

23/85

No.45 of 1983

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N . A P P E A L

FROM THE SUPREME COURT OF MAURITIUS

B E T W E E N :

ALUMINIUM ENTERPRISES LIMITED	<u>First Appellant</u>
LIM KWET CHOW LAM PO TANG	<u>Second Appellant</u>
GARY LAM PO TANG	<u>Third Appellant</u>
LIMBERG LAM PO TANG	<u>Fourth Appellant</u>

- and -

THE COMMISSIONER FOR INCOME TAX	<u>Respondent</u>
---------------------------------	-------------------

(Consolidated Appeals)

RECORD OF PROCEEDINGS

SLAUGHTER AND MAY,
35 Basinghall Street,
London, EC2V 5DB

Solicitors for the
Appellants

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London, WC2

Solicitors for the
Respondent

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE SUPREME COURT OF MAURITIUS

B E T W E E N :

ALUMINIUM ENTERPRISES
LIMITED First Appellant

LIM KWET CHOW LAM PO TANG Second Appellant

GARY LAM PO TANG Third Appellant

LIMBERG LAM PO TANG Fourth Appellant

- and -

THE COMMISSIONER OF INCOME TAX Respondent

RECORD OF PROCEEDINGS

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE SUPREME COURT OF MAURITIUS

B E T W E E N :

ALUMINIUM ENTERPRISES LIMITED First Appellant

LIM KWET CHOW LAM PO TANG Second Appellant

GARY LAM PO TANG Third Appellant

LIMBERG LAM PO TANG Fourth Appellant

10 - and -

THE COMMISSIONER OF INCOME TAX Respondent

RECORD OF PROCEEDINGS

No.1

NOTICE OF GROUNDS OF APPEAL BY FIRST APPELLANT

In the Supreme Court of Mauritius

In re:-

20 ALUMINIUM ENTERPRISES LIMITED Appellant

v/s

THE COMMISSIONER OF INCOME TAX Respondent

No.1 Notice of Grounds of Appeal by First Appellant 22nd April 1980

Notice with grounds of appeal

Take notice, you, the abovenamed Respondent, that the Appellant in the above matter, electing its legal domicile in the office of the undersigned Attorney-at-law,

In the
Supreme
Court of
Mauritius

No.1
Notice of
Grounds of
Appeal by
First
Appellant
22nd April
1980

(continued)

situate at No.8, Georges Guibert Street,
Port Louis, feeling itself aggrieved by
and dissatisfied with the determination made
by you under section 40 of the Income Tax
Act, 1974, as amended (hereinafter referred
to as "the Act") and contained in your letter
of the 13th March 1980 to Messrs. de Chazal du
Mee & Co., that the sum of Rs.898,921.- and
Rs.899,331.- should have distributed as
dividends by the Appellant to its shareholders
for the two years of assessment 1977-1978 and
1978-1979 respectively, and that the share-
holders of the Appellant be assessable
accordingly, does hereby give you notice that
it appeals to the Supreme Court of Mauritius
against your said determination in order to
have same, quashed, reversed, set aside or
otherwise dealt with, with costs as the said
Court may seem fit and proper, on the
following grounds, viz:-

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1. Because the Respondent was wrong in
holding that Section 40 of the Act was
applicable to the Appellant.

2. Because the Appellant, as a Development
Company had no chargeable income and no
distributable income during the years of
assessment under reference.

3. Because the Respondent was wrong in
holding that the Appellant's decision not to
declare dividends in respect of the years of
assessment under review is to be considered
as a tax avoidance arrangement under section
44(1) and (2) of the Act which in any case has
no application to the circumstances of the
present case.

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4. Because the Respondent was wrong in
holding that there are different classes of
exempt income under the Act, viz. exempt income
under section 7 of the Act and income becoming
exempt by an act of the Respondent.

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5. Because the Respondent has misunder-
stood the alleged intention of the legislator
in connection with the applicability of
section 55 of the former Income Tax Ordinance
and Section 40 of the Act to Development
Companies and drawn wrong inferences therefrom.

6. Because in the alternative the amount
which the Respondent has determined should be
distributed as income amongst the shareholders
of the Appellant is excessive and should be
reduced.

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10 And take further notice that the documents mentioned in List "A" attached to this notice are those which the Appellant intends to produce at the hearing of the above appeal and that the said documents may be inspected by you, the Respondent, your attorney or agent at the office of the undersigned Attorney-at-law, situate in No.8, George Guibert Street, Port Louis or at the Registry of the above Court, as the case may be on any office day between office hours previous to the hearing of the above appeal.

Under all legal reservations.

Dated at Port Louis, this 22nd day of April, 1980.

(Sd.) Georges Andre Robert
of No.8, George Guibert Street,
Port Louis

20 Appellant's Attorney

To: The Commissioner of Income Tax of
8th Floor, Jules Koenig Street,
P. Louis.

Reg. A420 No. 4608

In the
Supreme
Court of
Mauritius

No.1
Notice of
Grounds of
Appeal by
First
Appellant
22nd April
1980

(continued)

In the
Supreme
Court of
Mauritius

No. 2

NOTICE OF GROUNDS OF
APPEAL BY SECOND APPELLANT

No.2
Notice of
Grounds of
Appeal by
Second
Appellant
10th June
1982

IN THE SUPREME COURT OF MAURITIUS

In re:-

LIM KWET CHOW LAM
PO TANG Appellant

v.

THE COMMISSIONER OF
INCOME TAX Respondent 10

Notice of objections:

Take notice, you, the abovenamed Respondent, that the Appellant in the above matter, electing his legal domicile, in the office of the undersigned attorney at law, situate at No.8 Georges Guibert Street, Port Louis, feeling himself aggrieved by and dissatisfied with additional assessment made upon him by you on the 1st June 1982 (Additional assessment No.Lc 010057 of 01.06.82, 29109/78, 17748/78) for the year of assessment ending on the 30th June 1978 and based on the Appellant's income for the year ended the 30th June 1977, does hereby give you notice that it appeals to the Supreme Court of Mauritius against your said additional assessment in order to have same quashed, reversed, set aside or otherwise dealt with, with costs, as the said Court may deem fit and proper, on the following grounds, viz:- 20 30

1. Because the Respondent was wrong in holding that the Income Tax Act, 1974, as amended, was applicable to the Appellant, whereas it was the Income Tax Ordinance, 1950, as amended, which applied to him.

2. Because section 36(P) of the Income Tax Ordinance 1950, as amended, enacts that section 55 of the Ordinance which gives the Income Tax Commissioner anti-avoidance powers, shall not apply to Development Companies. 40

3. Because the Respondent was wrong in

holding that section 40 of the Income Tax Act, 1974, was applicable to Aluminium Enterprises Limited, a development Company, of which the Appellant is a shareholder, and in assessing this latter accordingly.

In the
Supreme
Court of
Mauritius

10 4. Because Aluminium Enterprises Limited, as a Development Company, had no chargeable income and no distributable income during the year of assessment under reference.

No.2
Notice of
Grounds of
Appeal by
Second
Appellant
10th June
1982

5. Because the Respondent was wrong in holding Aluminium Enterprises Ltd's decision not to declare dividends in respect of the year of assessment under review is to be considered as a tax avoidance arrangement under section 44(1) and (2) of the Act which in any case has no application to the circumstances of the present case.

(continued)

20 6. Because the Respondent was wrong in holding that there are different classes of exempt income under the Act, viz:- exempt income under section 7 of the Act and income becoming exempt by an act of the Respondent.

30 7. Because the Respondent has misunderstood the alleged intentions of the legislator in connection with the applicability of section 55 of the former Income Tax Ordinance and section 40 of the Act to development companies and drawn wrong inferences therefrom.

8. Because the amount which the Respondent has determined should be distributed as income among the shareholders of Aluminium Enterprises Ltd. is excessive and should be reduced.

40 And take further notice that the documents mentioned in List "A" attached to this notice are those which the Appellant intends to produce at the hearing of the above appeal and that the said documents may be inspected by you, the Respondent, your attorney or agents, either at the Registry of the above Court or at the office of the undersigned attorney at law, situate at 8 Georges Guibert Street, Port Louis, as the case may be, on any office day between office hours previous to the hearing of the above appeal.

50 Under all legal reservations.

In the
Supreme
Court of
Mauritius

Dated at Port Louis, this 10th day
of June 1982.

No.2
Notice of
Grounds of
Appeal by
Second
Appellant
10th June
1982

(Sd.) G.A. ROBERT
Appellant's Attorney

Reg. A 435 No. 2095

(continued)

No.3
Notice of
Grounds of
Appeal by
Second
Appellant
8th June
1982

No.3

NOTICE OF GROUNDS OF
APPEAL BY SECOND APPELLANT

IN THE SUPREME COURT OF MAURITIUS

In re:-

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Lim Kwet Chow Lam
Po Tang

Appellant

v/s

The Commissioner of
Income Tax

Respondent

Take Notice, You, the abovenamed
Respondent, that the Appellant in the
above matter, electing his legal domicile
in the office of the undersigned attorney
at law, situate at No.8 Georges Guibert
Street, Port Louis, feeling himself
aggrieved by and dissatisfied with additional
assessment made upon him by you on the
1st June 1982 (Additional assessment No.
Lc 010058/79 of 01.06.82, 36973/79, 17776/79)
for the year of assessment ending on the
30th June 1979, and based on Appellant's
income for the year ended the 30th June 1978,
does hereby give you notice that it appeals
to the Supreme Court of Mauritius against
your said additional assessment in order to

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have same quashed, reversed, set aside or otherwise dealt with, with costs, as the said Court may deem fit and proper, on the following grounds, viz:-

In the
Supreme
Court of
Mauritius

10 1. Because the Respondent was wrong in holding that the Income Tax Act, 1974, as amended, was applicable to the Appellant, whereas it was the Income Tax Ordinance, 1950, as amended, which applied to him.

No.3
Notice of
Grounds of
Appeal by
Second
Appellant
8th June
1982

2. Because Section 36 (p) of the Income Tax Ordinance, 1950, as amended, enacts that Section 55 of the said Ordinance which gives the Income Tax Commissioner anti-avoidance powers, shall not apply to Development Companies.

(continued)

20 3. Because the Respondent was wrong in holding that Section 40 of the Income Tax Act, 1974, was applicable to Aluminium Enterprises Limited, a development Company, of which the Appellant is a shareholder, and in assessing this latter accordingly.

4. Because Aluminium Enterprises Limited, as a development company, had no chargeable income and no distributable income during the year of assessment under reference.

30 5. Because the Respondent was wrong in holding that Aluminium Enterprises Ltd's decision not to declare dividends in respect of the year of assessment under review is to be considered as a tax avoidance arrangement under Section 44(1) and (2) of the Act which in any case has no application to the circumstances of the present case.

40 6. Because the Respondent was wrong in holding that there are different classes of exempt income under the Act, viz. exempt income under Section 7 of the Act and income becoming exempt by an act of the Respondent.

7. Because the Respondent has misunderstood the alleged intentions of the legislator in connection with the applicability of Section 55 of the former Income Tax Ordinance and Section 40 of the Act to development companies and drawn wrong inferences therefrom.

50 8. Because the amount which the Respondent has determined should be distributed as income among the shareholders of Aluminium Enterprises Ltd. is excessive and should be reduced.

In the
Supreme
Court of
Mauritius

No.3
Notice of
Grounds of
Appeal by
Second
Appellant
8th June
1982

(continued)

And Take Further Notice that the documents mentioned in List "A" attached to this Notice are those which the Appellant intends to produce at the hearing of the above appeal and that the said documents may be inspected by you, the Respondent, your Attorney or Agent, either at the Registry of the above Court or at the office of the office of the undersigned Attorney at Law, situate at 8, Georges Guibert Street, Port Louis, as the case may be, on any office day during office hours previous to the hearing of the above appeal.

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Under all legal reservations.

Dated at Port Louis, this 8th day of June, 1982.

(Sd.) G.A. ROBERT

Appellant's Attorney

REG. A434 No.4825

No.4
Notice of
Grounds of
Appeal of
Third
Appellant
10th June
1982

No.4

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NOTICE OF GROUNDS OF
APPEAL OF THIRD APPELLANT

IN THE SUPREME COURT OF MAURITIUS

In re:

G. LAM PO TANG

Appellant

v.

THE COMMISSIONER OF
INCOME TAX

Respondent

Notice of Objections

Take notice, you, the abovenamed Respondent, that the Appellant in the above matter, electing his legal domicile in the office of the undersigned attorney-at-law, situate at No.8, Georges Guibert Street, Port Louis, feeling himself aggrieved and dissatisfied with additional assessment

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made upon him by you on the 1st June 1982 (Additional assessment No. Lc 010055/78, of 01.06.82, 27781/78) for the year of assessment ending on the 30th June 1978 and based on the Appellant's income for the year ended the 30th June, 1977, does hereby give you notice that it appeals to the Supreme Court of Mauritius against your said additional assessment in order to have same quashed, reversed, set aside or otherwise dealt with, with costs, as the said Court may deem fit and proper, on the following grounds, viz:-

In the
Supreme
Court of
Mauritius

No.4
Notice of
Grounds of
Appeal of
Third
Appellant
10th June
1982

(continued)

1. Because the Respondent was wrong in holding that the Income Tax Act, 1974, as amended, was applicable to the Appellant, whereas it was the Income Tax Ordinance, 1950, as amended, which applied to him.

2. Because section 36(P) of the Income Tax Ordinance, 1950, as amended, enacts that section 55 of the said Ordinance which gives the Income Tax Commissioner anti-avoidance powers, shall not apply to Development Companies.

3. Because the Respondent was wrong in holding that section 40 of the Income Tax Act, 1974, was applicable to Aluminium Enterprises Limited, a development Company, of which the Appellant is a shareholder, and in assessing this latter accordingly.

4. Because Aluminium Enterprises Limited, as a development company, had no chargeable income and no distributable income during the year of assessment under reference.

5. Because the Respondent was wrong in holding that Aluminium Enterprises Ltd's decision not to declare dividends in respect of the year of assessment under review is to be considered as a tax avoidance arrangement under section 44(1) and (2) of the Act which in any case has no application to the circumstances of the present case.

6. Because the Respondent was wrong in holding that there are different classes of exempt income under the Act, viz. exempt income under section 7 of the Act and income becoming exempt by an act of the Respondent.

In the
Supreme
Court of
Mauritius

No.4
Notice of
Grounds of
Appeal of
Third
Appellant
10th June
1982

(continued)

7. Because the Respondent has misunderstood the alleged intentions of the legislator in connection with the applicability of section 55 of the former Income Tax Ordinance and section 40 of the act to development companies and drawn wrong inferences therefrom.

8. Because the amount which the Respondent has determined should be distributed as income among the shareholders of Aluminium Enterprises Ltd. is excessive and should be reduced.

10

And take further notice that the documents mentioned in List "A" attached to this notice are those which the Appellant intends to produce at the hearing of the above appeal and that the said documents may be inspected by you, the Respondent, your attorney or agent, either at the Registry of the above Court or at the office of the undersigned attorney at law, situate at 8 Georges Guibert Street, Port Louis, as the case may be, on any office day between office hours previous to the hearing of the above appeal.

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Under all legal reservations.

Dated at Port Louis, this 10th day of June 1982.

(Sd.) G.A. ROBERT

Appellant's Attorney

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Reg. A434 No.5104

No. 5
NOTICE OF GROUNDS OF
APPEAL OF THIRD APPELLANT

In the
Supreme
Court of
Mauritius

IN THE SUPREME COURT OF MAURITIUS

In re:

GARY LAM PO TANG Appellant

v.

THE COMMISSIONER OF
INCOME TAX Respondent

No.5
Notice of
Grounds of
Appeal of
Third
Appellant
10th June
1982

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Notice of Objections:

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Take Notice, you, the abovenamed Respondent, that the Appellant in the above matter, electing his legal domicile in the office of the undersigned attorney at law, situate at No.8, Georges Guibert Street, Port Louis, feeling himself aggrieved by and dissatisfied with additional assessment made upon him by you on the 1st June 1982 (Additional assessment No. Lc 010056/79 of 01.06.82, 28892) for the year of assessment ending on the 30th June 1979, and based on Appellant's income for the year ended the 30th June 1978, does hereby give you notice that it appeals to the Supreme Court of Mauritius against your said additional assessment in order to have same quashed, reversed, set aside or otherwise dealt with, with costs, as the said court may deem fit and proper, on the following grounds, viz:-

40

1. Because the Respondent was wrong in holding that the Income Tax Act, 1974, as amended, was applicable to the Appellant, whereas it was the Income Tax Ordinance, 1950, as amended, which applied to him.

2. Because Section 36 (p) of the Income Tax Ordinance, 1950, as amended, enacts that section 55 of the said Ordinance which gives Income Tax Commissioner anti-avoidance powers, shall not apply to Development Companies.

3. Because the Respondent was wrong in holding that section 40 of the Income Tax

In the
Supreme
Court of
Mauritius

Act, 1974, was applicable to Aluminium Enterprises Ltd, a development Company, of which the Appellant is a shareholder, and in assessing this latter accordingly.

No.5
Notice of
Grounds of
Appeal of
Third
Appellant
10th June
1982

(continued)

4. Because Aluminium Enterprises Limited, as a development company, had no chargeable income and no distributable income during the year of assessment under reference.

5. Because the Respondent was wrong in holding that Aluminium Enterprises Ltd's decision not to declare dividends in respect of the year of assessment under review is to be considered as a tax avoidance arrangement under section 44(1) and (2) of the Act which in any case has no application to the circumstances of the present case.

6. Because the Respondent was wrong in holding that there are different classes of exempt income under the Act, viz. exempt income under section 7 of the Act and income becoming exempt by an act of the Respondent.

7. Because the Respondent has misunderstood the alleged intentions of the legislator in connection with the applicability of section 55 of the former Income Tax Ordinance and section 40 of the Act to development companies and drawn wrong inferences therefrom.

8. Because the amount which the Respondent has determined should be distributed as income among the shareholders of Aluminium Enterprises Ltd. is excessive and should be reduced.

And take further notice that the documents mentioned in List "A" attached to this notice are those which the Appellant intends to produce at the hearing of the above appeal and that the said documents may be inspected by you, the Respondent, your Attorney or Agent, either at the Registry of the above Court or at the office of the undersigned attorney at law, situate at No.8 Georges Guibert Street, Port Louis, as the case may be, on any office day during office hours previous to the hearing of the above appeal.

Under all legal reservations.

Dated at Port Louis, this 10th day of
June 1982

(Sd.) G.A. ROBERT
Appellant's Attorney

In the
Supreme
Court of
Mauritius

Reg. A 434 No. 5107

No.5
Notice of
Grounds of
Appeal of
Third
Appellant
10th June
1982

(continued)

No.6

NOTICE OF GROUNDS OF
APPEAL OF FOURTH APPELLANT

IN THE SUPREME COURT OF MAURITIUS

No.6
Notice of
Grounds of
Appeal of
Fourth
Appellant
7th June
1982

In re:-

10 Limberg LAM PO TANG, of
 Port Louis Appellant

v.

The Commissioner of
Income Tax Respondent

20 Take notice, you, the abovenamed
 Respondent, that the Appellant in the above
 matter, electing his legal domicile in the
 office of the undersigned attorney at law,
 situate at No.8, Georges Guibert Street,
 Port Louis, feeling himself aggrieved by and
 dissatisfied with additional assessment made
 upon him by you on the 1st June 1982
 (Additional assessment Lc 010053 of 01.06.82,
 29110/78, 17770/78) for the year of assess-
 ment ending on the 30th June 1978 and based
 on the Appellant's income for the year ended
 the 30th June 1977, does hereby give you
 notice that it appeals to the Supreme Court
 of Mauritius against your said additional
30 assessment in order to have same quashed,
 reversed, set aside or otherwise dealt with,
 with costs, as the said Court may deem fit

In the
Supreme
Court of
Mauritius

No.6
Notice of
Grounds of
Appeal of
Fourth
Appellant
7th June
1982

(continued)

and proper, on the following grounds, viz:

1. Because the Respondent was wrong in holding that the Income Tax Act, 1974, as amended, was applicable to the Appellant, whereas it was the Income Tax Ordinance, 1950, as amended, which applied to him.

2. Because section 36 (P) of the Income Tax Ordinance, 1950, as amended, enacts that section 55 of the said Ordinance which gives the Income Tax Commissioner anti-avoidance powers, shall not apply to Development Companies.

10

3. Because the Respondent was wrong in holding that section 40 of the Income Tax Act, 1974, was applicable to Aluminium Enterprises Limited, a development Company, of which the Appellant is a shareholder, and in assessing this latter accordingly.

4. Because Aluminium Enterprises Limited, as a development company, had no chargeable income and no distributable income during the year of assessment under reference.

20

5. Because the Respondent was wrong in holding that Aluminium Enterprises Ltd's decision not to declare dividends in respect of the year of assessment under review is to be considered as a tax avoidance arrangement under section 44(1) and (2) of the Act which in any case has no application to the circumstances of the present case.

30

6. Because the Respondent was wrong in holding that there are different classes of exempt income under the Act, viz. exempt income under Section 7 of the Act and income becoming exempt by an act of the Respondent.

7. Because the Respondent has misunderstood the alleged intentions of the legislator in connection with the applicability of section 55 of the former Income Tax Ordinance and section 40 of the Act to development companies and drawn wrong inferences therefrom.

40

8. Because the amount which the Respondent has determined should be distributed as income among the shareholders of Aluminium Enterprises Ltd. is excessive and should be reduced.

10 And take further notice that the documents mentioned in List "A" attached to this notice are those which the Appellant intends to produce at the hearing of the above appeal and that the said documents may be inspected by you, the Respondent, your attorney or agent, either at the Registry of the above Court or at the office of the undersigned attorney at law, situate at 8 Georges Guibert Street, Port Louis, as the case may be, on any office day between office hours previous to the hearing of the above appeal.

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No.6
Notice of
Grounds of
Appeal of
Fourth
Appellant
7th June
1982

(continued)

Under all legal reservations.

Dated at Port Louis, this 7th day of
June 1982.

(Sd.) G.A. ROBERT

Appellant's Attorney

20 Reg. A434 No.4822

No.7

NOTICE OF GROUNDS OF
APPEAL OF FOURTH APPELLANT

IN THE SUPREME COURT OF MAURITIUS

In re:-

Limberg Lam Po Tang Appellant

v/s

The Commissioner of
Income Tax Respondent

No.7
Notice of
Grounds of
Appeal of
Fourth
Appellant
8th June
1982

30 Take Notice, you, the abovenamed Respondent, that the Appellant in the above matter, electing his legal domicile in the office of the undersigned Attorney at Law, situate at No.8, Georges Guibert Street, Port Louis, feeling himself aggrieved by and dissatisfied with additional assessment made upon him by you on the 1st June, 1982 (Additional assessment No. LC 010054/79

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No.7
Notice of
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Fourth
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8th June
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of 01.06.82, 36972/79, 17803/79) for the year of assessment ending on the 30th June 1979 and based on Appellant's income for the year ended the 30th June 1978, does hereby give you notice that it appeals to the Supreme Court of Mauritius against your said additional assessment in order to have same quashed, reversed, set aside, or otherwise dealt with, with costs, as the said Court may deem fit and proper, on the following grounds viz:-

10

1. Because the Respondent was wrong in holding that the Income Tax Act, 1974, as amended, was applicable to the Appellant, whereas it was the Income Tax Ordinance, 1950, as amended, which applied to him.

2. Because section 36(P) of the Income Tax Ordinance, 1950, as amended, enacts that section 55 of the said Ordinance which gives the Income Tax Commissioner anti-avoidance powers, shall not apply to Development Companies.

20

3. Because the Respondent was wrong in holding that Section 40 of the Income Tax Act, 1974, was applicable to Aluminium Enterprises Ltd., a development Company, of which the Appellant is a shareholder, and in assessing this latter accordingly.

4. Because Aluminium Enterprises Limited, as a development company, had no chargeable income and no distributable income during the year of assessment under reference.

30

5. Because the Respondent was wrong in holding that Aluminium Enterprises Ltd's decision not to declare dividends in respect of the year of assessment under review is to be considered as a tax avoidance arrangement under section 44(1) and (2) of the Act which in any case has no application to the circumstances of the present case.

40

6. Because the Respondent was wrong in holding that there are different classes of exempt income under the Act, viz. exempt income under section 7 of the Act and income becoming exempt by an act of the Respondent.

7. Because the Respondent has misunderstood the alleged intentions of the legislator in connection with the applicability of section 55 of the former Income Tax

Ordinance and section 40 of the act to development companies and drawn wrong inferences therefrom.

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8. Because the amount which the Respondent has determined should be distributed as income among the shareholders of Aluminium Enterprises Ltd. is excessive and should be reduced.

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10 And take further notice that the documents mentioned in List "A" attached to this notice are those which the Appellant intends to produce at the hearing of the above appeal and that the said documents may be inspected by you, the Respondent, your attorney or agent, either at the Registry of the above Court or at the office of the undersigned attorney at law, situate at 8 Georges Guibert Street, Port Louis, as the case
20 may be, on any office day between office hours previous to the hearing of the above appeal.

(continued)

Under all legal reservations.

Dated at Port Louis, this 8th day of June 1982.

(Sd.) G.A. ROBERT

Appellant's Attorney

Reg. A434 No.4819

In the
Supreme
Court of
Mauritius

No. 8

JUDGMENT OF V.J.P.GLOVER
CHIEF JUSTICE AND HON.A.M.G.
AHMED J.

No.8
Judgment
of V.J.P.
Glover
Chief
Justice and
Hon.A.M.G.
Ahmed J.
2nd December
1982.

IN THE SUPREME COURT OF MAURITIUS

In the matter of :-

ALUMINIUM ENTERPRISES LTD. Appellant

v.

THE COMMISSIONER OF
INCOME TAX Respondent

AND

In the matter of :-

LIMBERG LAM PO TANG Appellant

v.

THE COMMISSIONER OF
INCOME TAX Respondent

AND

In the matter of :-

L.K.CHOW LAM PO TANG Appellant

v.

THE COMMISSIONER OF
INCOME TAX Respondent

AND

In the matter of :-

LIMBERG LAM PO TANG Appellant

v.

THE COMMISSIONER OF
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AND

In the matter of :-

GARY LAM PO TANG Appellant

v.

THE COMMISSIONER OF
INCOME TAX Respondent

AND

In the matter of :-

GARY LAM PO TANG Appellant

v.

THE COMMISSIONER OF
INCOME TAX Respondent

AND

In the matter of :-

L.K.C. LAM PO TANG

Appellant

v.

THE COMMISSIONER OF
INCOME TAX

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JUDGMENT

10 Aluminium Enterprises Ltd. is a development company which, in accordance with the relevant enactments, was entitled to income tax relief for a period of eight years as from 1971 (that is eight years instead of five because the company elected not to claim an initial allowance). During the first five years, it declared most of its net profits as dividends amongst the only three shareholders - cum - directors of the company. According to law, the income derived by a development company from its development enterprise is exempt from tax during its tax relief period, namely eight years in the present instance, whilst dividends paid to shareholders of such a company are only tax exempt to the extent that they are paid before the end of the first five years, which means that, in the case of a company which enjoys an eight year tax holiday, the shareholders must pay tax on any dividend received during years, 6, 7 and 8. The company failed to pay any dividend at all, in the sixth and seventh years of its tax relief period, namely the income years 1976-77 and 1977-78, although its net profits were greater than in the previous years. The respondent determined, pursuant to section 40 of the Income Tax Act (in this judgment referred to as "the Act"), that the company had failed to distribute a reasonable part of its distributable income in those two years. He accordingly directed that certain sums should be deemed to have been distributed and informed the company that the shareholders would be assessed thereon in due course. Before this could be done, the company appealed against the direction. Issue was joined and the case set down for trial.

(continued)

At the hearing both counsel pointed out that they had not at first realised that,

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whilst under the previous enactment, namely the Income Tax Ordinance 1950 (to which we shall refer as "the Ordinance"), a company which was the subject of a similar direction under section 55 thereof, could appeal to this Court against it, the Act is so couched that only the shareholders can appeal after they have been assessed. We allowed counsel to put in their documents and offer argument so as not to lose time, in the belief that the case could be completed on the same day. As, however, counsel for the company could not conclude his own submissions on that day, we suggested that matters be put right before the next sitting. The assessments have now been served on the shareholders, and they have lodged their six appeals, that is two for each shareholder in respect of the two relevant years (the same grounds being invoked). The sums claimed from the three shareholders amount to Rs 8,329,137.- It has been agreed by the parties that (a) the documents produced and the argument already offered in S.C.R. 3199 should be taken to be evidence and submissions in the six new cases (b) the seven appeals should be consolidated (c) the Appeal in S.C.R.3199 would at the end of the day be set aside, costs to abide the event in the other appeals.

Before passing on to the legal submissions, it is desirable to observe that, at least in respect of the two relevant years, the company derived no income from any source other than its development enterprise, i.e. no taxable income. The grounds of appeal are as follows :-

1. Because the Respondent was wrong in holding that the Income Tax Act, 1974, as amended, was applicable to the Appellant, whereas it was the Income Tax Ordinance, 1950, as amended, which applied to him.
2. Because section 36(P) of the Income Tax Ordinance, 1950, as amended, enacts that section 55 of the said Ordinance which gives the Income Tax Commissioner anti-avoidance powers, shall not apply to Development Companies.
3. Because the Respondent was wrong in holding that section 40 of the Income Tax Act, 1974, was applicable to Aluminium Enterprises Limited, a development Company, of which the

Appellant is a shareholder, and in assessing this latter accordingly.

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4. Because Aluminium Enterprises Limited, as a development company, had no chargeable income and no distributable income during the year of assessment under reference.

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10

5. Because the Respondent was wrong in holding that Aluminium Enterprises Ltd's decision not to declare dividends in respect of the year of assessment under review is to be considered as a tax avoidance arrangement under section 44(1) and (2) of the Act which in any case has no application to the circumstances of the present case.

(continued)

20

6. Because the Respondent was wrong in holding that there are different classes of exempt income under the Act, viz. exempt income under section 7 of the Act and income becoming exempt by an act of the Respondent.

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7. Because the Respondent has misunderstood the alleged intention of the legislator in connection with the applicability of section 55 of the former Income Tax Ordinance and section 40 of the Act to development companies and drawn wrong inferences therefrom.

8. Because the amount which the Respondent has determined should be distributed as income among the shareholders of Aluminium Enterprises Ltd. is excessive and should be reduced.

40

We need not concern ourselves with ground 5. True it is that, in the course of correspondence exchanged between the respondent and the firm of accountants which acts for the appellants, the former did allude to section 44 of the Act, which entitled the Commissioner to adjust a taxpayer's income in relation to any tax-avoidance arrangement or transaction which is declared to be void, but the assessments were made, and the directions issued, under section 40, and the respondent must stand or fall by his contentions on that score. On the other hand we were not addressed on ground 8 but asked to

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decide the legal issues before going into actual figures. Broadly speaking the other grounds fall under two distinct heads: grounds 1 and 2 on the one hand, and grounds 3, 4, 6 and 7 on the other.

The first issue, on grounds 1 and 2, to our mind poses no real problem. Under the Ordinance, section 36P thereof specifically provided that section 55 (the provision to which section 40 of the Act corresponds) could 10 not be applied at all by the respondent in relation to the income of a development company which was derived from the development enterprise, and therefore exempt. Whilst the old section 55, as we have seen, has its counterpart in section 40 of the Act, there is no provision in the latter law which corresponds to section 36P. Thus the respondent contends, as we shall see when considering the second issue involved, that, 20 as from the commencement of the Act, it was and is open to him to issue a direction under section 40 even in respect of a development company's income which is tax exempt. The appellants will submit, as we shall shortly observe, that this is not so on a proper construction of the Act, but they also say, through their counsel, that all rights acquired under the Ordinance are sacrosanct and cannot be affected by a change in the 30 law. Reference was made to retrospective legislation, and to the former article 2 of the Code Napoleon, but we do not see that the Act has any retrospective effect. We are not dealing with a situation such as the one considered in *Inland Revenue Commissioner v. Ross and Coulten* (1948) 1 All E.R. 616, where the Special Commissioners had issued a direction under section 24 of the U.K. Finance Act 1943, subsection (8) of which 40 provided as follows -

(8) The enactments relating to excess profits tax shall be deemed always to have had effect as amended and extended by the foregoing provisions of this section.

Our Act, which (subject to certain exceptions) came into operation on the 1st July 1973, made provision which, according to the respondent, entitles him to issue a 50 direction under section 40 in relation to income years beginning with the year 1973/74. Indeed the Assessments with which we are concerned relate to the income years 1976/77 and 1977/78.

Rather the question is whether, pursuant to section 17(3)(c) of the Interpretation and General Clauses Act, the appellants can claim that the company, or perhaps more to the point, they themselves, had acquired a right under the Ordinance which cannot be affected by a change in the law.

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10 The relevant provision reads as follows :-

Effect 17.- (1).....
of (2).....
repeal (3)..... the repeal
of an enactment shall not -

(continued)

20 (a).....
(b).....
(c) affect any right,
privilege, obligation
or liability acquired,
accrued or incurred
under the repealed
enactment;

.....

30 There is in our view no such acquired right, more especially in fiscal matters. Almost every year the executive, through the legislator, attempts to plug loop-holes in the tax laws to prevent the citizen from enjoying a benefit which had previously "accrued" to him. Moreover, the purport of the relevant enactments in relation to development companies has always carried an element of non-entitlement to accrued rights. Under the Ordinance, and under the Act, for that matter, the respondent is bound to exempt development companies from tax only to the extent that a tax relief period has been prescribed. In the Ordinance (section 36A) it was even open to the authority granting the development certificate (the Governor in
40 Council, then the Governor-General and later the Minister of Commerce and Industry) to prescribe no tax relief period at all. The Development Incentives Act 1974 (section 5) provided that there shall be a tax relief period, but "for a period not exceeding" so many years. And it was always open to the authority to amend a development certificate on certain conditions.

50 We have already referred to an English decision of 1948. We may also refer to Jamieson v. Inland Revenue Commissioners (1964) A.C.1445, Cory & Son Ltd. v. Inland Revenue

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Commissioners (1965) A.C.1088 and Greenberg v. Inland Revenue Commissioners (1972) A.C. 109. The gist of all these cases is that, in fiscal matters, the legislator may intervene retrospectively to render taxable revenue which was previously exempt. In a case quoted to us by Counsel for the appellants, Esperance Co.Ltd. v. Commissioners of Income Tax (1982) No.153, this Court used the following words :

10

" We have seen that as the law existed in Mauritius before 1971, a company issuing bonus shares to its shareholder did so with the knowledge that subsequent repayments of share capital to the shareholders would not be chargeable to income tax. There is no doubt that the legislator was entitled to decree in 1971 that such repayment, even where the corresponding bonus issue was effected at any time before 1971 would be taxable as dividends (or distributions), though such retrospective feature might result in a certain amount of unfairness being caused. Counsel for the appellant referred to the case of a third party who would, years ago, have bona fide purchased shares in a company and unexpectedly find later that, on its being repaid to him, his capital has become chargeable to income tax.

20

30

We agreed with Counsel for the respondent that, unfairness or no unfairness, if the language used by the Legislator makes clear such an intention, the Court could only give effect to it. "

To take one of the illustrations used by counsel for the respondent, surely a person who takes out a 15-year life insurance policy in year X, at a time when all premiums are tax deductible, cannot claim an acquired right if Parliament provides in year X + 5 that taxpayers can only deduct half their premiums.

40

For those reasons, we fail to see how it can be contended that Parliament is not authorised, after periodical reviews of the situation, to determine eventually that, in effect, shareholders are not paying to the public revenue their rightful share, and to prescribe measures to ensure that they do.

50

The only pre-requirements for an interference with rights is that the language of Parliament should be unambiguous. And nothing could be clearer than the omission of any provision corresponding to the old section 36P. Grounds 1 and 2 therefore fail.

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10 With regard to the other issue it is necessary to quote sizeable extracts from the relevant texts. We produce firstly those taken from the Ordinance.

Returns of income, objections and appeals 36N. (1) The provisions of Part XI of this Ordinance shall apply in all respects as if the income of a development company in its tax relief period was chargeable to tax.

(continued)

20 (2) For each accounting period the Commissioner shall issue to the development company a statement showing the amount of income or loss ascertained and the provisions of Part XI of this Ordinance shall apply, with the necessary modifications, as if such statement were a notice of assessment given under such provisions.

30 Profit exempted from income tax 36 O. (1) Subject to the provisions of sub-section (2) of this section, including the effect of a cancellation as therein mentioned -

40 (a) where any statement issued under sub-section (2) of section 36 N has become final and conclusive the amount of the income shown by such statement shall not form part of the assessable income, total income or chargeable income of the development company for any year of assessment and shall be exempt from tax under this Ordinance;

50 Certain undistributed profits to be treated as distributed 55.- (1) With a view to preventing the avoidance of the payment of tax through the withholding from distribution of income of a company which would

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otherwise be distributed, it is hereby provided that where it appears to the Commissioner that any company has not distributed to its shareholders as dividend a reasonable part of its income for any period, he may notice in writing to the company, direct that such undistributed income shall be deemed to have been distributed as dividend amongst shareholders and the shareholders concerned shall be assessable accordingly.

..... 20

If we now turn to the Act, the position is as follows :-

- Allowance for development companies 33.-(1)
- (2) The Commissioner shall issue to every development company, in respect of each year of assessment relating to its tax relief (sic) period, a statement showing the amount of income or loss for that year from the production or provision of the development products specified in its development certificate. 30
- (3)
- (4)where a statement issued under subsection (2) has become final and conclusive - 40
- (a) the amount of the income shown in the statement in respect of any income year during the tax relief period shall not form part of the gross income of the development

company for any year of assessment and shall be exempt from income tax;

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10 Excessive undistributed profits of companies

40. (1) Subject to the other provisions of this section where the Commissioner is of opinion that a company has not distributed to its shareholders by way of dividend during an income year a reasonable part of the distributable income of the company for that income year, he may determine that the amount of the insufficient distribution shall be deemed to have been distributed as a dividend amongst the shareholders in that income year and they shall be assessable accordingly.

20

30

- (2)
- (3)
- (4)
- (5)
- (6)
- (7)

(8) For the purposes of this section "distributable income" means the difference between -

40

(a) the sum of -

- i) the chargeable income derived by the company in the income year; and

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ii) any dividends deductible
by the company under
section 55 in that
income year;

(b) the amount of the income
tax in respect of the
chargeable income
derived by the company
in that income year;

(9) 10

Annual 60. Subject to the other provisions
Returns of this Act and to any regula-
tions made under this Act,
in each year of assessment -

(a)

(b) every company shall, whether
or not it is a taxpayer
furnish to the Commissioner
a return in a form approved
by the Commissioner specify- 20
ing all income derived
during the preceding income
year, together with such
other particulars as the
Commissioner may require.

The first thing which strikes us on a
comparison of the two laws is that, as
already indicated, there is no equivalent
to section 36P of the Ordinance. And this
brings us to the gist of the submission of 30
counsel for the appellants on grounds, 3, 4,
6 and 7. If his first contention is wrong,
and his clients cannot claim an acquired
right, then he says that, even under the Act,
the respondent cannot make use of section 40
in relation to development companies, or
their shareholders. Counsel for the appellants
contends that there is no section correspond-
ing to section 36P because the legislator
has achieved the same purpose as before 40
(namely that of excluding income of develop-
ment companies from the respondent's reach
in the field of dividend declaring) by using
different language in section 40 itself.
That section provides that the respondent
can only address himself to the "distribut-
able income" of a company; in order to find
out what is the distributable income, he
must first find out what is the company's
chargeable income; and the appellant company 50
has no chargeable income, says counsel.

We may first note that there are obvious cases where a development company may derive income otherwise than from its development products, on which it will be assessable to tax. To that extent, at least, it is not correct to say that the language of section 40 excludes development companies altogether.

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10 If we go back to the Ordinance we find that section 36 O provided that the amount certified by the Commissioner under section 36 N "shall not form part of the total income, assessable income or chargeable income," of the development company. Incidentally, neither "total income" nor "assessable income" was defined in the Ordinance. But what seems clear to us is that, when the Ordinance said that the income from the development enterprise did
20 not form part of the company's total income, it was achieving the same purpose which underlies section 33 of the Act which provides that such income shall not form part of gross income.

(continued)

In our view the same reasoning applies to section 55 of the Ordinance and section 40 of the Act. As explained in Cie d'Investissement et de Developpement Ltee v. Commissioner of Income Tax (1975) M.R. 239,
30 the combined object of such provisions and of those specifically related to development companies is twofold; to encourage investment in certain fields and at the same time to prevent loss to the general revenue. Moreover the marginal note to those two sections is substantially the same and it speaks of excessive accumulation of profits to enable shareholders to evade tax. Finally we come to the crux of the issue. On the appellants'
40 reasoning, if, under the Ordinance the income from the development enterprise of a company was said not to form part of its total income, then it was not part of its income at all. So then it could not, under section 55, form part of its income available for distribution or, for that matter, of its income at all. On that basis, there would have been no need for section 36 P to exist. If therefore, as the appellants concede,
50 section 36 P had a purpose, and indeed on it they rely for their contention on the first issue, it follows that, under the Ordinance, the income of a development company would have, but for section 36 P, constituted income available for distribution, notwithstanding the language of section 36 O. And we do not see

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that section 40 of the Act has changed the situation materially. What, in our view, the legislator has done there is to give more precision to the concept of distributable income. Section 55 of the Ordinance, apart from providing that certain categories of income were deemed, and others were not deemed, to be available for distribution, did not define that phrase. Indeed this is what led the Courts, both in the U.K. and here, [see Cie d'Investissement et de Developpement Ltee v. Commissioner of Income Tax (supra)] to explain that it meant income capable of being distributed. Section 40 now makes it clear that distributable income, that is to say income available for, or capable of, distribution, is limited to chargeable income (i.e. gross income less expenses, deductions and allowances), plus sums actually distributed as dividends, less tax paid. One can thus understand why Act No.16 of 1976 intervened to correct an obvious mistake in the Act. "Distributable income" had originally been defined in section 40(8) to mean gross income plus dividends less tax; in 1976 the word "chargeable" replaced the word "gross".

One further matter may be observed. Before the Act, Government Notice No.107 of 1951 prescribed the forms in use for tax purposes. Those rules were revoked by the Act which now provides that the forms will be such as the respondent determines. But a look at documents A17 and A19 in the record shows that the form in use for companies to make returns is the same as the one formerly prescribed. Those documents are in fact the returns made by the appellant company in the relevant years. Of course development companies must, in spite of the fact that they are said to have no gross income and no chargeable income, file returns. But what do we see? The appellant company sets down its profits from the development enterprise; it adds sums set down for depreciation in its books, it then deducts a certain figure for annual allowance on plant and machinery; finally it puts forward a figure as being its chargeable income. And it is that chargeable income which the respondent certified under section 33 as being the company's development income which is exempt from tax (Documents A18 and A35).

For those reasons we hold that section 40 cannot be construed as excluding development companies from its ambit. And, since no

provision corresponding to the old section 36 P exists, we uphold the respondent's contention. We shall now hear the parties on ground 8 as to the figures.

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The seven appeals will be mentioned on the 17th January, 1983.

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A copy of this judgment will be filed in each record.

A.M.G.Ahmed
J.
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10

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Ag. Chief Justice

(Sd.) A.M.G. AHMED
Judge

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In the matter of:-

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v.

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TAX Respondent

AND

In the matter of:-

LIMBERG LAM PO TANG Appellant

v.

THE COMMISSIONER OF INCOME
TAX Respondent

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AND

In the matter of:-

L.K.CHOW LAM PO TANG Appellant

v.

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LIMBERG LAM PO TANG

Appellant

v.

THE COMMISSIONER OF
INCOME TAX

Respondent

AND

In the matter of:-

(continued)

GARY LAM PO TANG

Appellant

v.

10

THE COMMISSIONER OF
INCOME TAX

Respondent

AND

In the matter of:-

GARY LAM PO TANG

Appellant

v.

THE COMMISSIONER OF
INCOME TAX

Respondent

AND

In the matter of:-

20

L.K.C. LAM PO TANG

Appellant

v.

THE COMMISSIONER OF
INCOME TAX

Respondent

JUDGMENT

As was explained in our interlocutory judgment delivered on the 2nd December 1982, Aluminium Enterprises Ltd (hereinafter referred to as "the Company") had, without having been assessed, appealed against a determination made by the Respondent, pursuant to section 40 of the Income Tax Act (in this judgment referred to as "the Act"), to the effect that a certain part of the company's income should be deemed to have been distributed among, and to be

30

taxable in the hands of its shareholders. Eventually the parties agreed that no such right of appeal existed and that the company's appeal would later be "set aside". Since, however, all the relevant documents had been filed, and part of the argument of Counsel for the company had been recorded, in the record relating to the company's appeal, that case was later consolidated with the six other appeals which had, meanwhile, been lodged by the company's shareholders after they had received assessments.

In the
Supreme
Court of
Mauritius
No.9
Judgment
of V.J.P.
Glover
Chief
Justice and
Hon. A.M.G.
Ahmed J.
15th July
1983

After having heard Counsel's submissions on either side of the six appeals on their merits, we held in our interlocutory judgment that the respondent's determination was valid and could not be questioned in law. By agreement of parties, the question relating to the figures, namely the amount of dividends which the respondent had assessed as being taxable in the shareholders' hands, was left open. We are now informed by their Counsel that he does not propose to challenge the figures. It is agreed that in the result, those six appeals should, on the merits, be dismissed with costs.

(continued)

Learned Counsel for the company now says that he was mistaken when he conceded that it had no right of appeal and that, at any rate, it always had a right of objection to the determination. He therefore says that he no longer agrees that the company's appeal should be set aside, but asks that it should be dismissed so that, if the other appellants are advised to appeal against our judgment, the company should also be able to join in.

In our view, the parties had correctly assessed the legal situation and this Court does not have jurisdiction to entertain an appeal against a determination by the respondent under section 40, for the following reasons. The principles that can be evolved from Part IX of the Act are the following -

- a) one may object to an assessment, and eventually appeal against the assessment if still dissatisfied, or one may appeal against it without being through the process of an objection;

In the
Supreme
Court of
Mauritius

No.9
Judgment
of V.J.P.
Glover
Chief
Justice
and Hon.
A.M.G.Ahmed
J.
15th July
1983

(continued)

- b) one may object to certain determinations, namely those that are not excluded by section 96(2) just as one may object to an assessment;
- c) if there has been a determination which is not open to objection, and one is eventually subject to an assessment, one may, on an appeal against the assessment, query the determination.

10

Another question which arises is this. Section 96(1) says that "the right of objection under this Part" (meaning the right to object to an assessment) "shall extend to an objection to any determination....." other than those determinations which are excluded by section 96(2). The provisions of the Act do not say clearly whether, if one can object to a determination, and the objection is unsuccessful, the objector can appeal. Still 20 less do they say whether an aggrieved party may appeal direct, that is without objecting, against a determination which is liable to objection.

Now a determination under section 40 is specifically excluded from the ambit of the right of objection by section 96(2)(c)(i). Whatever may be the position regarding determinations that are open to an objection, it seems to us that the situation concerning 30 those determinations which cannot be objected to is governed by section 96(3) and the principle at (c) above applies. They can only be questioned on appeal in the course of an appeal against an assessment.

With regard to learned Counsel's point about an appeal to Her Majesty in Council, we confess that we cannot follow it. The right of appeal in such a case is not dependent on the form of words which is used 40 to reject an appeal, but on whether the decision is one which falls within the four corners of section 81 of the Constitution as being a final decision in a civil matter.

The seven appeals are accordingly, albeit for different reasons, dismissed with costs.

We wish to add one point. This Court has previously had occasion to point out that, particularly as a result of the radical 50 changes effected while the clauses of the Bill which later became sections 90, 93 and 96

of the Act were considered in the Assembly, it was desirable that the legislator should consider a complete revision of Part IX. We venture to repeat this observation for the attention of the authorities concerned. (See Pa Kin Lee Chung v. The Commissioner of Income Tax (1977) M.R.17).

10

(Sd.) V.J.P.Glover
Senior Puisne Judge

(Sd.) A.M.G.Ahmed
Judge

15th July, 1983

In the
Supreme
Court of
Mauritius

No.9
Judgment
of V.J.P.
Glover
Chief
Justice
and Hon.
A.M.G.Ahmed
J.
15th July
1983

(continued)

No.10

JUDGMENT OF P.Y.
ESPITALIER NOEL J.
AND L.P.R.AHNEE J.

IN THE SUPREME COURT OF MAURITIUS

In re:-

20

ALUMINIUM ENTERPRISES LTD. Appellant

v.

THE COMMISSIONER OF INCOME
TAX Respondent

In re:-

LIMBERG LAM PO TANG Appellant

v.

THE COMMISSIONER OF INCOME
TAX Respondent

In re:-

30

LIMBERG LAM PO TANG Appellant

v.

THE COMMISSIONER OF INCOME
TAX Respondent

No.10

Judgment
of P.Y.
Espitalier
Noel J. and
L.P.R.Ahnee
J.
1st August
1983

In the
Supreme
Court of
Mauritius

No.10
Judgment
of P.Y.
Espitalier
Noel J. and
L.P.R.Ahnee
J.
1st August
1983

(continued)

In re:-

LIM KWET CHOW LAM PO TANG Appellant

v.

THE COMMISSIONER OF
INCOME TAX Respondent

In re:-

LIM KWET CHOW LAM PO TANG Appellant

v.

THE COMMISSIONER OF
INCOME TAX Respondent 10

In re:-

GARY LAM PO TANG Appellant

v.

THE COMMISSIONER OF
INCOME TAX Respondent

In re:-

GARY LAM PO TANG Appellant

v.

THE COMMISSIONER OF
INCOME TAX Respondent 20

We direct that these seven appeals
be consolidated.

We grant the applicants leave to
appeal under section 81(1)(b) of the
Constitution of Mauritius set out in the
Schedule to the Mauritius Independence
Order, 1968, upon condition, as required
by section 4 of the Mauritius (Appeals
to Privy Council) Order 1968 -

1) that the applicants shall within 30
six weeks from the date of judgment enter
into good and sufficient security to the
satisfaction of the Master and Registrar
in the sum of Rs. 10,000 for the due
prosecution of the appeals and the payment
of all such costs as may become payable by
the applicants in the event of the appeals
being dismissed for non-prosecution, or of
the Judicial Committee of the Privy Council
ordering the applicants to pay the costs 40
of the appeals (as the case may be); and

2) that the applicants shall procure the preparation of the record and the despatch thereof to England within four months from the date of this judgment.

In the
Supreme
Court of
Mauritius

Costs of the present applications to be costs in the cause.

No.10
Judgment
of P.Y.
Espitalier
Noel J. and
L.P.R.Ahnee
J.
1st August
1983

A copy of this judgment shall be filed in each record.

(Sd.) P.Y.ESPITALIER NOEL
Judge

10

(Sd.) L.P.R.AHNEE
Judge

(continued)

1st August, 1983

No.11

ORDER GRANTING FINAL
LEAVE TO APPEAL TO
HER MAJESTY IN COUNCIL

SCR 28232

IN THE SUPREME COURT OF MAURITIUS

20 On Friday the 21st day of November, 1983
in the 32nd year of the reign of Queen
Elizabeth II.

In the matter of:-

1. Aluminium Enterprises Ltd.,
2. Lim Kwet Chow Lam Po Tang.,
3. Garry Lam Po Tang.,
4. Limberg Lam Po Tang

Applicants

v.

30

The Commissioner of Income Tax
Respondent

No.11
Order
granting
final leave
to appeal
to Her
Majesty in
Council
21st
November
1983

UPON hearing A.Raffray Q.C. (H.Moollan Q.C. with him), of counsel for the applicants and I.Rajahbally, of Counsel for the Respondent, who states that there is no objection to the

In the
Supreme
Court of
Mauritius

No.11
Order
granting
final leave
to appeal
to Her
Majesty in
Council
21st
November
1983

(continued)

motion; and after consideration

IT IS ORDERED BY THE COURT that the applicants BE AND THEY ARE GRANTED final leave to appeal to Her Majesty in Council by way of consolidated appeals against the judgments of this Court delivered on the 2nd December 1982 and 15th July, 1983 in the matters pending between the applicants and the respondent.

IT IS FURTHER ORDERED that execution of the said judgment BE suspended pending a decision by Her Majesty in Council.

10

By the Court
(s) O.A.KHODADIN
for Master and Registrar

Reg.B126 No.2129

PART II

EXHIBITS
DOC A1

LETTER FROM MINISTRY OF
COMMERCE AND INDUSTRY
TO SECOND APPELLANT

Ministry of Commerce &
Industry,
Port Louis
Mauritius

10th January, 1969

EXHIBITS

DOC A1
Letter
from
Ministry
of Commerce
and Industry
to Second
Appellant
10th
January
1969

10

Sir,

With reference to your application for a Development Certificate in respect of the manufacture aluminium ware and stainless steelware, I have to inform you that the grant of a Development Certificate under the provisions of subsection 7 of Section 36A of the Income Tax Ordinance (No.84 of 1950) as amended to your proposed company has
20 been approved.

2. A Development Certificate declaring your new Company to be a development Company in terms of the Income Tax Ordinance will be issued after the registration of the Company, provided such registration takes place within 3 months of the date of this letter. Please let me know when this is done.

3. I am also to inform you that should
30 there be no evidence of your proceeding with the project within three months following the registration of your Company, the development certificate may be liable to cancellation.

I am,
Sir,
Your obedient Servant,
Sg. (P.MOHITH)
for Principal Assistant Secretary

40 Mr. L.K.C.Lam Po Tang,
40 Royal Street,
Port Louis.

EXHIBITS

DOC A3
Industrial
Development
Tax Relief
Certificate
for First
Appellant
6th October
1969

EXHIBITS
DOC A3

INDUSTRIAL DEVELOPMENT
TAX RELIEF CERTIFICATE
FOR FIRST APPELLANT

INDUSTRIAL DEVELOPMENT TAX RELIEF
DEVELOPMENT CERTIFICATE

WHEREAS the ALUMINIUM ENTERPRISES LIMITED
proposes to establish an industry to
manufacture aluminiumware and stainless 10
steelware in Mauritius as described in its
application dated 25th July, 1968, and has
applied for a development certificate;

AND WHEREAS the Governor-General in accordance
with subsection 5 of section 36A of the
Income Tax Ordinance, 1950, has deemed as
amended (sic) that it will be in the public
interest to grant the development
certificate;

THESE ARE THEREFORE to certify that the 20
ALUMINIUM ENTERPRISES LIMITED is hereby
declared to be a development company in
terms of the Ordinance with effect from a
date to be determined by the Commissioner of
Income Tax for five years.

2. This development certificate is granted
to the ALUMINIUM ENTERPRISES LTD. subject
to the following conditions :-

(a) that the Company shall be engaged 30
principally in the manufacture of
aluminiumware and stainless steelware
(hereinafter referred to as development
products);

3. This development certificate is issued
subject to the provisions of Section 36E of
the Income Tax Ordinance, 1950.

Dated the sixth day of October, 1969.

MINISTRY OF COMMERCE AND INDUSTRY

(sd.) G. Marchand

Minister 40

EXHIBITS

DOC A2

LETTER FROM MINISTRY OF
COMMERCE AND INDUSTRY TO
FIRST APPELLANT

Ministry of Commerce & Industry,
Port Louis,
Mauritius

9th October, 1969

EXHIBITS

DOC A2
Letter
from
Ministry
of Commerce
and Industry
to First
Appellant
9th October
1969

10 Sir,

20 With reference to your letter of the
16th September, informing me that the new
Company has been incorporated on the 10th
September 1969 under the name of the
"Aluminium Enterprises Limited", I enclose
Development Certificate declaring the
Aluminium Enterprises Limited to be a
development company in terms of the Income
Tax Ordinance (No.84 of 1950, as subsequently
amended) for a period of five years with
effect from a date to be determined by the
Commissioner of Income Tax.

2. Your attention is invited to sub-
sections 2 and 3 of section 36D and also
to section 36H of the Ordinance. You are
requested to take action accordingly.

I am,
Sir,
Your Obedient Servant,

30 (Sd.) P.MOHITH
for Principal Assistant
Secretary

The Managing Director,
Aluminium Enterprises Ltd.,
c/o Lam Po Tang & Co.,
PORT-LOUIS.

EXHIBITS

DOC A4
Letter
from First
Appellant
to
Respondent
1st July
1971

EXHIBITS
DOC A4

LETTER FROM FIRST APPELLANT
TO RESPONDENT

43, Royal Street
Port Louis

1st July 1971

The Commissioner of Income Tax
Port Louis.

Sir,

10

We refer to the Development Certificate granted to Aluminium Enterprises Ltd. for the manufacturing of Aluminiumware and Stainless steelware and to inform you that we propose to fix our Production Day on the 1st July, 1971, date we are starting our commercial operation.

Yours faithfully,

Aluminium Enterprises Ltd.
Manager

20

Reg.A420 No.4504

DOC A5
Letter
from First
Appellant
to
Respondent
23rd July
1971

EXHIBITS
DOC A5

LETTER FROM FIRST APPELLANT
TO RESPONDENT

40, Royal Street
Port Louis

23rd July, 1971

The Commissioner of Income Tax
Port Louis

30

Sir,

We refer to our letter of the 1st instant and to submit hereunder our qualifying capital expenditure for your approval :-

Cost of New Construction as per details enclosed	132,425.86
Registration of Crown Land Lease	<u>744.86</u>
	133,200.72
Cost of New Machinery as per details enclosed	<u>140,317.44</u>
Total	<u><u>273,518.16</u></u>

EXHIBITS

DOC A5
Letter
from First
Appellant
to
Respondent
23rd July
1971

(continued)

10 Yours faithfully,
Aluminium Enterprises Ltd.
Manager
(L.B.Lam Po Tang)

Reg. A420 No.4503

EXHIBITS
DOC A6

LETTER FROM RESPONDENT
TO FIRST APPELLANT

DOC A6
Letter from
Respondent
to First
Appellant
7th December
1971

Mauritius

20 Office of the Commissioner
of Income Tax,
Port Louis.

7th December, 1971

The Manager,
Aluminium Enterprises Ltd.,
40, Royal Street,
Port Louis.

Dear Sir,

30 Aluminium Enterprises Ltd.
Section 36D(4) of the Income
Tax Ordinance

With reference to your letters dated
1st and 23rd July, 1971, I am pleased to
certify that the company's date of Production
Day shall be 1st April 1971 and the amount of
qualifying capital expenditure incurred prior
to Production Day is Rs. 280,753 arrived at
as follows :-

EXHIBITS

	Cost of construction of buildings	Rs. 132,426
DOC A6	Plant & Machinery	140,317
Letter from Respondent to First Appellant 7th December 1971	Technicians passages, Labour and insurance during period of installation	<u>8,010</u>
(continued)		Rs. 280,753

The stock of raw materials and semi-finished goods at 30th June, 1971, have been computed thus :- 10

	Per accounts	Rs. 196,484
<u>ADD</u>	Manufacturing expenses and overheads	<u>14,313</u>
		Rs. 210,797

I enclose my capital allowances schedule and am pleased to issue the following statement under Section 36 N (2) of the Ordinance :- 20

Gross income	NIL
Capital Allowances	<u>4,341</u>
Loss c/f	Rs. <u>4,341</u>

Yours faithfully,

(Sd.) M. Soormally
for Commissioner of Income Tax

EXHIBITS

DOC A7

ANNEXURE

ALUMINIUM ENTERPRISES LTD.

CAPITAL ALLOWANCE SCHEDULE

EXHIBITS

DOC A7
Annexure to
DOC A6

	Build- ings	Plant & Electrical	Machinery Mechani- cal
	2%	10%	7½%
Cost	132,426	143,727	4,600
10 Annual 1971/72 (3 months)	662	3,593	86
W.D.V. 30.6.71	131,764	140,134	4,514
	131,764		
	2,648		
WDV at 30/6/73 =	129,116		

EXHIBITS

DOC A8

20

LETTER FROM FIRST APPELLANT
TO RESPONDENT

DOC A8
Letter from
First
Appellant
to Respondent
13th
December
1971

40, Royal Street,
Port Louis

13th December, 1971

The Commissioner of Income Tax,
Port Louis.

Dear Sir,

We thank you for your letter of the
7th instant.

30

We hereby elect not to claim the
Initial Allowances and should be obliged
if you kindly extend our tax relief period
by another three years.

Yours faithfully,

Aluminium Enterprises Ltd.
Manager

Reg.A420 No.4505 (Sd.) L.B.Lampotang

EXHIBITS

DOC A9
Letter from
Respondent
to First
Appellant
17th
January
1972

EXHIBITS
DOC A9

LETTER FROM RESPONDENT
TO FIRST APPELLANT

Government of Mauritius

Office of the Commissioner
of Income Tax,
Port Louis.

17th January, 1972

The Manager, 10
Aluminium Enterprises Ltd.,
40, Royal Street,
Port Louis.

Dear Sir,

Aluminium Enterprises Ltd.
Tax Relief Period

Thank you for your letter of the
13 December, 1971.

I note that the Company has elected 20
not to claim initial allowances to which
it would otherwise have been entitled
under Section 36L(2) of the Income Tax
Ordinance 1950.

In accordance with Section 36H(2)
the tax relief period has been extended
by three years and will expire on the
31 March, 1979.

Since the Company has made up the 30
first accounts of its trade beginning on
the date of production day for the three
months ended 30 June, 1971, it follows
that it must thereafter make up its
accounts for successive periods of one
year up to year ended 30 June, 1978 and
then for the period 1 July, 1978 to 31
March, 1979.

Yours faithfully,

(Sd.) M. Soormally
for Commissioner of Income Tax

EXHIBITS
DOC A10

MEMORANDUM FROM GUY SUM YUEN
TO FIRST APPELLANT

EXHIBITS

DOC A10
Memorandum
from Guy
Sum Yuen
to First
Appellant
June 1977

MEMORANDUM FROM GUY SUM YUEN TO ALUMINIUM
ENTERPRISES LTD.

10 Payment of dividend account 30 June 1977.
Retention of profits advisable on account
of funds required to meet rising cost of
raw materials at present around £250
expected to reach £1,000 per ton in 1979.
Clarify interpretation of Sections 33 and
40.

20 I had an appointment with Mr. Soormally,
Deputy Commissioner a week ago in his
office. I explained my views that on the
one hand government says develop an
industry and I will give you tax-free benefit.
On the other hand, the same government says
declare dividend and pay tax. The two
sections clearly go opposite.

30 The Deputy Commissioner he followed my
reasoning but did not think my views were
the right one and may be very arguable.
I set down his arguments; First, because
Initial has not been claimed, profits would
be considerably increased; with initial
allowance for the same year profits would
be less. Second, as I said above, the
40 additional tax-free years are due to
surrender of initial allowance and it would
not be reasonable to nullify the benefit by
the application of another section. Third,
is the most important point. The develop-
ment certificate starts in 1971 when the
Ordinance was in force. The condition in
Section 36P (undistributed profits) is that
Section 55 was not to apply to income of a
DC during its tax-free years. When Section
55 became Section 40 of the Act 1974, Section
36P was not reproduced. However, unless the
law said in clear words that Section 36P was
not to apply, the company retains the benefit
it had acquired under the Section 17 of the
Interpretation and General Clauses Act 1974
(Act No.33 of 1974 law as it was in 1971).

50 For these reasons, the Deputy Commissioner
assured me that the Department will not
attempt to apply Section 40 to a DC still
enjoying the tax-free years.

EXHIBITS

DOC A10
Memorandum
from Guy
Sum Yuen
to First
Appellant
June 1977

As suggested, you may retain the profits
for 30 June 1977 to meet high cost of
raw materials in future and to re-invest
in new machinery.

June 1977

(continued)

DOC All
Letter
from First
Appellant
to
Respondent
16th
January
1978

EXHIBITS
DOC All

LETTER FROM FIRST APPELLANT
TO RESPONDENT

40, Royal Street,
Port Louis.

10

16th January, 1978

The Commissioner of Income Tax,
Port Louis.

Sir,

We enclose herewith a certified copy
of our accounts for the year ended 30th
June, 1977. We hereby apologise for the
delay and the inconvenience caused.

Yours faithfully,

20

Director
Aluminium Enterprises Ltd.
(Sd.) L.B.Lampotang

Reg. A420 No.4507

Aluminium Enterprises Ltd.

Balance Sheet as at 30th June, 1977

Capital - Authorised -

40,000 Ordinary Shares of Rs 10.- 400,000.-
 Capital - Issued -
 20,000 Ordinary Shares of Rs 10.- 200,000.-
 Revenue Reserve
Profit & Loss Account 1,897,647.92

Long Term Liabilities

Development Bank 57,389.15
 less Refund 15,109.30

Current Liabilities

Bank O/d - M.C.Bk 95,274.26
 M. Bk.408,578.94
503,853.20
 Creditors 7,986.20
 Outstanding Items 3,708.07
 Bills Payable 105,486.84

Fixed Assets

Building 532,975.15
 Machinery 142,461.-
 Factory Fittings 2,325.37
 Furniture 1,800.-
 Motor Vehicles 25,295.-

Current Assets

Stock - Raw Materials 493,304.21
 Semi Finished 243,364.72
 Finished 352,260.80
1,088,929.73

Trade Debtors

1,311,152.57

Loans and Advances

Galvanising Co.Ltd. 738,185.34

Capital Expenses

Deposit - C.E.B.- 715.-
 Preliminary Expenses 6,052.65

621,034.31
2,760,962.08

6,767.65
2,760,962.08

Auditor's Report: The Final Accounts and Balance Sheet of Aluminium Enterprises Ltd. for the year ended 30th June, 1977 have been audited by me and are in accordance with their books. All explanations and information required have been obtained. In my opinion their Balance Sheet shows a true and faithful position of their affairs at 30th June, 1977.

(Sd.) L.B.Lampotang
 Director

(Sd.) Guy Sum Yuen
 Auditor

Reg. A420 No.4508

EXHIBITS

Doc A13
Trading,
profit and
loss
account
for First
Appellant
at 30th
June 1977

EXHIBITS
Doc A13

TRADING, PROFIT AND LOSS
ACCOUNT FOR FIRST APPELLANT
AT 30TH JUNE 1977

Aluminium Enterprises Ltd

Trading, Profit and Loss Account for the year ended 30th June, 1977.

To Stock	283,504.42	By Sales	2,824,988.15
Cost of Production	1,315,758.15	Stock	352,260.80
Gross Profit	<u>1,577,986.38</u>		
	<u>3,177,248.95</u>		<u>3,177,248.95</u>
To Telephone	253.74	By Gross Profit	1,577,986.38
Licence	2,320.-		
Stationery	157.50		
Packing	342.-		
Van Expenses	3,231.56		
Bank Ch. & Int.	14,795.42		
Int. Dev. Bank	3,488.70		
Insurance - Public Liab.	178.-		
Export Freight	2,741.87		
Salaries	37,543.-		
Commission	8,006.20		
Sundries	361.45		
Depreciation	3,010.47		
Net Profit	<u>1,501,556.47</u>		
	<u>1,577,986.38</u>		<u>1,577,986.38</u>
To Balance c/d	1,897,647.92	By Net Profit	1,501,556.47
		Balance b/d	396,091.45
	<u>1,897,647.92</u>		<u>1,897,647.92</u>

Reg. A420 No. 4509

EXHIBITS

Doc A14

MANUFACTURING ACCOUNT FOR
FIRST APPELLANT AT 30TH
JUNE 1977

Aluminium Enterprises Ltd.

Manufacturing Account for the year ended 30th June, 1977.

To Opening Stock	...	362,159.31
Purchase of Raw Material	...	<u>1,338,895.81</u>
		1,701,055.12
less Closing Stock	...	<u>493,304.21</u>
Cost of Materials used	...	1,207,750.91
add Factory Wages	...	<u>144,975.18</u>
Prime Cost	...	<u>1,352,726.09</u>

To Factory Rent	2,900.-	
Water Rate	1,179.20	
Insurance Workmen's	811.-	
Electricity	11,618.72	
Registration of Factory	50.-	
Insurance - Stock & Factory	8,359.64	
Medical Care	10.50	
Repairs	312.95	
Depreciation	15,829.06	<u>41,071.07</u>
		1,393,797.16

Semi Finished Items		
add Opening Stock	165,325.71	
less Closing Stock	243,364.72	<u>78,039.01</u>
Cost of Production		<u><u>1,315,758.15</u></u>

Reg. A420 No. 4510.

EXHIBITS

Doc A14

Manufact-
uring Account
for First
Appellant
at 30th
June 1977

EXHIBITS

Doc.A15
Notes to
First
Appellant's
Accounts for
1976/77



EXHIBITS

Doc A15

NOTES TO FIRST APPELLANT'S
ACCOUNTS FOR 1976/77

Aluminium Enterprises Ltd

Notes on Accounts for 1976 - 77

Bank Charges & Interests

Mercantile Bank	8,611.77
Mtius Comm. Bank	8,183.85
	<u>14,795.42</u>

Sundries

Stamps	50.—
Manifest	81.—
Cables	225.20
Annual Return	5.25
	<u>361.45</u>

Motor Vehicles

Sept. 76 Van - Toyota -	23,691.50
Registration	1,373.97
Fitness & H.P.	50.—
	<u>25,115.47</u>

Nov. 77 Mobylette:

Cost	2,800.—
Registration	168.—
Plates etc.	22.50
	<u>2,990.50</u>
Total	28,105.97

less Depreciation 2,810.97

Book Value at 30.6.77 25,295.—

List of Schedules

Schedules 1, 2 and 3	enclosed
Schedule 4 to 12	Nil
Schedule 13	Trading Stock

Machinery

Balance at 1.7.76	152,791.56
Additions: <u>Electrical</u>	
Oct. 76: One Sawing Machine	1,575.—
—" One Starter	650.—
Fittings for above	882.50
<u>Mechanical</u>	
Jan. 77 Fittings	1,719.40
Apr. 77 One Furnace	671.60
	<u>2,391.—</u>
	158,290.06
Less Depreciation	<u>15,829.06</u>
Book Value at 30.6.77	<u>142,461.—</u>

Furniture

Balance at 1.7.76	1,999.50
Less Depreciation	<u>199.50</u>
Book value at 30.6.77	<u>1,800.—</u>

Depreciation charged to accounts

Manufacturing Accounts

Machinery	<u>15,829.06</u>
<u>Profit and Loss Account</u>	
Motor Vehicles	2,810.97
Furniture	<u>199.50</u>

3,010.47

Total 18,839.53

Raw Materials have been valued at cost price i.e. the C.I.F.

value plus duty, landing charges and all expenses incurred to bring the goods to their present location.

Semi Finished Products: have been reckoned at half finished products.

Finished Products have been valued as per cost of materials plus proportionate part of cost of production.

Note: As regards our stock of Raw Materials, we have proceeded on the following basis. First In - First Out. The stock on hand has been valued at the actual price paid for latest equivalent quantities received.

EXHIBITS
Doc.A15
Notes to
First
Appellant's
accounts
for 1976/77
(Continued)

EXHIBITS
Doc A16
List of Schedules
Aluminium Enterprises Ltd.

Doc A16
List of
Schedules

List of Schedules - continued -

Schedule 14 - Acquisition and Disposal of Assets:
Acquisition of Assets: As per Notes on Accounts.

Schedule 15 - Capital Allowances

	<u>Motor</u> <u>Vehicles</u>	<u>Building</u>	<u>Plant and Machinery</u>		<u>Total</u>
			<u>Mechanical</u>	<u>Electrical</u>	
Rate of Depreciation	20 %	2%	7 ½ %	10 %	
W D V at 1.7.76	-	242,480	7,183	116,630	366,293
additions in 76-77	28,106	-	2,391	3,107	33,604
	28,106	242,480	9,574	119,737	399,897
A.A. on old	-	5,300	538	11,663	17,501
A.A. on new	4,385	-	102	206	4,693
W D X at 30.6.77	23,721	237,180	8,934	107,868	377,703

Schedule 17 - Repairs: I hereby certify that the amount claimed does not include cost of improvement, addition, alteration or expenditure of a capital nature

Schedule 18 and 19 Nil

Manager

Reg. A420 No. 4511

16th January 1978

quote
all communications
in this Office

FILE NO.

F 000094
ALUMINIUM ENTERPRISES Ltd.
% Lampotang & Co
40 Royal Street
Port-Louis.

COMPANY
INCOME TAX

MAURITIUS

RETURN 1977-78

Year of Assessment ~~1976-1977~~

Income of the year 1st July 1975 to 30th June 1976
or of the Approved Accounting Period... 1.7.75 to 30.6.76

The Return and any remittances of tax may be sent to
Commissioner of Income Tax post free by registered post
envelopes marked "Income Tax".

Cheques should be made payable to the Commissioner
Income Tax and crossed "Income Tax Account".

TO COMPLETE THIS RETURN

Read carefully at page 4 "Preparation of Comp
Returns - Instructions and Information". Insert all
information required in pages 1, 2 and 3 of this form
complete and attach the required schedules in numer
order.

Check to ensure that all the income has been disclosed
then complete and sign the declaration below.

The Income Tax Act provides severe penalties for incor
or false statements in returns. If in doubt you should place
the facts before the Commissioner of Income Tax.

By virtue of the Income Tax Act you are hereby required
to furnish on this form a true and correct return of the
chargeable income of the abovenamed Company or Cor
porate Body computed in accordance with the said Act
and to deliver such return duly signed to me on or before
the 30th September, 1976/.....

Office of the Commissioner of Income Tax
Development Bank Building
Chaussée, Port Louis, Mauritius
Telephone No. 2-1891
2-0218

[Signature]

Date..... 1 JUL 1976
Commissioner of Income Tax

NAME OF COMPANY	Aluminium Enterprises Ltd.
Postal address to which notices are to be sent	40 Royal St Port Louis
Nature of business (and date of commencement if new company)	Manufacture of Aluminium
Principal place of business in Mauritius	Port-Louis
Address of Registered Office	40 Royal St Port Louis
Date and place of incorporation	10.9.69 Port-Louis

PARTICULARS RELATING TO SOURCES OF INFORMATION

QUESTION	ANSWER
1. What books of account are kept by or on behalf of the Company? ...	a complete set of the B/L
2. By whom are those books of account kept? (State name and address)	Miss BSCampy MUK. Ch...
3. Are those books of account audited each year? If so, by whom? ...	G.S. L.B.
4. Is the return in accordance with those books? ...	Yes
5. If the return is not in accordance with those books, on what basis and upon what information has the return been prepared? ...	-
6. Have you satisfied yourself, and, if so, how, that the books of account, or other sources of information upon which the return is based, are correct and disclose the whole of the Company's income from all sources? ...	Yes

DECLARATION

I*, *[Signature]* being the
Secretary/Manager/Principal Officer of the Company/Corporate Body named above,
(a) declare that to the best of my judgment and belief the particulars shown in
this return, the answers set forth above relating to sources of information and
also the particulars stated in the accompanying schedules are true and correct
in every detail, and disclose a full and complete statement of the total income
derived from all sources both in and out of Mauritius by * the Company/
Corporate Body named above during the year ended*... 30/6/76...
and chargeable to tax under the provisions of the Income Tax Act;
(b) hereby tender the sum of Rs *... 200... being *one-half of the
tax / the full tax due in respect of the chargeable income as computed overleaf.

*Fill in blank spaces as appropriate and delete as may be necessary

Date... 16/1/78

Signature

PAYMENT OF INCOME

- (a) One-half of the tax due on the income where the year of ends on 30th June / other half of the tax payable on or before March 1977; or
- (b) The full tax (if any) the income declared the year of it a date prior June 1976.

FOR USE IN INCOME TAX OFFICE

V.P. No.....

Tax payable per Return Rs.....

- Please attach: (i) Balance Sheet
 (ii) Profit and Loss Account (including Manufacturing, Working, or Trading Accounts, if applicable) Schedule 2
 (iii) Statement of Movements in Reserves and Provisions Schedule 3

STATEMENT OF CHARGEABLE INCOME

		Rs.
Net Profit as per Profit and Loss Account	...	1501556
Add : Income not included in Profit and Loss Account (Attach details as Schedule 4)	.....	-
Depreciation charged in accounts	... Factory = 15829	18840
Items not allowed as deductions:—	... Office = 3011	-
Capital expenditure	.....	-
Additions to Provisions and Reserves (Attach details as Schedule 5)	.....	-
Entertainment expenses and gifts	.....	-
Expenses not wholly and exclusively incurred in the production of the income (Attach details as Schedule 6)	.....	-
Other non-allowable items (Attach details as Schedule 7)	.....	-
		1520396
Subtract : Net exempt income (Attach details as Schedule 8)	.....	-
Other deductible items (Attach details as Schedule 9)	.....	-
Capital Allowances (From Schedule 16 page 3)	... 22194	22194
Dividends paid	.....	-
		1498202
Deduct : Losses as adjusted for tax purposes from previous years	.....	-
	Chargeable Income	1498202
	Tax @ 45% thereon	Deduction
	Deduct Credit for Foreign Tax	-
	Tax	-
Deduct : Tax on Withholding Income — See Instruction No. 10 (Attach Certificate)	.....	-
	Tax Payable	-

SPECIFIC ITEMS OF INCOME AND SPECIFIC DEDUCTIONS CLAIMED

DIVIDENDS RECEIVED — Complete the following schedule:

Dividends Received SCHEDULE 10
 Including exempt dividends, redeemable bonus shares, liquidator's and other distributions.

Name of Company*	Amount Rs.	For Office Use	Name of Company*	Amount Rs.	For Office Use
			Brought forward		
			Nil		
Carried forward			TOTAL		

Where in Liquidation write "I.L.". If it is claimed that the whole or part of any dividend, bonus share issue, liquidator's or other distribution is exempt, an appropriate note should be inserted.

INTEREST RECEIVABLE

Total amount of interest receivable

RENT RECEIVABLE

Total amount of rent receivable by the Company during the accounting year
 (Attach details as Schedule 12) Rs. NIL

TRADING STOCK

Attach as Schedule 13 a statement setting out:—

- (a) the basis adopted for valuing stock and materials (including partly manufactured goods and work-in-progress) on hand at the closing accounting date e.g. historical cost price, market selling value, or replacement cost.
- (b) details of methods used to value the stock on that basis.

ACQUISITION AND DISPOSAL OF FIXED ASSETS

Did the company during the year of income acquire or dispose of:—

real estate ?	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	stocks or shares ?	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	plant or machinery ?	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	Other assets ?	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
---------------	------------------------------	--	--------------------	------------------------------	--	----------------------	---	-----------------------------	----------------	---	-----------------------------

(Tick Boxes applicable)

If "YES", attach as Schedule 14, a statement setting out the details of the assets, its cost price and sale price, the dates of acquisition and sale, the profit or loss realised and the manner in which such profit or loss has been dealt with in the accounts.

CAPITAL ALLOWANCES

Attach as Schedule 15 a statement showing:—

- (a) Written down value of each class of plant and machinery, industrial building etc. at beginning of accounting year.
- (b) Particulars, including cost, of each class of additions during the accounting year.
- (c) Particulars, including cost, date of purchase, written down value, and sale price of each item (on which capital allowances have been granted) disposed of during the accounting year.
- (d) Amount of allowance claimed and percentage rates.
- (e) Amount of balancing allowance arising on disposal of qualifying assets.
- (f) Amount of balancing charge arising on disposal of qualifying assets.

Complete the following schedule:—

Capital Allowances Summary

SCHEDULE 16

Initial Allowances.....		<u>NIL</u>	
Annual Allowances.....		<u>22,194</u>	<u>22,194</u>
Agricultural Allowances.....			<u>—</u>
Scientific Research Allowances.....			<u>—</u>
Balancing Allowances.....			<u>—</u>
Total Allowances ...			<u><u>22,194</u></u>
Subtract: Balancing Charges.....			<u>—</u>
Net Allowances Claimed ...			<u><u>22,194</u></u>

REPAIRS

Attach as Schedule 17 a statement showing the total amount claimed as deduction in respect of repairs together with details of all major items, a general description of the work done and a declaration by the Secretary/Manager/Accountant/Principal Officer to the effect that the amount claimed does not include cost of improvements, additions, alterations or expenditure of a capital nature.

WITHHOLDING INCOME—(Gross income that consists of:—Rents, Dividends, Interest or Royalties derived from Mauritius by a non-resident) (See also Instruction No. 10)

Attach as Schedule 18 a statement showing the name and address of, and withholding income paid to, each non-resident. State also whether withholding tax deductions were made. If deductions were not made, give the reasons.

OVERSEAS TRAVELLING EXPENSES

Attach as Schedule 19 a statement showing, in respect of each person for whom expenses were incurred:—

- (a) Full name.
- (b) Position held or service rendered.
- (c) Duration of trip and mode of travel.
- (d) Countries visited and purpose of trip.

PREPARATION OF COMPANY RETURNS

Year of Assessment 1976-77

INSTRUCTIONS AND INFORMATION

1. These notes are to help you fill in the income tax return of a company or body corporate. They deal only with the main points and are not meant to be a guide on income tax law.

Schedules to be attached

2. The return form requires certain accounting documents and statements to be attached as separate schedules. The schedules should be identified with the number shown on the return form and attached in numerical order with Schedule 1 on top. More than one schedule may be set out on a single sheet provided the schedules are kept in numerical order. Conversely a schedule may consist of several sheets which should then be distinguished alphabetically e.g. Schedule 15A, 15B, 15C, 15D and so on.
3. Where the schedule is incorporated in the return form e.g. Schedule 16 on page 3, but the space provided is insufficient for the information required in respect of the company, a separate schedule should be attached.
4. Schedules 1 to 3 must be supplied by every company. Each other schedule which is applicable to your company should be supplied together with any additional schedules not specifically required but which in the special circumstances of your company's trade would facilitate the examination of the return and save enquiries.

Copy of return

5. A copy of the return and of each of the supporting schedules should be preserved for future reference. The Income Tax Department will not supply the company with a copy of its return.

Enquiries

6. Always quote the official file number shown on page 1 of the form of return in any correspondence or telephone call made to the Income Tax Office relating to the tax affairs of the company.

Failure to make returns

7. (i) Failure to furnish a return, omission of any income from a return, or claims for deduction in excess of amounts incurred will render a company liable to severe penalties.
- (ii) Under the Income Tax Act the Commissioner may make an assessment upon a company which has failed to make a correct return of its chargeable income and add to the assessment a penalty not exceeding 25% of the amount of tax assessed.
- (iii) A company which fails to make a return of its income will be liable on summary conviction, under the Act, to a fine not exceeding two thousand rupees.
- (iv) Under the Act a company which negligently makes a false return, gives any false information etc., will be liable on summary conviction to a fine not exceeding Rs 2,000 and ordered to pay an amount equivalent to twice the difference between the tax to which the company is liable and the income tax paid or payable under the false return made or on the basis of the false information given.

- (v) A company which makes a fraudulent return to evade etc., the assessment or payment of tax will be liable on summary conviction, under the Act, to a fine of not less than Rs 2,000 and not more than Rs 10,000 and ordered to pay an amount equivalent to three times the amount of tax for which it is assessable.

In addition, the Director, Manager, Secretary or Officer of the company responsible for the offence committed shall be liable to a term of imprisonment not exceeding, under 7(iii) and (iv), six months; and under 7(v), two years.

Interest

8. Interest at a rate not exceeding 7% per annum is payable, under the Act, on tax charged from the date when the tax becomes due and payable until payment, in cases where the total tax charged exceeds five thousand rupees, provided that the total amount of interest calculated exceeds one hundred rupees.

Entertaining expenses and gifts

9. Expenditure incurred on business entertainment and gifts is not allowable as deduction except on entertainment for "an overseas customer" (as defined in the Act).

Withholding income

10. Withholding income is defined by the Income Tax Act 1974 as gross income consisting of rents, dividends, interest, or royalties derived from Mauritius by a non-resident

At the time of payment of any withholding income a company is required to deduct from or in respect of that payment income tax *at the rate of 15%*.

The company should also *remit*, within 28 days of the making of such deduction, the amount deducted to the Commissioner together with a return *in writing* stating:—

- (i) the amount of the payment
 - (ii) the amount of income tax deducted
 - (iii) the type of withholding income involved
 - (iv) the period covered by the payment and
 - (v) the name and address of the person to whom payment was made
- and also *furnish the person* to whom the withholding income was paid a certificate stating:—
- (i) the amount of the payment
 - (ii) the amount of income tax deducted
 - (iii) the type of withholding income involved; and
 - (vi) the period covered by the payment.

NOTE: All remittances will be deducted from the tax payable by the recipient of the withholding income who should also submit his/its own separate return (I. T. Form 1 or 3)

Income Tax Return of First Appellant for 1978/79
6th November 1978

INCOME TAX RETURN OF FIRST APPELLANT FOR 1978/79

FILE NO. F 9

F 000094

Aluminium Enterprises Ltd.
40 Royal Street
Port Louis.

Communications Office



MAURITIUS

COMPANY
INCOME TAX
RETURN

Year of Assessment 1978-1979

Income of the year 1st July 1977 to 30th June 1978

or of the Approved Accounting Period.....to.....

The Return and any remittances of tax may be sent to the Commissioner of Income Tax post free by registered post in envelopes marked "Income Tax".

Cheques should be made payable to the Commissioner of Income Tax and crossed "Income Tax Account".

TO COMPLETE THIS RETURN

Read carefully at page 4 "Preparation of Company Returns - Instructions and Information". Insert all the information required in pages 1, 2 and 3 of this form and complete and attach the required schedules in numerical order.

Check to ensure that all the income has been disclosed and then complete and sign the declaration below.

The Income Tax Act provides severe penalties for incorrect or false statements in returns. If in doubt you should place all the facts before the Commissioner of Income Tax.

By virtue of the Income Tax Act you are hereby required to furnish on this form a true and correct return of the chargeable income of the abovenamed Company or Corporate Body computed in accordance with the said Act and to deliver such return duly signed to me on or before the 30th September, 1978/.....

Office of the Commissioner of Income Tax
Development Bank Building
Chaussée, Port Louis, Mauritius
Telephone No. 2-1891
2-0218

Commissioner of Income Tax

NAME OF COMPANY	PRIVATE PUBLIC	* Delete as appropriate.	ALUMINIUM ENTERPRISES LTD.
Postal address to which notices are to be sent	40 ROYAL ST. PORT LOUIS		
Nature of business (and date of commencement if new company)	Manufacture of aluminiumware, etc.		
Principal place of business in Mauritius	PORT LOUIS		
Address of Registered Office	40 ROYAL ST. PORT LOUIS		
Date and place of incorporation	10.9.69 MAURITIUS		

PARTICULARS RELATING TO SOURCES OF INFORMATION
QUESTION ANSWER

1. What books of account are kept by or on behalf of the Company? ...	Sundry books, Cash Books, ledgers, etc.
2. By whom are those books of account kept? (State name and address)	The Accounts Dept of the company
3. Are those books of account audited each year? If so, by whom? ...	Yes, late Guy Sumner.
4. Is the return in accordance with those books? ...	Yes
5. If the return is not in accordance with those books, on what basis and upon what information has the return been prepared? ...	
6. Have you satisfied yourself, and, if so, how, that the books of account, or other sources of information upon which the return is based, are correct and disclose the whole of the Company's income from all sources? ...	Yes. The Accountant checks in details the books of the company in details kept by the Accounts Clerks.

DECLARATION

I, L. B. Lam, Pa. Tan, being the Secretary/Manager/Principal Officer of the Company/Corporate Body named above, (a) declare that to the best of my judgment and belief the particulars shown in this return, the answers set forth above relating to sources of information and also the particulars stated in the accompanying schedules are true and correct in every detail, and disclose a full and complete statement of the total income derived from all sources both in and out of Mauritius by * the Company/Corporate Body named above during the year ended*... 30.6.78....., and chargeable to tax under the provisions of the Income Tax Act; (b) hereby tender the sum of Rs *.....being *one-half of the tax / the full tax due in respect of the chargeable income as computed overleaf.

PAYMENT OF INCOME TAX

- (a) One-half of the tax (if any due) on the income declared where the year of income ends on 30th June 1978. The other half of the tax being payable on or before 31st March 1979; or
- (b) The full tax (if any due) on the income declared where the year of income ends on a date prior to the 30th June 1978.

Date... 11.11.78

Signature

FOR USE IN INCOME TAX OFFICE

V.P. No.....

Tax payable per Return Rs.....

Not Paid

RENT RECEIVABLE

Total amount of rent receivable by the Company during the accounting year
 (Attach details as Schedule 12) Rs.....

TRADING STOCK

Attach as Schedule 13 a statement setting out:—

- (a) the basis adopted for valuing stock and materials (including partly manufactured goods and work-in-progress) on hand at the closing accounting date e.g. historical cost price, market selling value, or replacement cost.
- (b) details of methods used to value the stock on that basis.

ACQUISITION AND DISPOSAL OF FIXED ASSETS

Did the company during the year of income acquire or dispose of:—

YES	NO	YES	NO	YES	NO	YES	NO
real estate ? <input type="checkbox"/>	<input checked="" type="checkbox"/>	stocks or shares ? <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	plant or machinery ? <input checked="" type="checkbox"/>	<input type="checkbox"/>	Other assets ? <input type="checkbox"/>	<input type="checkbox"/>

(Tick Boxes applicable)

If "YES", attach as Schedule 14, a statement setting out the details of the assets, the cost price and sale price, the dates of acquisition and sale, the profit or loss realised and the manner in which such profit or loss has been dealt with in the accounts.

CAPITAL ALLOWANCES

Attach as Schedule 15 a statement showing:—

- (a) Base value of each class of plant and machinery, industrial building etc. at beginning of accounting year.
- (b) Particulars, including cost, of each class of additions during the accounting year.
- (c) Particulars, including cost, date of purchase, base value, and sale price of each item (on which capital allowances have been granted) disposed of during the accounting year.
- (d) Amount of allowance claimed and percentage rates.
- (e) Amount of balancing allowance arising on disposal of qualifying assets.
- (f) Amount of balancing charge arising on disposal of qualifying assets.

Complete the following schedule:—

Capital Allowances Summary

SCHEDULE 16

For Office use

Initial Allowances.....		
Annual Allowances... <i>Factory Buildings, Office Buildings, Plant & Machinery, Motor Vehicle</i>	22,024	
Agricultural Allowances.....		
Scientific Research Allowances.....		
Balancing Allowances.....		
Total Allowances ...	22,024	
Subtract: Balancing Charges	1,594	
Net Allowances Claimed ...	20,430	

REPAIRS

Attach as Schedule 17 a statement showing the total amount claimed as deduction in respect of repairs together with details of all major items, a general description of the work done and a declaration by the Secretary/Manager/Accountant/Principal Officer to the effect that the amount claimed does not include cost of improvements, additions, alterations or expenditure of a capital nature.

WITHHOLDING INCOME—(Gross income that consists of:—Rents, Dividends, Interest or Royalties derived from Mauritius by a non-resident) (See also Instruction No. 10)

Attach as Schedule 18 a statement showing the name and address of, and withholding income paid to, each non-resident. State also whether withholding tax deductions were made. If deductions were not made, give the reasons.

OVERSEAS TRAVELLING EXPENSES

Attach as Schedule 19 a statement showing, in respect of each person for whom expenses were incurred:—

- (a) Full name.
- (b) Position held or service rendered.
- (c) Duration of trip and mode of travel.
- (d) Countries visited and purpose of trip.

PREPARATION OF COMPANY RETURNS

Year of Assessment 1978-1979

INSTRUCTIONS AND INFORMATION

1. These notes are to help you fill in the income tax return of a company or body corporate. They deal only with the main points and are not meant to be a guide on income tax law.

schedules to be attached

2. The return form requires certain accounting documents and statements to be attached as separate schedules. The schedules should be identified with the number shown on the return form and attached in numerical order with Schedule 1 on top. More than one schedule may be set out on a single sheet provided the schedules are kept in numerical order. Conversely a schedule may consist of several sheets which should then be distinguished alphabetically e.g. Schedule 15A, 15B, 15C, 15D and so on.

3. Where the schedule is incorporated in the return form e.g. Schedule 16 on page 3, but the space provided is insufficient for the information required in respect of the company, a separate schedule should be attached.

4. Schedules 1 to 3 must be supplied by every company. Each other schedule which is applicable to your company should be supplied together with any additional schedules not specifically required but which in the special circumstances of your company's trade would facilitate the examination of the return and save enquiries.

Copy of return

5. A copy of the return and of each of the supporting schedules should be preserved for future reference. The Income Tax Department will not supply the company with a copy of its return.

Enquiries

6. Always quote the official file number shown on page 1 of the form of return in any correspondence or telephone call made to the Income Tax Office relating to the tax affairs of the company.

Failure to make returns

- (i) Failure to furnish a return, omission of any income from a return, or claims for deduction in excess of amounts incurred will render a company liable to severe penalties.
- (ii) Under the Income Tax Act the Commissioner may make an assessment upon a company which has failed to make a correct return of its chargeable income and add to the assessment a penalty not exceeding 25% of the amount of tax assessed.
- (iii) A company which fails to make a return of its income will be liable on summary conviction, under the Act, to a fine not exceeding two thousand rupees.
- (iv) Under the Act a company which negligently makes a false return, gives any false information etc., will be liable on summary conviction to a fine not exceeding Rs 2,000 and ordered to pay an amount equivalent to twice the difference between the tax to which the company is liable and the income tax paid or payable under the false return made or on the basis of the false information given.

(v) A company which makes a fraudulent return to evade etc., the assessment or payment of tax will be liable on summary conviction, under the Act, to a fine of not less than Rs 2,000 and not more than Rs 10,000 and ordered to pay an amount equivalent to three times the amount of tax for which it is assessable.

In addition, the Director, Manager, Secretary or Officer of the company responsible for the offence committed shall be liable to a term of imprisonment not exceeding, under 7(iii) and (iv), six months; and under 7(v), two years.

Interest

8. Interest at a rate not exceeding 7% per annum is payable, under the Act, on tax charged from the date when the tax becomes due and payable until payment, in cases where the total tax charged exceeds five thousand rupees, provided that the total amount of interest calculated exceeds one hundred rupees.

Entertaining expenses and gifts

9. Expenditure incurred on business entertainment and gifts is not allowable as deduction except on entertainment for "an overseas customer" (as defined in the Act).

Withholding income

10. Withholding income is defined by the Income Tax Act 1974 as gross income consisting of rents, dividends, interest, or royalties derived from Mauritius by a non-resident.

At the time of payment of any withholding income a company is required to deduct from or in respect of that payment income tax at the rate of 15%.

The company should also remit, within 28 days of the making of such deduction, the amount deducted to the Commissioner together with a return in writing stating:—

- (i) the amount of the payment
- (ii) the amount of income tax deducted
- (iii) the type of withholding income involved
- (iv) the period covered by the payment and
- (v) the name and address of the person to whom payment was made

and also furnish the person to whom the withholding income was paid a certificate stating:—

- (i) the amount of the payment
- (ii) the amount of income tax deducted
- (iii) the type of withholding income involved; and
- (iv) the period covered by the payment.

NOTE: All remittances will be deducted from the tax payable by the recipient of the withholding income who should also submit his/its own separate return (I. T. Form 1 or 3)

EXHIBIT Doc A18

Statement issued by Respondent
in relation to First Appellant
19th April 1978

EXHIBIT Doc A18
STATEMENT ISSUED BY RESPONDENT
IN RELATION TO FIRST APPELLANT

REFERENCE

F 9/DD/76

REGISTERED

Doc. A18

Office of the
Commissioner of Income Tax
Income Tax Headquarters
21, Pope Hennessy Street
Port Louis

DEVELOPMENT COMPANY

EXPORT ENTERPRISE

STATEMENT UNDER SECTION 33(2) OF THE INCOME TAX ACT NO 41 OF 1974

To: The Manager
.....
..... Aluminium Enterprises Ltd
.....
..... 40 Royal Street
.....
..... Port Louis
.....

YEAR OF ASSESSMENT ENDING 30 JUNE 1978

(Statement based on income of the year ended 30 June 1977
or of the Approved Accounting Period to

TAKE NOTICE that for the above year of assessment/~~accounting period~~, the
undermentioned statement is issued pursuant to subsection 33.....
of Section 2..... of the Income Tax No 41 of 1974..... The notice
is addressed to you as required by law. However, if you have a professional
adviser or an agent, it is desirable that he should see it immediately.


STATEMENT

Amount of Income/~~Loss~~ derived from the production or
provision of the development product specified in your
development certificate Rs ... 1,498,202 ...

Note: If you are dissatisfied with this statement, you may either

a. give me notice of objection in writing,
stating the grounds of your objection within
thirty-two days from the date below*

or b. appeal to the Supreme Court within sixty
days from the date below*


Commissioner of Income Tax

* Dated this 19 April 1978

EXHIBIT Doc A20
REPORT OF AUDITOR TO
FIRST APPELLANT

EXHIBIT Doc A20
Report of Auditor
to First Appellant
27th October 1978

Aluminium Enterprises Ltd.

REPORT OF THE AUDITOR TO THE MEMBERS

I have examined the books and accounts of ALUMINIUM
ENTERPRISES LIMITED for the year ended June 30, 1978 and
I have obtained all the information and explanations I have
required for the purpose of my audit.

In my opinion, the Balance Sheet set out on page 2 is
properly drawn up so as to exhibit a true and correct view of
the state of the Company's affairs at June 30, 1978, according
to the best of my information and the explanations given to me
and as shown by the books of the Company.

(sd.) O. Y. Channe Vy
AUDITOR

22 Marcelle L'Etang St.,
Beau Bassin.

October 27, 1978.

Reg. A420 No. 4512

EXHIBIT Doc A21
Audited Accounts
of First Appellant
at 30th June 1978
(Balance Sheet)

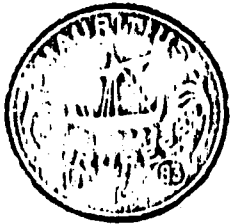
EXHIBIT Doc A21
AUDITED ACCOUNTS OF FIRST
APPELLANT AT 30TH JUNE 1978

ALUMINIUM ENTERPRISES LTD.

BALANCE SHEET - JUNE 30TH 1978

	NOTES	1978	1977
		RS	RS
ASSETS EMPLOYED			
FIXED ASSETS	1	691,798	704,856
INVESTMENTS		310,000	-
CURRENT ASSETS			
Stocks and work-in-progress	2	1,990,229	1,088,230
Accounts receivable		471,488	960,408
Cash and Bank Balances		184,056	-
		<u>2,645,775</u>	<u>2,049,338</u>
CURRENT LIABILITIES			
Accounts payable		28,904	117,181
Bank overdraft		-	503,853
		<u>28,904</u>	<u>621,034</u>
NET CURRENT ASSETS		<u>2,616,889</u>	<u>1,428,304</u>
INTANGIBLE ASSETS	3	6,768	6,768
		<u>3,625,435</u>	<u>2,139,928</u>
FINANCED BY			
SHARE CAPITAL	4	200,000	200,000
RESERVES	5	3,399,263	1,897,648
SHAREHOLDERS' INTERESTS		3,599,263	2,097,648
LOAN CAPITAL		26,172	42,280
		<u>3,625,435</u>	<u>2,139,928</u>

.....
Managing Director
Reg. A420 No. 4513



Doc. A.22

EXHIBIT Doc A22
Audited Accounts
of First Appellant
at 30th June 1978
(manufacturing
account)

ALUMINIUM ENTERPRISES LTD.

MANUFACTURING ACCOUNT - YEAR ENDED 30TH JUNE 1978

	<u>1978</u>		<u>1977</u>
	RS	RS	RS
<u>RAW MATERIALS CONSUMED</u>			
Stock, July 1st	493,304		362,159
Purchases	2,323,321		1,338,896
	<u>2,816,625</u>		<u>1,701,055</u>
<u>Less</u> Stock, June 30th	<u>1,114,100</u>		<u>493,304</u>
		1,702,519	1,207,751
<u>MANUFACTURING WAGES</u>			
		<u>142,640</u>	<u>144,975</u>
<u>PRIME COST</u>			
		1,845,150	<u>1,352,726</u>
<u>WORK'S INDIRECT EXPENSES</u>			
Electricity & Fuel	16,785		11,619
Rent and Rates	3,360		4,079
Insurance	3,069		9,171
Repairs	5,238		313
Depreciation	14,602		18,829
General Expenses	<u>2,828</u>		<u>60</u>
		<u>45,882</u>	<u>41,071</u>
		1,891,041	1,393,797
<u>Add</u> Work-in-Progress, July 1st		<u>243,363</u>	<u>165,326</u>
		2,134,406	1,559,123
<u>Less</u> Work-in-Progress, June 30th		<u>270,719</u>	<u>243,365</u>
<u>COST OF FINISHED GOODS</u>			
		Rs <u>1,863,687</u>	<u>1,315,758</u>

Reg. A420.No. 4514

EXHIBIT Doc A23
 Audited Accounts
 of First Appellant
 at 30th June 1978.
 (Trading, Profit
 and Loss account)

Doc. A23

ALUMINIUM ENTERPRISES LTD.

TRADING, PROFIT & LOSS ACCOUNT - YEAR ENDED 30TH JUNE 1978

	1978		1977
	Rs	Rs	Rs
SALES		3,266,822	2,824,888
Stock of finished goods, July 1st	352,261		283,505
Factory Cost of Production	1,863,687		1,315,758
	<u>2,215,948</u>		<u>1,599,263</u>
Stock of Finished goods June 30th	605,404		352,261
	<u>605,404</u>		<u>352,261</u>
COST OF SALES		1,610,544	1,247,002
GROSS PROFIT ON SALES		1,656,278	1,577,886
PROFIT ON SALE OF FIXED ASSETS		3,888	-
		<u>1,660,166</u>	<u>1,577,986</u>
ADMINISTRATIVE			
Salaries	74,671		35,543
Rent and Rates	2,370		2,320
Telephone	592		254
Insurance	4,591		178
Stationery	1,116		158
Commission	-		-
Depreciation	3,098		3,010
General Expenses	2,272		361
	<u>88,710</u>		<u>41,824</u>
SELLING AND DISTRIBUTION			
Ven Expenses	4,580		3,232
Packing and Transport	33,694		3,084
Commission	16,058		8,006
		54,332	14,322
FINANCE			
Bank Charges & Interest	13,509		18,284
Accountancy & Audit fees	2,000		2,000
		15,509	20,284
		<u>158,661</u>	<u>76,430</u>
NET PROFIT OF THE YEAR		Rs 1,501,615	1,501,556
Reg. A420 No. 4515			

ALUMINIUM ENTERPRISES LTD

NOTES ON ACCOUNTS - JUNE 30TH 1978

	Factory Buildings	Machinery and Equipment	Motor Vehicles	Total
1. FIXED ASSETS				
CCST	Rs	Rs	Rs	Rs
At July 1, 1977	532,975	196,200	28,106	707,281
Additions		7,354		7,354
Disposals		(3,720)		(3,720)
At June 30, 1978	<u>532,975</u>	<u>199,834</u>	<u>28,106</u>	<u>760,915</u>
DEPRECIATION				
At July 1, 1977	-	49,614	2,811	52,425
Charge for the year	-	14,890	2,810	17,700
Disposals adjustment		(1,008)		(1,008)
At June 30, 1978	<u>-</u>	<u>63,496</u>	<u>5,621</u>	<u>69,117</u>
NET BOOK VALUES				
At June 30, 1978	<u>532,975</u>	<u>136,338</u>	<u>22,485</u>	<u>691,798</u>
At June 30, 1977	<u>532,975</u>	<u>146,586</u>	<u>25,295</u>	<u>704,856</u>

2. STOCKS AND WORK-IN-PROGRESS

Stocks and work-in-progress are valued at the lower of cost and not realisable value.

	1978	1977
Raw Materials	1,114,106	493,304
Semi-finished goods	270,719	243,365
Finished goods	605,404	352,261
Rs	<u>1,990,229</u>	<u>1,088,930</u>

3. INTANGIBLE ASSETS

Preliminary Expenses	6,053
Deposit - CEB	715
	<u>6,768</u>

Reg. A420 No. 4516

4. SHARE CAPITAL

	Authorised		Issued & Fully Paid	
	1978	1977	1978	1977
	Rs	Rs	Rs	Rs
Ordinary shares of Rs 10 each	400,000	400,000	200,000	200,000

5. RESERVES

<u>Profit Retained</u>	Rs
Balance - July 1, 1977	1,897,648
Net Profit for the year	<u>1,501,615</u>
Balance - June 30, 1978	<u><u>3,399,263</u></u>

6. LOAN CAPITAL

Loan from Development	Rs
Balance - July 1, 1977	42,280
Refund	<u>16,108</u>
Balance - June 30, 1978	<u><u>26,172</u></u>

Reg. A420 No. 4517



EXHIBIT Doc A26
Audited Accounts
of First Appellant
at 30th June 1978
Notes on accounts

EXHIBIT Doc A26
Audited Accounts
of First Appellant
at 30th June 1978

ALUMINIUM ENTERPRISES LTD

YEAR ENDED JUNE 30TH 1978

ACCOUNTS RECEIVABLE

	Rs	Rs
Trade Debtors		327,735
Loan to Galvanising Co. Ltd.		138,185
<u>Prepayments</u>		
Insurance - Motor Vehicles	553	
Insurance - Public Liability	15	
Insurance - Workmen's Compensation	603	
Insurance - Fire, Cyclone, etc.	<u>4,397</u>	<u>5,568</u>
		<u>471,488</u>

ACCOUNTS PAYABLE

Creditors		25,427
Accruals		
Water	34	
Electricity	1,443	
Accountancy and Audit Charges	<u>2,000</u>	<u>3,477</u>
		<u>28,904</u>

REG. A420 No. 4518

EXHIBIT DOC A28
Audited Accounts of First Appellant
at 30th June 1978

ALUMINIUM ENTERPRISES LTD

CAPITAL ALLOWANCES COMPUTATION - YEAR OF ASSESSMENT 1978/79

	H.D.V. At 1.7.77	SALE/ DISPOSAL	ADDITION	INITIAL ALLOWANCE	BALANCE	ANNUAL RATE %	ANNUAL ALLOWANCE AMOUNT	H.D.V. At 30.6.78
	RS	RS	RS	RS	RS		RS	RS
Factory Building	257,180				237,180	2	5,300	231,880
Office Equipment (Electrical)			1,079		1,079	10	108	971
Plant & Machinery - Electrical	107,869	2,176	6,275		112,017	10	11,202	100,815
Machinery & Equipment - Mechanical	8,934				8,934	7½	670	8,264
Motor Vehicles:								
Van Toyota	20,929				20,929	20	4,186	16,743
Kobyllette	2,792				2,792	20	558	2,234
	377,703	2,126	7,354		382,931		22,024	360,907

BALANCING CHARGE

Proceeds of sale

Cost of Assets disposed

H.D.V. at 1.7.77

Annual Allowance allowed

Balancing Charge

SUMMARY CAPITAL ALLOWANCES

Annual Allowance

Balancing Charge

Rs. 20,430

EXHIBIT Doc A28
Audited Accounts
of First Appellant
at 30th June 1978
(Capital Allowances
computation)

EXHIBIT Doc A29
 Audited Accounts
 of First Appellant
 at 30th June 1978
 (Additions of
 fixed assets)

EXHIBIT Doc A29
 Audited Accounts of First-Appellant
 at 30th June 1978

ALUMINIUM ENTERPRISES LTD
ADDITIONS OF FIXED ASSETS

<u>DATE OF PURCHASE</u>	<u>DESCRIPTION</u>	<u>COST</u> RS	<u>TOTAL</u> RS
	<u>OFFICE EQUIPMENT</u>		
October 1977	1 Electronic Calculator	234	
October 1977	2 Electric Fans	845	1,079
	<u>PLANT & MACHINERY - ELECTRICAL</u>		
14.2.78	1 Drilling Machine	1,600	
14.2.78	1 Grinding Machine	2,375	
23.2.78	2 Electric Motors - 2 HP & 3 HP	2,300	6,275
			<u>Rs. 7,354</u>

REG. M420 NC. 4521



EXHIBIT

DOC. A.30

ALUMINIUM ENTERPRISES LTD
DISPOSAL OF FIXED ASSETS

FIXED ASSETS	DATE OF PURCHASE	COST	NUMBER OF YEARS' DEPRECIATION	ACCUMULATED DEPRECIATION (10% Red. Bal)		BALANCE	SALES PROCEEDS	PROFIT OR (LOSS)
				Rs	Rs			
Grinding Machine	1971	1,000	3	271	729	1,800	1,071	
Drilling Machine	10.5.74	1,000	3	271	729	2,500	1,771	
2 Electric Motors	1971	1,720	3	466	1,254	2,300	1,046	
		3,720		1,008	2,712	6,600	3,888	

REG. A420 NO. 4522

EXHIBIT A30
Audited Accounts
of First Appellant
at 30th June 1978
(Disposal of
Fixed Assets)

EXHIBIT Doc A31
Audited Accounts
Of First Appellant
at 30th June 1978
(Annual Allowances)

EXHIBIT Doc.A31
Audited Accounts of
First Appellant at
30th June 1978
(Annual Allowances)

Doc. A₃₁

ALUMINIUM ENTERPRISES LTD

ANNUAL ALLOWANCES - DISPOSAL OF FIXED ASSETS

	Grinding Machine	Drilling Machine	2 Electric Motors	TOTAL
	Rs	Rs	Rs	Rs
Cost - (April 1971)	1,000		1,720	2,720
Annual Allowance (3 months) 1971/72	25		43	68
W.D.V. 30.6.71	975		1,677	2,652
Annual Allowance - 1972/73	97		168	265
W.D.V. 30.6.72	878		1,509	2,387
Annual Allowance - 1973/74	88		151	239
W.D.V. 30.6.73	790		1,358	2,148
Addition - 10.5.74		1,000		1,000
	790	1,000	1,358	3,148
Annual Allowance - 1974/75	79	17	136	232
W.D.V. 30.6.74	711	983	1,222	2,916
Annual Allowance - 1975/76	71	98	122	291
W.D.V. 30.6.75	640	885	1,100	2,625
Annual Allowance - 1976/77	64	89	110	263
W.D.V. 30.6.76	576	796	990	2,362
Annual Allowance - 1977/78	58	79	99	236
W.D.V. 30.6.77	518	717	891	2,126

REG. A420 NO. 4523

EXHIBIT Doc A32
Audited Accounts
of First Appellant
at 30th June 1978
(Investments -
Acquisition
of Shares)

EXHIBIT

Doc. A32

ALUMINIUM ENTERPRISES LTD

INVESTMENTS - ACQUISITION OF SHARES - YEAR ENDED 30TH JUNE 1978

<u>DATE OF</u> <u>ACQUISITION</u>	<u>DETAILS</u>	<u>COST</u> RS
1.9.77	10 Ordinary shares of Rs 1,000 each in Indian Ocean International Bank Ltd	10,000
30.6.78	30,000 Ordinary shares of Rs 10 each in Galvanising Co Ltd	300,000
		<u>Rs. 310,000</u>

Reg. A420 No. 4524

EXHIBITS

Doc A33
Letter from
Respondent
to First
Appellant
19th
January
1979

EXHIBITS
Doc A33

LETTER FROM RESPONDENT
TO FIRST APPELLANT

GOVERNMENT OF MAURITIUS

Office of the Commissioner
of Income Tax,
Development Bank Building,
Chaussee, Port Louis

19 January, 1979

10

The Manager,
Aluminium Enterprises Ltd.,
40 Royal Street,
Port Louis

ALUMINIUM ENTERPRISES LTD.

This is to certify that the Company's tax
relief period commenced on the 1 April 1971
and will expire on the 31 March 1979.

During the 8 year period 1 April 1971 to
31 March 1979, any income derived by the
company from its development enterprises will
not be liable to income tax.

20

Yours faithfully,

(Sd.) M.R. SOORMALLY
F/Commissioner of Income Tax

EXHIBITS

Doc A34

LETTER FROM RESPONDENT TO
FIRST APPELLANT

MAURITIUS

Income Tax Headquarters,
21, Pope Hennessy St.,
Port Louis.

9th March 1979

EXHIBITS

Doc A34
Letter from
Respondent
to First
Appellant
9th March
1979

10 The Manager,
Aluminium Enterprises Ltd.,
c/o Lampotang & Co.
40 Royal St.
Port Louis.

Dear Sir,

ALUMINIUM ENTERPRISES LTD.
YEAR OF ASSESSMENT 1978/79
ACCOUNTS FOR THE YEAR
ENDED 30TH JUNE 1978

20 The Company's accounts for the above
quoted year have now been examined and I am
pleased to inform that the profit as declared
on page 2 of the Company's return for the
year of assessment 1978/79 have been agreed.
The usual statement issued under Section 33(2)
of the Income Tax Act 41 is herewith enclosed.

30 I note however that the Company made
substantial profits in the year under review
and in the preceding year as well and yet it
had not distributed to its shareholders, by
way of dividend, any part of its distributable
income during those years inspite of its high
liquidity ratio.

40 In these circumstances, and by virtue
of the powers conferred upon me under
Section 40 of the Income Tax Act 41 of 1974,
I hereby determine that the amounts in the
schedule below shall be deemed to have been
distributed amongst the shareholders and they
shall be assessable accordingly.

In that connection, please let me know
the full names and address of the shareholders
and the amount subscribed in each case.

EXHIBITSSCHEDULE

<u>Doc A34 Letter from Respondent to First Appellant 9th March 1979</u>	<u>Year to</u>	<u>Year of Assessment</u>	<u>Amount deemed to have been distri- buted as dividend</u>
	30.6.77	1977/78	Rs 898,921
	30.6.78	1978/79	Rs 899,331

(continued)

Furthermore, I note that Rs 16,058 commission has been charged in the 1978 accounts and I assume that this commission accrued wholly to Mr. S.A.Hassanbay of Comores Island. If that assumption is correct, please let me know whether tax has been paid thereon. 10

Otherwise, please let me have full details on that expenditure item.

A reply within the next fifteen days will oblige.

Yours faithfully,

(Sd.) M.R. SOORMALLY
for Commissioner of Income Tax 20

ENC.

EXHIBITS
Doc A35

EXHIBITS

STATEMENT OF RESPONDENT
TO FIRST APPELLANT

Doc A35
Statement
of Respondent
to First
Appellant
9th March
1979

Office of the Commissioner
of Income Tax
Income Tax Headquarters
21 Pope Hennessy Street
Port Louis

10 DEVELOPMENT COMPANY
 EXPORT ENTERPRISE

STATEMENT UNDER SECTION 33(2) OF THE
INCOME TAX ACT OF 1974

To: The Manager
 Aluminium Enterprises Ltd.
 c/o Lampotang & Co.
 40 Royal Road - Port Louis

YEAR OF ASSESSMENT ENDING 30 JUNE 1979

20 (Statement based on income of the year ended
 30th June 1978 or of the approved Accounting
 Period.....to.....)

TAKE NOTICE that for the above year of
assessment/accounting period, the under-
mentioned statement is issued pursuant to
subsection 2 of Section 33 of the Income
Tax Act of 1974. The notice is addressed
to you as required by law. However, if you
have a professional adviser or an agent, it
is desirable that he should see it immediately.

30 STATEMENT

Amount of Income/Loss derived from the
production or provision of the
development product specified in your
development certificate Rs.1498.885

Note: If you are dissatisfied with this
 statement, you may either

40 a. give me notice of objection in
 writing, stating the grounds of
 your objection within thirty-two
 days from the date below*

 or b. appeal to the Supreme Court within
 sixty days from the date below*

 (Sd.) M.R.SOORMALLY

 for Commissioner of Income Tax

Dated this 9 March 1979

EXHIBITS

Doc A36
Letter from
Gabriel
Seeyave of
de Chazal
du Mee & Co.
to
Respondent
21st March
1979

EXHIBITS

Doc A36

LETTER FROM GABRIEL
SEYAVE OF DE CHAZAL
DU MEE & CO. TO RESPONDENT

GS/ac/1147/A
21 March 1979

The Commissioner of Income Tax
Port Louis

Dear Sir

10

ALUMINIUM ENTERPRISES LTD - F9/PB/49

I have been requested to deal with your
letter dated 9 March 1979.

The Company holds a Development Certificate
and its tax relief period expires only on
31 March 1979. Its income or profits cannot
consequently be considered as 'distributable
income' for purposes of Section 40 of the
Income Act 1974.

In fact, Section 40(8) says that 'distribut- 20
able income' means: 'the difference between -

(a) the sum of

(i) the chargeable income derived
by the company in the income
year; and

(ii) any dividend deductible by
the company under Section 55
in that income year; and

(b) the amount of the income tax in
respect of the chargeable income 30
derived by the company in that
income year.

The term 'chargeable income' is defined in
Section 2 of the Act and Section 55 specifies
that 'the chargeable income of a resident
company, in any income year, shall be the
amount remaining after deducting from the
gross income of the company derived in that
income year....'

The tax position of development companies 40
is governed by Section 33 and Sub-section (4)
thereof stipulates that '.... the amount
of the income shown in the statement of
any income year during the tax relief shall

not form part of the gross income of the development company for any year of assessment and shall be exempt from tax.'

10 It therefore follows that the income of Aluminium Enterprises Ltd. as shown in your statements for the years of assessment 1977/78 and 1978/79 issued under Section 33(2) does not form part of the gross income for purposes of Section 55 or of any other Section of the Act. If it does not form part of gross income, it cannot possibly constitute 'chargeable income'.

For the above reasons, I am of the view that a determination under section 40 of the Act cannot apply to income which is exempt from Income Tax by virtue of Section 33(4).

20 Another point that may be argued is 'allowable deduction' but it is not worthwhile taking up that point at this stage.

I am requested also to confirm that the commissions of RS 16,058 were payable to Mr. S.A.Hassanbay of Comores Island. No tax has been paid thereon since such income is not liable to Mauritius Income Tax.

Yours truly,

(Sd.) Gabriel SEEYAVE

30 Reg. A420 No.4525

EXHIBITS

Doc A36
Letter from
Gabriel
Seeyave of
de Chazal
du Mee & Co.
to
Respondent
21st March
1979

(continued)

EXHIBITS

Doc A37
Letter from
Respondent
to Messrs.
de Chazal
du Mee
30th April
1979

EXHIBITS

Doc A37

LETTER FROM RESPONDENT
TO MESSRS. DE CHAZAL DU MEE

MAURITIUS

Income Tax Headquarters,
21, Pope Hennessy Street,
Port Louis.

30th April, 1979

Messrs. de Chazal du Mee, 10
Chartered Accountants,
Swan Building,
10 Intendance Street,
Port Louis.

Dear Sirs,

Aluminium Enterprises Ltd - Years of
Assessment 1977/78 and 1978/79
based on income for the 2 years ended
30th June 1978

1. I thank you for your letter of 21 March 20
1979 but regret to say that I am not
persuaded by your submission. Your above
new client's Development Certificate
entitled it, in the first instance, to a
tax holiday period of 5 years beginning on
the 1 April 1971. By virtue of Section
36(H)(2) of the now defunct Income Tax
Ordinance the tax relief period was, at its
request, extended by three years to end on
31 March 1979. As you are aware, while any 30
income derived by the company during the
8 years and dividends paid during the first
five years are not assessable to tax, any
dividends paid out of the exempt income
of the company for the last three years of
its tax holiday period are assessable to
tax in the hands of the shareholders. This
is in accordance with Sections 33(4) and
33(5) of the Income Tax Act which are quoted
in paragraph 3 below. 40

2. To prove my point I shall first give
a statement which shows the dividend policy
of the company since its incorporation.

<u>Year of Assessment</u>	<u>Net profit per a/c</u>	<u>Dividends paid</u>	<u>Remarks</u>
1972/73	Rs 90,183	Rs 60,000	

<u>Year of Assessment</u>	<u>Net profit per a/c</u>	<u>Dividends paid</u>	<u>Remarks</u>	<u>EXHIBITS</u>
1973/74	Rs 375,074	RS 360,000		Doc A37
1974/75	788,536	800,000		Letter from Respondent
1975/76	831,755	800,000		to Messrs. de Chazal
1976/77	1,285,334	960,000	the last year for which dividends are exempt	du Mee 30th April 1979
1977/78	1,501,556	NIL		(continued)
1978/79	1,501,615	NIL		

10

20

You will no doubt have noted that dividend payments were confined to the first five years and that for the year of assessment 1974/75 the company paid dividends which exceeded the net profit per account. Furthermore after the year of assessment 1976/77 when dividends ceased to be exempt no dividends were paid for the two years of assessment 1977/78 and 1978/79 although the accounts have shown net profits amounting to RS 1,501,556 and Rs 1,501,615 respectively.

30

3. Let us now compare sections 33(4) and (5) of the Income Tax Act with the corresponding provisions of the repealed Income Tax Ordinance, namely sections 36 O(1) which I take the liberty to quote:

Section 33(4) of the Income Tax Act 1974

"Subject to subsections (5) and (6), where a statement issued under subsection (2) has become final and conclusive -

40

(a) the amount of the income shown in the statement in respect of any income year during the tax relief period shall not form part of the gross income of the development company for any year of assessment and shall be exempt from income tax;

50

(b) (i) any dividends paid before the end of its tax relief period out of any income of the development company

EXHIBITS

Doc A37
Letter from
Respondent
to Messrs.
de Chazal
du Mee
30th April
1979

(continued)

which is exempt from
income tax under para-
graph (a); and

(ii) any dividend paid by
an investment trust
company out of dividends
from a development
company received under
sub-paragraph (i),

shall not form part of the 10
gross income of the shareholder
and shall be exempt from income
tax.

Section 33(5)
of the Income
Tax Act 1974

Subsection (4) (b) shall not
apply in relation to a period
during which the tax relief
period is extended under
subsection (8) "

Section 36 O
(1) of the
Income Tax
Ordinance
1950

"(1) Subject to the provisions 20
of subsection (2) of this
section, including the effect
of a cancellation as therein
mentioned -

(a) where any statement issued
under subsection (2) of
section 36 N has become final
and conclusive, the amount of
the income shown by such
statement shall not form part 30
of the assessable income,
total income or chargeable
income of the development
company for any year of
assessment and shall be exempt
from tax under this Ordinance;

(b) (i) any sums paid by way
of dividend out of the
profits of a development
after the thirtieth of June,
1968, and before the end 40
of its tax relief period,
and

(ii) any amount of dividend
paid by an approved invest-
ment trust company out of
dividends from a development
company received under the
last preceding sub-paragraph.

shall not form part of the 50
assessable income, total

income or chargeable income of the shareholders for any year of assessment and shall be exempt from tax under this Ordinance:

EXHIBITS

Doc A37
Letter from
Respondent
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de Chazal
du Mee
30th April
1979

10

Provided that for the purposes of this paragraph no regard shall be had to any extension of the tax relief period under sub-section (2) of section 36 H "

(continued)

20

So far both enactments express in no uncertain terms the same policy of the legislature regarding reliefs from income taxation of companies and their shareholders. However, the Income Tax Ordinance, by section 36 P (1), makes specific mention that section 55 (which is the equivalent of section 40 of the Income Tax Act) should not apply if the company does not make a sufficient distribution of dividends out of the income exempted under 36 O.

30

4. Now the history of section 36 P of the Old Ordinance reveals that in 1964 the intention of the legislators was undeniably to shield the shareholders of companies and thus subjecting them to the operative provisions of Section 55 of the Income Tax Ordinance until 1969 when the said section 36 P was reshaped into its original form before the Income Tax Ordinance was repealed by the Income Tax Act. In this connection please refer to Income Tax (Amendment Ordinance) No.49 of 1961 (section 12); No.20 of 1964 (Section 4) and No.48 of 1969 (Section 15), extracts of which are hereby given for ease of reference :-

40

(a) Ordinance No.49 of 1961 Section 12

"36 P - (i) The provisions of section 55 of this Ordinance shall not have effect in relation to any amount of income of a development company exempted under section 36 O....."

(b) Ordinance No.20 of 1964 Section 4

"Section 36 P of the Principal Ordinance is repealed and replaced by the following -

50

36P - (i) where during the tax relief period of a development company, any sum is applied by the company....."

EXHIBITS

(c) Ordinance No.48 of 1969 Section 15

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"Section 36 P of the Ordinance is
repealed and replaced by the following
section -

36P - (1) The provisions of section 55
of this Ordinance shall not have effect
in relation to any amount of income
of a development company exempted under
36 O

(continued)

Thus the intention of the legislature in 1964 was not to exclude the company and the shareholders of development companies, after the tax relief of 5 years, from the purview of section 55 of the Income Tax Ordinance which dealt with insufficient distributions. Therefore in the absence of express words in the Income Tax Act 1974 establishing the same policy shown in the last amendment to section 36 P of the Ordinance, in 1969, I believe it is reasonable to say that by necessary implication the legislature has reverted to its intention of 1964, i.e. to bring development companies, after the tax holiday of five years, within the purview of section 40 of the Income Tax Act 1974. 10

5. Now, in the light of the definitions of "gross income", "exempt income", "allowable deductions", "net income" and "chargeable income" we can have the following sketch : 20 30

Aggregate income i.e. income included
in Part III
(Sections 11 to 18)

Less Exempt Income i.e. income speci-
fied in Section 7
Gross income

Less Expenditure

Loss

Allowance Allowable deduction

Net income = chargeable 40
income of
non-resident
companies
(Section 55
(2))

Less Dividends paid

Chargeable income of
resident companies

Thus according to the definition, the gross income of the company for the two years ended 30 June 1978 should be the total sales + increase in value of trading stock i.e.

EXHIBITS

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30th April
1979

	<u>Year ended</u> <u>30.6.77</u>	<u>Year ended</u> <u>30.6.78</u>
<u>SALES</u>		
	Rs2,824,988	Rs.3,266,822
10 And Closing		
Stock 352260		605,404
Less Opening		<u>352,260</u>
Stock <u>283505</u>	<u>68,755</u>	<u>23,144</u>
Gross		
Income	2,893,743	3,519,966

(continued)

Therefore if a limited interpretation is given to the language of section 33(4) (a) we are bound to reach at least two absurd results namely :

20 (a) that the amounts of income shown in the two statements dated 19 April 1978 and 9 March 1979 viz. RS 1,498,202 and Rs 1,498,885 do not form part of the "gross income" as shown above i.e. Rs 2,893,743 and Rs 3,519,966, leaving in each case Rs 1,395,541 and Rs 2,021,081 which obviously represent expenditure;

30 (b) that since the two amounts of income are exempt from income tax the expenditures viz Rs 1,395,541 and Rs 2,021,081 become unauthorised deductions by virtue of section 20(1) (c).

40 6. Without straining the language, I believe that what is meant by section 33(4) is that if a company were in receipt of other income beside income from a Development Certificate the latter income will not form part of the total gross income, but that the other income will still be assessable to income tax at the rate specified in the First Schedule while the income arising from the Development Certificate will not. Again, it is difficult to see in the language how the legislature could have intended that any amount shown in the statement is not capable of being distributed as dividends the more so as Section 33(5) states in unequivocal terms

50 that dividends paid out of the amount of income which does not form part of the gross income

EXHIBITS

Doc A37
Letter from
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du Mee
30th April
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(continued)

shall be taxed. The whole issue boils down to this: Has the legislature given to directors of companies or the shareholders the discretionary power or privilege of not declaring and paying dividends during the extension of the tax holiday period of a development company when such dividends become taxable in their hands? I do not hold such a view.

7. Statutory language has to be studied in relation to the particular facts which raise the question of its application. When I read Part IV D of the Act (Anti Avoidance Provisions) I cannot find anything in it or in common sense which requires me to confine the language only to companies that are not exempt. On the contrary I find that the whole Part dictates a particular result in the sense that an obligation is imposed upon me by section 40 to calculate a reasonable part of the income exempted in the hands of the company which the latter should declare as dividends when such dividends after five years would become taxable in the hands of the shareholders. Should the company fail to pay such dividends in order to shield the shareholders from their fiscal obligations, then another obligation is imposed on me to ascertain whether under section 44 there is not between the shareholders and the directors a concerted action to an end - the end of avoiding tax. And what do I find? An "arrangement" with the "purpose" (meaning not the motive but the effect it is sought to achieve i.e. the end in view) of avoiding tax.

8. Furthermore, if your only objection to my determination of Rs 898,921 and Rs 899,331 as amounts deemed to have been distributed as dividends for the two years stems from the use of the word "chargeable income" in section 40(8), I have to state that all the terms "gross income", "allowable deductions", "net income" and "chargeable income" are but statutory phrases to indicate each step in the computation of income on which income tax is assessable in accordance with the First Schedule. Such income in the case of companies governed by sections 33 and 34 of the Income Tax Act is susceptible of being reduced by the appropriate amount of dividends before it is eligible to have the "cachet" of exempt income i.e. on

which a tax rate of 0% is applicable.
However, before determining the appropriate amount of dividends payable I am bound to have recourse to subsection 8 of section 40 which is a machinery section and not a taxing section. As you know machinery sections are not subject to especially rigorous construction and the Courts never tend to construe a machinery section so as to defeat the charge to tax and to frustrate the intention of the legislature. In this connection please refer to the following cases

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30th April
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(continued)

(a) Colquhoun v. Brooks - 2 TC 490
page 500

and (b) I.R.Commissioners v. Longmans
Green & Co.Ltd - 17 TC 272
page 282

9. Thus despite the statutory phrase "Chargeable income" in section 40(8) I hold the view that the whole language of sections 33 and 40 are literally satisfied by reference to a liability relating to dividends payable by a company out of its exempt profits. In other words the meaning of "distributable income", to my mind, cannot contradict or diminish the force of the operative provisions of section 40 as a whole which are clear and unambiguous in themselves.

10. In view of the above I cannot vary the decision conveyed to you in my letter of 9.3.1979 and have to renew my request for information concerning the names and addresses of the shareholders and the amount subscribed by each for the 2 years mentioned above.

(Sd.) Jean Samfat
for Commissioner of Income Tax

Copy to:

The Manager,
Aluminium Enterprises Ltd.
c/o Lampotang & Co.
40 Royal Street
Port Louis.

EXHIBITS

Doc A38
Letter from
Respondent
to Messrs.
de Chazal
du Mee
7th May
1979

EXHIBITS

Doc A38
LETTER FROM RESPONDENT
TO MESSRS. DE CHAZAL
DU MEE

Income Tax Headquarters,
21, Pope Hennessy St.,
Port Louis.

7 May 1979

Messrs. de Chazal du Mee 10
Swan Building
10 Intendance Street
Port Louis

Dear Sirs,

Further to my letter of 30 April 1979 I wish
to dispel the impression that I may have
left in paragraph 4, namely that section 55
was operative all the time. As a matter of
fact the latter section was repealed by
Ordinance 20 of 1964 (section 6) but was 20
re-introduced by section 5 of Income Tax
(Amendment) Act No.32 of 1969 which came
into force on the 1 July 1969. However, as
this Amendment Act No.32 of 1969 did not
make any mention of section 36 P of the
Income Tax Ordinance until the later
Amendment Act No.48 of 1969 (Section 15)
which entered into force on the first July
1970, the conclusion to be drawn is that 30
the Legislator's intention for one year
i.e. year of assessment 1969/70, was to
allow me to treat development companies on
the same footing as ordinary companies in
so far as section 55 is concerned.

In a nutshell the position would be as
follows :-

<u>YEAR OF ASSESSMENT</u>	<u>SECTION 55 OF I.TAX</u>	<u>LEGISLATION ORDINANCE</u>
1964/65	Not operative	I.Tax (Amendment) Ord.No.20 of 1964 40
1965/66	Not operative	I.Tax (Amendment) Ord.No.20 of 1964
1966/67	Not operative	I.Tax (Amendment) Ord.No.20 of 1964
1967/68	Not operative	I.Tax (Amendment) Ord.No.20 of 1964

YEAR OF ASSESSMENT SECTION 55 OF I.TAX
LEGISLATION ORDINANCE

EXHIBITS

	1968/69	Not operative	I.Tax (Amendment) Ord.No.20 of 1964	Doc A38 Letter from Respondent to Messrs. de Chazal du Mee 7th May 1979
	1969/70	<u>Operative</u>	I.Tax (Amendment) Act. No.32 of 1969	
	1970/71	Not operative	I.Tax (Amendment) Act No.48 of 1969	
10	1971/72	Not operative	I.Tax (Amendment) Act No.48 of 1969	(continued)
	1972/73	Not operative	I.Tax (Amendment) Act No.48 of 1969	
	1973/74	Not operative	I.Tax (Amendment) Act No.48 of 1969	

YEAR OF ASSESSMENT SECTION 40 OF I.TAX
LEGISLATION ACT

	1974/75 onwards	Operative	I.Tax Act No.41 of 1974	
20	Any reference in the last part of paragraph 4 of my letter dated 30 April 1979 regarding the legislator's intention to the period post 1964 should be taken to mean the period covered by the year of assessment 1969/70. In other words I maintain that the absence of my provision in the Income Tax Act 1974 similar to section 36 P in the Income Tax Ordinance leads me to draw the conclusion that the legislator decided in 1974 to follow the policy which was in operation for the year of assess- ment 1969/70.			
30				

Yours faithfully,

(Sd.) J. Sam Fat
f/Commissioner of Income Tax

Copy to:
Manager
Aluminium Enterprises Ltd.

EXHIBITS

Doc A39
Letter from
Messrs. de
Chazal du
Mee to
Respondent
8th May
1979

EXHIBITS

Doc A39

LETTER FROM MESSRS.
DE CHAZAL DU MEE TO
RESPONDENT

8 May 1979

The Commissioner of Income Tax
PORT LOUIS

Dear Sir

ALUMINIUM ENTERPRISES LTD - 0 0049.4/MR/25 10

Thank you for your letter dated 30 April 1979.

1. I agree that any dividends payable out of exempt income of a development company after the first five years of its tax holiday are liable to tax on the shareholders.

2. You say that for the year of assessment 1974/75 the company paid dividends in excess of its net profits but it is apparent that the small difference of Rs 1,464 could easily be met out of the surpluses for 1972/73 - Rs 30,183 - and for 1973/74 - Rs 15,074. The company very wisely decided not to pay any dividends in the two years ended 30 June 1978 not only because such payments would have converted exempt income into taxable income but also because it required cash resources to meet the very substantial increases in cost of raw materials imported and would have been unable to obtain bank credit facilities owing to the credit squeeze imposed by the Bank of Mauritius. 20 30

3. In my view, the legislator has not deemed it fit to reproduce the phrase appearing in Section 36 P: 'The provisions of section 55 of this Ordinance shall not have effect in relation to an amount of income of a development company exempted under section 36 O' in the Income Tax Act 1974 because the new wording of section 40 of the Act made it sufficiently clear that the same situation would continue to obtain. In fact, Section 40 introduced the concept of 'Distributable Income' and the meaning of this term is clearly defined in subsection 8, whereas Section 55 of the Ordinance referred only to a 'reasonable part of income'. 40

4. First of all let us see briefly what was the objective of introducing special legislation for the grant of Industrial Development Tax Relief (Sections 36A to 36P of the Income Tax Ordinance per Ordinance No.49 of 1961). The purpose of that legislation was to encourage entrepreneurs to set up new industries or to provide new services in Mauritius. One of the more important advantages, if not the most, conferred by this legislation was the exemption from income tax for a period of years of profits derived from the development enterprise. In 1966 a further incentive was given when exemption from tax was extended to dividends received by shareholders of development companies during the first five years of their tax holiday period. Development companies may also waive any initial allowances to which they may be entitled in return for a three-year extension of their tax holidays - such waiver applying even to the three-year extension.

EXHIBITS

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Letter from
Messrs. de
Chazal du
Mee to
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8th May
1979

(continued)

Contrary to your contention it is my view that it has always been clearly the intention of the legislator to shelter shareholders of development companies from the provisions of Section 55 (presently Section 40 of the Act) right from the introduction of tax relief for development companies. As a matter of fact, when such relief was introduced by Ordinance No.49 of 1961, shareholders of development companies were not exempted from tax on their dividends, and yet that Ordinance provided in Section 36P (1) that Section 55 should not apply to income of development companies in relation to their exempt income. It was not until the introduction of Ordinance No.15 of 1966 that Section 36 O was amended so as to exempt dividends paid out of profits of development companies after 30 June 1968.

You seem also to have misinterpreted the history of Section 36P as regards the 'shielding' or 'unshielding' of shareholders of development companies in relation to Section 55.

The simple explanation for these amendments is that Section 36P was amended by Section 4 of Income Tax (Amendment) Ordinance 1964 because Section 55 was repealed by Section 6 of the same Ordinance as a result of the introduction of Development Contribution Income Tax.

In 1969 Section 55 was reintroduced by Section 5 of Act No.32 of 1969 and the original wording

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Letter from
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of Section 36P restored by Section 15
of Act No.48 of 1969.

The history of Section 36P does not
consequently help you at all.

5. I do not see what absurd results
are reached if the exercise is continued
and carried on to its logical end by the
use of your own formula on page 3 of your
letter:

(continued)

	<u>30 June 1977</u>	<u>30 June 1978</u>	
Aggregate income	Rs 2,893,743	Rs 3,519,966	
Exempt income	<u>1,498,202</u>	<u>1,498,885</u>	
Gross Income	1,395,541	2,021,081	
Allowable Deductions (under Part IV)	<u>1,395,541</u>	<u>2,021,081</u>	
Net Income	NIL	NIL	20

You seem to arrive at 'two absurd results'
because:

- a. the expenditure of RS 1,395,541 and
Rs 2,021,081 have already been
taken into account in arriving at the
company's income for purposes of the
statement issued under Section 33(2):
and
- b. 'gross income' is not 'total sales +
increase in value of trading stock'
but rather 'the aggregate amount of
all income...other than exempt income'
in accordance both with the definition
in section 2(1) and your formula.

6. Although dividends paid by a develop-
ment company out of its exempt profits
between year 6 and year 8, are taxable on
the shareholders, there is no compulsion
on a company to convert income exempt from
income tax into taxable income and for
that matter there is in law no compulsion
for any company to declare and pay dividends.
Dividends are voted, declared and paid in
accordance with the decision of directors

and shareholders of the company.

EXHIBITS

10 7. The Anti Avoidance Provisions (Part D of the 1974 Act) no doubt give you wide powers to counter tax-avoidance but there must first of all be income on which tax is avoided. By income, one clearly implies income liable to Income Tax, whereas 'exempt income' has lost that substance and is no longer income for tax purposes and does not fall within the purview of Part D of the Act.

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Letter from
Messrs. de
Chazal du
Mee to
Respondent
8th May
1979

(continued)

20 I am sorry that I am unable to see what are the fiscal obligations of development companies and their shareholders when statutory provisions specifically exempt such companies from tax on their profits and shareholders on their dividends for a certain number of years. The legislator has clearly selected companies (and their shareholders) engaged in the development of new industries in Mauritius for a special tax treatment.

30 The company strongly denies your finding that there was any arrangement for the purpose of avoiding tax since it is not based on any facts or evidence. However even if your contention could be established, the arrangement to avoid tax must be the avoidance of tax on income, i.e. income which is chargeable to income tax, whereas in the case of development companies there is no income, by that, I mean no income for purposes of the Income Tax Act 1974 since Section 33 thereof clearly exempts the income of development companies from tax and their profits thereby lose their facade of income by becoming exempt income.

40 8. The terms: gross income, allowance deductions, net income and chargeable income may be for you 'but statutory phrases' but yet they are specifically defined in the Income Tax Act 1974 and must be given their strict meaning whenever the Act is interpreted and, obviously, they cannot be subjected to various interpretations whether to favour the revenue's interests or those of the taxpayer. These terms are not mere ornaments of the law but state precisely how each stage must be reached in calculating income with a view to arriving ultimately at the tax bill.

50

The deduction made for dividends paid by development companies in arriving at their exempt income is strictly in accordance with

EXHIBITS

Section 55 of the Income Tax Act 1974.

Doc A39
Letter from
Messrs. de
Chazal du
Mee to
Respondent
8th May
1979

I cannot concur that a 0% rate of tax is applicable to exempt income. Income tax is a tax on income and if the income is exempt from tax there is no income for tax purposes and there cannot be any rate applicable whether it be 0, 10 or 50%. Any rate of tax must be imposed by law and so far as I am aware, a zero does not exist.

(continued)

As regards the other grounds of objection to your proposed direction, the company has requested me to restate its previous contentions (as expressed by the late Mr. Guy Sum Yuen to your Mr. M. Soormally in June 1977): 10

- a. The company required cash resources to import raw materials which was expected to cost four times more in coming years; and
- b. the company obtained its development certificate in 1971 under the provisions of the Income Tax Ordinance 1950 and, by virtue of the Interpretation and General Clauses Act, 1974, all rights and privileges it had then acquired cannot be affected by new legislation. 20

9. Section 40(1) of the Act says: 'Subject to the other provisions of this section, where the Commissioner is of opinion that a company has not distributed to its shareholders by way of dividend during an income year a reasonable part of the distributable income of the company for that income year, he may determine....'. 30

Subsection (1) is consequently subject to the other provisions of Section 40 and the operation of its provisions must necessarily be considered in the light of the other sub-sections; it cannot be isolated as an operative provision. What do we see amongst the other provisions of Section 40? Sub-section (8) which defines in no uncertain terms the meaning of 'distributable income'. 40

Your determination must be made on 'distributable income' and if there is no 'distributable income', your determination is ineffective or void.

In spite of what you seem to claim, the terms 'distributable income' and 'chargeable income'

must be given their strict meaning as defined by the Income Tax Act. The intention of the legislature may be taken into account in cases of doubt only: if a provision or phrase is capable of more than one interpretation, but not when the law is clear and unambiguous.

EXHIBITS

Doc A39
Letter from
Messrs. de
Chazal du
Mee to
Respondent
8th May
1979

10 In the present case, it is evident that the provisions of Sections 34 and 40(8) exclude the profits made by a development company during its tax holiday period from the rigours of section 40(1).

(continued)

10. Although I feel confident that in the light of the above you will cancel your determination, I am giving you below the names of the company's shareholders as requested:

Name	Address	Share of Rs 10 each
L.B.Lampotang	40 Royal St., Port Louis	9,000
L.K.C.Lampotang	" "	8,500
Gary Lampotang	" "	<u>2,500</u>
		<u>20,000</u>

Yours truly,

(Sd.) GABRIEL SEEYAVE

Reg. A420 No.4526

EXHIBITS

Doc A40
Letter from
Messrs. de
Chazal du
Mee to
Respondent
15th May
1979

EXHIBITS
Doc A40

LETTER FROM MESSRS. DE
CHAZAL DU MEE TO RESPONDENT

GS/ac/1462/A

15 May 1979

The Commissioner of Income Tax
Port Louis.

Dear Sir,

ALUMINIUM ENTERPRISES LTD -
0 009.4/DD/25

10

Thank you for your letter dated 7 May 1979
which crossed mine of 8 May in the mail.

There is no need for me to compare the
'impression' you may have left in paragraph
4 of your letter dated 30 April 1979 with
the emphatic words used by you in that
very paragraph in support of your argument
as to the legislators' intention, but it
does not seem to me hardly conclusive that
it could have been the legislator's specific
intention that Section 55 of the 1950
Ordinance should apply to development
companies for 1 year out of an aggregate
period of 13 years. It looks to me more
like an omission rather than definite
intention since Section 36P was repealed
and reintroduced in its original form by
Act No.48 of 1969 less than six months after
the passing of Act No.32 of 1969 on 20 June
1969. It is true, however, that no
retrospective effect was given and, in
strictness, the provisions of Section 55
could be applied to profits of development
companies for the year of assessment 1969/70.

20

30

I have already explained in my previous
letter why in my view it was not necessary
to reproduce the same wording as Section 36P
in the 1974 Act.

Yours truly,

40

(Sd.) GABRIEL SEEYAVE

Reg. A420 No.4527

EXHIBITS
Doc A41

LETTER FROM RESPONDENT
TO MESSRS. DE CHAZAL DU
MEE

MAURITIUS

Income Tax Headquarters,
Level 8, Registrar General
Bldg.,
15, Jules Koenig St.,
P. Louis.

13 March 1980

Messrs. de Chazal du Mee & Co.,
'Jamalac Building',
Vieux Conseil St.,
Port Louis.

Dear Sirs,

ALUMINIUM ENTERPRISES LTD.
YEAR OF ASSESSMENT 1977/78 AND
1978/79 BASED ON INCOME FOR THE
2 YEARS ENDED 30 JUNE 1978

1. I have given long consideration to your letters dated 8 May and 15 May 1979 and I am now more convinced that your client should have paid the appropriate amounts of dividends to its shareholders for the two years mentioned above. However, before assessing the shareholders I wish to put on records my comments arising from the reading of your aforesaid letters as well as other reasons that have strengthened my conviction that my decision was right.

2. Of the two reasons for not declaring dividends during the extension period, the first one is admittedly a tax avoidance device. Your words imply that the Directors of the Company (who are at the same time the shareholders) planned or agreed or reached the understanding to refrain from declaring and paying dividends (to themselves) in order not to convert "exempt" income into taxable income. As you know, a Company and its shareholders are in law two distinct entities. But on lifting the veil we find that the company is the creature, the puppet of the shareholders in point of fact and it should be so regarded in point of law (vide the judgment of Lord Denning

EXHIBITS

Doc A41
Letter from
Respondent
to Messrs.
de Chazal du
Mee
13th March
1980

EXHIBITS

Doc A41
Letter from
Respondent
to Messrs.
de Chazal du
Mee
13th March
1980

(continued)

in "Littlewoods Mail Order Stores Ltd.
v. McGregor" - 45 TC 519). In my view
the device used is considered as a tax
avoidance arrangement under Section 44(1)
and (2) of the Income Tax Act.

3. The second reason is fallacious. I
believe you have erred in mentioning the
credit squeeze. As a matter of fact
information obtained from the Bank of
Mauritius has revealed that the credit
squeeze regulations did not apply to
Development Companies or EPZ Companies.

10

4. I believe you have erred again in
paragraphs 3 and 4 of your letter dated
8 May 1979, by focusing with almost exclusive
emphasis on Section 36P of the defunct
Income Tax Ordinance. To my mind that
Section has no equivalent in the Income
Tax Act now in force, but you claim that
it does not need to have one because of the
concept of "distributable income" introduced
in the Act. You seem to forget that the
main purport of Section 40 is to bring to
tax charge excessive undistributed profits
of Companies (see the rubric to that
section). Further you seem to overlook the
specific direction of Section 33(5) of the
Income Tax Act which is far more indicative
of the intention of the Legislator. In
fact this Section is the very antithesis
of Section 36P of the old Ordinance. To
me what Section 33(5) is doing in effect
is the dismantling of the "safe harbour"
afforded formerly to the shareholders by
Section 36P of the Ordinance and as a result
it renders the shareholders vulnerable
through the company to the full impact of
section 40 of the Act. At this juncture let
us come to Section 33(2) which is almost
similar to Section 34(2). Both Sections -
the first one dealing with Development
Companies and the second one with Export
Enterprises - speak of the issue of a
statement by me to show the "income or loss"
for the year of the Company. You will,
I am sure, agree with me that the "loss" of
which mention is made in both sections must
mean either the 'net loss' for income tax
purposes or the "total net loss" after
deduction of dividends paid (in other words
a negative chargeable income). This can be
shown as follows :-

20

30

40

50

	<u>Either</u>	<u>Or</u>	<u>EXHIBITS</u>
Gross Income	Rs 1,000.-	Rs 1,000.-	Doc A41
Less allowable deductions	<u>1,200.-</u>	<u>1,200.-</u>	Letter from Respondent to Messrs.
Net Loss	(200.-)	(200.-)	de Chazal du
Dividends paid	<u>NIL</u>	<u>100.-</u>	Mee
Total net loss or negative Chargeable income	(200.-)	(300.-)	13th March 1980 (continued)

10 It is by the same process that the "income" shown in the statement is arrived at but with the difference that it is a positive figure and not a negative one. The more so if we refer to the Export Processing Zones Act No.51 of 1970 we find at Section 10(1) that

20 "In any year of assessment, the assessable income, total income or chargeable income of an export enterprise as specified in any statement issued under Section 36PC of the Ordinance and accruing during its tax relief period shall be exempt from tax under the Ordinance".

30 As the Income Tax Ordinance has been repealed and replaced by the Income Tax Act any reference to the Ordinance and to the Section 36PC as quoted above should read the Income Tax Act and Section 34(2). To note here that the EPZ Act is complementary to Section 34 of the Income Tax Act No.41 of 1974 (although it was passed while the Income Tax Ordinance No.50 was the governing tax law) just as the Development Incentives Act No.50 of 1974 should be read in conjunction with Section 33 of the Income Tax Act. Thus the point I wish to make is that any development Company or EPZ Company must have a total income, gross income, net income and chargeable income.

40

5. Now by virtue of the definition of "exempt income" in the Income Tax any income listed in Section 7 is de facto exempt and it does not require any subsequent act on my part to make it exempt. There lies the difference between the exemption conferred by Section 7 and that conferred to the chargeable income of a development Company. In other words, whereas the chargeable income of a development Company is not exempt by the operation of the law

50

EXHIBITS

Doc A41
Letter from
Respondent
to Messrs.
de Chazal du
Mee
13th March
1980

(continued)

(Section 7), it will become "exempt income by an act of the Commissioner of Income Tax, namely the issuing of a statement under Section 33(2) of the Act. That chargeable income will therefore acquire the "cachet" of an exempt income only at a point in time, i.e. after the issue of the statement. Prior to the issue of such statements on 19 April 1978 (for the year of assessment 1977/78) and on 9 March 1979 (for the year of assessment 1978/79), the Company still had a net income and a chargeable income as well as a distributable income (Section 40(8)) out of which no dividends were paid. The company was therefore under the obligation because of Section 40 to distribute a reasonable part of its distributable income by way of dividends to its shareholders.

10

6. Thus there is no doubt in my mind that the situation of a development Company after the first five years of its tax relief period falls squarely within the literal provision of Section 33(5) and to contend otherwise is tantamount to saying that the Section is not susceptible of application at all.

20

7. In view of the explanation which, I regret, has been so lengthy, I have to let you know that I have determined that Rs 898,921 and Rs 899,331 should have been distributed as dividends for the two years of assessment 1977/78 and 1978/79 respectively. Assessment notices will be issued to the shareholders of the Company as soon as possible.

30

Yours faithfully,

(Sd.) J. SAMFAT
f/Commissioner of Income Tax

Copy to: Manager,
Aluminium Enterprises Ltd.

40

EXHIBITS

Doc A42

LETTER FROM MESSRS. DE
CHAZAL DU MEE TO
RESPONDENT

DE CHAZAL DU MEE & CO.
VIEUX CONSEIL STREET,
PORT LOUIS,
MAURITIUS.

GS/ac/1115/A

EXHIBITS

Doc A42
Letter from
Messrs. de
Chazal du
Mee to
Respondent
1st April
1980

10 1 April 1980

The Commissioner of Income Tax
Port Louis

Dear Sir,

ALUMINIUM ENTERPRISES LTD - F 00009.4/SS/25

Thank you for your letter dated 13 March
1980.

20 1. The writer of that letter is overstepping
himself when using such terms as 'fallacious'
and it is clear to me that you have not
personally approved the use of such a term
even though the letter has been issued in
your name. I trust that the writer will bear
in mind that he is dealing with a firm of
professional accountants - and a responsible
firm at that. The use of such terms cannot
but jeopardise the good relations and mutual
respect which have always existed between you,
your predecessors and your officers and our
firm.

30 2. If each time that the directors of a
company (who more often than not are also
shareholders of that company - particularly
in the case of private companies) meet to
decide whether a dividend should be declared
and paid is considered by you as a device for
tax avoidance, then all companies in Mauritius
- with the exception of one or two - would be
caught by Section 44 of the Income Tax Act.
40 The same situation would obtain not only as
regards payment of dividends but also as
regards any other decision that they may take
or any other question that they may be called
upon to consider. It is agreed that the
directors of the company did consider whether
a dividend should be declared and paid. They
even sought the advice of their then
accountant - the late Mr. Guy Sum Yuen - who
then discussed the matter with Mr. M.R. Soormally,

EXHIBITS

Doc A42
Letter from
Messrs. de
Chazal du
Mee to
Respondent
1st April
1980

(continued)

your Deputy, in June 1977. For obvious reasons, I had refrained from involving the late Mr. Sum Yuen more than necessary in our correspondence, but at this juncture I feel that I have no alternative but to do so since the company has nothing to hide and your allegation of the existence of a tax avoidance arrangement must be refuted.

I am consequently attaching a photocopy of a memorandum from Mr. Sum Yuen to the company recording the outcome of his interview with Mr. Soormally. I am aware that this memorandum has not been signed by its author but the directors (and shareholders) of the company are prepared to testify as to its authenticity. 10

It is to be wondered why the directors would seek a ruling from your Deputy if they intended to operate a tax avoidance scheme.

It is to be wondered also what help the Littlewoods Mail Order Stores case can afford since that case concerned a parent company and its wholly-owned subsidiary. There is, however, no doubt that the affairs of any company must be dealt with by its directors and shareholders as provided by its memorandum and articles of association and by Company Law. 20

3. The Bank of Mauritius did include development companies and export enterprises in its list of priority sectors for credit facilities issued to the commercial banks but this did not in any way mean that the latter were bound to grant overdrafts and other credit facilities to their clients in such priority sectors, the more so as, in regard to certain development companies and export enterprises, they had already sustained substantial losses on the financing of their operations. 30

Such losses and our unstable economic conditions which started to prevail in 1976 had led the commercial banks to restrict credit facilities to one and all - even to Development Companies and export enterprises. 40

4. You seem to now overlook the fact that you have been referring at length to the provisions of the Income Tax Ordinance 1950 in your letters dated 30 April and 7 May 1979, comparing the provisions of the Ordinance with those of the 1974 Act. 50

10 When your argument is refuted, you merely come to the conclusion that there is no equivalent in the Act for Section 36P of the Ordinance, ignoring the fact that, as mentioned in my letter of 15 May 1979, my letter dated 8 May 1979 had been typed and sent before receipt of your letter dated 7 May 1979 which, as you say, was written 'to dispel the impression' left by you in paragraph 4 of your letter dated 30 April 1979.

EXHIBITS
Doc A42
Letter from
Messrs. de
Chazal du
Mee to
Respondent
1st April
1980

(continued)

Had you not 'left an impression' on the history of Section 36P which you had to dispel subsequently, it would have been hardly necessary for me to extend myself on that Section.

20 5. In my view, the caption to each section of the Act is only indicative of the statutory provisions and cannot carry much weight. In that connection I wonder what would happen if a non-resident Cable and Wireless telegraphy company were to claim that Section 56 and paragraph 1 to the first schedule should not apply to it since it is not an 'insurance company'.

30 Anyway your statutory power under Section 40 is to decide whether a company has distributed a reasonable part of its distributable income and not of its profits, subsection 8 defining distributable income in no uncertain terms.

I fail to see what importance Section 33(5) of the Act can have in the present case. It reads :

'Subsection (4) (b) shall not apply in relation to a period during which the tax relief period is extended under subsection 8.'

Subsection (4) (b) says:

40 'Subject to subsections (5) and (6), where a statement issued under subsection (2) has become final and conclusive -

(a)

(b) (i) any dividends paid before the end of its tax relief period out of any income of the Development Company which is exempt from income tax under paragraph (a); and

EXHIBITS

Doc A42
Letter from
Messrs. de
Chazal du
Mee to
Respondent
1st April
1980

(continued)

(ii)
shall not form part of the
gross income of the shareholders
and shall be exempt from income
tax. '

Subsection 33(5) merely reproduces the proviso
to section 36 O(1) of the Ordinance, its
effect being to exempt from tax the dividends
received by shareholders from a development
company during the first five years of its
tax relief period and not during the last
three years. 10

There is therefore no point in relating
Section 33(5) of the Act to Section 36P of
the Ordinance since they deal with two
entirely different matters.

You seem to have misinterpreted the provisions
of Section 33(5) which concerns the share-
holders of development companies and not
development companies themselves. At no
time have I claimed that the shareholders
of a development company should not be taxed
on dividends received after the end of the
5th year of its tax relief period. 20

6. We are here dealing with a development
company and not an export enterprise.
Reference to the Export Processing Zone Act
No.51 of 1970 and to Section 34 of the
Income Tax Act can hardly help us since they
govern Export Enterprises whereas Aluminium
Enterprises Ltd. is a Development Company
and falls within the provisions of the
Development Incentives Act No.50 of 1974
and Section 33 of the Income Tax Act. 30

Section 33(4) says quite clearly that where
a subsection (2) statement has become final
and conclusive, the amount of income shown
in the 'statement' shall not form part of
the gross income of the development company
and shall be exempt from income tax. Once
the income derived from the production of
the development product is excluded from
the gross income, there is nothing left;
there is consequently no need to ascertain
the net or chargeable income as it would
serve no purpose at all and there is no
statutory requirement to that effect. 40

Incidentally it should be noted that:

(a) Section 34 (4) contains in relation
to export enterprises the very same 50

provisions as Section 33(4);
and

EXHIBITS

(b) the term 'assessable income,
total income or chargeable
income' referred to by you as
appearing in the Export Process-
ing Zone Act No.51 of 1970
merely reproduced that appearing
in the much earlier legislation
dealing with development
companies - Section 36 O(1) saying
at paragraph (a):

Doc A42
Letter from
Messrs. de
Chazal du
Mee to
Respondent
1st April
1980

10

20

'Where any statement issued under
subsection (2) of Section 36N has
become final and conclusive, the
amount of the income shown by such
statement shall not form part of
the assessable income, total
income or chargeable income of the
development company for any year
of assessment and shall be exempt
from tax under this Ordinance.'

The above shows beyond doubt that the Income
Tax Act 1974 has done away with the terms
'assessable income' and 'total income' and
replaced them by 'gross income', 'net income'
and 'distributable income'.

30

In fact, the statements issued by you under
Section 33(2) of the Income Tax Act show:
'the amount of income/loss derived from the
provision of the development product specified
in your development certificate' and the
figures shown by you are those adjusted for
tax purposes. You may refer to the statements
dated 19 April 1978 and 9 March 1979 to the
company for the years of assessment 1977/78 and
1978/79 where no mention of total income,
net income and chargeable income is made at all.

40

7. Exemption from Income Tax is conferred
by the Development Incentive Act 1974 as, by
virtue of Section 5(3), the development
Certificate must specify the tax relief period
which is in fact the period during which the
development company is relieved of income tax.

50

Such relief or exemption is covered by Section
7(1)(y) of the Income Tax Act 1974. The relief
is given right from Production Day and not at
some future time when the Commissioner of
Income Tax issues his statement under Section
33(2). This statement merely determines the
quantum of the income or loss derived from
the production or provision of development

EXHIBITS

Doc A42
Letter from
Messrs. de
Chazal du
Mee to
Respondent
1st April
1980

(continued)

products. In your letter dated 19 January 1979, you state: 'During the 8-year period 1 April 1971 to 31 March 1979, any income derived by the company from its development enterprise will not be liable to income tax.'

Even if you were right in your contention that the company had in the meantime derived income not yet exempt from tax, it would be entitled to deduct income derived from its development product in arriving at its 'chargeable income' since such income is an 'allowable deduction' as defined by Section 2(1). 10

Again you have already issued Section 33(2) statements for the years of assessment 1977/78 and 1978/79 conferring, as you say, the 'cachet' of exempt income on the company. How can you claim in the next breath that it is no longer exempt income, but chargeable 20 income or distributable.

Yours truly,

(Sd.) GABRIEL SEEYAVE

Reg. A420 No.4528

Enc.

YEAR OF ASSESSMENT ENDING 30th JUNE 19 78 MAURITIUS

(Assessment based on income of the year ended 30th June 19 77)

TAKE NOTICE that for the above year of assessment, I have made an assessment upon you, particulars of which are set out below. This notice is addressed to you as required by law but if you require a professional adviser or agent it is desirable that you should let me see it immediately.



File No.	0 022888
VP/Asst. No.	029109
Addtl. Asst. No.	17748/78
Addtl. Asst. No.	LC 010057

7858-1-81-30m

Notes—The tax in this Part is payable in addition to: (a) any tax of which you have already been notified by me; and (b) the second instalment of tax as calculated by you in your Return of Income.

PART A—Tax payable not later than

1st instalment or in one sum	05.06.1982
2nd instalment	15.06.82
Rs	286,246
Rs	

PART B CHARGEABLE INCOME		PART C TAX PAYABLE		
Income liable to tax	Deductions	On chargeable Income	Rate %	Tax Rs
	TOTAL INCOME brought forward Rs 486,927			
	<i>Less:</i>			
A. Income from Resident Société or Succession	K. Losses in trade, etc.	10,000	10%	1,000
	Interest paid 2,569	15,000	20%	3,000
	Capital Allowances	20,000	30%	6,000
B. Profits from cultivation and exploitation of lands	Deductible Donations 2,569	20,000	40%	8,000
C. Profits from trade, business, profession etc.	L. TOTAL NET INCOME 484,358	10,000	50%	5,000
D. Profits from the sale of property or interest therein	M. Passage Expenses	10,000	60%	6,000
E. Emoluments (a) Money 24,950	Deduct Reliefs—	10,000	70%	7,000
(b) Pension 24,950	9. A. Personal 4,000	376,358	75%	28,226
Sub Total 24,950	B. Wife 4,800	471,358	Total	8,268
(c) Money's worth 24,950	C. Wife's earned income			
F. Annual rental value of immovable property 1,200	D. Alimony and Maint			
G. Interest, dividends, annuity, O.A.P. etc. 460,777	E. Dependent Children 5,000			
H. Rents, royalties, premiums, etc.	F. Dependent Relatives			
I. Income from any other source in Mauritius	G. Pension Fund, etc.			
J. Income derived from outside Mauritius	H. Medical Exp/Scheme			
TOTAL INCOME carried forward 486,927	L. Premiums on Retirement Annuities 13,000			
	CHARGEABLE INCOME Rs 471,358			

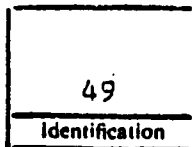
Deduct Relief for—	
Life Insurance	
Foreign Tax	
Spe. Dri.	
	318,268
Penalty (Section 100)	
Total Tax Charged	318,268
Deduct tax already charged	32,022
Additional Tax Charged by this Assessment	286,246
Deduct Tax on withholding income	
Deduct prepayments and overpayments	32,022
Tax Payable — as in Part A	Rs 286,246

1. If you are satisfied with this assessment and the tax is not paid by the date specified in Part A, ten per cent of the amount of income tax unpaid will be added by way of penalty. In addition, interest at the rate of seven per cent per year is payable in certain cases.

2. If you are dissatisfied with this assessment, you may, either: (a) give me notice of objection in writing, stating the grounds of your objection within thirty-two days from the date below*, or (b) appeal to the Supreme Court within sixty days from the date below*

3. Cheques should be made payable to the Commissioner of Income Tax and crossed "Income Tax Account". They should be sent with the detachable counterfoil (below) to the Commissioner at the 1st address shown below.

*Dated this 01.06.82 Office of the Commissioner of Income Tax Development Bank Building OR Headquarters Registrar General's Building, 1m 15, Jules Koenig Street, Port Louis.



Handwritten signature and 'Commissioner of Income Tax.'

PLEASE DETACH THIS COUNTERFOIL and present it or send it with your payment of 2nd instalment to the Office of the Commissioner of Income Tax, Development Bank Building, Chaussée, Port Louis.

Mr Lim Kwet Chow Lam Po Tang 8, Wallington St, PORT LOUIS

INCOME TAX — Year of Assessment 1977/78 File No. 00228888 Assessment No. LC 010057 Tax payable Rs. 286,246 not later than 05.06.1982

PLEASE DETACH THIS COUNTERFOIL and present it or send it with your payment of 1st instalment of total sum to the Office of the Commissioner of Income Tax, Development Bank Building, Chaussée, Port Louis.

INCOME TAX — Year of Assessment 1978/79 File No. Assessment No.

INCOME TAX

Income Tax Act, 1974

NOTICE OF ASSESSMENT

YEAR OF ASSESSMENT ENDING 30th JUNE 1979

(Assessment based on income of the year ended 30th June 1978)

TAKE NOTICE that for the above year of assessment, I have made an assessment upon you, particulars of which are set out below. This notice is addressed to you as required by law but if you are a professional adviser or agent it is desirable that you should let me see it immediately.

7858-1-81-30m



MAURITIUS

I.T. FORM
51

To... LIM KWET CHOW LAM PO TANG	
40 ROYAL STREET	
P/LOUIS	
File No.	0 02288.8
VP/Asst. No.	36973/79
Addtl. Asst. No.	LC 010058/79
Addtl. Asst. No.	01.06.82

Notes—The tax in this Part is payable in addition to:
(a) any tax of which you have already been notified by me; and
(b) the second instalment of tax as calculated by you in your Return of Income.

PART A—Tax payable not later than

1st instalment or in one sum	05.07.19 82
2nd instalment	31st March 19
	Rs
	286,661

ART B CHARGEABLE INCOME		PART C TAX PAYABLE		
Income liable to tax	Deductions	On chargeable Income Rs	Rate %	Tax Rs
	TOTAL INCOME brought forward Ra 496,607	10,000	10%	1,000
A. Income from Resident Société or Succession	<i>Less:</i>	15,000	20%	3,000
	K. Losses in trade, etc.	20,000	30%	6,000
	Interest paid	20,000	40%	8,000
	Capital Allowances	10,000	50%	5,000
B. Profits from cultivation and exploitation of lands	Deductible Donations	10,000	60%	6,000
C. Profits from trade, business, profession etc.	L. TOTAL NET INCOME 496,607	10,000	70%	7,000
D. Profits from the sale of property or interest therein	M. Passage Expenses	388,107	75%	291,080
E. Emoluments		483,107	Total	327,080
(a) Money 42,600	Deduct Relief—			
(b) Pension	9. A. Personal 4,000			
Sub Total 42,600	B. Wife 4,000			
(c) Money's worth 42,600	C. Wife's earned income			
F. Annual/rental value of immovable property	D. Alimony and Maint			
454,007	E. Dependent Children 5,500			
G. Interest, dividends, annuity, O.A.P. etc.	F. Dependent Relatives			
H. Rents, royalties, premiums, etc.	G. Pension Fund, etc.			
I. Income from any other source in Mauritius	H. Medical Exp/Scheme			
J. Income derived from outside Mauritius	I. Premiums on Retirement Annuities 13,500			
TOTAL INCOME carried forward 496,607	CHARGEABLE INCOME Ra 483,107			

Deduct Relief for—	
Life insurance	
Foreign Tax	
Spe. Dri.	
	327,080
Penalty (Section 100)	
Total Tax Charged	327,080
Deduct tax already charged	40,419
Additional Tax Charged by this Assessment	286,661
Deduct Tax on withholding income	286,661
Deduct prepayments and overpayments	
Tax Payable — as in Part A	286,661

15
Identification

[Signature]
Commissioner of Income Tax.

- If you are satisfied with this assessment and the tax is not paid by the date specified in Part A, ten per cent of the amount of income tax unpaid will be added by way of penalty. In addition, interest at the rate of seven per cent per an is payable in certain cases.
- If you are dissatisfied with this assessment, you may, either:
(a) give me notice of objection in writing, stating the grounds of your objection within thirty-two days from the date below*, or
(b) appeal to the Supreme Court within sixty days from the date below*
- Cheques should be made payable to the Commissioner of Income Tax and crossed "Income Tax Account". They should be sent with the detachable counterfoil (below) to the Commissioner at the 1st address shown below.

*Dated this 01.06.82
Office of the Commissioner of Income Tax
Development Bank Building OR Headquarters
Chausée, Port Louis.
15, Jules Kaszig Street,
Port Louis.
KW

PLEASE DETACH THIS COUNTERFOIL and present it or send it with your payment of 2nd instalment to the Office of the Commissioner of Income Tax, Development Bank Building, Chausée, Port Louis.
LIM KWET CHOW LAM PO TANG
40 ROYAL STREET
P/LOUIS

01.06.82
INCOME TAX — Year of Assessment 1978/79
File No. 0 02288.8
Tax payable Rs 286,661

Assessment No. LC 010058/79
not later than 05.07.1982

PLEASE DETACH THIS COUNTERFOIL and present it or send it with your payment of 1st instalment or total sum to the Office of the Commissioner of Income Tax, Development Bank Building, Chausée, Port Louis.

INCOME TAX

Income Tax Act, 1974

NOTICE OF ASSESSMENT

YEAR OF ASSESSMENT ENDING 30th JUNE 19 78

(Assessment based on income of the year ended 30th June 1977)

TAKE NOTICE that for the above year of assessment, I have made an assessment upon you, particulars of which are set out below. This notice is addressed to you as required by law but if you are a professional adviser or agent it is desirable that you should let me see it immediately.

7858-1-81-30m



MAURITIUS

I.T. FORM

51

To... Mr. Gary Lam Po Tang
8 Wallington St
Port Louis

Please quote these references	File No.	R 19925.7
	VP/Asst. No.	27781/78
	Addtl. Asst. No.	LC 010055/78
	Addtl. Asst. No.	01.06.82

Note—The tax in this Part is payable in addition to:
(a) any tax of which you have already been notified by me; and
(b) the second instalment of tax as calculated by you in your Return of Income.

PART A—Tax payable not later than

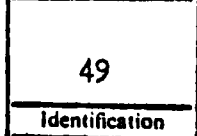
1st instalment or in one sum	2nd instalment 31st March 19
05.07.1982	
Rs 70,986	Rs

PART B CHARGEABLE INCOME PART C TAX PAYABLE

Income liable to tax		Deductions		On chargeable Income		
Rs		Rs		Rs	Rate %	Tax Rs
TOTAL INCOME brought forward 165,221		TOTAL INCOME brought forward 165,221		10,000	10%	1,000
Less:		Less:		15,000	20%	3,000
A. Income from Resident Société or Succession 7,908		K. Losses in trade, etc.		20,000	30%	6,000
	7,908	Interest paid 2,329		20,000	40%	8,000
B. Profits from cultivation and exploitation of lands		Capital Allowances		10,000	50%	5,000
C. Profits from trade, business, profession etc.		Deductible Donations 2,329		10,000	60%	6,000
D. Profits from the sale of property or interest therein		L. TOTAL NET INCOME 162,892		10,000	70%	7,000
E. Emoluments		M. Passage Expenses		58,392	75%	43,794
(a) Money 35,543			162,892	153,392	Total	79,794
(b) Pension		Deduct Reliefs—		Deduct Relief for:—		
Sub Total 35,543		9. A. Personal 4,000		Life insurance 916		
(c) Money's worth 35,543		B. Wife 4,000		Foreign Tax		
F. Annual rental value of immovable property		C. Wife's earned income		Spe. Dri. 916		
G. Interest, dividends, annuity, O.A.P. etc. 121,770		D. Alimony and Maint		78,878		
H. Rents, royalties, premiums, etc.		E. Dependent Children 1,500		Penalty (Section 100)		
I. Income from any other source in Mauritius		F. Dependent Relatives		Total Tax Charged 78,878		
J. Income derived from outside Mauritius		G. Pension Fund, etc.		Deduct tax already charged 7,892		
TOTAL INCOME carried forward 165,221		H. Medical Exp/Scheme		Additional Tax Charged by this Assessment Rs 70,986		
		I. Premiums on Retirement Annuities 9,500		Deduct Tax on withholding income 70,986		
		CHARGEABLE INCOME Rs 153,392		Deduct prepayments and overpayments		
				Tax Payable — as in Part A Rs 70,986		

- If you are satisfied with this assessment and the tax is not paid by the date specified in Part A, ten per cent of the amount of income tax unpaid will be added by way of penalty. In addition, interest at the rate of seven per cent per annum is payable in certain cases.
- If you are dissatisfied with this assessment, you may, either:
 - give me notice of objection in writing, stating the grounds of your objection within thirty-two days from the date below*, or
 - appeal to the Supreme Court within sixty days from the date below*
- Cheques should be made payable to the Commissioner of Income Tax and crossed "Income Tax Account". They should be sent with the detachable counterfoil (below) to the Commissioner at the 1st address shown below.

*Dated this 01.06.82
Office of the Commissioner of Income Tax
Development Bank Building OR Headquarters
Chaussee, Port Louis.
Registrar General's Building,
15, Jules Koenig Street,
Port Louis.



Commissioner of Income Tax.

PLEASE DETACH THIS COUNTERFOIL and present it or send it with your payment of 2nd instalment to the Office of the Commissioner of Income Tax, Development Bank Building, Chaussee, Port Louis.

Mr. Gary Lam Po Tang
8 Wallington St
Port Louis

INCOME TAX — Year of Assessment 19 77-78
File No. R 19925.7
Tax payable Rs 70,986

01.06.82
Assessment No. LC 010055/78
not later than 05 JUL 1982

PLEASE DETACH THIS COUNTERFOIL and present it or send it with your payment of 1st instalment or total sum to the Office of the Commissioner of Income Tax, Development Bank Building, Chaussee, Port Louis.

INCOME TAX

Income Tax Act, 1974

NOTICE OF ASSESSMENT

YEAR OF ASSESSMENT ENDING 30th JUNE 1979

(Assessment based on income of the year ended 30th June 1978)

TAKE NOTICE that for the above year of assessment, I have made an assessment upon you, particulars of which are set out below. This notice is addressed to you as required by law but if you are a professional adviser or agent it is desirable that you should let me see it immediately.

7858-1-81-30m



MAURITIUS

I.T. FORM
51

To: Mr. Gary Lam Po Tang
 8 Wellington Street
 Port Louis

Please quote these references	File No.	R 19925.7
	VP/Asst. No.	28892
	Addtl. Asst. No.	LC 010056/79
	Addtl. Asst. No.	01.06.82

Notes:—The tax in this Part is payable in addition to:
 (a) any tax of which you have already been notified by me; and
 (b) the second instalment of tax as calculated by you in your Return of Income.

PART A—Tax payable not later than

1st instalment or in one sum	2nd instalment 31st March 19
Rs 78,334	Rs

PART B CHARGEABLE INCOME PART C TAX PAYABLE

Income liable to tax		Deductions		On chargeable Income		
Rs		Rs		Rs	Rate %	Tax Rs
TOTAL INCOME brought forward 185,416		TOTAL INCOME brought forward 185,416		10,000	10%	1,000
<i>Less:</i>		<i>Less:</i>		15,000	20%	3,000
A. Income from Resident Société or Succession 18,033		K. Losses in trade, etc.		20,000	30%	6,000
..... 18,033		Interest paid 3,007		20,000	40%	8,000
B. Profits from cultivation and exploitation of lands		Capital Allowances		10,000	50%	5,000
.....		Deductible Donations 3,007		10,000	60%	6,000
C. Profits from trade, business, profession etc.		L. TOTAL NET INCOME 182,409		10,000	70%	7,000
.....		M. Passage Expenses		77,909	75%	58,431
D. Profits from the sale of property or interest therein		..... 182,409		172,909	Total	94,431
E. Emoluments		Deduct Reliefs—		<i>Deduct Relief for—</i>		
(a) Money 47,175		9. A. Personal 4,000		Life insurance		
(b) Pension		B. Wife 4,000		..... 916		
.....		C. Wife's earned income		Foreign Tax		
..... 47,175		D. Alimony and Maint		.....	
F. Total 47,175		E. Dependent Children 1,500		Spe. Dri.		
(c) Money's worth		.....		..... 916		
..... 47,175		F. Dependent Relatives		..... 93,515		
G. Annual rental value of immovable property		G. Pension Fund, etc.		Penalty (Section 100)		
.....		H. Medical Exp/Scheme		.....	
H. Interest, dividends, annuity, O.A.P. etc. 120,208		.....		Total Tax Charged 93,515		
.....		I. Premiums on Retirement Annuities 9,500		Deduct tax already charged 15,281		
I. Rents, royalties, premiums, etc		.....		Additional Tax Charged by this Assessment Rs 78,334		
.....		J. CHARGEABLE INCOME Rs 172,909		Deduct Tax on withholding income		
K. Income from any other source in Mauritius		.....		..... 78,334		
.....		.....		Deduct prepayments and overpayments		
L. Income derived from outside Mauritius		.....		Tax Payable — as in Part A Rs 78,334		
.....			
TOTAL INCOME carried forward 185,416		.....		.....

1. If you are satisfied with this assessment and the tax is not paid by the date specified in Part A, ten per cent of the amount of income tax unpaid will be added by way of penalty. In addition, interest at the rate of seven per cent per annum is payable in certain cases.

2. If you are dissatisfied with this assessment, you may, either:
 (a) give me notice of objection in writing, stating the grounds of your objection within thirty-two days from the date below*, or
 (b) appeal to the Supreme Court within sixty days from the date below*

* Cheques should be made payable to the Commissioner of Income Tax and crossed "Income Tax Account". They should be sent with the detachable counterfoil (below) to the Commissioner at the 1st address shown below.

Dated this 01.06.82
 Office of the Commissioner of Income Tax
 Development Bank Building OR Headquarters
 Registrar General's Building,
 15, Jules Koenig Street,
 Port Louis.

49
 Identification

[Signature]
 Commissioner of Income Tax.

Additional Tax Charged by this Assessment Rs	78,334
Deduct Tax on withholding income	78,334
Deduct prepayments and overpayments	.....
Tax Payable — as in Part A Rs	78,334

PLEASE DETACH THIS COUNTERFOIL and present it or send it with your payment of 2nd instalment to the Office of the Commissioner of Income Tax, Development Bank Building, Chaussée, Port Louis.

Mr Gary Lam Po Tang
 8 Wellington St
 Port Louis

01.06.82 78-79
 INCOME TAX — Year of Assessment 19 — 8
 File No. R 19925.7 Assessment No. LC 010056/79
 Tax payable Rs 78,334 not later than 05 JUL 1982

PLEASE DETACH THIS COUNTERFOIL and present it or send it with your payment of 1st instalment or total sum to the Office of the Commissioner of Income Tax, Development Bank Building, Chaussée, Port Louis.

INCOME TAX

Income Tax Act, 1974

NOTICE OF ASSESSMENT

YEAR OF ASSESSMENT ENDING 30th JUNE 1978

(Assessment based on income of the year ended 30th June 1977)

TAKE NOTICE that for the above year of assessment, I have made an assessment upon you, particulars of which are set out below. This notice is addressed to you as required by law but if you have a professional adviser or agent it is desirable that you should let him see it immediately.

7858-1-81-30m



MAURITIUS



Mr. LIMBERG, LAM, PO. TANG
P.O. Box 257
Port Louis

File No.	R 17737.7
VP/Asst. No.	29110/78
Addtl. Asst. No.	17770/78
Addtl. Asst. No.	Lc 010053 01.06.82

Notes—The tax in this Part is payable in addition to:
(a) any tax of which you have already been notified by me; and
(b) the second instalment of tax as calculated by you in your Return of Income.

PART A—Tax payable not later than	1st instalment or in one sum	2nd instalment 31st March 19
	05.07.1982 Rs 303,386	Rs

PART B CHARGEABLE INCOME **PART C TAX PAYABLE**

Income liable to tax		Deductions		On chargeable Income		
Rs		Rs		Rs	Rate %	Tax Rs
TOTAL INCOME brought forward 536,700		Less:		10,000	10%	1,000
A. Income from Resident Société or Succession		K. Losses in trade, etc.		15,000	20%	3,000
.....		Interest paid 5,054		20,000	30%	6,000
.....		Capital Allowances		20,000	40%	8,000
B. Profits from cultivation and exploitation of lands		Deductible Donations 5,054		10,000	50%	5,000
.....		L. TOTAL NET INCOME 531,646		10,000	60%	6,000
C. Profits from trade, business, profession etc.		M. Passage Expenses		10,000	70%	7,000
.....		.....		423,646	75%	317,734
D. Profits from the sale of property or interest therein		Deduct Reliefs—		518,646	Total	353,734
E. Emoluments		9. A. Personal 4,000		<i>Deduct Relief for:—</i>		
(a) Money 24,000		B. Wife 4,000		Life insurance		
(b) Pension		C. Wife's earned income		Foreign Tax		
Sub Total		D. Alimony and Maint		Spes. Dri.		
24,000		E. Dependent Children 5,000		.....	
(c) Money's worth		F. Dependent Relatives		.....	
1,200		G. Pension Fund, etc.		.....	
511,500		H. Medical Exp/Scheme		.....	
F. Annual rental value of immovable property		I. Premiums on Retirement Annuities 13,000		Penalty (Section 100).....		
.....		CHARGEABLE INCOME Rs 518,646		Total Tax Charged 353,734		
G. Interest, dividends, annuity, O.A.P. etc.				Deduct tax already charged 50,348		
.....				Additional Tax Charged by this Assessment Rs 303,386		
H. Rents, royalties, premiums, etc				Deduct Tax on withholding income.....		
.....				Deduct prepayments and overpayments.....		
I. Income from any other source in Mauritius				Tax Payable — as in Part A Rs 303,386		
J. Income derived from outside Mauritius						
TOTAL INCOME carried forward 536,700						

- If you are satisfied with this assessment and the tax is not paid by the date specified in Part A, ten per cent of the amount of income tax unpaid will be added by way of penalty. In addition, interest at the rate of seven per cent per year is payable in certain cases.
- If you are dissatisfied with this assessment, you may, either:
 - give me notice of objection in writing, stating the grounds of your objection within thirty-two days from the date below*, or
 - appeal to the Supreme Court within sixty days from the date below*
- Cheques should be made payable to the Commissioner of Income Tax and crossed "Income Tax Account". They should be sent with the detachable counterfoil (below) to the Commissioner at the 1st address shown below.

*Dated this 01.06.82
Office of the Commissioner of Income Tax
Development Bank Building OR Headquarters
Chaussée, Port Louis.
Registrar General's Building,
15, Jules Koenig Street,
Port Louis.

15
Identification

[Signature]
Commissioner of Income Tax.

Additional Tax Charged by this Assessment	Rs 303,386
Deduct Tax on withholding income	.....
Deduct prepayments and overpayments	.....
Tax Payable — as in Part A	Rs 303,386

PLEASE DETACH THIS COUNTERFOIL and present it or send it with your payment of 2nd instalment to the Office of the Commissioner of Income Tax, Development Bank Building, Chaussée, Port Louis.

Name: Mr. LIMBERG, LAM, PO. TANG
Address: P.O. BOX 257, Port Louis

INCOME TAX — Year of Assessment 1978 — 8
File No. R 17737.7
Assessment No. Lc 010053/78
Tax payable Rs 303,386 not later than 05.07.1982

PLEASE DETACH THIS COUNTERFOIL and present it or send it with your payment of 1st instalment or total sum to the Office of the Commissioner of Income Tax, Development Bank Building, Chaussée, Port Louis.

INCOME TAX

Income Tax Act, 1974

NOTICE OF ASSESSMENT

YEAR OF ASSESSMENT ENDING 30th JUNE 1979

(Assessment based on income of the year ended 30th June 1978)

TAKE NOTICE that for the above year of assessment, I have made an assessment upon you, particulars of which are set out below. This notice is addressed to you as required by law but if you are a professional adviser or agent it is desirable that you should let me see it immediately.

7858-1-81-30m



MAURITIUS

I.T. FORM

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To: MR LIMBERG LAM PO TANG
P O BOX 257
PORT LOUIS

Please quote these references	File No.	R 17737.7
	VP/Asst. No.	36972/79
	Addtl. Asst. No.	17805/79
	Addtl. Asst. No.	TC 010054/79

The tax in this Part is payable in addition to:
(a) any tax of which you have already been notified by me; and
(b) the second instalment of tax as calculated by you in your Return of Income.

PART A—Tax payable not later than

1st instalment or in one sum	2nd instalment 31st March 19
05.07.1982	
Rs 303,524	- Rs.

PART B CHARGEABLE INCOME		PART C TAX PAYABLE		
Income liable to tax	Deductions	On chargeable Income Rs	Rate %	Tax Rs
	TOTAL INCOME brought forward Rs 543,274	10,000	10%	1,000
	<i>Less:</i>	15,000	20%	3,000
4. Income from Resident Société or Succession	K. Losses in trade, etc.	20,000	30%	6,000
	Interest paid	20,000	40%	8,000
	Capital Allowances	10,000	50%	5,000
3. Profits from cultivation and exploitation of lands	Deductible Donations	10,000	60%	6,000
2. Profits from trade, business, profession etc.	L. TOTAL NET INCOME 543,274	10,000	70%	7,000
1. Profits from the sale of property or interest therein	M. Passage Expenses	435,274	75%	326,455
6. Emoluments (a) Money 42,600		530,274	Total	362,455
(b) Pension	Deduct Reliefs—			
7. Total 42,600	9. A. Personal 4,000			Deduct Relief for—
(c) Money's worth 42,600	B. Wife 4,000			Life insurance
5. Annual rental value of immovable property	C. Wife's earned income			Foreign Tax
3. Interest, dividends, annuity, O.A.P. etc. 500,674	D. Alimony and Maint			Spe. Dri.
4. Rents, royalties, premiums, etc.	E. Dependent Children			
L. Income from any other source in Mauritius	F. Dependent Relatives 5,000			
I. Income derived from outside Mauritius	G. Pension Fund, etc.			
TOTAL INCOME carried forward 543,274	H. Medical Exp/Scheme			
	I. Premiums on Retirement Annuities 13,000			
	CHARGEABLE INCOME Rs 530,274			Total Tax Charged 362,455

1. If you are satisfied with this assessment and the tax is not paid by the date specified in Part A, ten per cent of the amount of income tax unpaid will be added by way of penalty. In addition, interest at the rate of seven per cent per annum is payable in certain cases.

2. If you are dissatisfied with this assessment, you may, either:

(a) give me notice of objection in writing, stating the grounds of your objection within thirty-two days from the date below*, or

(b) appeal to the Supreme Court within sixty days from the date below*

3. Cheques should be made payable to the Commissioner of Income Tax and crossed "Income Tax Account". They should be sent with the detachable counterfoil (below) to the Commissioner at the 1st address shown below.

*Dated this 01.06.82

Office of the Commissioner of Income Tax
Development Bank Building OR Headquarters
15, Jules Koenig Street,
Port Louis.

JK

15

Identification

Signature

Commissioner of Income Tax.

Additional Tax Charged by this Assessment Rs	303,524
Deduct Tax on withholding income	303,524
Deduct prepayments and overpayments	
Tax Payable — as in Part A Rs	303,524

PLEASE DETACH THIS COUNTERFOIL and present it or send it with your payment of 2nd instalment to the Office of the Commissioner of Income Tax, Development Bank Building, Chaussée, Port Louis.

MR LIMBERG LAM PO TANG

01.06.82

INCOME TAX — Year of Assessment 1978-79

P O BOX 257
PORT LOUIS

File No. R 17737.7
Assessment No. TC 010054/79
Tax payable Rs 303,524
not later than 05.11.82

PLEASE DETACH THIS COUNTERFOIL and present it or send it with your payment of 1st instalment or total sum to the Office of the Commissioner of Income Tax, Development Bank Building, Chaussée, Port Louis.

No.45 of 1983

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N . A P P E A L
FROM THE SUPREME COURT OF MAURITIUS

B E T W E E N :

ALUMINIUM ENTERPRISES LIMITED	<u>First Appellant</u>
LIM KWET CHOW LAM PO TANG	<u>Second Appellant</u>
GARY LAM PO TANG	<u>Third Appellant</u>
LIMBERG LAM PO TANG	<u>Fourth Appellant</u>
- and -	
THE COMMISSIONER FOR INCOME TAX	<u>Respondent</u>

(Consolidated Appeals)

RECORD OF PROCEEDINGS

SLAUGHTER AND MAY,
35 Basinghall Street,
London, EC2V 5DB

Solicitors for the
Appellants

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London, WC2

Solicitors for the
Respondent