

**Fenwick**

*v.*

**Commissioners of Inland Revenue<sup>(1)</sup>**

*Special Contribution — Aggregate investment income — Whether dividends receivable in the year 1947-48 represented more than the income attributable to one full year if such income were deemed to have accrued from day to day — What constitutes “a full year’s income” — Finance Act, 1948 (11 & 12 Geo. VI, c. 49), Section 61 (1).*

*During the fiscal year 1947-48 F received dividends totalling £1,942 10s. 0d. on his shareholding in a certain company. Of this sum £1,554 0s. 0d. was a final dividend for the company’s trading year to 31st December, 1946, and £388 10s. 0d. an interim dividend for the year to 31st December, 1947. The total dividend was included in the computation of F’s aggregate investment income and he claimed relief under the provisions of Section 61 of the Finance Act, 1948, on the ground that the dividend represented more than the income attributable to a full year if the income were deemed to have accrued from day to day.*

*On appeal before the Special Commissioners against an assessment to Special Contribution, F contended that, by virtue of the provisions of Section 36 (1) of the Finance Act, 1927 (which is applied for Special Contribution purposes by Section 61 (2) of the Finance Act, 1948), the final dividend for the year 1946 and the interim dividend for the year 1947 must be deemed to have accrued during those years respectively so that the total dividend of £1,942 10s. 0d. must be deemed to have accrued over a period of two full years.*

*It was contended on behalf of the Crown that the conditions of Section 61 (1) (b) were not satisfied and that no relief was due.*

*The Commissioners were not satisfied that the total dividend represented more than the income which would be attributable to one full year if the income were deemed to have accrued from day to day and dismissed the appeal.*

*It was held in the High Court that the conditions set out in Section 61 (1) (b) were satisfied and the case was remitted to the Commissioners to determine what relief was due.*

*At the further hearing before the Special Commissioners F contended that the expression “a full year’s income” in Section 61 (1) meant the income relating to the fiscal year 1947-48, and that the amount of that income was so much of the dividends paid for the company’s year 1947 apportioned*

<sup>(1)</sup> Reported (H.L.) [1953] 2 All E.R. 666; [1953] 1 W.L.R. 1039.

*on a day-to-day basis as related to the period from 6th April to 31st December, 1947, together with so much of the dividends paid for the year 1948, similarly apportioned, as related to the period from 1st January to 5th April, 1948.*

*It was contended on behalf of the Crown that the amount of income from the assets included in F's aggregate investment income was equivalent to a full year's income therefrom, as it was equal to the total of the dividends paid for the year 1946.*

*The Commissioners held that the dividends paid for the year 1946 represented the measure of a full year's income and that no relief was due.*

*Held, that the Commissioners were entitled to take the income in respect of the company's year 1946 as representing a full year's income.*

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#### CASE

Stated under the Finance Act, 1948, Section 60, and the Income Tax Act, 1918, Section 149, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 27th October, 1949, Mr. E. A. F. Fenwick (hereinafter called "the Appellant") appealed against:—

(1) an assessment to Special Contribution made upon him under the provisions of Part V of the Finance Act, 1948; and

(2) a determination by the assessing Commissioners refusing the Appellant's claim for relief under the provisions of Section 61 of the Finance Act, 1948.

2. The sole question before us was whether in computing the Appellant's total income and aggregate investment income for the purpose of Special Contribution the Appellant was entitled, in the circumstances hereinafter set out, to any relief under Section 61 of the Finance Act, 1948, in respect of dividends received by him from N. H. & B. Collieries, Ltd. (hereinafter called "the Company").

3. At all relevant times prior to 11th December, 1947, the Appellant held £12,950 ordinary stock in the Company. On 11th December, 1947, consequent upon a reduction of the Company's capital, his holding was reduced to £7,770 ordinary stock.

4. Article 114 of the Company's Articles of Association reads as follows:—

"The Directors may, with the sanction of a General Meeting, from time to time declare dividends, but no such dividend shall (except as by the Statutes expressly authorised) be payable otherwise than out of the profits of the Company. No higher dividend shall be paid than is recommended by the Directors, and a declaration by the Directors as to the amount of the profits at any time available for dividends shall be conclusive. The Directors may, if they think fit, and if in their opinion the position of the Company justifies such payment, without any such sanction as aforesaid, from time to time declare and pay an interim dividend, or pay any preferential dividends on shares issued upon the terms that the preferential dividends thereon shall be payable on fixed dates."

The Company's accounts were made up to 31st December in each year.

5. The Appellant received the following dividends in respect of his holding of ordinary stock in the Company on the dates and in respect of the periods following:—

Date declared	Date received	Description	Period in respect of which paid	Gross amount before deduction of Income Tax
A. 4.7.1946	1.8.1946	3 per cent. Interim	Calendar Year 1946	£388 10s. 0d.
B. 15.5.1947	31.5.1947	12 per cent. Final	Calendar Year 1946	£1,554 0s. 0d.
C. 24.7.1947	1.9.1947	3 per cent. Interim	Calendar Year 1947	£388 10s. 0d.
D. 18.3.1948	23.4.1948	7 per cent. Second Interim.	Calendar Year 1947	£543 18s. 0d.
E. 21.7.1948	1.9.1948	3 per cent. Interim	Calendar Year 1948	£233 2s. 0d.
F. 7.4.1949	13.4.1949	7 per cent. Final	Calendar Year 1948	£543 18s. 0d.

No final dividend was declared in respect of the calendar year 1947.

6. In consequence of the provisions of Section 39 of the Finance Act, 1927, (which provides that income which is chargeable with Income Tax by way of deduction at the standard rate in force for any year shall be deemed to be income of that year) and of the provisions of Section 48 of the Finance Act, 1948, (which provides that, subject as therein provided, income from any source and total income shall be ascertained for the purpose of Special Contribution as they are ascertained for the purposes of Surtax) there fell to be included in the Appellant's total income for 1947-48 and in his aggregate investment income for 1947-48 the two dividends marked B and C in paragraph 5 above, which were declared and paid in the year ending 5th April, 1948, namely:—

B. The 12 per cent. final dividend for the calendar year 1946.

C. The 3 per cent. interim dividend for the calendar year 1947.

The gross amount of these two dividends (i.e. £1,942 10s. 0d.) was accordingly included in the total income and in the aggregate investment income of the Appellant for the purposes of the assessment under appeal.

7. The Appellant made application for relief under Section 61 of the Finance Act, 1948, on the ground that the income so included in his total income and aggregate investment income for the purposes of the said assessment represented more than the income which would be attributable to a period of one full year if the income were deemed to have accrued from day to day. This application was refused by the assessing Commissioners on the ground that relief under the said Section 61 was not allowable.

8. It was contended on behalf of the Appellant:—

(1) that by force of Section 36 (1), Finance Act, 1927, applied by Section 61 (2) of the Finance Act, 1948, the 12 per cent. final dividend paid in respect of the year 1946 must be deemed for the purposes of Section 61 to have accrued from day to day throughout the year 1946, and the 3 per cent. interim dividend paid in respect of the year 1947 must likewise be deemed to have accrued throughout the year 1947;

(2) that the income of the Appellant from his said holding in the Company included in his total income and aggregate investment income must therefore be deemed to have accrued from day to day over a period of two full years;

(3) that the condition to the granting of relief provided in Sub-section 1 (b) of the said Section 61 was accordingly satisfied;

(4) that the appropriate reduction to be made in ascertaining the total income and aggregate investment income of the Appellant under Section 61 was a reduction of one-half of the gross amounts of the two dividends in question, and that relief should be given and the assessment should be reduced accordingly.

9. It was contended on behalf of the Commissioners of Inland Revenue:—

(1) that the condition to the granting of relief provided in Sub-section 1 (b) was not satisfied ;

(2) that no reduction fell to be made in ascertaining the total income and aggregate investment income of the Appellant ;

(3) that the appeals should be dismissed.

10. We, the Commissioners who heard the appeals, gave our decision as follows:—

1. The Appellant received two dividends from N. H. & B. Collieries, Ltd. in the financial year 1947-48 as under:—

(a) a final dividend on account of the year ending 31st December, 1946, at the rate of 12 per cent ;

(b) an interim dividend on account of the year ending 31st December, 1947, at the rate of 3 per cent.

The gross amounts of these two dividends were treated as part of the total income of the Appellant for 1947-48 and as part of his total income and aggregate investment income for the purposes of Special Contribution. It was not disputed that they were correctly so treated (subject to the Appellant's claim for relief under Finance Act, 1948, Section 61).

The Appellant has appealed against the assessment to Special Contribution and against a determination refusing his application for relief under Section 61, and the only arguments addressed to us related to the application under Section 61.

2. The matter in dispute turns largely upon the true meaning of Section 61, and in particular of Sub-section (1), paragraph (b), and before examining the Appellant's contentions it is necessary to give our opinion on the construction of paragraph (b).

Paragraph (b) requires us to satisfy ourselves whether

“the income from the assets represents more than the income which would be attributable to a period of one full year if the income were deemed to have accrued from day to day”.

“The income from the assets” can only refer, in our opinion, to that part of the Appellants total income as ascertained for the purposes of Surtax as is derived from the assets in question (which for convenience we will style “the statutory income”). On the other hand, the “income” which we are to deem to have accrued from day to day must refer to some specific fruit of the assets (i.e. in this case, some specific dividends)—so much is clear, in our view, from reading Section 36 (1) of the Finance Act, 1927, to which we are referred in Section 61 (2).

3. It was contended on behalf of the Appellant that in considering what is

“the income which would be attributable to a period of one full year if the income were deemed to have accrued from day to day”

we are entitled to look only at the two dividends which were received in 1947-48 and which accordingly are represented by the “income from the assets”.

On our reading of Section 61, we can find no justification for this contention. In our opinion we are required to compare two things, the statutory income and the income which would be attributable to one full year. The two dividends in question come into the picture because they are represented by the statutory income; they accordingly form one of the subjects for the comparison we have to make. When we come to consider the other subject for the comparison (the income which would be attributable to one year) we see no valid reason why we should be confined to these two dividends and ignore any other dividends paid on account of the same years or periods. On the contrary, we are of opinion that we are obliged to take into consideration all dividends which on the assumption of a day to day accrual, would be attributable to whatever period is adopted as representative of "one full year", whether such dividends were receivable during the financial year 1947-48 or not.

4. The two dividends received in 1947-48 were a final dividend at the rate of 12 per cent. for the Company's accounting year ending 31st December, 1946, and an interim dividend at the rate of 3 per cent. for the year ending 31st December, 1947.

For the Company's year ending 31st December, 1946, in addition to the said final dividend at the rate of 12 per cent., there had been paid an interim dividend at the rate of 3 per cent. The income, therefore, received in 1947-48 was equal to the income, which, on a day to day accrual basis, was attributable to the Company's year ending 31st December, 1946.

In view of this, and on our construction of Section 61, we are not satisfied that the Appellant's income from the assets represents more than the income which would be attributable to a period of one full year if the income were deemed to have accrued from day to day, and accordingly we dismiss both appeals and leave the figures to be agreed.

Figures having been agreed in accordance with our decision, we subsequently reduced the assessment to an agreed amount.

11. The Appellant, immediately after the determination of the appeal, declared to us his dissatisfaction therewith as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court pursuant to the Finance Act, 1948, Section 60, and the Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

12. The question of law for the opinion of the court is whether, in the circumstances hereinbefore set out, the Appellant is entitled to relief under the provisions of Section 61 of the Finance Act, 1948.

R. A. Furtado, }  
A. W. Baldwin, } Commissioners for the Special Purposes  
of the Income Tax Acts.

Turnstile House,  
94-99, High Holborn,  
London, W.C.1.

19th June, 1950.

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The case came before Dankwerts, J., in the High Court on 27th October, 1950, when judgment was given against the Crown, with costs. It was ordered that the case be remitted to the Special Commissioners for further consideration.

Mr. Cyril King, K.C., and Mr. H. H. Monroe appeared as Counsel for the taxpayer, and Mr. J. Millard Tucker, K.C., Mr. J. H. Stamp and Mr. Reginald P. Hills for the Crown.

**Danckwerts, J.**—This is an appeal which involves consideration of the very troublesome provisions of Section 61 of the Finance Act, 1948. That is a section which provides for the giving of relief in certain circumstances to taxpayers who have to pay the Special Contribution which is levied in respect of the year 1947-48 under Section 47 of the same Act, that is to say, a tax which is to be paid by the taxpayers whose total income for the year 1947-48 exceeds £2,000 and whose aggregate investment income for that year exceeds £250.

Section 48 of the Finance Act, 1948, provides that

“Subject to the provisions of this Part of this Act, income from any source and total income shall be ascertained for the purposes of this Part of this Act as they are ascertained for the purposes of sur-tax; and subject as aforesaid income shall be treated for the purposes of this Part of this Act as income of an individual if it would be so treated for the purposes of sur-tax”.

Now, Section 61, the section dealing with relief, is in the following terms:

“(1) Where—(a) either before or after an assessment to contribution is made, but in any case before such an assessment has become final, application is made to the Special Commissioners for relief under this section, and (b) the Special Commissioners are satisfied as respects any assets that, by reason of the provisions of the Income Tax Acts which require that income which is chargeable with income tax by way of deduction shall be deemed to be income of the year in which it is receivable, the income from the assets represents more than the income which would be attributable to a period of one full year if the income were deemed to have accrued from day to day”.

then, the Section goes on to say,

“the Special Commissioners shall in ascertaining total income and aggregate investment income for the purposes of this Part of this Act make such reduction, if any, as may be appropriate to secure that there shall be taken as representing the income from the assets an amount equivalent to a full year's income therefrom.”

Sub-section (2) applies certain provisions of the Finance Act, 1927, in this way: it says:—

“Subsection (1) of section thirty-six of the Finance Act, 1927 (which specifies the period over which income is deemed to have accrued from day to day) shall apply for the purposes of paragraph (b) of the last foregoing subsection as it applies for the purposes of section thirty-four of the said Act of 1927 (which makes in relation to surtax the like provision as subsection (1) of this section)”.

Referring, therefore, to the Finance Act of 1927, one finds in Section 34 the provision that

“If, on an application made by any individual for the purpose, either at the time of making his return for the purposes of super-tax”

—which, of course, is the same as Surtax—

“for any year or within the time limited for appealing against the assessment upon him to super-tax for that year, the applicant proves to the satisfaction of the Special Commissioners—(a) that, as respects any assets, in consequence of the operation of the provisions of the Income Tax Acts which require that for purposes of super-tax any income which is chargeable with income tax by way of deduction shall be deemed to be income of the year in which it is receivable, the income from those assets, as estimated for the purposes of super-tax for that year, represents more than the income which would be attributable to a period of one full year if the income were deemed to have accrued from day to day”.

(Danckwerts, J.)

and then there is a provision that if the amount of super-tax payable exceeds by more than 5 per cent. the amount which would have been payable if the amount was attributable to a period of one full year,

"the Special Commissioners shall charge him to super-tax, or adjust his liability to super-tax, for that year and any succeeding year so as to give such relief as may be just, having regard to all the circumstances and in particular to the amount of any liability or additional liability to super-tax which would have arisen for any preceding year or years if . . ."

certain things happen.

Now Section 36 provides that

"(1) Any income arising in respect of any assets which for any of the purposes of the last three preceding sections of this Act is deemed to have accrued from day to day or which is to be computed as if it were income that accrued from day to day shall—(a) if payable in respect of any stated period, be deemed to have accrued from day to day during that period"

and then there is another provision dealing with certain special circumstances which I do not think I need read.

Now, in the present case the Appellant was the holder, until 11th December, 1947, of £12,950 of ordinary stock in a colliery company called the N. H. & B. Collieries, Ltd., but on 11th December, 1947, consequent upon the reduction of the company's capital, his holding was reduced to £7,770 of ordinary stock.

The dividend which the Appellant received in respect of his holding of stock in the company and the date in respect of which it was paid and received were as follows: they are numbered A, B, C, D, E and F in the Case stated by the Special Commissioners: A was declared on 4th July, 1946, and received on 1st August, 1946, a 3 per cent. interim dividend in respect of the calendar year 1946, and was the sum of £388 10s. B, which was declared on 15th May, 1947, and was received on 31st May, 1947, was a 12 per cent. final dividend in respect of the calendar year 1946, and amounted to a sum of £1,554. C, which was a dividend declared on 24th July, 1947, and paid on 1st September, 1947, was a 3 per cent. interim dividend in respect of the calendar year 1947, and amounted to the sum of £388 10s. D, which was declared on 18th March, 1948, and was paid on 23rd April, 1948, was a 7 per cent. second interim dividend in respect of the calendar year 1947, and amounted to a sum of £543 18s., and no final dividend, it is to be observed, was declared or paid in respect of the year 1947. E, which was declared on 21st July, 1948, and paid on 1st September, 1948, was a 3 per cent. interim dividend in respect of the calendar year 1948, and amounted to £233 2s. F, which was declared on 7th April, 1949, and paid on 13th April, 1949, was a 7 per cent. final dividend in respect of the calendar year 1948, and amounted to £543 18s.

Now, the two dividends which were received within the financial year 1947-48 were B and C, and the aggregate of those two was the sum of £1,942 10s., and therefore it is in respect of that income that I have to consider the provisions of Section 61 of the Finance Act, 1948.

The difficulties, really, in applying that Section are caused by, I think, two things: first of all, that the company's financial year ended on 31st December in each year and therefore was not the same as the taxation financial year ending on 31st March and beginning on 1st April; and secondly, the matter is complicated by the fact that, instead of there being just one

**(Danckwerts, J.)**

final dividend in respect of each of the company's years, there are the interim dividends to which reference has been made. It is in applying these particular circumstances, therefore, that one has to consider the effect of Section 61 of the Finance Act of 1948.

Therefore I refer again to Section 61 (1) (b), and I shall have to read the provisions of that paragraph again. The Special Commissioners have got to be satisfied as regards something

“ as respects any assets ”

which means capital and assets from which the income is to be derived

“ by reason of the provisions of the Income Tax Acts which require that income which is chargeable with income tax by way of deduction shall be deemed to be income of the year in which it is receivable ”

—and those are the provisions of the Finance Act, 1927—

“ the income from the assets ”

—and it is accepted by both the Crown and the Appellant, both of whom, I understand, agree that the Section is saying that you have got to include after that the words

“ included in the total income for the year 1947-48 ”

that is, the Appellant's total income for the year 1947-48, that income which we are considering—

“ represents more than the income which would be attributable to a period of one full year if the income were deemed to have accrued from day to day ”.

Mr. Cyril King, on behalf of the Appellant, says that the income which is

“ deemed to have accrued from day to day ”

under this provision must be the Appellant's income brought in in the way we have just considered in respect of the financial year 1947-48. He says that if you therefore refer to dividends which are included in the returnable income (if I may call it that) for the years 1946 in one case and 1947 in the other, in respect of which they were payable, the result is that they are attributable to a period of more than one full year; and accordingly, that the conditions for relief are satisfied, and the Special Commissioners therefore have to go on and consider whether any reduction should be made. I think that is as high as he puts his case. He says that the Special Commissioners have refused to consider relief, as not having satisfied the conditions of Section 61, and therefore have made no consideration as to whether any reduction at all should be made. The contention on behalf of the Appellant is that the conditions are satisfied, and that it is a matter which will require reference back to the Special Commissioners to ascertain whether any reduction should be made in the circumstances of this case.

On the other hand, it is argued on behalf of the Commissioners of Inland Revenue that the income which is deemed to have been accrued from day to day, the income for 1947-48 which has been returned, does not represent more than the income which would be attributable to a period of one full year. It is a matter which is not at all clear, and which has given rise to very considerable doubt in my mind, because it is difficult to know exactly what is the meaning of “ one full year ”; whether that means one full financial year, or one full calendar year, which of course would be the same as the Company's year, or what exactly it means. It is to



**(Danckwerts, J.)**

be noted that very much the same phrase appears in the concluding words of the Sub-section :

“ an amount equivalent to a full year's income therefrom ”.

If one refers to the table of the dividends which were received, which is in the Case Stated which I have already quoted, one finds that the 12 per cent. final dividend which was received in 1947-48, but declared in respect of the calendar year 1946, was part of the company's declared dividend in respect, of course, of the year 1946, which was made up to a total of 15 per cent. with the addition of the 3 per cent. interim dividend. So that, in respect of the 1946 calendar year, the amount of the company's declared dividend amounted to exactly the same sum as the two dividends B and C which have been declared in respect of the year 1947-48, that is to say £1,942 10s. On the other hand, if you take the second of the dividends which has been included in the return, that is C, that is part of the company's declarations in respect of the year 1947, and the declarations in respect of the year 1947 have also to include the 7 per cent. second interim dividend in respect of the calendar year 1947, amounting to £543 18s. So that if you take the calendar year's dividend for 1947, you get a total of a smaller sum, 10 per cent., not 15 per cent., in respect of that year.

I find it very puzzling to decide which is the correct construction to give to this Sub-section, but on the whole I come to the conclusion that the income which is referred to in (b) must be the income which is the income from the assets. I think you must give the same meaning to it and include it in the total income for 1947-48, and it seems to me on the whole that there is a case to be considered for relief in this matter.

It appears to me, therefore, that the Special Commissioners were not right in deciding that no case for their consideration arose at all and that the conditions were not satisfied, and it remains to remit the case back to the Special Commissioners for consideration as to whether some reduction should not be made to secure that there shall be taken as representing the income from the assets

“ an amount equivalent to a full year's income therefrom ”.

It may be that the result will be that no payment for relief will arise in fact or it may be that some payment for relief will arise, but it seems to me that it is appropriate that it should be remitted back to the Special Commissioners, and that they should consider whether they should make any reduction in this case.

That means that the appeal is allowed, does it not?

**Mr. J. Millard Tucker.**—Yes, my Lord, that the appeal is allowed to the extent that the case is to be remitted to the Special Commissioners for further consideration on the lines of your Lordship's judgment. The only question now is the question of costs.

**Danckwerts, J.**—I suppose the Appellant succeeded?

**Mr. Tucker.**—In a sense I agree that my learned friend has succeeded, but if the matter goes back to the Special Commissioners and nothing comes from it as a result, then the whole of this case has been purely academic.

**Danckwerts, J.**—Yes, but on the other hand the Appellant has been denied the opportunity which, according to my judgment, he is entitled to.

**Mr. Tucker.**—Well, he put his claim, as your Lordship knows, to have the two added together and reduced by a half.

**Danckwerts, J.**—Yes, I know he did.

**Mr. Tucker.**—And it seems highly improbable that the Special Commissioners would do that in any event. I was going to submit that your Lordship should do this—I will just look up the Section and show your Lordship what powers your Lordship has. It is the Income Tax provisions as to appeals applying equally to Special Contribution. It is Section 149 (2) (a) of the Income Tax Act, 1918:

“The High Court shall hear and determine any question or questions of law arising on the case, and shall reverse, affirm, or amend the determination in respect of which the case has been stated, or shall remit the matter to the Commissioners with the opinion of the Court thereon, or may make such other order in relation to the matter, and may make such order as to costs as to the Court may seem fit.”

**Danckwerts, J.**—Then what I do is to remit the matter “with the opinion of the Court thereon”?

**Mr. Tucker.**—Yes, my Lord, remit the matter with the opinion of the Court that they ought to take the matter into consideration on the substantive part of the Section. In regard to costs, your Lordship could say that the Special Commissioners are to report back to the Court the result, and then reserve the costs until that is done.

**Danckwerts, J.**—That seems a bit cumbrous to me. It would mean that you would have to come back.

**Mr. Tucker.**—We might not have to come back, because there may be nothing there.

**Mr. Cyril King.**—I submit that I am entitled to my costs here. I have been denied the opportunity of discussing this main question, and my learned friend will not forget that my client unfortunately will have to pay interest on this: this hearing was on 1st October of last year. I ask for costs here. I might never have to trouble your Lordship again, but that really is not meeting me. Otherwise I agree with what my learned friend says.

**Danckwerts, J.**—It is in my discretion?

**Mr. Tucker.**—Yes, it is in your Lordship’s discretion.

**Danckwerts, J.**—I think the Appellant should have his costs.

**Mr. Tucker.**—If your Lordship pleases.

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The case was accordingly again considered by the Special Commissioners and the following Supplemental Case stated.

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#### SUPPLEMENTAL CASE

Stated under the Finance Act, 1948, Section 60 and the Income Tax Act, 1918, Section 149.

1. Under an Order of the High Court dated 27th October, 1950, this case was remitted to us for further consideration in accordance with the judgment of the Court. Pursuant to the said Order we held a further meeting on 3rd April, 1951.

2. No further evidence was adduced before us, but our attention was drawn to the fact, which does not clearly appear in the principal Case, that of the dividends particularized in paragraph 5 thereof, those prefixed A, B and C were declared and paid in respect of the full capital of the Company before the reduction of capital referred to in paragraph 3 of the principal Case, and those prefixed D, E and F were declared and paid in respect of the reduced capital.

3. It was contended on behalf of the Appellant:—

(1) that the expression “a full year’s income” in the latter part of Section 61 (1) of the Finance Act, 1948, must be taken to refer to the same period of time as the expression “a period of one full year” in paragraph (b) of the Sub-section, i.e. the fiscal year 1947–48;

(2) that in ascertaining the “amount equivalent to a full year’s income” for the purpose of Section 61 (1) regard should be had to the dividends paid for the Company’s account years falling within the fiscal years 1947–48, i.e. dividends C and D (paid for the year 1947) and E and F (paid for the year 1948);

(3) that, even if Section 61 (1) did not require the income for the fiscal year 1947–48 apportioned on a day to day basis to be taken as the “amount equivalent to a full year’s income” in every case, in the circumstances of the present case no more appropriate method of calculating the required figure was available;

(4) that so much of dividends C and D as on a day to day apportionment relates to the period from 6th April to 31st December, 1947, together with so much of dividends E and F as on a similar apportionment relates to the period from 1st January to 5th April, 1948, should be taken as being a full year’s income from the assets;

(5) that such reduction should be made in ascertaining the total income and aggregate investment income of the Appellant as would secure that there would be taken as representing the income from the assets an amount arrived at in the manner indicated in sub-paragraph (4) above.

4. It was contended on behalf of the Commissioners of Inland Revenue that the amount of income from the assets included in the Appellant’s total income and aggregate investment income was equivalent to a full year’s income therefrom as the amount so included was equal to the sum of two dividends received for the calendar year 1946, and, therefore, no relief was appropriate and no reduction fell to be made.

5. We, the Commissioners who heard the appeal, gave our decision as follows:—

(1) The question for our decision, following the order of the High Court in *Fenwick v. Commissioners of Inland Revenue*, is what reduction (if any) should in the circumstances of the case be made in ascertaining the total income and aggregate investment income of the Appellant.

(2) We are directed, by Section 61 of the Finance Act, 1948, to make “such reduction, if any, as may be appropriate to secure that there shall be taken as representing the income from the assets an amount equivalent to a full year’s income therefrom.”

(3) The judgment of Danckwerts, J., in *Fenwick v. Commissioners of Inland Revenue* turns upon the language of paragraph (b) of Section 61 (1), which uses the expression

“the income which would be attributable to a period of one full year if the income were deemed to have accrued from day to day”;

we do not find anything therein which guides us as to the meaning of "a full year's income" in that part of the Section which we have to consider.

(4) It seems to us a necessary implication from the context that "a full year's income" does not mean the income received in the year of charge; nor do we think it *necessarily* means income which might, by applying the provisions of Section 36 of the Finance Act, 1927, be attributed to the year of charge, as the said Section 36 is not expressly made applicable to the part of Section 61 with which we are immediately concerned.

(5) According to the context and the natural meaning of the language used, we think the expression "a full year's income" means a full year's income in reality, ascertained by real and natural, and not by artificial tests.

(6) The Appellant contends that we should take as "a full year's income" the income attributable to the year of charge (1947-48) upon the basis of a day to day apportionment of the relevant dividends. This involves including part of a dividend for the calendar year 1948, declared on 7th April, 1949, which could never, in reality, be income of 1947-48. Moreover, it rests upon an interpretation of the Section which would oblige us, in cases like the present, to wait until 1949 before deciding what relief (if any) is due. We are of opinion that it contains such an element of artificiality that we should reject it if any more natural basis is available.

(7) Having regard to the nature of the assets and all the circumstances, we think that the most real and natural test we can adopt is to have regard to the dividends received in respect of the Company's successive financial years, each of which coincides with a full calendar year. The two years to which we most naturally turn are 1946 and 1947.

(8) The 1946 dividends are equal to the statutory income; the 1947 dividends are less than the statutory income. In these circumstances it seems to us that we should make no reduction at all; to do so would be to reduce the income *below* the amount received in respect of 1946, which according to the test we have applied is a full year's income, and this the Section does not entitle us to do.

(9) Accordingly we dismiss the appeal.

6. The Appellant immediately after the determination of the appeal declared to us his dissatisfaction therewith as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court pursuant to the Finance Act, 1948, Section 60, and the Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

The question of law for the opinion of the Court is whether on the evidence before us we were entitled to hold that no reduction in ascertaining the total income and aggregate investment income of the Appellant was appropriate under the provisions of Section 61 of the Finance Act, 1948.

R. A. Furtado, }  
A. W. Baldwin, } Commissioners for the Special Purposes  
of the Income Tax Acts.

Turnstile House,  
94-99, High Holborn,  
London, W.C.1.  
14th September, 1951.

The case came before Donovan, J., in the High Court on 7th March, 1952, when judgment was again given against the Crown, with costs.

Mr. Cyril King, Q.C., and Mr. H. H. Monroe appeared as Counsel for the taxpayer, and Mr. L. C. Graham-Dixon, Q.C., Mr. J. H. Stamp and Sir Reginald Hills for the Crown.

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**Donovan, J.**—The Appellant in this case is aggrieved by the amount of the assessment upon him to Special Contribution, which he thinks is excessive, but which the Special Commissioners have twice ruled is not.

The Special Contribution is a capital levy imposed by the Finance Act, 1948, and the extent of it is measured by the amount of the individual's income. The conditions of liability are, first, a total income of more than £2,000 for the year of assessment 1947-48 and second, an aggregate investment income of more than £250 for the same year. The tax is computed on a scale which rises according to the amount of the aggregate investment income. The lowest rate is 2s. in the £, the highest 10s.

It follows that if, by chance, an individual received in 1947-48 dividends on some particular shares which really represented two years' dividends instead of one, the Special Contribution might be materially increased, since such dividends are "investment income". This is what has happened in Mr. Fenwick's case. In 1947-48 he held £12,950 ordinary stock in a concern known as N. H. & B. Collieries, Ltd. Dividends were paid on these shares in 1947-48 as follows: On 31st May, 1947, £1,554; on 1st September, 1947, £388 10s.

The dividend of £1,554 was declared as a final dividend of 12 per cent. for the calendar year 1946; the £388 10s. as an interim dividend of 3 per cent. for the calendar year 1947. The Finance Act of 1948 makes both these dividends part of Mr. Fenwick's aggregate investment income for 1947-48 for the purpose of the Special Contribution, and so increases the amount he has to pay. It matters not that the £1,554 was, so to speak, an alien dividend, by which I mean a dividend declared in respect of one year but paid in a succeeding year.

Section 61 of the Finance Act, 1948, provides a measure of relief in such cases. It follows the lines of earlier legislation designed to give relief against excessive Surtax due to the same cause. For Surtax purposes, if a man has an investment on which, for some reason or another, two years' dividends are declared in one year of assessment, his Surtax bill, in the absence of some relief, will be swollen. Not only is the amount of his total income increased, but the rate of tax goes up, so that he may pay more Surtax than he would have done had each dividend been paid in the year for which it was declared.

In the days of Super-tax, that is, before 1927, the position was the same, though the relevant legislation producing this result was less explicit. In 1922 the position was challenged by a Mr. Hurl, whose Super-tax was increased in the way I have described, but he met with no success, the Court of Session holding that his dividends became income for Super-tax purposes when they were declared and paid, and not before. The case is reported in 8 T.C. 292. (*Mark Hurl v. Commissioners of Inland Revenue.*)

(Donovan, J.)

The law remained thus until 1927, when Surtax superseded Super-tax. Then two things, among others, were done. First, it was made more explicit than before that dividends from which tax is deductible at source are for Surtax purposes all income of the year when they are received. This was done by Section 39 of the Finance Act, 1927. Second, that when dividends relating to two or more years are all received in one year, there shall be a measure of relief. This was accorded by Sections 34 to 36 of the same Act. Their effect may be summarised thus. If a dividend for year 1 and a dividend for year 2 are both declared and paid in year 2, then on application by the Surtax payer for relief against his assessment for year 2, the dividends would be deemed to accrue from day to day over both years 1 and 2. This would take the dividend for year 1 out of year 2 altogether, and the Surtax for year 2 would be calculated accordingly. But of course extra Surtax might have been payable for year 1 had the first dividend actually been paid in year 1 and the Legislature directed the Special Commissioners to take this into account when deciding what relief was just in respect of year 2. This example illustrates the working of the Sections in a simple case, which is enough for present purposes.

Since investment income is calculated for the purposes of the Special Contribution in like manner as income from dividends is calculated for the purposes of Surtax, it was obvious from the outset that a similar provision for relief would be necessary in a case where two or more years' dividends were declared and paid in the one year 1947-48. This relief is provided, as I say, by Section 61 of the Finance Act, 1948. One will have to get to grips with the Section presently; but its effect, broadly speaking, is to apportion the two dividends on a day-to-day basis over the whole period for which they were declared payable. This will give a reduced amount of income from that source for 1947-48, inasmuch as the alien dividend, or some of it, will be apportioned to an earlier year. Then the Special Commissioners are—and here I quote the Section—to

“make such reduction, if any, as may be appropriate to secure that there shall be taken as representing the income from the assets an amount equivalent to a full year's income therefrom.”

In the present case, notwithstanding that dividends relating to two years were received by Mr. Fenwick in 1947-48 on his stock in N. H. & B. Collieries, Ltd., the Special Commissioners have twice decided that no reduction in his investment income for purposes of Special Contribution is appropriate.

To understand how this comes about, there is no escape from reading Section 61 in full. It says:

“(1) Where—(a) either before or after an assessment to contribution is made, but in any case before such an assessment has become final, application is made to the Special Commissioners for relief under this section, and (b) the Special Commissioners are satisfied as respects any assets that, by reason of the provisions of the Income Tax Acts which require that income which is chargeable with income tax by way of deduction shall be deemed to be income of the year in which it is receivable, the income from the assets represents more than the income which would be attributable to a period of one full year if the income were deemed to have accrued from day to day, the Special Commissioners shall in ascertaining total income and aggregate investment income for the purposes of this Part of this Act make such reduction, if any, as may be appropriate to secure that there shall be taken as representing the income from the assets an amount equivalent to a full year's income therefrom.

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(2) Subsection (1) of section thirty-six of the Finance Act, 1927 (which specifies the period over which income is deemed to have accrued from day to day) shall apply for the purposes of paragraph (b) of the last foregoing subsection as it applies for the purposes of section thirty-four of the said Act of 1927 (which makes in relation to surtax the like provision as subsection (1) of this section)."

The incorporation of Section 36 (1) of the Finance Act, 1927, simply means this, that where, as in the present case, the dividends are declared in respect of a stated period, they shall, for the purposes of granting relief, be deemed to have accrued from day to day over that period.

Mr. Fenwick applied for relief under Section 61 to the Special Commissioners on 27th October, 1949. He proved that for 1947-48 he received dividends on his stock which related to more than one year, and contended, therefore, that relief was due. The Special Commissioners held that he had not satisfied the conditions for relief specified in Section 61 (1) (b) and refused his application. They gave their decision in writing. It is not simple to follow but, if I understand it rightly, its basis is this: (1st) When Section 61 (1) (b) refers to "the income from the assets", it means that part of the Appellant's total income for Surtax purposes as is derived from the assets in question. For 1947-48 that would mean the two dividends declared and paid in that year, that is, the £1,554 and the £388 10s.; (2nd)

"On the other hand"

(those are their words) the expression, in the same Section 61 (1) (b),

"the income which would be attributable to a period of one full year if the income were deemed to have accrued from day to day"

refers, in a case like the present, to dividends on the stock generally, that is, whether actually declared and paid in 1947-48 or in any earlier year. (3rd) Accordingly, Section 61 (1) (b) prescribes two things for comparison: (a) the two dividends actually paid in 1947-48, which, in the absence of relief, will form the statutory income from the assets for 1947-48; and (b) all dividends which, on a day-to-day apportionment, would form the income of some other year, to be taken by the Special Commissioners as representative of "one full year". (4th) If (a) is no greater than (b), no relief is appropriate. (5th) In the present case the dividends actually paid in (not for) 1947-48 amounted to 15 per cent., that is, 12 per cent., amounting to £1,554, and 3 per cent., amounting to £388 10s. But the dividends paid for the calendar year 1946, apportioned on a day-to-day basis, amounted to 15 per cent. on the capital also. (6th) Accordingly, therefore, while 1947-48 contained an alien dividend, the result was not to include in that year more income than the income attributable on a day-to-day basis for one full year, the full year selected for the purpose of comparison being the calendar year 1946. So the Special Commissioners held that no claim to relief was competent.

This conclusion inevitably depends upon whether Section 61 entitles the Special Commissioners, first, to select some year which they regarded as representative; second, to see what dividends were apportionable to that year by apportioning the actual dividends on a day-to-day basis over the period for which such dividends were paid; and, third, to compare the result thus obtained with the statutory income for 1947-48. If the Special Commissioners' view that they were entitled to do this were right, no quarrel could be found with their conclusion that no relief was due. But this view

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Mr. Fenwick challenged, and Danckwerts, J., decided in his favour on 27th October, 1950. He said this<sup>(1)</sup>, after quoting the facts and the Section :

" I find it very puzzling to decide which is the correct construction to give to this Sub-section, but on the whole I come to the conclusion that the income which is referred to in (b) must be the income which is the income from the assets. I think you must give the same meaning to it and include it in the total income for 1947-48, and it seems to me, on the whole, that there is a case to be considered for relief in this matter. It appears to me, therefore, that the Special Commissioners were not right in deciding that no case for their consideration arose at all and that the conditions were not satisfied, and it remains to remit the case back to the Special Commissioners for consideration as to whether some reduction should not be made . . . ."

When one reads the contentions for the taxpayer set out in the Case Stated before Danckwerts, J., and referred to by him in his judgment, it is clear that he construed thus the following expressions in Section 61 (1) (b). First, the expression

" the income from the assets "

That meant the two dividends of £1,554 and £388 10s. Second, the expression

" the income which would be attributable to one full year if the income were deemed to have accrued from day to day "

This meant the result shown by apportioning each of the same two dividends over the period for which it was declared payable. Here, therefore, he differed from the Special Commissioners, who construed this second expression as referring to the result obtained by apportioning other dividends in the selected representative year. So that he rejected the construction of Section 61 (1) (b) adopted by the Special Commissioners, and which was the foundation of their decision. Accordingly, the case was remitted to them to consider what relief should be granted. The Special Commissioners did so on 30th April, 1951. They now had to deal with the case on the basis that Mr. Fenwick had satisfied the conditions for relief prescribed by Section 61 (1) (b), and they therefore had to administer the concluding part of Section 61 (1) which reads thus :

" . . . the Special Commissioners shall in ascertaining total income and aggregate investment income for the purposes of this Part of this Act make such reduction, if any, as may be appropriate to secure that there shall be taken as representing the income from the assets an amount equivalent to a full year's income therefrom."

In proceeding to do this, the Special Commissioners said, quite rightly, that, accepting Danckwerts, J.'s judgment, they still had to construe the expression " equivalent to a full year's income " appearing in the concluding part of Section 61 (1). They did not think it necessarily meant the income which on a day-to-day apportionment of the £1,554 and the £388 10s. would be the income for 1947-48. They considered it more real and natural to look at the company's successive fiscal years, and select one of these as showing what a full year's income was. They selected the two calendar years 1946 and 1947. They found that in the calendar year 1946 the dividends paid were equal to the dividends paid in the year of assessment 1947-48—the year of assessment under review. In the calendar year 1947 the dividends were less than the dividends paid in the year of assessment 1947-48. But they took 1946 as showing what a full year's income really was, and as this was equal to the income actually paid in 1947-48 they

(1) See page 419 *ante*.



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granted no relief. In summary therefore, the Special Commissioners' treatment of the whole matter was this. When they first dealt with it, they held that when they were considering whether a claim for relief were competent at all, they were entitled to select any one of the company's past years as a means of ascertaining, on an apportionment basis, what was the income "attributable to a period of one full year". When told this was wrong, and when asked to consider what was the appropriate relief, they take the same view for the purpose of ascertaining what is "a full year's income", except that they look at actual dividends paid in the year selected as representative, and do no apportionment.

Mr. Fenwick now appeals again, and the matter comes before me in February, 1952. The issue I have to decide crystallises into this problem. What is the true interpretation of the words "a full year's income" in the concluding part of Section 61 (1)? It is clear it does not mean a year as full of dividends as a quiver is sometimes said to be full of offspring. I do not see what tests could really be applied to solve such a problem. The word "full" governs the word "year" and, of course, at once gives rise to the question: What is the difference between a full year and a year? I do not think there is any. The statute, in my opinion, by the use of the word "full", is simply emphasising that a year, and not less than a year, is to be taken for the purposes of Section 61. One could read the concluding part of Section 61 (1) as though it simply said "equivalent to a year's income therefrom" without altering its meaning.

Two alternative constructions present themselves. First, that the words "a full year's income" simply refer back to the result of the apportionment of the £1,554 and the £388 10s. already done under paragraph (b) of Section 61 (1). That is to say, you arrive at a full year's income by means of that apportionment. To take an example: suppose for 1946 and 1947 dividends were paid in 1947-48 amounting to £2,000, and that on an apportionment basis the amount attributable to 1947-48 was £1,000. Then this £1,000 would, under the concluding words of Section 61 (1), have to be taken as the income equivalent to a full year's income. This £1,000 might have to be increased by an apportioned part of some dividend declared after 5th April, 1948, which related in part, however, to the period 6th April, 1947—5th April, 1948. This first construction is the construction contended for by the taxpayer.

The alternative construction is that adopted by the Special Commissioners and now supported by the Respondents. They say that the words involve that the Special Commissioners are to look back through the dividend history of the company, select some year which they think is representative, and say that the actual dividends in that year represent "a full year's income". To test this construction, let me consider once more the example I have just given. The taxpayer has proved that two years' dividends amounting to £2,000 were paid in the one year 1947-48, and that the result of the apportionment of both dividends on a day-to-day basis results, in terms of Section 61 (1), that £1,000 is the income "attributable to a period of one full year" within the meaning of Section 61 (1) (b). I should have thought, in the absence of clear words to the contrary (and subject to some dividend covering part of 1947-48 being declared late) that that is the amount which Parliament intended should be the measure of the income from these assets for the particular purpose in hand. But the Special Commissioners and the Crown say: "No, that is not so: £2,000 is still the measure of that income."

(Donovan, J.)

Why? Because, they say, when we have to construe the expression "a full year's income", we can switch to any other year in the past we like, and which we think is representative, and in the year we select we find £2,000 dividends were paid in that year.

With no hesitation I say that such a construction is wrong. Really the only substantial argument advanced in favour of it was this. On the basis that the taxpayer's construction is right, why should the Section say that the Special Commissioners shall make "such reduction, if any"? Because there would always, on this construction, be a claim for relief. I agree there would; because if by such apportionment you exclude all or part of an alien dividend, the result is to give you less income for 1947-48. If the words "if any" would be empty of meaning unless the Special Commissioners' construction were right, that would give some impetus towards upholding that construction. Such, however, is not the case. It may be that a dividend is declared in a later year, for example in 1949, for a period part of which falls in 1947-48. This would not need to be apportioned under the provisions of Section 61 (1) (b) to see whether a claim for relief were competent at all; but it would be material to be considered when deciding whether any relief were appropriate: in fact that very thing has happened in the present case. A dividend was declared in 1948-49 for the calendar year 1947, and so relates to some nine months of the fiscal year 1947-48. Another dividend was declared likewise in 1948-49 for the calendar year 1948, and so relates to three months of the fiscal year 1947-48. It may not be so in this case, but in another case such dividend, declared late, might make relief inappropriate.

Here it may be convenient to say that the Appellant agrees that an apportioned part of these dividends should be taken into account in computing what a full year's income is for the purposes of the concluding words of Section 61 (1).

The Special Commissioners reject a construction leading to such a result as artificial. But of course the whole purpose of Section 61 is to substitute an amount of income artificially arrived at for the income actually received. The Special Commissioners say: "Are we to wait till 1949 to see whether the company declares in 1949 dividends which may relate in part to 1947-48?" Not much weight attaches to that observation. Section 61 itself in its opening words allows a claim for relief to be made at any time before the assessment becomes final and conclusive. No assessment, in any event, could have been made until after 30th July, 1948, the date when the Finance Act of that year was passed. And it is obvious that in any given case—if not in the great majority—the year 1948 would have come and gone before the assessment to Special Contribution became final and conclusive. So no undue waiting on events would really be required in order to apply Section 61. Of course one is not obliged to wait, but one is entitled to take advantage of any knowledge available at the time the question of relief has to be determined.

In my judgment, Parliament never intended that the Special Commissioners would look back without limit into a company's dividend history and select some representative year for the purpose of Section 61. What is the use of the preliminary apportionment prescribed by Section 61 (1) (b) if all that has to be done is to compare the actual income of 1947-48 with the actual income of the "representative year"? Again, what are the Special Commissioners to do in a case where the dividends of a company fluctuated

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considerably from year to year before 1947-48? Do they strike an average? And how are they to compel anyone to furnish information as to the dividend history of a private company if the taxpayer whom they are assessing did not possess his shares before 1947-48 and sold them before they came to assess him to Special Contribution? Parliament would have clothed the Special Commissioners with the necessary authority to deal with these and kindred difficulties if the powers which they have assumed in this case were really granted. As it is, the Court is asked to say that these powers are all implied in the simple direction to ascertain a full year's income; and that the preliminary apportionment enjoined by the Section has no bearing on the matter. I think that had Parliament intended to grant such powers to the Commissioners it would have done so in express language. Instead, what Parliament said in Section 61 (2) was that Section 34 of the Finance Act, 1927, made "the like provision" in relation to Surtax as Section 61 (1) makes in relation to Special Contribution. As far as I know, Section 34, which also contains the expression "income attributable to a period of one full year", has never been construed or operated as the Special Commissioners construe Section 61.

In these circumstances I uphold the first of the alternative constructions. Here I ought to say that Mr. Graham-Dixon for the Crown contended that no part of the dividends declared after 1947-48 could be apportioned back to that year because such income would not arise from the same assets that produced the dividends actually paid in 1947-48. This is a reference to a reduction in the Appellant's holding of stock from £12,950 to £7,770 in December, 1947, consequent upon a reduction in the company's capital. This argument is double-edged; but I do not deal with it because the matter was not raised before the Special Commissioners so far as I can see. Had it been, other facts would have had to be gone into, as for example whether the capital reductions were such as to leave the shareholders with precisely the same stake in the company as before in relation to each other. That might well give rise to the argument that to all intents and purposes the asset was the same. I say nothing about the matter, except to refer to the decision in *Timbrell v. Lord Aldenham's Executors*, 28 T.C. 293, at page 306, which shows what the attitude of the Court of Appeal was in somewhat comparable circumstances. The point has little or no bearing, in any event, upon the construction of the words "a full year's income".

I remit the case to the Special Commissioners to grant such relief from Special Contribution as is appropriate on the basis of this judgment.

**Mr. H. H. Monroe.**—Would your Lordship make an Order as to costs to the Appellant?

**Donovan, J.**—Yes.

**Mr. Monroe.**—If your Lordship pleases.

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The Crown having appealed against the above decision, the case came before the Court of Appeal (Somervell, Denning and Romer, L.JJ.) on 25th July, 1952, when judgment was given in favour of the Crown, with costs.

Mr. L. C. Graham-Dixon, Q.C., Mr. J. H. Stamp and Sir Reginald Hills appeared as Counsel for the Crown, and Mr. Cyril King, Q.C., and Mr. H. H. Monroe for the taxpayer.

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**Somervell, L.J.**—This is an appeal by the Crown from a judgment of Donovan, J. The Finance Act, 1948, imposed a Special Contribution on those whose total income exceeded £2,000 for the year of assessment 1947-48 and who had for the same year an investment income of more than £250. Under the ordinary Income Tax law, Income Tax is leviable for any particular year on dividends received in that year although they may be in respect of more than one year. Earlier legislation with which we are not concerned gave relief in such cases in respect of Surtax. Section 61 of the Finance Act of 1948, gives relief in such cases in respect of the Special Contribution. The question is whether on the facts, the Commissioners who refused relief were wrong in law as the learned Judge held. Section 61 is as follows:

“(1) Where—(a) either before or after an assessment to contribution is made, but in any case before such an assessment has become final, application is made to the Special Commissioners for relief under this section, and (b) the Special Commissioners are satisfied as respect any assets that, by reason of the provisions of the Income Tax Acts which require that income which is chargeable with income tax by way of deduction shall be deemed to be income of the year in which it is receivable, the income from the assets represents more than the income which would be attributable to a period of one full year if the income were deemed to have accrued from day to day, the Special Commissioners shall in ascertaining total income and aggregate investment income for the purposes of this Part of this Act make such reduction, if any, as may be appropriate to secure that there shall be taken as representing the income from the assets an amount equivalent to a full year's income therefrom. (2) Subsection (1) of section thirty-six of the Finance Act, 1927 (which specifies the period over which income is deemed to have accrued from day to day) shall apply for the purposes of paragraph (b) of the last foregoing subsection as it applies for the purposes of section thirty-four of the said Act of 1927 (which makes in relation to surtax the like provision as subsection (1) of this section).”

The facts are set out in the Case Stated. The assets in question were ordinary stock in N. H. & B. Collieries, Ltd. The following table sets out the dividends which are or may be relevant and then the various dates are set out in the Case. I do not think I need read the details. Dividends B and C were received, as will be seen, in the financial year 1947-48. It is not disputed that apart from relief under Section 61 these fall to be included in the taxpayer's investment income for the purpose of the Special Contribution. When the case came first before the Special Commissioners the Crown was contending in the first instance that the condition for granting of relief provided in paragraph (b) was not satisfied.

The Commissioners were not satisfied that the Appellant's income from the assets represented more than the income which would be attributable to a period of one full year if the income were deemed to have accrued from day to day and dismissed the appeals. Danckwerts, J., regarded this as a decision that the words under paragraph (b) were not satisfied and he regarded this as wrong. With respect, I agree. Dividend B, applying Section 36 (1) of the Finance Act, 1927, must be deemed to have accrued over the calendar year 1946 which was the company's financial year. Dividend C must be deemed to have accrued over 1947. The dividends therefore represented more than the income attributable to a period of one full year on the day-to-day accrual basis. The case was therefore sent back for the Special Commissioners to consider on this basis whether the taxpayer was entitled to any (and what) relief under the concluding words of the Subsection. The basis of the decision of Danckwerts, J., was not challenged by the Crown before us.

In the Supplemental Case the Commissioners decided to make no reduction. They considered the years 1946 and 1947, and holding that the words “a full year's income” were applicable to the year 1946 made no reduction.

(Somervell, L.J.)

If they were right in holding that the income in respect of 1946 could be looked at as a full year's income the decision was clearly right.

The taxpayer appealed and Donovan, J., accepted the submission made on behalf of the taxpayer before him and before us. It was this. A full year's income as referred to in the last words of the Sub-section means the income for the period of charge 1947-48 arrived at, (1) by apportioning all dividends in respect of the year 1947 and taking the amount attributable to the period April 6th to December 31st; (2) by apportioning all dividends in respect of the year 1948 and taking the amount attributable to the period January 1st to April 5th; (3) adding these two sums together. If the figure so arrived at is, as it would be here, less than the income received from the assets in the year 1947-48 then the difference is the appropriate deduction.

It is relevant to consider first what cases fall outside the Section. If in the year 1947-48 the only dividends received had been in respect of the year 1946, I would have said the taxpayer failed on the threshold. If that income were deemed to have accrued from day to day it would not be more than the income attributable to a full year. It is attributable to a year and no more, namely, the calendar year 1946.

This shows that for the purpose of paragraph (b) the period of one full year may be and frequently would be a year anterior to the year of charge. This may have importance as Mr. King at one time argued that the "full year" in paragraph (b) must be the same as the "full year" in the concluding words of the Sub-section. If that were right, I think Mr. King's argument on the main point would fail, but I do not think it is right. I think one year may be relevant in applying paragraph (b) and another in considering what is a full year's income for the purpose of the sentences which follow.

I feel, with respect, a number of difficulties about the learned Judge's construction. It of course involves waiting till the final dividend for 1948 had been declared. I will assume this is not an insuperable objection. Once the final dividend for 1948 has been declared, the question whether there should be relief, and its *quantum*, becomes a mere matter of arithmetic and I find it difficult to see why the Special Commissioners should be troubled with the matter. The Inspector could deal with it, subject no doubt to an appeal if there was some arguable point, for example as to the years in respect of which some dividend had been declared.

Secondly, it seems to me that the words would have been different. I would have expected at the end instead of the words "a full year's income" the words "the income attributable to the financial year 1947-48 on the basis that dividends referable to those years were apportioned as accruing from day to day". I am not suggesting that these words would be the precise statutory language but the conception is one which could easily have been expressed.

Thirdly, the learned Judge proceeded on the basis that although this calculation was relevant to deciding whether any relief were appropriate, it was not relevant

"to see whether a claim for relief was competent at all".<sup>(1)</sup>

I gather from this and another passage in his judgment that he was accepting the view which I have expressed as to the conditions necessary to "cross the threshold". The principle would then lead to anomalous results which I can illustrate. One taxpayer in the year 1947-48 gets £2,000 dividends in respect only of 1946. He can get no relief although the company

(1) See page 428 ante.

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fares badly in 1947 and 1948. Another taxpayer in another company which has a similar financial history gets £1,800 in respect of 1946 and an interim dividend of £200 in respect of 1947. He therefore can claim. The appropriate income for the year 1947-48 on the learned Judge's formula might be, say, £1,000. This second taxpayer gets £1,000 relief and the first nil.

I will now turn to the submission for the Crown that the Commissioners did not go wrong in law in taking the year 1946 as the measure of a full year's income. Before the learned Judge the argument appears to have been submitted on the lines that the Commissioners could take any year in the past as the measure. There are words in the second Case Stated which might be read as suggesting this, although in fact they confined themselves to 1946 and 1947. I agree with the learned Judge that they cannot take any year in the past.

In the present case the taxpayer establishes first that he has received dividends in respect of more than one year, namely, 1946 and 1947. These, in my opinion, are the relevant years.

I would like to make clear that I am dealing with the facts of the present case in which the dividends for 1946 and 1947 were paid in the ordinary course in the year of charge. If, for example, ten years of accumulated preference dividends were paid in the year of charge, I am not suggesting that each one of these ten years could be treated as a relevant year. If one assumes that that was the only circumstance which made paragraph (b) applicable, I would have thought the Commissioners would allow relief simply in respect of the nine previous years of dividend.

The Commissioners are not directed to take an average, but the fact that it is left to them to consider what is appropriate to deduct having regard to what they decide is a full year's income indicates to my mind that there is no single formula.

In the present case I think the Commissioners were entitled to take the income in respect of 1946 as "a full year's income". By far the larger part of the income for the year of charge was in respect of that year. The full income for that year was no more than the income assessed on the "receivable basis". As I have said, there is, I think, no single formula. There might be circumstances in which of two relevant years, as here, they were entitled to take the smaller sum as "a full year's income". I am, however, not satisfied that they committed any error in law in taking the income of 1946 as a full year's income.

There was some argument as to the effect of Sub-section (2). The Commissioners took the view that Section 36 (1) of the Finance Act, 1927, being made applicable to paragraph (b) was expressly made inapplicable to the words of the Sub-section which follow the two inset paragraphs. If this is right, it affords a strong, perhaps conclusive, argument against the learned Judge's construction. Mr. King submitted that this was too narrow and that "paragraph (b)" should be read as including the words which follow. I am inclined to agree that if the context required it the expression "paragraph (b)" could be read in this extended sense. The context does not seem to me to require it, for the reason I have indicated, namely, that if "a full year's income" was to be arrived at for the year of charge on an accrual from day-to-day basis the language would have indicated this.

I should also refer to an argument put forward on behalf of the Crown based on the fact that in December, 1947, there was a reduction in the nominal value of the taxpayer's holding from £12,950 to £7,770. No facts

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were proved as to the circumstances in which the reduction was made and I agree with the learned Judge that although the matter was referred to no point of law based on it was sufficiently taken before the Commissioners.

The Section is not an easy one and we have had the advantage of a second argument. For the reasons which I have given I would allow the appeal.

**Denning, L. J.**—I entirely agree with all that my Lord has said and have nothing to add.

**Romer, L.J.**—I agree with the conclusions which my Lord has expressed and the reasons upon which those conclusions are based. It is only because we are differing from the learned Judge that I add a few words of my own.

It is the essence of the Respondent's argument that the "full year's income" referred to at the end of Section 61 (1) of the Finance Act, 1948, means such income from the shares in question as was referable only to the year of assessment, namely, 1947-48. In my judgment, there are many considerations which tend, in varying degrees of importance, to the opposite conclusion. I will tabulate these considerations without elaborating them. (1) The suggested conception would involve an apportionment of dividends on the day-to-day basis formulated by Section 36 of the Finance Act, 1927. (2) That Section was of obvious relevance to Section 61 (1) (b) and was therefore expressly made applicable to it. On the principle *inclusio unius alterius exclusio* the section was *prima facie* not made applicable to that part of Section 61 (1) which follows (b) and the inference is that the draftsman regarded it as irrelevant thereto. (3) This irrelevance is confirmed by the phrase "a full year's income", which, in its natural sense, requires no apportionment for its ascertainment or assessment. (4) The apportionment would involve a mere question of arithmetic which, as my Lord has pointed out, could very well be done without resort to the Special Commissioners. (5) It would in most cases also involve the taking into account of dividends paid and received after the end of 1948. Apart from the inconvenience of this, it is difficult to reconcile with Section 47 (6) of the Act of 1948, which *prima facie* requires payment of the Special Contribution on or before 1st January, 1949. (6) If the "full year's income" was intended to be that referable to the year of charge and ascertained by apportionment nothing would have been easier than for the Legislature to have said so. (7) The Respondent's contention would result in freedom from liability in each of the following illustrations which were suggested in argument. (i) A company declares and pays a dividend in June, 1947, in respect of a period of 15 months ending at some date during the previous March and then goes into liquidation. (ii) A company is two years in arrear of dividend on its issued 5 per cent. preference shares. In 1947-48 it pays the arrears for those two years (each of them being wholly outside the year of charge) but passes the dividend which becomes due during that year. (8) If the "period of one full year" in Section 61 necessarily meant only 1947-48 there would be some ground for suggesting that the "full year's income" meant the income referable to that same year. For the reasons which my Lord has given, however, the "period of one full year" is not of necessity so confined. The above considerations in the aggregate lead me clearly to the conclusion that in assessing the amount equivalent to a full year's income from any particular asset the Special Commissioners were not intended to be tied to apportioning the income referable to the year of assessment. If this be right, it becomes a matter of reasonable estimate as to what the amount should be. In the present case the Special Com-

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missioners introduced into the Case Stated the years 1946, 1947 and 1948 in which the shares yielded respectively 15 per cent., 10 per cent., and 10 per cent. and chose 1946 as the representative year. For my part I would have felt disposed to select 1947, partly because the 1946 dividend of 15 per cent. stands alone among the three years which the Commissioners regarded as relevant, partly because 1947 provided a more recent criterion of the company's prosperity and partly because nine months of 1947 fell within the year of assessment whereas no part of 1946 did so. Alternatively, I might have arrived at an estimate of a full year's income by adding the dividends together and dividing them by three. However, I agree with my Lord that it cannot be said that the Commissioners, in choosing 1946, were wrong in law and I do not think that it was unreasonable in any real sense for them to select that year as representative for their purpose.

For the reasons which I have attempted to summarise I agree that this appeal should be allowed.

**Somervell, L.J.**—The appeal will be allowed with costs.

**Mr. Cyril King.**—May I say one word about costs? Your Lordship remembers that Danckwerts, J., took our view and the Crown accepted his view, so that the costs incurred from that time were incurred really because the Crown accepted the learned Judge's judgment. I was only asking your Lordships whether you thought that in the circumstances the costs were unnecessary and some costs would have been saved if the Crown had appealed from Danckwerts, J.

**Somervell, L.J.**—We think Danckwerts, J., was right.

**Mr. King.**—On the first point.

**Somervell, L.J.**—We thought Danckwerts, J., was right in saying you got within "(b)". We all took Danckwerts, J.'s judgment as having decided that and deliberately refraining from expressing any opinion as to what would happen.

**Mr. King.**—I quite see that, my Lord.

**Somervell, L.J.**—The costs up to Danckwerts, J.'s judgment have been dealt with, have they not?

**Mr. King.**—Yes, I got those costs. I was wondering whether that Order should be disturbed.

**Somervell, L.J.**—No. We think Danckwerts, J., was right on the point, as I understand it, which was being argued for the Crown.

**Mr. King.**—If he was right, your Lordships think those costs should not be disturbed?

**Somervell, L.J.**—No, you get the costs up to Danckwerts, J.'s Order.

**Mr. J. H. Stamp.**—It is only the appeal from the second decision of the Commissioners.

**Somervell, L.J.**—Yes. Danckwerts, J., did make an Order for costs, did he not?

**Mr. Stamp.**—Yes, my Lord.

**Somervell, L.J.**—We are only purporting to deal with the costs as from the date of the judgment of Danckwerts, J.



**Mr. King.**—I have not had any opportunity of taking instructions, but if Mr. Fenwick should feel inclined to appeal to the House of Lords would your Lordships give him leave? We have had the advantage of two judgments in our favour. One remains and the other is now wrong.

**Somervell, L.J.**—One thing that occurs to one is I do not know how many Special Contributions are still outstanding. It may not affect your clients.

*(The Court conferred.)*

**Somervell, L.J.**—We think on the whole this is not a case in which to grant leave.

**Mr. King.**—If your Lordship pleases.

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On the petition of the taxpayer, leave to appeal against the decision in the Court of Appeal was granted by the Appeal Committee of the House of Lords.

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The case came before the House of Lords (Lords Normand, Oaksey, Morton of Henryton, Reid and Cohen) on 8th, 9th and 10th June, 1953, when judgment was reserved. On 20th July, 1953, judgment was given in favour of the Crown, with costs.

Mr. Cyril King, Q.C., and Mr. H. H. Monroe appeared as Counsel for the taxpayer, and the Solicitor-General (Sir Reginald Manningham-Buller, Q.C.), Mr. L. C. Graham-Dixon, Q.C., Mr. J. H. Stamp and Sir Reginald Hills for the Crown.

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**Lord Normand.**—My Lords, this appeal arises out of an assessment made upon the Appellant, under Part V of the Finance Act, 1948, to Special Contribution in respect of his aggregate investment income for the year 1947-48. The matter in dispute is the construction and application of the provisions for relief in Section 61 of the Act.

The Special Contribution was imposed by the Finance Act, 1948, as a tax for one year only, payable by individual taxpayers whose total income for 1947-48 exceeded £2,000 and whose aggregate investment income for that year exceeded £250. The Contribution was payable on or before 1st January, 1949. Total income was to be ascertained in the same manner as for the purposes of Surtax. Investment income was defined as meaning income from any source other than a source of earned income. The Contribution was assessable by the Special Commissioners to whom also an appeal lay. For the purposes of this case Section 61 is the important Section, and I therefore cite it in full:

“ 61.—(1) Where—

- (a) either before or after an assessment to contribution is made, but in any case before such an assessment has become final, application is made to the Special Commissioners for relief under this section, and
- (b) the Special Commissioners are satisfied as respects any assets that, by reason of the provisions of the Income Tax Acts which require that income which is chargeable with income tax by way of deduction shall be deemed to be income of the year in which it is receivable, the income from the assets represents more than the income which would be attributable to a period of one full year if the income were deemed to have accrued from day to day,

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the Special Commissioners shall in ascertaining total income and aggregate investment income for the purposes of this Part of this Act make such reduction, if any, as may be appropriate to secure that there shall be taken as representing the income from the assets an amount equivalent to a full year's income therefrom.

(2) Subsection (1) of Section thirty-six of the Finance Act, 1927 (which specifies the period over which income is deemed to have accrued from day to day) shall apply for the purposes of paragraph (b) of the last foregoing subsection as it applies for the purposes of Section thirty-four of the said Act of 1927 (which makes in relation to surtax the like provision as subsection (1) of this section)."

The Appellant at all relevant times before 11th December, 1947, held £12,950 ordinary stock in a colliery company. His holding was reduced in December, 1947, in consequence of a reduction of the company's capital, but no evidence was laid before the Commissioners to connect this reduction in any relevant way with the problem which arises in this appeal, and I shall therefore make no further reference to it. The company's accounts were made up to the 31st December in each year, and the Appellant received dividends on the stock held by him, as shown conveniently in the following table:—

Date declared	Date received (and date on which payable)	Description	Period in respect of which paid	Gross amount before deduction of Income Tax
A 4.7.1946 ...	1.8.1946 ...	3 per cent. Interim	Calendar Year 1946	£ 388 s. 10 d. 0
B 15.5.1947 ...	31.5.1947 ...	12 per cent. Final	Calendar Year 1946	1,554 0 0
C 24.7.1947 ...	1.9.1947 ...	3 per cent. Interim	Calendar Year 1947	388 10 0
D 18.3.1948 ...	23.4.1948 ...	7 per cent. Second Interim	Calendar Year 1947	543 18 0
E 21.7.1948 ...	1.9.1948 ...	3 per cent. Interim	Calendar Year 1948	233 2 0
F 7.4.1949 ...	13.4.1949 ...	7 per cent. Final	Calendar Year 1948	543 18 0

In consequence of the provisions of Section 39 of the Finance Act, 1927, and of the provisions of Section 48 of the Finance Act, 1948, that total income shall be ascertained as it is ascertained for the purposes of Surtax, the two dividends marked B and C, which were those paid in the fiscal year ending 5th April, 1948, fell to be included in the Appellant's total income for the fiscal year 1947-48 and accordingly the gross amount of these dividends was included in his aggregate investment income for the purposes of the assessment to the Special Contribution.

The Appellant applied to the Special Commissioners for relief under Section 61 on the ground that the income from his stock in the company included in his aggregate investment income represented more than the income which would be attributable to a period of one full year if the income were to be deemed to have accrued from day to day.

Section 61 makes reference to Sections 34 and 36 of the Finance Act, 1927, which deal with Surtax. Section 34 of the Finance Act, 1927, made provision for relieving the taxpayer of the hardship of paying Surtax on the fortuitously swollen income of any assets in a particular year, a hardship which might involve payment of tax both on a larger sum than is equitable and at a higher rate. It was foreseen that the same hardship might arise

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also in the reckoning and payment of the Special Contribution. Paragraph (b) of Section 61 (1) prescribes the antecedent condition for the grant of relief and it employs substantially the same terms as paragraph (a) of Section 34 of the Finance Act, 1927. Under both Acts the Special Commissioners have to be satisfied that

“ as respects any assets that, by reason of the provisions of the Income Tax Acts which require that income which is chargeable with income tax by way of deduction shall be deemed to be income of the year in which it is receivable, the income from the assets represents more than the income which would be attributable to a period of one full year if the income were deemed to have accrued from day to day ”.

For Surtax purposes there is another condition prescribed by Section 34 (b) of the Finance Act, 1927. It is that the Special Commissioners must also be satisfied that the amount of Surtax payable by the Appellant for the year exceeds by more than five per cent. the amount which would have been payable if the amount of his income from the assets had not exceeded the amount which would be attributable to a period of one full year if the income from those assets were deemed to have accrued from day to day. Section 36 (1) of the Finance Act, 1927 (which is applied by Section 61 (2) of the Finance Act, 1948, for the purposes of Section 61 (1) (b)), provides that income which is deemed to have accrued from day to day shall, if payable in respect of any stated period, be deemed to have accrued from day to day during that period. Paragraph (b) of Section 36 (1) of the Finance Act, 1927, provides for the case where the income is not payable in respect of any stated period. In the present case, however, the dividends on the Appellant's holding in the company receivable in the fiscal year 1947-48 were paid in respect of stated periods, dividend B being stated to be the final dividend in respect of the calendar year 1946 and dividend C being an interim dividend in respect of the calendar year 1947, and all other dividends are similarly assigned to a stated period.

When the application for relief first came before the Special Commissioners they held that the condition for the grant of relief as prescribed by Section 61 (1) (b) had not been fulfilled, but this decision was reversed by Danckwerts, J., who remitted to the Special Commissioners to consider what relief, if any, should be granted. The decision of Danckwerts, J., has been accepted by the parties in the proceedings which have followed upon it. It would nevertheless be necessary to consider what was the exact *ratio* of his decision, and what was the precise construction which he put upon the words in Section 61 (1) (b) which define the preliminary condition, if the construction of that part of the Sub-section which deals with the amount of the relief to be granted depended upon them. But that is itself the main issue in the appeal, and if, as I think, there is no such dependence, it is unnecessary to consider further the judgment of Danckwerts, J., or the construction of the words defining the preliminary condition. Nor would it be desirable to prejudice unnecessarily a question which may yet come to this House for decision.

In the debate the Appellant's Counsel submitted for consideration several alternative constructions of the final part of Section 61 (1). All of them had one common feature; in all of them the Special Commissioners were required in arriving at the relief to be granted, to make a calculation attributing to a period of twelve months the income received from the Appellant's holding in the company on the footing that the income was deemed to have accrued from day to day. Two examples may be given. The income thus to be attributed was, in one of the alternative submissions, the dividends C, D,

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E and F in the table, that is, the whole dividends which were in fact paid (at whatever date) in respect of the calendar years 1947 and 1948, and the Special Commissioners were then to take the portion attributable to the twelve months of the fiscal year 1947-48 as the equivalent of a full year's income. According to another of the alternative submissions it was the income receivable in the fiscal year 1947-48, viz. dividends B and C, which was to be apportioned, and the portion attributable to any consecutive period of twelve months out of the twenty-four months of the calendar years 1946 and 1947 was to be taken. The basis of all these submissions is that the words "a full year's income" at the end of the subsection "echo" the words

"the income which would be attributable to a period of one full year if the income were deemed to have accrued from day to day",

and therefore by virtue of Section 61 (2) and of Sub-section (1) of Section 36 of the Finance Act, 1927, entitle the Appellant to have the dividends treated as accruing during the period in respect of which they were payable.

The Special Commissioners rejected the basis of the Appellant's contention that a process of day-to-day apportionment was contemplated as the means for arriving at the relief to be granted. They said that the natural meaning of "a full year's income" in the context was a full year's income in reality, and that having regard to all the circumstances the most real and natural test was to take the dividends in respect of the company's successive financial years, each of which coincides with a full calendar year. The two years to which they thought it was most natural to turn were 1946 and 1947, and they selected the year 1946 since the dividends received in it were equivalent to the statutory income for the fiscal year 1947-48. They therefore made no reduction.

Donovan, J., reversed the decision of the Special Commissioners. He held that they were not entitled to select some representative year for the purpose of Section 61, and that they ought to have apportioned dividends B and C or B, C, D and E in the manner described above.

The Court of Appeal unanimously reversed the judgment of Donovan, J., and restored the decision of the Special Commissioners. Judgments were delivered by Somervell, L.J., and Romer, L.J. Denning, L.J., concurred with Somervell, L.J. The Court rejected the basic contention of the Appellant that the words "a full year's income" in their natural sense required any method of apportionment, or that they were capable of bearing the meaning "the income attributable to the financial year 1947-48 on the basis that dividends referable to these years were apportioned as accruing from day to day."

My Lords, I agree with the Court of Appeal on this point, for reasons which I will presently state. Both Somervell, L.J., and Romer, L.J., gave additional reasons for rejecting the Appellant's contention. I do not propose to deal with them because the rejection of the day-to-day attribution of income goes to the root of the Appellant's case, and whatever other reasons there may be for dismissing the appeal are superfluous.

There are two points to be considered in their bearing on the main issue. First, do the words "a full year's income" "echo" the words

"the income which would be attributable to a period of one full year if the income were deemed to have accrued from day to day"?

In my opinion the "echo" is a false echo, and does not justify the reading into the final part of Section 61 (1) of any part of the wording from the

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paragraph relating to what I have called the antecedent condition. I cannot think that the legislature would have left the crucial words by which the income is deemed to have accrued from day to day to be implied from the mere fact that the words "a full year's income" recall the words "a period of one full year". There is no reason why the words "a full year's income" should bear any artificial meaning or be stretched by implication into a meaning which they seem to be incapable of supporting. If the words "deemed to have accrued from day to day" are not to be read in, then Section 36 of the Finance Act, 1927, cannot help the Appellant. It may be noted that these crucial words are repeated in each of the two paragraphs of Section 34 of the Finance Act, 1927, and that they are not left to implication in the second of the two paragraphs.

This brings me to the second point for consideration. If attribution by accrual from day to day is excluded the consequence must be that unless the Special Commissioners have some degree of discretion there is no means of arriving at the relief to be granted. The Appellant contended that the Special Commissioners had no discretion to select a year the income in respect of which was to be regarded as equivalent to a full year's income. If that contention is well founded, and if the Appellant's method of arriving at the relief is to be rejected, the result might be that Section 61 is abortive. The questions whether the Special Commissioners have a discretion and how far it extends depend on the words of the Section itself. We were invited to contrast them with other words in other sections or statutes in which a discretion was given to the Special Commissioners. Such comparisons have little or no value, and I have not been helped by them. The Special Commissioners are, by the concluding words of Section 61 (1), directed, and to that extent the Sub-section is directory, to make such reduction, *if any*, as may be *appropriate* to secure that there *shall be taken as representing* the income from the assets *an amount equivalent* to a full year's income therefrom. The whole wording seems designed not to define what the relief must be but to allow some latitude of judgment in deciding what it may fairly be. The words which I have italicised are specially apt if the Special Commissioners' duty is to exercise a discretionary judgment. How far it may extend it is not necessary to decide here. The year they have chosen is one of the years in respect of which the dividends received in 1947-48 were paid. They might have taken the year 1947, but it cannot be said that they either ignored relevant matters or took into account irrelevant matters or acted capriciously in choosing 1946. Whether they might have gone further back than 1946 in certain circumstances and have taken a year the income in respect of which had no connection with the dividends received in 1947-48 is a question which does not arise, and I express no opinion upon it.

My conclusion is that the appeal should be dismissed with costs.

**Lord Normand.**—My Lords, I am asked to say that my noble and learned friends, **Lord Oaksey** and **Lord Morton of Henryton**, concur in this Opinion.

**Lord Reid.**—My Lords, I concur.

**Lord Cohen.**—My Lords, I also agree.

*Question put:*

That the Order appealed from be reversed.

*The Not Contents have it.*

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

*The Contents have it.*

[Solicitors:—Peacock and Goddard; Solicitor of Inland Revenue.]

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