

Judgment 1, 1971

IN THE PRIVY COUNCIL

No. 7 of 1969.

ON APPEAL  
FROM THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE  
OF GUYANA

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B E T W E E N:

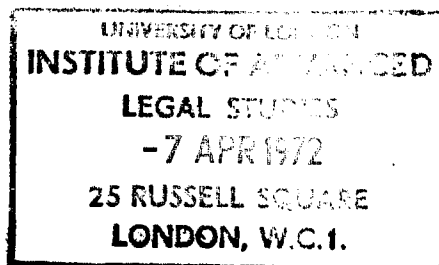
GUIANA INDUSTRIAL & COMMERCIAL INVESTMENTS LIMITED  
Appellants  
(Respondents)

- and -

THE COMMISSIONER OF INLAND REVENUE  
Respondent  
(Appellant)

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R E C O R D O F P R O C E E D I N G S



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14, Dominion Street,  
London,  
E.C.2

Solicitors for the Appellants

CHARLES RUSSELL & CO.,  
Hale Court,  
21, Old Buildings,  
Lincoln's Inn, London, W.C.2

Solicitors for the Respondent

1, 1971

IN THE PRIVY COUNCIL

No. 7 of 1969

ON APPEAL  
FROM THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE  
OF GUYANA

B E T W E E N:

GUYANA INDUSTRIAL & COMMERCIAL INVESTMENTS LIMITED  
Appellants  
(Respondents)

- and -

THE COMMISSIONER OF INLAND REVENUE  
Respondent  
(Appellant)

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IN THE PRIVY COUNCIL

No. 7 of 1969

ON APPEAL  
FROM THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE  
OF GUYANA

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B E T W E E N:

GUIANA INDUSTRIAL & COMMERCIAL INVESTMENTS LIMITED  
Appellants  
(Respondents)

- and -

10 THE COMMISSIONER OF INLAND REVENUE  
Respondent  
(Appellant)

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R E C O R D O F P R O C E E D I N G S

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NO. 1

NOTICE OF APPEAL

BOARD OF REVIEW

Board of  
Review

In re THE INCOME TAX ORDINANCE

B E T W E E N

20 GUIANA INDUSTRIAL AND COMMERCIAL INVESTMENTS  
LIMITED Appellant

and

THE COMMISSIONER OF INLAND REVENUE Respondent

No.1

Notice of  
Appeal to the  
Board of  
Review dated  
16th July  
1964

NOTICE OF APPEAL to the Board of Review is hereby given from the Assessment No. AA 289D/63 dated the 30th day of April, 1964, wherein a tax in the sum of \$30,827.66 was levied in respect of the Year of Assessment 1963 upon the income of the year ended 30th November, 1962.

(i) STATEMENT OF ALLEGATIONS OF FACTBoard of  
ReviewNo. 1Notice of  
Appeal to the  
Board of  
Review dated  
16th July 1964  
(continued)

- (a) Demerara Sugar Terminals Limited (hereinafter referred to as the Company) was incorporated as a Company Limited by shares on the 13th June, 1958, under the Companies Ordinance (Chapter 328). The registered office of the Company is at Ruimveldt, East Bank, Demerara.
- (b) The principal object for which the Company was established was to carry on the business of storing, handling, loading and shipping sugar in bulk at a special central installation to be constructed for that purpose at Ruimveldt, Demerara. 10
- (c) The construction of this installation was completed in July, 1960, and by agreement with the Commissioner of Inland Revenue, the 1st August, 1960, has been accepted as the date of the commencement of the Company's business for the purpose of income tax. 20
- (d) Having regard to the nature of its undertaking, the Company claimed the following initial allowances in respect of its "industrial buildings and structures" and its "machinery and plant" under the provisions of the Income Tax (In Aid of Industry) Ordinance (Chapter 300) (hereinafter referred to as the Air Ordinance), in respect of the years of income 1960 and 1961, namely:- 30

	<u>Industrial Buildings &amp; Structures</u>	<u>Machinery &amp; Plant</u>
For the year 1960	\$463,584:-	\$1,109,520:-
" " " 1961	<u>5,234:-</u>	<u>68,525:-</u>
	<u>\$469,098:-</u>	<u>\$1,178,045:-</u>

- (e) There is no dispute over the entitlement of the Company to these allowances and its liability to tax in respect of the 40

years of income aforesaid has been assessed on this basis but there is a dispute as hereinafter mentioned as to the legal effect thereof in respect of the tax the Company is entitled to deduct on the payment of dividends to its shareholders. In respect of the Company's income for the year 1960 there was a nil assessment but in respect of its income for the year 1961 the Company was assessed for income tax in the sum of \$23,745:-

Board of  
Review

No. 1

Notice of  
Appeal to the  
Board of  
Review dated  
16th July  
1964

(continued)

10

(f) Without bringing into account the aforesaid initial allowances and the annual allowances to which it was also entitled the Company made a profit of \$54,183:- for the year of income 1960 and of \$1,793,890:- for the year of income 1961.

20

(g) No Dividend was paid in respect of 1960, but in 1961 the Company declared for distribution to its three shareholders, namely, the Appellant Company, Bookers Shipping (Overseas Investments) Limited and Sandbach Parker and Company, Limited an interim dividend of \$500,000:- free of tax, of which \$40,000:- was the share paid to the Appellant Company on the 16th December, 1961.

30

(h) The Appellant Company is a company incorporated under the laws of British Guiana on the 30th day of November, 1960, and the Commissioner has permitted its income to be computed for the purposes of the Ordinance for each year terminating on the 30th day of November,

40

(i) In pursuance of Section 29 of the Income Tax Ordinance, Chapter 299 (hereinafter referred to as "the Ordinance") the said dividend of \$40,000:- was grossed up to \$72,727.27 and \$32,727.27 (being forty-five per cent of the gross dividend) which the Company claimed it was entitled to deduct, was shown as a deduction in respect of tax paid or to be paid on the income out of which the

Board of  
Review

No.1

Notice of  
Appeal to the  
Board of  
Review dated  
16th July  
1964

(continued)

dividend was paid. Of the said sum of £32,727.27, £1,899.61 represented the proportionate part of the tax of £23,745.15 actually paid by the Company.

- (j) The said gross dividend of £72,727.27 was included in the chargeable income of the Appellant Company for the year of income ended 30th November, 1962 and the claim of the Appellant Company under Section 30 of the Ordinance that the total amount of £32,727.27 should be set off against the tax charged on that chargeable income was granted by the Commissioner of Inland Revenue. 10
- (k) The Commissioner has since claimed that the Company has no authority under section 29 of the Ordinance to deduct more than £1,899.61 from the dividend declared for distribution to the Appellant Company and has raised a new assessment (No. AA 289D/63) against the Appellant Company claiming as tax due from the Appellant Company in respect of income for the year ended 30th November, 1962 the sum of £30,827.66 being the difference between the said sum of £32,727.27 and the said sum of £1,899.61 aforesaid. 20
- (l) By letter dated the 14th May, 1964, addressed to the Commissioner of Inland Revenue, Fitzpatrick Graham & Co., on behalf of the Appellant Company gave notice of objection to the said assessment, but in his reply dated 7th July, 1964, which was received by Fitzpatrick Graham & Co. on 11th July, 1964, the Commissioner has rejected the objection and maintained the assessment. 30
- (m) The Appellant Company now appeals to the Board of Review from this decision of the Commissioner. 40
- (2) STATEMENT OF THE REASONS ADVANCED IN SUPPORT OF APPEAL
- (a) The Appellant Company is entitled to



5.

set-off against the tax charged on the said gross dividend of \$72,727.27 aforesaid, the said amount of \$32,727.27 since the amount of \$32,727.27 was properly and lawfully deductible under section 29 of the Ordinance in that -

Board of  
Review

No. 1

Notice of  
Appeal to the  
Board of  
Review dated  
16th July  
1964

(continued)

10

(i) The said dividend was paid wholly out of income of the Company on which tax was payable by the Company under the Ordinance.

20

(ii) The amount which the company was entitled to deduct by section 29 aforesaid is determined by reference to the rate (being forty-five per centum) at which income tax imposed by the Ordinance on the income of the Company is charged, and does not depend on the quantified amount of tax actually so charged.

30

(iii) Alternatively, if it were necessary to consider whether income tax has been paid or is payable by the Company on the said amount of \$72,727.27, account must be taken of the entire scheme of income tax relief established by the Aid Ordinance under which the burden of tax on the aggregate income of a Company to which the Aid Ordinance applies earned over a period of years is distributed over the period so as to relieve the Company of a heavy tax burden during the early years of operation. Under this system, income tax is payable on the total income of the Company over the period even though there is no liability to pay any tax during some early year of operation.

40

(iv) It is an established principle of income tax law and of industrial incentive legislation that the grant of initial allowances does not affect the question whether

Board of  
Review

No.1

Notice of  
Appeal to the  
Board of  
Review dated  
16th July  
1964

(continued)

dividends are paid out of income charged to tax so as to impose on the recipient shareholder the obligations to pay income tax on such dividends without any right of set-off. Any interpretation of the Ordinance and the Aid Ordinance which imposed such an obligation would defeat the basic purpose of the grant of initial allowances and frustrate the manifest intention of the Legislature in authorising such allowances as part of a scheme of relief from income tax designed to encourage the establishment and development of industries in British Guiana. 10

(b) In the alternative, the Appellant Company is also entitled to set off against the tax charged on the said gross dividend of \$72,727.27 aforesaid the said amount of \$30,827.66 since the amount of \$30,827.66 was properly and lawfully deductible as aforesaid under section 29 of the Ordinance in that - 20

(i) If the amount which the Company was entitled to deduct by the said section 29 is determined by the tax charged by the Ordinance on the chargeable income of the Company, the amount of \$1,178,045:- (being the equivalent of the allowance to which the Company was entitled by law in respect of the provisions of machinery and plant) formed part of the chargeable income of the Company on which tax in the sum of \$530,120.25 was payable but in respect of which the Company was entitled to set off by virtue of the provisions of the Aid Ordinance, and the Company was therefore entitled to deduct from the said dividend so much of the tax of \$530,120 payable under the Ordinance on the amount of \$1,178,045:- aforesaid as was attributable to the said dividend; and 30 40

7.

(ii) The right of the Company to set off the said amount of \$530,120.25 against the tax payable on its chargeable income by virtue of the provisions of the Aid Ordinance in no way alters, modifies or restricts the entitlement of the Company to deduct the amount of \$30,827.66 aforesaid from the said dividend under sect. 29 of the Ordinance.

Board of  
Review

No.1

Notice of  
Appeal to the  
Board of  
Review dated  
16th July  
1964

(continued)

(c) The Appellant Company is not liable to pay tax on the said amount of \$32,727.27 since the said amount was never received by the Appellant Company as income or at all.

The Appellant's address for service is at 2, High Street, Newtown, Georgetown, the business address of the Appellant's Solicitor, JOSEPH EDWARD deFREITAS.

Dated at Georgetown, this 16th day of July, 1964.

(sgd.) J. Edward deFreitas

Solicitor for the Appellant

GULIANA INDUSTRIAL AND COMMERCIAL INVESTMENTS  
LTD.

NO.2  
DECISION

No.2  
Decision

18th November  
1965

Before: P.W. King (who was elected Chairman of the Meeting in the absence of the Chairman).

C.L. Kranenburg (Member)

S. Heald (Member)

1965 3rd, 4th, 5th, 13th, 16th & 18th August, 15th & 16th November.

Appearances: Mr. C. Lloyd Luckhoo, Q.C.  
for the Appellants

Board of  
Review

Mr. J.L. Rawlins, represented the  
Commissioner of Inland Revenue.

DECISION

This is an appeal against Additional Assessment No. AA289D/63 dated the 30th day of April 1964 wherein a tax in the sum of \$30,827.66 was levied in respect of the Year of Assessment 1963 upon the Income of the year ended 30th November, 1962.

No.2  
Decision  
18th November  
1965  
(continued)

1. The facts in the case are not disputed and are as follows. 10

2. Demerara Sugar Terminals Ltd. was incorporated as a limited Liability Company under the Companies Ordinance, Chapter 328, on the 15th June, 1958. The shareholders of the Company were three in number, viz. the Appellants, Bookers Shipping (Overseas Investments) Limited and Sandbach Parker and Co. Limited.

3. Demerara Sugar Terminals Limited came within the purview of the Income Tax (In Aid of Industries) Ordinance, Chapter 300 and under the provisions of that Ordinance was entitled to various deductions and allowances before arriving at its taxable income in any year. In the Year of Assessment 1963 upon the income of the Year 1962 Demerara Sugar Terminals Limited were entitled to these deductions and allowances. 20

4. As a result of the deductions and allowances Demerara Sugar Terminals Limited were immune from paying any income tax on their income for the Year which for them ended on the 30th November, 1962. 30

5. Out of the profits made by Demerara Sugar Terminals Limited which were immune to income tax, the Appellants were paid \$40,000 on the 16th December, 1961.

6. The said dividend of \$40,000 was grossed up to \$72,727.27 and \$32,727.27 (being forty-five per cent of the gross dividend) was shown as deduction in respect of the tax paid or to be paid on the income out of which the dividend was paid. Of the said sum of \$32,727.27, \$1,899.61 represented the proportionate part of the tax of \$23,745.15 actually 40

paid by Demerara Sugar Terminals Limited

7. The Commissioner originally granted the claim of the Appellants so that the total amount of \$32,727.27 should be set off against the tax charged on the Chargeable Income of the Appellant but subsequently raised an Assessment (No. AA 289 D/63) in the sum of \$30,827.66 being the difference between the said sum of \$32,727.27 and the sum of \$1,899.61 aforesaid.

Board of  
Review

No. 2

Decision

18th November  
1965

10 8. It is from this assessment that the appeal is brought.

(continued)

9. The sole question for decision is from what source was the amount paid to the Company derived.

10. The dividend, or whatever it may be called, was paid out of money in the hands of Demerara Sugar Terminals Limited which owing to the deductions and allowances given to that Company made it immune to tax.

20 11. As the money was immune to tax in the hands of Demerara Sugar Terminals Limited it must follow logically that it is also immune to tax when passed on to the members of that Company. To hold otherwise would be to defeat the objects of the Income Tax (In Aid of Industry) Ordinance. (Chapter 300) as the definition of a "body of persons" is the Income Tax Ordinance, Chapter 299, includes - "A Company" and therefore all the members thereof.

30 12. The following extract from the Judgment of Lord Dermott in the case of Commissioner of Inland Revenue v. Trustees of Joseph Reid, deceased, applies:-

40 "This matter, in light of the facts found proved, is irrelevant for our present purposes, for whatever the proper method of affecting this transfer from the Company to its shareholders - whether by a reduction of capital, or an ordinary dividend distribution, or in any other way - the transfer was in fact made, and it was in fact made out of capital profits. Its quality as capital in the hands of the recipients did not depend

Board of  
Review

upon anything done or left undone by the Company in making the distribution but upon the essential nature of the payment and the source from which the money came".

No.2

Decision

18th November  
1965

(continued)

13. The question as to whether a payment made from a fund which was not liable to Income Tax was liable to tax in the hands of the recipient was considered in the case of Simon v. The Commissioner of Inland Revenue, 15, Tax Cases. Page 595, where it was decided that such a payment was not so liable. This case has never been questioned and is therefore still good law.

10

14. We are of the opinion therefore, that the payment to the appellants, no matter how described, was never liable to tax.

15. Upon this view we find it unnecessary to follow Counsel and the representative of the Commissioner of Inland Revenue into the contentious region explored in argument. None of these wide issues have any necessary bearing on the single question before us as formulated in the Notice of Appeal.

20

16. The Appeal is therefore allowed and the Assessment annulled.

17. The appeal deposit of \$5.00 shall be repaid to the Appellants.

18. I hereby certify that the above is the decision of Messrs. King and Heald given on the 16th day of November, 1965. Mr. Kranenburg does not agree with Messrs. King and Heald and his decision is given below.

30

19. The reasons for the decision are incorporated therein.

Dated this 18th day of November, 1965.

(sgd) Percy W. King

Chairman of the Meeting.

In the case of Commissioner of Inland Revenue v. Reid's Trustees, an overseas company had

disposed of some of its capital assets as an enhanced value and paid a dividend from the resulting profits. It was held by the House of Lords that the dividends were taxable. They were income from a foreign possession; that is shares, and these were left in tact. The fact that dividends by United Kingdom companies from capital profits are not taxable was held not to be relevant. The dividends in question did not derive from capital profits. Accordingly, in my view, the case is not applicable.

Board of  
Review

No.2

Decision

18th November  
1965

(continued)

Income is nowhere defined in the Income Tax Ordinance, but the Ordinance does enumerate all the sources from which income can flow - Section 5 Cap. 299. Among the sources stipulated in the section are dividends, interest or discounts (sections 5(i) (c). Further, nowhere in the several provisions of the Ordinance relating to deductions allowable in ascertaining chargeable income is there to be found anything that would allow of 'off-setting' in determining chargeable income.

While the views held by my colleagues appear rational and equitable yet Cap. 300 which must be construed as one with the Income Tax Ordinance, Chapter 299, does not specifically provide exemption from tax of the holders of shares in companies qualifying for initial or annual allowances. In such case I feel I must be guided by the remarks made in the Courts by various judges in regard to interpretation of fiscal legislation such as follows:-

Clear words in a taxing ordinance is necessary to tax the subject. "This maxim" does not seem that words are to be unduly restricted against the Crown or that there is to be any discrimination against the Crown in such Acts ... it means that in taxation you have to look simply at what is clearly said. There is no room for any intendment; there is no equity about a tax; there is no presumption as to a tax; you read nothing in; you imply nothing, but you look fairly at what is said and what is said clearly and that is the tax" (Rowlatt, J., in Cape Brandy Syndicate v. Commissioner of Inland Revenue, at page 363, 12 T.C.).

Board of  
Review

No.2

Decision

18th November  
1965  
(continued)

"If a person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the Judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be".

(Lord Cairns in *Partington v. A.-G.*, (1899) at page 112 L.R. 4) -

10

It is not the function of a court of law to give words a strained and unnatural meaning because only thus will a taxing section apply to a transaction which, had the Legislature thought of it, would have been covered by appropriate words".

(Lord Simonds, in *Commissioner of Inland Revenue v. Wolfson* at page 169, 31 T.C.)

From the foregoing it follows that onde a tax is imposed no exemption or offsetting relief may be claimed unless the words of the Act clearly permit it.

20

In the circumstances it is my considered opinion that the dividends received by the Appellants are subject to tax without the offsetting relief claimed. Having regard however to the fact that the Demerara Sugar Terminals Limited were required to pay Tax under Section 14A or the Ordinance in the sum of \$23,745.15, the liability falling upon the Appellants is \$16,955.21 as computed by the Commissioner of Inland Revenue at (xviii) of the Statement of Facts. Accordingly \$13,872 of the additional assessment of \$30,827 should be discharged.

30

(sgd.) C. L. Kraneburg

C. L. Kraneburg

Dated this 18th day of November, 1965.



13.

NO. 3  
NOTICE OF APPEAL

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE  
GUYANA

In the matter of the Income Tax Ordinance,  
Chapter 299.

BETWEEN:

THE COMMISSIONER OF INLAND REVENUE,  
Appellant

- and -

THE GUIANA INDUSTRIAL AND COMMERCIAL  
INVESTMENTS LIMITED Respondent.

Take notice that the above named, the  
Commissioner of Inland Revenue intends to appeal  
against the decision of the Board of Review given  
on the 18th November, 1965 on an appeal against  
assessment No. AA 289 D/63.

2. And further take notice that you are  
required to attend the Judge in Chambers at the  
Victoria Law Courts, Georgetown, Demerara on the  
day and at the time notified by the Registrar of  
the Supreme Court on the hearing of an appeal  
by the Commissioner of Inland Revenue against the  
decision of the said Board of Review.

3. And further take notice that it is the  
intention of the said The Commissioner of Inland  
Revenue to attend the appeal by Counsel.

4. The Grounds of Appeal are as follows:-

- (i) The Board of Review in their decision  
expressed uncertainty as to the nature  
of the payments made by the Demerara  
Sugar Terminals Ltd. (a limited company  
incorporated under the Companies  
Ordinance, Chapter 328) to the  
respondent company, a shareholder in  
the first mentioned company, whereas in  
truth and in fact, the amounts paid by  
the said company to the respondent

In the High  
Court of the  
Supreme Court  
of Judicature  
Guyana

No. 3

Notice of  
Appeal

16th December  
1965

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20

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In the High  
Court of the  
Supreme Court  
of Judicature  
Guyana

No. 3

Notice of  
Appeal

16th December  
1965

(continued)

- company are in the nature of dividends;
- (ii) the Board of Review erred in holding that Bookers Sugar Terminals Ltd. (meaning Demerara Sugar Terminals Ltd.) was immune to tax owing to deductions and allowances given to that company since immunity connotes exemption or freedom from liability to taxation;
- (iii) the Demerara Sugar Terminals Ltd. is not immune nor exempt from tax because the said company in fact was assessed and did pay tax in respect of relevant year of assessment, that is to say, the year of assessment 1963; 10
- (iv) the Demerara Sugar Terminals Ltd. in which company the appellant company is a shareholder and was a shareholder in the years 1961 and 1962, declared on the 16th December, 1961, net dividends amounting to \$500,000 of which a net dividend of \$40,000 was paid to the appellant company in its capacity as a shareholder; 20
- (v) the Board of Review erred in holding that because moneys paid by a limited company which are not taxable in the hands of that company, when paid to a shareholder is also not taxable;
- (vi) the Board of Review erred in holding that because the Demerara Sugar Terminals obtained reliefs under the Income Tax (In Aid of Industry) Ordinance, Chapter 300, in excess of that company's profits so that the said company was left with no chargeable income on which tax is to be assessed, that dividends distributed became not liable to tax in the hands of shareholders; 30
- (vii) paragraph (c) of subsection (1) of Section 5 of the Income Tax Ordinance expressly makes dividends a taxable receipt in the hands of a person; 40
- (viii) dividends payable by a company which was

granted a tax holiday are exempt from tax in the hands of shareholders during the period of the tax holiday and within two years thereafter under the provisions of subsection (3) of Section (2) of the Income Tax (In Aid of Industry) Ordinance, Chapter 300;

In the High  
Court of the  
Supreme Court  
of Judicature  
Guyana

No. 3

Notice of  
Appeal

16th December  
1965

(continued)

- 10 (ix) the aforementioned dividends received by the appellant company are not exempt from tax by virtue of subsection (3) of Section (2) of the Income Tax (In Aid of Industry) Ordinance, Chapter 300;
- (x) that the Board failed to deal with the issue arising from the provisions of Section 29 and 30 of the Income Tax Ordinance, Chapter 299, which issue is material and relevant to the matter under this appeal;
- 20 (xi) that by the provisions of subsection (i) of Section (29) of the Income Tax Ordinance, every company registered in the Colony shall be entitled to deduct tax at the rate payable by a company from the amount of any dividend paid to a shareholder provided that where tax is not payable by such company on the whole income out of which a dividend is paid the deduction of tax at the company rate to be made out of such dividend should
- 30 be restricted to that portion of the dividend which is paid out of income on which tax is payable by such company;
- (xii) the Demerara Sugar Terminals Ltd. in which the appellant company is a shareholder issued a certificate to the appellant company certifying deduction of tax from the dividend paid alleging that tax was paid or payable on the whole of the income out of which such dividend was paid, whereas in fact tax was payable by that company only on a proportion of such income;
- 40 (xiii) that by the provisions of Section (30) of the Income Tax Ordinance any tax which a company has deducted or is entitled to

In the High  
Court of the  
Supreme Court  
of Judicature  
Guyana

No. 3

Notice of  
Appeal

16th December  
1965

(continued)

deduct under the provisions of Section (29) of the same Ordinance, and any tax applicable to the share to which a shareholder is entitled in the income of a company, shall be allowed to such shareholder as a set-off for the purposes of collection against tax charged on that shareholder;

- (xiv) that where a company distributes dividends to shareholders out of income or profits which are not subject to tax in the hands of such company, it is restricted from deducting tax from those dividends by the provisions of Section 29 (1) of the Income Tax Ordinance and thereby precluded from issuing certificates alleging deduction of tax which by law it was not competent to do; 10
- (xv) that in view of the aforementioned restrictions a claim for set-off of tax deducted on payment of dividend under Section 30 of the Income Tax Ordinance is invalid and the Commissioner of Inland Revenue is thereby precluded from granting such a set-off; 20
- (xvi) that the decision of the Board of Review should be set aside.

Dated this 16th day of December, 1965

(sgd.) V. J. Gangadin

Commissioner of Inland Revenue 30

NO. 4STATEMENT OF FACTS AND CONTENTIONS BY THE COMMISSIONER OF INLAND REVENUE

In the High  
Court of the  
Supreme Court  
of Judicature  
Guyana

STATEMENT OF FACTSNo. 4

Statement of  
Facts and Con-  
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The Respondent, Guiana Industrial and Commercial Investments Ltd. of 185 Charlotte and King Streets, Georgetown, British Guiana, is a limited liability company, registered in British Guiana, carrying on business as an investment company.

10           2. The Demerara Sugar Terminals Ltd. (hereinafter referred to as the Company) was incorporated in the year 1958 as a company limited by shares in British Guiana under the Companies Ordinance, Chapter 328, with registered office at Ruimveldt, E.B. Demerara. One of the shareholders of the Company is the respondent company, Guiana Industrial and Commercial Investments Ltd.

20           3. The respondent company on the 3rd May, 1963, submitted an Income Tax Return in respect of the Year of Assessment 1963, that is to say, in respect of their income of the preceding year ended on the 30th November 1962 and returned a chargeable income of 7888,448.

4. To the aforementioned Income Tax Return, among other things were attached the following statements etc:-

- 30           (a) Profit and Loss Account for the year ended 30th November, 1962;
- (b) Balance Sheet as at 30th November, 1962;
- (c) Adjustment of Profit and Loss Account for the year ended 30th November, 1962;
- (d) Three copies of Dividend Warrants issued by the Company dated 16th December, 1961, 21st March, 1962 and 15th September, 1962, respectively.

Copies of the aforementioned statements are hereunto annexed marked 'A(1)', 'A(2)', 'A(3)'

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(continued)

'A(4)', 'A(5)' and 'A(6)' respectively.

5. The respondent company in its adjustment of Profit and Loss Account (Exhibit 'A(3)') computed their tax at \$399,801.60 and claimed a set-off of income tax deducted at source from dividends paid to the respondent to the extent of \$396,678.08 thereby making its tax payable to be \$3,123.52. Of the total set-off of income tax claimed amounts of \$37,338.89 and \$18,297.47 totalling \$55,636.36 were in respect of tax claimed to have been deducted from gross dividends of \$82,975.32 and \$40,661.04 totalling \$123,636.36 paid to them by the Company (Demerara Sugar Terminals Ltd.).

10

6. Of the total gross dividends of \$123,636.36 paid by the Company to the respondent, \$72,727.27 of this amount was declared and paid to it on the 16th December, 1961 as evidenced by Dividend Warrant dated on the same date (Exhibit 'A(4)'). The said Warrant showed:

Gross Dividends to be	\$72,727.27	20
Income Tax deducted	<u>32,727.27</u>	
Net Dividend to be	<u>\$40,000.00</u>	

7. The respondent was assessed by the Commissioner on the 30th September, 1963 on the amount as returned by it and was allowed set-off of income tax deducted at source to the extent of \$396,678.08 as claimed by it under the provisions of Section 30 of the Income Tax Ordinance, Chapter 299.

A copy of the Notice of Assessment is here-  
unto annexed marked 'N'.

30

8. The Commissioner later discovered that the chargeable income of the Company (Demerara Sugar Terminals Ltd.) from the date of its incorporation to the 31st December, 1961 was only \$52,767, income tax at 45% (company rate) on which amounted to \$23,745.15, and as such could not withhold income tax in excess of this amount from dividends paid to its shareholders under the provisions of Section 29(1) of the Income Tax Ordinance, Chapter 299.

40

9. The Commissioner therefore informed the respondent by letter dated 10th April, 1964 that it

was allowed set-off of income tax in respect of the gross dividend of \$72,727.27 paid to it by the Company in excess of the amount to which it was properly entitled and assessed the respondent additionally to the extent of income tax of \$30,827.66.

In the High Court of the Supreme Court of Judicature Guyana

Copies of the aforementioned letter and Notice of Assessment are hereunto annexed marked 'B(1)' and 'B(2)' respectively.

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10           10. The respondent company objected to the additional assessment through its accountants, Messrs. Fitzpatrick, Graham & Co. by letter dated 14th May, 1964.

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A copy of the aforementioned letter is hereunto annexed marked 'C'.

(continued)

20           11. After consideration of the respondent's grounds of objection the Commissioner disallowed its objection and confirmed the assessment and informed the respondent accordingly through their accountants, by letter dated 7th July, 1964.

A copy of the aforementioned letter is hereunto annexed marked 'D'.

12. The respondent company appealed against the Commissioner's decision to the Board of Review through its Solicitor, Joseph Edward deFreitas on the 16th July, 1964.

A copy of the Notice of Appeal is hereunto annexed marked 'D(1)'.

30           13. The Board of Review heard the respondent's appeal and two members have agreed to allow the respondent's appeal but one member expressed a dissenting opinion.

A copy of the Board's decision together with the dissenting opinion of one member is hereunto annexed marked 'D(2)'.

14. It is against the decision of the Board of Review that the present appeal is lodged.

The Demerara Sugar Terminals Ltd.

15. The Demerara Sugar Terminals Ltd.

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hereinafter called the company, commenced business of storing, handling, loading and shipping sugar in bulk on the 1st August, 1960 and prepared its final accounts in respect of:-

(i) Year of Assessment 1961 -

for period of 5 months from 1.8.60 to 31.12.60 and returned a loss after claim for Initial Annual and Wear and Tear allowances of \$1,687,110.97 but which amount was further adjusted by the Commissioner for income tax purposes to be (Loss) - \$1,680,972.10.

10

(ii) Year of Assessment 1962 -

for a period of 12 months from 1.1.61 to 31.12.61 and returned a chargeable income of \$692,164 but which was later agreed by the Commissioner for income tax purposes on the basis of 2% on turnover to be chargeable income of \$52,767.00

Copies of the Company's adjusted statements of income for income tax purposes prepared by their accountants are hereunto annexed marked 'E(1)', 'E(2a)' and 'E(2b)' respectively.

20

16. The Commissioner not being competent to assess tax on the company made no assessment in respect of the Year of Assessment 1961, the company having returned a loss for income tax purposes.

17. The Commissioner assessed the company in respect of the Year of Assessment 1962 as follows:-

30

On 30.5.62 on chargeable income of	..	\$765,500	
and reduced the assessment on 7.11.62 by chargeable income of		<u>75,336</u>	
		692,164	
and further reduced the assessment on 14.3.63 by chargeable income of		<u>639,397</u>	
leaving the chargeable income finally assessed as		<u>52,767</u>	

40

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(continued)



18. The company declared on the 16th December, 1961, that is in respect of the Year of Assessment 1962, gross dividends of \$909,090.90 divisible among its shareholders as follows:-

	<u>Gross Amount</u>	<u>Income Tax Deducted</u>	<u>Net Amount</u>
	\$	\$	\$
10 Sandbach Parker & Co. Ltd.	181,818.18	81,818.18	100,000.00
<u>Bookers Shipping (Overseas Investments) Ltd.</u>	654,545.45	294,545.45	360,000.00
<u>Guiana Industrial &amp; Commercial Investments Ltd. (the Respondent)</u>	<u>72,727.27</u>	<u>32,727.27</u>	<u>40,000.00</u>
	<u>909,090.90</u>	<u>409,090.90</u>	<u>500,000.00</u>

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20 19. The company in fact was liable to and did pay income tax of \$23,745.15 being 45% of \$52,767 in respect of Year of Assessment 1962 and no income tax in respect of the Year of Assessment 1961 and therefore for the period from the date of its incorporation to the date of declaration of the aforementioned dividend was liable to and did pay total income tax of \$23,745.15 on total chargeable income of \$52,767.

REASONS IN SUPPORT OF THE ASSESSMENT

30 The Commissioner says:-

(i) that by the provisions of sub-section (1) of Section 29 of the Income Tax Ordinance, Chapter 299, every company registered in British Guiana is entitled to deduct from the amount of any dividend paid to a shareholder income tax at the rate paid or payable by the company on the income out of which the dividend is paid, provided that where income tax is not paid or payable, on the

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whole income out of which the dividend is paid, the tax deductible from the dividend paid should be restricted to that portion of the dividend which is paid out of income on which tax is actually paid or payable by the company;

- (ii) that although as claimed by the respondent, the Demerara Sugar Terminals Ltd. (hereinafter referred to as the company) made total profits of \$1,848,073 for the years of income 1960 and 1961, income tax was not paid or payable on the whole of that amount but only on a portion thereof i.e. \$52,767; 10
- (iii) under the provisions of the Income Tax (In Aid of Industry) Ordinance, Chapter 300 and more particularly by virtue of the provisions of Sections 3, 4 & 16 of the same Ordinance the company was entitled to deductions of Initial and Annual Allowances in respect of capital expenditure incurred in the construction of buildings and the acquisition of machineries; that the company claimed and was granted such allowances thereby removing the total amount of its claim from exigibility to tax; 20
- (iv) that the company claimed and was granted wear and tear allowances under the provisions of Section 13 of the Income Tax Ordinance, Chapter 299 thereby removing the total amount of its claim from exigibility to tax; 30
- (v) that the total allowances granted to the company for the relevant period of its business operations are as follows:-

	<u>Cap. 299</u>	<u>Cap. 300</u>	<u>Total</u>
Year of Assessment			
1961	\$167,910	\$1,573,384	\$1,741,294
Year of Assessment			
1962	<u>\$271,417</u>	<u>109,477</u>	<u>380,894</u>
	<u>\$439,327</u>	<u>\$1,682,861</u>	<u>\$2,122,188</u>

(Refer to Exhibits 'E(1)' and 'E(2a)').

- (vi) that after deducting the aforementioned allowances from the profits of the company no income remained on which income tax was payable but by virtue of the provisions of Sections 14A of the Income Tax Ordinance, Chapter 299, income tax became payable on a minimum chargeable income of 2% on the company's turnover which amounted to \$52,767;
- 10 (vii) that he is not competent to assess the company to income tax on an amount in excess of \$52,767 for the relevant period and as such income tax is not payable on the whole of the company's profits as ascertained for commercial purposes but only on the amount of \$52,767;
- 20 (viii) that the company in fact suffered income tax on a proportion of its profits i.e. \$52,767, an amount which is less than \$909,090.90, the gross amount of the dividend distributed to its shareholders, the respondent being one of them;
- (ix) that by virtue of the provisions of Section 29(1) of the Income Tax Ordinance, Chapter 299, the company was only competent in law to deduct tax at the company rate of 45% on \$52,767, being the portion of the dividend which is paid out of income on which tax is payable by the company;
- 30 (x) that the company, by deducting tax on that portion of its profits distributed as dividends which is not subject to tax, contravened the provisions of Section 29 (1) of the Income Tax Ordinance, Chapter 299, and as such neither the company nor its shareholders including the respondent should profit from such contravention;
- 40 (xi) that by the provisions of Section 30 of the Income Tax Ordinance, Chapter 299, the Commissioner must set-off from the tax charged to a person the amount of tax deducted or deductible in law by a "body of persons" or company, upon payment of dividend to such person by the "body of persons" or company where that dividend is included in the chargeable income of that person;

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- (xii) that the provisions of Section 30 of the Income Tax Ordinance, Chapter 299, can only empower the Commissioner to allow as a set-off from the tax charged to a person the amount of tax deducted or deductible from a dividend in accordance with the provisions of Section 29 but not such an amount of tax that is deducted in contravention of the provisions of Section 29 of the aforementioned Ordinance;
- (xiii) that the amount of tax allowed as set-off against the tax payable by the respondent has been computed as follows, that is to say, in accordance with the provisions of Sections 29 and 30 of the Income Tax Ordinance, Chapter 299; 10
- |   |                  |    |
|---|------------------|----|
| (a) Total Dividends declared<br>(gross)   | \$909,090.90     |    |
| (b) Dividend paid to<br>respondent (gross)  | 72,727.27        |    |
| (c) Proportion of total<br>dividend paid to<br>respondent                             | <u>72,727.27</u> | 20 |
|   | 909,090.90 = 8%  |    |
| (d) Income on which tax is<br>paid or payable   | 52,767.00        |    |
| (e) Proportion of income<br>subject to tax applicable<br>to respondent's<br>dividends | 3% of \$52,767   |    |
|   | = \$4,221.36     | 30 |
| (f) Set off limited to<br>45% of (e)  | \$1,899.61       |    |
- (xiv) that to grant set-off to an extent of \$409,090.90 to the shareholders of the company while the company was liable to pay and did pay tax to the Commissioner only to an extent of \$23,745.15 is a direct contravention of the provisions of Section 29 and 30 of the Income tax Ordinance, Chapter 299;
- (xv) that set-off of tax cannot be granted to the 40

shareholders of a company to an extent which exceeds the amount of tax payable or paid by that company;

(xvi) that, on the alternative, since the company actually paid away \$500,000 as dividends and tax was payable on \$52,767 the total amount of dividends should be apportioned as follows:-

10	(a) Net Dividend paid out of income on which tax is payable (55% of \$52,767) (Set-off - \$23,745.15)	\$29,021.85
	(b) Dividend paid out of income on which tax is not payable	<u>470,978.15</u>
		<u>500,000.00</u>
	(c) Respondent's share is	
	(a) above 8% of \$29,021.85	\$2,321.75
20	(Gross amount $\frac{2,321.75}{55} \times \frac{100}{1} =$ )	\$4,221.36
	Set off \$1,899.61	
	(d) Respondent's share in	
	(b) above - 8% of \$470,978.15	= \$37,678.25

(xvii) that by virtue of the provisions of paragraph (c) of section 5 (1) of the Income Tax Ordinance, Chapter 299, all dividends are subject to income tax whether paid out of the income of a company which is subject or not subject to tax;

(xviii) that in the circumstances the respondent on the alternative should be chargeable to income tax on the aforementioned dividends as follows:-

Gross Dividends paid out of income subject to tax	\$4,221.36
Dividends paid out of income not subject to tax	<u>37,678.25</u>
	<u>\$41,899.61</u>

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(continued)

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45% of \$41,899.61		\$18,854.82
Less set-off	=	<u>1,899.61</u>
Tax Payable		<u>\$17,955.21</u>

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(xix) in fact that the respondent paid income tax on the aforementioned dividends as follows:-

gross		\$72,727.27
Tax at 45%		\$32,727.27
Less set off		<u>32,727.27</u>
Paid		<u>N I L</u>

(continued)

(xx) that on the alternative additional income tax of \$17,955.21 should be paid, if not the amount of \$30,827.66 as assessed.

10

Dated this 19th day of January, 1966

(sgd) V. J. Gangadin

Commissioner of Inland Revenue

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Judge

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NO. 5

NOTES OF TRIAL JUDGE

Saturday 26th March 1966

Mr. Luckhoo calls:

ALLAN RIDLER sworn states:-

20

I am a Fellow of the Institute of Chartered Accountants in Ireland, and I am the Senior Resident Partner of Fitzpatrick Graham and Crewdson. I am familiar with the matters surrounding this appeal. I have prepared a number of schedules lettered 'A' to 'I' which I consider relevant to explain certain points which arise in this appeal.

Mr. Singh objects to the admissibility of documents on the ground that this stage,

30

there is no reason shown that the evidence is relevant and therefore admissible.

Mr. Luckhoo says that there are hypothetical cases worked out by this witness, and would show that there is nothing illogical in the allowance.

Court rules that it will hear oral evidence for the time being in order to ascertain how relevant these schedules are in order to determine their admissibility.

10

Witness Continues:

One schedule marked A for identification. This Exhibit illustrates initial allowances obtainable under the Aid of Industry Ordinance do not permanently reduce the taxation liability of any company. They do reduce such liability or possibly extinguish such liability in the early years of the Company, but the Company's taxation burden is merely postponed until later years rather than earlier years.

20

The document marked "A" illustrates this fact which would have been true regardless of what assumptions I worked on. It is purely illustrative. The assumption used for the purpose of this illustration are as set out at the top of the page. I have treated the hypothetical company as one entitled to the allowances under the Income Tax Aid of Industry Ordinance.

30

Capital allowances are only allowable to the extent of its capital investment. A company which claims allowance under Chapter 300 is in the long run no better off tax-wise than a company which does not claim allowance under Chapter 300. If in the early years by virtue of allowances a company pays no tax, if the company declares a dividend out of the profits of that year, it is entitled to pass on to its shareholders the full set-off arrived at by grossing up the net amount of the dividend because it will pay its full share of tax which will more than cover that set-off in subsequent years. There is no lasting benefit given tax-wise under Chapter 300.

40

Shareholders will not be able to get the allowances; they will pay substantially more in

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their fair share of tax as time goes on. Exhibit "C" demonstrates this. Exhibit "E" contains an explanatory note. Exhibits "F", "G", "H", were all submitted to the Board of Review.

Cross-examined by Mr. Singh:

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Judge  
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(continued)

Re Exhibits "A" and "B". In column 4 indicates profits. Column 8 indicates dividends paid out. I have not added up columns 4 in Exhibit "A" or Exhibit "B". I now add them in Exhibit "A", the total is \$2,779,390: and in Exhibit "B" the total is \$2,722.885: A would have paid \$57,000 less tax than B at the end of the 12th year. If the company made losses, this would affect the position.

10

Re-examined: Declined.

Mr. Singh submits - on the admissibility of documents -

Documents inadmissible because they are irrelevant. They are merely an illustration of the witness' contention. They may have been relevant when the matter was being argued before the Board. Before this Court, questions of law are to be argued. Witness is not entitled to demonstrate by figures what the law is. Documents are on the face, irrelevant, and inadmissible, as they are based on hypothetical cases. No ground of admissibility.

20

Luckhoo:-

Schedules do not purport to set out any legal principles. They illustrate and demonstrate the progress and result of the payment of tax upon certain assumptions. Counsel can advance his arguments to show that if the law were interpreted in a particular fashion it would not result in any absurdity or in any hardship one way or the other. Schedules are tables and calculations on certain basic assumptions. They are prepared by an expert and they can be inspected by the other side. If these documents are inadmissible then he would apply to have documents which were put in before the Board

30

40



of Review and the minutes of the Board at the hearing of the appeal before that body.

Section 56 C of the Income Tax Ordinance 56 E.

Decision on the point reserved to 25.3.66.

Monday 28th March, 1966

Ruling on admissibility of Schedule.

Court rules that the schedule are inadmissible on the following grounds -

- 10 (i) They are not relevant to the matter in hand in that they seek to deal with a hypothetical Company's business affairs comparable to the parent Company in the appeal, and not with those affairs of the respondent Co. Even if the schedules were referable to the respondent in this appeal, they seek to reflect a situation which was not in existence at the time of assessment or during the year of income, and really cannot assist in the interpretation of the law.
- 20 (2) They are really arguments reduced to a mathematical basis which are being advanced in this appeal, and cannot in my opinion be allowed in as evidence.

Luckhoo applies that they could be properly brought before this Court.

- 30 (1) All evidence led before the Board of Review, and this would include such evidence as was tendered by the respondent as well as the other evidence as was presented at the request of the Board. Mr. Ridler did give evidence before the Board on behalf of the respondent and his evidence was led by the respondent's Counsel, he was cross-examined by Mr. Rawlins for the appellants, he was questioned by the Board of Review, and certain exhibits were tendered and admitted, and certain other exhibits were at the request of the Board, prepared, tendered and admitted all without objections of any party. Arguments were
- 40 addressed on Mr. Ridler's evidence to the Board, and arguments in reply were made by

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Notes of Trial Judge

26th and 28th March 1966

(continued)

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Notes of Trial  
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(continued)

Mr. Rawlins. This being an appeal from the Board applied that Court, in the absence of rules which have not been made, would consider that it is reasonable and proper that application be granted that they be supplied to the Court as being a material part of this appeal -

(a) The minutes of the Board as kept by the provisions of S. 56 of Cap. 299.

(b) A copy of the evidence led before the Board including the original exhibits tendered and admitted by the Board which formed part of the basis of the case of the respondent. Provision is made for the Board to examine witness by S. 56 E Chapter 299.

10

Submits - that at this stage the respondent, or either party, would be entitled without leading evidence before the Court to address argument on such evidence and exhibits as were led and produced before the Board as that evidence and these exhibits would virtually form a proper record of the proceedings before the Board.

20

Submits - that this being an appeal from the Board to this Court, both parties as well as Court are entitled to consider the proceedings before the Board in the hearing of this appeal, and that such consideration would involve a consideration of the evidence including exhibits, as well as the decision of the Board, and it would not be proper to consider a decision in vacuo without a proper consideration of the evidence which was led, and considered.

30

This Court in the net result would not be bound and would make independent ruling in relation to minutes, exhibits and soundness of decision of Board.

For this Court to be asked to consider an appeal without the material he now seeks to get in, would be equivalent to asking the Court to try the matter de novo, and the whole proceedings would lose their identity of being an appeal.

40

Mr. Singh observes:-

10 In view of Court's ruling on the evidence sought to be led by respondent, it would appear that the granting of the application would result being to rule again on matter of the same type. Even though the evidence may have been received at the request of Board without objection the fact of its admissibility will have to be decided before any use can be made of such evidence or exhibit. Schedules, if held inadmissible by the Court as were so held, would again be inadmissible.

In judgment of Board, no judgment of facts recorded. There is no dispute as regards findings of facts, there is a dispute as to the interpretation of law. All appeal under Income Tax Law is different in some respects to other appeals under the ground law. There is no prohibition from the other side tendering relevant and admissible evidence before this Court.

20 Luckhoo -

30 Oral and documentary evidence may be wholly admissible, or vice versa, or partly inadmissible. Before Court can determine in what category any evidence falls, the Court must examine evidence. Evidence ought to be produced to enable arguments on it. Not to do so would amount to the Court being asked to speculate on the nature of the evidence. The fact that the exhibits as such were not specifically referred to as such in the judgment, does not mean that they were not considered; they might very well have influenced the conclusion of the Board.

This question is one of the most intricate, and involved and complex appeals. Wish to have benefit of what was put before the Board.

Court in an oral ruling refuses Mr. Luckhoo's application.

G. L. B. Persaud

Puisne Judge

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(continued)

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NO. 6  
JUDGMENT

BEFORE PERSAUD, J. (In Chambers)

No. 6  
Judgment by  
G.L.B.Persaud  
28th June  
1966

Mar. 19, 26, 28, 29, 31, 1966  
July, 19, 1966.

Doodnauth Singh for appellant.

C.L. Luckhoo, Q.C. for respondents.

JUDGMENT:

It is perhaps not inappropriate to commence this decision in the same vein as MacKinnon, L.J. did in C.I.R. v. Gull (22 T.C. 628) and say that there is only one thing about this case of which I am certain, and that is that it presents perhaps the most difficult (tax) problem I have ever attempted to solve. 10

This is an appeal by the Commissioner of Inland Revenue against a majority decision of the Board of Review in which the Board set aside an additional assessment raised by the Commissioner against the respondent company in respect of income for the year 1962. For the sake of brevity, I shall refer - as was done in the course of the argument - to the respondent company as GICIL, and to the Demerara Sugar Terminals, Ltd., a company of whom GICIL is a shareholder, as DST. 20

DST is a company incorporated in 1958 under the Companies Ordinance, and is limited by shares, GICIL being one of the shareholders. DST commenced business in 1960, and was entitled to certain initial and annual allowances under the Income Tax (In Aid of Industry) Ord., Cap. 300. As a result of these allowances, that company showed a loss in its income tax return for year of assessment 1961. For year of assessment 1962, after the appropriate deductions had been made under the Income Tax (In Aid of Industry) Ordinance no income remained on which tax was payable, but by virtue of s. 14A of the Income Tax Ord. (Cap. 299) income tax became payable on a minimum chargeable income of 2% on DST's turnover 30

which amounted to \$52,767. By virtue of s. 27(1) of Cap. 299, 45% of this amount (which amounted to \$23,745.15) was payable as income tax by DST and this was in fact paid.

In the High Court of the Supreme Court of Judicature Guyana

No. 6

Judgment by G.L.B.Persaud

28th June 1966

(continued)

10 In December, 1961, DST declared a gross dividend in respect of year of assessment 1962 of \$900,909.90, divisible among its shareholders, of which amount \$72,727.27 gross was payable to GICIL. After 45% of this amount had been deducted by DST as income tax and retained, the sum of \$40,000.00 free of tax was paid over to GICIL, and a certificate to that effect issued by CST in accordance with s. 29(2) of Cap. 299.

20 The Commissioner contends that as the sum of \$72,727.27 is not subject to income tax in the hands of DST, DST has no legal authority to deduct such tax, but that the entire amount is liable to tax as a dividend received by GICIL. The majority of the Board of Review was of the opinion that as the dividend was immune to tax while it was in the hands of DST, it must logically follow that it is also immune to tax when passed to the shareholders of the company, for to hold otherwise would be to defeat the objects of the Income Tax (In Aid of Industry) Ordinance, and they rested their decision on that view. I regret that I have been unable to find the case referred to (Simon v. C.I.R.) on which this view was based (see para. 13 of Board's decision).

30 In deducting income tax at source, DST purported to act under s. 29(1) of the Income Tax Ordinance (Cap. 299) which provides as follows -

"Every company registered in the Colony shall be entitled to deduct from the amount of any dividend paid to a shareholder tax at the rate paid or payable by the company ... on the income out of which the dividend is paid;

40 Provided that where tax is not paid or payable by the company on the whole amount out of which the dividend is paid the deduction shall be restricted to that portion of the dividend which is paid out of income on which tax is paid or payable by the company".

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(continued)

And it would be pertinent here to advert attention to s. 30 of the Ordinance which provides that tax which is deducted or can be deducted from a dividend shall be set off against the tax payable by the shareholder in respect of the latter's chargeable income.

Counsel for the respondent company has argued that the Commissioner has treated the expression "whole income" in the proviso to s. 29 (1) of the Ordinance to mean chargeable income, and in any event the proviso is not applicable to the case under review. 10

There is no principle in company law which compels a company while a going concern to divide the whole of its profits (or income) among its shareholders; how the company should deal with such profits (or income) is a matter of management and internal economy. In my opinion, the proviso to s. 29(1) merely recognises this rule. To understand the proviso, one must first refer to subsection (1). That subsection authorises the deduction by a locally registered company from a dividend which is being paid, tax at the rate paid or payable by the company on the income out of which the dividend is being paid. And the proviso restricts such a deduction to the income on which the tax is paid or payable, when the tax is not being paid or is not payable on the whole of the income out of which the dividend is payable. Thus, there can be no confusion between "whole income" and "chargeable income", and this is not the stand taken by the Commissioner. I am of the view that this case does fall within the purview of s. 29. 20 30

Both s. 29 and s. 30 were examined in some detail by Wylie J. in I.R.C. v. Davson (1960) L.R.B.G. 178. There the respondent company was assessed income tax in respect of the sum of \$1,200 received by way of a cash distribution at the rate of \$2.00 a share on 600 shares held by it in another company and paid by the latter out of a capital reserve consisting of profits made upon the sale of capital assets. 40

- (1) Whether or not the sum of \$1,200 was a 'dividend' within the meaning of s. 5 of the Income Tax Ordinance

- (2) Whether or not the said sum was 'income' of the Respondent company within the meaning of s. 5 aforesaid; and
- (3) Whether or not, even if the sum of \$1,200 be a dividend and be income within the meaning of s. 5 aforesaid, the same is chargeable with income tax, having regard to the provisions of the Ordinance relating to dividends and to the fact that the said sum of \$1,200 was paid out of capital profits.

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Referring to ss. 2, 5(c), 26 (1) of the Income Tax Ordinance (Cap. 299), Wylie, J. said (at p. 180)

(continued)

"These provisions taken on their own, and giving the language used its plain meaning, would leave no room for doubt that any dividend received by a company as part of its income must be included in calculating its chargeable income, and is liable to tax as part of that chargeable income at the rate set out in s. 27(1), even if the fund from which the dividend has been paid has already been subjected to tax under s. 27(1) as part of the chargeable income of the company which declared the dividend".

And at p. 181 (ibid) referring to s. 29(1) -

"Indeed there is a condition in the section that the shareholder is entitled to the set-off only when the dividend is included in the chargeable income of the shareholder. This condition is probably designed to deny any right of set-off in such case as shareholders beyond the jurisdiction who may not make a return of income, but, whatever its object, it leads irresistibly to the conclusion that the dividend, being included in the chargeable income of the shareholder, is going to be taxed as part of that taxable income, and that there is no right of set-off until the dividend has been subjected to tax as part of the taxable incomes of both the company and the shareholder, so that the same source of income will have been taxed twice".

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(continued)

At p. 182 (ibid), the learned judge draws a distinction between United Kingdom legislation, and ours when he said -

"The United Kingdom legislation, as interpreted by the Courts, imposes a tax at the standard rate on the income of the company, but not on the dividend in the hands of the shareholder, whereas in British Guiana legislation imposes tax on the income of the company and again on the dividend in the hands of the shareholder, but permits the latter to set off against his tax that part of the tax paid by the company which is proportionate to the amount of the dividend." 10

And to carry the ratio of Wylie, J. to its logical conclusion, if the company has paid no tax on any part of the dividend which has been paid over to the shareholder - for whatever reason - then it seems that there is no set-off which the latter can claim. I am wholly unable to understand how it can be truly said that DST has paid or is liable to pay tax on the income out of which the dividend has been paid. It is only right to attract attention to another dictum of Wylie, J. (at p. 186 ibid) in this regard and to this effect - 20

"The specific terms of the legislation do not give rise to any consideration as to whether or not the dividends from which the income is derived has been paid out of funds which were not taxable in the hands of the company paying the dividend." 30

That case was taken on appeal to the Privy Council sub non, Bicker, Ltd. v. Commissioners of Income Tax, (1962) 3 All E.R. 294. The appeal was dismissed. The sole point canvassed before the Privy Council was whether the sum of \$1,200 was received by the appellants as 'income', and this was answered in the affirmative, the main point argued before me in the instant matter not having been raised in the Privy Council. 40

As has been indicated, there is set in the United Kingdom tax legislation similar to s.29 of our Income Tax Ord. (Cap. 299). But it may be gainful to examine a few English cases dealing



with the imposition of super tax.

In Gimson v. Commissioners of Inland Revenue, 15 Tax Cas. 595, a company paid a dividend on its ordinary shares out of a specific fund part of which consisted of profits of a capital nature, and not liable to income tax in the hands of the company. The remainder of the fund was made up of accumulated items of income which had not, under the law at the material times, been brought into any computation of liability to Income Tax. The dividend was declared as '5 per cent actual' and was paid without any deduction. The appellant received £75, and following the proportion of the capital and income portions of the fund, £35 was regarded as paid out of the income portion.

The appellant was assessed to super tax in respect of £44, £35 plus £9 as the appropriate additions for income tax. He contended that as the income out of which the payment was made was not liable to be assessed to income tax, there was no liability to super tax, and his contention was upheld by Rowlatt, J. It seems to me that the decision in the Gimson case points to the general conclusion that where a dividend is not liable to tax (super tax in this case) in the hands of a company, it would not be liable to such tax in the hands of the shareholders.

The Gimson Case was distinguished by Rowlatt, J. himself in Hamilton v. Commissioners of Inland Revenue, 16 Tax Cas. 213, and his decision was affirmed in the Court of Appeal. In the Hamilton Case, the appellant was the holder of shares in a limited company which paid dividends exceeding in amount the income of the company, as computed for income tax purposes, for the periods in respect of which the dividends were declared. The dividends were paid under deduction of income tax at the standard rate. The appellant was assessed to sur-tax, and the full amount of the dividends was taken into account for this purpose, but he contended that his income from the company for sur-tax purposes could not exceed the properties received by him of the company's 'statutory income'. It was held that the full amount of the dividends was properly included in the assessment to sur-tax.

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(continued)

The object of referring to the Hamilton Case is to draw attention to a dictum of Romer, L.J. which is in my view of paramount importance, and which explains the position as between a company and its shareholders in regard to their respective liabilities to tax. Romer, L.J. said (at p. 235 *ibid*) -

"It has, however, frequently in recent days been pointed out by the Courts ... that the company is one taxpayer and that each individual shareholder is another, and a separate taxpayer, on whose behalf the company deducts a tax when it pays a dividend, but on whose behalf it is not paying the tax when it pays its own tax to the Crown. If a company should declare a dividend without deducting tax then it seems to me that the shareholder would himself be assessable to tax in respect of the dividend he has received .... If that be so, and the company merely acts as a collector of tax payable by the taxpayer to the Crown, it is quite obvious that the appropriate tax to be deducted from the dividend is a tax which the taxpayer himself would have to pay if he were assessed directly in respect of that dividend".

It seems to me to follow that if a company is not liable to tax on certain profits out of which a dividend is paid to a shareholder then that company must pay over to the shareholder the full dividend the effect of which is to render the shareholder liable to tax on that dividend. The position in this case resolves itself into this. The taxpayer is claiming relief in the nature of a set-off in regard to income tax which the parent company was not competent to make. In my judgment, the taxpayer - GICIL in this case - would not be entitled to the relief.

I wish to say that I have referred to Newman v. C.I.R. 18 Tax Cas. 332, to which my attention was drawn by counsel for the respondents. In that case a deduction from a gross sum was authorised, but was not in fact made, and the House of Lords held that there could be no distinction in those circumstances between a gross sum and a net sum, and that the actual sum

paid was that which should have been included in the return. The distinction to be drawn between the Newman Case and the instant case is that in the latter no deductions were permitted DST, but a deduction was in fact made.

It follows from what I have said so far that in my opinion the Commissioner appears to be on firm ground, and ought to succeed in this appeal.

10 The next question to be determined is the extent of the respondents' liability. I agree with the Commissioner that the proportion of total dividend paid to GICIL to the total dividend declared by DST is 8%. DST paid the amount of \$52,767.00 as tax; and 8% of this sum is \$4,221.36; 45% of which is \$1,899.61. The sum of \$1,899.61 would represent the respondents' contribution so to speak towards the tax paid by DST. According to my judgment, GICIL should have been taxed on the gross dividend of \$72,727.27; 20 they have in fact been taxed on \$40,000. I do not pretend to understand the method of computation executed by the Commissioner as contained in the statement of facts; but I would have thought that the respondents' additional liability is now limited to 45% of the sum of \$32,727.27 less the sum of \$1,899.61. According to my computation the sum is \$12,726.39.

30 My judgment will therefore be that the appeal is allowed. The decision of the Board of Review is set aside, and the additional assessment is varied to read \$12,627.39. As the Commissioner has succeeded on a point of law, I think he is entitled to his costs and I so order.

(sgd.) G.L.B.Persaud

PUISNE JUDGE

Dated this 28th June, 1966

In the High Court of the Supreme Court of Judicature Guyana

No. 6

Judgment by G.L.B.Persaud

28th June 1966

(continued)

In the High  
Court of the  
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NO. 7  
O R D E R

No. 7  
Order  
19th July  
1966

BEFORE THE HONOURABLE MR. JUSTICE PERSAUD  
(IN CHAMBERS)

DATED THE 19th DAY OF JULY, 1966

ENTERED THE 24TH DAY OF OCTOBER, 1966

UPON motion by way of appeal dated the 16th day of December, 1965, made unto this Court by the Commissioner of Inland Revenue AND UPON HEARING Mr. Deodnauth Singh of counsel for the Appellant and Mr. C.L. Luckhoo, Q.C. of counsel for the Respondent and the evidence adduced IT IS ORDERED that the appeal be allowed and the additional assessment be and is hereby varied to read \$12,627.39.

10

AND IT IS FURTHER ORDERED that the Respondent do pay to the Appellant cost of this appeal to be taxed.

BY THE COURT,  
(sgd.) A. Shahid Razack  
SWORN CLERK AND NOTARY PUBLIC  
for REGISTRAR (Ag.)

20

NO. 8  
AMENDED NOTICE OF APPEAL

IN THE COURT OF APPEAL OF THE SUPREME COURT  
OF JUDICATURE GUYANA

In the Court  
of Appeal of  
the Supreme  
Court of  
Judicature  
Guyana

AMENDED NOTICE OF APPEAL

Civil Appeal No. 40 of 1966

In the matter of the Income Tax Ordinance  
Cap. 299, and the Income Tax (In  
Aid of Industry) Ordinance, Cap. 300.

No. 8  
Amended Notice  
of Appeal  
  
March 1967

10 BETWEEN:-

GUIANA INDUSTRIAL & COMMERCIAL  
INVESTMENTS, LTD. Appellants  
(Respondents)

- and -

THE COMMISSIONER OF INLAND REVENUE  
Respondent  
(Appellant)

AMENDED  
NOTICE OF APPEAL

20 TAKE NOTICE that the Appellants (Respondents)  
being dissatisfied with the decision more particu-  
larly stated in paragraph 2 hereof of the High  
Court of the Supreme Court of Judicature contained  
in the judgment of the Honourable Mr. Justice  
Persaud, dated the 28th day of June, 1966, and  
delivered the 19th day of July, 1966, do hereby  
appeal to the Court of Appeal of the Supreme Court  
of Judicature upon the grounds set out in  
30 paragraph 3 and will at the hearing of the said  
Appeal seek the relief set out in paragraph 4.

And the Appellants (Respondents) further  
state that the names and addresses including their  
own of the persons directly affected by the appeal  
are those set out in paragraph 5.

2. The whole decision.

3. GROUNDS OF APPEAL -

In the Court  
of Appeal of  
the Supreme  
Court of  
Judicature  
Guyana

No. 8

Amended Notice  
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March 1967

(continued)

- (a) The learned Judge erred in not holding, as was claimed by the Appellants before the Board of Review, as well as before the learned Judge, that the Appellants are entitled to set off against the tax charged on the gross dividend of \$72,727.27 aforesaid, the amount of \$32,727.27 since the amount of \$32,727.27 was properly and lawfully deductible under section 29, of the Income Tax Ordinance, Chapter 299, in that - 10
- (i) The said dividend was paid wholly out of income of the Demerara Sugar Terminals Limited, hereinafter referred to as the Company (DST), on which tax was payable by the Company (DST) under the Ordinance, 10
- (ii) The amount which the Company (DST) was entitled to deduct by section 29 aforesaid is determined by reference to the rate (being forty-five per centum) at which income tax imposed by the Ordinance on the income of the Company (DST) is charged, and does not depend on the quantified amount of tax actually so charged. 20
- (iii) Alternatively, if it were necessary to consider whether income tax has been paid or is payable by the Company (DST) on the said amount of \$72,727.27 account must be taken of the entire scheme of income tax relief established by the Aid Ordinance under which the burden of tax on the aggregate income of a Company to which the Aid Ordinance applies earned over a period of years is distributed over the period so as to relieve the Company of a heavy tax burden during the early years of operation. Under this system, income tax is payable on the total income of the Company over the period even though there is no liability to pay any tax during some early year of operation. 30 40

(iv) It is an established principle of income tax law and of industrial incentive legislation that the grant of initial allowances does not affect the question whether dividends are paid out of income charged to tax so as to impose on the recipient shareholder the obligations to pay income tax on such dividends without any right of set off. Any interpretation of the Ordinance and the Aid Ordinance which imposed such an obligation would defeat the basic purpose of the grant of initial allowances and frustrate the manifest intention of the Legislature in authorising such allowance as part of a scheme of relief from income tax designed to encourage the establishment and development of Industries in Guyana.

(v) The grant of capital allowances and in particular of the capital allowances in question does not remove any profits from the scope of the charge to tax or affect the question whether within the meaning of section 29 (1), income on which dividends are paid is income out of which tax is paid or payable and though the amount of tax which the Appellants were liable to pay was reduced or cancelled by reason of such grant, the income of the Appellants out of which the dividends were paid nevertheless remained income on which tax was paid or payable within the meaning of section 29 (1).

(vi) The income out of which the dividends were paid was income on which within the meaning of section 29 (1) tax would over a period of time be paid or payable even if a year or years later than the year of assessment.

(b) In the alternative, the Appellants are also entitled to set off against the tax charged on the said gross dividend of \$72,727.27

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(continued)

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(continued)

aforesaid the amount of \$30,827.66 assessed on the Appellants since the amount of \$30,827.66 was properly and lawfully deductible as aforesaid under section 29 of the Ordinance in that -

- (i) If the amount which the Company (DST) was entitled to deduct by the said section 29 is determined by the tax charged by the Ordinance on the chargeable income of the Company, the amount of \$1,179,045.00 (being the equivalent of the allowance to which the company was entitled by law in respect of the provision of machinery and plant) formed part of the chargeable income of the Company on which tax in the sum of \$530,570.25 was payable but in respect of which the Company was entitled to set off by virtue of the provisions of the Aid Ordinance, and the Company was therefore entitled to deduct from the said dividend so much of the tax of \$530,570.25 payable under the Ordinance on the amount of \$1,179,045.00 aforesaid as was attributable to the said dividend; and 10
- (ii) The right of the Company (DST) to set off the said amount of \$530,570.25 against the tax payable on its chargeable income by virtue of the provisions of the Aid Ordinance in no way alters, modifies or restricts the entitlement of the Company to deduct the amount of \$30,827.66 aforesaid from the said dividend under section 29 of the Ordinance. 20
- (c) The Appellants are not liable to pay tax on the said amount of \$32,727.27 since the said amount was never received by the Appellants as income or at all. 40
- (d) The learned Judge erred in not admitting in evidence schedules which were



sought to be tendered on behalf of the Appellants in order to establish that tax would over a period of time be paid or payable within the meaning of section 29 (1) even if in a year or years later than the year of assessment.

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(continued)

- 10 (e) The learned Judge erred in not ordering the production of the minutes of the Board of Review or of the evidence led before the Board of Review, and in not considering such evidence.
- 20 (f) The learned Judge erred in not considering the alternative computation of the Commissioner of Inland Revenue with the result that, out of a net dividend of \$40,000.00 received by the Appellants, they would be required to pay \$30,827.66 in income tax if the judgment stands. In any event the alternative computation of the Commissioner of Inland Revenue is in error in that \$18,854.82 less \$1,899.61 amounts to \$16,955.21 not \$17,955.21.
- 30 (g) The learned Judge erred in not considering the submission for the Appellants that the assessment on the Appellants was bad in that it took account of only one of three dividends paid by the Company (DST) to the Appellants in the year ended 30th November, 1962, (See exhibits A (3) (4) (5) (6)).
- 40 (h) The learned Judge erred in not taking into account the fact that for the year of income 1961, the Company (DST) did initially pay income tax amounting to \$311,473.00. (See Exhibit E (2b)).
- (i) The learned Judge failed to take account of the effect of the provisions of the Income Tax (In Aid of Industry) Ordinance, Chapter 300 on the relevant provisions of the Income Tax Ordinance.
- (j) The learned Judge erred in any event in determining the extent of the Appellants liability, if any, in that he erred in

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determining the method on which liability should be computed, and in concluding that the Appellants' additional liability is \$12,726.39.

(k) The learned Judge misdirected himself on the principles involved in determining whether there was liability of the Appellants to pay tax, and if so the extent of the liability.

(1) The learned Judge erred in following the interpretation of section 29 of the Ordinance of Wylie J. in I.R.C. v. Davson (1960) L.R.B.G. and in holding that the right of shareholders to set off was limited or did not exist in that both of the learned Judges in their decisions overlooked the provisions of section 73 of the Ordinance and the learned Judge also failed to take into account the effect of the provisions of the Aid Ordinance on the relevant provisions of the Ordinance.

10

20

4. The relief sought from the Court of Appeal of the Supreme Court of Judicature is that the decision of the Board of Review be restored and the decision of the learned Judge should accordingly be reversed and that the additional assessment of \$12,627.39 be set aside, and the appeal by the Appellants be allowed and that the costs of this appeal and of the hearing in the Court below be paid by the Respondent.

30

5. Persons directly affected by the Appeal.

<u>Names</u>	<u>Addresses</u>
Guiana Industrial and Commercial Investments Limited.	22, Church Street, Georgetown.
The Commissioner of Inland Revenue	Income Tax Division, G.P.O. Building, Georgetown.

Dated this 26th day of August, 1966.

40

Amended this            day of March, 1967.

(Sgd.) D. P. Bernard  
Solicitor for the Appellants (Respondents).

NO. 9  
J U D G M E N T

In the Court  
of Appeal of  
the Supreme  
Court of  
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IN THE COURT OF APPEAL OF THE SUPREME COURT OF  
JUDICATURE

BETWEEN:

GUIANA INDUSTRIAL & COMMERCIAL  
INVESTMENTS, LTD. Appellants

- and -

THE COMMISSIONER OF INLAND REVENUE  
Respondent

No. 9  
Judgment of  
the Court of  
Appeal  
20th February  
1968

10

Before:

Sir Kenneth Stoby - Chancellor  
Mr. Justice Luckhoo - Justice of Appeal  
Mr. Justice Cummings - Justice of Appeal

1967: April 19.  
June 6. 8.

C.L. Luckhoo, Q.C. associated with John Stafford  
for the appellants.

20 Doodnauth Singh associated with R. Sharma  
for the respondent.

J U D G M E N T

The Chancellor:

Section 29(1) of the Income Tax Ordinance  
Cap. 299 is as follows:

30

" Every company registered in the Colony  
shall be entitled to deduct from the amount  
of any dividend paid to a shareholder tax  
at the rate paid or payable by the company  
(double taxation relief being left out of  
account) on the income out of which the  
dividend is paid:

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" Provided that where tax is not paid or payable by the company on the whole income out of which the dividend is paid the deduction shall be restricted to that portion of the dividend which is paid out of income on which tax is paid or payable by the company.

and the question which has to be determined on this appeal arises from the following admitted facts:

10

The appellant company, the Guyana Industrial and Commercial Investments Ltd. (G.I.C.I.L.), is a shareholder of Demerara Sugar Terminals Ltd. (D.S.T.). D.S.T. was incorporated in 1958. It commenced operations in relation to the handling and shipping of sugar on 1st August, 1960. There are three shareholders in D.S.T.: Sandbach Parker & Co. Ltd. is a 20% shareholder; Bookers Shipping Overseas Investments, Ltd. is a 72% shareholder; and the appellant company, G.I.C.I.L. is an 8% shareholder.

20

On the 16th December, 1961, dividends grossed up to \$909,090.90 were paid out to their three shareholders by D.S.T., and income tax deducted by D.S.T. was \$409,090.90, leaving a net payment to the three shareholders of \$500,000. The relevant portion of the dividend paid, so far as it affects G.I.C.I.L. is \$72,727.27. D.S.T. (purporting to act under s. 29 (1) of the Income Tax Ordinance Cap. 299) deducted income tax in the sum of \$32,727.27 from G.I.C.I.L.'s dividend of \$72,727.27, so that the net amount paid to G.I.C.I.L. is \$40,000. G.I.C.I.L. claims that it must, in relation to the Commissioner of Inland Revenue receive full credit for the \$32,727.27 deducted by D.S.T.

The Commissioner of Inland Revenue has refused to give credit to G.I.C.I.L., the appellant company, because he claims that D.S.T. has not paid the \$32,727.27 into revenue nor is it liable to pay that tax.

The tax liability of D.S.T. must be explained.

The Income Tax (Amendment) Ordinance 1962 (No.11), although enacted on the 8th June, 1962, was deemed by s. 1 (3) to have come into operation with respect to and from the year of assessment commencing on the 1st January, 1962. Certain sections were exempted from this provision but they are not relevant to this debate.

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(continued)

10 At the close of business on the 31st December, 1961, D.S.T. had made a profit of \$1,384,328 but its chargeable income for the year of assessment 1962 was \$692,164 due to the fact that an allowance for past losses in the sum of \$692,164 was permissible under s. 15 of the Income Tax Ordinance Cap. 299 which before its repeal was:-

20 "Where the amount of a loss incurred in the year preceding a year of assessment in any trade, business, profession or vocation, carried on by any person either solely or in partnership is such that it cannot be wholly set-off against his income from other sources for the same year, the amount of the loss to the extent to which it cannot be so set-off against his income from other sources for the same year shall be carried forward and, subject as hereinafter provided, shall be set-off against what would otherwise have been chargeable income for the next five years in succession:

Provided that -

- 30 (i) The amount of the loss allowed to be set-off in computing the chargeable income of any year shall not be set-off in computing the chargeable income of any other year; and
- (ii) in no case shall the set-off be allowed to an extent which will reduce the tax payable for any year of assessment to less than one-half of the amount which would have been payable had the set-off
- 40 not been allowed."

When however Ordinance 11 of 1962 repealed s. 15 of Cap. 299 and gave the new s.15 (s.11 of 11 of 1962) retroactive force, the tax position of D.S.T. improved to such an extent that their

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chargeable income was nil, since they were able to deduct all past losses and not only 50%. But although the new chargeable income was nil, s. 10 Ordinance 11 of 1962 made provision that in such a case a minimum tax of 2% of turnover was payable. So for the year of assessment 1962 D.S.T.'s chargeable income after the 1962 law was \$52,767 (2% of its turnover), and tax payable at the rate of 45 per centum was \$23,745.15. Before the 1962 law D.S.T.'s chargeable income was \$692,164 with tax at 45% being \$311,473.80. This latter sum had been paid but after the change in law this was treated as income, past losses deducted and it became income free of tax.

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Counsel for the appellant company has drawn attention to the fact that had D.S.T. remained liable to tax of \$311,473.80, as G.I.C.I.L. is an 8% shareholder G.I.C.I.L.'s proportion of this tax would be \$23,917.04, being 8% of the tax, while on the new situations, where D.S.T.'s Tax is \$23,745.15, and G.I.C.I.L.'s proportion is 8% or \$1,899.61, then if G.I.C.I.L. is still liable for \$32,727.27 less \$1,899.61 G.I.C.I.L. is worse off under the changed law. This lament overlooks the fact that D.S.T., the parent company, received a windfall of nearly \$300,000 which became available for payment of a dividend to G.I.C.I.L. in 1963, and also overlooks the question whether D.S.T. having deducted tax on dividends is not liable to repay the sum it has deducted if that sum has not been paid to revenue.

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The appellant company has not admitted that the \$32,727.27 has not been paid, but in any event, contends that the point cannot be resolved by the simple process of finding whether the amount involved has been paid, and if it has not, then holding G.I.C.I.L. liable. The submission is that s. 29 Cap. 299 is concerned with a company's income out of which dividends are paid, while s. 14 Cap. 299 is devoted to chargeable income which is the income on which tax is payable.

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The point which then arises is whether under s. 29 (1) a company can deduct tax from a dividend although the income out of which the dividend is paid is not income on which tax has been paid or is payable.

The stand taken by the Commissioner of Inland Revenue is that the Income Tax Ordinance does not exempt dividends from taxation; indeed it specifically makes dividends taxable but permits a company to deduct 45% - the company rate - from the dividend. But this rate can only be deducted if the sum so deducted is paid to the Commissioner of Inland Revenue or is payable to him by the deducting Company.

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10 Counsel for G.I.C.I.L. answered this proposition in several ways which can best be dealt with by stating each argument and dealing with each one.

It was said that although D.S.T. had not paid the tax in the year in which the tax was deducted, the tax was payable. Counsel supported his argument by a hypothetical case of company A with a capital of \$1,000,000, and which made a regular profit of \$500,000. If such a company took full advantage of the Income Tax (In Aid of Industry) law and wrote off \$500,000 of its permissible allowances, there would be so chargeable income in the first year but by the end of the twelfth year when the permitted capital allowances have diminished in amount year by year, total tax of \$2,320,610 would have been paid. On the other hand hypothetical company B with the same capital making the same profit, but writing off capital allowances in a more conservative way, say \$100,000 the first year and reducing its capital allowances in descending order for 12 years, would pay income tax in the first year of \$180,000 and at the end of 12 years \$2,377,115. (See the illustration attached to this judgment). These illustrations are said to prove that D.S.T. will eventually pay to the revenue all the tax it has deducted from dividends. The illustrations do prove that over a period of 12 years a company that writes off a large proportion of capital allowances eventually pays about the same income tax as a company that does not write off a large sum in the early stages of its existence. But the illustrations are faulty in other respects. What is the normal way of preparing a profit and loss account? A company shows its profits on which tax is payable and makes appropriate entries for income tax so that sums deducted from dividends are accounted for

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in the balance sheet. If the amount retained by a company for payment to the Commissioner of Inland Revenue is not paid, then the company must account for it in its balance sheet. This item will be shown as a liability, probably under the name of income tax reserve. If by the end of the next financial year the sum reserved has not been paid to the Commissioner of Inland Revenue, then it becomes a secret reserve which can be absorbed as capital or can be paid to shareholders. If the latter course is adopted the shareholder has received a dividend out of money deducted from a previous dividend and which should have been paid to revenue; the shareholder has in fact paid no tax on his dividend. Under the Income Tax Ordinance this is impossible. If the tax deducted is treated as capital, the company has increased its capital assets with the revenue's money. This, too, is impossible.

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There is another answer to the argument that a company withholding tax in the first year eventually pays it over a long period. Income tax is due and payable every year; each year of assessment is dealt with by itself and the tax payable is assessed for a particular year. If tax due for one year is not paid the revenue loses income for that year, income which if invested could double itself in 12 years. I can see no warrant for a company withholding Government's revenue due in 1962 until the company pays something on account in 1963 and successive years until 1974. An examination of the figures contained in the hypothetical cases put forward by the appellants, while proving that a company which writes off its capital or fixed assets in the earlier years eventually pays a higher tax in later years than the company which writes off its fixed assets by a small percentage every year, also disproves the theory that company A shareholders would be worse off than company B shareholders. The total dividends paid to company A shareholders for the 12 year period is \$2,779,390; to company B shareholders \$2,722,885. But company A had the benefit of \$500,000 free of tax. Now the Aid to Industry Ordinance was introduced to encourage the establishment or development of industries in the country and to make provisions for relief from income tax to persons establishing or developing such industries,

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and for purposes incidental to or connected with any of the above purposes. The Ordinance was designed to foster industries in a developing country; investors who ventured into a country with a small population with limited markets were being assured that at least their capital was safe. The Ordinance was not designed to make a gift to shareholders. By writing off the capital investment at an early stage of the company's existence company A had \$500,000 available for expansion. If properly utilised, the result of this \$500,000 would be that company A's profits could not possibly remain static, but would exceed company B's. But in the hypothetical case this assumption is made resulting in drawing a wrong conclusion from an arithmetical fallacy. Of course there is nothing to prevent company A paying out the \$500,000 profit as a dividend to shareholders. In the appellants' illustration it is assumed that the \$500,000 vanishes; it does not. Either it is invested or paid out as dividends to shareholders, in which case the company pays no tax but the shareholders pay according to their appropriate rate; if the shareholder is a company, the rate is 45%. Using the appellants' figures, company A shareholders will receive in the first year \$375,000 as dividends after tax and company B shareholders \$220,000 after tax. The assumption therefore that the Aid to Industry Ordinance does not benefit company A is incorrect. It benefits the company if the first year's profits are not dissipated in dividends and benefits the shareholders if the profits are distributed.

One argument put forward by the appellants was a curious one. The point was made that D.S.T. had withheld \$32,727.27 from G.I.C.I.L. and if the Commissioner was entitled, as he claims, to \$32,727.27 less \$1,899.61, that is to say, \$30,827.66, G.I.C.I.L. would suffer a loss of \$63,554.93 on its dividend of \$72,727.27 or 88% tax instead of 45%. This argument is founded on the misconception that D.S.T. is entitled to retain \$30,827.66 wrongly deducted. The Commissioner of Inland Revenue cannot proceed against D.S.T. to recover the amount withheld from G.I.C.I.L. because D.S.T.'s assessment is nil.

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Although the difference between the income tax position in the U.K. as distinct from that in Guyana has been clearly stated on several occasions, notably in *Inland Revenue Commissioners v. Davson* (1960) B.G.L.R. 178, affirmed by the Privy Council in *Bieber Ltd. v. Commissioners of Inland Revenue* (1962) 3 All E.R. 294, perhaps it is necessary to record once again the difference in the systems of taxation.

In England a dividend paid out of the profits of a U.K. company is not directly assessable on the shareholder to income tax. (*Bradbury v. English Sewing Co. Ltd.* 8 T.C. 481 U.C.). This is the direct result of the Income Tax Act 1952 s. 184 (1) which states - 10

" The profits or gains to be charged on any body of persons shall be computed in accordance with the provisions of this Act on the full amount of the same before any dividend thereof is made in respect of any share, right or title thereto, and the body of persons paying the dividend shall be entitled to deduct tax at the standard rate for the year in which the amount payable becomes due". 20

and s. 184 (2) which is -

" Subsection (1) of this section shall, in relation to a dividend paid by any body of persons, be construed as authorising the deduction of tax from the full amount paid out of profits and gains of the said body which have been charged to tax or which, under the provisions of this Act, would fall to be included in computing the liability of the said body to assessment to tax for any year if the said provisions required the computation to be made by reference to the profits and gains of that year and not by reference to those of any other year or period." 30 40

These provisions were formerly r. 20 of the General Rules. When a company pays income tax it is paying its own tax and not paying it on behalf of the shareholders. This is accepted law ever

since *Newman v. Inland Revenue Commissioners* 1934 A.C. 215 H.L.; *Cull v. Inland Revenue Commissioners* (1939) 3 All E.R. 79, where Lord Atkin said: "..... it is now clearly established that in the case of a limited company, the company itself is chargeable to tax on its profits, and that it pays tax in discharge of its own liability and not as agent for its shareholders. The latter are not chargeable with income tax on dividends, and they are not assessed in respect of them."; *Hamilton v. Inland Revenue Commissioners* (1931) 2 K.B. 495. The result of the propositions stated above is that where a company pays a dividend out of capital profits and therefore not liable to tax, the dividend is not taxable in the shareholders' hands. See *Inland Revenue Commissioners v. Reid's Trustees* (1949) 1 All. E.R. 359 where Lord Norman said:

"They say justly that a profit derived from the sale of a capital asset would neither have been taxed in the hands of the company if it had been registered in the United Kingdom, nor have been taxed by deduction when the dividend was paid. The company would not have been taxed on this profit, for it would not have been reckoned part of the profits and gains of the company's business under the rules by which the profits and gains of the company would have been computed if it had been a British company. The shareholder would not have suffered any deduction because the dividend was not paid out of profits and gains brought into charge".

S. 184(i) of the Income Tax Act 1952 (U.K.) is designed to permit deduction of tax from dividends only where the dividend is paid out of profits which are subject to tax. If the fund out of which the dividend is paid is not taxable in the hands of the company, then the company cannot deduct tax from the dividend. For a company to deduct tax from a dividend, the company must be liable to tax on its profits. The reason for that is that s. 184(1) specifically stipulates that the profits or gains to be charged on any body of persons shall be computed in accordance with the provisions of this Act before any dividend is made. This does not mean that a company cannot pay a dividend out of

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capital profits, but if it does, it cannot deduct tax from the dividend. If the appellant company was operating under the Income Tax Law as it exists in England, it could have paid the dividend which it paid, out of profits, but it could not deduct tax on the dividend. The shareholders would have received the whole dividend tax free because the company would not have been exigible to tax.

The question now is whether the law of this country is different. S. 5 of Cap. 299 the Income Tax Ordinance provides that income tax, subject to the provisions of this Ordinance, shall be payable at the rate or rates herein specified for each year of assessment upon the income of any person accruing in or derived from the Colony or elsewhere, and whether received in the Colony or not, in respect of -

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(a) .....

(b) .....

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(c) dividends, interest or discounts;

Davson's case settled the point that even when a dividend was paid from a capital profit and not taxable in the hands of the company it was still taxable in the shareholders' hands. S. 29 (1) specifically authorises a company to deduct tax from dividends but it is the law that where tax is not paid or payable by the company on the whole income out of which the dividend is paid the deduction shall be restricted to that portion of the dividend which is paid out of income on which tax is paid or payable by the company. The consequence of this proviso to s. 29 (1) is that while a company can pay dividends out of profits which are not taxable it cannot deduct tax from such dividends.

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In support of his argument that the appellant company was not exigible to tax on the sum deducted from its dividend and not paid by D.S.T. to the Commissioner of Inland Revenue, counsel stressed the difference in meaning between income as used in s. 29(1) and chargeable income as used in s. 12(1). There is no dispute that a person's income is a far different thing from his

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chargeable income. A company in preparing its balance sheet may, for example, write off doubtful debts, may permit various allowances to its directors and by so doing diminish its profits out of which a dividend is paid. The shareholders must accept this. The Inland Revenue may reject these items, making the chargeable income higher than the profit income; the converse is true. The income out of which dividends are paid may be higher than the chargeable income. But since the company is paying its own tax when it pays dividends from a fund which is not liable to tax there is no warrant for deducting tax from the dividend. S. 29(1) is crystal clear. The company can deduct from the dividend tax payable on the income out of which the dividend is paid. In England the shareholder escapes income tax; in Guyana he does not. G.I.C.I.L. will only suffer if the tax deducted by D.S.T. is not repayable to G.I.C.I.L. by D.S.T. and if G.I.C.I.L. has to pay the tax again. If both these propositions are correct, then the provisions of s. 72 Cap. 299 can be invoked on the ground that a company cannot write off more than its capital investment allowances. A company can therefore lawfully write off large allowances in the early stages and retain large gross profits not exigible to tax, but then it ought not to pay dividends in that year as the shareholders may be penalised.

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The remaining argument I wish to discuss is whether the remedy of the Inland Revenue is not against D.S.T. rather than against G.I.C.I.L. The answer is not difficult. Although D.S.T. wrongly deducted tax from the dividend, or even assuming the company rightfully deducted tax, the Revenue can only proceed against D.S.T. in respect of D.S.T.'s tax, and since D.S.T. is not exigible to tax other than the sum already paid, there is no process known to the law by which the Revenue can make D.S.T. disgorge money wrongly in its possession. On the other hand D.S.T. is holding G.I.C.I.L.'s money and there are obvious ways in which G.I.C.I.L. can compel D.S.T. to repay.

In my view neither D.S.T. nor G.I.C.I.L. has found a loophole in the law which can be legally exploited and G.I.C.I.L. is liable to pay the tax

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assessed by the Revenue.

The amount which G.I.C.I.L. should pay, if liable, was the subject of considerable discussion. The judge in the court below varied the amount assessed by the Commissioner from \$30,827.59 to \$12,627.39. He fixed the liability as 45% of \$32,727.27. He assumed that G.I.C.I.L. had paid tax of 45% on \$40,000, the net dividend. But D.S.T. only paid tax on a chargeable income of \$52,767, and as G.I.C.I.L. received 8% of the gross dividends of \$909,090.90, it should be given credit for 8% of 45% of \$52,767, which is \$1,899.61. G.I.C.I.L.'s gross dividend was \$72,727.27. Tax on that sum is \$32,727.20. Since tax lawfully deducted is \$1,899.61, G.I.C.I.L. should pay \$30,827.59.

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The appeal is dismissed with costs.

Dated the 20th day of February, 1968.

(Sgd) (1) Kenneth Stoby  
Chancellor

(2) E.V.Luckhoo J.A.

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(3) P.A. Cummings J.A.

NO.10  
ORDER ON JUDGMENT

BEFORE THE HONOURABLE SIR KENNETH STOBY, CHANCELLOR  
THE HONOURABLE MR. E. V. LUCKHOO, JUSTICE OF APPEAL  
THE HONOURABLE MR. P.A. CUMMINGS, JUSTICE OF APPEAL

DATED THE 20th DAY OF FEBRUARY, 1968

ENTERED THE 13TH DAY OF SEPTEMBER, 1968

In the Court  
of Appeal of  
the Supreme  
Court of  
Judicature  
Guyana

No.10

Order  
on Judgment  
20th February  
1968

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UPON READING the notice of appeal on behalf of the above named appellants (respondents) dated the 26th day of August, 1966 and the record of appeal filed herein on the 31st day of October, 1966.

AND UPON HEARING Mr. C. Lloyd Luckhoo, Queen's Counsel of counsel for the appellants (Respondents) and Mr. Doodnauth Singh, Senior Crown Counsel, of counsel for the respondents (appellants)

AND MATURE DELIBERATION THEREUPON HAD

20

IT IS ORDERED that this appeal be dismissed but that the judgment of the Honourable Mr. Justice Persaud dated the 28th day of June, 1966 wherein it was stated that the appellants (respondents) should pay tax assessed at \$12,627.39 (twelve thousand six hundred and twenty seven dollars and thirty-nine cents) with costs be varied by directing that the appellants (respondents) pay tax assessed at \$30,827.59 (thirty thousand eight hundred and twenty-seven dollars and fifty-nine cents).

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AND IT IS FURTHER ORDERED that the appellants (respondents) do pay to the respondent (appellant) his costs of this appeal to be taxed.

BY THE COURT

Sgd. H. Maraj

Sworn Clerk and Notary  
Public for Registrar.

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In the Court  
of Appeal of  
the Supreme  
Court of  
Judicature  
Guyana

No.11

Order granting  
Final Leave to  
Appeal to Her  
Majesty in  
Council

14th December  
1968

NO.11

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER MAJESTY  
IN COUNCIL

BEFORE THE HONOURABLE MR. E.V. LUCKHOO, CHANCELLOR  
(ACTING) (IN CHAMBERS)

DATED THE 14TH DAY OF DECEMBER, 1968

ENTERED THE 23rd DAY OF DECEMBER, 1968

UPON the petition of the above named Guiana Industrial and Commercial Investments Limited dated the 4th day of December, 1968 for final leave to appeal to Her Majesty in Her Majesty's Privy Council against the judgment of the Court dated the 20th day of February, 1968.

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AND UPON READING the said petition and the Order of the Court dated the 25th day of June, 1968

AND UPON HEARING Mr. G.M. Farnum, Q.C. of counsel for the appellants (respondents) the respondent being in default of appearance AND the Court being satisfied that the terms and conditions imposed by the said Order dated the 26th day of June, 1968 have been complied with.

20

THIS COURT DOTH ORDER that final leave be and is hereby granted to the said appellants (respondents) to appeal to Her Majesty in Her Majesty's Privy Council.

BY THE COURT

Sgd. H. Maraj

Sworn Clerk and Notary Public  
for Registrar.

30

Certified  
A True Copy

Sgd.

Assistant Sworn Clerk  
28.12.68



EXHIBIT E (1)COMPUTED PROFITS OF DEMERARA SUGAR TERMINALS LTD. (DST)

ADJUSTMENT OF PROFIT & LOSS ACCOUNT FOR PERIOD FROM  
1st AUGUST to 31st DECEMBER, 1960.

INCOME TAX - YEAR OF ASSESSMENT 1961

In the High  
 Court of the  
 Supreme Court  
 of Judicature

Exhibit E (1)

Computed Profits  
 of Demerara Sugar  
 Terminals Ltd.  
 for year to 31st  
 December, 1960

	<u>Reference</u>	Profit for the Period	\$158,392.09
	"	<u>Deduct:</u>	
		Debenture Interest	\$102,131.15
10		Pension Scheme - Company's Con- tribution	1,477.72
		Audit Fees	<u>600.00</u>
			<u>104,208.87</u>
			\$ 54,183.22
		<u>Deduct:-</u>	
	Attached Statement	Initial Allowances	<u>1,573,384.10</u>
			\$1,519,220.88
		<u>Deduct:-</u>	
20	Attached Statement	Wear and Tear	\$129,292.56
		Annual Allowance	<u>38,617.53</u> <u>167,910.09</u>
		Capital Allowances carried forward	<u>\$1,687,110.97</u>

Note:

The claims for Wear & Tear and Annual Allowances have been restricted to 5/12ths. of the amounts which could be claimed in connection with a full year's trading.

In the High  
Court of the  
Supreme Court  
of Judicature

## EXHIBIT 'E (2a)'

COMPUTED PROFITS OF DEMERARA SUGAR TERMINALS LTD. (DST)ADJUSTMENT OF PROFIT & LOSS ACCOUNT FOR THE YEAR  
31st DECEMBER, 1961Exhibit E (2a)INCOME TAX - YEAR OF ASSESSMENT 1962

Computed Profits  
of Demerara  
Sugar Terminals  
Ltd. for year  
to 31st December  
1961

Reference

Accounts	Profit for Year		\$1,993,754	
	<u>Add: Special Expen-</u> diture not allowable	\$20,763		10
	Repairs & Maintenance not allowable	4,028		
	Legal Expenses re Increase in capital	<u>975</u>	<u>25,766</u>	
			\$2,024,520	
	<u>Less: Debenture</u> interest	\$250,000		
	Pension Scheme - Company's contribution	4,043		20
	Audit Fees	750		
	Director's Fees	<u>4,500</u>	<u>259,298</u>	
			1,765,222	
Statement A) Attached )	<u>Less: Initial Allowance</u>		<u>71,425</u>	
			1,693,797	
	<u>Less: Wear &amp; Tear</u>	\$178,097		
	Annual Allowances	93,320		30
Statement B) Attached )	<u>Less: Balancing</u> Allowance	\$43,793		
	Balancing Charge	<u>5,741</u>		
		38,052	<u>309,469</u>	
			1,384,328	
Statement C) Attached )	<u>Less: Allowance for past losses</u>		<u>692,164</u>	
			\$ <u>692,164</u>	

EXHIBIT E (2b)COMPUTED PROFITS OF DEMERARA SUGAR TERMINALS LTD.AMENDED COMPUTED PROFITS OF DEMERARA SUGAR TERMINALS  
LIMITED FOR YEAR TO 31st DECEMBER 1961

In the High Court  
of the Supreme  
Court of Judica-  
ture

Exhibit E (2b)

Amended computed  
profits of  
Demerara Sugar  
Terminals Ltd.  
for year to 31st  
December 1961

	Chargeable Income as returned (after utilising \$692,164 of Capital Allowances brought forward from 1961 Year of Assessment)	\$692,164
10	Further Allowance for Past Losses now claimed (in accordance with Section 11 of Income Tax (Amendment) Ordinance No. 11 of 1962)	<u>692,164</u> \$ -
	Amended Chargeable Income based on 2% of Turnover in 1961 (\$2,638,343.14)	<u>\$ 52,767</u>
	Tax Payable \$52,767 @ 45%	\$ 23,745.15
	Tax already paid	<u>311,473.80</u>
	Refund due	<u>\$287,728.65</u>
20	Carry forward of Past Losses as Returned	\$994,947.00
	Less:- Further Allowance for Past Losses now claimed against Chargeable Income for 1962 Assessment	<u>692,164.00</u> \$302,783.00
30	Add:- Minimum Chargeable Income as above carried forward in accordance with Section 10 of Income Tax (Amendment) Ordinance No. 11 of 1962	<u>\$ 52,767.00</u>
	Amended Carry forward of Past Losses to 1963 Assessment	<u>\$355,550.00</u>

In the High Court  
of the Supreme  
Court of Judica-  
ture

EXHIBIT A (4)VOUCHER FOR DIVIDEND PAID BY DEMERARA SUGAR TERMINALS LIMITEDExhibit A (4)DEMERARA SUGAR TERMINALS LIMITED

Voucher for  
dividend paid  
by Demerara Sugar  
Terminals Ltd.

Ruinveldt, British Guiana

16th December, 1961.

16th December  
1961

Guiana Industrial and Commercial Investments Ltd.,  
C/o Bookers Central Services Ltd.,  
Water Street.

No. 3

DIVIDEND ON ORDINARY SHARES

Dear Sirs,

10

A warrant is annexed for an interim Dividend as detailed hereunder (free of Income Tax) in respect of the year ending 31st December, 1961 on the Ordinary Shares of the Company registered in your name.

<u>Shares</u> <u>Regis-</u> <u>tered</u>	<u>Shares</u> <u>Regis-</u> <u>tered</u>	<u>Dividend</u> <u>of</u>	<u>Dividend</u> <u>of</u>	<u>Net</u> <u>Dividend</u>	<u>Add</u>	<u>Gross</u>	
1,600	78,400	\$26,844.48	\$13,155.52	\$40,000.00	\$32,727.27	\$72,727.27	
each fully paid on each share	5c/ only paid on each share	on each fully paid up share	on each share (\$5) on which only 5¢ has been paid	(Free of tax) paid herewith	Income Tax at 45% already deducted	Dividend on 80,000 shares	20

I hereby certify that Income Tax on the Profits of the Company on which this Dividend forms a portion, will be duly paid to the proper officer for the receipt of Taxes.

Yours faithfully,

30

DEMERARA SUGAR TERMINALS LIMITED

B. R. Harris

SECRETARY

N.B. This voucher should be carefully preserved. It will be accepted by the Commissioner of Inland Revenue as evidence of Income Tax deducted.

NO DUPLICATE WILL BE ISSUED

EXHIBIT A (1)GUIANA INDUSTRIAL AND COMMERCIAL INVESTMENTS LIMITEDPROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED30TH NOVEMBER, 1962In the High  
Court of the  
Supreme Court  
of JudicatureExhibit A (1)Profit & Loss  
Account of  
Guiana Industrial  
and Commercial  
Investments Ltd.19th January  
1966

1961

£555,615	Dividends from Investments	£882,145
10,494	Interest Received	13,749
<u>6</u>	Transfer Fees	<u>8</u>
<u>£566,115</u>		<u>£895,902</u>

## Deduct:-

10	£	100	Audit Fees	£	100
		1,200	Secretarial Fees		1,200
		4,500	Director's Fees		4,500
		663	General Expenses		966
		4,525	Stamp Duty on Purchase of Investments written off		1,067
		22,490	Preliminary Expenses written off		-
		251,830	Provision for Income Tax - 1963		
20			Assessment		399,801
			- Provision for Property Tax - 1962		
			- Assessment		1,780
			Legal Expenses		<u>50</u>

£285,366

409,464

£280,749 Net Profit for the year, carried  
to Appropriation Account£486,438

In the High  
Court of the  
Supreme Court  
of Judicature

PROFIT & LOSS APPROPRIATION ACCOUNT

<p><u>Exhibit A (1)</u></p> <p>Profit &amp; Loss Account of Guiana Industrial and Commercial Investments Ltd.</p> <p>19th January 1966</p> <p>(continued)</p>	<p>₡280,749</p> <p style="text-align: center;">-</p> <p><u>₡280,749</u></p> <p>₡ 97,500</p> <p style="text-align: center;"><u>117,000</u></p> <p>₡214,500</p> <p style="text-align: center;">-</p> <p><u>₡214,500</u></p> <p>₡ 66,249</p> <p><u>₡ 66,249</u></p>	<p>Net Profit for the year, as per profit and Loss Account</p> <p>Balance brought forward from last year</p> <p><u>Deduct:</u></p> <p>Dividends Paid and Proposed to be paid:-</p> <p>Interim of 3% Free of Income Tax paid 25th June</p> <p>Proposed Final of 4% Free of Income Tax</p> <p>Transfer to General Reserve</p> <p>Balance carried to Balance Sheet</p>	<p>₡486,538</p> <p><u>66,249</u></p> <p>₡552,607</p> <p>₡117,000</p> <p><u>156,000</u></p> <p>₡273,000</p> <p><u>136,800</u></p> <p><u>409,800</u></p> <p>₡142,887</p> <p><u>₡142,887</u></p>	<p>10</p> <p>20</p>
---	--	---	---	---------------------

EXHIBIT A (2)

BALANCE SHEET OF GULANA INDUSTRIAL AND COMMERCIAL INVESTMENTS LIMITED  
AT 30TH NOVEMBER 1962

GUIANA INDUSTRIAL AND COMMERCIAL INVESTMENTS LIMITED

BALANCE SHEET

1961

SHARE CAPITAL

Authorised

3,900,000 Shares of  
\$1.00 each

\$3,900,000

Issued

\$3,900,000 3,900,000 Shares of \$1.00  
each, fully paid

REVENUE RESERVES

\$ - General Reserve

\$ 136,800

66,249 Unappropriated Profits

142,887

\$ 66,249

279,687

\$3,966,249 SHAREHOLDERS' EQUITY

4,179,687

30th NOVEMBER, 1962

1961

INVESTMENTS  
AT COST

Bookers Sugar  
Estates Ltd.

6% Cumulative  
Preference Shares  
of \$1.00 each  
fully paid

213,000

1,920,000 Ordinary Shares of  
\$1.00 each fully  
paid

Bookers  
Stores Ltd.

120,000 Shares of \$5.00  
each fully paid

Bookers Shipping (Demerara) Ltd.

33,600 Shares of \$5.00 each  
fully paid

Industrial Holdings (B.G.) Ltd.

12,000 Shares of \$1

each fully paid

Albion Distilleries Ltd.

contd.

In the High Court  
of the Supreme  
Court of  
Judicature

Exhibit A (2)  
Balance Sheet  
of Guiana Ind-  
ustrial and  
Commercial  
Investments Ltd.

30th November  
1962

In the High Court  
of the Supreme  
Court of  
Judicature

Exhibit A (2)

Balance Sheet  
of Guiana Industrial and  
Commercial  
Investments Ltd.

30th November  
1962

(continued)

<u>CURRENT LIABILITIES</u>			
4,600	Sundry Creditors	₹	145
117,000	Provision for Proposed Final Dividend		156,000
<u>1,361</u>	Provision for Taxation		4,904
<u>₹123,461</u>			161,049
			<u>1,700</u>
			<u>B.G. Stockfoods Ltd.</u>
			Shares of ₹5.00
			each fully paid
			8,500
			<u>Enmore Estates Ltd.</u>
			Shares of ₹1.00
			each fully paid
			18,000
			<u>Demerara Sugar Terminals Ltd.</u>
			Shares of ₹5.00
			each fully paid
			78,400
			Shares of ₹5.00 each
			5½ paid
			49,363
			<u>Bank Breweries Ltd.</u>
			Shares of ₹1.00
			each fully paid
			25,800
			<u>₹3,878,558</u>
			<u>56,760</u>
			<u>₹3,934,681</u>

Note:- As at 30th November, 1962, there were calls outstanding in connection with the Investments held by the Company; the total amount involved was ₹488,080 representing 95 per share on 78,400 shares in Demerara Sugar Terminals Ltd.



83,984,681

b/forward

CURRENT ASSETS

		301			
Sundry Debtors	8				
Amount on	-				
Deposit at					
Interest with					
Bokers Central					
Services Ltd.	353,955	210,752			
Cash in Bank	<u>2,100</u>	<u>99</u>			
	356,055	<u>821,152</u>			
			<u>84,089,710</u>		
				<u>84,340,736</u>	
					<u>84,340,736</u>

In the High Court  
of the Supreme  
Court of  
Judicature

Exhibit A (2)

Balance Sheet  
of Guiana Ind-  
ustrial and  
Commercial  
Investments Ltd.

30th November  
1962

(continued)

In the High  
Court of the  
Supreme Court  
of Judicature

EXHIBIT A (3)

COMPUTED PROFITS OF GUIANA INDUSTRIAL & COMMERCIAL  
INVESTMENTS LTD. FOR THE YEAR ENDED 30th NOVEMBER  
1962 and STATEMENT OF DIVIDENDS RECEIVED

Exhibit A (3)

Computed Profits of Guiana Indus- trial & Commercial Investments Ltd. for the year ended 30th November 1962	Profit for year as per Accounts	\$486,438	
	Add: Stamp Duty on Investments written off	1,067	
	Provision for Income Tax	399,801	
	Provision for Property Tax	<u>1,780</u>	
		\$889,086	10
	<u>Less: B.G. Stockfeeds Dividends</u>	<u>638</u>	
	Chargesable Income	<u>\$888,448</u>	
	Tax Payable at 45%	\$399,801.60	
	Set off as below	<u>396,678.08</u>	
	Tax Payable	<u>\$ 3,123.52</u>	

STATEMENT OF DIVIDEND FROM INVESTMENTS

No. of Share

			<u>Gross</u>	<u>Tax</u>	<u>Net</u>	
213,000	Bookers Sugar Estates Ltd.	6% Cum. Pref.	\$ 12,780.00	\$ 5,751.00	\$ 7,029.00	20
1,920,000	Bookers Sugar Estates Ltd.	Ordinary \$ 1	349,090.91	157,090.91	192,000.00	
120,000	Bookers Stores Ltd.	\$5.00 Shares	163,636.54	73,636.54	90,000.00	
33,600	Bookers Shipping (Dem.) Ltd.	\$5.00 shares	30,545.45	13,745.45	16,800.00	30

	<u>No. of shares</u>		<u>Gross</u>	<u>Tax</u>	<u>Net</u>	
	12,000	Industrial Holdings (B.G.) Ltd.	£10.00 shares	£109,090.91	£49,090.91	£60,000.00
10	73,000	Albion Distilleries Ltd.	£1.00 shares	56,726.82	25,526.82	31,200.00
	50	Davsons Caribbean Agencies Ltd.	£100.00 Shares	29,454.63	13,254.63	16,200.00
	1,700	B.G. Stockfeeds Ltd.	£5.00 shares	637.50	-	637.50
20	24,000	Emmore Estates Ltd.	£1.00 Shares	6,545.46	2,945.46	3,600.00
	1,600	Demerara Sugar Terminals Ltd.	£5.00 Shares	82,975.32	37,338.89	45,636.43
	78,400	Demerara Sugar Terminals Ltd.	£5.00 Shares (5¢ paid)	40,661.04	18,297.47	22,363.57
30				<hr/> £882,144.58	<hr/> £396,678.08	<hr/> £485,466.50
		Less B.G. Stockfeeds (Tax Holiday)		<hr/> 637.50	<hr/> -	<hr/> 637.50
				<hr/> £881,507.08	<hr/> £396,678.08	<hr/> £484,329.00

In the High Court of the Supreme Court of Judicature

Exhibit A (3)

Computed Profits of Guiana Industrial & Commercial Investments Ltd. for the year ended 30th November 1962

(continued)

In the High  
Court of the  
Supreme Court  
of Judicature

EXHIBIT 'B'  
ORIGINAL NOTICE OF ASSESSMENT

BRITISH E R GULANA

Exhibit 'B'  
Original Notice  
of Assessment  
30th September  
1963

NOTICE OF  
ASSESSMENT

Guiana Industrial & Commercial Investments Ltd.  
185 Charlotte & King Streets,  
Georgetown.

COMPANIES

YEAR OF ASSESSMENT 1963  
on Income of Year 1962

10

File No. D/588

Assessment No. 45<sup>D</sup>/63

TAKE NOTICE that the amount of your chargeable Income,  
Allowances, and Tax are as specified below:-

Tax Structure	£	Income from	£
at 25%		Working of Estates etc	
888,448 at 45%	399,801.60	Business, Trade, Profession	888,448
Add 5% Penalty for late return		Government Salary	
		Other Salary	
Less:-		Interest, etc. (local)	
Set-off	396,670.08	Interest, etc. (foreign)	
D.I.T. Relief		Pensions	
Tax Payable	3,123.52	Annuities & Charges	
Tax Instal- ments paid (a)	2,343.00	Rents	
Balance Tax Payable (b)	780.52	Capital Gains	
Tax Over Paid		Total Income	888,448

20

30

	(a) Tax Instal- ments paid		Less:-	
	On or before 15 Mar. 1963	781.00	Wear & Tear	
	On or before 15 June, 1963	781.00	Previous Losses	
	On or before 15 Sep., 1963		Total Deductions	
10	On or before 15 Dec. 1963	781.00	CHARGEABLE INCOME	888,448
		2,343.00	Minimum Chargeable Income	
	(b) Method of Payment	₹	Loss under	₹
	On or before 15, Jun. 1963		Head	
	On or before 15 Sep. 1963		"	
	On or before 15 Dec. 1963	780.52	"	
20	On or before			
			Loss carried forward Head	
			Capital Allowance	

In the High  
Court of the  
Supreme Court  
of Judicature

Exhibit 'B'

Original Notice  
of Assessment  
30th September  
1963

(continued)

V. J. GANGADIN,  
Commissioner of Inland Revenue,  
30 SEP 1963

.....

THIS NOTICE MUST BE PRESENTED AT THE TIME OF PAYMENT

I.R.D.- NO. 71B. C.G.P. & S. 637/65.

In the High  
Court of the  
Supreme Court  
of Judicature

EXHIBIT B (1)

LETTER FROM COMMISSIONER OF INLAND REVENUE TO GUIANA  
INDUSTRIAL AND COMMERCIAL INVESTMENTS LIMITED

Exhibit B (1)

Letter from  
Commissioner of  
Inland Revenue  
to Guiana  
Industrial and  
Commercial  
Investments Ltd.  
10th April 1964

ONP/PDB  
D/588

INLAND REVENUE DEPARTMENT,  
Income Tax Division,  
P.O. Box 24,  
Georgetown.

10th April, 1964

Gentlemen,

Guiana Industrial & Commercial Investments Ltd. 10  
Year of Assessment 1963 - Income Tax  
Dividend of \$72,727.27 from Demerara Sugar  
Terminals Ltd. - Paid on 16th December, 1961

Set-off amounting to \$32,727.27 (45% of \$72,727.27) has  
already been allowed against the tax assessed and payable by  
the above named company on dividends received from Demerara  
Sugar Terminals Ltd. in 1961. Kindly note, however, that  
Demerara Sugar Terminals Ltd. have not paid to the Inland  
Revenue Department, the whole of the tax on the profits out  
of which the dividends were paid to its shareholders and as a  
result was only entitled to withhold from the shareholders  
an amount equal to the tax paid. The proportion that the tax  
paid by Demerara Sugar Terminals Ltd. bears to the amount  
withheld by that company on the dividends is 5.80437% and  
thus only 5.80437% of that set-off granted to Guiana  
Industrial & Commercial Investments Ltd. in respect of the  
dividends received from Demerara Sugar Terminals Ltd. in 1961,  
should have been allowed. I am therefore raising an addi- 20  
tional assessment on the company as per my computation below:-

Set-off allowed in error 45% of \$72,727.27	-	\$32,727.27	30
do. now allowed			
5,80437% of \$32,727.27	-	<u>1,899.61</u>	
Additional Tax Payable		<u>\$30,827.66</u>	

2. The additional tax will be claimed by a formal notice of  
assessment to be issued in due course.

I have the honour to be, Gentlemen,  
Your obedient servant,  
V. J. Gangadin  
Commissioner of Inland Revenue (ag.)

Messrs. Fitzpatrick Graham & Co.,  
P.O. Box 37, Georgetown.

c.c. The Secretary,  
Guiana Industrial & Commercial Investments Ltd.,  
185 Charlotte & King Sts., Georgetown.

EXHIBIT B (2)  
ADDITIONAL ASSESSMENT

BRITISH E R GUIANA

In the High  
Court of the  
Supreme Court  
of Judicature

NOTICE OF  
ASSESSMENT

Exhibit B (2)

Guiana Industrial & Commercial Investments Ltd.,  
185 Charlotte & King Sts.,  
Georgetown.

Additional  
Assessment

30th April 1964

Additional Assessment to 45<sup>D</sup>/63

10 COMPANIES

Year of Assessment 1963

on Income of Year 1962

File No. D/588

Assessment No. AA289<sup>D</sup>/63

TAKE NOTICE that the amount of your chargeable Income,  
Allowances and Tax are as specified below:-

20

30

Tax Structure	£	Income from Working of Estates etc.	£
at 25%			
at 45%		Business, Trade, Profession	
Add 5% Penalty for return		Government Salary	
		Other Salary	
Less:-		Interest etc. (local)	
Set-off Dec.	30,827	Interest, etc. (foreign)	
D.I.T. Relief		Pensions	
Tax Payable		Annuities & Charges	
Tax Instalment Paid (a)		Rents	
Balance Tax Payable Inc. (b)	30,827	Capital Gains	

In the High  
Court of the  
Supreme Court  
of Judicature

Exhibit B (2)

Additional  
Assessment  
30th April 1964

(continued)

Tax Over Paid		Total Income	
(a) Tax Instal- ment Paid		Less:-	
On or before 15 Mar. 1963		Wear & Tear	
On or before 15 Jun. 1963		Previous Losses	
On or before 15 Sep. 1963		Total Deduc- tions	10
On or before 15 Dec. 1963		CHARGEABLE INCOME	
		Minimum Chargeable Income	
(b) Method of Payment	₹	Loss under	
On or before 15 Jun. 1963		Head	20
On or before 15 Sep. 1963		"	
On or before 15 Dec. 1963		"	
On or before 15 June, 1964			
		Loss carried forward - Head	
		Capital Allowances	30

V.J. GANGADIN  
Commissioner of Inland Revenue

THIS NOTICE MUST BE PRESENTED AT THE TIME OF PAYMENT

1. R.D.-NO. 718, C.G.P. & S. 637/65.



EXHIBIT 'C'NOTICE OF OBJECTION TO ADDITIONAL ASSESSMENT

P.O. Box 37,  
The Demerara Life Buildings,  
Georgetown,  
British Guiana.

14th May, 1964

ASR/AJA

The Commissioner of Inland Revenue,  
Inland Revenue Department,  
G.P.O. Building, Georgetown.

Dear Sir,

Guiana Industrial & Commercial Investments Ltd. D/588  
Income Tax - Year of Assessment 1963  
Assessment No. AA289D/63 (Additional to 45D/63)

On behalf of our clients, we hereby lodge formal Notice of Objection to the above Assessment on the following grounds:-

(1) That the provisions of the Income Tax Ordinance, Chapter 299 in particular sections 29 and 30 are to be read subject to the provisions of the Income Tax (In Aid of Industry) Ordinance, Chapter 300.

(2) That the capital allowances which are made in charging the profits or gains of the business of Demerara Sugar Terminals Ltd. (hereinafter referred to as the Company) under Chapter 300 do not remove any profits from the scope of the charge; they are only a deduction in quantifying liability and therefore on the true construction of Chapters 299 and 300, tax is or is considered to be payable by the Company on the whole of its income and the dividend is paid or is considered to have been paid out of income on which tax is payable.

(3) That in any event our clients are entitled to a share in the income of the Company, and that share having been included in the chargeable income of our clients, the tax applicable to such share is required to be set off for the purpose of collection against the tax charged on that chargeable income.

(4) That for the reasons and in the circumstances aforesaid income tax at the rate applicable to Companies, i.e. 45% has been paid, is payable or will be paid by the Company on the whole income out of which the dividend paid on the 16th December, 1961, was declared and that the set-off claimed in this respect by our clients should not therefore be restricted.

Yours faithfully,  
Fitzpatrick Graham & Co.

In the High  
Court of the  
Supreme Court  
of Judicature

Exhibit 'C'

Notice of  
Objection by  
Guiana Industrial  
& Commercial  
Investments Ltd.

14th May 1964

In the High  
Court of  
Supreme Court  
of Judicature

Exhibit 'D'

Decision of  
Commissioner  
of Inland  
Revenue

7th July 1964

EXHIBIT 'D'

DECISION OF COMMISSIONER OF INLAND REVENUE

23/CM  
D/588

INLAND REVENUE DEPARTMENT,  
Income Tax Division,  
P.O. Box 24,  
Georgetown.

7th July, 1964.

Gentlemen,

Guiana Industrial & Commercial Investments Ltd.  
Objection to Assessment No. AA 289D/63

10

Receipt of your letter dated 14th May, 1964 objecting to the above mentioned assessment is hereby acknowledged.

2. I have given consideration to the several points raised in your letter of objection and I hold the view that:-

- (1) only those provisions of the Income Tax Ordinance Chapter 299, are to be read subject to the provisions of the Income Tax (In Aid of Industry) Ordinance, Chapter 300 for which express provision exists; 20
- (ii) in fact the extent to which the Company's income is reduced for the computation of income tax payable by the company by virtue of a grant of capital allowances under the provisions of the Income Tax (In Aid of Industry) Ordinance, Chapter 300, to that extent the company's income is specifically removed from the exigibility to income tax and as such income tax is not payable on that proportion of the company's income. 30
- (iii) what may be deemed to be income of the company for other purposes is not necessarily the amount which is considered to be income for income tax purposes and the wording of the proviso of Section 29 (1) of the Income Tax Ordinance, Chapter 299 can only be construed in the light of that amount of income on which tax is in fact actually payable;
- (iv) the amount of tax shown to be deducted by the

Demerara Sugar Terminals Ltd. on payment of dividends to the aforementioned company are incorrect and that the Demerara Sugar Terminals Ltd. was not entitled to deduct tax to that extent since the latter company is either incapable of deducting "tax" which has not been paid over to the Commissioner or which it is under no obligation in law to pay to him;

- 10 (v) your clients are only entitled to a set off of tax on their dividends paid out of the income of the Demerara Sugar Terminals Ltd. on which they are obliged to pay income tax under the Income Tax Ordinance.

3. In view of the above mentioned reasons I have maintained the assessment. The tax of \$30,827.66 is therefore due and payable on or before the 23rd August, 1964.

- 20 4. Kindly advise your clients accordingly and let them know that if they are not in agreement with my decision they either appeal to the Board of Review or to a Judge in Chambers.

I have the honour to be,  
Gentlemen,

Your obedient servant,

V. J. Gangadin

Commissioner of Inland Revenue (ag.)

Messrs. Fitzpatrick, Graham & Co.,  
P.O. Box 37,  
Georgetown.

In the High  
Court of the  
Supreme Court  
of Judicature

Exhibit 'D'

Decision of  
Commissioner  
of Inland  
Revenue

7th July 1964

(continued)

EXHIBIT A.R.A.GUIANA INDUSTRIAL & COMMERCIAL INVESTMENTS LIMITEDINCOME TAX - YEAR OF ASSESSMENT 1963APPEAL AGAINST ASSESSMENT No. AA 289<sup>D</sup>/63EXHIBIT A (EXPANDED) SHOWING EQUALISATION OF TAX DEDUCTED FROM DIVIDENDS AND TAX PAID IN THE CASE OF A COMPANY WITH LARGE INITIAL ALLOWANCESAssumptions

- 10
- (1) Company is covered by provisions of Income Tax (In Aid of Industry) Ordinance
  - (2) Company's original investment in Plant & Machinery was \$1,000,000:
  - (3) Company depreciates Plant & Machinery at 7½% per annum on cost.
  - (4) Company distributes all free profits as dividends.
  - (5) Profit taken at \$500,000 per annum before charging depreciation.

(1) Year	(2) Gross	(3) Dividends		(4) Calculation of Net Profit/Dividend				(5) Calculation of Taxation Charge				(13) Capital Investment Allowances	(14)
		Tax	Net	Profit	Depre- ciation	Taxation	Net	Profit	Allow- ances	C'able Income	45% &		
1	\$772,727	347,727	425,000	500,000	75,000	-	425,000	500,000	500,000	-	-	1,000,000	
												500,000	(40% + 10%)
20	2	404,545	182,045	222,500	500,000	75,000	222,500	500,000	50,000	450,000	202,500	500,000	10% W.D.V.
			529,772								202,500	450,000	
	3	400,454	180,204	220,250	500,000	75,000	220,250	500,000	45,000	455,000	204,750	45,000	"
			709,976								407,250	405,000	
	4.	396,772	178,547	218,225	500,000	75,000	218,225	500,000	40,500	459,500	206,775	40,500	"
			888,523								614,025	364,500	
	5	393,458	177,056	216,402	500,000	75,000	216,402	500,000	36,450	463,550	208,598	36,450	"
			1,065,579								822,623	328,050	
	6	390,476	175,714	214,762	500,000	75,000	214,762	500,000	32,805	467,195	210,238	32,805	"
			1,241,293								1,032,861	295,245	
30	7	387,792	174,506	213,286	500,000	75,000	213,286	500,000	29,525	470,475	211,714	29,525	"
			1,415,799								1,244,575	265,720	
	8	385,376	173,419	211,957	500,000	75,000	211,957	500,000	26,572	473,428	213,043	26,572	"
			1,589,218								1,457,618	239,148	
	9	383,201	172,440	210,761	500,000	75,000	210,761	500,000	23,914	476,086	214,239	23,914	"
			1,761,658								1,671,857	215,254	
40	10	381,245	171,560	209,685	500,000	75,000	209,685	500,000	21,523	478,477	215,315	21,523	"
			1,933,218								1,887,172	193,711	
	11	379,485	170,768	208,717	500,000	75,000	208,717	500,000	19,371	480,629	216,283	19,371	"
			2,103,986								2,103,455	174,340	
40	12	377,900	170,055	207,845	500,000	75,000	207,845	500,000	17,434	482,566	217,155	17,434	"
			2,274,041								2,320,610	156,906	

Exhibit A provides arithmetical proof that the taxation position of a company in receipt of large capital allowances in its early years, regularises itself in a period of years; it will be seen that the tax paid by the company envisaged in the hypothetical case above (Column 12) exceeds the set-off available to its shareholders (Column 3) in the twelfth year. This must be the case because initial allowances merely postpone the full weight of the company's taxation burden, they do not permanently reduce the company's taxation liability. This will be clearly seen in the case of Demerara Sugar Terminals in Exhibits C and D.

Exhibit A.R.A.

Document produced  
before Board of  
Review illust-  
rating contentions

EXHIBIT A.R.B.  
GUIANA INDUSTRIAL & COMMERCIAL INVESTMENTS LIMITED  
INCOME TAX - YEAR OF ASSESSMENT 1963  
APPEAL AGAINST ASSESSMENT No. AA 289/63

EXHIBIT B (EXPANDED) SHOWING TAXATION POSITION WHERE COMPANY DOES NOT CLAIM INITIAL ALLOWANCES

Exhibit A.R.B.

Document produced  
before Board of  
Review illustrating  
contentions

Assumptions

As for Exhibit A except that (1) does not apply, i.e., the Company is not in receipt of Initial Allowances under the Income Tax (In Aid of Industry) Ordinance

10	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
	Year	Gross	Dividends Tax	Net	Calculation of Net Profit/Dividend			Calculation of Taxation Charge				Capital Investment & Allowances		
					Profit	Depre- ciation	Taxation	Net	Profit	Allow- ances	C'able	Income 45%		
	1	\$445,454	200,454	245,000	500,000	75,000	180,000	245,000	500,000	100,000	400,000	180,000	1,000,000	
													100,000	10% W.D.V.
	2	437,272	196,772	240,500	500,000	75,000	184,500	240,500	500,000	90,000	410,000	184,500	900,000	
			397,226									364,500	90,000	
	3	429,909	193,459	236,450	500,000	75,000	188,550	236,450	500,000	81,000	419,000	188,550	810,000	
			590,685									553,050	81,000	"
	4	423,281	190,476	232,805	500,000	75,000	192,195	232,805	500,000	72,900	427,100	192,195	729,000	
			781,161									745,245	72,900	"
20	5	417,318	187,793	229,525	500,000	75,000	195,475	229,525	500,000	65,610	434,390	195,475	656,100	
			968,954									940,720	65,610	"
	6	411,949	185,377	226,572	500,000	75,000	198,428	226,572	500,000	59,049	440,951	198,428	590,490	
			1,154,331									1,139,148	59,049	"
	7	407,076	183,184	223,892	500,000	75,000	201,108	223,892	500,000	53,144	446,856	201,108	531,441	
			1,337,515									1,340,256	53,144	"
	8	402,771	181,247	221,524	500,000	75,000	203,476	221,524	500,000	47,830	452,170	203,476	478,297	
			1,518,762									1,543,732	47,830	"
	9	398,856	179,485	219,371	500,000	75,000	205,629	219,371	500,000	43,047	456,953	205,629	430,467	
			1,698,247									1,749,361	43,047	"
30	10	395,334	177,900	217,434	500,000	75,000	207,566	217,434	500,000	38,742	461,258	207,566	387,420	
			1,876,147									1,956,927	38,742	"
	11	392,165	176,474	215,691	500,000	75,000	209,309	215,691	500,000	34,868	465,132	209,309	348,678	
			2,052,621									2,166,236	34,868	"
	12	389,311	175,190	214,121	500,000	75,000	210,879	214,121	500,000	31,381	468,619	210,879	313,810	
			2,227,811									2,377,115	31,381	"
													282,429	

Exhibit B provides arithmetical proof of the situation outlined in Exhibit A by demonstrating the taxation position of a company similar to that envisaged in Exhibit A except that the Exhibit B company is not in receipt of Initial Allowances. It will be seen that the tax paid by both companies up to the end of the twelfth year is very similar (Exhibit A Company \$2,320,610; Exhibit B Company \$2,377,115). The same observation applies to the tax set-off available to shareholders (Exhibit A Company \$2,274,041; Exhibit B Company \$2,227,811). The position will further regularise itself in succeeding years because the capital allowances available to Exhibit B Company at the end of the twelfth year are \$282,429 (see Column 13), whereas the allowances still available to Exhibit A Company are only \$156,906. It follows that if the shareholders of Exhibit A Company are additionally assessed to tax in the early years in the manner in which the shareholders of Demerara Sugar Terminals Limited (including the Respondent Company) have been assessed, then the shareholders of Exhibit A Company will be substantially worse off than the shareholders of Exhibit B Company despite, indeed by virtue of, the fact that the former is entitled to claim allowances under the Income Tax (In Aid of Industry) Ordinance.

EXHIBIT A.R.C.GULIANA INDUSTRIAL & COMMERCIAL INVESTMENTS LIMITEDINCOME TAX - YEAR OF ASSESSMENT 1963APPEAL AGAINST ASSESSMENT No. AA 289<sup>D</sup>/63EXHIBIT C (UPDATED) SHOWING TAXATIONPOSITION OF DEMERARA SUGAR TERMINALSLIMITEDExhibit A.R.C.

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Year of Assess- ment	Chargeable Income	%	Net	Tax	Gross
1961	Nil				
1962	£ 52,767	(16.12.61 21. 3.62)	£500,000	£409,091	£909,091
1963	914,015	(15. 9.62 22. 3.63)	150,000	122,727	272,727
1964	1,075,869	16. 4.64	450,000	368,182	818,182
1965	695,464	9. 4.65	250,000	204,545	454,545
1966 (Es- timated)	975,843		-	-	-
	<u>3,713,958</u>		<u>2,100,000</u>	<u>1,718,181</u>	<u>3,818,181</u>
					%
1961/62	52,767			1,272,727	4.14
1962/63	<u>914,015</u>			<u>1,272,727</u>	
	966,782			2,545,454	37.98
1963/64	<u>1,075,869</u>			<u>818,182</u>	
	2,042,651			3,363,636	60.73
1964/65	<u>695,464</u>			<u>454,545</u>	
	2,738,115			3,818,181	71.71
1965/66	975,843			-	
(Estim- ated)	<u>975,843</u>				
	<u>3,713,958</u>			<u>3,818,181</u>	97.27

Notes: (i) Balance on Profit & Loss Account carried forward at

31.12.64 - £ 73,487

31.12.65 - £505,104.

(ii) "%" in last column indicates % of accumulated chargeable income (as returned for taxation purposes) to accumulated gross dividends paid out of that income.

Exhibit A.R.C.

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(continued)

- (iii) In this statement gross dividends are set against the chargeable income for the periods in respect of which such dividends were expressed to be paid. The point to note particularly is the increase in the percentage of accumulated chargeable income to accumulated gross dividends; this percentage had reached 97.27% at 31st December, 1965, so that the taxation position of the Company, excluding the additional assessments on its shareholders (one of which is the subject of this appeal), has regularised itself. Thus the taxation position of a Company which is in receipt of initial allowances under the Income Tax (In Aid of Industry) Ordinance, as demonstrated in Exhibit A is shown above to have applied to Demerara Sugar Terminals Limited in a much shorter period than twelve years. 10
- (iv) The above statement takes no account of any dividend which may be declared in 1966 in respect of profits earned prior to 31st December, 1965. Even if it did, the trend in the percentage of accumulated chargeable income to accumulated gross dividends would still be apparent. 20
-

EXHIBIT A.R.D.Exhibit A.R.D.GUIANA INDUSTRIAL & COMMERCIAL INVESTMENTS LIMITEDINCOME TAX - YEAR OF ASSESSMENT 1963APPEAL AGAINST ASSESSMENT No. AA 289<sup>D</sup>/63EXHIBIT D (UPDATED) SHOWING TAXATION  
POSITION OF DEMERARA SUGAR TERMINALS  
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		<u>D I V I D E N D S PAID</u>				<u>% of</u>
						<u>Charge-</u>
						<u>able In-</u>
						<u>come to</u>
						<u>Gross</u>
						<u>Dividends</u>
<u>Year of</u>	<u>Chargeable</u>	<u>Year of</u>	<u>Net</u>	<u>Tax</u>	<u>Gross</u>	
<u>Income</u>	<u>Income</u>	<u>Payment</u>				
1960	Nil	1960	Nil	Nil	Nil	
1961	£ 52,767	1961	500,000	409,090	909,090	5.8%
1962	<u>920,154</u>	1962	<u>350,000</u>	<u>286,363</u>	<u>636,363</u>	
	972,921		850,000	695,453	1,545,453	63.0%
1963	<u>1,075,869</u>	1963	<u>550,000</u>	<u>450,000</u>	<u>1,000,000</u>	
	2,048,790		1,400,000	1,145,453	2,545,453	80.5%
20 1964	<u>695,464</u>	1964	<u>450,000</u>	<u>368,181</u>	<u>818,181</u>	
Estimated	2,744,254		1,850,000	1,513,634	3,363,634	81.6%
1965	<u>975,843</u>	1965	<u>250,000</u>	<u>204,545</u>	<u>454,545</u>	
	<u>3,720,097</u>		<u>2,100,000</u>	<u>1,718,179</u>	<u>3,818,179</u>	97.4%

Notes:- (i) The above statement sets gross dividends against the chargeable income for the periods in which such dividends were paid (as opposed to Exhibit C which set gross dividends against the chargeable income for the periods in respect of which such dividends were expressed to be paid).

30 (ii) The last dividend having been paid on 9th April, 1965 both Exhibits, C and D, reflect the same position at 31st December, 1965 apart from a small difference in the original statements in the chargeable income for the Year of Income 1962 (Year of Assessment 1963).



Exhibit A.R.D.

The two exhibits are reconciled below:-

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ting contentions

% of Chargeable Income to Gross Dividends - Exhibit C	97.27
Add Difference in 1962/63	
Chargeable Income:-       \$6,139 (.16% of \$3,813,179)	<u>.16</u> 97.43
% of Chargeable Income to Gross Dividends - Exhibit D to one place as above	<u>97.4%</u>

(continued)

- (iii) Again the point to note is the increase in the percentage of accumulated chargeable income to accumulated gross dividends (see end column) which had reached 97.4% at 31st December, 1965, As already pointed out the taxation position of Demerara Sugar Terminals Limited has regularised itself without the additional assessments on shareholders.

10

EXHIBIT A.R.E.GUIANA INDUSTRIAL & COMMERCIAL INVESTMENTS LIMITEDINCOME TAX - YEAR OF ASSESSMENT 1963APPEAL AGAINST ASSESSMENT No. AA 289<sup>D</sup>/63EXHIBIT E (AS ORIGINALLY SUBMITTED)EXPLAINING EXHIBITS A, B, C AND D.Exhibit A.R.E.

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(continued)

10 1. Referring to proforma statement (A) the import of the Commissioner's action in assessing the Shareholders of D.S.T.LTD. immediately becomes apparent. In the case of the hypothetical Company in statement (A) the Commissioner would assess the Shareholders of that Company in the sum of \$347,727 (see tax set-off Year 1), despite the fact that the statement shows conclusively that the tax paid by the operating Company equalizes the tax set-off on the Dividends at the end of the twelfth year. It should be noted that although tax will be paid on the full extent of the Company's profits in twelve years, the shareholders of Exhibit A Company will in addition suffer taxation in the sum of \$347,727, and that they will never be able to recover this sum.

20 2. The Commissioner on his alternative working would assess the Shareholders of Exhibit A Company in the sum of \$191,250, being 45% of the net Dividends in Year 1; \$425,000. The same remarks would apply to the lesser sum, i.e., that the Shareholders of Exhibit A Company would be unable to recover this additional tax although the Company's taxation position stabilizes in twelve years.

30 3. Extending the argument to D.S.T. Ltd., it is apparent that the Commissioner is seeking to assess the Shareholders in the sum of \$385,345; although statements (C) and (D) prove conclusively that the Company's tax payments will equalize the tax set-off in relation to the Dividends in a much shorter period than the twelve years envisaged for the hypothetical Company in statement (A). The Shareholders and in particular G.I.C.I.L. will have no opportunity of recovering this sum despite the fact that the Company's taxation position will stabilize itself over a period of years (see statements (C) and (D)).

40 4. The Commissioner's alternative working in the case of D.S.T. Ltd., would presumably assess the Shareholders on tax amounting to \$225,000. The comments in Paragraph 3 apply to the lesser sum with equal effect.

EXHIBIT A.R.F.GUIANA INDUSTRIAL & COMMERCIAL INVESTMENTS LIMITEDINCOME TAX - YEAR OF ASSESSMENT 1963APPEAL AGAINST ASSESSMENT No. AA 289D/63EXHIBIT F (UNDATED) SHOWING TAXATION POSITION OF DEMERARA SUGAR TERMINALS LIMITEDExhibit A.R.F.Document produced  
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(continued)

	Year of Assessment 1961	Year of Assessment 1962	Year of Assessment 1963	Year of Assessment 1964	Year of Assessment 1965	Year of Assessment ( ) 1966 (Estimated)
10 Profits as returned or estimated plus disallowances	£ 54,183	£1,793,890	£ 1,516,848	£1,337,156	£909,663	£1,187,379
Deduct:-						
Initial Allowances (sec. 3)	463,864	6,679	1,923	254	-	1,297
Annual Allowances (Sec. 4)	38,617	93,608	93,944	93,944	93,926	94,033
Wear and Tear (Sec.17)	129,293	178,930	152,218	131,253	117,569	106,582
Balancing Allowances (Sec.18)	-	38,052	11,862	33,301	3,251	-
	£ 631,774	£ 317,269	£ 259,947	£ 258,752	£ 208,244	£ 201,912
Chargeable Income/Loss	£ 577,591	£1,476,621	£1,256,901	£1,078,404	£ 701,419	£ 985,467
Loss brought forward	-	577,591	52,767	-	-	-
Assessable Profits	£ 577,591	£ 899,030	£1,204,134	£1,078,404	£ 701,419	£ 985,467
Tax @ 45%	-	404,563.50	541,860.30	485,281.80	315,638.55	443,460.15
20 Less Set-off - Initial Allowances (sec.16)	-	* 404,583.50	* 130,553.55	* 1,140.75	* 2,679.75	* 4,330.80
Tax Payable	£ -	£ -	£ 411,306.75	£ 484,141.05	£ 312,958.80	£ 439,129.35
Minimum Assessment (carried forward)		£ 52,767.00				
Initial Allowances (Sec.16)						
Brought forward	£ -	£1,109,520	£ 280,015	£ -	£ -	£ -
Claimed	1,109,520	69,525	10,104	2,535	5,955	9,624
	£1,109,520	£1,179,045	£ 290,119	£ 2,535	£ 5,955	£ 9,624
Less Set-off	-	899,030	290,119	2,535	5,955	9,624
Carried forward	£1,109,520	£ 280,015	£ -	£ -	£ -	£ -
30		* £ 899,030 @ 45%	* £ 290,119 @ 45%	* £ 2,535 @ 45%	* £ 5,955 @ 45%	* £ 9,624 @ 45%

Notes:- (1) The above treatment of Section 16 Allowances is in accordance with the treatment of all Capital allowances in the United Kingdom) "(Any such) allowance is made as a deduction in charging the profit, that is to say, it is deducted from the amount of the assessment. It is not treated as an expense in arriving at the profit on which the Assessment is based. Where the assessment is not large enough to permit of the full allowance being made, the amount unallowed is, carried forward, and is treated as part of the allowance for the next year, and so on for succeeding years." Quote from Simon's Income Tax (Second Edition) Volume 2 at p. 355).

(11) Disallowances of £6,138 for the Year of Assessment 1961 have been ignored for the purpose of this Statement.

(111) Exhibit F demonstrates the taxation position of Demerara Sugar Terminals Limited when the presentation of the Company's tax computations is brought into line with United Kingdom practice so far as Initial Allowances granted under Sec. 16 of the Income Tax (In Aid of Industry) Ordinance are concerned; it is submitted that this is the correct treatment of Sec. 16 allowances. Note the effect on the Company's chargeable Income which is clearly demonstrated in Exhibit G.

EXHIBIT A.R.G.GULIANA INDUSTRIAL & COMMERCIAL INVESTMENTS LIMITEDINCOME TAX - YEAR OF ASSESSMENT 1963APPEAL AGAINST ASSESSMENT No. AA 289<sup>D</sup>/63EXHIBIT G (UPDATED) SHOWING TAXATION POSITION OF  
DEMERARA SUGAR TERMINALS LIMITEDExhibit A.R.G.

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Year of Income	Chargeable Income per Statement F	Year of Payment	D i v i d e n d s P a i d		
			Gross	Tax Deducted	Net
1960	Nil	1960	Nil		
1961	1,476,621 (577,591) 899,030	1961	909,090	409,090	500,000
1962	1,256,901 (52,767) 1,204,134	1962	636,363	286,363	350,000
	2,103,164		1,545,453	695,453	850,000
1963	1,078,404	1963	1,000,000	450,000	550,000
	3,181,568		2,545,453	1,145,453	1,400,000
1964	701,419	1964	818,181	368,181	450,000
	3,882,987		3,363,634	1,513,634	1,850,000
1965 (Estimated)	985,467	1965	454,545	204,545	250,000
	4,868,454		3,818,179	1,718,179	2,100,000

Notes:- (i) Exhibit G sets chargeable income of Demerara Sugar Terminals Limited as computed in Exhibit F against Gross Dividends declared and paid by the Company to date.

(ii) Note the substantial excess of accumulated chargeable income over accumulated gross dividends when the former is re-computed so as to give effect to what is submitted to be the correct treatment of Initial Allowances granted under Section 16 of the Income Tax (In Aid of Industry) Ordinance.

Exhibit A.R.H.

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EXHIBIT A.R.H.

GUIANA INDUSTRIAL & COMMERCIAL INVESTMENTS LIMITED

INCOME TAX - YEAR OF ASSESSMENT 1963

APPEAL AGAINST ASSESSMENT No. AA 289<sup>D</sup>/63

EXHIBIT H (EXPANDED AND UPDATED)

Position arising if the entire share capital of  
Demerara Sugar Terminals Limited was held by one  
shareholder who paid Income Tax at the 6¢ rate or  
by one shareholder who paid Income Tax at the  
70¢ rate.

10

Assumptions:-

- (i) The chargeable income of the 6¢ shareholder could not exceed £1,200 so the dividends actually paid by Demerara Sugar Terminals Limited have been reduced from £1,000 to £1 for the purpose of this illustration e.g. £500,000 has been taken as £500.
- (ii) In practice, if there was only one shareholder, he would pay tax at the 70¢ rate and would receive no refunds; if there were a number of shareholders, the probability is that they would pay tax at rates ranging through all brackets.

20

Year of Assessment 1962

Dividend received on 16th Dec. 1961  
£500 free of Income Tax

	6¢	70¢
Returned £500 grossed @ 45%	<u>£ 909</u>	<u>£ 909</u>
Liability @ 6¢ and 70¢	£ 55	£ 638
Less set-off	<u>409</u>	<u>409</u>
Net Liability (Refund)	£ (354)	227
Additional Assessment	<u>385</u>	<u>385</u>
Tax Payable	<u>£ 31</u>	<u>£ 612</u>

30

<u>Year of Assessment 1963</u>	6¢	70¢	<u>Exhibit A.R.H.</u>
Dividend received on 21st March 1962 free of Income Tax		£ 200	Document produced before Board of Review illustrating contentions
Dividend received on 15th Sept. 1962 Free of Income Tax		<u>£ 150</u> £ 350	
Returned £350 grossed @ 45%	<u>£ 636</u>	<u>£ 636</u>	(continued)
Liability @ 6¢ and 70¢ Less set-off	£ 38 <u>286</u>	£ 445 <u>286</u>	
Tax Payable (Refund due)	<u>£ (248)</u>	<u>£ 159</u>	
10 <u>Year of Assessment 1964</u>			
Dividend received on 22nd March 1963 free of Income Tax		£550	
Returned £550 grossed @ 45%	<u>£1,000</u>	<u>£1,000</u>	
Liability @ 6% and 70¢ Less Set-off	£ 60 <u>450</u>	£ 700 <u>450</u>	
Tax Payable (Refund due)	<u>£ (390)</u>	<u>£ 250</u>	
<u>Year of Assessment 1965</u>			
Dividend received on 16th April 1964 free of Income Tax		£450	
Returned £450 grossed @ 45%	<u>£ 818</u>	<u>£ 818</u>	
Liability @ 6¢ and 70¢ Less Set-off	£ 49 <u>368</u>	£ 573 <u>368</u>	
Tax Payable (Refund Due)	<u>£ (319)</u>	<u>£ 205</u>	
<u>Year of Assessment 1966</u>			
Dividend received on 9th April 1965 free of Income Tax		£250	
Returned £250 grossed @ 45%	<u>£ 455</u>	<u>£ 455</u>	
Liability @ 6¢ and 70¢ Less Set-off	£ 27 <u>205</u>	£ 319 <u>205</u>	
Tax Payable (Refund due)	<u>£ (178)</u>	<u>£ 114</u>	
30			

Exhibit A.R.H.

Note:-

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(continued)

This statement was originally prepared at the request of the Board of Review. Particularly note the position arising in the Year of Assessment 1962. The "Additional Assessment \$385" represents the additional assessments raised on the shareholders of Demerara Sugar Terminals Limited (in total \$385,345.75), one of which is the subject of this Appeal:-

Bookers Shipping (Overseas Investments) Ltd.	\$277,448.94	
Sandbach Parker & Co. Ltd.	77,069.15	10
Guiana Industrial & Commercial Investments Ltd.	<u>30,827.66</u> *	
	<u>\$385,345.75</u>	

\* the subject of this Appeal.

The position in the Year of Assessment 1962 in the case of the 70% shareholder is particularly illuminating. Such a shareholder would have to pay \$612 in tax on a net dividend of \$500; in other words, if there was only one shareholder in Demerara Sugar Terminals Limited paying tax at the 70% rate, he would have paid substantially more tax in respect of the 16th December, 1961 dividend than the amount of the dividend he actually received. This ridiculous state of affairs is the result of the additional assessment which would be raised by the Commissioner similar to those he has actually raised in the case under review.

20

EXHIBIT A.R.I.GUIANA INDUSTRIAL & COMMERCIAL INVESTMENTS LIMITEDINCOME TAX - YEAR OF ASSESSMENT 1963APPEAL AGAINST ASSESSMENT No. AA 289<sup>D</sup>/63EXHIBIT I (NOT PREVIOUSLY SUBMITTED)Exhibit A.R.I.

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1. It is submitted that, in any event, the Commissioner has erred in assessing Guiana Industrial & Commercial Investments Limited in the sum of \$30,827.66.

10 2. Guiana Industrial & Commercial Investments Limited was incorporated in November, 1960, and makes up its accounts to 30th November, each year. The basis period for the Year of Assessment 1963 is therefore the accounting year to 30th November, 1962.

3. The additional Assessment appealed against is for the Year of Assessment 1963 and should therefore be based on the income for the year ended 30th November, 1962.

4. In the year to 30th November, 1962, Guiana Industrial & Commercial Investments Limited received from Demerara Sugar Terminals Limited the following dividends:-

20

	<u>Net</u>	<u>Tax</u>	<u>Gross</u>
16th December, 1961	\$40,000.00	32,727.27	72,727.27
21st March, 1962	16,000.00	13,090.91	29,090.91
15th September, 1962	12,000.00	9,818.18	21,818.18
	<u>\$68,000.00</u>	<u>55,636.36</u>	<u>123,636.36</u>

The above dividends represent 8% of the total dividends paid by Demerara Sugar Terminals Limited in 1961 and 1962:-

<u>Net</u>	<u>Tax</u>	<u>Gross</u>
<u>\$850,000.00</u>	<u>695,454.53</u>	<u>1,545,454.53</u>

30 5. Chargeable Income of Demerara Sugar Terminals Limited during this period was as follows:-

Year of Income 1960	\$ nil
" " " 1961	52,767
" " " 1962	<u>920,154</u>
Total	<u>\$972,921</u>
8% thereof	<u>\$ 77,833.68</u>



Exhibit A.R.I.

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6. Thus, the Assessment on Guiana Industrial & Commercial Investments Limited ought, in any event, to be as follows:-

Gross Dividends paid to G.I.C.I.L. in 1961 and 1962	\$123,636
Less 8% of D.S.T.'s Chargeable Income for 1961 and 1962	<u>77,833</u>
Difference	<u>\$ 45,803</u>
@ 45%	<u>\$ 20,611.35</u>

But the Commissioner has assessed additional tax of

\$ 30,827.66

10

7. Using the Commissioner's alternative method of assessment the position would be as follows:-

(i) Net dividends paid out of income on which tax is payable:-	
55% of \$972,921 (see 5 above)	\$535,106.55 (a)
Dividends paid out of income on which tax is not payable	<u>314,893.45 (b)</u>
Total Net Dividends (see 4 above)	<u>\$850,000.00</u>
G.I.C.I.L.'s share of	
(a) 8% of \$535,106.55	\$42,808.52
\$ share of	
(b) 8% of \$314,893.45	<u>25,191.48</u>
Net Dividends received by G.I.C.I.L. (see 4 above)	<u>\$68,000.00</u>

20

(ii) The Alternative assessment on Guiana Industrial & Commercial Investments Limited ought therefore, in any event, to be as follows:-

Dividends paid out of income on which tax is payable:-	
\$42,808.52 grossed at 45%	\$77,833
Dividends paid out of income on which tax is not payable	<u>25,191</u>
	<u>\$103,024</u>
Tax @ 45%	\$ 46,360.80
Less Set-off (45% of \$77,833)	<u>35,024.85</u>
	<u>\$ 11,335.95</u>

30

But the Commissioner would have assessed additional tax of \$16,955.21 using the alternative method of assessment.

MAM.

IN THE PRIVY COUNCIL No. 7 of 1969

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ON APPEAL  
FROM THE COURT OF APPEAL OF THE  
SUPREME COURT OF JUDICATURE - GUYANA

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BETWEEN:-

GUIANA INDUSTRIAL & COMMERCIAL  
INVESTMENTS LIMITED Appellants  
(Respondents)

- and -

THE COMMISSIONER OF INLAND  
REVENUE Respondent  
(Appellant)

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RECORD OF PROCEEDINGS

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