

*Privy Council Appeal No. 34 of 1968*

**Sim Lim Investments Limited** - - - - - *Appellant*

v.

**Attorney-General, Singapore** - - - - - *Respondent*

FROM

**THE FEDERAL COURT OF MALAYSIA HOLDEN AT SINGAPORE  
(APPELLATE JURISDICTION)**

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 28TH JULY 1969**

*Present at the Hearing :*

LORD HODSON

LORD DIPLOCK

SIR GARFIELD BARWICK

*[Delivered by LORD DIPLOCK]*

The only question in this appeal is whether a dividend of \$1,192,500 declared and paid on 6th March 1965 by Sim Lim Co. Ltd., a wholly-owned subsidiary of the appellant Company, is to be included in the statutory income of the appellant Company for the year of assessment ended 31st December 1965.

The appellant Company itself declared and paid on 17th August 1965 a dividend of \$811,162.50 from which it duly deducted tax at the rate of 40% under Section 44 (1) of the Income Tax Ordinance. Subsections (2) to (5) of section 44 provide in effect that if the amount so deducted exceeds the amount of tax payable by the appellant Company in respect of the year of assessment in which the deduction was made (together with any balance of tax from previous years available as a set-off under the provisions of subsection (5)) the amount of the excess is recoverable from the appellant Company as a debt to the Crown. It is unnecessary for their Lordships to refer to these provisions in detail, for it is common ground that the excess so recoverable amounts to \$302,324.60 unless the dividend of \$1,192,500 which the appellant Company received from its wholly-owned subsidiary on 6th March 1965 did form part of its statutory income for the year of assessment (ended 31st December 1965) in which it paid its own dividend to its own shareholders and deducted tax therefrom. The High Court of Singapore and, on appeal the Federal Court of Malaysia, held that it did not. Both courts gave substantially the same reasons for their judgments. Their Lordships so fully agree with them that it is unnecessary to do more than to repeat them in summary form in dismissing this further appeal.

Under section 10 of the Income Tax Ordinance income tax is payable upon the income of any person accruing in or derived from Singapore, in respect of (*inter alia*): "(a) gains or profits from any trade, business . . ." and "(d) dividends . . .". The amount of the income of a company resident in Singapore which is assessable to tax for any year of assessment is determined by ascertaining what is its "statutory income" for that year of assessment under section 35 and deducting therefrom any deductions allowed by section 37. No question as to deductions arises in the present appeal, which turns solely upon the true construction of section 35 and in particular subsection (7A).

The general basis for computing "statutory income" for any year of assessment laid down in subsection (1) of section 35, is that it is the full amount of the taxpayer's income *for the year preceding the year of assessment* from each source of income possessed by him at any time during the year of assessment. Subsection (7A) which deals specifically with dividends is in the following terms:

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

It therefore follows, in their Lordships' view, that, as was held by each of the Courts below, the dividend of \$1,192,500 declared and paid to the appellant Company on 6th March 1965 formed part of its statutory income for the year of assessment ended 31st December 1966, and did not form part of its statutory income for the year of assessment ended 31st December 1965 in which its own dividend of \$811,162.50 (from which tax was deducted) was paid.

The argument to the contrary was based upon the way in which the dividend of \$1,192,500 was dealt with in the accounts of the appellant Company and its subsidiary. In its Trading and Profit and Loss Account for the year ended 31st December 1964 the subsidiary Company showed a net profit transferred to Appropriation Account of \$552,533.05. In its Appropriation Account, which included a substantial balance from the previous year and dividends received from other companies, it appropriated to "Provision for Dividend \$1,192,500 less Income Tax at 40% \$477,000", giving a net appropriation of \$715,500.00. This figure appears in the Balance Sheet of the Subsidiary Company at 31st December 1964 as a liability under the rubric "Provision for Dividend". In the appellant Company's own Profit and Loss Account for the period ended 31st December 1964, the figure of \$1,192,500 appears on the income side under the rubric "Dividend from Subsidiary Company (gross)".

Both parties were prepared to accept that this method of dealing with the proposed dividend of \$1,192,500 (gross) in the accounts of both companies for the year ended 31st December 1964 was in accordance with good accounting practice. The submission for the appellant Company was that since in accordance with that practice the amount of the proposed dividend of the subsidiary Company was properly included as a credit item in the profit and loss account of the appellant Company for the year ended 31st December 1964 it constituted income from dividends for the year of assessment 1965 notwithstanding that no dividend was declared or paid until the year 1965.

Whatever force that argument might have if the appellant Company were liable to income tax upon the profits of a trade or business only, it has none in relation to income accruing in respect of dividends. In their Lordships' view the words of section 35 subsection (7A) are too plain to permit any other construction than that accepted by the High Court of Singapore and the Federal Court of Malaysia. Income from a dividend does not accrue until it has been declared and at least become payable.

The appeal is accordingly dismissed with costs.



**In the Privy Council**

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**SIM LIM INVESTMENTS LIMITED**

v.

**ATTORNEY-GENERAL, SINGAPORE**

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DELIVERED BY  
LORD DIPLOCK