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13, 1971

IN THE PRIVY COUNCIL No. 26 of 1969

O N A P P E A L

FROM THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE, GUYANA

IN THE MATTER of the PROPERTY TAX AND GIFT TAX ORDINANCE 1962

B E T W E E N :-

GUIANA INDUSTRIAL AND COMMERCIAL INVESTMENTS LIMITED Appellants (Appellants)

- and -

THE COMMISSIONER OF INLAND REVENUE Respondent (Respondent)

RECORD OF PROCEEDINGS

SIMMONS & SIMMONS,
14 Dominion Street,
London, E.C.2.
Solicitors for the
Appellants.

CHARLES RUSSELL & CO.,
Hale Court,
21 Old Buildings,
Lincoln's Inn,
London, W.C.2.
Solicitors for the
Respondent.

IN THE PRIVY COUNCIL No. 26 of 1969

ON APPEAL

FROM THE COURT OF APPEAL OF THE SUPREME COURT OF JURIDCATURE, GUYANA

IN THE MATTER of the PROPERTY TAX AND GIFT TAX ORDINANCE 1962

BETWEEN :-

GUIANA INDUSTRIAL AND COMMERCIAL INVESTMENTS LIMITED — Appellants (Appellants)

- and -

THE COMMISSIONER OF INLAND REVENUE — Respondent (Respondent)

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

E X H I B I T S

DOCUMENTS OMITTED FROM THE RECORD BY CONSENT OF SOLICITORS FOR BOTH PARTIES

Description of Document	Date
Consent to Extension of Time for Commissioner to file Statement	8th June 1964
Ex Parte Application for Extension	26th June 1964
Notice of Intended Application for Leave to Appeal to the Privy Council	2nd June 1966
Petition of Guiana Industrial and Commercial Investments Limited for Leave to Appeal to Her Majesty's Privy Council	2nd June 1966
Affidavit of J. Edward deFreitas verifying Petition	2nd June 1966
Bond to prosecute Appeal to Her Majesty's Privy Council	8th July 1966

DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL BUT NOT REPRODUCED

Description of Document	Date
Notes of Evidence of Hearing of Appeal	25th July 1964
Order granting Conditional Leave to Appeal to Her Majesty in Council	22nd February 1967

IN THE PRIVY COUNCIL No. 26 of 1969

ON APPEAL

FROM THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE, GUYANA

IN THE MATTER of the PROPERTY TAX AND GIFT TAX ORDINANCE 1962

BETWEEN :-

GUIANA INDUSTRIAL AND COMMERCIAL INVESTMENTS LIMITED Appellants (Appellants)

- and -

THE COMMISSIONER OF INLAND REVENUE Respondent (Respondent)

RECORD OF PROCEEDINGS

In the Supreme Court of British Guiana

No.1

Statement by the Commissioner of the Material Facts

29th June 1964

No. 1

STATEMENT BY THE COMMISSIONER OF THE MATERIAL FACTS

IN THE MATTER OF THE INCOME TAX ORDINANCE, CHAPTER 299

BETWEEN:

GUIANA INDUSTRIAL AND COMMERCIAL INVESTMENTS LIMITED, Appellants

-and-

THE COMMISSIONER OF INLAND REVENUE Respondent

STATEMENT BY THE COMMISSIONER OF THE MATERIAL FACTS UPON THE SEVERAL POINTS SPECIFIED IN THE SUMMONS HEREIN AS GROUNDS OF APPEAL TOGETHER WITH THE REASONS IN SUPPORT OF THE ASSESSMENT

The appellants are a public limited liability company holding shares in other companies with

In the Supreme Court of British Guiana

No. 1

Statement by the Commissioner of the Material Facts

29th June 1964 (continued)

offices at 165, Charlotte Street, Georgetown.

2. The appellants submitted their Property Tax Return on the 2nd May, 1963 in respect of the Year of Assessment 1962, that is to say, of their net property as at 30th November, 1961.

A copy of the aforementioned return is hereunto annexed marked "A".

3. The appellant company was permitted by the Commissioner to prepare their accounts as at 30th November, each year, rather than as at 31st December under the provisions of Section 8 of the Property Tax and The Gift Tax Ordinance of 1962.

4. In the aforementioned Property Tax Return in respect of the Year of Assessment 1962, the appellants' assets and liabilities as at 30th November, 1961 are stated as follows:

Total value of Assets and Properties		$4,089,711
Liabilities		
Sundry Creditors	$ 4,600	
Provision for Dividend	117,000	
Provision for Taxation	1,861	123,461
Total value of net property		$3,966,250

5. Under the provisions of Section 13 of the Property Tax and the Gift Tax Ordinance 1962, the appellants claimed and were allowed a set-off of property tax on shares to the value of $3,878,558 held in other companies.

6. The tax payable by the appellants in accordance with their return should therefore be as follows:-

½% on value of Net Property of $3,966,250	-	$19,831.25
Less set-off equal to ½% on $3,878,558	-	19,392.79
		$ 438.46

7. On the 23rd September, 1963 the Commissioner assessed the appellants on net property amounting to $4,085,111, that is to say, after disallowing the appellants claim for the following liabilities:-

Provision for Dividend	$117,000
Provision for Income Tax	1,861
	$118,861

A computation was sent to the appellants along with a formal notice of assessment.

Copies of the Computation and Notice of Assessment are hereunto annexed marked "B" and "C" respectively.

8. By letter dated 15th October, 1963, the appellants through their accountants, Messrs. Fitzpatrick, Graham & Co. objected to the assessment on the ground that "Provision for Dividend" and "Provision for Income Tax" are in fact liabilities and should be deducted from the appellants' gross assets in ascertaining the value of their net property.

The appellants further stated that the dividend for which provision was made was sanctioned at the company's annual general meeting on 20th December, 1961 and was paid at the end of that month.

A copy of the aforementioned letter is hereunto annexed marked "D".

9. By letter dated 28th October, 1963, the appellants were informed through their Accountants, Messrs. Fitzpatrick, Graham and Co., that the Commissioner, after due consideration of the grounds of their objection had decided to maintain the assessment.

A copy of the aforementioned letter is hereunto annexed marked "E".

10. From the appellants "Statement of Allegation of Facts" and "Statement of Reasons Advanced in Support of Appeal" it would appear that the appellants accepted the decision of the Commissioner in

In the Supreme Court of British Guiana

No.1

Statement by the Commissioner of the Material Facts

29th June 1964 (continued)

the disallowance of the "Provision for Dividend" but disagree with his decision in the disallowance of "Provision for Income Tax" and the present appeal is therefore against the disallowance of "Provision for Income Tax" only.

11. The appellants appealed against the decision of the Commissioner to the Board of Review and their appeal was disallowed. The Board gave a written decision.

A copy of the aforementioned decision is hereunto annexed marked "F". 10

12. It is against the Board's decision that the present appeal has been lodged.

REASONS IN SUPPORT

The Commissioner says:-

(i) that under the provisions of Section 7 of the Property Tax and the Gift Tax Ordinance, 1962 property tax is chargeable for each year of assessment in respect of the "net property" of every person on the corresponding "valuation date"; 20

(ii) that under the provisions of Section 3 of the aforementioned Ordinance,

"net property" - means the amount by which the aggregate value, computed in accordance with the provisions of the Ordinance, of the property of any person on the "valuation date" is in excess of the aggregate value of all the debts owed by him on that date ....; and

"valuation date" - means in relation to any year of assessment the last day of the year preceding that year of assessment. 30

(iii) that where any person computes the gains or profits from his trade for the purpose of income tax for a year terminating on some other day than that immediately preceding any year of assessment, the commissioner may, under the provisions of Section 8 of the aforementioned Ordinance, permit that day to be the valuation date instead of the day 40

immediately preceding the year of assessment;

(iv) that the appellant company commenced business, that is to say, for the first time since its incorporation, on the 1st December, 1960 and prepared its first accounts for the year ended 30th November, 1961;

(v) that the appellant company was assessed to income tax in respect of the Year of Assessment 1962 on its profits of the preceding year ended 30th November, 1961 and that that date became the "valuation date" in relation to the Year of Assessment 1962 for property tax purposes;

(vi) that the property tax return of the appellant company in respect of Year of Assessment 1962 shows the "valuation date" to be 30th November, 1961;

(vii) that on the aforementioned valuation date the appellant company owed no income tax to the Commissioner of Inland Revenue and the amount of $1,861 claimed as a debt owed on the valuation date is untrue and incorrect;

(viii) that the appellant company was not liable to income tax in the year 1961 on its profits earned during the year 1961 and as such could owe no income tax in respect of its profits earned in 1961 on the valuation date, that is, on 30th November, 1961;

(ix) that Section 8 of the Income Tax Ordinance Chapter 299, which provides for the basis of assessment of income tax states that;

> "tax shall be charged .... for each year of assessment upon the chargeable income of any person for the year immediately preceding the year of assessment".

(x) that in view of the provisions of Section 8 of the Income Tax Ordinance, Chapter 299, the Commissioner was not competent to make an assessment or claim income tax in respect of profits earned in the year 1961 at any time during 1961, and as such the appellant company could not have owed income tax in respect of

In the Supreme Court of British Guiana

No.1

Statement by the Commissioner of the Material Facts

29th June 1964 (continued)

the profits earned in the year 1961 on the valuation date, that is, 30th November, 1961;

(xi) that the income tax of $1,861.00 in respect of the Year of Assessment 1962 was not a legal debt owed as at 30th November, 1961; Re - Duffy (dec'd) Lakeman v. Attorney General (1948) ALL. E.R. 756;

(xii) that the assessment is correct and should be maintained.

Dated this 29th day of June, 1964.

V. Gangadin

Commissioner of Inland Revenue (ag).

No.2

Notice of Appeal to Judge in Chambers

28th May 1964

No. 2

NOTICE OF APPEAL TO JUDGE IN CHAMBERS

TAKE NOTICE that the abovenamed Guiana Industrial and Commercial Investments, Limited intends to appeal against the decision of the Board of Review dated the 28th of March, 1964, certified by the Chairman of the Board on the 28th April, 1964 and served on the Appellant Company's Solicitors, Cameron & Shepherd on the 6th May, 1964, on appeal from assessment number 130 PT/62.

AND FURTHER TAKE NOTICE that you are required to attend a Judge in Chambers at the Victoria Law Courts, Georgetown, Demerara, on the day and at the time to be notified to you by the Registrar on the hearing of an Appeal by the said Guiana Industrial and Commercial Investments Limited against the said decision of the Board of Review.

AND FURTHER TAKE NOTICE that it is the intention of the said Guiana Industrial and Commercial Investments Limited, to attend this appeal by Counsel.

The grounds of appeal are as follows:-

1. The appellants repeat and rely on the facts and reasons set out in the Notice of Appeal to the Board of Review dated the 12th day of November, 1963.

2. The Income Tax payable on the net chargeable income of the Appellant Company for the year of income ended 30th November, 1961 being the valuation date permitted by the Commissioner in respect of the property of the Appellant Company was the sum of $251,887.95, and after deducting the sum of $250,027.35 in respect of set-offs to which the Appellant Company was entitled, the balance payable by the Appellant Company was the sum of $1,861.00, which sum the Appellant Company, in making its return of its net property on the valuation date, deducted as a debt owed by it on the said date.

3. The Commissioner disallowed the said sum of $1,861.00 as a liability of the Appellant Company on the valuation date for the purposes of Section 7 of the abovementioned Ordinance.

4. The Board of Review erred in holding that the aforesaid sum of $1,861.00 was not a debt owed by the Appellant Company on the aforesaid valuation date for the reasons set out in the said Notice of Appeal.

5. In the alternative, the Commissioner and the Board of Review have erred in not allowing the said sum of $1,861.00 to be brought into account if not by deduction as a debt then as a liability capable of being assessed and charged against the profits of the Appellant Company in order to ascertain the true aggregate net value of the property of the Appellant Company on the valuation date within the true intent and meaning of the said Ordinance.

Dated the 28th day of May, 1964.

H.W. de Freitas

Solicitor for the Appellants.

The said Solicitor's address for service is 2 High Street, Newtown, Georgetown.

In the Supreme Court of British Guiana

No.3

Decision of the Chief Justice

11th August 1964

No. 3

DECISION OF THE CHIEF JUSTICE

BEFORE: LUCKHOO, C.J. (IN CHAMBERS)

1964: July 25; August 11.

Appearances:- G.M. Farnum for the Appellants.
David Singh, Senior Crown Counsel, for the Respondent.

JUDGMENT:

This is an appeal from an assessment made under the provisions of the Property Tax and Gift Tax Ordinance, 1962 (No. 19 of 1962) in respect of the Year of Assessment 1962 upon the net property of the appellant company as at 30th November, 1961, the appellant company being permitted by the Commissioner of Inland Revenue under the provisions of s. 8 of the Property Tax and Gift Tax Ordinance, 1962, to prepare its accounts as at 30th November in each year rather than as at 31st December.

The question for determination in this appeal is whether the sum of $1,861 claimed by the appellant company to be its income tax liability for the Year of Assessment 1962 under the provisions of the Income Tax Ordinance, Cap. 299 is a debt owed by the appellant company at the valuation date the 30th November, 1961, within the contemplation of definition of the expression "net property" in s. 3 of the Property Tax and Gift Tax Ordinance, 1962.

Under the provisions of s. 7 of the Property Tax and Gift Tax Ordinance, 1962, property tax is chargeable for each year of assessment in respect of the net property of every person on the corresponding valuation date. The expression "net property" is defined by s. 3 of the Property Tax and Gift Tax Ordinance as follows:-

> "'net property' means the amount by which the aggregate value, computed in accordance with the provisions of this Ordinance, of the property of any person on the valuation date is in excess of the aggregate value of all the debts owed by him on that date other than -
>
> ..... "

S. 9 of that Ordinance makes provision for the inclusion of certain specified property in the net property of any person and s. 10 provides for the exclusion of certain specified property from the net property of any person. S. 12 provides for the method of computing the value of property other than cash in the computation of net property.

For the appellants it was submitted that the value of property must include the assets as affected by the liabilities attaching to those assets.

Before the Board of Review it had been submitted on behalf of the appellants that liability to tax was a debt due within the meaning of the Property Tax and Gift Tax Ordinance, 1962, and it was contended that the words "debt due" in the definition of the expression "net property" in s. 3 of that Ordinance must be construed to include existing liabilities which have not yet become payable. That contention was rejected by the Board of Review.

Counsel for the appellant has similarly contended before me. He has further contended that the value of property would be its value in the open market and that it would be unrealistic to suggest that a prospective purchaser would offer a price which did not take into account a tax liability in respect of which the property stands charged. Counsel urged that the obligation to pay income tax arose as soon as income was derived in the Colony during the year 1961 over and above a certain sum and that the taxpayer's liability not being dependent on assessment, the amount of $1,861 eventually assessed as income tax for the Year of Assessment 1962 was a debt due by the appellants at the valuation date, the 30th November, 1961. That being so, counsel argued, in order to arrive at the true value of the appellants' assets as at that date, such income tax liability must be taken into account.

In Phillips v. C.I.R. (1963) 5 W.I.R. 304 it was held that s. 8 of the Income Tax Ordinance, Cap. 299 provides for income tax to be charged, levied and collected for each year of assessment upon the chargeable income of any person for the year immediately preceding the year of assessment

In the Supreme Court of British Guiana

No.3

Decision of the Chief Justice

11th August 1964 (continued)

and that it is that chargeable income which stands charged with the payment of tax and not the income or chargeable income in the year of assessment. In C.I.T. v. Barcellos (1957) L.R.B.G. 105 at p.111 Stoby J., observed that "as soon as income is derived in the Colony over and above a certain sum the obligation to pay income tax arises. The tax-payer's liability does not depend on the arithmetical calculations of a Government Official; it is the extent of his liability which is dependent on the ascertainment of his chargeable income. A clear distinction must be drawn between the liability to pay on the one hand and the amount required to be paid as a result of the liability on the other." Normally, income tax for a year of assessment is not required by law to be paid until that year arrives but in certain specified cases provision has been made by law for payment of tax of employees by way of deduction from salaroes or wages during the year of income. In the instant case there is no suggestion that any provision was made by law for payment of income tax on income earned during the year of income 1961 at any time within that year.

That the appellants were at the valuation date, 30th November, 1961, liable to pay income tax for the Year of Assessment 1962 on income earned during 1961, seems to me to be without doubt. But was that amount of income tax a debt due at the valuation date, 30th November 1961? There was at that date a legal obligation on the part of the appellants to pay income tax in the next succeeding year 1962 but there was no legal right in the Commissioner of Inland Revenue at the 30th November, 1961, to enforce payment and in my opinion there was therefore no debt due at the valuation date. One has only to look at the provisions of s.69A(4) (which relates to tax clearance certificates) and s. 69C(1), (2) and especially (5) which relates to garnishments) of the Income Tax Ordinance, Cap.299, to observe the clear distinction made in that Ordinance between a tax debt due and liability to pay tax. The provisions of those sections are by s. 19(4) and the Third Schedule of the Property Tax and Gift Tax Ordinance, 1962 mutatis mutandis to have effect with respect fo the Property Tax and the Gift Tax as they have effect with respect to the Income Tax. It is true that those provisions were enacted subsequent to the year 1961 but they do give an indication as to the scheme of the legislation.

Dealing with the argument of Counsel for the appellants that the value of the property should be considered to be its value in the open market because the property stood charged with the income tax liability. I can find no provision in either the Income Tax Ordinance, Cap. 299 or the Property Tax and Gift Tax Ordinance, 1962, whereby income tax liability is affixed or attached to the taxpayer's property. The taxpayer's property does not stand charged with his income tax liability, whether a debt due or otherwise, in the sense that if the taxpayer were to convey his property to another person the latter take the property subject to the former's tax debt or liability.

For the respondent it was contended that the case of Re Duffy (deceased) Lakeman v. Attorney General (1948) All E.R. 756 supported the respondent's view that income tax liability in respect of a certain year of assessment is not a debt due in the year of income. It was held in that case that the word "liabilities" in s. 50(i) of the Finance Act, 1940, in relation to the valuation of shares of a deceased shareholder in a company referred to liabilities existing in law at the relevant date, and did not include the anticipated income tax liability on current profits which did not exist until the following financial year. Care must be taken in applying decisions in cases based on the English Income Tax legislation to cases which are to be decided under the provisions of the British Guiana legislation. In England "the chargeable income of a given year of assessment does not necessarily correspond to the actual income arising in that year. The rules vary according to the class of income involved, and frequently the chargeable income of the year of assessment is computed by reference to the income of the previous year; again profits of trades or businesses will in most cases be computed by reference to accounting years which end on some date other than April 5" (see Simon's Income Tax Vol. 1 at p. 14, para. 19). In Duffy's case the profits of the Company were liable to tax under Schedule D of the Income Tax Act, 1918 (Case I); that is, tax would normally be computed by reference to the income of the previous year. Such income of the preceding year only provides the measure of the assessment for the later year, the tax payable being tax of the later year and not of the preceding year. In British Guiana, as has

In the Supreme Court of British Guiana

No.3

Decision of the Chief Justice

11th August 1964 (continued)

already been pointed out, it is the chargeable income in the year of income which stands charged with the payment of tax and not, as in England, the chargeable income of a given year of assessment. In British Guiana liability to pay income tax arises in the year of income though it is not a debt due, unless otherwise provided by law, until the year of assessment has arrived. It is therefore not a debt due at the end of the year of income, in this case the valuation date.

There is a passage in the judgment of Lord Greene, M.R. in Re Duffy (ubi supra) at p. 760 which is applicable to the argument addressed to me by counsel for the appellants with respect to the method of valuation to be employed -

> "It is not for us to extract what we might like to think in certain cases would be a fairer method of valuation. We have to ascertain, from the construction of the words used by Parliament in stating its will, the method of valuation prescribed, in accordance with the natural and ordinary meaning of the words in their context, and to apply them, even though in this case, or in another case, we may think that some different method of valuation would have led to a fairer result. It may or may not be so. Anyone who is familiar with income tax or revenue law knows well that general provisions in an individual case may work rather harshly, but in another case they may work for the benefit of the income tax-payer. All we have to do is to apply them."

In the result the appeal is dismissed and the assessment of the Commissioner is affirmed with costs fixed at $240 to the respondent.

Dated this 11th day of August, 1964.

J.A. LUCKHOO
Chief Justice

No. 4

In the Supreme Court of British Guiana

No.4

Order on Judgment

11th August 1964

ORDER ON JUDGMENT

BEFORE THE HONOURABLE SIR JOSEPH LUCKHOO

CHIEF JUSTICE (IN CHAMBERS)

TUESDAY THE 11th DAY OF AUGUST, 1964

ENTERED THE 22nd DAY OF AUGUST, 1964

UPON Appeal by way of motion dated the 28th day of May 1964 made unto this court by the Guiana Industrial and Commercial Investments Limited AND UPON HEARING Counsel for the appellants and Counsel for the respondent IT IS ORDERED that the appeal be dismissed AND THAT the assessment of the Commissioner be affirmed AND IT IS FURTHER ORDERED that the appellants do pay to the respondent costs of this appeal agreed in the sum of $240.00 (two hundred and forty dollars).

BY THE COURT

B.B. McG. GASKIN

REGISTRAR (AG.)

No. 5

In the British Caribbean Court of Appeal

No.5

Notice of Appeal Motion

8th September 1964

NOTICE OF APPEAL MOTION

IN THE BRITISH CARIBBEAN COURT OF APPEAL

NOTICE OF APPEAL

BRITISH GUIANA

Civil Appeal No. 35 of 1964

In the matter of the PROPERTY TAX AND GIFT TAX ORDINANCE 1962

In the British Caribbean Court of Appeal

No.5

Notice of Appeal Motion

8th September 1964 (continued)

BETWEEN:

GUIANA INDUSTRIAL AND COMMERCIAL INVESTMENTS, LIMITED Appellants (Appellants)

-and-

THE COMMISSIONER OF INLAND REVENUE Respondent (Respondent)

TAKE NOTICE that the Appellants (Appellants) being dissatisfied with the decision more particularly stated in paragraph 2 hereof of the Supreme Court of British Guiana contained in the judgment of the Honourable the Chief Justice, dated 11th day of August, 1964, doth hereby appeal to the British Caribbean Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the said appeal seek the relief set out in paragraph 4.

AND the Appellants (Appellants) further state that the names and addresses including their own of the persons directly affected by the appeal are those set out in paragraph 5.

2. The whole decision.

3. Grounds of Appeal -

(1) The learned Chief Justice erred in holding that the sum of $1,861:- was not a debt owed by the Appellants at the valuation date, the 30th November, 1961 within the meaning of section 3 of the abovementioned Ordinance.

(2) The learned Chief Justice misdirected himself by applying the test of whether the tax was a debt due on the valuation date, and not whether it was a debt owed within the meaning of the said section.

(3) The learned Chief Justice correctly held that the Appellants were at the valuation date, the 30th November, 1961, liable to pay income tax for the year of assessment 1962, on the income earned during the year 1961, but erred in holding that because it was not due and payable on the valuation date it is not deductible.

(4) In the alternative, the Chief Justice erred in not allowing the said sum of $1,861:- to be brought into account, if not by deduction as a debt, then as a liability against the profits of the appellants in order to ascertain the true aggregate net value of the property of the appellants on the valuation date within the true intent and meaning of the abovementioned Ordinance.

4. The relief sought from the British Caribbean Court of Appeal is that the assessment of $9.21 by the Commissioner be set aside, that the judgment of the Honourable the Chief Justice should accordingly be reversed, and the appeal by the Appellants be allowed and that the costs of this appeal and of the hearing in the Court below be paid by the Respondents.

5. Persons directly affected by the Appeal.

Names	Addresses
Guiana Industrial and Commercial Investments Limited	185 Charlotte & King Streets, Georgetown.
The Commissioner of Inland Revenue	Income Tax Division, G.P.O. Building, Georgetown.

Dated the 8th day of September, 1964.

J. Edward de Freitas

Solicitor for the Appellants (Appellants)

In the Court of Appeal of the Supreme Court of Judicature, Guyana

No.6

Judgment of Acting Chancellor Luckhoo J.A.

20th January 1969

No. 6

JUDGMENT

IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUSTICATURE, GUYANA

BETWEEN:-

GUIANA INDUSTRIAL AND COMMERCIAL INVESTMENTS, LIMITED Appellants

- and -

THE COMMISSIONER OF INLAND REVENUE Respondent

BEFORE:

The Hon. E.V. Luckhoo - Chancellor (ag.)

The Hon. P.A. Cummings - Justice of Appeal

The Hon. V.E. Crane - Justice of Appeal (ag.)

1968: November 6, 7.

1969: January 20.

C. Lloyd Luckhoo, Q.C., G.M. Farnum, Q.C., with him for appellants

Doodnauth Singh, Senior Crown Counsel, C.Dhurjon with him, for respondent.

JUDGMENT

LUCKHOO, Chancellor (ag.):

As I find myself so much in accord with what has been said by my brother Crane, I shall only wish to append some observations. In doing so, I shall bear in mind what Luckhoo, C.J., with good sense, cautioned in his judgment, - that "care must be taken in applying decisions in cases based on the English income tax legislation to cases which are to be decided under the provisions of

the British Guiana legislation."

If the contention of the appellants is correct, then it would be legally permissible in computing the value of net property in any one year, for the purpose of property tax, to act in either of the following ways:

(1) Anticipate in a property tax return the assessment of income tax due to be made in the following year, and deduct it from the aggregate valuation of assets before the actual determination by the Commissioner of Inland Revenue of the assessment of income tax. Or,

(2) Await the assessment by the Commissioner and then apply to have the same deducted accordingly to show the value of the net property of the previous year.

A check, then should be made to see whether these results conflict with, or militate against, what is actually stipulated by law. At once one notices in the provisions of s. 42 of the Income Tax Ordinance, Cap. 299 that the Commissioner is the person solely entrusted with the legal duty of making an assessment, and on him alone is conferred the powers for so doing, which are wide and far-reaching in scope and extent. If he should be minded to accept the return, then he is empowered to make an assessment accordingly. If, on the other hand, he refuses to accept the return, he is empowered, based on his judgment, to determine the amount of the chargeable income of the person and assess him accordingly.

Then it would be seen under s. 8 of the said Ordinance that the Commissioner's assessment "shall be for the year immediately preceding the year of assessment". Departure from this provision is authorised elsewhere in the law, but as the present case is not so affected, reference becomes unnecessary.

Finally, the specific nature and restricted meaning of "net profit" appears under s. 3 of Ordinance 19 of 1962 and requires scrutiny. There, debts which are authorized to be deductible from the aggregate value of property to arrive at the net value for tax, must be debts owed on a particular

In the Court of Appeal of the Supreme Court of Judicature, Guyana

No.6

Judgment of Acting Chancellor Luckhoo J.A.

20th January 1969 (continued)

date, namely, the valuation date, which in this case is 30th November, 1961. This clear and express provision imports the existence of a debt at the time of the valuation date and not after.

With the above in mind, I am unable to comprehend how an assessment can be made in anticipation when the effect of doing so would be to allow a person to assess himself without waiting for the Commissioner's assessment, at a time before the assessment is legally due to be made, and when in actuality what purports to be a debt for income tax in the year following, had not yet been computed by the Commissioner.

There is nothing automatic about the Commissioner's acceptance of a return; nor is an assessment merely a matter of ascertainment by arithmetical calculations; so much depends upon the reaction of the Commissioner to the return, so much lies within his discretion and judgment. The circumstances of a case may well call for a rejection of the return and a substitution of his own assessment of the chargeable income. The process is unpredictable and becomes more so if recourse is had to the Courts when it may be several years after a return is made before it is known what is owed and what must be paid. When the Commissioner makes a fixed and settled assessment, which is accepted, then it could be truly said that a debt is owed. If it is challenged, then the decision of a competent forum will decide the issue.

It is true that liability to pay income tax for a particular year is attracted by the income in the year in which the income is earned, but it is not, in my view, correct to say that the amount is determinable with certainty immediately on the expiration of the year of income. The fact that the rates are fixed would be of little assistance if the figures supplied are not accepted or a difference of viewpoint exists as to what, or how, principles should be applied in computation.

This essential and material aspect of the Commissioner's responsibility may disappoint the hopes of the most sanguine and render unprecise any previous attempt to quantify. It does not spring from a mere liability to pay tax, but only when the extent of that liability is pronounced upon him at a time when the laws says he must do

so, that is, in the following year. Then it could be truly said that an amount is fixed, and remains to be settled after due acceptance.

The last matter which stands in the way of the appellants' contention is the specific requirement that the debt must be owed on the valuation date. As I have said before, the words used are clear in their import. If the debt was not owed on the 30th November, 1961, it cannot be deducted. 'Net property' (as defined) presents the idea of 'net worth' at a particular date. It is concerned with the existence of both 'assets' and 'debts' as they are at that date. Debts not then owed, but expected (with whatever degree of certainty) to accrue subsequently cannot be cognisable, and do not qualify for inclusion, if conflict with the statutory definition is to be avoided.

In this case, what purports to be a debt owed was never brought into being until the following year, and as there is no legal provision to make it retroactive, it could only be deducted from the 1962 property tax return, if unpaid provided it was assessed and accepted as such before 30th November of that year.

I therefore agree with the proposal of my brother Crane that the appeal should be dismissed with costs.

E.V. LUCKHOO

Chancellor (ag.)

Dated this 20th day of January, 1969

JUDGMENT

CUMMINGS, J.A.:

The facts, circumstances and statutory provisions giving rise to this appeal are clearly and accurately set out in the judgment of Crane, J.A. I need only summarize here that the point to be determined is the proper construction to be placed upon the words "debts owed" which appear in s. 3 of The Property and Gift Tax Ordinance, No. 19 of 1962 (hereinafter referred to as "the Ordinance").

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Counsel for the appellants urged before us - and indeed in the Court below - that:

(1) If the circumstances disclosed that A was obliged to pay money to B, whether immediately or in the future and this obligation did not depend upon the occurrence of some event which may or may not happen, then the obligation or liability to pay was a debt owing.

(2) Ss. 5 and 8 of the Income Tax Ordinance, Cap. 299, conferred on the appellant Company a statutory obligation to pay income tax on the chargeable income earned in 1961, and this the Company was bound to pay at some time or other.

(3) The Commissioner's assessment did not create the obligation. It was merely the machinery for determining the accurate extent of the obligation and fixing the time when it should be discharged; and that, consequently, income tax payable on income earned within the Company's valuation date - 30th November, 1961 - was then a "debt owing" within the meaning of the Ordinance.

(4) The Estate Duty Ordinance was in pari materia with the Ordinance, and the words "debt owing" should be given the same meaning as under that Ordinance.

Counsel for the respondent on the other hand, urged:

(1) That a debt owing is a debt payable, and that since income tax is not payable until the Commissioner has assessed, it is not a debt owing until such assessment.

(2) That the Income Tax Ordinance itself distinguishes between a liability to pay tax and a debt of income tax.

In support of this he cited s. 50, 67(1), 69A and 69C of that Ordinance.

A number of English cases were relied upon by

the appellants which (with the exception of The Commissioner of Inland Revenue v. The Port of London Authority. /1923/ A.C. 507) were also relied upon by the respondent. I propose to analyse these later in this judgment.

In Salkeld v. Johnson, (1848) 2 Ex. 256, a case sent by the Lord Chancellor, to the Judges of the Court of Exchequer for their opinion, Chief Baron Pollock, delivering the opinion of the Court (Barons Parke, Anderson and Platt concurring) said at page 272:

> "This question depends upon the construction of this Act, which unfortunately has been so penned as to give rise to a remarkable difference of opinion among the judges ..... We propose to construe the Act, according to the legal rules for the interpretation of statutes, principally by the words of the statute itself, which we are to read in their ordinary sense, and only to modify or alter so far as it may be necessary to avoid some manifest absurdity or incongruity, but no further. It is proper also to consider (1) the state of the law which it proposes or purports to alter; (2) the mischief which existed and which it was intended to remedy; and (3) the nature of the remedy provided, and then to look at the statutes in pari materia as a means of explaining this statute. These are the proper modes of ascertaining the intention of the legislature."

With great respect and humility, I adopt this pronouncement as an accurate statement of the law, and now proceed accordingly.

In Stroud's Judicial Dictionary, 3rd Ed., at p. 735, the learned author in his definition of 'debt' states:

> " ...
>
> (c) But, speaking generally, 'money in the hands of a man who cannot refuse to pay it somehow or another, is a 'debt', and if so, it can be attached.'"

The phrase "debt owing or accruing", occurring in Order XLV(2) of the English Rules of Court, received

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judicial interpretation in Webb v. Stenton, (1883) 11 Q.B.D. 522, where Lindley, L.J. said at p. 527:

> "Now, let us consider the language of Order XLV, rule 2. I should say, apart from any authority, that a debt legal or equitable can be attached whether it be a debt owing or accruing; but it must be a debt, and a debt is a sum of money which is now payable or will become payable in the future by reason of a present obligation, debitum in presenti, solvendum in futuro. An accruing debt, therefore, is a debt not yet actually payable, but a debt which is represented by an existing obligation. That appears to me to be the view taken by the judges in the cases under the Common Law Procedure Act, 1854, to which the Master of the Rolls has referred, and I will not allude to it further."

And Fry, L.J. at p. 528, said:

> "In my opinion the defendants' counsel is right in contending that the words there, 'is indebted', and the words 'debts owing or accruing' refer to the same subject-matter. It appears to me to be plain that to satisfy either of those two expressions there must be an actual present debt. I think further that the debt may be either equitable or legal. No doubt, under the Common Law Procedure Act, 1854, it has been held that the debt referred to must be a legal debt, because that statute was dealing only with the Courts of Common Law. But when the word 'debt' is used in the Judicature Acts or Orders, which deal with a new Court which has the jurisdiction of both the Courts of Common Law and Equity a meaning must be given to the word 'debt' which is co-extensive with such jurisdiction. I have further no doubt that the word 'indebted' describes the condition of a person when there is a present debt, whether it be payable in presenti or in futuro, and I think that the words 'all debts owing or accruing' means the same thing. They describe all debita in presenti, whether solvenda in futuro, or solvenda in presenti."

In Commissioner of Income Tax v. Barcellos, (1957) B.G.L.R., p. 105 the question for the

Court's consideration was, whether income tax not assessed at the time when a receiving order was made against the debtor but assessed subsequently on the basis of information disclosed by the debtor during the Public Examination could be proved as a debt in insolvency.

S. 35 of The Insolvency Ordinance, Cap. 43, provided as follows:

> "(1) Demands in the nature of unliquidated damages arising from tort or otherwise, than by reason of a contract, promise, or breach of duty or breach of trust, shall not be provable in insolvency.
>
> (2) Except as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he becomes subject before his discharge by reason of any obligation incurred before the date of the receiving order shall be deemed to be debts provable in insolvency."

Stoby, J., at page 111, said in the course of his judgment:

> "There is no contest that the failure to pay income tax would be a breach of duty and consequently an income tax assessment is a provable debt in insolvency." Counsel for the respondent's submission is that it was not an obligation incurred before the date of the receiving order.
>
> "To decide the point, it becomes necessary to advert to the Income Tax Ordinance, Chapter 299.
>
> "Sections 5 and 8 of the Income Tax Ordinance, Chapter 299, provide respectively for the imposition of Income Tax and the basis of assessment of the tax. As soon as income is derived in the Colony over and above a certain sum the obligation to pay income tax arises. The tax payer's liability does not depend on the arithmetical calculations of a Government Official; it is the extent of his liability

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which is dependent on the ascertainment of his chargeable income. A clear distinction must be drawn between the liability to pay on the one hand and the amount required to be paid as a result of the liability on the other hand. (Underlining mine).

"The case of Pitchford, (1924) 2 Ch.D. 260, on which Counsel for the respondent relied, is distinguishable from the one under review. In Pitchford's case, it was held that untaxed costs of an action which had been stayed was not a provable debt. In the judgment of Astbury, J., reference was made to what Cave, J. said in re Bluck, (1887) 57 L.T. 419 and 420 -

> 'If a man brings an action he does not place on himself an obligation to pay the costs, that obligation arises when judgment is given against him'.

"The present case is far stronger than that. Here there was no order of any sort or kind dealing either with the claim or with the costs of the action, and the creditor having chosen, as the respondent in the present case has chosen, to obtain an order staying his action relying on proof in the bankruptcy, it seems to me perfectly hopeless to contend that he is now at liberty to go to the county court, which had no jurisdiction of any sort or kind, to make an order for the costs of the King's Bench action, and ask that he should be allowed to prove for a sum of costs in respect of which he has obtained no judgment and in respect of which there, consequently, can be no taxation.

"The distinction I draw between Pitchford's case and the present one is that in Pitchford's case the obligation to pay costs could not arise until judgment and as there was no judgment there was no liability; while in the present case the obligation to pay tax arose as soon as the income was earned." (Underlining mine.)

See also Phillips v. Inland Revenue Commissioner, (1963) 5 W.I.R. 304.

In other words, the effect of ss. 5 and 8 of The Income Tax Ordinance create a statutory obligation or liability to pay income tax as soon as it is apparent that there is a chargeable income in a particular year - in the instant case, 1961. In other words, the obligation to pay tax arises in the year the income is earned.

Since the valuation date for the payment of property tax is 30th November, 1961, then this must be taken into account as an existing debt on that date. It exists in law as a debt owing.

It is true that it is not payable until it is assessed and that assessment was not to take place until 1962, but the obligation to pay does not depend upon assessment. As Lord Dunedin put it in Whitney v. The Commissioner of Inland Revenue, (1924) 10 Tax Cases 88 at p. 110:

> "My Lords, I shall now permit myself a general observation. Once that it is fixed that there is liability, it is antecedently highly improbable that the statute should not go on to make that liability effective. A statute is designed to be workable, and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable. Now, there are three stages in the imposition of a tax: there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, ex hypothesi, has already been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly come the methods of recovery, if the person taxed does not voluntarily pay."

In Re Duffy (deceased). Lakeman v. Attorney General, (1948) 2 A.E.R. p. 756, in dealing with the meaning of "Liabilities" in s. 55 of the English Finance Act, 1940, Lord Greene said at page 759:

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"Coming back to the body of sub-s. (1) of s. 50, the commissioners are directed to make an allowance 'from the principal value' of the assets (that would be the assets of the company) for all the liabilities of the company. It is to be observed that, this process of arriving at the net value being a variant of what I may call the basic process provided for by s. 7(i) of the Act of 1894, one would rather expect - I do not attribute any practical force to this argument, but it is right to point it out - that this new provision for arriving at the net value would not introduce a class of deduction going beyond the sort of thing which was deductible under s. 7(i) - which were debts and incumbrances. It is true that the language used here is different. It does not say 'debts and incumbrances'; it says 'all liabilities of the company'. We are all familiar with the fact that, in speaking of the liabilities of a company which keeps accounts, the word 'liabilities' may be used in two senses. From one point of view, in reference to a particular company, anything that appears on the left hand side of its balance sheet is a liability. In the accountancy sense, it is a liability whether it be a provision for an actual legal liability or whether it be a provision which the directors, as business men, think is prudent to make for something that may or may not happen in the future. From the accountancy point of view, once these things are properly entered on the left hand side of the balance sheet, they are liabilities. Counsel for the executors repudiates the suggestion that he wished to construe the word 'liabilities' in so extended a sense, but he rejects the suggestion that the word 'liabilities' is to be construed in the limited and narrow sense of legal liabilities existing in point of law, whether under a contract, or under a statute, or in some other way. He says that in the present case you have a sort of half-way house. When the testator died the company had made, and was making profits in respect of the Exchequer financial year then current which would form the basis of its assessment to income tax for the following financial year. He then says: 'Notwithstanding the fact that the testator died long

before the commencement of that Exchequer financial year, and, therefore, long before the beginning of the period in respect of which the assessment would take place on the basis of those profits nevertheless those profits" - if I may return to the phrase I used earlier - 'directly they were made carried within themselves, so to speak, in gremio, a liability to tax which in every business sense would materialise into a legal liability as soon as the Budget resolutions in the following year were passed.' From the business point of view, I have no quarrel with that statement of the situation. It may well be that a business man who did not make proper provision for tax payable in the next year would be very unwise, but we have to construe the word 'liabilities' in this context.

.. ..

"Counsel for the executors says: 'Income tax is a very special thing. It cannot be classed with the sort of apprehended future event which may or may not happen. It is as certain as anything can be.' A glance at the Income Tax Acts makes it clear that income tax will be imposed. Therefore, he says as soon as the profits are earned which are to form the basis of next year's assessment you can say with absolute certainty: 'Those profits will form the basis of next year's assessment, and any prudent business man will not regard them as spendable save after making proper provisions for that liability which is going to arise in the future.' That is an attractive argument, because to speak of income tax next year as if the question whether it was or was not going to be imposed were a thing at large would be stupid, but, taking the construction of these words, I find it impossible to give them a meaning extending beyond what is always ascertainable without any doubt whatsoever, namely, an existing legal liability - a liability actually existing in law at the relevant date. The words cannot be stretched so as to cover something which in a business sense is morally certain and for which every business man ought to make provision, but which in law does not

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become a liability until a subsequent date. That appears to me to be the short answer to this appeal, which, in my opinion, should be dismissed with costs."

In Guyana, however, the liability or obligation to pay income tax goes beyond moral certainty for which every businessman ought to make provision. It is a legally existing liability or obligation as soon as the income is earned, and he is bound to make provision to pay it as he will have to pay it at some time in the future.

In Winter & Others v. The Inland Revenue Commissioner, (1963) A.C. 235, when the question for determination depended ultimately on the proper construction of the words "contingent liability", Lord Reid said, at p. 247:

> "It would seem that the phrase 'contingent liability' may have no settled meaning in English law because, in this case, Danckwerts, J., thought it necessary to resort to a dictionary, and In re Duffy (a case much relied on by the respondents) the Court of Appeal regarded its meaning as an open question. But the Finance Acts are United Kingdom Acts, and there is at least a strong presumption that they mean the same in Scotland as in England. A case precisely similar to this case could have come from Scotland and your Lordships would then have considered the meaning this phrase in Scots Law. So I need make no apology for reminding your Lordships of its meaning there. Perhaps the clearest statement of the law of Scotland is in Erskine's Institute, 3rd ed. vol. 2, Book III, Title 1, section 6, p. 586, when he says: 'Obligations are either pure, or to a certain day, or conditional ..... Obligations in diem ..... are those in which the performance is referred to a determinate day. In this kind ..... a debt becomes properly due from the very date of the obligation, because it is certain that the day will exist; but its effect or execution is suspended till the day be elapsed. A conditional obligation, or an obligation granted under a condition, the existence of which is uncertain, has no obligatory force till the

condition be purified; because it is in that event only that the party declares his intention to be bound, and consequently no proper debt arises against him till it actually exists; so that the condition of an uncertain event suspends not only the execution of the obligation but the obligation itself ..... Such obligation is therefore said in the Roman law to create only the hope of a debt. Yet the granter is so far obliged, that he hath no right to revoke or withdraw that hope from the creditor which he had once given him.'

"So far as I am aware that statement has never been questioned during the two centuries since it was written, and later authorities make it clear that conditional obligation and contingent liability have no different significance. I would, therefore find it impossible to hold that in Scots law a contingent liability is merely a species of existing liability. It is a liability which, by reason of something done by the person bound, will necessarily arise or come into being if one or more of certain events occur or do not occur. If English law is different - as to which I express no opinion - the difference is probably more in terminology than in substance."

In Owen v. Southern Railway of Peru, Ltd., (1953-56) 36 Tax Cases, p. 602, under Peruvian law the Respondent Company was bound to pay its employees in Peru prescribed compensation payments upon the termination of their services with the Company subject to the fulfilment by the employee of certain conditions. The amount to be paid depended on (a) length of service and (b) rate of pay at the end of the period of service, except that a reduction in pay would not affect the amount to which an employee was entitled by reference to the period of service already performed.

On appeal against assessments to Income Tax on the Company made under Case I of Schedule D for the years 1947-48 to 1951-52 inclusive, it was contended on behalf of the Company that upon proper principles of commercial accountancy amounts of compensation calculated to have accrued due to each employee from year to year as deferred remuneration should be

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allowed as a deduction. The Special Commissioners held that it was a matter of correct accountancy practice to make provision in the accounts for the sums in question, and allowed the appeal.

The Chancery Division held that the deferred payments must be brought into account for Income Tax purposes at the time when they became payable, and not before. The Court of Appeal affirmed this decision.

In the House of Lords (Earl Jowitt and Lords Oaksey, Radcliffe, Tucker and MacDermott) judgment was given in favour of the Crown Earl Jowitt and Lords Radcliffe and Tucker were of opinion that, where a number of similar contingent obligations arise from trading, there is no rule of law which prevents the deduction of a provision for them in ascertaining annual profits if a sufficiently accurate estimate can be made; but that the provision claimed by the Company throughout the proceedings was not permissible by reason of discount and other factors. Lord Oaksey agreed with the judgments in the Court of Appeal.

Lord MacDermott, dissenting, favoured a remit to the Special Commissioners to ascertain whether it would be practicable to arrive at satisfactory deductions.

He said:

> "My Lords as a general proposition it is, I think right to say that in computing his taxable profits for a particular year a trader who is under a definite obligation to pay his employees for their services in that year an immediate payment and also a future payment in some subsequent year, may properly deduct not only the immediate payment but the present value of the future payment provided such present value can be satisfactorily determined or fairly estimated. Apart from special circumstances, such a procedure, if practicable, is justified because it brings the true costs of trading in the particular year into account for that year and thus promotes the ascertainment of the 'annual profits or gains arising or accruing from' the trade. As I read the judgments, the

substance of this proposition was accepted in the Court of Appeal; and before your Lordships the Crown, without making any formal concession, was not concerned to argue strenuously against it."

The rest of their Lordships appears to have been in agreement with this part of Lord MacDermott's judgment.

In Absolam v. Talbot, 26 Tax Cases, (1942-1945) 166, Luxmoore, L.J., in the course of his judgment in the Court of Appeal, said:

"In ordinary parlance 'Debt' is the proper description to be applied to money which is owing and remains unpaid whether the due date of payment has arrived or not, as witness the well-worn phrase 'deditum in praesenti, solvendum in futuro.'

"With all respect to my brother Scott, I can find nothing in the Acts or Rules to control the meaning of the word 'debts' in Rule 3 (i) so as to limit it to debts due and payable. The Rule provides that 'In computing the amount of the profits or gains to be charged, no sum shall be deducted in respect of ..... (i) any debts, except bad debts proved to be such to the satisfaction of the commissioners and doubtful debts to the extent that they are respectively estimated to be bad.'

"In my judgment the capital sums secured by the second mortgages and promissory notes are debts within this description and are none the less so because they are said to be secured by second mortgages or promissory notes."

In W.H. Cockerline & Co. v. The Commissioner of Inland Revenue, 16 Tax Cases (1929-1932), the headnote is as follows:

"Excess Profits Duty - Validity of notice of final determination where liability settled by agreement and no assessments made - Finance Act, 1926 (16 & 17 Geo. V. c. 22), Section 38(3).

"Following upon a special enquiry it was agreed in May, 1928, between representatives

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of the Inland Revenue and of the proprietor of the Appellant firm that a total amount of £67,076 had been underpaid by him on account of Excess Profits Duty. This amount, in respect of which no assessment was made was duly paid. On 10th December, 1928, the Commissioners of Inland Revenue gave notice under the provisions of Section 38 of the Finance Act 1926, that in their opinion all questions as to the liability in respect of Excess Profits Duty had been finally determined. Upon appeal to the Special Commissioners against this notice it was contended that there was no basis in law for the so-called settlement of May, 1928, and that the liability to Excess Profits Duty had not been finally determined. The Special Commissioners were satisfied upon the evidence that the settlement for £67,076 was intended by the Crown and by the taxpayer to be a final settlement of the liability to Excess Profits Duty and found that all questions as to the liability in respect of Excess Profits Duty had been finally determined before 10th December, 1928. They therefore dismissed the appeal.

"Held, that there was evidence upon which the Special Commissioners could come to their decision, which was not wrong in law."

Rowlatt, J., said at page 9:

"Here they met and came to an agreement with the intention on both sides that it should put an end to the matter, and if the formality had been gone through of putting the assessment on the book as a matter of consent on both sides, I do not see how it would have been possible for me, or any Court, to disturb the findings of the Special Commissioners in this case, and I cannot, having regard to the point that has been taken for the Crown, hold that the argument which has been put forward on behalf of the Appellant is one which is entitled to succeed. It seems to me that the point taken for the Crown succeeds, that what was done was exactly what was intended should be done if the assessment had been put on the book. All

that is wanting is the assessment, and the Crown is entitled to say: even assuming that assessment had been put on the book in July, when it comes to December there is nothing done, there is no question raised, and this notice is given, and they could have said, and said rightly, that there was no intention to appeal this, that it was settled and it never would be appealed, that it had not been appealed and that the time for appealing was over, and all the rest of it, and nothing more could have been settled. The only thing that is wanting really is this matter of the assessment on the book. I quite agree it would have been very much better if this matter had been regularised by an assessment. Personally, I do not understand how taxes can be collected without there being an assessment corresponding with it on the assessment book, but I do not see how that avails the subject."

In O'Driscoll & Anor. v. Manchester Insurance Committee, (1915) 3 K.B. 499; an insurance committee, acting under the National Insurance Acts, 1911 and 1913, and the Regulations made thereunder, entered into agreements with the panel doctors of their district by which the whole amounts received by the committee from the National Insurance Commissioners were to be pooled and distributed among the panel doctors in accordance with a scale of fees; the total amount available for medical benefit so received by the committee was to be the limit of their liability to the panel doctors; and if the total pool was insufficient to meet all the proper charges of the panel doctors in accordance with the scale, there was to be a pro rata reduction for each doctor, and, on the other hand, if it should be in excess of the amount required, the balance was to be distributed among the panel doctors.

It was held that where a panel doctor had done work under his agreement with the Insurance Committee, and the Committee had received funds in respect of medical benefit from the National Insurance Commissioners, there was a debt owing or accruing from the Insurance Committee to the panel doctor which could have been attached under Order XLV r.1, notwithstanding that as a matter of calculation the exact share payable to him may not

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yet have been ascertained.

Swinfen Eady, L.J., said at p. 511:

"In those circumstances I am of opinion that on April 9, 1914, there was a debt owing or accruing from the Insurance Committee to the panel doctors. It was not presently payable, the amount not being ascertained, but it was a debt to which the doctors were absolutely and not contingently entitled. The only question was as to the amount of the debt, the debt not being payable until the amount had been ascertained.

"I now come to the first quarter of 1914. The original year included in Dr. Sweeny's agreements ended on January 14, 1914, but we are told that in 1914 a change was made, and that the medical year began on January 1, 1914, and ended on December 31. The first quarter therefore expired on March 31. On April 9 Dr. Sweeny would be entitled to a payment on account of his services for that quarter. The Insurance Committee were bound to make such a payment. By art. 37 of the National Health Insurance (Medical Benefit) Regulations (England) 1913, which are applicable to Dr. Sweeny's contract of January, 1914, 'as soon as may be after the expiration of each quarter the committee shall pay to each practitioner such sum as may be agreed between the committee and the panel committee in advance of the amount due to him.' There is therefore a statutory obligation on the committee to pay to the panel doctors a quarterly sum on account, the amount of which is to be determined as therein provided, and no garnishee proceedings can affect the right of those persons to determine the amount. That being so, Dr. Sweeny had on April 9, 1914, become entitled to a payment on account for work done, and that right was not subject to be divested by any contingency. Rowlatt, J., held that on that date there was a 'debt owing or accruing' from the Insurance Committee to Dr. Sweeny though not presently payable.

"It is contended, however, that there cannot be a 'debt' until the amount has been

ascertained, and in support of this contention cases have been cited to us where it was attempted to attach unliquidated damages. But in such cases there is no debt at all until the verdict of the jury is pronounced assessing the damages and judgment is given. Here there is a debt, uncertain in amount, which will become certain when the accounts are finally dealt with by the Insurance Committee. Therefore there was a 'debt' at the material date, though it was not presently payable and the amount was not ascertained. It is not like a case where there is a mere probability of a debt, as, for instance, where a person has to serve for a fixed period before being entitled to any salary, and he has served part of that period at the time the garnishee order nisi is served. In such a case there is no 'debt' until he has served the whole period."

Phillimore, L.J., said at p. 514:

"I am of the same opinion, and have little to add. ..... Therefore both under the Regulations which have statutory force and under a contract incorporating the Regulations there was a debt due from the committee to Dr. Sweeny. No doubt these debts were not presently payable, and the amounts were not, on April 9, 1914, ascertained in the sense that no one could say what the result of the calculations would be, but it was certain on that date that a payment would become due from the balance of the moneys in the hands of the committee for 1913, and that there was a provisional payment due to the doctors for the first quarter of 1914. Therefore for each of those periods there was a debt owing or accruing from the Insurance Committee to Dr. Sweeny, and it is well established that a debt so payable, though solvendum in futuro, is attachable under Order XLV, r. 1. It is not like the case of unliquidated damages which are not a debt until judgment. Directly the learned judge came to the conclusion that there was a balance, though of unascertained amount, in the hands of the Insurance Committee on April 9, 1914, for payment to the doctors

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for the year 1913, and that there was money in their hands for making a provisional payment to the doctors for the first quarter of 1914, he was bound to find that there were debts owing or accruing due from the Insurance Committee to Dr. Sweeny. As to the form of the order, it will be sufficient if the order which we make follows the canons laid down by Swinfen Eady, L.J., namely, that the judgment creditors ought not to be placed in any better position as against the Insurance Committee with regard to the mode of ascertaining the sum due and the date of payment than the judgment debtor himself."

And Bankes, L.J. at p. 516:

> "It is well established that 'debts owing or accruing' include debts debita in praesenti solvenda in futuro. The matter is well put in the Annual Practice, 1915, p. 808: 'But the distinction must be borne in mind between the case where there is an existing debt, payment whereof is deferred, and the case where both the debt and its payment rest in the future. In the former case there is an attachable debt, in the latter case there is not.' If, for instance, a sum of money is payable on the happening of a contingency, there is no debt owing or accruing. But the mere fact that the amount is not ascertained does not show that there is no debt".

All of these cases, discussing and illustrating as they do debts in praesenti and debts in futuro, conclude that they are "debts owing" and distinguish between those and liability based upon a contingency. We are not in this case concerned with contingencies. The creation of the liability or obligation does not depend on the happening of any event which may or may not occur, such as the Budgetary Resolutions necessary, as illustrated in the English cases, nor upon the arithmetical calculations of the Commissioner of Inland Revenue assessment. As soon as the appellants' trading account for the year was settled and disclosed a chargeable income, the provisions of the Income Tax Ordinance were attracted and there was an obligation or liability to pay tax accordingly; and this was a statutory debt owing.

Principle and authority, in my view, establish that the plain and ordinary meaning of "debts owing" clearly sanctions the deduction made by the appellants in this case.

The learned Chief Justice came to the conclusion -

> "That the appellants were at the valuation date, 30th November, 1961, liable to pay income tax for the year of Assessment 1962 on income earned during the year 1961, seems to me to be without doubt."

But then he proceeded to enquire in the next line: "But was that amount of income tax a debt due at the valuation date, 30th November, 1961? and went on to say:

> "There was at that date a legal obligation on the part of the appellants to pay income tax for year of income tax 1961 in the next succeeding year 1962 but there was no legal right in the Commissioner of Inland Revenue at the 30th November, 1961, to enforce payment and in my opinion there was therefore no debt due at the valuation date."

And throughout the rest of his judgment he refers to "debt due". It is clear that he misdirected himself as to the scope of his enquiry. He had to find whether or not there was a debt owing, not whether or not there was a debt due. A debt due is one that is payable now; a debt owing is one that is payable now or in the future.

The case of the Inland Revenue Commissioner v. The Port of London Authority, (1923) A.C. 507, relied on by the respondent, dealt with the interpretation of "debt due", and the Court held that stock in the hands of a stockbroker did not create a debt due to him by the Authority. That case, therefore, does not avail the respondent, nor do the sections of the Income Tax Ordinance relied upon by the respondent.

Assuming that there is ambiguity as to the plain and ordinary meaning of "debt owing", what was the object of this legislation? It appears in the long title thereof - "An Ordinance to provide

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for the levy of taxes computed by reference to property and gifts."

It was a tax on worth. What was the appellant Company worth on 30th November, 1961? Surely, the value of its assets less what it would have to pay to its creditors up to that date, even though the payment could be deferred? The Commissioner of Inland Revenue became a statutory creditor the moment a chargeable income arose for the year 1961.

Section 10 of the Estate Duty Ordinance, Cap. 301, provides that:

> "In determining the amount on which the estate duty payable in respect of any property is to be calculated and paid, the following deductions shall first be made from the value of the property -
>
> .. ..
>
> (b) all debts or incumbrances incurred or created by the deceased bona fide for full consideration in money or money's worth wholly for the deceased's own use and benefit:
>
> Provided that no debt shall be deducted in respect whereof, there is a right to reimbursement from any other estate or person."

The practice has always been - and I have never heard this disputed - that the personal representative of deceased, in arriving at the net value of the deceased's estate, deducts the income tax charged on the chargeable income earned during the year in which the deceased died, even though it has not been assessed.

The only difference in the scheme of the two Ordinances on this aspect is that in the case of the Estate Duty Ordinance the "valuation date" is the date of the deceased's death, whereas in the Ordinance it is a statutory date. They are both Ordinances charging a tax on the net value of a person's property at a stated time.

In my view, the two Ordinances are <u>in pari materia</u> and similar provisions should receive similar interpretations.

Accordingly, I would allow this appeal, set aside the judgment and Order of the learned Chief Justice and the verdict of the Board of Review, and order the respondent to pay the costs of these proceedings in all the Courts.

PERCIVAL A. CUMMINGS,

Justice of Appeal.

Dated this 20th day of January, 1969

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JUDGMENT

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CRANE, J.A. (ag.):

The charging section of the Property Tax and the Gift Tax Ordinance, No. 19 of 1962 (hereinafter also called The Ordinance) provides as follows:

"Sec. 7. Subject to the provisions of this Ordinance, and more particularly to the other provisions of this part of this Ordinance, there shall be charged, levied and collected for each year of assessment a tax (to be called the Property Tax) at the appropriate rate or rates specified in the first schedule to this Ordinance, in respect of the net property, on the corresponding valuation date, of every person."

S.12(3) (b) of the same Ordinance makes provision for computing net property. It enacts that in the case of debts any deduction from the nominal amount of debts allowed for income tax purposes shall be subtracted from the price or value of any property. The machinery of both the Ordinance and the Income Tax Ordinance, Cap. 299, are therefore inter-related and geared for the collection of revenue.

The valuation date of the appellant Company was fixed by the Commissioner of Inland Revenue at November 30, 1961. Accounts were accordingly made

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up; gains and profits computed. After set-offs, to which the Company was entitled, were made, a net balance of $1,861 was struck. This the appellants claimed to be a debt owed by them as their income tax liability in respect of the year of Assessment 1962, and it was for that reason they deducted it when submitting their return of "net property" owned by them on the valuation date as required by the Ordinance. It is their contention that they had a right to do so since the $1,861 constituted a "debt owed" by them within the definition of "net property" in s. 3 of the Ordinance. (See below).

The Commissioner was, however, of a different view. He held that income tax in respect of the year of assessment 1962 was not a legal debt owed on the 30th November, 1961, the closing date of the Company's trading year, a view which was maintained by both the Board of Review and the Chief Justice, from whose judgment this appeal is now brought.

So far as is relevant, the definition of "net property" in the Ordinance is as follows:

"S.3. "Net property" means the amount by which the aggregate value, computed in accordance with the provisions of this Ordinance, of the property of any person on the valuation date is in excess of the aggregate value of all the debts owed by him on that date."

In his decision the learned Judge set out the matter he had to consider, as it was argued before him and previously before the Board of Review, thus:

> "The question for determination in this appeal is whether the sum of $1,861 claimed by the appellant's company to be its income tax liability for the Year of Assessment 1962 under the provisions of the Income Tax Ordinance, Cap. 299 is a debt owed by the appellant company at the valuation date the 30th November, 1961, within the contemplation of definition of the expression 'net property' in section 3 of the Property Tax and Gift Tax Ordinance, 1962."

However, it was contended before us that, notwithstanding the above premises which the Judge had correctly and succinctly laid as the basis for reasoning, he nevertheless went wrong when he considered the matter, not from the viewpoint of the time when the figure of $1,861 became a "debt owed", but when it became a "debt due" for payment. This, Counsel for the appellants has asked us to say, affected his judgment, and alluded to no less than ten instances therein where the Judge considered and finally resolved the problem in the light of a "debt due" but not payable by the appellant Company to the Commissioner of Inland Revenue until 1962. More particularly, we were referred to the passage on page 44 of the record in which he obviously misdirected himself in thinking that the words "debt due" were contained in the definition of net value (s.3). It was this error, it is said, which led to the erroneous conclusion, viz., that the Commissioner has no legal right to enforce payment on the valuation date, notwithstanding a clear finding by the Judge that there was a legal obligation existing on November 30, 1961, on the part of the appellants to pay income tax in 1962. Assuredly, as we shall see, if correct, this is tantamount to a finding that there was an existing debt to be paid in the future such as would fall within the definition of a "debt owed" in s. 3 of the Ordinance, and so render the $1,861 deductible.

No doubt there is an obvious difference, both theoretical and practical, between a debt which is owed and one which is due. While in both cases the existence of the debt is established, the difference between them is chiefly with regard to time for demanding payment. In the one case the time for demanding payment may or may not have arrived; but in the latter, there can be no dispute that it has. Therefore a consideration of whether a debt has become due must needs involve a consideration of whether, in the first place, it was owed, for a debt cannot become due unless it was first owed.

I believe the solution to this problem must lie in the correct interpretation to be given to the phrase "debt owed" and the words "liability" and "indebted" in the Income Tax Ordinance. In elucidation of it, several authorities dealing with

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garnishee orders under the Common Law Procedure Act, 1854, s.61, were cited. This section of that statute (now repealed) authorized the attachment of all debts "owing or accruing" from a garnishee to a judgment debtor. In the old case of Jones v. Thompson, 120 E.R. 430, one of the first on that statute, it was held that the words "owing or accruing" were intended to apply to such cases in which there is a debitum in presenti, solvendum in futuro, which Crompton, J., explained by saying that there must be an existing debt though it need not be yet due for payment, and that it is not enough to show the probability that there will soon be a debt; while Fry, L.J. considered the words "owing or accruing" in Webb v. Stenton, (1883) 11 Q.B.D. 548 at page 529, to be identical in meaning.

It is clear, however, that there must exist, in order to be termed a debt "something which the law recognises as a debt" (per Brett, M.R. at p.523) before it can be said to be owing and accruing, and in the same case Lindley, L.L.J., is reported as saying at page 527:

> "It must be a debt, and a debt is a sum of money which is now payable or will become payable in the future by reason of a present obligation, debitum in presenti, solvendum in futuro. An accruing debt, therefore is a debt not yet actually payable, but a debt which is represented by an existing obligation."

I consider the above extract to mean that the debt must not merely be a "liability", but an obligation. A debt must originate from a transaction or situation which is creative of the status of debtor and creditor arising either ex contractu, or ex lege; but it must savour of a legal obligation before it can receive recognition by the Courts. This means that, in the present context, the Commissioner must have the powers to assess, demand, sue for and recover the tax before it can be called a debt.

The question to be answered then is: Was there in existence any such legal obligation on the 30th November, 1961, which the law would recognise? In considering this matter, both the

Property Tax and the Gift Tax Ordinance, 1962, and the Income Tax Ordinance, Cap. 299, must be looked at in order to see whether they are creative at any stage of the status-obligation of debtor and creditor, and whether such acts and duties as are imposed on any one or both of the parties can give rise to any such relationship.

There are three stages which are characteristic of all tax and revenue legislation. (See per Viscount Dunedin in Whitney v. Commissioner of Inland Revenue, /1924/ 10 T.C. 88 at p. 110). These are well-known and are not disputed. They are: (i) the charging; (ii) the assessment, and (iii) the collection stages. Ss. 5 and 48 of our Income Tax Ordinance relate to the charging and assessment aspects of tax imposition; while s. 70 et seq. deal with tax gathering and the mode of collecting it after its determination. In his famous dictum, Lord Dunedin remarked (ibid.) by way of general observation:

> "Now, there are three stages in the imposition of a tax: there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That ex hypothesi has already been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay."

The charging section therefore deals with the taxpayer's liability to tax. This, however, does not depend upon assessment, because it arises quite independently of it; thus, there need not be an assessment or quantification of tax in order to ground liability to pay it.

The decision of the Court of Appeal in O'Driscoll v. Manchester Insurance Co. (1915) 3 K.B. 499, is frequently cited as illustrating the point that there need not be assessment or quantification of an amount in order to make a debt owing or accruing, i.e., in order that there should exist a present obligation to pay it now or in the future. But when the facts of that case are analysed, it will be seen that the point it is sought to make

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about the existence of the power to create the obligation was contained in the relevant articles of agreement. Briefly, the facts as set out in the headnote of the case are, that an Insurance Committee, acting under the National Insurance Acts, 1911 and 1913, and the Regulations made thereunder entered into agreements with the panel doctors of their district by which the whole amounts received by the Committee from the National Insurance Commissioners were to be pooled and distributed among the panel doctors in accordance with a scale of fees. The total amount available for medical benefit so received by the Committee was to be the limit of their liability to the panel doctors; and if the total pool was insufficient to meet all the proper charges of the panel doctors, in accordance with the scale, there was to be a pro rata reduction for each doctor, and, on the other hand, if it should be in excess of the amount required, the balance was to be distributed among the panel doctors. It was held that where Dr. Sweeny, one of the panel doctors, had done work under his agreement with the Insurance Committee, and the Committee had received funds in respect of medical benefit from the National Insurance Commissioners, there was a debt owing or accruing from the Insurance Committee to Dr. Sweeny which could be attached in payment of his debts under Order XLV r. 1 (I.K.), notwithstanding that as a matter of calculation the exact share payable to him may not yet have been ascertained. At page 511 of the report, Swinfen Eady, L.J., said:

> "In those circumstances I am of opinion that on April, 9 1914, there was a debt owing or accruing from the Insurance Committee to the panel doctors. It was not presently payable, and the amount not being ascertained, but it was a debt to which the doctors were absolutely and not contingently entitled. The only question was as to the amount of the debt, the debt not being payable until the amount had been ascertained.
>
> "I now come to the first quarter of 1914. The original year included in Dr. Sweeny's agreements ended on January 14, 1914, but we are told that in 1914, a change was made, and that the medical year began on January 1, 1914, and ended on December 31. The first

quarter therefore expired on March 31. On April 9, Dr. Sweeny would be entitled to a payment on account of his services for that quarter. The Insurance Committee were bound to make such payment. By Art. 37 of the National Health Insurance (Medical Benefit) Regulations (England), 1913, which are applicable to Dr. Sweeny's contract of January 1914, 'As soon as may be after the expiration of each quarter the committee shall pay to each practitioner such sum as may be agreed between the committee and the panel committee in advance of the amount due to him.' There is therefore a statutory obligation on the committee to pay to the panel doctors a quarterly sum on account, the amount of which is to be determined as therein provided, and no garnishee proceedings can affect the right of those persons to determine the amount. That being so, Dr. Sweeny had on April 9, 1914, become entitled to a payment on account for work done, and that right was not subject to be divested by any contingency. Rowlatt, J., held that on that date there was a 'debt owing or accruing' from the Insurance Committee to Dr. Sweeny, though not presently payable."

Far from being contrary to the view I hold that the liability must be legal, i.e. an obligation, I think the O'Driscoll case supports it. Whether a legal obligation exists is the all-important thing to look for in determining the existence of a debt. In O'Driscoll's case the legal obligation on the Committee to make those payments existed both under the Regulations and under the contract incorporating the Regulations. The Committee were bound to make those payments. So either way there was a debt due from the Committee to Dr. Sweeny notwithstanding it was not yet, although capable of being quantified. In contrast with O'Driscoll's case, yet illustrative of the necessity for there to be a legal obligation, is Seabrook Estates Co. Ltd. v. Ford, (1949) 2 A.E.R. 94. Here, a debenture holder appointed a receiver, who was to realise the assets and then pay off any preferential claims and the principal and interest to the debenture holders, and having done that, to pay the residue to the Company. The judgment-creditor of the Company sought to attach a certain sum of money in the hands of the receiver before he

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had paid these other debts, and which was estimated to be the residue that would be left in his hands. It was held that this could not be done as there was as yet no debt owing to the Company. In the course of his judgment Hallett, J., said, at p.97:

> "A time may come when the receiver for the debenture holders will become the debtor to the company, but I do not think that that time had arrived on February 22, 1949."

In the light of the authorities there can be no dispute about the correctness of this decision, nor about the emphasis it lays on the necessity for a legal obligation to have existed on the part of the receiver to pay the residue to the Company before a debt could be said to be owing; but that legal obligation had not yet arisen simply because the condition precedent had not been fulfilled; the receiver had not discharged his mandate to pay off preferential claims and the principal and interest to the debenture holders. Herein lies the distinction between Ford's and O'Driscoll's cases, viz., in the latter, the Committee were bound to make payments to the doctors, whereas in the former the time for making the payments had not yet arrived.

Support is also, I think, to be found in Re Duffy (deceased) Lakeman v. Attorney General, (1948) 2 All E.R. 756, although the words "debt owed" were not used in the relevant sections concerning that case which gave rise to the litigation, but the word "liabilities" instead. Duffy died possessed of shares in three companies to which s. 55 of the Finance Act, 1940 (U.K.) applied. His executors, in computing under that section the value of his shareholdings for the purposes of estate duty, sought to set off against the companies' profits for the part of the current year which had elapsed at the date of death, the propsective income tax liability in respect of those profits which would be borne by the companies in the ensuing year. The Court of Appeal held that the word "liabilities" referred to liabilities existing in law at the relevant date and could not be stretched so as to cover something which in a business sense is morally certain and for which every business man ought to make provision, but which in law does not become a liability until a subsequent date.

Presently we shall see that though this reasoning was not altogether approved the attempt to include anticipated income tax liability which did not exist until the next ensuing year did not succeed. Lord Greene, M.R., at page 759, having been at pains to point out that the relevant section wherefrom the Commissioner was directed to make an allowance from the principal value of the assets, did not read "debts and encumbrances", but "liabilities", went on to refer to the two senses in which the word "liabilities" is used, viz., in the wider and business sense of anything which appears on the debit side of the balance sheet of a company; and in the narrow and strict sense of legal liabilities existing in point of law, whether under a contract, or a statute, or some other way, that is to say, legal obligations or debts. It is therefore the finding of the Master of the Rolls that the word "liabilities" in s. 55 of the Finance Act, 1940, means present legal liabilities, i.e., the equivalent of obligations and debts that makes Duffy's case of particular importance and relevance to the instant case for it provides the link to the solution of the problem with which we are now confronted, and confirms the view entertained that anticipated income tax liability cannot be considered a debt until 1962 when the Commissioner of Inland Revenue could have lawfully exercised his powers of assessment under the law as an agent for the functions of the State.

Re Duffy was approved by the House of Lords in Winter v. Inland Revenue Commissioner, (1961) 3 A.E.R. 855; but not the analysis of Lord Green, M.R., concerning what are "liabilities" under ss. 50 and 55 of the Finance Act, 1940. The learned Master of the Rolls thought that only legal liabilities, i.e. those existing, not contingent liabilities, were so included. But by a majority of the House it was held that this view could not prevail for a liability may be contingent without being an existing legal liability. We are, however, spared from that consideration, having only to consider the meaning of "debts owed" within the definition of s. 3 of the Ordinance in relation to the appellants' liability to tax and their indebtedness in the Income Tax Ordinance, Cap. 299.

It was strenuously urged on behalf of the appellant Company that the $1,861 was set down in

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their books as a current liability and so could not be treated as an asset merely because they have held it in their possession. It was not within the contemplation of the Ordinance, so runs the argument that current liabilities should be treated as part of assets to be used in the computation of net value. The concept of "net worth" means what a man holds for himself; it does not mean that which he holds to meet a liability which will become due in a few months' time. Property tax, it is said, is a tax levied on net property, not on debts which have to be paid out now or in the future. The sum-total of the appellants' whole argument is directed to show that the $1,861 cannot in truth be regarded as their property because they will have to pay it sometime in the future.

I think, however, this argument tends to beg the question and to confuse the concepts of liability and legal obligation since it overlooks the point as to whether there was an existing legal obligation on the valuation date, i.e., whether the $1,861 could have been lawfully demanded from the appellants on that date. The departure by popular speech from the legal significance of the term "obligation" is one of the misfortunes of legal nomenclature.

In my view, a liability to tax arises from the very moment the subject embarks upon any of the enterprises in s. 5 of the Income Tax Ordinance, but I consider that at that time his is only a mere liability i.e., a duty to account for his gains and profits - his legal obligation only arises after assessment. See s. 69A(8) (g) where it is positively stated that it is the exercise of a trade, business, profession or vocation or other employment in Guyana which renders a person liable to pay income tax. I think that liability can only assume the nature of a legal obligation when the Commissioner of Inland Revenue, in exercising his statutory powers, transforms it into a legal liability, i.e. a debt owed to the Government of Guyana, that is to say, into an obligation to pay by making a lawful assessment on him and notifying him thereof. It seems to me that it was in this sense that Lord Reid explained the concept by contrasting its double meaning which we have seen above is inherent in it. See Winter v. Inland Revenue Commissioners (above), where he said at p. 858:

"But I cannot doubt that if a statute says that a person who has done something must pay tax, that is a 'liability' of that person" (i.e., in the wide business sense of the word as shown by the use of italics). "If the amount of tax has been ascertained and it is immediately payable it is clearly a liability" (i.e., in the narrow sense of the word as meaning an obligation or debt).

This double significance is also admirably analysed in the following extract from "Principles of the Law of Contracts", 2nd Ed. pp. 2-3 by Salmond & Williams in terms of the debtor and creditor relationship, a consideration of which I shall endeavour later to show from both the Ordinance and the Income Tax Ordinance is relevant in this case:

"In the second place, the Roman term obligation (and the English term obligation itself when used in its strict and legal sense) denotes not merely the duty, but also the corresponding right. In other words, it denotes the entire relationship between the parties - the vinculum juris as the Roman lawyers called it - which unites, for example, a debtor to his creditor or one contracting party to the other. Looked at from the point of view of the creditor or other person entitled, this obligatio or the vinculum juris is a right; looked at from the point of view of the debtor, or other person bound, it is a duty and a liability; and the term obligatio indicates both of these aspects. A debt is the obligatio not merely of the debtor, but of the creditor also. In the contrasted popular sense, however, the term denotes the duty or liability exclusively. The distinction may be illustrated by the use of the word debt, which to some extent possesses the same double significance as obligatio. A debt is the right of the creditor no less than the liability of the debtor. It is a relationship with a double aspect."

The question will therefore be approached from the standpoint of whether on the valuation date, i.e. the date on which the appellants contend that a debt of $1,861 was owed by them to the Commissioner,

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the latter was empowered to create such an obligation on them; if not, then in the light of the above analysis there could be no existing obligation on that date and therefore no debt owed on that date even though there was duty on the appellants to account for all gains and profits then.

In considering this question, I will commence by examining s. 9 of the Income Tax Ordinance, Cap. 299 along with s. 8 of the Property Tax and the Gift Tax Ordinance, and by bearing two fundamental observations in mind viz., (1) that with us, income tax assessment is based on the principle of chargeable income on gains or profits in business for the year immediately preceding the year of assessment (s. 8 Cap. 299); and (ii) that in relation thereto, the "year of assessment means the period of twelve months ....." (see definition) (s. 2 Cap. 299). Therefore, chargeable income on gains or profits earned in 1961 will be subject to assessment in 1962 and not before, unless power is specifically given to the Commissioner for that purpose in the very year of income.

Under s. 9 of Cap. 299, where the Commissioner is satisfied that any person usually makes up the accounts of his trade or business on a day other than the day immediately preceding any year of assessment, i.e. on the 31st December of that year, he may permit that person to compute his gains or profits for income tax purposes upon income received by him during the year up to that day on which he makes up his accounts; but there is the proviso that where such permission is given in respect of any year of assessment, income tax shall be charged, levied and collected for each subsequent year on the gains and profits for the full year on the same date in the year immediately preceding the year of assessment subject to an adjustment which, in the Commissioner's opinion is just and reasonable.

Two points are especially worthy of note about this section (i) permission is only granted the taxpayer <u>to compute</u> gains or profits for the purposes of enabling him to fulfil his statutory liability of accounting for income received during the year of business. Permission is not granted him <u>to assess</u> the amount of tax due from him for

any purpose whatever, nor to obligate himself for the payment thereof; (ii) the principle of assessment on the basis of the chargeable income for the year immediately preceding the year of assessment is maintained.

Under s. 8 of the Property Tax and the Gift Tax Ordinance, 1962, it is provided that when the Commissioner has permitted computation of gains or profits as above on a day other than that immediately preceding any year of assessment, he may permit this day to be valuation day for the purpose of Part II of the Ordinance in respect of property held for the purposes of such trade or business. It has already been stated above that the Commissioner had in this case fixed November 30, 1961, as the valuation date. In relation to any year of assessment, this date is defined as the last day of the year preceding that year of assessment, and in relation to the Property Tax, the expression "year of assessment" means the period of twelve months commencing on the 1st January, 1962, and each subsequent period of twelve months.

It will therefore be readily seen from both Ordinances that there was a liability on the appellants to both income tax and property tax on November 30, 1961, and hence a liability to assessment in respect of both items in 1962. I stress, however, there was on that date, i.e., November 30, 1961, a mere liability to tax; there was then no "legal obligation on the part of the appellants to pay income tax in the next succeeding year 1962", as the learned Chief Justice thought; there was no certainty they would pay tax, because they may have incurred severe losses in business and so made as imposition impossible. I think so because, on the true construction of the Income Tax Ordinance, there could have been no lawful demand on the appellants as debtors by the Commissioner for payment in whole or in part of either Income or Property Tax on the 30th November, 1961, since the latter had no legal right to make an assessment in the year of income 1961. Any power to assess the taxpayer before the end of his year of income must of course, have legal sanction. Take, for example, the Commissioner's power to deduct income tax under the P.A.Y.E. system (s.66A); his power to bring to book absconding taxpayers liable to tax before the end of the year of income (s.69A(9);

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his power to garnish debts (s. 69C); and certain other specified instances; these are all cases where a priori legislative authority has to be obtained. In my view, the appellants' liability to tax on November 30, was incapable of being transformed into a legal obligation by reason of the legal incapacity of the Commissioner to assess, demand from and sue the appellants on that date for income chargeable in respect of 1961. The appellants cannot assess themselves and so oblige themselves; there is no power directed in either Ordinance to that end.

See ss. 19(1) and 48(1) of the Ordinance and the Income Tax Ordinance, respectively. These show that it is the Commissioner who is to make the assessment; is is he who, as we have seen from s. 12(3) (b) of the Ordinance, it is empowered to allow in the case of debts, deductions from the nominal amount which has been allowed in respect thereof for income tax purposes. Having regard to the fact that in the case of both Ordinances the years of assessment are coincident and co-terminus, viz., 12 months commencing on January 1, 1962, and also to s. 19(4) of the Ordinance, I think there is left no room for doubt that the intention is for both to be mutually operative in the respects mentioned therein in the year 1962.

The juridical explanation of an obligation connotes "the relation between two persons one of whom can take judicial proceedings or legal steps to compel the other to do or abstain from doing a certain act." See the Dictionary of English Law, 1959, at page 1256, by Earl Jowitt. In other words, an obligation creates a right in personam. This was no doubt the idea which the learned Judge had in mind when he sought to show "there was at that date (i.e. November 30, 1961) a legal obligation on the part of the appellants to pay income tax in the next succeeding year 1962," since he gave as his reason for his finding the non-existence of a debt due was the absence of a legal right to enforce payment of it. Having found that there arose a legal obligation on November 30, 1961, to pay tax in 1962, it is clear that the Judge was in effect saying there was an existing debt to be paid at a future time. This, assuredly, in the light of what we have been considering above, must be a "debt owed" within s. 3

of the Ordinance. But this notwithstanding, he reached the conclusion that the appeal must be dismissed, for the reason that the debt was not yet due.

In my opinion the Judge's finding that there was a legal obligation on the valuation date was wrong because there was no debt in existence whatever on the valuable date; nevertheless, his conclusion was right that this appeal must be dismissed. He arrived at the right conclusion through the wrong reasoning. An appeal, however, it is well known, is not from the reasons given in support but from the decision itself. I find that the decision can be sustained from the evidence, however.

Recapitulating from the foregoing, I have come to the conclusion that on the valuation date the appellants were not bound to make any payment to the Commissioner in respect of their income tax liability for 1962, which had not yet arrived. They were then under no obligation which the cases show must exist to do so, because there was no right in the Commissioner to create it at that time. The true legal position, it seems to me is this: that before demand is made, the appellants are under a liability to be placed under an obligation to pay tax, i.e. their liability is only a duty to account to the Commissioner for income received during their trade year. An obligation to pay tax is, however, created when the Commissioner serves his notice of assessment under s. 56, which constitutes a demand on them for payment of it, the demand itself being the exercise of a power vested in him obligating the appellants to the payment of the tax.

An examination of his powers will show that s. 48(i) of the Income Tax Ordinance gives him power to assess the appellants as soon as may be after delivery of their returns, which assessment must be in 1962; while s.56 empowers him to send them a notice stating the amount of their chargeable income, the amount of tax payable by them, and requires him to inform them of their rights in case they are desirous of disputing his assessment. As I have said, Notice of assessment is in the nature of a demand for payment of the tax which then legally becomes due and payable on its receipt.

In the Court of Appeal of the Supreme Court of Judicature, Guyana

No.6

Judgment of Crane J.A. (ag.)

20th January 1969 (continued)

It is only after that point of time, I believe, that it can be truly said that there is a liability in the strict sense of an obligation to pay the tax; it is only after that time that it can be said that in law the status-obligation flowing from a debtor-creditor relationship arises, which Lindley's L.J., referred to as a present or existing obligation. (See Webb v. Stenton - above).

What was hitherto merely a duty or liability on one of the parties, viz., the appellants, will now be transmuted into the vinculum juris by virtue of the exercise of the corresponding right vested in the Commissioner of Inland Revenue to assess and demand payment of the tax. Such, it is submitted, is the position in this case to be deduced from the authorities, and an analysis of the passage quoted from the work of Salmond & Williams above, but there never was any exercise of the Commissioner's powers in this case, simply because there was none he could properly exercise on the valuation date.

That it was the intention of the Legislature to create the status of debtor and creditor, there can be no doubt, for the language in those sections of the Income Tax Ordinance establishing that relationship makes it unmistakably clear by the use of the words "liable" and "indebted". This bears, I think, ample testimony to the view which I hold - see, for example, ss. 39(1), 69C(1), 2(2)(a) and (5), and more particularly s. 71 which ought to leave one in no doubt at all as to the true nature of the tax since power is given to recover it from a defaulter in a Court of Law "as a debt due" to the Government of Guyana.

For the reasons I have endeavoured to give, I would support the conclusion reached in the Court below that this appeal be dismissed, though not for the reasons given; and I would accordingly dismiss the appeal with costs.

V.E. CRANE,

Justice of Appeal (ag.)

Dated this 20th day of January, 1969.

No. 7

ORDER ON JUDGMENT

In the Court of Appeal of the Supreme Court of Judicature, Guyana

No.7

Order on Judgment

20th January 1969

IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE, GUYANA

CIVIL APPEAL NO. 35 of 1964

In the matter of the PROPERTY TAX AND GIFT TAX ORDINANCE 1962.

BETWEEN:-

GUIANA INDUSTRIAL AND COMMERCIAL INVESTMENTS LIMITED (Appellants)
Appellants

10

- and -

THE COMMISSIONER OF INLAND REVENUE
(Respondent)
Respondent

BEFORE: THE HONOURABLE MR. E.V. LUCKHOO, CHANCELLOR (AG.)

THE HONOURABLE MR. P.A. CUMMINGS, JUSTICE OF APPEAL

THE HONOURABLE MR. V.E. CRANE, JUSTICE OF APPEAL (AG.)

DATED THE 20th DAY OF JANUARY, 1969

20 ENTERED THE 21st DAY OF JANUARY, 1969

UPON READING the notice of appeal on behalf of the abovenamed appellants (appellants) dated the 8th day of September, 1964 and the record of appeal filed herein on the 20th day of October, 1964 AND UPON HEARING Mr. C. Lloyd Luckhoo, Queen's Counsel, of Counsel for the appellants (appellants) and Mr. Doodnauth Singh, Senior Parliamentary Counsel, of Counsel for the respondent (respondent)

AND MATURE DELIBERATION THEREUPON HAD

30 IT IS ORDERED that the judgment of the Honourable the Chief Justice dated the 11th day of August, 1964 in favour of the respondent (respondent)

In the Court of Appeal of the Supreme Court of Judicature, Guyana

No.7

Order on Judgment

20th January 1969 (continued)

be affirmed and this appeal dismissed with costs to the respondent (respondent) to be taxed and paid by the appellants (appellants)

AND IT IS FURTHER ORDERED that this order be stayed for a period of two (2) months from the date hereof.

BY THE COURT

(Sgd.) H. Maraj

Sworn Clerk & Notary Public
for Registrar.

No.8

Order Granting Final Leave to Appeal to Her Majesty in Council

19th July 1969

No. 8

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

IN THE COURT OF APPEAL OF THE SUPREME COURT

OF JUDICATURE, GUYANA

BETWEEN:

GUIANA INDUSTRIAL AND COMMERCIAL INVESTMENTS LIMITED Appellants (Appellants)

- and -

THE COMMISSIONER OF INLAND REVENUE Respondent (Respondent)

BEFORE THE HONOURABLE MR. V.E. CRANE, JUSTICE OF APPEAL (IN CHAMBERS)

DATED THE 19th DAY OF JULY, 1969

ENTERED THE 28th DAY OF JULY, 1969

UPON the petition of the abovenamed Guiana Industrial and Commercial Investments Limited dated the 17th day of June, 1969 preferred unto

this Court for final leave to appeal to Her Majesty in Her Majesty's Privy Council against the judgment of this Court dated the 20th day of January, 1969;

AND UPON READING the said petition and the affidavit of Solicitor for the appellants (appellants) dated the 17th day of June, 1969 in support thereof and the Order of the Court dated the 22nd day of February, 1969;

AND UPON HEARING Mr. J.A. King, of counsel for the appellants (appellants) the respondent (respondent) being in default of appearance and being satisfied that the terms and conditions imposed by the said Order dated the 22nd day of February, 1969 have been complied with;

THIS COURT DOTH ORDER that final leave be and is hereby granted to the said appellants (appellants) to appeal to Her Majesty's Privy Council.

BY THE COURT

(Sgd.) Satrohan Singh.

Sworn Clerk & Notary Public
for Registrar.

In the Court of Appeal of the Supreme Court of Judicature, Guyana

No.8

Order Granting Final Leave to Appeal to Her Majesty in Council

19th July 1969
(continued)

EXHIBITS

"A"

Form No. 2.

C2

1969

COMPANY etc.

CONFIDENTIAL

File No. D/586

PROPERTY TAX RETURN OF G.I.C.I. LTD.

GUYANA

Dated April 20th, 1963

No. of Assessment.....

PROPERTY TAX.

(Property Tax Ordinance 1962)

Exhibits

"A"

Property Tax Return of G.I.C.I.Ltd.

20th April 1963

YEAR OF ASSESSMENT ENDING THE 31ST DECEMBER, 1969.

RETURN TO BE MADE OF THE NET PROPERTY AT 31ST DECEMBER, ~~1968~~ 1962

To be delivered to the Commissioners of Inland Revenue, P.O. Box 24, Georgetown, on or before ~~30th April 1969~~ 31st December 1962.

Nam Firm, Estate, Trust, or Company GUIANA INDUSTRIAL & COMMERCIAL INVESTMENTS LTD.

Block Letters.

Address 186 Charlotte & King Streets, Georgetown

Nature of Business Investments Company

Last Income Tax Return was filed for the Year of Assessment 1962 at Georgetown (District Tax Office).

Section 1

I, E. Bookers Central Services Ltd. - Secretaries

declare that in the Statements in Sections A to D on pages 2 and 3 and in any Returns sent herewith, I have given a full, just and true Return and particulars of the net property chargeable under the Property Tax Ordinance, 1962, to the best of my judgement and belief according to the directions and Rules of the said Ordinance.

Given under my hand this 20th day of April 1963

Bookers Central Services Ltd. - Secretaries

Sign here (Sgd.) Jena Forte, Secretary .....Signature

186 Charlotte Street .....Business Address

.....Private Address

If absent from the Colony state the name and address of agent residing in the Colony.

Name of Agent.....

Address of Agent.....

State whether the Return is made:

(i) As the Resident Acting Partner for the time being of a Firm.....

(ii) As the Secretary or other responsible Officer of any Corporate Body... Secretary .....

(iii) As an Attorney, Agent, Factor, Trustee, Manager, etc., of any person.....

(iv) As Trustee, Executor, Administrator, etc., of an Estate.....

N.B.-In the case of a Firm, the Declaration above must be made by the Resident Acting Partner for the time being, or in the case where none of the partners is resident in Guyana, by the Attorney, Manager, Agent, etc., the required Declaration as to the Partnership Property being made in Section E Page 3.

PENALTIES

1. Any person chargeable with tax who refuses, fails or neglects to deliver a Return of his net property to the Commissioners on or before 30th April 1969, is liable to a penalty not exceeding $500.00.

2. Where a person refuses, fails or neglects to make a return of net property for the year immediately preceeding the Year of assessment within the time specified in a notice issued by the Commissioner to such person under Section 19 of the Property Tax Ordinance, 1962 and the Third Schedule thereto, the Commissioner shall add to the assessment a sum equal to five per centum of the amount of tax assessed.

3. Any person who without reasonable excuse makes an incorrect return by omitting or understating any property of which is required by the Ordinance to make a return, whether on his own behalf or on behalf of another person, or makes a incorrect statement in connection with a claim for deduction in estimating net property; or gives any incorrect information in relation to any matter or thing affecting his own liability to tax or the liability of any other person, is liable to a fine not exceeding $1,000.00 and double the amount of tax which has been or would have been undercharged in consequence thereof.

4. Any person who knowingly makes any false statement or representation in any Tax Return, or who keeps or prepares false accounts of any profits, property chargeable to Income Tax, or Property Tax as the case may be, or aids, or abets any person in such offences, is liable to a fine not exceeding $1,000.00 and treble the amount of tax which has been undercharged in consequence of such false account, particulars, return, statement, information, or representation, or would have been so undercharged if the account, particulars, return, statement, information, or representation had been accepted as correct or imprisonment for six months, or to both such fine and imprisonment.

RATES OF TAX

The Rate of tax is that provided by Section 7 and in the First Schedule of the Property Tax Ordinance, 1962.

PROPERTY TAX - FOR A COMPANY ½ per centum.

I.R.D.-No. 90B. C.G.P. & S. 2651/68.

Exhibits

"A"

Property Tax Return of G.I.C.I.Ltd.

20th April 1963 (continued)

N.B. Property to be excluded from net property is set out in section 10 of the Property Tax Ordinance 1962, examples of which are indicated in Section D below. For the basis of valuation of property (other than cash), see Note I on page 4 of this Return.

Section A – Property In Guyana *(Column 1)*	Amount *(Column 2)*
1. **Property held on 31st December, ~~1968~~ 1961, as part of a business:** Total Value of net property in Guyana in accordance with Schedules 1 and 3 attached..... (See Note II on page 4)	$3,966,250
2. **Property held on 31st December, ~~1968~~ 1961, other than as part of a business:**	
(a) Immovable Property Total value of immovable property held otherwise than as part of a business, in accordance with Schedules 2 and 3 attached ..... (See Note III on page 4)	
(b) Movable Property Total value of movable property held otherwise than as part of a business, in accordance with Schedule 4 attached ..... (See Note IV on page 4)	
(Carry total to Column 2) Total	
Section B – Property out of Guyana **N.B.** This section need not be completed by any person who during ~~1967~~ 1961 was not resident in Guyana, or ceased to be resident in Guyana, or was not domiciled in Guyana.	
3. **Property held on 31st December, ~~1968~~ 1961, as part of a business:** Total Value of net property out of Guyana in accordance with Schedule 5 attached..... (See Note V on page 4)	
4. **Property held on 31st December, ~~1968~~ 1961, other than as part of a business:**	
(a) Immovable Property Total value of immovable property held otherwise than as part of a business, in accordance with Schedule 6 attached ..... (See Note VI on page 4).	
(b) Movable Property Total value of movable property held otherwise than as part of a business in accordance with Schedule 6 attached ..... (See Note VI on page 4)	
(Carry total to Column 2) Total	
Carry Forward	$3,966,250

Exhibits

"A"

Property Tax Return of G.I.C.I.Ltd.

20th April 1963 (continued)

(Column 1)	Amount (Column 2)
Brought Forward	$3,900,250
Section C – Deductions in Arriving at Net Property **N.B.** This section is for deductions claimed other than those appropriate to a business. Deductions in respect of business liabilities to be specified in Schedule 1, Schedule 3 or Schedule 5 and deducted in arriving at Net Property under Section A – Head 1, or Section B – Head 3.	
5. Total deductions as per Schedule 7 attached..... (See Note VII on page 4)	
Section D – Exemptions Claimed **N.B.** The exemptions to be claimed in this Section (e.g. immovable or movable property abroad of a non-resident person; investments in Guyana Government Securities) must relate either in whole or part to those items of property which have already been entered on page 2 of this return and any accompanying Schedule. (See Section 10 of the Property Tax Ordinance, 1962).	
6. Total Exemptions as per Schedule 8 attached..... (See Note VIII on page 4)	$3,875,558
Net Property $	87,692

Section E – Partnerships, Estates, Trusts etc.

Declaration as to the partners in a Firm, and the share to which each partner was entitled, and as to the beneficiaries in an estate, trust, etc.

Name of Partners (or beneficiaries)	Address of the Partners (or beneficiaries)	Basis of distribution of Profit	Share of each partner or beneficiary	Amount of each Partner's or beneficiary's share in Net Property	
Total (to agree with the total Net Property as returned above) $					

I declare that I am * .....of the Firm or Trust above described, and that the foregoing particulars are in every respect fully and truly stated according to the best of my judgment and belief.

.....

Signature

*State whether Resident Acting Partner for the time being, Executor, Administrator, Trustee, Agent, Manager &c., in cases where no partner in the Country.

N.B. In the case of persons carrying on business in partnership, the Acting Resident Partner or the Attorney, Agent or Manager, where no partner is resident in the Country, is required to render a joint return of the property of the partnership although liability to tax attaches only to each of the partners in his individual capacity. Each resident partner must therefore render a separate Return of his share of the partnership profits, and also of any personal income which he may possess. The Return of the share of any non-resident partner must be made on his behalf by his Attorney, Agent, Manager, &c.

PAGE 4

Instructions that must be Carefully Followed.

Note I. For the basis of valuation, see Section 12 of the Property Tax Ordinance, 1962.

Generally the basis of valuation of property, other than cash and debts is -

(i) where property was acquired before 1st January 1956, the market value (estimated by the owner but subject to a variation by the Commissioner if he is dissatisfied with such estimate) as at 1st January, 1956, and the cost of improvements and additions made to it after that date.

(ii) where property was acquired on or after 1st January, 1956, the cost of purchase or acquisition and the cost of improvements and additions made to it after purchase.

Debts are to be valued at the nominal amounts thereof.

The following deductions, from the above values, are allowable:-

(i) in respect of property, other than debts, any deductions for wear and tear and annual allowances (but not initial allowances) allowed under the provisions of the Income Tax Ordinance, since 1st January, 1956, or the date of purchase whichever is the later.

(ii) in the case of debts, any deduction from the nominal amount which has been allowed in respect thereof for income tax purposes.

Note II. Please furnish a separate schedule (Schedule 1) stating the value for the year of assessment, of the assets and the amount of the liabilities of each business indicating in the case of property acquired before 1st January, 1956, the cost thereof and your estimate of its market value as at 1st January, 1956, and in the case of other property, the cost thereof. The cost of improvements and additions since 1st January, 1956, or the date of purchase or acquisition, if later, must also be included. In the case of agricultural property, please complete Schedule 3 in addition.

Note III. Please furnish a separate schedule (Schedule 2) giving full details of each property. Enter the details on the separate printed form, a copy of which is enclosed with this Return; in the case of agricultural property, please furnish Schedule 3 in addition. These Schedules must be duly signed and dated.

Note IV. Please furnish a separate schedule (Schedule 4) giving full details of each group of property under the respective headings. This Schedule must be duly signed and dated.

Note V. Please furnish a separate schedule (Schedule 5) stating the value, for the year of assessment, of the assets and the amount of the liabilities of each business (including the country in which the business is located) indicating in the case of property acquired before 1st January, 1956, the cost thereof and your estimate of the market value thereof as at 1st January, 1956, and in respect of other property the cost thereof. The cost of additions or improvements thereto since 1st January, 1956 or the date of purchase or acquisition, which ever is later must also be included.

Note VI. Please furnish a separate schedule (Schedule 6) giving the details under the respective headings. This Schedule must be duly signed and dated.

Note VII. Please furnish a separate schedule (Schedule 7) of deductions (other than those appropriate to a business) claimed in arriving at Net Property. Deductions in respect of business liabilities are to be specified in Schedule 1 and/or Schedule 3 and/or Schedule 5 (See Notes II and V above). This Schedule must be duly signed and dated.

Note VIII. Please furnish a separate schedule (Schedule 8) of exemptions claimed in arriving at Net Property. This Schedule must be duly signed and dated.

"B"

Exhibits

"B"

Property Tax Computation of Commissioner of Inland Revenue

PROPERTY TAX COMPUTATION OF COMMISSIONER OF INLAND REVENUE

Guiana Industrial & Commercial Investments Ltd.

Net value of property returned			$3,966,250
Add Back:			
Provision for proposed dividend		$117,000	
Provision for Income Tax		1,861	118,861
Net value of property chargeable to tax			$4,085,111
Tax payable			$20,425.55
Less set-off			19,392.79
Tax payable			$ 1,032.76

W.G. Stoll

Commissioner of Inland Revenue

Exhibits

"C"

Property Tax Assessment

30th September 1963

PROPERTY ASSESSMENT

NOTICE OF ASSESSMENT **BRITISH** E R GUIANA "C"

Guiana Ind. & Com. Investments Ltd.
185 Charlotte Street,
Georgetown

PROPERTY TAX

YEAR OF ASSESSMENT 1963
on Property as at 31st December, 1961

D/503 130 T/63

File No..... Assessment No.....

TAKE NOTICE that the amount of your Net Property and Tax are as specified below:-

Tax Structure	$	*Property*	$
On 50,000	Nil	A. Property in British Guiana—	
„ at ½%		1. Business Property	1,005,111
„ at ¾%		2. Non-business Property—	
„ at 1%		(a) Immovable	
„ at 1½%		(b) Movable	
Co. 24,005,111 @ ¾%	20,425.55	B. Property out of British Guiana—	
Set-off 3,878,550 at ½%	19,392.70	3. Business Property	
		4. Non-business Property—	
Add 5% Penalty for late return		(a) Immovable	
TAX PAYABLE*	1,032.70	(b) Movable	
		C. 5. Deductions	
		D. 6. Exemptions	
		NET PROPERTY	1,005,111

***Method of Payment**

The tax is payable to the Commissioner of Inland Revenue at Georgetown.

(a) in full on or before

or

(b) by instalments ¼ on or before

balance on or before 14 NOV 1963 31st Oct., 1963.

Paid $438.00
Balance 594.70

See back of notice for notes as to objections, etc.

W. G. STOLL
Commissioner of Inland Revenue.

30 SEP 63

THIS NOTICE MUST BE PRESENTED AT THE TIME OF PAYMENT

I.R.D.—71C.

"D"

Exhibits

"D"

Letter, Fitzpatrick, Graham & Co. to Commissioner of Inland Revenue

15th October 1963

LETTER, FITZPATRICK, GRAHAM & CO. TO COMMISSIONER OF INLAND REVENUE

FITZPATRICK, GRAHAM & CO.,
Chartered Accountants
British Guiana

P.O. Box 37,
THE DEMERARA LIFE BUILDINGS,
GEORGETOWN,
DEMERARA.

15th October, 1963.

EEH/AJA

The Commissioner of Inland Revenue,
Inland Revenue Department,
Income Tax Division,
P.O. Box 24,
Georgetown

Dear Sir,

Your Ref: D/588

Guiana Industrial & Commercial Investments Ltd. - Property Tax Assessment for Year 1962

Our clients have forwarded us your communication of 30th September together with Notice of Assessment to Property Tax for Year of Assessment 1962.

We must disagree with the treatment of "Provision for Proposed Dividend $117,000" and "Provision for Income Tax $1,861" in your computation. Both of these items have been included in "Current Liabilities" on the Company's Property Tax Return and should, we consider, be deducted from Gross Assets. We would point out that the dividend for which provision was made was sanctioned at the Annual General Meeting on 20th December 1961 and was paid at the end of that month.

We submit hereunder our computation of the Property Tax for the Year of Assessment 1962:

Exhibits

"D"

Letter, Fitzpatrick, Graham & Co. to Commissioner of Inland Revenue

15th October 1963 (continued)

Net value of Property per valuation		$3,966,250
Less: Local Investments		3,878,558
		$ 87,692
Tax at ½%		$ 438

Yours faithfully,

(Sgd.) Fitzpatrick, Graham & Co.

"E"

"E"

Letter, Commissioner of Inland Revenue to Fitzpatrick, Graham & Co.

28th October 1963

LETTER, COMMISSIONER OF INLAND REVENUE TO FITZPATRICK, GRAHAM & CO.

INLAND REVENUE DEPARTMENT,
Income Tax Division,
P.O. Box 24,
Georgetown,
BRITISH GUIANA

D/588

28th October, 1963

Gentlemen,

Guiana Industrial & Commercial Investments Ltd. Property Tax Assessment Year of Assessment 1962 - 130PT/62

Receipt of your letter dated 15th October, 1963 objecting to the above-mentioned assessment is hereby acknowledged.

2. Kindly note that after due consideration of the grounds on which the objection is based I have decided to maintain the assessment. My reasons are as follows:

(i) Provision for Proposed Dividend $117,000: The company closed its Financial Year 1961 as at

Exhibits

"E"

Letter, Commissioner of Inland Revenue to Fitzpatrick, Graham & Co.

28th October 1963 (continued)

the 30th November 1961 and as such computed its net property as at that date. The Dividend was declared on the 20th December, 1961 and was paid at the end of December, 1961. As such, it could not be a liability as at 30th November, 1961. No shareholder had the right to demand payment of dividend from the company as at 30th November, 1961.

(ii) Provision for Income Tax - $1,861: I do not consider this to be a liability as at 30th November, 1961. Income Tax on profits earned in the year of income 1961 is not due and payable until 1962 and as such could not be a liability as at 30th November, 1961. I should point out that because of the preceding year basis only tax due and payable on income or property prior to the year 1961 becomes a liability as at the end of the company's financial year 1961.

3. The balance of the unpaid property tax amounting to $594.76 becomes due and payable on or before the 30th November, 1963. If your clients disagree with my decision they may be advised to appeal to the Board of Review or to a Judge in Chambers.

I have the honour to be,
Gentlemen,

Your obedient servant,

(Sgd.) W.G. Stoll

Commissioner of Inland
Revenue.

Messrs. Fitzpatrick, Graham & Co.
Demerara Life Buildings,
Georgetown,
Demerara.

Exhibits

"F"

Decision of Board of Review

25th March 1964

"F"

DECISION OF BOARD OF REVIEW

No. 32 of 1963

BRITISH GUIANA

INCOME TAX BOARD OF REVIEW
IN THE MATTER OF THE
PROPERTY AND GIFT TAX
ORDINANCE, 1962

BETWEEN:

GUIANA INDUATRIAL AND COMMERCIAL INVESTMENTS LTD. Appellants

and

THE COMMISSIONER OF INLAND REVENUE Respondent

4th February, 1964

BEFORE: E.M. Duke, C.B.E., LL.B. (Chairman)
S. Heald, F.C.A. (Member)
C.L. Kranenburg, O.B.E. (do.)
P.W. King, C.B.E. (do.)

Appearances:

Mr. G.M. Farnum, Barrister-at-Law on behalf of the Appellant

Mr. V. Gangadin, represented the Commissioner of Inland Revenue.

In Attendance: Mr. Roopnarine, Trainee Inspector of Taxes, Inland Revenue Department.

DECISION

This is an appeal from assessment No. 130PT/62 dated 30th September 1962, under the Property and the Gift Tax Ordinance, 1962 (No. 19 of 1962) in respect of the Year of Assessment 1962 upon the net

Exhibits

"F"

Decision of Board of Review

25th March 1964 (continued)

property of the Appellant Company as at 30th November, 1961, the valuation date of the Guiana Industrial and Commercial Investments Ltd.

The amount involved is $9.31 representing the prescribed company rate of ½ of one per centum of the sum of $1,861:- included among the deductions made by the Appellants in the valuation of Net Property returned.

The deduction is the amount of Income Tax the Appellant Company paid on its chargeable income for Assessment Year 1962, that is on income earned during the Company's Accounting year ended 30th November, 1961.

The Commissioner with whom an objection was lodged disallowed the deduction on the ground that at 30th November, 1961, the relevant valuation date, income tax for Assessment Year 1962, was not due and payable.

The following are the Commissioner's reasons in support of the Assessment:

The Appellants are a public limited liability company holding shares in other companies with offices at 165, Charlotte Street, Georgetown.

(i) that under the provisions of Section 7 of the Property Tax and the Gift Tax Ordinance, 1962 property tax is chargeable for each year of assessment in respect of the "net property" of every person on the corresponding "valuation date";

(ii) that under the provisions of Section 3 of the aforementioned Ordinance:

"net property" means the amount by which the aggregate value, computed in accordance with the provisions of the Ordinance, of the property of any person on the "valuation date" is in excess of the aggregate value of all the debts owed by him on that date ....; and "valuation date" - means in relation to any year of assessment the last day of the year preceding that year of assessment;

Exhibits

"F"

Decision of Board of Review

25th March 1964 (continued)

(iii) that where any person computes the gains or profits from his trade for the purpose of income tax for a year terminating on some other day than that immediately preceding any year of assessment, the Commissioner may under the provisions of Section 8 of the aforementioned Ordinance, permit that day to be the valuation date instead of the day immediately preceding the year of assessment;

(iv) that the appellant company commenced business, that is to say, for the first time since its incorporation, on the 1st December, 1960 and prepared its first accounts for the year ended 30th November, 1961;

(v) that the appellant company was assessed to income tax in respect of the Year of Assessment 1962 on its profits of the preceding year ended 30th November, 1961 and that that date became the "valuation date" in relation to the year of assessment 1962 for property tax purposes;

(vi) that the property tax return of the appellant company in respect of Year of Assessment 1962 shows the "valuation date" to be 30th November, 1961;

(vii) that on the aforementioned valuation date the appellant company owed no income tax to the Commissioner of Inland Revenue and the amount of $1,861 claimed as a debt owed on the valuation date is untrue and incorrect;

(viii) that the appellant company was not liable to income tax in the year 1961 on its profits earned during the year 1961 and as such could owe no income tax in respect of its profits earned in 1961 on the valuation date, that is, on 30th November, 1961;

(ix) that Section 8 of the Income Tax Ordinance, Chapter 299, which provides for the basis of assessment of income tax states that;

"tax shall be charged .... for each year of assessment upon the chargeable income of any person for the year immediately preceding the year of assessment".

(x) that in view of the provisions of Section 8 of the Income Tax Ordinance, Chapter 299, the Commissioner was not competent to make an assessment or claim income tax in respect of profits earned in the year 1961 at any time during 1961, and as such the appellant company could not have owed income tax in respect of the profits earned in the year 1961 on the valuation date, that is, 30th November 1961.

The following are the Reasons advanced by the Appellant in support of the appeal.

1. The Commissioner erred in not allowing the deduction of $1,861:- from the taxable value of the net property of the Appellant Company.

2. The said sum is a debt owing by the Appellant Company on the valuation date within the true intent and meaning of "net property" as defined in the Ordinance.

3. Under Section 5 and 8 of the Income Tax Ordinance, the income chargeable to tax is the income for the year preceding the Year of Assessment.

4. Consequently, on the last day of the year preceding the Year of Assessment, namely on the valuation date under the Property Tax Ordinance, the income of the Appellant Company for that year was subject to a statutory charge in respect of the Income Tax payable thereon.

5. The said tax was accordingly a debt owing to the Crown although not due and payable until the same had been assessed.

At the hearing of the appeal, Mr. Farnum, in response to an enquiry admitted that the appeal related solely to the reservation of $1,861:- made by the Appellants Company in their accounts as at 30th November, 1961, for income tax which

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while not due and payable on that date would accrue payable in 1962 on the income of the Company as at 30th November 1961. He said that a principle was involved hence the appeal. Mr. Farnum then said that the matter was one of interpretation of the Property Tax and Gift Tax Ordinance, 1962 (No. 19 of 1962). Continuing he said that Section 7 of the Ordinance reads:

> "Subject to the provisions of this Ordinance, and more particularly to the other provisions of this Part of this Ordinance, there shall be levied and collected for each year of assessment a tax (to be called the Property Tax) at the appropriate rate or rates specified in the first schedule to this Ordinance, in respect of the net property, on the corresponding valuation date, of every person."

and Section 3 defines "Net Property" thus:

> "'net property' means the amount by which the aggregate value, computed in accordance with the provisions of this Ordinance, of the property of any person on the valuation date is in excess of the aggregate value of all the debts owed by him on that date other than -
>
> (a) any debt incurred without consideration, in money or money's worth;
>
> (b) any debt incurred which is not wholly for his benefit;
>
> (c) any debt in respect of which there is any right to reimbursement from any other person unless such reimbursement cannot be obtained;
>
> (d) any debt charged or secured on, or incurred in relation to, any property of his which is to be excluded for the purposes of the Property Tax under the provisions of this Ordinance, and
>
> (e) any debt incurred by him outside British Guiana other than any such debt which is contracted to be paid in British Guiana or secured on property in British Guiana,

and account being taken not more than once of the same debt charged upon different portions of property:"

Mr. Farnum submitted that the whole matter depends on the answer to the question "what is the meaning of the expression - "debts owed by him on that date? Now, on the valuation date, the Appellants had set aside the sum of $1,861:- in respect of Income Tax due on that date. And so the question resolves itself into whether the sum of $1,861:- referred to was in fact a debt owed by the Company on valuation date. Mr. Farnum then pointed out that the Commissioner of Inland Revenue in Exhibit "E" stated:

> "Provision for Income Tax - $1,861:- I do not consider this to be a liability as at 30th November, 1961. Income tax on profits earned in the year of income 1961 is not due and payable until 1962 and as such could not be a liability as at 30th November, 1961. I should point out that because of the preceding year basis only tax due and payable on income or property prior to the year 1961 becomes a liability as at the Company's financial year 1961."

This Mr. Farnum holds is precisely where the Commissioner erred. He submitted that the words "debt owed by him at that date" provides for inclusion of a debt due but not paid. There can be no doubt that before the assessment the liability did exist. It does not depend upon the assessment to establish the debt. He cited the following decisions:-

(i) The C.I.R. v. Barcellos B.G. Law Report 1957 - page 105 - by Mr. Justice Stoby;

(ii) Whitney v. C.I.R. 1926 - Appeal Cases - page 37, Lord Dunedin's dictum.

In (i) Mr. Justice Stoby ruled that as regards income tax there are three related stages - (a) the imposition (2) the assessment and (3) the process of recovery. He submitted that it cannot be argued that a liability cannot be quantified. In the case under review the debt was undeniably in respect of the income earned as at 30th November,

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1961 and therefore in computing the net property of the Appellant Company the amount was correctly included among the debts owed. The $1,861:- had to be paid out on a later date and is therefore a liability and not an asset. In this connection he made reference to the case of Port of London Authority v. C.I.R. - 1923 Appeal Cases - pages 507/514, wherein Viscount Finaly's decision in regard to "something due if payable in future" he considers applicable. Mr. Farnum also invited attention to "Maxwell on Interpretation" 11th Edition - pages 221 and 278 wherein will be found the axiom that "where interpretation causes an injustice the correct procedure is to give a liberal meaning". Mr. Farnum concluded by saying that the Ordinance does not intend to impose a tax upon a tax which is precisely what the interpretation of the Commissioner of Inland Revenue does.

Mr. Gangadin said there was no need for him to go over the facts of the case. He submitted that income tax on the Appellant Company's profits earned in year of income ended 30th November, 1961 was definitely not a liability owed by the Company as at 30th November, 1961. He was positive that the tax could be a liability only in the year in which it was competent for the Commissioner to assess. He then queried: "Could the Commissioner in regard to the year 1928 claim tax as at 31st December, 1928?" Reference was invited to Frank H. Jones' "Guide to Company Balance Sheets and Profit and Loss Accounts" - 1946 Second Edition - page 4, and to the case of Duffy (dec'd) - Lakeman v. Attorney General - 1948 - All England Reports - pages 756 and 758. It was held in this case that "liability" means liability existing in law at the relevant date and did not include the anticipated income tax liability which did not exist until the following financial year.

With regard to Justice Stoby's decision referred to by Mr. Farnum Mr Gangadin said the Board should note that in the matter concerned Mr. Barcellos was the Assignee of the Estate of M.O. Barcellos and that the Commissioner had made an assessment and claimed on the Assignee. The issue in that matter was whether the debt was assumed by the Assignee after the order appointing him as such had been made.

With regard to Mr. Farnum's remark that a liability cannot be quantified he would say the "liability" in the present context means an obligation where there is power to make assessment. In the matter before the Board it is evident that the Commissioner had no power to assess for tax until 1st January 1962.

Mr. Stoll (who at this stage joined his Officers at the hearing) said he thought it proper that the Board should be made aware of the reason behind the choice of the word "owed" appearing in the definition "net property" in Section 2 of the Ordinance because he knew that there is a good deal of concern as to whether income tax of the year of income should be deducted in arriving at one's net capital. He then drew attention to the Excess Profits Tax Ordinance (No. 1 of 1941) 1st Schedule Part II (i) wherein a person was allowed to consider as his capital, the income tax relating to a particular year's chargeable income and not deducted until the 1st January of the following year. He concluded with the remark; "the reasonableness of it is apparent."

Mr. Farnum in reply stated that he would like to emphasize that while the word "debt" may have a prescribed meaning under the Income Tax Ordinance, it does not necessarily follow that that meaning holds under the Property Tax and the Gift Tax Ordinance, 1962 is illustrative of the purpose of the Ordinance and therefore the word "debt" should be construed accordingly.

After weighing all the material facts and submissions, the Board agrees with the stand taken by the Commissioner of Inland Revenue that the reservation of $1,861:- for income tax was not a debt owed by the Appellant Company at the 30th November, 1961, closing date of their trading year. No mention was made by either the Appellant or by the Commissioner of Inland Revenue of the definition of "Net Property" at (a) and (b) in Section 3 of the Property and Gift Tax Ordinance, 1962. In the circumstances the Assessment in so far as it relates to the sum of $1,861:- is confirmed.

The appeal deposit of $5.00 shall be forfeited.

I certify that the above decision is the unanimous decision of the Board of Review given on the 25th day of March, 1964.

(Sgd.) E. Mortimer Duke

Chairman
Board of Review.
25th April, 1964

IN THE PRIVY COUNCIL No. 26 of 1969

ON APPEAL

FROM THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE, GUYANA

IN THE MATTER of the PROPERTY TAX AND GIFT TAX ORDINANCE 1962

BETWEEN :-

GUIANA INDUSTRIAL AND COMMERCIAL INVESTMENTS LIMITED Appellants (Appellants)

- and -

THE COMMISSIONER OF INLAND REVENUE Respondent (Respondent)

RECORD OF PROCEEDINGS

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