

IN THE PRIVY COUNCIL

No.27 of 1977

O N A P P E A L

FROM THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

B E T W E E N :

UNION CARBIDE SINGAPORE PRIVATE LIMITED

Appellants

- and -

COMPTROLLER OF INCOME TAX

Respondent

CASE FOR THE RESPONDENT

RECORD

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1. This Appeal concerns the computation of the amount of relief on "export profits" that may properly be deducted in ascertaining the income of the Appellant Company for the years of assessment (being calendar years) 1968, 1969, 1970 and 1971, the statutory income of each said year of assessment being the income of an accounting period terminating in the previous calendar year. One year only, namely 1968, the income of which is computed on the amount of gains or profits of the Appellant Company's business of the period 26.12.66 to 25.12.67, has been closely examined in the Courts below, on the footing that the same issues apply to all four years under appeal.

pp. 1 to 17

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2. The issue in this Appeal is the true interpretation of certain statutory provisions now in the Economic Expansion Incentives (relief from income tax) Act (Chapter 135) ("the Incentives Act"). That Act consolidates an earlier Act of 1967 and an amending Act of 1970. Strictly the provisions of the 1967 Act govern the years now under appeal; but in the Courts below reference has been made to the Incentives Act, and the sections particularly relating to this Appeal, namely sections 28(1)

and (2) and 30 of the 1967 Act, now appear without amendment as sections 30(1) and (2) and 32 of the Incentives Act; and there is no other amendment material to the issue in this Appeal. Therefore references to the sections of the Incentives Act have been adopted in the Courts below, and in this Case.

p. 18  
p. 20

pp. 36-37

pp. 47-49

3. The agreed facts are summarized in the Statement of Facts presented to the Income Tax Board of Review, and in the Board's decision. Furthermore, agreed figures relating to the computations are set out in the Judgment of Chua J. in the High Court of Singapore. The area of agreement and dispute as respects statutory provisions is described in the Judgment of the Court of Appeal Briefly the facts are as follows:

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(i) The Appellant Company at all material times carried on a trade in Singapore largely but not wholly directed to exports, and was the holder of an "export enterprise certificate" under section 23 of the Incentives Act. The "tax relief period" under that certificate included all the periods of account and years of assessment now under Appeal.

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(ii) All the conditions for tax relief, set out in sections 31 of the Incentives Act, were complied with, and consequently the Appellant Company was entitled to treat as not forming part of its statutory income for the years under Appeal, and thus as exempt from income tax, the "amount" referred to in section 32(3) of the Incentives Act.

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4. The dispute concerns the computation of that "amount"; in particular the true interpretation and effect of section 32(1) of the Incentives Act. While the dispute centres on section 32(1) aforesaid, the reference in that enactment, and also in section 30(1), to sections 16, 17, 18, 19, 19A, 20, 21 and 22 of the Income Tax Act (all sections dealing with capital allowances) makes it advisable to digress, and summarize the law relating to capital allowances in relation to income tax in Singapore.

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10 Apart from the Incentives Act, a trader carrying on trade in Singapore (such as the Appellant Company) ascertains its income for income tax purposes pursuant to the Income Tax Act. Apart from the usual provisions regulating the deduction of revenue outgoings from gross receipts in order to compute income, the Income Tax Act makes provision for "capital allowances", namely for relief by way of deduction, in order to arrive at income chargeable to income tax, of part of capital expenditure incurred by the trader in carrying on business. The capital allowances are given by the following provisions of the Income Tax Act:

Sections 16, 17 and 18. Industrial Buildings and Structures.

20 A mandatory "initial allowance" for the accounting period in which the expenditure was incurred of 10 per cent thereof, and thereafter a mandatory "annual allowance" in each subsequent year of 2 per cent of the said expenditure.

Section 18A. Plantations.

An allowance of ten per cent of the capital expenditure in the accounting period in which the expenditure was incurred and the nine following accounting periods.

Section 19. Machinery or Plant.

30 An "initial allowance", if claimed by the trader, for the accounting period in which the expenditure was incurred, equal to 20 per cent thereof; and an "annual allowance" if claimed by the trader for every accounting period at the end of which the trader is using the machinery or plant for the purposes of his trade (this annual allowance is at rates prescribed by the Comptroller and is  
40 computed on the "written down" value of the machinery or plant, i.e. on the cost reduced by the initial allowance and previous annual allowances claimed.)

Section 19A. Anti pollution Equipment

Similar allowances to those under section 19 but at different rates.

Section 20, 21 and 22 contain detailed provisions for "balancing allowances and charges" that come into effect on machinery or plant ceasing to be used for a trade, for replacement of machinery and plant, and for building alterations incidental to installation of machinery or plant.

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Capital allowances are not deducted exclusively or even primarily from the revenue produced from the capital assets on the acquisition of which the expenditure is incurred. They are deducted from the income of the entire trade; that is to say, in effect rateably from each part of such income, irrespective of whether it originated in the capital expenditure or not.

5. The method by which the "export enterprise" relief of the Appellant Company has to be computed is as follows:

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(i) The first step is to ascertain the income of the Appellant Company's trade, that is, its export enterprise, for the accounting period in respect of which relief is claimed. That income is ascertained in accordance with the provisions of the Income Tax Act: however one does not deduct any capital allowances: see section 30(1) of the Incentives Act. This is not in dispute.

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(ii) Next, under section 30(2) one ascertains the "total export profits". That expression means that part of the income, ascertained as above, that bears to that income the same proportion that "export sales" of the Appellant Company bear to its "total sales". This is not in dispute.

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(iii) Next, under section 30(3) one ascertains what can conveniently be termed the

"amount of export profit qualifying for relief" or "the excess". This is the excess of the "total export profit" of an accounting period over the "fixed sum" that has to be determined in the manner described in section 30(3). This is not in dispute.

10 (iv) Next, armed with the "amount of export profit qualifying for relief" or "excess" one turns to section 32(1) of the Incentives Act. The effect of this enactment is disputed. The Respondent claims, and the Income Tax Board of Review, the High Court, and the Court of Appeal have held, that section 32(1) has this effect: one modifies the "amount of export profit qualifying for relief" by now making those capital allowances deductions that one was directed to refrain from making at the first step in sub-paragraph (i) above. 20 The Respondent claims that the way one effects the deduction is by deducting the capital allowances from the income of the Appellant Company's trade, so that the deduction falls rateably on that part of the said income that is the "amount of export profit qualifying for relief" and on the remaining part of the said income. 30 The result of deducting from the "amount of export profit qualifying for relief" its rateable proportion of capital allowances deductible from the entire income is to product a "balance". It is the statement of that balance that has to be shown in the statement to be issued pursuant to section 32(2). It is 90 per cent of the said balance that "shall not form part of the statutory income of the export enterprise for that year of 40 assessment but shall be exempt from tax".

The Appellant has however claimed that section 32(1) does not provide for any deduction whatever in respect of capital allowances, in arriving at the amount that is exempt under section 32(3).

6. The Respondent contends that his interpretation of section 32 (1) is correct,

for the following among other reasons.

- (i) Section 32(1) states that "any deductions ... shall be made ...". Any result whereby no deduction whatever is made must be ruled out.
- (ii) Section 30(1) does not take away any substantive right to capital allowances. It is only the first step in computation of total export profit and thus of the tax relief conferred by section 32(3). 10
- (iii) Similarly section 32(1) is only part of the computation of the tax relief conferred by section 32(3). It would be wrong to say that the deduction does not relate to that computation, but is intended to push on to the non-relieved part of a trader's income, namely its non-export part, the whole of the capital allowances. Such an interpretation would result in the Incentives Act not merely giving relief in respect of that part of income ascribable to "export sales", but actually reducing income tax on the "non-export" part of income. 20
- (iv) Section 32(2) refers to a "balance of the export profit". This expression must be given some meaning. Its most obvious, and its correct meaning, is that there is a balance arrived at by deducting from the "amount of export profit qualifying for relief" in appropriate part of capital allowances. 30
- (v) In considering the policy of section 32 (1) (in other words in applying the so-called "mischief rule", it is proper to consider it together with section 30(1), against the background of capital allowances. Moreover two particular points stand out from that background. 40

First, as stated above, capital allowances are deducted from the whole income of a trade, rateably from each

part, and not exclusively or primarily from the revenue produced by the capital asset whose acquisition gave rise to the allowance. Secondly, capital allowances can operate so as to distort a company's income. Sometimes a trading company can use capital allowances to "manipulate" profits, i.e. to increase or decrease the profits of any particular accounting period by means such as delaying or advancing the day on which capital expenditure is incurred, or omitting to claim an initial or annual allowance in respect of machinery or plant in one period, so increasing the annual allowance claimable in a subsequent period. Even without manipulation, incidence of capital allowances may distort profits so as to contradict the true trading record.

It follows from the foregoing that a trading company could - if section 30(1) did not direct the adding back of capital allowances at the start of a computation - manipulate the "amount of export profit qualifying for relief," i.e. the excess of "total export profit" over "fixed sum" for a particular period, although in truth no such excess would exist apart from capital allowances. Alternatively, a trading company might - apart from section 30(1) be faced with the fact that there was no such excess when, apart from capital allowances, such an excess truly existed on the trading record.

Consequently it is sensible to exclude capital allowances before arriving at the said excess: one thus looks at the true trading record. That is the purpose of section 30(1). However, having excluded capital allowances in computing the excess, it would be unjust to make them non-deductible. One therefore concludes that the policy of section 32(1) is to confirm that capital allowances are to be deducted in the way they are normally deductible, that is, rateably from all

trading income. The result of such deduction is that there is a balance. It is this balance that is to be shown in the statement mentioned in section 32(2).

- (vi) It could be argued that section 32(1) would be more accurately worded if some words only added, for example if at the end the following words were added:

"And such deductions shall be made rateably on all parts of the statutory income, both the part that qualifies for relief as aforesaid and the remaining part".

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But those words would be, strictly, superfluous, and are seen to be superfluous once it is appreciated that capital allowances are normally deducted rateably from all parts of the income of a single trade.

7. The Respondent the Comptroller of Income Tax therefore respectfully submits that the Appeal of Union Carbide Singapore Private Limited be dismissed with costs for the following among other

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R E A S O N S

(1) That on the true construction of section 32(1) of the Incentives Act a deduction in respect of capital allowances is required to be made in computing the "export profit" relief claimed by the Appellant Company.

(2) That on such true construction the said deduction is to be made not from any special part of the income of the Appellant Company to the exoneration of any other part, but in the way that capital allowance deductions are normally made that is from the income of the trade in question.

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(3) That the reasoning of the Income Tax Board of Review, of the High Court, and of the Court of Appeal is correct, and their decisions should be upheld.

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D.C. POTTER



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CASE FOR THE RESPONDENT

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