Kenya
25, 1958
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IN THE PRIVY COUNCIL No. 7 of 1957

ON APPEAL

FROM THE COURT OF APPEAL FOR EASTERN AFRICA

B E T W E E N :-

GOKULDAS RATANJI MANDAVIA (Assessee) — Appellant

- and -

THE COMMISSIONER OF INCOME TAX (Eastern Africa) — Respondent

RECORD OF PROCEEDINGS

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Solicitors for the Appellant.

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Solicitors for the Respondent.

UNIVERSITY OF LONDON
W.C.1.
24 JAN 1959
INSTITUTE OF ADVANCED
LEGAL STUDIES

52070

IN THE PRIVY COUNCIL No. 7 of 1957

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA

B E T W E E N

GOKULDAS RATANJI MANDAVIA (Assessee) Appellant

- and -

THE COMMISSIONER OF INCOME TAX (Eastern Africa) Respondent

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL No. 7 of 1957

ON APPEAL

FROM THE COURT OF APPEAL FOR EASTERN AFRICA

B E T W E E N :-

GOKULDAS RATANJI MANDAVIA (Assessee) — Appellant

- and -

THE COMMISSIONER OF INCOME TAX (Eastern Africa) — Respondent

RECORD OF PROCEEDINGS

No. 1.

No. 1.

Income Tax Assessments 1943-1951.

26th June, 1953.

INCOME TAX ASSESSMENTS 1943-1951

Please quote File No. 23013 in any communication.

COLONY AND PROTECTORATE OF KENYA
TANGANYIKA TERRITORY
PROTECTORATE OF - UGANDA
PROTECTORATE OF ZANZIBAR

Form I.T.20
NOTICE OF
~~ADDITIONAL~~
ASSESSMENT
ASSESSMENT
NO. IB/109
2.1.1. 80.

INCOME TAX YEAR, 1943
(Section 58 of the Ordinances
or Decree, 1940)

10 To, Mr. Gokaldas Ratanji Mandavia, 68, St. Marks Road, London, W.10.

Take notice that you have been assessed in respect of

as follows :-	£ INCOME	Shs. TAX PAID
A. Agriculture		
B. Trade, Profession, etc...................	500	
C. Employment-Salary etc..................		
Quarters..................		
20 D. Rents, etc.............................	300	
E. Annual Value, - property...............		
F. (a) Dividends		
(b) Debenture - Interest		
(c) Mortgage Interest		
(d) Interest - untaxed		
G. Other Income...........................		
H. Income from United Kingdom.............		
Income from other Countries............		
I. Less Interest paid		
30 J. Less Losses		
TOTAL INCOME	800	

Less Personal Deductions

Single	Married	Child	Dependent	Life Assurance	Pension Fund

CHARGEABLE INCOME	800

Excluding surtax, the rate of tax is Sh.2. plus $\frac{1}{8}$ of a cent for every £ of chargeable income in excess of £250 up to a maximum of Sh.5. i.e. The excess over £250 is

No. 1.

Income Tax Assessments 1943-1951.

26th June, 1953 - continued.

(£800 - £250) = £550 at ⅛ cent			Sh. .678
Add			Sh. 2.00
The rate chargeable is			Sh. 2.678
or Sh. 5/- whichever is the less.			
£800 at 2.687	...	...	Shs. 2,150
Surtax as overleaf .	...	...	
ADD tax under Sec.28	...	...	Shs. 6,450
Less Double Tax Relief	...	...	Sh.
Tax paid at source	...	...	Sh.
Tax overpayment 194 .	...	...	Sh.
Less Assessment No.	...	...	Sh.
	TAX PAYABLE		Sh. 8,600

10

Except where notice of objection has been given the above amount is payable by you on or before the due date i.e., 5th August, 1953.

If not paid on or before the due date a penalty of 20 per cent. of the tax will be added; PROVIDED THAT where the due date is before the 31st March, 1944 an instalment of half the tax may be paid on or before the due date and the balance on or before the 31st March, 1944 without incurring a penalty. If the first instalment is not paid on or before the due date demand will be made for the full tax together with a penalty of 20 per cent of the tax.

20

If you dispute this Assessment you must give me notice of objection in writing, stating precisely the grounds of your objection WITHIN 30 DAYS of the date hereof. Please read NOTES ON THE BACK OF THIS FORM.

A notice of objection, if made after 30 days, cannot be accepted unless absence from the Colony, sickness or other reasonable cause prevented due notice being given.

30

Dated this 26th day of June, 1953.
Law Courts Buildings,
MRW P.O.Box 520, Nairobi, Kenya.

(Sgd.) A.HOLDEN
For Assistant Commissioner of Income Tax.

SURTAX

Where the TOTAL income exceeds £3,000 surtax is payable on the excess of total income over £3,000, at the rate of Sh.4 in the pound plus 1/20 of a cent for every pound of the total income in excess of £3,000, i.e.

40

(Not charged).

Please quote No.23013 in any communication.

COLONY AND PROTECTORATE OF KENYA
TANGANYIKA TERRITORY
PROTECTORATE OF UGANDA
PROTECTORATE OF ZANZIBAR

Form I.T.20
NOTICE OF ~~ADDITIONAL~~ ASSESSMENT
ASSESSMENT NO. IB/110
2.1.1. 80

No. 1.

Income Tax Assessments 1943-1951.

26th June, 1953 - continued.

INCOME TAX YEAR 1944
(Section 58 of the Ordinances or Decree, 1940)

10 To, Mr. Gokuldas Ratanji Mandavia, 68, St. Marks Road, London, W.10.

Take notice that you have been assessed in respect of

as follows :-

	£ INCOME	Shs. TAX PAID
A. Agriculture		
B. Trade, Profession, etc..................	600	
C. Employment-Salary etc...................		
Quarters..................		
D. Rents, etc.............................. (20)	300	
E. Annual Value, - property................		
F. (a) Dividends		
(b) Debenture - Interest		
(c) Mortgage Interest		
(d) Interest - untaxed		
G. Other Income............................		
H. Income from United Kingdom..............		
Income from other Countries............		
I. Less Interest paid......................		
J. Less Losses............................. (30)		
TOTAL INCOME	900	

Less Personal Deductions

Single	Married	Child	Dependent	Life Assurance	Pension Fund

CHARGEABLE INCOME 900

Excluding surtax, the rate of tax is Sh. 2. plus $\frac{1}{8}$ of a cent for every £ of chargeable income in excess of £250 up to a maximum of Sh. 5. i.e. The excess over £250 is

No. 1.

Income Tax Assessments 1943-1951.

26th June, 1953 - continued.

(£900 - £250) = £650 at ⅛ cent		Sh.	.812
	Add:	Sh.	2.00
The rate chargeable is		Sh.	2.812
or Sh. 5/- whichever is the less.			
£900 at 2.812 ...	...	Shs.	2,531
Surtax as overleaf ...	...	Shs.	
ADD tax under Sec. 28.	...	Shs.	7,593
Less Double Tax Relief.	...	Sh.	
Tax paid at source ...	...	Sh.	
Tax overpayment 19 ...	...	Sh.	
Less Assessment No. .	...	Sh.	
	TAX PAYABLE	Sh.	10,124

10

Except where notice of objection has been given the above amount is payable by you on or before the due date, i.e., 5th August, 1953.

If not paid on or before the due date a penalty of 20 per cent. of the tax will be added; PROVIDED THAT where the due date is before the 31st March, 1944 an instalment of half the tax may be paid on or before the due date and the balance on or before the 31st March 1944 (20) without incurring a penalty. If the first instalment is not paid on or before the due date, demand will be made for the full tax together with a penalty of 20 per cent of the tax.

If you dispute this Assessment you must give me notice of objection in writing, stating precisely the grounds of your objections WITHIN 30 DAYS of the date hereof. Please read NOTES ON THE BACK OF THIS FORM.

A notice of objection, if made after 30 days, cannot be accepted unless absence from the Colony, sickness (30) or other reasonable cause prevented due notice being given.

Dated this 26th day of June, 1953
Law Courts Building,
MRW P.O. Box 520, Nairobi, Kenya.

(Sgd.) A.HOLDEN
For Assistant Commissioner of Income Tax.

SURTAX

Where the TOTAL income exceeds £3,000 surtax is payable on the excess of total income over £3,000, at the rate of Sh.4 in the pound plus 1/20 of a cent for every (40) pound of the total income in excess of £3,000, i.e.

(Not charged).

Please quote No.23013 in any communication.	COLONY AND PROTECTORATE OF KENYA TANGANYIKA TERRITORY PROTECTORATE OF UGANDA PROTECTORATE OF ZANZIBAR	FORM I.T.20 NOTICE OF ADDITIONAL ASSESSMENT. ASSESSMENT NO. IB/111. 2.1.1. 80.	No. 1. Income Tax Assessments 1943-1951. 26th June, 1953 - continued.

INCOME TAX YEAR 1945
(Section 58 of the Ordinances or Decree, 1940)

10 To, Mr. Gokuldas Ratanji Mandavia, 68, St. Marks Road, London, W.10.

Take notice that you have been assessed in respect of

as follows :-	£ INCOME	Shs. TAX PAID
A. Agriculture		
B. Trade, Profession, etc..................	1,300	
C. Employment-Salary, etc..................		
Quarters		
20 D. Rents, etc................................	300	
E. Annual Value, - property...............		
F. (a) Dividends		
(b) Debenture Interest		
(c) Mortgage Interest		
(d) Interest - untaxed		
G. Other Income		
H. Income from United Kingdom		
Income from other Countries		
I. Less Interest paid		
30 J. Less Losses		
TOTAL INCOME	1,600	

Less Personal Deductions

Single	Married	Child	Dependent	Life Assurance	Pension Fund

CHARGEABLE INCOME 1,600.

Excluding surtax, the rate of tax is Sh. 2. plus $\frac{1}{8}$ of a cent for every £ of chargeable income in excess of £250 up to a maximum of Sh. 5. i.e. The excess over £250 is

Income Tax Assessments 1943-1951. 26th June, 1953 - continued.		
No. 1.	(£1,600 - £250) = £1,350 at 1/8 cent	Sh. 1.687
	Add:	Sh. 2.00
	The rate chargeable is	Sh. 3.687
	or Sh. 5/- whichever is the less.	
	£1,600 at 3.687	Shs. 5,900
	Surtax as overleaf	Shs.
	ADD tax under Sec.28	Shs.17,700
	Less Double Tax Relief	Sh.
	Tax paid at source	Sh.
	Tax overpayment 19	Sh.
	Less Assessment No.	Sh.
	TAX PAYABLE	Sh. 23,600

10

Except where notice of objection has been given the above amount is payable by you on or before the due date, i.e., 5th August, 1953.

If not paid on or before the due date a penalty of 20 per cent. of the tax will be added: PROVIDED THAT where the due date is before the 31st March, 1944 an instalment of half the tax may be paid on or before the due date and the balance on or before the 31st March, 1944 without incurring a penalty. If the first instalment is not paid on or before the due date, demand will be made for the full tax together with a penalty of 20 per cent of the tax.

20

If you dispute this Assessment you must give me notice of objection in writing, stating precisely the grounds of your objections WITHIN 30 DAYS of the date hereof. Please read NOTES ON THE BACK OF THIS FORM.

A notice of objection, if made after 30 days, cannot be accepted unless absence from the Colony, sickness or other reasonable cause prevented due notice being given.

30

Dated this 26th day of June, 1953
Law Courts Building,
MRW P.O.Box 520, Nairobi, Kenya.

(Sgd.) A.HOLDEN
For Assistant
Commissioner
of Income Tax.

SURTAX

Where the TOTAL income exceeds £3,000 surtax is payable on the excess of total income over £3,000, at the rate of Sh.4 in the pound plus 1/20 of a cent for every pound of the total income in excess of £3,000, i.e.

40

(Not charged).

Please quote File No. 23013 in any communication.	COLONY AND PROTECTORATE OF KENYA TANGANYIKA TERRITORY PROTECTORATE OF UGANDA PROTECTORATE OF ZANZIBAR	Form I.T.20 NOTICE OF ADDITIONAL ASSESSMENT. ASSESSMENT NO. IB/112 2.1.1. 80.	No. 1. Income Tax Assessments 1943-1951. 26th June, 1953 - continued.

INCOME TAX YEAR 1946
(Section 58 of the Ordinances or Decree, 1940)

10 To, Mr. Gokuldas Ratanji Mandavia, 68, St. Marks Road, London, W.10.

Take notice that you have been assessed in respect of

as follows :-	£ INCOME	Shs. TAX PAID
A. Agriculture		
B. Trade, Profession, etc...............	1,300	
C. Employment - Salary, etc............		
Quarters............		
20 D. Rents, etc...........................	300	
E. Annual Value, - property............		
F. (a) Dividends		
(b) Debenture - Interest		
(c) Mortgage Interest		
(d) Interest - untaxed		
G. Other Income		
H. Income from United Kingdom		
Income from other Countries		
I. Less Interest paid		
30 J. Less Losses		
TOTAL INCOME	1,600	

Less Personal Deductions

Single	Married	Child	Dependent	Life Assurance	Pension Fund

	CHARGEABLE INCOME	1,600

Excluding surtax, the rate of tax is Sh. 2. plus $\frac{1}{8}$ of a cent for every £ of chargeable income in excess of £250 up to a maximum of Sh. 5. i.e. The excess over £250 is

No. 1.

Income Tax Assessments 1943-1951.

26th June, 1953 - continued.

(£1,600 - £250) = £1,350 at $\frac{1}{8}$ cent	Sh.	1,687
Add:	Sh.	2.00
The rate chargeable is	Sh.	3.687

of Sh. 5/- whichever is the less.

£1,600 at 3.687	Shs.	5,900
Surtax as overleaf	Shs.	
ADD tax under Sec.28	Shs.	17,700
Less Double Tax Relief	Sh.	
Tax paid at source	Sh.	
Tax overpayment 19	Sh.	
Less Assessment No.	Sh.	
TAX PAYABLE	Sh.	23,600

10

Except where notice of objection has been given the above amount is payable by you on or before the due date, i.e., 5th August, 1953.

If not paid on or before the due date a penalty of 20 per cent. of the tax will be added; PROVIDED THAT where the due date is before the 31st March, 1944 an instalment of half the tax may be paid on or before the due date and the balance on or before the 31st March, 1944 without incurring a penalty. If the first instalment is not paid on or before the due date, demand will be made for the full tax together with a penalty of 20 per cent of the tax.

20

If you dispute this Assessment you must give me notice of objection in writing, stating precisely the grounds of your objections WITHIN 30 DAYS of the date hereof. Please read NOTES ON THE BACK OF THIS FORM.

A notice of objection, if made after 30 days, cannot be accepted unless absence from the Colony, sickness or other reasonable cause prevented due notice being given.

30

Dated this 26th day of June, 1953. (Sgd.) A.HOLDEN

Law Courts Building, For Assistant Commissioner of Income Tax.

MRW P.O.Box 520, Nairobi, Kenya.

SURTAX

Where the TOTAL income exceeds £3,000 surtax is payable on the excess of total income over £3,000, at the rate of Sh.4 in the pound plus 1/20 of a cent for every pound of the total income in excess of £3,000, i.e.

40

(Not charged)

Please quote File No. 23013 in any communication.

COLONY AND PROTECTORATE OF KENYA
TANGANYIKA TERRITORY
PROTECTORATE OF UGANDA
PROTECTORATE OF ZANZIBAR

Form I.T.20
NOTICE OF ~~ADDITIONAL~~ ASSESSMENT.
ASSESSMENT NO. IB/113
2.1.1. 80

No. 1.

Income Tax Assessments 1943-1951.

26th June, 1953 - continued.

INCOME TAX YEAR 1947
(Section 58 of the Ordinances or Decree, 1940)

10 To, Mr. Gokuldas Ratanji Mandavia, 68, St. Marks Road, London, W.10.

Take notice that you have been assessed in respect of

as follows :-	£ INCOME	Shs. TAX PAID
A. Agriculture		
B. Trade, Profession etc...............	1,800	
C. Employment - Salary etc............		
Quarters............		
20 D. Rents, etc......................	300	
E. Annual Value, .. property...........		
F. (a) Dividends		
(b) Debenture - Interest		
(c) Mortgage Interest		
(d) Interest - untaxed		
G. Other Income		
H. Income from United Kingdom.........		
Income from other Countries........		
I. Less Interest paid		
30 J. Less Losses		
TOTAL INCOME	2,100	

Less Personal Deductions

Single	Married	Child	Dependent	Life Assurance	Pension Fund

CHARGEABLE INCOME 2,100

Excluding surtax, the rate of tax is Sh. 2. plus $\frac{1}{8}$ of a cent for every £ of chargeable income in excess of £250 up to a maximum of Sh.5 i.e. The excess over £250 is

No. 1.

Income Tax Assessments 1943-1951.

26th June, 1953 - continued.

(£2,100 - £250) = £1,850 at ⅛ cent	Sh.	2.312
Add:	Sh.	2.00
The rate chargeable is	Sh.	4.312

of Sh.5/- whichever is the less.

£2,100 at 4.312	Shs.	9,056
Surtax as overleaf	Shs.	
ADD tax under Sec.28	Shs.	27,168
Less Double Tax Relief	Sh.	
Tax paid at source	Sh.	
Tax overpayment 19	Sh.	
Less Assessment No.	Sh.	
TAX PAYABLE	Sh.	36,224

10

Except where notice of objection has been given the above amount is payable by you on or before the due date, i.e. 5th August, 1953.

If not paid on or before the due date a penalty of 20 per cent. of the tax will be added; PROVIDED THAT where the due date is before the 31st March, 1944 an instalment of half the tax may be paid on or before the due date and the balance on or before the 31st March 1944 without incurring a penalty. If the first instalment is not paid on or before the due date, demand will be made for the full tax together with a penalty of 20 per cent of the tax.

20

If you dispute this Assessment you must give me notice of objection in writing, stating precisely the grounds of your objections WITHIN 30 DAYS of the date hereof. Please read NOTES ON THE BACK OF THIS FORM.

A notice of objection, if made after 30 days, cannot be accepted unless absence from the Colony, sickness or other reasonable cause prevented due notice being given.

30

Dated this 26th day of June, 1953

Law Courts Building,

MRW P.O.Box 520, Nairobi, Kenya.

(Sgd.) A.HOLDEN
For Assistant Commissioner of Income Tax.

SURTAX

Where the TOTAL income exceeds £3,000 surtax is payable on the excess of total income over £3,000, at the rate of Sh.4 in the pound plus 1/20 of a cent for every pound of the total income in excess of £3,000, i.e.

40

(Not charged)

Reference Please quote File No. 23013 in any communication.

EAST AFRICAN INCOME TAX DEPARTMENT

INCOME TAX YEAR, 1948

(Section 58 of the Ordinances or Decree)

Form I.T.20(K)
Notice of ~~Additional~~
Assessment.

No. 1.

Income Tax Assessments 1943-1951.

26th June, 1953 - continued.

To, Mr. Gokaldas Ratanji Mandavia, 68, St. Marks Road, London, W.10.

10 Take notice that you have been assessed in respect of as follows :-

	Statistical Coding	Code	Income £	For official use 2.1.1. 80
	Agriculture	1		
	Trade Profession etc.....	2	2,000	
	Employment Salary etc....	3		
	Quarters	4		
	Rents etc................	5	250	
	Annual value Property....	6		
20	Dividends	7		
	Debenture Interest	8		
	Mortgage Interest........	9		
	Interest Untaxed.........	10		
	Other Income.............	11		
	Income from United Kingdom	12		
	Income from other Countries............	13		
	Less Interest paid........	21		
	Less Losses...............	22		
30	Less Passage Deduction....	23		
			2,250	

NOTES

(Including explanation of any difference betweem income returned and the amount assessed)

Please also read notes on the back of this form)

Less Personal allowances:-

Single	Married	Child	Education

Dependent	Age Relief	Life Assurance	Prov. Fund.

CHARGEABLE INCOME 2,250

No. 1.

Income Tax Assessments 1943-1951.

26th June, 1953 - continued.

Income Tax Chargeable Income	£2250	Tax Shs. 8050
Surtax - Total Income	£2250	Tax Shs. 140
Add tax under Section 28		24570
Less Life Assurance etc.		
£ @ Shs. 2/50	Shs.	
Double Tax Relief	Shs.	
Tax paid at source	Shs.	
Tax Payable	Shs. 32,760	
Hospital Contribution- Chargeable Income £ Tax	Shs.	
Total Charge	Shs. 32,760	Due date 5th August, 1953

10

Dated this 26th day of June, 1953
P.O. Box 520, Nairobi, Kenya.

(Sgd.) A. HOLDEN,
for Regional Commissioner
of Income Tax.

NOTICE

If you dispute this assessment you must give me notice of objection in writing stating precisely the grounds of your objection within 30 days of the date hereof. 20

A notice of objection, if made after 30 days, cannot be accepted unless absence from the Colony, sickness, or other reasonable cause prevented due notice being given.

NOTES

Income tax is payable on chargeable income and surtax on total income in excess of £2,000 in accordance with the Third Schedule of the Income Tax Laws.

Except where notice of objection has been given the above amount is payable by you on or before the due date. 30

If not paid on or before the due date a penalty of 20 per cent of the tax will be added PROVIDED THAT where the due date is before the 31st March, 1953, an instalment of half of the tax may be paid on or before the due date and the balance on or before the 31st March, 1953, without incurring a penalty. If the first instalment is not paid on or before the due date demand will be made for the full tax together with a penalty of 20 per cent of the tax. 40

CIRCUMSTANCES IN WHICH SPECIAL ADJUSTMENTS MAY BE MADE

---

(1) Source of Income ceasing - Where a person ceases to possess a source of income during the year, upon which tax was charged, levied and collected for the year preceding the year of assessment 1937 in Kenya or 1940 in Uganda, Tanganyika or Zanzibar, certain adjustments with consequential relief are available (Section 8).

(2) Loss in a trade, business, profession or vocation - Where a loss is incurred in the year ended 31st December, 1952 (or the corresponding year for Income Tax purposes to which the Balance Sheet is made up) the amount of the loss as adjusted for Income Tax may be set off against the income assessed on the basis of the preceding year. Notice of any such claim must be given before 30th June, 1953. (Section 13(1)(h).)

HOSPITAL CONTRIBUTION

(Hospital Service (European) Ordinance, 1946-1947)

Every European who, under the provisions of the Income Tax Ordinance, was resident in the Colony in the year immediately preceding any year of assessment commencing on or after the 1st January, 1945, shall pay in respect of each such year of assessment a contribution to the Fund as laid down in Section 12(2) of the Ordinance.

Reference Please quote File No. 23.013 in any communication.	EAST AFRICAN INCOME TAX DEPARTMENT INCOME TAX YEAR, 1949 (Section 58 of the Ordinances or Decree, 1940)	Form I.T.20(K) Notice of Additional Assessment Assessment No. IB/115.

To, Mr. Gokaldas Ratanji Mandavia, 68, St. Marks Road, London, W.10.

Take notice that you have been assessed in respect of as follows :-

No. 1.

Income Tax Assessments 1943-1951.

26th June, 1953 - continued.

Statistical Coding	Code	Income £	For official use 2.1.1. 80
Agriculture	1		
Trade, Profession etc.....	2	2,500	NOTES
Employment, salary etc....	3		
Quarters....	4		(Including explanation of any difference between income returned and the amount assessed)
Rents etc.................	5	300	
Annual Value Property.....	6		
Dividends.................	7		
Debenture Interest........	8		
Mortgage Interest.........	9		
Interest Untaxed..........	10		
Other Income..............	11		PLEASE ALSO READ
Income from United Kingdom	12		
Income from other Countries	13		NOTES ON THE
Less Interest paid........	21		
Less Losses...............	22		BACK OF THIS FORM
Less Passage Deduction....	23		
TOTAL INCOME		2,800	

Less Personal Allowances

Single	Married	Child	Education	Dependant	Age relief	Life assurances	Prov Fund

CHARGEABLE INCOME 2,801

Income Tax Chargeable Income	£2800	Tax Sh.	10800
Surtax Total Income	£	Tax Sh.	1000
Add tax under Section 28			35400
Less Life Assurances etc. £ @ Sh. 2/50	Sh.		
Double Tax Relief	Sh.		
Tax paid at source	Sh.		
TAX PAYABLE		Shs.	47200
Hospital Contribution - Chargeable Income £	Tax	Sh.	-
Total Charge		Sh.	47200 Due date 5th August, 1953.

Dated this 26th day of June, 1953.
MRW P.O.Box 520, Nairobi, Kenya.

(Sgd.) A. HOLDEN,
for Regional Commissioner of Income Tax.

(The subsequent Notice and Notes are identical with those on the Assessment for 1948).

Reference Please quote File No. 23.013 in any communication.

EAST AFRICAN INCOME TAX DEPARTMENT

INCOME TAX YEAR, 1950 (Section 58 of the Ordinances or Decree, 1940)

Form I.T.20(K) Notice of Additional Assessment Assessment No. IB/116.

No. 1.

Income Tax Assessments 1943-1951.

26th June, 1953 - continued.

To, Mr. Gokaldas Ratanji Mandavia, 68, St. Marks Road,
London, W.10.

10 Take notice that you have been assessed in respect of as follows :-

Statistical Coding	Code	Income £	For official use 2.1.1. 80
Agriculture...............	1		NOTES
Trade, Profession etc.....	2	3,750	
Employment, Salary etc....	3		(Including explanation of any difference between income returned and the amount assessed)
Quarters....	4		
Rents etc.................	5	250	
Annual Value Property.....	6		
20 Dividends.................	7		
Debenture Interest........	8		
Mortgage Interest.........	9		
Interest Untaxed..........	10		PLEASE ALSO READ
Other Income..............	11		
Income from United Kingdom	12		NOTES ON THE
Income from other Countries	13		
Less Interest paid........	21		BACK OF THIS FORM
Less Losses...............	22		
Less Passage Deduction....	23		
30 TOTAL INCOME		4,000	

Less Personal Allowances:-

Single	Married	Child	Education	Dependant	Age relief

Life Assurance	Prov. Fund

CHARGEABLE INCOME 4,000

No. 1.

Income Tax Assessments 1943-1951.

26th June, 1953 - continued.

Income Tax Chargeable Income £4000		Tax Sh.16800
Surtax total income £4000		Tax Sh. 5312
Less Life Assurances etc.		
£ @ Sh. 2/50	Sh.	
Double Tax Relief	Sh.	
Tax paid at source	Sh.	
Add Tax under Section 28		66336
TAX PAYABLE		Sh.88448
Hospital Contribution - chargeable Income £ Tax		Sh. -
TOTAL CHARGE		Sh.88448

10

Due Date 5th August, 1953

Dated this 26th day of June, 1953.

MRW. P.O.Box 520, Nairobi, Kenya.

(Sgd.) A. HOLDEN
For Regional Commissioner
of Income Tax.

(The subsequent notes are identical with those on the Assessment for 1948)

Reference Please quote File No.23.013 in any communication.

EAST AFRICAN INCOME TAX DEPARTMENT

INCOME TAX YEAR, 1951

Form I.T.20(K)
Notice of ~~Additional~~ Assessment.
Assessment No. IB/117.

20

To, Mr. Gokaldas Ratanji Mandavia, 68, St. Marks Road, London, W.10.

Take notice that you have been assessed in respect of as follows :-

Statistical Coding	Code	Income £	For official use 2.1.1. 80
Agriculture...............	1		
Trade, Profession etc.....	2		NOTES
Employment, Salary, etc...	3	6,000	
Quarters....	4		(Including explanation of any difference between income returned and the amount assessed)
Rents, etc................	5	250	
Annual Value Property.....	6		
Dividends.................	7		
Debenture Interest........	8		
Mortgage Interest.........	9		
Interest Untaxed..........	10		
Other Income..............	11		PLEASE ALSO READ
Income from United Kingdom	12		
Income from other Countries	13		NOTES ON THE
Less interest paid........	21		
Less losses...............	22		BACK OF THIS FORM
Less Passage Deduction....	23		
TOTAL INCOME		6,250	

30

40

Less Personal Allowances:-

Single	Married	Child	Education	Dependant	Age relief

Life Assurance	Prov. Fund

CHARGEABLE INCOME 6,250

No. 1.

Income Tax Assessments 1943-1951.

26th June, 1953 - continued.

		*	*
Income Tax - Chargeable Income	£6250 Tax	Sh. 28050	(sic)
Surtax - Total Income	£6250 Tax	Sh. 17968	
Add tax under Section 28		138054	
Less Life Assurance, etc.			
£ @ Sh. 2/50	Sh.		
Double Tax Relief	Sh.		
Tax paid at source	Sh.		
TAX PAYABLE		Sh.184672	
Hospital Contribution			
10 Chargeable Income £	Tax	Sh. -	
TOTAL CHARGE		Sh.184672	

Due Date 5th August, 1953

Dated this 26th day of June, 1953.

MRW P.O.Box 520, Nairobi, Kenya.

(Sgd.) A. HOLDEN
For Regional Commissioner
of Income Tax.

(The subsequent notes are identical with those on the Assessment for 1948).

No. 2.

No. 2.

Notice of Intention to Appeal.

14th July, 1954.

20 NOTICE OF INTENTION TO APPEAL

Santosh House,
Bagamoyo Road,
Dar-es-Salaam.
Tanganyika Territory

14th July, 1954.

The Commissioner of Income Tax,
Nairobi.

Sir,

File No. 23013

TAKE NOTICE that I intend to appeal against your Assessment No.IB/109-17 for the year of assessment 1943-51 in respect of which you sent me "Notice of Refusal to amend" dated the 16th May, 1954.

I am, Sir,
Yours obediently,

G. R. MANDAVIA.

In the Supreme Court.

No. 3.

Assessee's Memorandum of Appeal.

14th July, 1954.

No. 3.

ASSESSEE'S MEMORANDUM OF APPEAL.

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI

APPEAL NO.33 of 1954

GOKULDAS RATANJI MANDAVIA — Appellant

Versus

THE COMMISSIONER OF INCOME TAX purporting to act through Arthur Holden, Assistant Commissioner of Income Tax, of Nairobi in Kenya ... ... Respondent

(APPEAL FROM ASSESSMENTS SIGNED AND MAILED ON 18th JUNE, 1953 AND DELIVERED TO APPELLANT ON 22nd JUNE, 1953 IN LONDON, BUT MARKED AS TYPED IN NAIROBI ON 26th JUNE, 1953 - FILE 23013 YEARS OF ASSESSMENT - 1943 to 1951) 10

MEMORANDUM OF APPEAL

THE APPELLANT ABOVE NAMED being aggrieved by the assessments (Originals with copies whereof accompany this Memorandum) simultaneously made and signed by the Respondent on behalf of the Commissioner of Income Tax and mailed from Nairobi on 20 the 18th day of June, 1953 and delivered to the Appellant in London on the 22nd day of June, 1953, but post-dated to the 26th day of June, 1953, NOW BEGS TO APPEAL pursuant to Notices of Refusal to amend the same, dated at Nairobi the 16th day of May, 1954 and mailed to Appellant at Dar-es-Salaam in Tanganyika from where he has given to the Commissioner, the requisite Notice of Appeal in writing in time. The principal grounds of appeal are set forth below, namely - 30

1. The assessments appealed against are unjustifiably and prematurely made before expiration of the time specifically allowed to the Appellant for delivery of his Returns for the years 1943-51, in respect of which they are said to have been made, and are invalid for breach of statutory provisions made in that behalf.

2. That no reasonable time or opportunity has been allowed to the Appellant to complete such Returns - except upon compliance by the Appellant of 40 a condition of payment on account of such assessments of £2,000 - a condition not warranted by law.

In the Supreme Court.

No. 3.

Assessee's Memorandum of Appeal.

14th July, 1954.
- continued.

3. That assessments for the years of assessment which expired prior to six years on the 18th day of June, 1953 are invalid and that income tax in respect of such years included in the aforesaid assessments appealed against, is not chargeable, leviable or collectable.

4. That the assessments appealed against have not been made according to the best of the Commissioner's judgment inasmuch as he deliberately abstained from having regard to the accounts furnished by the Appellant and accepted by the Commissioner without any objection during the year 1951.

5. That the Respondent was wrong in resiling away from his agreement of June, 1951, 1951 - not to charge any penalty in the particular circumstances of this case.

6. That the sum of Shillings 454,628/- assessed by the assessments appealed against is fabulous and out of all proportion to any conceivable income of the Appellant during the years of such assessment, and the Respondent was wrong in refusing to make the adjustments by his notice of the 16th May, 1954 in the face of his express assurance that such assessments were subject to adjustment on taking proper accounts.

7. That the assessments appealed against and the Respondent's actions connected therewith are contrary to law and the facts of the case.

WHEREFORE THE APPELLANT PRAYS that the Assessments appealed against be discharged and that the Respondent be directed to permit the Appellant to complete his incomplete accounts retained by the Respondent in 1951 and to submit Returns and pay the tax without penalty on income thereby ascertained; and that this appeal be allowed with Costs.

Dated this 14th day of July, 1954.

Sgd. G.R. MANDAVIA,
GOKULDAS RATANJI MANDAVIA
Appellant.

Filed by - Sgd.G.R.MANDAVIA
Appellant.

This Memorandum accompanies - Appellant's Statement of Facts, with Original signed assessment appealed against, and Copy of Notice of Intention to Appeal served on the Respondent.

In the Supreme Court.

No. 4.

Assessee's Statement of Facts.

14th July, 1954.

No. 4.

ASSESSEE'S STATEMENT OF FACTS.

(Title as No. 3)

APPELLANT'S STATEMENT OF FACTS TO ACCOMPANY MEMORANDUM OF APPEAL

1. During the first half of the year 1943, the Appellant approached C.W. Deadman, Esq., of the Income Tax Department, of Nairobi, and informed him that the Appellant was assessable to Income Tax, and a file of a number different to the above, was opened, and the Appellant was issued with a Form of Return but it could not be completed with "the Total" income of the Appellant as one Monjee Raghavjee who was his partner in a number of Immovable properties, failed to furnish accounts of such properties and their incomes to enable the Appellant to do so. In 1944, one D.N. Khanna, Advocate of Nairobi, with whom the Appellant was a partner during 1943 and the first month of 1944, similarly failed to give accounts of such partnership, though the said Khanna held and retained the books of the partnership.

2. The Appellant placed the matter of such accounts in the hands of Messrs. Daly & Figgis, Advocates of Nairobi, but as they did not succeed in their efforts, a suit for such accounts was filed against the said Khanna during the year 1950 in the Supreme Court at Nairobi - which is still pending.

3. The Officers of the Income Tax Department were aware of the assessability of the Appellant and his difficulties in making returns of total incomes of such years.

4. After the filing of the suit against Khanna, the Appellant of his own accord approached L. R. Fisher, Esq., of the Income Tax Department, at Nairobi, and explained to him the circumstances which made it difficult to file returns of "Total Income" and persuaded the said Mr.Fisher to permit the Appellant to file accounts and returns and pay tax on the major portion of the Appellant's income derived from his practice only without any penalty, and the said Mr. Fisher placed the matter of the Appellant's case in the hands of A.Holden, Esq. to

In the Supreme Court

No. 4.

Assessee's Statement of Facts.

14th July, 1954 - continued.

whom the trial balances of the Appellant's Books of account for the years commencing 1943 and up to that time in the first half of 1951 were placed with a request for directions as to the mode of taking off any allowance for Bad Debts and for depreciation. A. Holden Esq., also required particulars of any personal and children's allowances claimable by the Appellant, which was done. The Appellant thereafter made numerous calls on the 10 said A. Holden Esq., during 1951 and 1952 and requested directions and any provisional assessments that he had promised to give and make. During 1952 the Appellant was suspended from practice in Kenya, and came to Tanganyika to resist a similar application made before the High Court of Tanganyika, which he successfully did. The Appellant was given the licence to practice in Tanganyika for 1953 but he had to prosecute his appeal before the Privy Council against the Kenya decision, and until the 20 15th February 1953 when the Appellant went to London by air, he had not succeeded in eliciting any reply or response from the said A.Holden Esq. who was placed in sole charge of the Appellant's case.

5. The very next communication from the Income Tax Department signed by C.Martin Esq., and dated the 22nd May, 1953 was delivered to the Nairobi address of the Appellant - who then was away in London, and the said letter together with a further letter from Mr. Martin dated the 26th May 1953 (in 30 which he stated that he would express his regret that more rapid progress had not been made by his Department with the matter left over in 1951) asked for, inter alia, Profit and Loss accounts which could be prepared from the trial balances already lodged with A. Holden Esq., and also for a payment of £2,000. The Appellant explained by an Air Letter dated 4th June, 1953 his difficulty in getting accounts ready in London.

6. The said letter of the 4th June, 1953 from the 40 Appellant was acknowledged by the said C. Martin, Esq., by the latter's communication of the 15th June 1953 and meantime on the 26th May, 1953 he had caused Forms of Return to be delivered at the Nairobi address of the Appellant, for completion in respect of Years of Assessment; 1943 to 1951 which forms had not yet reached the Appellant in London, when the aforesaid letter of the 15th June, 1953 reached him by air. By the said letter of

In the Supreme Court

No. 4.

Assessee's Statement of Facts.

14th July, 1954 - continued.

the 15th June, 1953 the said C. Martin Esq., informed the Appellant in London that Assessments were being raised against the Appellant in respect of the aforesaid years 1943-1951 and such assessments totalling Shs.454,628/- were signed and mailed by A.Holden, Esq., from Nairobi on the 18th day of June, 1953 and received by the Appellant in London on the 22nd June, 1953. The Appellant has been treated by such assessments as a London resident although the Income Tax Officers knew that the Appellant was only temporarily in London for the purpose of his appeal before the Privy Council. By the said letter the said C.Martin, Esq., again asked for £2,000 on account of or in part payment of such assessments of Shs.454,628/- and he continued to repeat his requests (just as other officers of the Income Tax Department did) for payment of such £2,000 in part payment and on account, and stating at times that such sum was a "liability not in dispute". The amount of the assessments was indivisible, and the whole of it was objectionable and ultra vires. In the aforesaid letter of the 15th June, 1953 to the Appellant, the said C.Martin Esq., stated - "These (meaning the aforesaid assessments of Shs.454,628/-) assessments will, of course, be subject to adjustment on final agreement of liability.", and also "The quantum of the penalties will also be subject to adjustment at the discretion of the Commissioner when your liability has finally been established." And by the said letter the Appellant was invited to lodge, if he desired, his notice of appeal.

7. By an air letter dated and sent by registered air mail on the 14th July, 1953, the Appellant lodged his notice of Appeal, and objection to such assessment and the peremptory way in which the Appellant was prevented from submitting proper Returns and Accounts and requesting that he be permitted to have his books of account sent from Kenya and to have audited accounts submitted by any London firm of Accountants, and objecting to acknowledge the validity of the aforesaid assessments by making any part payment on account thereof.

8. The Appellant could not return to East Africa till the end of December 1953 from London, and soon after landing at Entebbe he proceeded to Dar-es-salaam where he reached on the 29th December, 1953 and where he has been practising ever since. The

In the Supreme Court

No. 4.

Assessee's Statement of Facts.

14th July, 1954 - continued.

Appellant expressed his readiness and willingness to show his account books to the Dar-es-salaam office of the Income Tax Department, and to submit fully detailed accounts for a variation of the aforesaid fantastic assessments (which bear no proportion to the Appellant's actual liability) and to pay the actual sum due - penalty not having been chargeable in 1951 when he submitted accounts to A.Holden Esq., and no default having been made
10 by the Appellant since, but the Respondent refused to negotiate any adjustment unless payment of £2,000 was made, and on 13.5.54 sent Notices of Refusal, necessitating this Appeal.

(Sgd.) G. R. MANDAVIA,
14/7/54.

No. 5.

Respondent's Statement of Facts with annexures.
9th May, 1955

No. 5

RESPONDENT'S STATEMENT OF FACTS WITH ANNEXURES

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 33 of 1954

20 GOKULDAS RATANJI MANDAVIA ... Appellant

Versus

THE COMMISSIONER OF INCOME TAX purporting to act through Arthur Holden, Assistant Commissioner of Income Tax of Nairobi in Kenya ... ... Respondent

STATEMENT OF FACTS OF RESPONDENT

1. The Appellant appeals against the following assessments:-

30

No. and Year of Assessment		Income	Tax	Penalty
IB/109	1943	£ 800	Sh. 2,150	Shs. 6,450
IB/110	1944	£ 900	2,531	7,593
IB/111	1945	£ 1,600	5,900	17,700
IB/112	1946	£ 1,600	5,900	17,700
IB/113	1947	£ 2,100	9,056	27,168
IB/114	1948	£ 2,250	8,190	24,570
IB/115	1949	£ 2,800	11,800	35,400
IB/116	1950	£ 4,000	22,112	66,336
IB/117	1951	£ 6,250	46,018	138,054

In the Supreme Court

No. 5.

Respondent's Statement of Facts with annexures.
9th May, 1955 - continued.

2. The Appellant at no time made a return of his income for the years of assessment 1943 to 1951 and, accordingly, the above assessments were made as estimated assessments on 16th June, 1953, but post dated to the 26th June, 1953. The income figures in the various assessments set out above included estimated income of £300 for rents of property owned by the Appellant in respect of each of the years of assessment from 1943 to 1947 and the year of assessment 1949, and of £250 in respect of the years of assessment 1948, 1950 and 1951. The remainder of the income included in the above assessments related to professional earnings and was estimated in respect of the years of assessments 1943 to 1947 as a result of information given by the Appellant in an interview on the 19th September, 1951, and as regards the years of assessment 1948 to 1951 as a result of figures submitted by the Appellant. 10

3. No personal allowances have been granted to the Appellant for the reason that, as stated above, he has never made a return of income for the years of assessment in question and thus he has failed to make any claim for a personal allowance on the specified form as required by section 35 of the E.A. Income Tax (Management) Act, 1952, which reproduces in substance section 26 of the Income Tax Ordinance, Cap. 254. 20

4. Having regard to the fact that the Appellant failed to make any return of income in respect of any of the above mentioned years of assessment and continued in such failure even after forms were supplied to him in 1951, the Commissioner of Income Tax considered that he was guilty of wilful default, and accordingly, made assessments in respect of periods prior to the 7th year of income from the date upon which the assessments were made. 30

5. As the Appellant made default in furnishing a return for any of the years of assessment above referred to and as the Commissioner was satisfied that such default was due to gross or wilful neglect, the statutory penalty provided for in the law was not remitted. At no time did the Commissioner of Income Tax or any authorised member of the Income Tax Department approve of or agree to the remission of such penalties. 40

6. Attached hereto and lettered A to R are copies

of letters passing between the Appellant and members of the Income Tax department between the 20th September, 1951, and the 5th May, 1954.

Dated at Nairobi this 9th day of May, 1955.

C.D. NEWBOLD.
Legal Secretary
East Africa High Commission.
Advocate for the Respondent.

Filed by C.D.Newbold,
10 Advocate for the Respondent,
P.O. Box 601,
Nairobi.

To be served upon:
M/S Shapley, Barrett, Allin & Co.,
Advocates for the Appellant,
Nairobi.

Consent is given to filing this document out of time.

Sd. Ivor Lean.

20 Shapley Barrett Allin & Co.,
Advocates for Appellant.

LETTER "A" to A. HOLDEN.

Letter "A"

20th September, 1951.

20th September, 1951

A.Holden, Esq.,
Income Investigation Branch,
Income Tax Department,
Nairobi.

Dear Mr. Holden,

As promised yesterday, I am setting out below amounts of life insurance premiums I paid during
30 the years 1944 to 1950 -

1944	Shs. 2,260/65	
1945	same	
1946	same	
1947	Shs. 2,297/75	
1948	Shs. 617/90	(I had the same policies during this year, but I cannot trace any further entries of premia debited to the Ledger in 1948)
1949	Shs. 2,424/12	
1950	Shs. 3,090/93	

40

In the Supreme Court

No. 5.

Respondent's Statement of Facts with annexures.
Letter "A"

20th September, 1951 - continued.

In 1944 my eldest son aged (then) 18-9 years born 25.11.1925 was at college, and to this date he has been at college. My next eldest child (daughter) was born 24.11.28, and she has been helping in housekeeping since August 1942. She was married during November 1945. My third child (a daughter also) was born in 5.4.1931 and she was at school in 1944, and has remained at school and college, and also helping this year with housekeeping. My fourth child - a son, born 25.12.1937 has been at school ever since 1942, and so also the last child - a daughter born 21.7.1939. 10

I trust these particulars will assist you in making the assessments.

Yours faithfully,

G.R. MANDAVIA

Letter "B"

26th May 1953.

LETTER "B" FROM REGIONAL COMMISSIONER.

ENVELOPE MARKED
"URGENT TO BE RE-DIRECTED IMMEDIATELY"

26th May, 1953 20

Mr. G.R. Mandavia,
P.O. Box 759,
Nairobi.

Dear Sir,

On the 22nd May I wrote requesting you to call at this office this morning, the 26th May at 10 a.m. when you did not call, I telephoned your office and was informed that you were in England and would not return before the end of June.

If you had been able to call this morning, I would have expressed regret that more rapid progress had not been made in dealing with your Income Tax liabilities, which have been outstanding certainly since the Assessment Year 1943. I found in the papers that you submitted copies of Trial Balances from 1944 to 1950 and also very incomplete statements of your professional receipts and expenses from 1947 to 1950. It is clear from these documents that you must have kept very accurate records, not only of your professional, but also of your private affairs. 30 40

In the Supreme Court

No. 5.

Respondent's Statement of Facts with annexures. Letter "B"

26th May 1953 - continued.

In order that there may be as little delay as possible in bringing your case up to date on your return to this country, and in order that any preliminary work necessary may be undertaken in your absence, I shall be glad if you will note that I shall require from you the following information and documents.

1. Correctly prepared Profit & Loss Accounts and Balance Sheets for all years from 1942 onwards, relating to your professional activities. If for any of the earlier years accurate figures cannot be prepared, estimates should be submitted supported with whatever evidence is available as to the accuracy of such estimates. It would be most satisfactory if those Profit & Loss Accounts and Balance Sheets were prepared on your behalf by a qualified Accountant but, since I understand that you yourself have had considerable Accountancy experience, I should accept accounts prepared by you on your own behalf, provided that they are fully certified and that after their receipt access should be given to members of this Branch to your books and records so that they may test the accuracy of the Accounts submitted. In connection with these Accounts I note that you requested Mr. Holden, at an earlier date, to give you a percentage allowance on account of Bad Debts and on account of your library. It would appear to me that no percentage allowance should be required - your records should be sufficient for you to be able to state the exact amount of Bad Debts incurred by you and also the exact amount expended by you in replacements and renewals of your library. You are, of course, fully aware that additions to such library cannot be allowed as a charge against professional profits.

2. I shall at the same time require a full statement from you of all the transactions in property which you have had from 1942 onwards. These statements should show Plot Numbers of properties, dates of purchase, purchase price, expenditure on improvements, date of sale and sale prices. In addition, particulars should be given showing the names

In the Supreme Court

No. 5.

Respondent's Statement of Facts with annexures. Letter "B"

26th May 1953 - continued.

and Box Nos. of all parties jointly interested in the allocation of the Profits arising from the transaction. Particulars should also be given of any loans raised by you in order to finance your property transactions, together with particulars of the interest paid.

3. As you do not appear at any time to have made a Return of total income and claim for allowances, I am sending under separate cover forms covering years of Assessment 1943 to 1953. These should be completed and submitted to me along with the Accounts of your professional activities and of your property dealings as set out in preceding paragraphs. 10

Since on the very rough figures already submitted it is clear that you have been liable for Income Tax for not less than the previous eight years, and since for certain of the years your liability would be substantial in amount, I suggest that an immediate payment on account, of not less than £2,000, should be made by you. I can see no reason why the receipt of this payment should await your return from the United Kingdom. If you will remit to me at this address I will arrange for the sum to be placed on deposit pending final ascertainment of your full liability. 20

Yours faithfully,

REGIONAL COMMISSIONER.

Letter "C"

4th June 1953.

LETTER "C" TO REGIONAL COMMISSIONER. 30

G.R. MANDAVIA

68, St. Mark's Road,
London, W.10.
4th June, 1953.

The Regional Commissioner,
Investigation Branch
(for attention C.Martin Esq.)
Head Office, Nairobi.

Sir,

Your Ref: I.B.70.

I am very grateful for your letters of the 22nd and 26th May, both of which come to hand this week, after being re-directed from my Nairobi address. 40

In the Supreme Court

No. 5.

Respondent's Statement of Facts with annexures. Letter "C"

4th June 1953 - continued.

It is true that since February last I have been in England, in connection with my appeal against my suspension from practice ordered by the Supreme Court of Kenya, and although I did not expect to be able to return to East Africa before the end of June, my stay here may be prolonged due to the fact that a Petition and subsequently the Appeal will have been heard before I could return, since my legal advisers deem it essential that I should be present to instruct them on many matters of fact and law that may emerge at the hearings.

Mr. Holden, to whom as directed I delivered the several statements of my accounts as they were available, and he was informed that my partnership accounts with Mr. Khanna for the years 1943-4 were the subject matter of a Court action (which is still pending) and that the accounts of my property in partnership with Mr. Monjee Raghavjee were still not settled - had kindly promised to make a provisional assessment, but unfortunately the misfortune referred to above intervened, and I did not hear from him about it until I left for this country on the 15th February last.

I have resided in Nairobi continuously from 1921 and I have my home there and I am willing to co-operate with your department by submitting such accounts as you require and by submitting my books, papers, vouchers and other evidence that you may need, and by completing the forms of Returns that you must have forwarded to my Nairobi address, but all these things I can do only on my return to East Africa since I have no resident staff at Dar-es-Salaam and the only clerk I have at Nairobi has no knowledge of such financial accounts or the mode of preparing them - she is there only for the purpose of service of certain process I have to send from London - and I must do the preparation of my accounts for your use, personally.

I have been kept busy by my legal advisers and also I have to be at the Bar Library to make research in certain moot points of law, and I shall be extremely grateful if you will grant me indulgence till my return to East Africa, which should not take very long - compared at least to the time which elapsed since I first submitted copies of my Trial Balances to your office. You must be aware that the Courts here sit during only

In the Supreme Court

No. 5.

Respondent's Statement of Facts with annexures.

Letter "C"

4th June 1953. - continued.

the fixed terms and the hearings before the Privy Council cannot be had quickly.

The expense of coming to East Africa and then coming back to England is something I cannot afford in my present circumstances, as my income has practically dwindled down to a little amount of monthly rent and I have some overhead expenses yet. My books are in East Africa and I have to collect my debts also, and until I have adjusted the amounts of my income paid into my office and clients' accounts at the National Bank of India Ltd., Nairobi, I am not in a position to pay you any deposit. I also venture to hope to be able to satisfy you from my books and other evidence that the fees I charged did not become all my property and that quite a substantial amount had and has to be returned in view of my misfortune, and perhaps you will then revise your views about the amount you would assess against me. 10

As a resident of Nairobi for some thirty two years with landed interests also in Nairobi, you will, I hope consider it right to leave the matter in abeyance till the hearing of my Appeal is over; and if you so prefer it, I shall write to you from time to time to say when it will be so. At present there is no prospect of my being able to return before the end of July next, but if I do I shall report to you soon after my arrival in East Africa. 20

I am, Sir,
Your obedient servant, 30
G.R. MANDAVIA.

Letter "D"

15th June 1953.

LETTER "D" FROM REGIONAL COMMISSIONER.

Ref. No. 70.

E.A. Income Tax Department,
Nairobi.

15th June, 1953.

Mr.G.R.Mandavia,
68, St. Mark's Road,
London, W.10.

Dear Sir,

I have to thank you for your letter of the 4th June, and have noted your explanation concerning your absence from Kenya. I have further noted

that there is no prospect of your being able to return before the end of July next. In these circumstances, and in order that there may be no undue delay in collection of duty, I propose to submit estimated Income Tax assessments for all years for which, on the basis of the figures which you have already submitted, you would appear to be liable. These assessments will, of course, be subject to adjustment on final agreement of liability.

In view of the fact that you were clearly liable and must have been aware of the fact that you were liable to taxation for a considerable period before any approach was made to this Department, I propose to have the assessments made with the addition of penalties. The quantum of the penalties will also be subject to adjustment at the discretion of the Commissioner when your liability has finally been established.

The notices of assessment will be issued to your Nairobi address and you will presumably be advised of their receipt and be able to give formal notice of appeal if you so desire.

I am unable to agree that you are not in a position to pay any deposit. On your own showing you have substantial properties in Nairobi, from which presumably you could obtain funds. In these circumstances I would repeat my request for a payment on account of £2,000. If this is sent to me at this address, it will be brought to account against the estimated assessments which it is proposed to raise, and final payment will be adjusted at a later date.

Yours faithfully,

REGIONAL COMMISSIONER.

In the Supreme Court

No. 5.

Respondent's Statement of Facts with annexures.

Letter "E"

19th June 1953.

LETTER "E" TO REGIONAL COMMISSIONER

G.R.MANDAVIA

Present address -
68, St. Mark's Road,
North Kensington,
London, W.10.

AIR MAIL

19th June, 1953.

The Regional Commissioner,
(C.Martin, Esq.)
E.A. Income Tax Department,
Investigation Branch,
Nairobi.

10

Dear Sir,

Your Air letter Ref.No.70 came to hand yesterday evening - and I only regret that despite my expression of readiness to co-operate with you in submission of final Profit and Loss accounts (which were to be prepared on the basis of the trial balances submitted to Mr.Holden after receipt of an indication as to whether your Department preferred to agree a percentage allowance for bad debts and depreciation, or whether actual bad debts and losses should be taken off in the preparation of the final balance sheets and an indication as to how he would like included the items of partnership accounts in dispute with Mr. Khanna and Mr.Monjee Raghavajee), you have thought it fit to take up an attitude which would only add to my difficulty and inconvenience in the purpose for which I have temporarily come to England, after many years residence in East Africa.

20

As I am engaged at present in the preparation of the notes for use of Counsel at the conference on Monday next, I am unable to let you have the detailed reply which your letter calls for, but I shall do so as early as I find time for it next week. Meantime, I should not be taken as agreeing with remarks of proposals contained in your letter hereby acknowledged.

30

Yours faithfully,

G.R. MANDAVIA.

LETTER "F" TO COMMISSIONER OF INCOME TAX AND OTHERS

In the Supreme Court

No. 5.

Respondent's Statement of Facts with annexures.

Letter "F"

14th July 1953.

G.R.MANDAVIA.

c/o C.H. Thacker, Esq.,
Sutherland Avenue,
London.

14th July, 1953.

1. The Commissioner of Income Tax
2. Mr. C. Martin, I.B., E.A. Income Tax Dept.,
3. Mr. Arthur Holden, Regional Commissioner,
P.O. Box 520, Nairobi.

Dear Sirs,

File 23,013: Your Ref. No. 70.

Since I last wrote by air mail on the 19th ult. I find several assessment notices signed by Mr. Holden and mailed on the 18th June, 1953, though post dated to 26th June 1953, forwarded to my London address, and although in my humble submission such assessments and notices are ultra vires and invalid I am taking this opportunity of making formal objections thereto, without prejudice to my said contention.

My first approach to your department was made about 1943 (according to the best of my memory) and Mr. Deadman was good enough to issue to me a form of Return under a different file number, but the main difficulty in its completion had arisen from the fact that Mr. Monjee Raghavjee was not giving me accounts of my partnership rents and properties (including the accounts to which Mr. Martin referred in his letter of the 26th May last), and further difficulty in the way of submitting complete returns and accounts arose out of Mr. Khanna having adopted a similar attitude - with the result that I had at long last (after nearly 6 years' waiting) to bring a suit against him for partnership accounts; and it was in those circumstances that Mr. Holden agreed to my submitting accounts only of my practice as an advocate. There was no question of any wilful default, and the communications with Mr. Holden continued on the basis that no penalty was to be charged. I am sure, he will remember that in 1951, he did not propose to go beyond six years' assessments and the 1942 accounts were therefore not called for. It is true that I asked him to agree a percentage basis of allowance

In the Supreme Court

No. 5.

Respondent's Statement of Facts with annexures.

Letter "F"

14th July 1953 - continued.

for bad debts and the depreciation of my library (since several yearly publications have no value when later editions are published and bought to replace the older editions); and it was therefore that I submitted trial balances showing the names of various debtors. It is well known that once the trial balance is ready, the profit and loss accounts can be prepared therefrom soon, if the valuation of book debts and other assets can be made on an ascertained basis. I also submitted to Mr. Holden full particulars of my children and dependents for the taking of accounts of personal allowances during the various years. Unfortunately, in spite of several telephone and personal calls, I received no further communication about them until Mr. Martin wrote during May last, when I was already in England; otherwise the profit and loss accounts could speedily have been prepared, even if a valuation of bad and doubtful debts and depreciation of my assets could not be agreed. Mr. Martin's letter stated that the assessments would be made on the basis of the figures which I have already submitted, but the actual assessments are nothing but arbitrary and bear no relation to realities, and they demand from me for tax fabulous sums far in excess of what I could ever have earned. I object on the following grounds, amongst others:

(a) No reasonable time allowed to me for completion of returns

(b) Assessments made prematurely and unjustifiably;

(c) Notices of assessment sent as if I was treated as a London Resident with not even a pretence of compliance with the requirements of the Act 8 of 1952 (EAHC) or even with the provisions of Cap.254 of Laws of Kenya.

(d) Assessments have been made not according to the best of the Commissioner's judgment; and even by deliberately abstaining taking any notice of the particulars furnished by me, including details for my personal allowances - I should have been allowed a reasonable opportunity of completing my Returns and the profit and loss accounts from the trial balances I submitted; and to this end, I am willing even

to have my accounts audited in England, and Returns and final accounts submitted by any reputed firm of English accountants - by sending for my books from East Africa, should you so desire.

I am sending copies of this letter to Mr. Martin and to Mr. Holden individually, since I should do so in case it becomes necessary to sue out a writ as to invalidity of the notices and assess- 10 ments.

Yours faithfully,

G.R.MANDAVIA.

LETTER "G" FROM COMMISSIONER OF INCOME TAX

92564/68/4

Mr.G.R.Mandavia,
c/o C.H.Thacker, Esq.
62, Sutherland Avenue,
London, W.9.

27th July, 1953

Dear Sir,

20 I acknowledge receipt of your registered air mail letter of the 14th July, of which you sent copies to Messrs. Martin and Holden.

2. I have examined the files relative to your case. According to your own statement you first approached this Department in 1943, but apart from obtaining a form of return, which apparently you did not complete, you took no further action until 1951, though you must have been well aware that you were liable to tax in some, if not all, of the 30 intervening years. It is accepted that in 1951 you had some correspondence and interviews with Mr. Holden and as Mr. Martin stated in his letter to you of the 26th May, 1953, it is a matter of regret that progress was not more rapid.

When Mr. Martin took over he at once made it clear to you that no further delay was likely to be permitted. He sent you forms of return, the completion of which is a statutory requirement before personal allowances can be granted, and when

In the Supreme Court

No. 5.

Respondent's Statement of Facts with annexures.

Letter "G"

27th July 1953 - continued.

raising estimated assessments he reminded you of your right of appeal and of the fact that the assessments would be subject to adjustment on final agreement of liability. Actually the figures calculated for your professional earnings are a close approximation to those you placed before Mr.Holden in 1951.

4. Dealing with your specific grounds of complaint, since you first had a form of return in 1943 and failed to complete it I cannot agree that no reasonable time has been allowed. Further forms were posted to you on May 26th of this year and have not yet been returned. 10

5. Nor can I agree that assessments have been made prematurely or unjustifiably. "Prematurely" is the wrong word to use for assessments made in 1953 to cover liabilities up to 1950, and "unjustifiably" cannot apply where the main part of the assessment (that on professional earnings) is based on figures you provided in 1951. 20

6. You were treated as a non-resident so far as allowances were concerned because no returns of total income or claim for allowances had been received, and Mr.Martin's letter of the 15th June, states specifically that these assessments will be subject to later adjustment, when the liability is agreed.

7. Finally, I would add that Mr.Martin's request for a payment on account of £2,000 is entirely reasonable. A calculation has been made of your liability to income tax and sur-tax for the last two years only, after giving you the personal allowances to which you may be entitled, and this shows a total tax due, without penalties, of approximately £3,000. Over all the years, therefore, £2,000 as a measure of the tax "not in dispute" (section 81) is the bare minimum, and I ask that this sum be paid at once. 30

8. Your formal objection to the assessments has been recorded, and I shall be glad to be advised of the earliest date when I may expect to receive the accounts of your professional practice and the returns of your total income. 40

Yours faithfully,
V.H.M.
COMMISSIONER OF INCOME TAX.

Letter "H"

1st September,
1953.

LETTER "H" FROM REGIONAL COMMISSIONER.

Ref.No.70. E.A. INCOME TAX DEPARTMENT
Nairobi.
1st September, 1953.

Mr. G.R. Mandavia,
c/o Mr. C.H. Thacker,
62, Sutherland Avenue,
London, W.9.

Dear Sir,

10 I beg to direct your attention to the letter dated 27th July, sent to you by the Commissioner of Income Tax, Mr.V.H.Merttens. In paragraph 7 of that letter Mr. Merttens stated that a request made to you earlier for a payment of £2,000 on account was entirely reasonable, and further asked that this sum should be paid at once. I shall be glad to be informed when a remittance for this amount may be expected.

In paragraph 8 of his letter Mr.Merttens asked
20 to be advised of the earliest date when he might expect to receive the Accounts of your professional activities and the Returns of your total income. I should be obliged if you would supply this information without further delay.

Yours faithfully,

REGIONAL COMMISSIONER.

Letter "I"

16th September,
1953.

LETTER "I" FROM REGIONAL COMMISSIONER.

70 AIR MAIL 16th September, 1953.
PERSONAL & CONFIDENTIAL.

30 Mr.G.R.Mandavia,
c/o Mr. C.H. Thacker,
62, Sutherland Avenue,
London, W.9.

Dear Sir,

I would again direct your attention to the letter of the 27th July, addressed to you by the Commissioner, Mr. Merttens, and to my refresher of the 1st September. No reply has so far been received to either of those communications.

In the Supreme Court.

No. 5.

Respondent's Statement of Facts with annexures.

Letter "I"

16th September, 1953 - continued.

I would repeat the request already made for a payment of £2,000 on account, this being substantially less than the Tax which could be held to be "not in dispute". In order that you may appreciate that your liability on any basis is substantially in excess of this sum of £2,000, I have prepared computations of the liability for the years of assessment 1948 to 1951 on your professional profits only. These figures are based on those supplied by you to Mr.Holden in 1951 and make allowance for your full claim for Bad Debts and for expenses of your library. It must not be assumed that any of these figures submitted by you are accepted as final, they are merely incorporated in these computations so as to show the liability "not in dispute" as being in excess of the sum of £2,000.

You will note that even if your basis of calculation were accepted there would still be an increase in your total income each year and in your taxation liability on account of income from properties. In preparing the original assessment, estimated figures were taken into account for such income but these have been excluded from the computations now sent to you. Equally, these latter computations do not take into account liabilities for any year earlier than 1948, although it is reasonably clear that you are liable from the year 1943 onwards.

Whilst I have throughout, been prepared to accept that your absence from Nairobi made it difficult for you to agree with this Department the profits from your professional practice, I am still of opinion that sufficient evidence has been given to you of your ultimate liability to justify the request for an immediate payment of £2,000. I shall be glad to hear from you that you accept that the liability "not in dispute" is in excess of this sum of £2,000 and to have your remittance for the latter sum. Will you, at the same time, please give me some indication as to the date of your return to Kenya, when negotiations can take place with a view to finalising your liabilities.

Yours faithfully,

REGIONAL COMMISSIONER.

Copies also sent to:
P.O. Box 759, Nairobi, and
P.O. Box 155, Dar-es-Salaam -
addressed to Mr.G.R.Mandavia and
marked "Personal & Confidential".

LETTER "J" TO COMMISSIONER OF INCOME TAX

In the Supreme Court

No. 5.

Respondent's Statement of Facts with annexures.

Letter "J"

9th October, 1953.

G.R.MANDAVIA.

Registered Air Mail.

c/o National Provincial
Bank Ltd.,
London, W.2.
9th October, 1953.

The Commissioner of Income Tax for E.A.,
Inland Revenue Offices,
Nairobi.

Sir,

10 Pursuant to section 59 of East African Income Tax (Management) Act of 1952, I hereby give you notice that I am chargeable with income tax in respect of my income in Kenya and adjoining East African Territories for the year 1952, as I was during 1951 (of which you are aware).

On account of my stay in this country having been prolomged, I have sent for my books of account from East Africa and will, as soon as possible, send you proper balance sheets with Returns for 20 the income of that and preceding years, if you will kindly let me have the requisite forms of returns.

I shall of course, have to ask for adjustment of the tax in view of the loss I am likely to suffer during the current and the next years.

I have the honour to be,
Sir,
Your obedient servant,

Gokuldas Ratanji Mandavia.

(Kindly note the correct
30 spelling of the name).

In the Supreme Court

No. 5.

Respondent's Statement of Facts with annexures.

Letter "K"

27th October, 1953.

LETTER "K" FROM ACTING REGIONAL COMMISSIONER.

23,013.

E.A. INCOME TAX DEPARTMENT
Nairobi.

REGISTERED.

27th October, 1953.

Mr.Gokuldas Ratanji Mandavia,
c/o National Provincial Bank Ltd.,
Bayswater Branch,
76, Bishops Bridge Road,
London, W.2.

Dear Sir, 10

I would refer you to the Commissioner's letter dated 27th July, 1953, paragraph 7 in which he informed you that £2,000 should be paid as being tax not in dispute. He further requested that this sum should be paid at once.

In addition, Mr. Martin of the Investigation Branch referred to this £2,000 on 16th September, 1953.

I have therefore to give you notice that if payment of this amount is not received in this office on or before 1st December, 1953, I shall proceed to appoint agents for collection under the powers invested in me in Section 54 of the Income Tax (Management) Act, 1951. 20

Yours faithfully,

P.M. TOWLER,

AG. REGIONAL COMMISSIONER.

Copies sent to your addresses at :-

P.O. Box 759, Nairobi.
P.O. Box 155, Dar-es-Salaam

addressed to Mr. G.R. Mandavia and marked "Personal & Confidential".

LETTER "L" TO ACTING REGIONAL COMMISSIONER

In the Supreme Court

No. 5.

Respondent's Statement of Facts with annexures.

Letter "L"

27th November, 1953.

GOKULDAS RATANJI MANDAVIA.

REGISTERED AIR MAIL.

c/o National Provincial Bank, London, W.2.

27th November, 1953.

P.M.Towler, Esq.,
Ag.Regional Commissioner,
E.A. Income Tax Dept.,
Nairobi.

10 Dear Mr. Towler,

Your Ref. 23,013.

Your letter of the 27th ult., has caused some surprise. I have had difficulty in getting to a copy of section 54 of the Income Tax Management Act - and also because my friend Mr. C. H. Thacker went away to Bristol almost soon after I wrote on the 14th July last, I had to receive my mails from the address left by him.

It is obvious that your letter under reply 20 was a consequence of my letter of October 1953 giving notice of assessibility under the new Act, but unfortunately my mails from East Africa have not been forwarded to me as expected.

I find now from a letter of Mr. Merttens of the 27th July last that I took "no further action" since I notified your Department in 1943 about my assessibility - according to what he thinks about it. In fact, as I had informed, I had handed over to Messrs. Daly & Figgis, Advocates of Nairobi, 30 the matter of my partnership account with Mr.Khanna for taking appropriate action, soon after I took the forms of Return, and I understood from Mr. Deadman that I had to put in a Return of my total income (and not an incomplete income a/c) for 1943 onwards. As the efforts of Messrs. Daly & Figgis which were continued for a long time prove abortive, I did eventually file an action in 1950 against Mr. Khanna, and that action is still pending before the Supreme Court.

40 Eventually, Mr. Holden agreed to my submitting such accounts as I could of my individual income only after I had seen Mr. Fisher about it, and Mr. Holden should confirm that at that time no penalty

In the Supreme Court

No. 5.

Respondent's Statement of Facts with annexures.

Letter "L"

27th November, 1953 - continued.

was to be charged. The only question was about agreeing a percentage for bad debts etc., and I supplied to Mr. Holden particulars of my claim for Personal allowances. I did not hear further from him until Mr. Martin wrote to me after I came to this country temporarily in connection with my case, and I di not see any valid ground for penalty cropping up meantime.

By my registered air letter of 14th July last, I made objections to the fantastic sums assessed - and to the manner of assessment and while I am prepared to pay the accurate amount of taxes I do not find the demand for a payment "on account" as asked in the letters of Mr. Merttens or Mr. Martin, justifiable on any ground. According to your letter, the sum of money that was requested as an "on account" payment is now being treated as a "sum not in dispute"! Such sum is not due on any view of the law, and in my humble submission section 54 of the Act has no application to this case. I wish you would take a more reasonable attitude in the matter, and if you will agree to stand by the original agreement of not charging the penalty - we can come to an amicable settlement of the whole dispute. Kindly let me hear from you.

Yours faithfully,

G.R.MANDAVIA.

Letter "M".

5th December, 1953.

LETTER "M" FROM ACTING REGIONAL COMMISSIONER.

Ref.20,013.

E.A.Income Tax Department,
P.O.Box 520,
Nairobi.

5th December, 1953.

Mr.Gokuldas Ratanji Mandavia,
c/o National Provincial Bank,
Bayswater Branch,
76, Bishop's Bridge Road,
London, W.2.

Dear Sir,

I refer to your letter of 27th November 1953.

I regret that I cannot agree in any respect to your letter stating that the tax of £2,000 requested as being the tax not under dispute, is not justifiable.

Mr. Merttens stated in his letter of 27th July, 1953, paragraph 7, "over all the years therefore, £2,000 as a measure of the tax not in dispute (Section 81) is the bare minimum, and I ask that this sum be paid at once".

Mr. Martin, in his letter of 16th September, 1953, second paragraph, stated that the tax, taking your own figures into account and allowing all deductions claimed by you for the years of income 1947 to 1951 only, exceeded the figure of £2,000 and enclosed a schedule clearly showing that the tax, without any penalties whatsoever, was much larger than the £2,000 requested.

I consider that this Department has shown the utmost leniency to you and in fact been more than generous in asking for a payment on account of tax which, on your own figures and without any penalties, greatly exceeds the sum requested.

Section 54 of the Income Tax Act 1952 is a section which permits me to appoint any person as agent for any other person for the collection of tax and I propose implementing the provisions of this section forthwith.

Yours faithfully,

AG. REGIONAL COMMISSIONER

LETTER "N" FROM ACTING REGIONAL COMMISSIONER.

Letter "N"

8th January, 1954.

70 8th January, 1954

Mr. Gokaldas Ratanji Mandavia,
P.O. Box 759,
Nairobi.

Dear Sir,

I would refer you to our previous correspondence regarding your taxation liability.

As I am informed that you have now returned from the United Kingdom to Nairobi, I should be obliged if you would arrange to call upon me at a very early date. I would suggest Tuesday next, the 12th January, at 10 a.m. If the date and time are not convenient, a mutually convenient date could possibly be arranged over the telephone, my number being 21201, extension 208.

Yours faithfully,

PRINCIPAL INVESTIGATION OFFICER.

In the Supreme Court

No. 5.

Respondent's Statement of Facts with annexures.

Letter "O"

11th January, 1954.

LETTER "O" TO MR. C. MARTIN

G.R.Mandavia. DAR-ES-SALAAM.

11th January, 1954.

Mr.C.Martin,
E.A. Income Tax Dept.,
Investigation Branch,
Nairobi.

Dear Sir,

Your Ref. I.B.70.

Your letter of the 8th inst., has on re-direction from Nairobi, been received here this morning. 10

Although by the 'plane from U.K. I landed at Entebbe, I have returned here where I have been licensed to practice as an Advocate, and where I have my office and am engaged as an Advocate in some big cases. I do not yet know when I shall be able to pay a visit to Nairobi, but as some of my important books of a/c are here, I am prepared to call on your local office - if a personal interview is most necessary. On the other hand, I shall be obliged if you will send me any inquiries in writing and I shall answer them, by writing, in detail. 20

I take it that you do not base your claim on the assessments you previously sent me, and that you will make fresh assessments on the basis of figures from my books after you have given me a proper amount of time for completing the returns from the stage of accounts I was asked to deliver to Mr. Holden. 30

Kindly let me hear from you at the above address.

Yours faithfully,

G.R.MANDAVIA.

In the Supreme Court

No. 5.

Respondent's Statement of Facts with annexures.

Letter "P"

12th January, 1954.

LETTER "P" FROM PRINCIPAL INVESTIGATION OFFICER.

70 12th January, 1954

Mr.G.R.Mandavia,
P.O. Box 155,
Dar-es-Salaam.

Dear Sir,

I acknowledge receipt of your letter of the 11th January.

The requirements of this Department were set out to you in my letter dated 26th May, 1953, which was addressed to your Nairobi office but was obviously received by you in London since you acknowledged its receipt on the 4th June 1953.

I would add to the list of requirements that in addition to the statements of properties purchased and sold a statement should be supplied showing the rents received from such properties by you and the outgoings correctly chargeable against such gross rents.

I am prepared to accept that preparation of the necessary accounts and completion of the returns, which forms were sent to you also on the 26th May, 1953, may take some little time. In the meantime, I would direct your attention to the final paragraph of my letter which points out that a substantial payment on account should be made and suggests a sum of £2,000. This requirement was repeated in my letter of the 16th September, when I attached certain computations showing that on the basis of figures supplied by you earlier to Mr. Holden, and leaving out of account any income whatsoever from properties, your liability for the four years from 1948 to 1951 inclusive amounted to approximately £3,000. I think it very unlikely that any figures which you now produce, acceptable to this Department, will effect any substantial reduction in such liability, and I therefore repeat the request that a payment of £2,000 on account should be made at once.

Will you please remit this sum of £2,000 at an early date and, at the same time, give me some idea as to the period of time which you will require to prepare the accounts, etc., as asked for in my letter of the 26th May.

Yours faithfully,

PRINCIPAL INVESTIGATION OFFICER.

In the Supreme Court.

No. 5.

Respondent's Statement of Facts with annexures.

Letter "Q"

8th April 1954.

LETTER "Q" FROM PRINCIPAL INVESTIGATION OFFICER.

E.A. Income Tax Department,
Investigation Branch,
Nairobi.

8th April, 1954.

Mr. Gokaldas Ratanji Mandavia,
P.O. Box 155,
Dar-es-Salaam.

Dear Sir,

I beg to direct your attention to my letter of 12th January to which I have not yet received a reply. 10

In that letter I directed your attention to the fact that a calculation of your liability on a minimum basis showed a total in excess of £2,000 and requested that pending submission by you of the necessary accounts and completion of returns forms which were sent you on the 26th May, 1953, a payment of £2,000 should be made.

Since, so far as I have been able to trace, you have at no time made any payments of Income Tax and since, further, your liability from 1947 to 1950 on this minimum basis exceeds the sum of £2,000, I must request that you should make an immediate remittance of this amount. If you fail to do so, consideration will have to be given to the commencing of proceedings for recovery of duty on the basis of assessments which have already been made. 20

Yours faithfully,

PRINCIPAL INVESTIGATION OFFICER. 30

LETTER "R" FROM PRINCIPAL INVESTIGATION OFFICER.

In the Supreme Court

No. 5.

Respondent's Statement of Facts with annexures.

Letter "R"

5th May, 1954.

70

REGISTERED 5th May, 1954.

Mr.Gokaldas Ratanji Mandavia,
P.O. Box 155,
Dar-es-Salaam.

Dear Sir,

As you have failed to reply to my letter of 8th April and to various letters addressed to you at earlier dates, I am attaching Notices of Refusal of your request that assessments should be amended. These assessments cover the years of assessment 1943 to 1951 inclusive.

I would draw your attention to the steps to be taken by you if you desire to continue with your appeal either to the Local Committee or to a judge. I would further draw your attention to the fact that if no appeal is made, the whole of the duty shown on each of the Notices of Refusal will be payable on or before the 15th day of July, 1954.

Yours faithfully,

PRINCIPAL INVESTIGATION OFFICER.

No. 6.

JUDGE'S NOTES OF COUNSELS' OPENING.

No. 6.

Judge's Notes of Counsels' Opening.

19th December, 1955.

19.12.55.

Salter Q.C. for Appellant with Kapila D.V.

Newbold Q.C. for Respondent.

Salter Q.C.: Number of assessments. Separate assessments. Convenient to deal with all together. Respondent does not wish to object.

Newbold: I do not object to consolidation competent to hear en bloc. Ask to mention this in my judgment - not a precedent.

Salter opens Appellant's case.

Procedure: E.A.C.A. vol. I p. 129 I.C.T.A. No.15.

In the Supreme Court

No. 6.

Judge's Notes of Counsels' Opening.

19th December, 1955 - continued.

Appeal by taxpayer. Statements of fact:- assessments. First ground of appeal:- preliminary point if upheld assessments bad - no need to go further. Other grounds:- effect right to impose penalties. Wilful default.

Respondent: Does not wish to argue it as a preliminary point.

Newbold: I do not wish it. Point in limine. No argument as to fact. Based on evidence or state of fact accepted by both sides. First fact. Ask all statements of fact are accepted by Appellant. Should have to give history. Tax payer resident in Kenya. 10

Salter: Merits. I would accept as facts those first grounds of appeal.

Newbold: I oppose it strongly.

Salter: Dates paragraph 3. Respondent's own reply paragraph 2.

Newbold: Appellant had return of income in 1943, handed to him. Handed form of return. He never filled these in. Appellant in wilful default. Income and assessments, correct. 20

Salter: I tried to shorten this matter. I shall address Court on issue of costs later if necessary.

Court: It seems we shall have to hear this on the merits.

Salter continues: Appeal heard in camera.

Newbold: I agree.

Order: Any member of the public to leave Court not a party or witnesses. 30

A. L. Cram.

Salter: Appellant's statement of facts. Paragraph 1. Respondent's statement of facts. Facts not seriously in dispute: Ground 1. Letter A. Letter B addressed to Nairobi. Addresses. Knowledge - paragraph 3. Rest of correspondence. Construction of Act:- Simonds I.T. 2nd Edition Volume 1 42 - 43 - in pari materia - same subject, not based on English Act. Section based on Indian Act. On 26th May 1953 letter B. Appellant required

In the Supreme Court

No. 6.

Judge's Notes of Counsels' Opening.

19th December, 1955 - continued.

to make a return for 1943-53. No form of return - 1943. Assessments are based upon non-return of notice sent on 26th May 1953. Those notices were sent by virtue of Section 59(1) of the Act. Sent to Nairobi address - S.6. Respondent knew Mr. Mandavia in England. Assuming it was correct to send to last known address - received 27th May. S.6(2) - deemed - 27th May plus 7 days - 3.6.53. S.59(1) - reasonable time - 30 days plus. 2nd para - Respondent. 16.6.53 estimated assessments 13 days. Posted on 18.6.53. Received on 22.6.53 - dated 26.6.53. Obvious - why 26.6.53 - added on 3 days. Overlooked S.6. S.71 - 3rd July 1953 Return made or not made. Respondent assessed under S.71(3). S.71(3) - stage. Sent on 26th May. Served 3.6.53. Assessments made on 16.6.53. Post dated to 26.6.53. Returned on 30 day principle. 3.7.53. Made 17 days before. Reason - difference in procedure. S.71(2) Assessment 71(3) - no penalties would attach. Penalties are attached. Sehan Singh Khorena.

Newbold: I do not object to it. But it is a secret document. Statutory authority. Consent of Judge used to be required. Amendment to publish who approved so long as report did not disclose name - tax payer.

Salter: Came into my hands from hands of Advocate instructing me - with consent of party to that suit.

Newbold: Espionage. Proceedings not available to another Judge. Strong public interest. Absolutely secret. Common law. Children. Statutory requirement. Would not be heard in camera by common law. Statutory requirements if tax payer requests in camera. Statutory hearing in camera. Amicus Curiae.

Court: Hearsay.

Newbold: Basis of reports. Counsel. Year books. My report would be authoritative. Printing is not authority.

Court: Mr. Newbold says he is to report the S.78(8) amended. I think I can look at an anonymous version of the judgment added by Mr. Newbold.

Salter continues: S.40. Penal Section. Case cited. Handed in. Two passages. p.3 centre. Most material for Commissioner to wait and see if return is made before assessing - 30 days notice. No

In the Supreme Court

No. 6.

Judge's Notes of Counsels' Opening.

19th December, 1955 - continued.

return is received the machinery under S.71 is invoked and is to be rigidly followed. S.71(1). He must await the time S.71(2) - delivery of return. 71(3) no return as in this case - no time - happened here. Procedure must be rigidly followed. No.S.72. 40(3) English Act. p.171 - 172 Vol. Simonds. Correspondence. No.S.72. Why form of 26.5.53 sent to fill in. Refers to Notice pro forma. Why asked to make a return or post dating it. Not assessed at all. Letter B. Suggested now not under S.71 - requires documents - why. Para.1 - para 2 - 3. Does not say he is going to assess but sends income tax forms requiring a return. Subsequent assessments number under S. 72 not 71. How can that be said. Letter F. Post dated. Assessments made. Why is 26.6.53. What magic? unless invokes 71(1). Where assessments made 17 days before earliest time person required to make a return - must have been made under 71(3) bad ab initio invalid. Cannot now stand. Significance regards penalties. Wholly different procedure. If under S.72 Commissioner would have said - under S.72 - reassessments. Instead of letter of 26th May. Proposes now to call evidence. If in favour on first ground then need not go on. Other matters been on evidence of wilful default, penalties. Right to go back. Notices of assessment. Do not see help there - date on envelope 18.6.53. Mr. Fisher - Deputy Commissioner. Mr.Mandavia to leave.

Newbold: No objection to Mr.Mandavia remaining but concerned with procedure. He opens case: Procedure. Points of law. Calls witnesses. If Mandavia's witnesses I go on. I can reply. When will be developing argument.

Salter: I look at other grounds of appeal. 2nd ground tied in with first. 3rd ground - period of limitation - 6 years unless wilful default - onus on Commissioner. A matter of evidence. Reply will deal with evidence - will meet his point. Para. 4 and 5 - Evidential matters. (6) Amounts. Whether penalties could be imposed - legal argument. Call evidence now - other points could be dealt with in final address.

Newbold: Difficulty. When I come to deal with these points - submission at that moment. If in final reply - deals on question of law. Question raised and could reply on this point.

Salter: We are agreed upon that.

Court: Very well proceed to evidence.

In the Supreme Court

Assessee's Evidence.

No. 7.

L.Russell Fisher

19th December, 1955.

Examination.

No. 7.

EVIDENCE OF L. RUSSELL FISHER

Ap. 1. Sworn, LESLIE RUSSELL FISHER Director of Motor Mart, Nairobi:

In 1951, I was Deputy Commissioner of Inland Revenue, Income Tax. I know Mr. Mandavia. I have known him for years. He came to see me about his affairs, it is a long time ago. It is several years ago. I cannot recollect the date - 2 or 3
10 years before I left in 1955. 1950 or 1951. I know Mr. Holden. He was an assessor in Income Tax Department. I introduced Mr. Mandavia to him. The time when Mr. Mandavia came to see me. Mr.Mandavia as far as I remember was in certain difficulties with his income tax. Either he had not put in a return or put in a return and not included some of his income. Trouble with his partnership income. I can't recollect state of his file. I gave him certain advice. To make a clear disclosure, to
20 explain whole circumstances and presumably to do so right away. I would mention if he ...... it would depend on sort of conversation. I am sure penalties would be mentioned. If he did so quickly penalties be small. If fraud I would not have mentioned penalties. That was before we got I.B. going. We then suggested disclosure. Now we are tightening up. (Para. 4 - Read). I think it would be true Mr. Mandavia came in voluntarily. I think I handed it to Mr. Holden. Had he returns in with partner-
30 ship outstanding or no returns in. If he had to make a return but could not get accounts from a partner I may have said put in a reasonable figure and we shall not charge penalties on it. 20 minute conversation. I probably sent for Mr.Holden. I handed it to him. I can't recollect seeing file again. I thought he was frank. It was not a false account. He could not get the accounts.

Cross-Examination.

Cross-examined by Newbold: I have an extensive knowledge of income tax procedure. Notices of
40 assessment are always post dated. Notices are deemed to be served 7 days after date of posting. Certain things have to be done 30 days from date of service. Practice has grown in Department of posting them 7 days before that date. Also schedule showing normal time of posting to places. That is added to date. Normal practice is post dated

In the Supreme Court.

Assessee's Evidence.

No. 7.

L.Russell Fisher

19th December, 1955.

Cross-Examination - continued.

about 10 days or longer from date of posting. A tax payer who had made no return and came and admitted no return or paid tax I should not have promised not impose penalties, I should have trebled tax but could have set it aside. If Mr. Mandavia said he made no return since 1937 and paid nothing I should have said he should make disclosure and when it came to penalties I should bear facts in mind. If a taxpayer says he made no returns he is handed returns for these years. It is likely I sent for Mr. Holden on the spot to hand Mr. Mandavia's forms for the years when he had made no returns. I should have made no promise as to amount of penalty. S.28. I should possibly have said it might be treated leniently or seriously. 10

Re-Examination.

Re-examined by Salter: Notices of assessment are post dated according to practice. It does not necessarily fit in with Act - get 30 days clear at least. Gave more time under practice. Notices requiring returns - those on first of year are treated in same way. If a man had made no returns and has to get notice, notice would be a covering letter but I doubt if post dated in same way. 20
Q. An assessment made within 30 days - notice sent out. A. Sent out, on 26th May and assessment made before 30 days unless we thought he was leaving country. We let statutory period run. If no return received we should raise estimated assessment with treble tax on it.

Q. I show you S.71(3) - If no return made. 30

A. I should estimate assessment.

Q. Appropriate sub-section 71(3). A. Yes.

Q. S.72. A. I know it.

Q. Man never assessed. If under S. 72 would you have had a notice sent to tax-payer - a notice requiring a return before you assessed him?

A. No, I just get on with S.72.

Q. Only a notice sent and he did not do so, would you go under S. 71(3)?

A. 71(3) in the first place. 40

Newbold: New matter raised.

Salter: Should have objected. New matter.

Through Court.

Court: Through the Court:

Q. What section for back years.

A. S.72. Outside 6 year period.

Q. If to assess under S.72 would you normally ask for a return - return of income.

A. Also allowances. Only form which a person must fill in before personal allowances are granted.

In the Supreme Court

Assessee's Evidence.

No. 7.

L.Russell Fisher

19th December, 1955.

Re-examination - continued.

Salter: Through Court:

Q. Allowances would be computed in any event.

A. If no return no allowances given. It would be a pure estimated assessment. An assessor has a discretion but there are standing instructions.
10 Departed from only occasionally.

R.O.D.W. A. L. Cram.

No. 8.

EVIDENCE OF G. R. MANDAVIA

No. 8.

G.R. Mandavia.

19th December, 1955.

Examination.

Ap. W.2. Affirmed, GOKULDAS RATAMJI MANDAVIA:

Resident for many years - May 1921 in East Africa. I prepared statement of facts. It is true. Para.1 in 1943 I went to Income Tax Department. Mr. Gledhill was a deputy i/c names marked "M". I went to him to explain although
20 I was not getting accounts from my partner to help me to make an assessment on basis of returns made by him. He said it was a disclosure of confidence. I asked if I could omit that part. He warned me I had to make a declaration. He gave me a form and to try to settle the matter by litigation or private arrangement, where I could not enter a return of income. There were negotiations through mutual friends. There was correspondence with Mr. Dave. I was a partner of Khanna in 1943. He
30 brought about disruption in 1944. One dispute led to more. I eventually brought a suit against Mr. Khanna. It is still pending. No. 130 of 1950. Decision this year dismissing notice of motion for stay. Defence filed. Listed for March 1956 but date taken off. I have not resolved dispute with Monji. He died in February this year. Suggestion I should get arbitrator. I saw Mr.Fisher - I used to go to Department. I was told I must return total income. I was told eventually to see Mr.
40 Fisher. Form required a declaration - might have

In the Supreme Court

Assessee's Evidence.

No. 8.

G.R. Mandavia.

19th December, 1955.

Examination - continued.

got into greater trouble if I signed it. I asked if I coule be permitted to pay a provisional tax on such amount as I could show from partnership. Mr. Fisher said he would help me in view of my difficulty. I raised question of penalty. He said who was in charge of the case and informed him. He would not regard me as a defaulter . . and sent for Mr. Holden. He instructed Mr.Holden I was to give him all my accounts apart from partnership. He gave me a letter confirming the arrangement. I explained to him I had left my accounts open for adjustment and would like to have depreciation allowed for bad debts, library and fittings. I said I would bring accounts before putting them into final form of a balance sheet. He said he would make a provisional assessment subject to adjustment, subject to share in two partnerships being ascertained. He gave me a letter. I produce the original of 20th June 1951 Exhibit 1. It was extended one month. In August nearly all accounts were ready except 1950. He asked me to bring all together. On 20.9.51 letter A to Mr. Holden. At end of August or beginning of September I gave him trial balances extracted from my books for 1944 - 1950 years. Kane's System of legal book-keeping. Every entry gives a picture of income and expenditure. Only difficulty is in regard to what you have to do when recovery of costs is problematical - debit of agreed fee but a year later still not earned. I saw Mr. Holden, he was to get another assessor to make a provisional assessment. I saw him several times last 20.9. Said would do a provisional assessment to which partnership income would be added. Wrote letter A. He signed for it. He knew I was anxious to pay tax but he was not able to find a junior to do calculations for him. I saw him several times between September and December. I asked for assessment so I could remit to my son in England. At beginning of September he had lost letter of 20.9. So I sent him a copy of it. I made several calls after that in early part of 1952 and handed him a further trial balance for 1951. In February or March 1952. I had trouble in August and September 1952. He had difficulties in getting some one to handle the matter. I was in Kenya till end of October 1952. I had a summons in Tanganyika. I went there. I was licensed to practice there in 1953. I flew to London in February in connection with professional matter. I did not

Exhibit 1.

In the Supreme Court

Assessee's Evidence.

No. 8.

G.R. Mandavia.

19th December, 1955.

Examination - continued.

receive any advice from Mr. Holden about my assessments. I got no income tax forms before 26th May till some were sent to my Nairobi office in 1953. I had no such forms in 1951 from Mr.Holden or Mr. Fisher. They knew I could not make a declaration of total income. I was asked to write a letter on 20.9. and instead of filling in a form claiming personal allowances I did explain to Mr. Holden I could not claim £550 as I was a widower but I had 10 5 children. He said he would make a provisional sic. assessment and(I should)send details of insurance. In February 1953 I was in London. I received 2 letters of 22 and 26.5. together. I produce letter of 22.5. Exhibit 2. Both redirected. I was informed in letter - forms sent to Nairobi. I think forms were got in letter of 15.6 or 2 or 3 days later. Not sent by Air. Went by sea. Letter C 4.6 written by me and letter D 15.6. received. They came to London. I have envelope of 18.6.53 20 registered which contained assessments subject of this appeal. Post dated 26.6.53. addressed to me in London. Received 22.6.53. I had written on 19.6. and letter of 14.7. Certain grounds of objection to these assessments. Question of payment of £2,000. I consulted certain Counsel, experts in tax. I should not admit liability for invalid assessment. 14.7 letter was written I think after advice, I am not sure. I received a statement in London attached to a letter of 16.9.53 - Exhibit 3. 30 Liability on professional profits. Figures purely taken from account I had given to Mr. Holden. Bad debt allowance 10%, library allowance, personal allowance, children allowance - showing tax payable. These are not figures shown on my Trial balances. I had a composite balance sheet on my accounts basis. 8 years - £300 was added for expected income from my partnership. I was asking for a reduction to that extent. Full amount of allowances were not shown in so called abstract. Actual 40 assessments are also shown at back of bundle. Notices of refusal were sent 2 - 3 days after Mr. Martin called me to Income Tax Office in Dar-es-Salaam. Condition £2,000 to be paid forthwith. I asked him to agree to final liability as suggested in letter. He replied nothing could be done till I paid £2,000. He could not reach any agreement. He said my appeal must proceed and I would get notices of refusal. I produce notices Exhibit 4.

Exhibit 2.

Exhibit 3.

Exhibit 4.

50 Adjourned till 10.00 hours on 20.12.55.

A.L. Cram.

In the Supreme Court

Assessee's Evidence.

No. 8.

G.R. Mandavia.

20th December, 1955.

Examination contd.

20.12.55. Court as before.

Mr. Mandavia recalled, warned still on oath:

In 1951, at end of August or beginning of September 1951 (for 1951) trial balances from 1944 to 1950 - I gave to Mr. Holden. I produce these Exhibit 5. These reflect the position in regard to the owner of the business whose books they are at end of year when it is prepared. It shows respectively balances at credit or debit of account for the year. They relate only to my earnings apart (10) from partnerships. Disclose cash, bank balances, assets, library, amounts owed by various persons in double entry system of book-keeping which requires totals to agree if accurate. This trial balance can on one hand be used so as to prepare a balance sheet, merely a summary of anyone's financial position. Book debts, debtors and creditors. I look through Exhibit 5. Remarks have been added (Exhibit 5.) not made by me in pencil. In 1952 I handed a further trial balance as at 31.12.51 - (not on file (20) of Respondent) (Notice to produce). (Copy to go in - Exhibit 6). It was in January or February (Exhibit 6.) 1952 to Mr. Holden. I again requested an inquiry. It is a carbon copy. I have experience of accounting. Fellow of Association of International Accountants of London, F.A.I.A. London. An experienced accountant would gather a bird's eye view - he could make from these documents a profit and loss account - in a professional business - day to day - in a trade the profit is shown on (30) work sheet. One could draw also a balance sheet. I myself prepared a balance sheet - for my own use. I produce these. I did not hand these in to the Income Tax Authority. There are three - 1948, 49 and 50 - Exhibit 7. I prepared those last year. (Exhibit 7.) I also prepared a composite balance sheet for 1944 - 1951 inclusive. I prepared this about the same time last year. I also prepared the composite balance sheet - Exhibit 8. I got the material (Exhibit 8.) from carbon copies of trial balance sheets. The (40) plots shown are not those in the partnership dispute. They are my own. These show income after deduction of outlays such as rates. Nett figures are at bottom of end column. Exhibit 3 is a statement. Liability - Letter G para. 3 - close approximation of figures.

Q. Have you any general comment.

A. According to trial balance in 1950, income

£5,844 and at bottom of composite statement Exhibit 8 - charged me £6,250. Tax charged £9,200 inclusive of penalty. £2,300 is normal tax on £6,250. I was to have a deduction in respect of large book debts of £9,300. Last but one column in Exhibit 8, 1950. These sundry debtors include all debts due to me from 1944. Letter of 16.9. Letter D. I asked them to adjust my claims for bad debts. In my letter of 14th July - Letter F. I set out
10 grounds of my objection to assessment - law and fact ....(c) Treated as a London resident. If I was treated as a foreigner I should not get my allowances under Kenya law. Letter F(d). Since September 1951 they never pointed out any discrepancies or mistake in my accounts although my books .....

In the Supreme Court

Assessee's Evidence.

No. 8.

G.R. Mandavia.

20th December, 1955.

Examination - continued.

By Court.

Court: Q. Since 1937 you have never once filed with the authority a return nor has any income tax ever been paid. A. No I have not done so.

20 Examination by Salter continues:

The reasons are, in 1937 I had no taxable income. I was employed by Ahmed Brothers at £22.10. per month and that income was returned by employer's return. In 1938 I was employed by Government as Examiner of accounts and so in 1939/40, and returns were made by Department concerned. In 1940, from June I was in India on a law course. On 5.12.41 I was admitted in Kenya as an advocate. I had then no income. In 1942, I began to practise
30 I had no income except £20 per month from rents on which I subsisted. In 1943 I became a partner with Mr. Khanna. End of 1942 Mr. Monji ceased to account and ceased to give me rents. In 1943, first half, I approached Mr. Deadman, an income tax official. He gave me a form of return. I asked about the rent of Monji. I asked him about Monji's assessment. I called on Mr. Burgess another income tax official. I did not conceal any facts. I explained to Mr. Fisher my difficulty
40 was information withheld from me. I got a letter from him. I prepared accounts. Exhibit A - in sphere of allowances. I called several times to see Mr. Holden. He had lost that letter. After I handed in Exhibit(s) 6,7,8 I received no notice to return income till 26.5.53. I had not withheld any information about my movements or accounts. In 1952 my financial position - until I was suspended,

In the Supreme Court

Assessee's Evidence.

No. 8.

G.R. Mandavia.

20th December, 1955.

Examination - continued.

Cross-examination

I could have paid all the tax. I had made provision for it. I am in a position to make a payment. I made an offer some days ago. I offered £1,000 straight away, a £500 per month. The reply was £5,000. I did not consider I was liable to that extent.

Cross-examined by Newbold:

Q. Is the position you approached Mr. Bechgaard.
A. I was with Mr. Bechgaard in his office on another matter. He phoned Mr. Newbold. He was my advocate before appeal. I heard him. 10

Q. He asked if I would adjourn case on your paying £1,000 and £500 - 15th January and £500 on 15th February. A. Not exactly so.

Q. What was it then. A. Mr. Bechgaard said he would offer £1,000. To save friction. No condition. Leave matter over if a payment is made.

Q. You're on oath. That is, it was an adjounment. A. If it is leaving matter over, adjournment was not used. 20

Q. Why did he telephone. A. He suggested I should show readiness to pay instead of fighting case. I showed my bank balance. He offered £1,000 to be paid straight away and £500 in January. He then suggested the matter left over.

Q. He did not ask for an adjournment.
A. He did not use word adjourn. It was a private arrangement.

Q. He did not ask me to adjourn.
A. I can't recollect word 'adjourn' being used. 30

Q. You made an offer to whom? A. Your Department.

Q. I said I would not be willing to adjourn but would have to ask Commissioner.
A. I could not hear what Mr. Newbold said on the telephone. I heard Mr. Bechgaard. He told me to wait for an answer next day. Saturday. I later heard the answer was "No". The suggestion was £5,000.

In the Supreme Court

Assessee's Evidence.

No. 8.

G.R. Mandavia.

20th December, 1955.

Cross-Examination - continued.

Q. When did you hear.

A. On Saturday about 11.00 hours on telephone.

Q. The first time heard was Saturday. A. Yes.

Q. It was in first conversation £5,000 was mentioned. A. I did not hear it. I don't recollect it. It was next day.

Q. When did you first see Mr.Martin.

A. In Tanganyika.

Q. When?

10 A. A few days before I got notices of refusal.

Q. How many times. A. Once I recollect.

Q. You saw him on 9.12.54 once only in Tanganyika?

A. It was a few days before I got notices of refusal.

Q. Did you discuss payment of tax. A. Yes.

Q. Was Mr.Bechgaard's suggestion in a letter?

A. Yes.

Q. In a letter to Mr. Martin?

A. There was correspondence. It is difficult to

20 say without letter.

Q. You discussed proposals - Mr.Bechgaard's letter?

A. Not a discussion. He said pay amount. I said about my penalties. He said it would have to be left over.

Q. In relating to Mr. Bechgaard's proposed settlement? A. I could call it a sort of discussion.

Q. You have copies of Mr. Bechgaard's letters. Look at letter of 2nd November 1954. A. Yes.

Q. Your discussion with Mr. Martin after that on

30 9.12.54.

A. Yes. After the letter about that date.

Q. Notices of refusal were before that date?

A. Yes.

Q. I show you notices of refusal dated 16th May, 1954. A. Yes.

Q. Yesterday you said you saw Mr.Martin 2 or 3 days before notices of refusal. A. Yes.

Q. And this morning.

A. Yes. That was my impression until now.

40 Q. You have made a mistake.

A. No, not a mistake, a lapse of memory.

Q. I show you Exhibit 3. A. Yes.

In the Supreme Court

Assessee's Evidence.

No. 8.

G.R. Mandavia.

20th December, 1955.

Cross-Examination - continued.

Q. Attached to letter of 16.9. A. Yes.

Q. Did you say yesterday these figures not shown in your trial balances.

A. I don't think I went so far as that.

Q. I refer to record. Do you now agree?

A. Some are and some are not. It is a compound question.

Q. Repeated? A. I did say so.

Q. Which are different from trial balance figures. I show you Exhibit 5. The total I mean. 10

A. I should have said that these don't agree the trial balance the figures I had given Mr. Holden. Letter A.

Q. From Exhibit 3. Office costs, 61,334 for 1947.

Salter: Holden witness. Here since yesterday. Lives at Kericho. Wish to interpose him as witness.

Newbold: No objection.

Order: Witness to stand down. Mr. Holden to be examined. 20

A.L. Cram.

No. 9.

A. Holden.

20th December, 1955.

Examination.

No. 9.

EVIDENCE OF A.HOLDEN

Ap. Witness: Sworn, ARTHUR HOLDEN, c/o D.C.Kericho:

In 1951, I was in Income Tax Department. Assistant Commissioner of Income Tax, working in the Investigation Branch. I met Mr.Mandavia in 1951. I had known him for some time before. Deputy Commissioner, Mr. Fisher, introduced me to Mr. Mandavia. He said Mr.Mandavia had come to him and told him he had never filled in or made a return of income tax. Mr.Mandavia was present then. Mr. Fisher wanted me to agree a liability with Mr.Mandavia, have tax calculated and have file returned to the Deputy Commissioner. I saw Mr. Mandavia about his return and extracted so far as I remember certain preliminary information from him. Part of 30

In the Supreme Court

Assessee's Evidence.

No. 9.

A. Holden.

20th December, 1955.

Examination - continued.

which was he had not been able to make his return before because of accounting difficulties with his partners. The procedure was - a little difficult to be certain -, I recollect I asked him for accounts by which I would mean balance sheet and Income and Expenditure accounts. On balance of probability I think I probably did not give him returns. I did not get complete account from him. For a period of years he submitted trial balances showing balances in books at end of each year. I might be able to recognise these. I see Exhibit 5 (trial balances - 1944-1950). I find it difficult to say. It is a long time ago. I cannot swear they are. I see no notes on them but then I do not do so. He did produce trial balances. I endeavoured to arrive at a fair assessment but there were one or two points upon which I did not have full information - bad debts, library, and depreciation on motor vehicles and his property income. I cannot recollect date of letter but he did give me information about allowances, to enable me to calculate liability when eventually a claim was made. I did not arrive at an assessment due to pressure of work and incomplete information. I left department early in 1954 - February 28th 1954. During period 1951 - 1953 Mr. Mandavia may have called twice. The object I surmise to arrive at a settlement of his liability. He told me he would like to make a payment on account as he had responsibility to his son. I wanted outstanding points cleared before assessments were raised. From 1951 to 1953 nothing had been concluded so far as I am personally concerned. I had not brought the matter to finality. There was nothing definite earlier to 1951. I could not trace it. I had a card index and file opened. Probably in early part of our meeting Mr. Mandavia said he had once approached an officer of department and he thought he had a file number. He mentioned Mr. Deadman. I cannot recollect when he said that was. He retired in 1951 or 1952, I believe. There was no difficulty about information, it was more a divergence of views of what was necessary. It was something like this. He wanted an allowance for bad debts which he said were heavy at the beginning of a practice also for his library depreciation. The practice was the former item needed details. It is of principle whether he should be allowed a percentage. It was in my view irregular. He gave all the information. There was a difference

In the Supreme Court

Assessee's Evidence.

No. 9.

A. Holden.

20th December, 1955.

Examination - continued.

about deductions. Mr. Martin took over his file. I handed file over to Mr. Martin. It is difficult to say what happened. I was left with impression that as Mr. Mandavia had come forward, Mr. Fisher would not be hard upon him. It was more an impression than a direct statement. The amount of retrospect tax would depend on liability. If he were not worth powder and shot in early years he would not have been proceeded against. I was to find out if there was any. 10

By Court.

By Court: I can't say I found any discrepancies. But I had asked for accounts. I got the trial balances. A trial balance is an unsegregated list of balances existing in books at end of the year. Accounts. I meant the same balance with adjustments as might be necessary formed into two statements - one income and expenditure accounts to show income for year and (2) a balance sheet which would have capital and liabilities including profit on left and assets on right. If an accountant had used 20 the trial balance to endeavour to make up accounts he would take an accountancy risk. I would have started with trial balance, asked certain questions of which three were - bad debts, library, depreciation on motor car and other plant. I would have required an audit. I fancy I did not ask for audited accounts. I was prepared to take a risk. I could not cast up on income and expenditure account. I fancy I cast up a rough income and expenditure account - professional profit: substan- 30 tial amounts on three items to be adjusted. It showed an excess of income: subject to income from property. There is on the file a partially completed - a statement of nett profits - period 1942 to 1952. I was very busy and ill - not an income and expenditure account. Had a stab at library and bad debts. I did not ask him to cast up accounts. I thought I could define discussion. We tried to reach agreement. We never got as far as a figure. First we could not agree to carry 40 into suspense the three items; second, I had no information on properties. He did not impede me.

Examination (Continued)

Salter continues: We discussed an interim settlement. Accountants even were full up. I should have been perhaps asking impossible if I had insisted upon an audit. In practice it was better to have one bite at a cherry rather than several interim settlements.

Q. If you sent out a notice requiring a return - a special notice.

A. The date is the date I sent it out. He has thirty days to send it back. I don't think I have ever required it back at an earlier date except possibly in error. It would not be a practice in the absence of special circumstances. I have sent out notices of assessment. There was a practice as to delivery of assessment notices. To post date a notice of assessment so as to allow a generous margin for delivery. A deliberate act. It existed from 1937 when I took office. But not unless in error - assessment notice. I see Section 72 of the Act - effect same as old Ordinance.

Q. Would Commissioner assess under section without any notice at all?

A. Yes. If there were any fraud, wilful default - that is one cause.

Q. If he invoked that section would he send a notice before invoking that section - he would act before requiring a return?

A. No, not to my recollection.

Q. Do you see any point then asking to furnish a return - in such instance?

A. Yes. If I did I would ask for a return eventually. No, I would not send out a return and assess within thirty days unless he was about to leave the country or fail to meet his liabilities.

Q. If already out of country would you qualify your answer in correspondence with your view?

A. It is impossible to say.

Cross-examined, NEWBOLD:

From trial balances unless you check books it would be difficult to find evasion except where you found sundry creditors more than year's trading.

Q. Impossible to say from trial balances to say no evasion.

A. Normally, yes. I would have been prepared to accept the trial balance - relative to professional earnings.

Q. Returns - would it be normal position when a member of public came in to give him return forms?

A. Normally, yes. But in this case I know Mr.

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A. Holden.

20th December, 1955.

Cross-Examination - continued.

Mandavia had accounting difficulties and it is likely I did not give him returns at that stage, He got no personal allowances until returns made - when question arose I can't say if I gave him returns without reference to records. My duty to give return but not necessarily before the agreement of the liability.

Q. When he wrote about personal allowance you would give him returns? A. I fancy not.

Q. He asked about percentage of bad debts - allowed only when proved to be bad? 10

A. That is my view. I thought he would pay on book debts basis. It is a practice. I don't think we assessed it on agreement. I think I put it to him he had to pay less on debts proved. We never settled the problem. I could have settled it by arbitrary assessment - to the best of adjustment. I mean an estimated assessment therefore I saw him on 19.9.51.

Q. Did you make a note? 20

A. Yes. I look in file. I see my note: I show it: it is a note I made immediately after the interview. There is a record that Mr. Mandavia in 1942 and 1943 made respectively about £500 and £600 - for 1944-5-6, he had produced trial balances.

Q. Total receipts and expenses?

A. Not clear: but my note suggests he did produce trial balances for '44, '5, '6.

Q. For 1944 showed receipts Sh. 57,000/- and expenses Shs. 31,000/-. On professional side he made Shs. 26,000/- nett profit, subject to bad debts? 30

For year '45 - receipts Sh.46,000/-; expenses Sh.19,000/- nett profit of Shs. 27,000/-? A. Yes.

Q. For 1946 no trial balance to show Sh. 50,000/- was receipts and total expenses Shs.14,500/-; nett profit of Shs.35,500/-? A. Correct.

Q. Did you ask why expenses so high in 1944?

A. I did: he replied when he set up he had a staff of clerks, but later he took a pupil as required and trained him. 40

Q. Certain amounts from properties - did you ask?

A. Yes, or he may have told me he had certain rents from property. I recalled he took me to a room

In the Supreme Court

Assessee's Evidence.

No. 9.

A. Holden.

20th December, 1955.

Cross-Examination - continued.

in the building and pointed to a building outside and said "That is a building from which I claimed rents". I am not clear if he had 100% on those rents.

Q. Did you estimate amount of annual income from properties?

A. No, from partnership. We did discuss properties.

Q. Is this figure, £250 or £300 in your writing?

10 A. Yes. It gives more information, that there were rents of £250 - £300 in which he had half or one-third share. I may have got it elsewhere. I am not sure if his share was £250. It is my note. I have an earlier note. I think I got it from him. I don't know if it was all the property. I had a note of property - two plots 668 and 676, Victoria Street - note - no accounts - for two or three years - Monji.

Re-examined SALTER: Re-Examination.

20 Bad and doubtful debts. Taxpayer would produce a schedule for doubtful debts, allowance would be made - note made against debts and queries made later. I got no such schedule, I did not ask for it. He claimed off 100%. I never asked for a schedule. I did not reveal mind of authorities on subject of debts. No personal allowances without return.

Q. Letter A - particulars making assessments. In interview what was said?

30 A. To save time later I should like to know personal allowances to be made later in a return. There was nothing in allowances peculiar to him.

Q. Last sentence?

A. When assessment was made it would assist me. It would take into account assessment as claimed. I asked for a note to save time to enable me to proceed with the calculation. Assuming liability created and return completed. I should take these as in 1951 when particulars were agreed.

40 R.O.D.W. A.L. Cram.

Adjourned by consent 10.00 hours on 21.12.55.

A.L. Cram.

In the Supreme Court

Assessee's Evidence.

No.10.

G.R. Mandavia (recalled)

21st December, 1955.

Cross-Examination (continued).

No.10.

EVIDENCE OF G.R. MANDAVIA (recalled)

21.12.55.

Recalled Mr. MANDAVIA: Warned still on oath.

Cross-examination continued, NEWBOLD:

Q. I show you Exhibit 5. Copy of schedule letter I. Office costs of Sh.61,334/-. Does that agree with total of office costs of trial balance that year? A. Yes.

Q. Office expenses of? A. Yes, they agreed. 10

Q. 1948-49-50 - any divergence from these to those contained in your trial balance?

A. Let me see - no difference.

Q. What did you mean when you said yesterday these were not same?

A. I meant that they did not agree with all the figures that I had given to Mr. Holden.

Q. In what respect did they not agree?

A. They did not include allowances for insurance premiums paid although they allowed certain sums for personal allowances and even in regard to those, my view was different as to the amount allowed. 20

Q. Exhibit 3 gives you the percentage you claimed? A. Yes.

Q. Allowance in respect of library? A. Yes.

Q. Personal allowances? A. Yes.

Q. How much capital sunk in properties you own?

A. I cannot tell you that: £7,000 to £8,000 personally owned properties. 30

Q. And with other persons?

A. I distinguish - two in Victoria Street, I paid my share - £1,200 - £1,300. I own a half share, each cost about £1,250. Capital expenditure in 1938.

In the Supreme Court

Assessee's Evidence.

No.10.

G.R. Mandavia (recalled)

21st December, 1955. continued.

Cross-Examination - continued.

Q. Other properties jointly owned: capital etc.?

A. My partner collected the rents. I have not put in my own capital.

Q. Exhibit 7. Balance sheet - 1948 - discloses on capital account Shs. 67,100/- half share of plot in Victoria Street owned with Monji? A. Yes.

Q. This sum - capital sunk?

A. 684 plot, we bought it for £700 jointly in 1935: auction?

10 Q. Purposes of resale plots?

A. I don't know if .... I have something of a list - 33 vacant plots in Eastleigh, £20 - £22.10.0 each. I did not provide half share, it was paid out of rents.

Q. You had a half share?

A. It was in his name. He will not give me accounts.

Q. From 1942 - 46 any income in any form?

A. Unless I see accounts 1942 - 43, part payments
20 - money payable to Monji - end of 1942 relations were strained.

Q. It is possible - 1942 - something, after that nothing? A. No.

Q. What would rents have been?

A. Generally. In 1945 - plot 668.

Q. Repeated.

A. I can only guess rent - 2 properties £40 - £45 per month if collected. My share £20 - £22 per month.

30 Q. From your own properties - income?

A. One house in Dalgairns Road occupied by me since 1945 - before that vacant. £175 per annum 6% basis.

Q. Giving you all these, the minimum tax liability amounted to Sh. 2,781/- in tax? A. Yes.

Q. You were anxious to pay tax? A. Yes.

Q. Having received these, your tax liability amounted to more than £2,000. Why did you not pay it when asked?

40 A. I understood I was required to pay £2,000 on account or part payment of aggregate sum already assessed and whole of which I considered an invalid and indivisible assessment.

In the Supreme Court

Assessee's Evidence.

No.10.

G.R.Mandavia (recalled)

21st December, 1955. continued.

Cross-Examination - continued.

Q. You were anxious to pay prior to assessment but because it was invalid, you would not pay?

A. After assessments were made I had two difficulties and two reasons. One was the answer I gave now and also before assessment until October 1952, when I was in Kenya my bank balance was depleted because I had to hand out briefs to other advocates. I had to pay out. I had a small allowance on which I was subsisting I explained. My financial position was shattered. I had to return 10 to Nairobi and make adjustments of my two accounts in Bank - my own and clients'.

Q. In 1953 you wrote a letter, J, of 9.10.53 informing Department you were liable in respect of year 1952. You knew position in law.

A. Yes, I looked at Act.

Q. You knew liability to inform Commissioner if you had not made a return by a certain date?

A. Yes, I knew of my assessment but not exact amount. 20

Q. When did Monji partnership start?
A. 1935 or before. It still continues in law. In fact he started giving trouble.

I was purchasing properties - renting some out, likely to produce stable income. Using funds to purchase small pieces of land in Nairobi and dividing income or profits. Some times there was a third person joined in the joint adventure. We had three lots of land in Victoria Street - we were re-selling. 30

Q. Do you own plots now on partnership?

A. Yes, two plots in joint names since 1935; numbers 668 - 676.

Also in 1950.

Q. Any other plots in 1950 in joint names? A. No.

Q. You had properties in your own name?

A. Seven or eight.

Q. In year 1949 - jointly? A. Two only.

Q. In your own name?

A. A number of other properties. 40

Q. In 1948 jointly?

A. The same - a number in my own name, about seven

In the Supreme Court

Assessee's Evidence.

No.10.

G.R. Mandavia (recalled)

21st December, 1955. continued.

Cross-Examination - continued.

or eight - I tried to buy in 1948 one property. I made purchases of three properties, now my daughter's properties - 283, 152 in Eastleigh, 2227 in Imtiazali. The last was liked.

Q. In 1947 jointly?

A. I think we had three. We sold one. In 1948 Monji sold his half share in plot 684 to Naranjan Singh. I had to give up half share at price shown in balance sheet.

10 Q. In 1947 three jointly and about eight in your own name?

A. Number 70, a small plot in Eastleigh, apart from that seven or eight.

Q. In 1946 - three jointly and seven - eight own?

A. Yes.

Q. In 1945, 1944, the same? A. Yes.

Q. 1943 - the same?

A. I wish to consult my books - 1540 is shown acquired in 1943 or 1944. The position was almost
20 the same.

Q. 1942? A. I have not got my books for that year.

Q. Did you receive rents from Monji joint properties?

A. In India he used to send me revenue; after that proceeds along with other loans from Monji were used to purchase vacant pieces of land.

Q. In 1950 did you receive rent in respect of joint property?

A. He had ceased to collect rents, I was not paid
30 rents. I did not get any rents. It could be called income. It was received from tenants. I got no money.

Q. Money or money's worth in 1950, 668 - 676?
A. No.

Q. 1949 - any income, money or money's worth?
A. No.

Q. Or third? A. No income.

Q. Value of half share of sold property. A. Yes.

Q. Value? A. Shs. 67,000/- odd.

Q. In 1948 you received value of half year but no
40 income?
A. No.

Q. In 1947 - any income from joint properties?
A. No.

In the Supreme Court

Assessee's Evidence.

No.10.

G.R. Mandavia (recalled)

21st December, 1955. continued.

Cross-Examination - continued.

Q. In 1944 - any income in any form? A. No.

Q. Very generally - income on average each year from plots owned personally?

A. I can only give a guess. Generally varied between £15 to £30 per month in respect of properties I owned personally.

I add this - in later years I have been paying huge rates for Victoria Street properties. Most income is consumed in rates.

Q. If you occupy lane - you pay rent. 10

A. I put it in my 1951 return which I put in a few days ago.

Q. From other plots?

A. Some had wood and iron houses: site value rates took up more than income. In 1945 net income 160/- per annum - 1540. On 1751 net income 87/- per month income before expenses: 118/40; 12489/18 1948; 371/2 -

SALTER: Details: Reference to referee.

NEWBOLD: If Court so orders; figure by referee would be figure: little advantage: only essential on broad issues. 20

Q. Generally; you received little or no income from the plots you owned personally for years of assessment under appeal?

A. Some items have gone into my personal account.

Q. Some income gone into your personal account?

A. Yes.

Q. The rents were utilised to buy other properties for resale? 30

A. Yes, I think in 1939 or '40. One or two plots in Eastleigh were taken over by Municipality. I was paid a share; plot in Caledonian Road, near Aga Khan property, I was paid a share of profits.

Q. 1942 - 50, any monies of sales of any properties?

A. Mortgages for Monji. My books go on from 1944. I have not received any share from 1944 for resale of any property.

Q. In 1948 - sale of one property?

A. Yes. Monji sold his half share. I let go my share at same price. 40

Q. On conveyance of other properties, did you not participate?

A. What was registered in joint names were the three Victoria Street properties.

Q. Any other? A. I have not received.

Q. Purchased jointly for resale - any income received 1942-50? A. From 1944.

Q. All right? A. No income.

Q. Have plots been sold?

A. He has sold some and he has retained some. They stood in his name alone.

Q. You may have received? A. Difficult to say. Item of Shs.1,000/- I took off a sum for a mortgage
10 - but I got a full account --

Q. I show you Exhibit 8 - under year 1948.

A. Yes.

Q. Assets 2489/18 - Shs.15,000/-?

A. Bowji Khanji Parma sold me plot at Shs.50,000/-; before completion he took drastic steps to recover deposit receipt from me. He lost that. I took a suit for malicious performance, suit for .... Shs.15,000/- deposit. Official Receiver. I paid another Shs.15,000/- to Official Receiver discharg-
20 ing mortgage. The Shs.15,000/- until property is transferred to me is a sort of judicial charge on property.

Q. 668 - 2904?

A. Site value rates paid; Monji debited charges against me - asset - offset. I am paying money without getting any income - 4938.

Q. These two figures - payments, not income?

A. Yes, payments, later much higher.

Q. You have made payments, no income?

30 A. To avoid a forced sale for rates.

Q. 1949 - plot 1751 - Shs. 2,200/-?

A. Wood and iron on black cotton soil. I spent about £600 on it. I credit income against it. It represents the repairs and rates as well.

Q. Do I understand these figures - assets represent expenditure? A. Not all of them.

Q. Repeated.

A. In respect of 668 - 676, 1751 2489 - outlay?

Q. Where is income?

40 A. In balance only, debit and credit balance is shown.

Q. From that answer - 1751 - 1949, after balancing

In the Supreme Court

Assessee's Evidence.

No.10.

G.R. Mandavia (recalled)

21st December, 1955. continued.

Cross-Examination - continued.

income against expenditure you are left with a deficit? A. Yes.

Q. What is value of 1751?

A. Purchased for Shs.23,000/00 to Shs.24,000 in - I mean 23,000/-.

Q. When did you purchase it?

A. I would have to look at Title Deeds. In my personal account 1946-1947 I think.

I had some income - £3-£4 per month.

Exhibit 8 - 1751 plot liability shown. 10

A. Half interest - transfer to my personal account. Price. I paid for half the share.

Q. You owned it personally you said.

A. Yes. You see it was very soon between my purchasing share in half share.

Q. Alone or in conjunction - ?

A. I had offered a half share with my brother.

Q. It is incorrect.

A. He did not pay price for it. Soon after it was transferred. 20

Q. Value is Shs. 43,000/-?

A. The whole amount. I did make a mistake.

Q. Shs.43,000/- you paid?

A. I paid Shs.23,000/-.

Q. Repeated.

A. No nett income. It cost me Shs.11,500/-.

Q. For years 1948, 49, 50. Liability for plots 283, 152 and 2227, 6,093/-, what do they represent?

A. These figures represent the amount with landlords. The profit made on these three plots which 30 I had purchased, to settle on my grand-daughter, one after another. The last was liked. She died in 1949. It is profit to me.

Q. These three plots yielded you income in each year of over £300? A. No.

Q. Explain?

A. It is profit made once and for all - stands against plots pending adjustment. I asked him if he would tax for 1948. I am carrying it forward. It belongs to person on whom I am going to settle 40 it. It is mine.

Q. Shs.6,093/- income?

A. It is profit income. The question is whose

In the Supreme Court

Assessee's Evidence.

No.10.

G.R. Mandavia (recalled)

21st December, 1955. continued.

Cross-Examination - continued.

profit it is. I spoke to Mr. Holden about it.

Q. You got down to details of specific plots?

A. No, I told him of the series of properties. I never gifted it. It is my profit.

Q. Partnership with Mr. Khanna?

A. It lasted 13 months - 1943 to 1944.

Q. You had partnership with Monji - 1948 only to two properties - and you had none with Mr.Khanna?

10 A. Yes. None with Khanna. Monji's was for more than two properties.

Q. More than two? A. Yes.

Q. Your property dealings in 1948 were more extensive.

SALTER: Witness did not go so far.

Q. You owned interest in more properties, in more than two - Monji and seven or eight owned by yourself?

A. I am registered owner, in other I can only claim a partnership, in others - not settled.

20 Q. Could you not have made a return in respect of those owned by you?

A. Holden sat on my account for 20 months.

Q. You reported to Mr. Deadman?

A. I said so in my written case. I have some doubt whether it was Deadman or not. I first saw a European in charge of 'M' files in 1943. When I was asked, I was told it was Mr. Deadman. Yesterday a friend said he was a man with hollow cheeks. The man I saw was not so. I doubt therefore ....

30 in 1943. In 1945 I explained to officer I wanted to see men - I was told it might have been Mr. Deadman.

Q. In your statement - Mr. Deadman?

A. Yes, and in my evidence in chief.

Q. Mr. Deadman was not in Kenya in 1943.

A. As I say when I was asked I said a European. The name was suggested to me.

Q. He handed you a return? A. Yes.

Q. Did you fill it up? A. No.

40 Q. In 1944, you did not inform any member of Department you were liable to tax? A. No.

In the Supreme Court

Assessee's Evidence.

No.10.

G.R. Mandavia (recalled)

21st December 1955. continued.

Cross-Examination - continued.

Q. 1945? A. Same applies.

Q. 1946? A. Same.

Q. 1947? A. Yes.

Q. 1948, 49, 50? A. Yes.

Q. In 1951 for first time you informed Department.

A. I made a visit in 1945.

Q. These figures in trial balance, balance sheets depend entirely upon your statement as to what they are and books would be required to be checked?

A. Yes. It is a Summary. The books support Summary; the vouchers the books. 10

Q. Letter B - 26.5.53 made certain requirements?

A. Yes, it required profit and loss accounts and balance sheets.

Q. Did you comply? A. No.

Q. Why not?

A. Martin created a default on my part by making an assessment before time and made it impossible for me to give him the accounts for purpose of true assessments. 20

Q. How did he make it impossible?

A. (1). By proceeding to make assessments within thirteen days of date upon which I should have according to the statute. I mean the time within which according to law I should have received the return or could be deemed to have received the forms of return.

(2). When after making a pretence of adjusting accounts later, he did not agree accounts unless on condition I paid £2,000 down. 30

Q. He also required a full statement of all profits and property? A. Yes.

Q. Did you comply? A. My answer is the same.

Q. You mean no, and for reasons you have given?
A. Exactly.

Q. Letter P. of 12.1.51. He again referred to these requirements? A. Yes.

Q. Did you reply to letter P? A. No.

Q. You saw Mr. Martin in Dar-es-Salaam in December?
A. Yes. 40

Q. He again asked for accounts, balance sheets, profit and loss accounts, property dealing accounts?

A. Yes, but he also asked for £1,500 to £2,000. I asked him to clarify the position of penalty - do

In the Supreme Court

Assessee's Evidence.

No.10.

G.R. Mandavia (recalled)

21st December 1955. continued.

Cross-Examination - continued.

I still have to pay you the penalty - if I submit accounts and pay the deposit?

Q. Did you tell Mr. Martin you had not prepared any accounts and it would take you a long time to do so? A. Not that I remember.

Q. Exhibits 7 and 8 were prepared last year?

A. For purposes of the appeal.

Q. You had these available to give to Mr. Martin?

A. He had seen my trial balance. I can't (sic) if
10 they were available. They may have been available.

Q. You have referred to trial balance, does that refer to anything other than professional earnings?

A. To some extent it does.

Q. Those trial balances include items additional to professional earnings?

A. To some extent.

Q. Point them out.

A. They do include reference to plots and personal account not entirely professional income.

20 Q. You said earlier - these trial balances handed to Mr. Holden and they were exclusively professional earnings?

A. He had required accounts of professional earnings - anything bound up with these was shown. I gave a complete picture of books. There are some items in these relating to properties.

Q. Property - partnership and personal?

A. To my personal dealings.

Q. If that is so, why did you not complete full re-
30 turns to Mr. Holden?

A. Because the accounts were not total. It was still partial unless partnership accounts were excluded.

Re-examination.

Re-examined: SALTER:

In 1951 I went to the Income Tax Department to settle my liability to such extent as I could with accounts available and to be allowed to pay tax in such manner as adjusted. Neither Mr.Holden nor Mr.Fisher asked me to make a return. No reason
40 was given why I was not asked to make a return. They were interested in getting all information as to why I had not made any return before. A complete income could not be returned, nor was any agreement reached. I saw Mr.Holden and Mr.Fisher in office about June, 1950. I offered all my

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No.10.

G.R. Mandavia (recalled)

21st December, 1955. continued.

Re-examination - continued.

books, papers, vouchers. He wanted a summary of what my books showed my position to be. I made a summary in form of these trial balances. The material for trial balances was books of account, vouchers which I had in my office. After that I was not asked for material to substantiate my trial balances until 26th May - not in 1951. Apart from three subjects - bad debts library and depreciation on cars, there were no other subjects upon which he wanted information. Mr.Holden towards my partnership disputes, appreciated my difficulty and until matters were resolved I could not give him any more information. My dispute with Monji - he would not give me information for accounts. My dispute with Mr.Khanna was over accounts. The suit is for accounts to be referred to a referee. Mr. Holden did not ask for any payment. I was more anxious than he was. My attitude to payment - I was making visits and asking what arrangements for payment I could make. My financial position was I could have paid full amount till 1952. Reason I did not make it was I never knew what amount I would be called upon to pay.

By Court.

Q. <u>By Court</u>: The £2,000 was being asked on basis of my getting adjustment on a final agreement. I did not have £2,000 which I was asked; I used deposit in letter D. I had also apprehensions.

Re-examination - contd.

<u>Re-examination</u>: continued :-

Q. Letter B of 26.5. - submit Profit and Loss accounts and balance?

A. Mr.Holden knew what a traders' Profit and Loss account was included in the income and expenditure account. He never made any demand for a balance sheet. If we had agreed depreciation the balance sheet would have showed a different figure. Mr. Holden did not require anything from me after I had submitted the papers.

Q. Exact amount of bad debts - letter B (1)?

A. Mr.Holden's attitude showed an inclination to come to an agreement on all items including depreciation and bad debts.

Q. Could you have stated bad debts exactly at time asked?

A. No, I was in London, without my books and papers and further requirement I could only have done. I could supply a list of bad debts to-day. If I had had my books in London - 1953 - to determine bad

In the Supreme Court

Assessee's Evidence.

No.10.

G.R. Mandavia (recalled)

21st December, 1955. continued.

Re-examination - continued.

debts one needs. Well, not to the fullest extent. One would need to enquire locally whether a man were in Kenya or not and ascertain his position to discover whether it was a complete bad debt or not. Column 8, Exhibit 8, sundry debtors - reached substantial figures, £9,000 and more. That had some reference to uncompleted work and unconcluded briefs. In 1953 a number of these debtors were bad debts. With my accounts - in London it was difficult - in Kenya I could have done so in a matter of a week or so. Now I could give an exact amount of my bad debts. Since then I now know persons who are completely bad debts - those who have left and are completely insolvent. Exact amount of renewals to library and I had no books in London - difficult then - without sight of my books to discover which were valueless. Letter B (2). Property transactions: there was nothing more I could have given Mr.Holden, except I could have gone to Land Registration Office. I was anxious to get indication of what they wanted to do. I could not have given names and box numbers of people interested in May, 1953, in London. Allocation of profits. I tried hard to explain difficulties to Mr.Fisher from outset. Exhibit 8, Shs.6,093/- plots in left column. I mentioned these to Mr.Holden but never reached stage of explanation why it was a liability. I wanted a direction from Mr.Holden when he was ready to discuss matter. I prepared Exhibit 8 last year. It is in trial balance in 1948. It shows amount outstanding against name of plot. I show 1948 trial balance, Exhibit 6. Fourth item, fifth and seventh item totals up to Shs.6,093. Unfortunately, these methodical things - one column shows debtors and other creditors. Right column money owed by business. Balance sheet is incomplete.

By Court.

Court: Q: Are not these figures on wrong side?

Re-examination.

Re-examination: It is my asset, it does not read that side on balance sheet - subject to sale and adjustment. It is in an incomplete state.

Q. Did you explain why entry is shown as a liability? Exhibit 8 did not exist. Did Mr.Holden raise any query on that entry in Trial Balance?

A. No.

Q. You never reached stage of explanation - why shown as a liability?

A. Having given accounts in September by Trial

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G.R. Mandavia (recalled)

21st December, 1955. continued.

Re-examination - continued.

Balance letter of 20.9 and December, I was never even wanted to attend that office to explain or received a letter making enquiries. In a property transaction you debit plot with amount you pay out. If you find the property unsuitable and you let it go in an ordinary market, you would not get what you paid; but if prices rising there is a profit. You get more than you paid. The property is credited, the cash is debited.

Shs.1,000/- say on credit side of the plot and for purposes of the trial balance. On the one hand you enter them this way. My system, became debts or money on an ex account. I would have paid out - else cash avoiding balances. Accounts a blank system controlled by reason. It is (?) during - this balance sheet. My cash would be shown on debit side more - plot should get its credit. The trial balances depended on our statement and information. They could be substantiated with books and vouchers as required by a proper system of book-keeping. I was never asked to substantiate my statements. I told Mr.Holden if he wanted any further information I was quite ready to do it. Then I saw Mr.Martin in Dar-es-Salaam. I saw him once only. He asked for documents previously mentioned in correspondence - letter B and in letter P. I asked about penalties - Mr. Martin replied - he was more interested in getting a deposit - £2,000 - £1,500. He knew till I went to Nairobi I could not give him details. It was being asked as an amount, not dispute. I disputed it as part of whole claim. I wanted to pay but I had to get a loan. I thought they would get my £2,000 and further difficulty ahead. He said penalty would depend on wishes of the Commissioner and assessment. I did not want to bleed white and have a further danger hanging over my head. I was prepared to pay full amount - when - Mr. Martin. They were trying to postpone one thing. I got a notice of refusal. Memorandum of Appeal was some months before conversation. I had entered an appeal and felt the penalties could not be charged. If I had paid my £2,000 - there was arrangement suggested - appeal was to be withdrawn. Mr.Bechgaard and Mr.Martin. I was given no assurance to enable me to withdraw appeal and agreed assessment. I was given no assurance about withdrawal.

R.O.D.W. A. L. Cram.

APPELLANT'S CASE CLOSED

In the Supreme Court

Respondent's Evidence.

No.11.

C. Martin.

21st December, 1955.

Examination.

No. 11.

EVIDENCE OF C. MARTIN

Respondent's case opened:

R/1 Sworn: CHARLES MARTIN:

Regional Commissioner of Income Tax. Principal Investigation Officer in Investigation Branch. I took it up on 1.7.52. Prior to that - September, 1951 - Chief Inspector of Taxes, Somerset House. I had been for thirty years attached to Enquiry Branch of Chief Inspector of Taxes - a senior position - Senior Inspector of Taxes, U.K. I arrived here in July, 1952. In 1953 I came across Appellant's file. Mr.Holden had been detailed to assist me. In May, 1953, he was absent sick and in order that any cases on which he was working should not be delayed I went through the whole of his files. I found there the Mandavia file over which no action had been taken by Mr.Holden since December 1951. I addressed a letter to Mr.Mandavia at his Nairobi office asking him to call - 22nd May. He did not call. I 'phoned his Nairobi office. I learned he was in England. I wrote letter of 26th May, 1953, to be re-directed. I did not then know the London address. Under separate cover - para.3, page 2 - no return of income and claim for allowances. I sent forms of assessment 1943 - 1953. I have never received any part of the information asked for in paras.1 - 13. I have received no part of Para. 2 B information. I have never received any return from Mr.Mandavia. I have seen certain figures handed in to Mr.Holden. I did not consider those figures sufficient to make an accurate as opposed to an estimated assessment. In the same letter I referred to £2,000 - certain figures not sufficient except for estimated assessment - had been placed before Mr.Holden. I examined these and made a rough calculation for probable liability on those figures. The total was well in excess of £4,000 without any question of penalty addition. I therefore pointed out in last paragraph of letter that it was clear on his own figures Mr.Mandavia must have been liable to tax for not less than the previous eight years and I suggested an immediate payment on account of not less than £2,000 by virtue of no legal provision in mind. He owed tax for many years and had paid none. I asked for a payment on account. In the last sentence I said it would be placed on deposit

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Respondent's Evidence.

No.11.

C. Martin.

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Examination - continued.

pending final ascertainment of full liability.

I sent forms of Return because I required from him particulars of his professional income which would have been given in Profit and Loss Account · which I had asked for and particulars of his income from property and particulars of any other form of taxable income which might have accrued to him between 1943 and 1953. Further, I could not ascertain his true taxation liability until I had full details of allowances he claimed and to which he might be entitled. They have to be claimed for by schedule on form provided for the purpose. The form of Return provides for that purpose. I received a reply dated 4.6.53, "C". Third paragraph - provisional assessments. Mr.Mandavia would not be able to make return for a certain time - no prospect before end of July. I wrote Mr.Mandavia on 15.6.53. "D", letter. I noted he would not be back before end of July. I proposed estimated assessments of tax so that no undue delay in collection of duty. I added that these assessments would be subject to adjustment. Written to London. The notices included a penalty provision. I concluded he must have been aware of the liability before approaching Department. The quantum would be subject to adjustment when liability finally established. Full amount of penalty must be inserted and be remitted at discretion of Commissioner. I imposed these penalties - nothing Appellant has done since assessment in any way to remit these penalties - nothing done to remit whole penalty. I caused these assessments to be made under section 72. It was the only section I could make them under. There is an analogous section in England. I am thoroughly familiar with it. It is only section I could use which permits raising of assessments outside normal seven years time limit. I was raising assessments in 1953 to cover year 1943. It was this section and this section only which I could go another seven years. Before I could go back seven years there must be fraud or wilful default, certainly wilful default. Mr. Mandavia on own showing and the figures supplied by him had had a professional income from his independent practice ranging between £500 in 1942 and £5,000 in 1950, and had in addition considerable income from property. The Act provided that if a person is aware of his liability to tax and has not been supplied with a Return he must give notice before

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Examination - continued.

15th October year after. He was a practising advocate and of education and must have been aware of his liability to tax. I had enquiries made in the office. I could find no evidence he had ever given notice until June 1951. In my judgment he had been guilty of wilful default. The post-dating of assessments - post-dated by Assessor - ordinary practice. The reason for the practice has nothing to do with date of issue of return, it is concerned
10 with period of time within which a tax-payer can lodge Notice of Objection. This period is thirty days from the date of service of the notice of assessment. To ensure the taxpayer may have his full thirty days the notice of assessment is post-dated at least ten days after the date when assessment actually made. I again requested £2,000 payment. I had sent forms of assessment which required a reply within thirty days. The letter I had from Mr.Mandavia was that I had no prospect of
20 returns within July. I had assessments made out first. I was not held up by returns.

The figures in the assessment were directly related to those given to Mr.Holden on which he gave evidence yesterday. They were slightly increased to round figures. The reason being that until I had received Profit and Loss and Balance Sheets for which I had asked I could not be certain that Mr.Mandavia's figures for his professional income were full and complete. I had prepared
30 Schedules - Exhibit B.

Exhibit B.

SALTER: These not put to witness.

NEWBOLD: Supplied already.

Examined

Examination.

1945: 1946: 1947.

Court: Not objectionable.

I showed tax and penalty addition. (These penalties - this Court is vested with all powers of Commissioner. One basic difference - onus is on Appellant to prove assessment is excessive.
40 Penalty is also in Court's discretion. Penalty is automatic. If no fraud or gross or wilful neglect whole penalty flies off. If wilful neglect Commissioner or new Court can remit portion justified - Newbold). I made assessments and sent them off.

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Examination - continued.

I received from Mr.Mandavia - copy letter dated 14th July. Letter F. I regarded letter as a formal notice of objection and recorded it as such. It was addressed to Commissioner. (Taxpayer after 30 days may apply to Commissioner to review and advise - stage longest - between the assessment and finality. Taxpayer and Commissioner discuss. Stage when Commissioner says he will not vary assessment and issues a Notice of Refusal: time begins to run for appeal or he may amend the assessment in a way not satisfactory - on date of amendment service - as if Notice of Refusal, or amend notice - taxpayer satisfied or converse, taxpayer no necessity for revisal - application for review and revise tendered).

I took this letter as a Notice of Objection. The Commissioner replied on 2.7.53. Letter G. Mr. Mandavia asked for allowance for bad debts. I did not allow for it. In his discussions with Mr. Holden asked for a percentage deduction each year from total fees or nett profits on account of bad debts. Legal position regarding bad debts is the same in Kenya as in the United Kingdom. That is a trader or professional man may have an allowance against profits of any trading year or practice on account of bad debts which he has actually written off as bad in that year. He may have a further allowance on account of doubtful debts to extent that on a valuation of each debt at time he prepares his accounts he is of opinion that some part is doubtful of recovery. In so far as at any later date he recovers on account of a debt actually written off he must bring that recovery into his Profit and Loss account for the year in which recovery is made. The position in Kenya is resolved by Section 14 (d) Act. It is brought into account. The valuation of doubtful debts and writing off of bad debts must be done at the end of the particular year of account the profits of which are to be subject of year of assessment. The debt has to be proved bad to the satisfaction of the Commissioner.

Mandavia has never placed before me documents that any debt is bad from doubtful. It is the practice to require schedule of names and addresses of debtors to be furnished to Authority. Complete schedule of amounts claimed for doubtful debts again not produced with names and addresses. I can see no difficulty in providing such a schedule. He

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Examination - continued.

shows amounts owing to him and it should be a simple matter for him to state which of those individual amounts were never paid to him and those where he is doubtful of full recovery. He also asked for an allowance for depreciation on books - not allowed. We allow deduction on renewals of books. If an Annual Practice for 1950 and one got one for 1955 the costs would be allowed as a charge against profits. No allowance made for additions.

10 Letter G. I received no reply. I issued a reminder. Letter H, 1.9.53. I received no reply. I wrote on 16.9.53. Letter I. I received no reply. I received reply dated 9.10.53. Letter J. A notice: liability for 1952. Said he had sent for books and would send balance sheets, etc. I sent him those returns asked for on 26.5.53. I have never received those returns or balance sheets or accounts in any form for those years. I heard him say he had filled in a return of income for

20 year 1951. That has not been received by me. Mr. Mandavia says he completed it a few days ago, it may not have reached my desk. Attempts were made to obtain some payment from Appellant. An assessment had been issued and a Notice of Objection received. Section 81 Act they enable me to enforce tax not in dispute, notice given. Payment of tax in abeyance except right to collect tax not in dispute. £2,000 tax was not in dispute. I prepared a schedule showing amount of tax payable for last

30 four years up to 1950; - 1947 - '48 - '49 - '50 based on figures supplied by Mr. Mandavia giving him, while not admitting legality, 10% allowance for bad debts and certain sums shown in trial balances as increases in value of his library; personal allowances and children's allowances in accordance with statements he had made to Mr. Holden in September 1951. Such allowances not legally claimable in absence of a completed return. Having made all these deductions and allowances I set out a

40 calculation on tax payable for four years - 1948 - 1951 with a total of £2,781/7/-. Since these calculations cover four years only out of eight I was of opinion £2,000 was a very reasonable sum to be treated as not in dispute. I sent calculations to him with explanatory letter and asked for a payment on account of £2,000. I received no reply or any sum in payment. Letter I.

Adjourned till 22.12.55. 1000 hours.

A. L. Cram.

In the Supreme Court

Respondent's Evidence.

No.11.

C. Martin. (recalled)

22nd December, 1955.

Examination - continued.

22.12.55.

Recalled: MR. MARTIN: Warned still on oath.

Examination continued: NEWBOLD:

Q. Did you know of Mr.Mandavia's movements in 1954?
A. He had returned to East Africa. On 8.1. I wrote letter M. requesting him to call. He replied on 11.1. He informed me he had been licensed to practise in Tanganyika Territory and had an office in Dar-es-Salaam. Some of his important books were in Dar-es-Salaam and would call if a personal interview was necessary. I replied letter P on 12.1.54. I received no reply. I wrote on 8th April, 1954, letter Q. I then issued on 16.5.54 Notices of Refusal; Notice of Objection acknowledged dated July 1953. In a letter accompanying Notices of Refusal I directed attention to remedies 5.5.54. I received a telegram dated 13th July, 1954, from Mr. Mandavia, fifty-nine days after issue of notices of refusal. Under date 14.7.54 I had an official notice of intention to appeal. On 14.10.54 I received a letter from Mr.Bechgaard, advocate.

SALTER: Objects. Not relevant - no proof of agency - not his advocate at that time.

NEWBOLD: Letter put to Mr.Mandavia from Mr.Bechgaard and cross-examination of Mandavia on interview with Mr.Martin. Not an exhibit. It was in relation to Mr.Mandavia. As a result I replied on 15.10.54 to Mr.Bechgaard. I saw Mr. Mandavia on 9.12.54. I discussed with Mr.Mandavia certain proposals put before me by Mr.Bechgaard. He knew of these proposals. I asked Mr.Mandavia if he had a copy of letter of 14.11.54 addressed to Mr.Bechgaard. So far as I could ascertain he had a copy. I told him I had arranged the interview if he was prepared to agree the proposals mentioned in the letter. I see Exhibit A. It makes certain proposals. I replied in a letter dated 4.11.54. Mr. Mandavia had seen my reply I understand. Letter of 2.11.54. I dictated a note immediately afterwards and asked Mr.Mandavia if he would agree the terms as set out - Exhibit A. My reply to Mr. Bechgaard of 4.11.54. These terms included payment of a deposit of £1,500, the submission of accounts and balance sheets I had asked for on 26.5.53, before 31.12.54; the deposit of £1,500 to

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22nd December, 1955.

Examination - continued.

be paid on the understanding when final agreement of liability reached it would be adjusted up or down. My letter of 4.11.54 to Mr. Bechgaard had agreed the terms concerning the deposit. Letter of 4.11.54, Exhibit C. Mr.Mandavia said he might be able to find such a deposit. That he would not be in a position to submit accounts and balance sheets by 31.12.54. Before doing anything he wants an assurance that no charge for penalties would be imposed. I told him that I might agree to even further extension of time for submission of accounts and balance sheets provided he made a deposit of £1,500. I asked him for a direct answer of question of a deposit. He again asked whether we were going to charge penalties. I told him that the point was covered by para. 3 of my letter of 4.11.54. I asked once more for a direct answer about the £1,500. He said he was not prepared to do so unless he had a clear statement as to what we proposed to do with regard to penalties. I repeated I could give him no undertaking on that matter. He gathered his papers and walked out. I have had the office records relating to Mr.Deadman checked. From those records, Mr. Deadman was not in Nairobi in any office of Income Tax Commissioner during 1943. From records he went to Dar-es-Salaam in 1940. He went to Lushoto from Dar-es-Salaam in 1942, and he returned to Nairobi in 1944. I did not mention I was making these inquiries made in this Court. The Composite balance sheet. I have been engaged on examination of accounts for a period of over thirty years. Without a vast amount of further examination these trial balances are completely valueless. The balance sheet is related to earnings of income from profession and also to rents from property. In case of a professional ? along This document, Exhibit 8, has no value in assisting me to arrive at the true total of income for Mandavia. These do not show. I should have to see Mr.Mandavia's books. I should have to have full details regarding assets and liabilities and to have complete statements of his property transactions and, in particular, of rents which he has received in course of year from his various properties. When a person in Appellant's position submits a balance sheet, I should have to expect detailed profit and loss accounts related to his practice and detailed statements as to his receipts from and expenditure on his properties. These would be separate documents. They

In the Supreme Court

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No.11.

C. Martin (recalled)

2 December, 1955.

Examination - continued.

would show the total profit and loss on that activity and those total figures would be reflected in relation to the balance sheet. They would be shown as credits to his personal capital account and there would also be shown his drawings from the business during each of the years. Having heard evidence in this case so far, I can only say assessments made do not cover the whole of the taxable income of Mr. Mandavia for the respective years. In particular they do not include his probable total income from properties. The schedule of earnings prepared showing relationship between Mr. Mandavia's own figures of his personal earnings and the amounts assessed included one item of £200 in most years and £250 in one or two years as income accruing from property. These figures were based on statements made by Mr.Mandavia to Mr.Holden to the effect that he had a half interest in two properties in Victoria Street. He has stated in cross-examination that in addition he had seven or eight properties in his own name and a partnership interest in thirty-two or thirty-three building plots. I further think that as a result of the cross-examination of Mr.Mandavia it is - appears - also clear ..... It would appear Mr. Mandavia has been in receipt of profits from sales of properties which may take form of taxable income. There is still a further item. Mr.Mandavia referred to mortgages. If he received interest on such mortgages that interest would also be taxable income in his hands. Nothing is shown in balance sheet clearly. Not separately in the statement.

By Court.

Questioned by Court: The trial balances. Particulars of rent from properties. Not shown in trial balances at all. I should want details on the expenses side. The right hand column - properties. They ought to show value of property at date of balance. The figures mean - Mr. Mandavia 6093.00 in Exhibit 8 would not be necessarily fraudulent. Does not come into expenditure account at all. He did not disclose information to Mr. Holden in 1951.

Cross-Examination

Cross-examined: SALTER:

Q. It was for that purpose he went to see Mr.Holden?

A. I heard his evidence. I believe Mr.Holden as one-time member of my staff.

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C. Martin (recalled)

22nd December, 1955.

Cross-Examination - continued.

Q. The whole trouble was first partnership with Mongi and Khanna? A. Yes.

Q. Any shortcoming or inability to declare a total income was disclosed to Mr. Holden in 1951?

A. In so far as your holding in Victoria Street. There is no record in Mr. Holden's notes that he had personally owned properties.

Q. He came and said I cannot give you information because of disputes?

10 A. Yes. I accept that.

Q. Did you hear Mr. Holden corroborate Mr.Mandavia. He came in several times to get his assessment?

A. Yes.

Newbold: He is putting questions to witness, if my note is correct, he is putting it in a way not in which Mr. Holden gave his evidence. He put there was no question to be cleared up other than bad debts.

Salter: I did not say so.

20 Newbold: Putting it in such a way as it was left with Mr. Holden to make assessment. My note includes property income, I understood that.

Salter: I am sorry if I did not make it plain.

Q. The object of Mr. Holden's visit was to try to clear up first of all Mr. Mandavia's tax return?

A. He had not made any.

Q. His liability? A. Yes.

Q. The two matters were bad debts, motor cars and library. Mr. Holden agreed with Mr. Mandavia.

30 What held up declaration of total income was the partnership disputes?

Q. Mr. Holden said that he had never requested any further information?

A. It is possible. I do not recollect.

Q. No action was taken for seventeen months by your Department? A. Yes.

Q. Default by Department?

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C. Martin (recalled)

22nd December, 1955.

Cross-Examination - continued.

A. Some delay or neglect by Mr. Holden.

Q. Supposing this were the position. A taxpayer comes in. Here are my trial balances, and information I can give you. Ask for more information. No action is taken for seventeen months?

A. Not default. Not gross negligence. Mr.Holden was exceedingly busy. I hold no brief for Mr. Mandavia.

Q. The Department is adopting a correct attitude in blaming all on Mr. Mandavia? 10

A. It is fully justified. Mr. Mandavia guilty by wilful default. 1943 - not making ....

Q. Grossly neglectful of Department?

A. Mr. Holden failed to clear up matter. I reached Nairobi in 1952.

Q. For a year you were aware of no action?

A. In May, 1953, I found file and at once.

Question by Court: Drastically?

A. I gave him a full opportunity to deal with the whole question. 20

Q. For ten months you were Senior Officer over Mr. Holden when no action was being taken on file. Do you blame subordinate or accept some?

A. I had no knowledge of Mr.Mandavia. I am not responsible. It was my duty to find out. I had a responsible officer, Mr. Holden, who was giving due attention to all matters under review.

Q. You were brought out to clear up chaos?

A. No, to take charge of Branch, not chaos, if any existed. 30

Q. The Branch was concerned to assess?

A. To examine accounts and returns with a view to ascertaining returns are fairly complete.

Q. The Tax Department was hopelessly behind work in 1951? A. I was not here in 1951.

Q. In 1953?

A. I am not concerned with the ordinary machinery of Department.

Q. Mr. Fisher said if a taxpayer came forward and

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C. Martin (recalled)

22nd December, 1955.

Cross-Examination - continued.

was frank, every reasonable attitude was taken towards him? A. Yes.

Q. He considered Mr.Mandavia had been quite frank?

A. How could he say so. I do not recollect it. I do not think he was in a position to say it. I did not hear him say so. Mr.Mandavia may have spoken to him.

Q. Mr.Mandavia's case was treated as a special one?

A. No. When I took over papers, Mr. Mandavia had interviewed Mr.Holden, then a delay of twelve months. No indication on papers that he was being treated as a special case.

Q. Mr. Holden received certain instructions from Mr.Fisher and took file back? A. Yes.

Q. Treating it in a special manner? A. Yes.

Q. Mr. Holden told you? A. No.

Q. Did you consult with Deputy Commissioner?
A. No.

Q. Did you ask Mr. Holden? A. Yes.

Q. Did he not tell you he had to try to clear matter up and go back to Commissioner? A. No.

Q. You at once wrote letter of 22nd May, Exhibit 2? A. Yes.

Q. It was clear to you Mr.Mandavia had been writing to and interviewed Mr. Holden? A. Yes.

Q. He was out of Kenya? A. Yes.

Q. Did you ask office for London address?
A. No. I do not think so.

Q. Look at letter "B". A. Yes.

Q. You found papers, copies of trial balances and incomplete statements?

Q. If Mr. Mandavia had been writing to Mr. Holden whose duty was it?

A. Mr. Holden's, so long as he handled case.

Q. You say accurate records?

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C. Martin (recalled)

22nd December, 1955.

Cross-Examination - continued.

A. A trial balance indicated strict accounts with debtors and creditors, and details of private affairs in books, but much more information was required to prepare trial balances.

Q. You would have expected Department to ask?
A. Yes.

Q. You knew Mr. Mandavia was in England. Was it reasonable to ask him to submit accounts?
A. I said with as little delay as possible.

Q. His requesting Mr. Holden about bad debts was in your opinion not correct? 10
A. I went on to say no reason for query, percentage allowances.

Q. He had not got these records?
A. No. I did not ask for a list of bad debts.

Q. Paragraph 2. I shall require a full statement of property, etc., names and box numbers. Was that reasonable?
A. Not by return of post, as little delay as possible. 20

Q. Even in your letter No.P, 12th January, 1954, I am prepared to accept preparation of necessary accounts may take some little time.
A. Time was dependent on access to books. I had learned Mr. Mandavia was not back in Nairobi.

Q. What period of time did you expect on 26th May?
A. Three months if he had access to his books.

Q. So you then sent notices of returns to be completed and submitted along with accounts you should ask? A. Yes. 30

Q. Your estimate. He could not comply in thirty days?
A. Yes. In case of absence the period can be extended.

Q. The rough figures - in spite of accurate accounts? A. Yes, they were.

Q. It was duty of your Department to take matter up? A. It was.

Q. On 26th May, 1954, he was asked to furnish

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Cross-Examination - continued.

detailed information which you knew he could not complete at least within three months? A. Yes.

Q. You sent him return to fill up?

Q. The next step is that you were informed by letter of 24th June, 1953, of Mr.Mandavia's position?

A. Yes.

Q. Paragraph 3. Mr.Holden had promised provisional assessment?

A. I accepted Mr. Mandavia's statement.

10 Q. Did you ask Mr. Holden why he had not?

A. I did ask, He was otherwise engaged. Matter put on one side.

Q. If Mr.Mandavia led to believe Holden was to take action, you could not blame Mandavia for delay?
A. No.

Q. Letter "E". Notice of assessment. He could not comply with letter of 26th May before assessment? A. Yes.

Q. Based on information he had supplied seventeen
20 months before? A. Yes.

Q. Computed by Mr. Holden?

A. Yes. He signed original.

Q. In June, 1953, upon information he supplied nearly two years before? A. Yes.

Q. You said yesterday assessments made under Section 72? A. Yes.

Q. Three reasons you said. First was, it was only Section you could go back more than seven years?
A. Yes.

30 Q. You had asked for returns from 1943 year of assessment. You could have got returns and assessed him under Section 71(2) or (3) and subsequently serve additional assessments under 72?

A. No. I could not assess over seven years under Sec.71.

Q. You could have served under Section 71?

A. Not an additional assessment under Section 72 unless assessment.

Q. You could have made an assessment under Section
40 71 if returned? A. Yes.

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22nd December, 1955.

Cross-Examination - continued.

Q. Having made an assessment under 71 serving additional assessment under 72 if satisfied of wilful default?

A. I cannot answer it as it stands. If assessed under 71 and, at a later date, found fraud or wilful default I could serve additional assessment under 72. I could not assess under 71 for years outside seven. Under 71, up to seven years.

Q. If assessed at a less amount or default, serve additionally under Section 72. A. 72. 10

Q. Therefore 72 was not the only section under which he could have been assessed, 71 also?

A. It was only section under which I could make a first assessment over seven years. I could have used two sections.

Q. Reason was delay because he would not return till July and that there was a default. Delay, default and seven year period? A. Yes.

Q. So far as delay concerned it would not have been material? A. It might have been. 20

Q. Had he completed his forms he was then liable to assessment about 3rd July? A. Yes.

Q. Thirty days to complete. You would have assessed after 3rd July? A. Yes.

Q. Delay was not material, you could still have assessed him thirty days after. 72 does not matter?

A. I could have assessed him around 30th July, but for years out of date under Section 72.

Q. Payable on 5th August. Could have made an assessment under Section 71, payable on same time if not before? A. Later. 30

Q. Before 5th August, Section 71?

A. Payment would not be due before 5th August. I had no returns.

Q. You could have assessed him on 4th July, 1952? A. Yes.

Q. When you say he was in default. Since 1951 Department aware of the exact position? A. Yes.

In the Supreme Court

Respondent's Evidence.

No.11.

C. Martin (recalled)

22nd December, 1955.

Cross-Examination - continued.

Q. And could have assessed under Section 72?
A. Yes.

Q. When you took over and sent forms, 26th May, you assessed under Section 72? A. Yes.

Q. Why send forms first?
A. Two reasons. First because I wanted particulars of income and allowances he could claim.

Q. To make assessment? A. No.

Q. Why did you not on 26th May assess him. Why bother. It could not matter?
A. It was not necessarily the action I meant to take on 26th May. I subsequently learned he was out of Nairobi.

Q. On 26th May, you meant to proceed in ordinary way?
A. If I had intended to assess on return, I would not have asked for returns.

Q. What you did was to change mind on receipt of his letter of continued absence from Nairobi?
Q. Was it not more correct your idea of Section 72 arose after you became acquainted with judgment in case handed in?

A. I could not have been affected by it, I was not aware of it. The Judgment was made later.

Q. You did assess him under Section 71, now under Section 72? A. You impugn my veracity.

Q. I am testing your credibility. A. Very well.

Q. If your assessment is based on information two years previously, no point waiting for 26th May?
A. Possibly not.

Q. Does not affect your mind as to subordinate acting under 71 or 72? A. Probably not.

Q. Letter D of 15th June, 1954. You refer to assessments subject to adjustment? A. Yes.

Q. You refused to amend? A. Yes.

Q. You refused to amend because he did not want to pay £2,000?
A. No. Notice of refusal was in no way connected with the £2,000.

In the Supreme Court

Respondent's Evidence.

No.11.

C. Martin (recalled)

22nd December, 1955.

Cross-Examination - continued.

Q. Look at letter Q, date 8th April, 1954. Last paragraph. You request immediate remittance of £2,000. If you fail - threat of proceedings? You are saying this, if you do not pay £2,000 we refuse to amend and take proceedings?

A. No, I can give notice to provide security for tax.

Q. Proceedings for recovery of duty?

A. Yes. Serving of a notice to give security; no relation to a refusal to amend. 10

Q. Never amended?

A. No. No papers have been put in.

Q. Assessments are inaccurate?

A. To the best of my judgment they may or may not be. They are inadequate.

Q. We assess you; we have not amended it; they are inaccurate? A. I think they are inadequate.

Q. Inaccurate? A. Yes. Up not down.

Q. Full information as regards to large debts. Taken into account, might be a revision down? 20

A. I had not accepted £9,000 as a correct figure. It could be remotely possible a revision down. Liability for four years only, not whole of total liability.

Q. Tax 1948 to 1951. Four years?

A. Yes. After granting allowances for bad debts and personal allowances, still more due than £2,000. Most of later letters refer to £2,000, but other remarks are in them. Later it is treated as a deposit not in respect of tax not in dispute. 30 I had still not been supplied with figures. On his own figures tax not in dispute was in excess of £2,000. Mr. Towler was then an Assessor in the Collection Branch. Letter L.

Q. Letter L. Last paragraph?

A. £2,000 had not changed over. I had asked for payment on account. He had refused. I had then pointed out to him that despite submission of a Notice of Objection the Commissioner was entitled to collect tax not in dispute. I had pointed out 40 to him in a schedule with own figures, £2,000 was clearly not in dispute.

In the Supreme Court

Respondent's Evidence.

No.11.

C. Martin (recalled)

22nd December, 1955.

Cross-Examination - continued.

Q. Letter K. Not in dispute? A. Yes.

Q. When you saw Mandavia in Dar-es-Salaam he was worried by question of penalties? A. Yes.

Q. Yes, but he asked about penalties. He was not willing to settle while it remained unsettled?

A. He was unwilling to make any progress at all till the matter was settled.

Q. You gave reason of wilful default. He was a practising advocate and of education. He must have
10 been aware of liability to tax?

A. Are there no other grounds alleged?

Q. That is your ground? A. Yes.

Q. In the circumstances of Mr.Holden and Mr.Fisher do you rely on it still? A. Yes.

Q. Mr.Holden said he got the impression Mr. Fisher was not going to impose penalties? A. Yes.

Newbold: Mr.Holden did not say that would treat him leniently.

Salter: I accept that.

20 Cross-examination continued:

Q. In 1951 man tells everything, is entitled to be treated differently from a wilful defaulter?

A. Yes. After co-operation to the full.

Q. According to own evidence the Department was as much in default from 1951 to 1953. A. Yes.

Q. The Department was more in fault than Mr.Mandavia?

A. Delay was due to inattention in Department.

Q. Up to 1953 there was co-operation from Mr.
30 Mandavia?

A. From 1951. He was asked to give no further information.

Q. That period asked for an assessment he could not get? A. Yes, on his evidence.

Q. More on his part or the Department?

A. First three months fifty-fifty. After three

In the Supreme Court	months Department neglected to give attention to case. Unco-operative on part of the Department.
Respondent's Evidence.	Q. Your real complaint is not what happened after 1951? A. 1943 and 1950 is my real complaint.
No.11.	Q. Mr. Mandavia went and called in 1943 and 1945?
C. Martin (recalled)	A. He says so. There is no record. They are not infallible nor his memory infallible.
22nd December, 1955.	Q. The Department would be in fault if records not kept? A. Yes.
Cross-Examination - continued.	Q. You are influenced by letter of 26th May and after? A. Only leniency of treatment. (10)
	Q. He did not comply with letter of 26th May, 1953. That affects question of leniency.
	A. If you remove question of £2,000 I would accept it.
Re-examination.	Re-examined by Newbold:
	Q. You heard Mr.Salter ask you whether your attention was directed to Section 72 after he referred to case he put in?
	Salter: I did not put it that way. (20)
	A. I had never heard of judgment till Mr. Salter produced it.
	Q. Had you been asked before this case the Section? A. No.
By Court.	Question by Court: I am particularly concerned with fraud or wilful default and sections under which I can assess. I have never made an assessment under Section 71 in my life. I deal with Section 72. I was only interested in dealing with cases of fraud or wilful default. (30) I only thought about these Sections after Mr. Salter's opening. I have read Section 72. I have never made use of Section 71 or given instructions to assess under Section 71. I did not assess Mr. Mandavia till after his reply to me.
Re-examination (continued)	Re-examined Newbold:
	Mr. Holden said there was trouble with partnership, but no reason why he should not have given

In the Supreme Court

Respondent's Evidence.

No.11.

C. Martin (recalled)

22nd December, 1955.

Re-examination - continued.

details of private practice, both his practice and property. Mr. Mandavia might have taken three months to make returns. The preparation of detailed profit and loss accounts, balance sheets. He said he had a system of book-keeping. Even from scratch would take three months. The impression I had from his alleged records, he had extracted trial balances. Having reached that stage three months was a maximum period. I could not blame delay September 1951 - 1953. He continued delay from 1953 to 1955, and the early period of 1943 to 1950. In my letter I have always said the assessments were subject to adjustment and still would be.

10

Newbold: Query?

R.O.D.W. A. L. Cram.

Respondent's case closed.

No. 12.

No.12.

Addresses by Counsel.

(1) For Respondent.

22nd December, 1955.

ADDRESSES BY COUNSEL

20 Judge's Notes of Addresses by Counsel:

Newbold: Taxpayer in end of 1955 not paid any tax since inception of tax in 1937, it warrants fullest investigation. Procedural law of assessment and collection. Not substantive. Income Tax Act, 1952. Section 1. 1st January, 1951. Paragraph 1, Schedule 5. Tax chargeable 1951. Procedural provisions Section 8 to 13 apply to tax chargeable in arrears. Proviso- new provisions should not apply to prejudice.

30 Assessments: 1942 - 1950. Substantive provisions are those of Old Ordinance, Chapter 254. Procedural of Act. Under Ordinance, year of assessment - year in which assessment made, subsequent to year of income. Act - assessment year succeeding year of income. Will refer to year of income 1942 under Ordinance, year of assessment, 1943.

Section 43 Ordinance - Section 49 Act (1).

In the Supreme Court

No.12.

Addresses by Counsel.

(1) For Respondent.

22nd December, 1955 - continued.

Section under which Mr. Mandavia could have been required to make a return. The Section is permissive. Section 43(2) - 59 Act. Notice to Commissioner is chargeable. Effect in year 1943. Duty of Mr. Mandavia before 15th October, 1942, that he was chargeable with tax in as much as he had not sent in a return. Same in relation to each of succeeding years. Year of income 1950 - duty to report liability to Commissioner prior to 15th October, 1951. Various powers - Sections - not concerned. Section 55 Ordinance, - Section 71 Act (1) (2) (3). Commissioner may determine amount and assess accordingly. Section 71 comes within Part 10 of Act, applies procedure even if substantive law is in old Ordinance. Section 56 Section 72 Act. Now apply to tax under old Ordinance.

Section 71 is in practice applied where assessment made in year following year of income. Section 74 is in practice applied where issue of back duty, subsequent to year following year of income. They could be used in either case. It may be the practice is as stated by Mr. Fisher.

Section 72 is divided into two parts. Power to assess or to make out an additional assessment, only exercised within seven years of year of income. Provision to go back further if satisfied fraud or wilful default. Section 72, no issue of fraud or wilful default arises unless earlier than seven years.

In this case the first three assessments for year of income 1942, 1943, 1944 can only be made if Commissioner satisfied of wilful default or fraud and Court so satisfied. Proviso is only applicable to first three assessments under review. Do not go back more than seven years. When assessment made. Then under Section 74 Act. Procedural section. Commissioner - served on taxpayer. (2) Dispute apply by Notice of Objection in writing. Grounds of assessment. Exhibit from Appellant, letter, treated as a Notice of Objection. At that stage dickering takes place, most frequently when estimated assessment made. Relates to income. No dickering. No return made, estimated estimate, or return not accepted, estimated assessment. Try to agree upon income. Not tax payable, but income.

Section (4). Commissioner did not agree.

In the Supreme Court

No.12.

Addresses by Counsel.

(1) For Respondent.

22nd December, 1955 - continued.

Notice of Objection was sent. Section 75 Act. Notice of refusal to amend served. Not satisfactory to taxpayer. Unless steps taken the assessment is final. If not satisfied has to appeal to Local Committee or to Court. If to Committee - Section 78 (1) (5). Important. Onus. Section (6) Order. Effect is give Court as res integra. All powers of Commissioner. Now to determine the assessment. Section 79 Appeal. Section 81.
10 Collection - portion of tax. Section 40 (28 Ordinance). To deal with Section 28 part of substantive tax, year of income 1951. Section 27 additional tax as penalty. (2) Revision. Remit. If default in making a return or notice, then automatically law imposes treble tax. Simple question is, has he failed to give return or notice, if so the law imposes treble tax. Assessment automatically contains a treble tax. If default not occasioned automatic remission; if did arise, he may make such
20 remission as he thinks fit. The assessment would automatically have the treble tax. Now to decide it, wilful neglect remit all penalty. If satisfied grounds for default remit part. (3) 28. Importance when assessment made under Section 71. (56) (72) Case on topic. Case law: - Section (5) and (6). Section 78. Onus of proof. Order E.A.C.A. No.15. 1 E.A.T.C. Page 124. Page 128. Briggs, Justice of Appeal 129. 128 last paragraph - position same where taxpayer appeals direct. 129.
30 Appellant has to produce evidence assessment is excessive. To satisfy Court. Not exceptional position. Privy Council Ceylon. Gemeni Bus Company Limited. 1952 A.C. 571. In pari materia. 577. 581. Same approach in case cited by Appellant.

The estimated assessments have to be disproved and to establish some other figures. How has he he done so. In case handed in Appellant has not produced books of accounts. Bits of paper, trial balances are quite incapable of proving anything
40 without books. No expert evidence is required to prove that. Does not prove existence or non-existence of income. Case 11. 1 E.T.C. page 94. Page 102. Persuasive if not binding. Paragraph 10. Circumstances, no return, no notice. 28(2) fraud etc.

Claims for allowances. Bad debts, etc. Appellant is entitled to a deduction for bad or doubtful debts. Section 14. Substantive provision, look to Ordinance. Section 13 (1) (c).

In the Supreme Court

No 12.

Addresses by Counsel.

(1) For Respondent.

22nd December, 1955 - continued.

Before Appellant can be allowed to deduct bad debts must be proved to satisfaction of Commissioner to be bad. Has the Commissioner exercised discretion judicially in not allowing any deduction for bad debts. Court can substitute own discretion. Onus on Appellant, bears onus, got to prove they are bad at this stage.

Claim for Library deduction. How is claim made. In respect of expenditure on new books, relates to a capital item. Broadly difference between tree and fruit. Capital outlay, enduring benefit. In practice, Department always allows replacements as a revenue expenditure. Courts have always given place to practice of Department unless contrary to law. Decisions not here yet, but in United Kingdom. Expenditure in relation to new books - capital. Expenditure in relation to replacements - income. 10

No evidence to make any allowance. The same position in relation to bad debts. Nothing of year or what debts are bad for what amount or how they became bad. 20

Personal allowances. Part of Act deals with this. Section 35 of Act - 26 of Ordinance. Claim was never made upon the form. In case handed in, same point came up. He refused to allow personal allowances. Claims had not been made.

Facts. Comment to section under which assessment made. Mr. Martin says Section 72, reasons given. Post dated, three reasons given:- Section 71. Post dating, point, post dated to exactly thirty days. 30th May - 26th June made on 16th. Proof, made under Section 71. Own witness - practice in existence since 1937. Letter D in proof of fact made under Section 71 (3). How can one extract from letter D made under Section 71 (3). Mr. Martin dealing with some assessments which had to be made under Section 72 and he was a "Section 72 man". Section 71, Fisher. Made in year following year of income, practice. 72 used in every other year. Either section could be used subject to this, 71 could never be used beyond seven years. Fair to say either could be used within the seven years. Practice. General tenor of Act. Obviously intended by the Legislature. Normal case year of income elapsed, Commissioner sent out a form of return. Improper to seek to make any 30 40

In the Supreme Court

No.12.

Addresses by Counsel.

(1) For Respondent.

22nd December, 1955 - continued.

assessment until he had received it, save in exceptional circumstances. Section 71 designed to deal with assessment following year of income. 72 back assessments. In any event criticism of way in which assessment made and time it was made. Mr. Martin faced with position, file of a person who has never made a return or paid any tax. Has on same file note of interview. Taxpayer has given certain figures and asked for assessment to be made. Appellant said he was asking for his assessment to be made, a provisional assessment. Mr. Martin faced with this. In spite of these requests finds gross neglect in the Department. I do not seek to deny gross neglect in Department in failing to take any action between September 1951 and May 1953. If Mr. Holden had required additional figures he might have been justified to defer assessment. For some reasons not known, nothing was done - gross neglect. I admit that. Mr. Martin Taxpayer has at long last come and given some information, asked for provisional assessment, and nothing done. He took immediate action, letter B. Asks for certain additional information and encloses forms of returns up to 1953. Figures given Mr. Mandavia were not sufficient to make an actual assessment. They included only his professional income in an abbreviated and unsatisfactory form. Mr. Martin was duty bound to ask for information in letter B. How could it be supplied, it is said, Mr. Mandavia in England. Cart before horse, information back to 1942 required and any normal person would have information asked for in 1943. Mr. Holden said he asked Mr. Mandavia for further information.

Salter: He never asked for further information.

Newbold: Evidence is he asked Mr. Mandavia for property accounts and bad debts and would not accept 10% as principle in 1953. Reasonable assumption that already got out if not before 1951 but after 1951 whether or not asked for. Normal position with every business or professional man at end of year. He wanted information as far back as 1942. Not unreasonable even if Mr. Mandavia was in London. Mr. Mandavia said only a few minutes from stage of trial balance to produce picture. Play made about difficulties in relation to partnership. Mr. Khanna affected only one of all these years. Thirteen months at the most affected only two of

In the Supreme Court

No.12.

Addresses by Counsel.

(1) For Respondent.

22nd December, 1955 - continued.

those years. How can that partnership be dragged in in relation to 1946, 1947, 1948, 1949, 1950. It had nothing to do with these years. It was a red herring like so many other things.

Partnership. Property accounts. I accept may have been some difficulty in property owned in partnership. Great uncertainty to thirty odd building plots. Up to 1948 - three - then two joint properties. Extraordinary one of these, when sold in 1948, partner handed over 67,000/-. Appears in balance sheet as a receipt. I asked about that, only two since 1948. But there were a number of other properties. Nothing prevented him from finalising his accounts in these properties except to escape as long as possible burden of tax every citizen must bear. Red herring, gross neglect accepted by Tax Department in 1951. Nothing at all to prevent returns being made or full accounts given of earnings except 1943, professional earnings and property joint earnings. If a tax payer had to await settlement of a dispute before making a return. Would be few taxpayers; if he has a dispute he does not make a return or pay tax he can refuse to make a return or pay tax. There are only two grounds placed before Court. Only grounds for delay in making returns are two disputes with Monji and Khanna. Khanna, professional earnings one year. Monji over a number of years - had the two properties. Appellant had a number of other properties in his name; is that sufficient justification for Appellant not making returns; he is a member of legal profession. Mr. Mandavia, in Kenya, has also pretended to have some knowledge of accounting, income tax a feature of accountancy. Own evidence, he was aware of these requirements. In 1953 wrote letter attached. In 1945 he says he went to Income Tax Department and received a return. We do not need to rely upon presumption, actions prove that he knew it. What did he do, in 1943, he got a return which he did not fill in, 1942 income, no question of Mr.Khanna arises. Properties; he had earnings and properties. He did not fill a return. 1944, never went near Department - 1945, 1946, 1947, 1948, same thing applies. Advocate and accountant aware of the requirements of the law, failed to intimate to Commissioner each year. Actions speak for themselves. Wilful default, gross negligence; if that is not, I find it difficult to conceive circumstances in which it would be wilful. Wilful negligence,

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Addresses by Counsel.

(1) For Respondent.

22nd December, 1955 - continued.

Bowen L.J. in re Young, 31 Ch. Div. 168, page 175. Knows what he is doing, intends to do what he is doing and is a free agent adopted Re City Fire Insurance Company Limited, 1925 Ch. 407. "Wilful" default or negligence - person who knew what he was doing. He knew what he was doing. He knew of liability and he did not comply with it. That is wilful default and justified Commissioner in going under Section 72 for three years - unless
10 wilful default - 1943, 1944, 1945. Some lack of action in my submission, gross or wilful neglect. Section 28 (2) of the Ordinance with the result that automatic penalty is imposed subject to a power of remission. I do not need to deal any further with topic of wilful neglect. Knows he must do something and fails to do it over eight years, then I confess I do not know what to bring within the term.

Neglect of Department, justifiable criticism
20 levelled, neglect, default. I accept that, in that is, in relation to seventeen months. Here we have a period of eight years to start off with and two years subsequently. It matters not how neglectful Department was since 1951, it does not excuse neglect by taxpayer. Default or not, not exclusive of Tax Department. Department did not make an estimated assessment or call for additional figures does not mean Appellant not guilty of default. It existed long before and continues to exist. It
30 continues, no matter who else is guilty of neglect. Independent of neglect of Department. Department in default does not reduce Appellant's gross neglect. Up to June, 1951; first time informed Tax Department, apart from one visit in 1945. In June 1951, he was in default for purposes Section 28 and Section 72. The Department in default. Another stage, I accept no blame attaches to Appellant from 1951 to May 1953, for argument, May 1953, letter is written. Every one is proper and reas-
40 onably phrased. Letter for estimated estimates, adjusted if you make returns asked for. Returns and information asked for, at no stage is one tittle of further information supplied. Now at end of 1955, since May 1953. requests continually made, not one tittle of further information supplied to Department. A further example of gross neglect and wilful default. In coming to a view, Court can take into account attitude in other years of assessment. Up to this year he has not made one

In the Supreme Court

No.12.

Addresses by Counsel.

(1) For Respondent.

22nd December, 1955 - continued.

return until - box - he made a return a few days ago for 1951. Even although he knows of these, back to 1951, no return until one made two days ago. From 1937 to end of 1955 Appellant has paid no tax, a unique situation. Extraordinary, own evidence, anxious to pay tax. Position of person anxious to pay successful in avoiding payment all these years of paying any tax. Most strict enquiry, considerable amount of explanation before one could say he was not guilty. One year with Mr. Khanna and with Mr. Monji in relation to two or three properties. Seen Appellant in the box. At one stage I considered if I should retire and give evidence. It went to credibility I did not. Before case started I informed my learned friend of substance of telephone conversation. General impression of Mr. Mandavia, not a pleasant one. Two pieces of evidence, offer of £1,000. End of examination-in-chief, even last week he offered to pay £1,000. Department said £5,000. Making a bargain offer to settle and Department rejecting it. He admitted conversation took place, not with Department but with me and while he would not agree it was an application for adjournment he said it was for a stand over. Cross-examination, probabilities of case; picture he was trying to create, distorted picture. Certain facts taken and distorted to serve his own ends.

Mr. Mandavia objecting to penalties. Had it not been for penalties he would have paid. Used "blackmail" in other words he was hard done by and because of this he would not pay, and trying to show hard and grasping was the Department and prejudiced they were because he would not agree. Then gave in evidence of Notice of Refusal, a few days after he saw Mr. Martin. That again, he was forced to admit, was incorrect, trying to create impression of expression which was false. Slippery and oily throughout his contact with Department and throughout examination in the box. He could not answer a question fairly, he always must evade and answer something else and twisted and distorted and tried to give wrong impression. His own profession has rejected and ejected. He should not be accepted as credible in evidence.

Construction of Statutes. "Has he succeeded in throwing burden off on fellow citizens" Taxing Statute construed neither against Crown or person

In the Supreme Court

No.12.

Addresses by Counsel.

(1) For Respondent,

22nd December, 1955 - continued.

taxed to enable Judges to find. Sole question is, apart from main first ground of appeal, has Appellant discharged onus that assessments were excessive. The documents produced are worthless, a balance sheet of a professional person would have an income and expenditure account. Expenses of profession and fees received balance on profit side taken to balance sheet and appear there. Deduction, personal drawings. Same with rent. Rent account all properties owned by Appellant, left side expenses. Rates. Repairs. Right, return of income balance on profit side carried over to balance sheet. A clear picture of position. No such picture shown. If such a picture presented, Court cannot determine this is correct till look at books. No evidence to satisfy Court that these assessments are excessive. Evidence is to contrary. They tally with own figures. He is entitled to no deductions. Rentals estimated at £300 - 1948, 1949, 1950. Evidence that rental income was higher - admitted he lived in his house, £175 per annum. Estimated that in relation to three properties he made an income of over £300 per annum in relation to other properties in his own name. Income £35 to £40 per month. He would not over-estimate it. That figure alone at £50 is £600 per annum. On general factors of case no evidence, apart from evidence to satisfy - all evidence is that this is an under assessment. Three years out of time. Wilful default.

Remission of penalties. Gross neglect. In circumstances of this case there is no ground whatsoever for Court to remit any part of those penalties, up to and including year 1949. As regards 1950, different circumstances apply. Appellant came to Department 1951. He admittedly came before 15th October, 1951. Completely different factors exist for 1950. Had it not been for his attitude since 1953 I would suggest entire penalty for 1950 be remitted, but he has been continually asked for information. Difficult to give before January, 1954. Time and time again before he has failed to produce one figure. These are such as to preclude an entire remission for 1950. I submit, discretion, penalty should be one third of penalty.

Grounds of appeal -

(1) That ground of appeal relates to Section

In the Supreme Court

No.12.

Addresses by Counsel.

(1) For Respondent.

22nd December, 1955 - continued.

71. Whole evidence made under Section 72. Own witness says so. That ground fails unless under Section 71. Evidence is it is not, even if it were circumstances are such, Appellant asking, not a good ground, dealt with by Section 75 of the Act.

(2) Appellant has yet failed to make returns. No condition was attached to his making returns. Request for £2,000, was on account, assessments under 81 related to tax not in dispute. 10

(3). Going back prior to six years. Issue of wilful default.

(4) The accounts are submitted in respect of professional earnings. They are under assessments. Made in accordance judgment of Mr. Martin. Law Companies case.

(5) Agreement, called two people, neither has given evidence of any such agreement. Mr. Fisher called Mr. Holden so he could hand Mandavia forms of return. Mr. Fisher never said anything of an 20 agreement. No doubt if full disclosure had been made he would have been treated more leniently. He might have had some remission. But assuming agreement, does not effect power now in hands of Court to apply law.

(6) Tax follows automatically once income ascertained and penalty ascertained. Letters, respondent willing to make adjustment if he could get figures to show actual income. Even Court has still to get these figures. 30

(7) What does it mean, have to hear these grounds.

Failed to discharge onus. Default for first three years, gross neglect. Penalties upon all 1950 - last year be reduced to one third. Could increase assessments as to property income.

Adjourned till 23rd December, 1955. 10.00 hours.

A. L. Cram.

23rd December 1955.

23rd December 1955.

Court as before. 40

(2) For Assessee.

Salter Q.C. addresses Court.

Question. Prejudice. Obviously an obvious

In the Supreme Court

No.12.

Addresses by Counsel.

(2) For Assessee.

23rd December, 1955 - continued.

prejudice against a man who has made no return or payment of tax. Authorities in opening address. Tax liability construction. Letter of law that matters. Neglect on part of Appellant to complete returns up to year 1951. If evidence accepted, interview between someone - Mr. Deadman - reasons he explained, 1943. Second visit in 1945. Saw someone. Mr. Deadman - believed, he was there in 1945. In 1951, he made a frank disclosure to Mr. 10 Fisher. Mr.Holden called in to sort matters out. Mr.Holden to examine certain accounts, provisional assessment. At that stage there must be a considerable mitigating factor. Did make disclosure. Many people who took that line could expect to receive lenient treatment. Two years following it is admitted Department were themselves neglectful, more than Mr.Manravia. He pressed them from time to time to give him some idea of his liabilities, He wanted to make arrangements for his son. His 20 son's education might have to be postponed. From 1952 there was a drastic change in circumstances of Appellant. His income fell to something small, He had virtually no income for a time till he could resume in Tanganyika.

Ethical side. Served with notices of assessment, taken some advice. He decided to stand fast on his contention that those assessments were bad ab initio. If he thought that was a legal entitlement he could pursue it and to refuse to go 30 anywhere further unless and until some arrangement could be reached. This is a non-ethical matter; Legal right, he can stick to it. The first ground is that these assessments are bad. Served with a notice before expiration of statutory period he was assessed. Must rest whether such assessment made under Section 71 or Section 72. I submit as a matter of law and fact it was made under Section 71 (3). Background not in dispute of conversations in 1951 and lack of action. As soon as Mr. 40 Martin took over file, the first thing he did was to have notice of return, Section 59 (1) sent. Significant that Mr. Martin, a Section 72 man, should think about asking for a return. One has to look both at the correspondence letter B and answer filed by Respondent to arrive at correct inference. B, third paragraph, "made a return" wording of sections. 1943 to 1953, not 1951. In other words asking for return of income which would bring Appellant up to date at that time, including 50 current years of assessment. Paragraph 2 C.

Appellant at no time made a return, accordingly above assessments were made. It was because no returns made over those years that assessments were being estimated and served.

I refer to Sections Vol. 3219. Section 55 (1) - Section 71. First Sub-section. There is no dispute assessment made before expiration of time. Section 6. Thirty days. No dispute about that. No time limit under Section 55 (1), no limit of six or seven years. If returns asked for went back to 1943, the parties should not have returned such an assessment made under that Section. Object of a return. Vol.17, 2nd Halsbury page 11. Article 9. Simonds Vol.1, page 171. Limitation in corresponding English Section, Section 254. Exception. Section 55 (3) - 71 (3). Distinction. Section 56 - 72. Delivery of return. Failure, may assess. No restriction over number of years, over which he can be assessed. Next section is entirely different. Section 72 - 56. Striking difference. Mr. Martin, Section 72 had nothing to do with returns, no request for a return is required under Section 72. Two ways of assessment. (1) Six years. (2) Fraud or wilful default, exceeding six or seven years as case may be. Marginal note, additional assessment in both cases. Simonds 173 Section 257. I concede if no return asked for, a great deal to be said for contention assessments made under Section 56 - 72. Ordinary procedure is to call for a return, wait time limit, then to assess. Either accepted under 71 (2)(a) or rejected 71 (2)(b). Not delivered then 71 (3) comes into effect. Supposing return is received and accepted but subsequently it is discovered that either an assessment not made or has been made at a lesser amount than it should have been, then the Commissioner can make an additional assessment. True effect of Section 72. Cases may arise where Commissioner does not ask for a return. Where ordinary machinery has been invoked under Section 59 (1) - 43 (1) to make a return, two things must happen. Proper procedure thereafter must be rigidly followed and as to provisions of Section 55. No power under Ordinance. Reason: Invoking Section 59 is a deliberate and formal act. Services also effected. Does not make a return becomes liable to penalties, Section 89. It gives a right to person served to obtain certain deductions from tax. Wholly wrong, violation of actual provisions

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of Act. To take another step ultra vires. The Act does not permit Commissioner to change his mind. Once invoked proper machinery you must follow it and you cannot take a short cut. It may be Mr. Martin may assess Section 72, not used to other procedure.

Paragraph 2. Respondent's statement of facts. Appellant had at no time made a return. Because he did not make a return, estimated assessments
10 were made on 16th June. Procedure according to Act. 71(3). But under a penalty, others must follow Act. Mr.Martin asked for a return up to current year of assessment. 26th May, 1953. No return forms sent. Wrong address. London. Had till 3rd July to send returns. If he did not do so liable to penalty under Section 89. The Commissioner intervened. Contrary to provisions of Section 71 (1), expiration of time allowed. Proceeded to make assessment. Since object of making
20 return, Mandavia excused under Section 89. Without sufficient cause. Deprived of claim for personal allowances. Assessment made not upon information supplied. Idle for Mr. Martin to come here and say I assessed him under Section 72. He may be convinced in his mind, but he was not enabled to do that. If you put into motion of procedure then you must follow the procedure, laid down by Act. In violation of Act you cannot go to other procedure. Cannot have both together. Disregard
30 question of returns you are depriving taxpayer of right to claim allowances. If you assess him within period he has time to make return, you are violating Section 71(1). But also entitled to say now you have assessed me, I am excused from penalties under Section 89. If two are pursued together - in difficulties.

Penalties. 71 (3). Assessment, on any non-return of income does not carry with it penalties of anonymous judgment. If at same time pursuing
40 procedure under Section 72, penalties are incurred automatically. Furthermore, under Section 72, unless you, the taxpayer, is brought within first proviso, can be assessed only within period, six years. No such limiting period in Section 71. Wilful default comes in under Section 72 only, not 71. Differences, may be more after reflection, conflict with. If procedure taken concurrently under both. Envisaged by wording; one deals only

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with assessment on return or non-return, other with assessments where there has been no assessment at all or an assessment for too little. Marginal notes themselves a different procedure. Notice of return - return or no return, does not matter. Section 71 assessment. Discovery of Commissioner, assessment in a particular year not made or at a less amount - not charged. An additional assessment. Section 72. Time limit. Reason may be to put some end to making of additional assessments. Taxpayer cannot continually be subject to additional assessments going back over periods of time, going back indefinitely. Limit in Section. Where not imposed under Section 71. Legislature realises where is fraud or wilful default, assessments may be ordered over any period. 10

Plain meaning. I submit if proper procedure had been followed, statutory period of time even extended within which Mr. Mandavia had to make a return of total income. If accepted or rejected under Section (2). Assessed on those returns but could not have been assessed until expiry of statutory period Section (3). No returns, assessment made. Called for books, no return assessed on no return. Assessment too low, served an additional assessment. If return had been made or incorrectly made, or produced none at all on return, Section 72 could operate. Started in that way there can be no doubt, letter of 26th May, paragraph 3. Assessments were made prematurely is not then in dispute. Paragraph 2 of Statement of Facts leads me strongly to suppose that assessments made were estimated assessments made on 15th June, 1953. They are not additional assessments but assessments. 20 30

Mr. Martin gave three reasons why he said he proceeded under Section 72.

(1) Delay. (2) Default. (3) No other section under which he could proceed.

(3) Submitted another Section. Only one under which he could proceed. He should have waited seventeen days, should have done. 40
(1) Delay. Searching requirements he expected Mr. Mandavia to take a maximum of three months. I assumed three months' maximum. Delay even less understandable. When assessments raised, he had been informed by Mr. Mandavia that he did not expect to return before end of July, 1953. Mr.Martin

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letter "D" 15th June. Because he is unlikely to return before end of July he is going to assess him. Is there any substance in question today. Unlikely that Mr. Mandavia could have completed returns before the end of July. Mr.Martin appreciated that, before end of August. In any case that was on 26th May, not when Mr.Mandavia wrote. Importance to Mr.Martin's reason for proceeding under Section 72, none can be attached.

10 Wilful default, relating to submission of returns. Reliance placed on this failure by Appellant. Importance attached by Respondent. The Appellant's actions in 1951 whilst they may not technically wipe out the default, must have an enormously mitigating effect. Heard from Mr.Fisher and Mr.Holden he would receive considerable leniency. That is how default was regarded in 1951. Mr.Mandavia not in default up to 26th May, 1953. Technical default. Department knew what was going
20 on. He was taxable, but incapable of producing an assessment. Mr. Holden had not reached stage where we could ask him for a proper return. That was not Mr. Mandavia's fault. Pressure of work and sickness. Mr. Mandavia felt was incapable of making a declaration of total income because of disputes with partners, and matters of principle had to be decided. There was therefore no default 1951 to 1953. Once assessment made on 16th June, 1953, and objected to and now appealed against the
30 question of wilful default does not arise at all. He was entitled to say, you have done something which contravenes my interpretation of Act. Go ahead at your peril, I object. The history since that date, fight between two, because one person is taking a course of objection he is in default in shaming these words. No bearing on assessments now before Court. The years of income 1942 to 1950. It is in respect of that matter the issue arises, in circumstances known to Court and De-
40 partment.

Passing to a point arising out of events of 1951. Partnership disputes, said to be red herrings, could not have affected total income.

Newbold: Return of income.

Salter: Continues:

Mr. Holden said he did not want two bites at the cherry, attitude towards difficulties accounted

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for. Mr. Khanna's partnership, thirteen months, not any serious bearing, it has some. Still going on today. That plus other reason actuating Mr. Mandavia. 1951 felt he could not, after institution of partnership proceedings. Mr.Mandavia went to the Department. Explanation if not excuse he was not more active. It had some effect. Not a red herring. Property partnership far more serious. Suggested only two properties in Victoria Street. Not primary disputes, rent dispute. Income had been applied to purchase of other properties. Monji not accounted for all rents received but had in fact purchased thirty to thirty-two plots in his own name to which Mr. Mandavia was laying a claim for a share. Important matter, not fully appreciated.

Court: Issue of fraud?

Newbold: Not alleged. Not got information to allege it, no evidence. Assessments increased case would not increase estimated estimates. Additional evidence might be a duplication, in this case, exactly how estimated estimates arrived at, on evidence, property issue, too small, Court could increase.

Court: Not an issue fraud. Perhaps I should not find on this. I will not.

Salter: Assessments themselves, upon Appellant to show they are wrong. "Satisfy" authorities. They are wrong because based on incomplete information. Bad debts sector. I have not put forward positive proof of alternative accounts, except 7 or 8, which were the balance sheets and composite balance sheets. Sundry debtors 180,000/-, evidence incompleted cases. Assessments too, incomplete. Schedule to letter I admitted liability - allowances merely for these purposes.

Newbold: Could allow assessment reduction under law. Law requires to be proved to satisfaction, now proved. Do not even know what sum we back. In a subsequent year, on proof of bad debts, tax and treble tax would be remitted.

Salter: Penalties. Said no reasonable grounds for remitting penalties. Year 1950 would have asked for remission of whole amount, if not for attitude since 1953. Stand: assessments wrong 1953 to 1954, got no money, cannot pay. Practice gone.

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Court: He has properties.

Penalties in respect of penalties appealed from. Penalties imposed because of defaults. Conduct subsequently - principle be penalised twice. If returns not made, subsequent years, default again. Conduct since 1953 will affect remission of any penalties. Suffering twice. If failing to make returns, never called upon to make a return. It may be because he had not unlimited
10 liability. Did in 1943 and 1945 expected he went every year, 1950.

Newbold: Fact that in a trial balance a reference to a plot with a figure does not mean plot owned by Appellant. Holden asked for property information. Mandavia was to give it to him. May be plots in trial balance, not informative.

Salter: Concession based on year 1950. Behaviour since 1953. Take away whole penalty for 1950. Took action in 1951. Conduct since 1953 should
20 not be allowed to affect the issue, and once assessment made. Impression not regarded in a severe light, lenient light in 1951. Trustee - Brodie. Vol.17 T.C.1923. 437 - Finley J. 440. Main ground, not technical, trivial. Burgess v. Attorney General. 1912. 1 Ch. Div. 173. Barker v. Palmer 8QBD.9. Rigidity of Penalty. Obligatory, not directory. Bad if non-compliance. Wholly bad. Vast distinction between two sections, cannot interchange in any way.

30 Newbold: Submission in relation to 71. Position of a taxpayer could be sent a return and assessed, any such a construction would be impossible under all established practice.

Judgment reserved:

A. L. Cram.

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JUDGMENT.

IN HER MAJESTY'S SUPREME COURT OF KENYA
AT NAIROBI

APPELLATE SIDE

CIVIL APPEAL NO.33 of 1954

GOKULDAS RATANJI MANDAVIA — Appellant (Tax-payer)

versus

COMMISSIONER OF INCOME TAX — Respondent 10

J U D G M E N T

The Appellant appeals against assessments made by the Commissioner of Income Tax, Nairobi, for the years of assessment 1943 to 1951.

The Appellant states that he has resided in Nairobi since 1921. As early as 1937 he was employed by a firm at a monthly wage of £22.10.0. and, he says, his income was returned by his employers. In 1938 and 1939 he states he was employed by Government as an examiner of accounts 20 and returns were made by the department concerned. In 1940, he says, he was in India taking a law course and on 5.12.1941 he was admitted to practice as an advocate in Kenya. At that time he says he had no income. In 1942, he states, he began to practise and had no income apart from £20 per month from rents of property. At the end of 1942, he says the co-owner, a Mr. Monji, ceased to account to him, and ceased to pay him rents from certain property. In 1942, he became a partner in a legal 30 firm with a Mr. Khanna but after some 13 months a dispute arose leading to a law suit not yet resolved and he alleges a refusal on the part of Mr. Khanna to account. Apart from these statements, certain facts are not in dispute. The Appellant admittedly enjoyed some income before and during the years for which he has been assessed, an income which waxed and towards the end of the period was substantial. Up until the time of assessment the Appellant had admittedly at no time made any 40 return of income nor for that period of assessment has he, up to the present day, made any payment of income tax even on account. Indeed, up until the hearing of the appeal he had not made any return

of income, save, about this time, he says, he made a return for the year 1951 which had not reached the official dealing with his assessments.

The Appellant, in the course of his evidence, as well as in a letter dated 14.7.53, alleged that in 1943 he "approached" a Mr. Deadman, an income tax official, who gave him a form of return to fill up under a different file number, not mentioned by the Appellant; the Appellant admits he did not fill up or return this form. This was in his examination-in-chief. But, earlier in that same examination, he had said, "I got no income tax forms before 26th May, till some were sent to my Nairobi office in 1953". Later, he said that he had called on a Mr. Burgess another income tax official. Mr. Holden, an income tax official who dealt with Mr. Mandavia in 1951, could find no trace of any record of any earlier visit by Mr. Mandavia to the Income Tax Authority and no trace of any such alleged visits has ever come to light. Mr. Holden opened a card index and file for the Appellant. Mr. Holden stated that the Appellant said to him that he had once approached an official of the department and thought he had a file number and mentioned Mr. Deadman. Mr. Holden could not recollect when the Appellant said this. Mr. Deadman had retired in 1951 or 1952. In cross-examination the Appellant for the first time became doubtful if he had seen Mr. Deadman. He alleged he had first seen a European who was in charge of the files under his "M" initial in 1943. He was told this European was Mr. Deadman. Then, on the day before the cross-examination, he had seen a "friend" who had informed him on a matter of facial appearance. In the result the Appellant doubted he had seen Mr. Deadman in 1943. He had called in 1945 he said and was told the man he had seen might have been Mr. Deadman. It was then put to the Appellant (and later proved) that Mr. Deadman was not in the Colony in 1943. The Appellant replied to this that he had seen a European and, when he was later asked whom he had seen, he said "a European" and the name "Mr. Deadman" was suggested to him. The Appellant then admitted that in 1944, 1945, 1946, 1947, 1948, 1949 and 1950 he did not inform any member of the Department of his liability to tax. Asked if it was in 1951 he had first informed the Department of his liability he replied he made a visit in 1945. Later, Mr. Martin another official, who could find no previous record of any appearance by the Appellant to intimate his liability to tax, agreed that his files

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were not infallible. Unhappily for him, the Appellant is not a witness whose manner or mode of answering questions inspires confidence. He is evasive, argumentative and faced with a question which demands a plain answer he tends to leave it half-answered and more often than not to slip off into voluble and not altogether convincing explanations of what motivated him to act in certain circumstances without coming to the point and saying unequivocally what he in fact did. On several occasions, on application by learned Counsel for the Respondent, the Appellant was warned by the Court and indeed warned of the risk of depreciation in credibility produced by his evasiveness but, unhappily for him, these warnings either had little effect or the effect was soon dissipated. Indeed, so to infer is to be charitable for the impression eventually left by those sudden bolts into alley-ways of explanation was that the Appellant found difficulty in answering straightforward questions not because his memory was at fault but rather because any such answers tended to dispel the impression of willingness to co-operate and sense of grievance from oppression by the Tax Department he seemed so anxious to create. If, therefore, the Appellant wished to prove that he discharged his duty to give notice of his liability to tax in any year of assessment before 1951 as required by Section 43(2) of the Income Tax Ordinance Cap.254 or Section 59(3) of the East African Income Tax (Management) Act of 1952, he grievously failed to do so. The allegations he made of visits, in my view and in the complete absence of a scrap of corroboration such as a production of the form of return or a note of his file number or of any statement whether on commission or otherwise from any other witness taken with his rather transparent volto face on the topic of Mr.Deadman are quite unacceptable. It may well be that the same "friend" who told him about the appearance of the officials concerned may also have warned him of Mr. Deadman's absence from Kenya in 1943, but, at any rate, the Appellant was as ever ready with an explanation when faced with a cross-examination which inevitably led him to issues that he could not have seen Mr. Deadman at all in 1943 and that moreover Mr. Deadman was present in 1945.

In the result, it may be that the Appellant, in some circuitous manner less than resulting in opening a file or amounting to notice as required

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by the Act, got hold of a form of return or even had some circumspect and casual conversation with an official of the department, but this, in my view, even if it happened, which I doubt could not and did not in any way amount to notice as contemplated by the Act and moreover was not intended by the Appellant to amount to notice. In my view, the first time the Income Tax Authorities can be said to have had notice of the Appellant's lia-
10 bility to tax was in 1951, when the Appellant called upon Mr. Holden. Mr. Holden did have notice of liability to tax but he cannot recollect if he gave the Appellant forms to fill up to make returns of income. In consequence, there is no proof that forms were then handed to the Appellant. On 9th October 1953, the Appellant gave notice in writing of his liability to tax but this was for the year 1952 although in that notice he mentions a liability to tax for the year 1951.

20 To sum up, during the years 1937 to 1951 including the assessment 1943 to 1951, the Appellant neither made any return of income nor did he give notice of his liability to be chargeable, until he saw Mr. Holden in 1951.

Mr. Holden made a note he saw the Appellant on 19.9.51, that is within the time limit required for notice for the year of income 1950 but of course outside the time limit for any previous year. The note was made immediately after the interview
30 and Mr. Holden recorded that the Appellant in 1942 made a nett profit of £500; in 1943, £600; in 1944, £1,300; in 1945, £1,350; in 1946, £1,750. For the years 1944, 1945 and 1946 the Appellant produced to Mr. Holden, Trial Balances. Mr. Holden was also shown Exhibit 5 which contains Trial Balances from 1944 to 1950 but he could not say definitely when he got, if he ever got, the Trial Balances from 1947 to 1950 from the Appellant. Mr. Holden stated that on 19.9.51, the Appellant told him he
40 had certain rents from property but he was not clear whether these rents were from property owned wholly or merely jointly by the Appellant. While the income from the property was discussed and noted as £300 and £250 per annum Mr. Holden was of the impression it was property in which the Appellant had a half or a one third share because his note referred to two plots in Victoria Street, Nairobi held jointly.

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Mr. Holden said he tried to make a fair assessment but there were certain topics upon which he and the Appellant could not come to an agreement. One of these was the amount to be allowed for bad and doubtful debts. The Appellant wished to have a percentage allowance annually for these. Then there was an issue of an allowance for the Appellant's library and another about the amount of depreciation on the Appellant's car. In addition, there was the topic of the personal allowances to be allowed. As regards the years of income before 1941, Mr. Holden considered the Appellant was probably not worth proceeding against. The figures supplied by the Appellant were, therefore, incomplete as to property income. In addition there was a dispute about professional earnings in 1942/3 with Mr. Khanna over one period of about 14 months and there was the perennial dispute with Mr. Monji over the property owned jointly.

Mr. Holden stated that he received no books, no vouchers and no audit, all he had was the bare Trial Balances and other figures submitted. While these Trial Balances could have formed the basis of an assessment, to accept them would have been an accountancy risk since there was nothing to support them. Mr. Holden said he asked the Appellant for accounts and by accounts he meant an adjusted income and expenditure account and balance sheet showing capital assets. The questions he had to have resolved, apart from the property issues, were the bad debts, the library and car allowances or depreciations. He considered he might have been prepared to take the risk of trial balances being correct and he did not, he believed, ask for audit. It was possible, subject to adjustments to assess an income from the figures. But Mr. Holden, and his conduct has been criticised by the Respondent, did not achieve any solution. He was busy and ill, he said and the assessment drifted. The Appellant called twice he thought and the assessments were discussed but no agreement was ever reached, the same difficulties still remained, in 1953. On 28th February 1954, Mr. Holden left the department. But before so doing he eventually sent out estimated assessments. But he did not do so of his own free will but on the orders of his superior Mr. Martin. It is apparent from the evidence of Mr. Fisher, who was formerly deputy Commissioner of Inland Revenue and so was in 1951, that the investigation side of income tax was to be

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tightened up and Mr. Martin, an official of long experience on the investigation branch in the United Kingdom was one of the officers imported for this purpose and began his task on 1.7.52. Mr.Holden, keeping in mind his excuse that he was ill and overworked, certainly required some supervision. If he had a precise knowledge of the theory and practice of income tax assessment and collection it must be taken as his misfortune that he could 10 not satisfy the Court of this. He was a vague and uncertain witness and it is perfectly apparent that in his negotiations with the Appellant he got nowhere, nor do I think the Appellant meant to get anywhere unless at bargain basement rates. Mr. Holden had every weapon conceded by the Legislature at his command to enforce assessment and collection. He could have demanded business books and vouchers and any other necessary documents under Section 45 of the Ordinance and he could without more have 20 proceeded to estimate assessments under Section 56. The Ordinance provided pains and penalties for failure. To any argument about the assessment of bad debts, the evidence discloses he could have opposed that there was no acceptable practice for making an annual percentage deduction and required either assessment on cash income or else allowed deduction on proved bad debts; he could have stated that the Appellant's library was not subject to an allowance for depreciation but that replacements 30 were allowed against income whereas quite new volumes were not; he could have required figures for the depreciation on motor cars insofar as they related to professional business and either on the basis of acceptable figures he could have arrived at finality in a reasonable time or else faced with procrastination - and there had been enough of that already on the part of the Appellant - he could as I have outlined have cut the Gordian knot and made estimated assessments inevitably with treble 40 tax by Section 28. As regards allowances he could have simply replied that none was allowed unless upon a proper return and when he was met with the argument, a wholly specious one in my view, that it would be unsafe to sign the declaration of total income pending settlement of the partnership and joint income disputes, he could have replied most adequately that a rough estimate of these incomes accompanied by an explanation upon the form of inability to be accurate would have sufficed, as in- 50 deed any reasonable person could not but agree nor

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could any conviction have reasonably proceeded upon any such a return. Mr. Holden neglected and failed to take any of these perfectly plain and obvious courses and, in my view apart from overwork and ill-health, the principal reasons were two, Mr. Holden did not have sufficient grasp of the management of income tax to know safely what to do and, secondly, he allowed himself skilfully to be led from taking any action by the Appellant smothering him with reasons why, although alleging he was most anxious to pay his tax accordingly, he was frustrated from so doing. Mr. Holden was introduced by Mr. Fisher to deal with the Appellant who had failed although in receipt of some income over a period of some 13 previous years either to make a return or to intimate his liability to tax and with a situation which demanded the most immediate and if need be the most drastic action. But Mr.Holden allowed 1951 and even 1952 to slip away and it was not until 1953 was almost half-gone and indeed when he was absent and the file came by chance into the hands of his superior Mr.Martin that he was superseded and the firm action required at once taken. The Ordinance was repealed by Ordinance No. 33 of 1952 on 31.7.52. The local Act received assent on 11.6.52 and is deemed to have come into operation upon 1st January 1951 and also repeals but saves the Ordinance. Mr. Martin not only knew the remedies for such a state of affairs but he was prepared to take them. But by this time the Appellant had been disbarred from practice and was in England in an effort to persuade the Privy Council to reverse the decision of the Supreme Court of Kenya.

What then was the situation confronting Mr. Martin on 23rd May 1953 who, it must not be overlooked, had spent the past 30 years in the tax inquiry branch and had until recently been Chief Inspector of Taxes at Somerset House. He was confronted with the extraordinary and indeed, it is to be hoped, unique case of a barrister-at-law and a practising advocate who had, on the figures supplied by himself, in the past three years, at least, of the period under consideration enjoyed a nett income of £2,800, £4,000 and £6,250 respectively chargeable to tax but who had never complied with the law by furnishing either a return or given notice of liability to tax until the middle of 1951 and, who, after giving such notice had still not

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made a return and who had not furnished any proof beyond Trial Balances and some unaudited accounts. Mr.Martin was also faced with the dilitoriness of his own subordinate, Mr. Holden who, in spite of the charge given him by Mr. Fisher, had dillied and dallied in 1951, 1952 and 1953 and had allowed himself to become enmeshed in disputes as to principles relating to bad debts, library, motor car depreciation, alleged partnerships and joint properties as well as dependent allowances until he was so well enwebbed that he did not seem to know what to do next; principles which Mr. Martin at least could have no doubt and practice which he knew well was not followed by the Income Tax Department; principles which although tendered by the Appellant, Mr. Martin knew were invalid.

It is simpler to interpret the Ordinance or the Act, as the case may be, (for the important provisions are the same) in their historical perspective. It must be kept in view that the United Kingdom legislation burdened the taxpayer with duties to make returns or to give notice and that failure led to treble tax and to penalties. The burden of the Appellant's argument however, seems to me however, with respect to attempt to subvert the theory of the taxing law and to pass the burden to the Revenue to intimate to the taxpayer that he is chargeable. For example, in the United Kingdom, the Income Tax Act of 1918 made income tax chargeable and it also required assessors to issue general notices requiring all persons comprehended by the Act to make out and deliver within a specified time of not later than 21 days a kind of return of income. In addition, particular notices were issued to persons known to be chargeable, to make returns within the time specified in the general precept. The Act required every person chargeable under the Act when required to do so either by a general or a particular notice to deliver a true and correct statement of income in writing. Moreover any person who disobeyed either the general or the particular notices or indeed both or wilfully delayed was liable to penalty and to treble tax. Further if an assessor did not receive a statement of income from a "person liable to be charged with tax" he could to the best of his judgment and information make an assessment or estimate. Under the scheme of the 1918 Act, it seems, that persons chargeable with tax under the Act were not required to take action until the

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general and particular notices went out. If a person did not receive a particular notice, he became liable to treble tax, on proof of publication of the general notice. What happened when the Commissioners found out that a person who had been subjected to a general notice and was chargeable but had made no delivery? Section 107 provided that in such a case the Commissioners were to proceed to assess every such defaulter. Nothing is suggested in the Act of 1918 that any defaulter under a general or any other notice should not be assessed until he had received another sort of notice. To the contrary, the Act required immediate assessment. The scheme is simple to understand. The duty lay on the taxpayer.

But the Tenth Schedule of the Finance Act of 1942 assumed better knowledge on part of taxpayers and did away with the general notices while retaining the duty. General notices no longer require to be given. But a duty was laid upon any persons who were chargeable to income tax for any year of assessment to give notice to the Revenue that he was so chargeable before the end of the year, with the proviso that no notice need be given where the taxpayer had already delivered a statement of profits and gains in accordance with the provisions of the Income Tax Acts.

The Finance Act went on that, if any person, without reasonable excuse, failed to give such notice he should be liable to the like penalties applicable under the Income Tax Acts in case of neglect or refusal to deliver a list etc. required by these Acts to be delivered. In other words, without more, without any action on part of the Revenue those who failed to take heed of the law could be assessed and automatically and by process of law became liable to penalty and to treble tax. No one had by law to give a taxpayer notice, the legislature had given everyone notice and in fact as these Finance Acts were annual acts, in a sense, gave notice annually. These are stringent provisions. Let me refer however to some remarks made by Lord Loreburn, Lord Chancellor, in the House of Lords, in the appeal of the Attorney General v. Till (1910) A.C. 50 at page 53 :-

> "On the one hand hundreds of thousands, if not millions, of people are required to make

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"returns. It is necessary, therefore, that there should be a sharp weapon available in order to prevent the requirements of the Act being trifled with. On the other hand, the making of the return or statement is not always easy, and mistakes may occur notwithstanding that care may have been used to avoid them, still more when proper care has not been used. Accordingly provision is made for penalties which are to fall in the event either of unpunctuality or of inaccuracy in the return or statement required. But alongside of that are to be found provisions to relieve a man from the penalty if he mends his mistake. In the present case this result could be secured by s.129. I see nothing either harsh or unreasonable in this. A fair balance is held, and while the revenue is protected against procrastination and carelessness which, if practised on any large scale, would make the collection of the tax an intolerable business, anyone who though honest has been neglectful may redeem his neglect.

In regard to the argument that, upon this construction, the penalty for incorrectness is more heavy than are other penalties for more serious disobedience, I am not satisfied that it is so, or at all events that it is conspicuously so; but I do not pursue the subject, for I think it does not signify whether it be so or nor.

I am, in a sense, sorry for Mr. Till, because he has evidently persuaded himself as well as the Court of Appeal that he has found a loophole of escape from the contention of the Crown, and he will have to pay dearly for his error. It seems to me, however, that he has been trifling with a thoroughly just claim, and cannot complain that the Crown should put in force against him, though no charge can be made or is made of any dishonesty, the penalty prescribed for exactly this kind of conduct . . . . "

In my respectful view, in this historical context, these Acts in pari materia and, indeed, the progenitors of our local taxing statutes, suggest that a search be made for like scheme, like intent and like provisions in the Ordinances and Act. For example, the Ordinance at Section 7, as well as the Act at Section 8, makes a statutory

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charge of tax, upon income. There can be no doubt that the Appellant's income was charged by law with income tax. Not the Revenue but the Legislature so charged his income, year by year on the due dates specified in the sections. The Appellant cannot be heard to say with the figures he himself has produced that he is not chargeable to tax. Ideally speaking the Commissioner does not "charge" the taxpayer, who is already charged, but computes what the charge ought to be. If I am not fanciful, the ideal charge on each taxpayer exists by law in any one year and the Commissioner is enjoined to find out what that ideal may be to the best of his human judgment. That such an "ideal" tax materialises ex lege for every taxpayer cannot be denied. It is however an ideal not so easy to materialise into figures on paper. Both Act and Ordinance assist the Commissioner by laying down the basis of assessment. But what of the person charged? As the year revolves and the due date arrives when his income becomes charged can he ignore this event or must he take action? Can he safely do nothing until the Revenue takes action? Must the Revenue take action and if so what action? In my view I ought to look for a time of payment and a time for making a return or giving notice. I should expect these duties to lie on the taxpayer and not upon the Commissioner. So far as payment is concerned the duty and the date are clear in both Ordinance at Section 66 and Act at Section 82. The first says:

> "..... tax shall be payable within 40 days after the service of a notice of assessment .... or by 30th September in the year of assessment whichever date is the later and that date shall be the due date ...."

and the latter:

> "..... tax shall be payable within 40 days of a notice of assessment made under Section 71 or 72 or within 9 months of the end of the year of income whichever is the later ......"

These sections provide disjunctive times. At any rate, by law, without any assessment or notice of assessment the tax charged by the statute falls due on a certain date. That payment is a duty on the taxpayer is not susceptible to doubt. Has he any other duty? I consider he has. Let me look at Section 43 of the Ordinance and Section 59 of

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the Act. Subsection 2 of the former runs :-

> "Where a person chargeable with tax has not furnished a return within 9 months after the commencement of the year of assessment, it shall be the duty of every such person to give notice to the Commissioner before the 15th October in the year of assessment that he is so chargeable."

Whereas subsection 3 of Section 59 is identical
10 with the addition only of clarifying words which seem to add little or nothing to the effect.

Looking to the lengthy progenitors of these pieces of legislation the local Ordinance and Act have been subjected to telescoping inasmuch that sections appear as subsections but, in my view, they all intend that any person who is chargeable to tax is to take action and that without any intimation from the Revenue and to neglect this statutory duty is to be in peril. These subsec-
20 tions suggest to me that the taxpayer is invited to make a return of income within 9 months of the time the tax is chargeable and indeed, within the time the tax becomes payable. Any person who makes a reasonable return shields himself from risk of treble tax. But he seems to have a second chance. Provided he gives notice to the Commissioner that he is chargeable with tax before the 15th of October he may also avoid peril. I say may expressly because of the disjunction which suggests
30 peril after 9 months delay without more. What is the peril? It is set forth in Section 28 of the Ordinance and Section 40 of the Act. These sections are substantially the same. The former runs:-

> "(1)(a) Any person who makes default in furnishing a return or fails to give notice to the Commissioner as required by the provisions of Section 43 of the Ordinance in respect of the year of assessment ...... shall be chargeable for such year of assessment with treble the
40 amount of tax for which he is liable ...."

This may well mean default in furnishing a return within 9 months in terms of Section 43.

That is the local legislation follows closely upon the United Kingdom scheme, A duty, without prompting, save by legislation, lies upon persons

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chargeable with tax either to make returns or to give notice and if they fail by the due date then to their tax is attached a statutory treble tax. Nothing is left at this stage to the discretion of the Commissioner. The charge is ex lege.

That is, prima facie, when the Appellant neglected his plain statutory duty of either making a return or giving notice in every year, except 1951, when he merely gave notice he incurred ex lege treble tax. No-one had to charge him with the ideal amount of this tax although no doubt the amount of it had to be correlated in figures to his income tax and ascertained or in other words "assessed". What the Appellant has glossed over is that had Mr. Holden made estimated assessments or provisional assessments or even assessments on accurate figures supplied for year (except it may be for the year of income 1950) these assessments would ex lege have had to be enhanced by treble tax. Nothing that Mr. Holden or the Commissioner or any other official could have done could have altered the situation in which the Appellant would have found himself and indeed finds himself or have defeated the statute, although a discretion was released to remit another matter.

Looking at Section 43(1) of the Ordinance equally with the identical section 59(1) of the Act, unlike the United Kingdom Act it is not mandatory upon the Commissioner to issue a notice requiring a return. The operative word is "may" not "shall". In my view a duty is laid upon the Commissioner, however in that in the ordinary course of the year at any rate up to 9 months running, once he knows of the whereabouts of a taxpayer he ought to send him a notice but this in no way cuts down the duty laid upon the taxpayer. But the scheme of the Ordinance and Act, like the United Kingdom legislation, is that ordinarily tax will be assessed and paid in the year it is due. Ordinarily therefore the Commissioner will send out notices on or about the time the income becomes chargeable i.e. at the beginning of the year but in my view it is not a condition precedent to assessment that a notice be sent out and a return made or default in return made. In my view, a person chargeable with tax becomes liable to tax and when he is liable to tax he can be assessed without notice being sent out. For example

a taxpayer might submit an audited profit and loss account and balance sheet and a return showing allowances monthly.

I refer now to Section 55 of the Ordinance and to Section 71 of the Act which are the same:-

"(1) The Commissioner shall proceed to assess every person chargeable with tax as soon as may be after the expiration of the time allowed to such person for delivery of his return".

I think it is not improper to say that there seem at least two times allowed for delivery of return. The first is the time of delay after notice is issued by the Commissioner and the second is after the nine month period allowed by Section 43(2) and 59(3). Once either of these periods have elapsed then the Commissioner conceivably may proceed to assess. If the person has delivered a return the Commissioner may accept or reject it and assess and where no delivery has been made then the Commissioner may also assess.

Section 56 and Section 72 of the Ordinance and Act respectively are also very much the same. The marginal note in my view, for what it is worth (and the modern view is that marginal notes are not of much worth and certainly cannot legislate to narrow down the section) reads "Additional assessment" but each section is binary with co-equal value in the parts. Not only is additional assessment provided for but also assessment of any person liable to tax. This "non-additional assessment" part of the section in my mind corresponds with that part of the 1918 Act which enables assessment to be made of persons "liable to tax". When is a person liable to tax? At the lowest a person who was chargeable in any one year of assessment and especially one who has failed to pay his tax and who has failed to make a return within 9 months or to give notice of his chargeability is liable to tax. In all years relevant the Appellant, in my view, was certainly liable to tax and had not been assessed. It is difficult therefore to see why the Commissioner could not proceed to assess him under Section 72. Mr. Martin, a witness, a responsible official whom I found credible says this is the section he employed. I do not doubt

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him. So far as 1951 year of assessment was concerned, apart from any issue of treble tax, the Appellant was certainly chargeable with tax, he had not paid any tax even as late as 1953 as required by law, he had not been assessed and he had made no return. I am unable to see how he could not be assessed for this year under Section 72 (or section 56 for that matter).

The Appellant comes into Court with what to my mind is an audacious and, looking to the risks of being unsuccessful, dangerous argument that, in spite of the scheme of the Ordinance and Act and in spite of his chargeability to tax for all these years and in spite of his not having ever once delivered a return or ever once except in 1951 given notice of his chargeability and in spite of his never having paid a penny of tax contrary to law these assessments are illegal merely because forms of return were sent off to him before he was assessed and assessments happened to be made before the delay allowed in Sections 55 and 71 respectively had run. That is, he arbitrarily insists that these assessments were made under Section 55 or 71 as the case may be and not under Section 72. In other words the whole enormity of these delays and defaults is to be deflected by (however striking it may be essentially) a technical argument. It is on the strength of this argument that he has not yet paid any tax, and it is now 1956. And now I come to a part of the Appellant's argument, which if I understand it aright, hardly brooks description and, at least to me, appears as impudent as it is fallacious. Briefly, it is this, if assessments are sent out under Sections 55 or 71 as the case may be and no returns are made, then, by a loophole in the Act, any assessments made cannot be chargeable with treble tax. That is he maintains that sub-section 3 of Sections 28 and 40 respectively, in some manner, limit the Sections so that where no return has been made and where assessments have been made under the third sub-section of Sections 55 and 71 respectively treble tax cannot attach. Now if I understand the intention of the Appellant aright, having, as he assumed, wrongly I believe, found some loophole in the Ordinance or Act and having defaulted for all these years and being still in grievous default but being in receipt of notices to make returns he could refrain from making, and, in fact, did not make any returns

and if he elected so to do in flagrant breach of duty he could sit back and escape the major consequences of his wilful omissions to perform his duty to the community. The Appellant has in fact never made any returns to the notices sent, and, apart from his contention that he need do nothing further because the assessments made are in any event illegal, I can only assume he is founding further on the loophole he seems to think he has discovered and trying to turn his breach of duty to his advantage. This is a pathetic revelation of an immature mind as to social duty. I may say that I consider that the appeal cited can be distinguished in point of fact from the present appeal and indeed some important facts are assumed rather than stated in that judgment but I would not be bound by that decision. If it is suggested there that treble tax cannot be imposed because of an assumed restriction on the sections by the sub-sections then with the utmost respect I am wholly unable to agree.

I prefer the argument proffered by the Respondent in that appeal. I observe that the learned Judge was dubitante of his own decision which he arrived at by process of construction. He appeared to think that there might be two constructions and selected one but from my point of view, however humble, it seems clear that there is one construction only and that the sub-sections are merely there for clarity and other construction runs contrary to the whole scheme of taxing statutes and in particular to that of the Ordinance and Act and to the clear intent of the sections themselves.

But to return to the Appellant's arguments. As I have already found (and as Mr. Salter seemed to concede) at the time before the assessments were made and at a time before the notices were sent out the Appellant was a person liable to tax and could have been assessed under Section 72 which in my view from the scheme of the Act was the appropriate section. Historically, once the time allowed by the general precept in the United Kingdom had expired the Commissioners could proceed to assess without necessity of recourse to sending out particular notices or any other notice and, after the 1918 Act was amended, the Commissioners could proceed to assess once the taxpayer had become liable to tax without any need to serve him with

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notices and wait until any period had expired after service and the same is true under the 1952 Act, in the United Kingdom. It is obvious, I consider from the scheme of the local Ordinance and Act, that once a taxpayer has become liable to tax and he is at least liable to tax when the year begins and particularly when he has failed to make a return within 9 months and failed to pay his tax, he can and ought to be assessed under Section 72. The scheme of the local legislation is that, ordinarily, the Commissioner will send out notices to make returns but if he does not the burden never shifts from the taxpayer to perform his duty to make a return. These sections appropriate are disjunctive. I do not consider any duty lies upon the Commissioner when a person has become liable to be assessed under Section 72 to give him notices to make returns before he can proceed to assess or having issued them be estopped from recourse to Section 72. When I pressed Mr. Salter to state where the statutory estoppel arose in the Act he could only reply that what the Commissioner did was a violation of the scheme of the Act but in my view the only violation of the scheme of the Act is to be found in the Appellant's conduct, who, I consider now finds himself in the position of the unfortunate Mr. Till in the case of A.G. v. Till who had "evidently persuaded himself that he had found a loophole in the contention of the Crown and will have to pay dearly for his error". The Appellant's contention can be reduced to this, however, merely, because the Revenue elected to send him forms of return to fill up the Commissioner had selected one of two alternative courses open to him and having selected that course, on the analogy of the laws of the Medes and the Persians, found himself estopped from pursuing the other course and as under Section 71 (or 55) as the case may be, 30 days must elapse before the third subsection can be used the assessments were premature and illegal and of course not subject to treble tax because no returns had been made. The Appellant, of course, is faced with the two difficulties first of showing that the assessments were made under section 71 and second even if the Revenue started off under Section 71 the Commissioner was estopped from using and could not have recourse to Section 72. Any taxpayer who sets off on such a forlorn hope on appeal under a taxing statute seems to me obtuse, or else he is raising difficulties

created by his own smartness of desperation in the hope of bemusing the Revenue and hoping to reach some sort of compromise, a compromise which, of course, would substantially benefit himself. In the first place, how can the Appellant show that the Revenue inevitably elected to use (or misuse) Section 71?

He says they sent him notices to make returns but he seems to overlook that after assessment or
10 for the purposes of assessment under Section 56 or 72 the Revenue can still call for returns. I refer of course to Section 45 of the Ordinance and Section 61 of the Act. It is true that under the repealed Ordinance, Section 45, a delay of 30 days is statutorily given to the taxpayer but this is a mere delay before enforcement by penalty and in my view in no way estopped the Revenue from proceeding to assessment under Section 56 before the expiry of that time even if the procedural provisions
20 of the Ordinance then applied. These provisions are there to assist the Commissioner in obtaining figures but they do not estop him if he elects to make use of them from assessing under Sections 56 and 72 but he could use these figures to revise the assessment. The Appellant then submits two other arguments. The first is that the notices of assessment were wickedly post-dated so that they ex facia seemed to be out with the 30 days delay enjoined by Sections 55 and 71 and this is evidence
30 of a Machiavelian plot by the Revenue to defeat whatever justice may seem to him to reside in his cause. But the evidence of the Revenue Officials and, particularly, Mr. Martin, which I accept, is that the practice was to post-date these notices so as to afford the taxpayer the maximum time to object since he had but 30 days after the date of the notice of assessment to object. But, any courtesy or fair practice on the part of the Revenue when seen by the Appellant is inverted in-
40 to an unfair practice. Next, he assumes, that Mr. Martin having proceeded to assess him under Section 71 by sending out notices suddenly became aware of the decision in the appeal cited and realising the sort of man he had to deal with took fright assuming (quite correctly) that the Appellant would not make returns and founding on the decision would escape the treble tax so proceeded to assess him under Section 72. Or, otherwise, if he did not so realise at the time, now, is telling lies. In
50 my view, this is another of the "through the looking

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glass" inverted logic approaches of the Appellant to the scheme of the Act. Mr.Martin was an official of 30 years experience and I consider, from his evidence, knew very well what his powers and duties were but I do not think that Mr. Martin, at that time, even with all his experience, had fully appreciated with whom he was dealing. Mr. Martin says and I believe him that he intended to assess under Section 72 and that under the scheme of the Act it was inappropriate and too late to bring into effect the provisions of Section 71 "the ordinary routine section" which to my mind are not essentially mandatory on the Commissioner the more especially in the circumstances of this case. Nowhere is a liability to tax created by sending out a notice to make a return. Nowhere is liability to tax made dependent upon being in receipt of a return. The return is dutiful upon the taxpayer and is merely informative. In the ordinary case the taxing law intends that a return will be sent out and returned and assessment made and tax paid all in the same year; the year after the income is earned. But a taxpayer (especially evident where he fails in his statutory duty to make a return) none the less becomes liable to tax. More notice of liability does not bring into force any provision to compel the Commissioner to issue a return before he can assess. It may well be that in some cases only accounts will be submitted without return and an assessment made on these.

But to revert to Mr.Martin. He had learned that the Appellant was in London and he was aware that the Appellant was liable to tax and he had certain figures in his possession but not any returns and it was only where a taxpayer had furnished returns that he could obtain relief for allowances. It was therefore only common sense to send out the forms (which Mr.Holden thinks he had not done). Quite properly Mr. Martin did not consider the figures submitted by the Appellant were acceptable as true or revealed all his income and he required correct profit and loss accounts and balance sheets for all the years from 1942 onwards or estimates supported by evidence. Mr.Martin also repudiated the Appellant's bad debt principles as well as those relating to his library. The object was, as stated in the letter, to enable preliminary work to be done pending the Appellant's return. It is an eminently reasonable letter.

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The reply however from the Appellant was, in my view and in Mr. Martin's view, one upon which no more delay in assessment could properly be granted. Instead of stating that he would make his books and papers which were in Nairobi immediately available to the Revenue the Appellant in the same fulsome and insincere manner as the rest of the correspondence (and indeed his oral evidence) put the matter off. No doubt he could not comply in full, being in England but there is no sincere intent apparent in that letter of 4th June. Not unnaturally, Mr. Martin did his duty and assessed on the figures he had under Section 72 as he could have done all along and these assessments ex lege contained charges of treble tax. No-one in the Revenue could have lawfully promised not to obey the law and not to charge these. The only treble tax upon which there may remain room for argument is that of the year of assessment 1951. In my view the Revenue was not wrong in charging treble tax for that year since the Appellant had not made a return within 9 months as required by Sections to which I have already referred but since he gave notice of liability by 19th September 1951, although he may have been in wilful default in not sending in a return, I propose to remit all the treble tax for that year of assessment. He did give notice. He did supply some figures and in spite of all that went before and after I propose to give him the benefit of his voluntary act, and remit the treble tax.

At one stage in the evidence I put to Mr. Martin that although he was lawfully entitled to make the assessments he might conceivably have acted drastically; I had reason to change this view before the end of the evidence and I now consider that Mr. Martin was abundantly justified in the course he took which as I shall go on to show, in no way prejudiced a revision of the assessments, and brought the matter to a head. Indeed drastic action was called for. At the time Mr. Martin wrote on 23rd May he had information that the Appellant would return by the end of June. The Appellant in his letter of 4th June dispelled this and made it clear he would not be back until the end of July. In fact, the Appellant did not return until about the end of September. The Appellant has made a great deal of complaint because Mr. Martin assessed him with treble tax but, in my view, Mr. Martin could not but have so assessed him

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because he had a statutory duty to do so; a duty which Mr. Holden would also have had to perform had he made assessments in September 1951. The Appellant made the same sort of approach to Mr. Martin as he had made to Mr. Holden. There is the same insincere expression of anxiety to be assessed and to pay his tax if only it were not for the self-raised illusory obstacles to doing everything. Nothing concrete was done, as opposed to more promises to do, to create confidence and promises are not the sort of currency which appealed to an income tax official with a sense of duty like Mr. Martin. Mr. Martin naturally wished to end the shilly-shallying apparent from the file before him and the simple and obvious way, after so many years delay, was to make assessments. It may be that consciously, the Appellant did not mean to defraud the income tax authorities but it is only when a citizen achieves a certain social and mental maturity that he willingly shoulders his tax obligations and appreciates he is paying for services. Below that level of maturity, tax is seen as a burdensome imposition to be evaded as an arbitrary reduction of hard-earned income and it is in such a stage of development that ways and means are sought if not, consciously to defraud, at least to delay or to defeat the bearing of the burden. In such a frame of mind it may well be that the Appellant began to rationalize his unwillingness and to find what seemed to him good reasons for delay and obstruction. Inexorably this trend of mind may have forced him to a point where he was obliged to project his own shortcomings as a species of blame upon the officials with whom he was dealing, a common mental phenomenon. Finally he reached the classic stage of psychosis of imagining himself the aggrieved and innocent victim of a pernicious system run by crafty officials scheming to wrest from him not only more tax than he was due but treble tax as well. The Appellant is a man of considerable ability but it is pitiable to see a person of his capacities inexorably grasped in a down-spiral of his own mind away from reason and maturity. Such a state of mind presumes dishonesty and, with inverted logic, sees ordinary and indeed lawful actions as wily machinations of individuals seeking to defeat him. So it may be that Mr. Martin is accused of making errors and on finding out his own mistakes, of hastily post-dating assessments in a manner which a simpleton could

discover and twisting past decisions of this Court to fasten upon the Appellant pains and penalties; whereas the sympathetic and dilatory Mr. Holden is accused along with Mr. Fisher of making promises which either they could not at all lawfully make or ought not in duty bound to make, to raise from the defaulting taxpayer the statutory burden of his own defaults and omissions. So the benefit of delay given by Mr. Holden is construed to another purpose and the benefit of being enabled to make returns is misrepresented and the benefit of post-dating the assessments is made to look like a trick. And, further, any attempts to make the Appellant pay tax on his own figures apparently not in dispute is reflected through the Appellant's distorting mental mirror to appear as a device to cut the ground from under his submissions on appeal. It is, to me, a tragic rather than a fraudulent state of mind but "who can minister to a mind diseased?"

The Appellant received the notices of assessment and his reply was that Mr. Martin's frame of mind was an "attitude which would only add to my difficulty and inconvenience....." I am unable to see how these assessments so added. At least they cleared the air. They were not final. They were mere points of departure. Each and every one as res integra could have been revised in terms of Section 74 of the local Act. Mr. Martin has stated that these assessments were made on the basis of the figures supplied by the Appellant himself and that apart from a slight enhancement into round figures reflect only what the Appellant himself disclosed. Mr. Martin was also strongly of the view that these figures did not reveal the whole truth about the Appellant's property income and might well not have disclosed the whole truth about his professional earnings and any revision would most probably have been up rather than down. Mr. Martin was, justly, of the view that the Appellant was in wilful default and this enabled him under Section 72 to assess for years of assessment back to 1943. These assessments ought to have served as a red light to the Appellant that his progress of delay was drawing to a close and to warn him to co-operate with the income tax authority to the best of his ability. Had he so done it seems probable that he would have received lenient treatment as he was originally advised by Mr. Fisher and that the assessments would have been revised in

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accord with proper accounts and that he would have received all allowances and deductions which he could prove and that some at least if not all of the treble tax might have been remitted. The Appellant however elected to take a diametrically opposed course. The Appellant's letter of 14th July, 1953, is a mere reiteration of his earlier complaints and objections with a projection of his own shortcomings as blame upon the unfortunate Mr. Holden who, at the most, had failed to make the sort of provisional assessment about which the Appellant was then objecting and must necessarily, also had charged the statutory triple tax. The letter is once more couched in the now familiar fulsome and evasive language. Plainly this letter amounted to a notice of objection in writing in terms of Section 74(2) of the Act and was properly so treated by Mr.Martin. It cannot be stressed too much that the notice did not result in making the estimated assessments final but amounted to no more than an application to review. It is only common-sense that a person who wishes his assessments reviewed would do his utmost to supply the figures essential to review. Not so the Appellant, however. He had no status in law to demand that his mere letter in regard to dependants allowances should be treated as the statutory return required by both Act and Ordinance, for example In his letter, the Appellant states he is willing to have his books audited but by this time willingness was not enough, what was urgently required was the audit itself. The department had made that clear. I am satisfied, in the light of later events, that the Appellant could never have intended to send for his books nor indeed to have them audited. Even for the purposes of this appeal he has not produced audited or even authenticated accounts.

The assessments, of course, do not allow for bad debts, but the percentage principle proposed by the Appellant does not accord with the statutory requirement contained in Section 14(1)(d) of the Act which lays down that the only allowance is in respect of bad debts proved to the satisfaction of the Commissioner to have become bad during the year. The Appellant had an opportunity and, indeed, more than ample opportunity long after his return to Kenya to furnish such proof but not a vestige of any such proof has ever been produced either to the Commissioner or to this Court. The

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Appellant alleges that, because he was disbarred from practice, he lost money deposited on briefs but he has not produced details. It is on these details, which can be the subject of proof and counter-proof, that, alone, he can be allowed a deduction. In a like sense, if the Appellant is to be allowed an allowance for replacements in his library he must furnish details and, similarly, for any depreciation upon his car. Subject to his allegation that he has lost money it is a shrewd inference, that advocates lose less money than other professional men or traders. The Act fairly allows a locus poenitentiae alike to those assessed upon return or upon default upon assessment or upon estimated assessment and nothing can be said in favour of a taxpayer who over a period of years has opportunity to prove his contentions but elects to remain silent and to talk in vague generalities or to stand upon technicalities if these avail him not.

On 27th July, the Commissioner, himself, replied, treating the previous letter as notice of objection in writing and replying to points raised, but once more requiring accounts and returns in terms of section 74(3) of the Act. No reply was received to this letter. On 1st September, 1953, Mr. Martin wrote to the Appellant reminding him of the Commissioner's letter and asking once more for the information so often required by the Department. No reply was received to this letter. On 16th September, Mr. Martin wrote once more, in reminder, again offering to revise. He also made a calculation showing that even on the figures supplied by the Appellant and - for the purpose of explanation only - allowing him his full claim for bad debts and library expenses and taking only the figures for professional profits that the Appellant, ignoring property income, was liable to tax "not in dispute" of at least £2,000 and asking for payment of this sum. This was in terms of the proviso to Section 81. The Appellant did not pretend to reply directly to this letter but, on 9th October 1953, he gave notice that he was chargeable with tax for the year 1952. Once more he had not sent in a return within the statutory nine months. He also stated that he had sent for his books and would send proper balance sheets and returns for that year and the preceding year "if you will kindly let me have the requisite forms of return".

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I find this condition surprising as Mr. Martin had already sent forms of return to cover that year and it is the sending of the returns that is the bone of contention in this appeal. But, in fact, no such accounts have yet been produced nor is there any evidence that the Appellant ever did send for his books. The letter, of course, evaded both the issue of tax not in dispute as well as that of accounts for past years. It is entirely in accord with the Appellant's frame of mind towards his tax liability. That is imprecision and lack of finality. 10

On 27th October 1953, a Mr. Towler wrote, on behalf of the department, asking once more for payment of £2,000 tax not in dispute. On 7th November the Appellant replied "expressing his surprise" and, apparently, with intent to go through the whole rigmarole with a fresh official. Once more the whole gamut of objections are stated. In my view, this letter contains mis-statements of facts 20 well known to the Appellant. I am satisfied that no official of the department ever agreed or confirmed that which was illegal for him to do, i.e., that no "penalty" was to be imposed. The treble tax if that is the penalty - and no other comes into the ambit - was imposed ex lege. Once again there is the same molifluous language; a toying with the words of the Act; a complete absence of certainty and what may seem surprising a suggestion of an "amicable settlement", which suggests to me 30 something less than payment of tax certain. And what is even more subversive of truth, looking to the Appellant's past actions and the actions of the department an injunction to the department - as to a tiresome litigent - to "take a more reasonable attitude" and abjuring it, as to a dishonest contractor, "to stand by the original agreement of not charging penalty". The last remark is outrageous of truth.

On 5th December, ignoring all provocation, the 40 department very reasonably replied insisting upon payment of £2,000 tax not in dispute and pointing out Section 81 and mentioning the leniency shown by the department. No reply was received to that letter.

On 8th January 1954, the department wrote once more to the Appellant stating they had been informed that he had returned to Nairobi and to call.

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if possible, on 12th January. On 11th January the Appellant replied from Dar-es-Salaam that he was prepared to call but only "if necessary" but as he had some of his important books with him he would prefer to call in Dar-es-Salaam. With an unabashed and unwarranted audacity the Appellant continued:- "I take it that you do not base your claim on the assessments previously sent to me and you will make fresh assessments on the basis of my
10 figures from my books after you have given me a proper amount of time for completing the returns from the state of accounts which I was asked to deliver to Mr. Holden". The underlining is mine. It may be remarked that the Appellant had had, by that time, nearly 2½ years to deliver the accounts and that it was a bold assumption that all that had gone before was to be thrown overboard and a fresh start made without any reliable assurance that the Appellant would co-operate and the Appellant's as-
20 surances were no longer reliable. The reply, dated 12th January was moderate and the department, taking its stand as before, reiterated its request for payment of £2,000 tax not in dispute and for accounts and returns under Section 74(3). No reply was received to this letter. On 8th April, the department wrote to the Appellant asking for a reply and a remittance of the £2,000, a topic which the Appellant had successfully avoided. No reply was received to this letter and on 5th May, 1954
30 the department justifiably sent the Appellant notices of refusal for the request for revision for the years of assessment 1943 to 1951. These were served in terms of the proviso to Section 74(4). In consequence, the Appellant filed this appeal. I may add that when this appeal first came near to hearing on 30.5.55 it had to be adjourned on an application to the Registrar on the grounds alleged by the Appellant that he was ill.

In his evidence, Mr. Martin stated that he
40 received a telegram from the Appellant, dated 13th July 1954, that is 59 days after the issue of the notices of refusal. The time for appealing is sixty days, as laid down by Section 78(1). On 14th July he received notices of intention to appeal, that is on the last day available. After that day, some correspondence ensued between the department and the Appellant's advocate suggesting various compromises which never matured. By this time the Appellant was trying to bargain with the

In the Supreme Court

No.13.

Judgment.

6th January, 1956 - continued.

income tax authorities. He had at no time produced books or audited accounts as he had from time to time undertaken and which had never materialised but he was trying to compromise his tax liability on no certain figures by making offers to settle. But these offers always contained a condition precedent to payment or to settlement and that was that the department must forego the triple tax or any other additional liability. It is hardly surprising that such a curious and one-sided bargain virtually a solecism was not acceptable to the department. Even at that late stage, had the Appellant submitted audited accounts and made a payment of tax not in dispute he might well have found the department willing if it were lawful to remit some of the treble tax but it was inconceivable that after so many years and after so many unsupported promises and idle suggestions that the department should any longer trust mere promises. The officials had a public function to collect tax and it would clearly have been contrary to the public interest to make remission even if lawful at that stage on the ground of the odd and anomalous bargain put forward by the Appellant.

At the time of hearing no audited accounts or proper books of account were put in evidence; no returns have been made and no money paid into Court. No schedules of bad debts have been produced; no schedules of books bought as replacements to the library and nothing at all about depreciation on a car worthy of proof. No returns have been made disclosing claims for dependants allowances. I am not able to say whether the Appellant keeps proper books or whether they are kept at all or at all properly or if they are kept they are in shape to bear scrutiny by an accountant or in a Court of law. The assessments are based very closely and accurately on the figures submitted by the Appellant himself. I am of opinion that these accounts do not properly disclose all the income on property transactions made personally by the Appellant. In addition, they are inaccurate by the amount of income in dispute arising out of a large number of building plots and the amount of rents of two properties in Victoria Street, Nairobi owned jointly and by any excess which may be due under a partnership which lasted with another advocate for at least a year in 1942-1943. Looking at these unvouched unaudited accounts I am unable to say that

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6th January, 1956 - continued.

they disclose the whole chargeable income of the Appellant and it is unlikely that he shows more rather than less. There is no evidence that they ought to be less because so far as bad debts and library and car allowance or dependants allowance no proper proof has been submitted and I can allow nothing for these items. That I cannot do so is entirely and wholly the fault and default of the Appellant himself. The onus of proving that the assessments complained of are excessive lies upon the Appellant by Section 78(5) of the Act and in my opinion he has wholly failed to discharge that onus.

There can be no doubt that with the single exception of the year of assessment 1951, that the Appellant was in wilful default and that the treble tax attached by law. I must confess to some small doubt as to that year but I am inclined to the view that the Appellant was in wilful default by not making a return within 9 months. However I have a discretion to remit that tax and I propose to do so because he gave notice before the 15th of October voluntarily.

For the anterior years of assessment, Mr. Salter has urged, that the Court should not look to the period after issue was joined and to confine its attention to the period when the Appellant did not appear at his worst and that is when he was dealing with Mr. Holden alone. But I am of opinion that the apparent nervelessness of Mr. Holden was largely the result of the subtle barriers put in the way and the implicit opposition of the Appellant to finality. Essentially Mr. Holden was dealing with a taxpayer who subconsciously did not want to pay his tax and who was consciously finding reasons for putting off the evil hour even it may be to the extent of deluding himself. Whether that be so or not I am being at least charitable to the Appellant. But such a frame of mind does not entitle the Appellant, even if it is a correct assumption on my part, to remission. He knew well enough, consciously, what he was doing, even if the springs of action were dark in his mind. Grievous though the burden may be it is the burden especially provided by the Legislature for any such a state of mind. Like Mr. Till the Appellant has been trifling with a thoroughly just claim by the Revenue and cannot complain that the Crown should

In the Supreme Court

No.13.

Judgment.

6th January, 1956 - continued.

put into force against him, though no finding of actual dishonesty is made, the penalty prescribed for exactly this kind of conduct. The Appellant had no cause to grumble at assessments being made and he deliberately eschewed the locus poenitentiae provided for revision by the Act itself. Nothing is more objectionable than the evasive tactics employed by the Appellant after he had returned from England. He failed to reply to reasonable letters addressed to him by the department; he evaded the issue of payment of tax not in dispute; he endeavoured to induce officers fresh to dealing with his case to start anew; he suggested that all that had gone before be scrapped and a fresh start made; he failed to furnish the department with the figures they required and very reasonably required, and at the end of the day he tried to bargain with the Crown putting forward offers which were in the circumstances evasive, even absurd and wholly unacceptable. I have a discretion no doubt to remit this treble tax but it is a judicial discretion. I cannot make unjudicial and sympathetic remissions even if the Appellant were entitled to any sympathy which in my opinion he is not. Sufficient facts must be adduced to enable me to form a reasonable opinion that remission is justified and, search as I may, there is hardly a fact, hardly indeed, a shadow of a fact in his favour. To the contrary, I might have arrived at conclusions as to the conduct and state of mind of the Appellant very much more discreditable and to his disfavour. The alleged disputes over partnership income and joint property are mere red herrings, ballooned up in the imagination of the Appellant. His objections might be described as "making mountains out of molehills". It is a pathetic, even a pathogenic case. It is to be hoped that the Appellant's file is one unique in the department among professional men in Kenya.

I think I have dealt with all the heads of appeal. The first is a misconception in law of the scheme of the Act; the second an audacious subversion of fact; the third a repetition in other terms of the first, it is absurd to say that the Appellant is not liable to any tax; the fourth is another subversion of fact, the assessments are based on the Appellant's own figures; the fifth is another misconception of mixed fact and law, the assessed tax ex lege attracted treble

tax, the Commissioner gave more than ample time to revise; the seventh is a mere generality and a repetition of the first.

In the circumstances I confirm the assessments for all years, but I remit treble tax for the year of assessment 1951.

I dismiss this appeal with costs to the Respondent. I can see no reason whatever for departing from the usual rule that costs follow success, 10 or at any rate more than substantial success over tho whole field of principle.

6.1.56. A. L. Cram.

No. 14.

NOTICE OF APPEAL

(Title)

NOTICE OF APPEAL

TAKE NOTICE that Gokuldas Ratanji Mandavia, the Appellant above named being dissatisfied with the decision of the Honourable Mr. Acting Justice Cram 20 given herein at Nairobi on the 6th day of January, 1956, intends to appeal to Her Majesty's Court of Appeal for Eastern Africa, against the whole of the said decision other than that part of it which remits treble tax for the year of assessment 1951.

Dated this 20th day of January, 1956.

(Sgd.) G. R. Mandavia,
Appellant.

To, The Registrar of the Supreme Court of Kenya, at Nairobi, and to The Legal Secretary, E. A. High 30 Commission, Nairobi, as advocate for the Respondent

The address for service of the Appellant is :-
Africa House, Government Road, P.O.Box 759, Nairobi.

(Dated) Filed the 20th day of January, 1956, at Nairobi.

(Sgd.) R. H. Lownie,
Deputy Registrar, Supreme Court of Kenya, Nairobi.

In the Supreme Court

No.15.

Decree.

6th March, 1956.

No. 15.

DECREE

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 33 of 1954

GOKULDAS RATANJI MANDAVIA — Appellant

versus

THE COMMISSIONER OF INCOME TAX
purporting to act through ARTHUR HOLDEN,
ASSISTANT COMMISSIONER OF INCOME TAX, of
Nairobi, in Kenya — Respondent 10

(Appeal from Assessments signed and mailed on 18th June, 1953 and delivered to Appellant on 22nd June, 1953 in London, but marked as typed in Nairobi on 26th June, 1953 - File 23013, years of Assessment - 1943 to 1951)

D E C R E E

CLAIM for discharging the Assessments in respect of the years of assessment 1943 to 1951 and for directing the Respondent to permit the Appellant to complete his incomplete accounts 20 retained by the Respondent in 1951 and to submit returns and pay the tax without penalty on income thereby ascertained and for costs of the Appeal.

THIS APPEAL coming on the 19th to 23rd days of December, 1955, for hearing and on the 6th day of January, 1956, for judgment before the Honourable Mr. Acting Justice Cram in the presence of Counsel for the Appellant and Counsel for the Respondent, IT WAS ORDERED :- 30

1. That this Appeal be dismissed with costs;
2. That the assessments for all the said years of assessment be confirmed but that the treble additional tax for the year of assessment 1951 be remitted; and
3. That the Appellant do pay to the Respondent the sum of Shillings 9,205/- being the taxed costs of the Appeal.

GIVEN under my hand and the Seal of the Court at Nairobi this 6th day of March, 1956. 40

O. C. K. Corrie,
Judge,
Supreme Court of Kenya.

No. 16.

MEMORANDUM OF APPEAL

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT NAIROBI

CIVIL APPEAL NO.33 OF 1956

BETWEEN:

GOKULDAS RATANJI MANDAVIA Appellant

- and -

THE COMMISSIONER OF INCOME TAX Respondent

10 (Appeal from Judgment/Decree of Her Majesty's Supreme Court of Kenya at Nairobi (the Honourable Mr. Acting Justice Cram) dated the 6th day of January, 1956 in its Civil Appeal Number 33 of 1954

Between

GOKULDAS RATANJI MANDAVIA Appellant

- and -

THE COMMISSIONER OF INCOME TAX Respondent)

In the Court of Appeal

No.16.

Memorandum of Appeal.

16th April 1956.

MEMORANDUM OF APPEAL

20 GOKULDAS RATANJI MANDAVIA, the Appellant above named, appeals to Her Majesty's Court of Appeal for Eastern Africa against the whole of the said decision other than that part of it which remits the treble tax for the year of assessment - 1951, on the following grounds, namely :-

1. That the learned Acting Judge misdirected himsels in law:

(i) in holding that the Respondent - in spite of his having sent out on the 26th May,
30 1953, notices under Section 59(1) of the East African Income Tax (Management) Act, 1952, calling upon the Appellant then in London. England, to complete and submit within ONE MONTH Returns for the years of assessment: 1943 - 1953, had still, the jurisdiction or authority to proceed to make on the 16th day of June, 1953 assessments for the years (1943 to 1951), before the expiry of the said ONE MONTH, contrary
40 to provisions of Section 71 of the said

In the
Court of Appeal

No.16.

Memorandum of
Appeal.

16th April 1956
- continued.

Act, merely because the Appellant asked to be allowed reasonable time, which time, according to the evidence of the Respondent's own witness - Mr. Martin should have been three months at least; and in, thereby prejudicing the Appellant's position and depriving the Appellant of his opportunity to claim and obtain tax deductions for Personal allowances, bad debts, depreciation etc. 10

(ii) in holding that non-submission by the Appellant without service on him of any notice as provided by the aforesaid Section 59(1) of the Act - of completed Returns of income, before the 30th day of September in each of the eight years of assessment: 1944 - 1951, constituted in law, such default as attracted the automatic (or, as the judge preferred to call it, EX LEGE) imposition of treble additional tax, over and above 20 the amount of tax assessable on the true or estimated amounts of the Appellant's income for the years of income: 1943 to 1950.

(iii) in confirming the imposition on the Appellant of treble additional tax amounting to Shs. 202,917/- for the years of assessment: 1944 to 1950, on his interpretation of the law as set out in (ii) above, although the Respondent, by his unequivocal statement 30 of facts as certified under the hand of his advocate, C.D.Newbold, Esq., Q.C., came to support such imposition, at the hearing, on the allegation of fact that the Appellant had not completed the Forms of Return (comprising in the body of such forms, Notices to complete and submit them within ONE MONTH) said to have been handed to the Appellant in 1951 - because Mr. Arthur Holden, the then Assistant Commissioner of 40 Income Tax, who handled the Appellant's case in 1951, would not by his testimony at the hearing of the appeal, support such allegation.

(iv) in not appreciating that although the Appellant had brought his Civil Appeal (No. 33 of 1954) in his Court, against "the Commissioner of Income Tax through Arthur Holden", so that at its hearing, which was virtually

In the Court of Appeal

No.16.

Memorandum of Appeal.

16th April 1956 - continued.

conducted as a Witness Action, it was Mr. Holden's duty to give evidence as a respondent, (as laid down by the Privy Council in 37 I.A., pp. 1, 4 and 5 and as succinctly noted in Mulla's Commentary on Civil Procedure, 10th Ed., bottom of page 654) the Respondent had manoeuvered his being called as the Appellant's witness, in spite of Mr. Holden's Minutes of evidence having been taken by the respondent and Mr. Holden having been brought for the hearing of the Appeal from Kericho to Nairobi by the respondent - with the result that the Appellant was prejudiced in the establishment of his case, by being prevented from cross-examining Mr. Holden

(v) in not drawing: the correct inference from Exhibit 1 (Mr. Holden's letter to Appellant of 20th June, 1951) that the Commissioner of Income Tax thereby admitted and agreed that the Appellant was not only previously but even then unable to make Returns or sign the Declaration (prescribed and incorporated therein) of true total income for the years 1943 to 1950, (beyond Appellant's Accounts of practice as advocate) and: the inference that such inability negatived neglect or wilful default in making or submitting the Returns - for which the punishment set out in (iii) above had been imposed on the Appellant.

(vi) in not appreciating (a) that the Appellant's conduct subsequent to December 1951, or, for that matter, subsequent to 22nd May, 1953, should not have been taken into consideration by the Respondent or the Court, in not remitting the so-called 'ex lege' treble-tax for years of assessment: 1944 to 1950, and (b) that the Appellant's submission of the 8 years' accounts as asked by Mr. Holden was a factor which should not have been disregarded in maintaining (what the judge called) the "grievous burden" of additional tax, referred to in (iii) above.

(vii) in not taking into consideration, the assurances given in 1951 by Mr. Fisher and Mr. Holden that until the Appellant's partnership incomes could be ascertained, there would only be a provisional assessment in respect of the Appellant's income from only his practice as advocate, with negligible or no addition of penalty by way of treble-tax, and with allowances and deductions for bad debts and depreciation on a provisional basis, subject to final adjustment when Returns with agreed final figures could be made.

(viii) in holding that the sum of £2,000 was in

In the Court of Appeal

No.16.

Memorandum of Appeal.

16th April 1956 - continued.

law "tax not in dispute" under Section 81 of the aforesaid Act.

(ix) in holding - without there being any or sufficient evidence to support the finding - that the Appellant had been guilty of "wilful default" within the meaning of Section 72 of the aforesaid Act;

(x) in permitting himself, throughout his judgment to be influenced by considerations irrelevant to the appeal and prejudicial to the Appellant, and more especially on account of the Appellant relying on his legal rights - called "technicalities" in the judgment.

10

WHEREFORE THE APPELLANT PRAYS that this Appeal be allowed with Costs here and in the Court below, and that the Assessments appealed against be set aside, or in the alternative, the additional treble-tax imposed on the Appellant be set aside or substantially remitted, as to the Court may seem just.

20

DATED at Nairobi, this 16th day of April, 1956.

G. R. Mandavia,
Appellant.

To The Honourable Judges of Her Majesty's Court of Appeal for Eastern Africa.
And to - The Legal Secretary, East Africa High Commission,
Advocate for the Respondent above-named,
Queensway House, P.O. Box 601, Nairobi.

Filed this 16th day of April, 1956, at Nairobi.

30

(Sgd.) ?
Registrar,
Court of Appeal for Eastern Africa.

No.17.

Additional Grounds of Appeal.

No. 17.

ADDITIONAL GROUNDS OF APPEAL

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT NAIROBI

CIVIL APPEAL NO.31 OF 1956

BETWEEN: GOKULDAS RATANJI MANDAVIA — Appellant

- and -

40

THE COMMISSIONER OF INCOME TAX — Respondent

ADDITIONAL GROUNDS OF APPEAL

(a) The learned Acting Judge erred in holding that

the Commissioner was entitled to assess the Appellant under Section 72 of the East African Tax (Management) Act, 1952, or Section 56 of the Income Tax Ordinance (Cap. 254 of Laws) of Kenya, Revised 1948 Edition.

(b) The learned Acting Judge erred in holding that the Appellant's income was charged by law with income tax before any assessment had been made.

10 (c) The learned Acting Judge erred in holding that on the true construction of the Act and the Ordinance, a taxpayer who has not been required by the Commissioner to furnish a return of income is "invited to make a return of income within 9 months of the time the tax is chargeable and indeed within the time the tax becomes payable".

(d) The learned Acting Judge erred in holding that a person chargeable to tax becomes thereby liable to tax.

20 (e) There was no evidence to support the learned judge's conclusions that he did not "think the Appellant meant to get anywhere" in his negotiations with Mr. Arthur Holden "unless at bargain basement rates" and that the said Holden "allowed himself skilfully to be led from taking any action, by the Appellant smothering him with reasons why, although alleging that he was most anxious to pay his tax accordingly, he was frustrated from so doing".

30 (f) The learned Acting Judge erred in holding that with the single exception of the year of assessment, 1951, the Appellant was in wilful default.

(g) The learned Acting Judge erred in failing to consider whether the whole or part of the treble tax should be remitted under Section 40(3) of the East African Income Tax (Management) Act.

In the Court of Appeal

No.18.

Notes of arguments (Worley P.)

17th September, 1956.

No. 18.

NOTES by SIR N.WORLEY,(President) of ARGUMENTS.

17.9.56. Coram: Worley P.
Sinclair V-P.
Briggs J.A.

Dingle Foot, Q.C., and Sandhu for Appellant.

Hooton, Legal Secretary, East African High Commission for Respondent.

DINGLE FOOT:

Files additional grounds, Hooton not objecting. 10

Appeals from assessments 1943-51.

Assessments £2,300.18.0.

Amount of actual tax Shs. 113,657 paid.

Penalties as reduced by Cram not paid - now Shs. 202,917.

No interest paid on arrears. No question of evasion.

If appeal dismissed, amount of tax not affected, but Appellant must pay penalties. If appeal allowed, there would have to be fresh assessments. If Court remitted in whole or part amount of penalties involved wouldn't affect amount of tax paid or any additional assessment which might be made. 20

Statutes -

E.A.Income Tax Management Act 1951 - repealed Cap.254 Kenya (s.99). Fifth Schedule para.1. No material difference between Act and Ordinance in provisions relevant to this appeal.

s.6(2) Service of Notice. 30

s.8. Charge of Tax.

S.27, 28 - Children's allowances.

s.59 - Notice of chargeability and returns.

I say only duty on taxpayer is to give notice - no duty to make return until receives notice. s.40(1) - penalty for default in making return or giving notice.

s.40(2) - discretion of Court to remit.

PRESIDENT:

What are powers of this Court on Appeal. 40

In the Court of Appeal

No.18.

Notes of arguments (Worley P.)

17th September, 1956 - continued.

DINGLE FOOT:

S.78(5)(6)(10) and (11). I don't accept this Court cannot review discretion - mixed law and fact - Order in Council s.16(1). I suggest this overrides s.78(10). I shall try to shew that the Judge below exercised discretion on wrong principle which is question of law. s.71(1)(2) and (3) - assessment. I shall submit s.71 is all embracing - covers everything concerned with making returns or failure to make returns - no time-limit: not confined to 6 years. s.72 - additional assessment - Proviso (a) - no time limit. s.82 - time for payment. s.89 - failure to comply with notice.

Submissions

1. Commissioner cannot make assessment under s.71(3) until time has expired within which taxpayer has to make return i.e. till 30 days elapsed. I say under s.71 there has to be a notice before the taxpayer is under any duty to make a return: s.59(3). s.71(3) doesn't operate unless and until there has been requirement to furnish return.

2. Where taxpayer has failed to make return. Commissioner must proceed under s.71 - s.72 has no application.

Alter: 3. s.71 and 72 are alternatives. Commissioner may use either but not both- period under s.71 must run out before s.72 can be used.

4. Assessments in this case must be deemed to be under s.71.

History:

Appellant in Nairobi since 1921 - tax paid by employer. 1941 admitted to practice - first in partnership for 18 months: dispute. Co-owner of property - also dispute. 1943 and 1945 Appellant claims to have gone to I.T. for forms - didn't send them in. I don't defend this.

I say he was to blame up to 1951 - he should have given notice in each year. About June 1951, saw Fisher and then Holden - disclosed position and submitted trial balances. Nothing done till May 1953 - Holden overworked and sick man - Newbold admitted Holden to blame. Questions of allowances to be considered.

In the Court of Appeal

No.18.

Notes of arguments (Worley P.)

17th September, 1956 - continued.

Holden didn't call for returns, supply forms or call for books. Martin's instructions in May 1953. Department's delay material to remission of penalties. Martin's letter of 26.5.53. September 1952, Appellant suspended from practice in Kenya only (practised in Tanganyika Territory and Uganda not suspended) Appellant went to England to appeal to Privy Council. Letters: B p.26 26.5.53. p.21 para 6: forms sent on 15.6.53 (26.5.53) - to be filled in within 30 days. I say 30 days had to elapse before assessment made. 10

p.28 C : 4.6.53: Appellant's excuse.
p.30 D : 15.6.53: estimated assessments.
p.24 Assessments - made 16.6.53 but post-dated to 26.6.53. See pp. 1-17 Assessments. Explanation r's that it was normal practice to post-date. 40 days to pay from service of notice of assessment - s.82(1).

Assessments delivered at Nairobi on 18/6 and reached Appellant in London on 22/6. I say they appeared to be made under s.71. 20

BRIGGS: If made under s.72, how different?

DINGLE FOOT: At hearing Martin said assessments made under s.72 - until then everyone assumed made under s.71. Appellant considered them as invalid - therefore unwilling to make provisional payment.

TO BRIGGS: Don't concede they would be alright if actually made on 26/6. I don't say Commissioner cannot post-date an assessment - provided time for assessing has elapsed. 30

p.25 20.9.51: particulars of children - Holden never gave Appellant any forms.

p.32 19.6.53 reply to p.30 D.
p.33 F.14.7.53 - objection to assessments.

BRIGGS: Do you say making of invalid assessments absolved Appellant from duty of making returns?

DINGLE FOOT: That is difficult - taxpayer may suppose he is no longer bound to fill up returns. 40

p.51 - Fisher

p.60 - Holden. p.61 offer to pay

p.63 - Questions if forms given.

This evidence gives different picture to that given by Cram J. - see additional grounds E.

To 2.30 p.m.

2.30 p.m. Bench and Bar as before.

p.76 line 17 et seq Appellant's evidence.
p.119 Judgment line 4 et seq.
p.120 lines 2-13
p.121 line 3 et seq.

I say that for 20 months the fault was admittedly that of Inland Revenue.

Vol.II p.89 lines 1-10 lines 30-40 (Not printed)

This is a circumstance to be taken into account in assessing penalties.

10

p.142 lines 24 to 39 unjustified.

s.71(3) cannot be applied until after expiry of time for making return. Sub-sec. (2) and (3) are governed by sub-sec.(1).

S.72 is not appropriate section for case where failure to make return.

Cf. Eng. Act 1952 s.41 - 1918 s.125.

Halsbury Statute 2nd Ed. Vol.31 p.48.

Statues Vol. 56 1918 220.

20

I say this is progenitor of Ss.71 and 72.

I say that s.72 has no application when person has not made a return at all. In such case the Department must require him to make a return and wait until his return comes in and then act under s.71 - they may also prosecute.

S.72 covers cases where there has been an error in assessment or where though return made no assessment made on it. If not so s.71(3) is otiose. If no returns made, no limit of time per which assessment can be made.

30

"chargeable with tax")
"liable to tax") are different things.

Every person gainfully employed is chargeable with tax - but not necessarily liable to tax, e.g. his earnings might not be enough or his income might be exempted. Time might also come into it.

Cites:-

40

I.L.R. 58 Cal. 909 Rankin C.J. at 913.

"Now before the C.I.T. etc.

61 I.A. 10 (Py. Co.) at page 15.

"The appts. however submit".

On literal construction of s.72 you could sweep aside s.71 and never call for return - not intention of Legislature.

In the Court of Appeal

No.18.

Notes of arguments (Worley P.)

17th September, 1956 - continued.

p.124 Judgment line 17 et.seq.
p.124 line 38 - p.125 line 30.

Misconception: S.59 not obligation on taxpayer to make any return until asked. Only duty is to give notice to Commissioner under S.59(3). I say assessment is condition precedent to tax being due for payment. S.82 has nothing to do with person who hasn't been assessed. Judge read into s.59 something which is not there. 10

S.59 and 71 are complete code re returns.

S.O. to 10.30 a.m.

18th September, 1956.

18.9.56. Bench and Bar as before.

DINGLE FOOT - continues -

p.125 line 44 et seq. p.126 line 45 et seq. p.127

Judge found subject under duty not only report but also to make a return even if not called on to do so.

Fallacy: I say only duty on taxpayer is to give notice. Cannot read into taxing statute duty by implication. Makes no distinction between chargeable and liable. Consequence is that taxpayer could be assessed without being given chance to make return. Also deprived of his personal allowances. I say there must be some limitation on s.72 - different set of circumstances to s.71. 20

COURT: May it be if there has been a default.

DINGLE FOOT: S.72 (omitting provisoes) doesn't draw any distinction between "innocent" and "guilty" taxpayer. 30

Scheme of Act clear.

1. S.59(1) Commissioner sets machinery in motion. S.59(3) "Reminder" by taxpayer.
2. Forms sent out.
3. Whether filled up or not s.71 operates. If not filled in, s.71(3) and s.89 operate. S.71(1) is mandatory. S.72 adds nothing to s.71(3). 40

COURT: S.40(3) - how do you reconcile that.

DINGLE FOOT: You can't charge penalty if acting under s.71(3). Windham J. held it was casus omissus: Kenya Civil Appeals 22-31/54.

In the Court of Appeal

No.18.

Notes of arguments (Worley P.)

18th September, 1956 - continued.

Cram J. refused to follow this. see pp.129-130 Don't ask Court to say which is right. If notices have been sent out, an assessment must be made under s.71, even though there has been an assessment under s.72. Logical consequence is that s.72 is a supplementary section. If ambiguity, it ought to be resolved in favour of taxpayer.

R. v. Chapman 1931 2 K.B. 606,609. 1 E.A.C.A. 80 at p.90: 2nd para. I must accept that. But I say qualification only applies where taxpayer is claiming relief. Not where you are considering general question of liability to tax or penalty.

Russell v. Scott 1948 A.C. 422,433 - Lord Simonds - last para. I say principle applies to sections under which assessments are made.

3rd Alternative submission:

Assuming Sections 71 and 72 overlap, then I say Department must choose - if he has started under s.71 he can't switch to s.72.

Gould v. Bacup L.B. 50 L.J. M.C.44.

If you proceed under s.71 taxpayer has certain advantages. Can furnish return and claim allowances, which he can't do under s.72.

If 71(1) is applied, matter settled - under s.72 taxpayer has onus of showing assessment is wrong, and must establish his claim to allowances.

4thly: Assessment was or must be taken to be made under s.71 and not under s.72. See p.30 letter of 15/6, 2nd para. p.33 14.7.53 first para. p.34(b) p.36 para.5. I say this shews Court was misunderstanding Appellant's objection - no ref. to s.72.

p.18 Memo of Appeal para. 1.

p.21 Statement of Facts para. 6.

p.24 Respondents Statement para. 2.

"and accordingly". I say this shews that they were acting under s.71(3). But see p.24 para.4 - suggests proviso to s.72 invoked.

Assessments made by Holden. Holden p.63 lines 1-31.

Fisher p.52 line 16 - Re-examination by Salter.

Martin said he could only act under s.72 if he wanted to go beyond 7 years. I say he is

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Notes of arguments (Worley P.)

18th September, 1956 - continued.

wrong in this. Department having acted under s.59, they normally would go under section 71. I say Martin should not have been allowed to say he was acting under s.72.

Was Judge right in refusing to remit penalties?

TO COURT: Appellant is prepared to undertake to leave with revenue authorities the amount already paid as tax due. If this Court cannot exercise discretion vested in first Appellate Court, then I have to show that Cram J. went wrong. No doubt Appellant wholly at fault till 1951. After that Department at fault - p.101 Newbold. 10

Judge should have taken account of this.

COURT: But he did - he remitted penalty for 1951.

DINGLE FOOT: But he should have done more - the evidence didn't justify his view that Appellant was trying to evade tax.

s.40(2) latter part.

s.78(6) gives Judge in default discretion. 20

I say Judge in at least as good a position as the Commissioner - latter's duty to bring all relevant matters before Judge. As to this Court, I say Order in Council puts this Court in same position as Court below. S.78(10) limits appeal. Where you have in first appellate a discretion the position is different. Sub-section (10) deals only with grounds of appeal. I can't ask Court to try case over again. But if facts are clear, same effect 30 must be given to Order in Council and Court must consider whether it has discretion to remit penalties. If there is difficulty in reconciling the two, the Order in Council prevails.

Much of which Cram J. said related to correspondence between parties subsequent to 1951 particularly in 1953. Appellant's refusal to pay £2,000 has nothing to do with remission of penalties. 40

To 2.15 p.m.

2.15 p.m. Bench and Bar as before:

HOOTON:

Merits of case - legal practitioner who for 14 years hadn't paid 1d. of tax and up to 1951 had given no notice of liability. In 1953 assessed for tax - shortly before that

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he is asked to complete a document (which he didn't). Given 30 days to send it back. Because 30 days not allowed to run (after period of 11 years) we are told assessment is invalid. If that is so, the same assessments would or could be made again.

Granted strict construction of statute, this appeal can only succeed if it is shown there is no lawful authority for these assessments. Concede it doesn't depend on Martin's evidence. I say s.72 is authority. S.72 is "stop-gap" section. Doesn't require that in fact a person hasn't been assessed - merely that it should appear to Commissioner that taxpayer hasn't been assessed. If there has been a previous assessment no hardship is worked. Nothing final about an assessment unless person assessed doesn't object. It's an intermediate step which may be followed by objection or appeal.

Only chargeable income can be taxed. S.72 not intended to be used in normal case, but can be used in any case in which "it appears to the Commissioner" that no assessment has been made. That is the only limitation. Holden could and should have assessed under s.72 in 1951. It is said that once a return has been demanded s.72 cannot be employed: nothing in Act to support this. S.59 prescribed no time for demanding return - merely one of general powers to require information - not mandatory. I concede that s.71 contemplates the normal case, but that doesn't restrict s.72. Courts will always deal with arbitrary action.

S.71 It is said if Commissioner acting under s.71 the assessments invalid because 30 days not elapsed. Each sub-section should be read as disjunctive - no express inter-relation and no necessary implication - each to be read as if separate section. Sub-section (1) imposes a duty of Commissioner - (2) and (3) confer powers. I say that s.59 prescribes no time limit and that even if return demanded -

(a) if returned in less than 30 days, assessment can be made within that period:

(b) Commissioner could act at once within 30 days under s.71(3).

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S.72 in order to assess for first three years there had to be "wilful default" - and that only under first proviso to s.72.

S.40(1)(a) - imposition of treble tax is automatic where there has been a default. Can only be remitted if Commissioner (or Judge) is satisfied that the default is not due to "fraud, or gross or wilful neglect" Default of Department in 1951 has nothing to do with it. I say last part of (2) merely gives Commissioner power to remit all or part of penalty as he thinks fit. (Quaere, if (2) covers failure to give notice) Commissioner can only be satisfied on information furnished by taxpayer. In instant case, taxpayer can't be heard to say that he didn't know of his duty to send a notice. 10

I agree that the Department was willing to consider some concessions in 1951 if they were provided with reliable information. But this information has never yet been furnished. I say that the gross or wilful neglect was practically indistinguishable from fraud. Conduct since 1953 clearly relevant. 20

p.26 Martin's letter 26.5.53 - not supplied to this day. Cross-examination of Appellant on trial balance shews the so-called trial balances were useless.

p.61 line 28 - no payment ever made until after decision on first appeal. 30

p.62 line 20 et seq - Semblance of frankness but no accounts of any balance ever supplied.

p.79 Martin estimated assessment on the undisputed income - that is one now in question.

p.76 15.6.53: request for £2,000.

I concede no statutory obligation on taxpayer to furnish return proprio motu - his duty is to send notice.

p.34 - nothing to stop him making out returns for 1943 long before this. 40

Goes through correspondence pp.35-46.

If delay in Department for 17 months, how can it affect Appellant's delay for 10 years. Letters show clearly Appellant's attitude to Income Tax Department. Clear liability for £2,000 - constantly asked for but never paid. Information continually asked for but never supplied.

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Judge quite correct in not remitting any part of penalties (other than for 1951). If assessments valid, and if there was gross and wilful neglect of degree suggested, the language of Judge is immaterial. This Court will be slow to say discretion exercised on wrong principle.

DINGLE FOOT in reply:-

I agree s.72 is stop-gap - only question is what is gap to be stopped? I say that once assessment made under s.72 no personal allowances can be claimed. Further the onus is shifted to the taxpayer.

S.71 - "shall" and "may"

Maxwell - 10th Ed. 239-240.

"Wilful neglect" - here no approach to fraud or near fraud - voluntary disclosure. Suggestion of possible remission: - p.51 line 30 Fisher.

Sufficiency of trial balances.

p.61 Holden didn't complain they were not useful so far as they went.

p.34 F. - Appellant had already been assessed.

Appellant's conduct:-

p. - explanation of financial position.

COURT: He could have realised his house property. Judge never considered whether second limb of s.40(2) should be applied.

Holden's delay; more than 17 months.

Ex "1" p.190.

C. A. V.

8.9.56. Civil Appeal No. 31 of 1956

Coram: Worley P.

For Appellant: G.R.Mandavia in person.

For Respondent: Hooton for E.A.High Commission.

Judgments read by me. Appeal dismissed: order in terms proposed in judgment of Briggs J.A.

(Sgd.) N. A. Worley.

President.

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Court of Appeal

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1956.

(1) Briggs,
(J.A.)

No. 19.

JUDGMENTS

(Title)

JUDGMENT OF BRIGGS J.A.

This is an appeal by the taxpayer from a judgment and decree of the Supreme Court of Kenya dismissing his appeal against certain assessments to income tax.

The Appellant, who was resident in Kenya, became chargeable with tax in respect of the year of income 1942, and was also chargeable for the years 1943 to 1950 inclusive. He did not make any return at any time on or before 1951, and did not at any time before 1951 give notice to the Commissioner that he was so chargeable. He was thus repeatedly and gravely in default over a period of several years. 10

In 1951, and before 15th October of that year, he gave notice orally to the Commissioner that he was chargeable in respect of the year of income 1950 and the previous eight years. The Commissioner did not at once by notice in writing require him to furnish returns, but a Mr. Holden, who was then one of the Commissioner's officers, discussed matters with the taxpayer and they had some correspondence with the object of ascertaining the extent of liability. Mr. Holden asked the taxpayer for various accounts and other materials relevant for this purpose and received some, but by no means all, of what he asked, or what was reasonably necessary. Mr. Holden, admittedly in grave breach of his duty, appears then to have allowed the whole matter to lapse, and nothing further was done until a Mr.Martin, who had become head of the Investigation Branch, discovered in 1953 what had occurred. The taxpayer was, though still resident in East Africa, at that time in England, and on 26th May, 1953, the Regional Commissioner wrote to him at his Nairobi address setting out the facts of the case and calling for various accounts and other documents and information. He also sent under separate cover appropriate forms for the years of assessment 1943-1951 inclusive. These forms are each two documents in one, comprising a notice in writing by the Commissioner requiring the taxpayer

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to make a return, and the form of return itself, which is to be completed by the taxpayer and submitted within the time stated in the notice. This time must not be less than thirty days from "service" of the notice, and service when effected by post is deemed to have been effected "not later than the seventh day succeeding the day on which the notice would have been received in the ordinary course by post", in this case at the Nairobi address.
10 It would seem, therefore that the Commissioner could not in prudence have fixed the limit of time for making returns at less than, say, two days for ordinary course of post, plus seven days, plus thirty days, from the 26th May. The forms were not in evidence and we do not know what date was in fact fixed. In the letter of 26th May the Commissioner also called on the taxpayer to make an immediate payment on account of £2,000, a sum admittedly much less than the amount due by him,
20 even if he were given credit for all possible allowances and not charged with any triple tax by way of penalty. The taxpayer wrote from England on 4th June acknowledging the letter of 26th May, which presumably had been forwarded by airmail. He implied that he had not received the forms of return, which may have been forwarded by sea, and promised to fill up the forms and co-operate in every way, but not until after his return to East Africa, which, he said, could not be before the
30 end of July and might be much later. He said also that he was "not in a position to pay any deposit".

On 15th June the Regional Commissioner replied noting that the taxpayer could not, or would not, take any action until after the end of July, which would presumably have been substantially later than the time fixed by the notices for submitting returns. He said that to prevent further delay he proposed at once to assess the taxpayer for the years of assessment 1943 - 1951 inclusive and to
40 include penalties in the assessments, but that final adjustment both as regards initial liability and penalties could be made at a later date. He repeated the request for a deposit. In the next day or two the assessments were duly made for sums totalling Shs.454,628. They were, however, post-dated 26th June, 1953, and this is now said to have a sinister significance. The taxpayer at once objected that the assessments were premature and unlawful. The Commissioner refused to withdraw

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(1) Briggs, (J.A.) continued.

or amend them, and the taxpayer appealed to the Supreme Court.

It should be noted that over the earlier years in issue in this case the Kenya Income Tax Ordinance, 1940, (later Cap. 254) was in force. It was replaced with effect from 1st January 1951 by the East African Income Tax (Management) Act, 1952. We are assured by Counsel that all relevant provisions in the two statutes are in pari materia, and I propose for convenience to do as they did, and refer only to the sections of the Act, leaving it to be understood that in many cases the governing provision was really the corresponding section of the Ordinance.

I think that at this stage, and indeed until much later, there was a genuine misunderstanding between the parties. The taxpayer believed that he had been assessed under s.71 of the Act, whereas the Commissioner had intended to assess, and had assessed, whether rightly or wrongly, under s.72. When Mr.Martin gave evidence in the Supreme Court about this, he was attacked very strongly, but the learned Judge accepted his evidence, and I think rightly. The importance of the matter is this. Under s.71 the Commissioner is to assess "as soon as may be after the expiration of the time allowed ..... for delivery of (the) return". It seems clear from this and from the whole tenor of the section that an assessment made before that time had elapsed would be irregular and a nullity. The assessments in this case were certainly made before the time which should properly have been limited had run out, and we must presume that a proper time was given. It was to this that the Appellant intended to refer when he said that the assessments were made "prematurely"; but he did not state it anywhere with precision, or refer to s.71. The Commissioner's reply to the objection was that, where assessments were made in 1953 to cover liabilities up to 1950, "prematurely" was the wrong word to use of them. It seems clear to me that the question of the time limited by the notice did not then appear to him to be relevant. He thought the taxpayer was merely complaining generally that he was being hustled, if I may so put it, at a time and in a way which was inconvenient to him. The question of premature assessment was raised in the memorandum of appeal to the Supreme Court, and some dates were given in the taxpayer's statement

of facts, but again s.71 was not mentioned, and I think it came as a genuine surprise to Mr. Martin when it was suggested that he had acted under that section. It was put to him that the date 26th June 1953 was inserted in the assessments to make it appear that they were made more than 30 days after being posted (on 26th May) to the taxpayer. He replied that the object of post-dating was to give time for them to reach the taxpayer and still give him his full forty days under s.82 for payment. This was a most reasonable explanation, and I think almost certainly a true one. In the first place, I am not prepared to accept that the notices in this case required returns to be submitted on or before 25th June 1953. To have fixed so early a date would have been both irregular and contrary to normal practice. I should expect the date fixed to be somewhere about 7th to 14th July. If this was so, the date 26th June would still be within the time limited, and could not have been chosen for the reason suggested. There is however, an additional point which seems conclusively to show that Mr. Martin's evidence that he intended to act under s.72 was not, as suggested, a last-minute invention, but was perfectly true. In the Respondent's statement of facts (S.4) it appears that for reasons given the Commissioner considered that the taxpayer was guilty of wilful default "and, accordingly, made assessments in respect of periods prior to the seventh year of income from the date upon which the assessments were made". These words seem to refer directly to the provisions of s.72, and would, so far as I can see, be irrelevant if the assessments had been made under s.71. As I have said, the learned Judge was satisfied that the assessments were intended to be made, and were made, under s.72, and I am inclined to think that this was a finding of pure fact which we should not be entitled to disturb. One of the submissions made for the Appellant was, however, that Mr. Martin must in the circumstances be deemed to have acted under s.71. This appeared to be a submission of mixed law and fact and we heard full argument on it. My conclusion is that, so far as the question is one of fact, the learned Judge below was right, and if Mr. Martin intended to act, and thought he was acting, under s.72 I see no reason whatever why he should be "deemed" to have acted under s.71, though I am prepared to accept that the taxpayer may have thought he was doing so.

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I should perhaps add that it does not appear from the notices of assessment themselves under which section they were, or purported to be, made.

The submission for the taxpayer to which I have referred came logically fourth in order, though I have found it convenient to dispose of it first. The first submission made was that section 71 as a whole operates only after notice requiring submission of a return has been served, and in the absence of such notice no assessment can be made thereunder. In particular, sub-section (3) only operates when there has been actual default in making the return. Unless the time limited therefore has run out, it cannot properly be said that the taxpayer "has not delivered a return", and consequently an assessment cannot be made under that sub-section. With regard to this submission, it is only necessary to say that the Commissioner did not seriously contest it, since his case was that the assessments were made under s.72. I think the submission was almost certainly correct, though it is not strictly necessary to decide the point.

The second, and principal, submission for the Appellant is that s.72 applies only in cases where the taxpayer has made a return. If he has failed to make a return, s.72 has no application and he can be assessed only under s.71(3). The third submission is alternative to the second, and is that sections 71 and 72 afford the Commissioner alternative courses of action in any case. He may elect to use either section, but cannot use both at the same time. If he serves notice requiring a return to be made, he is bound by that notice in the sense that he must wait until the time limited has expired, and can then assess under s. 71(3), but cannot before time has expired assess under s.72. It is implicit in the third submission that s.72 can apply whether or not a return has been made.

In addition to the question of the legality of the assessments the learned Judge on first appeal was asked to consider the question of quantum, and in particular to reduce the assessments by remitting the triple tax charged as penalty. He held that the assessments were lawfully and properly made under s.72, but that there was sufficient ground for remitting the penalty claimed for the

year of assessment 1951. This amounted to Shs. 138,054, the taxpayer's income having been considerably higher in that year than in previous ones. This deduction reduced the total claimed to Shs. 316,574, of which Shs. 202,917, represents penalties and Shs. 113,657, normal tax. We are informed that the amount due for normal tax has now been paid, but the penalties have not. Before us it was submitted that the learned Judge had exercised his discretion to remit penalties on wrong principles, and that we ought, if the assessments were not quashed in toto, to remit them to the Commissioner or to the Supreme Court to consider on a proper basis the remission of the whole or part of the sum of Shs. 202,917. Alternatively it was submitted that we should ourselves exercise the discretion vested in the learned Judge on first appeal and grant remission.

I turn now to the impressive argument addressed to us by Mr. Dingle Foot in support of the Appellant's second submission. It begins from the historical angle. It is submitted that sections 71 and 72 of the Act both have their origin in s.125 of the United Kingdom Income Tax Act, 1918, now s.41 of the Income Tax Act, 1952. On the question of time for exercise of the powers given by s.41, s.47 of the Act of 1952 is also relevant. In general, this must be accepted. The argument proceeds that, so far as possible, sections 71 and 72 should be read as conferring together powers similar to those given by s.41, but not further or additional powers. The contention that s. 72 does not apply unless a return has been made is supported by the consideration that there is no restriction of time for assessments made under s. 71(3), or in cases of wilful default or fraud where assessments are made under s.72, but there is a limit of seven years in other cases under s.72. This suggests that section 72, apart from proviso (a), is directed to cases where the taxpayer has done his full duty, and the failure to assess or under-assessment has been due to the fault of the Commissioner.

From this point it is necessary to diverge at some length on the question when and how liability to pay tax arises. The learned Judge on first appeal took the view that section 8 of the Act creates an immediate liability to pay such income

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tax as may, under all the provisions of the Act relevant for that purpose, be found to be due. He held, in effect, that returns and assessments are really no more than machinery for resolving doubts which might otherwise exist as to the amount of the debt in any case, and do not in truth determine that amount. On this view he held that from 1943 onwards the taxpayer had been in default, not only in failing to give notice of chargeability, but also in failing to pay in each year tax actually 10 due and payable by him, although not assessed. I think that this is incorrect. It is clearly not correct in England. See Konstam's Income Tax, 12th Ed. S S 425 et seq. And I think the system is the same in East Africa. The charging section (s.8) creates only what I would call a notional liability, which crystallizes into an actual debt only upon assessment, whether made in the ordinary course under s.71, or in special cases under some other section. Even so, the debt is not normally 20 payable upon assessment, but at a later time (s.82 (1)). Contrast special provisions to meet unusual circumstances, such as ss. 82(2), 84(2) and (3), and 56. That there can be no default by non-payment in the absence of assessment is, I think, clear also from s. 83(1). It is true that the words of s. 82(1) might be read as meaning that, even without assessment, tax is payable "within nine months of the end of the year of income"; but I think that, having regard to the scheme of the 30 Act as a whole, that is not the meaning. I think the sub-section means that, apart from special cases, where assessment has been made, payment is not in any case due until forty days after assessment and, if the assessment is made more than forty days before 30th September of the year of assessment, payment is not due until 30th September.

I return to Mr. Dingle Foot's second submission. He stressed the difference between the words "chargeable with tax" in s.71 and "liable to 40 tax" in s. 72, and suggested that since, on the wording of s. 72, there may be a "person liable to tax" who "has not been assessed", liability cannot depend wholly on assessment. He cited in support of this dicta of Rankin C.J. in In re Krishnakumar and Another, 58 Cal. 906, approved by the Privy Council in Rajendra v. I.T.C. 61 I.A.10, on the meaning of the words "escape assessment" in s. 34 of the Indian Act. I do not find much assistance

in these cases. I think the words "liable to tax" in s. 72 are used in a loose, or, to use a politer word, a proleptic, sense, and mean "who is, or ought to be made, liable to tax". If one abandons the principle that liability depends on assessment, the result may be chaos. If I understood the argument aright, it was that the departure from that principle indicated by the words "liable to tax" in s. 72 is not so grave where a return has been made as it would be if no return had been made, so s. 72 should be read as applicable only where there has been a return.

The learned Judge in the Court below held that every person chargeable with tax is automatically under a duty to make a return of income within nine months of the time when the tax becomes chargeable. I cannot accept this view. On the plain wording of s. 59 the taxpayer must make a return when required by notice to do so. I can find no indication anywhere in the Act that he can be under a duty to make a return unless that notice has been or is deemed to have been, served on him. The other view also involves consequences of extreme inconvenience, having regard to the practice of the Department. Returns are in practice made on a printed form supplied by the Department and forming part of the same document as the notice requiring a return. A duplicate is supplied for retention by the taxpayer, but a note appears on this that a return made on it will not be accepted. Under s. 35 claims for allowances may be made only on the "specified form", which is in fact the ordinary form of return, or part of the same document. There is clearly no intention that "home-made" returns should be sent in at random without notice. The learned Judge appears to have considered that "liability to tax", and so liability to be assessed under s. 72, might spring from failure to make a return, although no notice requiring a return had been served. I cannot accept this view, and I think the solution I have suggested, that "liable" in s. 72 is used proleptically, is not only a simpler escape from the difficulty, but gains some support from the English s. 41(1)(i)(a), which provides that where no assessment has been made "the surveyor shall .... assess the person liable to the full amount". There is no "person liable" in the earlier words of the section, and I think that here also the word "liable" is used proleptically. The taxpayer is assessed so as to

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(1) Briggs (J.A.) continued.

make him liable. If s.72 were confined, as the marginal note suggests, to additional assessments, there would be no difficulty. It is not impossible that it was first drafted to apply only to additional assessments, and that when the words allowing first assessments under it were added the inappropriateness of the words "liable to tax" escaped notice. I have found no other example in the Act of confusion between chargeability and liability, and appreciate that my suggested construction is a bold one, but I see no satisfactory alternative. It may be slightly assisted by the point that, in order to bring s.72 into operation, it is not necessary that the taxpayer should in fact be liable to tax, but only that it should appear to the Commissioner that he is so liable. Contrast s.71, which depends on fact, not on opinion.

Mr. Dingle Foot's argument continues, that s.72 should have a restricted rather than a general application, because it inflicts hardship on the taxpayer. He cannot, for example, claim allowances, for he will never have had the "specified form", if he is assessed before making a return. The taxpayer relied on the principle that, where a penal statute or a taxing statute is of ambiguous meaning, the construction more favourable to the subject should be adopted, and cited in support R. v Chapman, (1931) 2 K.B. 606, 609. The provision in question in this case was not "a provision giving the taxpayer relief in certain cases from a section clearly imposing liability", and was not within the exception that such provisions need not be construed in the taxpayer's favour. See C.I.T. v. J., 1 E.A.T.C. 80, 90, and cases there cited. On the other hand, the case was within the principle laid down by Viscount Simon in Russell v. Scott, (1948) A.C. 422, at p. 433, where he said -

> " I must add that the language of the rule is so obscure and so difficult to expound with confidence that - without seeking to apply any different principle of construction to a Revenue Act than would be proper in the case of legislation of a different kind - I feel that the taxpayer is entitled to demand that his liability to a higher charge should be made out with reasonable clearness before he is adversely affected. In the present instance, this reasonable clearness is wanting".

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Finally Mr. Dingle Foot dealt with the objection that his second submission does not accord with the wording of s.40(3) of the Act, which clearly implies that s.72 may be brought into play where returns have not been furnished. He referred to the decision of Windham J. in Kenya Civil Appeals Nos. 22-31 of 1954; unreported, where it was held that, if the assessment is made under s.71(3), the wording of s.40(3)- precludes the inclusion of penalties, and pointed out that the learned Judge below in the present case disagreed with that construction, though the passage was obiter, since here the assessments were under s.72. Whichever of these views may be right, and I think it quite unnecessary to decide the question, I find s.40(3) a very serious obstacle to the acceptance of the second submission. We are being asked in the first place to read into s.72 certain words which are not there, and here is another provision of the Act which clearly suggests that they were never intended to be there. Even if s.40(3) is defective in other respects, I do not think that detracts from its importance for this purpose. But before dealing further with the second submission I must deal shortly with the third.

It is submitted that, if sections 71 and 72 overlap, in the sense that where no return has been submitted it might be possible to use either, the Commissioner must elect under which section he will proceed. If he has served notice requiring a return, that amounts to an election to proceed under s.71. He is then obliged to wait until either a return has been made, in which case he assesses under s.71(2), or the time limited for making the return has run out, in which case he can assess under s.71(3). He cannot in any event assess in the first place under s.72, either before or after time has run out, though s.72 might later permit an additional assessment. Mr.Dingle Foot referred in support of this contention to Gould v. Bacup, (1881) 50 L.J. M.C. 44. I accept the principle that, where a statutory authority may apply two methods of pressure to a subject, an expressed intention to apply one method may preclude the authority from changing its mind and applying the other; but I do not think the principle is applicable here.

In the course of describing the second and

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third submissions I have set out certain objections which may be urged against their acceptance. Some of these are substantial. But I think the real answer to the second submission is not one of detail, but is based on a consideration of the whole purpose and policy of the Act. The construction for which the taxpayer contends is certainly not a "natural" construction. If it had been intended to restrict the use of s.72 to cases where a return has been made, it would have been perfectly simple to say so. And the consequences of rejecting the submission are by no means necessarily so serious to the subject as Mr. Dingle Foot suggests. It is not necessary for the Commissioner to contend that s.72 has in practice an unlimited scope. If the Department were to abandon altogether the practice of requiring returns to be made, and began to assess in every case by guesswork under s.72, the Courts might not be slow to say that the powers given by the Act were being abused. But where powers given to a Department of Government, or other statutory authority, are capable of being, through perversity, misused, it does not follow that they are likely to be misused, and much less does it follow that they should be construed in an unnaturally restricted sense merely because of the theoretical danger of misuse.

I reject the historical argument, first, because it is always unwise to expect one set of statutory provisions to have the same effect as an earlier set in another jurisdiction which are in a widely different form, even if parentage is established. Secondly, it is by no means unreasonable that the legislatures of Kenya and East Africa should have thought it necessary to give wider powers to the Department here than those enjoyed by their colleagues in England. Circumstances in East Africa may make such wider powers essential. Thirdly, as I have suggested, there are slight indications in the form of s.72 that it was deliberately widened in scope after initial drafting.

It was suggested in argument that the correct view of s.72 might be that it applies only in cases of default by the taxpayer. Since Mr. Dingle Foot's client has been so obviously in default, this suggestion could not be expected to commend itself to him. I think it is still too restrictive. One of the cases which the section seems

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(1) Briggs (J.A.) continued.

designed to meet is where there has been default, or something like it, in the Department. I think Mr. Hooton for the Commissioner described it fairly as a "stop-gap" section. Mr. Dingle Foot would accept that on the footing that only one kind of gap was intended to be stopped, the gap where a return has been made, but no adequate assessment based on it. I think the true purpose and meaning of the section is that it is intended to be applied in practically any case where the course of collection of tax has not "run smooth", whatever the reason may have been. Consider for a moment the facts of this case. The taxpayer is in grave default for many years. He reports to the Department and is handed over to an officer almost as dilatory as himself. In 1953 practically nothing has been done and ten years tax is unpaid. To suggest that in such a case the Commissioner must go through all the usual routine before he can begin to collect anything seems to me most unreasonable. One would expect that the legislature would have provided him with a powerful weapon which in such a case could be used immediately. I think s.72 is such a weapon. The occasions on which it may properly be used are not defined, partly because any definition might accidentally exclude some cases which should be included, and partly because there is no reason to suspect that it would be used in cases where it should not be. In this case it was properly used, subject to what remains to be said concerning the third submission.

Mr. Dingle Foot placed much reliance on the point that the duty to assess under s.71(1) is mandatory and without exception. He argued that, if an assessment is made under s.72 and a return is later made, there must be another assessment under s.71, quod est absurdum. He raised this point on both his second and third submissions, as I understood it; but from either point of view there seems to be no absurdity at all. In some cases of assessment before return under s.72 the Commissioner may have some material to work on, but quite often he will assess purely by guesswork. He may assess too low. He must still have available the right to call for returns and other material in order to ascertain whether an additional assessment is necessary. If his assessment under s.72 is high, he may be prepared, as he was in this case, to reduce it after considering a return and

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28th September, 1956.

(1) Briggs (J.A.) continued.

all other relevant material, and if the taxpayer is reasonably co-operative. A re-assessment, or amended assessment, may be necessary, and in practice is frequently made. I think the argument for the Appellant is without weight in relation to either submission. If, as I have held, sections 71 and 72 overlap pro tanto, I think the principle of Gould v. Bacup should only be applied if a switch from one section to another could be shown to be unfair in practice to the taxpayer. He relies on inability to claim allowances; but this is being unduly technical. If he had been prepared to submit returns with proper accounts and other information, he could have had his allowances long ago. Instead, he has chosen to rely on a dangerously self-contradictory line of argument. He says the assessments are invalid and nullities, and apparently uses that as excuse for having done nothing since they were made; but, if they were nullities, they could not destroy or affect his obligation to make returns as required. It is his failure to make returns which has at long last caused him to lose the benefit of allowances. Where there is long-standing default, it cannot be unfair to the taxpayer to assess first under s.72 and at the same time, or before or after, to call for returns. I see neither merit nor sound legal basis for the third submission.

For these reasons I am of opinion that the assessments were lawfully made under s.72, and I have no doubt that there was such wilful default as entitled the Commissioner under proviso (a) to go back beyond the seven year period. It remains to consider the question of penalties.

I consider this a very bad case of wilful default. The taxpayer is and was at material times a practising lawyer. He cannot have been in the slightest doubt at any time prior to May 1951 that he was wrongfully evading payment of tax. I think it is permissible to look at his conduct as a whole after that date as an indication of his motives and frame of mind before he gave notice of chargeability. Judging from the facts as a whole I am satisfied that this was not a case of mere negligence, but of deliberate and wilful evasion. It was not, however, a case of fraud, and it can also be said for the taxpayer that he did at last take the initiative and give notice that he was chargeable. He was not merely found out and brought to

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(1) Briggs (J.A.) continued.

book. Also, the delay from 1951 to May 1953 was not his fault, or at worst was only his fault in a slight degree. It was mainly, if not wholly, Mr. Holden's fault. I can think of little more that can be said on the taxpayer's behalf, and if I were sitting on first appeal I should not necessarily feel obliged to remit any part of the penalties now assessed. There can be worse cases than this, but they are apt to lead to prosecutions and sentences of imprisonment as well as penalties. On the other hand we are sitting in second appeal and I think we must, as asked, examine the basis on which the learned Judge below approached the question of penalties and consider whether it was correct. It must be noted, first, that the materials in the Commissioner's hands when he made the assessments, though of assistance to him, afforded no certainty that the basic assessments, apart from penalties, were sufficiently high, and we have still no means of judging whether this was so. Secondly, the taxpayer has not made any offer or submission to pay partial penalties, even on a basis of the equivalent of interest on money overdue. This would represent a very substantial sum.

The learned Judge appears to have considered this case to be about as bad as it possibly could be. I need not quote him, but it is fair to say that the language in which he describes the taxpayer and his conduct is vigorous and at times verges on the immoderate. This might not matter; but I think that on one point at least the learned Judge has misdirected himself. He blamed the taxpayer for having thrown dust into the eyes of Mr. Holden in such a way that he, rather than Mr.Holden, was responsible for the delay from 1951 to 1953. I think that, on the evidence and on the admissions made by Counsel for the Commissioner, it was not open to the learned Judge so to find, and so far as his decision concerning penalties was based on this finding it proceeded on a wrong principle. It is impossible to be certain that this particular finding did not affect the decision on penalties. Again, I think there is a real danger that the decision on penalties may have been effected by the view which the learned Judge took, erroneously, as I think, concerning obligation to make returns without demand and to pay tax before assessment. It is possible that none of these matters affected the decision, but I cannot feel confident that that is so. In the circumstances, the remission of all

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(1) Briggs (J.A.) continued.

penalties for 1951 must be confirmed, since they were not chargeable and in any case there is no cross-appeal, but the refusal to remit or reduce penalties for the years 1943-1950 inclusive must be taken to have been arrived at unjudicially and must be set aside. The question of those penalties must therefore be reconsidered. On the other hand I do not wish this matter to be prolonged indefinitely. I cannot conceive that it would be proper to remit all the penalties, and I think the taxpayer should be made to pay some of them at once. I would therefore confirm the assessments for 1943-1951 inclusive as regards the basic tax, and confirm that part of the assessments for 1943-1950 inclusive which levies a penalty equal to the amount of the basic tax for each year. These penalties together amount to Shs.67,639. As regards those parts of the assessments for 1943-1950 inclusive which levy the further penalty equal to twice the amount of basic tax, a total of Shs.135,278, I would remit them to the Supreme Court for retrial by another Judge of the issue whether the whole or any and what part thereof should be remitted. I would add a direction that the Commissioner may, if he so desires, before the rehearing require all such returns to be made and accounts and information, including claims for allowances, submitted, as will enable him to assess to his satisfaction the true basic liability to tax of the taxpayer for the years in issue. If the Commissioner has the true figures, it will clearly be much easier for him to reconsider his claim for penalties and, if so advised, modify it. This might even result in agreement which would obviate re-trial, and would, at the worst, greatly facilitate the task of the Supreme Court when the trial of the issue takes place.

In the result, I think the appeal fails generally, but there should be a re-trial on one issue, as I have indicated. In view of this I would order that the taxpayer should pay two-thirds of the Commissioner's costs of this appeal. The order of the Court below as to costs of the first appeal should stand and the costs of the retrial will be in the discretion of the Judge.

F. A. Briggs,
Justice of Appeal.

Nairobi,
28th September, 1956.

In the Court of Appeal

No.19.

Judgments.

28th September, 1956 - continued.

(2) Worley (P.)

(3) Sinclair (V.P.)

JUDGMENT OF WORLEY P.

I also agree and do not wish to add anything. An order will be made in the terms proposed in the judgment of the learned Justice of Appeal.

N. A. WORLEY,

President.

JUDGMENT OF SINCLAIR V-P.

I am in entire agreement with the judgment of the learned Justice of Appeal and have nothing to
10 add.

R. O. SINCLAIR,

Vice-President.

Nairobi,
28th September, 1956.

No.20.

Order on Appeal.

28th September, 1956.

No. 20.

ORDER ON APPEAL

(Title)

IN COURT this 28th day of September 1956.

BEFORE the Honourable the President, Sir Newnham
20 Worley, the Honourable the Vice President, Sir Ronald Sinclair and the Honourable Mr. Justice Briggs, Justice of Appeal.

O R D E R

THIS APPEAL coming on the 17th day of September, 1956, for hearing in the presence of Mr. Dingle Foot, of Her Majesty's Counsel, Advocate for the Appellant, and Mr. J. C. Hooton, Advocate for the Respondent, when it was ordered that this Appeal do stand for judgment and upon the same coming for
30 judgment IT WAS ORDERED:

In the Court of Appeal

No.20.

Order on Appeal.

28th September, 1956 - continued.

1. THAT the assessments to Income Tax raised upon the Appellant in respect of the years 1943-1951 inclusive are, so far as such assessments relate to the basic tax, confirmed.

2. THAT those parts of the assessments for the years 1943-1950 inclusive which levy a penalty equal to the amount of the basic tax in each year, that is to say a total sum of Shs.67,639/- are confirmed.

3. THAT those parts of the assessments for the years 1943-1950 inclusive which levy a further penalty equal to twice the amount of the basic tax, that is to say a total sum of Shs.135,278/- shall be remitted to the Supreme Court for retrial by a Judge (other than the Judge of the first instance) whether the whole or any and what part thereof shall be remitted. 10

4. THAT the Commissioner of Income Tax may, if he so desires. before the re-hearing referred to in paragraph 3 above, require all such returns to be made and accounts and information, including claims for allowances, to be submitted as will enable him to assess to his satisfaction the true basic liability to tax of the taxpayer for the years in issue. 20

5. THAT two-thirds of the Respondent's costs in this Appeal be paid by the Appellant.

6. THAT the Order as to costs of the Court below shall stand.

7. THAT the costs of any re-trial shall be in the discretion of the Judge. 30

Given under my hand and the Seal of the Court at Nairobi, the 28th day of September, 1956.

(Sgd.) F. Harland,

Registrar,
H.M. Court of Appeal for Eastern Africa.

Issued on the 4th day of December 1956.

In the Court of Appeal

No.21.

Notice of Motion to Suspend Execution.

5th December, 1956.

No. 21.

NOTICE OF MOTION TO SUSPEND EXECUTION.

(Title)

NOTICE OF MOTION

Under Section 7 of the Eastern African (Appeal to Privy Council) Order in Council, 1951.

TAKE NOTICE that on day, the day of 1956 at o'clock in the forenoon or so soon thereafter as he can be heard a Judge
10 of this Honourable Court will be moved by the Appellant/Applicant FOR AN ORDER THAT:

1. That the execution or operation of the Order/Judgment dated the 28th day of September, 1956 shall be suspended pending the Appeal to the Privy Council for which Conditional Leave has been granted on the 30th day of November, 1956;
2. The Costs of his Application be Costs in the Appeal to Her Majesty in Council and be awarded to the Respondent in case the Appeal is dis-
20 missed.

THIS Application is supported by an Affidavit made by the Appellant/Applicant, which is annexed hereto and will further be supported on other grounds and reasons to be offered at the hearing.

Dated at Nairobi, this 5th day of December, 1956.

Registrar,
H.M. Court of Appeal for Eastern Africa.

This Notice of Motion has been taken out by G. R. Mandavia, the Appellant/Applicant of Africa House, Government Road, P.O. Box 759, Nairobi.

To, The Legal Secretary, E.A. High Commission,
Advocate for the Commissioner of Income Tax,
Nairobi.

In the Court of Appeal

No.22.

Affidavit of Assessee in Support of Notice of Motion (with Annexures A, B & C.)

5th December, 1956.

No. 22.

AFFIDAVIT OF ASSESSEE IN SUPPORT OF NOTICE OF MOTION

(Title)

A F F I D A V I T

I, GOKULDAS RATANJI MANDAVIA of Nairobi in the Colony of Kenya make oath and say as follows :-

1. THAT on the 30th day of November, 1956, His Lordship the Honourable Mr. Justice Briggs granted my Application, being Civil Application Number 12 of 1956 for Conditional leave to appeal to Her Majesty in Council, in terms of my Draft Order as completed and initialled by His Lordship, on my undertaking to return to the Respondent's Advocate, the Draft Order drawn in pursuance of the judgment of this Honourable Court dated the 28th day of September, 1956, duly approved of by me as drawn, within 24 hours of that date; but that no directions were at that time given under Section 7 of the Eastern African(Appeals to Privy Council) Order in Council, 1951; And I make this Affidavit in support of my Application for Stay which I undertook to file within 5 days of that date.

10

20

2. THAT on the 29th day of February, 1956, I have lodged by way of Security with the Legal Secretary, E.A. High Commission Nairobi, the Advocate for the Respondent, Documents of unencumbered title to 5 landed properties, in accordance with prior agreement, to secure payment to the Respondent of a sum of approximately £10,000 to £11,000 inclusive mostly of the Triple Penalties imposed by the judgment of the Supreme Court dated the 6th day of January, 1956 in its Civil Appeal Number 33 of 1954, the cash payments then made by me of Shs.110,000/- (£5,500) having been appropriated by the Respondent to the Basic Tax and Costs allowed by that Supreme Court judgment; and at the hearing of this Application I shall crave leave to refer to the true copies of the acknowledgment of the said Documents and the correspondence of that date, annexed hereto and marked "A". The said Security is still held by the Respondent.

30

40

3. During the months of July and August, 1956, when a Mr. Martin on behalf of the Respondent demanded settlement of the triple penalty so secured, while the Civil Appeal Number 31 of 1956 was pending before this Honourable Court, the Commissioner of Income Tax himself (the Respondent) agreed to allow the collection of penalties and the amounts so demanded to remain in abeyance, and I shall crave leave to refer to copy of my letter to the Respondent dated the 15th day of August, 1956, a copy whereof marked "B" is annexed hereto, and the contents whereof have never since then been disputed or objected to by the Respondent's Department or its Investigation Branch.

4. That I have returned as undertaken to the Respondent's Advocate on the 30th day of November, 1956, the Draft Order drawn by him in pursuance of this Honourable Court's judgment of the 28th September, 1956, which has reduced the aforesaid Triple penalties by Two-thirds thereof, but as the Draft Order so extracted, reserves in paragraph 4 thereof liberty to the Respondent to call for the Returns and accounts, I have by my letter of that date offered to furnish them, (and shall crave leave to refer to a true copy of all the correspondence I have addressed the Respondent on the subject, annexed hereto and marked "C") all such accounts and returns and documents indicated in this Honourable Court's direction in that judgment of 28.9.1956, and have also, in view of a further remark in the principal judgment of that date, offered to pay Compound Interest at the official rate of 6% per annum with Yearly rests on the statutory dates for payment of taxes, on all the yearly amounts so found due, if my requests for payment of the original taxes, after deduction of allowances, as indicated in the said direction, are granted by the Respondent.

5. That the Land values of the aforesaid 5 landed properties of which the unencumbered title deeds are held by the Respondent, have gone up both in the local market and on the Roll of the City Council of Nairobi, on the basis of which latter only, the City Valuer of Nairobi had on the 29th day of February 1956, certified the

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No.22.

Affidavit of
Assessee in
Support of
Notice of Motion
(with Annexures
A, B & C.)

5th December,
1956 -
continued.

values of the land only (and each of the said 5 plots of land in Nairobi have thereon improvements in the form of Residential houses of an aggregate value equivalent to the aggregate value of the said 5 plots of land), when the Respondent accepted the security for the purpose of the then outstanding amount of some £11,000 inclusive of the triple tax referred to above; and for the purpose of the Intended Appeal to the Privy Council for which leave 10 has, as stated above, been granted to me by this Honourable Court on the 30th day of November, 1956, I am prepared, beyond securing the amount of financial payment that may be ordered on appeal by the Privy Council by a continuance of the lodgment of the aforesaid title deeds, to undertake to pay Compound Interest at the rate and in manner aforesaid, on any sum that by allowance of my Application for Stay of Execution, may remain unpaid, pen- 20 ding the decision of the Privy Council.

6. That if the operation of the execution of the Order judgment of this Honourable Court of the 28th day of September, 1956 is not suspended as prayed for by me, there will have to be a forced sale at short notice of my landed properties referred to above or of some of them, at sacrifice prices in the present times of Credit Squeeze, and this can be avoided by the grant of the Stay and the acceptance by 30 the Respondent of my offer of the aforesaid Security and of the payment of Compound Interest. Moreover, in the event of my Appeal on the question of penalties succeeding I shall have suffered irreparable loss on the forced immediate sale of my properties, for which I shall have no redress in law.

7. That I am advised and verily believe that I have good prospects of success in my Appeal to the Privy Council since there has already been 40 a partial exercise of discretion as to imposition of penalty in the judgment sought to be appealed from, and the matter of a further partial exercise of the same statutory discretion has been delegated to the Court below; and since there are several important points of law involved as to whether S.4 of the Respondent's Statement of Facts has been substantiated by

sufficient or any evidence, and as to whether Mr. Martin can contend that his Assessments appealed from were "Section 72 Additional Assessments" when in the actual assessments exhibited before the Court, the words: "Additional" were deliberately scored off for the purpose of leaving no doubt that the Assessments were no other than Section 71 assessments; and as to other matters too numerous to detail hereunder.

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No.22.

Affidavit of Assessee in Support of Notice of Motion (with Annexures A, B & C.)

5th December, 1956 - continued.

10

AND I make this Affidavit in support of my Application for an Order under this Honourable Court's powers under the aforesaid Order in Council, 1951, for staying execution of the above Order.

SWORN at Nairobi, this 5th day of December, 1956) (Sgd.) G.R. MANDAVIA.
Deponent.

Before me:

(Sgd.) K.D.Travadi,
Commissioner for Oaths.

20

A N N E X U R E "A" to the Affidavit of G.R.Mandavia sworn this 5th day of December, 1956.

Annexure "A"

(1) G.R.Mandavia's letter to Legal Secretary, E.A. High Commission: 29th February, 1956.

The Legal Secretary, E.A. High Commission, Nairobi.

Dear Sir,

re: S.C. Civil Appeal 33 of 1954

Further to my letter herein of yesterday, I send you herewith the Title Deeds as per Schedule attached, of the Five landed properties mentioned by Mr. Stephen on my behalf to Mr. Pembroke at the office of the Commissioner of Income Tax, together with the letter from the City Valuer as to the site values thereof, as arranged, for investigation of title by you.

30

Mr. Stephen will probably communicate with your office this morning, over the telephone.

Yours faithfully,

G.R. Mandavia.

In the Court of Appeal

No.22.

Affidavit of Assessee in Support of Notice of Motion (with Annexures A, B & C.)

5th December, 1956 - continued.

(2) Reference L.S./I.T.13/54.

(Legal Secretary's Chambers),
Nairobi.
29th February, 1956.

G.R.Mandavia, Esq.,
Advocate,
P.O.Box 759, Nairobi.

Dear Sir,

Re: S.C. Civil Appeal No.33 of 1954

I have to acknowledge receipt of your letter of even date enclosing Title Deeds as per Schedule attached thereto. I forward herewith a copy of the Schedule duly receipted. 10

Yours faithfully,

(Sgd.) C.D. Newbold.
Legal Secretary.

Annexure "B"

ANNEXURE "B" to the Affidavit of G.R. Mandavia sworn this 5th day of December, 1956

Nairobi, 15th August, 1956.

The Commissioner of Income Tax, 20
Investigation Branch, Nairobi.

Dear Sir,

E.A. Court of Appeal Civil Appeal 31 of 1956 and your letter and demand notes of 17.7.56.

Adverting to your demand notes Nos.5247/50 and 5270 I have been informed by Mr. Dingle Foot, Q.C. who is appearing for me in the above appeal, that on the 1st inst., when he was in Nairobi, he was on telephone communication with Mr.Winterspoon who 30 agreed that your normal practice to allow to remain in abeyance the cases which are the subject matter of appeals like the above, would be followed in this case also, and accordingly an early date for the hearing has been agreed with Mr. Hooton, the Legal Secretary, for the middle of the next month, in respect of the above appeal.

Quite likely the said arrangement with Mr. Foot has been communicated to your Section by Mr. Winterspoon, and I am merely writing this letter to point out why no other action was taken since receipt of your aforesaid letter.

Yours faithfully,

(Sgd.) G. R. Mandavia.

In the Court of Appeal

No.22.

Affidavit of Assessee in Support of Notice of Motion (with Annexures A, B & C.)

5th December, 1956 - continued.

Annexure "C"

A N N E X U R E "C" to the Affidavit of G.R.Mandavia sworn this 5th day of December, 1956.

10 Sd. K.D.T.

Nairobi,
30th November, 1956.

By hand.

The Legal Secretary, E.A. High Commission,
Advocate for Commissioner of Income Tax, Nairobi.
for attention - J. C. Hooton, Esq.

Sir,

E.A.C.A. Application No.12 of 1956 (Civil)

Pursuant to the Order made by the Honourable Mr. Justice Briggs in Chambers this morning, I re-
20 turn herewith unaltered and approved the Draft Order drawn by you in respect of the judgment in Civil Appeal No. 31 of 1956.

May I, in passing point out that paragraph 4 of the Draft Order is more in the nature of a suggestion or direction from the Bench, and if the Commissioner desires compliance therewith, I am prepared, on hearing about the same, to submit all such returns and accounts and information. I have the honour to be Sir, Your obedient Servant,

30 G.R. Mandavia.

Copy for the record of:-
The Registrar, H.M.Court of Appeal for E.A.
Nairobi.

Nairobi,
4th December, 1956.

By hand

The Legal Secretary, E.A. High Commission,
Advocate for the Commissioner of Income Tax.
for attention of J.C. Hooton, Esq.,

In the Court of Appeal

No.22.

Affidavit of Assessee in Support of Notice of Motion (with Annexures A, B & C.)

3rd December, 1956 - continued.

Sir,

E.A.C. Civil Application No. 12 of 1956
- and -
E.A.C.A. Civil Appeal 31 of 1956.

Further to my letter herein to you of the 30th ultimo, and the request I made in the second paragraph thereof for being informed if the Commissioner of Income Tax would be prepared to exercise his discretion in the matter of assessing my basic liability to tax, including claims for allowances, according to the direction of the Honourable Mr. Justice Briggs in his principal judgment of the Court dated 28th September, 1956 - I beg to add that, if your client would be prepared to make assessments on that basis I am prepared, in view of the learned Judge's remarks at the bottom of the First paragraph on page 18 of his said judgment, to pay Compound Interest at the Official rate of 6% per annum, with yearly rests on the statutory dates for payment in each year, on all sums remaining outstanding from time to time of the aggregate of the basic tax so ascertained, so as to compensate fully the Income Tax Department, for any delays in payment.

Kindly let me have your client's reaction to this request at your early convenience.

Yours faithfully,

(Sgd.) G.R.Mandavia.

No.23.

Judgment on Motion to Suspend Execution.

4th January, 1957.

No. 23.

JUDGMENT ON MOTION TO SUSPEND EXECUTION.

(Title)

JUDGMENT

WORLEY P.

The Applicant in this matter obtained conditional leave to appeal to Her Majesty in Council from the judgment and order of this Court in Civil Appeal No.31 of 1956. He then applied for an Order directing "that the execution or operation of the Order/Judgment of this Court .... be suspended

pending the appeal to the Privy Council." This application came before the learned Vice-President in Chambers, who refused it, whereupon the Applicant applied to have his application referred to the Court under Section 14(b) of the Eastern African Court of Appeal Order in Council, 1950 and Rule 19 (6) of the Eastern African Court of Appeal Rules, 1954. On 19th December 1956 after hearing the Applicant in person and Mr. Hooton, Assistant Legal Secretary, for the Respondent, we also refused the application with costs and now give our reasons.

The proceedings which have led up to the projected appeal to Her Majesty relate to assessments for East African income tax raised against the Applicant and the operative part of the order of this Court runs as follows :-

"1. That the assessments to Income Tax raised upon the Appellant in respect of the years 1943-1951 inclusive are, so far as such assessments relate to the basic tax, confirmed.

2. That those parts of the assessments for the years 1943-1950 inclusive which levy a penalty equal to the amount of the basic tax in each year, that is to say a total sum of Shs.67,639/-, are confirmed.

3. That those parts of the assessments for the years 1943-1950 inclusive which levy a further penalty equal to twice the amount of the basic tax, that is to say a total sum of Shs.135,278/-, shall be remitted to the Supreme Court for re-trial by a Judge (other than the Judge of first instance) whether the whole or any and what part thereof shall be remitted.

4. That the Commissioner of Income Tax may, if he so desires, before the re-hearing referred to in paragraph 3 above, require all such returns to be made and accounts and information, including claims for allowances, to be submitted as will enable him to assess to his satisfaction the true basic liability to tax of the taxpayer for the years in issue.

5. That two-thirds of the Respondent's costs in this appeal be paid by the Appellant.

In the Court of Appeal

No.23.

Judgment on Motion to Suspend Execution.

4th January, 1957 - continued.

6. That the Order as to costs of the Court below shall stand.

7. That the costs of any re-trial shall be in the discretion of the judge."

The present application is brought under Section 7 of the East African (Appeal to Privy Council) Order in Council, 1951 which reads:-

> "Where the judgment appealed from requires the Appellant to pay money or do any act, the Court shall have power, when granting leave to appeal, either to direct that the said judgment shall be carried into execution or that the execution thereof shall be suspended pending the appeal, as to the Court shall seem just, and in case the Court shall direct the said judgment to be carried into execution, the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security, to the satisfaction of the Court, for the due performance of such Order as Her Majesty in Council shall think fit to make thereon."

The learned Vice-President accepted Mr.Hooton's submission that the application was misconceived in that it did not come within the scope of section 7: the submission was repeated before us and we also accepted it.

The appeal to this Court was an appeal against assessments to tax raised by the Respondent and confirmed by the Supreme Court. The decision of this Court further confirmed those assessments with some modification as to penalties; it also confirmed the order for costs made in the Supreme Court and ordered the applicant to pay two-thirds of the Respondent's taxed costs of the appeal. It is contrary to the usual practice, on an application of this nature, to stay any direction for the payment of costs, provided that the Solicitor who is to receive the costs gives an undertaking to refund them if called upon to do so: Annual Practice 1956 p.1285: Wilson v. Church (No. 2) 1879 L.R.12 Ch. D. 454. Indeed, before the Vice-President, Mr. Mandavia appears to have expressly stated that he was not asking for a stay of the Order so far as it directed payment of costs. If before us he resiled from this Admission, he did so half-heartedly and without conviction.

In the Court of Appeal

No.23.

Judgment on Motion to Suspend Execution.

4th January, 1957 - continued.

But, in any case, we think that a direction to pay costs, is not of itself sufficient to bring the order appealed from within the definition of a judgment which "requires the Appellant to pay money or do any act". We think that this phrase is intended to apply to what may be termed the substantive order or orders of the Court, i.e., the order or orders embodying the determination on the issue or issues raised in the appeal to the Court. On any other view, the opening words of Section 7 would appear to be meaningless and otiose, since almost every judgment of the Court contains an order for the payment of costs by the unsuccessful party, even if it be only a declaratory judgment or one dismissing a claim.

If this view is correct, then it is clear that there is nothing in the judgment which requires the applicant/Appellant "to pay money or to do any act". As Mr. Hooton has pointed out the Commissioner cannot execute directly on the judgment but must, unless the taxpayer pays voluntarily, sue for the tax and penalties under Sections 83 and 86 of the East African Income Tax (Management) Act, 1952. He therefore submitted that the Court had no jurisdiction to order a stay since the case does not fall within the scope of Section 7 of the Order in Council and he reinforced this submission with a reference to section 78(II) of the Act which provides "notwithstanding that an appeal from the decision of the judge has been lodged, tax shall be assessed and collected in accordance with the decision of the judge". There follow provisos for adjustment should the amount of the assessment be varied either by this Court or by Her Majesty in Council.

The Applicant's answer to these arguments amounted to little more than a plea ad misericordiam. He asserted that this Court had an inherent jurisdiction to grant a stay which was not limited by Section 7 of the Order in Council, that the Commissioner was sufficiently secured by the deposit of title deeds and that a forced sale of his properties in the present conditions, whether as a consequence of further proceedings or to enable him voluntarily to discharge the assessments would involve him in heavy losses.

We found ourselves unable to accept the view that we have any wider jurisdiction to order a stay than is conferred upon us by Section 7 of the Order

In the Court of Appeal

No.23.

Judgment on Motion to Suspend Execution.

4th January, 1957 - continued.

in Council. There is nothing in Part VIII or Rule 53 of the 1954 Rules of this Court which extends or purports to extend that jurisdiction.

We therefore rest this decision solely on the ground that this application does not fall within the scope of section 7. It is accordingly not necessary for us to express any opinion on Mr. Hooton's argument that sub-section (II) of section 78 of the Act effectively prevents the exercise of the discretion to order a stay even where such discretion exists. We also express no opinion on the merits of Mr. Mandavia's application. There are points which may have to be considered by another Court if the Commissioner takes further proceedings to collect the tax and penalties confirmed by the judgment of this Court.

N. A. Worley,
President.

F. A. Briggs,
Justice of Appeal.

Roger Bacon,
Justice of Appeal.

Nairobi,
4th January, 1957.

No.24.

Order for Final Leave to Appeal to Her Majesty in Council.

28th February, 1957.

No. 24.

ORDER FOR FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL.

(Title)

O R D E R

In Chambers this 28th day of February 1957 before the Honourable Mr. Justice Bacon, Justice of Appeal.

UPON the Application presented to this Court on the 20th day of February, 1957 by the above named Appellant/Applicant for Final leave to appeal to Her Majesty in Council AND UPON READING the Affidavit of the said Applicant sworn on the 19th

day of February 1957 in support thereof and the exhibits/annexures marked 'GRM-1', 'GRM-2' and 'GRM-3' referred to therein AND UPON HEARING the Applicant and Counsel for the Respondent THIS COURT DOTH ORDER that the Application for Final leave to appeal to Her Majesty in Council be and is hereby granted AND DOTH DIRECT that the record including this Order, be dispatched to England within 14 days from the date of issue of this
10 Order AND DOTH FURTHER ORDER that the Costs of this application do abide the result of the Appeal.

In the Court of Appeal

No.24.

Order for Final Leave to Appeal to Her Majesty in Council.

28th February, 1957 - continued.

GIVEN under my hand and the Seal of the Court at Nairobi, the 28th day of February, 1957.

(Sgd.) F. Harland

Registrar.

ISSUED at Nairobi this 1st day of March, 1957.

Exhibits.

(Assessee's)

"1"

Letter, Assistant Commissioner, I.T. to Assessee.

20th June 1951.

EXHIBITS

"1". LETTER ASSISTANT COMMISSIONER TO ASSESSEE

The East African Income Tax Department,
P.O. Box 520,
Nairobi.

June 20th, 1951.

Mr.Gokuldas Ratanji Mandavia,
P.O. Box 759,
Nairobi.

Sir, 10

Following our conversation today, I confirm that you were granted two months in which to supply accounts in respect of your practice as an Advocate.

Yours faithfully,
(Sgd.) A.Holden.
Assistant Commissioner of Income Tax.

Agree extension
1 month.
A. Holden.

"2"

Letter Regional Commissioner to Assessee.

22nd May 1953.

"2". LETTER REGIONAL COMMISSIONER TO ASSESSEE. 20

Joint Income Tax
Department of Kenya
Tanganyika Uganda
and Zanzibar.

Investigation Branch,
Head Office,
P.O. Box 520,
Nairobi, Kenya.

22nd May, 1953.

I.B. 70.

Mr.G.R.Mandavia,
P.O. Box 759,
Nairobi.

Dear Sir, 30

With reference to your previous correspondence and interviews with Mr.Arthur Holden, I should be glad if you would arrange to call at this office at the earliest possible date. I suggest an appointment on Tuesday next, 26th May, at 10 a.m. If the date and time are not convenient to you, an appointment could possibly be arranged by telephone.

Yours faithfully,
(Sgd.) C. Martin,
Regional Commissioner. 40

"3". REGIONAL COMMISSIONER'S COMPUTATIONS.

Exhibits

(Assessee's)

"3"

Regional Commissioner's Computations.

G. R. MANDAVIA

LIABILITY ON PROFESSIONAL PROFITS

	1947	1948	1949	1950
Mr. M's. figures:				
Office Costs	61,334	70,136	109,048	167,950
Office Expenses	21,706	20,433	35,418	51,242
10 Net profit	39,628	49,703	73,630	116,708
B/Debts 10% Allowance claimed	3,962	4,970	7,363	11,670
Library Total increase in account	790	1,016	2,492	1,381
	4,752	5,986	9,855	13,051
Minimum profit Shs.	34,876	43,717	63,775	103,657
20 " " £.	1,743	2,185	3,188	5,182
Allowances: Personal	200	200	200	200
Children	160	120	120	120
	360	320	320	320
Chargeable to Income Tax	£ 1,383	£ 1,865	2,868	4,862
I.T. payable Shs.	3,773	6,125	11,140	21,110
30 Sur Tax		89	2,061	11,329
Total Shs.	3,773	6,214	13,201	32,439
Payable	£188.13s	£310.14s.	£660.1s.	£1621.19s.

Minimum liability

1948-51 - £2,781.7s..

Exhibits

(Assessee's)

"4"

Notice of Refusal to amend Assessments.

16th May 1954.

"4". NOTICE OF REFUSAL TO AMEND ASSESSMENTS.

Form I.T.No.23.

Please quote File No.23013 in any communication regarding this form.

East African Income Tax Department.

Notice of Refusal.

(Sections 77 and 78 of East African (Management) Act, 1952)

16th May, 1954.

Appeal No.

Assessment No.	Income Tax - Year of Assessment
IB/109	1943
IB/110	1944
IB/111	1945
IB/112	1946
IB/113	1947
IB/114	1948
IB/115	1949
IB/116	1950
IB/117	1951

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To:- Mr. Gokuldas Ratanji Mandavia,
P.O.Box 155, Dar-es-Salaam, T.T.

20

Sir,

With reference to your objection to the assessments made upon you for the years of assessment 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, I hereby give you notice that I am not prepared to amend the assessment.

You are entitled -

(a) to appeal to the Local Committee on giving me notice in writing within 30 days from the date of this notice; or

30

(b) to appeal to a judge on giving me notice in writing within 60 days of the date of this notice. Such notice cannot be accepted after 30 days or 60 days as the case may be, unless you are able to satisfy the Local Committee or the Judge that you were prevented from giving due notice owing to absence from the Colony, sickness or other reasonable cause. In the event of an Appeal to a Judge, you are also required to

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Exhibits

(Assessee's)

"4"

Notice of Refusal to amend assessments.

16th May 1954 - continued.

present a memorandum of appeal to the Court within 60 days after service of this notice.

If no appeal is made, the tax assessed, amounting to Sh:

IB/109	1943	8,600/-
IB/110	1944	10,124/-
IB/111	1945	23,600/-
IB/112	1946	23,600/-
IB/113	1947	36,224/-
IB/114	1948	32,760/-
IB/115	1949	47,200/-
IB/116	1950	88,448/-
IB/117	1951	184,072/-

is payable on or before the 15th day of July, 1954 and if payment is not made by that date a penalty of 20 per cent will be added. Will you kindly attach the remittance slip when making payment.

I am, Sir,

Your obedient servant,

(Sgd.) C. Martin,

Regional Commissioner of Income Tax.

Exhibits

(Assessee's)

"5"

Trial Balance.

1950.

"5". TRIAL BALANCE 1950.
(part) (Trial Balances 1944-49 not reproduced)

Trial Balance for the year 1950.

No.	Name	Debit	Credit	
1.	G.R.Mandavia Capital A/c.		20,461-39	
5.	Do. Personal A/c.	86,633-97		
7.	Mwakabi s/o Mwendwo	110-00		
9.	S. Karam Shah	1,086-00		
10.	Ebrahim Premji Mawani	98-50		
10.	Sunbeam Bakery	70-00		10
11.	Gulabchand Ramji Shah	24-00		
11.	Monjee Raghavjee	28,320-80		
12.	Alibhai & Co. Ltd.		33-00	
13.	Walimohamed Alibhai	307-40		
13.	D. N. Jasani	6-75		
14.	Library A/c.	19,729-92		
14.	Office Cars A/c.	11,850-00		
15.	Furniture A/c.	9,682-00		
16.	M.K.Patel and N.R.Sisodiya	460-97		20
17.	L.N.Vadgama	110-00		
17.	Harakhchand Lakhamshi	70-00		
18.	V.R. Mandavia		28,235-50	
19.	Karen Butchery		200-07	
19.	Simeon Mbuya Lolea	91-00		
20.	Rugnath Jeram Transporters Ltd.	14,412-34		
21.	Dayal Singh Labh Singh	1,359-55		
21.	N.R. Sisodiya	2,594-87		
22.	M.K. Patel		1,980-87	30
22.	P. Lal & Co.	426-00		
23.	Kotecha Bros.	27-50		
24.	Premchand Mopa Shah	58-00		
24.	G.H.C. Noronha	123-50		
25.	Sweet & Maxwell Ltd.	2,473-67		
25.	Old Mark Soap Factory	415-50		
26.	Mrs. Saheb Bagum	296-00		
26.	Karamshi & Co.	88-00		
	M.M. Desai	2,952-49		
28.	Purshottam Pargji Soni	301-68		40
		171,180-41	50,910-83	

Exhibits

(Assessee's)

"5"

Trial Balance 1950 - continued.

Line	Account	Dr.	Cr.
	28. Nathoo Karman	56-22	
	29. Esmail Naji	60-00	
	30. Comrade Engineering Works	30-00	
	30. Ngara Bkery Ltd.	45-00	
	31. Virchand Pethraj		115-08
	31. Uplands Traders & Produce Co. Ltd.	167-00	
	32. G.J. Somani	7-50	
	32. Gurubachan Singh		123-00
10	33. Thakkar & Shah	78-50	
	33. Uplands Central Trading	214-00	
	34. Raichand Kanji	73-80	
	34. Narain Singh Co.	156-00	
	35. P.J. Shukla	30-00	
	35. H.N. Jasani	60-00	
	36. Chhaganlal Somji	100-83	
	36. Chhotabhai Maganbhai Patel		104-00
	37. Monjee Raghavji and G.R. Mandavia	2,481-46	
20	38. Pl. Karioki s/o Njuguna	160-00	
	39. Dharamahi Virpar & Co.	15-00	
	39. Premchand Bhagwanji	262-00	
	40. R.R. Mandavia	28,589-81	
	41. Manibhai & Magajan		584-00
	42. Vithaldas Jamnadas	119-70	
	42. Ali Daya & Co.	90-90	
	43. Ranmal Ala	1,081-50	
	43. Ibrahim Hussein	244-00	
	44. Mohamed Ahamed	8-60	
30	45. Sewa Singh Babu Khan		520-00
	45. Chhotalal Kalyanji	250-00	
	46. Jivraj Poona	185-37	
	46. Rugnath Jeram	31-00	
	47. Noormohamed Jiwa Bhatia	32-00	
	47. Manekchand Pancha		474-00
		34,630-19	1,920-08

Exhibits

(Assessee's)

"5"

Trial Balance 1950 - continued.

No.	Account	Debit	Credit	
48.	Plot No.2489/18 Ngara Road	15,000-00		
48.	Abdulali Mohamedali		61-00	
49.	Mohamed Diwan	54-80		
49.	R.S. Patel	6,205-71		
50.	Vestock Products Co.	830-00		
50.	Mrs. C.M. Botha	17,396-40		
51.	Damji Petrol Station		350-55	
52.	Ismalia Corp. of Nairobi Ltd.		932-07	
53.	Mrs. B. Yowell	15-00		10
53.	Punja Jesang Shah	922-90		
54.	Parklands Provision Stores	375-35		
56.	Shabdin Kaluji	1,215-00		
56.	M.P. De Mello	5-00		
57.	H.B. Pelham Mather		217-84	
58.	Shah Meghji Hadha	66-00		
58.	Panachand Karamshi Shah	45-50		
59.	Chanan Singh	82-00		
59.	Bhanji Govindji and G. Harji		1,633-50	20
60.	Govind Karsan Patel	304-00		
61.	Manji Jetha	80-53		
63.	Lakhamshi Bros.	20-38		
63.	Ibrahim Garage		119-00	
64.	L.D. Vyas	1,000-00		
65.	Mrs. V. Rogers	535-30		
65.	Dhaneshwar Bhimji Mehta		648-77	
66.	G.B. Desai	5,000-00		
66.	G.R. and R.R. Mandavia	9,626-40		
67.	B.G. Dave		20-00	30
67.	Plot No.1540 Parklands	2,361-17		
68.	Plot No.668 Victoria Street	4,398-29		
68.	Plot No.676 Victoria Street	2,933-54		
69.	Plot No.1751 Belfield Road	727-37		
70.	Kanji Shamat		188-34	
70.	Shamji Vaja Shah	91-00		
		69,291-64	4,171-07	40

Exhibits

(Assessee's)

"5"

Trial Balance 1950 - continued.

	71.	E.O. Critchley	13-00	
	71.	L.N. Lakhani	53-00	
	72.	Alliance Building & Hardware	66-00	
	72.	Karmally Jaffer		319-66
	73.	C.T. Patel	63-00	
	73.	Harmanbhai M. Patel		-77
	74.	Aziz Din		80-00
	75.	Naranbhai Nagarbhai	91-65	
	75.	Mahbub Alam		1-00
10	76.	Solicitors Law Stationery Ltd.	60-00	
	76.	V.H. Patel	24-50	
	79.	Manubhai B. Patel		448-07
	80.	Modern Provision Stores	737-00	
	80.	Miss Lily Boisezon	80-00	
	81.	Tribhovan Bhurabhai		82-99
	81.	Butterworth & Co. Ltd.	97-08	
	82.	Dominion Building Co.		42-00
	82.	Bikar Singh s/o Thaker Singh	368-80	
20	83.	Manzur Alam		45-90
	83.	Sharif Yusuf	716-33	
	84.	B.I. Lobo	110-00	
	84.	Jiwaji Yusufali	28-00	
	85.	Sunder Singh & Sons	10-50	
	85.	Mohamed Tuffail	4-00	
	86.	Emil Stozky		359-55
	87.	Colonial Commercial Co.		1,054-23
	88.	M.T.H.Lawrence-Brown		349-93
30	89.	Thuo. Macharia and Maina Ikunu		975-00
	89.	Balubhai Chhotubhai	308-50	
	90.	Alibhai Jamal	17-50	
	90.	Popatlal Jethalal Kathadbhai		4-00
	91.	Miarty Nagina Singh		722-00
	91.	M.Narain Singh Gurubuksh Singh	4-00	
			2,852-86	4,484-80

Exhibits

(Assessee's)

"5"

Trial Balance 1950 - continued.

No.	Name		
93.	Lalji Makan		1,153-66
95.	Reliance Motor Service		743-40
96.	W.E. Tilley	322-82	
98.	Estate Gazette Ltd.	44-00	
98.	R.A. Lakhani		1-75
99.	Muribai w/o Shivji Jessa		23-00
99.	N.M. Tripathi Ltd.	12-75	
100.	Plot No.118/40 Dalgairns Road	2,848-66	
100.	Plot No.70, Sec.3 Eastleigh	55-17	
101.	Universal Industries Ltd.	8-00	
101.	J.M. Shah		548-55
102.	Estate of Amarshi Madhavji		4,102-29
103.	Parry & Nicoll	379-37	
104.	Nizam Mohamed & Jiwani		143-75
104.	V.P. & H.V. Bhojani etc.	323-49	
106.	Hanaraj Meghji	28-00	
106.	Sanitary Stores Ltd.	955-01	
107.	Purshottam Patel		107-67
108.	Hirji Purshottam	504-00	
108.	G.N. Shah		350-00
109.	Desai & Mehta	347-13	
110.	M. & P. Bulsara	48-50	
111.	Rami Punja & Kalyan Devshi	317-00	
112.	Rattanshi Dharamshi Jethwa	515-00	
113.	Umedbhai N. Patel	35-00	
113.	D.A. Jasani	253-85	
114.	D.P. Pajvani	4,900-00	
116.	Pritam Singh Waryam Singh	25-00	
116.	Ramniklal G. Kakkhar	150-00	
117.	Lekhraj Munshiram		40-00
117.	Jamalbhai Hirji	7-50	
118.	Mela Singh Sagoo & Co.		
118.	A. P. Patel	22-00	
119.	Abdul Karim Sai Fatch Din		13-00
119.	Pritam Singh Bharaj		115-00
		12,102-25	7,342-07

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Exhibits

(Assessee's)

"5"

Trial Balance 1950 - continued.

Line	No.	Name	Debit	Credit
	120.	Karsan Harji & Co.	735-00	
	120.	K.P. Toprani		1,585-50
	121.	Popatlal Padamshi	155-30	
	121.	Hansraj Ranmal	20-00	
	122.	Hansraj Dewji		50-00
	122.	Ranchbedbhai Marchabhai	3-50	
	123.	Modern Furniture House		50-00
	124.	Musini Saw Mills		485-00
	124.	Karman Devraj	10-00	
10	125.	Abdul P. Sutan Premji Virji	20-00	
	125.	Nairobi Printing Press		48-50
	126.	Habib Dhanji		29-00
	127.	Mavji Ratna	152-00	
	128.	S.S. Khorana		532-00
	128.	Aden Trading Co.	346-59	
	129.	C.U. Bhatt		53-33
	129.	Shukla Bros.	333-50	
	130.	C.N.M. Harrison	63-00	
20	131.	Jivraj Devraj Shah		334-34
	132.	G.E. Harrison Ellis		479-00
	132.	Hassanali Madatali	245-00	
	133.	Joans Tailoring Establishment	416-16	
	135.	Walimohamed Shad	64-00	
	135.	Dharamshi Kanji	200-00	
	136.	Odhavji Savji	373-80	
	137.	Mrs. L. Henderson	20-00	
	138.	Govindji Raghavji	9-76	
30	138.	I.B. Patel	69-33	
	139.	Sokhi Bros.	585-66	
	139.	Harry Wheelock	130-48	
	140.	Joshi General Stores	83-45	
	140.	Bhikhabhai Lallubhai Patel	39-33	
	141.	J.A.Lewis and Mrs.C.M. Botha	450-00	
	142.	Bharmal Devraj & Co.		442-00
			4,525-86	4,088-67

Exhibits

(Assessee's)

"5"

Trial Balance 1950 - continued.

No.	Name	Debit	Credit
142.	Alif Din		110-00
143.	Siqueira	10-00	
143.	Pranshankar Rattanji Mehta		151-99
144.	Jamnadas Ramji		278-50
145.	Abdul Karim	366-70	
145.	N.M. Padany		91-00
147.	Shivprasad Kantharia	20-00	
148.	Mohamed Khalil Malik	10-00	
149.	Vrajlal Vanmali Gadhia	-40	
152.	Zahur Ul Haq	20-00	
152.	Nanji Jetha		79-53
153.	Shantilal Lalji Shah	20-00	
154.	Kanji Jaga Mistry	-30	
155.	Plot No.371/2 Lenana Rd.	16,786-21	
155.	Yusuf Abdul Gani	472-83	
156.	D.V.Anandji and M.M. Patel	29-60	
157.	Maganlal V. Vadgama	39-00	
157.	Sohan Singh Harnam Singh and Others	6-00	
158.	Ram Singh (Bhatti Garage)	27-50	
159.	Bhagwandas Choitram		96-80
159.	M.F.T. Ellis		4,666-00
160.	Devshi Dhanji and Ratna Punja	320-00	
161.	Mohanlal J. Jobanputra		12-00
162.	Chhotalal G. Morjaria	62-33	
162.	Holmes & Co. Ltd.		1,877-00
163.	Universal Timber Co. Ltd.	49-50	
164.	Nandlal Velji Sodha and 6 Others		1,997-50
165.	Chaturbhai Ashabhai Patel	20-00	
165.	C. Bhailal & Co. Ltd.		12,371-65
166.	Parmatma Singh & Sons		70-57
167.	Modern Grocery Stores	15-00	
168.	Miss D. Furlong	22-00	
168.	Sultan Ali Gulam Hussein and P.J.	8-00	
		18,305-37	21,802-54

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Exhibits

(Assessee's)

"5"

Trial Balance 1950 - continued.

	169.	Files Stores	10-00	
	170.	Jayantilal Kalyanji	216-00	
	170.	Ambalal Vithalbhai		72-20
	171.	Nairobi City Stores		396-00
	172.	Kachra Samji Shah	2,249-58	
	172.	Narbheram A.Shah & Others	165-00	
	173.	B.S. Seth		992-00
	175.	20th Century Maternity Home	7-50	
	176.	Pyarali Hussein Suleman	500-00	
10	176.	Charan Singh Sher Singh	20-00	
	177.	Mr.S.J. & Mrs.C.M. Botha	4,000-00	
	178.	Maganlal Premji	2-00	
	178.	Vasai Trading Co.		190-00
	179.	Pyarali Jamal	266-13	
	180.	Purshottam Mawji	319-99	
	181.	Amritlal Damodar Joshi	17-00	
	182.	F.H.Mohamedbhai & Co.	2,172-12	
	182.	Punja Kachra Shah	10-00	
	183.	Najamuddin & Sons	126-00	
20	183.	Thakorlal G. Desai		520-00
	184.	S.C.Sarkar & Sons Ltd.	300-00	
	185.	Mohamed Rafiq	20-00	
	186.	Sultanali Gulamhussein	50-00	
	186.	Rambhai Bhovanbhai Patel	600-00	
	187.	Chhotabhai Javerbhai Patel	--	
	187.	Central Provision Stores	614-73	
	189.	Messrs. B.D. Joshi		969-54
	190.	Mawjibhai Maya	101-00	
	190.	Benarasidas Joshi	250-00	
30	191.	Parmatma Singh		10-00
	191.	Meghji Kachra		777-40
	192.	Lakhamshi Premchand & Co.	230-00	
	192.	Mrs. F. Roos	60-00	
	193.	Manubhai Gulab	20-00	
	193.	Rajnikant C. Patel and 3 Others	282-00	
			12,609-05	3,927-14

Exhibits

(Assessee's)

"5"

Trial Balance 1950 - continued.

194.	Mrs. E.L. Wheelock	2,443-46		
194.	J.J. Thakore	138-00		
195.	Rambhai N. Patel	105-00		
195.	Mrs.M.T.H.Lawrence-Brown	162-00		
196.	Highland Garage Ltd.	330-00		
197.	Embu Provision Stores	300-00		
197.	Mrs. Mary O'Brian	160-00		
198.	Raghbir Singh Sundersingh	44-00		
198.	Jagivan Vallabhdas		50-00	
199.	Vithaldas Rattanshi	2-00		10
199.	Abdul Aziz	408-00		
200.	Ismail Haji		60-00	
200.	V.S. Mascarenhas	422-00		
201.	Khetshi Virjee Shah	10-00		
201.	Osman Yakub & Co.	348-32		
202.	Harshadrai H. Patel	169-00		
203.	Lajpat Rai Puri	2,924-00		
204.	J.V. Bentley	64-76		
205.	Fazal Hussein	10-00		
205.	Qadir Ahamed	10-00		20
206.	Philip Kaine Muchire	22-00		
207.	Gurubachan Singh and Sewa Singh	22-00		
207.	Isherdas Gulabrai		173-20	
208.	Gulam Hussein Manji	181-66		
209.	Chhaganlal Odhavji		436-00	
209.	M.A.H. Tonnet	72-00		
210.	Gulamali Koorji	165-90		
211.	Devchand Karamshi Shah	92-00		
211.	Gulam Hussein V. Nanji	40-00		30
212.	Kishen Singh & Hari Singh	235-00		
212.	Reliance Garage	178-66		
213.	Mohanlal Kalyanji	8,612-03		
215.	Ratanji Sukhabhai Patel	73-33		
216.	Ramji Lakhamshi	137-20		
216.	Hari Singh and Kishen Singh	2-00		
		17,884-32	719-20	

Exhibits

(Assessee's)

"5"

Trial Balance 1950 - continued.

No.	Name		
217.	Mrs. A.O. Confait	22-00	
218.	M.S. Malik	558-40	
219.	United Services Stores	1,250-00	
219.	K.K. Patel & Co.	382-66	
220.	Colonial Blankets Syndicate	881-03	
221.	Jamal Ibrahim		298-00
222.	Beant Trading Co.	15-00	
222.	Nathubhai & Bros.	288-66	
223.	Atlas Trading Co.	14-15	
223.	Narain Singh & Assa Singh	2-00	
225.	Kenya Motor Service	1,063-70	
226.	Hassanali K. Shivji and R.C. Patel	1,400-00	
226.	Manibhai Amaidas Patel		201-00
227.	Ghela Manek	20-00	
227.	Premji Mepa	2-00	
228.	Nakuru Auto Garage	1-00	
228.	Gachuru Karitu & 2 Others	58-33	
229.	Mrs. Kulsumbai and Bhimji Shamji	414-00	
230.	Gahir Furniture House	84-00	
230.	Damodar Ladha	10-00	
231.	Gopalji Jeram Kotecha and V.G. Radia	5,116-40	
231.	City Electric Service Co.	175-33	
232.	Pritam Singh and 2 Others	2-00	
232.	M.K.Jani and Lalji Shah	1,800-00	
233.	Anandji Stores Ltd.	12-60	
233.	P. Lal & Co.	6-00	
234.	Govindji Kanji Shah	20-00	
234.	T.G. Varma		500-00
248.	Njoroge - Office Boy	100-00	
276.	Kathiawar Service Stores	336-00	
288.	Popatlal Jivraj	15-00	
		13,050-26	999-00

Exhibits

(Assessee's)
"5"
Trial Balance 1950 - continued.

ACCOUNTS FOR 1947

No.	Name	Dr.	Cr.	
511.	Santa Singh Pardashi		177-00	
527.	Bawa Singh & Milkha Singh	18-50		
538.	Vithaldas Karabbai		69-70	
572.	Mangalbbai J. Patel		875-00	
	Bishen Singh Sunder Singh 9(80)	72-50		
589.	Bawa Singh & Dalip Singh	21-00		
598.	Chhaganlal Morarji	7-70		
599.	Uplands Central Trg. Co.			10
599.	A.J. Vyas	30-00		
606.	Barmi Bros.	22-00		
608.	Bharat Motor Works	30-00		
617.	Laxmiben Durlabhbhai		100-00	
631.	Narain Singh & Co.	153-00		
650.	Karen Butchery	231-50		
659.	D.M. Zakharia		171-40	
660.	Alibhai Jamal Lalani	44-00		
662.	Hussein Mohamed Moti	15-00		
674.	Husseini Provision Stores	200-00		20
687.	Snatosh Kumari	58-00		
687.	Harbans Kumari	30-00		
	Office Account		39,627-83	
	Do. 1948		49,702-83	
		933-20	90,723-76	

1946 ACCOUNTS

No.	Name	Dr.	Cr.	
324.	Office Account		35,537-40	
449.	M.C. Patni	147-05		
456.	G.H. Karim		200-13	
459.	E.A. Produce Co.	10-00		30
462.	Gordhandas & Ranchhoddas	20-00		
462.	D.P. Thakkar	300-00		
463.	Imam Deen		166-00	
466.	Mohamed Saffi	45-00		
466.	Jagannath Bholla		8-00	
475.	Hazara Singh	10-00		
480.	Bhanji Kanji	20-00		
492.	Hindustan Boot Co.	10-00		
		562-05	35,911-53	

ACCOUNTS FOR 1948

	No.	Name			Exhibits
	720.	Charandas & Lajpatrai		55-47	(Assessee's)
	727.	S.J. Karim		295-00	
	746.	Ellias Mucharia Gakura	10-00		"5"
	764.	G. Lowsley		210-00	
	770.	Muljibhai C. Patel		1-70	Trial
	776.	Gilgil Motor Works	18-50		Balance
	777.	Vithalbhai Fakirbhai		55-00	1950 -
	779.	A. Khalil	24-00		continued.
10	784.	Plot No.283 Eastleigh Sec. 1.		2,420-00	
	785.	Plot No.152(889) Eastleigh Sec.1.		848-00	
	788.	Plot No.2227, Immtiazali Road		2,825-00	
	792.	Jashlal Dahyalal & Narshi D.	240-50		
	800.	Sawani Stores	43-50		
			336-50	6,710-17	

ACCOUNTS FOR 1949

	No.	Name		
20	853.	New Tailoring House		15-70
	860.	Harilal Odhavji (Olkalau Stores)	628-80	
	864.	Lakhamshi Stores Ltd.		246-31
	870.	Punja Jeshang Shah		1-60
	889.	Arjan Singh Tara Singh Co.	4-00	
	909.	Manji & Ranchhod Morarji	200-00	
	931.	Lakhani Ltd.		66-00
	932.	I. Latherman	4-00	
	936.	Bawa Singh s/o Kanda	404-00	
30	937.	Bekar Singh Taker Singh H.L.Chandarana	72-00	
	953.	Mrs. Udham Kaur		-10
	955.	Abdul Wahid	24-00	
	961.	Prabhudas & Maganlal Damodar	8-00	
	969.	Y.D. Sawani	4-00	
	970.	V.P. Bhojani & Sons		817-00
	1001.	Savitaben d/o Jivraj		15-37
	1001.	Uganda Produce Agency	68-00	
40		Office Account		73,631-15
			1,604-80	76,493-23

Exhibits	OFFICE EXPENSES	OFFICE COSTS
(Assessee's)	4,507-69	19,231-84
"5"	2,592-70	11,795-97
	2,656-20	13,462-83
Trial	2,717-73	8,538-97
Balance	2,386-55	14,179-56
1950 -	3,903-84	4,292-00
continued.	6,549-56	15,430-29
	4,651-57	30,261-68
	5,483-83	14,921-13
	5,019-25	13,932-48
	4,594-55	8,461-97
	6,185-15	13,447-63
	51,242-62	167,950-35

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Bank Balance Office A/c	17,023-88
" " Clients A/c	48,683-71
Cash on Hand	3,735-34
Cash Book Folio 87	50-00
"	16-00
"	15-30
	69,524-23

20

Bank Difference Carried forward more	847-90
Cash " " " "	149-60
	997-50

171,180-41	50,910-83
34,630-19	1,920-08
69,291-64	4,171-07
2,852-86	4,484-80
12,102-25	7,343-07
4,525-86	4,088-67
18,305-37	21,802-54
12,609-05	3,927-14
17,884-32	719-20
13,050-26	999-00
3,489-55	211,375-36
51,242-62	167,950-35
69,524-23	997-50
480,688-61	480,688-61

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"8". COMPOSITE BALANCE SHEET AND INCOME & EXPENDITURE ACCOUNTS FOR 1944 to 1951

Exhibits

(Assessee's)

"8"

Composite Balance Sheet and Income & Expenditure Accounts for 1944 to 1951.

G.R. MANDAVIA - Composite Balance Sheet for the years 1944 to 1951   8 years 1944-51.

	1944 Shs.Cts	1945 Shs.Cts	1946 Shs.Cts	1947 Shs.Cts	1948 Shs.Cts	1949 Shs.Cts	1950 Shs.Cts	1951 Shs.Cts
Liabilities:								
Capital	20,461.39	20,461.39	20,461.39	20,461.39	20,461.39	20,461.39	20,461.39	20,461.39
Personal A/c.	23,559.41	-	5,877.75	30,462.67	127,811.63	145,628.74	229,389.44	305,866.38
Sundry Creditors	33,213.81	65,684.64	52,509.39	58,385.37	58,986.26	65,480.12	86,590.99	191,074.48
Plot No. 1540	-	160.00	-	590.36	-	-	-	1,091.34
Plot No.1751	-	-	-	21,564.00	-	-	-	-
Earnings:- Plots 283 & 152 Eastleigh & 2227	-	-	-	-	6,093.00	6,093.00	6,093.00	6,093.00
Total Shs.	77,234.61	86,106.03	78,848.53	131,463.79	213,352.28	237,653.25	342,534.82	524,586.59
Assets:								
Library	11,904.75	12,836.67	14,050.92	14,840 87	15,856.42	18,348.83	19,729.92	20,461.11
Office Cars	5,850.00	5,850.00	5,850.00	5,850 00	11,850.00	11,850.00	11,850.00	22,903.00
Furniture & Fittings	2,287.50	2,287.50	3,317.50	3,644 25	3,644.50	7,049.25	9,682.00	14,288.50
BANK - Office A/c	17,672.60	23.85	7,198.41	23,222 68	55,524.62	38,496.46	65,707.59	38,058.71
Clients' "								191,055.15
Cash on hand	424.50	259.78	511.82	1,075 97	118.38	3,747.11	3,816.64	1,496.16
Sundry Debtors	39,095.26	45,133.55	46,969.88	82,545 82	104,978.02	126,631.37	186,693.43	186,824.97
Personal Drawings A/c	-	19,714.68						
Lenana Rd. Plot 371/2	-	-	950.00	156 0	741.75	3,204.25	16,786.21	17,533.01
Plot No. 1540	-	-	-	-	1,855.79	4,040.43	2,361.17	-
" " 1751	-	-	-	-	1,853.57	2,220.14	727.37	1,199.94
" " 118/40	-	-	-	126 :0	1,929.48	2,270.66	2,848.66	5,125.83
" " 2489/18	-	-	-	-	15,000.00	15,000.00	15,000.00	15,000.00
" " 668 (½)	-	-	-	-	-	2,904.75	4,398.29	6,446.29
" " 676 (½)	-	-	-	-	-	1,890.00	2,933.54	4,213.92
Total Shs.	77,234.61	86,106.03	78,848.53	131,46 9	213,352.28	237,653.25	342,534.82	524,586.59
Earnings:	58,577.35	46,511.33	49,611.18	61,33 4	70,136.74	109,113.88	168,131.35	198,357.14
Less Expenses	32,535.02	17,194.56	14,557.57	21,70 1	20,433.91	35,412.83	51,248.62	77,145.20
Shs.	26,042.33	28,716.77	35,053.61	39,62 3	49,702.83	73,701.05	116,882.73	121,211.94
£	£1,302-2-33	£1,435-16-77	£1,752-13-61	£1,981- 5	£2,485-2-83	£3,685-1-05	£5,844-2-73	£6,060-11-94

Exhibits

(Respondent's)

"A"

Letter from K. Bechgaard to C.J. Martin.

"A". LETTER FROM K. BECHGAARD TO C.J. MARTIN

K.BECHGAARD Our Reference P/267/1.

P.O. Box 2339,
Sunglora House,
Victoria Street,
Nairobi,
Kenya Colony.

C.J. Martin Esq.,
Investigation Branch,
E.A. Income Tax Department,
Gill House, Nairobi.

10

Dear Martin,

Re: Gokuldas Ratanji Mandavia

With reference to your letter I.B. 70 of the 15th October, I saw Mr. Mandavia during my recent visit to Dar-es-Salaam. As a result of my interview with him and our subsequent telephone conversation, it seems to me that the whole matter may be settled out of Court and I would accordingly put forward that following proposals for your consideration :-

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(a) Mr. Mandavia to pay a deposit of £1,500, such deposit being without prejudice to adjustment up or down when the tax due is actually quantified;

(b) Mr. Mandavia to submit revised accounts for the years in dispute, such accounts to be submitted before the close of 1954 and to be subject to your scrutiny;

(c) Upon agreement being reached as to the actual amount of tax to be assessed, the present appeals filed in the Supreme Court to be withdrawn by consent.

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2. Please let me have your confirmation in a form that I can forward to my client. I should make it plain that I have no absolute authority from him, but I have every reason to believe that the above suggestions will prove acceptable to him.

Yours sincerely,
K. Bechgaard.

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KB/RH

Exhibits

(Respondent's)

"B"

Regional Commissioner's Computations for Assessments 1943 to 1951.

"B". REGIONAL COMMISSIONER'S COMPUTATIONS FOR ASSESSMENTS 1943 to 1951.

FIGURES OF PROFESSIONAL PROFITS AS SUPPLIED BY MR. MANDAVIA

Calendar Year		1942	1943	1944	1945	1946	1947	1948	1949	1950
Net Profit	Shs.	10,000	12,000							
Costs, i.e. Fees earned	Shs.			57,000	46,000	50,000	61,334	70,136	109,048	167,950
Expenses	Shs.			31,000	19,000	14,500	21,706	20,433	35,417	51,242
Net Professional Income	Shs.	10,000	12,000	26,000	27,000	35,500	39,628	49,703	73,631	116,708
10 Equivalent in Sterling		£500	£600	£1,300	£1,350	£1,775	£1,981	£2,485	£3,681	£5,835

ASSESSMENTS RAISED ON MR. MANDAVIA

Year of Assessment		1943	1944	1945	1946	1947	1948	1949	1950	1951
Professional Earnings		£500	£600	£1,300	£1,300	£1,800	£2,000	£2,500	£3,750	£6,000
Rents		300	300	300	300	300	250	300	250	250
Total Income		£800	£900	£1,600	£1,600	£2,100	£2,250	£2,800 2,280?	£4,000	£6,250
Income Tax and Sur Tax	Shs.	2,150	2,531	5,900	5,900	9,056	8,190	11,800	22,112	46,018
Penalty Addition	Shs.	6,450	7,593	17,700	17,700	27,168	24,570	35,400	66,336	138,054

IN THE PRIVY COUNCIL

No. 7 of 1957

ON APPEAL

FROM THE COURT OF APPEAL FOR EASTERN AFRICA

BETWEEN :-

GOKULDAS RATANJI MANDAVIA (Assessee) — Appellant

- and -

THE COMMISSIONER OF INCOME TAX (Eastern Africa) — Respondent

RECORD OF PROCEEDINGS

A.L.BRYDEN & WILLIAMS,
53, Victoria Street,
London, S.W.1.

Solicitors for the Appellant.

CHARLES RUSSELL & CO.,
37, Norfolk Street,
Strand,
London, W.C.2.

Solicitors for the Respondent.