

30, 1971

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IN THE PRIVY COUNCIL

No. 31 of 1970

ON APPEAL FROM
THE COURT OF APPEAL OF JAMAICA

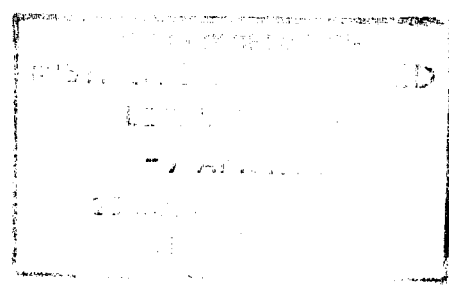
B E T W E E N :-

WALTER FLETCHER Appellant
on his own behalf and on
behalf of TRUSTEES AND
COMMITTEE OF DOCTOR'S CAVE
BATHING CLUB

- and -

THE COMMISSIONER OF INCOME TAX Respondent

RECORD OF PROCEEDINGS



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London, W.C.2.

Solicitors for the Appellant

Solicitors for the Respondent

IN THE PRIVY COUNCIL

NO.31 of 1970

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THE COURT OF APPEAL OF JAMAICA

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CAVE BATHING CLUB

- and -

THE COMMISSIONER OF
INCOME TAX Respondent

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

INDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>INCOME TAX APPEAL BOARD</u>		
1.	Decision of Board	12th June 1963	1
2.	Board's notes of evidence (excluding note of submission)	14th March 1966	2
3.	Decision of Board	14th March 1966	12

No.	Description of Document	Date	Page
<u>IN THE SUPREME COURT OF JAMAICA</u>			
4.	Notice of Appeal	5th April 1966	12
5.	Statement of Facts and determination by Income Tax Appeal Board	20th April 1966	16
6.	Judgment of Edun J. (duplicate copy note reproduced)	19th December 1966	19
<u>IN THE COURT OF APPEAL OF JAMAICA</u>			
7.	Notice of Appeal	3rd January 1967	48
8.	Judgment of Luckhoo J.	28th March 1969	49
9.	Judgment of Shelley J.A.	28th March 1969	54
10.	Judgment of Moody, J.A.	28th March 1969	54
11.	Order on Judgment	28th March 1969	59
12.	Affidavit of Mr. D.I. Brandon	15th April 1969	60
13.	Affidavit of Mr. A.A. Debuc and exhibit thereto	12th May 1969	62
14.	Affidavit of Mr. G.W.N. Downer	22nd May 1969	66
15.	Affidavit of Mr. G.W.N. Downer	29th May 1969	69
16.	Affidavit of Mr. A.A. Debuc and exhibits thereto	13th June 1969	71
17.	Affidavit of Mr. A.A. Debuc	18th June 1969	75
18.	Judgment on leave to Appeal	31st July 1969	77
19.	Order granting final leave to Appeal	16th March 1970	82

E X H I B I T S

Exhibit No.	Description of Document	Date	Page
D	<u>RESPONDENT IN COURT</u> (below) Rules and Bye-laws of the Doctor's Cave Bathing Club	revised 14th October 1963	Reproduced separately

Exhibit No.	Description of Document	Date	Page
<u>APPELLANT IN COURT (below)</u>			
1A	Extracts from income from Profit and Loss Accounts of Doctor's Cave Bathing Club	years 31st December 1951 to 31st December 1965	84
1B	Extracts from final Account of Doctor's Cave Bathing Club	years 31st December 1958 to 31st December 1965	85
1C	Extract of certain of the Auditors notes of financial statements	years 31st December 1951 to 31st December 1965	86

LIST OF DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

INCOME TAX APPEAL BOARD

B	Notes of submission to Board	12th June 1963
C	Notes of submission to Board	14th March 1966

IN THE SUPREME COURT OF JAMAICA

Judges Notes of submission

IN THE COURT OF APPEAL OF JAMAICA

Notice of Motion for Leave to Appeal to Her Majesty in Council
 Affidavit of service of Notice of Appeal
 Respondents Notice of Preliminary objection
 Order granting conditional leave to Appeal to Her Majesty in Council

LIST OF DOCUMENTS NOT TRANSMITTED

INCOME TAX APPEAL BOARD

Taxpayers Exhibits

DC1	Trust Deed 11th May 1966
DC3	Letter from Clerk of the Income Tax Appeal Board dated 22nd April 1966 and copy Deed dated 11th June 1966
DC2	Copy of Rules and bye-laws of the Doctor's Cave Bathing Club

Exhibit No.	Description of Document	Date	Page
	<p data-bbox="403 443 999 478"><u>IN THE SUPREME COURT OF JAMAICA</u></p> <p data-bbox="403 510 903 575">Summons of appeal from the Income Tax Appeal Board</p> <p data-bbox="403 606 847 672">Notices of intention to render oral evidence</p>	<p data-bbox="994 606 1246 638">1st June 1966</p> <p data-bbox="978 638 1246 669">12th July 1966</p> <p data-bbox="978 669 1246 701">13th July 1966</p>	

IN THE PRIVY COUNCIL

No.31 of 1970

ON APPEAL FROM
THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

WALTER FLETCHER on his own behalf
and on behalf of TRUSTEES AND
COMMITTEE OF DOCTOR'S CAVE BATHING
CLUB Appellant

- and -

THE COMMISSIONER OF INCOME TAX Respondent

RECORD OF PROCEEDINGS

NO. 1

DECISION OF BOARD

Income Tax
Appeal Board

No. 1

Meeting of the Income Tax Appeal Board
held on the 12th June 1963

Decision of
Board
12th June 1963

Present were:

Sir Alfred Rennie	Chairman
Mr. E.E.A. Campbell	} Board Members
Mr. Ewart Forrest	
Mr. Ramon Alberga	
Mr. B.C. O'B.Nation) Representing
Mr. G.W.N. Downer	
Mr. D.W. Marsh) Representing Commissioner
Mr. K.L. Robertson	
Mr. R.G. Butler	Clerk to the Board

Appeal : Doctor's Cave Bathing Club

v.

Commissioner of Income Tax

10

20

Income Tax
Appeal Board

Clerk: Mr. Chairman, gentlemen, the Appeal of
Doctor's Cave Bathing Club. The Appellants
are being represented by Mr. B.C. O'B.
Nation.

No. 1

MEETING ADJOURNED AT 11.37 for 12 minutes

Decision of
Board

Chairman: Well, we have considered this matter
and it seems to us that - that Income Tax is
payable unless there is a mutuality of
interests among the members of the club and
for mutuality there must be effective control
and the right to participate in the assets
of the - of the club. In the instant case
the hotel members cannot - it cannot be
said that the hotel members have effective
control of this club they have no right to
vote and therefore one ingredient is
missing, they are not members within the
meaning of this case of Municipal Insurance
Company and Hill. That being so, the
Appeal will be dismissed.

12th June 1963
(contd)

10

20

MEETING ADJOURNED AT 12.53 p.m.

No. 2

NO. 2

Notes of
Evidence

NOTES OF EVIDENCE

14th March
1966

Meeting of the Income Tax Appeal Board
held on Monday the 14th March 1966.

Present were:

Mr. Samuel Hart Deputy Chairman presiding
Mr. C.I. Escala)
Mr. E.A. Forrest) Board Members
Mr. John McIntosh)
Mr. E.A. Grant Representing Commissioner of
Income Tax
Mr. B.C.O'B. Nation Representing Appellant
-do-
Miss C.M. Barrett Clerk to the Board

30

Appeal: Doctor's Cave Bathing Club

Income Tax
Appeal Board

v.

Commissioner of Income Tax

—
No. 2

Clerk: Mr. Chairman, this is the case of
Doctor's Cave Bathing Club, Mr. Nation
appearing.

Notes of
Evidence

14th March 1966
(contd)

Mr. Nation: (Mr. G.W.N. Downer sworn as a
witness.)

10 Mr. Nation: Your name, Mr. Downer? A. George
William Nelson Downer.

Q. And you are a chartered accountant?
A. I am.

Q. And a member of the firm of Price,
Waterhouse & Company? A. Yes.

Q. As such does your firm audit the accounts
of the Doctor's Cave Bathing Club?
A. Yes.

Q. And does it also audit the accounts of
Beach View Company Limited? A. Yes.

20 Mr. Grant: What's that?

Mr. Nation: Beach View Company Limited.
Now, to your knowledge is Beach View
Company Limited a Hotel Member of the
Doctor's Cave.... A. Yes, it is.

Q. ... Bathing Club? A. It is.

Q. And it is such a member because it pays on
the audited house counts of its guests?
A. That's right.

30 Mr. Escala: It pays a subscription? A. Yes,
it pays a subscription on the house count.

Mr. Nation: Based on the audited house count.
Now, the ...

Mr. McIntosh: It pays thirty shillings.

Income Tax
Appeal Board

No. 2

Notes of
Evidence

14th March
1966
(contd)

Mr. Nation: Beach View - the subscription
is 30/-plus.

Mr. McIntosh: (Nod. nod.)

Mr. Nation: Does Beach View charge its guests-
charge back against its individual guests
any part of that money paid in relation
to the house count? A. No, there is no
charge made against the guests for
bathing facilities.

Chairman: Bathing facilities at Doctor's
Cave? A. At the Doctor's Cave.

10

Mr. Nation: At the Doctor's Cave. Now, am I
right that your firm is also - for income
tax purposes - deals with the books of
Hotel Casa Blanca Limited? A. Yes, Hotel
Casa Blanca Limited owns both Casa Blanca
Hotel and Casa Montego and my firm has
been over the past number of years, been
preparing their income tax returns and
therefore I have had access to their
accounts.

20

Mr. Escala: I didn't follow that, I didn't
hear you quite well. A. My firm ...

Mr. Nation: May I give it to you, Sir, or
would you like him ...

Mr. Escala: I would prefer Mr. Downer to
answer the question. A. My firm are not
the auditors for Hotel Casa Blanca Limited
but we prepare their income tax return for
them and therefore in the capacity of tax
consultants we see their annual accounts.

30

Mr. Nation: Do they make any - Hotel Casa
Blanca Limited is a hotel member of the
Doctor's Cave Bathing Club, to your
knowledge? A. Hotel Casa Blanca Limited
comprising both hotels - Casa Blanca and
Casa Montego.

Q. The Hotel Casa Blanca Limited as such. Now,
does Hotel Casa Blanca Limited in regard to
its operations of both the Casa Blanca
Hotel and the Casa Montego Hotel, does it

40

charge its guests for the bathing facilities afforded them? A. To the best of my knowledge and belief, no, and not from what I can see from the accounts which I have perused when I am submitting them for taxation.

Income Tax
Appeal Board

—
No. 2

Q. When you submit them for taxation? A. Yes.

Notes of
Evidence

Mr. Nation: Was there another point you wanted, Sir?

14th March
1966
(contd)

10 Chairman: Well, that is just merely the point that struck me at the moment.

Mr. Nation: Yes.

Chairman: The disputed point, the point of dispute.

Mr. Nation: Hardly of dispute but a point that was not admitted, not conceded by Mr. Grant because he was unaware of it. That will be all.

20 May I just say this? You are aware, as auditor for the Doctor's Cave that no profits are distributed to its members?
A. I am.

Mr. Grant: The profits have not ...?

Mr. Nation: No profits are distributed to the members of the Doctor's Cave Bathing Club.

Mr. Grant: Oh, the Doctor's Cave Club.

30 Mr. Nation: And you are further aware that all profits, all income derived becomes utilised for improvements? A. Yes, for improvements to the Doctor's Cave Bathing Club.

Q. Yes, and of course, salaries to its ...
A. And running the Club.

Q. Running the Club, yes, and you are further aware actually that those improvements involve the Club in mortgage loans by way of overdrafts? A. Yes, we do have overdrafts from time to time from the bank, I

Income Tax
Appeal Board

—
No. 2

Notes of
Evidence

14th March
1966
(contd)

am not sure about the mortgage.

Q. Chiefly overdrafts, I must correct myself there ... A. Yes.

Q. ... overdrafts, running into considerable sums of money. Sorry, Mr. Grant.

Mr. Grant: Mr. Downer, you yourself don't prepare the accounts for - audit the accounts for Beach View Company Limited? You yourself don't do it, it's done by one of your clerks? A. I am the partner in charge.

10

Mr. Escala: I didn't quite hear you, Mr. Grant.

Mr. Grant: Yes, I'll rephrase my question, I will ask him the question, again. You yourself don't prepare those accounts, do you? I mean, it's done by - is it not done by one of your clerks, accountants employed in your office? A. Sometimes I have been known to do it myself.

20

Q. Oh, sometimes? A. Ummmmm..

Chairman: During what time have you audited these ... A. Beach View.

Chairman: Beach View.

Mr. Grant: But you would say most times its done by your audit clerk, occasionally?
A. Occasionally but under my supervision.

Q. Well, that's quite a different matter.

Mr. Escala: I don't wish to interrupt you. May I just ask you, what is this point...

30

Mr. Grant: Yes.

Mr. Escala: ... because the responsibility of an auditor rests, remains under all sets of circumstances ...

Mr. Grant: Yes, yes.

Mr. Escala: ... unless there is fraud.

Mr. Grant: Yes, I know the responsibility is there but if he didn't do it or see it himself it's my submission that it was pure hearsay. In respect of Hotel Casa Blanca and Hotel Casa Montego you admit that you yourself don't prepare the accounts? A. No.

Income Tax
Appeal Board

—
No. 2

Notes of
Evidence

Q. ... you just happen to peruse it sometimes, I suppose. A. That's correct.

14th March
1966
(contd)

10 Q. How many Hotel members would you say there are at Doctor's Cave? Well, there are either 4 or 3 at the moment, I am not sure whether Gloucester House is still one or not, it used to be Beach View, Casa Blanca, Casa Montego and Gloucester House, I have a feeling that Gloucester House has dropped out, I am not quite sure when,

Q. So when ... A. I don't remember.

20 Q. In any case you will admit that you don't know very much about Gloucester House Hotel, you don't know whether they are members, you don't know whether they charge, you don't know whether they have dropped out? A. No.

Q. Thank you.

Mr. Nation: Gloucester House has recently pulled down its buildings - the majority of it and put apartments there ... A. Yes.

30 Q. ... and during that time was not opened to guests. Now, to return for a moment to Hotel Casa Blanca Limited ...

Chairman: Re-examined - Gloucester House ...
(writing) ...

Mr. Nation: I am sorry, Sir.

Chairman: Yes?

Mr. Nation: You have stated that you are not the auditors - your firm is not the auditor for Hotel Casa Blanca Limited but

Income Tax
Appeal Board

—
No. 2

Notes of
Evidence

14th March
1966
(contd)

you prepare - your firm prepares the income tax returns ... A. Yes.

Q. ... their auditors are abroad, aren't they?

A. Their auditors were a firm in the United States of America.

Q. But to prepare the income tax returns haven't you got to peruse quite thoroughly the accounts of those hotels? A. Not to the extent of analysing each separate account, it is possible that an account like miscellaneous income could include things which I have no knowledge about, it's all taxable as far as the hotel goes and therefore as far as making up their income tax returns I would merely be satisfied with the item of taxable income and not analyse it any further but there is in no place in the accounts is there anything stated to give me the impression that the guests are charged with anything for bathing at Doctor's Cave.

10

20

Mr. Nation: Thank you, Mr. Downer.

Mr. Escala: Mr. Downer, could there be any indirect charge that would not appear on any specific voucher, that is, could I as one of these hotel proprietors or managers make a charge per day say of \$10. that would take care of all these amenities and yet you would not know anything about it? A. Well, the inclusive charge which the hotel makes covers all the facilities that the guest obtains at the hotel.

30

Mr. Escala: So it is possible that this charge might be included. A. Well, I would think it is included in the six - in whatever the number of dollars are that the person paid for their board, it's not a separate charge for bathing ...

Mr. Escala: It's not a separate charge.
A. .. it's a facility which the ...

40

Mr. Escala: It is not a separate but it could be included and on the other hand it could not be included it might be just a gesture of

goodwill, could that obtain, could that situation obtain or do you know that it does obtain? A. No, it certainly doesn't obtain where the guest has made any charge. You see other hotels operate, as Mr. Nation said, in quite a different way, the other hotels actually buy their books of tickets from Doctor's Cave and then sell these tickets to the guests.

Income Tax
Appeal Board

—
No. 2

Notes of
Evidence

14th March
1966
(contd)

- 10 Mr. Forrest: Mr. Downer, you say the three hotel members are hotel Casa Blanca Limited, Beach View Hotel Limited and which is the third one? A. Casa Montego Hotel, part of Hotel Casa Blanca Limited.
- Mr. Forrest: ... so there are two ... A. There are two limited companies involved.
- Mr. Forrest: Who are hotel members. A. Yes.
- Mr. Forrest: Beach View and Hotel Casa Blanca. A. Yes.
- 20 Mr. Forrest: Now, in each case we haven't got any documentary evidence of the accounts. One is dealing with the question, in each case - from your own personal knowledge of their accounts, are you able to say whether a charge is made to the guests to cover the amount expended by the hotel? A. Are we talking about Beach View now or all three? In these two I can say definitely no. In the case of Casa Montego,
- 30 I do not believe it is and I see nothing in the accounts to show that it is. But this is a point that can easily be verified at a later stage.
- Mr. Forrest: Are the guests of the hotels given their bills? A. Yes.
- Mr. Forrest: Just an inclusive daily charge I suppose? A. That's right. There is no item on the bills for Beach View which says that bathing tickets or bathing at
- 40 Doctor's Cave.
- Mr. Forrest: Thank you.

Income Tax
Appeal Board

—
No. 2

Notes of
Evidence

14th March
1966
(contd)

Mr. Escala: Mr. Nation, excuse me, the question of investments that you brought up earlier, was there any special significance about them?

Mr. Nation: Investments, Sir?

Mr. Escala: You talked about mortgages, I beg your pardon.

Mr. Nation: No. I was only showing you that no special significance ...

Mr. Escala: No special significance.

10

Mr. Nation: I was just showing that the income is used for these improvements and is supplemented by overdraft, because the improvements are very expensive.

Chairman: The only question I would like to ask, Mr. Downer, in the case of Casa Blanca and Casa Montego, you say you see their accounts with a view to preparing your income tax returns ... Mr. Downer: Yes.

Chairman: ... for them. And you say there is no item there indicating that there is a separate charge ... Mr. Downer: No.

20

Chairman: But you say and ... have you ever seen such an item in other accounts or other hotels, is it usual if there was such an item to show it - non-members? A. Yes, it is I think. It would be quite a substantial charge which would be one which would normally be shown under miscellaneous income, and a breakdown of miscellaneous income would normally disclose ...

30

Chairman: If there was a charge - if there was a separate charge, you would have expected to see it. A. I would have expected to see it, Sir.

Chairman: Any more ...

Mr. Grant: What's that?

Chairman: I don't know whether there was something new that came out in this.

Income Tax
Appeal Board

Mr. Grant: No, no, Mr. Chairman.

—
No. 2

Chairman: No, I - is that your case, Mr. Nation?

Mr. Nation: Yes, Sir.

Notes of
Evidence

10 Mr. Grant: Mr. Chairman, Members of the Board, I wonder if there is any particular point to which you would like me to direct my attention with a view towards saving time, or do you wish me to - do you wish to hear me on all points?

14th March
1966
(contd)

20 Chairman: Well, Mr. Grant, as far as I am concerned, my point - my position is that I have not had an opportunity of looking into this particular case, I didn't have the advantage of sitting on the last appeal when possibly these cases were discussed in detail, therefore I am left in the position of not having read these cases, and so if you would care to discuss these cases for the benefit of the Board ...

Mr. Grant: Yes.

Chairman: ... making any point as you go on, that would assist us.

30 Mr. Grant: Yes. I would start by saying that the Board having found on the 12th June, 1963 against Doctor's Cave Bathing Club, the real point at issue now, is whether the amendments have made any material difference from the point of view of income tax liability. And my first submission is that on the face of the Rules the amendment or amendments make no difference. The amendments haven't got over

Income Tax
Appeal Board

NO. 3

DECISION OF BOARD

No. 3
Decision
of Board

Meeting of the Income Tax Appeal Board
held on the 14th March 1966.

(Board confers)

14th March
1966

Gentlemen, we have listened to the arguments on both sides and we are unanimously of the opinion that this appeal should be allowed. We see a distinction between this case and the cases quoted and have reached a conclusion that there is no trading based on the hotel, and in our opinion as the Rules are now framed, there is a mutuality of interest which entitles us to reach a conclusion that income tax is not chargeable. On the question of the artificiality, we are of the opinion that this is not for Crown's action (sic) which could come within Sect 10(1). The appeal is accordingly allowed.

10

In the
Supreme Court
of Jamaica

NO. 4

NOTICE OF APPEAL

20

No. 4

INCOME TAX APPEAL

Suit No.8 of 1966

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE HIGH COURT OF JUSTICE

Notice of
Appeal
5th April
1966

B E T W E E N :

THE COMMISSIONER OF INCOME TAX Appellant

- and -

WALTER FLETCHER on his own
behalf and on behalf of the
TRUSTEES AND COMMITTEE OF
DOCTOR'S CAVE BATHING CLUB Respondent

30

NOTICE OF APPEAL

This is an Appeal against a decision of the

Income Tax Appeal Board made on the 14th of March, 1966, allowing the appeal of the Respondent against a decision of the Appellant dated 21st July, 1965, fixing the Respondent's chargeable income at £5042 for the Year of Assessment 1964.

In the
Supreme Court
of Jamaica

No. 4

FACTS

Notice of
Appeal

10 The Respondent is the chairman of the Board of Trustees and Committee of Doctor's Cave Bathing Club which is run as a Members Club in the Parish of St. James.

5th April
1966
(contd)

20 The Commissioner assessed the Respondent on the basis that the said sum of £5042 constituted profits of a trade or business carried on by the said Doctor's Cave Bathing Club for the Year of Assessment 1964. The Respondent contended that the said figure was wrong as it included annual subscriptions of "Hotel Members" and the said annual subscriptions were non-taxable under the mutuality principle. The said annual subscriptions were made up of the sum £1.10.0 (as paid by ordinary members) and a further sum based on the amount of the "audited house count"; this latter sum was paid in respect of and varied with the number of Tourist guests in residence at the hotels owned or operated by the "Hotel Members".

30 The sole issue before the Income Tax Appeal Board was, therefore, whether the mutuality principle extended to the said annual subscriptions of the "Hotel Members".

40 Mr. G. Downer, auditor of the said Doctor's Cave Bathing Club gave evidence to the effect that he was accountant for three of the "Hotel Members" and to the best of his knowledge, the "Hotel Members" did not charge the amounts paid to the said Doctor's Cave Bathing Club as annual subscriptions on their Tourist guests. In cross-examination, he admitted that the details of the accounts were prepared by one of his clerks, though he would have seen the accounts when they were finally prepared.

The Income Tax Appeal Board, in allowing the appeal, distinguished the present appeal from an earlier appeal made by the Respondent

In the
Supreme Court
of Jamaica

—
No. 4

Notice of
Appeal

5th April
1966
(contd.)

on the 12th June, 1963 on the basis that the Rules and Byelaws governing the said Doctor's Cave Bathing Club for the Year of Assessment 1965 were materially different from the relevant Rules and Byelaws applicable at the earlier appeal, having regard to amendments made to the said Rules and Byelaws subsequent to the said earlier appeal.

The Appellant, the Commissioner of Income Tax, now appeals.

10

GROUNDS OF APPEAL

TAKE NOTICE that the following are, inter alia, the Grounds of Appeal on which the Appellant will rely at the hearing of the Appeal:-

- (1) That the amendments of the Rules and Byelaws governing the said Doctor's Cave Bathing Club have made no material change in the Rules and Byelaws which were applicable at the date of the earlier appeal of the Respondent and the Income Tax Appeal Board should, therefore, have considered itself bound by its previous decision. 20
- (2) That, further and in the alternative, it was established in Municipal Mutual Insurance Co. v. Hills 10 (1932) 16.T.C.430 that where a mutual association carries on a mutual business with its subscribers and another business with some of its subscribers and also non-subscribers the whole of the profits of the second business are assessable. 30

So far as the said annual subscriptions were made up of the 'audited house count', they were taxable within the principle of Municipal Mutual Insurance Co. v. Hills.

- (3) That, further and in the alternative, the transaction, in particular the said amendment to the Rules and Byelaws, by which a special category of membership known as "Hotel Members" was created was an 'artificial' transaction which reduces or would reduce the amount of tax payable by 40

the Respondent, within the intendment of s.10(1) of the Income Tax Law 59 of 1954; and

In the
Supreme Court
of Jamaica

- (4) That the decision of the Income Tax Appeal Board was wrong in law, as the Commissioner of Income Tax, acting pursuant to s.10(1) of the Income Tax Law 1954, was entitled to disregard the form and to tax the Respondent in accordance with the substance of the said transaction.

No. 4

Notice of
Appeal

5th April
1966
(contd)

10

RELIEF SOUGHT

- (1) That the decision of the Appeal Board made on the 14th March 1966 and referred to the above be set aside.
- (2) That the Appellant's decision fixing the Respondent's chargeable income at £5042 be restored.
- (3) That the Respondent do pay the Appellant the costs of and incident to hearing of the appeal to this Honourable Court.
- (4) Such further or other relief as this Honourable Court may deem just.

20

DATED this 5th day of April 1966.

Sgd: R.M. Millingen

for Crown Solicitor

To The Clerk of the Income Tax Appeal Board,
40 Duke Street, _____
Kingston.

30

AND

To Messrs. Nation, Lord & DeLisser,
Solicitors, P.O. Box 334,
Montego Bay.

FILED by THE CROWN SOLICITOR of Public Buildings
East, Kingston,
Solicitor for the abovenamed Appellant.

In the
Supreme Court
of Jamaica

NO. 5

STATEMENT OF FACTS AND
DETERMINATION BY THE
INCOME TAX APPEAL BOARD

No. 5

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

Statement of
Facts and
Determination
by Income Tax
Appeal Board

IN THE HIGH COURT OF JUSTICE

Suit No. M8 of 1966

B E T W E E N :

20th April
1966

THE COMMISSIONER OF INCOME TAX Appellant

- and -

10

WALTER FLETCHER on his own
behalf and on behalf of the
TRUSTEES AND COMMITTEE OF DOCTOR'S
CAVE BATHING CLUB Respondent

On the 27th day of July, 1965, the Respondent gave notice of appeal to the Income Tax Appeal Board against the decision of the Appellant dated the 21st day of July, 1965, in connection with assessment No.10820/A7/580.

2. The matter came on for hearing before the Appeal Board on the 14th day of March, 1966, the Board being comprised of Messrs. Samuel Hart (Deputy Chairman), E.A. Forrest, J. McIntosh and C.I. Escala. The Respondent was represented by Mr. B.C. O'B. Nation and the Appellant by Mr. E.A. Grant of Counsel.

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3. Upon the conclusion of the arguments the Appeal Board gave its decision. The decision was unanimous.

4. There was no contest as to the facts except as in so far indicated by Mr. Grant's cross examination of Mr. George Downer, Chartered Accountant, who gave evidence on behalf of the Respondent, explaining the meaning of "audited house count" and stating, based on his knowledge of the operations of the hotel members, that hotel members did not charge their

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individual guests for bathing facilities at Doctor's Cave. Mr. Downer was the only witness who gave evidence on oath.

In the
Supreme Court
of Jamaica

—
No. 5

Statement of
Facts and
Determination
by Income Tax
Appeal Board

20th April
1966
(contd)

5. A copy of a Trust Deed dated the 11th day of May, 1966, (Exhibit D.C.1) and a copy of the Rules and By-laws of Doctor's Cave Bathing Club, revised and reprinted October 20, 1961, attached to which was a copy of resolutions passed in Special General Meeting 14th October, 1963, amending the Rules (the above together identified as Exhibit D.C.2) were by consent admitted in evidence.

The facts as admitted are that the Doctor's Cave Bathing Club is a members' Club consisting of ordinary, honorary, hotel and temporary members but only ordinary and hotel members have voting rights, each ordinary and hotel member having one vote. Previous to the 14th October, 1963, an hotel member had no vote.

Annual membership fees for ordinary members are £1.0/- for each single person, and £3 for ordinary family membership. An entrance fee of Three Guineas is payable by every person on his election as an ordinary member and in the case of family membership, Three Guineas by the applicant plus One Guinea for each additional member of the family registered as user of the Club. Hotel members pay to the Club in addition to an annual subscription of £1.10/- an aggregate amount based on the "audited house count" of its guests or such other amount as may from time to time be agreed by the Committee of the Club and the resident guests of such an hotel are entitled to the use and amenities of the Club.

6. The issue before the Appeal Board was whether the Subscriptions paid by 'hotel members' computed on the basis of the "house count" was subject to Income Tax.

7. On a previous appeal to this Board against the decision of the Commissioner of Income Tax, prior to the amendment of the Rules of Doctor's Cave Bathing Club made at the Special General Meeting on the 14th October, 1963, the Board

In the
Supreme Court
of Jamaica

No. 5

Statement of
Facts and
Determination
by Income Tax
Appeal Board

20th April
1966
(contd)

dismissed the appeal on the ground that there was no mutuality of interest among the members of the Club because the hotel members had no vote, and that tax was payable on the subscriptions of hotel members.

8. The Appellant maintains in the present appeal that no mutuality of interest had been created by the amendments to the Rules on the 14th October, 1963, and that the Board was therefore bound by its previous decision or in the alternative that as the annual subscriptions by the hotel were made up on the "audited house count" these subscriptions were taxable within the principle of Municipal Mutual Insurance Limited vs Hills (1932) 16 T.C.430, and that in the further alternative the amendment of the Rules in October, 1963, was an artificial transaction within the meaning of Section 10 (1) of the Income Tax Law - Law 59 of 1954 which the Commissioner was entitled to disregard.

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9. The Appeal Board came to the conclusion that there was mutuality of interest between ordinary and hotel members and that there was no trading by the Club in receiving subscriptions from the hotel members based on the "audited house count" and that as the Rules are now framed there is a mutuality of interest which entitles it to reach the conclusion that Income Tax is not chargeable on subscriptions of hotel members. The Appeal Board was further of the opinion that the amendment of the Rules in October, 1963, was not an artificial or fictitious transaction within the meaning of Section 10 (1) of the Income Tax Law - Law 59 of 1954. The Appeal Board accordingly allowed the appeal.

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Certified that the foregoing contain a statement of the facts and determination of the Income Tax Appeal Board herein.

Dated this 20th day of April, 1966.

Sgd: C. Barrett
Clerk to the Income Tax Appeal Board
TO: The Registrar of the Supreme Court,
Kingston,

40

and

the Commissioner of Income Tax

and

Messrs. Nation, Lord & DeLisser,
Solicitors,
P.O. Box 334,
Montego Bay.

FILED by the Clerk to the Income Tax Appeal
Board, 40 Duke St., Kingston.

In the
Supreme Court
of Jamaica

—
No. 5

Statement of
Facts and
Determination
by Income Tax
Appeal Board

20th April
1966
(contd)

NO. 6

No. 6

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JUDGMENT OF EDUN J.

Judgment of
Edun J.

Reasons for decision

19th December
1966

In this appeal, Mr. E.A. Grant of Counsel, appeared for the Appellant (hereinafter referred to as "the Commissioner"), and Mr. David Coore, Q.C. of Counsel, appeared for the Respondent (hereinafter referred to as "the Club"). At the commencement of the hearing, the parties agreed that the following documents, (apart from the Statement setting forth the facts and the determination of the Income Tax Appeal Board, dated 20th April, 1966 which is marked "A"):-

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- (i) copy of the transcript of notes of the hearing by the Income Tax Appeal Board held on 14th March, 1966, marked "B",
- (ii) copy of transcript of notes of a previous hearing of the Income Tax Appeal Board held on the 12th June, 1963, marked "C",

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- (iii) extracts from Income of the Profit and Loss Account of the Club from and including the year ending 31st December, 1951 and up to and including the year ending 31st December, 1965, marked "1 A", "1 B" and "1 C",
and

In the
Supreme Court
of Jamaica

—
No. 6

Judgment of
Edun J.
19th December
1966
(contd)

(iv) a copy of the Rules and By-laws of the Club, revised and reprinted October 20, 1961 and attached thereto, a copy of resolutions passed in Special General Meeting on 14th October, 1963, amending the Rules, marked "D",

be admitted as record of the facts and statements of this appeal.

2. Among the facts admitted are these, that

(i) the Respondent is a Members' Club consisting of ordinary honorary, hotel and temporary members; 10

(ii) the annual subscription fees for ordinary members are £1. 10/- for each single person, and £3.-- for ordinary family membership; and

(iii) an entrance fee of £3.3/- is payable by every person on his election as an ordinary member and in the case of family membership £3.3/- by the applicant plus £1.1/- for each additional member of the family registered as a user of the Club. 20

(iv) Prior to 14th October, 1963 -

By Rule 8c, hotel members were defined as hotels in Montego Bay which pay to the Club subscriptions based on the audited house count of its guests or such other subscriptions as may from time to time be agreed by the Committee of the Club, and their resident guests shall be entitled to the use and amenities of the Club. 30

By Rule 10a, ordinary and hotel members shall have proprietary rights in the Club;

By Rule 10b, temporary and honorary members shall not have any proprietary rights in the Club, and

By Rule 10c, only ordinary members shall have voting rights 40

By Rule 16, visitors to the Club can only be introduced by an ordinary member who has paid his subscription for the current year.

In the
Supreme Court
of Jamaica

By Rule 20, visitors to the Parish of St. James who are not members (with the exception of guests residing at hotels which are hotel members) may be admitted to the Club by daily tickets or by such method as the Committee may from time to time decide.

No. 6

Judgment of
Edun J.

19th December
1966
(contd)

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- (v) Mr. Nation, Solicitor, who appeared for the Club in the hearing before the Income Tax Appeal Board, states at Page 48 of "C" thus;

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"If there are some hotels which are not on the audited house count and those hotels have books of tickets which they sell, they buy the tickets, a book of 20 tickets for £3 and they buy the tickets from the Doctor's Cave (the Club), they sell to their guests and of course they pocket the money because the Doctor's Cave is only concerned with that hotel, but that hotel is not a hotel member, because it's not using the audited house count, and we pay Income Tax on that".

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3. On 12th June, 1963, the Income Tax Appeal Board heard an appeal by the Club against the Commissioner assessing the revenue or income from the hotel members based on the "audited house count" for tax purposes. The Board's decision was stated in "C", thus:-

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"Well, we have considered this matter and it seems to us that -- that income tax is payable unless there is mutuality of interests among the members of the Club and for mutuality, there must be effective control and the right to participate in the assets of ... of the Club. In the instant case the hotel members cannot ... it cannot be said that the hotel members have effective control of this club. They have no right to vote and therefore one ingredient is missing, they are not members within the meaning of this case of Municipal

In the
Supreme Court
of Jamaica

—
No. 6

Judgment of
Edun J.

19th December
1966
(contd)

Insurance Co. v. Hill. That being so, the
appeal will be dismissed."

4. Thereafter, the Club at a Special General Meeting on 14th October, 1963 amended its Rules, some of which are as follows:-

(i) Rule 7 now reads "Membership shall consist of ordinary, honorary and temporary members and election to membership shall be in the hands of the Committee, save that a hotel member shall be deemed to be elected a member of the Club when it is agreed that the amount of the audited house count will be paid in respect of the hotel owned or operated by him or his corporation". 10

(ii) By substituting for Rule 8(c), the following:-

"8(c). Hotel members shall be the owners or operators of hotels in Montego Bay which pay to the Club in addition to an annual subscription of £1.10/- (as in the case of an ordinary member) an aggregate amount based on the audited house count of its guests or such other amount as may from time to time be agreed by the Committee of the Club and the resident guests of such hotels shall be entitled to the use and amenities of the Club. 20

If such owner or operator is a Corporation it may authorise such persons as it thinks fit to act as its representative at any meeting of the Club and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the Club". 30

(iii) 8(d). A Hotel member shall not be required to pay an entrance fee

(iv) 10(c). Only ordinary and hotel members shall have voting rights. Each hotel member shall be entitled to one vote only. 40

5. On 14th March, 1966, the Income Tax Appeal Board heard an appeal by the Club against a

10 decision of the Commissioner fixing the Club's chargeable income at £5,042 for the Year of Assessment 1964. The Commissioner contended that the said sum constituted profits of a trade or business carried on by the Club for that year. But the Club contended that the said figure was wrong as it included annual subscriptions of Hotel members based upon the audited house count and the said annual subscriptions were non-taxable under the mutuality principle.

In the
Supreme Court
of Jamaica

—
No. 6

Judgment of
Edun J.

19th December
1966
(contd)

6. The Chairman of the Board allowed the appeal and gave the Board's decision in "B" in the following words:-

20 "Gentlemen, we have listened to the arguments on both sides and we are unanimously of the opinion that this appeal should be allowed. We see a distinction between this case and the cases quoted and have reached a conclusion that there is no trading by the Club in receiving subscriptions from the Hotel Members based on the hotel (audited house count), and in our opinion as the rules are now framed there is a mutuality of interest which entitles us to reach a conclusion that Income Tax is not chargeable. On the question of the artificiality we are of the opinion that this is not for the Crown's action (sic.) which could come within Sect 10(1) (Income Tax Law No.59 of 1954). The appeal is accordingly allowed".

30 7. It is against that decision that the Commissioner now appeals. In the main, the grounds of appeal, contentions and my conclusions appear under the following heads:-

A. Ground 1 of Appeal: System of Accounting, and Onus of Proof.

40 B. Ground 2 of Appeal: Mutuality Principle.

C. Ground 3 of Appeal: Artificial or fictitious transactions.

8. Ground 1 of Appeal: System of Accounting and Onus of Proof.

In the
Supreme Court
of Jamaica

No. 6

Judgment of
Edun J.

19th December
1966
(contd)

It is contended on behalf of the Commissioner that by Section 71 of the Income Tax Law, No.59 of 1954, there is an obligation on the taxpayer to keep proper books of account sufficient to record all transactions necessary to ascertain the gains and profits made or the loss incurred in each trade, profession or business and that he would be deemed to have kept such books or accounts as are necessary to exhibit or explain his transaction and financial position in his trade or business. Mr. Coore, on behalf of the Club contended that:-

- (i) hotel membership subscriptions have been accounted for separately and one of the reasons is that the accountant or auditors are obliged to show the difference between members and hotel membership subscriptions, should the hotel members' subscription based on the audited house count be assessable for taxation. It may be true that the differentiation was first shown in 1956 and the Commissioner assessed same for taxation in 1960, yet that method of accounting was convenient in giving effect to the Club's own notions of account keeping. That method continued after the appeal because the matter was still sub-judice and until a final decision is arrived at, there will be a convenient method of ascertaining the amount of hotel membership subscriptions.
- (ii) in law, accounts are not decisive except where a decision is meant nor would the keeping of accounts in a certain way constitute an estoppel unless it is a question whether a particular expenditure has come out of capital or revenue.

9. In my view, the authorities referred to, that is, Central London Rly. Co. v. Commissioner of Inland Revenue (1936-37) 20 Tax Cases 102, Chancery Lane Safe Deposit and Offices Co.Ltd. v. Inland Revenue Commissioners (1966) 2 W.L.R.251 and B.W. Nobles & Co.Ltd. v. Inland Revenue Commissioners (1966) 1 W.L.R.111, establish that as a general principle, the form of account is not to inure to the benefit of or to injure the taxpayer. Though these authorities concern the payments out of capital or revenue, yet there

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are certain dicta in these judgments I consider helpful. In the Central London case, Lord Harmworth M.R. at page 132, quoted what he himself said in Sterling Trust Case 12 T.C.868 at Page 882:

In the
Supreme Court
of Jamaica

No. 6

Judgment of
Edun J.

19th December
1966
(contd)

10 "I am very reluctant to think that on any occasion, it is possible for these questions of the liability of the subject to be affected or still less decided by the actual proceedings which have taken place in drawing up a balance sheet or a profit and loss account, because it appears to me, and it has often been laid down, that the Court has to look at the substance of the matter and that the Crown is not bound by a balance sheet which would be favourable to the taxpayer, nor is the taxpayer subject to be charged because he has drawn up a balance sheet or profit and loss account which imperfectly (shows the immunity which he would otherwise have been) entitled to claim from the tax which is assessed upon him".

30 In the Central London Rly. Co's case the House of Lords upheld the contention of the Commissioners who found that the only evidence before them was the manner in which the payments had been treated in the accounts which amply justified them in coming to the findings of facts that the money which was assessed for tax was paid out of capital, and there was no evidence given before them that such payments had in fact been made out of income. Per Slesser J, at Page 140:-

40 "I do not decide this appeal on the ground of the form of the accounts. I decide it on the evidence, and the facts found, indeed, the uncontradicted evidence, that, in fact, not merely as a matter of accounting but in reality, this interest was paid out of capital; it was said, to those who lent the money, to be bound to be paid out of capital, and it was never considered that it should be paid in any other way".

In the
Supreme Court
of Jamaica

—
No. 6

Judgment of
Edun J.

19th December
1966
(contd)

In the Chancery Lane Safe Deposit Case, the majority in the House of Lords, dismissed the appeal. The Company contended that the allocations to capital were book-keeping entries and irrelevant for tax purposes and that the sums were in fact paid out of taxed income. Lord Morris at Page 271, said -

"My Lords, the reason of that clear decision fully covers the present case. The appellant Company of their own free choice made a similar decision to that made by the Central London Railway Co. Doubtless "during construction" there were good reasons in each case for the decision. There was a deliberate choosing of attribution to capital rather than to revenue. It is not a matter of method of domestic book-keeping. The accounts merely evidenced the decision was taken, was acted upon and maintained. The Company's definite attribution precluded an entirely inconsistent attribution. The Company "had deliberately elected to charge the interest against capital"...."

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In the B.W. Nobles & Co.Ltd. Case, the Chancery Lane Case was followed and there Lord Morris at Page 115, said -

"My Lords, in my view the present case is governed by the decision in the Central London Rly.Co. v. Inland Revenue Commissioner. The facts in the present case show that there was clear decision to make the annual payments out of capital. That decision was maintained and acted on year after year".

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10. The three cases I have referred to, turn on the question as to whether or not certain payments were made out of capital or out of taxed income, and in such cases the evidence afforded by the accounts would in the absence of evidence to the contrary, be conclusive on the point. However, it has been laid down in many other cases that neither the rights of the Crown nor those of the taxpayer can be made to depend upon the way in which the taxpayer's account have been prepared;

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nor do the rights of either side depend upon the character of the book-keeping relating to the business; Edinburgh Life Ass.Co. v. Lord Advocate (1910)A.C.143, Glenboig Union Fireclay Co.Ltd. v. Inland Revenue Commissioners 12 T.C.427. Lord Buckmaster in his judgment in the Glenboig Union Fireclay Co. Ltd. Case at Pages 462-464 said that the sum of £15,316 had been included in the Company's balance sheet as profit for the year 1913, and upon it, the Company had paid Income Tax without demur. In truth that sum of money was paid to the Company by the Respondent to prevent it obtaining full benefit of the capital value of that part of the mines which they were prevented from working by the Respondent. At Page 464 he said - "I am unable to regard this sum of money as anything but capital money, and I think it was therefore erroneously entered in the balance sheet ending 31st August, 1913, as a profit on the part of the Fireclay Company", therefore, in my view accounts are merely a statistical method of recording the facts but whether or not there has been a trading the true character of the payments must be looked into.

11. On the facts of this appeal. Mr. Grant for the Commissioner contended, that:-

(i) Extract, Ex. 1A, shows that from year ending 31st December, 1951, up to and including year ending 31st December, 1955, membership subscriptions have been recorded as one total amount for each year, but from year ending 31st December, 1956, up to and including year ending 1965, hotel membership subscriptions have been recorded separately from other membership subscriptions, in each of such years.

(ii) Extract, 1B, shows that hotel members appear as trading debtors, and

(iii) In Extract, 1C, the auditors have observed that members subscriptions have been credited to Income and Expenditure account on a cash basis and no amount has been shown for subscriptions paid in arrear or in advance.

In the
Supreme Court
of Jamaica

No. 6

Judgment of
Edun J.

19th December
1966
(contd)

In the
Supreme Court
of Jamaica

—
No. 6

Judgment of
Edun J.

19th December
1966
(contd)

In effect, Mr. Grant has contended that from those facts, payments received by the Club based upon the audited house count are not subscriptions but are in fact income in the nature of trading receipts.

12. There is no doubt by Section 71 of the Income Tax Law No.59/54, there is an obligation on the Club to keep proper books of account sufficient to record all transactions necessary in order to ascertain the gains and profits made or the loss incurred in each such trade, profession or business. If the Club, however, keeps an account showing income and expenditure of membership subscription, it does not thereby show a trading or incur any liability for taxation. Lord Guest in J.P. Harrison (Watford) Ltd. v. Griffiths (40 Tax Cases) at Page 304 said "In my opinion one has to look at the transaction by itself irrespective of the object, irrespective of the fiscal consequences, and ask the question in Lord President Clyde's words in Livington's case (11 Tax Cases Page 542) "are the operations involved ... of the same kind, and carried on in the same way, as those which are characteristic of ordinary trading in the line of business in which the venture was made".

In my view, the facts in this appeal do not show that there is a clear decision or consistent action on the part of the Club:-

- (a) to treat the receipt of Hotel membership subscriptions based on the audited house count as trading receipts, or
- (b) to regard the form of accounting as anything more than a mere convenient or domestic way of book-keeping in order to determine the difference of the subscriptions received from ordinary members and hotel members, or
- (c) that such receipts are characteristic of any trading in the line of business.

I have no doubt that the object of the club in extending its category of membership subscriptions would be to increase its income over expenses but

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the evidence as it is and uncontradicted, shows no transaction, no dealing, no buying or selling. On the other hand, the evidence discloses a receipt of monies by the Club as subscriptions simpliciter. Lord Denning in the Harrison v. Griffiths Case, at Page 299, said, "Short of a definition, the only thing to do is to look at the usual characteristics of a "trade" and see how this transaction measures up to them." For example, too, in George v. Y.M.C.A. 4 T.C. 613 where a restaurant was provided which catered not only for the members but also for the public, its profits constituted a trading and were held not immune from taxation. Guests of the hotel members entitled to use the facilities and amenities of the Club by virtue of the rules of the Club are not in fact members of the public or non-members, but by the rules have been constituted members of the Club.

13. Mr. Grant, further contended that the onus is on the club to show that the assessment is excessive or based upon a wrong principle and unless it can do so, the Commissioner's assessment stands; that the club has sought through the evidence of George Downer to show that there was no trading by the Club with the hotel members, but that his evidence is valueless and should be ignored. On the other hand, Mr. Coore contended that it was agreed that Mr. Downer's evidence as stated in "B" be part of the Record of Appeal. Mr. Downer attended the hearing of this appeal and either he or the auditors could have been asked why they had prepared the accounts of the Club in the way they have done. Mr. Downer gave evidence (see pages 24 and 25 of "B") stating that Hotel Casa Blanca Ltd., and Beach View Hotel Ltd., collected no charges from their guests to reimburse themselves for the whole or any part of the amounts based upon the audited house count which they paid to the Club; in the case of Hotel Casa Montego, Mr. Downer said, "I do not believe it is (no charge is made) and I see nothing in the accounts to show that it is (a charge is made). But this is a point that can easily be verified at a later stage ... if there was a separate charge he

In the
Supreme Court
of Jamaica

—
No. 6

Judgment of
Edun J.

19th December
1966
(contd)

In the
Supreme Court
of Jamaica

No. 6

Judgment of
Edun J.

19th December
1966
(contd)

would have expected to see it reflected in the accounts which he had access to but not himself prepared." For want of any evidence to the contrary, it would appear from Mr. Downner's evidence that the Hotel members do not "trade or profit" from the subscriptions paid by such hotel members for the facilities and amenities afforded by the Club to the guests of the hotel members. If the hotel members have been shown in any way to be receiving any such "benefits" of course, a hotel member being a member of the Club and so entitled to participate in any surplus asset of the Club, the Club would, in my view, have then been trading under the guise of receiving subscriptions from the hotel members.

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That being so, my conclusion is that this ground of appeal fails.

Ground 2: Mutuality Principle:

13. Here, it is contended on behalf of the Commissioner that:-

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- (i) the mutuality principle is not applicable to the facts of the appeal before me, in that -
 - (a) there is no complete identity of the contributors with the participators of the surplus or assets of the Club, and
 - (b) the subscriptions of the hotel members based on the audited house count are business transactions or trading receipts of the Club and as such are taxable.

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It is contended on behalf of the Club, that on the facts of the appeal, the mutuality is applicable.

14. It has been settled in a series of cases in the House of Lords, beginning with the New York Life Ins. Co. v. Styles (1889) 14 A.C. (2 T.C.460) and ending with Municipal Mutual Ins. Ltd. (1932) 16 T.C. 430) that surpluses arising out of transactions of purely mutual insurance between an association and its members, or between an association as insurers and the policy holders as the insured, were not assessable to Income Tax.

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The ground of these decisions is well summarised by Lord MacMillan in Municipal Insurance Case at Page 448 as follows:-

In the
Supreme Court
of Jamaica

—
No. 6

Judgment of
Edun J.

19th December
1966
(contd)

10 "The cardinal requirement is that all the contributors to the common fund must be entitled to participate in the surplus and that all the participators in the surplus must be contributors to the common fund; in other words, there must be complete identity between the contributors and the participators. If this requirement is satisfied the particular form which the Association takes is immaterial".

and earlier on the same page he stated:

"As the common fund is composed of sums provided by the contributors out of their moneys, any surplus arising after satisfying claims remain their money".

20 15. The important facts of this appeal show that:-

(i) hotel members pay an annual subscription of £1.10/- as in the case of ordinary members, and in addition an aggregate amount based on the audited house count of its guests and the resident guests of such hotel shall be entitled to the use and amenities of the Club; Rule 8(c) of "D".

30 (ii) it is the practice with hotels which are not members, for them to purchase tickets from the Club and re-sell them to their guests at 3/- for each ticket for those who wished to enjoy the facilities and amenities of the Club. Whereas, with hotels which are members of the Club, the rate of subscription for each guest is 2/- and the number of guests is based on the audited house count. Each such
40 guest is entitled to enjoy the facilities and amenities of the Club without paying the hotel member or the Club anything, though the maximum number of such guests may or may not visit the Club.

In the
Supreme Court
of Jamaica

No. 6

Judgment of
Edun J.

19th December
1966
(contd)

16. As I understand the main contention on behalf of the Commissioner, it is that there is no complete identity of the guests of the hotel members with the participators of the Club. In other words, those guests contribute nothing nor do they participate in the surplus or assets of the Club yet the Club derives an appreciable income from them. In arriving at my decision as to whether or not the mutuality principle is applicable to the facts of this appeal I find some of the decided cases on the subject very helpful. In the Carlisle and Silloth Golf Club v. Smith (1911-1915) 6 Tax Cases Page 48, a golf club unincorporated and admittedly a bona fide members club was bound under a clause in its lease to admit non-members to play on its course on payment of green fees to be fixed by the Lessors. Those green fees were paid by the non-members themselves and entered into the general accounts of the Club, which showed an annual excess of receipts over expenditure; the green fees were the receipts from visitors appearing in the Club's income account under the head of "visitors tickets". Those visitors were not members, they had no vote for the committee, they were not admitted to the Club's competitions and were not elected in the same way as ordinary members. It was held that the club for income tax purposes carried on a business which is capable of being isolated and defined and in respect of which it received remuneration that was assessable. Hamilton J., in his judgment at Page 54, said:

"It is no doubt part of the functions and activities of the Club to entertain strangers but not to entertain strangers who pay their own shot, but to entertain strangers who are guests of the Club or introduced by and are guests of the members of the Club. It therefore is quite a special feature in the course pursued by this club that it should have a class of visitors entitled as of right to the enjoyment of most of its advantages upon payment by themselves to the Club although they are not members and although they may come from classes of the public from whom it is not the object of the Club to recruit its membership" and at Page 55 "I think, therefore, at the

In the
Supreme Court
of Jamaica

—
No. 6

Judgment of
Edun J.

19th December
1966
(contd)

10 outset the club has, for considerations
sufficient in its own view, annexed to
its ordinary enterprise as a golf club
the rendering of services systematically
to strangers for the purpose of obtaining,
among other advantages to itself, the
revenue that those strangers provide. It is
not a case where, thanks to the
relations of membership or family bonds
people club together and reduce the
common expenditure on some common objects
by contributions which they fix roughly
with reference to the cost. It seems to
me that it is not a case in which the
members as an aggregate (for they are not
incorporated) dispose of their surplus
because they have no necessity to consume
it, it is a case it seems to me at the
20 outset in which this aggregate of gentle-
men, who may for practical purpose be
treated as one person annexed to their
club for the purposes of recreation an
enterprise which is separate from it and
which results in pecuniary receipts to
themselves".

30 I am considerably impressed with the
reasons for judgment of Hamilton J., and those
reasons have been considered as correct in the
judgment of the Court of Appeal reported at
6 T.C. p.198-201.

40 17. In this appeal, guests of hotel members
cannot enjoy the amenities of the Club as of
right. According to Rules 7 and 8(c) of the
Club the rights of those guests are not only
dependent upon the payment of an annual
subscription of £1.10/- by the hotel member,
but also upon the payment or agreement for the
payment of an additional, an aggregate amount
based on the audited house count of those
guests. There is also according to the facts
as deposed to by George Downer, no "trading or
profit" made by the hotel members or its guests
by charging them any "extras" for bathing
facilities at the Club. In other words, unless
the contrary is proved, the facts show that the
contributions or additional payments based upon
the audited house count are borne exclusively
by the hotel members and of course, in a
winding-up the hotel members are entitled to

In the
Supreme Court
of Jamaica

share equally with other members in the surplus or assets of the Club. However, it may be argued that -

—
No. 6

Judgment of
Edun J.

19th December
1966
(contd)

(i) a hotel member has one vote, although there are many guest-users of the Club, or

(ii) in the case of a winding-up a hotel member is entitled only to one share in the surplus, though the business is introduced, is enormous.

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However, it is not unknown that in the affairs of a club, there are some members more popular than others, or some members who make more frequent uses of the Club than others or some members who introduce more guests to the Club than other members. Can it be a trading if those popular members are called upon to pay a greater amount in subscriptions according to the number of their guests, if by the greater number of users, the shares of other members are greatly increased in costs because of a greater wear and tear of the physical assets of the Club, or because of the requirement of extended facilities or of higher costs of maintenance of the Club's premises? I am inclined to the view that unless there is something more to be considered, this is a case where members club together to reduce the expenditure on the common objects of providing physical enjoyment of bathing, by subscriptions or contributions which the Club fixes roughly with reference to the costs. It is not without significance that Rule 8(c) of the Club provides for the payment of an aggregate amount based on the audited house count or such amount as may from time to time be agreed by the Committee of the Club. It is not inconceivable that in the future the Club may well increase or reduce this aggregate amount having regard to the facilities and amenities provided and to its income and expenditure.

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18. In the Municipal Ins. Ltd. v. Hills (1932) 16 T.C.430, the Company did fire insurance business with its members only, but also transacted other insurance business with members and non-members. It was decided that the surplus from the other insurance business done with

policy-holders (or members) did not arise from mutual insurance. In that case, the facts were that non-members transacted other insurance business by paying among other things premiums to the Company in which the fire policy holders were members. In this appeal, the guests of hotel members do not contribute anything to the hotel members or to the club.

In the
Supreme Court
of Jamaica

—
No. 6

Judgment of
Edun J.

10 In New York Life Insurance Co. v. Styles (1889)
14 A.C. 381 27 T.C. 460 H.L. the members of a
mutual life insurance company were confined to
participating policies, and each year the
surplus of receipts over expenses and estimated
liabilities was divided among them, either in
the form of a reduction of future premiums or
of a reversionary addition to policies. That
surplus was obtained partly from the profits
arising from non-participating policies and
20 other business. The Company in consideration of
single payments granted annuities on lives.
Neither the payment of the said consideration
nor the receipt of the said annuities
constituted a membership of the Company.
It was held,

19th December
1966
(contd)

(1) that the portion of the surplus which
arose from excess contributions of the
holders of participating policies was not
an assessable profit and

30 (2) that the Company was however, liable
to be assessed in respect of profits
made on annuities granted and on
premiums paid under non-participating
policies.

Here again, the facts of this appeal not only
show that the guests of hotel members do not
contribute anything, but in my view, as I
have already stated, further show that the
40 additional sums of money paid by a hotel member
based on the audited house count constituted
the hotel member, a member of the club: See
Rules 7 and 8(c) of the Club.

19. In National Association of Local Govt.
Members v. Watkins (1934) 18 T.C.499, the
association owned a holiday camp, and all the

In the
Supreme Court
of Jamaica

No.6

Judgment of
Edun J.

19th December
1966
(contd)

property of the association belonged to the members as a whole. The holiday camp was used by a limited number of members but the profits derived from the camp enured for the benefit of all members and not to the users of the camp alone. It was held that the liability to income tax was confined to profits made from non-members. Here again, the non-members were paying for the enjoyment and facilities of the holiday camp. Mr. Grant, for the Commissioner, drew my attention to the query where the Solicitor General at the end of the report, Page 507, asked Finlay J. thus:-

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"It may not be the right place to debate it, but I should have thought a question might arise if a member pays for a friend" Finlay J. replied - "I think that must be debated before the Commissioners".

20. If this appeal raises the question that if a hotel member pays for a guest, whether or not such income is assessable for income tax, I prefer to resolve the problem in this way:-

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(i) there is no doubt that if the guest pays, there is a trading or profit receipt by the Club; that is the practice with the Club where guests of hotels which are not members visit the Club;

(ii) if a hotel member pays for a guest, simpliciter, then in my view, two questions will have to be answered, before a conclusion can be arrived at, as to whether or not such income is assessable for income tax. The two questions are:-

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(a) were the subscribers and the participants the same:-
see Finlay J. at Page 506 in National Association of L.G.O. v. Watkins, and

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(b) do the payments by the hotel members constitute membership or not: See Hamilton, J., in Smith's case at Page 54.

21. In this appeal, the first question in (ii) (a) can be answered in this way. The guests of the hotel members do not subscribe anything; therefore, the problem as to whether guests are subscribers and the hotel members participants, does not arise. As regards the second question (ii)(b) that is, where a hotel member pays for a guest, whether or not such payment constitutes membership of the hotel member, Rules 7 and 8(c) of the Club provide the best answer. In my view, therefore, the payment by the hotel of an additional amount based on the audited house count,

In the
Supreme Court
of Jamaica

—
No. 6

Judgment of
Edun J.

19th December
1966
(contd)

- (1) constitutes the hotel member a member of the club,
- (2) entitles its guests to the use and amenities of the club, and
- (3) the rights of those guests are dependent upon the membership of the hotel members.

22. That being so, the additional payments are, membership subscriptions and as such the Club cannot be said to be trading with non-members. In this respect, I am fortified and confirmed in my conclusions having regard also to the reasons for judgment of Kennedy L.J. in Carlisle and Silloth Golf Club v. Smith (1911-1915) 6 T.C. at pp 200-201, thus - the Club retains no right of discrimination, the use of its club house and ground is open to anyone who presents himself, and is willing to pay the prescribed fee. It is not, therefore, the common case of golf club which admits to the use of its accommodation players who are introduced by a member or are approved by the Club Committee, and who, upon such introduction or approval, and upon payment according to the rules of the club, are admitted to the privileges of members according to the rules of the club, for some specified period. It is not necessary to decide the point, but in such a case, I am inclined to think, the persons to whom such privileges are accorded might fairly be regarded as becoming for the time, members of the club, subscribing to its funds. But

In the
Supreme Court
of Jamaica

—
No. 6

Judgment of
Edun J.

19th December
1966
(contd)

upon the facts appearing in the case, it appears to me that this club is really carrying on business of supplying to the public for reward a recreation ground fitted for the enjoyment of the game of golf, and that the receipts derived from this business are in the nature of profits and gains in respect of which it is liable to assessment for income tax".

23. Mr. Grant further contended, that giving hotel members the right to vote is immaterial, so the mutuality principle is inapplicable and, therefore, the decision of the Income Tax Appeal Board in March 1963 was based upon a wrong principle. Mr. Coore, on the other hand contended that because the Club is a members' club, any surplus belongs to the contributors and the general principle is that members of the Club for the time being are entitled to the funds of the Club in equal shares: Halsbury Laws of England, 3rd Ed. Volume 5, paragraphs 589 and 590. In such circumstances, he argued that the right to vote makes no difference to the members who contributed from being entitled to the funds of the club in equal shares. The identity of the contributor and the participator is complete, irrespective of the right to vote.

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I am of the view, that before a hotel member was given the right to vote the Rules of the Club stipulated the amount of the subscription or contribution and defined its membership. The right to vote has conceded an additional privilege to a hotel member, that is, of partaking in the administrative affairs of the Club, for example, he can request a meeting or move an amendment to the Rules. However, it may well be argued that by Rule 2 a hotel member cannot become a member of the Committee of Management nor a Trustee. The Commissioner, however, has never contended that the amount of £1.10/- subscribed by the hotel member is assessable for taxation. In other words, the Commissioner is saying that the hotel member is a bona fide member but that the additional amount based on the audited house count of its guests constitutes a trading by that member. I have already concluded that

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such a payment is not a trading, and in my view where the hotel member is a bona fide member accepted and regarded as such by the Commissioner the right to vote is immaterial.

In the
Supreme Court
of Jamaica

For the reasons given, I am of the view that on the facts of the appeal before me, the Mutuality principle is applicable. This ground of appeal also fails.

No. 6

Judgment of
Edun J.

Ground 3: Artificial or fictitious transaction

19th December
1966
(contd)

- 10 24. On behalf of the Commissioner it is contended that -
- (1) the amendment of the rules of the Club is a transaction which reduces or would reduce the amount of tax payable by the Club and it is artificial or fictitious. If that is so, then the Commissioner is entitled to disregard the transaction and assess the Club accordingly, Section 10(1) of the Income Tax Law, No.59 of 1954.
- 20 (2) that the Commissioner had certain facts before him, including the statements contained in Exs. 1A, and 1C, and he considered the Club's amendment of Rules as an artificial or fictitious transaction; the onus is on the Club to show that the Commissioner acted on a wrong principle or in any other way show that the Commissioner's assessment was excessive. If not, the Commissioner's assessment stands.
- 30 (3) that since the decision in the case of Duke of Westminster v. Commissioners of Inland Revenue 19 T.C.p.490; the substance of the transaction rather than form must be looked at, in determining whether or not income derived from any transaction is assessable for payment of taxes. At p. 520 of that case, Lord Tomlin puts the matter in the following way:
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"Every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Acts is less than it

In the
Supreme Court
of Jamaica

—
No. 6

Judgment of
Edun J.

19th December
1966
(contd.)

otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue may be of his ingenuity, he cannot be compelled to pay an increased tax. This so-called doctrine of 'the substance' seems to me to be nothing more than an attempt to make a man pay notwithstanding he has ordered his affairs that the amount of tax sought from him is not legally claimable".

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Mr. Grant, in his submissions referred to S.28 of the Finance Act 1960, which provided that where in consequence of a transaction, a person is in a position to obtain or has obtained, a tax advantage then unless he shows that the transaction was carried out for bona fide commercial reason or in the ordinary course of making or managing investments and that none of them had as their main object, to enable tax advantages to be obtained, such tax advantages may be nullified by an assessment for taxation. He said that Section 10 of the Income Tax Law of Jamaica No.59 of 1954, was enacted to provide the same construction, power, and authority to the Commissioner; in support he cited Inland Rev. Commissioner v. Cleary and Perrin (1966) 2 W.L.R. p.790.

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Mr. Coore on the other hand, contended that -

- (1) Section 10 of the Income Tax Law is differently worded from S. 28 of the Finance Act 1960 and in the local law attention must be given the plain and natural meaning of the words used in that section;
- (2) that the word "artificial or fictitious" must be construed in accordance with the ejusdem generis rule and so no transaction can be said to be artificial, unless it is unreal, fictitious or a sham. He cited the cases of Johnson v. Griffith (sic) 40 Tax Cases p. 231 and Harrison v. Griffith 40 Tax Cases 281, as examples of

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transactions which are artificial, fictitious or unreal, and

In the
Supreme Court
of Jamaica

- (3) Sec. 28 of the Finance Act applies to transactions in securities in consequence of which "a tax advantage" was obtained, and that the facts of this appeal disclose no transactions in securities.

—
No. 6

Judgment of
Edun J.

23. The facts of this appeal show that -

19th December
1966
(contd)

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- (a) the amendment of the Rules of the Club was duly passed at a Special General Meeting on 14th October, 1963, that is, Rules 7 and 8(c) whereby the hotel members were constituted members of the Club, by payment of £1.10.- and an additional amount based on the audited house count of its guests.

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- (b) the guests of the hotel members do not each pay an annual subscription of £1.1 /-. (sic.)
- (c) the guests are not each entitled to or share in the proceeds of the Club in the case of a winding-up, and
- (d) they are not each a member of the Club, having a vote or entitled to vote.

On the other hand, a hotel member -

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- (a) has one vote and its accumulated business does not entitle it to more than one vote;
- (b) cannot be a member of the Committee of the Club; Rule 2
- (c) can move an amendment of the Rules though no such amendment can be made except by a consent of two-thirds of the ordinary or hotel members present: Rule 18.

Be that as it may, the question, nevertheless, arises, is the amendment of the Rules a "transaction within the meaning of Section 10 (1) of the

In the
Supreme Court
of Jamaica

No. 6

Judgment of
Edun J.

19th December
1966
(contd)

Income Tax Law No.59/54. If not, what is the transaction complained of? If the amendment of the Rules is the transaction, is it artificial or fictitious? Sub-section (1) of Section 10 reads, thus:-

"Where the Commissioner is of opinion that any transaction which reduces or would reduce the amount of tax payable by any person is artificial or fictitious, or that the full effect has not in fact been given to any disposition, the Commissioner may disregard any such transaction or disposition and the persons concerned shall be assessable accordingly".

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Sub-section (7) of Section 10 provides: "For the purposes of this section the expression "disposition" includes any settlement, trust, covenant, agreement, arrangement or transfer of assets" other subsections (2), (3) and (4) of Section 10 provides for transfers of property to children and transfers of property in trust.

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25. The case of Littman v. Baron (Inspector of Taxes), both in the Court of Appeal (1951) 1 Chancery p.993 and in the House of Lords (1952) 2 A.E.R. p.548 does, in my view, give an insight as to the meaning of the word "transaction". In that case, the taxpayer a dealer in property, held a number of leaseholds, some of which he sub-let at rents which exceeded the head-rents and others which he sub-let at rents below the head-rents and the net annual values, whilst others he did not sub-let. He did not dispute the Crown's right to assess in respect of those excess rents, but he claimed to be entitled to a deduction in respect of losses he sustained in respect of 5 other properties.

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The Crown contended that

- (1) the holding by the taxpayer of the five properties, was not a transaction or transactions and
- (2) if they were transactions, they were not such a nature as would have been liable to be assessed under Case VI of

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Sch. D.... (section 27 Finance Act 1927).

In the
Supreme Court
of Jamaica

26. Cohen L.J. at p.1001 of (1951) 1 ch. report
said

"there is, therefore, no reason for not
looking back to the original acquisition as
part of the transaction. The transaction as
a whole covers a number of acts:

—
No. 6

Judgment of
Edun J.

19th December
1966
(contd)

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- (1) the acquisition of property
- (2) the payment of head-rent
- (3) the attempt to sub-let
- (4) in two cases, actual sub-letting
- (5) the receipt for the rent from the
sub-tenant.

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I have come to the conclusion ... that the
losses in question arose in the case of each
property from a transaction consisting, as it
is put in the case stated, in the acquisition
and management of the property concerned."
The House of Lords confirmed the decision of
the Court of Appeal. Viscount Simon at page
552 of the (1952) A.E. Report said "... In
my opinion, there was in each case a trans-
action in which the loss arose. The
transaction consisted in the taking of property
with a view to re-letting it and either
succeeding or failing to re-let it. It is just
as much a transaction as would be the
purchasing of an article by a trader, who seeks
to re-sell it at a profit, and who either does
sell it at such a profit or sells it at a loss
or does not succeed in selling it at all".

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27. Having regard to the provisions of
Section 10 as a whole and to the statutory
definition of "disposition", I am of the view
that "transaction" must be given a meaning in
the line with the statutory definition of
"disposition" and if I may venture a meaning,
the word "transaction" would include "any
dealing with property or arrangement or
transfer of assets which reduced or would
reduce the amount of tax payable by any person".
In this appeal, the amendment of the Rules does,

In the
Supreme Court
of Jamaica

—
No. 6

Judgment of
Edun J.

19th December
1966
(contd)

in my view, involve a course of action undertaken or carried out among the members of the Club itself; there is no second, third, or other parties involved in the course of action. It may well be argued that the resolution of a company or club may effect the rights of other parties but unless those rights can be acted upon by others (as for example, in Carlisle and Silloth Golf Club where non-members paid fees for use of the Club amenities), the payment of such fees may well be said not to constitute a trading or a transaction. In other words, as a result of the Club rules in Carlisle's case there is an income by trading or transacting business with non-members. In this appeal, can it be said that as a result of the Rules or amendment of the Rules, the guests of the hotel members who have not subscribed or contributed anything, have traded or transacted any business with members of the Club in passing Rules, or amending them, has had as its object the constituting of hotel members as members of the Club and the stipulating of the amount of the subscriptions or contributions of such members. I fail to see what facts constitute a transaction within the meaning of section 10(1) of the Income Tax Law No.59 of 1954. In this appeal, I am of the view, that the Commissioner has not shown that the Rules or the amendment to the Rules are a sham, unreal or fictitious, even if it can show that the amendment is a "transaction" within the meaning of Section 10 of the Income Tax Law No.59 of 1954.

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28. Even if such course of action of the Club was a transaction, I would conclude that the cases of Johnson v. Jewitt (40 Tax Cases 231) and Harrison v. Griffith (40 Tax Cases 281) are examples showing the meaning of an artificial transaction, that is, a dealing which is a sham, unreal, not genuine or fictitious. In this appeal the onus is shifted on the Commissioner to establish the Rules, or amendment of the Rules or whatever name the Club's course of action may be determined, that the so-called transaction was artificial, in the sense of a sham, unreal or fictitious. If the word "artificial" be given the meaning as contended for by the Commissioner, that is, an

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artifice, or a scheme of art designed for the purpose of avoiding taxation, then it would mean that a bona fide transaction which contains no element of a sham or impropriety but which may have as its object some fiscal advantage, can be disregarded by the Commissioner by virtue of his powers under S 10 (1) of the Income Tax Law No.59 of 1954. The case cited by Mr. Grant of Latilla v. Commissioner of Inland Revenue 25 T.C. p.100 is no authority for Mr. Grant's proposition and that case has been decided upon the meaning of S 18 of Finance Act 1936 and is in my view inapplicable to the facts and circumstances of this appeal. On the other hand, Lord Morris in Harrison v. Griffith 40 Tax Cases 281, said at p. 302

".... The possibility of tax recovery may be a result made possible by the trading activity, but I am unable to accept that if a transaction, fairly judged, has in reality and not fictitiously the features of an adventure in the nature of trade, it must be denied any such description if those taking part in it had their eyes fixed upon some fiscal advantage".

I am of the view that S 10 (1) of the Income Tax Law has given the Commissioner no such unlimited powers as contended for by Mr. Grant.

29. Before concluding this matter, I may refer to the case of Desmond Lees Peat v. Commrs. of Taxation of the Comm. of Australia 3 W.L.R. 346 which in my view has considered a similar problem as in this appeal, and the language used in S 260 of the Income Tax and Social Services Contribution Assessment Act 1936 - 60:-

"Every contract, agreement or arrangement made or entered into, orally or in writing .. shall so far as it has or purports to have the purpose or effect of in any way, directly or indirectly -
 (a) altering the incidence of any income tax or (b) relieving any person

In the
Supreme Court
of Jamaica

No. 6

Judgment of
Edun J.

19th December
1966
(contd)

In the
Supreme Court
of Jamaica

—
No. 6

Judgment of
Edun J.

19th December
1966
(contd)

from liability to pay any income tax or make any return; (c) defeating, evading or avoiding any duty or liability imposed on any person by this Act; or (d) preventing the operation of this Act in any respect; be absolutely void, as against the Commissioner, or in regard to any proceedings under this Act but without prejudice to such validity as it may have in other respect or for any other purpose".

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Their Lordships in that case had no hesitation in coming to the conclusion that the family companies arranged by the Appellant had the purpose and effect of avoiding a liability imposed by that Law. In my view, the text of section 10 (1) of the Income Tax Law No.59 of 1954 is too vague to increase the incidence of taxation in any respects other than a transaction or dealing with property or an arrangement or transfer of assets which reduces or would reduce the amount of tax payable by any person and where the Commissioner is of opinion that such transaction or dealing with property or such arrangement or transfer of assets is artificial or fictitious in the sense of a sham, unreal, illegal or fraudulent.

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In Johnson v. Jewitt (40 Tax Cases p.231)

(i) Lord Evershed at p.254 said "I am quite unpersuaded that these transactions can properly, fairly or sensibly be called anything but fantastic to the degree almost, perhaps, of impudence. I am bound to say that were it otherwise, it would seem to me that the English Law, and particularly the Companies Act, would have been made mock of; and I only in conclusion, express great regret that the engineer of this extraordinary scheme should be a member of the profession of Solicitor."

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(ii) Donovan L.J., at p.253 said "We were asked what was this if it was not trading? If I had to give an answer, I would call it a cheap exercise in fiscal conjuring and book-keeping

phantasy, involving a gross abuse of the Companies Act, and having as its unworthy object the extraction from the Exchequer of an enormous sum which the Appellant had never paid and to which he had no shadow of a right whatsoever."

In the
Supreme Court
of Jamaica

—
No. 6

Judgment of
Edun J.

19th December
1966
(contd)

10 30. These are strong words by eminent judges summarising the facts in Johnson's case. Can it be said by the Commissioner in this appeal, that the Club:-

- (i) is guilty of a sham or unreal exercise in fiscal conjuring or book-keeping phantasy?
- (ii) has it in any way abused any provisions of the Law or Regulations, or in any way acted with impropriety?
- 20 (iii) had it the unworthy object of evading or avoiding the payment of just taxation?
- (iv) was it acting beyond the shadow of a right which it possessed in law?

For the reasons I have given, this ground of appeal also fails. Therefore, on a consideration of the whole matter, I would dismiss the appeal, with costs to the Club - Respondent.

Dated this 19th day of December, 1966.

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Sgd. A.M. EDUN

In the Court
of Appeal
of Jamaica

NO. 7

NOTICE OF APPEAL

No. 7

IN THE COURT OF APPEAL

Suit No.M 8 of 1966

C.A.3/67

Notice of
Appeal

3rd January
1967

B E T W E E N :

THE COMMISSIONER OF INCOME TAX Appellant

- and -

WALTER FLETCHER on his own
behalf and on the behalf of
TRUSTEES AND COMMITTEE OF
DOCTOR'S CAVE BATHING CLUB Respondent

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TAKE NOTICE THAT the Court of Appeal will be moved so soon as Counsel can be heard on behalf of the abovenamed Appellant on Appeal from the Order herein of the Honourable Mr. Justice Edun made at the hearing of this Appeal from the Income Tax Appeal Board on the 19th day of December, 1966 whereby it was ordered that the said Appeal be dismissed.

For an order

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- (1) That the decision of the Appeal Board made on the 14th day of March, 1966 be set aside.
- (2) That the Appellant's decision made on the 21st day of July, 1965, fixing the Respondent's chargeable income at £5,042 for the year of assessment 1964 be restored.
- (3) That there be such further or other relief as may be just.

AND FURTHER TAKE NOTICE that the Grounds of this Appeal are:-

- (1) That the findings by the Learned Trial Judge that the Respondent were not trading or carrying on a business with their hotel members cannot be supported by the evidence before him.

(2) That the Learned Trial Judge mis-directed himself in law in holding that the principle of mutuality extended to the subscriptions paid by the said Hotel members so far as the said subscriptions were based on the 'audited house count'.

In the Court of Appeal of Jamaica

No. 7

(3) That the findings by the Learned Trial Judge that the transaction whereby the Respondents were in receipt of the said subscriptions from the hotel members was not artificial cannot be supported by the evidence before him.

Notice of Appeal

3rd January 1967 (contd)

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DATED this 3rd day of January 1967.

Sgd:- R.M. Millingen

for Crown Solicitor

Solicitor for the abovenamed Appellant

NO. 8

No. 8

JUDGMENT OF LUCKHOO J.

Judgment of Luckhoo J.

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IN THE COURT OF APPEAL CIVIL APPEAL No.3/1967

28th March 1969

BEFORE: The Honourable Mr. Justice Moody,
 Presiding
 The Honourable Mr. Justice Shelley
 The Honourable Mr. Justice Luckhoo

B E T W E E N :

THE COMMISSIONER OF INCOME TAX Appellant

- and -

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WALTER FLETCHER on his own behalf and on the behalf of TRUSTEES AND COMMITTEE OF DOCTOR'S CAVE BATHING CLUB Respondent

Mrs. Hudson Phillips for Appellant

In the
Court of Appeal
of Jamaica

Mr. David Coore Q.C. for Respondent

LUCKHOO, JA.:

No. 8

Judgment of
Luckhoo J.

28th March
1969
(contd)

Doctor's Cave Bathing Club is registered under the provisions of the Registration of Clubs Law Cap. 339 as a Members Club in the parish of St. James. The rules of the Club provide that membership shall consist of ordinary, honorary, hotel and temporary members of whom only ordinary and hotel members shall have proprietary rights in the Club. Annual membership fees for ordinary members are £1.10.-- for each single person and £3.-- for ordinary family membership defined by rule 15 as constituting the two parents and their unmarried children under 21 years of age, unless bona fide students. An entrance fee is required to be paid by every person on his election as an ordinary member whether he is a single person or included in ordinary family membership. Honorary members may be elected by the Committee of the Club from time to time for such period as the Committee shall determine. Temporary members are required to pay a subscription of £3.-- for each person and £5.-- for family membership, the definition of family membership contained in rule 15 applying to temporary family membership. In respect of hotel members the following provisions are made by rules 8(c) and 8(d) -

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RULE 8(c) Hotel members shall be the owners or operators of hotels in Montego Bay which pay to the Club in addition to an annual subscription of £1.10/- (as in the case of an ordinary member) an aggregate amount based on the audited house count of its guests or such other amount as may from time to time be agreed by the Committee of the Club and the resident guests of such hotels shall be entitled to the use and amenities of the Club.

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If such owner or operator is a corporation it may authorise such persons as it thinks fit to act as its representative at any meeting of the Club and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that

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corporation could exercise if it were an individual member of the Club.

RULE 8(d) A hotel member shall not be required to pay an entrance fee.

In the
Court of Appeal
of Jamaica

—
No. 8

Judgment of
Luckhoo J.

28th March
1969
(contd)

10 Only ordinary members and hotel members have voting rights. Under rule 16 ordinary members may introduce as visitors to the Club bona fide non-paying house guests for not more than 42 days during any one year of membership. Under rule 17 such visitors shall not be residents of the parishes of St. James, Hanover, Trelawny or Westmoreland nor shall they be staying at any hotel, guest or boarding house, or as a paying guest with a family or individual. Any ordinary member introducing a visitor under rule 16 may extend the period of 42 days to a continuous period of not exceeding 3 months on payment of £1.10.- for each such guest.

20 On the 21st July, 1965, the Commissioner of Income Tax fixed the respondent's chargeable income at £5,042 for the Year of Assessment 1964. The respondent is the chairman of the Board of Trustees and Committee of the Club. The Commissioner assessed the respondent on the basis that the said sum of £5,042 constituted profits of a trade or business carried on by the Club for the Year of Assessment 1964. The respondent contended
30 that the said figure was wrong as it included annual subscriptions of hotel members and the said annual subscriptions were non-taxable under the mutuality principle. The Income Tax Appeal Board on the 14th March, 1966, allowed the respondent's appeal against the Commissioner's decision and the Commissioner appealed to a Judge in Chambers against the decision of the Income Tax Appeal Board on the ground inter alia that the Board's decision
40 was wrong in point of law. The Judge in Chambers dismissed the Commissioner's appeal. The Commissioner now appeals against the decision of the Judge in Chambers.

At the hearing before the Judge in Chambers the respondent called one witness, Mr. G.W.N. Downer, a chartered accountant and a member of the firm of Price Waterhouse & Co.

In the
Court of Appeal
of Jamaica

—
No. 8

Judgment of
Luckhoo J.

28th March
1969
(contd)

which undertook at all material times the audit of the Club's account and the accounts of Beach View Company Limited, and prepared the Income Tax returns of Hotel Casa Blanca Ltd. These two companies are the hotel members of the Club in respect of whose subscriptions for the year 1963 (Year of Assessment 1964) the question of exigibility of the Club to tax is concerned in this appeal. The Hotel Casa Blanca Ltd. owned and operated two hotels - the Casa Blanca and the Casa Montego - in respect of which sums based on the audited house count of those hotels formed part of the subscription paid in respect of hotel membership of the Hotel Casa Blanca Ltd. The Beach View Company, Ltd. operated one such hotel.

10

From the uncontradicted evidence of Mr. Downer, it emerges that no part of the profits made by the Club is distributed to its members, all income derived being utilised for improvements of facilities at the Club.

20

As far as Mr. Downer knew there was no specific charge made against any of the resident guests of the three hotels concerned in respect of their enjoyment of the bathing and other associated facilities provided by the Club. Mr. Downer said that that part of the subscriptions paid by the hotel members which was based on the audited house counts of their hotels would form part of the inclusive charge the hotels would make against their resident guests which would cover all of the amenities (including the use of the amenities provided by Doctor's Cave Bathing Club) provided by the hotels but would as far as he knew not be separately charged against resident guests for the bathing and associated amenities provided at the Club.

30

It is I think important to understand how the provision for hotel membership at the Club came about. Before such membership was provided for under the rules of the Club all non-residents of the parish of St. James who desired to enjoy the Club's amenities had to purchase a ticket for three shillings. At first all hotel guests who were non-members had to purchase such tickets before they could enjoy the amenities provided by the Club. Tickets could be bought by the guests through the hotels, the hotels making a purchase of tickets in block and

40

then reselling to individual hotel guests at the original purchase price. Certain hotels found that some of their guests would complain that they had lost their tickets while on the way to the Club and had had to purchase tickets again. Some of the hotels concerned conferred with the Club's Committee and it was arranged that the Club should have a new class of member known as a hotel member whose membership would be restricted to those owners and operators of hotels which paid an amount based on their audited house count. A certificate was to be submitted by a hotel's auditors to the Club stating the number of guests at the hotel over a specified period and on that basis the hotel would pay the Club at the rate of two shillings per head and in addition the sum of £1.10.--. would be paid annually as in the case of an ordinary member. No entrance fee was payable by a hotel member.

In the
Court of Appeal
of Jamaica

—
No. 8

Judgment of
Luckhoo J.

28th March
1969
(contd)

The substance of the matter is that instead of each hotel resident guest paying the sum of three shillings for each occasion on which he enjoyed the Club's amenities the hotel now pays at the rate of two shillings per resident guest based on an audited house count over a given period. The former arrangement it is conceded was a trading transaction in respect of which the proceeds coming to the Club were exigible to tax. The latter arrangement in my view is no less in the nature of a trading transaction. The proceeds come from the coffers of the hotels and form part of their operating expenses. Obviously the hotels are in business for the purpose of making a profit and the expenditure they make to secure the use of the amenities offered by the Club for their guests is made with a view to enhancing their own trade. Does the payment by a hotel to the Club in this regard by way of a "subscription" in the name of the hotel owner or operator result in the receipt by the Club being not exigible to tax? The hotel owner or operator may be a corporation as it indeed is in the case of each of the three hotels concerned in this case. Obviously a corporation as such cannot and is not intended to enjoy the bathing and other amenities offered by the Club. The membership of such a

In the
Court of Appeal
of Jamaica

No. 8

Judgment of
Luckhoo J.

28th March
1969
(contd)

corporation is clearly intended to facilitate the use of the Club by hotel guests and the "subscription" paid in regard of such membership is no more and no less part of the trading receipts of the hotel - the same being derived from the custom of its guests, albeit not by way of a specific charge made for the enjoyment of the Club's amenities but by way of an inclusive charge. The hotel pays it to the Club in the name of the hotel owner or operator who may or may not be a different corporation. It is the hotel and not the hotel owner or operator who by the Club's rules is required to pay the subscription of the hotel owner or operator.

10

In my view the principle of mutuality as enunciated in New York Life Insurance Company v. Styles (1889) 2 T.C. 460 and the other authorities cited to us has no application to the facts of this case. The contributors are in fact the hotel's resident clientele even though no specific charge is made in respect of the use of the Club's amenities by them and the participators are the hotel owners or operators.

20

I would allow the appeal and restore the finding of the Commissioner.

No. 9

Judgment of
Shelley J.A.

28th March
1969

NO. 9

JUDGMENT OF SHELLEY J.A.

Mr. Shelley asks me to say that he concurs with the judgment just delivered.

30

No. 10

Judgment of
Moody J.A.

28th March
1969

NO. 10

JUDGMENT OF MOODY J.A.

I regret that I cannot agree with the judgment just read.

One ground of appeal was argued: viz. that

the learned Judge in Chambers misdirected himself in law in holding that the principle of mutuality extended to the subscriptions paid by the hotel members so far as the subscriptions were based on the audited house count.

The facts are set out in the written judgment of the learned Judge in Chambers paragraphs 1-6.

In the
Court of Appeal
of Jamaica

—
No. 10

Judgment of
Moody J.A.

28th March
1969
(contd)

10 Learned Counsel referred to Simon's
Income Tax 1964-5 ed. Vol. 2 paragraph 58 and
submitted that it was essential if the
principle of mutuality was to apply that the
profits come back to the person to whom goods
are sold and services rendered. In the
instant case the hotels are members; the
persons who use the hotels are tourists and
are not members of the club and in no position
to participate in the profits of the Club.
20 Once there is a making of profit from persons
who are not members that profit is liable to
taxation. There is no complete identity
between the guests of the hotel and Doctor's
Cave Bathing Club. The cases of C.I.R. v.
Stanchaven Recreation Grounds Trustees 15 T.C.
419; National Association of Local Govern-
ment Officers v. Watkins 18 T.C. 499;
30 Municipal Mutual Ins. Ltd. v. Hills 16 T.C.
430 show that where a club is making a profit
from non-members or persons not entitled to
participate in the profits then the club is
liable to taxation. The evidence of Mr.
Downer, the Chartered Accountant, was not
categoric when he said that to the best of his
knowledge and belief the Casa Blanca and Casa
Montego hotels do not charge their guests for
bathing facilities afforded them. Sums paid to
the Club by hotel members based on the audited
house count were paid for and on behalf of
40 guests and so were liable to taxation. The
allowing of voting rights to hotel members
does not of itself indicate that there is
mutuality between hotel guests and the Doctor's
Cave Bathing Club. The Revenue distinguishes
between the payment of £1.10/- made by hotel
members as subscription for ordinary membership
and payment of the sums based on the audited
house count of guests of the hotel in order to

In the
Court of Appeal
of Jamaica

allow such guests the facilities of the club. Hotel guests are not members of the Club and not entitled to participate in the surplus assets.

No. 10

Judgment of
Moody J.A.

28th March
1969
(contd)

Learned Counsel for the respondent submitted that it is important to examine the pattern established in the rules of the Club. It is obvious that the Club exists to provide amenities to members and guests but it is appreciated there may be circumstances in which a particular member is introducing a disproportionate number of guests. A distinction exists between single and family membership. Provision is made for a member who wishes to introduce a guest for longer than 42 days - he must pay a higher subscription. These payments have never been taxed.

10

Members of the public other than those residing in St. James may be admitted by ticket on payment of three shillings each. It has never been disputed that these sums are taxable income in the hands of the Club. Guests at hotels in Montego Bay other than those hotels who are hotel members of the Club purchase tickets from the hotel and the sums thus collected are taxable. The subscriptions from hotel members are made up of a fixed minimum of thirty shillings per annum together with an amount calculable on the audited house account. These sums are paid whether the hotel is closed or not and whether the guests use the facilities of the Club or not. The cases make a distinction between revenue which the Club or association earns from trading with non-members or persons who are non-members. It is not how much each member pays but whether the revenue is paid by virtue of membership and whether the person paying it will participate in a sharing of the assets when the time arrives.

20

30

There is no evidence that hotel members charge guests a specific amount for use of the facilities of the Club and hand those sums over to the Club. The evidence of Downer, the auditor, is to the effect that no charge is made by hotel members to guests for use of the facilities of the Club. The revenue to the Club is from hotel members and not from the guests at the hotel. Guests pay nothing to the Club.

40

Amounts paid by way of membership subscriptions by members of a club or similar mutual association do not constitute taxable revenue in the event that those sums exceed the expenses of the club or association in any given year.

In the
Court of Appeal
of Jamaica

—
No. 10

Not every payment made by a member of a Club or Association is necessarily to be regarded as a membership subscription. Whether it is so or not is a question of fact to be determined by a consideration of the rules and constitution of the association and the facts of the particular case. If it appears that a particular payment is not made by way of subscription but forms part of a trading transaction that payment may give rise to taxable revenue.

Judgment of
Moody J.A.

28th March
1969
(contd)

The learned Judge in Chambers made a finding that the payment by hotel members was a subscription and this finding was supported by the rules of the Club and the evidence of Mr. Downer, the auditor. The facts found by the learned Judge in Chambers are final - section 58 sub-section (6) of Law 59, 1954.

The evidence discloses that the Doctor's Cave Bathing Club is neither a commercial club nor a proprietary club but a bona fide members club and does not pay dividends nor does it pay its Committee or Trustees any money by way of salary or other emoluments

There can be no doubt that owners or operators of the hotels in Montego Bay who are hotel members of the club carry on the trade of hotel keeping. To meet the convenience of the guests of the hotels which did not have their own private beaches or private arrangements for bathing facilities, after a conference between the management of such hotels and the Committee of the Club the Doctor's Cave Bathing Club created a new class of member known as an hotel member as defined in Rule 8(c) as amended. The resident guests at the hotel of an hotel member are entitled to the use and amenities of the Club. Ordinary members may introduce a non-paying house guest to the Club for a period not

In the
Court of Appeal
of Jamaica

—
No. 10

Judgment of
Moody J.A.

28th March
1969
(contd)

exceeding 42 days. Beyond that time and for a period not exceeding three months the ordinary member is required to pay £1.10/- for each such guest. Hotel members pay an annual subscription of £1.10/- and an aggregate amount based on the audited house count. Neither the guests of hotel members nor the guests of ordinary members pay for the use they make of the Club. It is no doubt part of the functions and activities of the Club to entertain strangers and a bona fide members Club does not become any the less so by reason of entertaining strangers. 10

Hotel members like ordinary members have the right to vote and to share in the profits of the Club should dissolution take place. If the amounts paid by hotel members were liable to tax this would suggest the members were trading among themselves.

In these circumstances, I cannot agree that there is a making of profit from persons who are non-members. I agree with the conclusion reached by the learned Judge in Chambers that the payments by the hotel members are membership subscriptions notwithstanding it is computed in part on the basis of an "audited house count". In my judgment such payments by the hotel members are not business transactions nor do they constitute a trading so as to render the Club assessable for tax. The contributors are the members of the Club and they are the ones who would participate in the surplus or assets of the Club. Accordingly, I hold that the learned Judge was right in his decision that the principle of mutuality extended to subscriptions paid by the hotel members so far as the said subscriptions were based on the audited house count. 20 30

I would dismiss this appeal.

The judgment of the Court is, the appeal is allowed, the decision of the Commissioner is restored and the costs to the appellant. 40

NO. 11

ORDER ON JUDGMENT

In the
Court of Appeal
of Jamaica

IN THE COURT OF APPEAL

Civil Appeal No.3
of 1967

—
No. 11

B E T W E E N :

Order on
Judgment

THE COMMISSIONER OF INCOME
TAX

Appellant

28th March 1969

- and -

10

WALTER FLETCHER on his own
behalf and on the behalf of
the TRUSTEES AND COMMITTEE
OF DOCTOR'S CAVE BATHING
CLUB

Respondent

The 17th and 18th December, 1968 and
The 28th day of March 1970 (sic)

BEFORE the Honourable Mr. Justice Moody
(Presiding)
the Honourable Mr. Justice Shelley
and the Honourable Mr. Justice Luckhoo

20

UPON Motion by way of Appeal on the 17th,
18th December 1969,(sic)and 28th March 1970,(sic) made
unto this Court by Mrs. A.C. Hudson Phillips of
Counsel for the Respondent from the Judgment
of Mr. Justice Edun dated the 18th and 19th
July 1966, and upon hearing Counsel for the
Appellant and Mr. David Coore of Queen's
Counsel instructed by A.E. Brandon & Company of
45 Duke Street, Kingston, Solicitors for the
Respondent, and upon reading the said Judgment,
this Court did order that the said Appeal should
stand for Judgment, and the said Appeal standing
this day in the Paper for Judgment, the written
Judgment of the Court was read, whereby the
Court doth order that the Appeal be allowed
with costs and that the Judgment of Mr. Justice
Edun in the Court below be reversed, the
Honourable Mr. Justice Moody (presiding)
dissenting.

30

Signed S. MORRIS
ACTING DEPUTY REGISTRAR
COURT OF APPEAL

In the
Court of Appeal
of Jamaica

FILED by A.E. Brandon & Company of 45 Duke
Street, Kingston, Solicitors, Town Agents for
Nation, Lord & Delissa of Montego Bay,
Solicitors for the Respondent.

No. 11

Order on
Judgment

28th March
1969
(contd)

No. 12

NO. 12

Affidavit of
Mr.D.I.Brandon
sworn 15th
April 1969

AFFIDAVIT OF DOUGLAS IAN BRANDON

IN THE COURT OF APPEAL

Civil Appeal No.3/1967

B E T W E E N :

THE COMMISSIONER OF INCOME TAX Appellant

- and -

WALTER FLETCHER on his own
behalf and on the behalf of the
TRUSTEES AND COMMITTEE OF
DOCTOR'S CAVE BATHING CLUB Respondent

10

I, DOUGLAS IAN BRANDON being duly sworn
make oath and say:-

1. THAT my true place of abode is at No.14
Easton Avenue in the Parish of Saint Andrew, my
postal address is Post Office Box 131, Kingston
Post Office and I am a Solicitor of the Supreme
Court of Judicature of Jamaica and a partner of
the firm of A.E. Brandon & Co., of 45 Duke Street,
Kingston, Solicitors, Town Agents for Nation,
Lord & DeLisser of Montego Bay in the Parish of
Saint James, Solicitors for the Respondent
herein.

20

2. That proceedings were commenced by Notice
of Appeal to the Income Tax Appeal Board dated
the 27th day of July 1965 against the decision

of the Appellant dated the 21st day of July 1965 in connection with Income Tax assessment No.10820/A7/580 whereby the Respondent was assessed to income tax in the sum of £993.15.--. for year of assessment 1964.

In the
Court of Appeal
of Jamaica

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No. 12

Affidavit of
Mr.D.I.Brandon
sworn 15th
April 1969
(contd)

10 3. On the 5th day of April 1966 the Appellant appealed against the decision of the Income Tax Appeal Board and the said appeal was heard by Mr. Justice Edun in Chambers on the 18th and 19th July 1966.

20 4. On the 3rd day of January 1967 the Appellant appealed against the decision of the learned Judge in Chambers and the said appeal was heard before this Honourable Court comprising their Lordships Mr. Justice Moody, Mr. Justice Shelley and Mr. Justice Luckoo on the 16th and 17th December 1968. The Judgment of this Honourable Court was delivered on the 28th day of March 1969 resulting in the appeal being upheld and awarding the costs of the said appeal and of the proceedings before the Judge in Chambers to the Appellant.

5. The Respondent is aggrieved by the Judgment of this Honourable Court and has instructed his solicitors to make an application to the Honourable Court of Appeal with a view to obtaining leave to appeal to Her Majesty in Council.

30 6. The Judgment of this Honourable Court is a final decision in civil proceedings involving a claim to or a question respecting a right of the value of upwards of £500, and by virtue of the provisions of Section 110 Sub-Section (1)(a) of the Constitution an appeal lies from the decision of Her Majesty in Council as of right.

(Sgd) Douglas Brandon

40 SWORN to at Kingston in the Parish of Kingston this 15th day of April 1969 before me:-

(Sgd) J.B. Archer

Justice of the Peace

In the Court of Appeal of Jamaica

FILED by A.E. Brandon & Co. of 45 Duke Street, Kingston, Solicitors, Town Agents for Nation, Lord & DeLisser of Montego Bay, Saint James, Solicitors for the Respondent.

No. 12

Affidavit of Mr. D.I. Brandon sworn 15th April 1969 (contd)

No. 13

NO. 13

Affidavit of Mr. A.A. Debuc

AFFIDAVIT OF ARTHUR ANTHONY DEBUC

12th May 1969

IN THE COURT OF APPEAL

Civil Appeal No.3/1967

B E T W E E N :

THE COMMISSIONER OF INCOME TAX

Appellant

10

- and -

WALTER FLETCHER on his own behalf and on the behalf of the TRUSTEES AND COMMITTEE of DOCTOR'S CAVE BATHING CLUB

Respondent

I, ARTHUR ANTHONY DEBUC being duly sworn make oath and say:-

1. THAT my true place of abode is at No.34 Hillary Avenue in the Parish of St. Andrew and my postal address is 34 Hillary Avenue, Kingston 10, and I am a certified Accountant and a Senior Assistant Commissioner of Income Tax, attached to the Department of Income Tax and Stamp Duties.

20

2. That in the course of my duties I am called upon to examine and deal with the Returns and Accounts of the above-named Respondent, and I did in fact examine and deal with their Accounts and Return for the Year of Assessment 1964.

3. That I have been shown a copy of the Affidavit of Douglas Ian Brandon sworn to at Kingston on the 15th day of April, 1969, in

30

which the following is stated at paragraph 6.

"The Judgment of this Honourable Court is a final decision in civil proceedings involving a claim to or a question respecting a right of the value of upwards of £500 and by virtue of the provisions of Section 110 Sub-Section (1)(a) of the Constitution an appeal lies from the decision of Her Majesty in Council as of right".

In the
Court of Appeal
of Jamaica

—
No. 13

Affidavit of
Mr. A.A. Debuc

12th May 1969
(contd)

10
4. That from my examination of the Accounts and Return of the above-named Respondents for the Year of Assessment 1964 I find that the Judgment of this Honourable Court does not involve a claim to or a question respecting a right of the value of upwards of £500 because the tax in dispute between the Respondent and the Appellant for the Year of Assessment 1964 amounts to the sum of
20 £145.2.6d.

5. That the question in dispute between the Appellant and the Respondent was the proper treatment for Income Tax purposes of subscriptions from "hotel members" for the period 14th of October, 1963 (the date on which the Rules of the Club were altered) to the 31st of December, 1963, it being common ground between the parties that the subscriptions from such
30 members prior to the aforesaid 14th of October, 1963, were to be included in the computation of taxable profits of the Respondent for the Year of Assessment 1964.

6. That because of the foregoing, the tax in dispute only relates to the period 14th October, 1963 to 31st December, 1963.

40 7. That from my examination of the Accounts of the Respondent I find that the tax which would have been payable by them in respect of this period had the Decision of this Honourable Court been in their favour, would have been £177.--.; that the tax payable by the Respondent for the same period in accordance with the Decision of this Honourable Court, is £322.2.6; that accordingly the Decision of this Honourable Court involves a claim to or a

In the
Court of Appeal
of Jamaica

—
No. 13

Affidavit of
Mr. A.A. Debuc

12th May 1969
(contd)

question respecting a right of the value of
£145.2.6.

8. That in furtherance of the foregoing I
exhibit hereto marked "A" a computation showing
how the foregoing figures were calculated.

Sgd. A.A. Debuc

SWORN to at Kingston in the Parish of Kingston
this 12th day of May 1969 before me:-

(Sgd) Dudley B. Young

JUSTICE OF THE PEACE St. Andrew

10

FILED by the Crown Solicitor of 134-140 Tower
Street (Upstairs), Kingston,
Solicitor for and on behalf of the above-named
Appellant, whose address for service is that
of his said solicitor.

A.A. Debuc

This is the Affidavit mentioned and referred
to and marked with the letter "B" in the Notice
dated the 12th day of May, 1969.

(Sgd) Dudley B. Young

20

J.P. St. Andrew

/Exhibit "A"

EXHIBIT "A"

This is the computation mentioned and referred to in the Affidavit of Arthur Anthony Debuc dated 12th day of May, 1969

(Sgd) A.A. Debuc

(Sgd) Dudley B. Young
Justice of the Peace, St. Andrew

In the
Court of Appeal
of Jamaica

—
No. 13

Exhibit "A"
referred to in
Affidavit of
Mr. A.A. Debuc

12th May 1969
(contd.)

10

Adjusted income of Doctor's Cave Bathing Club for the Year of Assessment 1964 is arrived at as follows:-

Profits per accounts to		
31.12.63		£1530
Add: Donations	984	
Depreciation	1230	
Travel	155	
Repairs	1658	
Fees re income tax appeal	<u>114</u>	<u>4141</u>
		5671
Less Annual Allowance		<u>1173</u>
	Chargeable Income =	4498

20

Taxable profits if Doctor's Cave had won Appeal

$\frac{18284}{19937} \times 4498$	$\times \frac{9\frac{1}{2}}{12}$	= 3266 @ 7/6d.	= £1224.15.--.
$\frac{10032}{19937} \times 4498$	$\times \frac{2\frac{1}{2}}{12}$	= 472 @ 7/6d.	= <u>177.--.</u>
			1401.15.--.

Taxable position since losing appeal

$\frac{18284}{19937} \times 4498$	= 4125
-----------------------------------	--------

30

Tax relating to period prior to changing of rules

$\frac{9\frac{1}{2}}{12} \times 4125$	= 3266 @ 7/6d.	= 1224.15. -
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Tax relating to period subsequent to changing of rules

$\frac{2\frac{1}{2}}{12} \times 4125$	= 859 @ 7/6d.	= <u>322. 2. 6</u>
		<u>£1546.17. 6</u>

Tax in dispute therefore is difference between £177 and £322.2.6. amounting to £145.2.6.

40

In the
Court of Appeal
of Jamaica

NO. 14

AFFIDAVIT OF GEORGE
WILLIAM NELSON DOWNER

No. 14

IN THE COURT OF APPEAL

Civil Appeal No.3/1967

Affidavit of
Mr. G.W.N.
Downer

B E T W E E N :

THE COMMISSIONER OF INCOME TAX Appellant

22nd May 1969

- and -

WALTER FLETCHER on his own
behalf and on the behalf of the
TRUSTEES AND COMMITTEE OF
DOCTOR'S CAVE BATHING CLUB Respondent

10

I, GEORGE WILLIAM NELSON DOWNER being duly
sworn make oath and say:

1. THAT my true place of abode is Mango Walk
in Montego Bay in the Parish of Saint James, my
postal address is Box 180 Montego Bay Post
Office and I am a Chartered Accountant and a
partner of the firm of Price Waterhouse &
Company in Jamaica and as such I am the partner
in charge of the audits of the Doctor's Cave
Bathing Club in Montego Bay aforesaid (herein-
after referred to as "the Club")

20

2. That for Year of Assessment (hereinafter
abbreviated to Y/A) 1964 the Assessment against
the Club was first expressed by the Commissioner
of Income Tax (hereinafter referred to as "the
Commissioner") to be £993.15.- but was
subsequently computed by him to be £1,546.17.6
as shown in the computation annexed to the
Affidavit of Arthur Anthony Debuc sworn to at
Kingston on 12th May 1969 a copy whereof has
been shown to me.

30

3. That the statement in the Affidavit aforesaid
that for Y/A 1964 an amount of only £145.2.6 is
involved omits to take into account that further
amounts (specifically mentioned in Paragraph 9
hereof) are indirectly affected in respect of
Years of Assessment 1965 to 1968 inclusive as it
was generally accepted that the final result of

the Appeal in respect of Y/A 1964 would determine whether the full amounts of tax claimed in the years subsequent to 1964 were to be paid.

In the
Court of Appeal
of Jamaica

4. That therefore in truth and in fact the Assessments for Years of Assessment 1965 to 1968 inclusive are indirectly affected by the Appeal to this Honourable Court in that they involve the same question at issue in relation to Y/A 1964.

No. 14

Affidavit of
Mr. G.W.N.
Downer

10

5. That by letter dated 21st July 1965 the Commissioner informed my firm of Notice of his decision in respect of Y/A 1964 relating to the Club such decision being worded:

22nd May 1969
(contd)

"That the Assessment No.10820/A7/580 made on the above" (that is to say the Club) "for Y/A 1964 is hereby varied to a chargeable income of £5,042.--"

20

in consequence whereof I on behalf of my firm replied to the Commissioner as follows:

"We acknowledge receipt of your Notice of Decision dated 21st July 1965 in regard to our objection to Assessment 10820/A7/580. This is to advise that we have served the Notice of Objection on the Income Tax Appeal Board under Section 53(1) of the Income Tax Law 59 of 1954 and enclose a copy of same."

30

Such copy of a letter dated 27th July 1965 addressed to the Clerk of the Income Tax Appeal Board read as follows:

"We hereby give notice (as agents of the Club) of Objection under Section 53 (1) of the Income Tax Law 59 of 1954 against a Notice of Decision dated 21st July 1965 from the Commissioner of Income Tax relating to Assessment No.10820/A7/580 showing a chargeable income of £5,042"

40

6. That the Appeal in respect of Y/A 1964 was heard by the Income Tax Appeal Board on 14th March 1966.

In the
Court of Appeal
of Jamaica

—
No. 14

Affidavit of
Mr. G.W.N.
Downer

22nd May 1969
(contd.)

7. That I have been informed that the Commissioner claims that by letter dated 16th March 1966 it was clearly established between the Club and himself and so became common ground that the objection was only to the portion of tax dealing with the house count subscription made by hotel members of the Club but despite diligent search made by me and others such a letter or any other letter pertaining thereto has not been traced as having been received by either the Club, its Solicitors or my firm and having regard to the date of hearing of the Appeal (mentioned in the immediately preceding paragraph hereof) I am of opinion that an error has been made by the Commissioner in this respect.

10

8. That during the years 1965 to 1968 inclusive Notice of Objection was in each of such years given by my firm on behalf of the Club to the Commissioner in respect of his assessments of tax against the Club on the following ground stated in each such Notice, namely:

20

"For the reason that this does not agree with the return sent in by us"

and in consequence payment of tax by the Club in respect of each such year of Assessment was to my knowledge in a sum less than the computed tax.

9. That from my knowledge of the fact relating to the Club and the computations made by me in respect of the annual additional tax (which are indirectly affected by this Appeal) which would be payable by the Club in respect of the house count subscriptions by hotel members the amounts of such additional tax in respect of each Year of Assessment are set out hereunder, namely:

30

Y/A 1965	£1,135.--
Y/A 1966	901.10.--
Y/A 1967	1,005. 7.6
Y/A 1968	797. --

40

(Sgd) G.W.N. Downer

SWORN to at Montego Bay in the Parish of Saint James this 22nd day of May 1969 before me:

In the Court of Appeal of Jamaica

(Sgd)

No. 14

Justice of the Peace

Affidavit of Mr. G.W.N. Downer

FILED by A.E. Brandon & Company of 45 Duke Street, Kingston, Solicitors, Town Agents for Nation, Lord & deLisser of Montego Bay, Saint James, Solicitors for the Respondent.

22nd May 1969 (contd)

10

NO. 15

No. 15

AFFIDAVIT OF GEORGE WILLIAM NELSON DOWNER

Affidavit of Mr. G.W.N. Downer

IN THE COURT OF APPEAL Civil Appeal No.3 of 1967

29th May 1969

B E T W E E N :

THE COMMISSIONER OF INCOME TAX Appellant

- and -

WALTER FLETCHER on his own behalf and on behalf of the TRUSTEES AND COMMITTEE OF DOCTOR'S CAVE BATHING CLUB Respondent

20

I, GEORGE WILLIAM NELSON DOWNER being duly sworn make oath and say;

1. THAT my true place of abode is Mango Walk in Montego Bay in the Parish of Saint James, my postal address is Box 180 Montego Bay Post Office and I am a Chartered Accountant and a partner of the firm of Price Waterhouse and Company in Jamaica and as such I am the partner in charge of the audits of the Doctor's Cave Bathing Club in Montego Bay aforesaid (hereinafter referred to as "the Club").

30

In the
Court of Appeal
of Jamaica

—
No. 15

Affidavit of
Mr. G.W.N.
Downer

29th May 1969
(contd)

2. I refer again to the affidavit of Mr. Arthur Debuc filed herein and in particular to paragraph 5 thereof.

3. The question at issue between the parties in this appeal was whether the amount paid (after the amendment of the Club rules on the 14th October 1963) by hotel members based upon the audit house count constituted profits or gains within the meaning of the income tax law.

4. The amount paid by hotel members for the year 1963 (that is Year of Assessment 1964) was £8252. Of this amount £1720 represented the proportion attributable to the two and a half month period in 1963 subsequent to the amendment of the rules.

10

5. The effect of the decision of the income Tax Appeal Board was that this sum of £1720 was not liable to be brought to account for the purpose of computing the Respondent's chargeable income since it did not constitute a profit or gain within the meaning of the Income Tax Law.

20

The effect of the decision of this Honourable Court is that this sum will now have to be treated as part of the Respondent's income for income tax purposes.

5. The amounts paid by way of subscription from hotel members for the succeeding years 1964-1967 are as follows;

1963 £8252

1964 £9528

1965 £11372

1966 £10028

1967 £10254

30

(Sgd) G.W.N. Downer

SWORN to at Kingston in the Parish of Kingston
this 29th day of May 1969 before me;

(Sgd)

Justice of the Peace

FILED by A.E. Brandon & Co. of 45 Duke Street,
Kingston, Solicitors,
Town Agents for Nation Lord & DeLisser of
Montego Bay Saint James,
Solicitors for the Respondent.

In the
Court of Appeal
of Jamaica

No. 15

Affidavit of
Mr. G.W.N.
Downer

29th May 1969
(contd)

NO. 16

No. 16

FURTHER AFFIDAVIT OF ARTHUR ANTHONY DEBUC

Affidavit of
Mr. A.A. Debuc

IN THE COURT OF APPEAL

Civil Appeal No.
3/1967

13th June 1969

10 B E T W E E N :

THE COMMISSIONER OF INCOME
TAX

Appellant

- and -

WALTER FLETCHER on his own
behalf and on the behalf of
the TRUSTEES AND COMMITTEE
OF DOCTOR'S CAVE BATHING
CLUB

Respondent

20 I, ARTHUR ANTHONY DEBUC being duly sworn
make oath and say:-

1. That my true place of abode is at No.34
Hillary Avenue in the Parish of St. Andrew and
my postal address is 34 Hillary Avenue,
Kingston 10; and I am a Certified Accountant
and a Senior Assistant Commissioner of Income
Tax, attached to the Department of Income Tax,
Stamp Duties and Estate Duties.

30 2. That in the course of my duties I am called
upon to examine and deal with the Returns and
Accounts of the above-named Respondents, and I
did in fact examine and deal with their Accounts

In the
Court of Appeal
of Jamaica

—
No. 16

Affidavit of
Mr. A.A. Debuc

13th June 1969
(contd)

and Return for the Year of Assessment 1964.

3. That I have been shown a copy of the Affidavit of George William Nelson Downer dated the 22nd May, 1969, and served on the Crown Solicitor on the 26th May, 1969, in which the following is stated at paragraph seven:-

" That I have been informed that the Commissioner claims that by letter dated 16th March 1966 it was clearly established between the Club and himself and so became common ground that the objection was only to the portion of tax dealing with the house count subscription made by hotel members of the Club but despite diligent search made by me and others such a letter or any other letter pertaining thereto has not been traced as having been received by either the Club, its Solicitors or my firm and having regard to the date of hearing of the Appeal (mentioned in the immediately preceding paragraph hereof) I am of opinion that an error has been made by the Commissioner in this respect."

10

20

4. That the facts stated in paragraph seven aforesaid betray a misunderstanding of the true position. The Commissioner of Income Tax has never claimed that he wrote to the above-named Respondents and/or their solicitors or accountants on the 16th March, 1966, in the terms referred to in the aforesaid paragraph seven.

30

5. That the true position is, not that the Commissioner of Income Tax wrote to the aforesaid persons, but, that Messrs. Price Waterhouse and Company, accountants for the above-named Respondents, wrote to the Commissioner of Income Tax by letter dated the 17th (not the 16th) March, 1966 enclosing a computation in which it was stated that the tax payable in terms of the Decision of the Income Tax Appeal Board was £1401.15.-, and further, that if the Appeal had been lost the tax payable would have been £1546.17.6, thereby revealing the tax not in dispute to be £1401.15.-, and the tax in dispute to be £145.2.6. A photocopy of the aforementioned

40

letter of the 17th of March, 1966 and the computation enclosed therewith is exhibited hereto and marked "A".

In the Court of Appeal of Jamaica

Signed A.A. Debuc

No. 16

SWORN to at Kingston in the Parish of Kingston this 13th day of June, 1969, before me:-

Affidavit of Mr. A.A. Debuc

Signed Dudley B. Young

13th June 1969 (contd)

Justice of the Peace

St. Andrew

10

FILED by the Crown Solicitor of 134-140 Tower Street, (Upstairs) Kingston, Solicitor for and on behalf of the above-named Appellant, whose address for service is that of his said Solicitor.

This is the Further Affidavit mentioned and referred to and marked with the letter "B" in the Notice dated the 13th day of June, 1969.

20

Signed Dudley B. Young

Justice of the Peace

St. Andrew

EXHIBIT "A"

PRICE WATERHOUSE & CO.

Chartered Accountants

Montego Bay,
17th March, 1966

Exhibit "A" referred to in Affidavit of Mr. A.A. Debuc

13th June 1969 (contd)

GWND/gp

30

The Commissioner of Income Tax,
Income Tax Department,
Kingston.

Dear Sir,

re: Doctor's Cave Bathing Club
Y/A 1964 File 1956

At the Appeal before the Appeal Board held

In the
Court of Appeal
of Jamaica

No. 16

Exhibit "A"
referred to in
Affidavit of
Mr. A.A. Debuc

13th June 1969
(contd)

on 14th inst. the Appeal was allowed and, therefore, the adjusted tax payable appears to be £1401.15/- as per computation enclosed. Please refer to your letter of 9th February 1965 and the computation submitted which appears to be overadded by £1000. This mistake was carried on in the computation submitted by you in your letter of 1st July 1965.

The tax payable for year of assessment 1965 appears to be £1480.2.6d. as returned. We should be obliged if you would confirm these figures.

10

Yours faithfully,

Price Waterhouse & Co.

This is the letter and computation mentioned and referred to in the Further Affidavit of Arthur Anthony Debuc and marked with the letter "A".

(Sgd) Dudley B. Young

20

Justice of the Peace

St. Andrew

DOCTOR'S CAVE BATHING CLUB

Income Tax Computation
Year of Assessment 1964

Profit per accounts to 31st December 1963		£1,530	
Add: Donations	984		
Depreciation	1,230		
Travel (to and from home)	155		
Repairs disallowed	1,658		
Fees re income tax appeal	114		
		<u>4,141</u>	
		5,671	
Less: Annual Allowances		<u>1,173</u>	
		<u>4,498</u>	

30

Taxable Profit:

<u>18284</u>	x	<u>4498</u>	x	$\frac{9\frac{1}{2}}{12}$	=	3,266
19937						
<u>10032</u>	x	4498	x	$\frac{2\frac{1}{2}}{12}$	=	<u>472</u>
19937						<u>3,738</u>

In the Court of Appeal of Jamaica

No. 16

Exhibit "A" referred to in Affidavit of Mr. A.A. Debuc

Tax Payable

£3738 @ 7/6d = £1401.15.-

13th June 1969 (contd)

10 If Appeal had been lost the position would have been:

<u>18,284</u>	x	4498	=	4125	@	7/6	=
19,937							£1546.17.6

NO. 17

No. 17

FURTHER AFFIDAVIT OF ARTHUR ANTHONY DEBUC

Affidavit of Mr. A.A. Debuc

IN THE COURT OF APPEAL Civil Appeal No. 3/1967

18th June 1969

B E T W E E N :

THE COMMISSIONER OF INCOME TAX Appellant

- and -

20 WALTER FLETCHER on his own behalf and on the behalf of the TRUSTEES AND COMMITTEE OF DOCTOR'S CAVE BATHING CLUB Respondent

I, ARTHUR DEBUC being duly sworn make oath and say:-

1. That my true place of abode is at No.34 Hillary Avenue in the Parish of St. Andrew and my postal address is 34 Hillary Avenue,

In the
Court of Appeal
of Jamaica

B E T W E E N :

THE COMMISSIONER OF INCOME TAX Defendant/
Appellant

- and -

WALTER FLETCHER Plaintiff/
Respondent

No. 18

Judgment on
Leave to Appeal

31st July 1969
(contd)

Mr. D.W. Marsh, Q.C. for Defendant/Appellant

Mr R.N.A. Henriques for Plaintiff/Respondent

31st July, 1969.

MOODY, J.A. (Presiding)

10

This is an application by the respondent for leave to appeal to the Privy Council from a Judgment of this Court delivered on the 28th March, 1969.

The application is by motion under S.110 (1)(a) of the Constitution of Jamaica which is as follows:-

"An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases -

20

where the matter in dispute on the appeal to Her Majesty in Council is of the value of five hundred pounds or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of five hundred pounds or upwards, final decisions in any civil proceedings."

30

Learned Counsel for the applicant states that there is no dispute that the tax, if payable, is £145.2.6; three amounts are agreed for what they represent. £1,720 represent the amounts collected by way of subscriptions of hotel members. £489 represent the sum remaining after deductions are made in accordance with

In the
Court of Appeal
of Jamaica

—
No. 17

Affidavit of
Mr. A.A. Debuc

18th June 1969
(contd)

Kingston 10; and I am a Certified Accountant and a Senior Assistant Commissioner of Income Tax, attached to the Department of Income Tax, Stamp Duties and Estate Duties.

2. That in the course of my duties I am called upon to examine and deal with the Returns and Accounts of the above-named Respondents, and I did in fact examine and deal with their Accounts and Return for the Year of Assessment 1964. 10

3. That I have been shown the Affidavit of George William Nelson Downer dated the 29th May, 1969, served on the Crown Solicitor on the 2nd June, 1969, and received by the Commissioner of Income Tax on the 14th June, 1969, paragraphs three and four of which states:

"3. The question at issue between the parties in this appeal was whether the amount paid (after the amendment of the Club rules on the 14th October, 1963) by hotel members based upon the audit house count constituted profits or gains within the meaning of the income tax law. 20

4. The amount paid by hotel members for the year 1963 (that is year of assessment 1964) was £8,252. Of this amount £1,720 represented the proportion attributable to the two and a half month period in 1963 subsequent to the amendment of the rules." 30

4. That it is my understanding that the issue between the parties in this Appeal was whether or not the Commissioner of Income Tax was entitled to the amount of tax in dispute, namely £145.2.6 referred to in paragraph seven of my Affidavit of the 12th May, 1969, although in determining that issue, it was necessary to consider what was the proper treatment for Income Tax purposes of amounts paid by hotel members for the period 14th October, 1963 to 31st December, 1963. 40

5. That in any event the proper amount of profits to be taken into account for the aforesaid period, namely 14th October, 1963, to 31st December, 1963, is £489.-- and not £1,720 as

provisions of the Income Tax Law. The applicant is a members' club assessed for the year of assessment, 1964, as having a chargeable income of £5,142. In arriving at this amount the Commissioner wrongly took into account the sum of £1,720 received for the period October to December, 1963, by way of subscriptions from the said members. The sum of £1,720 is money received from a non-taxable source and should not be taken into account. The Commissioner was contending that the applicant must carry on a trade of supplying bathing and other facilities to the public and that the £1,720 was derived from that trade. The applicant has the right to have this question determined and the value of that right is £1,720.

10

In support of his submission he referred to the case of The Commissioner of Land Valuation v. Gypsum 10 W.I.R. p.88.

20

The taxpayer by S.43(1) of Law 59 of 1954 is required to make a return of the whole of his income from every source whatsoever.

The issue between the parties was not the amount of tax payable but whether the receipts from a certain source should be treated as receipts from strangers or as receipts from ordinary members. The sole issue was whether the mutuality principle applied to annual subscriptions of hotel members.

30

In four subsequent years of assessment the same question arises and objection had been duly taken and the Commissioner had not yet given his decision in respect of it. It seems a clear inference that the decision was withheld pending the determination of this appeal.

Learned Counsel for the Commissioner of Income Tax submitted that the wording of S.110 (1)(a) indicated a clear intention to confer a limited and restricted right of appeal. What was in issue was whether the Commissioner was entitled to the amount of tax in dispute, viz. £145.2.6d. although in determining that issue it was necessary for the Court to consider what was the proper treatment of the profits

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In the
Court of Appeal
of Jamaica

—
No. 18

Judgment on
Leave to Appeal

31st July 1969
(contd)

In the
Court of Appeal
of Jamaica

—
No. 18

Judgment on
Leave to Appeal

31st July 1969
(contd)

derived from such hotel members during the period October to December, 1963. Income tax was a tax on profits. Gross receipts by themselves are not charged by the Income Tax Law. Profit is the difference between gross receipts and the costs of earning them. When a taxpayer has profit he comes within the purview of the law and only then does S.8 of the Income Tax Law apply. £489 is not chargeable income, it is profit computed on ordinary commercial principles. The figure of £1720 does not concern the Commissioner, it is completely meaningless to him. Unless there are profits arising from a transaction the Commissioner has no authority for dealing with that taxpayer in that regard for that year. The tax is on profits, not on gross receipts. Assuming that it is not the amount of tax the applicant is called on to pay but some larger figure on which the tax is calculated, then such larger figure has to be the profits derived from it by the Club over the relevant period and not the gross receipts or sales. The right involved is the right to have the profits for the relevant period taxed. Since that figure is below the statutory minimum the application does not meet the test in S.110.

10

20

There is no statutory duty on the Commissioner to have regard to the £1,720 unless he has reason to doubt the accuracy of the taxpayer's return, then he rejects the return and imposes his own estimate of the taxpayer's liability. The duty of the Commissioner is to assess tax. S.47 of Law 59 of 1954. In determining the value for the purposes of S.110 the measure is the amount which the applicant has to pay. The value must also be taken at the date of the institution of the suit, i.e. 17th July, 1965. The recurrent nature of the liability is not a factor to be taken into account. The amount the person seeking the order has to pay determines the value, see Allen V. Pratt (1888) 13 A.C. p.780. The appeal is to restore the order of the Commissioner. Estoppel by res judicata does not apply in income tax appeals, Commissioner of Inland Revenue v. Sneathe, 17 T.C. p.149 - thus subsequent years are not to be taken into account. The case of The Commissioner of Land

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Valuation v. Gypsum is not concerned with taxes and so it cannot apply to the instant case.

In the
Court of Appeal
of Jamaica

—
No. 18

Judgment on
Leave to Appeal

31st July 1969
(contd)

10 We are clearly of the opinion that this application should be granted. Learned Counsel for the applicant has submitted that the issue between the parties was not the amount of tax payable but whether the income from a certain source, i.e. "hotel members" was liable to tax. In our opinion this description of the dispute accords substantially with the contents of paragraph 5 of the affidavit of the Senior Assistant Commissioner of income tax dated 12th May, 1969, wherein he states:

20 "That the question in dispute between the Appellant and the Respondent was the proper treatment for Income Tax purposes of subscriptions from "hotel members" for the period 14th October, 1963 (the date on which the rules of the Club were altered) to the 31st December, 1963, it being common ground between the parties that the subscriptions from such members prior to the aforesaid 14th October, 1963, were to be included in the computation of taxable profits of the Respondent for the year of assessment, 1964."

30 The total of those subscriptions, it is agreed, is £1,720. This dispute, in our view, certainly involves directly not only a question respecting a right in the Applicant to have it determined how this sum of £1,720 should be treated for income tax purposes but also a question respecting personal property of the value of £1,720.

40 We cannot agree with the submission of learned Counsel for the Commissioner that the issue between the parties was whether the Commissioner was entitled to the amount of tax in dispute. There was no dispute as to the amount of tax that might ultimately have to be paid. The application, accordingly, is granted. The usual terms, subject to any submission that Counsel might wish to make, the terms that I propose are that the order

In the
Court of Appeal
of Jamaica

No. 18

Judgment on
Leave to Appeal

31st July 1969
(contd)

is granted conditionally upon the applicant entering into good and sufficient security to the satisfaction of the Court in the sum of five hundred pounds, sterling, for the due prosecution of the appeal. The payment of such costs as may become payable by the Applicant in the event of his not obtaining final leave to appeal or, of the appeal being dismissed for non-prosecution or, of the judicial committee ordering the Applicant to pay the costs of the appeal, as the case may be and that the time fixed for the preparation and dispatch of the record to England is hereby fixed at approximately four months as from today, security to be given within ninety days.

10

No. 19

NO. 19

Order granting
final leave to
appeal to
Her Majesty
in Council

16th March
1970

ORDER GRANTING FINAL LEAVE TO
APPEAL TO HER MAJESTY IN COUNCIL

IN THE COURT OF APPEAL Civil Appeal No.3
of 1967

20

B E T W E E N :

THE COMMISSIONER OF INCOME TAX Appellant

- and -

WALTER FLETCHER on his own
behalf and on behalf of the
TRUSTEES AND COMMITTEE OF
DOCTOR'S CAVE BATHING CLUB Respondent

The 16th day of March, 1970

UPON the application for final leave to appeal to the Privy Council by the Respondent coming on for hearing on the 6th day of March, 1970 and upon hearing Mr. R.N.A. Henriques of Counsel instructed by A.E. Brandon & Co. of 45 Duke Street, Kingston, Solicitors, Town Agents for Nation, Lord & DeLisser of Montego Bay, Saint James, Solicitors for the Respondent

30

and Mrs. A.C. Hudson Phillips of Counsel on behalf of the Appellant instructed by the Crown Solicitor IT IS HEREBY ORDERED

In the
Court of Appeal
of Jamaica

1. That the Respondent's application for final leave to appeal to the Privy Council is granted.

—
No. 19

2. That leave is granted for the inclusion in the Record of Appeal to the Privy Council of the Judgment of the Court of Appeal in connection with the application for conditional leave to appeal to the Privy Council.

Order granting
final leave to
appeal to
Her Majesty
in Council

3. That the costs of and incident to the application for final leave be costs in the cause.

16th March
1970
(contd)

(Sgd) L. Hunte

Deputy Registrar

FILED by A.E. Brandon & Co. of 45 Duke Street, Kingston, Solicitors, Town Agents for Nation, Lord & DeLisser of Montego Bay, Saint James, Solicitors for the Respondent herein.

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1A

DOCTOR'S CAVE BATHING CLUBEXTRACT FROM INCOME FROM THE PROFIT AND LOSS ACCOUNT

Year ending 31st December	'51 £	'52 £	'53 £	'54 £	'55 £	'56 £	'57 £	'58 £	'59 £	'60 £	'61 £	'62 £	'63 £	'64 £	'65 £
Entrance Fees						20	331	428	357	402	324	341	288	240	419
Members subscription	995	1034	1141	1025	1241	1842	1894	1849	1951	1879	1699	1577	1365	1992	2109
Hotel Membership subs.						4435	4879	8898	7443	8071	8234	7729	8252	9528	11372
Admission tickets	3920	4167	4259	4675	7261	3841	4278	3630	4211	4550	4761	5032	4958	6867	9130
Hirage of equipment	733	1077	2199	2376	2850	2964	3420	3773	3484	3269	3218	3244	2967	3562	5068
Rent received	161	177	167	515	437	517	639	1019	1214	1032	1357	1162	1511	1811	1990
Interest - Building Soc.	41	60	119	63	69	238	127	155	143	-	-	-	-	-	-
Bonus - Building Soc.	69	35	43	55	65	101	92	49	53	-	-	-	-	-	-
Receipts from pedalos	-	66	16	-	-	-	-	-	-	-	-	-	-	-	-
Interest & Bonus Building Soc.	-	-	-	-	-	-	-	-	-	133	265	317	575	85	241
Gain on exchange	-	-	-	-	-	-	-	-	-	12	11	9	21	46	198
Miscellaneous	-	-	-	-	-	-	-	-	-	26	41	8	-	-	-
Total	5919	6616	7944	8709	11923	13958	15660	19801	18856	19374	19910	19419	19937	24131	30507

Respondent's Exhibit
(Appellant below)

1A

Extracts Profit &
Loss Accounts
Doctor's Cave
Bathing Club
years 31.12.51
to 31.12.65

1B

EXTRACT FROM THE FINAL ACCOUNTS OF DOCTOR'S CAVE
ACCOUNTS RECEIVABLE AND PREPAYMENTS

Respondent's Exhibit
(Appellant below)

1B

Extracts from
Final Account of
Doctor's Cave
Bathing Club
years 31.12.58
to 31.12.65

Accounts Y/E	<u>31/12/58</u>	<u>31/12/59</u>	<u>31/12/60</u>	<u>31/12/61</u>	<u>31/12/62</u>	<u>31/12/63</u>	<u>31/12/64</u>	<u>31/12/65</u>
Casa Montego Hotel	373	628	908	432	858	1063	954	1043
Casa Blanca Hotel	137	377	296	271	105	396	406	465
Gloucester House Hotel	159	226	147	47	75	88	141	231
Beach View Hotel	43	53	45	143	216	147	35	37
	812	1284	1396	893	1254	1694	1536	1776
Rents:-								
D. Ohisholm		14	17	32	44	44	80	77
Hotel Casa Blanca							95	95
Smith			50	50	50	50	50	8
Post Office			6	6	6	6	31	31
Land Taxes Prepaid					70			
Club Pension Contribution Prepaid					223	220	234	225
Staff Loans					95	96	135	53
Rent:-								
* Elias Edwards						50		
Merle Henriques						60	180	150
Water Rates Paid						90		
Cash Shortage							291	
	812	1298	1469	981	1742	2310	2632	2415
Less: Provision for Doubtful Debts							260	260
							2372	2155

C1DOCTOR'S CAVE BATHING CLUBRespondent's
Exhibit
(Appellant below)EXTRACTS OF CERTAIN OF THE AUDITORS
NOTES TO FINANCIAL STATEMENTS10

	<u>Dates of Balance : Sheets</u>	<u>Auditors Observations</u>	Extract of certain Auditors notes of financial statements years 31.12.51 to 31.12.65
10	1. 31.12.65	1. Members subscriptions are credited to Income and Expenditure Account on a cash basis. Members subscriptions shown by the records to be in arrears at 31st December, 1965 amounted to £730 (1964 £1509).	
20	2. 31.12.64	1. Members subscriptions are credited to Income and Expenditure Account on a cash basis. Members subscriptions shown by the records to be in arrears at 31st December, 1964 amounted to £1509 (1963 £1135).	
30	3. 31.12.63	Members subscriptions are credited to Income and Expenditure Account on a cash basis. Members subscriptions shown by the records to be in arrears at 31st December 1963 amounted to £1135 (1962 £1555).	
40	4. 31.12.62	Members subscriptions are credited to Income and Expenditure Account on a cash basis. Of the members subscription shown by the records to be in arrear at 31st December 1962 £685 are considered to be collectable.	

Respondent's Exhibit (Appellant below)	Dates of <u>Balance Sheets</u>	Auditors <u>Observations</u>	
10	5. 31.12.61	2. Members subscriptions are credited to Income and Expenditure Account on a cash basis. Subscriptions in arrears at 31st December 1961 amounting to £628 (£210 in 1960) are not reflected in the Account	10
Extract of certain Auditors notes of financial statements years 31.12.51 to 31.12.65 (contd)	6. 31.12.60	3. Members subscriptions are credited to Income and Expenditure Account on a cash basis. Subscriptions in arrears at 31st December 1960 amounting to £210 are not reflected in the Accounts.	
	7. 31.12.59	(No note appears as to the treatment of members subscriptions nor did the Auditors report make any reference to it).	20
	8. 31.12.58	We have not checked the Members subscriptions and arrears or payments in advance have not been brought to account.	
	9. 31.12.57	Outstanding liabilities with the exception of Audit Fees and Income Tax have not been brought to account. Income has been accounted for on a cash basis and no amount has been shown for subscriptions in arrears or paid in advance. We have not checked the Members Subscription Account.	30
	10. 31.12.56	Same as at 7	40

88.

<u>Dates of Balance Sheets</u>	<u>Auditors Observations</u>	Respondent's Exhibit (Appellant below)
11. 31.12.55	Same as at 7	<hr/> 10
12. 31.12.54	Same as at 7	
13. 31.12.53	Same as at 7	
14. 31.12.52	Same as at 7	
15. 31.12.51	Same as at 7	Extract of certain Auditors notes of financial statements years 31.12.51 to 31.12.65 (contd)

ON APPEAL FROM
THE COURT OF APPEAL OF JAMAICA

B E T W E E N :-

WALTER FLETCHER

Appellant

on his own behalf and on
behalf of TRUSTEES AND
COMMITTEE OF DOCTOR'S CAVE
BATHING CLUB

- and -

THE COMMISSIONER OF INCOME TAX Respondent

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

DEUCES & ATLEE,
82 King William Street,
London, E.C.4.

Solicitors for the Appellant

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

Solicitors for the Respondent