A HIGH COURT OF JUSTICE (CHANCERY DIVISION)—
9TH AND 10TH JULY 1964

COURT OF APPEAL
27TH, 28TH AND 29TH JANUARY 1965

B HOUSE OF LORDS
28TH FEBRUARY AND 1ST AND 31ST MARCH 1966

Commissioners of Inland Revenue

v.

Coathew Investments Ltd.[1]

C

Surtax—Investment company—Computation of actual income—Deduction—Annual payment under voluntary covenant—Beneficiary not an individual—Income Tax Act 1952 (15 & 16 *Geo.* 6 & 1 *Eliz.* 2, *c.* 10), *ss.* 245, 248, 255(3), 262 *and* 415.

The Respondent Company was an investment company whose actual income
D *from all sources was liable to automatic apportionment for surtax purposes. On appeal against apportionments for the years* 1955–56 *to* 1959–60 *it claimed a deduction in respect of annual sums paid by it under a covenant the beneficiary of which was not an individual. For the Crown it was contended that under ss.* 262 *and* 415, *Income Tax Act* 1952, *the deduction was not allowable. The Special Commissioners allowed the deduction.*

E Held, *that the deduction claimed was not allowable.*

CASE

Stated under the Income Tax Act 1952, ss. 229(4) and 64, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the High Court of Justice.

F 1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 24th January 1963, Coathew Investments Ltd. (hereinafter called "the Company") appealed against apportionments to its member made under s. 248(1) of the Income Tax Act 1952 of the actual income of the Company from all sources for each of the five years of assessment 1955–56, 1956–57, 1957–58, 1958–59 and 1959–60 and against consequential
G sub-apportionments made under the Income Tax Act 1952, s. 254, in respect of the same five years of assessment.

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(1) Reported (Ch.D.) 108 S.J. 602; (C.A.) [1965] 1 W.L.R. 583; 109 S.J. 133; [1965] 1 All E.R. 954; (H.L.) [1966] 1 W.L.R. 716; 110 S.J. 351; [1966] 1 All E.R. 1032.

2. (1) Directions had been made on the Company for each of the said five years of assessment, pursuant to ss. 245 and 262(1) of the said Act. These directions were accepted by the Company and were not under appeal. A

(2) The sole question in issue in the appeal concerned the computation of the actual income from all sources of the Company for each of the said years of assessment (hereinafter called "the actual income"), and was whether or not there could be deducted, in computing such actual income, a sum of £1,450 paid in each of the said years by the Company pursuant to the deed of covenant referred to below. B

3. The Company was incorporated in 1934 as an investment holding company, and was at all material times an investment company to which s. 262 of the Income Tax Act 1952 applied. At all material times the whole of its issued share capital was beneficially owned by another company, Anglo-Foreign Properties Ltd. Accordingly, in the apportionments under appeal the whole of the actual income of the Company computed in each year without deducting the said £1,450 was apportioned to Anglo-Foreign Properties Ltd., and in the sub-apportionments the excess of such actual income over dividends paid to Anglo-Foreign Properties Ltd. by the Company was sub-apportioned amongst the members of Anglo-Foreign Properties Ltd., who were as follows: (i) Mr. H. D. H. Wills; (ii) the trustees of Mr. H. D. H. Wills' settlement of 17th January 1955; (iii) the trustees of Mr. H. D. H. Wills' settlement of 12th June 1943. C D

4. On 30th March 1955 the Company made a deed of covenant in the following terms:

> "We Coathew Investments Limited of 12, Tokenhouse Yard, London, E.C.2. (hereinafter called 'the Company') hereby covenant with the Council of the Governors of the Dominion Students' Hall Trust that for seven years from the date hereof the Company will pay to the said Trust each year commencing on the thirty-first day of March one thousand nine hundred and fifty-five (making seven payments in all) the sum of £1,450 (less income tax at the rate from time to time in force) from its general fund of taxed income, so that the Company shall receive no personal or private benefit in any of the said years from the said annual payments. E F
>
> In Witness whereof the Company has caused its Common Seal to be affixed the thirtieth day of March, 1955."

5. The Company made payments to the Dominion Students' Hall Trust as provided in the deed. It was common ground that the said trust was not an "individual" within the meaning of that word as used in s. 415 of the Income Tax Act 1952. G

6. Details of the computation of the Company's actual income for all relevant years, together with details of apportionments and sub-apportionments on the differing bases contended for (A) by the Commissioners of Inland Revenue and (B) by the Company respectively, are set out in a schedule annexed hereto, forming part of this Case. This schedule, which was prepared and submitted by the Company's agents, was agreed by the Commissioners of Inland Revenue correctly to represent in part (A) thereof the basis for which the Commissioners contended, provided that the deletions appearing therein were made. H

7. It was contended on behalf of the Company: I

(1) that in computing the Company's actual income for apportionment purposes in the manner required by s. 255(3) and proviso (*a*) to s. 262(2),

A there should be deducted the sums paid by the Company pursuant to the said deed of covenant;

(2) that such deduction was not excluded by s. 415;

(3) that s. 415 does not require or permit the said sums to form part of the actual income of the Company for apportionment purposes;

(4) that the apportionments and sub-apportionments be amended
B accordingly.

(5) The following further contention was mentioned, i.e., that, alternatively, if the said sums form part of the actual income of the Company for apportionment purposes, Dominion Students' Hall Trust is a member as defined in s. 255(2), and part of the actual income equal to the said sums should be apportioned to it. This contention was not developed. We were not asked to
C decide it, and we did not do so.

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

(1) that, on the correct reading of ss. 262 and 415 together with all other relevant provisions of the Income Tax Acts, no deduction was allowable in respect of the said sums of £1,450 in computing the Company's actual income;

(2) that the apportionments and sub-apportionments were correct and
D should be confirmed.

9. We, the Commissioners who heard the appeal, gave our decision in writing as follows:

(1) The question for decision concerns the computation of the actual income of the Company, having regard to s. 415. If s. 415 were not there, the Company's actual income would be its gross income, less management expenses
E and profits tax, and less the annual payment under the deed of covenant.

(2) It was contended for the Crown that the effect of s. 415 is that the deduction of the annual payment cannot be allowed. The contention was founded on proviso (*a*) to s. 262(2), which refers to the computation of the total income of an individual.

(3) Section 524, which contains provisions concerning the computation
F of the total income of an individual, expressly refers to Sch. 24, the third paragraph of which indicates that in estimating total income annual payments are to be deducted.

(4) In the case of an annual payment under a deed constituting a settlement to which s. 415 applies, s. 415 does not in terms prohibit the deduction (cf. s. 407); it enacts that the income arising under the settlement shall be treated
G for the purposes of surtax as the income of the settlor. It seems to us that the section must result, in all cases to which it applies, in an addition to the settlor's total income for surtax; if this is so, then it must be implicit that the deduction of the annual payment should not be disturbed, if double taxation is to be avoided. It may be that in the case of an individual the same arithmetical result is arrived at by simply striking out the deduction, but that is not what the
H section requires us to do.

(5) The remaining question is whether the income arising under the settlement, which has (by s. 415) to be treated for the purposes of surtax as the income of the Company, forms part of the Company's actual income. We have found this extremely difficult. "Actual income" is dealt with in s. 255(3), and we have some guidance as to what it embraces from *Thomas Fattorini (Lan-*
I *cashire) Ltd.* v. *Commissioners of Inland Revenue*(1) 24 T.C. 328; *Lord Howard*

(1) [1942] A.C. 643.

de Walden v. *Commissioners of Inland Revenue* (1948) 30 T.C. 345; and *Commissioners of Inland Revenue* v. *Wood Bros. (Birkenhead) Ltd.*[1] 38 T.C. 275. Giving the matter the best consideration we can, we hold that the said income does not form part of the Company's actual income; we can best express how we have come to this conclusion by adopting the words of Lord Reid, 38 T.C. at page 302, where he said:

> ". . . far from finding any clear indication of an intention to bring these sums within the scope of Section 245, I would not find it possible to reach that result without devious and dubious argument."

(6) The appeal succeeds and we leave the figures to be agreed.

Agreement of the figures on the basis of our decision being later reported to us, we determined the appeal by adjusting the apportionments and the sub-apportionments in accordance with the figures so agreed, which are as shown in part B of the schedule annexed hereto.

10. The Commissioners of Inland Revenue immediately after our determination declared to us their dissatisfaction therewith as being erroneous in point of law, and in due course required us to state a Case for the opinion of the High Court pursuant to the Income Tax Act 1952, ss. 229(4) and 64, which Case we have stated and do sign accordingly.

11. The question of law for the opinion of the Court is whether our decision in para. 9 above is erroneous in point of law.

R. A. Furtado
F. Gilbert
} Commissioners for the Special Purposes of the Income Tax Acts.

Turnstile House,
94–99 High Holborn,
London, W.C.1.
30th October 1963.

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(1) [1959] A.C. 487.

SCHEDULE TO THE CASE

COATHEW INVESTMENTS LIMITED

Apportionments for Surtax Purposes

Fiscal year	1955–56	1956–57	1957–58	1958–59	1959–60
A. As contended by Inland Revenue	£	£	£	£	£
Gross income less management expenses and profits tax ..	2,656	4,174	5,307	5,273	6,295
"Actual income" under s. 262(2)	2,656	4,174	5,307	5,273	6,295
apportioned wholly to Anglo-Foreign Properties Ltd.					
Sub-apportionment	2,656	4,174	5,307	5,273	6,295
Deduct: Dividends paid	1,000	2,500	3,333	4,300	4,800
	1,656	1,674	1,974	973	1,495
To: H. D. H. Wills	821	830	979	483	741
Trustees of H. D. H. Wills's settlement of 17th January 1955	795	804	948	467	718
Trustees of H. D. H. Wills's settlement of 12th June 1943 ..	40	40	47	23	36
	1,656	1,674	1,974	973	1,495
B. As contended by Company					
Gross income less management expenses and profits tax ..	2,656	4,174	5,307	5,273	6,295
Deduct: Annuity paid under deed	1,450	1,450	1,450	1,450	1,450
"Actual income" under s. 262(2)	1,206	2,724	3,857	3,823	4,845
Section 415 creates 'deemed' income of £1,450 p.a. which is not capable of apportionment					
Apportioned wholly to Anglo-Foreign Properties Ltd.					
Sub-apportionment	1,206	2,724	3,857	3,823	4,845
Deduct: Dividends paid	1,000	2,500	3,333	4,300	4,800
	206	224	524	*	45
To: H. D. H. Wills	102	111	260		22
Trustees of H. D. H. Wills's settlement of 17th January 1955	99	108	252		22
Trustees of H. D. H. Wills's settlement of 12th June 1943	5	5	12		1
	206	224	524		45

*An excess distribution of £477 was made in this year and is possibly available for relief under s. 249(5) or under s. 254.

The case came before Ungoed-Thomas J. in the Chancery Division on 9th July 1964, when judgment was reserved. On 10th July 1964 judgment was given in favour of the Crown, with costs.

Roy Borneman Q.C., *E. Blanshard Stamp* and *J. Raymond Phillips* for the Crown.

Roderick A. Watson for the Company.

Ungoed-Thomas J.—The question in this case is whether a deduction can be made in respect of a payment by a controlled investment company to a charity when computing its income for the purpose of being treated as the income of its members in assessing their liability to surtax. The Respondent Company, by deed of covenant dated 30th March 1955, covenanted with a charity that for seven years it would pay it each year

> "£1,450 (less income tax at the rate from time to time in force) from its general fund of taxed income".

The Company paid the charity that amount in respect of the years of assessment 1955–56 to 1959–60 inclusive, to which this appeal relates.

It is common ground that the Respondent Company is a controlled investment company within ss. 245, 256, 257 and 262 of the Income Tax Act 1952, and that accordingly the actual income of the Company for the years of assessment in this case must be deemed for the purposes of assessment to surtax to be the income of the members of the Company. Section 262(2), however, provides that, in computing the actual income of the Company for those purposes:

> "(*a*) no deduction shall be allowed in computing the actual income from all sources of the company which would not be allowable in computing the total income of an individual for the purposes of this Act . . ."

It is established and accepted by both parties that, by the combined effect of s. 2(1)(*b*) and (2)(*a*), s. 524(1) and (2) and Sch. 24, the payment made to the charity by the Company might, if made by an individual, "be deducted" (in the words of s. 2(2)) in computing that individual's total income for the purposes of surtax, subject, however, to s. 415. That section provides, so far as relevant:

> "(1) Where, during the life of the settlor, income arising under a settlement made on or after the tenth day of April, nineteen hundred and forty-six, is, under the settlement and in the events that occur, payable to or applicable for the benefit of any person other than the settlor, then" subject to exceptions not relied on and which therefore can be omitted "the income shall be treated for the purposes of surtax as the income of the settlor and not as the income of any other person".

It is not disputed that, if the Company were an individual, then, under the definitions in ss. 415(3) and 411(1) and (2), the deed of covenant is a "settlement" and the Company is a "settlor" and the payments under the deed are "income arising under the settlement", within s. 415(1). It is thus clear—and indeed is common ground—that, if the Company were an individual, the income of the Company payable to the charity under the deed would be income within s. 415, so that that

> "income shall be treated for the purposes of surtax as the income of the settlor and not as the income of any other person".

Thus, the only question in this case is whether those words quoted from s. 415 establish in the case of the covenanted sum, if the covenant had been made by an individual, that there would be "no deduction" allowable "in computing

A the total income of" that individual within s. 262(2), i.e., do the words quoted from s. 415 establish "no deduction" within proviso (*a*) to s. 262(2)?

It is submitted for the Respondent that to treat an amount as income does not preclude its also being deducted, so that these two operations are not incompatible; with the result, it is suggested, that s. 262(2) refers only to deduction and not to treatment as income. Therefore, the argument goes, B s. 262(2) is unaffected by s. 415, and deductions may be made under ss. 2 and 524 and Sch. 24 by the Company in respect of the covenanted payments in this case. I hope this summary of the submission of the Respondent does not do it injustice.

I was referred to ss. 397 and 398. Section 397 provides that in certain cases income paid under a settlement

C "to or for the benefit of a child of the settlor in any year of assessment shall . . . be treated . . . as the income of the settlor for that year and not as the income of any other person."

Section 398(1) provides that income which might become payable under a settlement for the benefit of a child of the settlor in the future is to be deemed to be for the benefit of the child subject to a proviso, in subs. (2)(*a*), that the D income represents sums paid by the settlor "which are allowable as deductions in computing his total income". Clearly, here, the deduction and the treatment as income are two separate operations, but the treatment as income counterbalances, and in effect cancels, the deduction. It is, in effect, the equivalent of disallowance of a deduction. It was convenient in these sections to deal with what was, in effect, disallowance of a deduction in this way, instead of by E expressly disallowing a deduction, because the provision for treatment as income in s. 397(1) applied to a wide category of cases, including those in s. 398(1), and the proviso in s. 398(2), referring to income representing sums allowable as deductions, applied only in a narrower category of cases to which the effect of s. 398(1) was limited by s. 398(2).

Settlements within s. 415 are not confined to covenants for payment of F periodic sums, and include "any disposition, trust, covenant, agreement or arrangement" (see ss. 415(3) and 411(2)). They thus include, for example, settlements of capital under which no sum is periodically payable by the settlor. Deductions by a settlor from income arise only where income is payable by the settlor; and consequently it was conceded in the course of argument that to have provided in s. 415(1) that there should be no deductions would be G inappropriate in relation to settlements which include settlements under which no periodic sums are payable by the settlor. And, as the income of capital settlements is to be treated as income of the settlor, it seems advisable to make it clear that it is not to be treated as the income of any other person, including, of course, the recipient. Further, even under settlements by which income is payable by the settlor, as the *rationale* for the deduction of that income H is that it is treated as the income of the recipient, it seems advisable to make it clear in those cases too that the income is not to be treated as the income of any other person than the settlor.

There is thus, to my mind, ample reason for preferring, in s. 415(1), the form of words there adopted, and they appear to me effective to prohibit deductions in those cases where deductions would otherwise be applicable. I In my view, the statement that the specified income "shall be treated for the purposes of surtax as the income of the settlor" prevents that income being deductible from the income of the settlor, as apart from that statement it might

(Ungoed-Thomas J.)

"be deducted", in the words of s. 2(2). Thus, "no deduction" in s.262(2) expresses the effect of s. 415(1), which, in respect of the covenanted payments in this case, in effect prohibits the deduction of what might otherwise "be deducted". And this conclusion accords with the general design of the relevant sections to treat the income of the company as the income of its members.

Borneman Q.C.—Would your Lordship accordingly allow the appeal with costs?

Ungoed-Thomas J.—There is no answer to that, is there, Mr. Watson?

Watson—No, my Lord.

Ungoed-Thomas J.—Very well.

Borneman Q.C.—Further, in accordance with modern practice, will your Lordship make a declaration in the following form: Declared, that in computing the actual income of the Respondent for each of the years of assessment 1955–56 to 1959–60 inclusive, in accordance with the provisions of Chapter III of Part IX of the Income Tax Act 1952, the sums paid by the Respondent under the deed of covenant referred to in para. 4 of the Case Stated are not an admissible deduction?

Ungoed-Thomas J.—Have you any observation on that form, Mr. Watson?

Watson—No, my Lord.

Ungoed-Thomas J.—Very well; there will be a declaration in that form.

Borneman Q.C.—Will your Lordship further remit the case to the Special Commissioners with directions to determine the actual income of the Respondent, and the apportionment and sub-apportionment thereof accordingly?

Ungoed-Thomas J.—That follows as a matter of course. Very well.

The Company having appealed against the above decision, the case came before the Court of Appeal (Willmer, Harman and Pearson L.JJ.) on 27th, 28th and 29th January 1965, when judgment was given unanimously in favour of the Crown, with costs.

F. Heyworth Talbot Q.C. and *Roderick A. Watson* for the Company.

Roy Borneman Q.C. and *J. P. Warner* for the Crown.

Willmer L.J.—In this case the Appellant Company is what has been described as a "controlled investment company" within the meaning of Chapter III of Part IX of the Income Tax Act 1952. It is an investment company because its income consists mainly of investment income, so as to fall within s. 257(2); and it is a company which is under the control of not more than five persons—see s. 256(1). In the case of such a company the combined effect of ss. 245 and 262(1) is that the Special Commissioners are required to give a direction in respect of each year of assessment that the "actual income" of the company shall, for the purposes of surtax, be deemed to be the income of its members and that the amount thereof shall be apportioned among its members. I do not enlarge any further upon those provisions, because so far there is no dispute between the parties. Directions were in fact given by the Special Commissioners in respect of five financial years between 1955 and 1960, and no objection was taken to those directions, and there was no appeal in regard to them.

The dispute which has arisen, and which has brought the parties to this Court, is in relation to the method of assessment of the "actual income" of the Company for the years in question; and the dispute has arisen because on 30th

March 1955 the Company executed a covenant to pay an annual sum to charity. The terms of the covenant are set out in para. 4 of the Case Stated as follows:

> "We Coathew Investments Limited . . . hereby covenant with the Council of the Governors of the Dominion Students' Hall Trust that for seven years from the date hereof the Company will pay to the said Trust each year commencing on the thirty-first day of March [1955] (making seven payments in all) the sum of £1,450 (less income tax at the rate from time to time in force) from its general fund of taxed income, so that the Company shall receive no personal or private benefit in any of the said years from the said annual payments."

The case for the Company is that in computing its "actual income" for each of the years in question the sums paid under this covenant should be deducted. What is said is that by reason of the covenant the Company was under an enforceable obligation to pay thereunder, so that its actual income was thereby diminished.

The question that has arisen between the parties depends upon the effect to be given to proviso (*a*) to s. 262(2) of the Act. That provides:

> ". . . no deduction shall be allowed in computing the actual income from all sources of the company which would not be allowable in computing the total income of an individual for the purposes of this Act . . ."

That provision apparently appeared on the Statute book for the first time in 1939. It is accepted, I think, on both sides that at the time of its enactment an individual, in computing his total income, would have been entitled to deduct sums paid under a covenant such as we have in the present case. I do not think that I need refer in detail to the various sections of the Act which produce this result, for I do not understand that there is any dispute about it; but in 1946 there was a change in the law which, on the Crown's submission, very much affected the position under proviso (*a*) to s. 262(2). A new provision was then made with regard to settlements generally, including covenants such as that in question in the present case, which was designed to stop individuals from obtaining relief from surtax in respect of sums paid thereunder. That new provision is now embodied in s. 415 of the Act of 1952. I read subs. (1):

> "Where, during the life of the settlor, income arising under a settlement made on or after the tenth day of April, nineteen hundred and forty-six, is, under the settlement and in the events that occur, payable to or applicable for the benefit of any person other than the settlor, then, unless, under the settlement and in the said events, the income either—(*a*) is payable to an individual for his own use; or (*b*) is applicable for the benefit of an individual named in that behalf in the settlement, or of two or more individuals named in that behalf therein; or (*c*) is applicable for the benefit of a child or children of an individual named in that behalf in the settlement; or (*d*) is income from property of which the settlor has divested himself absolutely by the settlement; or (*e*) is income which, by virtue of some provision of this Act not contained in this Chapter, is to be treated for the purposes of this Act as income of the settlor, the income shall be treated for the purposes of surtax as the income of the settlor and not as the income of any other person". That is followed by a proviso which I need not read.

There is no dispute that the sums paid under the covenant in this case fall within the description of "income arising under a settlement", or rather would

(Willmer L.J.)

fall within that description if made by an individual within the meaning of that section. For this is a case in which the income is not paid to an individual, nor do any of the other exceptions contained in the section apply. If, therefore, this covenant had been made by an individual, the sums paid under it would have to be treated for purposes of surtax as his income and not that of any other person. So it is the Crown's case that the amounts paid under the covenant in the present case, if they had been paid by an individual, would not be allowable deductions in computing his total income within proviso (*a*) to s. 262(2). Consequently it is said that no deduction can be allowed in this respect in computing the actual income of the Company.

The Special Commissioners came to the conclusion that the sums paid under the covenant did not form part of the Company's actual income: that is to say, they concluded that those sums constituted an allowable deduction. I am bound to say that the reasoning by which they reached this conclusion is by no means clear to me, and I am relieved to find that my difficulty in that respect is shared by both my brethren, and, I think, by Counsel on both sides. Be that as it may, the matter then went on appeal to Ungoed-Thomas J., who came to the opposite conclusion. He held([1]) that the words used in s. 415(1) were

> "effective to prohibit deductions in those cases where deductions would otherwise be applicable."

In other words, he took the view that the effect of s. 415 is that in the case of an individual no deduction would be allowable. If that is so, it would follow that, by proviso (*a*) to s. 262(2), the same must apply to the Company in the computation of its actual income.

The Company now appeals to this Court. In opening the appeal Mr. Heyworth Talbot, who appeared for the Company, addressed to us a most interesting and comprehensive argument, in the course of which he took us over a great number of the provisions of the Act of 1952 with a view to illuminating the basic principles upon which the "actual income" of a company or the "total income" of an individual is to be computed. He pointed out, as is plainly the case, that s. 415 is not directly relevant to the computation of the actual income of a company, being directed solely to the effect of a settlement made by an individual in relation to the computation of his income for surtax purposes. The argument was directed to showing that, in the case of an individual, payments made under a covenant such as that in the present case would diminish his total income, in the sense in which "diminution" of income is to be contrasted with "application" of income as explained by Viscount Radcliffe in *Commissioners of Inland Revenue* v. *Frere*([2]) [1964] 3 W.L.R. 1193. It was therefore contended that a payment under a covenant such as this would be an allowable deduction in computing the total income of an individual. What is suggested, as I understand it, is that the only effect of s. 415 in the case of an individual is that, since for surtax purposes payments under such covenants are to be treated as his income, they must be added back when it comes to assessing his liability for surtax. But that, it is contended, does not get rid of the fact that such payments must first be deducted for purposes of computing his "total income", on which it is suggested that his claims for relief must be based. Therefore, so the argument runs, notwithstanding s. 415, the amounts paid under a covenant such as this would, in the case of an individual, constitute " allowable" deductions.

([1]) *See* page 307 *ante*. ([2]) 42 T.C. 125, at p. 147; [1965] A.C. 402.

A I should like to say that I found the argument for the Appellant Company most interesting, and I would add that for me, at any rate, it had the effect of letting in a few gleams of light on what had hitherto been totally dark places in the law relating to income tax and surtax. But with all possible respect to the argument, and to the distinguished Counsel who advanced it, I am still left with the view that it did not touch the one essential point of the case. That point, B as I see it, is an extremely short one. For my part, I can see no answer to the contention put forward on behalf of the Crown. Proviso (*a*) to s. 262(2) says that a deduction is only allowable for a company if it would be allowable in computing the total income of an individual. That means, in this context, total income for surtax purposes, because that is all that s. 262 in particular, and Chapter III of Part IX in general, are dealing with. I would pause there to C remark that s. 524 of the Act recognises, as I see it, that total income for surtax purposes is something different from total income for income tax purposes. In the case of an individual making payments under a covenant such as this, s. 415 says that such payments are to be treated for surtax purposes as his income. That means that he is not allowed to say for surtax purposes that his income is diminished by the amount of those payments. In other words, D the plain meaning is that he is not allowed for surtax purposes to deduct the payments from what would otherwise be his total income for surtax purposes. In those circumstances it seems to me that the deduction here sought to be made by the Company in computing its actual income falls fairly and squarely within the words of proviso (*a*) to s. 262(2); and that being so, in my judgment the learned Judge came to the only possible conclusion when he held that E the payments made by the Appellant Company under this deed of covenant do not give rise to an allowable deduction.

I would only add one further observation, and that is to express my agreement with what the learned Judge said in the concluding sentence of his judgment([1]), namely that

> "this conclusion accords with the general design of the relevant sections to F treat the income of the company as the income of its members."

I do not think I need to enlarge upon that point, for I fully accept the submissions made to us by Mr. Borneman in that respect.

On that very short ground I am of the opinion that the learned Judge came to the right conclusion and I would dismiss the appeal.

Harman L.J.—I agree. This Company is one of those so-called surtax G companies coming within Part IX of the Income Tax Act 1952. It has, in effect, only one member, and one would in the ordinary way therefore say that it is a subsidiary of the company which is the owner of its shares, but it is among the oddities of this legislation that nothing means what it would appear to mean: when you see in s. 256 that s. 245 applies to a company which is not a subsidiary company, and you say that this is clearly a subsidiary, you are told "Oh, no; H by the definition in s. 256(4), a subsidiary means something quite different in this Act from what it does in the Companies Act." That is typical of income tax legislation.

Now it seems clear enough on the face of it that under proviso (*a*) to s. 262(2), which is a section providing for companies which are not only surtax companies but are investment companies, and which therefore come under I this legislation automatically without any special directions by the Com-

([1]) *See* page 308 *ante*.

(Harman L.J.)

missioners, that proviso says quite tolerably clearly that the actual income is to be computed in such a way as it would be computed if the company were an individual; and at the time that was passed it all seemed plain sailing enough.

The Company entered into a covenant to pay for seven years an income sum to a charity. It was a frequent device with wealthy and even not so very wealthy people to pay their charitable subscriptions in this way, thus having the advantage of getting the State to pay most of the bounty which they dispensed. This got to such a pitch that it became necessary, or it was thought necessary after the war, to stop it. You may still enter into a seven-year covenant to pay income to an individual not being your own infant child and deduct it for surtax purposes from your total income. You may not do that in the case of your charitable subscriptions any more, and the only question in this case is whether such a company as this, being a company under s. 262, is amenable to that prohibition, a prohibition which is included in s. 415(2). Mr. Talbot, in his most interesting and fascinating argument, was, I think, eventually driven to say that s. 415 has no application to s. 262. Directly you apply s. 415 to s. 262, you are bound to come to the conclusion to which the learned Judge came and to which the Crown aspires, namely, that a company of this sort can no more than an individual deduct from its total income the amount it pays away in current subscriptions to a charity. Well, says Mr. Talbot, the reason why s. 415 has nothing to do with s. 262 is because it uses quite different language. It does not talk about deductions; it talks about treating the sum as being the income of the settlor. And, says he, the very effect of treating it as being the income of the settlor and not of any other person would be contrary to the enactment in s. 262, or the whole of Part IX, which was precisely that, namely, to treat the income of a company in this position as the income of the members composing it; that is to say, of another person. That was a striking piece—I say it without disrespect—of linguistic agility: it involves the argument that on a consideration of the proviso of s. 262(2) we are to ignore in the case of a controlled investment company the provisions of s. 415. This I decline to do: the two are to be read one with the other, in spite of the tautology and the verbal leapfrogging, and I am satisfied that the result to which the Crown persuades us must be the right one, and we should dismiss this appeal.

Pearson L.J.—I agree. To some extent the Appellant Company's argument was based on the difference in language between proviso (*a*) to s. 262(2) and s. 415(1). Proviso (*a*) provides that no deduction shall be allowed in computing the actual income from all sources of the company. On the other hand, s. 415(1) uses a different phrase, that the income shall be treated for the purposes of surtax as the income of the settlor. That phrase in the proviso to s. 262(2) is at first sight somewhat odd. It seems odd to say that no deduction shall be allowed in computing the actual income, because you would imagine that any normal computation would not reach the stage of allowing the deduction of anything else; a normal computation would go straight at the task in hand and would include all the items which ought to be included and exclude those which ought not to be included, and would arrive in one operation at the final sum to be computed. But I think the answer is that in this Act it is envisaged that the computation will be made in what may be called either two or three stages. Some support for that is to be derived from Sch. 24, which is referred to in s. 524(2).

In the first of the three stages you reach a *prima facie* or gross figure of the income. At the second stage you set out a list of the allowable deductions to be made, and then at the third stage you make a deduction of the allowable

A deductions from the *prima facie* or gross amount of the income and you arrive at the final net figure. That being the method of computation envisaged by s. 262, you then have to look at s. 415 and you find that the income in question shall, in the case of an individual, be treated for the purposes of surtax as the income of the settlor. If that income is to be treated as the income of the settlor, it must follow that it is not an allowable deduction. It is therefore not to be
B included in the list of allowable deductions which are to be subtracted from the *prima facie* gross income arrived at in the first stage of the computation.

When the matter is looked at in that way it seems to me that no difficulty arises from the change in wording in s. 415 as compared with proviso (*a*) to s. 262(2), and in my view the result follows that the decision of the learned Judge was correct and ought to be affirmed. I would dismiss the appeal.

C **Borneman Q.C.**—Would your Lordships dismiss the appeal with costs? Would your Lordships also affirm the declaration and Order which the learned Judge made in the Court below, which is set out at the end of the judgment? There is no need for me to read it; it is just the machinery for giving effect—

Harman L.J.—Why do we need to do that if we dismiss the appeal?

Borneman Q.C.—My Lord, so long as it does stand, but in modern
D practice a somewhat extended declaration is made, certainly in the lower court.

Harman L.J.—This Court is concerned with allowing or dismissing the appeal.

Borneman Q.C.—So long as the declaration and Order—

Willmer L.J.—The effect of our decision is that the judgment of the learned Judge stands.

E **Borneman Q.C.**—My Lord, it was not part of his judgment; that is why I mentioned it.

Willmer L.J.—Well, it is part of his decision.

Heyworth Talbot Q.C.—My Lord, with some apprehension I venture to make the application I am instructed to make, in view of the unanimity against me, but I am under instructions to ask your Lordships for leave to go to the
F House of Lords, if, after careful consideration of your Lordships' judgments, the Appellant should so desire.

Willmer L.J.—What have you to say to that, Mr. Borneman?

Borneman Q.C.—Your Lordship knows that it is the practice of the Crown not to make any observation on such an application. They leave it entirely to your Lordships.

G **Willmer L.J.**—Is there something else you want to say, Mr. Talbot?

Talbot Q.C.—I have nothing more to say my Lord, only that, in my submission, this is a point of general importance.

Willmer L.J.—We will grant you leave to appeal to the House of Lords.

Talbot Q.C.—If you please.

H The Company having appealed against the above decision, the case came before the House of Lords (Viscount Dilhorne, Lords Cohen, Hodson, Guest and Upjohn) on 28th February and 1st March 1966, when judgment was reserved. On 31st March 1966 judgment was given in favour of the Crown, with costs (Lord Guest dissenting).

F. Heyworth Talbot Q.C. and *D. Braham* for the Company. A

Roy Borneman Q.C., *J. Raymond Phillips* and *J. P. Warner* for the Crown.

The following cases were cited in argument: *Commissioners of Inland Revenue* v. *Frere*, 42 T.C. 125; [1965] A.C. 402; *Perry* v. *Astor*, 19 T.C. 255; [1935] A.C. 398; *Commissioners of Inland Revenue* v. *Wood Bros. (Birkenhead) Ltd.*, 38 T.C. 275; [1959] A.C. 487. B

Viscount Dilhorne—My Lords, the Appellant Company is an investment company to which s. 262 of the Income Tax Act 1952 applies. So far as material that section reads as follows:

> "262.—(1) Subject to the provisions of this section with respect to companies with estate or trading income, the whole of the actual income C from all sources, for every year of assessment, of every investment company to which section two hundred and forty-five of this Act applies shall, however much or however little thereof has been distributed to its members, be deemed for the purposes of assessment to surtax to be the income of the members of the company, and accordingly the Special Commissioners shall give a direction under the said section two hundred and forty-five in respect D of each year of assessment in relation to every such company without considering whether or not the company has distributed a reasonable part of its said income. (2) . . . Provided that—(*a*) no deduction shall be allowed in computing the actual income from all sources of the company which would not be allowable in computing the total income of an individual for the purposes of this Act, other than deductions for any profits tax payable E by the company or for any such sums disbursed by the company as expenses of management as the Special Commissioners consider reasonable, having regard to the requirements of the company's business and, in the case of directors' fees or other payments for services, to the actual services rendered to the company".

The actual income of the Appellant Company had therefore to be deemed F for the purposes of assessment to surtax to be the income of the members of the Company. On 30th March 1955 the Appellant Company entered into a deed of covenant whereby it undertook to pay the Dominion Students' Hall Trust the sum of £1,450 a year less income tax for seven years commencing on 31st March 1955. The only question for determination in this appeal is whether the actual income of the Company included or excluded this sum of £1,450. G

It was common ground that, if the covenant had been made by an individual, the income received by the Dominion Students' Hall Trust would, by virtue of s. 415(1) of the Income Tax Act 1952, have had to be treated for the purposes of surtax as the income of the individual who entered into the covenant. Section 415(1) reads as follows:

> "Where, during the life of the settlor, income arising under a settle- H ment made on or after the tenth day of April, nineteen hundred and forty-six, is, under the settlement and in the events that occur, payable to or applicable for the benefit of any person other than the settlor, then, unless, under the settlement and in the said events, the income either—(*a*) is payable to an individual for his own use; or (*b*) is applicable for the benefit of an individual named in that behalf in the settlement, or of two or more I individuals named in that behalf therein; or (*c*) is applicable for the benefit of a child or children of an individual named in that behalf in the settlement; or (*d*) is income from property of which the settlor has divested himself absolutely by the settlement; or (*e*) is income which, by virtue of some

A provision of this Act not contained in this Chapter, is to be treated for the purposes of this Act as income of the settlor, the income shall be treated for the purposes of surtax as the income of the settlor and not as the income of any other person . . ."

Section 411(2) of the Act defines a settlement as including any covenant and a settlor as meaning any person by whom the settlement is made.

B Mr. Heyworth Talbot, for the Appellant Company, contended that the fact that s. 415(1) required, in the cases in which it applied, that the income of the settlement should for surtax purposes be treated as the income of the individual who made it, did not mean that a deduction of the amount paid by the settlor ceased to be allowable as a deduction when computing his income. Where, he said, it was intended to prohibit a deduction, that was clearly stated. He referred C to s. 407(1) of the Act, which states:

> "Where, by virtue or in consequence of any settlement to which this section applies, the settlor pays . . . any sums which would, but for this subsection, be allowable as deductions in computing his total income for that year for the purposes of surtax, those sums shall not be so allowable".

Section 415(1) did not, he argued, prohibit the deduction by an individual of D the amount he had covenanted to pay when computing his income. Its effect was, he said, to nullify the deduction by requiring the amount received under the covenant to be added to his income. He therefore maintained that as, despite the enactment of s. 415(1), the amount received annually by the Dominion Students' Hall Trust would have been deductible if the covenant had been made by an individual, the proviso to s. 262(2) did not prevent that sum being deducted E in computing the actual income of the Appellant Company. The words "during the life of the settlor" in that section showed, he submitted, that that section was not intended to apply where the settlor was a company, and the words "actual income" in s. 262, he submitted, excluded income that was to be deemed or treated as the income of the taxpayer. I see no reason to conclude that "actual income" was intended to exclude income required by Statute to be F treated as the income of the taxpayer. As I have said, s. 411(2) defines a settlor as meaning any person by whom a settlement is made. Unless a contrary intention appears, a person includes a body corporate: Interpretation Act, 1889, s. 19. I doubt if the use of the words "during the life of the settlor" suffices to indicate a contrary intention. If they do not, s. 415(1) requires the amount received under the covenant to be treated as the income of the Appellant G Company. It is not, in my opinion, necessary to reach a conclusion on this, for, despite the ingenious argument advanced by Mr. Heyworth Talbot, I have come to the conclusion that, although the language of ss. 407 and 415(1) is different, its effect is the same, namely, to prevent certain deductions being allowable. Willmer L.J. in the course of his judgment said([1]):

> "In the case of an individual making payments under a covenant H such as this, s. 415 says that such payments are to be treated for surtax purposes as his income. That means that he is not allowed to say for surtax purposes that his income is diminished by the amount of those payments. In other words, the plain meaning is that he is not allowed for surtax purposes to deduct the payments from what would otherwise be his total income for surtax purposes."

([1]) *See* page 311 *ante*.

(Viscount Dilhorne)

Pearson L.J. put the matter even more succinctly when he said([1]): A

"If that income is to be treated as the income of the settlor, it must follow that it is not an allowable deduction."

I agree with them. Not being an allowable deduction in the case of an individual, the proviso to s. 262(2) prevents it being deducted in computing the actual income of the Appellant Company.

Mr. Heyworth Talbot placed some reliance on the provisions of Sch. 24 to B the Income Tax Act 1952. Section 524(2) of that Act requires any person delivering a statement of total income to comply with that Schedule. The fact that in doing so a person shows a deduction from his income does not, in my view, establish that the deduction is allowable.

For the reasons I have given, in my opinion this appeal should be dismissed.

Lord Cohen—My Lords, I agree that this appeal should be dismissed. I have C had the opportunity of reading the opinions which have been written by my noble and learned friends Lord Dilhorne and Lord Upjohn. I agree with the reasons they give for dismissing this appeal and cannot usefully add any further reasons of my own.

Lord Hodson—My Lords, at first sight the case for the Crown on this appeal appeared unanswerable, and at the end of the hearing, notwithstanding D the forceful arguments put forward on behalf of the taxpayer, I remain of the same opinion.

The Crown's case is a simple one. By proviso (*a*) to s. 262(2) of the Income Tax Act 1952 it is provided that:

"no deduction shall be allowed in computing the actual income from all sources of the company which would not be allowable in computing E the total income of an individual for the purposes of this Act. . . ."

The taxpayer is a company within the meaning of s. 262. It has entered into a covenant in favour of a charity to pay to it annually £1,450 less income tax. What would be the position if the covenant had been entered into by an individual? There is no question but that the covenanted sum would not be allowable in computing the total income of the individual for income tax F purposes, and the Company is in the same position. I have left out the word "deduction", as the use of that word begs the only question which has been debated.

It arises in this way. The position of the individual taxpayer in relation to covenants is governed by s. 415, which provides:

"Where, during the life of the settlor, income arising under a settle- G ment made on or after the tenth day of April, nineteen hundred and forty-six, is, under the settlement and in the events that occur, payable to or applicable for the benefit of any person other than the settlor, then . . . the income shall be treated for the purposes of surtax as the income of the settlor and not as the income of any other person".

I have omitted words which relate to immaterial exceptions. Since there is no H mention of deductions in the section, which applies to individuals, it is argued that the section can have no application to the deductions referred to in the proviso to s. 262(2). No other section comes into play, and the argument is

([1]) *See* page 313 *ante*.

A reinforced by the application of the principle that there can be no taxation without clear words and that the Statute has many examples of items being treated as income in contradistinction to items being allowed as deductions: see ss. 405, 407, 408. By way of explanation it should be stated that s. 415 had to be drafted in a somewhat roundabout way so as to cover settlements in the ordinary conveyancing sense of the word by which the settlor disposes of a B capital sum and settles it upon successive interests. No question of deduction in such a case arises, but a covenant is by definition a "settlement" (see ss. 411(2) and 415(3)) and is thus caught by the language of s. 415. The effect, of course, is that the covenantor cannot deduct the income paid away under the covenant when he is computing his total income for surtax purposes, although the route by which that position is arrived at is a devious one. Theoretically he C deducts the covenanted payment as an annual payment under Sch. 24 and then gets it disallowed by virtue of the covenanted payment being treated for the purposes of surtax as his income. Arithmetically the result is the same whether one uses the word deduction or not, and I find myself unable to accept the argument that, because the word "deduction" is not employed in s. 415 (contrast s. 78 of the Finance Act 1965), the section is inapplicable and the taxpayer D Company is accordingly free from any restriction as to deduction in the case of this charitable covenant.

I would dismiss the appeal.

Lord Guest—My Lords, the Appellants on 30th March 1955 entered into a deed of covenant whereby they covenanted to pay £1,450 annually for seven years to the Dominion Students' Hall Trust. The Appellants made payments to E the Dominion Students' Hall Trust as provided in the deed. The Special Commissioners held that the sum of £1,450 formed a valid deduction from the Appellants' actual income for the purpose of its computation for purposes of surtax. This decision was reversed by Ungoed-Thomas J., whose decision was affirmed by the Court of Appeal.

The Appellant Company is an investment company within the meaning F of s. 257(2) of the Income Tax Act 1952. It is also a closely controlled company under s. 256 of the Act. A direction was made on the Appellants pursuant to ss. 245 and 262(1) of the Act for each of the five years of assessment 1955–56 to 1959–60 inclusive. These directions, it was accepted, were properly made, and the actual income of the Company fell to be sub-apportioned among the shareholders of the company of which it was a subsidiary. In making the apportion- G ment the whole of the actual income of the Company was apportioned without deducting the annual sums of £1,450 paid by the Appellants under the deed of covenant.

The Crown contends that the deduction is not permissible having regard to the terms of proviso (*a*) to s. 262(2) of the Act:

> "no deduction shall be allowed in computing the actual income from H all sources of the company which would not be allowable in computing the total income of an individual for the purposes of this Act, other than deductions for any profits tax payable by the company or for any such sums disbursed by the company as expenses of management as the Special Commissioners consider reasonable, having regard to the requirements of the company's business and, in the case of directors' fees or other payments I for services, to the actual services rendered to the company".

(Lord Guest)

Section 262 applies the s. 245 code relating to closely controlled companies and providing for the apportionment of non-distributed income among its members to an investment company, and makes a direction by the Special Commissioners obligatory in the case of such a company. Proviso (*a*) to s. 262(2) provides that no deduction shall be allowed in computing the actual income of the company which would not be allowable in computing the total income of an individual. The Crown contends that s. 415 prohibits the deduction from an individual's total income for surtax purposes of income under certain settlements of which it is admitted the present is one. But when one refers to s. 415 one finds that deductions are not mentioned. The section provides as follows:

> "(1) Where, during the life of the settlor, income arising under a settlement made on or after the tenth day of April, nineteen hundred and forty-six, is, under the settlement and in the events that occur, payable to or applicable for the benefit of any person other than the settlor, then, unless . . . the income shall be treated for the purposes of surtax as the income of the settlor and not as the income of any other person".

The section is directed to an entirely different end. Before the predecessor to s. 415 appeared on the Statute book an individual's total income would have been diminished by the settlement income. His "total income" would have been arrived at under the predecessor to s. 524 and ascertained by applying the rules and directions in force. But the result of s. 415 was, in the case of an individual, to nullify the effect of the diminution of the individual's income by including in his total income the settlement income. The mechanics of the calculation would then be that in the individual's income in the first place would be included the settlement income in virtue of s. 415, and the settlement income would then be deducted as an annual payment under Sch. 24. The arithmetical result would be in effect to disallow any allowance of the settlement income by adding it back for the purpose of ascertaining the total income. But the steps which would according to the Act have to be taken would be as I have stated.

The Crown says this is a very long way round to achieve the result and, as the result of s. 415 is to disallow the settlement income as a deduction for the purposes of computing total income, the section can fairly be described as prohibiting a deduction within the terms of proviso (*a*) to s. 262(2). In this I think they are wrong. Their argument involves verbal leapfrogging so as to give s. 262 the intention which it is said it must have had. Section 415 is not disallowing any deduction but providing for some income to be included in total income which would otherwise not be included. The Crown argued that the expression "no deduction shall be allowed" in proviso (*a*) to s. 262(2) should not be construed strictly as limited to "deductions" but should extend to allowances, adjustments of whatever nature in arriving at total income. This I decline to do. There is a clear distinction to be found in the Income Tax Act 1952 of items being treated as income and items being allowed as deductions: see ss. 405, 407, 408. If Parliament wishes to include both, clear language can be used, as in s. 78 of the Finance Act 1965.

If I am right that s. 415 has no effect on proviso (*a*) to s. 262(2), then there is no prohibition against making an allowance from the income of the investment company of the settlement income under the covenant. The difference between the investment company and the individual is that there is no provision similar to s. 415—which it is conceded can only apply to the individual—which would result in the addition of settlement income to the income of the investment company. In short, proviso (*a*) to s. 262(2) only equiparates the investment

company with the individual for the purpose of allowable deductions, and as s. 415 does not deal with deductions, it is not brought into play by proviso (*a*) to s. 262(2).

I would allow the appeal.

Lord Upjohn—My Lords, the Appellant Company is an investment company within the meaning of ss. 245 and 262 of the Income Tax Act 1952, and accordingly the whole of its actual income from all sources for every year of assessment is deemed for the purposes of assessment to surtax to be income of the members of the Appellant Company, and apportionable among them in the manner provided by the Act.

Proviso (*a*) to s. 262(2) provides:

> "no deduction shall be allowed in computing the actual income from all sources of the company which would not be allowable in computing the total income of an individual for the purposes of this Act. . . ."

The Appellant Company has entered into a common form seven years' covenant in favour of a charity known as Dominion Students' Hall Trust to pay to it annually £1,450 less income tax. It is common ground that if this covenant had been entered into by an individual no deduction in respect of the annual sum payable thereunder would be allowable in computing the total income of the individual for the purposes of the Act. Therefore, argue the Crown, the proviso to s. 262(2) fits the case exactly and no deduction can be allowed in computing the actual income of the Appellant Company for the purposes of surtax.

I can see no answer whatever to this simple proposition, but in deference to the ingenious argument placed before your Lordships I propose to examine it in a little detail. It depends on the provisions in the Income Tax Act which make it clear beyond doubt or dispute that an individual cannot deduct from his total income sums paid by him to charitable bodies under seven-year covenants. These are to be found in s. 415. By the combined effect of ss. 411(2) and 415(3), a "settlement" in s. 415 includes a covenant. Section 415(1) provides that:

> "Where, during the life of the settlor, income arising under a settlement made on or after the tenth day of April, nineteen hundred and forty-six, is, under the settlement and in the events that occur, payable to or applicable for the benefit of any person other than the settlor, then, unless . . . the income either"

—and the section sets out in paras. (*a*) to (*e*) certain exceptions which do not include payment of income to charitable bodies—

> "the income shall be treated for the purposes of surtax as the income of the settlor and not as the income of any other person".

The argument is that the section is not dealing with deductions at all. It is argued that in accordance with general income tax principles the taxpayer can deduct from his total income payments of covenanted annual sums because his income is thereby diminished. But the effect of s. 415 is that to this diminished income there must be added the sum he has already deducted, for it is to be treated as his income and not that of any other person. Hence the permitted deduction and the compulsory addition balance out and the individual taxpayer cannot diminish his total income for the purposes of surtax by the covenanted annual payment.

(Lord Upjohn)

That, as I have said, is not in dispute, but the argument runs that, as there is nothing in s. 415 which prohibits deductions and all it has done is to nullify the permitted deduction by making an addition, so the proviso to s. 262(2) does not operate, for it is only dealing with deductions not allowable in the case of individuals and there are none. I cannot accept this argument. The main purpose of s. 415 is no doubt to deal with settlements as they are ordinarily understood, i.e., settlements where the settlor transfers out and out capital sums to trustees upon various trusts so that the income ceases to be his. Therefore s. 415 was framed to reach the desired tax result by providing that nevertheless such income was to be treated as his. But when a settlement is made by definition to include a covenant, a somewhat artificial though now very familiar concept, the sum has to be worked out purely as a matter of mental process in the way in which it has been argued on behalf of the Appellant Company, but this leads to the result which, in my opinion, may be accurately stated in legal language by saying that the individual taxpayer cannot for surtax purposes deduct from his total income annual payments made by him under covenant for charitable purposes. Proviso (*a*) to s. 262(2) makes it plain that the investment company cannot do so either. That seems to me to have been the clear intention of Parliament.

I would dismiss this appeal.

Questions 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:—Allen & Overy; Solicitor of Inland Revenue.]