

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

B E T W E E N :

AMERICAN LEAF BLENDING CO SDN BHD

Appellant

- and -

DIRECTOR-GENERAL OF INLAND REVENUE

Respondent

RECORD OF PROCEEDINGS

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA HOLDEN
AT KUALA LUMPUR

B E T W E E N :

AMERICAN LEAF BLENDING CO SDN BHD Appellant

- and -

DIRECTOR-GENERAL OF INLAND REVENUE Respondent

RECORD OF PROCEEDINGS

In the High
Court in
Malaya at
Kuala Lumpur

NO. 1
Case Stated by the
Special Commissioners
of Income Tax

No. 1
Case Stated by
the Special
Commissioners
of Income Tax
27 February
1973

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

Director-General of Inland Revenue
Appellant

- and -

American Leaf Blending Co. Sdn. Bhd.
Respondents

CASE STATED by the Special
Commissioners of Income Tax
for the opinion of the High
Court pursuant to paragraph 34
of Schedule 5 to the Income
Tax Act, 1967.

1. The respondent company appealed to us,
the Special Commissioners of Income Tax, in
respect of the assessments of income tax on
the company for the years of assessment
1968 and 1970 as contained in the notice
of additional assessment and notice of

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assessment, respectively, dated 22nd August, 1970.

2. We heard the appeal on 29th January, 1973,
and gave our decision on 13th February, 1973.

3. The question for our determination was
whether the unabsorbed losses amounting to
\$399,303.00 and the unabsorbed capital
allowances amounting to \$82,662.00 in respect
of the company's tobacco business which
ceased to operate in 1964 should be deducted
from the company's income from rents received
from granting licences over its premises as
from April, 1964, in arriving at the total
income of the company for the years of
assessment 1968 and 1970.

10

4. Encik Rahmat bin Haji Jamari, Federal
Counsel, (Inland Revenue) and Encik Quah Cheng
Choon, Assistant Director of Inland Revenue,
appeared for the appellant. Encik James
Puthuchear, Advocate and Solicitor, appeared
for the respondent company. No witnesses were
called by either party. The following documents
were submitted to us :-

20

- (i) Agreed statement of facts (Exhibit A1)
- (ii) Agreed Bundle of documents (Exhibit A2)
- (iii) Profit & Loss Account for year ended 30th
September, 1967 (Exhibit A3).
- (iv) Profit & Loss Account for year ended 30th
September, 1968 (Exhibit A4).
- (v) Profit & Loss Account for year ended 30th
September, 1969 (Exhibit A5).

30

5. The following facts were admitted :-

- (a) The respondent company was incorporated on
2nd September, 1960, with the object, inter
alia, of carrying on a tobacco business.
For this purpose the company purchased land
in Petaling Jaya and built a factory to house
cigarette machinery and a bonded warehouse
for stocks of cigarettes and tobacco.
- (b) The respondent company commenced its business
on 14th February, 1961, and was initially
concerned with cutting and blending tobacco
leaves and to bring them to a condition
suitable to be rolled into cigarettes.

40

(c) The company subsequently found that it was not profitable to carry on with its tobacco business and it ceased to operate its machinery in November, 1961, only about nine months after commencement. It also ceased trading in tobacco in 1964 and had no sale of tobacco in 1965. Eventually, in 1967, the plant and machinery were sold and removed from the factory.

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10 (d) From April, 1964, the respondent company started granting licences to various companies for the use and occupation of its premises in return for a monthly rental. At first it let out only a part of its premises but with effect from October, 1968, the company granted a licence to Gammon South East Asia Berhad for the use and occupation of all its land and buildings erected thereon.
20 Under paragraph 3(1) of the respondent company's Memorandum of Association (Exhibit A2 page 1) the company was empowered to lease or grant licences over its property. The said paragraph 3(1) read as follows :-

30 3. (1) To sell, lease, mortgage, grant licences, easements and other rights over or otherwise dispose of and generally deal in the land rights and other property, assets or undertaking of the Company or any part thereof both moveable and immoveable for such consideration as the Company may think fit, and in particular for shares, stock, debentures, or other securities of any other company whether or not having objects altogether or in part
40 similar to those of the Company.

(e) The financial year of the respondent company ended on the 30th September. In the tax computation of the respondent company for the years of assessment 1963 - 1970, prepared by the Department of Inland Revenue, dated 22nd August, 1970 (Exhibit A2, page 43), a loss of \$399,303.00 and a capital allowance of \$82,662.00 are shown for the year of
50 assessment 1965 and subsequent years of assessment. Both these sums remain

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unabsorbed at the bottom of the computation
which ends with the year of assessment 1970.

- (f) For the years of assessment 1968 and 1970 the respondent company was assessed to income tax on the sum of \$7,040.00 and \$33,234.00, respectively, as income in respect of rents under section 4(d) of the Income Tax Act, 1967. The respondent company's claim to have the unabsorbed losses amounting to \$399,303.00 and the unabsorbed capital allowances amounting to \$82,662.00 to be set off against the rental income was disallowed by the Director General of Inland Revenue for both the years of assessment 1968 and 1970.

10

6. It was contended on behalf of the Director General of Inland Revenue :-

- (a) that after the respondent company had ceased its tobacco business in 1964 the company was no more doing a trade or business;
- (b) that the main object of the respondent company was to carry on a tobacco business and not that of letting out its property;
- (c) that although one of the objects in the Memorandum of Association of the respondent company allowed it to lease out its property, yet after its cessation in tobacco business the company cannot be said to be carrying on a business of letting out its property;
- (d) that for the years of assessment 1968 and 1970 the respondent company had been properly assessed to income tax under section 4(d) of the Income Tax Act, 1967, as income in respect of rents and, therefore, the respondent company cannot claim any deductions for unabsorbed losses and unabsorbed capital allowances in respect of its tobacco business which it had ceased to operate in 1964; and
- (e) that, therefore, the assessment of income tax for the years of assessment 1968 and 1970 be confirmed.

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7. It was contended on behalf of the respondent company :-

- (a) that the unabsorbed losses and the unabsorbed

capital allowances in respect of the respondent company's tobacco business should be allowed as deductions against the company's income from rents from its premises;

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10 (b) that one of the objects as set out in the Memorandum of Association of the respondent company states that it may lease out its property or other assets and that, therefore, the leasing out of its premises constituted the business of the respondent company, even though the company's initial tobacco business had ceased to operate in 1964;

20 (c) that all the objects in the Memorandum of Association must be considered as business objects of the company, and that the letting out of its property being one of the objects in the Memorandum of Association it cannot be said that the company was no more doing business after it had ceased to operate its initial business in tobacco; and

(d) that, therefore, the unabsorbed losses and the unabsorbed capital allowances should be set off against the business income of the respondent company received by way of rents from its premises.

30 8. The following authorities were cited to us by the parties :-

(i) Scales v. George Thompson & Co. Ltd.,
13 T.C. 83.

(ii) Salisbury House Estate Ltd. v. Fry,
15 T.C. 266.

(iii) City of London Real Property Co. Ltd.
v. Jones, 15 T.C. 266.

(iv) Commissioner of Income Tax v. Hanover
agencies Ltd. (1967) 1.All.E.R. 954.

40 (v) C.I.R. v. The Birmingham Theatre Royal
Estate Co. Ltd. 12 T.C. 580.

(vi) C.I.R. v. Dale Steamship Co. Ltd.
12 T.C. 712.

(vii) C.I.R. v. The Westleigh Estates Co. Ltd.
12 T.C. 657.

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(viii) C.I.R. v. The South Behar Railway Co. Ltd.
12 T.C. 657.

(ix) C.I.R. v. The Eccentric Club Ltd.
12 T.C. 657.

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(x) The Rosyth Building & Estates Co. Ltd. v.
P. Rogers, 8 T.C. 11.

9. We, the Special Commissioners of Income Tax, who heard the appeal, agreed with the contentions made on behalf of the respondent company. We were of the opinion that the respondent company was carrying on the business for which it was incorporated when it commenced to grant licences over its property after it had ceased its initial tobacco business in 1964. In the circumstances, we ordered that the unabsorbed losses amounting to \$399,303.00 and the unabsorbed capital allowances amounting to \$82,662.00 should be taken into account and deducted from the company's income received by way of rents from its premises in arriving at the total income of the respondent company for the years of assessment 1968 and 1970. We further ordered that the notices of assessment in respect of the respondent company for the said years of assessment 1968 and 1970 as contained in the notice of additional assessment and the notice of assessment, respectively, dated 22nd August, 1970, be amended accordingly. 10

10. The Director General of Inland Revenue, by notice dated 16th February, 1973, required us to state a Case for the opinion of the High Court, pursuant to paragraph 34 of Schedule 5 to the Income Tax Act, 1967, which Case we have stated and do sign accordingly. 30

11. The question of law for the opinion of the High Court is whether, on the facts found by us, there was evidence to support our decision and whether our decision was correct in law.

Dated this 27th day of February, 1973.

Sgd: (Ajaib Singh)
Chairman,
Special Commissioners of Income Tax. 40

Sgd: (M.C. Schubert)
Special Commissioner of Income Tax.

Sgd: (Tan Sri Hj. Wan Hamzah bin Hj. W. Mohd.)
Special Commissioner of Income Tax.

No. 2
Judgment of Sani J.

In the High
Court in
Malaya at
Kuala Lumpur

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING MOTION NO: 16 OF 1973

B E T W E E N:

10 The Director-General of
Inland Revenue Appellant

- and -

American Leaf Blending
Co., Sdn. Berhad Respondent

JUDGMENT OF DATO' HASHIM YEOP A. SANI J

This is an appeal by way of Case Stated by the Special Commissioners of Income Tax under paragraph 34 of Schedule 5 to the Income Tax Act, 1967 on the requisition of the Director-General of Inland Revenue, the Appellant.

20 The facts of the case as found by the Special Commissioners are briefly as follows. The respondent company was incorporated on 2nd September, 1960, with the object, inter alia, of carrying on a tobacco business. For this purpose the company purchased land in Petaling Jaya and built a factory to house cigarette machinery and a bonded warehouse for stocks of cigarettes and tobacco. The respondent company commenced its business on 30 14th February, 1961, and was initially concerned with cutting and blending tobacco leaves and to bring them to a condition suitable to be rolled into cigarettes. The company subsequently found that it was not profitable to carry on with its tobacco business and it ceased to operate its machinery in November, 1961, only about nine months after commencement. It also ceased trading in tobacco in 1964 and had no sale of tobacco in 1965. Eventually, in 1967, 40 the plant and machinery were sold and removed from the factory. From April, 1964, the respondent company started granting licences to various companies for the use and occupation of its premises in return for a monthly rental. At first it let out only a part of its premises but with effect from

No.2
Judgment of
Sani J
30 May 1974

In the High Court in Malaya at Kuala Lumpur

No.2
Judgment of Sani J
30 May 1974

October, 1968, the Company granted a licence to Gammon South East Asia Berhad for the use and occupation of all its land and buildings erected thereon.

In the tax computation of the respondent company for the years of assessment 1963 - 1970, prepared by the Department of Inland Revenue, dated 22nd August, 1970, a loss of \$399,303.00 and a capital allowance of \$82,662.00 are shown for the year of assessment 1965 and subsequent years of assessment. Both these sums remain unabsorbed at the bottom of the computation which ends with the year of assessment 1970.

10

For the years of assessment 1968 and 1970 the respondent company was assessed to income tax on the sum of \$7,040.00 and \$33,234.00, respectively, as income in respect of rents under section 4 (d) of the Income Tax Act, 1967. The respondent company's claim to have the unabsorbed losses amounting to \$399,303.00 and the unabsorbed capital allowances amounting to \$82,662.00 to be set off against the rental income was disallowed by the Director General of Inland Revenue for both the years of assessment 1968 and 1970.

20

It was contended on behalf of the Director General of Inland Revenue that although one of the objects in the Memorandum of Association of the respondent company allowed it to lease out its property, since the respondent company had in fact ceased its tobacco business in 1964 which was the main object of the respondent company, therefore for the years of assessment 1968 and 1970 the respondent company had been properly assessed under section 4 (d) of the Income Tax Act, 1967 as income in respect of rents and therefore the respondent company cannot claim any deductions for unabsorbed loss and the unabsorbed capital allowances in respect of its tobacco business which it had ceased to operate.

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On behalf of the respondent company it was however argued that the unabsorbed losses and unabsorbed capital allowances in respect of the respondent company's tobacco business should be allowed as deductions against the company's income from rents from its premises as all the objects in the Memorandum of Association must be considered as business objects of the company and that letting of its property is one

50

of the objects in the Memorandum of Association and therefore it cannot be said that the company was no longer doing business after it had ceased to operate its tobacco business.

In the High Court in Malaya at Kuala Lumpur

Before this Court the following legal points were argued, namely -

No.2
Judgment of
Sani J
30 May 1974

10 (1) The sources of income specified in Section 4 of Income Tax Act, 1967 are "mutually exclusive" and therefore rents cannot be a part of business income for the purpose of taxation. This proposition was put forward by counsel for the Director General of Inland Revenue. In support of this contention counsel relied on London County Council v. Attorney General (1), Hill v. William Hill (Park Lane) Ltd. (2), and Fry v. Salisbury House Estate Ltd. (3). The very eloquent submission by this counsel
20 deserves praise who also correctly drew the attention of the Court to the Privy Council case Commissioners of Income Tax v. Hanover Agencies Limited (4).

Counsel for the respondent company distinguished the authority of London County Council v. Attorney-General (supra) and relied on the Commissioners of Income Tax v. Hanover Agencies Limited (supra) as more persuasive on the point.

30 (2) It is contended on behalf of the Director General of Inland Revenue that the Memorandum of Association of the respondent company alone is insufficient for the Commissioners to draw a conclusion that the respondent company was "conducting a business". It is argued by counsel that since the appeal to the High Court only lies on a question of law it is important that the question of law should be distinguished from question of fact. It is contended that
40 the problem before the Court is whether the Commissioners could properly on certain findings of primary fact draw or infer those conclusions. Citing the case of Edwards v. Bairstow & Harrison (5) it is contended that this question becomes a question of law.

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- 50 (1) (1901) A.C. 26 at p.35, 36; 4 T.C. 265 at p.293.
(2) (1949) 2 All E.R. 452 at p.461.
(3) 15 T.C. 266
(4) (1967) 1 All E.R. 954
(5) (1956) A.C. 14; 36 T.C. 207

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No.2
Judgment of
Sani J
30 May 1974

(3) Finally it was argued by counsel for Director General of Inland Revenue that the unabsorbed capital allowances which were given to the respondent company in respect of its tobacco business should not be taken into consideration when computing their rental income. This proposition is based on the construction that the unabsorbed capital allowance in respect of one source of business cannot be set off against profits of that business derived from other sources.

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Let me deal first with the second point which can be disposed of easily. The Commissioners made their finding in clear terms as follows:-

" We were of the opinion that the respondent company was carrying on the business for which it was incorporated when it commenced to grant licences over its property after it had ceased its initial tobacco business in 1964."

20

The Commissioners came to this finding obviously on the ground that all the objects in the Memorandum of Association must be considered as business objects of the company and one of such objects is that the respondent company may lease out its property or other assets and as such the leasing out its premises constituted a business of the respondent company. In my view the Commissioners' finding here is clearly a finding of fact which I should not disturb. The Commissioners found as a fact that the respondents were doing business of renting its premises when it commenced to grant licences. The Appellant has asked the Court to come to a different conclusion. Although the question whether the company was carrying on a business was not seriously disputed by the appellant in the Jamaican case of Commissioners of Income Tax v. Hanover Agencies Limited (supra) the law is succinctly stated on this question at page 956 -

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" The word "business" is of wide import and must be given its ordinary meaning unless the context otherwise requires. The respondents' objects include inter alia, acquiring of freehold property and the leasing of all or any of the company's property. If a company's objects are business objects and are in fact carried out,

it carries on business (Inland Revenue Commissioners v. Westleigh Estate Co., per Pollock M.R.). The respondents are engaged in negotiating leases and collecting rents from their properties. This would prima facie indicate that they were carrying on business so as to bring them within the terms of section 8 (o)."

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Judgment of Sani J
30 May 1974

10 I do not think that I should go further than this.

I will now come to the more difficult point that is whether the sources of income specified in section 4 of the Income Tax Act, 1967 is "mutually exclusive" and therefore rents cannot be a part of business income for the purposes of taxation. I do not quarrel with the provision of that Act in that each of the paragraphs speaks of a different source of income. But the problem does not end there.
20 In determining whether the provision of that section is "mutually exclusive" one has to go into the scheme of our Income Tax Act. It is not in dispute that income tax for the purposes of our law, as in the case of the U.K. law, is one tax; but whether it is one tax or a conglomeration of different taxes will depend on the scheme of the particular statute. The decision of the Court of Appeal in Salisbury House Estate Ltd v. Fry (supra)
30 that the sources of income in U.K. law are "mutually exclusive" was based on the scheme of the U.K. Act. Lord Atkin based his decision on the express provision of section 100 of the Act of 1842 and the fact that each of the Schedules were complete codes for each class of income. On pages 318 - 9 of the report he states:-

" The Scheme of the Income Tax Acts is and always has been to provide for the
40 taxation of specific properties under Schedules appropriated to them and under a general Schedule D to provide for the taxation of income not dealt with specifically. Schedule A provides for the taxation of income derived from property in land; B for income derived from the occupation of land; C for income derived from government securities; E for income derived from employment in public service.
50 It is unnecessary to go further back than the Income Tax Act of 1842, the provisions of

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No.2 Judgment of Sani J 30 May 1974

which were incorporated in every Customs and Inland Revenue or Finance Act up to 1918, when the present Consolidation Act was passed. I need not repeat the familiar Schedules altered and extended by the Act of 1853. It is only necessary to refer to Section 100 of the Act of 1842 which defined the tax to be imposed under Schedule D. "The duties hereby granted, contained in the Schedule marked D, shall be assessed and charged under the following rules, which rules shall be deemed and construed to be a part of this Act, and to refer to the said last-mentioned duties, as if the same had been inserted under a special enactment. Schedule D. The said last-mentioned duties shall extend to every description of property or profits which shall not be contained in either of the said Schedules A, B or C, and to every description of employment of profit not contained in Schedule E."

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" My Lords, nothing could be clearer to indicate that the Schedules are mutually exclusive; that the specific income must be assessed under the specific Schedule; and that D is a residual Schedule so drawn that its various Cases may carry out the object so far as possible of sweeping in profits not otherwise taxed. For this reason no doubt the actual Schedule was drawn in the widest terms. "For and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere," etc. Such language covers income from land in Schedule A and from government securities in Schedule C. Its true meaning is made apparent by Section 100. Moreover, the dominance of each Schedule A, B, C and E over its own subject matter is confirmed by reference to the Sections and Rules which respectively regulate them in the Act of 1842. They afford a complete code for each class of income, dealing with allowances and exemptions, with the mode of assessment, and with the officials whose duty it is to make the assessments."

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Later in his speech at page 320 he stated:

"Believing as I do that the specific Schedules A, B, C and E, and the Rules thereunder, contain definite codes applying exclusively to their respective defined subject matters, I find no ground for assessing the taxpayer under Schedule D for any property or gains which are the subject matter of the other specific Schedules."

50

The charging section in our Income Tax Act,

1967 is section 4 and the manner the chargeable
income is to be ascertained is provided in
section 5. Section 5 (1) (a) to (d) requires
that each source be separately treated to
determine the basis period, gross income, the
adjusted income and statutory income. After
the statutory income has been arrived at the
aggregation of these incomes will be
ascertained in accordance with Chapter 6 of the
Act. Section 43 (1) (a) requires that
statutory incomes from all the sources making
up a business should be aggregated. Then
this aggregate income is reduced by any
reductions falling to be made under sub-section
(2) of section 43 and finally to the remaining
income the statutory incomes from other
sources if any is to be added and in addition
falling to be made under Schedule 4. Section
45 of the Act provides that the chargeable
income is the total income minus deductions
allowed by Chapter 7 of the Act.

Section 4 of the Income Tax Act, 1967 is
the charging section and it does not go
beyond describing the sources of income upon
which tax is chargeable under the Act.
Section 5 of the Act provides in sub-section
(1) thereof the manner in which chargeable
income shall be ascertained and in paragraph
(c) it is provided as follows:-

"5.(1)(c) next, his adjusted income from each
source (or, in the case of a source
consisting of a business, his adjusted income
or adjusted loss from that source) for the
basis period for that year shall be
ascertained in accordance with Chapter 4 of
that Part; "

The words "each source" can only mean each
source of income for the words in bracket
provide that where the source of income
consists of "a business" the adjusted income
or adjusted loss from that source shall be
taken into account. Sources of income
consisting of business as distinct from
other sources of income are clearly expressed
in sub-section (2) of section 5 of the Act
which provides as follows:-

"5. (2) For the purposes of this Act, any
income of a person from any source or
sources, and any adjusted loss of a person
from any source or sources consisting of a
business, may be ascertained for any period

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(including a year of assessment) notwithstanding that -

- (a) the person in question may have ceased to possess that source or any of those sources prior to that period; or
- (b) in that period that source or any of those sources may have ceased to produce gross income or may not have produced any gross income. "

No.2
Judgment of Sani J
30 May 1974

From the scheme of the Income Tax Act, 1967 it can be seen therefore that although section 4 provides for separate paragraphs relating to separate sources of income all these categories would appear to be joined up in arriving at the aggregate income of a person. This is also clearly expressed in section 43 (1) where this sub-section requires the aggregation of all the sources that make up a business. Only after aggregating all sources consisting of a business and deductions made of such losses as may have been incurred in previous years are incomes from other sources if any (which must be taken to mean non-business sources) are to be added.

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Therefore the "mutually exclusive" decision in Salisbury House Estate Ltd. v. Fry (supra) cannot simply be applied to the Malaysian Income Tax Act without considering the scheme of our own Act. In fact when the Privy Council considered section 5 of the Jamaican Act which although differently worded is clearly nearer to our section 4 than the U.K. Act, at page ~~957~~ ¹⁶⁸⁸ said:-

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" In their Lordships' opinion the decision in the Salisbury House case has no bearing on the construction of the provisions of the Income Tax Law of Jamaica where there is no parallel to the division of the charge to income tax into various separate and distinct Schedules. Section 5 already referred to is an omnibus section which treats all profits and gains together whether arising from property or from a trade, business, employment or profession, or in respect of rent or emoluments, salaries or wages. These are all treated as profits or gains. "

40

The same is true of the Malaysian section. Whether rents, royalties or premiums are gains or profits from a business depends on whether they are derived from a business.

In the Jamaican case the taxpayer was dealing

10 in hardware and lumber and operated a wharf and let out premises to tenants. They also dealt in dry goods and ran a picture house. They manufactured building blocks and had an insurance sub-agency. The Memorandum of Association as in the case of the respondent company had as an object the acquiring of freehold property and the leasing of all or part of the company's property. The company claimed wear and tear allowances in relation to its building. Under Section 8 of the Jamaican Income Tax Law of 1954 wear and tear allowance was only deductible in cases where the owner used the building for the purpose of acquiring the income from a trade, business, profession or vocation carried on by him.

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30 May 1974

20 Under Section 43 of the Income Tax Act, 1967 the statutory incomes of each of the sources of a business are aggregated and it is this aggregate sum from which "unabsorbed losses" are deducted. For this reason the decision of the Commissioners to take into account the unabsorbed losses amounting to \$399,303.00 should not in my view be disturbed.

30 The last point to be dealt with is the unabsorbed capital allowances. The Commissioners ordered that the unabsorbed capital allowances amounting to \$82,662.00 should be taken into account and deducted from the company's income received by way of rents from its premises in arriving at the total income of the respondent company for the years of assessment 1968 and 1970. It was the contention of counsel for Director General of Inland Revenue that the unabsorbed capital allowances cannot be taken into consideration when computing the rental income of the respondent company.

40 Let us now examine the provisions of our Act. In order to arrive at the chargeable income of the respondent company we have to follow the provisions laid down in Part III of the Act. The "basis period" as defined in section 21 (1) of the Act refers to a source of income as defined in section 2 of the Act. The provision of section 21(1) is of course to make provision that each taxpayer can have different
50 sources of income. The provisions of Part III provide for the treatment to be given for each of these sources. Different source as provided by this Part is to be treated

In the High Court in Malaya at Kuala Lumpur

No.2
Judgment of Sani J
30 May 1974

separately until the aggregate income is arrived at. The gross income of the respondent company for those periods is not in dispute. From this gross income adjustments have to be made as provided in Chapter 4.

Next we go to Chapter 5. It is only covered by section 42. It is to be observed from the wording of section 42 that statutory income is to be calculated from each source. The statutory income in respect of each source and if a taxpayer has more than one source then the statutory income must be computed from each source. Section 43 (1)(a) also speaks of each of business sources consisting of a business indicating that a business income can have several sources. Section 43 (1)(a) allows deductions which include unabsorbed losses to be deducted from all the taxpayer's business sources. However in the treatment of unabsorbed capital allowances it would appear that the Act allows such allowances to be given only to that particular source even if it is a business source. In other words capital allowances incurred for one business should never be taken into account when computing the income from another business source.

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Section 42 of the Act provides that the statutory income of a person from a source for a year of assessment shall consist of an amount reduced by the amount of any allowances or the aggregate of the allowances falling to be made for that year under the schedule in relation to that source. The schedule that grants the allowances is schedule 3 in which paragraph 75 reads as follows:-

30

"75. Where, by reason of an insufficiency or absence of adjusted income of a person from a business of his for the basis period for a year of assessment or by reason of the existence of an adjusted loss from the business for that period, effect cannot be given or cannot be given in full to any allowance or to the aggregate amount of any allowances falling to be made to him for that year in relation to the source consisting of that business, that allowance or that aggregate amount, as the case maybe, which has not been so made (or so much thereof as has not been so made to him for that year) shall be deemed to be an allowance to be made to him for the first subsequent year of assessment for the basis period for which there is adjusted income from that business, and so on for subsequent

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years of assessment until the whole amount of the allowance or that aggregate amount to be made to him has been made to him. "

In the High Court in Malaya at Kuala Lumpur

It is clear therefore from this paragraph that such allowances are given only to that source consisting of that business.

No.2
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30 May 1974

10 Paragraph 75 of schedule 3 of the Act is explicit in its distinction between "income from a business" and "income from a source consisting of that business." It would appear that paragraph 75 of schedule 3 is a special provision in the application of capital allowances. The contention of counsel for respondent company that paragraph 60 when read in conjunction with the definition of what is an "industrial building" in paragraph 63 of the schedule has no merit on the facts of this case. It is to be observed that the respondent company is still the "American Leaf Blending Company Sdn. Berhad" although for the moment due to business difficulties it is engaged in granting licences to others for the use and occupation of their premises. In my view to avail itself to paragraph 60 of Schedule 3, the respondent company must also satisfy the second limb of sub-paragraph (c) of paragraph 63 of the Schedule that is, its business must consist or mainly consist of the hiring of storage space to the public.
20 We cannot say that of the respondent company.
30

40 Applying paragraph 75 to the present case the capital allowances which were due to the respondent company only related to its tobacco business. Therefore the unabsorbed capital allowances cannot be taken into account in computing the incomes received from rental received by the respondent company. The order of the Commissioners is amended accordingly and the appeal is to that extent allowed.

There shall be no order as to costs.

Sgd: Datuk Hashim Yeop A. Sani
JUDGE,
HIGH COURT, MALAYA

Kuala Lumpur,
30th May, 1974.

Encik Mohd. Nizar bin Idris)
Federal Counsel,) for Appellant
Department of Inland Revenue)

In the High
Court in
Malaya at
Kuala Lumpur

Encik J.J. Puthuchear, of)
Messrs. Skrine & Co., of) For Respondents.
Kuala Lumpur.)

No.2
Judgment of
Sani J
30 May 1974

CERTIFIED TRUE COPY

Sgd: ?
Secretary to Judge,
High Court,
Seremban.
8 Jun, 1974.

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No.3
Order of High
Court
30 May 1974

No. 3
Order of High Court

IN THE HIGH COURT IN MALAY AT KUALA LUMPUR

ORIGINATING MOTION NO.16 of 1973

BETWEEN

Director-General of Inland Revenue Appellant

- and -

American Leaf Blending Co. Sdn. Bhd. Respondent

BEFORE THE HONOURABLE MR.
JUSTICE HASHIM SANI

20

THIS 30TH DAY OF MAY, 1974

IN OPEN COURT

O R D E R

WHEREAS pursuant to paragraph 34 of Schedule 5 to the Income Tax Act, 1967, a case had been stated at the request of the Appellant by the Special Commissioners of Income Tax for the opinion of the Court:

AND WHEREAS the said case coming up for hearing on the 21st day of January, 1974 in the presence of Encik Mohd. Nizar bin Idris, Federal Counsel, for the Appellant and Encik J.J. Puthuchear of Counsel for the Respondent AND UPON READING the Case Stated AND UPON HEARING both the Counsel as aforesaid IT WAS ORDERED that this case do stand adjourned for written submissions by Counsel for the Appellant and the reply thereto by Counsel for the Respondent and for judgment AND

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the same coming on for judgment this 30th day of May, 1974 in the presence of both the Counsel as aforesaid:

In the High Court in Malaya at Kuala Lumpur

THIS COURT IS OF THE OPINION that the determination of the said Special Commissioners of Income Tax:

No.3
Order of High Court
30 May 1974

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(a) is correct in respect of the unabsorbed losses amounting to \$399,303.00 which amount was ordered to be taken into account and deducted from the company's income received by way of rents from its premises in arriving at the total income of the respondent company for the years of assessment 1968 and 1970; and

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(b) is erroneous in respect of the unabsorbed capital allowances amounting to \$82,662.00 which amount was ordered to be taken into account and deducted from the company's income received by way of rents from its premises in arriving at the total income of the respondent company for the years of assessment 1968 and 1970:

AND IT IS ORDERED that the appeal be and is hereby allowed only in respect of the unabsorbed capital allowances amounting to \$82,662.00:

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AND IT IS ALSO ORDERED that the Deciding Order of the said Special Commissioners of Income Tax dated the 13th day of February, 1973 be amended accordingly:

AND IT IS LASTLY ORDERED that there be no order as to costs.

GIVEN under my hand and the Seal of the Court this 30th day of May, 1974.

Sgd: (ISMAIL IBRAHIM)
SENIOR ASSISTANT REGISTRAR,
HIGH COURT, KUALA LUMPUR.

In the
Federal Court
of Malaysia

No. 4
Notice of Appeal

No.4
Notice of
Appeal
25 June 1974

IN THE FEDERAL COURT OF MALAYSIA

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 90 OF 1974

BETWEEN

Director-General of Inland Revenue Appellant 10

- and -

American Leaf Blending Co. Sdn. Bhd. Respondent

(In the matter of Originating Motion
No. 16 of 1973 in the High Court in
Malaya at Kuala Lumpur)

Between

Director-General of
Inland Revenue Appellant

- and -

American Leaf Blending
Co. Sdn. Bhd. Respondent

NOTICE OF APPEAL

20

Take Notice that the Director-General of
Inland Revenue being dissatisfied with the
decision of the Honourable Datuk Justice Hashim
Yeop A. Sani given at Kuala Lumpur on the 30th
day of May, 1974 appeals to the Federal Court
against such part only of the decision as
decides that the unabsorbed losses amounting to
\$399,303.00 (claimed by the Respondent Company
as a deduction from the Company's income from
rental for the years of assessment 1968 and
1970) can be taken into account in computing
the income of the respondent company.

30

Dated this 25th day of June, 1974.

Sgd: (MOHAMED BIN HAJI SAID)
Federal Counsel,
for and on behalf of the Appellant.

To: The Registrar,
The Federal Court, Malaysia,
KUALA LUMPUR.

In the
Federal Court
of Malaysia

And to: The Registrar,
The High Court in Malaya at
KUALA LUMPUR.

No.4
Notice of
Appeal
25 June 1974

10 And to: Messrs. American Leaf Blending Co.
Sdn. Bhd.,
c/o Messrs. Skrine & Co.,
Advocates & Solicitors,
Bangunan Straits Trading,
Leboh Pasar Besar,
KUALA LUMPUR.

The address for service of the Appellant
is c/o Federal Counsel, Jabatan Hasil Dalam
Negeri, Bangunan Fitzpatrick, Tingkat 13,
Jalan Raja Chulan, Kuala Lumpur.

20 No. 5
Memorandum of Appeal

No.5
Memorandum
of Appeal
5 August 1974

IN THE FEDERAL COURT OF MALAYSIA

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 90 OF 1974

BETWEEN

Director-General of Inland Revenue Appellant

- and -

American Leaf Blending Co. Sdn. Bhd. Respondent

(In the matter of Originating Motion
No.16 of 1973 in the High Court in
Malaya at Kuala Lumpur)

30 BETWEEN

Director-General of
Inland Revenue Appellant

- and -

American Leaf Blending
Co. Sdn. Bhd. Respondent

In the
Federal Court
of Malaysia

MEMORANDUM OF APPEAL

No.5
Memorandum
of Appeal
5 August 1974

The Director-General of Inland Revenue, the Appellant above-named appeals to the Federal Court against the decision of the Honourable Mr. Justice Hashim Yeop A. Sani given at Kuala Lumpur on 30th May, 1974 in respect of the unabsorbed losses on the following grounds:

- (1) The Learned Judge erred in law in holding that although section 4 of the Income Tax Act, 1967 provides for separate paragraphs relating to separate sources of income all these categories should be joined up in determining the Respondent's aggregate income for business sources. The Learned Judge failed to appreciate that section 4 of the Income Tax Act, 1967 is "mutually Exclusive". 10
- (2) The Learned Judge erred in law in coming to the conclusion that the Memorandum and Articles of Association of the Company alone is sufficient to decide the Company's intention when he failed to appreciate that the Company's intention must be gathered from the whole facts of the case. 20
- (3) The Learned Judge erred in law in holding that the finding of the Special Commissioners was a finding of fact when they stated that the Company was carrying on the business for which it was incorporated. 30

Dated this 5th day of August, 1974.

Senior Federal Counsel,
For and on Behalf of the
Appellant.

To:

- (1) The Chief Registrar,
Federal Court,
Malaysia,
Kuala Lumpur.

And to:

- (2) Messrs. American Leaf Blending Co.
Sendiran Berhad,
c/o Messrs. Skrine & Company,
Advocates & Solicitors,
4, Leboh Pasar Besar,
Kuala Lumpur. 40

The address for service of the Appellant is care of Senior Federal Counsel, Jabatan Hasil Dalam Negeri, Bangunan Fitzpatrick, Tingkat 13, Jalan Raja Chulan, Kuala Lumpur.

In the
Federal Court
of Malaysia

No.5
Memorandum
of Appeal
5 August 1974

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No. 6
Notice of Cross-Appeal

No.6
Notice of
Cross-Appeal
9 August 1974

20

TAKE NOTICE that, the hearing of the above appeal, American Leaf Blending Co. Sdn. Bhd., the Respondent abovenamed, will contend that the decision of the Honourable Datuk Justice Hashim Yeop Sani given at Kuala Lumpur on the 27th day of May, 1974 in respect of the costs of action be varied and the Respondent be awarded the costs on the ground that as the Learned Judge upheld the decision of the Special Commissioners allowing the Respondent's objections to the assessments for the years 1968 and 1970 there was no reason connected with the case that could deprive the Respondent of the costs of the action.

Dated this 9th day of August, 1974.

Sd: Skrine & Co.
Solicitors for the Respondent.

30

Filed at Kuala Lumpur, this 10th day of August, 1974.

Sd: E. E. SIM
Chief Registrar,
Federal Court, Kuala Lumpur.

To:-

40

The Appellant abovenamed
or his Solicitor,
Peguam Kanan Persekutuan,
Jabatan Hasil Dalam Negeri,
Bangunan Fitzpatrick (Tingkat 13)
Jalan Weld,
Kuala Lumpur.

This Notice of Cross-Appeal is filed by Messrs. Skrine & Co., Straits Trading Building, No. 4, Leboh Pasar Besar, Kuala Lumpur, Solicitors for the Respondent abovenamed.

No.7
Judgment of
Gill CJ
1 March 1975

Coram: Gill, Chief Justice, Malaya,
H.S. Ong, Judge, Federal Court,
Wan Suleiman, Judge, Federal Court.

JUDGMENT OF GILL, CHIEF JUSTICE

This is an appeal from a judgment of Hashim Sani J. on a case stated by the Special Commissioners of Income Tax on the requisition of the appellant. The facts of the case as found by the Special Commissioners are as follows. The respondent company was incorporated on 2nd September 1960 with the main object of carrying on a tobacco business. Having purchased for this purpose a piece of land in Petaling Jaya and built thereon a factory to house the cigarette machinery and a bonded warehouse for stocks of cigarettes and tobacco, the company commenced its business on 14th February 1961. Its financial year ended on 30th September. 10
20

Initially, the respondents were concerned with cutting and blending tobacco leaves in order to bring them to a condition suitable for rolling into cigarettes. Finding it not profitable to carry on with their tobacco business, they ceased to operate their machinery in November 1961. They also stopped trading in tobacco in 1964 and had no sale of tobacco in 1965. In 1967 their plant and machinery were sold and removed from the factory. 30

From April 1964 the respondents started granting licences to various companies for the use and occupation of their premises in return for a monthly rental. At first they let out only a part of their premises, but from October 1968 they granted a licence to Gammon South East Asia Berhad for the use and occupation of all their land and the buildings thereon. One of the numerous objects of the respondent company, as contained in paragraph 3(1) of their memorandum of association, was to lease or grant licences over their property. 40

On 22nd August 1970 the Department of Inland Revenue prepared the respondents' tax computation for the years of assessment 1963 to 1970. This showed an accumulated loss of \$399,303/- and an un-utilised capital allowance for the industrial

10 buildings of \$82,662/- for the year of assessment 1965 and subsequent years of assessment ending with 1970. For the years of assessment 1968 and 1970 the appellant assessed the respondents to income tax on the sums of \$7,040/- and \$33,234/- respectively as their income in respect of rents, under section 4(d) of the Income Tax Act, 1967. In doing so, the appellant disallowed the respondents' claim to have their unabsorbed losses and capital allowances set off against their rental incomes.

In the
Federal Court
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No.7
Judgement of
Gill C J
1 March 1975

20 The respondents appealed to the Special Commissioners against the disallowance of their claim. Their appeal was allowed, whereupon the appellant appealed against the Special Commissioners' decision by way of case stated to the High Court. In the High Court the learned Judge dismissed the appellant's appeal on the point concerning the unabsorbed losses, but allowed the appeal in respect of the unabsorbed capital allowances. From that decision of the learned Judge the appellant has appealed and there is a cross-appeal by the respondents.

30 It is to be observed that the question at issue in the appeal before this court is whether, in ascertaining the respondents' income tax for the years of assessment 1968 and 1970, their unabsorbed losses and capital allowances in respect of their tobacco business should be deducted from their rental incomes received long after the tobacco business had ceased. In order to determine that question, it is necessary to consider the scheme of our income tax law as contained in the Income Tax Act, 1967.

40 The classes of income on which tax is chargeable are contained in section 4 of the Act which reads as follows:

- "4. Subject to this Act, the income upon which tax is chargeable under this Act is income in respect of -
- (a) gains or profits from a business for whatever period of time carried on;
 - (b) gains or profits from an employment;

- (c) dividends, interest or discounts;
- (d) rents, royalties or premiums;
- (e) pensions, annuities or other periodical payments not falling under any of the foregoing paragraphs;
- (f) gains or profits not falling under any of the foregoing paragraphs.

Section 5 of the Act provides for each source of income to be treated separately for the purpose of ascertaining the basis period, the gross income, the adjusted income and the statutory income. There is no dispute between the parties as to how such ascertainties are made. Section 43(1)(e) provides for the statutory incomes from all sources making up a business to be aggregated. Such aggregated income from all business sources is then required to be reduced by any deductions falling to be made under section 43(2), and it is to the remainder of the income after such deductions that statutory incomes from other sources are required to be added. In other words, it is only after aggregating the incomes from all sources making up a business and deducting therefrom such losses as may have been incurred in previous years in such business or businesses that incomes from other sources, if any, are required to be added. Section 45 of the Act provides that chargeable income shall be the total income less the deductions allowed under Chapter 7 which begins with that section and ends with section 51. There is no dispute about such deductions under that Chapter.

In allowing the respondents' appeal for their unabsorbed losses and capital allowances in respect of their tobacco business to be deducted from their rental incomes, the Special Commissioners made a finding that by granting licences over its property the respondent company was carrying on a business for which it was incorporated. The learned Judge considered that finding to be a finding of fact which he felt he should not disturb. He found further support for that finding in the following passage from the judgment of the Privy Council in the Jamaican case of Commissioners of Income Tax v. Hanover Agencies Ltd. (1967) 1 All E.R.954, 956,

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10 "The word 'business' is of wide import
and must be given its ordinary meaning,
unless the context otherwise requires.
The Respondents' objects include inter
alia acquiring of freehold property and
the leasing of all or any of the
company's property. If a company's
objects are business objects and are in
fact carried out, it carries on business
(Inland Revenue Comrs. v. Westleigh Estates
Co., Ltd. (1924) 1 K.B.390, 408, 409; 12 Tax
Cases 657, 686 per Sir Ernest Pollock, M.R.).
The respondents are engaged in negotiating
leases and collecting rents from their
properties. This would prima facie indicate
that they were carrying on business so as to
bring them within the terms of s. 8(o)".

20 The facts in the Jamician case were as
follows. In 1944 a business, one of whose
objects was the acquiring and letting of
property, was purchased by predecessors of
the respondent company. In 1947 the business
was vested in the respondent company which
was formed to carry it on. The business
included that of merchants dealing in
hardware and lumber, and that of operating
a wharf, as well as that of letting of
premises. In 1945 three buildings were
30 purchased by the business ("Bank Building")
and were subsequently pulled down, rebuilt
and leased. On appeal from an order
upholding the respondent company's claim to
an allowance for wear and tear in respect of
the Bank Building under section 8(o) of the
Jamician Income Tax Law, 1954, it was held
that the company was entitled to such an
allowance because they were in fact carrying
out their object of acquiring and leasing
properties and accordingly were carrying on
40 that business, and the profits on which
they were assessed arose from the business.

50 It was argued on behalf of the appellant
in the court below that, as the sources of
income specified in section 4 of our Income
Tax Act are mutually exclusive, rents
cannot be a part of business income for the
purpose of taxation. This proposition was
put forward on the authority of what was
decided in Fry v. Salisbury House Estate Ltd. 15
T.C.266, 316, but that case was concerned with the

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No.7
Judgment of
Gill C J
1 March 1975

English Income Tax Act under which specific incomes are assessed under specific schedules. In Commissioners of Income Tax v. Hanover Agencies Ltd. (1967) 1 All E.R.954, 956 the Privy Council said at page 957:

"In their lordships' opinion the decision in the Salisbury House case has no bearing on the construction of the provisions of the Income Tax Law of Jamaica, where there is no parallel to the division of the charge to income tax into various separate and distinct Schedules. Section 5 already referred to is an omnibus section which treats all profits and gains together whether arising from property or from a trade, business, employment or profession, or in respect of rent or emoluments, salaries or wages. These are all treated as profits or gains."

10

Section 4 of our Act, although differently worded in that it does not speak of all the sources of income under an omnibus provision as "gains or profits", would appear basically to be similar to section 5 of the Jamaican Act. Nevertheless for "rents royalties or premiums" as specified in section 4(d) of our Act to be brought under section 4(a) of the Act as "gains or profits" from a business, it must be shown that they are derived from a business as such. In my judgment it would be difficult to treat rents as "gains or profits" from a business in the absence of clear evidence that the taxpayer was carrying on a business of acquiring and leasing properties as in the Hanover Agencies case.

20

30

It is to be observed that the context in which the company in the present case began to grant licences over its property is quite different from the context in which the Company in the Jamaican case was carrying on its business. The company here was incorporated with the main object of carrying on tobacco business. Like all other companies it had a number of ancillary objects. So long as it continued its tobacco business it certainly was not carrying on any business of renting its premises. In granting leases over its premises after its tobacco business ceased it was merely receiving income from rents. The collection of such rents was entirely divorced from the business which it had previously carried on.

40

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The memorandum of association of a company by itself is insufficient to decide whether it was carrying on a particular business. The question always is not what business the taxpayer professes to carry on, but what business it actually carries on. In this connection Lord Warrington of Clyffe in Fry v. Salisbury House Estate Ltd. 15 T.C. 266, 316, said at page 316:

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Gill C J
1 March 1975

10 "Assuming the Memorandum of Association allows it, and in this case it unquestionably does, a Company is just as capable as an individual of being a landowner, and as such deriving rents and profits from its land, without thereby becoming a trader, and in my opinion it is the nature of its operations, and not its own capacity, which must determine whether it is carrying on a trade or not."

20 Lord Macmillan in the same said at pages 330 and 331:

"The income of the Company being derived from the location of land, or in other words in the normal manner in which property in land yields revenue, it is in my opinion inadmissible to characterise this income as the income of a trade.
..... A landowner may conduct a trade on his premises, but he cannot be represented as carrying on a trade of owning land because he makes an income by letting it."

40 It follows from what I have just said that the Special Commissioners misdirected themselves in law when they said that the respondent company was carrying on the business for which it was incorporated when it commenced to grant licences over its property after it had ceased its initial tobacco business in 1964. On the facts of this case it seems clear that the only business which the respondents carried on was its tobacco business, so that it is quite impossible to say that they were carrying on a business of renting their premises.

I agree with the learned Judge's conclusion that under section 43 of the Income Tax Act, 1967 the statutory incomes of

In the
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Gill C J
1 March 1975

each of the sources of a business are aggregated
and that it is this aggregated sum from which
"unabsorbed losses" are deducted. But, in view of
what I have already said, I cannot, with respect,
agree with the learned Judge's further conclusion
that the decision of the Commissioners to take
into account the unabsorbed losses amounting to
\$399,303/- should not be disturbed. I would
therefore allow the appellant's appeal.

Coming now to the cross-appeal, I must say
at once that I can find no merit in it whatsoever.
It is clear that the statutory income of a taxpayer
is required to be calculated in respect of each of
his sources of income. Section 43 speaks of each
of the business sources consisting of a business,
indicating that a business can have several sources,
and it allows deductions in respect of unabsorbed
losses to be made from all the business sources of
the taxpayer. Unabsorbed capital allowances,
however, are governed by section 42 which provides
that the statutory income of a person from a source
for a year of assessment shall consist of an amount
reduced by the amount of any allowances or the
aggregate of the allowances falling to be made for
that year under the schedule in relation to that
source. In other words, as the learned Judge has
rightly pointed out in his judgment, capital
allowances in respect of one source of business
cannot be taken into account when computing the
income from another business source.

The schedule which governs capital allowances
is schedule 3 to the Act. Paragraph 75 of that
schedule reads:

"75. Where, by reason of an insufficiency or
absence of adjusted income of a person from a
business of his for the basis period for a
year of assessment or by reason of the
existence of an adjusted loss from the
business for that period, effect cannot be
given or cannot be given in full to any
allowance or to the aggregate amount of any
allowances falling to be made to him for that
year in relation to the source consisting of
that business, that allowance or that
aggregate amount, as the case may be, which
has not been so made (or so much thereof
as has not been so made to him for that year)
shall be deemed to be an allowance to be
made for the first subsequent year of
assessment for the basis period for which
there is adjusted income from that business,

and so on for subsequent years of assessment until the whole amount of the allowance or that aggregate amount to be made to him has been made to him."

In the
Federal Court
of Malaysia

10 This paragraph, again as the learned Judge has rightly pointed out in his judgment, is explicit in drawing a distinction between "income from a business" and "income from a source consisting of that business". It is therefore clear that the respondents' unabsorbed capital allowances relate only to their tobacco business and cannot be taken into account even if the renting of their premises can be assumed to be a business. I would therefore dismiss the cross-appeal.

No.7
Judgment of
Gill C J
1 March 1975

20 In the result I would allow the appellant's appeal and dismiss the respondents' cross-appeal, thus restoring the assessment made by the appellant of the respondents' income tax for the years of assessment 1968 and 1970. In all the circumstances of the case there will be no order as to costs.

Sd: S.S. Gill
CHIEF JUSTICE

Kuala Lumpur,
1st March, 1975.

Ong Hock Sim F.J. and Wan Suleiman F.J.
concurred.

Encik Mohd. Nizar for the Appellant.

30 Encik James Puthuchearry for the Respondents.
Solicitors: Messrs. Skrine & Co.

No. 8

Order

CORAM: GILL, CHIEF JUSTICE, HIGH COURT IN MALAYA;
ONG HOCK SIM, FEDERAL COURT, MALAYSIA;
WAN SULEIMAN, JUDGE, FEDERAL COURT,
MALAYSIA.

No.8
Order
1 March 1975

IN OPEN COURT

THIS 1ST DAY OF MARCH, 1975

40

O R D E R

THIS APPEAL coming on for hearing on the 26th

In the
Federal Court
of Malaysia

No.8
Order
1 March 1975

day of November, 1974 in the presence of Encik Mohd. Nizar, Senior Federal Counsel for the Appellant and Mr. James Puthuchearay of Counsel for the Respondent above-named AND UPON READING the Appeal Record filed herein AND UPON HEARING the submissions of Counsel as aforesaid IT WAS ORDERED that this appeal do stand for judgment and the same coming on for judgment this day in the presence of Counsel as aforesaid IT IS ORDERED that the Appeal be and is hereby allowed AND IT IS ORDERED that the Cross-Appeal of the Respondent be and is hereby dismissed AND IT IS FURTHER ORDERED that Assessment of the Respondent's income tax for the years of assessment 1968 and 1970 be restored AND IT IS LASTLY ORDERED that there be no order as to costs.

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GIVEN under my hand and the seal of the Court this 1st day of March, 1975.

Sd: E. E. SIM
CHIEF REGISTRAR.

20

No.9
Affidavit
of John
Herries Skrine
23 April 1975

No. 9
Affidavit of John
Herries Skrine

I, JOHN SHOLTO HERRIES SKRINE, of full age, and residing at No.20, Penang Road, Kuala Lumpur, affirm and say as follows:-

1. I am a Director of the Respondent and am duly authorised to affirm this affidavit on its behalf.

30

2. On the 30th day of May, 1974 the High Court at Kuala Lumpur gave judgment in favour of the Respondent and ordered that the Respondent's appeal be allowed only in respect of the unabsorbed capital allowances amounting to \$82,662/- and the Deciding Order of the said Special Commissioners of Income Tax dated the 13th day of February 1973 be amended accordingly.

3. The Appellant appealed to the Federal Court against the said judgment and the Respondent filed a Notice of Appeal with this Honourable Court on the 10th day of August, 1974.

40

4. The appeal was heard by this Honourable Court on the 25th day of November, 1974 and the judgment

was delivered on 1st March 1975 whereby it was ordered that the Appellant's appeal be allowed with costs and the Respondent's cross appeal be and is hereby dismissed.

In the
Federal Court
of Malaysia

No.9
Affidavit
of John
Herries Skrine
23 April 1975

10 5. The Respondent is dissatisfied with the said judgment of the Federal Court and is desirous of appealing to His Majesty the Yang Dipertuan Agung against the said judgment. The Respondent is advised that this is a fit and proper case for appeal.

20 6. The unabsorbed losses to be properly carried forward which is in dispute is in excess of \$25,000/-. The tax in issue, which arises out of the quantum of unabsorbed tax losses which can properly be carried forward and which is in dispute in this litigation in respect of the years of assessment 1968 and 1970 is \$16,609.60. I am advised by the Company Tax Advisers, Messrs. Peat, Marwick, Mitchell & Co. that the figure has now increased since then to \$25,433.65. If and when the Company recommences any large scale business the figure can of course increase substantially.

30 7. The Respondent abovenamed is willing to undertake as a condition for leave to appeal to enter into good and sufficient security to the satisfaction of this Honourable Court in such sum as this Honourable Court may duly prescribe and to conform to any other condition that may be imposed.

8. I pray that this Honourable Court will be pleased to grant to the Respondent leave to appeal to His Majesty the Yang Dipertuan Agung and that execution of the said judgment may be suspended pending the hearing of the appeal.

40 AFFIRMED at Kuala Lumpur,)
this 23rd day of April,) Sd: John Sholto
1975 at 2.35 p.m.) Herries Skrine

Sd: Hariram Jayaram
Commissioner for Oaths.

This Affidavit is filed by Messrs. Skrine & Co., Straits Trading Building, No.4, Leboh Pasar Besar, Kuala Lumpur, Solicitors for the Respondent abovenamed.

In the
Federal Court
of Malaysia

No. 10
Notice of Motion for Conditional
Leave to Appeal to His Majesty
the Yang Dipertuan Agung

No.10
Notice of
Motion for
Conditional
Leave to
Appeal to
His Majesty
the Yang
Dipertuan
Agung

TAKE NOTICE that on Monday the 12th day of
May, 1975 at 9.30 o'clock in the forenoon or as
soon thereafter as Counsel can be heard by
Counsel on behalf of the Respondent abovenamed
will move the Court for an Order:-

- 1) That conditional leave be granted to the Respondent to appeal to His Majesty the Yang Dipertuan Agung against the judgment of this Honourable Court given on the 1st day of March, 1975; 10
- 2) That execution of the said judgment be suspended pending the appeal;
- 3) That the costs of and incidental to this application be costs in the cause.

Dated this 12th day of April, 1975.

Sd: Skrine & Co. 20
Respondent's Solicitors.

Dated this 30th day of April, 1975.

Sd: E. E. SIM
Chief Registrar,
Federal Court, Malaysia,
Kuala Lumpur.

To:-

The Senior Federal Counsel
for and on behalf of
Director-General of Inland Revenue, 30
Suleiman Building,
Kuala Lumpur.

The address for service of the Respondent is
c/o Messrs. Skrine & Co., Straits Trading Building,
No.4, Leboh Pasar Besar, Kuala Lumpur, Solicitors
for the Respondent abovenamed.

No. 11
Order granting Conditional Leave
to Appeal to His Majesty the
Yang di-Pertuan Agung

Coram: Gill, Chief Justice, Malaya.
Ong Hock Sim, Federal Judge.
Raja Azlan Shah, Federal Judge.

IN OPEN COURT

THIS 12TH DAY OF MAY, 1975.

O R D E R

In the
Federal Court
of Malaysia

No.11
Order granting
Conditional
Leave to
Appeal to His
Majesty the
Yang di-
Pertuan Agung
12 May 1975

10 UPON MOTION made unto Court this day by Mr.
Thayalan Kanapathippillai of Counsel for the
Respondent abovenamed in the presence of Tuan
Haji Mohd. Nizar bin Idris, Senior Federal
Counsel, for the Appellant above-named AND
UPON READING the Notice of Motion dated the
30th day of April, 1975 and the Affidavit of
John Sholto Herries Skrine affirmed on the
23rd day of April, 1975 both filed herein AND
20 UPON HEARING Counsel as aforesaid IT IS ORDERED
that leave be and is hereby granted to the
Respondent to appeal to His Majesty the Yang
di-Pertuan Agung against the Order of the
Federal Court dated the 1st day of March 1975
upon the following conditions:-

30 (a) that the Respondent abovenamed do within
three (3) months from the date hereof
enter into good and sufficient security
to the satisfaction of the Chief
Registrar, Federal Court, Malaysia in
the sum of \$5,000/- (Ringgit Five
thousand only) for the due prosecution
of the Appeal, and the payment of all
such costs as may become payable to the
Appellant abovenamed in the event of the
Respondent abovenamed not obtaining an
order granting them final leave to
Appeal or of the Appeal being dismissed
for non-prosecution or of His Majesty
40 the Yang di-Pertuan Agung ordering the
Respondent abovenamed to pay the
Appellant costs of the Appeal as the
case may be; and

(b) that the Respondent abovenamed do within
the said period of three (3) months take
the necessary steps for the purpose of
procuring the preparation of the Record
and for the despatch thereof to England.

In the
Federal Court
of Malaysia

AND IT IS ORDERED that the application for stay of execution of the Judgment herein be and is hereby refused AND IT IS LASTLY ORDERED that the costs of and incidental to this application be costs in the cause.

No.11
Order granting
Conditional
Leave to
Appeal to His
Majesty the
Yang di-
Pertuan Agung
12 May 1975

GIVEN under my hand and the seal of the Court
this 12th day of May, 1975.

Sd: E. E. SIM
CHIEF REGISTRAR.

No.12
Order granting
Final Leave to
Appeal to His
Majesty the
Yang di-
Pertuan Agung
10 November
1975

No. 12
Order granting Final Leave
to Appeal to His Majesty the
Yang di-Pertuan Agung

10

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR
(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 90 OF 1974

BETWEEN

Director-General of Inland Revenue Appellant

- and -

American Leaf Blending Co. Sdn. Bhd. Respondent

(In the matter of Originating Motion No.16
of 1973 in the High Court in Malaya at
Kuala Lumpur

20

BETWEEN

Director-General of
Inland Revenue Appellant

- and -

American Leaf Blending
Co. Sdn. Bhd. Respondent)

CORAM: SUFFIAN, LORD PRESIDENT FEDERAL COURT,
MALAYSIA;

LEE HUN HOE, CHIEF JUSTICE, HIGH COURT
IN BORNEO, BORNEO;

30

ONG HOCK SIM, JUDGE, FEDERAL COURT,
MALAYSIA.

IN OPEN COURT

THIS 10TH DAY OF NOVEMBER, 1975.

In the
Federal Court
of Malaysia

O R D E R

No.12
Order granting
Final Leave to
Appeal to His
Majesty the
Yang di-
Pertuan Agung
10 November
1975

10 UPON MOTION made unto Court this day by
Mr. Kwok Yoke How of Counsel for the
Respondent in the presence of Encik Mokhtar bin
Haji Sidin, Senior Federal Counsel for and on
behalf of the Appellant AND UPON READING the
Notice of Motion dated the 21st day of October,
1975 and the Affidavit of Vinayak Pradhan
affirmed on the 4th day of October 1975 both
filed herein AND UPON HEARING Counsel as
aforesaid IT IS ORDERED that the Respondent
abovenamed be and is hereby granted final leave
to appeal to His Majesty the Yang di-Pertuan
Agong against the whole of the Judgment and
Order of the Federal Court of Malaysia given
20 on the 1st day of March, 1975 AND IT IS
ORDERED that the costs of and incidental to
this application be costs in the cause.

GIVEN under my hand and the seal of the
Court this 10th day of November, 1975.

CHIEF REGISTRAR,
FEDERAL COURT, MALAYSIA.

Exhibit A.1
Statement
of Facts

Exhibit A.1
Statement of Facts

1. The taxpayer company (hereinafter referred to as "the taxpayer") was incorporated on the 2nd of September, 1960. (See AB 1 to AB 5 of the Agreed Bundle of Documents).
2. The taxpayer purchased land in Petaling Jaya and built upon it a factory to house cigarette machinery and a bonded warehouse for stocks of cigarettes and tobacco. This building is at No.15 Jalan Tandang, Petaling Jaya. 10
3. The taxpayer commenced business on the 14th February, 1961.
4. The initial business was cutting and blending tobacco leaves and to bring it to a condition suitable to be rolled into cigarettes.
5. The taxpayer decided that it was not profitable to carry on with this business. The company ceased to operate its machinery in November, 1961. 20
6. The taxpayer ceased trading in tobacco in 1964 and there has been no sale of tobacco in 1965.
7. The plant and machinery was sold in 1967.
8. From 4th April, 1964 the taxpayer granted a licence to Caxton Press (1957) Ltd. to store paper in a part of the taxpayer's premises. (See AB 6 to AB 11). 30
9. On the 8th January, 1965 a licence was granted to Zuellig & Co. to store maize in some part of the taxpayer's premises. (See AB 12 to AB 17).
10. On the 1st of October, 1966 a licence was granted to Dunlop Malaysia Industries to store their goods (See AB 18 to AB 23).
11. In 1967 a licence was granted to Tien Wah Press to store paper (See AB 24 to AB 29).
12. In 1968 a licence was granted to Gammons (S.E.A.) Bhd. to store engineering stores, equipment and vehicles, for all of the premises. 40

13. The taxpayer was assessed in the year of assessment 1968 and the year of assessment 1970 for the sum of \$2,816/- and \$13,793.60 respectively. Exhibit A.1
Statement
of Facts

Solicitors for the
Comptroller General of
Income Tax.

Solicitors for the
American Leaf
Blending Co.Ltd.

Exhibit A.2

Exhibit A.2
Agreed Bundle
of Documents

10

Agreed Bundle of Documents

AMERICAN LEAF BLENDING CO. LTD. V.
COMPTROLLER GENERAL OF INCOME TAX

P.K.R. 162

SUMMARY OF THE AGREED BUNDLE

20

The taxpayer company was incorporated in 1960. A copy of the Memorandum of Association is reproduced on pages AB 1 to AB 5. It purchased land in Petaling Jaya and built upon it a building to house cigarette machinery and as a bonded warehouse for stocks of cigarettes and tobacco. This building is at No. 15, Jalan Tandang, Petaling Jaya. It started business on making and manufacturing cigarettes in 1961. By 1965 the company decided that manufacturing cigarettes was not profitable and ceased this lines of business. The company sold its plant and machinery in 1968 and the stocks of tobacco and blending materials have been sold some time earlier.

30

40

From 1964, it had rented out a part of its premises at No. 15, Jalan Tandang, Petaling Jaya. The business of renting was done by granting licences to occupy a part of the premises. The first licence was given to Caxton Press (1957) Ltd. to store paper. A copy of the licence is reproduced on pages AB 6 to AB 11. In 1965 they granted a licence to Zuellig Feedmills (Malaya) Limited to store maize. A copy of which is reproduced on pages AB 12 to AB 17. In 1966

Exhibit A.2
Agreed Bundle
of Documents

they granted a licence to Dunlop Malayan Industries Limited as a warehouse for their own goods. A copy of which is reproduced on pages AB 18 to AB 23. In 1967 a licence to the Factory area of No.15, Jalan Tandang, Petaling Jaya was granted to Tien Wah Press to store paper. A copy of which is reproduced on pages AB 24 to AB 29. In 1968 a licence to all the premises of No.15, Jalan Tandang, Petaling Jaya was granted to Gammon South East Asia Berhad. A copy of which is reproduced on pages AB 30 to AB 36 to store engineering stores equipment and vehicles used by the licensee in connection with its business.

10

When the cigarettes manufacturing business of the company ceased in 1965, the company had an accumulated loss of \$399,303/- and the unutilised capital allowance for the industrial building was \$82,662/-.

THE COMPANIES ORDINANCES

Federation of Malaya

20

COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

OF

AMERICAN LEAF BLENDING COMPANY
LIMITED

1. The name of the Company is AMERICAN LEAF BLENDING COMPANY LIMITED.

2. The registered office of the Company will be situate in the Federation of Malaya.

3. The objects for which the Company is established are:-

30

(a) To cut and blend dry and re-dry and in every way process tobacco of all types and for all purposes and generally to carry on the business of manufacturers of and dealers in tobacco, cigars, cigarettes, matchlights, pipes, and any other articles required by or which may be convenient to smokers, and of snuff grinders and merchants and box merchants, and to deal in any other articles and things commonly dealt in by tobacconists.

40

- 10 (b) To carry on the business of planters, growers, cultivators and importers and exporters of tobacco of all types, rubber, gutta percha, coconuts, tapioca, oil palms, valata, coffee, cocoa, tea, cinchona, and any other produce of the soil, and to treat, prepare, manufacture, render marketable, buy, sell and dispose of any of such products either in their raw or manufactured state and in any manner thought convenient or advisable whether the same are grown or purchased in the Federation of Malaya or elsewhere in the world.
- 20 (c) To clear, drain, reclaim, plant, replant, graze, farm, cultivate, maintain, build upon, render accessible and otherwise improve or develop any lands or hereditaments and to mine, work, win, get, render merchantable, turn to account and deal with any mineral or other substances in or under or near to any land of the Company, and any timber on such lands.
- 30 (d) To carry on the business of farmers, graziers, meat and fruit preservers, brewers, miners, metallurgists, quarry owners, brickmakers, builders, contractors for the construction of works, both public and private, merchants, importers and exporters, printers, publishers, bankers, shippers, ship builders, ship owners, brokers, manufacturers, general storekeepers, general agents, insurance agents and warehousemen and any other business which may seem calculated directly or indirectly to develop the Company's property.
- 40 (e) To build, construct, alter, maintain, enlarge, pull down, remove or replace, and to work, manage and control any buildings, offices, factories, churches, chapels, schools, mills, shops, machinery, engines, roads, ways, tramways, railways, branches or sidings, bridges, reservoirs, drains, watercourses, wharves, electric works and other works and conveniences which may seem calculated directly or indirectly to advance the interests of the Company, and to join with any other person or
- 50

Exhibit A.2
Agreed Bundle
of Documents

company in doing any of these things.

- (f) To improve, manage, develop, grant rights or privileges in respect of, or otherwise deal with all or any part of the land or other property and rights of the Company both moveable and immoveable.
- (g) To enter into any arrangements with any governments or authorities, Federal, State, municipal, local or otherwise, or any person or company that may seem conducive to the objects of the Company, or any of them, and to obtain from any such government, authority, person or company any rights, privileges, charters, contracts, licences and concessions which the Company may think it desirable to obtain and to carry out, exercise and comply therewith. 10
- (h) To acquire, hold, sell, exchange, surrender convert or dispose of shares, stocks, debentures, debenture stock, annuities, bonds, options, loans or other obligations or securities issued or guaranteed by any company, corporation or association or by any government or public body or other local or municipal authority and to acquire any such shares, stocks, debentures, debenture stock, bonds, options, loans or other obligations or securities by original subscription, tender, purchase, exchange or otherwise, and to subscribe for the same, either conditionally or otherwise, and to underwrite, sub-underwrite or guarantee the subscription thereof in any manner and generally to invest and deal with the moneys of the Company not immediately required in any manner. 20 30
- (i) Generally to purchase, take on lease, exchange, hire or otherwise acquire or obtain options or concessions over, any land and other property moveable or immoveable, real or personal and any licences, rights or privileges which the Company may think necessary or convenient with reference to any of its objects, or capable of being profitably dealt with in connection with any of the Company's property or rights for the time being. 40
- (j) To apply for, purchase, or otherwise 50

10 acquire and protect and renew in any part
of the world any patents, patent rights,
brevets d'invention, trade marks,
designs, licences, concessions, and the
like, conferring any exclusive or non-
exclusive or limited right to their use,
or any secret or other information as to
any invention which may seem capable of
being used for any of the purposes of the
Company, or the acquisition of which may
seem calculated directly or indirectly to
benefit the Company, and to use exercise,
develop, or grant licences in respect of,
or otherwise turn to account the property,
rights or information so acquired and to
expend money in experimenting upon,
testing or improving any such patents,
inventions or rights.

20 (k) To receive money on deposit or loan and
borrow or raise money in such manner as
the Company shall think fit, and in
particular by the issue of debentures or
debenture stock (perpetual or otherwise),
and to secure the repayment of any money
borrowed, raised or owing to mortgage,
charge or lien upon all or any of the
property or assets of the Company (both
present and future), including its
uncalled capital, and also by a similar
30 mortgage, charge or lien to secure and
guarantee the performance by the
Company or any other person or company
of any obligation undertaken by the
Company or any other person or company as
the case may be.

40 (l) To sell, lease, mortgage, grant licences,
easements and other rights over or
otherwise dispose of and generally deal
in the land rights and other property,
assets or undertaking of the Company or
any part thereof both moveable and
immoveable for such consideration as the
Company may think fit, and in particular
for shares, stock, debentures, or other
securities of any other company whether
or not having objects altogether or in
part similar to those of the Company.

50 (m) To purchase or otherwise acquire and
undertake the whole or any part of the
business, property, and liabilities of
any person or company carrying on or
proposing to carry on any business which

Exhibit A.2
Agreed Bundle
of Documents

the Company is authorised to carry on, or possessed of property suitable for the purposes of the Company, or which can be carried on in conjunction therewith or which is capable of being conducted so as directly or indirectly to benefit the Company.

- (n) To amalgamate, or enter into partnership, or into any arrangement for sharing profits, union of interest, joint adventure, reciprocal concession or co-operation, with any person or company carrying on or engaged in or about to carry on or engage in any business transaction or enterprise which this Company is authorised to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit this Company, and to take or otherwise acquire and hold shares, securities or obligations in any such company, and to sell, hold, re-issue, with or without guarantee, or otherwise deal with the same. 10 20
- (o) To establish or promote or concur in establishing or promoting any company or companies for the purpose of acquiring all or any of the property, rights and liabilities of the Company or for any other purpose which may seem directly or indirectly calculated to benefit the Company and to place or guarantee the placing of, underwrite, subscribe for or otherwise acquire all or any part of the shares, debentures or other securities of any such other company. 30
- (p) To draw, make, accept, indorse, discount, execute, and issue promissory notes, bills of exchange, bills of lading, warrants, debentures, and other negotiable or transferable instruments.
- (q) To lend and advance money or give credit to such persons or companies and on such terms as may seem expedient, and either with or without security and in particular to customers and others having dealings with the Company, and to guarantee the performance of any contract or obligation and the payment of money of or by any such persons or companies, and generally to give guarantees and indemnities in any manner that may seem expedient to the Company. 40
- (r) To issue securities which the Company has power to issue by way of security and indemnity 50

to any company or persons whom the Company has agreed, or is bound or willing to indemnify, or in satisfaction of or as security for any liability undertaken or agreed to be undertaken by the Company, and generally in every respect upon such terms and conditions and in such consideration as the Company think fit.

- 10 (s) To pay for any land or rights or other property acquired by the Company, and to remunerate any person or company whether by cash payment or by the allotment of shares, debentures or other securities of the Company credited as paid up in full or in part or otherwise.
- 20 (t) To distribute among the members in specie any property of the Company, or any proceeds of sale or disposal of any property of the Company, but so that no distribution amounting to a reduction of capital be made except with the sanction (if any) for the time being required by law.
- 30 (u) To establish and maintain or procure the establishment and maintenance of any contributory or non-contributory pension or superannuation funds for the benefit of, and give or procure the giving of donations, gratuities, pensions, allowances or emoluments to, any persons who are or were at any time in the employment or service of the Company or of any company which is a subsidiary of the Company or is allied to or associated with the Company or with any such subsidiary company, or who are or were at any time Directors or officers of the Company or of any such other company as aforesaid, and the wives, widows, families and dependants of any such persons, and also establish and subsidise and subscribe to any institutions, associations, clubs or funds calculated to be for the benefit of or to advance the interests and well-being of the Company payments to or towards the insurance of any such person as aforesaid and to any of the matters aforesaid, either alone or in conjunction with any such other company as aforesaid.
- 40
- 50

Exhibit A.2
Agreed Bundle
of Documents

- (v) To undertake and execute any trusts the undertaking whereof may seem desirable, and either gratuitously or otherwise.
- (w) To vest any land or other real or personal property, rights or interest acquired by or belonging to the Company in any person or company on behalf of or for the benefit of the Company, and with or without any declared trust in favour of the Company.
- (x) To pay out of the funds of the Company all expenses which the Company may lawfully pay with respect of the formation and registration of the Company or the issue of its capital, including brokerage and commission for obtaining applications for or taking placing or underwriting or procuring the underwriting of shares, debentures or other securities of the Company. 10
- (y) To carry on any other business or businesses whatsoever and wheresoever which may, in the opinion of the Company, be conveniently carried on in connection with any business which the Company is authorised to carry on, or calculated directly or indirectly to enhance the value of or render profitable any of the Company's properties or rights. 20
- (z) To procure the Company to be registered or recognized in any place or country outside the Federation of Malaya.
- (aa) To apply for, promote and obtain the passing of any Ordinance or Enactment, charter, privilege, concession, licence or authorisation of any government, state or municipality, provisional order or licence or other authority for enabling the Company to carry any of its objects into effect or for extending any of the powers of the Company or for effecting any modification of the constitution of the Company or for any other purpose which may seem expedient, and to oppose any proceedings or applications which may seem calculated directly or indirectly to prejudice the interests of the Company. 30
40
- (bb) To act as agents or brokers and as trustees for any person or company and to undertake and perform sub-contracts and to do all or any of the above things in any part of the world, and either as principals, agents,

trustees, contractors or otherwise, and either alone or jointly with others, and either by or through agents, sub-contractors, trustees or otherwise.

Exhibit A.2
Agreed Bundle
of Documents

- 10 (cc) To do all such other things as are incidental to or connected with any of the above objects, or conducive to the attainment thereof or otherwise likely in any respect to be advantageous to the Company.

And it is hereby declared that -

- (a) the word "Company" in this clause, except where used in reference to this Company, shall be deemed to include any partnership or other body or persons, whether incorporated or not incorporated, and whether domiciled in the Federation of Malaya or elsewhere, and
- 20 (b) the objects specified in each of the paragraphs of this clause shall be regarded as independent objects, and accordingly shall in no wise be limited or restricted (except where otherwise expressed in such paragraphs) by reference to or inference from the terms of any other paragraph (or the name of the Company), but may be carried out in as full and ample a manner and
- 30 construed in as wide a sense as if each of the said paragraphs defined the objects of a separate and distinct company.

4. The liability of the members is limited.

5. The original share capital of the Company is ~~£~~1,500,000 divided into 150,000 shares of ~~£~~10,00 each, with power to increase or reduce its capital, and the shares in the original or any increased or

40 reduced capital may be divided into several classes, and there may be attached thereto respectively any preferential, deferred or other special rights, privileges, conditions, or restrictions as to dividend, capital, voting or otherwise.

We, the several persons whose names, addresses and descriptions are subscribed, are desirous of being formed into a Company

Exhibit A.2
Agreed Bundle
of Documents

in pursuance of this Memorandum of Association,
and we respectively agree to take the number of
shares in the capital of the Company set opposite
our respective names.

Names, Addresses and Descriptions of Subscribers.	Number of Shares taken by each Subscriber.	
SOO YU-DEE 4 Broom Road, Hong Kong Tobacconist	One	10
LIM SUN HOE 27 Perak Road, Kuala Lumpur, Advocate & Solicitor	One	

Dated the 2nd day of September, 1960.

Witness to the above signatures:

THIS AGREEMENT made the first day of October,
1968 BETWEEN AMERICAN LEAF BLENDING COMPANY
LIMITED, a company incorporated in Malaysia and
having its Registered Office at No. 15, Jalan
Tandang, Petaling Jaya (hereinafter called "the
Licensor") of the one part And GAMMON SOUTH EAST
ASIA BERHAD, a company also incorporated in
Malaysia and having its Registered Office at
No. 5, Road 203, Petaling Jaya (hereinafter
called "the Licensee") of the other part WITNESSETH
as follows :

1. The Licensor hereby grants to the Licensee
leave and licence to occupy on the terms and
conditions hereinafter ALL THAT the land held
under Lease Negeri No. 3148 Lot 81 Section 20 in
the Town of Petaling Jaya belonging to the
Licensor together with all the buildings erected
thereon (hereinafter referred to collectively as
"the demised premises").

2. The licence shall remain in force until the
thirtieth day of September 1969 and may be
terminated on the said thirtieth day of September
1969 or on the last day of any calendar month
thereafter by either party giving to the other
six (6) months previous notice in writing to that
effect.

3. The Licensee covenants with the Licensor as follows :

- 10 (a) To pay by way of a fee for the granting of this licence the sum of Dollars three thousand five hundred (\$3,500-00) per month in advance on the first day of every month the first of such payments to be made on the first day of October, 1968 and thereafter on the first day of each succeeding month.
- (b) To pay all deposits fees dues and charges for water conservancy electricity telephone and refuse removal which may become payable hereafter in respect of the demised premises.
- 20 (c) In the event of the rates payable to the Petaling Jaya Town Board or other local authority in respect of the demised premises exceeding the rates payable in respect of the year 1968 (whether such increase results from an increase in the annual value or is by way of increase in the percentage of the annual value payable as rates) to pay the excess.
- 30 (d) To keep the interior of all the buildings comprising the demised premises and the drains and sanitary and water apparatus and all fixtures and additions thereto in tenable repair and condition throughout the period of this licence and without any alterations except such as shall be sanctioned in writing by the Licensor and to yield up the same in such repair and condition (except as aforesaid) at the determination of this licence.
- 40 (e) Save as aforesaid not to make any alterations or additions to the demised premises without the previous written consent of the Licensor nor to cut maim or injure any of the walls or timbers thereof nor to permit any of the aforesaid things to be done.
- (f) Not to assign this Agreement or part with the possession of the demised premises.

Exhibit A.2
Agreed Bundle
of Documents

- (g) Not to keep or permit or suffer to be kept on or in the demised premises any goods other than engineering stores equipment and vehicles used by the Licensee in connection with its business and in case of damage being done to the demised premises or any part thereof (including roads and turfed areas) as a result of the use to which the demised premises are put by the Licensee pursuant to this Agreement the Licensee shall at its own cost and expense make good the damage at the determination of this licence. 10
- (h) Not to contravene any statute or order or local regulation or bye-law while occupying the demised premises.
- (i) Not to constitute or create any nuisance to the occupiers of neighbouring property.
- (j) Not to carry on or permit or suffer to be carried on upon the demised premises any trade of a noxious or offensive nature. 20
- (k) Not to keep or permit to be kept in or on the demised premises or any part thereof any materials the keeping of which may contravene any local ordinance statute regulation or bye-law or in respect of which an increased rate of insurance is usually required and in particular not to store any explosive or inflammable materials and to reimburse to the Licensor any increased insurance premium which the Licensor has to pay as a result of the storing of materials in contravention of the policy effected by the Licensor pursuant to Clause 4(c). 30
- (l) To use the demised premises for the purpose only of storing engineering stores equipment and vehicles as aforesaid therein and thereon and if necessary for the purpose of operating a mechanical workshop repair shop and fabricating shop and the same shall be stored and undertaken at the Licensee's sole risk, the Licensor, as hereafter appearing, insuring only the demised premises against fire. 40
- (m) If this licence is extended to a period of more than two (2) years, to paint during the third year thereof with two coats at least of a good paint to be approved by the

Licensors all the wood and iron work already painted in the interior and exterior (including all doors and windows) of all the buildings and to stain varnish and polish all the inside wood already stained varnished and polished and also to distemper and colour wash such inside parts of all the buildings as are now distempered and colour washed.

10

- (n) To yield up the demised premises at the determination of this Agreement in good repair and leave the same clean and tidy in every respect and subject always to complying with sub-clause (g), fair wear and tear is excepted.

4. The Licensor covenants with the Licensee as follows:

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- (a) To pay all existing and future rates taxes and other outgoings imposed or charged upon the demised premises save and except those hereinbefore covenanted to be paid by the Licensee pursuant to Clause 3 (b).

- (b) To repair and keep the main drains and fences on the land and the roofs main structures and walls of the buildings in good and tenantable repair.

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- (c) To insure and keep insured the buildings against loss or damage by fire and to make all payments necessary for that purpose and to produce to the Licensee the policy of such insurance and the receipt for the premium if so required by the Licensee.

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- (d) That the Licensee paying the fee hereby reserved and observing and performing the several covenants and stipulations on its part herein contained shall peaceably hold and enjoy the demised premises during the period of the licence without any interruption by the Licensor or any person rightfully claiming under or in trust for the Licensor.

5. It is hereby mutually agreed as follows :

- (a) If the licence fee hereby reserved or any

Exhibit A.2
Agreed Bundle
of Documents

part thereof shall at any time be unpaid for fourteen (14) days after becoming payable (whether formally demanded or not) or if the covenants on the Licensee's part herein contained shall not be performed or observed (or if the Licensee shall go into liquidation or make any assignment for the benefit of its creditors or enter into any agreement or make any arrangement with its creditors for liquidation of its debts by composition or otherwise or suffer any distress or process of execution to be levied on its goods) then and in any such case it shall be lawful for the Licensor at any time thereafter to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon this licence shall absolutely determine but without prejudice to the right of action of the Licensor in respect of any antecedent breach of the Licensee's covenants herein contained. 10 20

(b) If at any time during the licence the demised premises or any part thereof shall be destroyed or damaged so as to become unfit for occupation or use by fire tempest or other inevitable cause except when such fire shall have been caused by any act or default of the Licensee whereby payment of the policy moneys under any policy of insurance shall be refused then the fee hereby reserved or a fair and just proportion thereof according to the nature and extent of the damage sustained (to be ascertained in the case of dispute by arbitration in the manner provided by the Arbitration Ordinance in force at the time of dispute) shall be suspended and cease to be payable until the demised premises shall have been again rendered fit for habitation and use. The Licensor shall not be bound or compelled to rebuild or reinstate the same unless the Licensor in its discretion thinks fit; in the event of the Licensor deciding not to rebuild or reinstate the demised premises then the fee hereby reserved shall cease and determine from the happening of such event or damage as aforesaid and the Licensee shall peaceably and quietly surrender leave and yield up to the Licensor possession of the demised premises. 30 40 50

(c) The Licensee shall pay all legal fees costs expenses and stamp duty payable in respect of this Agreement.

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(d) Any notice under this Agreement shall be in writing and any notice to the Licensee shall be deemed to be sufficiently served if sent to it by registered post or left at its last known address and any notice to the Licensor shall be deemed to be sufficiently served if delivered to it or sent to it by registered post care of Skrine & Company, Straits Trading Building, 4 Leboh Pasar Besar, Kuala Lumpur.

I N W I T N E S S whereof the parties hereto have hereunto affixed their seals the day and year first above written.

THE COMMON SEAL of AMERICAN
LEAF BLENDING COMPANY LIMITED)
was hereunto affixed in the)
presence of :-)

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Director

Secretary

THE COMMON SEAL of GAMMON
SOUTH EAST ASIA BERHAD was)
hereunto affixed in the)
presence of :-)

Director

Secretary

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

B E T W E E N :

AMERICAN LEAF BLENDING CO SDN BHD

Appellant

- and -

DIRECTOR-GENERAL OF INLAND REVENUE

Respondent

RECORD OF PROCEEDINGS

FRESHFIELDS
Grindall House,
25 Newgate Street,
London EC1A 7LH.

STEPHENSON HARWOOD
Saddler's Hall,
Gutter Lane,
Cheapside,
London EC2V 6BS.

Solicitors for the Appellant

Solicitors for the Respondent