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UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
- 9 MAR 1968  
25 RUSSELL SQUARE  
LONDON, W.C.1.

No.34 of 1968

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

A FROM THE FEDERAL COURT OF MALAYSIA, HOLDEN AT SINGAPORE (APPELLATE JURISDICTION)

B E T W E E N :-

SIM LIM INVESTMENTS LIMITED (Defendants)  
Appellants  
- and -

B ATTORNEY GENERAL, SINGAPORE (Plaintiff)  
Respondent

(In the matter of Suit No. 358 of 1967 in the High Court in the Republic of Singapore at Singapore)

B E T W E E N :-

C ATTORNEY GENERAL, SINGAPORE Plaintiff  
- and -

SIM LIM INVESTMENTS LIMITED Defendants)

C A S E FOR THE APPELLANTS

RECORD

D 1. This is an appeal, by leave of the Federal Court of Malaysia holden at Singapore, from an Order dated the 3rd day of September 1968 of the said Federal Court (Wee Chong Jin C.J., Tan Ah Tah F.J., and Chua J.) dismissing an appeal by the Appellants from a judgment of the High Court of Singapore (Winslow J.) dated the 21st day of November 1967.

p.42  
p.41

p.25

Appellants themselves declared a dividend in August, 1965.

A On the basis that the dividend declared  
by the subsidiary in March, 1965, was  
properly excluded from the chargeable income  
of the Appellants for the year of assessment  
1965, the Appellants were, under Section 44  
(4) of the Ordinance, liable to pay a sum  
equal to the excess of the tax deducted by  
B the Appellants from the dividend paid to  
their shareholders in August, 1965, over the  
aggregate of the amount of the tax payable by  
the Appellants in respect of the years of  
assessment 1964 and 1965.

C The question in issue between the parties  
was whether the tax payable by the Appellants  
had been correctly calculated on the basis  
that the dividend declared by the subsidiary  
in March, 1965, formed no part of the  
D Appellants' chargeable income for the year  
of assessment 1965.

6. The learned Judge held that the dividend  
declared by the subsidiary in March, 1965,  
was income in respect of which tax was  
E payable under Section 10(1)(d) of the  
Ordinance and that by virtue of Sections 29  
and 35(7A) the Appellants' income for the  
year of assessment 1965 in respect of  
dividends must be the full amount of income  
F from such dividends for the year preceding  
the year of assessment 1965 and that since  
such income from dividends must necessarily  
mean income from dividends already paid, the  
subsidiary's dividend declared in March,  
G 1965, could not be treated as income for the  
preceding year and was not therefore income  
in respect of which tax was payable in the  
year of assessment 1965. Accordingly he held  
that the Respondent was entitled to recover  
H from the Appellants the amount claimed.

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7. From the judgment of the learned Judge  
the Appellants appealed to the Federal Court  
of Malaysia (Appellate Jurisdiction) on the

p.34 grounds set out in the Memorandum of Appeal  
which is item No.9 in the Record of Proceedings:  
p.40 The Federal Court dismissed the appeal with  
costs.

The Federal Court took the view that the dividend declared by the subsidiary in March, 1965, was income in respect of which tax was payable under Section 10(1)(d) of the Ordinance and rejected the argument that the dividend should be treated as income from dividends for the year preceding the year of assessment 1965 since it formed part of the profits from the Appellants' business of holding shares as shown by the Appellants' accounts for the accounting period ending 31st December, 1964.

pp.36-40

It was the view of the Federal Court that Section 35(7A) of the Ordinance governed the position and that under that Section the dividend declared by the subsidiary in March, 1965, could not be treated as income from dividends for the year preceding the year of assessment 1965. It followed from that conclusion that the tax which the Appellants had deducted from the dividend which it paid in August, 1965, exceeded the aggregate of the tax payable by the appellants for the year of assessment 1965 and the previous year and that accordingly a sum equal to the excess was due from the Appellants under Section 44(4) of the Ordinance.

p.42 8. The Appellants were granted final leave to appeal to the Judicial Committee of the Privy Council by Order of the Federal Court dated 7th October, 1968.

9. The scheme of the Ordinance is that tax is to be levied and paid for each year of assessment (corresponding with the calendar year) upon the chargeable income of every company at the rate of 40 per cent: see Section 43. Chargeable income is to be arrived at by computing successively the taxpayer's income from each source under Section 14, the taxpayer's statutory income

from each source under Section 35, the taxpayer's assessable income under Section 37 and finally the taxpayer's chargeable income under Section 38. Under Section 35(1) statutory income from a source is normally the income for the year preceding the year of assessment. Where a taxpayer commences or ceases to carry on a trade or business special rules apply under subsections (3) and (5). Commencement and cessation provisions applicable to other sources are contained in subsections (6) and (7). Under subsection (7A) a taxpayer's statutory income in respect of dividends is invariably the full amount of the income therefrom for the preceding year.

Apart from stating in Section 14 what may be deducted and in Section 15 what may not be deducted in ascertaining the income from a source, there is no general guidance in the Ordinance as to the ascertainment of income from a trade or business. Section 29 provides for the income from a dividend to be ascertained on a "grossed up" basis.

Section 44 provides for the deduction of tax from the dividends paid by companies. Under subsection (3) a company is required to make a return at the end of each year of assessment showing what tax has been deducted from dividends paid during the year. If the amount deducted exceeds the aggregate of the tax payable by the company in respect of the year of assessment and the amount of any unexhausted balance of tax paid for previous years, then under subsection (4) an amount equal to such excess is a debt due from the company to the Government. Thus, in effect, a running account is kept and a company can only retain tax deducted from dividends to the extent to which it has itself already paid or is liable to pay tax on an equivalent or greater amount.

Section 46 of the Ordinance provides that where a taxpayer receives a dividend from which tax has been deducted and the gross amount of the dividend is included in the

taxpayer's chargeable income, then the tax deducted is to be set off against the tax chargeable on the taxpayer's chargeable income. In this way credit is given to the taxpayer for the tax which has already been paid by him by way of deduction and paid by the company paying the dividend either as tax on its chargeable income in the ordinary way or as a debt due under Section 44 (4).

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10. It is the Appellants' respectful submission that the learned Judge and the Federal Court were wrong to reject the contention that tax was payable by the Appellants under Section 10(1)(a) of the Ordinance in respect of the profits of its business. The Comptroller himself so described the Appellants' income when issuing Notices of Assessment: see Annexures 11 and 12 to item No.4 in the Record. The business of the Appellants was the holding of investments. The Appellants' accounts were drawn up to show the profits of that business. The accuracy and correctness of those accounts are not in dispute, only their relevance. It is the Appellants' contention that the income on which tax was payable by it in respect of the years of assessment 1964 and 1965 fell to be computed under Section 35 of the Ordinance by reference to the Appellants' accounts. Computations so made would have included the dividend declared by the subsidiary in March, 1965. Accordingly the tax payable by the Appellants for those years of assessment would have exceeded the tax deducted from the dividend paid by the Appellants in August, 1965, and there would have been no debt due under Section 44 of the Ordinance.

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It is the Appellants' respectful submission that the learned Judge and the Federal Court were wrong to regard Section 29 and Section 35(7A) of the Ordinance as settling the question for which year the dividend was to be treated as income. Section 29 merely requires a dividend (whether received under deduction of tax or not) to be

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"grossed up" for the purpose of measuring the amount of income represented by the dividend. It does not indicate for which year the dividend is to be treated as income. Section 35(7A) requires a taxpayer's statutory income for any year of assessment to include the full amount of the income from dividends for the year preceding the year of assessment but throws no light upon the question what dividends are to be regarded as dividends for that year. It is the Appellants' contention that a dividend which was correctly and in accordance with sound accountancy practice treated in a wholly-owned subsidiary's accounts as paid out of the profits of 1964 and in the parent company's accounts as forming part of the company's income for the accounting period ended on 31st December, 1964, was demonstrably a dividend for the year 1964. Declaration of the dividend by the subsidiary in March, 1965, was merely the machinery whereby effect was given to the appropriation and distribution of its 1964 income. That the subsidiary was an entity separate from the parent company is not in dispute. But the accountancy practice followed in this case correctly recognizes that as between a wholly-owned subsidiary and its parent a dividend is properly to be regarded as income for the year the profits of which it represents.

11. The Appellants humbly submit that the decision of the Federal Court is wrong, that this appeal should be allowed, that the Order of the Federal Court should be set aside and the Order of the High Court reversed, and that the Respondent should be ordered to pay the costs of this appeal, of the appeal to the Federal Court and of the proceedings in the High Court for the following among other

#### REASONS

(1) BECAUSE on the correct application of

the Ordinance the amount of the tax payable by the Appellants in respect of the years of assessment 1964 and 1965 is such that no debt is due from the Appellants under Section 44(4) of the Ordinance in respect of tax deducted by the Appellants from the dividend paid to its shareholders in August 1965.

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- (2) BECAUSE the dividend declared by the Appellants' wholly-owned subsidiary in March 1965 should be taken into account in computing the chargeable income of the Appellants for the year of assessment 1965 as representing income from dividends for the year 1964.

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- (3) BECAUSE the reasoning in the judgments of the learned Judge and of the Federal Court is wrong.

H.H. MONROE

G. STARFORTH HILL

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A N N E X U R E

THE INCOME TAX ORDINANCE

(Chapter 166)

an Ordinance to impose a tax upon incomes  
and to regulate the collection thereof.

[1st January, 1948]

PART I

PRELIMINARY

Interpre-  
tation B

2. In this Ordinance, unless the subject or  
content otherwise requires -

"year of assessment" means the period of  
twelve months commencing on such date  
as the Minister may, by notification  
in the Gazette, appoint, and each  
subsequent period of twelve months. +

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[Amended by Ordinance 72 of 1959] †

+ 1st January, 1948 - see G.N.Nos.433/47

PART III

IMPOSITION OF INCOME TAX

Charge D  
of  
Income  
Tax

10. (1) Income Tax shall, subject to the  
provisions of this Ordinance, be payable at the  
rate or rates specified hereinafter for each  
year of assessment upon the income of any  
person accruing in or derived from Singapore  
or received in Singapore from outside  
Singapore in respect of -

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(a) gains or profits from any trade,  
business, profession or vocation, for  
whatever period of time such trade,  
business, profession or vocation may  
have been carried on or exercised;

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(d) dividends, interest, or discounts

PART IV

ASCERTAINMENT OF INCOME

Deductions  
allowed

14. (1) For the purpose of ascertaining the income of any person for any period from any source chargeable with tax under this Ordinance (in this Part referred to as "the income"), there shall be deducted all outgoings and expenses wholly and exclusively incurred during that period by such person in the production of the income including -

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Income from  
certain  
dividends  
to include  
tax there-  
on

29. The income of a person from a dividend paid by a company liable to tax under this Ordinance or Commonwealth income tax within the meaning of sub-section(3) of section 48 of this Ordinance, shall, where any such tax has been deducted therefrom, be the gross amount before making such deduction; where no such deduction has been made, the income shall be deemed to be such a gross amount as after deduction of tax at the maximum rate deductible at the date of payment would be equal to the amount received.

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[Amended by Ordinance 37 of 1958+  
and Act 29 of 1965] †

PART V

ASCERTAINMENT OF STATUTORY INCOME

Basis for  
computing  
statutory  
income

35. (1) Save as provided in this section, the income of any person for each year of assessment (hereinafter referred to as "statutory income") shall be the full amount of his income for the year preceding the year of assessment from each source of income possessed by him at any time during the year of assessment, notwithstanding that any such source does not produce income during the year of assessment.

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[Amended by Ordinances 20 of 1948, 44 of 1950\* and Act 29 of 1965] †

- + In force from 1st January, 1959
- † In force from 1st January, 1966
- \* In force from 1st January, 1950
- \* In force from 1st January, 1966

Accounting  
period  
as  
basis A

(2) Where the Comptroller is satisfied that any person usually makes up the accounts of a trade, business, profession, vocation or employment carried on or exercised by him to some day other than that immediately preceding any year of assessment, he may direct that the statutory income from that source be computed on the amount of the gains or profits of the year ending on that day in the year preceding the year of assessment. Where, however, the statutory income of any person from a trade, business, profession, vocation or employment has been computed by reference to an account made up to a certain day, and such person fails to make up an account to the corresponding day in the year following, the statutory income from that source both of the year of assessment in which such failure occurs and of the two years of assessment following shall be computed on such basis as the Comptroller in his discretion thinks fit.

New  
trades  
and  
occupations E

(3) The statutory income of any person from any trade, business, profession, vocation or employment for the year of assessment in which he commenced to carry on or exercise such trade, business, profession, vocation or employment and for the two following years of assessment (which years are in this subsection respectively referred to as "the first year", "the second year" and "the third year") shall be ascertained in accordance with the following provisions:-

- (a) for the first year the statutory income shall be the amount of the income for that year;
- G (b) for the second year the statutory income shall, unless such notice as hereinafter mentioned is given, be the amount of income for one year from the date of the commencement of the trade, business, profession, vocation or employment;
- H (c) for the third year the statutory income shall, unless such notice as

is hereinafter mentioned be given, be computed in accordance with the provisions of subsection (1) of this section;

- (d) the person carrying on or exercising the trade, business, profession, vocation or employment shall be entitled, on giving notice in writing to the Comptroller within two years after the end of the second year, to require that the statutory income both for the second year and the third year (but not for one or other only of those years) shall be the income of the respective years of assessment: A B

Proviso

Provided that he may, by notice in writing given to the Comptroller within twelve months after the end of the third year, revoke the notice, and in such case the statutory income both for the second year and the third year shall be computed as if the first notice had never been given; C D

- (e) where such a notice as aforesaid has been given or revoked, such additional assessment, or, on a claim being made for the purpose, such reductions of assessments or repayments of tax, shall be made as may be necessary to give effect to paragraph (d) of this subsection. E

New sources of income, other than trades and occupations and dividends (6) Where income from any source other than a source specified in subsection (3) or (7A) of this section first accrues to a person during any year of assessment, the statutory income from that source - F

(a) in respect of the year of assessment in which the income first accrues shall be the amount of the income arising therefrom in that year of assessment; G

- (b) in respect of the year of assessment next succeeding that in which the income first accrued shall be the amount of the income arising therefrom in the first twelve months after the date on which such income first accrued to him; and H

(c) in respect of subsequent years of assessment shall be the amount of the income arising therefrom in the year preceding the year of assessment.

A Amended by Ordinance 6 of 1956<sup>+</sup> and substituted by Act 29 of 1965<sup>‡</sup>

Divi-  
dends

(7A) The statutory income of any person for any year of assessment in respect of dividends shall be the full amount of the income therefrom for the year preceding the year of assessment notwithstanding that the source of such income is not possessed by him during the year of assessment.

Added by Ordinance 6 of 1956<sup>\*</sup>

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#### PART VI

#### ASCERTAINMENT OF ASSESSABLE INCOME

Assess-  
able  
income

D

37. (1) The assessable income of any person from all sources chargeable with tax under this Ordinance for any year of assessment shall be the remainder of his statutory income for that year after the deductions allowed in this Part of this Ordinance have been made.

#### PART VII

#### ASCERTAINMENT OF CHARGEABLE INCOME AND PERSONAL RELIEFS

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Charge-  
able  
income

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38. The chargeable income of any person for any year of assessment shall be the remainder of his assessable income for that year after the deductions allowed in this Part of this Ordinance have been made.

+ In force from 1st January, 1956

‡ In force from 1st January, 1966

\* In force from 1st January, 1956.

PART VIII

RATES OF TAX, RIGHTS OF DEDUCTION AND  
ALLOWANCES FOR TAX CHARGED

A - Rates of Tax

Rate of  
tax upon  
companies  
and  
others

43. Subject to the provisions of section 40 of this Ordinance there shall be levied and paid for each year of assessment upon the chargeable income of - A

(a) every company, tax at the rate of forty per centum on every dollar of the chargeable income thereof B

Amended by Ordinance 49 of 1958<sup>†</sup> and Act 29 of 1965<sub>7</sub> +

B - Rights of Deduction of Tax

Deduction  
of tax from  
dividends  
of  
companies

44. (1) Every company which is resident in Singapore, shall be entitled to deduct from the amount of any dividend paid to any shareholder tax at the rate of forty per centum on every dollar of such dividend. C

Amended by Ordinance 46 of 1950\*, substituted by Ordinance 6 of 1956<sup>++</sup> and amended by Ordinances 37 of 1958\* and Act 29 of 1965<sub>7</sub> § D

(2) Every such company shall upon payment of a dividend, whether tax is deducted therefrom or not, furnish each shareholder with a certificate setting forth the amount of the dividend paid to that shareholder and the amount of tax which the company has deducted or is entitled to deduct in respect of that dividend. E

+ In force from 1st January, 1966

† In force from 1st January, 1959, in respect of year of assessment 1959 and subsequent years of assessment

\* In force from 1st January, 1951, in respect of years of assessment 1951 to 1958 inclusive.

++ In force from 1st January, 1956

\* In force from 1st January, 1959, in respect of year of assessment 1959 and subsequent years of assessment

§ In force from 1st January, 1966.

(3) At the end of each year of assessment every such company shall render to the Comptroller a statement in such form as the Comptroller may direct, showing the total amount of the tax which has been deducted from all dividends paid to shareholders during such year of assessment, and the Comptroller shall compare the amount of tax so deducted with the aggregate of the following amounts, namely, the amount of the tax payable by the company in respect of such year of assessment in accordance with the provisions of this Ordinance and the amount of the balance (if any) carried forward from any previous year of assessment in accordance with the provisions of subsection (5) of this section.

(3A) ~~Subsection added by L.N.181 of 1964// and deleted by Act 29 of 1965~~ §

(4) Notwithstanding any other provisions of this Ordinance, where the amount of tax so deducted exceeds the aggregate of the said amounts, a sum equal to the amount of such excess shall be a debt due from the company to the Government and shall be recoverable as such.

~~Amended by L.N. 181 of 1964% and Act 29 of 1965~~ §

(5) Where the aggregate of the said amounts exceeds the amount of tax so deducted, a sum equal to the amount of the excess shall be carried forward as a balance to the immediately ensuing year of assessment, and such balance shall be available to be set off against the amount of tax deducted from dividends in such ensuing year of assessment in accordance with the provisions of this section.

~~Proviso deleted by Act 29 of 1965~~ \*

(6) For the purposes of this section, where any dividend has been paid without deduction of tax, such dividend or part thereof, from which there was a title to deduct tax, shall be deemed to be a dividend of such a gross amount as after

// In force from 1st January, 1964

% In force from 16th September, 1963

\* In force from 1st January, 1966

§ In force from 1st January, 1966

deduction of tax at the rate deductible at the date of payment would be equal to the net amount paid; and a sum equal to the difference between such gross amount and the net amount paid shall be deemed to have been deducted from A such dividend or part thereof as tax.

Subsections (3), (4), (5) and (6) added by Ordinance 6 of 1956<sup>7</sup> +

+ In force from 1st January, 1956

No.34 of 1968

IN THE JUDICIAL COMMITTEE OF THE  
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B E T W E E N

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- and -

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C A S E FOR THE APPELLANTS

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