

IN THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N

N. T. S. ARUMUGAM PILLAI

Appellant

- and -

10 THE DIRECTOR GENERAL OF INLAND
REVENUE

Respondent

CASE FOR THE APPELLANT

R = Record
Ex = Exhibits

1. This is an Appeal from a Judgment and Order of the Federal Court of Malaysia (Appellate Jurisdiction) at Kuala Lumpur (Coram: Suffian, L.P., Ong Hock Sim, F.J. and Wan Sulaiman, F.J.) dated 15th March, 1977. R. p.163
The Judgment and Order dismissed an Appeal by the Appellant from a Judgment and Order of Datuk Chang Min Tat J. of High Court dated 13th September, 1976. The High Court Judgment and Order dismissed the Appellant's Appeal from R. p.173
20 a Determination of the Special Commissioners (Messrs. Gunn Chit Tuan, Tan Sim Hj, Wan Hamzah b.Hj. Mohd and T. Saravanamuthu) and their Deciding Order dated 27th R. p.103
September 1975. The Deciding Order of the Special R. p.139
Commissioners unanimously directed Assessments to income tax in sums aggregating to M. \$ 10, 323, 230. 75 be made for the years involved.
2. The Appellant had appealed to the Special Commissioners against assessments and additional assessments to income tax in the following sums for 14 years covering
30 a period of 20 years :-

R = Record
Ex = Exhibits

<u>Year of Assessment</u>	<u>Date of Notice of Assessment</u>	<u>Tax Payable</u>	
1953	17.3.1973	58,188.00 (Additional)	
1957	1.12.1972	40,000.00 (Additional)	
1958	6.4.1974	11,606.00 (Additional)	
1959	1.12.1972	800,000.00 (Additional)	
1960	27.10.1972	360,000.00 (Additional)	
1961	27.10.1972	1,800,000.00 (Additional)	
1962	27.10.1972	901,158.85 (Original)	
1966	23.2.1974	12,844.00 (Original)	
1967	23.2.1974	101,710.00 (Original)	
1968	23.2.1974	1,391,050.25 (Original)	10
1969	23.2.1974	244,540.60 (Original)	
1970	23.2.1974	517,565.00 (Original)	
1971	3.7.1971	150,687.50 (Original)	
1971	31.7.1971	670,665.90 (Additional)	
1972	2.9.1972	1,085,825.00 (Original)	
		<u>8,145,841.50</u>	

Held at the Bar
 or
 In Appendix
 hereto

The Additional Assessments for 1953, 1957, 1958, 1959 were time-barred and made under the proviso to Section 69(1) of the Income Tax Ordinance (No. 48 of 1947) on the basis that there was fraud or wilful default. Appeals against these Assessments were made in the prescribed statutory manner under Section 99 of the Income Tax Act (No. 53 of 1967) as such Assessments were excessive; did not reflect the correct incomes and were not in accordance with the Returns and Accounts already submitted. 20

3. The Special Commissioners heard these Appeals on 3rd and 4th December 1974; 3rd February 1975; 24th, 25th, 26th, 27th and 30th June 1975; 1st, 2nd, 3rd, 4th, 7th, 8th, 9th, 10th, 11th, 17th, 18th, 19th, 21st, 22nd, 23rd, 24th and 31st July 1975; 7th and 8th August 1975 at Penang and on 21st and 22nd August and 2nd September 1975 at Kuala Lumpur. 30

4. Before the said hearings and on 16th August, 1972 the Inland Revenue Department searched the Appellant's residence and offices, and took possession of the Appellant's Books of Account and other personal and business documents covering the said period of twenty years. Consequently the Books of Account and documents were retained by the Inland Revenue Department for the two years preceding the hearings before the Special Commissioners and were not released to

R = Record
Ex = Exhibits

the Appellant nor were any reasonable facilities afforded to the Appellant or his Advisers for inspection and study or to take copies. For this among other reasons the Appellant did not have adequate opportunity to present his case to the Special Commissioners; the High Court of Penang and the Federal Court of Malaysia and is still under the same disability before Your Lordships.

5. The Special Commissioners directed the Director General of the Inland Revenue to amend Assessments and
 10 Additional Assessments as follows :-

<u>Year of</u>	<u>Revised</u>	<u>Tax</u>	<u>Previous</u>	<u>Tax</u>
<u>Assess-</u>	<u>total</u>	<u>thereon</u>	<u>Assess-</u>	<u>Payable</u>
<u>ment</u>	<u>income</u>		<u>ment</u>	
	\$	\$	\$	\$
1956	580,546	166,068.80	5,006.00	161,062.80
1957	363,608	132,338.20	18,900.20	113,438.00
1958	285,190	100,477.40	63,386.20	37,091.20
1959	2,015,609	792,645.00	123,145.00	669,500.00
1960	1,553,763	683,655.85	68,080.60	615,575.25
1961	5,172,768	2,312,433.10	524,680.30	1,787,752.80
20 1962	2,279,520	1,010,921.50	Nil	1,010,921.50
1966	1,062,716	517,183.00	Nil	517,183.00
1967	1,173,275	631,126.25	Nil	631,126.25
1968	3,248,763	1,772,644.65	Nil	1,772,644.65
1969	751,897	399,368.35	Nil	399,368.35
1970	1,405,706	758,963.30	Nil	758,963.30
1971	2,037,789	1,106,608.95	Nil	1,106,608.95
1972	1,374,854	741,994.70	Nil	741,994.70
TOTALS	23,306,004	11,126,429.05	803,198.30	10,323,230.75

30 The Assessments appealed against were in a total sum of \$8,145,845.50. These were increased by the direction of the Special Commissioners to \$10,323,230.75.

6. Before the Special Commissioners the hearing of the Appeals for the fourteen years covering a period of 20 years were heard together to the prejudice of the Appellant, in as much as -

- (i) as the Appellant was not heard in terms of Paragraphs 10 and 11 of Schedule 5 of Income Tax Act (No. 53 of 1967);
- (ii) the hearing of Appeals from the Assessments under Income Tax Ordinance (No. 48 of 1947) and Assessments under Income Tax Act (No. 53 of 1967) were heard together.

Held at the Bar
 or
 In Appendix
 hereto

R = Record
Ex = Exhibits

- R. p. 65
- R. p. 67
7. At the outset of the hearing of the appeals, Counsel for the Appellant (in view of the difficulties experienced in meeting any case against the Appellant) applied to the Special Commissioners for particulars and details as to how the said assessments were arrived at. The application was refused. The Revenue contended that "once an assessment has been made, there arises a rebuttable presumption that the Assessment was regularly made and the onus of displacing that presumption lies on the Assessee", and that there is no legal provision or obligation to inform the Appellant of the details of the case against him. It was also contended by the Revenue that "there are no provisions in Schedule 5 of the Income Tax Act 1967 to say that the documents taken from the Appellant's premises must be shown to him either before or during the hearing". The case against the Appellant should have been clearly stated and reasonable opportunity and time given to enable him to meet the case. The Deciding Order of the Special Commissioners is bad in law and cannot be sustained. Consequently the Judgments and Orders of the High Court and the Federal Court also are bad in law and cannot be sustained. The refusal to disclose particulars is untenable particularly in regard to the Assessments for the time-barred years where fraud or wilful default are alleged. The Appellant was entitled to know the particulars and the basis on which the Revenue was alleging fraud against him. 10 20
8. The Appellant's case was prejudiced by the manner in which the Revenue case was presented and heard. The Special Commissioners were required to consider 89 contentious issues as regards assessments covering a period of 20 years. The nature, scope and extent of these issues were not put to the Appellant when he gave evidence. The majority of these issues were not raised or disclosed until Exhibits R 229 to R 233 were produced by the Revenue on 21st July, 1975 (the 21st day of the hearing). 30
- Ex. Vol. 3
pp. 388-406
- R. p. 3
9. As regards those years of assessment (viz: 1953, 1957, 1958, 1959) in respect of which the Revenue raised additional assessments and alleged there had been fraud, the procedure adopted by the Special Commissioners occasioned prejudice to the Appellant's case. The tribunal refused an application by the Appellant's Counsel that, as the onus was upon the Revenue to show fraud, the Revenue should open the proceedings and show the Appellant the case he was required to meet and prove fraud beyond reasonable doubt. The Special Commissioners having referred to the case of Amis v. Colls (39 T.C. 145) and the observations made therein by Cross J. and also having 40

R = Record
Ex = Exhibits

referred to the observations made by Widgery C.J. in the case of Regina v. Special Commissioners (ex parte Martin) ruled as follows :-

48 Tax Cas 1

10 "as the substantive onus of proving that the assessments for Years of Assessments 1960 to 1972 that they were excessive or erroneous was on the Appellant, he should begin and lead evidence first and when the Revenue adduced evidence in reply, it should then in the circumstances also discharge its onus of proving fraud or wilful default in respect of the statute-barred years of Assessment".

R. p.79

20 The Special Commissioners furthermore held the view that by reason of Paragraph 22 of Schedule 5 of the Income Tax Act (No. 53 of 1967) they were empowered to regulate their own procedure. On appeal and in the High Court Datuk Chang Min Tat J. held that the procedure and giving of evidence in a hearing before the Special Commissioners may largely be regulated by themselves. This is subject to the consideration that the Appellant must be given a full and adequate hearing and reasonable opportunity to be heard. He considered the following extract from the Judgment of Widgery C.J. in Regina v. Special Commissioners (ex parte Martin) most apt :

R. p.109

"It is very important that the procedure before the Commissioners should be kept as flexible as possible to deal with widely varying types of cases which come before them".

48 Tax Cas 7

30 The Learned Judge did not further consider the decision of 24th July, 1976 by the Special Commissioners in which they repeated their ruling that the Appellant could only give evidence in rebuttal if taken by surprise.

The Learned Judge did not apply his mind as to whether the Special Commissioners could have been misguided in their approach to calling evidence and to have done so in a prejudicial manner. In being guided by Widgery C.J's views in the ex parte Martin case (supra) he made no reference to the Judgment of Lord Denning M.R. in the Court of Appeal in that case. Lord Denning said :

40 "The Commissioners are not subject to the rules of the White Book. They are not subject to rules about pleading ... The proceedings are quite informal. The case is simply stated by the Crown

48 Tax Cas 11

R = Record
Ex = Exhibits

on whom the burden lies. There is no need to give particulars of fraud at the outset. It is sufficient if it appears from the opening, or from the evidence as it emerges. The only thing that is necessary is that the taxpayer should have a fair opportunity of knowing the case against him and then of answering it. That is sufficient to comply with the rules of natural justice".

Lord Denning said further that so long as justice was had their jurisdiction cannot be challenged. 10

On the basis of the principles outlined the Learned Judge did not appreciate that the Commissioners must give the Appellant opportunity to deal with any evidence submitted by the Respondent. It is submitted that as a matter of natural justice the Appellant should have been allowed to lead evidence in rebuttal and that this right is not limited to where the Appellant can show he has been taken by surprise by such evidence. The need for such matters to be put is shown in Lack v. Doggett 46 Tax Cas. in the Court of Appeal at page 512 (Russell, Sachs and Buckley L.J.J.). 20

The Learned Judge did say that perhaps with hindsight the Special Commissioners should have adopted an alternative course of splitting the appeal into parts. On the issue of fraud and wilful default, the Revenue could have opened the case against the Appellant and the Appellant would then have had the opportunity to reply. It is submitted that the Learned Judge should have remitted the case for that course to be adopted. It is contended that the Learned Judge was wrong in his view that that course could not be any more advantageous or fairer to the Appellant than the course adopted by the Special Commissioners. 30

As to the matter of procedure, the Federal Court appears to have adopted the Learned Judge's views on the question whether the Special Commissioners adopted the correct procedure. In the Federal Court's judgment there were no substantive arguments for rejecting the conclusions of the Learned Judge and they could find no valid legal objections to those conclusions.

9. (a) On the first day of the hearing (3rd December, 1974) the Revenue applied to the Special Commissioners that the hearing should be open to the public under amended paragraph 43(2) of Schedule 5 to the Income Tax Act (No. 53 R. p. 5 40

of 1967) which amendment came into operation on the 26th February, 1974. Although the Appellant was facing an inquiry in respect of the Years of Assessment before 1972, he was subjected to a Public Inquiry notwithstanding that objections were taken by his Counsel that a public hearing would prejudice the Appellant. The Appellant suffered great prejudice by the said ruling, since undue publicity was given to the proceedings in the daily papers causing much embarrassment to the Appellant and his family.

10 (b) By the Interpretation Act No. 23 of 1967 it is provided as follows :-

"Section 30(1) The repeal of a written law in whole or in part shall not -

- (a) affect the previous operation of the repealed law or anything duly done or suffered thereunder; or
- (b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed law;
- 20 (c) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under the repealed law; or
- (d) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.

30 and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing law had not been made".

(c) "Section 30(2) Without prejudice to the generality of sub-section (1) -

- (a) The repeal of a written law which adopts, extends or applies another written law shall not -
 - (i) invalidate the adoption, extension or application; or
 - (ii) prejudicially affect the continued operation of the adopted, extended or applied law; and

R = Record
Ex = Exhibits

(b) The repeal of a written law which amends another written law shall not -

(i) invalidate the amendments made by the repealed law; or

(ii) prejudicially affect the continued operation of that other law as amended".

It is submitted that the amended paragraph 43(1) of Schedule 5 of the Income Tax Act No. 53 of 1967 had no retrospective effect. It is therefore wrong that the proceedings were held in public. The public hearing (particularly when there were allegations of fraud) hindered the Appellant in the preparation of his case. 10

(d) The Appellant's above submission that the new paragraph 43(1) of Schedule 3 to the Income Tax Act No. 53 of 1967 is not retrospective is a new contention and the Appellant will apply for leave to introduce it in the course of the hearing.

Ex. Vols. 2&3
 234 to 258
 inter alia

10. (a) During the cross-examination of the Appellant, the Revenue put to him Exhibits R-35 to R-106. At the end of the cross-examination of the Appellant, Counsel for the Revenue stated that "there were many other documents to be produced but as he did not wish to cross-examine the Appellant on those documents, he would not produce them yet until he called his witness". 20

(b) It is submitted that it is of special significance that at such a late stage the Revenue should have made a decision not to disclose the said documents. This resulted in the Appellant being denied an opportunity to meet the case made out against him with the said documents which were not put to him. 30

R. p. 57

(c) Subsequently when the witness for the Revenue was called, it was sought to produce the remaining Documents R-111 to R-233 on the 22nd of July, 1975 when Counsel for the Appellant objected on the ground that they were not put to the Appellant and the Appellant was taken by surprise. The Counsel for the Revenue, on the other hand, replied that "there was no element of surprise as the documents tendered, apart from those prepared by Revenue, were documents taken from the Appellant himself".

R. p. 58

(d) The Special Commissioners ruled that "Appellant had as a matter of law, the right to lead evidence in rebuttal 40

but the Court would have to be satisfied that before evidence was adduced on any fact, the Appellant had been taken by surprise on that fact". By this ruling the Special Commissioners accepted the position taken by the Revenue that the Appellant was not taken by surprise as the documents were taken from his premises. In view of the ruling that the Appellant did not have the right unconditionally to lead evidence with regard to documents not put to him earlier, the observations made by the Appellate Court that the Appellant elected not to lead evidence is unjustified as he was not given an opportunity as of right to do so (supra).

R. p.171

(e) Such was the prejudice suffered by the Appellant that it would have been futile to lead evidence against the assessments for the statute-barred years on the ground that they were excessive or erroneous because the Special Commissioners had indicated that they were already satisfied that there was fraud or wilful default on the part of the Appellant. The ruling allowed the Appellant to lead evidence only to show the assessments were excessive or erroneous.

11. The Appellant also faced the following difficulties :-

(i) the Appellant's Accountant, Mr. K.R. Somasundaram who was responsible for keeping the books of the Appellant had retired and left Malaysia on 8th May, 1970. Mr. Mathan of Sam Ah Chow & Company, the Auditors, who was in charge of the audit of the Appellant's business from 1952, retired from the profession in March 1972 and his services were not available to the Appellant. A new auditing firm, Chitam & Company, functioned as Auditors from April 1972 until October 1972. They resigned the job stating that they were not competent to handle the work. Thereafter, from November 1972, the services of Kennedy Burkhill & Company were engaged. However, they too resigned from the position with effect from 2nd April, 1973 for the reason that the matter was too large for them to handle. From 3rd April, 1973 the services of Chari & Company were secured. Mr. V. Chari, the Senior Partner, was personally in charge of the work which included matters arising out of the investigations by the Revenue Department.

(ii) Mr. Chari died on the 4th November, 1974. Thereafter, the Appellant had no competent Accountant to assist him whether at the hearing before the Special Commissioners or otherwise. On account of Mr. Chari's death, the hearing which was fixed for the 4th December, 1974 was put off until 3rd February, 1975. A Junior Accountant in

R = Record
Ex = Exhibits

Chari & Company, Mr. Ramanuyam, assisted in the proceedings thereafter. The services of another Accountant, Mr. Wong Hoon Keat, was engaged. However they were not familiar with the books of account. They had great difficulty in familiarising themselves with the accounts, particularly because such accounts were written in Tamil and spread over a period of 20 years.

(iii) The inquiry was again taken up on the 24th June, 1975. Datuk Sri S.P. Seenivasagam, Advocate, the Senior Counsel for the Appellant, fell ill. A postponement was asked for on the ground of his illness. The Special Commissioners refused to grant a postponement and the inquiry was proceeded with from the 24th June onwards. Mr. Seenivasagam, Advocate and Senior Counsel, died on the 4th July, 1975 during the hearing. 10

(iv) Further, the services of Mr. Woodhull were retained to address the Special Commissioners on questions of law. Mr. Woodhull appeared on the 31st July, 1975 and moved for a short adjournment so that he could get ready. Application for postponement was refused. 20

In the circumstances set out above, and particularly due to refusal of adjournments, the Appellant did not have the opportunity to present his case and therefore there was no hearing of his Appeals, and there is no sustainable Deciding Order.

12. (a) The Appellant himself did not write up the Books of Account and he was not familiar with the Books of Account or other business documents. The Appellant was quite unfamiliar with the English language and therefore he had no knowledge of the Statement of Accounts and other documents in the English language. 30

(b) Mr. V. Chari, the Auditor, who had no familiarity with the books of the Appellant, wanted to examine the Books of Account in the Department of Inland Revenue. However, he could do so only on two dates. Thereafter, Mr. Sadasivam of the Inland Revenue Department, informed him (Mr. Chari) that the Books of Account could not be examined before the hearing. Even at the time they examined the Books of Account, only one book at a time was given. Thus it was not possible to cross refer or carry out any sustained or co-ordinated investigation by Mr. Chari. In all, Mr. Chari was able to examine one ledger, one register and a few agreements in the English language. Mr. Chari requested that copies of the documents on which Revenue would rely be given, 40

R = Record
Ex = Exhibits

but Mr. Sadasivam refused to make copies available.

(c) At the inquiry no issues were raised nor formulated by the Special Commissioners. The request by the Appellant to State the Case against him was refused by the Revenue.

R. p. 3

(d) At the hearing, the Appellant was not able to lead the evidence of any person familiar with the Books of Account, in view of the speed and mode of procedure. The Appellant gave evidence himself and stated whatever he knew from memory.

10

(e) The Appellant gave evidence in chief on 25th, 26th and 27th June, 1975. The Appellant was cross-examined on 30th June, 1st, 2nd and 3rd and 7th July, 1975 and he was re-examined on 8th July, 1975. No further evidence was led on behalf of the Appellant in circumstances herein set out.

(f) The Appellant led in evidence Exhibits A-1 to A-34 and A-107 to A-110 and A-234 to A-240. The Revenue produced Exhibits R-35 to R-106 and R-111 to R-233. The Exhibits R-111 to R-233 produced by the Revenue were not put to the Appellant at any time and the Appellant had no opportunity to study them.

20

Ex. Vol. 2
 pp. 1-233
 Ex. Vols. 2&3
 pp. 233 - 362

(g) The Exhibits R-229, R-230, R-231, R-232 and R-233 are documents of facts and the case of the Revenue, prepared by the Revenue and were produced at the end of the evidence. Thus, not only were the Statements of Facts and the case of the Revenue prepared by the Revenue not made available to the Appellant or his advisers in time to prepare for the hearing of the Appeals, but also not put to the Appellant at the hearing. The Revenue, while leading the evidence for the Revenue, has led evidence for the Years of Assessment 1963, 1964 and 1965 which years were not in Appeal. (Ref: R-169, R-172, R-178, R-231 and R-233). Thus the Appellant had in effect been called upon to answer and deal with Assessments for 17 years and also in respect of years not under Assessment or Appeal.

30

Ex. Vol. 3
 pp. 386-405

Ex. Vol. 3
 pp. 350-352
 Ex. Vol. 3
 pp. 386-405

(h) During the hearing, the Appellant's Counsel needed to inspect certain documents led in evidence. After an application made on 11th July, 1975, the inspection was arranged for 12th July, 1975. The Appellant and his advisers went to the Revenue Department, where there were

40

R = Record
Ex = Exhibits

press photographers ready to take photographs of the Appellant inspecting the Books of Account; the photographers were there at the invitation of or with the permission and approval of the Inland Revenue Department. As a result of this attitude of the Revenue Department, the Appellant or his advisers did not succeed in examining the books.

(i) The speed, mode and manner of the inquiry did not give the Appellant a fair or reasonable opportunity to refer to the Books of Account and documents. The Appellant was not able to get ready for the inquiry with the appropriate advice and preparation. This was particularly so, as the hearing covered facts over 20 years and as it subsequently turned out involved more than 89 issues after the evidence was led. 10

13. (a) It appears that no official record of evidence and proceedings was kept. Some notes were kept by each of the Special Commissioners individually; none of which was made available to the Appellant. Therefore the Appellant had not the opportunity to examine the record of notes on which the final decision was made. It is accepted that there is no express provision to make available to the Appellant the record of the proceedings. No record of the proceedings was given to the Appellant. An application for a record of the proceedings was refused. It is submitted that a record of evidence and proceedings should have been kept and made available. 20

(b) The Appellant submits that the non-availability of the record seriously prejudiced his case before the Special Commissioners; the High Court and the Federal Court. 30

(c) The correctness and adequacy of the Stated Case could not be questioned and challenged in the absence of a proper record of proceedings and therefore the formal agreement of the Stated Case is without any weight. The approval of the Stated Case was inevitable and does not cure the defects set out herein and should not be held against the Appellant.

14. To facilitate and enable the Appellant to demonstrate to Your Lordships the gravity of the prejudice suffered at the hearing by the Appellant, it will be moved on behalf of the Appellant for Your Lordships to admit Affidavit "X" filed herewith along with the Affidavit, which is part of the Record, which was sought without success to be produced as evidence in the Federal Court of Malaysia. This application will be 40

R = Record
Ex = Exhibits

made for the following, among other, reasons that will be urged by Appellant's Counsel at the hearing before Your Lordships :-

10 (1) The evidence and proceedings before the Special Commissioners have not been made available at any time or even now to the Appellant for him to present his Appeal, even though action had been taken to obtain same before his Appeal to the High Court of Penang. The Order of Refusal by the High Court of Penang is now a subject matter of Appeal in the Federal Court of Malaysia.

15. (a) The Grounds of Appeal in this case also involve findings of facts which cannot be sustained in law. It is therefore submitted that it is necessary for the High Court, the Federal Court and the Privy Council to have an official record of the evidence and of the proceedings to :-

20 (i) to go through the evidence not for the purpose of deciding whether they could come to a different conclusion, but for the purpose of deciding whether the findings reached by the Special Commissioners could have been reached by any reasonable person or is irrational or perverse and therefore not sustainable in law. In such case questions of law arise;

(ii) the record of the proceedings will have to be gone through, in addition to any evidence that is now led by Affidavit, to discover whether the Appeal proceedings have been conducted in accordance with the principles of natural justice.

30 (b) It will be seen that the Special Commissioners referring to the 89 issues covering such a period of twenty years determined a sum of M. \$ 10,323,230.75 by accepting in toto that the tax asked for by the Revenue although they overruled the Assessment for the years 1963, 1964 and 1965 on the grounds that no Assessments were made, they adopted the total assessments made by the Revenue for the other years including the statute-barred years, that is to say, they failed to direct their independent minds on the basis of the said assessments, on each of the 89 issues. This reveals
 40 how important it was for the Appellant to have been shown the Assessments in terms of R-233, when he was in the box.

Ex. Vol. 3
 p. 406

(c) The following table sets out the sums assessed by the assessments described in Paragraph 2 above and

R = Record
Ex = Exhibits

compares these sums with the amounts to which the assessments were increased by Order of the Special Commissioners.

TABLE I

Year of Assessment	Date of Assessment	(A)	(A) Income Assessed (I)	Income Requested (R-233)	(I1)
			(O) Tax Due (T)	Gross Tax Due (T1)	
<u>UNDER THE PROVISIONS OF INCOME TAX ORDINANCE 1947</u>					
1953	17.3.73	A	237,630.00(I) 58,188.00(T)	580,546.00(I1) 166,068.80(T1)	10
1957	1.12.72	A	180,013.00 40,000.00(T)	363,608.00(I1) 132,338.20(T1)	
1958	6.4.74	A	221,477.00 11,606.00(T)	285,190.00(I1) 100,477.40(T1)	
1959	1.12.72	A	2,341,859.00 800,000.00(T)	2,015,609.00(I1) 792,645.00(T1)	
1960	27.10.72	A	958,818.00(I) 360,000.00(T)	1,553,763.00(I1) 683,655.85(T1)	
1961	27.10.72	A	5,192,118.00(I) 1,800,000.00(T)	5,172,768.00(I1) 2,312,433.10(T1)	20
1962	27.10.72	O	2,035,603.00(I) 901,158.85(T)	2,279,520.00(I1) 1,010,921.50(T1)	
1963		O	Nil Nil	739,942.00(I1) 318,111.40(T1)	
1964		O	Nil Nil	1,315,012.00(I1) 577,792.90(T1)	
1965		O	Nil Nil	2,729,781.00(I1) 1,350,715.50(T1)	
1966	23.2.74	O	53,736.00(I) 12,844.40(T)	1,062,716.00(I1) 517,183.00(T1)	30
1967	23.2.74	O	210,700.00(I) 101,710.00(T)	1,173,275.00(I1) 631,126.25(T1)	

R = Record
Ex = Exhibits

UNDER THE PROVISIONS OF INCOME TAX ACT 1967

1968	23.2.74	O2,554,955.00	3,248,763.00(I1)
		<u>1,391,050.25(T)</u>	<u>1,772,644.65(T1)</u>
1969	23.2.74	O 470,392.00(I)	751,897.00(I1)
		<u>244,540.60(T)</u>	<u>399,368.35(T1)</u>
1970	23.2.74	O 966,800.00(I)	1,405,706.00(I1)
		<u>517,565.00(T)</u>	<u>758,963.30(T1)</u>
1971	3.7.71	O1,400,000.00(I)	
		<u>150,687.50(T)</u>	
10 1971	3.9.71	A1,513,688.00(I)	2,037,789.00(I1)
		<u>670,665.00(T)</u>	<u>1,106,608.95(T1)</u>
1972	2.9.72	O2,000,000.00(I)	1,374,854.00(I1)
		<u>1,090,825.00(T)</u>	<u>741,994.70(T1)</u>

NOTE: A = Additional
 O = Original

16. At all material times the Appellant carried on a trade of land dealing. He purchased large estates and sold them off in smaller parcels to local purchasers. This is referred in the Record of Appeal as the "fragmentation business" (and hereinafter referred to as such). For the proper conduct of this business the Appellant's employees and agents kept books of account and business records either in the Tamil or English language. The principal books are :

(i) Registers - (referred to by the High Court as Personal Account Books and hereinafter referred to as "PAB"). The purpose of PAB's were that when a sale of land was tentatively agreed the date, the name of the purchaser, details of the lots and the tentative prices were therein set out. The price was subject to revision after inspection and survey of the lot. It will be seen later that on the day the tentative agreement was reached, the buyer generally paid only a small advance.

(ii) Estate Ledger - (sometimes referred in the Record as the "Ledger" - referred to by the Appellate Tribunals as the "Account Book kept for Income Tax Purposes", hereinafter referred to as "ABIT") in which, inter alia, were recorded under the following headings the following matters :-

(a) Estate Sales Account; the final price in terms of the notarial agreement for the sale of the land, and

R = Record

Ex = Exhibits

- (b) an Estate Advance Account in which payments made by instalments, or otherwise made, were recorded. When the agreed amount for the land and expenses as set out in the PAB was, in fact, received this receipt was fully recorded in the Estate Advance Account of ABIT.
- (iii) Examples of such entries and reconciliation of PAB and ABIT.

Kuala Dingin Estate - The Estate Advance Account in the Ledger (ABIT) relating to Kuala Dingin Estate was recorded on pages 131, 132, 133 and 134 of the Ledger (ABIT) for the year 1959/60. Ten out of eleven sales are found in pages 131, 132, 133 and 134. In most cases the total price as recorded in the Register (PAB) was received and recorded. In Paragraph 22(a)(iii) of the Affidavit the entries in the Register (PAB) and the corresponding entries in the Estate Advance Account in the Ledger (ABIT) are set out. 10

Bertram Estate - the Ledgers (ABIT) for 1961/62, 1962/63 and 1963/64 contain the Estate Advance Accounts relating to Bertram Estate, R-176 is Extract of Bertram Estate Sales (PAB). The prices set out in R-176 with respect to Lot 629 were received in instalments and recorded in full. 20

(Ref: Paragraph 22(a)(iii) of the Affidavit;
Ref: also to Tables II, III and IV in Paragraph 20(a)(iii)).

- (c) The Revenue produced extracts from the Ledger (ABIT) showing only the sales but did not show or refer to the Estate Advance Account in the same ledger (ABIT). The Revenue submitted that the correct price was recorded in the Registers (PAB) and that the Registers were not disclosed to the Revenue; that therefore there were two sets of books, one set of books (Ledgers or ABIT) maintained for income tax purposes and the other (Register of PAB) maintained for the use of the Appellant and not to be shown to the Revenue; that the "sales" figures set out in the Ledger (ABIT) were less than the "sales" figures recorded in the Register (PAB). The Revenue submitted that there was therefore fraud. Although the Revenue had possession of the books they neglected to show that there was an Estate Advance Account in the same Ledger (ABIT) and that this account tallied with the items set out in the Register (PAB). Only when the full amount contracted for was not paid or when there were acreage adjustments there were differences. 30 40

R = Record
Ex = Exhibits

- (d) Every Ledger (ABIT) had the Estate Advance Account which reflects the sales account in PAB for each year, the tax return of the Appellant for each year had the Estate Advance Account (balance outstanding) and Revenue was or should have been aware of this but did not refer to the accounts from 1953 until 1972 submitted to the Revenue.
- 10 (e) The allegation of fraud or wilful default was mainly on the basis that the Appellant kept two sets of books, viz, the Register (PAB) for himself and the Ledger (ABIT) for the Revenue. If the fact that all the moneys received were recorded in Estate Advance Account in the Ledger (ABIT) was disclosed to the Special Commissioners, it is submitted they would and could not have reached the conclusions that two sets of books were kept, one for personal information and the other for income tax purposes. It is submitted further that the conclusion that there was fraud or wilful default was erroneous and cannot be sustained.
- 20 (f) The Appellant repeatedly asserted that the business transactions were all recorded properly in the books and that he wanted time to get the help of competent persons to examine the books. However, adequate opportunity was not given to the Appellant to have the books examined by competent persons.
- 30 (g) It is stated that "the Appellant admitted that there were differences between the sale prices declared and the actual sale price recorded in the books seized by the Revenue. He, however, refused to admit that these differences were omissions of income which he should have declared ... ". The Appellant's position was that "All sales of fragmented lots have been recorded in his Books of Account maintained by him in his office".
- 40 (h) The Appellant's position was that the books were not kept by him. He was not conversant with the English language and he was not in a position to speak to the correctness or otherwise of the accounts submitted to the Revenue. But he insisted that he had given instructions to record all transactions and therefore there was no question of fraud or wilful default. The Appellant needed to obtain the assistance of Accountants who are familiar with both English and Tamil languages to examine the Books of Account.

R = Record
Ex = Exhibits

- (i) The Revenue had not given adequate opportunity, particularly when the issues were not put to the Appellant, during the three years from 16th August, 1972 to 24th January, 1975 - Revenue had the Books of Account with them.
- (j) The Revenue selected the documents which could, in the absence of other documents or evidence, suggest the inference of fraud. For example, the Revenue suggested (and accepted by the Special Commissioners) that in R-66 "twenty-eight" means "twenty eight lakhs". But it is quite evident that from R-45T (25.10.59) where "Rs. 10" is referred to and there is a corresponding entry in the Ledger R-41 (23.10.59) that a sum of Rs. 10,000 was sent, that "28" means "Rs. 28,000/-". Similarly, see R-45 under date 23.10.59 where it is recorded "Rs. 40" (meaning Rs. 40,000) was sent being the equivalent to M\$21,917/-.

10

Ex. Vol. 3
 p. 358

See also R-200(b) (27.5.65) in which it is recorded "Rs. 8", (meaning Rs. 8,000) equivalent to M\$2,758.61. It is clear that the code used by the employees is Rs. 1 to Rs. 1,000/-.

20

17. (a) The mode of hearing of the Appeals before the Special Commissioners, and the conduct of the Inland Revenue Department by its officers during the hearing were calculated to embarrass and to deter the Appellant in the presentation of his case against the Assessments.

(b) The wrongful and unreasonable refusal of adjournments as and when necessary to enable the Appellant to retain and instruct Counsel and Accountants for presentation of his case in effect crippled the Appellant and prevented him from the presentation of his case. There was no fairness in action in the course of the proceedings and the transgressions of the principles of natural justice mentioned above denied the Appellant of a meaningful hearing.

30

18. The decision of the Special Commissioners (the Deciding Order) cannot be sustained and the assessments should be discharged because :

(a) The case against the Appellant for the several years not being conveyed to him in a manner and in time to enable him to prepare and meet the case against him. In fact details of the Assessments were denied by the Revenue Department to the Appellant on the ground that they were not obliged in law to disclose the same.

40

R = Record
Ex = Exhibits

(b) Access to the Books of Account and personal and business documents in the custody of the Revenue Department were not allowed to the Appellant or his representatives in a reasonable manner and in time to enable the Appellant to present his case against the Assessments, nor was he permitted to take copies.

(c) The Appeals for 14 years including statute-barred years were consolidated together and 89 issues ranging over 20 years being dealt with in one hearing.

10 (d) Documents R-111 to R-233 not being put to the Appellant.

Ex. Vols. 2&3
 pp. 233-362

(e) By alleged dispositions of witnesses recorded by the Revenue Department officials being produced in evidence without notice to the Appellant and without adequate opportunity to meet or test such dispositions by cross-examination or otherwise.

(f) The Appellant wrongfully and unreasonably being refused adjournments as and when necessary to enable him to retain and instruct Counsel and Accountants.

20 (g) By the Special Commissioners ruling that the Appellant has committed fraud or wilful default without hearing the Appellant.

(h) The Appellant being not given the record of evidence and of proceedings before the Special Commissioners. Such record has still not been made available to the Appellant.

30 19. Further the Assessments cannot be sustained because (a) The method of ascertaining income for a year of assessment as required by the Income Tax Act from each source has not been followed. As a result -

- (i) disallowance of interest has been treated as income;
- (ii) the qualifying plantation expenses which should have been allowed as a deduction in respect of each source of agriculture in terms of Section 42 read with Paragraph 75 of Schedule 3 of the Income Tax Act of 1967 could not be given effect to;
- (iii) the carry-forward of losses and deductions for such losses could not be given effect to. Deductions for losses and qualifying plantation expenditure for the

Held at the Bar
 or
 In Appendix
 hereto

R = Record
Ex = Exhibits

years 1963, 1964 and 1965 and for subsequent years could not be given effect to.

(b) Details of the assessments, particularly by amounts and sources, have not been given in the Notices of Assessments or otherwise.

(c) The Additional Assessments or Assessments do not indicate the sources of income assessed and, particularly for the time-barred years, do not indicate the income which is alleged to have been undeclared.

Held at the Bar
 or
 In Appendix
 hereto

(d) Consolidation of Appeals for several years was made without hearing the Appellant contrary to the provisions of Paragraph 11 of Schedule 5 of the Income Tax No. 53 of 1967.

10

(e) The Revenue drew evidence selectively from the books of account and documents in their possession and as a consequence it is submitted that errors were made by the Special Commissioners in respect of -

(i) Books "PAB" and "ABIT";

Ex. Vol. 3
 p. 250

(ii) "Twenty eight" in Exhibit R-66;

(iii) Wellesley Estate sale and the year 1953;

20

(iv) Batu Kawan, Breih and Nagarajan Estates;

Ex. Vol. 3
 pp. 279 & 280
 Ex. Vol. 3
 pp. 388-403

(v) the Exhibit R-142 - the Lim Boon Chit transaction;

(vi) the Exhibit R-230 - and details set out therein;

(vii) borrowings of M\$ 2,098,909 for the year of assessment 1964.

(f) Hearsay evidence of -

(i) Saraswathy Ammal;

(ii) Rajadurai;

(iii) Chang Choo Chua

was taken into account with no opportunity given to the Appellant to cross-examine such persons as such persons were not called in evidence.

30

(g) The Appellant was denied the right to be heard in Camera.

(h) No opportunity was given to the Appellant to rebut any presumption of fraud after the evidence of Revenue was led in respect of the time-barred years;

(i) The evidence for each year has not been separately considered in reaching a decision for that year;

(j) A separate Deciding Order for each year has not been made.

10 (k) The Deciding Order did not indicate for the years 1953, 1957, 1958 and 1959 the income and the source that was to be assessed to make good the loss attributable to the alleged fraud, but such Order proceeded on the basis that once fraud in respect of one source was proved all income could be assessed whether such income were or were not declared for fraud.

20 (l) There was no adequate or reasonable consideration of the evidence for each issue in each year, and a finding arrived at for one year was applied indiscriminately to every other year, for example in respect of bonus, wages, interest received.

(m) The Special Commissioners followed the evidence and submissions of the Revenue, without making a critical or reasonable appraisal of such evidence and submissions.

20. The Special Commissioners have come to a finding of facts not sustainable in law on the ground that such findings are unreasonable, irrational or perverse. Some instances are -

30 (a) (i) The Revenue submitted that the Appellant "had failed entirely to disclose in his accounts submitted for Income Tax purposes, the purchase and sale of a plantation called Wellesley Estate"(Ref: Paragraph 8(iv) page 48 - FCR). The Special Commissioners stated (Ref: Paragraph 18(i) page 147 - FCR) as follows :-

R. p. 27

R. p. 77

40 "We considered that the action of the Appellant in submitting false Returns to the Income Tax Authorities, which had failed entirely to disclose profits from his fragmentation business, as in the case of Wellesley Estate for the years of Assessment 1953 ... the Appellant has not only committed wilful

R = Record
Ex = Exhibits

default but has also committed fraud within the meaning of Section 69(1) of the Income Tax Ordinance No. 48 of 1947, for each of the time-barred years of assessment which were the subject of Appeals before us . . . "

(Exhibit R-120 a letter from Sam Ah Chow & Co., the Auditors of the Appellant dated 30th December, 1957, the Auditors have explained to the Revenue that the purchase and sale of Wellesley Estate had resulted in a small loss of M\$ 89.85. Revenue was also informed of this transaction in another letter, Exhibit R-119 dated 21st April, 1961 by the Auditors. 10

(ii) The Special Commissioners have stated as follows :-

"Revenue also discovered that the Appellant had failed to disclose details of the purchase and sale of three other plantations, namely Batu Kawan Estate, Breih Estate and Nagarajan Estate, in his Return for the Year of Assessment 1957 . . . "

In Paragraph 18(ix) page 168 of the Federal Court Record the Special Commissioners state as follows :- 20

R. p. 87

"From the facts found and stated by us in Paragraph 8(iii) to Paragraph 8(xii), it was obvious that the Appellant had throughout the relevant years of assessment understated and/or omitted to declare his profits from his fragmentation business . . . "

Ex. Vol. 3
 pp. 269-270

Exhibit R-124 is the Income Tax Return sent by the Appellant for the Year 1957 and received by the Revenue on 26th March, 1957. In the Schedule attached to the Balance Sheet annexed to R-124, Nagarajan Estate and Breih Estate were disclosed. There was no estate called Batu Kawan Estate. But the Appellant contracted to purchase an estate called Golden Grove Estate from Batu Kawan Rubber & Coconut Company. This fact too was disclosed in Exhibit R-124. However, the Appellant was unable to complete the sale himself by selling fragmented lots and suffered a loss of M\$ 34,025.44 and claimed the loss which was allowed by the Revenue. 30

(iii) The Revenue also alleged that the Appellant entered the fragmentation business transactions and only correctly and fully recorded those transactions in books maintained for his personal use - the PAB - and 40

R = Record
Ex = Exhibits

maintained another set of books - ABIT - in which the sale prices were under-stated. Further, it was from the latter books that the Income Tax Returns were prepared. The contention of the Revenue was that -

- (i) PAB contained the full sale price of the fragmented lots;
- (ii) ABIT contained only sale prices as per deed which were less than the prices set out in PAB

10 leading to the inference and assertion of the Revenue that PAB is kept for Appellant's purposes and ABIT for Income Tax purposes. However, Register (PAB) contains figures of the agreed amount, payable in respect of each lot and the Ledger (ABIT) contains two accounts :-

- (i) Estate Advance Account - all advances received with dates and amounts in respect of the lot entered as and when received;
- (ii) Estate Sales Account in which the ultimate sale price according to Deed of Sale was entered.

20

The Revenue suppressed the evidence of the Estate Advance Account in ABIT and was able to mislead the Special Commissioners that ABIT was kept for income tax purposes and did not show the Sales Account in full.

30

If the existence of the Estate Advance Account in ABIT which tallies exactly with the figures in the Sales Account in PAB was brought to the notice of the Special Commissioners, the Special Commissioners could not have come to the conclusion that there was fraud or that there were separate books kept for income tax purposes, which books did not reflect the correct sales. The examples of entries in the Register PAB and the Estate Advance Account in the Ledger ABIT are set out below -

R = Record
Ex = Exhibits

TABLE II

SELAMBAU ESTATE - ANALYSIS WITH LEDGER (ABIT) FOR THE YEAR 1958/1959

Nagarathnam Ammal, D/O Navarathnam (R-146T) Receipts produced by Revenue to show discrepancy with Ledger (ABIT)	Estate Advance Account Entry in Ledger (ABIT): - A-9 in Selambau Estate Advance Account - pages 112 - 119
Advance received on 11.8.58 M\$ 5,000.00	11.8.58 M\$ 5,000.00 Folio 112
Advance received on 28.8.58 M\$34,000.00	28.8.58 M\$ 37,000.00 Folio 113
Advance received on 28.8.58 M\$ 3,000.00	
Advance received on 2.9.58 M\$10,000.00	2.9.58 M\$ 10,000.00 Folio 114
Advance received on 6.9.58 M\$23,500.00	6.9.58 M\$ 23,500.00 Folio 114
Advance received on 17.9.58 M\$ 5,000.00	17.9.58 M\$ 5,000.00 Folio 114
Advance received on 20.9.58 M\$33,000.00	20.9.58 M\$ 33,000.00 Folio 114
Advance received on 28.9.58 M\$ 5,544.00	28.9.58 M\$ 5,544.00 Folio 115
Advance received on 4.10.58 M\$10,000.00	4.10.58 M\$ 10,000.00 Folio 115

TABLE III

SUNGEI BATU ESTATE: ANALYSIS WITH LEDGER (ABIT) FOR THE YEAR 1958/59

ESTATE ADVANCE ACCOUNT

(R-149T) Receipts produced by
Revenue to show discrepancy with
Ledger (ABIT)

Entry in Ledger (ABIT) A-9 in
Sungei Batu Advance Account -
Pages 97 to 111

Advance received on 14.3.58 M\$ 3,000.00 14.3.58 M\$ 3,000.00 Folio 142

R = Record
Ex = Exhibits

R = Record
Ex = Exhibits

TABLE IV

BERTRAM ESTATE - AN ANALYSIS WITH LEDGERS (ABIT)
 FOR THE YEARS 1961/62, 1962/63 and 1963/64

ESTATE ADVANCE ACCOUNT

						Payments as per Estate	
Date	No:	Lot	Name	Rate	Sq. Ft. Amount	Advance Account	
11.3.62	6	629	Vonkatesami	M\$.60	5000	3,000	550.00
							1,000.00
							400.00
							100.00
							500.00
							450.00
							<u>3,000.00</u>
8.4.62	6	629	Mr. Raju	M\$.60	7000	4,200	320.00
							230.00
							550.00
							400.00
							100.00
							100.00
							100.00
							100.00
							170.00
							100.00
							200.00
8.4.62	6	620	Mr. Raju	M\$.60			100.00
							130.00
							200.00
							180.00
							150.00
							170.00
							150.00

(R-176 Extracts of Bertram Estate Sales) Entry in Ledgers (ABIT) in Bertram Estate Advance Account

R = Record
Ex = Exhibits

TABLE IV (Contd.)

Date	No: Lot	Name	Rate	Sq. Ft.	Amount	Advance Account	Payments as per Estate
							180.00
							160.00
							10.00
							150.00
							150.00
							<u>4,200.00</u>
26.12.62	6 629	Koopal Sekeran	M\$.170	19,375	4.1.62		19,375.00

R = Record
Ex = Exhibits

TABLE V

<u>KUALA DINGIN ESTATE</u>			<u>ESTATE ADVANCE ACCOUNT IN THE LEDGER (ABIT)</u>			
Details in Register (Memory Book) (PAB) R-162 and R-165			Extracted from Ledger (ABIT) 1959/60 & 1960/61 marked X-1 & X-2 attached to Affidavit			
Item	Date	Amount M\$	Date	Folio	Amount M\$	
1.	2.3.60	247,000.00	1.3.60	131 1959/60	7,000.00	
			6.3.60	132 1959/60	30,000.00	
			18.3.60	132 1959/60	210,000.00	
					247,000.00	
2.	2.3.60	756,095.00	2.3.60	131 1959/60	50,000.00	
			30.3.60	133 1959/60	706,095.00	
					756,095.00	
			30.3.60	133 " (com)	- 17,000.00	
		739,095.00				
3.	4.3.60	83,200.00	4.3.60	132 1959/60	6,500.00	
			8.4.60	134 1959/60	76,700.00	
					83,200.00	
4.	30.9.60	340,793.00	17.10.60	134 1959/60	330,928.00	
			4.3.60	132 1959/60	4,500.00	
	30.9.60	127,500.00	4.3.60	132 1959/60	4,500.00	
			9.3.60	132 1959/60	11,500.00	
			1,400.00	15.3.60	132 1959/60	7,000.00
			128,900.00	30.3.60	133-4 "	104,500.00
				127,500.00		
5.	7.3.60	102,000.00	7.3.60	132 1959/60	1,000.00	
			14.3.60	132 1959/60	9,000.00	
			30.3.60	133 1959/60	92,000.00	
				102,000.00		

10

20

30

R = Record
Ex - Exhibits

TABLE V (Contd.)

Item	Date	Amount M\$	Date	Folio	Amount M\$
6.	9.3.60	536,600.00	9.3.60	132 1959/60	40,000.00
			13.3.60	132 1959/60	20,000.00
			20.3.60	132 1959/60	60,000.00
			24.3.60	133 1959/60	40,000.00
			29.3.60	133 1959/60	40,000.00
			4.4.60	134 1959/60	15,000.00
			2.3.60	134 1959/60	2,000.00
			28.5.60	59 1960/61	5,000.00
			9.8.60	59 1960/61	25,000.00
			16.9.60	50 1960/61	51,000.00
					<u>298,600.00</u>
7.	29.4.60	52,000.00	20.5.60	59 1960/61	8,000.00
			12.4.60	134 1959/60	44,000.00
					<u>52,000.00</u>
8.	28.5.60	33,800.00	20.5.60	59 1960/61	3,500.00
			22.8.60	59 1960/61	30,300.00
					<u>33,800.00</u>
9.	29.6.60	92,960.00	12.4.60	134 1959/60	92,960.00
10.	1.10.60	131,500.00			
		108,500.00			
		<u>240,000.00</u>	12.4.60	134 1959/60	225,620.00
11.	28.2.60	75,922.00	28.2.60	131 1959/60	5,000.00
			6.3.60	132 1959/60	29,860.00
			8.3.60	132 1959/60	41,039.25
					<u>75,919.25</u>

R = Record

Ex = Exhibits

(b) In the Registers PAB there was entered the date on which the sale was agreed upon and the amount due on account of each lot.

Register PAB contains the payments due which includes expenses. This was done before the survey and inspection of the lots to be sold. Then buyers of the lots paid the moneys in one or more instalments. As and when the payments were made they were recorded in the Estate Advance Account in the Ledger (ABIT). In most cases only an advance was received on the date of the agreement. However, in the Register PAB there is only the record of the total amount agreed upon. Thus it is incorrect to find or infer that the Appellant kept a set of books for the purpose of income tax, which had different figures from that in the Register PAB. This is the procedure adopted in respect of fragmentation business for all years and therefore for each of the years there will be the payments in the Estate Advance Account in the Ledger ABIT, the total of which would tally with the figure (ultimate price of land and expenses) in Register PAB.

Ex. Vol. 3
pp. 273-277

(c) Revenue points out the alleged difference in transactions, i. e. Item 1 in R-137 (Ledger ABIT) and Item 1 in R-138 (List of Purchases - Register PAB). In R-138 initially Lot No. 1 10 Relongs in extent was sold at \$ 19,000/-, i. e. \$1,900 per Relong.

In R. 137 the transfer was made at \$16,000/-. Revenue failed to point out that what was in fact transferred, i. e. after survey (now Lot No. 468 and 437) was only 8 Relongs and 182 Jembahs (Ref. R-138).

Now 8 Relongs and 182 Jembahs at \$1,900/- per Relong works out at \$15,914.36. Therefore the conclusion that there was an understanding by the Appellant in a sum of M\$3,000 was totally unwarranted.

(d) Mr. Lim Boon Chit, a Broker, arranged to buy a large part of Padang Estate. Mr. Lim Boon Chit agreed to purchase a portion of the estate for M\$306,790.63 and the transfer to be made to him or to his nominees. He sold a part of that portion for M\$324,414.19 and that money was deposited with the lawyers. Mr. Lim Boon Chit's sub-purchasers were entitled to the transfers of the portions purchased by them. And Mr. Lim Boon Chit or his nominees were entitled to the transfer of the

R = Record
Ex = Exhibits

balance portion without further payment since Mr. Lim Boon Chit's sub-purchasers had paid M\$324,414.19 as against the contracted price of M\$306,790.63. He was thus entitled to a credit of M\$17,623.56. All this is clearly brought out in R-142. This evidence was suppressed by the Revenue. The full translation of R-142 was not led in evidence but only a part thereof by the Revenue.

Ex. Vol. 3
 pp. 279 & 280

10 There remained out of the contracted area 306 Relongs to be transferred to Mr. Lim Boon Chit or his nominees. The Revenue challenged the sale of 306 Relongs for \$3,000. Revenue alleged that R-142 indicated the sale price of 306 Relongs of Padang Estate to Mr. Lim Boon Chit was M\$306,790.63 and included this figure instead of M\$3,000, whereas the M\$306,790.63 had already been included in the sales by taking the sales of all the sub-purchasers of Lim Boon Chit. The Revenue marked as R-142T a translation of a few lines of R-142 so that their contention may have support, and suppressed the balance portion which would have shown the true facts.

20

From the Exhibit R-142T it is clear that the transfer of 306 Relongs was only a transfer of the balance land due to Mr. Lim Boon Chit. It is also clear that the transfer was free of consideration. It was also stated that the balance was due to Mr. Lim Boon Chit; that is, the difference between M\$324,414.19 and M\$306,790.63 = \$17,623.56 was adjusted in the sale price of Kuala Dingin Estate. The reason for adjusting the price for Kuala Dingin Estate was that Mr. Lim Boon Chit bought a part of Kuala Dingin Estate. It is submitted that the contention of the Revenue was unfair and totally unwarranted.

30

(e) (i) With respect to R-66 the Revenue submitted as follows :-

40 "The 'twenty eight' would refer to 28 Lakhs; otherwise why should the sender of the telegram sound so panicky and asked for advice urgently? The amount borrowed during the year of assessment 1964 was \$2,098,909.00 but the amount which the Appellant apparently used for purposes other than in the production of income in this country was only \$398,914.00. If the latter amount was deducted from the former, the balance would be \$1,699,995.00 which was approximately 28 lakhs converted at the 'black market' rate of exchange prevailing at that time". (Ref: Pages 140-141 of FCR).

Ex. Vol. 3
 p. 250

R. p. 74

R = Record

Ex = Exhibits

The Special Commissioners accepted this position and held that the Appellant had transferred 28 lakhs of rupees to India.

Ex. Vol. 3
p. 245

(ii) Revenue failed to point out that in R-45T (25.10.59) when "Rs.10" was referred to, there was a corresponding entry in the Ledger R-41 (22.10.59) that a sum of Rs. 10,000 was sent. Similarly in R-45, under 23.10.59, there was a reference to '40' (meaning Rs. 40,000). The equivalent of Rs. 40,000, i.e. \$21,917.80 was recorded as sent to India.

10

Similarly in R-200(b) (27.5.65) there is a reference to Rs.8 (meaning Rs. 8,000). It is evident that \$2,758.61 was sent, i.e. the equivalent of Rs. 8,000 at the current rate of exchange. It is submitted the conclusion that 'twenty eight' meant 28 lakhs is incorrect and contrary to the evidence available in the documents and otherwise (Ref. Affidavit).

Ex. Vol. 2
pp. 72-77

(f) The facts set out in Paragraph 20(e)(i) above is contrary to the cash flow statement marked A-3. The total borrowings for the year ended 13.4.63 was \$2,098,909 as alleged by the Revenue (Ref. A-3 Cash Flow Sources). The business "out-go" is fully set out under "Disbursements". The total disbursement for the year ended 13.4.63 is \$2,840,565 less \$7,127 = \$2,833,438. The items of disbursements are as follows :-

20

Advance paid	\$ 371,900	
Shares purchased	\$ 8,205	
Purchase of properties	\$ 289,582	
Sundry Debtors further advances	\$ 188,168	30
Sundry assets	\$ 47,195	
Ganesh Printing Works	\$ 41,306	
Business Expenses	\$ 837,538	
Bank Overdraft repayment	\$ 28,980	
Drawings, Remittances	\$	
Income tax paid jewellery	\$ 20,518	
	<hr/>	
	\$ 2,833,390	
	<hr/>	

Which was the book differences of \$ 48 makes \$2,833,438. The findings of the Special Commissioners are merely conjectural or surmise. It is submitted that they cannot be sustained.

40

R = Record
Ex = Exhibits

(g) That such sum of \$1,699,995.00 remitted to India should have been shown in the Books of Account of the Appellant, and because the Appellant, when giving evidence, could not show this, the Books of Account were false. (Ref: Page 141 - FCR).

R. p. 74

Further instances of perverse findings of facts were referred to in subsequent paragraphs under each Year of Assessment and they briefly are as follows :-

10 (h) (i) That the entire interest paid by the Appellant was in respect of moneys borrowed for non-business and private purposes, and the acceptance of Exhibit R-230 by the Special Commissioners. (Ref. Paragraph 27);

Ex. Vol. 3
 pp. 388-403

(ii) That \$421,570.50 was used for non-business and private purposes and that the debit of this amount to the bank account in the Ledger rendered the accounts false; (Ref: Page 70 - FCR).

R. p. 38

20 (iii) That the Appellant carried on an "export" business in the several items of personal goods; (Ref: Pages 79-80 - FCR).

R. p. 43

(iv) That the Appellant was a dealer in foreign exchange and that profits were made from the remittances (Official and Unofficial) of moneys or foreign exchange; (Ref: Pages 82 to 86 - FCR).

R. p. 44

30 (v) That the Appellant should know the nature and contents of the Books of Account and documents taken by the Revenue from his premises and that the Appellant would and could not be taken by surprise if any documents or Books of Account which were taken from Appellant's premises were put to him without any notice; (Ref: Pages 110, 111 - FCR).

R. pp. 57 & 58

(vi) That no bonus has been paid to Suppiah Pillai and therefore no bonus had been paid to any employee, and that for each of the years of assessment;

(vii) That there was a profit of \$137,550.00 in respect of Batu Kawan Estate (when in fact this estate was not purchased though advance money was paid);

(viii) That wages and other expenses were inflated;

R = Record
Ex = Exhibits

(ix) That it is sufficient for Revenue to discover just one omission in one year in respect of any single estate, to entitle the Revenue to raise additional assessments for that year for all estates and for all other years;

(x) That understatement of profits for Bertram Estate was \$20,000.00 when the major part was acquired by Government and there was only one sale to a private party;

(xi) That the Appellant sent money to India and therefore he deliberately did not complete the Trans Krian Estate transaction, resulting in the "penalty" payment of M\$72,857.00 and therefore the penalty of M\$72,857.00 is not allowable as a deduction in computing income; 10

(xii) That there were no losses or any carry-forward of qualifying plantation expenditure for 1963, 1964 and 1965 and therefore no deduction for 1966 (and subsequent years);

(xiii) That there is an under-statement of profit of M\$137,500 in Batu Kawan Estate for 1957; 20

(xiv) That the profits on sales of balance portions of Juru Estate purchased in 1955 developed and worked as an agricultural land and sold in 1969 was Revenue profits (as against capital profits);

Ex. Vol. 3
 pp. 404 & 405

(xv) That a profit of \$170,000 (Ref. R-231) arose by reason of the Appellant taking re-possession of part of Kuala Dingin Estate known as Ellappan Property and re-selling it.

21. (a) The Appellant being aggrieved by the Deciding Order of the Special Commissioners, appealed to the High Court of Penang, and his appeal was dismissed for reasons stated in the Judgment and Order of the High Court on the 13th day of September, 1976. 30

(b) The said Judgment and Order of the High Court, it is respectfully submitted, was in error for the following reasons :-

(i) The High Court adopted the Deciding Order of the Special Commissioners which is not sustainable in law

for the reasons set out above.

(ii) The Appellant did not have a fair opportunity to present his appeal at the hearing in the High Court because there was no record of the evidence and proceedings available to him. An application for the records of evidence and proceedings was refused.

10 (iii) The Appellant's case on such multitude of issues could not be fairly presented because by reason of the refusal of an application for adjournment on 20th July, 1976.

(c) The decision of the High Court is vitiated for the further reason that no separate Order has been made in respect of each Year of Assessment.

(d) The evidence for and against on each issue in respect of each Year of Assessment has not been separately considered and an Order setting out the reasons for the assessment of each of the years has not been made.

20 22. (a) The Appellant appealed to the Federal Court of Malaysia. The Federal Court of Malaysia dismissed the appeal of the Appellant by their Judgment and Order delivered on 19th March, 1977.

(b) It is respectfully submitted that the Judgment and Order of the Federal Court of Malaysia dismissing the Appellant's appeal and affirming the Deciding Order of the Special Commissioners is erroneous and not sustainable in law, it is respectfully submitted, for the following among other reasons, that may be urged by Counsel, at the hearing of this Appeal before Your Lordships -

30 (i) the Federal Court of Malaysia also adopted the reasoning and affirmed the Deciding Order of the Special Commissioners which is void and not sustainable in law for the reasons hereinbefore set out;

(ii) the Appellant was prejudiced and handicapped in presenting his appeal because the record of the evidence and proceeding was not available to him at the hearing;

40 (iii) the Appellant was prejudiced and handicapped in the presentation of his appeal when the Federal

R = Record
Ex = Exhibits

Court refused the Appellant's application to lead further evidence.

(iv) The Decision of the Federal Court is vitiated for the further reasons that the Court failed to consider the several submissions made in respect of each of the Years of Assessment;

(v) The Court failed to make an Order in respect of each of the Years of Assessment;

(vi) The Court failed to consider the evidence for and against each Year of Assessment on each issue and determine whether the decision of the Special Commissioners could be sustained by reason of the evidence adduced in the case. 10

23. There is hereinafter set out in detail a number of examples showing in our submission the findings of fact by the Special Commissioners to be unsustainable on the evidence before them. It is submitted that the facts disclosed by the documentary evidence available cannot be reconciled with the findings of the Special Commissioners.

PARAGRAPHS 24 TO 29 DEAL WITH ISSUES RELEVANT TO SEVERAL YEARS 20

24. FRAGMENTATION OF ESTATES BUSINESS

(a) The several errors in arriving at the estimates are pointed out under each year. Also, the existence of the Estate Advance Account in the Ledger (ABIT) and not only the Estate Sales Account in the Ledger (ABIT) as made out by the Revenue vitiates the case of the Revenue. So also does the disclosure of the Estate Advance Account every year in the return submitted by the Appellant was overlooked by the Revenue. R-231 was not put to the Appellant. For these reasons the additions in respect of this source cannot be sustained. 30

(b) (i) The years 1953, 1957, 1958 and 1959 are time-barred unless there was fraud or wilful default on the part of the Appellant. The Revenue should prove that there was fraud or wilful default on the part of the Appellant in respect of the particular income assessed (and not in respect of other income or matter).

(ii) The Appellant who was not informed or aware of

R = Record
Ex = Exhibits

the details of the alleged under-statement of income, could only state his position generally, and thus his evidence covered the whole period, i. e. 1953 to 1972.

As stated earlier, the Appellant was not familiar with his Books of Account. No opportunity whatsoever was given to the Appellant to rebut the evidence of the Revenue on the question of fraud or wilful default, or to make submissions thereon before the ruling was given.

10 The documents relating to the alleged under-statement of profits of the Fragmentation Business, viz. R-111 to R-186 and R-231 and R-233 were not put to the Appellant. Thus, almost all the documents relating to the Fragmentation Business were not put to the Appellant.

Ex. Vol. 3
 pp. 262-362

(iii) The reasons for holding that there was fraud or wilful default were that -

the Appellant was keeping two sets of books; and that

20 the Appellant had omitted to include the income from the fragmentation business, e. g. the sale of Wellesley Estate.

(iv) It was alleged by the Revenue that the Appellant entered the transactions correctly in books maintained for Appellant's use (referred to as Registers - PAB) and maintained another set of books (referred to as Ledgers - ABIT) for income tax purposes in which the sale prices were under-stated.

30 Further that it was from the Ledgers (ABIT) the income tax returns were prepared.

It was also alleged that the correct amounts of moneys received were recorded in the Register (PAB) but not in the Ledgers (ABIT). The contention of the Revenue is unwarranted and incorrect and not sustainable for the following reasons :-

40 Kuala Dingin Estate: The entries of moneys receivable in the Register (PAB) (R-162T) relating to Kuala Dingin Estate and corresponding entries of the moneys received in the Ledger (ABIT) under "Estate Advance Account" are fully set out in Paragraph 20(b).

Ex. Vol. 3
 pp. 333 to 343

R = Record
Ex = Exhibits

In the Register (PAB) was entered the date on which the sale was agreed upon and the amount to be collected for the lot. This was done before the survey and inspection of the lots to be sold. Then the buyer of the lot pays the moneys in one or more instalments. As and when the payments were made they were recorded in the "Estate Advance Account" in the Ledger (ABIT). In most cases only an advance was received on the date of the agreement. However, in the Register (PAB) there is only the record of the amount payable and the record of the payments were only in the Estate Advance Account in the Ledger (ABIT). 10

All transactions were recorded in the Ledger (ABIT). Thus it is incorrect to state that the Appellant kept a different set of books, taking into consideration figures in the Register (PAB) and only the Final Sales Account in the Ledger (ABIT). (See also examples with respect to Bertram Estate, Selambau Estate and Sungoi Batu Estate set out in Paragraph 20(b)). 20

It is submitted that the Revenue deliberately suppressed the evidence of the Estate Advance Account in the Ledger (ABIT) and that all transactions were recorded in the Ledger (ABIT).

It is also submitted that on the evidence there cannot be an inference of fraud or wilful default.

The moneys received by the Appellant are fully recorded in the Books of Account and accounted for. Therefore there is no under-statement of the moneys received or the final prices agreed upon. The moneys received are not to be identified as the price of lots. 30

Ex. Vol. 3
 pp. 388-403

The Deciding Order holding that the several sums set out in R-230 as assessable cannot and should not be sustained in full or in part

For the reasons set out the Order holding that there was fraud for the years 1953, 1957, 1958 and 1959 cannot and should not be sustained.

If there is no fraud or wilful default, then it is not competent to raise the Additional Assessments for the years 1953, 1957, 1958 and 1959. 40

The allegation of fraud or wilful default was only with respect to fragmentation business.

25. BONUS AND SALARIES DISALLOWED

(a) The following amounts have been disallowed and added as income by the Deciding Order :-

	1958	M \$30,000.00
	1959	M \$41,200.00
	1960	M \$47,000.00
	1961	M \$52,000.00
10	1962	M \$42,000.00
		<hr/>
		M \$212,200.00
		<hr/>

(b) The evidence on this is in respect of Suppiah Pillai. It is the practice for expatriate employees from India employed in Malaysia, whether under the Appellant or others, to receive very low salaries and high bonuses. This facilitates savings and makes available money when the expatriate leaves for India on holiday or otherwise.

(c) The evidence marked in this case, R-216 and R-216T is not conclusive as to whether bonus has or has not been paid. In point of fact, R-218a clearly shows the bonus credited to the account of Suppiah Pillai. R-218a also shows that Suppiah Pillai draws money and such sums are debited to his account. In the system of accounting adopted, in the case of employees like Suppiah Pillai, salaries and bonuses are not directly paid but they are only credited to the account and drawings are made against such credit. Therefore, the finding that Suppiah Pillai has not been paid bonus in the sense of actual payment to him is not sufficient reason for disallowing the bonus payment which is credited to his account. In the particular case of Suppiah Pillai, the amount standing to his credit was remitted through his firm SPAR of which Suppiah Pillai was a partner, to India -

20

30

M \$4132.24 on 12.10.1964 (R-190);
M \$2758.61 on 27. 5.1965 (R-200b).

(d) Since the case against the Appellant was not put to him properly or in time, it was not possible to lead this and other evidence. Fortunately, documents marked for other purposes contain this relevant information. All remittances to the firm SP AR/AR SP is payment to Suppiah Pillai.

40

R = Record
Ex = Exhibits

It is submitted that it is unreasonable to suggest that the services of employees were obtained and small sums credited to their account monthly, and not paid to them. Likewise the payment of bonuses.

(e) It is also not sustainable in law to conclude merely by reason of disallowing Suppiah Pillai's bonus in one year, that bonus in respect of others have not been paid and also in respect of several other years. No consideration has been given to the facts of each year. The Appellant was not given an adequate opportunity to meet this issue. 10

It is submitted -

(i) that there is no evidence that the Appellant has failed to pay bonus and salaries to the employees;

(ii) that even if the Special Commissioners have accepted that there was evidence of omission, there is no fraud or wilful default alleged or proved with respect to omissions of bonus and salaries. The additional assessment is thus not competent;

(iii) that even if there was evidence (accepted) in regard to the year 1958, in the absence of evidence of non-payment in the other years, there is no evidence to support assessments for the other years on this ground. There should be a consideration of the evidence of bonus and salaries for each year and the Appellant should have been given an opportunity to answer each year before a decision can be made against him for that year. 20

26. INTEREST PAID TO BANKS:

(i) The following sums of interest paid to banks were disallowed and the Special Commissioners treated the whole of such sums as Additional Income for the relevant years: 30

<u>Year of Assessment</u>	<u>Interest charged by Banks on outstanding overdrafts</u> M\$
1958	2,708
1959	29,537
1960	30,463
1961	131,558

R = Record
Ex = Exhibits

	M\$
1962	216,305
1963	213,895
1964	319,240
1965	423,132
1966	518,879
1967	583,585
1968	620,978
1969	479,482
1970	510,026
10 1971	507,485
1972	511,069

(ii) Originally in the Appellant's income tax returns interest was computed for all sources of income and allowed as a deduction.

Interest paid is deductible in terms of Section 33 of Income Tax Act 1967. Even if after the disallowance of interest a particular source of income results in a profit, it is submitted the losses and qualifying plantation expenditure are deductible (pro tanto) to reduce the income from that source to nil (see Section 42 of the Income Tax Act 1967) for the years hereinafter set out: 1968, 1970 and 1971. The disallowance of interest by itself cannot be treated as income or a source of income.

The disallowance of interest was made entirely on the evidence of the Revenue and upon the basis of their own worked examples. These examples themselves were based on hypothesis and the presumption that sums had generally been applied for non-business purposes.

The Revenue's examples are set out in R-230 which suffers from two fundamental errors -

Ex. Vol. 3
 pp. 388-403

(i) It assumes that the debits to the Bank Account on non-business "out-go" and are the only contribution to the overdraft or increase in overdraft. It assumes that there are no other debits and if there are such other debits on business account that they do not contribute to the overdraft or increase in the overdraft.

(ii) That debits in one year are carried forward cumulatively to the succeeding year. The following example may be set down to demonstrate the falsity of this assumption -

R = Record
Ex = Exhibits

EXAMPLE

First Year	Debit	Credit	Balance
-	-	-	Nil
-	-	M\$500,000	-
N. B.	M\$700,000	-	-
O. D.	-	-	M\$200,000

[N. B. - Non-business; O. D. - Overdraft]

The total borrowings in the year is only M\$200,000 but the total sum used but not employed in the business is M\$700,000. 10

If the principle adopted in R-230 is correct, the sum of M\$700,000 is treated as borrowed and accounted for as overdrafts in subsequent years. It should be clear that M\$500,000 of the debit of M\$700,000 on non-business account is out of the credit of M\$500,000.

Second Year	Debit	Credit	Balance
O. D.	-	-	M\$200,000
-	-	M\$300,000	-
N. B.	M\$100,000	-	-
B.	M\$600,000	-	-
O. D.	-	-	M\$600,000

[B - Business]

Therefore net borrowings for the

Second Year is	..	M\$400,000
Total borrowings	..	M\$600,000

The cumulative account of the debits for both years on non-business account is :-

M\$700,000 (first year)	30
M\$100,000 (second year)	

totalling .. M\$800,000.

It is therefore submitted by the Revenue that through the method of R-230 that the overdraft of M\$600,000 is due to the non-business debits of M\$800,000 in the

R = Record
Ex = Exhibits

two years. Whereas for the first year only M\$ 200,000 of non-business expenditure contributed to the overdraft of M\$ 200,000 and the second year there was a non-business debit of M\$ 100,000 which may but not necessarily have contributed to the overdraft. This M\$ 800,000 is not used in the production of income according to Revenue. It may be noted that the total net borrowings in the second year is M\$ 400,000. This treatment of the debits in cumulative fashion is misleading and brings out the erroneous conclusion that debits of M\$ 800,000 on non-business account is the reason for the overdraft of M\$ 600,000.

10

Third Year	Debit	Credit	Balance
O.D.	-	-	M\$ 600,000
B.	M\$ 1,300,000	-	-
-	-	M\$ 1,000,000	-
N.B.	M\$ 100,000	-	-
O.D.	-	-	M\$ 1,000,000

20

The use of debits on non-business account cumulatively results in the total non-business debits over the three years of M\$ 900,000 as contributing to the overdraft of M\$ 1,000,000 outstanding at the end of the year. Whereas the total non-business debits contributing to the overdraft in the first year of M\$ 200,000; second year of M\$ 100,000; and third year of M\$ 100,000 making a total of M\$ 400,000.

30

Therefore the facts as found cannot be supported by the evidence and are incorrect and misleading. Therefore there is a fundamental error and the decision based thereon is not sustainable.

(iii) Further Examples

Further examples expose the inaccuracy of the Revenue's submissions.

40

	Debits	Credits	Balance
	-	-	Nil
	-	M\$ 300,000	-
N.B. M\$ 200,000		-	-
B. M\$ 200,000		-	-
	-	-	M\$ 100,000

R = Record
Ex = Exhibits

In the mode of approach adopted by the Revenue in R-230, the final overdraft of M\$100,000 they submit is due to the non-business debits of M\$200,000. This, of course, is clearly wrong in fact and in law. Where there are several debits and credits, both on business and on non-business account, it is arbitrary and incorrect to appropriate any overdraft or increase in overdraft to debits of one particular nature whether debit on business or non-business account. The law however is that where there are several such debits that the benefit should be given to the taxpayer and the overdraft or increase in overdraft, as the case may be, should be held to be due to the debits on business account and therefore the interest payable should be allowed as a deduction. This correct approach would appear from the returns already submitted for deduction of interest for each of the years. For 20 years the interest on this basis has been properly claimed against the several sources of income and allowed by the Revenue. It is not now possible to reverse this working in a Deciding Order.

10

20

Ex. Vol. 3
 pp. 388-403

There are many debits in R-230. In particular, for the year 12th April, 1957 (Year of Assessment 1958), a sum of M\$421,570.50 is shown as a disbursement on non-business account. This is incorrect. In fact, this is an advance paid to Messrs. Presgrave & Matthews, Solicitors, and is shown in X-3, X-4, X-5 and the Affidavit (to be produced with the permission of this Honourable Court). The mode and manner of presenting R-230 did not permit the Appellant an opportunity to point out these errors. There are a large number of defects in R-230 which cannot all be enumerated here.

30

- (b) One example is the submission that for the year ended 13th April, 1963 the total borrowings was M\$2,098,909/- and out of this M\$398,914/- was used for non-business purposes and that the balance was used to remit to India a sum of M\$1,669,995/-.

Ex. Vol. 2
 pp. 72-77

The Cash Flow Statement A-3 is in respect of this year both in regard to receipts and disbursements shown by the extract hereunder :-

40

STATEMENT OF CASH FLOW FOR THE YEAR ENDED
13.4.63 (Relevant Parts Extracted) M\$

SOURCES

Opening Balance - Cash in Hand and at Banks 4,255

R = Record
Ex = Exhibits

	(A) <u>Deposits and Advances Received</u>	
		M\$
	Sundry Creditors	372,528
	Advances received for sale of properties	-
	Advances paid for purchases of properties - recovered	-
	Other Advances received	<u>150</u>
		<u>372,678</u>
	(B) <u>Business Income Accounts</u>	
10	Proceeds of Sale of properties	321,740
	Proceeds of Sale of Shares	
	Dividends	-
	Ganosh Printing Works (Current Account Receipts)	-
	Tamil Malar, Kuala Lumpur (Current Account Receipts)	-
	Tamil Malar, Singapore (do)	-
	Gross Income from Business (other than sale of Properties, etc.)	42,983
20	Book difference	<u>-</u>
		<u>364,723</u>
	<u>Bank Overdrafts (Borrowings)</u>	
	United Commercial Bank Limited	1,126,091
	Overdraft Chinese Banking Corporation Ltd.	-
	Malayan Banking Berhad	972,818
	First National City Bank	<u>-</u>
		<u>2,098,909</u>
	GRAND TOTAL	M\$ <u><u>2,840,565</u></u>

30 STATEMENT OF CASH FLOW FOR THE YEAR 13.4.63

DISBURSEMENTS M\$

(A) <u>Deposits and Advances Paid</u>	
Sundry Creditors - repayments	-
Advances paid for purchase of properties	-

R = Record
Ex = Exhibits

	M\$	
Advances received for sale of properties - repayments	-	
Other advances - repayments	<u>1,371,900</u>	
(B) <u>Business Out-go</u>		
Shares purchased	6,206	
Purchase of properties	289,582	
U.P. Estate Machinery	-	
Sundry Debtors - further advances	188,168	
Sundry Assets (motor cars, TV, etc.)	47,195	10
Ganosh Printing Works (Current Account Advances)	41,306	
Tamil Malar, Kuala Lumpur (Current Account)	-	
Tamil Malar, Singapore (do)	-	
Total Business Expenditure (other than interest paid to banks)	837,538	
Interest paid to others	-	
Book differences	<u>448</u>	
	<u>1,412,043</u>	20
(C) <u>Bank Overdrafts (repayments)</u>		
Overseas Chinese Banking Corporation Ltd.	28,980	
Malayan Banking Berhad	-	
First National City Bank	<u>-</u>	
	<u>28,980</u>	
(D) <u>Proprietor's Drawings, Remittances, etc.</u>		
Income tax paid and jewellery	<u>20,515</u>	
(E) <u>Other Investments</u>		30
Ganosh Printing Works (Capital)	-	
Tamil Malar Kuala Lumpur (Capital)	-	
Tamil Malar, Singapore (Capital)	<u>-</u>	
Closing Balances - Cash in Hand and at Banks	<u>7,127</u>	
GRAND TOTAL	<u>M\$ 2,840,565</u>	

R = Record
Ex = Exhibits

INTEREST PAID TO BANKS:

	M\$
United Commercial Bank Limited	254,646
Overseas Chinese Banking Corporation Limited	8,819
Malayan Banking Berhad	55,775
First National City Bank	-
	<hr/>
	319,240
	<hr/>

10 This clearly shows how the M\$2,098,909/- has been disbursed. A sum of M\$1,371,000 has been used for repayment of advances received.

The submission made by Revenue is contrary to the evidence. Such submission was possible because the Appellant was unable to contradict or disprove any evidence or submission of the Revenue by reason of the manner in which the evidence was led. Details of the issues were not communicated to the Appellant and such information was deliberately refused.

(c) Another defect in R-230 is to treat the interest paid and debited as on account of non-business purposes.

20 Additional examples in respect of interest disallowed for each of the years will be dealt with under the submissions for that year.

30 The Appellant was buying and selling estates for about M\$100,000 each from 1950 to 1955. He bought Juru Estate for M\$800,000 in 1955-56. Having sold portions of Juru Estate, he retained and worked the balance estate until he sold this in 1970. After the purchase of Juru Estate there was a rising overdraft. Similarly, he retained portions of other estates. Finally, the Appellant retained half the United Patani Estate which he bought in 1959-1960 for M\$5,021,000. This estate he continued to develop until it was sold by the Revenue for M\$15,000,000 to collect the income tax dues for the years under appeal.

Thus it is clear that the value of estates retained by the Appellant was always more than the moneys outstanding in the overdraft. Therefore the interest should be a deduction.

In any event, Assessments relating to interest payments

R = Record
Ex = Exhibits

for the years 1958 and 1959 are time-barred. There was no allegation of fraud or wilful default in respect of interest payments. Therefore, the additional assessments are not sustainable.

27. WAGES AND OTHER EXPENSES

Ex. Vol. 3
 p. 406

(a) In R-233 the Revenue set out the wages and other expenses alleged to be inflated. The Special Commissioners determined that such expenses were not incurred. The expenses are as follows -

<u>Year of Assessment</u>	<u>Amount disallowed as set out in R-233</u>	
	M\$	
1953	-	
1957	-	
1958	60,000	
1959	100,000	
1960	100,000	
1961	200,000	
1962	200,000	
1963	200,000)	
1964	200,000)	20
1965	200,000)	
1966	500,000	
1967	750,000	
1968	500,000	
1969	200,000	
1970	300,000	
1971	200,000	
1972	200,000	

The only evidence given is the evidence of the Revenue. 30

The evidence of Mr. Sadasivam that there are several other examples of non-payment of wages and bonus is a mere assertion and not upon the evidence. There are no such examples. If there were, he should have furnished details of them to the Appellant. He should have further allowed the Appellant an opportunity to show that Mr. Sadasivam's assertion was incorrect. In the absence of such procedure being adopted, no inference can be drawn that wages and salaries were inflated for all or any of the years. The contention that wages and salaries are inflated is pure surmise, made with the knowledge that it could not be challenged by reason of it being put after the evidence of the Appellant was closed. 40

There was no instance of wrong payment or exaggerated entries of payment for any one of the years for which additional assessments are made on account of this source. It is not competent to cite one instance of credit entry in one year and estimate the alleged inflation of expenses for all subsequent years, particularly as crediting is a good method of accounting and because the credits have been settled by payment. In any event there was no allegation of fraud or wilful default and therefore it is not competent to raise additional assessments for the time-barred years.

28. (a) PROFITS FROM EXPORT OF ARTICLES

The first contention by the Revenue is that the Appellant exported goods such as gold, diamonds, wrist watches, radios, refrigerators, cuff links, shirt buttons, flash bulbs, electric irons, etc.

The Appellant sent the goods to his family and relations and sometimes to friends, as gifts. The nature, quantity and quality of the articles sent clearly indicate that they are not of a commercial nature or in commercial quantities for commercial purposes. Therefore the inference that they were for sale cannot be drawn. In fact, such articles were for the personal and household use of members of his family and were so used. The only instance of sending diamonds was in December 1969 which the Appellant stated was for the wedding of his eldest son.

In all the books and documents taken from the Appellant there was no reference to the sale of any such article. If there was such sale, then there would have been reference in the correspondence and documents taken by the Revenue.

It is clear from the books produced by the Revenue that the Appellant had kept a record of purchase of articles. The volume of articles sent for a period of six years does not suggest that a trade was being carried on in the export of those articles. It is consistent with the Appellant's claim that they were gifts for personal use. Further, the nature and variety of articles leads to the conclusion that they were gifts for personal and household use.

There is also no evidence that the Appellant was in possession of the goods in India. On the contrary, acknowledgement has been made by members of the family indicating that the goods have been received. It is clear from the evidence of the Appellant which is not contradicted that he did not carry on any trade in those articles.

R = Record
Ex = Exhibits

The contention that because these articles were not shown in the Appellant's returns in India or to the Malaysian Tax Authorities, they would have been sold cannot be sustained as these items did not belong to the Appellant.

The badges of trade are not present, it is submitted. There is no evidence there has been a sale or evidence of any sale of any of the articles. There is only conjecture by Mr. Sadasivam that these items could have been sold at 300% profit.

(b) CURRENCY DEALINGS

10

The contention of the Revenue was that the Appellant has sent moneys from Malaysia to India through the banks as well as unofficial channels. The rate of exchange obtainable is higher from the unofficial channels.

In evidence not one single instance was given of the Appellant having bought Malaysian dollars.

The moneys were sent to the members of the family or to employees of the Appellant or to their families and small sums were sent to friends and no money was remitted to strangers. Sometimes the moneys were used for charity. These moneys were not retained by the Appellant.

20

However, the Revenue draws the inference that the Appellant was trading in currency. The Special Commissioners too accepted the suggestion.

The assessments did not include this source of income. The Appellant was not even informed that the assessments included this source of income. The Appellant was also not informed of the method of computation or the basis of estimation of the income from this source at any time.

30

It is submitted that the estimate has no basis in fact or in law and it is not supported by evidence.

EXAMPLE

An example was the submission that "twenty eight" in R-66 should mean twenty eight lakhs. The Revenue failed to point out that in R-45T (25.10.59) when "Rs. 10" was referred to, there was a corresponding entry in the Ledger R-41 (10.11.59) that a sum of 10,000 was sent.

R = Record
Ex = Exhibits

Similarly, in R-45T under 23.10.59 there was a reference to "40" (meaning Rs. 40,000), i. e. M\$ 21,917/80 was recorded as sent to India. In R-41 under 22.10.59 a sum of Rs. 40,000/- equivalent to M\$ 21,917/80 was sent. Similarly, in R-200(a) (27.6.65) there is a reference to Rs. 8/- (meaning Rs. 8,000/-). It was recorded that M\$ 2,758/61 was sent. M\$ 2,758.61 was the equivalent of Rs. 8,000/-.

Ex. Vol. 3
p. 358

10 The Revenue submitted that M\$ 1,699,995.00 out of M\$ 2,098,909.00 was transferred to India. This was an attempt by the Revenue to justify their contention "twenty eight" to mean 28 lakhs. It is submitted that the conclusion is incorrect and unwarranted by the evidence.

29. INTEREST INCOME OMITTED

(a) The following sums have been brought into assessment by the determination of the Special Commissioners as interest alleged to be omitted by the Appellant.

	<u>Year of Assessment</u>	<u>Estimate of Interest Income Omitted</u> M\$
20	1960	10,000.00
	1961	20,000.00
	1962	20,000.00
	1966	20,000.00
	1967	20,000.00
	1968	10,000.00
	1969	10,000.00
	1970	10,000.00
	1971	10,000.00
	1972	<u>10,000.00</u>
30		<u>200,000.00</u>

It is alleged that these sums were received by the Appellant (from the sub-purchasers of estates sold by the Appellant) because the purchase price was not paid in due time. It is alleged that the Appellant has omitted this interest from his return of income.

Two instances were examined before the Special Commissioners, i. e. R-134 and R-162.

40 R-134 relates to the sale of Paya Bosar Estate in the year 1966, and R-162 relates to the sale of Kuala Dingin Estate in the year 1962. These documents were

Ex. Vol. 3
pp. 333-343

R = Record
Ex = Exhibits

not put to the Appellant.

It is submitted that it is significant that there is no reference to the omission of interest in the evidence of Mr. Sadasivam.

The Appellant clearly stated that all such interest has been brought into account. In view of the fact that the Revenue omitted to refer to the Estate Advance Account in the several Ledgers (ABIT) and reference to the Estate Advance Account in the returns submitted by the Appellant for each of the years, the evidence of the Revenue should not be accepted. This evidence also should not be accepted as it has not been properly tested, as no opportunity has been given to the Appellant to show to the contrary. It is submitted that the contention that there are sums by way of interest for several years which have been omitted is conjecture. 10

Further it is submitted that a Deciding Order cannot include sums from a source which has not been assessed. It is contended that the assessments as made in respect of the sources of income assessed and quantum of income from such sources only are subject to appeal. 20

Therefore estimates of or actual income (not already assessed) cannot be brought into assessment by a Deciding Order merely on the ground that the assessments already made are in appeal. The proper procedure in such a case is to make the assessment from such source.

[PARAGRAPHS 30 to 46 DEAL WITH EACH YEAR OF ASSESSMENT, i. e. 1953, 1957 to 1972]

30. YEAR OF ASSESSMENT 1953

Notice of Additional Assessment dated 17th March, 1973 showing the income at M\$ 237,630 and demanding an additional tax of M\$ 58,188 was served on the Appellant. Such notice did not state the source of income which was assessed. 30

The sources of income as set out in R-233 and as determined by the Special Commissioners are as follows -

Income agreed previously	M\$ 37,630
Fragmentation profits understated	<u>M\$ 542,916</u>
	<u>M\$ 580,546</u>

R = Record
Ex = Exhibits

Additional tax due M\$161,062.80

The Appellant contends that such determination is erroneous in law and cannot be sustained.

In R-231 profits understated on account of fragmentation business is given as follows -

Ex. Vol. 3
 pp. 404 & 405

Lunas	M\$ 27,354
Gordon	M\$240,662
Wellesley	<u>M\$274,900</u>
	<u>M\$542,916</u>

10 R-231 and R-233 and other relevant documents were not put to the Appellant and he was not aware or informed of the details set out in R-231.

Ex. Vol. 3
 p. 406

31. Lunas Estate - alleged understatement is M\$27,354.

There is no understatement of the moneys received or of the price. For the reasons stated in Paragraph 24 above there is no fraud or wilful default. It is therefore not competent to raise additional assessments in 1973 after the lapse of 12 years.

20 Gordon Estate - alleged understatement is M\$240,660 (Reasons as above).

Wellesley Estate - alleged understatement is M\$274,900.

For the reasons stated in Paragraph 24 above, there is no fraud or wilful default. Therefore, it is not competent to raise an additional assessment in 1973 after the lapse of 12 years.

30 The Revenue alleged that these transactions were omitted from the income tax returns of 1953. However, this matter was inquired into as early as 1957 and again in 1961, and the explanations were accepted. The Revenue has incorrectly included this item of M\$274,900 too in the final computation as shown in R-233. There were no documents to show the details of the transaction. The Revenue has estimated the profits. The basis of the estimates was not revealed at any time.

It is submitted that for the reasons stated above, the inclusion of the additional income from the sale of Wellesley Estate cannot be sustained.

R = Record
Ex = Exhibits

32. YEAR OF ASSESSMENT 1957

Notice of Additional Assessment dated 1st December, 1972 was served showing the income at M\$ 237,630 and demanding and additional tax of M\$ 28,900.20. The sources and details of income were not given.

The sources and income as set out in R-233 and as determined by the Special Commissioners are as follows -

Income agreed previously	M\$ 80,013	
Fragmentation profits understated	<u>M\$283,595</u>	
	<u>M\$363,608</u>	10

In R - 231 the profits understated on account of fragmentation business are given as follows -

Juru Estate	M\$ 97,395
Batu Kawan Estate	M\$137,500
Breih Estate	M\$ 31,200
Nagarajan Estate	<u>M\$ 17,500</u>
	<u>M\$283,595</u>

Since the additional assessment was made on 1st December, 1972 the assessment for the year 1957 was time-barred and therefore void. Since there is no proof of fraud or wilful default in respect of this source, the assessment is not competent and should be discharged. 20

Juru Estate - alleged understatement is M\$97,395.

Here again, the finding of fraud or wilful default was by reason of the alleged discrepancy in Register (PAB) and the Ledger (ABIT).

The Revenue found a difference between the Register (PAB) and the Ledger (ABIT) Sales Account. The difference was M\$63,395. Revenue produced no evidence or document relating to portion 556. Therefore the Revenue estimates of an understatement of M\$ 34,000 could not have been reached on the evidence. The Revenue should have compared the Register (PAB) with the Estate Advance Accounts in the Ledger (ABIT). They would have tallied. It is submitted that the Revenue has not the proper accounts for comparison. The details were not given in time to enable the Appellant to answer the case against him. 30

Batu Kawan Estate - alleged understatement is M\$ 137, 500.

There is no estate called Batu Kawan Estate. The reference is to Golden Grove Estate formerly owned by Batu Kawan Rubber & Coconut Company Ltd.

There is no fraud or wilful default for the reasons stated in Paragraph 24 above. It is not competent to raise an additional assessment in 1972 after the lapse of 12 years.

10 In R-124 the income tax return for 1957, the Appellant has stated that he had lost M\$ 34, 205 being advance payment and expenses for the purchase of this estate. The purchase was not concluded. The loss was in fact then allowed.

Ex. Vol. 3
pp. 269-271

Breih Estate - Alleged understatement is M\$ 31, 200.

There is no understatement of the price received.

There is no fraud or wilful default for the reasons stated in Paragraph 24. It is not competent to raise an additional assessment in 1972 after the lapse of 12 years.

20 Apart from R-124 the returns for the year 1957, no other document or evidence was produced with respect to this estate. The Appellant has declared a profit of M\$ 15, 773. The Revenue estimates the understatement of profits as M\$ 31, 200. There is no basis whatsoever for the estimate. This estimate was not communicated to the Appellant and no opportunity to meet it was given and therefore this income should be deleted from the assessment.

Nagarajan Estate - alleged understatement is M\$ 17, 500. Revenue stated that this estate was not disclosed.

30 There is no understatement of the profits. There is no fraud or wilful default for the reasons stated in Paragraph 24. It is not competent to raise an additional assessment in 1972 after the lapse of 12 years.

Apart from R-124 the returns for the year 1957, no other document or evidence was produced with respect to this estate. The Appellant declared a profit of M\$ 8, 522. The Revenue estimated the understatement of profits at M\$ 17, 500. There is no basis whatsoever for the estimate. The estimate was not communicated to the Appellant and there was no

R = Record
Ex = Exhibits

opportunity to meet it given. For the above reasons the income of M\$17,500 should be deleted from the assessment.

33. YEAR OF ASSESSMENT 1958

Notice of additional Assessment dated 6th April, 1974 showing the income at M\$ 29,015 and demanding an additional tax of M\$ 11,606.00 was served. The sources and details of income were not given.

R-233 gives the sources and the amount of income and as determined by the Special Commissioners as follows:

Income previously agreed	M\$192,462	10
Bonus and Salaries	M\$ 30,000	
Interest paid to the bank	M\$ 2,708	
Wages and other expenses inflated, say	<u>M\$ 60,020</u>	
	<u>M\$285,190</u>	
 The additional tax is	 M\$ 37,091.20	

Bonus and Salaries

For the reasons set out in Paragraph 25, there is no evidence that the Appellant did not pay M\$30,000 or any other sum as bonus and salaries.

There is no allegation of fraud or wilful default. The additional assessment which is after 12 years is thus not competent. 20

Interest Paid to the Bank

For the reasons set out in Paragraph 26, the Revenue cannot disallow the interest paid to the banks. It is submitted that the interest payments are permissible deductions.

There is no allegation of fraud or wilful default. The additional assessment is thus not competent.

Wages and Other Expenses

For the reasons set out in Paragraph 27, the Revenue cannot make an additional assessment. 30

There is not one instance of non-payment or inflation for this year. Therefore the additional assessment is not sustainable.

There is no allegation of fraud or wilful default. The additional assessment is thus not competent.

34. YEAR OF ASSESSMENT 1959

The Notice of Assessment dated 1st December, 1972 showing the income at M\$2,341,859 and assessed additional income tax of M\$800,000 but gave no details of the alleged understated income.

R-233 exhibits the sources and the amounts of income as determined by the Special Commissioners as follows -

10	Income agreed previously	M\$ 341,859
	Fragmentation profits understated	M\$1,003,013
	Bonus and salaries	M\$ 41,200
	Interest paid to banks	M\$ 29,537
	Wages and other expenses inflated, say	M\$ 100,000
	Profits on export of gold, currency, diamonds and other valuables	<u>M\$ 500,000</u>
		<u>M\$2,015,609</u>

The additional tax due according to R-233 and the determination of the Special Commissioners is M\$669,500.00

20 In R-231 the profits alleged to be understated on account of fragmentation business are as follows -

	Paya Bosar	M\$ 67,440
	Padang	M\$ 541,036
	Sempan Ponanti	M\$ 330,257
	Alor Pongsu	M\$ 14,300
	Jawi Krian	<u>M\$ 50,000</u>
		<u>M\$1,003,013</u>

30 It is submitted that the assessment is time-barred. There was no allegation of fraud or wilful default except in the case of fragmentation business. For the reasons set out in Paragraph 24 there is no fraud or wilful default. Therefore it is not competent to raise additional assessments with respect to the Year of Assessment 1959, particularly in respect of Bonus and Salaries, interest paid to banks, wages and other expenses and "Export" profits.

Paya Bosar Estate - the alleged understatement of income is M\$67,440.

R = Record
Ex = Exhibits

There is no understatement of the price received on sale of this estate. There is no fraud or wilful default for the reasons stated in Paragraph 24 and it is not competent to raise additional assessments.

Padang Estate - alleged understatement is M\$541,036.

There is no understatement of the price received. There is no fraud or wilful default for the reasons stated in Paragraph 24 and it is not competent to raise additional assessments.

Ex. Vol. 3
 p. 278

Example: The Revenue contends that there is a discrepancy in the records of one transaction, i. e. Item 1 in R-137 (Ledger ABIT) and Item 2 in R-138 (List of Purchases, Register PAB).

10

In R-138 initially Lot No. 1, 10 Relongs in extent was sold at M\$19,000, i. e. M\$1,900 per relong.

Ex. Vol. 3
 pp. 273-277

In R-137 the transfer was made at M\$16,000. The Revenue failed to point out that what was in fact transferred, i. e. after survey (now Lot Nos. 468 and 437) was only 8 relongs and 182 Jembahs. Now 8 relongs and 182 jembahs at M\$1,900 per relong works out at M\$15,914.46. Therefore, the conclusion that there was an understatement by the Appellant in a sum of M\$3,000 was unwarranted.

20

Lim Boon Chit, a broker, purchased a portion of Padang Estate for M\$306,790.63. A sum of M\$324,414.19 was deposited on account of sub-sales effected by Lim Boon Chit. The excess M\$17,623.56 to the credit of Lim Boon Chit was accounted for in the transaction of Kuala Dingin Estate. An extent of 306 relongs was not transferred in the sub-sales effected and therefore the 306 relongs was to be transferred free of any payment but the consideration was to be entered as M\$3,000; as there were labour lines on the land a value had to be placed on them. This fact is brought out fully in R-142. The Revenue failed to produce the full facts set out in R-142 and produced R-142T, the translation of two or three lines in R-142 to support their contention.

30

Ex. Vol. 3
 pp. 279 & 280

Sempah Penanti Estate - the alleged understatement is M\$330,257.

There is no understatement of the price received. There is no fraud or wilful default for the reasons stated in Paragraph 24, and it is not competent to raise additional assessments.

40

The details were not given in time to enable the Appellant to answer the case against him.

Alor Pongsu Estate - alleged understatement is M\$14,300.

There is no understatement of the price received. There is no fraud or wilful default for the reasons stated in Paragraph 24 and it is not competent to raise additional assessments.

10 It was alleged that there was a difference between the figures as set out in the Ledger (ABIT) and the Statement of Sales set out in the Register (PAB). The additional assessment is unjustified.

The details were not given in time to enable the Appellant to answer the case against him.

Jawi Krian Estate - alleged understatement is M\$50,000 (estimate).

20 There is no understatement of the price received. There is no fraud or wilful default for the reasons stated in Paragraph 24, and it is not competent to raise additional assessments.

The Revenue states that it estimated the understatement at M\$50,000 since there were no documents to show understatement. The estimate is unreasonable and unjustified.

The details were not given in time to enable the Appellant to answer the case against him.

Bonus and Salaries - disallowed M\$41,200.

30 The Revenue alleges that the bonus for the year 1959 was in fact not paid. There is no substance in this contention.

There is no fraud or wilful default proved. Therefore the inclusion of this item in the assessment is in any event time-barred.

For reasons stated in Paragraph 25 the assessment is unjustified.

R = Record
Ex = Exhibits

Interest paid to the bank - M\$29,537 disallowed.

For the reasons stated in Paragraph 26, it is submitted that the interest payments are permissible deductions.

There was no fraud or wilful default alleged or proved. Therefore the inclusion of this item in the assessment is time-barred.

Wages and other expenses - M\$100,000 disallowed.

The Revenue alleges that the Appellant has inflated the expenses. Therefore it disallows an estimated sum of M\$100,000.

10

Not one instance of inflation of wages or expenses was shown for this year.

For the reasons stated in Paragraph 27, it is submitted that the estimates of inflated expenses is unwarranted and unjustified.

There is no fraud or wilful default alleged or proved and therefore the inclusion of this item is time-barred.

Profits on Export of Gold, Currency, Diamonds and other valuables - M\$500,000

The Revenue contended this alleged source of income under two heads - namely export of articles - gold, diamonds and other valuables, and dealing in foreign currency. This will be considered separately.

20

For the reasons stated in Paragraph 28 the assessment is not sustainable.

The estimates of profits were recklessly made and assessed with no evidence to support it.

Dealing in currency :

For the reasons stated in Paragraph 28 the assessment is not sustainable.

30

There was no suggestion of fraud or wilful default. Therefore it is not competent to raise an additional assessment for the year 1959. There is no basis for the inclusion of M\$500,000 for this year.

No details were given to the Appellant to meet the case on this point.

R = Record
Ex = Exhibits

35. YEAR OF ASSESSMENT 1960

The Notice of Assessment is dated 27th October, 1972 showing the income as M\$958,818.00 and demanded an additional tax of M\$360,000. The sources of income were not given.

The sources and income as set out in R-233 are as follows -

	Income agreed previously	M\$ 185,818
	Fragmentation business	M\$ 680,482
10	Bonus and salaries	M\$ 47,000
	Interest paid to the banks	M\$ 30,463
	Wages and other expenses	M\$ 100,000
	Profits from exports	M\$ 500,000
	Interest income omitted	<u>M\$ 10,000</u>
		<u>M\$1,553,763</u>
	Additional tax due	<u>M\$ 615,575.25</u>

In R-231 the profits understated on account of fragmentation business is given as follows -

	Sungei Batu Estate	M\$ 362,888
20	Selambau Estate	<u>M\$ 317,594</u>
		<u>M\$ 680,482</u>

Sungei Batu Estate - alleged understatement is M\$362,888. (Ref. R-231)

The computation is on the basis that there are differences between the Register (PAB) and the Ledger (ABIT). The basis is wrong for the reasons stated in Paragraph 24.

Selambau Estate - the alleged understatement is M\$317,594.

30 The Revenue found differences between Register (PAB) and Ledger (ABIT) in two transactions out of 27 transactions. The Revenue estimates understatement at M\$317,594 without taking into account unusable tracts of forest on the estate.

The basis is incorrect for the reasons stated in Paragraph 24.

R = Record
Ex = Exhibits

Bonus and Salaries - the alleged non-payment is
M\$47,000.

For the reasons stated in Paragraph 25 the assessment
is unjustified.

Interest paid to the banks - amount of interest paid is
M\$30,463.

For the reasons stated in Paragraph 26 the assessment
is unjustified.

Wages and other expenses - alleged inflation is
M\$100,000. 10

For the reasons stated in Paragraph 27 the assessment
is unjustified.

Profits from the export business - alleged omission -
M\$500,000.

For the reasons stated in Paragraph 28 the assessment
is unjustified.

Interest income omitted - alleged interest income
omitted - M\$10,000.

For the reasons stated in Paragraph 29 the assessment
is unjustified. 20

36. YEAR OF ASSESSMENT 1961

The Notice of Assessment dated 27th October, 1972,
showed the income at M\$5,192,984 and demanded additional
income tax of M\$1,800,000. The sources of alleged addi-
tional income were not given.

The sources of income as set out in R-233 are as
follows -

Income agreed previously	M\$1,999,984	
Fragmentation business	M\$2,569,226	
Bonus and salaries	M\$ 52,000	30
Interest paid to banks	M\$ 131,558	
Wages and other expenses	M\$ 200,000	
Profits from export	M\$1,000,000	
Interest income omitted	M\$ 20,000	
	<u>M\$5,172,768</u>	

R = Record
Ex = Exhibits

Additional tax due M\$1,787,752.00

In R-231 the profits alleged to be understated on account of the fragmentation business are given as follows -

United Patani	M\$1,232,265
Junun Champadak	M\$1,316,961
Bertam	M\$ 20,000
	<u>M\$2,569,226</u>

United Patani Estate - alleged understatement
M\$1,232,265.

10 R-157 contains the details of sales as per Ledger (ABIT). Ex. Vol. 3
pp. 315-323

R-158 contains the details of sub-sales. Similarly R-158A too contains details of sub-sales. There is a repetition of items in R-158 and R-158A.

e. g. (a) Item 8 in R-158 is the same as Portion 869 in R-158A.

(b) Portion 967 in R-158 is the same as Portion 967 in R-158A.

(c) Portion 871 in R-158 is repeated in R-158A.

20 Thus, R-158A is not a continuation of R-158. They were maintained for two different purposes and both have records of the same transactions.

30 R-159 and R-160T clearly show that the price ultimately payable is different from the price agreed. Thus, it fully supports the contention of the Appellant that the moneys received by way of advance and otherwise is not what is indicated as the price in the Register (PAB). These amounts are shown in the Ledger (ABIT) under Estate Advance Account and represents the total money received. From this account is transferred to the Sales Account the actual sale price of land as agreed.

Ex. Vol. 3
p. 328

It is submitted that the additional assessments would appear to have been made merely on the basis that there is a difference between the Ledger (ABIT) and the Register (PAB) or similar documents maintained by the Appellant.

For the reasons stated in Paragraph 24 the addition to

R = Record
Ex = Exhibits

the income is unjustified.

The details were not given in time to enable the Appellant to answer the case against him.

Junun Champadak Estate - the alleged understatement is M\$1,316,961.

Ex. Vol.3
 pp.288-301

R-154A contains the details relating to sub-sales of Junun Champadak Estate, and R-154B is the Register of Junun Champadak Estate. The basis of estimate or assessment was that there is a difference between the Ledger (ABIT) and the temporary documents showing the details of sub-sales.

10

For the reasons stated in Paragraph 24 the assessment is unjustified.

The details were not given in time to enable the Appellant to answer the case against him.

Bertam Estate - the alleged understatement is M\$20,000.

There were no documents produced with respect to this estate.

The bulk of the estate was acquired by the Government and there was one private transaction for M\$63,873/-. The Revenue estimates the omission at M\$20,000. There is no basis for this estimate.

20

In any event details of the assessment were not given to enable the Appellant to answer the case.

Bonus & Salaries - alleged non-payment M\$52,000.

For the reasons stated in Paragraph 25 the assessment is unjustified.

Interest paid to the Banks - amount of interest paid M\$131,558.

30

For the reasons stated in Paragraph 26 the assessment is unjustified.

Wages and Other Expenses - alleged inflation M\$200,000

For the reasons stated in Paragraph 27 the assessment is unjustified.

R = Record
Ex = Exhibits

Profits from the export business - alleged omission
M\$1,000,000.00.

For the reasons stated in Paragraph 28 the assessment is unjustified.

Interest Income Omitted - alleged omission M\$20,000.

For the reasons stated in Paragraph 29 the assessment is unjustified.

37. YEAR OF ASSESSMENT 1962

10 The Notice of Assessment dated 27th October, 1972 showed the income at M\$2,000,000 and demanded an additional tax of M\$901,158.85. The sources of income were not given.

The sources of income as set out in R-233 are as follows -

Income agreed previously	M\$ 186,440
Fragmentation business	M\$ 914,598
Bonus and Salaries	M\$ 42,200
Interest paid to Banks	M\$ 216,305
Wages and other expenses	M\$ 200,000
20 Profits from exports	M\$1,000,000
Interest income omitted	M\$ 20,000
Penalty payments	M\$ 72,857
	<u>M\$2,279,520</u>
Additional tax	<u>M\$1,010,921.50</u>

In R-231 profits understated on account of fragmentation business is given as follows -

Kuala Dingin Estate	M\$ 527,650
Trans Krian Estate	<u>M\$ 386,948</u>
	<u>M\$ 914,598</u>

30 Kuala Dingin Estate - alleged understatement is M\$527,650.

The computation is on the basis that there is a difference between the Register (PAB) and the Ledger (ABIT). The basis is wrong for the reasons stated in Paragraph 24.

R = Record
Ex = Exhibits

Trans Krian Estate - alleged understatement is
M\$386,948.

The computation is on the basis that there are differences between the Register (PAB) and the Ledger (ABIT). The basis is wrong for the reasons stated in Paragraph 24.

Bonus and Salaries - alleged non-payment is M\$42,200.

For the reasons stated in Paragraph 25 the assessment is unjustified.

Interest paid to the Banks - amount of interest paid
M\$216,305. 10

For the reasons stated in Paragraph 26 the assessment is unjustified.

Wages and Other Expenses - alleged inflation M\$200,000.

For the reasons stated in Paragraph 27 the assessment is unjustified.

Profits from the Export Business - alleged omission
M\$1,000,000.

For the reasons stated in Paragraph 28 the assessment is unjustified.

Interest income omitted - alleged omission M\$20,000. 20

For the reasons stated in Paragraph 29 the assessment is unjustified.

Penalty Payments

During the year 1962 the Appellant paid the Penang Rubber Estates Company Limited, the vendor of Trans Krian Estate, a sum of M\$72,857 as penalty payment for non-completion of the contract for purchase.

The Revenue submitted that the penalty payment of M\$72,857.00 to the vendor company of Trans Krian Estate during the year of assessment 1962 was disallowed as a tax deduction because investigations by Revenue have revealed that money collected from sub-purchasers of fragmented lots of that plantation had been remitted by the Appellant to India through a money-lender. That was why the Appellant did not have enough money to pay the vendor company. They 30

submitted that when a taxpayer has sufficient funds but chose to remit those funds out of the country, then in those circumstances any penalty paid by him for failures to carry out a contractual business obligation here should not be allowed as a deductible tax allowance.

10 The witness for the Revenue, Mr. Sadasivan, had no personal knowledge of the transactions. His evidence is entirely from the documents examined by him. No document is referred to. There is no evidence whatsoever for the conclusion reached by the Revenue and accepted by the Special Commissioners.

20 Further, assuming that moneys were sent to India during the year 1962, it does not necessarily mean that the Appellant has sent the moneys from the sub-purchasers. Even assuming that some moneys of the sub-purchasers were sent to India, it does not necessarily mean that the failure to complete the sale was due to that fact. No evidence was led to show the amount collected from the sub-purchasers and the amount sent to India and by what amount there was a shortfall in completing the transaction, assuming that the failure was entirely due to lack of funds.

It is submitted that the reason for the failure is irrelevant. The penalty payment is allowable as a loss.

38. YEAR OF ASSESSMENT 1963

30 The Special Commissioners stated there were no appeals for the years of assessment 1963, 1964 and 1965 but the computation of income and tax under-assessed for the years of assessment 1953 and 1957 to 1972 prepared by the Revenue (Exhibit R-233) showed that there were no un-absorbed losses for those years to be carried forward to the year of assessment 1966. They contended that the Appellant had not shown that the Respondent's said computation to be excessive or erroneous and had also failed to discharge the onus on him of proving that the assessments raised against which he has lodged appeals to be excessive or erroneous.

40 The Revenue submitted that although there were no appeals for the years of assessment 1963, 1964 and 1965, the profits of the Appellant from short-term money lending for these years should be taken into account in considering whether the Appellant had a chargeable income for the years of assessment 1966. They said that it will be noticed from Exhibit R-233 that the Appellant had originally

R = Record
Ex = Exhibits

claimed to have suffered losses during the year of assessment 1966.

Ex. Vol. 3
 p. 406

The Special Commissioners did not comment on the income of the Appellant for the years 1953, 1964 and 1965 and they have ignored the losses incurred during these years in computing the income for the subsequent years. The Special Commissioners stated that in the circumstances, that the Appellant had not shown that the Respondent's computation of his income and tax under-assessed for the years of assessment 1953, 1957 to 1962 and 1966 to 1972 as shown in Exhibit R-233 to be excessive or erroneous. Since there were no assessments for the years 1963, 1964 and 1965, the review of those years was without jurisdiction. For this reason only the assessment of income as set out in Exhibit R-233 is dealt with here. No notice whatsoever was given by the Revenue that they are disallowing these losses. Revenue has also assessed profits from short-term money lending for the years 1964 and 1965. 10

The sources and income as set out in R-233 are as follows :- 20

Income agreed previously	M\$	283,821
Fragmentation business	M\$	20,606
Bonus and salaries	M\$	39,263
Interest paid to banks	M\$	213,894
Wages and other expenses	M\$	200,000
Profits from exports	M\$	500,000
Interest income omitted	M\$	20,000
Penalty payment	M\$	30,000
		<hr/>
	M\$	739,942

Tax alleged to be due M\$318,111.40 30

Ex. Vol. 3
 pp. 404 & 405

In R-231 profits understated on account of fragmentation business is given as follows:

Trans Krian Estate	M\$	15,783
Jawi Krian	M\$	4,823
		<hr/>
	M\$	20,606

Trans-Krian Estate - alleged understatement is M\$ 15,783.

The computation is on the basis that there is difference between the Register (PAB) and the Ledger (ABIT). The basis is wrong for the reasons stated in Paragraph 24. 40

R = Record
Ex = Exhibits

Jawi Krian Estate - alleged understatement is M\$ 4,723. The computation is on the basis that there is a difference between the Register (PAB) and the Ledger (ABIT). The basis is wrong for the reasons stated in Paragraph 24.

10 The assessments under the headings bonus and salaries, interest paid to the banks, wages and other expenses, profits from the export business, interest income omitted are unjustified for the reasons set out under the respective headings in Paragraph 37 above for the year 1962.

There was a carry-forward loss of M\$ 283,821 for the year 1963.

39. YEAR OF ASSESSMENT 1964

There was no assessment and the Special Commissioners have no jurisdiction to review.

The sources and income as set out in R-233 are as follows :-

20	Income agreed previously	M\$ 625,488
	Fragmentation business	M\$ 178,162
	Bonus and salaries	M\$ 3,083
	Interest paid to the banks	M\$ 319,240
	Wages and other expenses	M\$ 200,000
	Profits from export	M\$ 500,000
	Interest income omitted	M\$ 20,000
	Profits from short-term money lending	<u>M\$ 720,015</u>
		<u>M\$1,315,012</u>
	Tax alleged to be due	<u>M\$577,792.90</u>

30 In R-231 the profits understated on account of fragmentation business are given as follows :-

	Bawali Estate	M\$ 136,000
	Bertam Estate	M\$ 12,162
	Gomas Estate	<u>M\$ 30,000</u>
		<u>M\$ 178,162</u>

Bawali Estate - alleged understatement is M\$136,000.

This estate was sold as a single lot for M\$700,000.

R = Record

Ex = Exhibits

Revenue points out two items of deposits made with lawyers. It is reflected in Document R-173, Statement of Account with respect to the Appellant. The payments were received on 12th April 1964 (M\$83,000) and on 12th April 1965 (M\$53,000). Revenue seeks to estimate the understatement as M\$136,000. There is no basis whatsoever for this assessment. Further, the Revenue has suppressed the Ledger (ABIT) and the Register (PAB) relating to the sale of this estate.

Bertam Estate - alleged understatement is M\$12,152. 10

The computation is on the basis that there is difference between the Register (PAB) and the Ledger (ABIT). The basis is wrong for the reasons stated in Paragraph

Gomas Estate - alleged understatement is M\$30,000.

In R-177 the Appellant has requested that seven vehicles belonging to the estate be returned. There was no evidence that the vehicles were returned.

It is submitted that the assessment was unjustified.

The assessments under the headings Bonus and Salaries, Interest paid to the banks, Wages and other expenses, Profits from export and Interest income omitted are unjustified for the reasons set out under the respective headings in Paragraph 37 above for the year 1962. 20

PROFITS from Short-term Money lending - M\$720,015

The Appellant carries on the business of money lending and in particular short-term money lending. The profits are correctly reflected in the Books of Account. The basis for the assessment was not revealed even during the hearing before the Special Commissioners.

There is no evidence whatsoever for the assessment. It is submitted that the assessment is unjustified. 30

There is another instance of the unreasonable attitude of the Revenue towards the Appellant. The Revenue was seeking to assess one percentum of all debits in the bank account which, in the estimation of the Revenue, was not used for other business purposes, as an income from short term money lending.

The Revenue was compelled to abandon this source of income as it could not be established.

The carry-forward loss for the year 1964 is M\$625,488.00.

40. YEAR OF ASSESSMENT 1965

There was no assessment and the Special Commissioners have no jurisdiction to review.

The sources and income as set out in R-233 are as follows:-

	Income agreed previously	M\$ 374,000	Loss
	Fragmentation business	M\$ 23,518	
10	Interest paid to the banks	M\$ 423,131	
	Wages and other expenses	M\$ 200,000	
	Profits from exports	M\$ 500,000	
	Interest income omitted	M\$ 20,000	
	Profits from short term money lending	<u>M\$1,937,232</u>	
		<u>M\$2,729,781</u>	
	Tax alleged to be due	<u>M\$1,350,715.50</u>	

In R-231 profits understated on account of fragmentation business are given as follows :-

	Hai Thong Estate	M\$ 13,806
20	Juru Estate	M\$ 8,212
	Kuala Dingin Estate	<u>M\$ 1,500</u>
		<u>M\$ 23,518</u>

Hai Thong Estate - alleged understatement is M\$ 13,806.

The only evidence is the mere statement of Mr. Sadasivam of the Revenue. The basis of the assessment is not given. The assessment is thus unjustified.

Juru Estate - alleged understatement is M\$8,212.

30 The computation is on the basis that there is a difference between the Register (PAB) and the Ledger (ABIT). The basis is wrong for the reasons set out in Paragraph 24.

Kuala Dingin Estate - alleged understatement is M\$ 1,500.

The basis of the computation was not revealed. It is submitted that the assessment is unjustified.

R = Record
Ex = Exhibits

The assessment under the headings - Interest paid to the banks, Wages and other expenses, Profits from exports and Interest income omitted are unjustified for the reasons set out under the respective headings in Paragraph 37 above for the year 1962.

The assessments under the heading Profits from short-term money lending is unjustified for the reasons set out in Paragraph 39 above for the year 1964.

The carry-forward loss for the year 1965 is thus M\$374,090. 10

41. YEAR OF ASSESSMENT 1966

The Notice of Assessment dated 23rd February 1974 showed additional income at M\$ 53,736 and demanded M\$ 12,844.40 as tax. The sources of income were not given.

The sources of income as set out in R-233 are as follows:-

Income agreed previously	M\$ 244,551 (Loss)	
Fragmentation business	M\$ 68,388	
Interest paid to the banks	M\$ 518,879	
Wages and other expenses	M\$ 200,000	20
Profits from export	M\$ 500,000	
Interest income omitted	<u>M\$ 20,000</u>	
	<u>M\$1,062,716</u>	
Income tax	<u>M\$ 517,183</u>	

In R-231 profits understated on account of fragmentation business is given as follows :-

<u>Juru Estate</u>	M\$ 47,349	
Trans Krian Estate	M\$ 7,639	
United Patani Estate	M\$ 9,900	
Paya Besar Estate	<u>M\$ 3,500</u>	30
	<u>M\$ 68,388</u>	

Juru Estate - alleged understatement is M\$47,349.

The computation is on the basis that there is difference between the Register (PAB) and the Ledger (ABIT). The basis is wrong for the reasons set out in Paragraph 24.

Trans Krian Estate - alleged understatement is
M\$7,639.

The computation is on the basis that there is difference between the Register (PAB) and the Ledger (ABIT). The basis is wrong for the reasons set out in Paragraph 24.

United Patani Estate - alleged understatement is
M\$9,900.

10 The computation is on the basis that there is difference between the Register (PAB) and the Ledger (ABIT). The basis is wrong for the reasons set out in Paragraph 24.

Paya Besar Estate - alleged understatement is
M\$3,500.

No document was produced in evidence. The basis of assessment was not revealed. It is submitted that the assessment is unjustified.

Interest paid to the banks

Amount of interest paid M\$ 518,879

For the reasons set out in Paragraph 26 the assessment is unjustified.

20 Wages and other expenses. Alleged inflation is
M\$200,000.

For the reasons set out in Paragraph 27 the assessment is unjustified.

Profits from export. Alleged omission is M\$500,000.

For the reasons set out in Paragraph 28 the assessment is unjustified.

There is no evidence of any export of goods.

Interest income omitted. Alleged omission is
M\$ 20,000.

30 For the reasons set out in Paragraph 29 the assessment is unjustified.

Carry-forward of losses

The Revenue had failed to take into account the losses

R = Record
Ex = Exhibits

incurred during the years of assessment 1963, 1964 and 1965 and carry forward to the year of assessment 1966.

42. YEAR OF ASSESSMENT 1967

The Notice of Assessment dated 16th April, 1974, showed additional income as M\$210,700 and demanded as tax M\$101,710. The sources of income were not given.

The sources of income as set out in R-233 are as follows :-

Income agreed previously	M\$ 962,080 (Loss)	
Fragmentation business	M\$ 581,770	10
Interest paid to the banks	M\$ 583,585	
Wages and other expenses	M\$ 200,000	
Profits from export	M\$ 750,000	
Interest income omitted	M\$ 20,000	
	<u>M\$1,173,275</u>	
Income tax	<u>M\$ 631,136.25</u>	

In R-231 profits understated on account of fragmentation business are given as follows :-

Sungoi Lalang Estate	M\$ 24,000	
Paya Besar Estate	M\$ 1,796	20
Lubok Kiab Estate	M\$ 142,756	
Bukit Gonting Estate	M\$ 413,218	
	<u>M\$ 581,770</u>	

Sungoi Lalang Estate - alleged understatement is M\$24,000.

R-183 is the income tax return. No other document was marked. The basis for computation probably is that there is difference between the Register (PAB) and the Ledger (ABIT). The basis is wrong for the reasons set out in Paragraph 24. 30

Paya Besar Estate - alleged understatement is M\$1,796.

The computation is on the basis that there is difference between the Register (PAB) and the Ledger (ABIT). The basis is wrong for the reasons set out in Paragraph 24.

R = Record
Ex = Exhibits

Lubok Kiab Estate - alleged understatement is
M\$142,756.

No document was produced. The computation is probably on the basis that there is difference between the Register (PAB) and the Ledger (ABIT). The basis is wrong for the reasons set out in Paragraph 24.

Bukit Gonting Estate - alleged understatement is
M\$413,218. (Ref: R-231).

No document was produced.

10 The computation is probably on the basis that there is difference between the Register (PAB) and the Ledger (ABIT). The basis is wrong for the reasons set out in Paragraph 24.

Interest paid to the banks. Amount of interest
paid - M\$583,585.

For the reasons set out in Paragraph 26 the assessment is unjustified.

Wages and other expenses. Alleged inflation -
M\$200,000.

20 For the reasons set out in Paragraph 27 the assessment is unjustified.

Profits from export. Alleged omission - M\$750,000.

For the reasons set out in Paragraph 28 the assessment is unjustified.

There is no evidence of "export" of goods.

Interest income omitted. Alleged omission - M\$20,000.

For the reasons set out in Paragraph 29 the assessment is unjustified.

43. YEAR OF ASSESSMENT 1968

30 The Notice of Assessment dated 23rd February, 1974 showed additional income at M\$2,554,955 and demanded as tax M\$1,391,050.25. The sources of income were not given.

The sources of income as set out in R-233 are as

R = Record
Ex = Exhibits

follows :-

Income agreed previously	M\$1,719,623
Fragmentation business	M\$ 198,162
Interest paid to the banks	M\$ 620,978
Wages and other expenses	M\$ 200,000
Profits from export	M\$ 500,000
Interest income omitted	<u>M\$ 10,000</u>
	<u>M\$3,248,763</u>
Income tax	<u>M\$1,772,644.65</u>

In R-231 profits understated on account of fragmentation business is given as follows :-

10

Jitra Estate	M\$ 170,162
Glugor Estate	<u>M\$ 28,000</u>
	<u>M\$ 198,162</u>

Jitra Estate - alleged understatement is M\$170,162.

No documents were produced. The computation is probably on the basis that there is a difference between the Register (PAB) and the Ledger (ABIT). The basis is wrong for the reasons set out in Paragraph 24.

Glugor Estate - alleged understatement is M\$28,000.

No document was produced. The computation is probably on the basis that there is difference between the Register (PAB) and the Ledger (ABIT). The basis is wrong for the reasons set out in Paragraph 24.

20

Interest paid to the banks. Amount of interest paid - M\$620,978.

For the reasons set out in Paragraph 26 the assessment is unjustified.

Wages and other expenses. Alleged inflation - M\$200,000.

For the reasons set out in Paragraph 27 the assessment is unjustified.

30

Profits from export. Alleged omission - M\$500,000.

For the reasons set out in Paragraph 28 the assessment is unjustified.

There is no evidence of any "export" of goods.

Interest income omitted. Alleged omission - M\$10,000.

For the reasons set out in Paragraph 29 the assessment is unjustified.

44. YEAR OF ASSESSMENT 1969

10 The Notice of Assessment dated 23rd February 1974 showed additional income as M\$470,392 and demanded as tax M\$244,540.60. The sources of income were not given.

The sources of income as set out in R-233 are as follows :-

Income agreed previously	M\$ 45,585
Fragmentation business	M\$ 8,000
Interest paid to the banks	M\$479,481
Wages and other expenses	M\$100,000
Profits from export	M\$200,000
Interest income omitted	<u>M\$ 10,000</u>
	<u>M\$751,897</u>
20 Income tax	<u>M\$399,368.35</u>

In R-231, profits understated on account of fragmentation business was only with respect to Juru Estate in a sum of M\$8,000.

Juru Estate - alleged understatement is M\$8,000.

30 Juru Estate was bought in 1955. The Appellant sold a part of it and developed and worked the balance in extent about 560 acres. The estate was sold in 1969 at a profit of M\$327,064. The claim was disallowed. The Revenue states that there is difference between the Register (PAB) and the Ledger (ABIT) in a sum of M\$139,170 which sum the Revenue seeks to add for the year 1970. In 1969 the Revenue seeks only to add M\$8,000 on account of the difference between the Register (PAB) and the Ledger (ABIT).

The basis of computation is wrong for the reasons set out in Paragraph 24.

R = Record
Ex = Exhibits

It is also submitted that when the Appellant develops and works the estate as a plantation venture, the capital profits arising on the sale will not be profits in the fragmentation business.

Interest paid to the banks. Amount of interest paid - M\$479,481.

For the reasons set out in Paragraph 26 the assessment is unjustified.

Wages and other expenses. Alleged inflation - M\$100,000. 10

For the reasons set out in Paragraph 27 the assessment is unjustified.

Profits from export. Alleged omission - M\$200,000.

For the reasons set out in Paragraph 28 the assessment is unjustified.

There is no evidence of "export" of goods.

Interest income omitted. Alleged omission - M\$10,000.

For the reasons set out in Paragraph 29 the assessment is unjustified.

45. YEAR OF ASSESSMENT 1970 20

Notice of Assessment dated 23rd February, 1974 showing the income as M\$966,800 and demanding as tax M\$517,565 was served. The sources of income were not given.

The sources of income as set out in R-233 are as follows :-

Income agreed previously	M\$	131,415	
Fragmentation profits	M\$	149,170	
Interest paid to the banks	M\$	510,000	
Wages and other expenses	M\$	100,000	30
Profits from export	M\$	300,000	
Interest income omitted	M\$	10,000	
Juru Estate fragmentation profits	M\$	327,064	
Thamil Malar losses	M\$	121,969	
		<u>M\$1,405,706</u>	

R = Record
Ex = Exhibits

Income tax M\$758,963.30

In R-231 profits understated on account of fragmentation business is given as follows :-

Juru Estate	M\$139,170
Bertam Estate	<u>M\$ 10,000</u>
	<u>M\$149,170</u>

Juru Estate - alleged understatement is M\$139,170.

For the reasons set out in Paragraph 24 the assessment is unjustified.

10 Bertam Estate - alleged understatement is M\$10,000.

No documents were marked. The computation is presumably on the basis that there are differences between the Register (PAB) and the Ledger (ABIT). The basis is wrong for the reasons set out in Paragraph 24.

Interest paid to the banks. Amount of interest paid - M\$510,026.

For the reasons set out in Paragraph 26 the assessment is unjustified.

20 Wages and other expenses. Alleged inflation - M\$100,000.

For the reasons set out in Paragraph 27 the assessment is unjustified.

Profits from export. Alleged omission - M\$300,000.

For the reasons set out in Paragraph 28 the assessment is unjustified.

There is no evidence of "export" of goods.

Interest income omitted. Alleged omission - \$10,000.

For the reasons set out in Paragraph 29 the assessment is unjustified.

30 Juru Estate - Fragmentation Profits. Capital profits - M\$327,064.

R = Record
Ex = Exhibits

For the reasons set out in Paragraph 44 the assessment is unjustified.

Thamil Malar Losses

Thamil Malar in Singapore is a branch of Thamil Malar in Malaysia and the losses are a permissible deduction.

46. YEAR OF ASSESSMENT 1971

The Notice of Assessment dated 3rd July, 1971, showed additional income at M\$1,400,000 and demanded tax of M\$150,687.50. The sources of income were not given.

A Notice of Additional Assessment dated 31st July, 1971 showed further additional income at M\$1,515,688 and demanded additional tax of M\$670,665.90. The sources of income were not given. 10

The sources of income as set out in R-233 are as follows :-

Income agreed previously	M\$1,475,751	
Fragmentation profits	M\$ 197,500	
Interest paid to the banks	M\$ 507,485	
Wages and other expenses	M\$ 100,000	
Profits from export	M\$ 200,000	20
Interest income omitted	M\$ 10,000	
(Thamil Malar Losses	M\$ 47,560	
(Bad debts written off	M\$ 405,387	
	<u>M\$2,037,789</u>	
Tax	<u>M\$1,106,608.95</u>	

In R-231 profits understated on account of fragmentation business are given as follows :-

Glugor Estate	M\$ 27,500	
Kuala Dingin Estate (Ellappan Property)	<u>M\$ 170,000</u>	30
	<u>M\$ 197,500</u>	

Glugor Estate - alleged understatement is M\$27,500.

R-186 is the return for the year 1970. No other document was produced. The basis for the assessment was not given.

It is submitted that the assessment is unjustified.

Kuala Dingin Estate - (Ellappan Property) - Alleged understatement is M\$170,000.

Portion No. 516 in private Lot No. 1 in extent 45 relongs was sold for M\$112,500 and Portion No. 1 in private Lot No. 5 in extent 25 relongs was sold for M\$60,000. Both lots were bought by Ellappan. The money due was not paid and the balance due as at 17th January 1970 was recorded as M\$39,000. The balance was paid on 18th February, 1970.

10 The Revenue took up the position that the Appellant had taken possession and resold it in 1970 for M\$172,500.

It is submitted that the conclusion of the Special Commissioners is untenable.

Interest paid to the banks. Amount of interest paid - M\$507,485.

For the reasons set out in Paragraph 26 the assessment is unjustified.

Wages and other expenses. Alleged inflation - M\$100,000.

For the reasons stated in Paragraph 27 the assessment is unjustified.

20 Profits from export. Alleged omission - M\$200,000.

For the reasons stated in Paragraph 28 the assessment is unjustified.

There is no evidence of "export" of goods.

Interest income omitted. Alleged omission - M\$10,000.

For the reasons stated in Paragraph 29 the assessment is unjustified.

47. YEAR OF ASSESSMENT 1972

30 The Notice of Assessment dated 2nd September, 1972 showed additional income as M\$2,000,000 and demanded M\$1,085,825 as tax. The sources of income were not given.

The sources of income as set out in R-233 are as follows :-

R = Record
Ex = Exhibits

Income agreed previously	M\$108,579 (Loss)
Interest paid to the banks	M\$466,830
Wages and other expenses	M\$ 50,000
Profits from export	M\$200,000
Interest income omitted	M\$ 10,000
Thamil Malar Losses	M\$ 80,896
Bad debts written off	<u>M\$675,707</u>
	<u>M\$1,374,854</u>
Tax	<u>M\$741,994.70</u>

Interest paid to the banks. Amount of interest paid -
M\$466,830. 10

For the reasons stated in Paragraph 26 the assessment is unjustified.

Wages and other expenses. Alleged inflation -
M\$50,000.

For the reasons stated in Paragraph 27 the assessment is unjustified.

Profits from export. Alleged omission - M\$200,000.

For the reasons stated in Paragraph 28 the assessment is unjustified.

There is no evidence of "export" of goods. 20

Interest income omitted. Alleged omission - M\$10,000.

For the reasons stated in Paragraph 29 the assessment is unjustified.

Thamil Malar Losses. Losses - M\$80,896.

For the reasons stated in Paragraph 45 the assessment is unjustified.

Bad Debts written off

A sum of M\$415,181.31 was lent to Mr. Sundaram but not repaid. Appellant's position was that the agreement was that interest should be paid. However, finding that Mr. Sundaram was in financial difficulties, the Appellant waived the interest. Even then the loan was not repaid. The 30

Appellant had found that no useful purpose would be served in instituting legal proceedings for the recovery of the debt. It is submitted that the Revenue has wrongly disallowed the loss. Revenue has not put the case to the Appellant so that the Appellant may answer the case.

10 The Appellant was a shareholder and director of Malaysian Times Ltd. He had also agreed to take up shares to the value of M\$250,000. In his capacity as director and shareholder of the company, he guaranteed a loan to Malaysian Times Ltd. Malaysian Times Ltd. could not pay their debt and thus the Appellant was compelled to pay a sum of M\$260,535.20. The Appellant himself was engaged in a newspaper business and he was publishing the daily paper called the Tamil Malar in Malaysia and Singapore and an investment in another newspaper is an advantage to the Appellant. It is submitted that a loss is a permissible deduction.

20 The Appellant humbly submits that the Judgment of the Federal Court of Malaysia (Appellate Jurisdiction) is wrong and ought to be reversed and that this Appeal should be allowed with costs for the following, among other

R E A S O N S

- I. BECAUSE the principles of natural justice have been transgressed in the hearing of the Appeal and the Appellant was denied the opportunity to present his case as set out in Paragraph 18.
- 30 II. BECAUSE the assessments hearing and the Deciding Order are contrary to law for the reasons set out in Paragraph 19.
- III. BECAUSE the Appeals for the several years were consolidated without any proper Order for such procedure in terms of Paragraphs 10 and 11 of Schedule 5 of the Income Tax Act No. 53 of 1967 as more fully set out in Paragraph 6.
- 40 IV. BECAUSE the Appeals for 1953, 1957 to 1966 were under Income Tax Ordinance No. 48 of 1947 and the Appeals for 1968 to 1971 under Income Tax Act No. 53 of 1967 and such appeals could not have been heard in camera or clubbed with Appeals under Income Tax Act of 1967.

R = Record
Ex = Exhibits

- V. BECAUSE the Appellant was denied his right to be heard in camera.
- VI. BECAUSE the Special Commissioners came to a finding that there was fraud or wilful default on the part of the Appellant with respect to the years 1953, 1957, 1958 and 1959 without giving the Appellant an opportunity to be heard on this issue, the assessments for the years of assessments 1953, 1957, 1958 and 1959 cannot be sustained in law. And further that in respect of these years the proviso to Section 69(1) of Income Tax Ordinance No. 48 of 1947 does not permit the assessment of this income as there was no fraud or wilful default. 10
- VII. BECAUSE the Inland Revenue Department suppressed the evidence in their possession and thus induced the Special Commissioners to arrive at an unreasonable, irrational or perverse finding as set out in Paragraph 16.
- VIII. BECAUSE the finding of the facts by the Special Commissioners is unreasonable, irrational, perverse and could not have been reached and therefore such findings are not sustainable in law as more fully set out in Paragraph 20. 20
- IX. BECAUSE the conclusion that the Appellant cannot be believed and that the books are false were reached on non-sustainable findings, the whole of the Deciding Order of the Special Commissioners is vitiated and cannot be sustained in law as set out in Paragraph 20.
- X. BECAUSE Additional Assessment dated 17th March, 1972 for year of assessment 1953 cannot be sustained in law for the reasons set out in Paragraphs 24 and 30. 30
- XI. BECAUSE the Additional Assessment dated 1st December, 1972 for year of assessment 1957 cannot be sustained in law for the reasons set out in Paragraphs 24 and 32.
- XII. BECAUSE the Additional Assessment dated 6th April, 1974 for year of assessment 1958 cannot be sustained in law for the reasons set out in Paragraphs 25, 26 27 and 33.
- XIII. BECAUSE Additional Assessment dated 1st December, 1972 for year of assessment 1959 cannot be sustained 40

in law for the reasons set out in Paragraphs 24, 25, 26, 27, 28 and 34.

- XIV. BECAUSE the assessment dated 27th October, 1972 for year of assessment 1960 cannot be sustained in law for the reasons set out in Paragraphs 24, 25, 26, 27, 28, 29 and 35.
- XV. BECAUSE the Assessment dated 27th October, 1972 for year of assessment 1961 cannot be sustained in law for the reasons set out in Paragraphs 24, 25, 26, 27, 28 and 36.
- XVI. BECAUSE the Assessment dated 27th October, 1972 for year of assessment 1962 cannot be sustained in law for the reasons set out in Paragraph 37 and Paragraphs 25, 26, 27, 28 and 29.
- XVII. BECAUSE the Assessment dated 23rd February, 1974 for the year of assessment 1966 failed to take into account the carry-forward losses as shown in Paragraphs 38, 39 and 40.
- XVIII. BECAUSE the assessment dated 23rd February, 1974 for year of assessment 1966 cannot be sustained in law for the reasons set out in Paragraphs 24, 26, 27, 28, 29 and 41.
- XIX. BECAUSE Assessment dated 16th April, 1974 for year of assessment 1967 cannot be sustained in law for the reasons set out in Paragraphs 24, 26, 27, 28, 29 and 42.
- XX. BECAUSE Assessment dated 23rd February, 1974 with respect to year of assessment 1968 cannot be sustained in law for the reasons set out in Paragraphs 24, 26, 27, 28, 29 and 43.
- XXI. BECAUSE Assessment dated 23rd February, 1974 with respect to year of assessment 1969 cannot be sustained in law for the reasons set out in Paragraphs 24, 26, 27, 28, 29 and 44.
- XXII. BECAUSE Assessment dated 23rd February, 1974 for year of assessment 1970 cannot be sustained in law for the reasons set out in Paragraphs 24, 26, 27, 28, 29 and 45.

R = Record

Ex = Exhibits

- XXIII. BECAUSE Assessment dated 3rd July, 1971 and Additional Assessment dated 31st July, 1971 for year of assessment 1971 cannot be sustained in law for the reasons set out in Paragraphs 24, 26, 27, 28, 29 and 46.
- XXIV. BECAUSE Assessment dated 2nd September, 1972 for year of assessment 1972 cannot be sustained in law for the reasons set out in Paragraphs 26, 27, 28, 29 and 47.

S. AMBALAVANER.

10

IN THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL

ON APPEAL
FROM THE FEDERAL COURT OF
MALAYSIA

B E T W E E N

N.T.S. ARUMUGAM PILLAI Appellan

- and -

THE DIRECTOR GENERAL OF
INLAND REVENUE Responden

CASE FOR THE APPELLANT

COWARD CHANCE,
Royex House,
Aldermanbury Square,
London, EC2V 7CD.

Solicitors for the Appellant.