland Revenue shall decide what period of twelve months ending on a date within the year preceding the year of assessment shall be deemed to be the year the profits or gains of which are to be taken to be the profits or gains of the year preceding the year of assessment. (3) Where the Commissioners of Inland Revenue have given a decision under paragraph (*b*) of subsection (2) of this section and it appears to them that in consequence thereof the tax for the last preceding year of assessment in respect of the profits or gains from the same source should be computed on the profits or gains of a corresponding period, they may give directions to that effect and an assessment or repayment of tax shall be made accordingly." Then follow these two paragraphs, introduced by an amendment of 1964[1]: "1. The decision whether or not to give a direction under the subsection shall be subject to an appeal to the General or Special Commissioners who shall grant such relief, if any, as is just. Subject to paragraph 2 below, the appeal shall be brought within thirty days of receipt of notice of the decision. 2. If the decision is to give a direction, and an assessment is made in accordance with the direction, the appeal against the decision shall be by way of an appeal against the assessment."

A B C D E F

It will be observed that under subs. (2)(*b*) the Commissioners of Inland Revenue must give a decision selecting a basis period for the relevant year and this decision is not appealable. The Commissioners then have power under subs. (3) to give a direction altering the basis period for the previous year of assessment. This direction is appealable. I mention in passing, having regard to one argument which was addressed to me, that it seems clear that the Commissioners, in exercising their powers under s. 127(3), must take as the new basis period for the preceding year of assessment a period ending on the date at which the period selected under subs. (2) begins. It is accepted on behalf of the Crown that the General or Special Commissioners have power on appeal under subs. (3) to make whatever adjustment is necessary in order to bring about a fair result as regards the last preceding year of assessment in the circumstances of the particular case. The principle on which the Commissioners of Inland Revenue act, and rightly act, will be found well summarised in Simon on Income Tax, vol. 2, page 221[2]:

G H

> "The general principle is that the average rate of assessments over the years affected should be equated to the average rate of profits made in the accounting periods that go to form the basis of those assessments."

I

As regards the latitude of the Commissioners' powers, I was referred to the judgment of Lord Greene M.R. in *Gollin* v. *Commissioners of Inland Revenue*

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(1) Income Tax Management Act 1964, Sch. 4. (2) *See* 43 T.C., at p. 672D.

(1943) 25 T. C. 161. That was a decision under a different statutory provision, namely, that in which income attributable to a period exceeding a year may be spread for the purposes of surtax. The relevant expression is " such relief as may be just ". Lord Greene M.R., at pages 169–70, said this:

> " Now the operative part of the Section, in cases where it applies, gives to the Special Commissioners power to charge an applicant to Super-tax, or adjust his liability to Super-tax, for the year in question and any succeeding year so as to give such relief as may be just, having regard to all the circumstances. Pausing there for a moment, that language appears to me to give to the Special Commissioners the widest possible discretion to do what appears to them as just-minded men to be just in the circumstances of the case. Down to that point there is nothing to suggest that there are any particular matters which the Special Commissioners are bound to take into consideration or any special matters which they are forbidden to take into consideration. The whole matter is left at large, and they would be entitled to take into consideration anything which to them appeared to be relevant to the question of justice. That, of course, does not mean that they could take into account matters which, on any view of any reasonable man, must be quite irrelevant to the question; for instance, it does not mean that they could take into account the special position of a man's family affairs or anything of that kind. It must be related to the incidence of taxation, but subject to that, the discretion, down to that point, is of the widest possible character. But the Section goes on and it says this: ' and in particular to the amount of any liability or additional liability to super-tax which would have arisen for any preceding year or years if ', and then it sets out two contingencies. "

It seems to me that that reasoning is applicable as regards the powers of the Commissioners under s. 127(3). There is no reason in principle that I can see why the Commissioners should not take corporation tax into account if and so far as it is relevant to do so as regards the last preceding year in question. Again, there is no reason why the adjustment should not take the form of reducing the amount of the assessment. Indeed it is not apparent what other form it could take.

In the present case the Company's period of account up to and including 31st January 1964 ran from 1st February to 31st January, so the period of account ended 31st January 1963 was the basis period for the year of assessment 1963–64; the period of account ended 31st January 1964 was the basis period for the year of assessment 1964–65. After 31st January 1964 the Company acquired certain new interests, and for commercial reasons took a 15-month period of account from 1st February 1964 to 30th April 1965, thus throwing the end of the new period of account forward into a new year of assessment, so rendering it ineligible as the basis period for the year of assessment 1965–66. The Company continued thereafter, so far as I am aware, to use the period of twelve months ended on 30th April as the period of account.

The Company's profit for the period of account ended on 31st January 1963 was £104,867, its profit for the period of account ended on 31st January 1964 was £141,203, and its profit for the 15-month period ended 30th April 1965 was £95,654. The alteration in the Company's period of account brought s. 127 into play, and in due course the Commissioners of Inland Revenue made a decision under subs. (2)(*b*) making the period of twelve months ending 30th April 1964 the basis period for the year of assessment 1965–66. They further made a direction under subs. (3) altering the basis period for the year of assessment 1964–65 from the period ended 31st January 1964 to the period ended 30th April

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1963. This decision and direction were in accordance with normal practice. The adjustments necessarily involved an apportionment on a time basis of the profit for the periods of account ended 31st January 1964 and 30th April 1965 respectively. The Company complains of the direction under subs. (3) on the ground that it involves some form of double taxation. The Company's complaint does not rest on any hardship of the kind which sometimes results from a wide variation in the amount of a trader's profits over the relevant years, that being the type of hardship which subs. (3) appears at any rate primarily to be designed to meet. I do not overlook that there was in fact a considerable variation in the Company's profits here.

The case as formulated by the Special Commissioners is also in some way related to the transition from income tax to corporation tax. Very summarily, the Company was chargeable to income tax for the last time in the year of assessment 1965–66. It became chargeable to corporation tax for the first time as from the date in the year 1964–65 at which its period of account begins; obviously, the earlier this date, the earlier its liability for corporation tax begins. But irrespective of whether this date is early or late in the year 1964–65, the Company is chargeable with income tax for the whole year 1965–66. So a company having a period of account ending early in the year of assessment is at a real disadvantage as compared with a company having a period of account ending late in the year of assessment, although this disadvantage is to some extent blanketed by certain provisions not now material as regards the actual payment of tax. Thus, in the present case the Company incurred a real disadvantage as regards corporation tax by the alteration of its period of account so as to end on 30th April instead of on 31st January. I have mentioned the incidence of corporation tax because it comes repeatedly into the Case Stated and evidently influenced the Commissioners, but Mr. Major Allen, who appears for the Company, expressly disclaims reliance on hardship resulting from acceleration of the date for the commencement of corporation tax. The Company's claim as advanced before the Commissioners and supported to-day is based on the contention that there was some form of double taxation.

I propose now to read the Case Stated. I think that in this particular case it will be convenient to make comments on the Case Stated as I go along rather than to read it first as a whole.

> " 1.(1) At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 9th December 1968 Helical Bar Ltd. (hereinafter called ' the Company ') appealed against the following assessment to income tax: Year 1964–65; Amount £114,099 less capital allowances. (2) The appeal was brought under s. 127(3) of the Income Tax Act 1952, as amended by the Income Tax Management Act 1964, Sch. 4. The assessment was made in accordance with a direction by the Board of Inland Revenue (hereinafter called ' the Board ') pursuant to the said subs. (3), and the question (shortly stated) was what relief therefrom, if any, should be just. 2. The facts set out in this paragraph were agreed or proved. (1) The Company is a company limited by shares which was incorporated in July 1919. Its business is the design and erection of all types of ferro-concrete structures and foundations. (2) At all material times up to 31st January 1964 the Company made up its accounts to 31st January in every year. Prior to April 1965 the Company acquired the whole of the respective issued share capitals of five trading companies, which accordingly became its wholly-owned subsidiaries. This involved a substantial increase in the business of the group, and at the same time a new chairman was appointed to the board of the Company. The next accounting date of the

Company was then postponed, and its accounts were made up for a 15-month period to 30th April 1965. (3) The profits of the material accounting periods of the Company were: year to 31st January 1963, £104,867; year to 31st January 1964, £141,203; 15 months to 30th April 1965, £95,654. (4) Following upon this change of accounting date, the Board (*a*) in pursuance of their powers under s. 127(2)(*b*) of the Income Tax Act 1952, decided that the basis period to be adopted in determining the Case I assessment on the Company for the year 1965–66 should be the period of 12 months to 30th April 1964, and (*b*) in pursuance of their powers under s. 127(3) of the said Act, directed that the Case I assessment on the Company for the preceding year 1964–65 should be computed on the profits for the twelve months ending 30th April 1963. There is annexed hereto, marked 'A', a copy of the statement from the Inland Revenue setting out the calculations falling to be made in accordance with these decisions."

Appendix A merely shows how the profits for the two years of assessment are made up on the basis of time apportionments for the relevant basis periods. As regards the year of assessment 1965–66, the basis period is the year ended 30th April 1964, and the profits for that year are made up of nine-twelfths of £141,203—that is the profit for the period of account ended on 31st January 1964—and three-fifteenths of £95,654—that is the profit for the 15-months' period of account ended on 30th April 1965. That gives a total of £125,033. As regards the year of assessment 1964–65, the basis period is the year ended 30th April 1963, and the profits for that year are made up of nine-twelfths of £104,867—that is the profit for the period of account ended on 31st January 1963—and three-twelfths of £141,203—that is the profit for the period of account ended on 31st January 1964. That gives a total of £113,951. Then follow certain adjustments, into which it is not necessary to go, and the adjustments end up with a figure of £114,160, which is so close to the figure of £113,951 as to make no particular difference.

To return to the body of the Case, para. 2 continues: "(5) The decision by the Board described in sub-para. (4)(*a*) above is in accordance with its published practice." Then they exhibit a copy of the publication setting out this practice[1]. Counsel did not consider it necessary to read that publication, and I will not refer to it.

"The direction described in sub-para. (4)(*b*) above is not precisely in accordance with that practice, although the difference in figures is small. An alternative approach (not in accordance with the Board's practice) would have been to adopt 31st January as the accounting date for income tax purposes throughout. The effect of these two alternatives can be summarised as follows: (*a*) *Basis periods following the Inland Revenue's two decisions:* Income tax year 1963–64, basis period: year to 31st January 1963; income tax year 1964–65, basis period: year to 30th April 1963; income tax year 1965–66, basis period: year to 30th April 1964; corporation tax, first accounting period: 1st May 1964 to 30th April 1965. (*b*) *If 31st January had been adopted as the accounting date for income tax purposes throughout:* Income tax year 1963–64, basis period: year to 31st January 1963; income tax year 1964–65, basis period: year to 31st January 1964; income tax year 1965–66, basis period: year to 31st January 1965; Corporation tax, first accounting period; 1st February 1965 to 30th April 1965. (6) The effect of the decisions of the Inland Revenue described in sub-para. (4)(*a*) and (*b*) above is that: (*a*) the profits of the

(1) *See* 43 T.C., at pp. 670–2.

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Company for the period from 1st May 1962 to 31st January 1963 are brought into assessment twice over, once in respect of the year 1963–64 and again in respect of the year 1964–65, and no corresponding period drops out; and (*b*) the Company's profits for the period from 1st May 1964 to 31st January 1965 are charged to corporation tax instead of income tax. Neither of these two consequences would ensue if 31st January were adopted as the accounting date of the Company for income tax purposes throughout. There is annexed hereto, marked 'C', a statement prepared by Messrs. Black, Geoghegan & Till, the auditors of the Company, giving details of the figures involved."

I will refer to that statement in a moment, but I will first make certain comments on what is said in sub-para. (6)(*a*) and (*b*). The profits for the nine months from 1st May 1962 to 31st January 1963 are only brought into assessment for income tax twice over in the sense that these nine months form part of the year taken as a basis period for the ascertainment of profit for two distinct years of assessment, namely, 1963–64 and 1964–65. The charge of tax for each year of assessment is only upon the profits of a single basis year. It is true that no corresponding period drops out. That is the inevitable result of putting back the date at which the trader's year of account ends, but that does not in the circumstances involve any double taxation. The profits for the nine months from 1st May 1964 to 1st January 1965 are chargeable to corporation tax. They are so charged instead of to income tax only in the sense that as a result of the change in taxation these profits are prevented from forming part of the profits of any basis year of income tax. It is literally true that the consequences set out at the beginning of para. (*b*) would ensue if 31st January had been adopted as the accounting date of the Company for income tax purposes throughout.

I now turn to appendix C, which is the statement prepared by the Company's accountants. Although it is tedious to read the figures I must, I think, do so. "Proposed bases of assessment: 1963–64, 1st February 1962 to 31st January 1963; 1964–65, 1st May 1962 to 31st January 1963, 1st February 1963 to 30th April 1963; 1965–66, 1st May 1963 to 30th April 1964. Doubly assessed period, 1st May 1962 to 31st January 1963. Profits of basis periods: (i) Assessments: 1963–64, 1st February 1962 to 31st January 1963, £104,867; 1964–65, 1st May 1962 to 31st January 1963, £78,650 coupled with 1st February 1963 to 30th April 1963, £35,301", total £113,951; "1965–66, 1st May 1963 to 30th April 1964, £125,033." The total of those figures for the assessments is £343,851. Then there is a trivial adjustment which increases it to £344,060. Then "(ii) Profits: 1st February 1962 to 31st January 1963, £104,867; 1st February 1963 to 31st January 1964, £141,203; 1st February 1964 to 30th April 1964, £19,131." The total of these figures for profits is £265,201. The difference—that is the amount by which the total of profits, £265,201, is less than the total assessments, £344,060—is £78,859. It appears on the face of those figures as if the amount of the assessments had exceeded the amount of the corresponding profits by the sum of £78,859, but it will be seen that the profits brought in are only profits for two years and three months. These cannot properly be compared with the profits for the three years which form the basis periods for the three respective years of assessment.

To return once more to the body of the Case, para. 2(7) reads:

"Shortly stated, the effect of the Board's basis for assessments is that, whereas the aggregate profits of the Company's three accounting periods (i.e. year to 31st January 1963, year to 31st January 1964 and 15 months to 30th April 1965: total 39 months) amounts to £341,724, the aggregate of the profits assessed to income tax and corporation tax as per sub-para. (5)(*a*)

A above (on the basis of periods totalling 48 months) amounts to £420,583. The difference of £78,859 corresponds to the profits of the nine months' period brought into assessment twice over (*vide* sub-para. (5)(*a*) above). We were later informed that the correct figure was not £78,859 but £78,798 "

—there is nothing relevant in that.

I find great difficulty in following this passage, which involves a comparison B of the profits for 39 months of account with profits assessed to income tax and corporation tax on the basis of periods totalling 48 months. So far as income tax is concerned, the profits for the three years of assessment 1963–64, 1964–65 and 1965–66 are charged on the profits of three basis periods overlapping certainly but each of one year and no more.

To return to the Case Stated:

C " It was suggested to us in the course of argument that we might adjourn the appeal to enable the Board to reconsider the whole matter in the light of the possibility of adopting the alternative approach described in sub-para. (5)(*b*) above. This, in the event, we did not do.

3. It was contended on behalf of the Company: (1) that the Board's direction in respect of 1964–65, in the circumstances created by the Board's D decision in respect of 1965–66, resulted in an injustice; (2) that the injustice could be measured by the amount of the profits of the nine months' period which was included in the basis period for 1963–64 and also in the basis period for 1964–65; (3) that the said injustice should be cured by deducting £78,798 from the amount of the assessment under appeal.

4. It was contended on behalf of the Board: (1) that the Board's E direction under s. 127(2)(*b*) was properly made, that it was in accordance with the Revenue's published practice and that it was not subject to appeal; (2) that the direction made under s. 127(3), although not precisely in accordance with the Board's published practice, did not result in injustice, since it was more favourable to the Company than if the practice had been followed; (3) that the power to grant such relief, if any, as is just could only F be exercised within the limits of the fundamental requirement of the Income Tax Acts of assessing the profits of twelve months in each year of assessment; (4) that a reduction in the assessment for 1964–65 of £78,798 would result in the assessment being based upon the profits of only three months, so that the assessments to income tax for the three years in question, namely, 1963–64, 1964–65 and 1965–66 would be calculated on the profits G of only 27 months; (5) that tax charged under Cases I and II of Schedule D on the preceding year basis is not tax charged on the profits of the accounting year ending in the preceding year of assessment but is tax charged in respect of the profits of the year of assessment, those profits being measured by the profits of the aforesaid earlier accounting year; (6) that accordingly the adoption of the profits of a particular twelve-month period for H measuring the profits of two years of assessment, as for example in the commencement provisions under s. 128, did not result in double taxation; (7) that any apparent disadvantage to the Company which may have resulted from the first accounting period for corporation tax commencing on 1st May 1964 was the consequence of the Company's change of accounting date, the Board's decision under s. 127(2)(*b*) and the provisions I of the Finance Act 1965, and it was not relevant to an appeal against the direction under s. 127(3); (8) that the direction under s. 127(3) should be supported and the consequential assessment for the year 1964–65 confirmed.

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5. We, the Commissioners who heard the appeal, noted that the direction made in relation to 1964–65 resulted in the basis periods for 1963–64 and 1964–65 overlapping by nine months. Such overlapping of basis periods was, we thought, a thing which might not uncommonly happen in income tax computations and did not necessarily of itself give rise to any injustice. In the present case, looking at the overlap in the light of the circumstances of the Board's decision relative to 1965–66 and the consequential charge to corporation tax as from 1st May 1964, we came to the conclusion that the profits of the nine months' overlap were being in a real sense charged to tax twice over, and this we considered was, in the particular circumstances, unjust. In all the circumstances it seemed to us that an appropriate way of relieving this injustice was to deduct £78,798 from the amount of the 1964–65 assessment. We accordingly reduced the assessment to £35,301 less capital allowances."

Leaving aside the rather perplexing comparisons of like with unlike, the conception on which the Commissioners based their finding, unless I have completely misunderstood it, is not really double taxation at all, but the fact that the period from 1st May 1964 to 31st January 1965 is brought into the first period in respect of which corporation tax is chargeable. That really means that the hardship to the Company lies in the advancement of the date as from which chargeability to corporation tax commences. Reliance on the contention in that simple form is, as I have said, expressly disclaimed by Mr. Major Allen, and I had better not pursue it. The difficulty in the way of such a contention is, I suppose, to be found in sub-para. (7) of the contentions made on behalf of the Board as set out in para. 4 of the Stated Case. Suffice it to say that, so far as income tax is concerned, I am quite unpersuaded that there has been any double taxation, and that being so the basis on which the Commissioners expressed their conclusion and on which Mr. Major Allen supported it seems to me to disappear. Once one concludes, as I feel bound to do, that the Commissioners based their decision on the mistaken view that the direction involved double taxation, their conclusion is obviously vitiated. No other ground has been adduced for interfering with the direction.

I ought, I think, before leaving the matter, to make one point clear. If one takes the three years' actual profit, i.e., £104,867 for the year 1st February 1962 to 31st January 1963, £141,203 for the year 1st February 1963 to 31st January 1964 and £76,523, twelve-fifteenths of the profits for the 15 months from 1st February 1964 to 30th April 1965, one gets a total of £322,593. That is less by £21,467 than the total amount of profit charged, i.e. £,344,060. That, however, is not the ground upon which the Company rests its contention, and I am not concerned to go further into that matter. For the reasons which I have given I must allow this appeal.

Beattie Q.C.—Your Lordship will allow the appeal with costs?

Pennycuick J.—Yes.

Beattie Q.C.—My Lord, would your Lordship say that the assessment for the year 1964–65 should be affirmed in the sum of £113,951 less capital allowances? I understand my learned friend agrees to that.

Pennycuick J.—If that is right, I will say so.

Allen Q.C.—My Lord, that is the slight difference which arose on the figures in the Case, which your Lordship did not really have to trouble to look at. I only question whether the assessment is affirmed in that amount. It is, I think, technically reduced because the assessment stands at £114,000 odd and it should be £113,900 odd.

A **Pennycuick J.**—I will make the Order in whatever form is right.

Beattie Q.C.—It is entirely satisfactory to me that your Lordship should reduce the assessment to £113,951. It saves sending the case back, my Lord.

Pennycuick J.—We do not want to do that over a trifling sum. That is right, is it?

Allen Q.C.—Yes, my Lord, I am happy with that.

B

The Company having appealed against the above decision, the case came before the Court of Appeal (Russell, Sachs and Buckley L.JJ.) on 9th, 10th and 11th November 1970, when judgment was reserved. On 9th December 1970 judgment was given against the Crown, with costs (Russell L.J. dissenting).

C *H. Major Allen Q.C.* and *Andrew Park* for the Company.
C. N. Beattie Q.C. and *Patrick Medd* for the Crown.

The cases cited in argument are referred to in the judgments.

Russell L.J.—This is an appeal by the taxpayer from a decision of Pennycuick J., [1970] 1 W.L.R. 294, allowing an appeal from the Special Commissioners (hereinafter referred to as " the Commissioners ") on a Stated Case.

D

The Finance Act 1965 introduced corporation tax as the tax on profits of a company. This tax is charged in respect of a fiscal year on the actual profits made by the company in that fiscal year. Income tax was also charged on the profits of a company for a fiscal year, but under the income tax system those profits were assessed by reference not to the trading activities of that fiscal year but on the basis of profits made in the company's twelve months' accounting period last ended before the commencement of that fiscal year. The language of the 1965 Act was such that in the case of all companies the actual trading profits of the fiscal year 1965–66 [if they did not form the basis of the 1965–66 income tax assessment] were brought into charge to corporation tax, while at the same time the profits of that same fiscal year assessed for income tax purposes on the basis of the profits in an earlier accounting year remained subject to charge to income tax. Moreover, it resulted from the Statute that some part of the actual profits for the fiscal year 1964–65 were also brought into charge to corporation tax, while of course the whole of the profits of that fiscal year assessed on the basis of the actual profits of a yet earlier accounting year remained subject to the charge of income tax. (In fact the liability to *pay* any corporation tax could not arise before 1st January 1967.) The extent to which actual profits in the fiscal year 1964–65 became liable to corporation tax depended on the date upon which the twelve months' accounting period, on the profits of which the assessment for income tax purposes of profits for the fiscal year 1965–66 was based, terminated. Thus, if the accounting period of a company was from 1st February to 31st January, corporation tax would begin to run (so to speak) on 1st February 1965: if from 1st May to 30th April, then on 1st May 1964. This is because the scheme of the 1965 Act is to impose the charge to corporation tax on all earned profits of a company that have not been brought into computation of an assessment of profits for the purpose of the

E F G H

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charge to income tax. Every company, whatever may be the terminal date of its relevant basis accounting period for assessment to income tax for the fiscal year 1964–65, is in this respect treated in the same way. A

The Appellant Company had since it began to trade in 1919 used as its accounting period the year 1st February to 31st January. In connection, however, with the reorganisation of its business and the acquisition of interests in other companies it decided some time towards the end of 1964 to change its accounting period to expire on 30th April. This involved a 15-month account from 1st February 1964 to 30th April 1965, and there was lacking, accordingly, any account showing the profits for a 12-month period ending within the year before the beginning of the fiscal year 1965–66, on which the assessment of profits for that fiscal year for income tax purposes was required to be based. (It is perhaps convenient at this stage to extract from the Stated Case the figures of profits earned in the Company's three relevant accounting periods. These were: for the year 1st February 1962 to 31st January 1963, £104,867; for the year 1st February 1963 to 31st January 1964, £141,203; for the 15 months 1st February 1964 to 30th April 1965, £95,654.) In those circumstances the Commissioners of Inland Revenue (hereinafter referred to as " the Board ") were required by s. 127(2)(*b*) of the Income Tax Act 1952 to decide what period of twelve months ending on a date within the year preceding the fiscal year 1965–66 should be the period on the profits of which the assessment of the profits for income tax purposes for that fiscal year should be based. The Board decided upon the twelve months period ending on 30th April 1964. A result of this decision, which in fact was made after the Finance Act 1965 came into force, was that profits earned after 30th April 1964 did not enter into any computation of an assessment of profits to be charged to income tax, and accordingly such subsequently earned profits became subject to corporation tax. As already indicated, had the Board chosen, for example, 1st February 1964 to 31st January 1965 as the period, corporation tax would not have begun to run until 1st February 1965. The Board's choice of the one date rather than the other has, because of the operation of the 1965 Act, cost the Company corporation tax on nine months' actual profits, or to put it another way has failed to save the Company that tax: on the other hand, those profits ceased to be relevant for income tax. (It is of course not the fact that those were the only dates available to the Board in selecting a twelve-month period: s. 127(2)(*b*) in no way restricts the decision in such a case to the old accounting date or the new accounting date: the Board could have selected a date having a " better " result for the Company than 31st January, or a " worse " one than 30th April, or something intermediate.) This decision of the Board is final and not subject to appeal. The incidence of corporation tax that flows from the 1965 Act and the selection for decision of 30th April is inescapable. B C D E F G

I note in passing, because of arguments addressed to us in respect of a later decision, or rather determination, of the Board, that the choice of 30th April 1964 as a terminal date involved the use for the second time of some actual profits of the Company as a basis for assessment of profits for income tax. The profits of the twelve months ending 30th April 1964, now to be used as a basis for assessment for the fiscal year 1965–66, were ascertainable (at £125,033) by a time apportionment of the profits shown by the Company's accounts for 1st February 1963 to 31st January 1964 and 1st February 1964 to 30th April 1965: this involved bringing in nine-twelfths (that is, £105,902) of the profits made in the year 1st February 1963 to 31st January 1964, which had already formed the basis for assessment for income tax of profits for the fiscal year 1964–65. Such double use of actual profits as a basis is of course common at H I

A the commencement of a trade, and no doubt occurred in the early days of this Company. As indicated later, this particular double use was cancelled by the determination next mentioned.

Section 127(3) operates when a decision has been made under subs. (2)(*b*). It provides that if it appears to the Board that in consequence of that decision the tax in respect of the company's profits for the last preceding fiscal year
B should be based on the profits of " a corresponding period " the Board may give directions to that effect and an assessment or additional assessment or repayment of tax shall be made accordingly. This provision, which was introduced when the system of computing profits on an average of three years was abolished, was plainly designed as a method by which there could be mitigated any result of the decision under subs. (2)(*b*) unduly favourable to the
C Crown or to the taxpayer owing to the impact of the change in basis periods on an irregular pattern of profits. In the present case the Board directed under subs. (3) that the corresponding period to serve as a basis for assessment or reassessment for income tax of the profits of the fiscal year 1964–65 should be the period 1st May 1962 to 30th April 1963. Without such direction the basis period otherwise applicable (that is, 1st February 1963 to 31st January 1964)
D resulted in an assessment for the fiscal year 1964–65 of £141,203: the direction would result in a reassessment at £113,951. (On the other hand, the decision under subs. (2)(*b*) to take the twelve months ending 30th April 1964 as the basis period for the fiscal year 1965–66 resulted in an assessment for that fiscal year of £125,033: whereas if, for example, a basis period of the twelve months ending 31st January 1965 had been decided upon, or if no change in the
E accounting date had been made, that figure would have been £76,526.) This direction under subs. (3) had the effect that nine months (that is, £78,650) of actual profits of the Company which had already been used as part of the basis for assessment of profits for the fiscal year 1963–64 were to be used again as part of the basis for assessment of the profits of the Company for the fiscal year 1964–65 for income tax purposes. On the other hand, as I have already
F indicated, in effect it cancelled the " double use " of profits for the income tax assessment for 1965–66, which would as indicated have resulted from the subs. (2)(*b*) decision alone.

While there is no provision for appeal from a decision under s. 127(2)(*b*) there is provision for appeal in relation to a direction or a failure to direct under subs. (3). Originally this was found in subs. (4), but since the Income
G Tax Management Act 1964 the position is that subs. (3) is subject to the following provisions:

> " 1. The decision whether or not to give a direction under the subsection shall be subject to an appeal to the General or Special Commissioners who shall grant such relief, if any, as is just."

The rest does not seem presently material.

H The Company appealed to the Commissioners in respect of the subs. (3) decision to make this direction, contending that the Board's direction under that subsection, in the circumstances created by the Board's decision under subs. (2)(*b*) in respect of 1965–66, resulted in injustice: that that injustice could be measured by the nine months of actual profits to be used as part of the basis for assessment of profits for income tax for the second time, namely in respect
I not only of the fiscal year 1963–64 but also of the fiscal year 1964–65: and that accordingly the Commissioners should give relief against the direction by reducing the assessment for that latter year by the relevant nine months' profits figure—£78,650, as I have already stated. In the reasons for acceding to these

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contentions the Commissioners referred to this double use of the nine months of profits as an overlapping of the basis periods used for income tax assessment for 1963–64 and 1964–65. They then said:

> " In the present case, looking at the overlap in the light of the circumstances of the Board's decision relative to 1965–66 and the consequential charge to corporation tax as from 1st May 1964, we came to the conclusion that the profits of the nine months' overlap were being in a real sense charged to tax twice over, and this we considered was, in the particular circumstances, unjust. In all the circumstances, it seemed to us that an appropriate way of relieving this injustice was to deduct £78,798 from the amount of the 1964–65 assessment."

They pointed out that the figure " corresponds to the profits of the nine months' period brought into assessment twice over ". The basic reason for the decision appears to me clearly to have been the nine months' overlap of basis periods as producing in a real sense a charge of income tax on the profits of those nine months twice over. The effect of the decision under subs. (2)(*b*) on the date on which the corporation tax would begin to run was brought in as a background matter. It is plain from the Stated Case that the deduction by the Commissioners of £78,798 from the income tax assessment was because that was or approximated to the figure of profits earned (ascertained by apportionment) during the " doubly used " nine months. I am not sure how the actual figure of £78,798 is arrived at.

The Commissioners were not speaking of, and could not be speaking of, a duplication of charge to income tax and its successor corporation tax. Not only does their language make this plain, but it simply was not so. Corporation tax, running from 1st May 1964 on actual profits for the fiscal year 1964–65, bore no relation to the assumed profits for the fiscal year 1964–65 for income tax purposes. No part of the actual profits up to 31st January 1963 which were included in the " doubly used " nine months was relevant to the charge to corporation tax. It cannot be correctly said that any part of the earned profits of the Company which were made subject to corporation tax had already been brought into computation for the purpose of the charge to income tax: no part of the earned profits in the fiscal year 1965–66 had been so brought into computation: no part of the earned profits in the period of the fiscal year 1964–65 from 1st May 1964 had been so brought into computation. The Act did not permit it. I stress this point in particular because I do not understand it to be argued for the taxpayer that intervention on appeal with a direction or non-direction under subs. (3) could be justified in law merely on the ground that the decision under subs. (2)(*b*) had the result of bringing corporation tax to bear on profits earned by the Company in 1964–65 earlier than some different decision of a terminal date would have done; nor that such intervention could be justified merely on the ground that the decision had the result of a larger assessment to income tax for the fiscal year 1965–66 than would have resulted from a direction of some different terminal date. That was, I apprehend, because the field in which at least *some* injustice or hardship is (it is argued) to be found is the assessment of profits for income tax for the fiscal year 1964–65 resulting from a direction under subs. (3) or a lack of such a direction. But it was submitted that, having found injustice in that field so resulting, the Commissioners would be at liberty to take *also* into account the fact that the unappealable decision under subs. (2)(*b*) had resulted in an impact of corporation tax on profits earned in 1964–65 earlier than would have been the case had a 12-month period terminating later than 30th April 1964—for example, 31st January 1965—been the decision.

A I return, therefore, to the contention relied upon by the Commissioners that there was in a real sense a double subjection to income tax of nine months of profits of the Company by those nine months forming for the second time a basis for assessment. For my part, I cannot see that in any sense there was such double taxation. The system of assessment for income tax involves the use of the actual profits for an accounting period as a basis for the assessment B of the profits chargeable to income tax of the next ensuing fiscal year. This cannot be done in the very early years of a trade, and as a consequence there is to be found at that stage what has been referred to as " double use " of the actual profits of an accounting period for the purpose of computation or assessment of profits of a fiscal year chargeable to income tax. It was argued for the taxpayer that there is no great harm in that, because when you reach C cessation of the trade there will prove to be an equivalent number of years of actual profit which have not been used for the purpose of assessing the profits of a fiscal year chargeable to tax. But, it was said, the introduction by the 1965 Act of corporation tax charged on actual profits of a fiscal year means that those so-called " drop-out " years disappear. This, it is said, is a hardship or injustice. Tax, it is argued, is exigible for x plus y years on the basis of D profits earned in only x years. It is accepted that this must be stomached to a greater or less degree by all companies by the impact of the 1965 Act. Equally, it is accepted that if in (say) 1960 the events which affected this Company had happened to another company, there would be no possible complaint in law by that company of its tax position as now occupied by the Appellant Company. But it is said that the direction as to the basis period for the fiscal year E 1964–65 has produced injustice in that an additional nine months of double use of actual profits for the 1964–65 assessment has been introduced in circumstances that do not permit a corresponding nine months' " drop-out ". In my judgment, this reference to a " drop-out " is a red herring. It assumes that the non-user of earning years prior to cessation necessarily would be beneficial to the taxpayer: but this may well not be so. There is no telling. Accordingly, F it seems to me that this aspect of the argument for the taxpayer has no validity.

Charts were produced to us in order to demonstrate that the effect of the unappealable decision under subs. (2)(*b*) was that income tax was to be charged in respect of fiscal periods of x months on assessments based on profits earned over only x minus 23 months. It was accepted that, if the decision under subs. (2)(*b*) had been to appoint 31st January 1965 and no direction had been G made under subs. (3), the result would have been a charge in respect of x months based on profits earned over only x minus 14 months, with no possible complaint, because that would be the result of the 1965 Act. Once more, it is the nine months to which objection is taken. But indeed the argument seems to me to be as fallacious as the " no drop-out " argument. The Company is inevitably charged to income tax on assessments made according to the Statute up to and H including the fiscal year 1965–66 of the profits of its trading activities, which activities continued to be carried on throughout that year. It is not a question of trading and earning profits for only x minus 23 months, but being charged to tax as if one was trading profitably for x months. Once more, it is fundamentally an objection to the system under the 1965 Act, under which, while income tax is still running on assessed profits of a fiscal year, corporation tax I begins to run on actual profits earned in the same year. If the Board had made no direction under subs. (3), thus *avoiding* a double use of actual past profits for the 1964–65 income tax assessment, I apprehend that the complaint of the Appellant Company would have been loud. At the very least, it would have been said to the Commissioners on appeal, " you must adjust the assessment

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for income tax for the fiscal year 1964–65 to a basis of actual profits for 1st May 1962 to 30th April 1963 ", which is of course what was done.

I come back, therefore, to this. It was not contended for the Appellant taxpayer that because the Board had selected 30th April 1964, when the Board might have selected, for example, 31st January 1965, with the result that the impact of corporation tax came nine months earlier, this would justify adjustment by the Commissioners on appeal of the 1964–65 assessment for income tax. It was accepted, indeed contended, for the taxpayer that if anything was to be done under subs. (3) the " corresponding period " must be 1st May 1962 to 30th April 1963. It was accepted for the taxpayer that somehow it must be shown that injustice was done by the results of that direction. I can understand that it might have been argued or contended that the 1964–65 assessment to income tax could have been adjusted on appeal solely on the ground that the Board had needlessly imposed on the Appellant Company an extra nine months of corporation tax when the Board might quite sensibly have decided upon 31st January 1965 as the terminal date of the relevant basis period for 1965–66: and that accordingly the 1964–65 assessment—which according to the Appellant Company would then have been £141,000 odd—should be adjusted to mitigate that hardship. But that contention was disclaimed, I think rightly. On the contrary, the Appellant Company's case was primarily grounded upon the overlap, " double taxation " and drop-out points that I have mentioned and rejected, and which were accepted by the Commissioners as justifying in all the circumstances deletion from the 1964–65 assessment of the amount of the " doubly used " basis profits.

These views accord, I think, with those expressed by Pennycuick J. on appeal by way of Stated Case from the decision of the Commissioners, and I need not therefore refer to his judgment in detail. The only factual criticism made of it was that he apparently thought that counsel for the taxpayer dismissed the " acceleration " of the charge to corporation tax as a total irrelevance, whereas it was contended that it was an additional factor: but this does not, I think, serve to undermine the conclusion, as I have sought to indicate.

The grounds of appeal to this Court were as follows:

> " 1. That in all the circumstances of this case the direction made by the appellants under section 127(3) of the Income Tax Act 1952 as respects the year of assessment 1964–65 occasioned to the respondent injustice and hardship the nature of which was correctly apprehended by the Special Commissioners. 2. That the determination of the Special Commissioners gave appropriate relief to rectify the aforesaid injustice and hardship being relief of a kind which the Special Commissioners were empowered to give by the entry relating to the said section 127(3) contained in Schedule 4 to the Income Tax Management Act 1964. 3. That the learned Judge misdirected himself in holding that the respondent had not suffered a double liability to income tax. 4. That the learned Judge was therefore wrong in law in reversing the determination of the Special Commissioners."

As to these grounds, as indicated, I consider that the Commissioners in relying upon double charge or liability to income tax did not correctly apprehend. The grounds of appeal underline the point that I have made as to the limited use to which the Appellant taxpayer sought to put the incidence of corporation tax.

My brethren, I understand, take the view that the decision of the Commissioners can be upheld on a ground that I did not understand to be accepted by the taxpayer, though advanced from the Bench. As I see it, it is certainly not the ground upon which the Commissioners came to their decision, and is one which basically involves (*a*) an erroneous view that corporation tax was charged for nine months on the same earned profits as remained subject to a charge to income tax and (*b*) that a decision under subs. (2)(*b*) of the Board that accelerated the date from which earned profits would cease to be relevant to income tax and would therefore be brought within the charge to corporation tax, more than would do some other decision possible under that subsection, would *per se* justify a reduction of the income tax assessment in respect of the fiscal year 1964–65. It involves the proposition that if in any case, for example, the decision under subs. (2)(*b*) with or without a direction under subs. (3) should involve a total of assessments to income tax for both 1964–65 and 1965–66 not greater than would have been the case had there been no change in the accounting period, yet if the decision under subs. (2)(*b*) had not been such as would introduce at the latest possible date the first subjection of earned profits to corporation tax, there could be considered to be an appropriate case for just relief. I cannot accept this. In my judgment the impact of corporation tax under the 1965 Act lies where it falls, however the relevant terminal accounting period may be, or has been, arrived at—whether because it has always been that date, or whether it was arrived at because of a change in, say, 1960, or whether on the facts of the present case.

It is implicit in the view that injustice is suffered by this Company by the impact of corporation tax on its profits earned in 1964–65 during a period of nine months, while it remained liable to income tax on assessed profits for the whole of that year, that an injustice was done by the 1965 Act to every single company in the country in respect of the year 1965–66. I do not consider that to be true. The scheme of the Act, by which corporation tax is charged only upon earned profits that have not been brought into computation for an assessment of profits to income tax, does not seem to me to work any injustice, nor to involve in a real or any other sense double taxation. This means, in effect, that I reject the contention that the impact of corporation tax is relevant to a decision by the Commissioners on appeal from a direction under subs. (3). The other view would put the Appellant Company in a better position than another company which, in similar circumstances, had earlier changed its accounting date to 30th April, and involves a criticism of an unappealable decision of the Board under subs. (2)(*b*) as unjust, without presuming to go so far as to say that the Board in arriving at such a decision had some obligation, in justice or fairness, to choose the date most favourable in point of corporation tax to the company.

To revert momentarily to my view that the Commissioners arrived at their decision on a fallacious basis, because in speaking of " double taxation in a real sense " they were not speaking of double subjection to income tax and corporation tax, it is true to say that the figure by which they reduced the income tax assessment for 1964–65 corresponds approximately with the total of (*a*) the profits subjected to corporation tax in the so-called accelerated nine months from 1st May 1964 to 31st January 1965—which would be £57,392—and (*b*) the difference (adverse to the taxpayer) of £21,258 between the total of income tax assessments for 1964–65 and 1965–66 resulting from the decision and direction of the Board and what would have been that last total had the Board decided upon 31st January 1965. That first correspondence results from the time apportionment of the figures. But that was not the road followed by the

(Russell L.J.)

Commissioners, nor was it the road along which the Appellant Company sought to lead us. Nor, as I have indicated, do I think it would have been the right road. On the other hand, I think that the Commissioners would have been justified in amending the assessment for 1964–65 by reducing it by a figure (which I calculate to be £21,258) which would result in a total of assessments to income tax for 1964–65 and 1965–66 at the figure which that total would have been had the accounting period not been changed. This, I think, would have been permissible if no direction had been made under subs. (3); and if that be so a similar result would have been permissible in the present case. This was not, however, suggested to us. It was all or nothing, with no alternative suggestion that we might remit the matter to the Commissioners to review the possibility of a reduction of the 1964–65 income tax assessment in the light of the view that I have expressed.

In the result, in my judgment the appeal should fail, and the taxpayer is in the same situation as it would have been if the change of accounting period, the decision under subs. (2)(*b*), and the direction under subs. (3) had occurred in, say, 1960.

There is one other matter to be mentioned, though not decided. It has always, since the introduction of the earlier equivalent of subs. (3) in I think 1926, been considered or assumed that " a corresponding period " must correspond in point of terminal date. For the first time it was suggested in this Court by the Crown that since the subsection did not refer to " *the* corresponding period " the Board was not bound to direct a similar terminal date, but was at liberty to select as a basis period for the last preceding fiscal year any period, provided that it was (*a*) twelve months and (*b*) ending within twelve months before the beginning of the last preceding fiscal year. The argument thereafter, as I understood, would be that the power of the Commissioners on appeal was limited to selection of some or some other " corresponding period " in that wider sense. Neither side invites us to rule on this contention, and I say no more than that, if it be correct, the draftsmen since, I think, 1926 of these provisions in different Statutes must have despaired of the ability of the Board to understand the meaning of words. In fact, on the assumption that the contrary is the true construction, a system has grown up, directed at avoiding hardship from the readjustment of accounting periods in circumstances of sharp ups and downs in profit levels, by the Board offering to reassess the last preceding fiscal year at a particular figure of profits by reference to an average level ascertained in a manner set out in a policy statement summarised in Simon on Income Tax(1). Commonly this has resulted in agreement: where there is no agreement the Board has directed the new basis period, and the taxpayer has been able then to go to the Commissioners, who have also aimed at a fair average. By this means the assumedly narrow ambit of the powers of the Board to direct under subs. (3) and the apparently wider powers of the Commissioners to give such relief as is just have been reconciled

Accordingly, differing as I do with regret from my brethren, I would dismiss the appeal.

I append to this judgment some calculations upon which I have based the figures that I have mentioned. I follow a distinguished precedent in not reading them out, without the modest disclaimer of their worth to be found in that precedent: see *Askinex Ltd.* v. *Green* [1969] 1 Q.B. 272, at page 285.

(1) *See* 43 T.C., at pp. 670–2.

Appendix to Judgment

Comparative Table of the profits assessed to income tax and subject to corporation tax on the assumptions:

(A) that terminal dates 31 January 1965 and 1964 had been decided and directed by the Board;

(B) that terminal dates 30 April 1964 and 1963 were so decided and directed.

Note: Earned profits were as follows (see Case Stated):

	£
Year 1 February 1962 to 31 January 1963	104,867
Year 1 February 1963 to 31 January 1964	141,203
15 months 1 February 1964 to 30 April 1965	95,654

(A) (i) Income tax

(*a*) For 1964–65: basis, earnings in period 1.2.63 to 31.1.64 141,203

(*b*) For 1965–66: basis, earnings in period 1.2.64 to 31.1.65 12/15ths of £95,654 76,523

(ii) Corporation tax before 31 January 1965 .. .. .. Nil
(for period 31.1.65 to 30.4.65 would be £19,131)

Total £217,726

	£	£
(B) (i) Income tax		
(*a*) For 1964–65: basis, earnings in period 1.5.62 to 30.4.63		
9 months of period 1.2.62 to 31.1.63 = ¾ of £104,867 = ...	78,650	
plus 3 months of period 1.2.63 to 31.1.64 = ¼ of £141,203 = ...	35,301	
		113,951
(*b*) For 1965–66: basis, earnings in period 1.5.63 to 30.4.64		
9 months of period 1.2.63 to 31.1.64 = ¾ of £141,203 = ...	105,902	
plus 3 months of period 1.2.64 to 30.4.65 = 3/15ths of £95,654 = ...	19,131	
		125,033
(ii) Corporation tax for period 1.5.64 to 31.1.65 = 9/15ths of £95,654		57,392
Total		296,376
Deduct total in (A) above		217,726
Difference		78,650

Note (1) The final difference figure is the same as the figure for " doubly used " earnings of £78,650 in (B)(i)(*a*).

Note (2) The total of the income tax assessment figures in (B) is £238,984, which is greater by £21,258 than the total of the income tax assessment figures in (A).

Sachs L.J.—In so far as income tax on profits falling within Case I of Schedule D is concerned, any change in the terminal date of the annual accounting period of a company is bound in many cases to give rise to difficulties. They are such that no set of specific rules could be so framed as both to be practicable and at the same time calculated to produce fair results in all the many varying circumstances that can arise.

Section 127 of the Income Tax Act 1952 is accordingly devised so as to provide that flexibility which is essential if considerable injustice is to be avoided. Its provisions must be read as a whole. Subsection (3) and the present subs. (4) (by which I refer to the two paragraphs which replace the original subs. (4) by virtue of Sch. 4 to the Income Tax Management Act 1964) are intended to enable redress to be given for hardships deriving from an exercise of the powers given by subs. (2) to make an unappealable decision. Indeed, subs. (2) decisions can thus properly be made by the Board in the light of the knowledge that subss. (3) and (4) can later be appropriately applied to relieve unjust consequences. In this way the Board is free for reasons of accounting or administrative convenience to make an order under subs. (2) that *prima facie* has harsh results, relying on the fact that these can and indeed should be in due course remedied under the other two subsections.

Before turning to the facts of the present case it is convenient to consider a preliminary point as to the extent of the powers given to the Special Commissioners to relieve such hardships. That depends on the interpretation to be given to the words in the current subs. (4) " who shall grant such relief, if any, as is just ". Those are the same words as appeared in subs. (4) as originally enacted in 1952, and they are similarly to be found in s. 34 of the Finance Act 1926. Do those words give the Special Commissioners unrestricted discretion, within the ambit indicated in *Gollin* v. *Commissioners of Inland Revenue* (1943) 25 T.C. 161, to reduce any assessment with which the Commissioners are concerned to whatever extent they think just in all the circumstances, or are they confined to making such a direction as could have been made by the Board under subs. (3) ? The former and wider view is the one which has been consistently adopted by the Board since 1926. Moreover, this view appears to have been accepted on behalf of the Crown when the instant matter came before Pennycuick J.—as was also the case when it came before the Special Commissioners. In this Court, however, it was for the first time submitted that the second and narrower view should be adopted. Despite the ingenious and attractively presented argument of Mr. Beattie it seems to me that the former and wider view is correct. It suffices to say that otherwise the wording of subs. (4) would be different: indeed it might even be said that the words above recited were otiose and the relevant sentence in the present subs. (4) could simply have read: " the decision whether or not to give a direction under the subsection shall be subject to an appeal to the Special Commissioners." Accordingly, it is appropriate to deal with the present case on the basis of the wider interpretation.

Turning, on that basis, to those issues it is first to be noted that it is stated in Simon's Income Tax (2nd edn.), vol. 2, page 221, that, when seeking to relieve relevant hardships,

> " the general principle is that the average rate of assessments over the years affected should be equated to the average rate of profits made in the accounting periods that go to form the basis of those assessments." (1)

No doubt that principle—or, to be more exact, that practice—can often be so applied as to produce a fair result. That, however, does not mean that no

(1) *See* 43 T.C., at p. 672 D.

A other method of relief should ever be applied to the task in hand. There does not seem to me to be any particular magic in that or any other formula. The proper objective to be aimed at when applying subs. (4) is, to my mind, to try so far as may be practicable to ensure that the taxpayer, despite the adjustment of the terminal date to the accounting period, so pays tax on his actual profits that he does not overall pay more on them in the immediately relevant years
B than if the accounting period had remained constant, and that, on the other hand, none of those profits escapes tax. How best to approach the objective must naturally depend on the particular circumstances of the case. Moreover, when such a wide discretion is given to the Special Commissioners as is indicated in Lord Greene M.R.'s judgment in *Gollin's* case[1] (see 25 T.C., at page 169), then the Courts will be slow indeed to interfere with their view as to what
C constitutes hardship or as to how it may be remedied, unless an error in law in their approach is manifest.

If we were concerned only with what had to be paid by way of income tax, and if corporation tax had either not been introduced or if we had to disregard that introduction, Mr. Major Allen has frankly and rightly conceded that the taxpayer in the present case would on the particular facts have no cause for
D complaint and would not have been pursuing the matter before the Courts. It is the introduction of corporation tax that has produced the main adverse effect resulting from the Board having by its direction dated 22nd September 1966 under s. 127(2) selected 30th April 1964 rather than 31st January 1965 as the terminal date for the accounting period with which the Board dealt. That difference of nine months has resulted in a further nine months' profits
E becoming subject both to income tax and corporation tax, because the period of time over which the Company's profits attract the latter tax is extended by nine months without either correspondingly reducing the period over which those profits attracted income tax or correspondingly reducing any assessment to that tax. The amount of corporation tax involved is approximately £57,000. Thus, by virtue of the s. 127(2) direction, that amount has gone from the coffers
F of the Company into those of the Revenue; and accordingly that much less is available to the Company for allocations such as reserves or dividends. It was conceded for the Crown that it was equally open to the Board when making their direction under subs. (2) to select either 31st January 1965 or 30th April 1964 as the terminal date. Indeed, no reason was advanced for selecting the earlier date other than presumed adherence to some administrative practice
G that had developed over the years before corporation tax was introduced—in other words, a practice that never could have had nor did have any regard to the effects the incidence of that new tax might produce. To that extent the direction was arbitrary—in that it is not suggested by the Crown that the Board at that stage either considered or had any need to consider the particular facts of the case or the results that would follow the direction.

H Those being the facts, it is necessary to consider in turn three questions: first, whether the incidence of corporation tax is something which in law the Special Commissioners are, when using their powers under s. 127(4), entitled to take into account in the course of determining whether a direction under subs. (3) has produced a result that ought in justice to be the subject of relief; secondly, whether that direction did in the present case produce such a result;
I thirdly, whether the particular method adopted for granting relief was within their powers.

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(1) 25 T.C. 161.

(Sachs L.J.)

As regards the first question, Pennycuick J. said(1), [1970] 1 W.L.R. 294, at page 297:

> "There is no reason in principle that I can see why the Commissioners should not take corporation tax into account if and so far as it is relevant to do so as regards the last preceding year in question."

He refrained, however, from dealing further with this question, substantially, so it appears, on account of what he understood to be a disclaimer on behalf of the Company of reliance on hardship caused by the advancement of date of incidence of corporation tax. To my mind, the incidence of corporation tax is something the Commissioners can properly take into account in cases such as the present one. Corporation tax was by the Finance Act 1965 being introduced to replace income tax, and the justice of any individual case required that the system of taxation should be considered as a whole. It is true that when s. 127 first came into force there was no tax called corporation tax, but that does not mean that under subs. (4) account could not in future be taken of whatever other or further form of taxation of income derived from annual profits might take. Income tax, surtax, excess profits tax, corporation tax, name them how you will, are all taxes levied on income.

Having come to that conclusion as to the first question, I am absolved from dealing in detail with the intricate arguments addressed on behalf of the taxpayer as to the effects respectively of the " double use " of the actual profits of one year as a measuring rod to compute the deemed profits for each of two successive fiscal years or of the " drop-out " of accounting periods not being available should the business activities of the company cease at some time in the future. Suffice it to say that to me, as to Russell L.J., both sets of arguments appear to be wholly fallacious for the reasons he has given, and I quite understand how the great reliance placed on points that appear on the face of it solely to relate to the incidence of income tax may have led Pennycuick J. to make his decision in a way in which he did.

At this point it is convenient to mention that it is my considerable misfortune to differ from Russell L.J. on the interpretation both of that part of the findings of the Special Commissioners which he has cited and also of the ambit of the submissions made to us by counsel for the taxpayer. As to the former, it seems to me that the reference to " the consequential charge of corporation tax as from 1st May 1964 " could have no meaning unless they had in mind that nine months' extension of the period over which the profits of the taxpayer were subject to corporation tax as well as income tax. Incidentally, I would be reluctant to think that the " double use " and " drop-out " arguments which have been observed to be so clearly fallacious by all three members of this Court, and also, it would seem, by Pennycuick J., were not thus regarded also by the experienced Commissioners. As to the submissions made here by counsel for the taxpayer, reference has already been made to what was said as to the taxpayer having no cause for complaint looking at income tax in isolation, and it is thus sufficient to mention that it was Mr. Major Allen who first used the phrase that it was necessary to " take the whole system of taxation as an entity ": indeed, he emphasised in reference to chart 2, examples B and C, that it was the corporation tax liability which produced the substantial adverse effect stemming from the Commissioners' direction under subs. (2). Indeed, each of the three questions which are in course of being dealt with in this judgment was fully canvassed in the course of the extensive arguments in this Court. Moreover, I would in any event

(1) *See* page 227 *ante*.

A hesitate long before, on account of anything in the form or emphasis of some submission, I refrained from dealing with the true substance of the matter before the Court.

I turn now to the second question, as to whether, if one takes into account the incidence of corporation tax, the s. 127(3) direction in the present case can properly be said to have produced a result for which relief should in justice
B be given. More shortly, did it result in unnecessary hardship? That is a matter pre-eminently for the Special Commissioners as the tribunal selected by the Legislature to determine these special matters. It seems to me that it was in law clearly open to them so to determine, and that it is thus not for an appellate Court to substitute their own view either as to the existence or the extent of the hardship, towards both of which issues the Commissioners are
C entitled to adopt a reasonably broad approach. Where, as here, it was equally open to the Board to select either of the two terminal dates discussed (or indeed any one of a number of intermediate dates), the somewhat arbitrary selection of a date that bore so particularly hardly on the Company would indeed appear to me also to have resulted in an unnecessary hardship. As regards the nature of that hardship, the amount of the Commissioners'
D deduction tallies too closely with the aggregate of the £57,392 and £21,257 mentioned by Russell L.J. for that closeness to be in my view a mere coincidence. Be that as it may, whilst I might not myself have come to the same figure as the Commissioners, I can see no grounds for interfering with the one they reached; moreover, I very much doubt whether in any event this Court is entitled to substitute its own figure for that of the particular tribunal designated
E to assess it: see *Blaise* v. *Blaise* [1969] P. 54, and the case there cited[1]. Accordingly, I would not disturb their determination either as to the existence of hardship or its measure. Whilst in reaching this conclusion I have not used the words " double taxation "—the various meanings of which were much canvassed before us—it yet seems to me reasonable and indeed proper to use that phrase when one set of profits is unnecessarily made to attract two taxes
F on income instead of one.

Turning to the third and final point, the method adopted for granting relief, Pennycuick J. observed [1970] 1 W.L.R. 294, at page 297[2]: ". . . there is no reason why the adjustment should not take the form of reducing the amount of the assessment. Indeed it is not apparent what other form it could take." With that observation I respectfully agree, and I see no reason why
G the Special Commissioners should not take the course of reducing the assessment for the fiscal year 1964–65—particularly as the s. 127(3) direction resulted in the first corporation tax accounting period falling within that year. I would incidentally be very reluctant to circumscribe what Lord Greene M.R. described in *Gollin's* case 25 T.C. 161, at page 169, as " the widest possible discretion to do what appears to them " (the Special Commissioners) " . . . to
H be just in the circumstances of the case."

I would accordingly allow this appeal and make such Order as is appropriate to give effect to the decision of the Commissioners.

Buckley L.J.—Since the Finance Act 1926 income tax on the profits of a trade has been assessed on what is commonly called " the preceding year basis ".
I The tax charged in respect of the trade of a taxpayer who is liable to income tax for the current income tax year ending on 5th April 1971 (the amount of whose profits for that period cannot at present be ascertained) is assessed

(1) Bray *v.* Ford [1896] A.C. 44. (2) *See* page 227 *ante*.

upon the assumption that those profits will be of an amount equal to the ascertained profits of his trade for the preceding year. Since, however, most traders do not work on an accounting year ending on a 5th April, to avoid the need for apportionment the twelve-month period adopted for the purpose of computing the taxpayer's liability in respect of the income tax year 1970–71 is not the immediately preceding twelve months (that is, the twelve months ending on 5th April 1970) but the period of twelve months covered by his trading account ending next before 5th April 1970. There is consequently a time lag between 6th April 1970, the first day of the income tax year in respect of which the tax is charged, and the first day of the trading year the profits of which are used as the basis of computing the amount of the tax to be charged, which cannot be less than twelve months and may be all but two years.

This method of proceeding cannot be adopted in the opening years of the trade. Suppose a trader to start trading on 1st February 1960, and to earn profits in the period 1st February to 5th April 1960. He cannot be assessed to tax on those profits by reference to any earlier trading period, for he has none; but he is none the less liable to some tax in respect of the income tax year 1959–60, because he has earned profits in that period, by an assessment based on an appropriate apportioned part of his total profits disclosed by his first year's trading account covering the year 1st February 1960 to 31st January 1961. His tax liability in respect of profits during the income tax year 1960–61 also cannot be assessed by reference to any period of twelve months ended before 6th April 1960, for the taxpayer has not traded for as much as twelve months before that date. His tax liability for this income tax year is assessed by reference to the profits of his first year's trading, ending 31st January 1961. His tax liability in respect of profits during the income tax year 1961–62 will be assessed on the preceding year basis, and the basis period to be adopted will be the twelve months ended 31st January 1961, being that period covered by the taxpayer's trading accounts ended last before 6th April 1961. The profits of one year's trading have thus been used as the basis of computation of the taxpayer's tax liability in respect of approximately two years and two months from 1st February 1960 to 5th April 1962, a difference of approximately 14 months. This is all achieved by the Income Tax Act 1952, ss. 122, 123, 127(1) and (2)(*a*) and s. 128. Under s. 129 the taxpayer has an option to be assessed on another basis in respect of his second and third years of assessment (that is, in my example, the years 1960–61 and 1961–62), but I need not pause to discuss this.

Suppose the same trader to cease trading on 31st December 1970, and suppose that he has remained chargeable to income tax on the profits of his trade until then. He will have been assessed in respect of the income tax year 1969–70 on his profits for his trading year ended 31st January 1969. Under s. 130 of the 1952 Act he is assessed in respect of the period 6th April 1970 to 31st December 1970 on his actual profits for that period. His actual profits for the period 1st February 1969 to 6th April 1970 (a period of approximately 14 months) will in this state of affairs never have been used as a basis of computing any liability to tax on his part. Under s. 130(1)(*b*) the Revenue has an option to assess him on his actual profits in the fiscal year 1969–70 instead of on the preceding year basis, but I need not go into that in any detail. The point of this narration is to illustrate how, notwithstanding that twelve months' profits are at the start used to measure more than twelve months' liability to tax, the extent of this " multiple use ", as I may call it, namely 14 months, is reflected by an equivalent period towards the end of the trading period (which I may call a " non-use period ") of which no use is made for computation purposes.

A Any exercise by the Revenue of the option under s. 130(1)(*b*) merely shifts this non-use period to an earlier date.

Now suppose that the taxpayer in the example does what the taxpayer in the present case in fact did, that is, that between 5th April 1964 and 5th April 1965 he decides to change the terminal date of his trading year from 31st January to 30th April, and to this end makes up a trading account for 15
B months ending on 30th April 1965 instead of a twelve months' trading account ending on 31st January 1965. Suppose also that he remains liable to income tax on his trading profits until he stops trading on 31st December 1970. In this state of affairs the preceding year basis cannot be used for computing his tax liability for the income tax year 1965–66, because there is no trading account for a period of twelve months' trading ending within the income tax
C year 1964–65. Section 127(2)(*b*) becomes applicable. Under that subsection the Commissioners of Inland Revenue (" the Board ") can select any period of twelve months ending in the income tax year 1964–65 to serve as the basis period for computing the taxpayer's liability to income tax in the year 1965–66. They have adopted as their usual practice the selection of the twelve months ending on the same date in the income tax year preceding the year of assessment
D as the new terminal date selected by the taxpayer for his trading account. In accordance with this practice, in the case supposed the Board would select as the basis period for the year 1965–66 the twelve months from 1st May 1963 to 30th April 1964. The profits of a part of this period—from 1st May 1963 to 31st January 1964, nine months—will have already been used as part of the basis period for computing the taxpayer's liability for the income tax year
E 1964–65. Another multiple-use period of nine months' extent is produced in this way, but the interval between the end of the basis period and the beginning of the year of assessment will thenceforth always be increased by nine months, and consequently the non-use period in his closing trading years will also be increased by the same extent. In the present case the Board not only made such a decision under s. 127(2)(*b*) but also gave a direction under s. 127(3),
F thus shifting this new multiple-use period back another twelve months but otherwise not changing the effect of the operation.

This system is carefully and ingeniously devised in such a way that the whole trading period and the aggregate of the basis periods (treating multiple-use periods cumulatively) is of equal length, the multiple-use periods and the non-use period being of equal duration. Disregarding the favourable or
G unfavourable effect that changes in the rate of tax may have—a hazard of a kind to which a taxpayer is constantly exposed—the system works completely fairly, except that, if the profits in the multiple-use periods are higher than those in the non-use period the taxpayer suffers, whereas in the reverse position the taxpayer benefits.

In consequence of the change from income tax to corporation tax the
H Company in the present case was chargeable to income tax for the last time in the income tax year 1965–66, and became chargeable to corporation tax for the first time from the end of its basis period for income tax in relation to that income tax year—that is, on 1st May 1964: Finance Act 1965, s. 80(2). The Company was consequently liable to both income tax and corporation tax in respect of the profits of its trade for the period 1st May 1964 to 5th April 1966,
I approximately 23 months.

On account of the fact that liability to corporation tax was made to start immediately following the ending of the taxpayer's basis period for the purpose of income tax for the year 1965–66, some overlapping of income tax and

(Buckley L.J.)

corporation tax is bound to occur in the case of every taxpayer assessed on the preceding year basis, the length of overlap depending on when that basis period ended in each case. The actual profits of the first year in which the company is liable to corporation tax are never used as a basis for computing any income tax. Nevertheless, income tax is payable in respect of those profits, although the amount of tax so payable is computed by reference to the profits for the preceding basis period. Corporation tax is chargeable in respect of all profits of the taxpayer's trade from the date when it first becomes chargeable down to the date when it ceases to trade. The non-use period which formed part of the income tax scheme consequently disappears. The taxpayer has to pay both income tax and corporation tax for the overlap period without any compensating immunity in any later year. It pays two taxes in respect of one lot of profit. This, being a burden which Parliament had thought fit to impose on payers of corporation tax, cannot in normal circumstances be regarded as unfair, in spite of the fact that the period of double taxation may in one case be much longer than in another, varying from twelve months to all but 24 months. The taxpayer must accept the inevitable. But in the present case it was not inevitable that the period of double taxation should be as long as 23 months. Had the Company not changed its accounting date, the period would have been 1st February 1965 to 5th April 1966, that is to say, nine months less. It was not, however, the act of the Company in changing its accounting date but the act of the Board in making their decision under s. 127(2) which brought this result about and rendered the Company liable to corporation tax for the additional nine months.

Was this just? In other words, were the resulting circumstances such that it would be just for the Special Commissioners to grant relief under that provision in Sch. 4 to the Income Tax Management Act 1964 to which s. 127(3) of the Income Tax Act 1952 is subjected by the terms of s. 17(3) of the Act of 1964? The Board in giving their directions followed their accustomed practice, but I see no particular merit in this. A practice which operates reasonably, fairly and conveniently in some circumstances may not do so in others. One must consider the consequences of using the practice in the circumstances of the particular case. There seems to have been no greater convenience in fixing the basis period for 1965–66 in relation to the Company as the twelve months ended 30th April 1964 and in making the corresponding direction in respect of the preceding year than there would have been in adhering to the terminal date of 31st January in each of those years. Indeed, the latter course would have involved less apportionment of profits. In consequence of the directions given under s. 127 the profits for the three basis periods for the three income tax years 1963–64, 1964–65, and 1965–66 amounted to £343,851 or thereabouts. Had 31st January been retained as the terminal date of the relevant basis periods, the profits for the basis periods for the same three income tax years would have amounted to £322,594 or thereabouts. One consequence of the directions was accordingly to render the Company liable to income tax in respect of upwards of £21,250 more assumed profits than would have been the case had 31st January remained the terminal date—and, incidentally, without any possibility of a compensating immunity in a non-use period at a later stage. As I have pointed out already, another effect of the directions was to make the Company liable to corporation tax for nine months more than would have otherwise been the case. The profits of this period of nine months amounted to approximately £57,400. It is clear, therefore, that the direction had the effect of making the Company liable for a considerably larger sum in tax than would otherwise have been the case.

Under s. 127(4) of the Income Tax Act 1952 an appeal lay against any assessment or additional assessment or in respect of any repayment of tax under subs. (3) of the section. No appeal lay against any refusal to take any action under subs. (3). The provisions of the Income Tax Management Act 1964, to which s. 127(3) is now subjected, are expressed in somewhat wider terms. Under those provisions an appeal lies from any decision, whether it be to give or not to give a direction, under s. 127(3). Under both subs. (4) in its original form and under the provision in the Income Tax Management Act 1964 the Commissioners to whom the appeal lies are to grant such relief, if any, as is just. This is a discretion in perfectly general terms, and is not, in my judgment, confined to granting relief in any particular kind of circumstances. Presumably the appeal under s. 127(4) was intended to give the Commissioners an opportunity to relieve a taxpayer from unduly harsh effects resulting from directions given under the section, such as might result from the multiple use of a period in which the profits of the taxpayer were unusually high. There is, however, nothing in the language of the Income Tax Management Act 1964 to suggest that the discretion of the Commissioners before whom an appeal is brought is confined to considerations of this sort. In my judgment, they have power to grant relief in any case in which they consider that a decision on the part of the Commissioners of Inland Revenue either to make a particular direction or directions under s. 127 or to decline to make a direction or directions under that section operates harshly upon the taxpayer to such a degree as to make it just to grant him some relief. The form of s. 17(3) of the Income Tax Management Act 1964 and of the relevant part of Sch. 4 to that Act is such that it is only s. 127(3) of the 1952 Act which is in terms made subject to the provisions set out in Sch. 4 to that Act. Since, however, a right of appeal is given on a decision whether or not to give a direction under s. 127(3), a right of appeal must exist in every case in which a decision is made under s. 127(2).

Before the Special Commissioners it was contended on behalf of the Company that the direction under s. 127(3), in the circumstances created by the decision under s. 127(2), resulted in an injustice which could be measured by the amount of the profits of the nine months' period which was included in the basis period for 1963–64 and also in the basis period for 1964–65. In para. 5 of the Case Stated the Commissioners drew attention to this nine months' overlap of the two basis periods and said:

> "Such overlapping of basis periods was, we thought, a thing which might not uncommonly happen in income tax computations, and did not necessarily of itself give rise to any injustice. In the present case, looking at the overlap in the light of the circumstances of the Board's decision relative to 1965–66 and the consequential charge to corporation tax as from 1st May 1964, we came to the conclusion that the profits of the nine months' overlap were being in a real sense charged to tax twice over, and this we considered was, in the particular circumstances, unjust. In all the circumstances, it seemed to us that an appropriate way of relieving this injustice was to deduct £78,798 from the amount of the 1964–65 assessment."

Commenting on this finding, Pennycuick J., when the matter came before him on appeal from the Special Commissioners, said[1]:

> "Leaving aside the rather perplexing comparisons of like with unlike, the conception on which the Commissioners based their finding,

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[1] *See* page 232 *ante*.

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> unless I have completely misunderstood it, is not really double taxation at all, but the fact that the period from 1st May 1964 to 31st January 1965 is brought into the first period in respect of which corporation tax is chargeable. That really means that the hardship to the Company lies in the advancement of the date as from which chargeability to corporation tax commences. Reliance on the contention in that simple form is, as I have said, expressly disclaimed by Mr. Major Allen, and I had better not pursue it. . . . Suffice it to say that, so far as income tax is concerned, I am quite unpersuaded that there has been any double taxation, and that being so the basis on which the Commissioners expressed their conclusion and on which Mr. Major Allen supported it seems to me to disappear." Earlier in his judgment ([1970] 1 W.L.R. 294, at page 298[1]) Pennycuick J. had said: "Mr. Major Allen, who appears for the Company, expressly disclaims reliance on hardship resulting from acceleration of the date for the commencement of corporation tax."

Before us, Mr. Major Allen said that there had been a misunderstanding about the extent of his concession in this respect in the Court below. He says that his concession only went to the extent of disclaiming reliance on hardship resulting from acceleration of the date for the commencement of corporation tax taken alone. Before us he has contended that the advancement of the liability to corporation tax is part of the relevant circumstances to be taken into consideration, although alone it would not entitle the Company to relief.

Like Pennycuick J., I am quite unpersuaded that there has been any double taxation of the Company so far as income tax is concerned, but in my view there clearly was double taxation during the period when the Company was simultaneously liable to income tax and corporation tax. I find the passage from the findings of the Special Commissioners which I have read obscure. In arriving at their conclusion that the profits of nine months had in a real sense been charged to tax twice over they took into account, not only the overlap in the basis periods for the years 1963–64 and 1964–65, but also the circumstances of the decision of the Board relative to 1965–66 and the consequential charge to corporation tax as from 1st May 1965. It is true that they say that their conclusion is that the profits of "the nine months' overlap" have been charged twice over, and that syntactically these words are most appropriately referable to the overlap in the two basis periods, but it is also true that the liability to corporation tax and the liability to income tax overlapped by nine months longer than would have been the case but for the directions under s. 127.

Analysis of the tax history of the Company, which I cannot think that the Special Commissioners ignored, makes it perfectly clear that the Company was never assessed or charged to income tax more than once in respect of any income tax period. The only sense in which any profits of the Company can properly be said to have been charged to tax twice over is, in my judgment, on the ground that the Company was required to pay both income tax and corporation tax on the profits of a certain period. The Commissioners have, I think, expressed themselves imperfectly in para. 5 of the Case Stated, and I cannot avoid the conclusion that, when they speak of profits being taxed twice over, they are thinking of this double subjection to tax and that the nine months' overlap which they had in mind was the additional nine months' liability to corporation tax resulting from the direction under s. 127(2). It may perhaps be said that the profits of the nine months' overlap of the basis

(1) *See* page 228 *ante*.

periods are taxed twice in the sense that these profits are taken into account twice over for the purposes of computation of tax and that all later profits are subsequently taken into account for the assessment of tax on profits (whether income tax or corporation tax), with the result that in the outcome the number of months' profits used for assessment purposes (treating multiple-use periods cumulatively) must exceed the actual number of months' trading to the extent of the multiple-use periods. It may be that the Commissioners had this conception in mind when they expressed themselves as they did in the passage I have quoted. With respect to the Commissioners, I do not think that it is really accurate to regard this as involving double taxation to income tax of the profits of the multiple-use period; but whichever view is taken discloses, I think, that the Company has suffered double taxation for a period of nine months.

In this Court the Company has been very shy about putting forward any claim to relief on the ground of simultaneous liability to income tax and corporation tax. Mr. Major Allen, for the Company, has contended that the effect of altering the basis periods for the income tax years 1964–65 and 1965–66 has been that the Company has suffered too much income tax. This contention, as I understand it, is not based upon the level of profits in any particular period, but merely upon the fact that basis periods have been selected which to some extent overlap. It cannot, in my judgment, be said to result in double taxation.

In conjunction with this submission Mr. Major Allen also relies on the advancement of the Company's liability to corporation tax as a matter to be taken into consideration. Mr. Beattie, on the other hand, appearing for the Crown, when pressed by members of the Court about the simultanous liability to corporation tax and income tax, contended that the incidence of corporation tax could not properly be taken into account. This simultanous liability was, he said, common to all companies, and in considering what is just the Special Commissioners must, as he contends, treat all companies fairly *inter se*. He says that the Appellant Company is in no worse position as to corporation tax than any other company with trading accounts which close on 30th April in each year, and that there is no reason to relieve this particular Company. He points out that their position with regard to simultanous liability to corporation tax and income tax is the same as it would have been if they had changed their accounting period as long ago as 1960 and the Board had thereupon made directions under s. 127 corresponding to those which in fact they did make in 1965. This is true, but if the Company had changed its accounting year in 1960 the Board, in considering what period they should choose to serve as the basis period for the Company's income tax assessment in relation to the year 1960–61, would have made their decision in ignorance of the possibility of corporation tax being substituted for income tax at some later date. The element of hardship which arises out of the state of affairs existing in 1965 would not then have arisen. The Company would have approached the year 1965 in exactly the same position as if its accounting year had always been one ending on 30th April. In my judgment, different considerations arise when the Commissioners make their decision in circumstances in which they must be taken to have known that it would affect the Company's liability to corporation tax.

The ground, therefore, upon which I would allow this appeal is a ground which was not dealt with by Pennycuick J. in his judgment, partly, it may be, because of a misunderstanding between the learned Judge and Counsel as to

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the extent of a concession by Counsel, and partly because Counsel presented an argument to Pennycuick J. of a narrower kind than I consider to be the true strength of the Company's case. Although in this Court also Counsel for the Company were inclined to put forward their case on what I consider to be too narrow a front, the basis upon which I consider the case falls for decision has, I think, been sufficiently canvassed before us. It rests upon the fact that in consequence of the directions given under s. 127 the Company became liable to corporation tax nine months earlier than they would have done had the Company's basis period for 1965–66 remained the twelve months ended on 31st January 1965. This, in itself, and in conjunction with the increased liability to income tax occasioned by the change of basis periods, results, in my judgment, in a severe fiscal hardship on the Company, having a direct causal link with the decisions under both s. 127(2) and (3) of the Income Tax Act 1952. In these circumstances, the Special Commissioners were, in my judgment, right in thinking that it was a case in which it was proper for them to grant relief. No question as to quantum has been raised on the appeal before us.

I should mention two contentions which Mr. Beattie, for the Crown, placed before us. First, as to the meaning of the expression " a corresponding period " in s. 127(3) of the Income Tax Act 1952, although the Crown has in practice treated this as meaning the twelve months' period immediately preceding the period of twelve months selected under s. 127(2), he did not accept this as necessarily representing the true construction of the subsection. His submission was that it was open to the Commissioners of Inland Revenue to select any period of twelve months ending within twelve months before the period of assessment which would produce a fair result, or as fair a result as the circumstances allowed. This question does not, I think, arise for decision in the present case, and I for my part do not wish to express any opinion upon it. Mr. Beattie also contended that under the appeal provisions applicable to s. 127(3) the Special Commissioners could do no more on an appeal than the Commissioners of Inland Revenue could have done under s. 127(3), that is to say, that they could only select some other period of twelve months to serve as the basis for the year of assessment in question. I feel unable to accept this contention. The Statute empowers the Special Commissioners to grant such relief as is just, and I see no reason to confine these words to any particular form of relief within the competence of the Special Commissioners.

Russell L.J.—Mr. Major Allen, that involves that the appeal will be allowed, I apprehend with costs here and below.

Allen Q.C.—Your Lordship will restore the determination of the Special Commissioners?

Russell L.J.—We set aside Pennycuick J.'s Order and restore the determination of the Special Commissioners, which reduced the assessment of income tax for 1964–65 to £35,301 less capital allowances.

Allen Q.C.—If your Lordship pleases.

Beattie Q.C.—My Lord, may I respectfully ask your Lordships for leave to appeal to the House of Lords? Your Lordships are differing from Pennycuick J., and Russell L.J. differs from the majority of the Court. My Lord, it is a point which affects a number of companies. There are a considerable number in the same position in relation to the transitional period.

A **Russell L.J.**—What do you say, Mr. Major Allen?

Allen Q.C.—I would respectfully submit that this is not a case for the House of Lords. In my submission, it has turned largely on the facts of this particular case, or application of the relevant sections to the facts of this particular case; and these facts depend very much upon what I might call the intrusion of corporation tax into the otherwise harmonious operation of the B basis period provisions. It cannot, with respect, happen again, while the law remains in its present form. I would submit that this case is decided on facts rather than on the construction of the sections.

(*The Court conferred.*)

Russell L.J.—Mr. Beattie, you may have leave.

Beattie Q.C.—I am much obliged, my Lord.

C

The Crown having appealed against the above decision, the case came before the House of Lords (Lord Wilberforce, Viscount Dilhorne and Lords Pearson, Cross of Chelsea and Salmon) on 1st and 2nd March 1972, when judgment was reserved. On 22nd March 1972 judgment was given unanimously in favour of the Crown, with costs.

D *C. N. Beattie Q.C.* and *Patrick Medd* for the Crown.

F. Heyworth Talbot Q.C., *H. Major Allen Q.C.* and *Andrew Park* for the Company.

No cases were cited in argument.

Lord Wilberforce—My Lords, this appeal concerns an assessment to E income tax under Case I of Schedule D on the Respondent Company for 1964–65, which the Special Commissioners, on appeal by the Company, acting under s. 127(3) of the Income Tax Act 1952, reduced by £78,650. (The figure appearing in the Case Stated is £78,798, but this relates to a higher assessment (£114,099) than that now contended for (£113,951).)

The Respondent Company, which previously made up its accounts to F 31st January in each year, after 31st January 1964 changed its accounting date to 30th April. The first new period was thus from 1st February 1964 to 30th April 1965. This brought into play s. 127(2)(*b*) of the Income Tax Act 1952, and under it the Commissioners of Inland Revenue decided that, in respect of the year of assessment 1965–66, the Company's basis period should be the twelve months ending on 30th April 1964. The Commissioners G were not bound to select this period, but there is no doubt that they were entitled to do so and that their decision was unappealable. The Commissioners then proceeded, under s. 127(3) of the Act, to deal with the last preceding year of assessment, i.e. 1964–65. They determined that the basis period for this year of assessment should be the twelve months ending 30th April 1963. This determination was indisputably valid, but under the terms of s. 127(3), as H amended, an appeal lay to the Special Commissioners, who may under the subsection grant such relief, if any, as may be just.

(Lord Wilberforce)

The relevant figures are as follows:

A. *Company's accounting periods*

	£
1st February 1962 to 31st January 1963	104,867
1st February 1963 to 31st January 1964	141,203
1st February 1964 to 30th April 1965 (15 months)	96,654

B. *Tax assessments*

1963–64 (measured on year to 31st January 1963)	104,867
1964–65 (measured on year to 30th April 1963) ..	113,951
1965–66 (measured on year to 30th April 1964) ..	125,033

The relevant law is contained in s. 127(2) and (3) of the Income Tax Act 1952, the latter as amended by s. 17 of and Sch. 4 to the Income Tax Management Act 1964. It is necessary, in addition, to have regard to the Finance Act 1965, in particular, ss. 46(1), 49(3), 80(2) and 87. The effect of the latter Act was that the Company became liable, in addition to income tax in respect of the sums mentioned, to corporation tax as from 1st May 1964. This fell to be assessed on the actual profits from that date, and over a twelve-month period amounted to tax on £76,523 (i.e., 12/15ths of £96,654 appearing above).

The Special Commissioners in their decision noted, first, that the direction given as to the basis period for 1964–65 resulted in the basis periods for 1963–64 and 1964–65 overlapping by nine months, i.e., 1st May 1962 to 31st January 1963. (The apportioned profits for this period were some £78,000.) They then proceeded as follows:

> " In the present case, looking at the overlap in the light of the circumstances of the Board's decision relative to 1965–66 and the consequential charge to corporation tax as from 1st May 1964, we came to the conclusion that the profits of the nine months' overlap were being in a real sense charged to tax twice over, and this we considered was, in the particular circumstances, unjust. In all the circumstances it seemed to us that an appropriate way of relieving this injustice was to deduct £78,798 from the amount of the 1964–65 assessment."

This decision was reversed by Pennycuick J. but restored by a majority of the Court of Appeal.

My Lords, I am unable to support the latter decision. Under s. 127(3) after the Commissioners of Inland Revenue have decided, as they may or may not do, to fix a basis period different from the Company's accounting period, an assessment has to be made for the relevant year. The relevant year was 1964–65 and no other year. The appeal is formally against the decision to give the direction, but it is prescribed that if (as must be the case where a direction has been given) an assessment is made in accordance with the direction, the appeal against the decision is by way of an appeal against the assessment. Thus the appeal is against the assessment of £113,951. The reference to " such relief, if any, as is just " shows that what the Special Commissioners have to consider is whether there is any injustice in the assessment and, if so, how it is to be relieved against.

Now, as appears from the figures given above, the assessment made (£113,951) was in fact lower than that which would have been made if the Company's

A original dates had stood (£141,203), but there can be no doubt that the Special Commissioners on appeal are not obliged to stop at this simple comparison. They may, indeed should, look at the assessments for other neighbouring periods (old and new) to see if there is any injustice, but the injustice, if any, must be in the assessment under enquiry. To illustrate: the Special Commissioners' practice is to take an average of the profits of several years (1) B under the old system and (2) under the new, and if they find that the latter is significantly higher than the former (as it may be where there have been fluctuations in profits), they grant relief(1). The relief they grant is, and I would think almost necessarily must be, by way of reduction of the assessment in question; I cannot see how they can interfere with any other assessment not before them. I remark in passing that the result of the Special Commissioners' C decision is to take as the taxable profits for 1964–65 a sum of £35,301, which represents the profits for a period of three months.

I return to the Special Commissioners' decision and to the question whether they made any error in law. It is clear, in the first place, that no injustice arises from the mere fact that there was a nine months' overlap, i.e., that some £78,000 of profits, those from 1st May 1962 to 31st January 1963, entered D into two years' assessments. This double computation, or double use of profits for two years' asssesments, is a phenomenon frequently found in income tax law: it may happen whenever there is a change of accounting period. Injustice can result if the doubly used profits are unusually high (not this case) but not from the double use itself. I need not elaborate on this because all four Judges below agree that this fact alone cannot give rise to injustice. The E factor which does, it is said, have this effect arises from the introduction of corporation tax. This is because, for the year beginning 1st April 1964, the profits of a company come into charge as from the end of the basis period for the purposes of income tax for the assessment year 1965–66. Thus, the earlier in the financial year a company's accounting year ends, the more of its profits are charged, so that this Company suffered, to the extent of nine F months, by its basis period being brought back from 1st January 1965 to 1st May 1964. To this comparatively simple argument there was added another of more sophistication. The effect of the introduction of corporation tax was, it was said, to take away from the Company the advantage it would otherwise have had at the end of its trading life—an advantage which would have caused the profits for a period to drop out of charge to income tax. Under G the corporation tax system this drop-out does not occur. These two factors, taken together, amounted, it was claimed, to an injustice which the Special Commissioners could properly relieve against.

My Lords, I find this claim fallacious. In the first place, any supposed hardship arising from the overlap in the financial year 1964–65 of corporation tax and income tax is inherent in the nature of that tax and is common in some H degree to all trading companies. The Courts cannot regard as an injustice that which merely flows from the nature of a tax as devised by Parliament. In so far as this Company suffers from having its basis period end on 30th April 1964 (rather than later) it suffers in common with any other company with a similar basis date: there can hardly be injustice in denying it a relief which they cannot get. If, finally, the injustice lies not in the date itself, but I in the change to that date, then it arises not from the determination of the Commissioners under s. 127(3) (which related to the twelve months ending 30th April *1963*), but from the decision of the Commissioners under s. 127(2), fixing the terminal date of 30th April *1964*, which decision was unappealable.

(1) *See* 43 T.C., at p. 672D.

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Whichever way the matter is regarded, the impact of corporation tax and its remoter consequences have no bearing upon the justice or injustice of the assessment under appeal. A

In my opinion, the Special Commissioners' decision, whether based upon the nine months' overlap, or the earlier incidence of corporation tax, or upon a combination of these two, was wrong in law and there was no basis shown for reducing the assessment. I would allow the appeal. B

Viscount Dilhorne—My Lords, I have had the advantage of reading the speech of my noble and learned friend Lord Wilberforce. I agree with it and there is nothing I wish to add.

Lord Pearson—My Lords, for the reasons given in the opinion of my noble and learned friend Lord Wilberforce, I would allow the appeal.

Lord Cross of Chelsea—My Lords, for the reasons given by my noble and learned friend Lord Wilberforce, I agree that this appeal should be allowed. C

Lord Salmon—My Lords, for the reasons given in the opinion of my noble and learned friend Lord Wilberforce, I would allow the appeal.

Questions put:

That the Order appealed from be reversed and the judgment of Pennycuick J. restored. D

The Contents have it.

That the Respondents do pay to the Appellants their costs here and in the Court of Appeal.

The Contents have it.

[Solicitors:—Solicitor of Inland Revenue; Slaughter & May.]