

19, 1969

IN THE PRIVY COUNCIL

No. 34 of 1968

O N A P P E A L
 FROM THE FEDERAL COURT OF MALAYSIA HOLDEN AT SINGAPORE
 (APPELLATE JURISDICTION)

B E T W E E N :-

SIM LIM INVESTMENTS LIMITED

Appellant

- and -

ATTORNEY GENERAL SINGAPORE

Respondent

C A S E FOR THE RESPONDENT

- | | | <u>Record</u> |
|----|--|-------------------------|
| 10 | 1. This is an appeal brought by leave from the Judgment and Order of the Federal Court of Malaysia dated 3rd September 1968 dismissing the Appellant's appeal against the Formal Judgment of the High Court of the Republic of Singapore (hereinafter referred to as "the High Court" dated 21st November 1967 whereunder the Respondent was adjudged entitled to recover against the Appellant the sum of \$302,324.60. | p.42
p.36,41
p.32 |
| 20 | 2. The substantial question arising on this appeal is whether in ascertaining the statutory income of the Appellant for Income Tax purposes for the year of assessment 1965 the dividend which it received from one of its subsidiary companies in March 1965 can be said to be on a proper construction of the relevant statutory provisions the Appellant's income from dividends for the year preceding the year of assessment, that is to say, the year ended 31st December, 1964. | |
| 30 | 3. The relevant statutory provisions are Sections 10, 29, 35, 44 and 46 of the Income Tax Ordinance (Chapter 166) (hereinafter called "the Ordinance"). The whole of the | |

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Ordinance is annexed to the Cases for the Appellant and the Respondent.

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4. The facts of the case appear in the Agreed Statement of Facts and in the Judgments of the Courts and so far as material may be summarised as follows:

(i) Sim Lim Company Limited (hereinafter called "the Subsidiary") is a wholly-owned Subsidiary company of the Appellant. The Subsidiary is a trading company and is resident and was incorporated in Singapore. 10

(ii) By resolution dated 8th March, 1965, the Subsidiary declared a dividend of \$1,192,500.

(iii) On 17th August, 1965, the Appellant declared to its shareholders a dividend of £811,162.50. The amount of tax deducted from this payment in accordance with Section 44 (1) of the Ordinance was \$324,465.00. 20

(iv) In the Accounts of the Appellant the dividend declared by the Subsidiary in March 1965 was included by its auditors as income of the Appellant for the year ending 31st December, 1964.

(v) The computations of the Comptroller of Income Tax treated the dividend declared by the Subsidiary in March 1965 as income of the Appellant for the year ended 31st December, 1965. 30

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5. On the 4th March 1967 the Respondent served a Writ on the Appellant and by his Amended Statement of Claim the Respondent claimed \$302,324.60 from the Appellant as a debt due to the Government under Section 44 (4) of the Ordinance.

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6. The action was heard in the High Court and on the 21st November 1967 Mr. Justice Winslow gave judgment in favour of the Respondent.

7. In his judgment Mr. Justice Winslow said that the sole issue in the case was the amount of 40

10 tax payable by the Appellant in respect of the year of assessment 1965, being the year in which it actually received the dividend declared by the Subsidiary in March, 1965. The Appellant contended that proper accounting practice approved what had been done by the auditors in the present case in treating the dividend which was declared by the Subsidiary in 1965 as the Appellant's income for 1964. In drawing up the account of a holding company it was maintained that it was a proper commercial method of accounting to anticipate dividend by showing the profits out of which the dividend was paid in any particular year as its income for the preceding year.

20 The Respondent contended that statutory recognition had not been granted in Singapore to consolidated accounts of a group of companies and that, without acceptance of such accounts, a parent or holding company such as the Appellant could not properly anticipate dividends from any of its subsidiaries and claim them as income for the year preceding that in which such dividends were actually received. The Respondent submitted that the expression "dividend" in the context of the Ordinance must mean "dividend which had already been received."

30 Mr. Justice Winslow considered the provisions of the Ordinance relating to dividends, namely, Section 10 (1) (d), Section 29, Section 35 (7A), Section 44 and Section 46, and concluded that the statutory income of any person (whether an individual or a company) for any year of assessment in respect of dividends was the full amount of income from such dividends for the year preceding the year of assessment, and that such income from dividends must necessarily mean income from dividends already paid within the meaning of Section 29 of the Ordinance.

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8. On the 19th December 1967 the Appellant issued a Notice of Appeal to the Federal Court of Malaysia (hereinafter referred to as "the Federal Court"). The grounds of the Appellant's appeal are set out in its Memorandum on Appeal. On the 3rd September 1968 the Federal Court (Chief Justice Wee Chong Jin,

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Federal Justice Tan Ah Tah and Mr. Justice Chua) unanimously dismissed the Appellant's appeal.

9. In the Judgment of the Federal Court it is stated that the real question is whether on the true construction of Section 35 (7A) of the Ordinance in ascertaining the statutory income of the Appellant for the year of assessment 1965 the dividend that it received from its Subsidiary in March 1965 can be said to be its income for the year preceding the year of assessment, i.e. the year ending 31st December, 1964. The Court found untenable the submission that, as the term "income" was not defined in the Ordinance, it was appropriate to start with a figure based on normal commercial accounting practice, subject to express statutory modification, to calculate the income of a taxpayer. In the present case the Court pointed out that it was not concerned with the method of ascertaining the profits for the year preceding the year of assessment, in which good accountancy practice might come into play, but with the ascertainment of the full amount of the income from dividends for the year preceding the year of assessment, in which case, in the Court's view, good accountancy practice played no part. To ascertain the statutory income for tax purposes for any year of assessment the Court held that the Ordinance provided by Section 35(1) that it should be the full amount of the income for the year preceding the year of assessment and that, in the case of income from dividends, Section 35 (7A) specifically provided that it should be the full amount of the income from dividends for the preceding year of assessment.

10. It is respectfully submitted that while the ordinary principles of commercial accounting are relevant in determining the balance of profits and gains, they are not relevant to the determination of the question in issue in the present case. That question is governed, it is submitted, by express statutory provisions. On a proper construction of the relevant provisions, and in particular the provisions in Section 35 (7A) of the Ordinance, it is submitted that the dividend received by the Appellant from the Subsidiary in March, 1965, did not constitute part of the Appellant's

statutory income for the year ended 31st December, 1964.

11. The Respondent humbly submits that the decision of the Federal Court is right and should be affirmed and that this Appeal should be dismissed with costs both here and below for the following among other

R E A S O N S

- 10 (1) BECAUSE the statutory income of the Appellant in respect of dividends for the year of assessment 1965 should not be determined by reference to the Accounts of the Appellant for the year ended 31st December, 1964.
- (2) BECAUSE the statutory income of the Appellant in respect of dividends for the year of assessment 1965 should be determined by reference to the income therefrom received in the year preceding the 1965 year of assessment.
- 20 (3) BECAUSE the Judgments in the High Court and in the Federal Court were correct and ought to be confirmed.

MICHAEL NOLAN

STEWART BATES

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B E T W E E N :

SIM LIM INVESTMENTS
LIMITED Appellant

- and -

ATTORNEY GENERAL
SINGAPORE Respondent

C A S E FOR THE RESPONDENT

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